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SUPREME COURT

OF THE

PHILIPPINES

FROM

MARCH 1, 2016 TO MARCH 8, 2016

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MANILA
2018

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. P-16-3430. March 1, 2016]
(Formerly OCA IPI No. 12-3905-P)

AIREEN A. MAHUSAY, *complainant, vs.* **GEORGE E. GAREZA, Sheriff III, Municipal Trial Court in Cities, Victorias City, Negros Occidental,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; SHERIFFS; HIGH STANDARDS OF CONDUCT ARE EXPECTED OF SHERIFFS WHO PLAY AN IMPORTANT ROLE IN THE ADMINISTRATION OF JUSTICE.—** Sheriffs play an important role in the administration of justice. They are tasked to execute final judgments of the courts. If not enforced, such decisions become empty victories of the prevailing parties. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its orders, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice. Sheriffs ought to know that they have a sworn responsibility to serve writs of execution with utmost dispatch. When writs are placed in their hands, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. Unless restrained by a court order, they should see to it that the execution of judgments is not unduly delayed. Accordingly, they must comply with their

mandated ministerial duty as speedily as possible. As agents of the law, high standards are expected of sheriffs. x x x A sheriff is a front-line representative of the justice system in this country. Once he loses the people's trust, he diminishes the people's faith in the judiciary. High standards of conduct are expected of sheriffs who play an important role in the administration of justice. They are tasked with the primary duty to execute final judgments and orders of the courts. When a writ is placed in the hands of a sheriff, it becomes his ministerial duty to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. It must be stressed that a judgment, if not executed, would be an empty victory on the part of the prevailing party.

2. **ID.; ID.; ID.; ID.; ID.; HAVE THE DUTY TO REMIT IMMEDIATELY TO THE BRANCH CLERK OF COURT ANY PAYMENTS IN SATISFACTION OF MONEY JUDGMENTS.—** In this case, it has been established, through substantial evidence, that respondent *received* the amount of ₱10,000.00 from Garcia, through the latter's staff, in partial satisfaction of the judgment obligation in favor of Lopue's. It has also been established that despite the lapse of more or less four (4) months, respondent failed to remit the same to the Branch Clerk of the MTCC of Victorias City. In fact, had it not been for several follow-ups from complainant and a reminder from the Branch Clerk requiring respondent to make a return of service on the writ of execution, the latter would not have remitted the money. Likewise, even after having remitted the partial payment from Garcia, respondent failed to satisfactorily implement the writ and only made a return of service after a period of almost three (3) years after the issuance thereof. x x x Records indubitably show his receipt of the money which he was obliged to remit immediately to the Branch Clerk, it being his *ministerial duty* to satisfactorily enforce the writ of execution. As the amounts were received by him by virtue of his office, it was his duty, as sheriff, to faithfully account therefor. Sheriffs have the duty to perform faithfully and accurately what is incumbent upon them, and any method of execution falling short of the requirement of the law should not be countenanced.

3. **ID.; ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY; FAILURE TO MAKE A RETURN AND TO SUBMIT A RETURN WITHIN THE REQUIRED PERIOD, A CASE**

OF.— [R]espondent made a return of service on the writ of execution on July 21, 2014, or almost three (3) years after the issuance thereof on October 11, 2011, and only after an *ex-parte* motion on the part of the complainant. On this score, Section 14, Rule 39 of the Rules of Court mandates that a sheriff should submit a return of service every thirty (30) days on the proceedings taken on the writ he is to implement. Based on the records, respondent clearly failed to comply with the Rules. It bears stressing that the submission of the return and of periodic reports by the sheriff is a duty that cannot be taken lightly. It serves to update the court on the status of the execution and the reasons for the failure to satisfy its judgment. The periodic reporting also provides the court insights on how efficient court processes are after a judgment's promulgation. Its overall purpose is to ensure speedy execution of decisions. A sheriffs failure to make a return and to submit a return within the required period constitutes inefficiency and incompetence in the performance of official duties. Consequently, respondent's failure in this respect renders him administratively liable for simple neglect of duty, defined as the failure of an employee to give attention to the task expected of him.

D E C I S I O N

***PER CURIAM*:**

The instant administrative case arose from a complaint-affidavit[1] filed by complainant Aireen A. Mahusay (complainant) charging respondent George E. Gareza (respondent), Sheriff III of the Municipal Trial Court in Cities of Victorias City, Negros Occidental (MTCC), of dishonesty, grave misconduct, and gross negligence.

The Facts

In her complaint-affidavit, complainant averred that she is the authorized representative of Lopue's Victorias Corporation (Lopue's), the plaintiff in Small Claims Case No. SCC-8-V against one Joseph Andrei A. Garcia (Garcia), entitled *"Lopue's*

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[1] *Rollo,* pp. 3-5.

Victorias Corporation v. Joseph Andrei A. Garcia"[2] filed before the MTCC of Victorias City. She alleged that on February 9, 2011, the MTCC of Victorias City rendered a Decision[3] based on the compromise agreement[4] executed between the parties, where Garcia undertook to pay, in installments, the total amount of ₱54,591.05 to Lopue's. However, because Garcia reneged on his undertaking under the compromise agreement, Lopue's filed a motion for the issuance of a writ of execution,[5] which the MTCC granted[6] on October 11, 2011. Respondent was tasked to implement the writ.[7]

Complainant alleged that respondent, despite having received a partial payment from Garcia through his staff, Janice C. Sta. Ana (Sta. Ana) in the amount of ₱10,000.00, failed to remit the same to Lopue's for a period of around four (4) months and ten (10) days.[8] Respondent failed to turn over the same despite follow-ups from complainant.[9]

On February 24, 2012, the MTCC Branch Clerk, Cheline T. Sorreño (Sorreño), issued a reminder[10] to respondent requiring him to submit a return on the writ. Thereafter, or on March 7, 2012, more than four (4) months after the writ of execution had been issued, Lopue's was able to receive[11] the ₱10,000.00 partial payment in satisfaction of Garcia's obligation. Still, the rest of Garcia's obligation remained unsatisfied notwithstanding the lapse

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[2] See *id*. at 19.

[3] *Id*. Penned by Presiding Judge Evelyn D. Arsenio.

[4] *Id*. at 8.

[5] *Id*. at 202-203.

[6] See Writ of Execution signed by Sorreño; *id*. at 20-21.

[7] See *id*. at 3. Respondent received the Writ of Execution on October 12, 2011; see *id*. at 24.

[8] See *id*. at 225.

[9] See *id*. at 3-4.

[10] *ld*. at 24.

[11] See Acknowledgment Receipt dated March 6, 2012; *id*. at 23.

of five (5) months from the issuance of the writ of execution; hence, the administrative complaint against respondent.[12]

In his defense,[13] respondent denied complainant's allegations and claimed that upon receipt of the writ of execution, he inquired from the latter the exact amount that Garcia owed to Lopue's, considering the alleged previous payments he had made. He also averred that Garcia was willing to settle the balance of the judgment obligation, provided that their records would tally complainant's outstanding balance in the amount of ₱55,000.00, which was much more than Garcia's computation at ₱17,000.00.[14] Respondent further explained that he deferred the enforcement of the writ of execution in deference to Garcia's status as City Councilor of Victorias City and the latter's willingness to settle his account.[15]

Thereafter, when Garcia, through Sta. Ana, tendered the amount of ₱l0,000.00 as partial payment of the judgment obligation, complainant refused to accept the same and instead, demanded the full settlement of the obligation. Further, respondent admitted that he failed to make a return of service as he did not know "how to establish the fact that defendant Garcia took the money he was supposed to pay through me."[16]

On January 8, 2014, the Court, through the Office of the Court Administrator (OCA), referred[17] the instant administrative complaint to Executive Judge Dyna Doll C. Trocio (Executive Judge Trocio) of the Regional Trial Court of Silay City, Negros Occidental (RTC), for investigation, report, and recommendation.[18]

Pending investigation, or on May 30, 2014, complainant filed an *ex-parte* motion[19] to direct respondent to enforce the writ of

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[12] See *id*. at 4.
[13] See Comment dated April 29, 2013; *id*. at 32-40.
[14] See *id*. at 33.
[15] See *id*. at 34.
[16] See *id*. at 35.
[17] *Id*. at 50-52.
[18] *Id*. at 52.
[19] *Id*. at 211-212.

execution, which the MTCC granted in an Order[20] dated June 2, 2014. Thus, on July 24, 2014, respondent filed a Return of Service,[21] stating that, despite demands for payment, the writ could not be served as Garcia was unemployed, had no other source of income, and had no personal properties that can be levied against him.

In her Investigation Report[22] dated March 11, 2015, Executive Judge Trocio found that respondent's Return of Service was submitted only on July 24, 2014, or two (2) years, nine (9) months, and thirteen (13) days[23] after the issuance of the writ of execution, and only after he was directed to do so upon *ex-parte* motion of complainant. She found that the delay could only be attributed to respondent's irresponsibility and apparent refusal to perform his duty. As such, he failed to live up to his sworn duty to uphold and execute the law.[24] Consequently, she recommended that respondent be dismissed from the service, having found him guilty of dishonesty, gross neglect of duty, and simple neglect of duty.[25]

The OCA's Report and Recommendation

In a Memorandum[26] dated December 1, 2015, the OCA concurred with Executive Judge Trocio's recommendation that respondent should be held guilty of dishonesty, gross neglect of duty, and simple neglect of duty and, accordingly, be dismissed from service, with forfeiture of all benefits and privileges except accrued leave credits, if any, with prejudice to reemployment

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[20] *Id*. at 215.

[21] Dated July 21, 2014. *Id*. at 216.

[22] *Id*. at 224-239.

[23] "Four (4) years, nine (9) months, and ten (10) days" as mentioned in the Investigation Report of Executive Judge Trocio. See *id*. at 234.

[24] See *id*. at 234-235.

[25] *Id*. at 239.

[26] *Id*. at 243-248. Issued by Deputy Court Administrator and Officer-in-Charge Raul Bautista Villanueva.

in any branch or instrumentality of the government, including government-owned or controlled corporations.[27]

Holding that sheriffs are responsible for the speedy and efficient implementation of writs of execution, the OCA found that respondent did not observe the degree of dedication required of him as a sheriff, in that he failed to discharge his duties in the execution of the final judgments of the courts. Moreover, a sheriffs duty is purely ministerial; hence, he must comply with this mandated ministerial duty as speedily as possible, without any need for the litigants to "follow up" the implementation of the writ.[28]

Respondent's failure to turn over the partial payment that he received from Garcia to the judgment creditor, Lopue's, or to the Branch Clerk, was an act of misappropriation of funds amounting to *dishonesty.* Furthermore, his failure to issue official receipts for the amount received was also a violation of the General Auditing and Accounting Rules.[29]

Moreover, respondent should also be held liable for *gross neglect of duty* for failing to implement the writ for a period of almost three (3) years[30] after its issuance.[31]

Finally, he should likewise be held guilty of *simple neglect of duty* for failing to make or submit a report/return on the implementation of the writ of execution within the required period under the Rules of Court.[32]

The Issue Before the Court

The issue for the Court's resolution is whether or not respondent should be held administratively liable for dishonesty,

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[27] See *id*. at 246 and 248.

[28] See *id*. at 247.

[29] *Id*.

[30] "Four (4) years" in OCA's Memorandum. See *id*.

[31] *Id*.

[32] *Id*. at 248.

gross neglect of duty, and simple neglect of duty and, accordingly, be dismissed from service.

The Court's Ruling

The factual findings of the Investigating Judge and the recommendation of the OCA are well-taken and are therefore adopted by the Court.

Sheriffs play an important role in the administration of justice. They are tasked to execute final judgments of the courts. If not enforced, such decisions become empty victories of the prevailing parties. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its orders, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice.[33]

Sheriffs ought to know that they have a sworn responsibility to serve writs of execution with utmost dispatch. When writs are placed in their hands, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. Unless restrained by a court order, they should see to it that the execution of judgments is not unduly delayed. Accordingly, they must comply with their mandated ministerial duty as speedily as possible. As agents of the law, high standards are expected of sheriffs.[34]

With regard to the sheriff's duty to turn over or remit any payments in satisfaction of money judgments, Section 9 (a), Rule 39 of the Rules of Court provides in part:

Section. 9. *Execution of judgments for money, how enforced.*

(a) Immediate payment on demand. - The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ

[33] See *Miranda v. Raymundo, Jr.,* A.M. No. P-13-3163, December 1, 2014, citing *Legaspi v. Tobillo,* 494 Phil. 229, 238 (2005).

[34] *Id.*, citing *Pesongco v. Estoya,* 519 Phil. 226, 241 (2006).

of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment oblige or his authorized representative if present at the time of payment. **The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.**

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. **The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amount to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.**

The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

x x x (Emphases and underscoring supplied)

In this case, it has been established, through substantial evidence, that respondent *received* the amount of ₱10,000.00 from Garcia, through the latter's staff, in partial satisfaction of the judgment obligation in favor of Lopue's. It has also been established that despite the lapse of more or less four (4) months, respondent failed to remit the same to the Branch Clerk of the MTCC of Victorias City. In fact, had it not been for several follow-ups from complainant and a reminder from the Branch Clerk requiring respondent to make a return of service on the writ of execution, the latter would not have remitted the money. Likewise, even after having remitted the partial payment from Garcia, respondent failed to satisfactorily implement the writ

and only made a return of service after a period of almost three (3) years after the issuance thereof.

Under these premises, the Court thus concurs with the OCA that respondent's omissions in this case make him administratively liable for dishonesty, as well as for gross neglect of duty.[35]

Records indubitably show his receipt of the money which he was obliged to remit immediately to the Branch Clerk, it being his *ministerial duty* to satisfactorily enforce the writ of execution. As the amounts were received by him by virtue of his office, it was his duty, as sheriff, to faithfully account therefor.[36] Sheriffs have the duty to perform faithfully and accurately what is incumbent upon them, and any method of execution falling short of the requirement of the law should not be countenanced.[37] In this respect, respondent miserably failed, and his various defenses all fail to persuade.

Moreover, respondent made a return of service on the writ of execution on July 21, 2014, or almost three (3) years after the issuance thereof on October 11, 2011, and only after an *ex-parte* motion on the part of the complainant. On this score, Section 14,[38] Rule 39 of the Rules of Court mandates that a sheriff should submit a return of service every thirty (30) days

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[35] See *Rural Bank of Francisco F. Balagtas (Bulacan), Inc. v. Pangilinan,* 367 Phil. 235 (1999).

[36] *Romero v. Villarosa, Jr.,* 663 Phil. 196, 204-210 (2011).

[37] *Peña, Jr. v. Regalado II,* 626 Phil. 447, 455-456 (2010).

[38] Section 14. *Return of writ of execution.* – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

on the proceedings taken on the writ he is to implement. Based on the records, respondent clearly failed to comply with the Rules.

It bears stressing that the submission of the return and of periodic reports by the sheriff is a duty that cannot be taken lightly. It serves to update the court on the status of the execution and the reasons for the failure to satisfy its judgment. The periodic reporting also provides the court insights on how efficient court processes are after a judgment's promulgation. Its overall purpose is to ensure speedy execution of decisions. A sheriff's failure to make a return and to submit a return within the required period constitutes inefficiency and incompetence in the performance of official duties.[39] Consequently, respondent's failure in this respect renders him administratively liable for simple neglect of duty, defined as the failure of an employee to give attention to the task expected of him.[40]

A sheriff is a front-line representative of the justice system in this country. Once he loses the people's trust, he diminishes the people's faith in the judiciary. High standards of conduct are expected of sheriffs who play an important role in the administration of justice. They are tasked with the primary duty to execute final judgments and orders of the courts. When a writ is placed in the hands of a sheriff, it becomes his ministerial duty to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. It must be stressed that a judgment, if not executed, would be an empty victory on the part of the prevailing party.[41]

In light of the foregoing, the Court hereby affirms the conclusions of fact and recommendations of the OCA finding respondent administratively liable for dishonesty, gross neglect of duty, and simple neglect of duty. As dishonesty is a grave

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[39] *Development Bank of the Philippines v. Famero,* A.M. No. P-10-2789, July 31, 2013, 702 SCRA 555, 564.

[40] See *id*.

[41] *Romero v. Villarosa, Jr., supra* note 36, at 210.

offense punishable by dismissal even on the first offense, the penalty therefor shall be meted upon respondent, and the gross neglect of duty and simple neglect of duty shall be considered as aggravating circumstances.[42]

WHEREFORE, respondent George E. Gareza, Sheriff III of the Municipal Trial Court in Cities of Victorias City, Negros Occidental, is hereby found **GUILTY** of dishonesty, gross neglect of duty, and simple neglect of duty and is ordered **DISMISSED** from service with forfeiture of all benefits and privileges, except accrued leave credits, if any, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

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

Brion, J., on leave.

EN BANC

[G.R. No. 217012. March 1, 2016]

WIGBERTO "TOBY" R. TAÑADA, JR., *petitioner, vs.* **HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL, ANGELINA "HELEN" D. TAN, and ALVIN JOHN S. TAÑADA,** *respondents.*

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[42] See Section 55, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service.

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); COMELEC RULES OF PROCEDURE; PROHIBITS THE FILING OF A MOTION FOR RECONSIDERATION OF AN EN BANC RULING, RESOLUTION, ORDER OR DECISION EXCEPT IN ELECTION OFFENSE CASES.—** Wigberto filed a prohibited pleading: a motion for reconsideration of a resolution of the COMELEC En Banc. Section 1(d), Rule 13 of the COMELEC Rules of Procedure specifically prohibits the filing of a "motion for reconsideration of an en banc ruling, resolution, order or decision except in election offense cases." Consequently, the COMELEC En Banc ruling became final and executory, precluding Wigberto from raising again in any other forum Alvin John's nuisance candidacy as an issue.

2. **ID.; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL; HAS NO JURISDICTION TO ENTERTAIN A PETITION QUESTIONING THE COMELEC EN BANC'S RESOLUTION WHICH HAS BECOME FINAL AND EXECUTORY; CASE AT BAR.—** Wigberto filed his petition beyond the period provided by the COMELEC Rules of Procedure. The COMELEC En Banc promulgated its resolution on Alvin John's alleged nuisance candidacy on 25 April 2013. Wigberto filed his petition in G.R. Nos. 207199-200 before this Court on 27 May 2013. By this date, the COMELEC En Banc's resolution on Alvin John's alleged nuisance candidacy was already final and executory. x x x What Wigberto should have done was to file a petition for certiorari with this Court within five days from promulgation of the 25 April 2013 resolution of the COMELEC En Banc. Wigberto failed to timely assail before this Court through a petition for certiorari the COMELEC En Banc resolution declaring that Alvin John was not a nuisance candidate. x x x The HRET did not commit any grave abuse of discretion in declaring that it has no jurisdiction to determine whether Alvin John was a nuisance candidate. If Wigberto timely filed a petition before this Court within the period allotted for special actions and questioned Alvin John's nuisance candidacy, then it is proper for this Court to assume jurisdiction and rule on the matter. As things stand,

the COMELEC En Banc's ruling on Alvin John's nuisance candidacy had long become final and executory.

PEREZ, *J.*, *concurring opinion*:

1. **POLITICAL LAW; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET); 2015 REVISED RULES OF THE HRET; THE HRET ONLY HAS JURISDICTION OVER ELECTION PROTESTS AND *QUO WARRANTO* CASES; ELECTION PROTEST AND *QUO WARRANTO* CASE, DISTINGUISHED.—** Under the 2015 Revised Rules of the HRET (HRET Rules), the electoral tribunal only has jurisdiction over two types of election contests: election protests and *quo warranto* cases. An election protest is the proper remedy against acts or omissions constituting electoral frauds or anomalies in contested polling precincts, and for the revision of ballots. On the other hand, the eligibility of the Member of the Lower House is impugned in a *quo warranto* case. Evidently, the HRET Rules do not prescribe procedural guidelines on how the Certificate of Candidacy of a political aspirant can be cancelled on the ground that he or she is a nuisance candidate. Rather, this remedial vehicle is instituted in the Commission on Elections (COMELEC) Rules of Procedure, particularly Rule 24 thereof, by virtue of Sec. 69 of *Batas Pambansa Blg.* 881, otherwise known as the Omnibus Election Code.

2. **ID.; ID.; ID.; NOT VESTED WITH APPELLATE JURISDICTION OVER THE RULINGS OF THE COMMISSION ON ELECTIONS *EN BANC*.—** It is worth recalling in the case at bar that the COMELEC, in the exercise of its jurisdiction, has resolved that Alvin John is **not** a nuisance candidate, although he committed false material representations in his certificate of candidacy. It was error, however, for petitioner to assume that the HRET may thereafter reverse the COMELEC's findings. The tribunal is not vested with appellate jurisdiction over the rulings of the COMELEC En Banc. As the Court held in *Codilla Sr. vs. Hon. De Venecia,* the HRET cannot assume jurisdiction over a cancellation case involving Members of Lower House that had already been decided by the COMELEC and is under review by the Supreme Court. I see no bar against applying the same restriction by analogy to proceedings against nuisance candidates wherein a final judgment has already been rendered

by the polling commission, even more so in this case where Alvin John can never be deemed a "Member" of Congress over whom the HRET can exercise jurisdiction.

3. **ID.; ID.; ID.; THE JURISDICTION OF THE HRET IS LIMITED TO THE ELECTION, RETURNS, AND QUALIFICATION OF THE MEMBERS OF THE HOUSE OF REPRESENTATIVES; MEMBERSHIP IN CONGRESS, REQUISITES.—** In *Reyes v. COMELEC,* the Court made clear that the jurisdiction of the HRET, as circumscribed under Article VI, Section 17 of the Constitution, is limited to the election, returns, and qualification of the **Members** of the House of Representatives. And to be considered a Member of the Lower House, there must be a concurrence of the following requisites: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office. This remains to be the standing test of membership in Congress being applied by the Court. x x x Applying *Reyes,* it becomes indisputable that Alvin John cannot be considered a "Member" of Congress. Having garnered the least number of votes in a landslide defeat, he could have never been recognized as the winning candidate. Consequently, he could not have validly taken an oath of office, nor could he have discharged the functions pertaining to a district representative. As a non-member of Congress, the HRET could not therefore assume jurisdiction over the issues concerning his eligibility, *e.g.* the issue on whether or not he is a nuisance candidate.

APPEARANCES OF COUNSEL

Villamor & Sana Law Firm for petitioner.
Franky Y. Tan for petitioner Tañada, Vivo & Tan.
The Solicitor General for public respondent.
G.E. Garcia Law Office for respondent Angelina "Helen" D. Tan.
J.P. Cabugao Law Office for respondent Alvin John S. Tañada.
Josef Leroi L. Garcia for petitioner.

DECISION

CARPIO, *J.*:

The Case

G.R. No. 217012 is a petition for certiorari[1] assailing the Resolutions promulgated on 25 September 2014[2] and 22 January 2015[3] by the House of Representatives Electoral Tribunal (HRET) in HRET Case No. 13-018 (EP). The HRET dismissed Wigberto "Toby" R. Tañada, Jr.'s (Wigberto) election protest *ad cautelam* on two grounds: for being insufficient in form and substance, and for lack of jurisdiction to pronounce and declare Alvin John S. Tañada (Alvin John) as a nuisance candidate.

The Facts

The HRET recited the facts as follows:

> Culled from the records and the submissions of the parties herein, as well as from the ruling of the Supreme Court in *Tanada, Jr. v. Commission on Elections, et al.,* [G.R. Nos. 207199-200, 22 October 2013, 708 SCRA 188] are the factual antecedents relevant to this resolution.
>
> For the position of Representative of the Fourth Legislative District of the Province of Quezon contested in the National and Local Elections of 2013, three candidates filed their respective Certificates of Candidacy (CoC), namely: Wigberto R. Tañada, Jr. (Wigberto) of the Liberal Party; Angelina D. Tan (Tan) of the Nationalist People's Coalition [(NPC)]; and Alvin John S. Tañada (Alvin John) of the Lapiang Manggagawa. In October 2012, Wigberto filed twin petitions

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[1] Under Rule 65 of the 1997 Rules of Civil Procedure.

[2] *Rollo,* pp. 39-52. Penned by Associate Justice Lucas P. Bersamin, with Associate Justice and Chairperson Presbitero J. Velasco, Jr., Associate Justice Diosdado M. Peralta, and Representatives Ma. Theresa B. Bonoan and Wilfrido Mark M. Enverga concurring. Representative Luzviminda C. Ilagan penned a Concurring and Dissenting Opinion, which was joined by Representatives Franklin P. Bautista, Joselito Andrew R. Mendoza, and Jerry P. Treñas.

[3] *Id.* at 70-71.

in the Commission on Elections (COMELEC) to seek the cancellation of Alvin John's CoC (docketed as SPA No. 13-056), and to declare Alvin John a nuisance candidate (docketed as SPA No. 13-0357). The petitions were eventually consolidated.

On January 29, 2013, the COMELEC First Division dismissed the consolidated petitions for their lack of merit.

Wigberto duly filed his motion for reconsideration of the dismissal of his petitioners [sic], alleging the following grounds, to wit:

> a) Assuming Respondent Tañada resided in Purok 3, Barangay Progreso, Gumaca, Quezon for a period of thirteen (13) years, the said period was long ago. Presently, Respondent Tañada failed to comply with the one-year residency requirement.
>
> b) Respondent Tañada was a resident of Parañaque where he was enrolled as a voter from 2009 until 4 June 2012, when he transferred his Voter's Registration to Gumaca, Quezon; and
>
> c) "Respondent Tañada's own tweets and entries in Facebook are bereft of any political plans or activities which betray his true intentions to run as Member of the 4th District of Gumaca, Quezon.

On April 25, 2013, the COMELEC *En Banc* denied Wigberto's motion for reconsideration in SPA No. 13-057, but granted his motion for reconsideration in SPA No. 13-056, decreeing thusly:

> WHEREFORE, premises considered, the Motion for Reconsideration dated 18 February 2013 is PARTIALLY GRANTED. The Motion for Reconsideration for SPA No. 13-057 (DC) is DENIED for LACK OF MERIT. However, the Motion for Reconsideration for SPA No. 13-056 (DC) is GRANTED. Accordingly, Respondent Alvin John S. Tañada's Certificate of Candidacy for the position of Member of the House of Representatives for the 4th District of the Province of Quezon is hereby CANCELLED.

On May 7, 2013, Wigberto sought the reconsideration of the denial of his petition in SPA Case No. 13-057 to urge the declaration of Alvin John as a nuisance candidate on the basis of newly discovered evidence.

For the May 13, 2013 National and Local Elections, the name of candidate Alvin John remained in the ballots. After the canvass of the votes, the following results indicated that Tan was the winning candidate, to wit:

Tan	84,782
Tañada, Wigberto	80,698
Tañada, Alvin John	7,038

On May 16, 2013, Wigberto filed with the Quezon Provincial Board of Canvassers (Quezon PBOC) his PETITION TO CORRECT MANIFEST ERRORS IN THE CERTIFICATES OF CANVASS FOR THE POSITION OF MEMBER OF THE HOUSE OF REPRESENTATIVES, 4TH DISTRICT QUEZON with URGENT MOTION TO SUSPEND CANVASS AND/OR PROCLAMATION FOR THE SAID POSITION, whereby he prayed that the COMELEC direct the Quezon PBOC to consolidate in his favor the votes canvassed for Alvin John, and to proclaim the candidate with the highest number of votes as the winner.

The Quezon PBOC denied Wigberto's motion to have the votes garnered by Alvin John credited in his favor on the same date of May 16, 2013, holding that the votes of Alvin John could not be counted in favor of Wigberto because the cancellation of the former's CoC had been on the basis of his material misrepresentations under Section 78 of the *Omnibus Election Code,* not on being a nuisance candidate under Section 69 of *Omnibus Election Code.* The Quezon PBOC then proclaimed Tan as the winning candidate.

On May 21, 2013, Wigberto filed a SUPPLEMENT TO THE PETITION WITH ADDITIONAL PRAYER FOR ANNULMENT OF PROCLAMATION, whereby he reiterated his prayer to be declared as the winning candidate for the position of Representative of the Fourth District of Quezon by consolidating the votes received by Alvin John with the votes he garnered.

On May 27, 2013, Wigberto brought in the Supreme Court his *AD CAUTELAM* PETITION FOR *CERTIORARI, MANDAMUS* AND PROHIBITION with URGENT MOTION FOR THE ISSUANCE OF A *STATUS QUO ANTE* ORDER to assail the COMELEC *En Banc's* Resolution promulgated on April 25, 2013 declaring Alvin John not a nuisance candidate, docketed as G.R. Nos. 207199-200, thereby imploring the Supreme Court to declare Alvin John as a nuisance

candidate, and to order the COMELEC to credit the votes received by Alvin John in his favor.

On May 30, 2013, Wigberto filed [with] this Tribunal this election protest *ad cautela,* pertinently alleging as follows:

> 13. The fraud perpetrated upon herein Protestant in the fielding of Alvin John Tañada as a nuisance candidate consists of the following:
>
> > a. The lawyers who turned out to be counsels for Protestee collaborated, in varying degrees and at various times, in support of the nuisance candidate Alvin John Tañada, in a case of an otherwise patent conflict of interest, unless their client Protestee in the first place was precisely the sponsor of the candidacy of Alvin John as a nuisance candidate in order to confuse and mislead the voters into voting for Alvin John instead of herein Protestant, to wit: x x x.
> >
> > b. As found by the Comelec En Banc in SPA 13-056, Alvin John Tañada "is not a resident of and/or never resided" in the Fourth District of Quezon, and that he had the "intent to mislead, misinform, or deceive the electorate" since he is a resident of Parañaque City, and therefore disqualified from running for any elective post in the Fourth District of Quezon. x x x.
> >
> > d. Alvin John Tañada was never seen campaigning in the Fourth District of Quezon Province, nor did he have any posters in the common poster areas. Neither did he attend any campaign rally or candidate's forum. To top it all, he did not even bother to vote in the May 13, 2013 Elections.
> >
> > e. An avid user of social media such as Facebook and Twitter, Alvin John Tañada never made a single post or tweet to his friends, relatives or associates in said media about his political plans of the fact that he was running as Congressman. Such palpable silence, if not secrecy, on one's candidacy is a trademark attitude of nuisance candidates. They

> make themselves publicly scarce and difficult to track down, when the very nature of a candidacy precisely seeks nourishment from widespread publicity and maximum exposure.
>
> f. The fraudulent fielding of Alvin John Tañada as a nuisance candidate resulted in 7,038 votes for the one and only bona fide candidate with the surname "Tañada," Wigberto "Toby" Tañada, [Jr.,] whose certificate of candidacy, in the first place, had already been ordered cancelled by the Comelec in its April 25, 2013 consolidated Resolution in SPA 13-056 and 13-057. x x x.

> 22. Because of the perpetration of fraud upon herein Protestant through the malicious and intentional fielding of a nuisance candidate in the person of Alvin John Tañada to sabotage the candidacy of herein Protestant, and the inclusion of Alvin John's name in the ballot despite the cancellation of his certificate of candidacy, Protestant is hereby protesting the miscounting and mistabulation of the votes cast for him as votes for Alvin John in the ten (10) Municipal Board of Canvassers of the Fourth District of Quezon and the Provincial Board of Canvassers of Quezon as follows: x x x.

Meanwhile, on June 28, 2013, the COMELEC Second Division favorably acted on the motion to annul the proclamation of Tan, and annulled the proclamation, and directed the Quezon PBOC to credit the 7,038 votes of Alvin John to Wigberto, and to declare the winner after the re-computation of the votes. While Wigberto's petition for *certiorari* was still pending in the Supreme Court, the COMELEC *En Banc* affirmed the action of the COMELEC Second Division annulling Tan's proclamation. However, Tan had by then taken her oath and assumed office past noon time of June 30, 2013, thereby rendering the adverse resolution on her proclamation moot.

On October 22, 2013, the Supreme Court promulgated its resolution in G.R. Nos. 207199-200 dismissing Wigberto's *AD CAUTELAM* PETITION FOR *CERTIORARI, MANDAMUS* AND PROHIBITION with URGENT MOTION FOR THE ISSUANCE OF A STATUS QUO ANTE ORDER, *viz:*

> Case law states that the proclamation of a congressional candidate following the election divests the COMELEC of

jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed representative in favor of the HRET. The phrase "election, returns and qualifications" refers to all matters affecting the validity of the contestee's title. In particular, the term "election" refers to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of the votes; "returns" refers to the canvass of the returns and the proclamation of winners, including questions concerning the composition of the board of canvassers and the authenticity of the election returns; and "qualifications" refers to matters that could be raised in *quo warranto* proceeding against the proclaimed winner, such as his disloyalty or ineligibility or the inadequacy of his COC.

In the foregoing light, considering that Angelina had already been proclaimed as Member of the House of Representatives for the 4th District of Quezon Province on May 16, 2013, as she has in fact taken her oath and assumed office past noon time of June 30, 2013, the Court is now without jurisdiction to resolve the case at bar. As they stand, the issues concerning the conduct of the canvass and the resulting proclamation of Angelina as herein discussed are matters which fall under the scope of the terms "election" and "returns" as above-stated and hence, properly fall under the HRET's sole jurisdiction.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Thereafter, the Tribunal directed Tan to submit her responsive pleading to the election contest.

In compliance, Tan filed her verified answer with special and affirmative defenses and counter-protest, praying that the Tribunal dismiss the election protest pursuant to Rule 16 in relation to Rule 21 of *The 2011 Rules of the House of Representatives Electoral Tribunal* (20 11 HRET Rules) for being grossly deficient in form and substance under the law, and considering further that Wigberto was guilty of forum shopping.

In his reply and answer to the counter-protest, Wigberto insisted that the Supreme Court had already declared in G.R. Nos. 207199-200 that the Tribunal had exclusive jurisdiction to determine whether

or not Alvin John was a nuisance candidate, and whether or not crediting the votes garnered by Alvin John to Wigberto constituted an election contest.

On February 11, 2014, Tan filed her comment with motion to dismiss and/or set the case for preliminary hearing or oral argument.

On February 27, 2014, the Tribunal granted Tan's motion to set the oral arguments, and held oral arguments on March 13, 2014.[4]

The HRET's Ruling

The HRET promulgated the assailed Resolution on 25 September 2014.

The HRET held that Wigberto did not commit forum-shopping. Wigberto sought exclusive relief from the HRET for his electoral protest in the belief that it was the proper forum for his predicament. He did not go to the HRET to look for a friendly forum to obtain a favorable result.

However, the HRET held that Wigberto's election protest was insufficient in form and substance. The HRET found that Wigberto's election protest failed to allege the facts to support a valid election protest as required by Rule 16 of the 2011 HRET Rules. Although the pleading was captioned as an election protest, its contents were more appropriate for a petition to annul Tan's proclamation. The HRET further stated that the material fraud in an election protest must be of an "intrinsic nature as to which the protestant was caught off his guard,"and not extrinsic, or "one that he could have effectively prevented after the filing of Alvin John's CoC but still during the campaign period."

Finally, the HRET ruled that it has no jurisdiction to declare that Alvin John was a nuisance candidate. The HRET relied on Section 17, Article VI of the 1987 Constitution and Rule 15 of the 2011 HRET Rules to declare that its power to judge election contests is limited to Members of the House of Representatives. Alvin John, admittedly, is not a Member of the House of Representatives.

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

The dispositive portion of the HRET's Resolution reads:

WHEREFORE, the election protest *ad cautela* of protestant WIGBERTO "TOBY" R. TAÑADA, JR. is DISMISSED for being insufficient in form and in substance, and for lack of jurisdiction to pronounce and declare Alvin John S. Tañada as a nuisance candidate.

No pronouncement as to costs.

SO ORDERED.[5]

Representative Luzviminda C. Ilagan (Rep. Ilagan) of Gabriela Women's Party wrote a Concurring and Dissenting Opinion.

Rep. Ilagan stated that Wigberto's election protest is sufficient in form and substance. The purpose of an election protest is to ascertain whether the candidate proclaimed by the board of canvassers is the lawful choice of the people. Wigberto was not raising matters of irregularities in the counting of votes at the precinct level, so there was no need to cite the specific precincts in the protest filed before the HRET. Rep. Ilagan further stated that the principle of liberal interpretation and application of the HRET Rules is consistent with the HRET's constitutional duty to ensure that the will of the electorate is not defeated.

Rep. Ilagan declared that the HRET has jurisdiction to determine whether Tan committed fraud by fielding Alvin John, and whether Alvin John is a nuisance candidate. The jurisdiction of the HRET in the adjudication of election contests is intended to be full, complete and unimpaired. The facts and circumstances of the case, that is, the limitations in the procedures of the computerized elections that led to the non-deletion of Alvin John's name in the ballots despite the cancellation of his certificate of candidacy, the refusal of the COMELEC to declare Alvin John a nuisance candidate, and the eventual decision of the COMELEC to annul Tan's proclamation and credit Alvin John's votes to Wigberto, show that the electorate's will was not realized.

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[5] *Id.* at 50.

Finally, Rep. Ilagan concurred with the Resolution that Wigberto did not commit forum-shopping. Even if Wigberto instituted actions before different institutions, the actions had different causes of action.

Wigberto filed his Motion for Reconsideration of the HRET's Resolution on 3 November 2014. He raised the following grounds: (1) the jurisdiction of the HRET in election protests is defined by the Constitution, the law and jurisprudence, and cannot be arbitrarily limited by the HRET; (2) the opening of ballot boxes and the revision of ballots are not essential to an election protest; and (3) the HRET cannot refuse the exercise of its jurisdiction over the fraud committed by a protestee on the ground that it has no power to reverse a COMELEC ruling on a nuisance candidate.

The HRET denied Wigberto's Motion for Reconsideration in its Resolution dated 22 January 2015.

Wigberto filed the present Petition for Certiorari on 18 March 2015.

The Issues

Wigberto enumerated the following grounds warranting allowance of his petition:

1. Public respondent HRET gravely abused its discretion, amounting to lack or excess of jurisdiction, when it whimsically, capriciously, and arbitrarily limited its own jurisdiction in election protests as defined by the Constitution, the law, and jurisprudence.
2. Public respondent HRET gravely abused its discretion, amounting to lack or excess of jurisdiction, when it whimsically, capriciously, and arbitrarily declared that an election protest is limited to the opening of ballot boxes and the revision of ballots.
3. Public respondent HRET gravely abused its discretion, amounting to lack or excess of jurisdiction, when it whimsically, capriciously, and arbitrarily declared that it cannot look into the fraudulent fielding of a nuisance

candidate as perpetrated by herein private respondent, because it has no power to review, modify, or reverse the factual finding of the COMELEC on nuisance candidates.[6]

The Court's Ruling

The petition has no merit. We affirm the Resolutions of the HRET.

Wigberto's Procedural Errors

In G.R. Nos. 207199-200, this Court narrated the following events:

In a Resolution dated January 29, 2013, the COMELEC First Division dismissed both petitions for lack of merit. On Wigberto's motion for reconsideration, **the COMELEC En Banc, in a Resolution dated April 25, 2013,** upheld the COMELEC First Division's ruling in SPA No. 13-057 (DC) that Alvin John was not a nuisance candidate as defined under Section 69 of Batas Pambansa Bilang 881, as amended, otherwise known as the "Omnibus Election Code of the Philippines" (OEC). However, in SPA No. 13-056 (DC), it granted the motion for reconsideration and cancelled Alvin John's CoC for having committed false material representations concerning his residency in accordance with Section 78 of the OEC.

On May 15, 2013, Wigberto filed a 2nd Motion for Partial Reconsideration of the COMELEC En Banc's ruling in SPA No. 13- 057 (DC) on the ground of newly discovered evidence. He alleged that Alvin John's candidacy was not bona fide because: (a) Alvin John was merely forced by his father to file his CoC; (b) he had no election paraphernalia posted in official COMELEC posting areas in several barangays of Gumaca, Quezon Province; (c) he did not even vote during the May 13, 2013 National Elections; and (d) his legal representation appeared to have been in collusion with the lawyers of Angelina.

On May 15 and 16, 2013, Wigberto filed with the COMELEC En Bane an Extremely Urgent Motion to Admit Additional and Newly Discovered Evidence and to Urgently Resolve Motion for Reconsideration and an Urgent Manifestation and Supplemental thereto. These motions, however, remained un-acted upon until **the filing of the present petition before the Court on May 27,**

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[6] *Id.* at 14.

2013. Thus, in order to avoid charges of forum-shopping, said motions were withdrawn by Wigberto.[7]

Wigberto committed several fatal procedural errors.

First, Wigberto filed a prohibited pleading: a motion for reconsideration of a resolution of the COMELEC En Banc. Section 1(d), Rule 13 of the COMELEC Rules of Procedure specifically prohibits the filing of a "motion for reconsideration of an en banc ruling, resolution, order or decision except in election offense cases." Consequently, the COMELEC En Banc ruling became final and executory,[8] precluding Wigberto from raising again in any other forum Alvin John's nuisance candidacy as an issue.

Second, Wigberto filed his petition beyond the period provided by the COMELEC Rules of Procedure. The COMELEC En Banc promulgated its resolution on Alvin John's alleged nuisance candidacy on 25 April 2013. Wigberto filed his petition in G.R. Nos. 207199-200 before this Court on 27 May 2013. By this date, the COMELEC En Banc's resolution on Alvin John's alleged nuisance candidacy was already final and executory. Section 3, Rule 37 of the COMELEC Rules of Procedure provides:

Section 3. *Decisions Final After Five Days.* – Decisions in pre-proclamation cases and petitions to deny due course to or cancel certificates of candidacy, to declare a candidate as nuisance candidate

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[7] *Tañada, Jr. v. Commission on Elections,* G.R. Nos. 207199-200, 22 October 2013, 708 SCRA 188, 191-192. Citations omitted. Emphases added.

[8] The HRET's 25 September 2014 Resolution stated that Wigberto sought reconsideration of the denial of his petition before the COMELEC En Banc in SPA Case No. 13-057 on *7 May 2013.* On the other hand, our resolution in G.R. Nos. 207199-200 stated that Wigberto filed a second motion for partial reconsideration of the COMELEC En Banc's ruling in SPA Case No. 13-057 on *15 May 2013.* Wigberto also filed with the COMELEC En Banc on *15 and 16 May 2013* an Extremely Urgent Motion to Admit Additional and Newly Discovered Evidence and to Urgently Resolve Motion for Reconsideration and an Urgent Manifestation and Supplemental thereto. In any event, Wigberto still filed said pleadings beyond the reglementary period.

or to disqualify a candidate, and to postpone or suspend elections shall become final and executory after the lapse of five (5) days from their promulgation, unless restrained by the Supreme Court.

What Wigberto should have done was to file a petition for certiorari with this Court within five days from promulgation of the 25 April 2013 resolution of the COMELEC En Banc. Wigberto failed to timely assail before this Court through a petition for certiorari the COMELEC En Banc resolution declaring that Alvin John was not a nuisance candidate.

The HRET's Exercise of its Jurisdiction

The HRET did not commit any grave abuse of discretion in declaring that it has no jurisdiction to determine whether Alvin John was a nuisance candidate. If Wigberto timely filed a petition before this Court within the period allotted for special actions and questioned Alvin John's nuisance candidacy, then it is proper for this Court to assume jurisdiction and rule on the matter. As things stand, the COMELEC En Banc's ruling on Alvin John's nuisance candidacy had long become final and executory.

To our mind, it appears that Wigberto's petition challenging Alvin John's nuisance candidacy filed before the HRET, and now before this Court, is a mere afterthought. It was only after Angelina was proclaimed a winner that Wigberto renewed his zeal in pursuing Alvin John's alleged nuisance candidacy. It is not enough for Wigberto to have Alvin John's COC cancelled, because the effect of such cancellation only leads to stray votes.[9] Alvin John must

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[9] Section 6, Republic Act No. 6646, The Electoral Reforms Law of 1987 provides:

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

also be declared a nuisance candidate, because only then will Alvin John's votes be credited to Wigberto.[10]

Wigberto further argues that this Court directed him to seek resolution regarding Alvin John's purported nuisance candidacy before the HRET. This is inaccurate. We directed Wigberto to the HRET to question the conduct of the canvass and Tan's proclamation. We stated thus:

> In the foregoing light, considering that Angelina had already been proclaimed as Member of the House of Representatives for the 4th District of Quezon Province on May 16, 2013, as she has in fact taken her oath and assumed office past noon time of June 30, 2013, the Court is now without jurisdiction to resolve the case at bar. As they stand, the issues concerning the conduct of the canvass and the resulting proclamation of Angelina as herein discussed are matters which fall under the scope of the terms "election" and "returns" as above-stated and hence, properly fall under the HRET's sole jurisdiction.[11]

WHEREFORE, we **DISMISS** the petition and **AFFIRM** the assailed Resolutions promulgated on 25 September 2014 and 22

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[10] Our ruling in *Dela Cruz v. Commission on Elections,* 698 Phil. 548 (2012), prompted the issuance of COMELEC Resolution No. 9599, In The Matter of the Amendment to Rule 24 of the Comelec Rules of Procedure as amended by Resolution No. 9523 (2012). The amendment reads:

> Section 5. *Applicability of Rule 23.* – Except for *motu proprio* cases, Sections 3, 4, 5, 6, 7, and 8 of Rule 23 shall apply in proceedings against nuisance candidates.
>
> If the person declared as a nuisance candidate and whose certificate of candidacy has been cancelled or denied due course does not have the same name and/or surname as a *bona fide* candidate for the same office, the votes cast for such nuisance candidate shall be deemed stray pursuant to Section 9 of Rule 23.
>
> If the person declared as a nuisance candidate and whose certificate of candidacy has been cancelled or denied due course has the same name and/or surname as a *bona fide* candidate for the same office, the votes cast shall not be considered stray but shall be counted and tallied for the *bona fide* candidate. However, if there are two or more *bona fide* candidates with the same name and/or surname as the nuisance candidate, the votes cast for the nuisance candidate shall be considered as stray votes.

[11] *Tañada, Jr. v. Commission on Elections,* G.R. Nos. 207199-200, 22 October 2013, 708 SCRA 188, 196. Citations omitted.

January 2015 by the House of Representatives Electoral Tribunal in HRET Case No. 13-018 (EP).

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, del Castillo, Mendoza, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.*, concur.

Perez, J., see concurring opinion.

Velasco, Jr., Peralta, and *Bersamin, JJ.,* no part, HRET members.

Brion, J., on leave.

CONCURRING OPINION

PEREZ, *J.*:

I register my vote with the majority for the dismissal of the instant petition. The House of Representatives Electoral Tribunal (HRET) did not commit grave abuse of discretion in disclaiming jurisdiction over the protest filed by herein petitioner Wigberto "Toby" R. Tañada, Jr. (Wigberto).

A perusal of the protest petitioner filed before the tribunal reveals that his claim of entitlement to office as Quezon province's Representative for its Third Legislative District is anchored on the postulation that the 7,038 votes cast for his political rival, private respondent John Alvin S. Tañada (John Alvin), an alleged nuisance candidate, should instead be credited in his favor.[1] These votes combined with the 80,698 already credited to petitioner exceeds private respondent Angelina Tan's tally of votes that totaled 84,782.

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[1] Sec. 5, Rule 24 of the COMELEC Rules of Procedure

Section 5. Applicability of Rule 23. – x x x

If the person declared as a nuisance candidate and whose certificate of candidacy has been cancelled or denied due course does not have the same name and/or surname as a bona fide candidate for the same office, the votes cast for such nuisance candidate shall be deemed stray pursuant to Section 9 of Rule 23.

It is patent from petitioner's line of argument that the declaration of Alvin John as a nuisance candidate is a precondition before the relief he seeks can be granted. Unfortunately, the HRET lacks the authority to rule on whether or not Alvin John is indeed a nuisance candidate as Wigberto pegged him to be.

Under the 2015 Revised Rules of the HRET (HRET Rules), the electoral tribunal only has jurisdiction over two types of election contests: election protests and *quo warranto* cases.[2] An election protest is the proper remedy against acts or omissions constituting electoral frauds or anomalies in contested polling precincts, and for the revision of ballots.[3] On the other hand, the eligibility of the Member of the Lower House is impugned in a *quo warranto* case.[4] Evidently, the HRET Rules do not prescribe procedural guidelines on how the Certificate of Candidacy of a political aspirant can be cancelled on the ground that he or she is a nuisance candidate. Rather, this remedial vehicle is instituted in the Commission on Elections (COMELEC) Rules of Procedure, particularly Rule 24[5] thereof, by virtue of Sec. 69 of *Batas Pambansa Blg.* 881, otherwise known as the Omnibus Election Code.[6]

It is worth recalling in the case at bar that the COMELEC, in the exercise of its jurisdiction, has resolved that Alvin John is **not** a nuisance candidate, although he committed false material

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[2] Rules 15-18 of the 2015 Revised Rules of the HRET.

[3] Rule 17 of the 2015 Revised Rules of the HRET.

[4] Rule 18 of the 2015 Revised Rules of the HRET.

[5] Entitled *"Proceedings Against Nuisance Candidates."*

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

representations in his certificate of candidacy.[7] It was error, however, for petitioner to assume that the HRET may thereafter reverse the COMELEC's findings. The tribunal is not vested with appellate jurisdiction over the rulings of the COMELEC *En Banc*. As the Court held in *Codilla Sr. vs. Hon. De Venecia,*[8] the HRET cannot assume jurisdiction over a cancellation case involving Members of Lower House that had already been decided by the COMELEC and is under review by the Supreme Court.[9] I see no bar against applying the same restriction by analogy to proceedings against nuisance candidates wherein a final judgment has already been rendered by the polling commission, even more so in this case where Alvin John can never be deemed a "Member" of Congress over whom the HRET can exercise jurisdiction.

In *Reyes v. COMELEC,*[10] the Court made clear that the jurisdiction of the HRET, as circumscribed under Article VI, Section 17 of the Constitution,[11] is limited to the election, returns, and qualification of the **Members** of the House of Representatives. And to be considered a Member of the Lower House, there must be a concurrence of the following requisites: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office. This remains to be the standing test of membership in Congress being applied by the Court.

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[7] April 25, 2013 Resolution of the COMELEC En Banc in SPA 13-056 and SPA 13-057.

[8] G.R. No. 150605, December 10, 2002.

[9] Concurring Opinion of former Associate Justice Roberto A. Abad in *Reyes vs. COMELEC,* G.R. No. 207164, October 22, 2013.

[10] G.R. No. 207164, June 25, 2013.

[11] SECTION 17. The Senate and the House of Representatives shall each have an Electoral Tribunal, which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

To set the record straight, the dismissal of the petitions in G.R. Nos. 207199-200 on October 22, 2013 was never intended to modify, much less overturn, the doctrine laid down in *Reyes.* Noteworthy is that the dismissal was effected through a minute resolution, in contrast to the Decision in Reyes, which was the result of a deeper scrutiny of the issue regarding the HRET's jurisdiction. Moreover, the statement in our ruling in G.R. Nos. 207199-200 that proclamation alone vests the HRET with jurisdiction over election, returns, and qualification of the winning candidate is mere *obiter dictum,* for as the Court observed, all of the three requisites for private respondent Tan's membership in the Congress were present.[12] To dispel any lingering doubt, the Court has ruled in the recent case of *Timuay vs. COMELEC*[13] that *"once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of representatives, the jurisdiction of the [COMELEC] over election contests relating to his/her election, returns, and qualification ends, and the HRET's own jurisdiction begins,"* in consonance with our ruling in *Reyes.*

Applying *Reyes,* it becomes indisputable that Alvin John cannot be considered a "Member" of Congress. Having garnered the least number of votes in a landslide defeat, he could have never been recognized as the winning candidate. Consequently, he could not have validly taken an oath of office, nor could he have discharged the functions pertaining to a district representative. As a non-member of Congress, the HRET could not therefore assume jurisdiction over the issues concerning his eligibility, *e.g.* the issue on whether or not he is a nuisance candidate.

In view of the foregoing considerations, I concur in the **DISMISSAL** of the instant petition.

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[12] Tan was validly proclaimed on May 16, 2013, she has already taken her oath, and she has assumed office by midday of June 30, 2013.

[13] G.R. No. 207144, February 3, 2015.

FIRST DIVISION

[A.M. No. RTJ-15-2408. March 2, 2016]
(Formerly OCA IPI No. 13-4134-RTJ)

FLORANTE A. MIANO, *complainant, vs.* **MA. ELLEN M. AGUILAR,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; FOR ADMINISTRATIVE LIABILITY TO ATTACH, THE DECISION OR ORDER OF THE JUDGE IN THE PERFORMANCE OF HIS OFFICIAL DUTIES MUST BE CONTRARY TO EXISTING LAW AND JURISPRUDENCE AND IT MUST BE PROVEN THAT HE WAS MOVED BY BAD FAITH, FRAUD, DISHONESTY, OR CORRUPTION.—** To be able to render substantial justice and maintain public confidence in the legal system, judges should be embodiments of competence, integrity and independence. Judges are also expected to exhibit more than just a cursory acquaintance with statutes and procedural rules and to apply them properly in all good faith. They are likewise expected to demonstrate mastery of the principles of law, keep abreast of prevailing jurisprudence, and discharge their duties in accordance therewith. Corollary thereto, the Court has ruled that when a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. Such is gross ignorance of the law. However, gross ignorance of the law is more than an erroneous application of legal provisions. Not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice. To constitute gross ignorance of the law and for administrative liability to attach, it is not enough that the decision, order or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence. It must also be proven that he was moved by bad faith, fraud, dishonesty, or corruption or had committed an error so egregious that it amounted to bad faith.

2. **ID.; ID.; GROSS INEFFICIENCY; FAILURE TO DECIDE CASES AND OTHER MATTERS WITHIN THE REGLEMENTARY PERIOD CONSTITUTES GROSS INEFFICIENCY AND WARRANTS THE IMPOSITION OF ADMINISTRATIVE SANCTION AGAINST THE ERRING MAGISTRATE.—** With regard x x x to the delay in the resolution of pending motions for inhibition within the prescribed period, records are bereft of evidence to show that respondent filed any request for an extension of time within which to resolve them, which the Court could have granted. As such, even if the Court were to accept her excuse that her combined caseload in RTC-Alaminos City, as well as in RTC-Burgos, the courts where she was concurrently presiding, was indeed heavy, she could have requested an extension of time within which to decide and dispose of pending cases and justified the same. The Court is not unmindful of the circumstances that may delay the speedy disposition of cases assigned to judges, thus, the Court allows extensions of time within which pending cases may be disposed of, upon a seasonable filing of a request therefor and sufficient justification. For failing to do so, respondent cannot evade administrative liability. The rules and jurisprudence are clear on the matter of delay. Failure to decide cases and other matters within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate. Judges must decide cases and resolve matters with dispatch because any delay in the administration of justice deprives litigants of their right to a speedy disposition of their case and undermines the people's faith in the judiciary. Indeed, justice delayed is justice denied.

3. **ID.; ID.; UNDUE DELAY IN ISSUING ORDERS AND UNDUE DELAY IN TRANSMITTING THE RECORDS OF A CASE; CLASSIFIED AS LESS SERIOUS CHARGES; PENALTY IN CASE AT BAR.—** [T]he Court finds that respondent is administratively liable for Undue Delay in Issuing Orders in Several Cases and Undue Delay in Transmitting the Records of a Case, which are classified as less serious charges under Section 9, Rule 140 of the Rules of Court that merit the penalty of *(a)* suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or (*b)* a fine of more than ₱l0,000.00 but not exceeding ₱20,000.00. Considering the circumstances of this case and the fact that

this is not the first time that respondent has been held administratively liable, the Court finds it appropriate to impose the penalty of suspension for a period of three (3) months against respondent.

APPEARANCES OF COUNSEL

Flordeliza M. Jimeno for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

The instant administrative case arose from a Verified Complaint[1] dated September 10, 2013 filed by complainant Atty. Florante A. Miano (complainant) before the Office of the Court Administrator (OCA) charging respondent Ma. Ellen M. Aguilar (respondent), Presiding Judge of the Regional Trial Court (RTC) of Burgos, Pangasinan, Branch 70 (RTC- Burgos), with ignorance of the rules on inhibition and gross inefficiency relative to several pending cases in her *sala.*

The Facts

Complainant alleged that he filed motions for inhibition in several cases raffled to the *sala* of respondent, specifically Civil Case No. 173-B,[2] entitled *"Florante A. Miano and Bernadette Atienza v. Romeo Migano" (Migano case),* and Criminal Case No. B-685,[3] entitled *"People of the Philippines v. Nelson Mores y Madarang" (Madarang case),* which respondent granted.[4] In the *Migano case,* complainant alleged[5] as grounds for respondent's inhibition his being a "personal friend" of the latter, as in fact complainant – whom respondent

[1] *Rollo,* pp. 1-5.

[2] See *id*. at 6.

[3] See *id*. at 14.

[4] See Orders dated September 11, 2007 (*id*. at 12) and February 21, 2012 (*id*. at 14).

[5] See Motion for Inhibition dated August 31, 2007; *id*. at 6-11.

called "Florams," a nickname only used by close and intimate friends – would often have dinners and/or lunches together with a common friend at respondent's house in Quezon City. Moreover, prior to respondent's appointment to the judiciary, one of her colleagues at the City Legal Office of Olongapo City, a certain Leonardo M. Miano, is a first cousin of complainant.[6] The OCA was furnished a copy of the Order of Inhibition dated September 11, 2007.[7]

Subsequently, however, respondent issued an Order[8] dated October 11, 2007 (October 11, 2007 Order) in the *Migano case* directing that the proceedings therein be held in abeyance "until such time that a new Presiding Judge will be appointed by the Court Administrator to hear and decide this case."[9] Complainant asserted that this constitutes ignorance of the rules on inhibition on the part of respondent because according to Administrative Matter (A.M.) No. 03-8-02-SC,[10] where the judge in a single-branch RTC, such as RTC-Burgos where respondent presides, is disqualified or voluntarily inhibits from hearing a case, the Order of Inhibition shall be transmitted to the pairing judge who shall then hear and decide the case.[11] Likewise, complainant contended that due to the issuance of the October 11, 2007 Order, the

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[6] See *id.* at 8-9.

[7] See Order dated October ll, 2007; *id.* at 13.

[8] *Id*.

[9] *Id*.

[10] Entitled "GUIDELINES ON THE SELECTION AND DESIGNATION OF EXECUTIVE JUDGES AND DEFINING THEIR POWERS, PREROGATIVES AND DUTIES" (February 15, 2004).

[11] Section 8, Chapter V of A.M. No. 03-8-02-SC provides:

SEC. 8. *Raffle and re-assignment of cases in ordinary courts where judge is disqualified or voluntarily inhibits himself/herself from hearing case.*– x x x.

x x x x x x x x x

(c) Where the judge in a single-branch RTC is disqualified or voluntarily inhibits himself/herself, the Order of Inhibition shall be transmitted to the pairing judge who shall then hear and decide the case. The determination of the pairing judge shall be in accordance with Annex "A" hereof

x x x x x x x x x

proceedings in the *Migano case* did not move from the time respondent inhibited therefrom in 2007 up to the filing of the present administrative complaint.[12]

Further, complainant accused respondent of gross inefficiency, citing various instances where the latter failed to resolve motions for inhibition within the 90-day period prescribed by law. Finally, he averred that respondent–surprisingly–*denied* his motions for inhibition in cases where the opposing counsel is a certain Atty. Sancho Abasta, Jr. (Atty. Abasta), who hails from the same province as her. In this regard, complainant claimed that respondent showed bias as she would usually grant motions for inhibition that he files before her court, except for the said cases handled by Atty. Abasta.[13]

In her comment,[14] respondent countered that: (*a*) she is aware of the rules on inhibition set forth in A.M. No. 03-8-02-SC and that the October 11, 2007 Order in the *Migano case* was only intended to inform the OCA of her inhibition therefrom; (*b*) her Branch Clerk of Court failed to transmit the records of the said case to the Executive Judge of the multi-*sala* court of RTC-Alaminos City, Pangasinan (RTC-Alaminos City), resulting in the delay in the proceedings therein; (*c*) her failure to resolve the motions filed by complainant within the 90-day period was due to heavy workload, especially considering that, aside from being the presiding judge of RTC-Burgos, she was also serving as acting presiding judge in RTC-Alaminos City, Branch 54 in behalf of Judge Benjamin Abella who already retired from service; and (*d*) complainant's motions for inhibition in cases where the opposing counsel is Atty. Abasta were *pro forma,* for which reason she denied the same, and the mere fact that she and Atty. Abasta hail from the same province is not enough justification for her inhibition.[15]

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[12] See *rollo,* pp. 2 and 66.

[13] *Id*. at 2-3 and 67.

[14] Dated October 24, 2013. *id*. at 46-53.

[15] See *id*. at 47-52 and 67-68.

The OCA's Report and Recommendation

In a Report and Recommendation[16] dated August 20, 2014, the OCA found respondent guilty of Gross Ignorance of the Law/Procedure, Undue Delay in Issuing Orders in Several Cases, and Undue Delay in Transmitting the Records of a Case. Accordingly, the OCA recommended that she be meted the penalty of dismissal from service with forfeiture of all benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.[17]

The OCA found that respondent was indeed ignorant of the rules on inhibition, especially Section 8, Chapter V of A.M. No. 03-8-02-SC which provides that the Order of Inhibition should be transmitted to the pairing judge who shall be the one to hear and decide the case. Her ignorance of such rules was highlighted when she violated the same by issuing the October 11, 2007 Order in the *Migano case* which was not solely intended to inform the OCA of her inhibition therefrom, but also "to hold the case in abeyance until such time that a new Presiding Judge will be appointed by the Court Administrator."[18] Worse, she caused undue delay in transmitting the records of the said case to the appropriate pairing court as such transmittal was effected only six (6) years after her inhibition therefrom.[19]

Anent the issue of respondent's failure to resolve motions for inhibition within the prescribed period, the OCA found that while her caseload was indeed heavy during the time she failed to resolve said motions, she made no effort to seek for an extension of time to resolve them. In this relation, the OCA

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[16] *Id*. at 66-71. Signed by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Raul Bautista Villanueva, and OCA Chief of Legal Office Wilhelmina D. Geronga.

[17] *ld*. at 71.

[18] *ld*. at 69.

[19] See *id*. at 68-69.

pointed out that in such instances, all that respondent needed to do was to request and justify an extension of time to decide the cases and the Court would have granted such request, but she failed to do so.[20]

The Issue Before the Court

The issue for the Court's resolution is whether or not grounds exist to dismiss respondent from service, as recommended by the OCA.

The Court's Ruling

The Court concurs with the OCA in finding respondent guilty of Undue Delay in Issuing Orders in Several Cases and Undue Delay in Transmitting the Records of a Case, but differs from its finding that respondent should likewise be held guilty of Gross Ignorance of the Law/Procedure.

To be able to render substantial justice and maintain public confidence in the legal system, judges should be embodiments of competence, integrity and independence. Judges are also expected to exhibit more than just a cursory acquaintance with statutes and procedural rules and to apply them properly in all good faith. They are likewise expected to demonstrate mastery of the principles of law, keep abreast of prevailing jurisprudence, and discharge their duties in accordance therewith.[21]

Corollary thereto, the Court has ruled that when a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. Such is gross ignorance of the law. However, gross ignorance of the law is more than an erroneous application of legal provisions.[22] Not every error or mistake that a judge commits in the

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[20] See *id.* at 69-70.

[21] *Re: Anonymous Letter dated August 12, 2010 complaining against Judge Ofelia T. Pinto, Regional Trial Court, Branch 60, Angeles City, Pampanga,* 696 Phil. 21, 26 (2012), citing *Cabatingan, Sr. v. Arcueno,* 436 Phil. 341, 347 (2002).

[22] *Barredo-Fuentes v. Albarracin,* 496 Phil. 31, 38 (2005).

performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice.[23] To constitute gross ignorance of the law and for administrative liability to attach, it is not enough that the decision, order or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence. It must also be proven that he was moved by bad faith, fraud, dishonesty, or corruption or had committed an error so egregious that it amounted to bad faith.[24]

Section 8, Chapter V of A.M. No. 03-8-02-SC states in part:

> Section 8. *Raffle and re-assignment of cases in ordinary courts where judge is disqualified or voluntarily inhibits himself/herself from hearing case.*- x x x.
>
> x x x x x x x x x
>
> (c) Where the judge in a single-branch RTC is disqualified or voluntarily inhibits himself/herself, the Order of Inhibition shall be transmitted to the pairing judge who shall then hear and decide the case. The determination of the pairing judge shall be in accordance with Annex "A" hereof.
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> x x x x x x x x x

In this case, respondent maintains that she is aware of the foregoing rules on inhibition. Nonetheless, she still issued the October 11, 2007 Order and directed that the proceedings in the *Migano case* be held in abeyance until such time that a new judge shall have been appointed by the Court Administrator, and failed to directly and immediately transmit the records of the case to the pairing judge in RTC-Alaminos City for further proceedings. Unfortunately, the transmittal was made only on July 25, 2013, and the case did not progress during the six-year interim period. As a result, the *Migano case* was left pending in her court for a long period of time.

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[23] *Sps. Lago v. Abul, Jr.,* 681 Phil. 255, 260 (2012).

[24] See *Lorenzana v. Austria,* A.M. No. RTJ-09-2200, April 2, 2014, 720 SCRA 319, 339, citing *Sps. Lago v. Judge Abul, Jr., id.*

Under the foregoing circumstances, therefore, respondent was clearly remiss in her duty of familiarizing herself with the rules on inhibition set forth in A.M. No. 03-8-02-SC. However, the Court finds that such error cannot be categorized as gross ignorance of the law and/or procedure as records are devoid of evidence to show that respondent was motivated by bad faith, fraud, corruption, dishonesty, or egregious error in issuing the October 11, 2007 Order.

Respondent had already clarified that she issued the said Order merely to inform the OCA of her inhibition from the subject case, and while it is true that there was no necessity therefor, respondent's act in itself is not indicative of bad faith. Moreover, she explained that she had instructed her Branch Clerk to transmit the records of the *Migano case* to the pairing judge in RTC-Alaminos City, only to discover later on that the transmittal letter was not properly attached to the records, resulting in the delay in its transmittal. Hence, while it may be inferred under the circumstances that respondent was careless and did not exercise diligence in ensuring that the records of the *Migano case* were immediately transmitted to the pairing judge of RTC-Alaminos City for proper disposition, records are bereft of evidence to show that the resulting delay was deliberately or maliciously caused as to amount to bad faith. Instead, what is evident in this case is that the delay was caused by inadvertence and negligence.

As such, while it may be considered an unfortunate error on respondent's part to hold in abeyance the proceedings in the *Migano case* and to fail to promptly transmit the records thereof to the pairing judge in RTC-Alaminos City, such error does not appear to have been tainted with or impelled by bad faith. Bad faith cannot be presumed[25] and the Court cannot conclude that bad faith attended respondent's acts when none has been shown in this case. Consequently, respondent need not be subjected to administrative sanction in this respect.[26]

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[25] See *Gatmaitan v. Gonzales,* 525 Phil. 658, 671 (2006), citing *Fernando v. Sto. Tomas,* G.R. No. 112309, July 28, 1994, 234 SCRA 546, 552.

[26] See *Abanado v. Bayona,* 692 Phil. 13, 27 (2012).

With regard, however, to the delay in the resolution of pending motions for inhibition within the prescribed period, records are bereft of evidence to show that respondent filed any request for an extension of time within which to resolve them, which the Court could have granted. As such, even if the Court were to accept her excuse that her combined caseload in RTC-Alaminos City, as well as in RTC-Burgos, the courts where she was concurrently presiding, was indeed heavy, she could have requested an extension of time within which to decide and dispose of pending cases and justified the same. The Court is not unmindful of the circumstances that may delay the speedy disposition of cases assigned to judges, thus, the Court allows extensions of time within which pending cases may be disposed of, upon a seasonable filing of a request therefor and sufficient justification.[27] For failing to do so, respondent cannot evade administrative liability.

The rules and jurisprudence are clear on the matter of delay. Failure to decide cases and other matters within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate.[28] Judges must decide cases and resolve matters with dispatch because any delay in the administration of justice deprives litigants of their right to a speedy disposition of their case and undermines the people's faith in the judiciary. Indeed, justice delayed is justice denied.[29]

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[27] See *Sps. Umale v. Fadul, Jr.,* 538 Phil. 518, 524-526 (2006); and *Re: Failure of Former Judge Antonio A. Carbonell to Decide Cases Submitted for Decision and to Resolve Pending Motions in the Regional Trial Court, Branch 27, San Fernando, La Union,* A.M. No. 08-5-305-RTC, July 9, 2013, 700 SCRA 806, 811-812.

[28] See *OCA v. Santos,* 697 Phil. 292, 299-301 (2012); *Re: Cases Submitted for Decision before Hon. Meliton G. Emuslan, Former Judge, Regional Trial Court, Branch 47, Urdaneta City, Pangasinan,* 630 Phil. 269, 272-273 (2010); and *Report on the Judicial Audit Conducted in the RTC, Branch 22, Kabacan, North Cotabato,* 468 Phil. 338, 345 (2004).

[29] *Angelia v. Grageda,* 656 Phil. 570, 574 (2011).

In light of all the foregoing, the Court finds that respondent is administratively liable for Undue Delay in Issuing Orders in Several Cases and Undue Delay in Transmitting the Records of a Case, which are classified as less serious charges under Section 9,[30] Rule 140 of the Rules of Court that merit the penalty of *(a)* suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or *(b)* a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[31] Considering the circumstances of this case and the fact that this is not the first time that respondent has been held administratively liable,[32] the Court finds it appropriate to impose the penalty of suspension for a period of three (3) months against respondent.

WHEREFORE, the Court finds respondent Ma. Ellen M. Aguilar, Presiding Judge of the Regional Trial Court of Burgos, Pangasinan, Branch 70, **GUILTY** of Undue Delay in Issuing Orders in Several Cases and Undue Delay in Transmitting the Records of a Case, and is hereby **SUSPENDED** from office without salary and other benefits for a period of three (3) months, with a warning that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

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[30] Section 9. *Less Serious Charges.–* Less serious charges include:

1. Undue delay in rendering a decision or order, or in transmitting the records of a case;

x x x x x x x x x

[31] See Section 11 (B), Rule 140 of the Rules of Court.

[32] In *OCA v. Judge Aguilar* (666 Phil. 11 [2011]), respondent was found guilty of dishonesty and was suspended from service for a period of six (6) months without pay.

FIRST DIVISION

[G.R. No. 182737. March 2, 2016]

SILICON PHILIPPINES, INC. (Formerly INTEL PHILIPPINES MANUFACTURING, INC.), *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); VALUE-ADDED TAX; REFUNDS OR TAX CREDITS OF INPUT TAX; ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES; ANY CLAIM FILED IN A PERIOD LESS THAN OR BEYOND THE 120+30 DAYS PROVIDED BY THE NIRC IS OUTSIDE THE JURISDICTION OF THE COURT OF TAX APPEALS.— [T]he administrative claim of a VAT- registered person for the issuance by respondent of tax credit certificates or the refund of input taxes paid on zero-rated sales or capital goods imported may be made within two years after the close of the taxable quarter when the sale or importation/purchase was made. x x x Upon the filing of an administrative claim, respondent is given a period of 120 days within which to (1) grant a refund or issue the tax credit certificate for creditable input taxes; or (2) make a full or partial denial of the claim for a tax refund or tax credit. Failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial. Note that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. If there is no evidence showing that the taxpayer was required to submit – or actually submitted – additional documents after the filing of the administrative claim, it is presumed that the complete documents accompanied the claim when it was filed. x x x Whether respondent rules in favor of or against the taxpayer – or does not act at all on the administrative claim – within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA. x x x The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, whichever is sooner. Aside from a specific exception

to the mandatory and jurisdictional nature of the periods provided by the law, any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA. x x x [T]he judicial claims of petitioner were filed beyond the 120+30 day period x x x. The judicial claim for the 4th quarter of 2001, while filed within the period 10 December 2003 up to 6 October 2010, cannot find solace in BIR Ruling No. DA-489-03. The general interpretative rule allowed the premature filing of judicial claims by providing that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review." The rule certainly did not allow the filing of a judicial claim long after the expiration of the 120+30 day period.

APPEARANCES OF COUNSEL

Noval and Buñag Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Court of Tax Appeals (CTA) En Banc Decision[1] dated 18 January 2008 and Resolution[2] dated 30 April 2008 in CTA EB No. 298.

The CTA En Banc affirmed the CTA Second Division Decision[3] dated 5 February 2007 and Resolution[4] dated 29 June 2007 in

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[1] *Rollo,* pp. 13-21. The Decision issued by the CTA *En Banc* was penned by Presiding Justice Ernesto D. Acosta, with Associate Justices Juanita C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez concurring.

[2] *Id.* at 42-45.

[3] *Id.* at 165-189. The Decision issued by the CTA Second Division was penned by Associate Justice Olga Palanca-Enriquez, with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy concurring.

[4] CTA *rollo* (CTA Case No. 6741), pp. 417-418.

CTA Case Nos. 6741, 6800 & 6841. That Decision denied the claim for tax refund or issuance of tax credit certificates corresponding to petitioner's excess/unutilized input value-added tax (VAT) for the 2nd, 3rd and 4th quarters of taxable year 2001. The CTA En Banc Resolution denied petitioner's motion for reconsideration.

FACTS

Petitioner is a corporation engaged in the business of designing, developing, manufacturing and exporting integrated circuit components.[5] It is a preferred pioneer enterprise registered with the Board of Investments.[6] It is likewise registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer by virtue of its sale of goods and services[7] with a permit to print accounting documents like sales invoices and official receipts.[8]

On 24 July 2001, petitioner filed its 2nd Quarter VAT Return reporting the amount of ₱765,696,325.68 as its zero-rated sales.[9]

Its 3rd Quarter VAT Return filed on 23 October 2001 indicated zero-rated sales in the amount of ₱571,812,011.26.[10] This amount was increased to ₱678,418,432.83 in the Amended 3rd Quarter VAT Return filed on 29 October 2001.[11]

The 4th Quarter VAT Return filed on 15 January 2002 reported zero- rated sales in the amount of ₱1,000,052,659.89.[12] This amount remained unchanged in the Amended 4th Quarter VAT Return filed on 22 May 2002.[13]

Petitioner sought to recover the VAT it paid on imported capital goods for the 2nd quarter of 2001. On 16 October 2001,

[5] *Rollo,* p. 13.
[6] *Id*. at 152.
[7] *Id*. at 150.
[8] *Id*. at 14.
[9] CTA Records (Vol. 9), Exhibit "E",
[10] *Id*. at Exhibit "H".
[11] *Id*. at Exhibit "I".
[12] *Rollo,* p. 157.
[13] CTA Records (Vol. 9), Exhibit "L".

it filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance, an application for a tax credit/refund in the amount of ₱9,038,279.56.[14]

On 4 September 2002, petitioner also filed for a tax credit/ refund of the VAT it had paid on imported capital goods for the 3rd and 4th quarters of 2001 in the amounts of ₱1,420,813.04[15] and ₱14,582,023.62,[16] respectively.

Because of the continuous inaction by respondent on the administrative claims of petitioner for a tax credit/refund in the total amount of ₱25,041,116.22,[17] the latter filed separate petitions for review before the CTA.

CTA Case No. 6741 filed on 30 July 2003 sought to recover ₱9,038,279.56 for the 2nd quarter of 2001;[18] CTA Case No. 6800 filed on 20 October 2003, the amount of ₱1,420,813.04 for the 3rd quarter of 2001;[19] and CTA Case No. 6841 filed on 30 December 2003, ₱l4,582,023.62 for the 4th quarter of 2001.[20]

The three cases were consolidated by the CTA Second Division in a Resolution dated 20 February 2004.[21] Trial on the merits ensued, and the case was submitted for decision on 23 August 2007.[22]

RULING OF THE CTA SECOND DIVISION

In a Decision[23] dated 5 February 2007, the CTA Second Division dismissed the petitions for lack of merit.

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[14] *Id*. at Exhibit "Q".

[15] *Id*. at Exhibit "R".

[16] *Id*. at Exhibit "S".

[17] ₱9,038,279.56 for the 2nd Quarter, plus ₱I,420,813.04 for the 3rd Quarter, plus ₱l4,582,023.62 for the 4th Quarter, all of the year 2001.

[18] CTA *rollo* (CTA Case No. 6741), pp. l-11.

[19] CTA *rollo* (CTA Case No. 6800), pp. 1-6.

[20] CTA *rollo* (CTA Case No. 6841), pp. 1-5.

[21] *Rollo,* p. 15.

[22] *Id*.

[23] *Id*. at 165-189; CTA Case Nos. 6741, 6800 and 6841.

It ruled that pursuant to Section 112 of the National Internal Revenue Code (NIRC), the refund/tax credit of unutilized input VAT is allowed (a) when the excess input VAT is attributable to zero-rated or effectively zero-rated sales; and (b) when the excess input VAT is attributable to capital goods purchased by a VAT-registered person.[24]

In order to prove zero-rated export sales,[25] a VAT-registered person must present the following: (1) the sales invoice as proof of the sale of goods; (2) the export declaration or bill of lading/ airway bill as proof of actual shipment of the goods from the Philippines to a foreign country; and (3) bank credit advice or certificate of remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.[26]

The CTA Second Division found that petitioner presented nothing more than a certificate of inward remittances for the entire year 2001, in compliance with the third requirement only.[27]

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[24] *Id.* at 178-179.

[25] Sec.106(A)(2)(a)(l) as enacted by R.A. 8424 reads:

SEC 106. Value-added Tax on Sale of Goods or Properties.—

(A) Rate and Base of Tax. — These shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

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(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales.— The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

[26] *Rollo,* p. 180.

[27] *Id.*

That being the case, petitioner's reported export sales in the total amount of ₱2,444,167,418.40[28] cannot qualify as VAT zero-rated sales.[29]

On the other hand, a taxpayer claiming a refund/tax credit of input VAT paid on purchased capital goods must prove all of the following: (1) that it is a VAT-registered entity; (2) that it paid input VAT on capital goods purchased; (3) that its input VAT payments on capital goods were duly supported by VAT invoices or official receipts; (4) that it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and (5) that the administrative and judicial claims for a refund were filed within the two-year prescriptive period.[30]

The CTA Second Division found that petitioner was able to prove the first and the fifth requisites for the pertinent quarters of the year 2001.[31]

However, petitioner was not able to prove the fourth requisite with regard to the claimed input VAT payments for the 3rd and the 4th quarters of 2001. The evidence purportedly showing that it had not offset or applied the claimed input VAT payment against any output VAT liability was denied admission as evidence for being a mere photocopy.[32]

Petitioner also failed to prove the second and the third requisite with regard to the claimed input VAT payment for the 2nd quarter of 2001. Specifically, it failed to prove that the purchases were capital goods.[33]

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[28] ₱765,696,325.68 as zero-rated sales for the 2nd Quarter, plus ₱678,418,432.83 as zero-rated sales for the 3rd Quarter, plus ₱1,000,052,659.89 as zero-rated sales for the 4th Quarter, all of the year 2001.

[29] *Rollo,* p. 181.

[30] *Id.* at 183.

[31] *Id.* at 183-184.

[32] *Id.* at 185.

[33] *Id.* at 186.

For purchases to fall under the definition of capital goods or properties, the following conditions must be present: (1) the goods or properties have an estimated useful life of more than one year; (2) they are treated as depreciable assets under Section 29(f) of Revenue Regulations No. 7-95; and (3) they are used directly or indirectly in the production or sale of taxable goods or services.[34]

The CTA Second Division perused the Summary List of Importations on Capital Goods for the 2nd quarter of 2001 presented by petitioner and found items therein that could not be considered as depreciable assets.[35] As to the rest of the items, petitioner failed to present the detailed general ledgers and audited financial statements to show that those goods were capitalized in the books of accounts and subjected to depreciation.[36]

Petitioner filed a Motion for Reconsideration, which was denied in the Resolution dated 29 June 2007.[37] It then filed before the CTA En Banc a petition for review challenging the CTA Second Division Decision and Resolution.

RULING OF THE CTA EN BANC

The CTA En Banc issued the assailed Decision[38] dated 18 January 2008 dismissing the petition for lack of merit.

It affirmed the finding of the CTA Second Division that petitioner had failed to prove its capital goods purchases for the 2nd quarter of the year 2001.[39] The CTA En Banc emphasized the evidentiary nature of a claim that a VAT-registered person made capital goods purchases.[40] It is necessary to ascertain the treatment of the purported capital goods as depreciable assets, which can only be determined

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[34] *Id.* at 186-187.

[35] *Id.* at 187.

[36] *Id.* at 188.

[37] CTA *rollo* (CTA Case No. 6741), pp. 417-418.

[38] *Rollo,* pp. 13-21; C.T.A. EB No. 298.

[39] *Id.* at 17.

[40] *Id.* at 18-19.

through the examination of the detailed general ledgers and audited financial statements, including the person's income tax return.[41] In view of petitioner's lack of evidence on this point, the claim for the refund or the issuance of tax credit certificates must be denied.

Petitioner's Motion for Reconsideration was denied in the challenged Resolution dated 30 April 2008.[42]

ISSUES

Petitioner now comes before us raising the following issues for our consideration:

I.

[WHETHER] THE COURT OF TAX APPEALS ERRED IN DENYING [PETITIONER'S] CLAIM FOR REFUND OF ITS EXCESS / UNUTILIZED INPUT VAT DERIVED FROM IMPORTATION OF CAPITAL GOODS DUE TO ITS FAILURE TO PROVE THE EXISTENCE OF ZERO- RATED EXPORT SALES.

II.

[WHETHER] THE COURT OF TAX APPEALS ERRED IN FINDING THAT [PETITIONER] FAILED TO COMPLY WITH THE REQUIREMENTS OF A VALID CLAIM FOR REFUND /TAX CREDIT OF INPUT VAT PAID ON ITS IMPORTATION OF CAPITAL GOODS.

III.

[WHETHER] THE COURT OF TAX APPEALS ERRED IN RULING THAT [PETITIONER] FAILED TO PROVE THAT THE GOODS IMPORTED ARE CAPITAL GOODS

IV.

[WHETHER] THE INPUT VAT ON THE ALLEGED NON-CAPITAL GOODS ARE STILL REFUNDABLE BECAUSE THEY ARE ATTRIBUTABLE TO THE ZERO RATED SALES OF [PETITIONER, A 100% EXPORT ENTERPRISE][43]

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[41] *Id.* at 19-20.

[42] *Id.* at 42-45.

[43] *Id.* at 56-57.

In the Resolution dated 30 July 2008,[44] we required respondent to comment on the petition. The Comment dated 21 January 2009[45] was filed by the Office of the Solicitor General as counsel.

OUR RULING

The applicable provision of the NIRC, as amended, is Section 112,[46] which provides:

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[44] *Id*. at 278.

[45] *Id*. at 302-3I7.

[46] As amended by Section 10 of R.A. 9337, Section 112 now reads: SEC. 112. *Refunds or Tax Credits of Input Tax.—*

(A) *Zero-Rated or Effectively Zero-Rated Sales.—* Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

(B) *Cancellation of VAT Registration.* — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within

SEC 112. *Refunds or Tax Credits of Input Tax.—*

(A) *Zero-rated or Effectively Zero-rated Sales.* — **Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,** except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(l), (2) and (B) and Section 108 (B)(l) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

(B) *Capital Goods.* — **A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased,** to the extent that such input taxes have not been applied against output taxes. **The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.**

(C) *Cancellation of VAT Registration.—* A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.

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the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

(D) *Manner of Giving Refund.—* Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit.

(D) *Period within which Refund or Tax Credit of Input Taxes shall be Made.*— **In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with [Subsections] (A) [and (B)] hereof:

In case of full or partial denial of the claim for tax refund or tax credit, or the **failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.**

(E) *Manner of Giving Refund.* — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit. (Emphases supplied)

Under the foregoing provision, the administrative claim of a VAT-registered person for the issuance by respondent of tax credit certificates or the refund of input taxes paid on zero-rated sales or capital goods imported may be made within two years after the close of the taxable quarter when the sale or importation/purchase was made.

In the case of petitioner, its administrative claim for the 2nd quarter of the year 2001 was filed on 16 October 2001, well within the two-year period provided by law. The same is true with regard to the administrative claims for the 3rd and the 4th quarters of 2001, both of which were filed on 4 September 2002.

Upon the filing of an administrative claim, respondent is given a period of 120 days within which to (1) grant a refund or issue the tax credit certificate for creditable input taxes; or (2) make a full or partial denial of the claim for a tax refund or tax credit. Failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial.

Note that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. If there is no evidence showing that the taxpayer was required to submit[47] – or actually submitted – additional documents after the filing of the administrative claim, it is presumed that the complete documents accompanied the claim when it was filed.[48]

Considering that there is no evidence in this case showing that petitioner made later submissions of documents in support of its administrative claims, the 120-day period within which respondent is allowed to act on the claims shall be reckoned from 16 October 2001 and 4 September 2002.

Whether respondent rules in favor of or against the taxpayer – or does not act at all on the administrative claim – within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.

Section 7 of Republic Act No. (R.A.) 1125 (An Act Creating the Court of Tax Appeals), as amended, provides:

SECTION 7. *Jurisdiction.*— The CTA shall exercise:

a. **Exclusive appellate jurisdiction to review by appeal,** as herein provided:

1. **Decisions of the Commissioner of Internal Revenue** in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

2. **Inaction by the Commissioner of Internal Revenue** in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National**

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[47] *CIR v. Team Sual Corp.,* G.R. No. 205055, 18 July 2014, 730 SCRA 242.

[48] *CIR v. Aichi Forging Company of Asia, Inc.,* G.R. No. 183421, 22 October 2014; *Applied Food Ingredients Company, Inc. v. CIR,* G.R. No. 184266, 11 November 2013, 709 SCRA 164.

Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; (Emphasis supplied)

The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, whichever is sooner.[49]

Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law,[50] any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.[51]

As shown by the table below, the judicial claims of petitioner were filed beyond the 120+30 day period:

Taxable Quarter of 2001	Administrative Claime filed	End of the 120-day Period	End of the 30-day Period	Judicial Claim Filed	Number of Days Late
2nd	16 October 2001	13 February 2002	15 March 2002	30 July 2003	502 days
3rd	4 September 2002	2 January 2003	1 February 2003	20 October 2003	261 days
4th	4 September 2002	2 January 2003	1 February 2003	30 December 2003	332 days

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[49] Section 11 of R.A. 1125, as amended, provides:

SECTION 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.*— Any party adversely affected by a decision, ruling or inaction of the Commissioner of lnternal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

[50] In *CIR v. San Roque Power Corporation* (G.R. Nos. 187485, 196113 & 197156, 12 February 2013, 690 SCRA 336), the Court applied the equitable principle of estoppel and ruled that judicial claims filed from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 up to its reversal in *CIR v. Aichi Forging Company of Asia, Inc.* (G.R. No. 184823, 646 SCRA 710) on 6 October 2010 need not wait for the lapse of the 120+30 day period.

[51] *CIR v. San Roque Power Corporation,* G.R. Nos. 187485, 196113 & 197156, 12 February 2013, 690 SCRA 336.

The judicial claim for the 4th quarter of 2001, while filed within the period 10 December 2003 up to 6 October 2010, cannot find solace in BIR Ruling No. DA-489-03. The general interpretative rule allowed the premature filing of judicial claims by providing that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review."[52] The rule certainly did not allow the filing of a judicial claim long after the expiration of the 120+30 day period.[53]

As things stood, the CTA had no jurisdiction to act upon, take cognizance of, and render judgment upon the petitions for review filed by petitioner. For having been rendered without jurisdiction, the decision of the CTA Second Division in this case – and consequently, the decision of the CTA En Banc – is a total nullity that creates no rights and produces no effect.[54]

Section 19 of R.A. 1125 provides that parties adversely affected by a decision or ruling of the CTA En Banc may file before us a verified petition for review on certiorari pursuant to Rule 45 of the 1997 Rules of Civil Procedure. In this case, the assailed CTA rulings are not decisions in contemplation of law[55] that can serve as the subject of this Court's exercise of its power of review.

Given the foregoing, there is no reason for this Court to rule upon the issues raised by petitioner in the instant petition.

WHEREFORE, this Court hereby **SETS ASIDE** the assailed Court of Tax Appeals En Banc Decision dated 18 January 2008 and Resolution dated 30 April 2008 in CTA EB No. 298; and the Court of Tax Appeals Second Division Decision dated 5 February 2007 and Resolution dated 29 June 2007 in CTA Case Nos. 6741,6800 & 6841.

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[52] *Id*. at 388.

[53] *Id*. at 389.

[54] *Calanza v. Paper Industries Corp. of the Philippines,* 604 Phil. 304 (2009).

[55] *Arevalo v. Benedicto,* 157 Phil. 175 (1974).

The judicial claims filed by petitioner with the Court of Tax Appeals for the refund of the input value-added tax paid on imported capital goods for the 2nd, 3rd and 4th quarters of 2001 are **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Leonardo-de Castro, Bersamin, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

THIRD DIVISION

[G.R. No. 185365. March 2, 2016]

RAMON PACON, through his wife FELINA PACON, ANTONIO PACON, through his wife NENITA PACON, EULOGIO PACON, through his son JORGE PACON, LEONARDO PACON, MANUEL IGOS, JOSE COLORES, LOLITA COLORES, and ESTANISLAO BUENDIA, *petitioners, vs.* **BENJAMIN TAN,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; AGRARIAN RELATIONS; TENANCY RELATIONSHIP; ONCE ESTABLISHED, THE TENANT IS ENTITLED TO SECURITY OF TENURE AND CAN ONLY BE EJECTED FROM THE AGRICULTURAL LANDHOLDING ON GROUNDS PROVIDED BY LAW.—** Under the law, the landowner or agricultural lessor has the burden of proving the existence of a lawful cause for the eviction of a tenant or agricultural lessee. This rule proceeds from the principle that a tenancy relationship, once established, entitles the tenant to security of tenure and can only be ejected from the agricultural landholding on grounds provided by law. Following this rule, the burden is upon Tan, *et al.,* and not petitioners, to show that there was cause for the latter's eviction. It was thus error for the Court of Appeals to order petitioner's

eviction from the property on the basis of their failure to prove payment of lease rentals.

2. **ID.; REPUBLIC ACT NO. 3844 (THE AGRICULTURAL LAND REFORM CODE); NON-PAYMENT OF LEASE RENTAL; TO BE A VALID GROUND TO DISPOSSESS THE AGRICULTURAL LESSEE OF THE LANDHOLDING, THE AMOUNT OF LEASE RENTAL MUST FIRST OF ALL BE LAWFUL.—** Non-payment of lease rentals whenever they fall due is a ground for the ejectment of an agricultural lessee under paragraph 6, Section 36 of Republic Act No. 3844, otherwise known as the Agricultural Land Reform Code. x x x For non-payment of lease rental to be a valid ground to dispossess the agricultural lessee of the landholding, however, the amount of the lease rental must first of all be lawful. When it exceeds the limit allowed by law, non-payment of rentals cannot be a ground to dispossess an agricultural lessee of the landholding. x x x The landowners' share being demanded from petitioners, equivalent to two-thirds of the harvest, exceeds the twenty percent maximum amount set by law. Non-payment of this share thus cannot legally be used as a ground to eject petitioners. Furthermore, as a consequence of the parties' failure to agree on a *lawful* lease rental, neither can petitioners be considered to be in default in the payment of lease rentals. x x x To be clear, petitioners are **not** excused from the payment of the *proper* lease rentals. For as long as the tenancy relationship subsists, petitioners must continue paying rentals. Absent any agreement between the parties providing for a lawful lease rental amount, the Department of Agrarian Reform (DAR), following this Court's ruling in *Heirs of Enrique Tan, Sr. v. Pollescas,* must first fix the amount of the provisional lease rental. Once determined, petitioners must thereafter pay rentals, without prejudice to any defenses petitioners or respondent may raise.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Rigoroso & Galindez Law Offices for respondent.

DECISION

JARDELEZA, *J.*:

The Case

Petitioners Ramon Pacon, Antonio Pacon, Eulogio Pacon, Leonardo Pacon, Manuel Igos, Jose Colores, Lolita Colores, and Estanislao Buendia ("petitioners") assail, via a Petition for Review under Rule 45 of the Rules of Court, the *Decision* dated February 13, 2007 rendered by the Court of Appeals in CA-GR. SP No. 86674. In its challenged *Decision,*[1] the Court of Appeals reversed the Department of Agrarian Reform Adjudication Board's *Decision* dated November 19, 2003 and *Resolution* dated August 18, 2004, and ordered petitioners to vacate and surrender possession of the property subject of this case.

The Facts

Respondent Benjamin Tan ("Tan") is a registered co-owner of a parcel of land located in Gaognan-Tara, Sipocot, Camarines Sur, with an area of 302,302 square meters covered by Transfer Certificate of Title (TCT) No. 3958 issued by the Registry of Deeds for the Province of Camarines Sur.[2]

Sometime in July 1997, Tan, with the other co-owners,[3] filed several complaints for ejectment against petitioners, who they claim were occupying approximately four (4) hectares of the property.[4] According to Tan, *et al.,* petitioners, after harvesting the various trees and crops planted on the property and despite repeated demands, have failed to remit any amount or part of the harvest gathered. They also claimed that petitioners have

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[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Martin S. Villarama, Jr. and Mariflor P. Punzalan Castillo, *Rollo,* pp. 31-42.

[2] *Id.* at 53-54.

[3] Romeo, Cecil, Josephine and Norma Tan.

[4] *Rollo,* pp. 49-5I.

sold and encumbered their rights to third persons who are now in actual possession of their portion of the property.[5]

Disputing the foregoing allegations, petitioners prayed for the dismissal of the complaints. They countered that they have a tenancy agreement with Tan, *et al.* wherein the former bound themselves to give to the latter an amount equivalent to two-thirds (2/3) share of the produce or income in the property. They further claim that they have been religiously remitting said share to Tan and his co-owners, through their overseer Sandy Nunez.[6] According to petitioners, the payments were "always withheld and deposited with [Tan *et al.*'s] 'authorized comprador' and these deposited payments with the comprador were being withdrawn by [Tan, *et al.'s*] above-named overseer."[7]

Ruling of the Provincial Adjudicator

In a *Joint Decision* dated July 15, 1999,[8] Provincial Adjudicator Virgil G. Alberto ordered the dismissal of the complaints.

Provincial Adjudicator Alberto found that petitioners "have substantially delivered the landowner's share" as admitted by respondent Tan in an affidavit dated July 24, 1997. In the affidavit, Tan allegedly declared that petitioners have made "irregular and meager remittances" representing the landowner's share of the produce.[9] According to Provincial Adjudicator Alberto, although Tan, *et al.* questioned the authenticity of the receipts presented by petitioners, "still by such statement or admission in the aforesaid affidavit, they can not say that

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

[6] *Id.* at 56.

[7] *Id.*

[8] PARAD Case Nos. R-0503-0277-'98, R-0503-0279-'98, R-0503-0282-'98, and R-0503-0283-'98, *rollo,* pp. 55-59. It appears that the Provincial Adjudicator rendered similar Decisions on May 28, 1998 (in PARAD Case Nos. R-0503-0278'98 and R-0503-0280-'98) and June 10,1999 (in PARAD Case Nos. 0503-0281-'98, R-0503-0284-'98, R-0503-0285-'98). See *rollo,* pp. 65-68.

[9] *Id.* at 57.

[petitioners] were completely remissed *(sic)* in their obligation to deliver the landowner's share."[10]

Even assuming that petitioners failed to remit respondent's share *in full,* this fact alone will not result in a dispossession of the land. Citing *Roxas y Cia v. Cabatuando,*[11] the Provincial Adjudicator held that "mere failure of a tenant to pay the landlord's share does not necessarily give the latter the right to eject the former when there is lack of deliberate intent on the part of the tenant to pay."[12]

Considering, however, that the landowner's share actually delivered was not in full satisfaction of the amount due the latter, petitioners were ordered to render accounting of harvest and deliver all arrearages to Tan, *et al.* The dispositive portion of the Joint Decision reads:

WHEREFORE, premises considered, decision is hereby rendered as follows:

1. Ordering the [petitioners] to render an accounting of harvest from the year 1995 up to the filing of these cases on March 1998, afterwhich to deliver the arrearages, if any, and the just share due [Tan, *et al.*] for the same period;
2. Ordering the [petitioners] to deliver the landowner's share to [Tan, *et al.*] for the harvest beginning April 1998 until such time that there is yet no new leasehold contract entered into by and between herein party-litigants;
3. Ordering the MARO of Sipocot, Camarines Sur or his duly-authorized representative to assist herein parties in the execution of a new agricultural leasehold contract; and
4. Ordering the parties to comply religiously and in good faith with the terms and conditions to be stipulated in the aforesaid contract.

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[10] *Id.*

[11] G.R. No. L-16963, April 26, 1961, 1 SCRA 1106, 1108.

[12] *Rollo,* p. 57.

Claim for damages is hereby ordered dismissed for lack of substantial evidence to prove the same.

No pronouncement as to costs.

SO ORDERED.[13]

Tan, *et al.*'s allegation that petitioners have already sold to third persons their rights as tenants of the land was also rejected for being "completely unsupported by evidence."[14]

Aggrieved, Tan, *et al.* filed appeals with the Department of Agrarian Reform Adjudication Board (DARAB). These appeals were docketed as DARAB Case Nos. 9151, 9152, 9153, 9154, 9155, 9156, 9157, 9158 and 9159. Due to the similarities in subject matter, cause of action and party-appellants, these cases were consolidated.

Ruling of the DARAB

In its Decision dated November 19, 2003,[15] the DARAB denied Tan, *et al.*'s appeals. The dispositive portion of the DARAB's Decision states:

WHEREFORE, in the light of the foregoing premises, the Board hereby AFFIRMS in toto the appealed decisions of the Hon. Adjudicator for the Province of Camarines Sur.

SO ORDERED.[16]

The DARAB affirmed the decision of the Provincial Adjudicator finding that Tan, *et al.* did not present substantial evidence to warrant petitioners' ejectment based on non-payment of rentals.[17] It considered Tan's statement in his Affidavit dated July 24, 1997 acknowledging the irregular and meager remittances made by petitioners.[18] It also found that petitioners paid lease rentals through Tan, *et al.*'s authorized representatives:

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[13] *Id.* at 58.
[14] *Id.* at 57.
[15] *Id.* at pp. 65-73.
[16] *Id.* at 73.
[17] *Id.* at 70.
[18] *Id.*

In addition, Rolando Candelaria stated in his Affidavit of May 12, 1998 that:

> "2. That I am the buyer of the copra produce in the land owned by Mr. Romeo Tan, *et al.,* covered by Title No. TCT-3958 and located at Tara, Sipocot, Camarines Sur;
>
> 3. That the landowner's share in the above-mentioned property representing 2/3 of the net produce were already withheld and deposited in my comprada and later on withdrawn by Mr. Sandy Nunez;"

Likewise, Felomino Garcia, BARC-Chairman of Barangay Tara, Sipocot, Camarines Sur, attested in his Affidavit of May 7, 1998 that:

> 2. I am the duly instituted overseer of a parcel of land owned by Romeo S. Tan, *et al.* embraced by Title No. TCT 3958 located at Tara-Gaongan, Sipocot, Camarines Sur;
>
> 3. That as per instruction of the landowners, he instructed the tenants of the above-mentioned property that during harvest season the landowners share in the subject property be remitted and deposited to Candelaria Comprada owned by Mr. Rolando Candelaria;

The aforementioned Affidavits clearly manifest that [petitioners] were paying their lease rentals to [Tan, *et al.*] through the latter's authorized representatives.[19]

On August 18, 2004, the DARAB denied the motion for reconsideration subsequently filed for lack of merit.[20] Thus, Tan filed with the Court of Appeals a Petition for Review under Rule 43 of the Rules of Court. This was docketed as CA-G.R. SP No. 86674.

Ruling of the Court of Appeals

The Court of Appeals granted Tan's petition. Reversing both the Provincial Adjudicator and the DARAB, the Court of Appeals found that petitioners failed to substantiate their claim of payment, whether partially or in full, of the landowners'

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[19] *Id.* at 71.

[20] *Rollo,* p. 35.

share. It did not give weight to the rental receipts presented by petitioners, stating that the presentation of the same does not conclusively establish the fact of payment or confirm receipt by Tan (or his co-owners) of the amounts stated therein.[21]

The Court of Appeals reasoned that petitioners, as debtors pleading payment, have the burden of showing with legal certainty that their obligation has been discharged by payment.[22] Having failed to meet the burden, the Court ordered petitioners (and all other persons claiming rights under them) to vacate the portion of the property they are occupying and surrender its peaceful possession to Tan or his co-owners.[23]

The Petition

Petitioners argue that the Court of Appeals erred in upholding Tan's allegation of non-payment of lease rentals. They claim that while failure to pay lease rentals is indeed a ground for the dispossession of a tenant or termination of the tenancy relationship, the non-payment of lease rentals must be shown to be deliberate and intentional.[24] No such showing was made in this case. Petitioners maintain that they have paid their lease rentals "every time they harvest, as evidenced by receipts issued to them" and attached in the record. Even assuming that petitioners were remiss in their obligation to pay the required rentals for some years, the same was not deliberate, but rather "due to the fact that they do not know who is the true owner of the subject landholding."[25]

Tan, on the other hand, contends that the payment of lease rental being an obligation, the burden to prove payment shifted to petitioners.[26] Quoting extensively from the Decision of the

[21] *Id.* at 36-38.
[22] *Id.* at 39.
[23] *Id.* at 41.
[24] *Id.* at 22-26.
[25] *Id.* at 24.
[26] Comment and/or Opposition to the Petition for Review on *Certiorari*, *rollo,* p. 89.

Court of Appeals, Tan insists that the rental receipts presented by petitioners do not prove the fact of payment to, or receipt by, Tan, *et al.* of the landowners' share. Even assuming that there were payments made to Candelaria and/or Nuñez, these do not produce the effect of payment as they were paid to unauthorized persons.[27] According to Tan, "petitioners should have made the proper verification."[28]

The Ruling of the Court

Burden of proving sufficient cause for eviction of tenants rests on the landowner

At the outset, we note from the challenged Decision the following statement of the Court of Appeals:

> xxx The [petitioners] should have endeavored to fully substantiate their claim of payment considering that [Tan] disputes or fails to acknowledge the fact of payment. Well-settled is the rule that one who pleads payment has the burden of proving it. Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove non-payment. **The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.**
>
> **In this case, [petitioners] failed to discharge their burden. They failed to prove the fact of payment. No evidence was presented showing receipt and acknowledgement by [Tan, *et al*.] of payment of rentals or their rightful share in the harvest/produce.** xxx.
>
> In fact, the very disposition of the agency below ordering [petitioners] to render an accounting of the harvest from 1995 to 1998 and to deliver arrearages as well as [Tan's] share in the harvest from 1998 only underscores the non-payment by [petitioners] of the landowners' share in the harvest. [29] (Emphasis supplied.)

We disagree.

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[27] *Id.* at 89-90.

[28] *Id.* at 90.

[29] *Id.* at 39-40.

Under the law, the landowner or agricultural lessor has the burden of proving the existence of a lawful cause for the eviction of a tenant or agricultural lessee.[30] This rule proceeds from the principle that a tenancy relationship, once established, entitles the tenant to security of tenure and can only be ejected from the agricultural landholding on grounds provided by law.[31] Following this rule, the burden is upon Tan, *et al.,* and not petitioners, to show that there was cause for the latter's eviction. It was thus error for the Court of Appeals to order petitioner's eviction from the property on the basis of their failure to prove payment of lease rentals.

Ground alleged for the dispossession of the land from herein petitioners

Non-payment of lease rentals whenever they fall due is a ground for the ejectment of an agricultural lessee under paragraph 6, Section 36 of Republic Act No. 3844, otherwise known as the Agricultural Land Reform Code. This paragraph reads:

SEC. 36. *Possession of Landholding; Exceptions.*— Notwithstanding any agreement as to the period or future surrender of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

x x x xxx xxx

(6) The agricultural lessee does not pay the lease rental when it falls due: *Provided,* That if the non-payment of the rental shall be due to crop failure to the extent of seventy-five *per centum* as a result of a fortuitous event, the non-payment shall not

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[30] Section 37 of Republic Act No. 3844, otherwise known as the Agricultural Reform Code, provides:

SEC. 37. *Burden of Proof.*— The burden of proof to show the existence of a lawful cause for the ejectment of an agricultural lessee shall rest upon the agricultural lessor.

[31] *Galope v. Bugarin,* G.R. No. 185669, February 1, 2012, 664 SCRA 733,740. See also Section 7 of R.A. No. 3844.

be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished; xxx.

For non-payment of lease rental to be a valid ground to dispossess the agricultural lessee of the landholding, however, the amount of the lease rental must first of all be lawful. When it exceeds the limit allowed by law, non-payment of rentals cannot be a ground to dispossess an agricultural lessee of the landholding.[32]

Section 34 of R.A. No. 3844, as amended, provides:

SEC. 34. *Consideration for the Lease of Riceland and Lands Devoted to Other Crops.*— **The consideration for the lease of riceland and lands devoted to other crops shall not be more than the equivalent of twenty-five per centum of the average normal harvest or if there have been no normal harvests, then the estimated normal harvest during the three agricultural years immediately preceding the date the leasehold was established after deducting the amount used for seeds and the cost of harvesting, threshing, loading, hauling and processing, whichever are applicable:** Provided, That if the land has been cultivated for a period of less than three years, the initial consideration shall be based on the average normal harvest or if there have been no normal harvests, then the estimated normal harvest during the preceding years when the land was actually cultivated, or on the harvest of the first year in the case of newly-cultivated lands, if that harvest is normal harvests, the final consideration shall be based on the average normal harvest during these three preceding agricultural years.

In the absence of any agreement between the parties as to the rental, the Court of Agrarian Relations shall summarily determine a provisional rental in pursuance of existing laws, rules and regulations and production records available in the different field units of the department, taking into account the extent of the development of the land at the time of the conversion into leasehold and the participation of the lessee in the development thereof. This provisional rental shall continue in force and effect until a fixed rental is finally determined. The court shall determine the fixed rental within thirty days after the petition is submitted for decision.

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[32] *Heirs of Enrique Tan, Sr. v. Pollescas,* G.R. No. 145568, November 17, 2005, 475 SCRA 203, 213.

If capital improvements are introduced on the farm not by the lessee to increase its productivity, the rental shall be increased proportionately to the consequent increase in production due to said improvements. In case of disagreement, the Court shall determine the reasonable increase in rental. (Emphasis and underscoring supplied.)

Tan cites the following as ground for petitioners' ejectment from the subject landholding:

2. There are supposed to be at least six (6) harvests in a year and **the rentals ... due to the agricultural lessors, is two-third (2/3) of every harvest.** Regretfully, petitioners made meager payments of the rentals only in 1994 and 1995.[33] (Emphasis and underscoring supplied.)

The landowners' share being demanded from petitioners, equivalent to two-thirds of the harvest, exceeds the twenty percent maximum amount set by law. Non-payment of this share thus cannot legally be used as a ground to eject petitioners. Furthermore, as, a consequence of the parties' failure to agree on a *lawful* lease rental, neither can petitioners be considered to be in default in the payment of lease rentals. Our ruling in *Heirs of Enrique Tan, Sr. v. Pollescas* is particularly applicable:

Section 34 of RA 3844 as amended mandates that "not xxx more than" 25% of the average normal harvest shall constitute the just and fair rental for leasehold. In this case, the Tan heirs demanded Reynalda to deliver 2/3 of the harvest as lease rental, which clearly exceeded the 25% maximum amount prescribed by law. Therefore, **the Tan Heirs cannot validly dispossess Reynalda of the landholding for non-payment of rental precisely because the lease rental claimed by the Tan Heirs is unlawful.**

Even assuming Reynalda agreed to deliver 2/3 of the harvest as lease rental, Reynalda is not obliged to pay such lease rental for being unlawful. There is no legal basis to demand payment of such unlawful lease rental. The courts will not enforce payment of a lease rental that violates the law. There was no validly fixed lease rental demandable at the time of the harvests. Thus, Reynalda was never in default.

Reynalda and the Tan Heirs failed to agree on a lawful lease rental. Accordingly, the DAR must first fix the provisional lease rental payable

[33] Comment and/or Opposition to the Petition for Review on *Certiorari, rollo,* pp. 83-84.

by Reynalda to the Tan Heirs pursuant to the second paragraph of Section 34 of RA 3844 as amended. Until the DAR has fixed the provisional lease rental, Reynalda cannot be in default in the payment of lease rental since such amount is not yet determined. **There can be no delay in the payment of an undetermined lease rental because it is impossible to pay an undetermined amount. That Reynalda is not yet in default in the payment of the lease rental is a basic reason why she cannot be lawfuly ejected from the Land for non-payment of rental.**[34] (Citations omitted; emphasis and underscoring supplied.)

We thus reverse the Decision of the Court of Appeals and uphold the dismissal of the complaint for ejectment filed against petitioners. In view of our ruling, we see no need to resolve, at this time, the issues relative to petitioners' defense of payment.

To be clear, petitioners are **not** excused from the payment of the *proper* lease rentals. For as long as the tenancy relationship subsists, petitioners must continue paying rentals.[35] Absent any agreement between the parties providing for a lawful lease rental amount, the Department of Agrarian Reform (DAR), following this Court's ruling in *Heirs of Enrique Tan, Sr. v. Pollescas,* must first fix the amount of the provisional lease rental. Once determined, petitioners must thereafter pay rentals, without prejudice to any defenses petitioners or respondent may raise.

WHEREFORE, the petition is **GRANTED.** Accordingly, we **REVERSE** and **SET ASIDE** the assailed *Decision* and *Resolution* of the Court of Appeals dated February 13, 2007 and September 15, 2008, respectively, in CA-G.R. SP No. 86674. The Court **REMANDS** this case to the Department of Agrarian Reform, through the Office of the Provincial Adjudicator, Camarines Sur, for the determination of the provisional rental.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Perez,* and *Reyes, JJ.,* concur.

[34] G.R. No. 145568, November 17, 2005, 475 SCRA 203, 213-215.

[35] *Galope v. Bugarin,* G.R. No. 185669, February 1, 2012, 664 SCRA 733, 743.

THIRD DIVISION

[G.R. No. 185757. March 2, 2016]

SPOUSES VIRGILIO DE GUZMAN, JR. [substituted by his wife, Lydia S. de Guzman, and children, namely, Ruel S. de Guzman, *et al*.] and LYDIA S. DE GUZMAN, *petitioners, vs.* **COURT OF APPEALS, Mindanao Station, LAMBERTO BAJAO, HEIR OF SPOUSES LEONCIO[*] BAJAO and ANASTACIA Z. BAJAO,** *respondents.*

SYLLABUS

1. **CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); THE ALIENATION OR ENCUMBRANCE OF LANDS ACQUIRED UNDER FREE PATENT OR HOMESTEAD WITHIN THE PROHIBITED PERIOD OF FIVE YEARS FROM THE DATE OF ISSUANCE OF THE PATENT IS NULL AND VOID AND PRODUCES NO EFFECT.—** It is undisputed that Leoncio Bajao obtained Lot No. 532 through Free Patent No. 400087 granted and issued on May 28, 1968. Free Patent No. 400087 was used as basis in the issuance of OCT No. P-6903 which was transcribed in the Registration Book of the Register of Deeds of Misamis Oriental on August 4, 1970. Section 118 of Commonwealth Act No. 141, otherwise known as the Public Land Act, prohibits the alienation or encumbrance of lands acquired under free patent or homestead within a period of five years from the date of issuance of the patent. The parties, however, never raised this issue on prohibition, but this failure will not deter us from resolving the issue. x x x Under Section 124 of the Public Land Act, any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of Sections 118 to 123 of the Public Land Act shall be unlawful and null and void from its execution. The violation shall also produce the effect of annulling and cancelling the grant, title, patent or permit originally issued, recognized or confirmed actually or presumptively. The violation shall also

[*] Also referred to as "Lencito" in some parts of the *rollo*.

cause the reversion of the property and its improvements to the State. The contract executed in violation of these sections being void, it is not susceptible of ratification, and the action for the declaration of the absolute nullity of such a contract is imprescriptible. In this case, portions of Lot No. 532 were conveyed to petitioners by virtue of two Deeds of Absolute Sale executed on May 24, 1969 and June 18, 1970, or after the grant and issuance of Free Patent No. 400087 on May 28, 1968. Both Deeds of Absolute Sale were executed within the prohibited period of five years. Consequently, following Section 124, these Deeds are null and void and produce no effect. They did not convey any right from Spouses Bajao to petitioners on the property. The parties could not have claimed ignorance of the free patent grant. x x x Nonetheless, although Section 124 states that a violation of Section 118 causes the reversion of the property to the State, we have held that a private individual may not bring an action for reversion or any action which would have the effect of cancelling a free patent and the corresponding certificate of title issued on the basis thereof, with the result that the land covered thereby will again form part of the public domain, since only the Solicitor General or the officer acting in his stead may do so. Until then, respondent, as heir of the vendors, has the better right to remain in possession of the property. x x x With respect to the purchase price of ₱2,400 which petitioners paid for the land, respondent should return it with interest. We similarly ruled in the recent case of *Tingalan v. Spouses Melliza* which also involved the void sale of land covered by the Public Land Act, as amended. We applied the rule that upon annulment of the sale, the purchaser's claim is reduced to the purchase price and its interest.

2. ID.; OBLIGATIONS AND CONTRACTS; RULE OF *PARI DELICTO*; INAPPLICABLE IN CASE AT BAR, FOR THE CONTRACTS OF SALE BETWEEN THE PARTIES ARE NULL AND VOID.— The rule of *pari delicto* will not apply here in view of the nullity of the contracts of sale between the parties. To have it otherwise would go against the public policy of preserving the grantee's right to the land under the homestead law. In *Binayug v. Ugaddan,* we returned the properties which were acquired through a grant of a homestead patent to the heirs of the original owner after it was proven that the properties were alienated within the five-year prohibition period under Section 118 of the Public Land Act.

3. **REMEDIAL LAW; ACTIONS; PRESCRIPTION OF ACTIONS; AN ACTION FOR RECONVEYANCE BASED ON AN IMPLIED TRUST PRESCRIBES IN TEN YEARS, RECKONED FROM THE DATE OF REGISTRATION OF THE DEED OR THE DATE OF ISSUANCE OF THE CERTIFICATE OF TITLE OVER THE PROPERTY; EXCEPTION.—** Petitioners allege that respondent fraudulently included the property in TCT No. T-7133, which was issued on February 13 and October 2, 1981. Article 1456 of the Civil Code provides that a person acquiring property through mistake or fraud becomes, by operation of law, a trustee of an implied trust for the benefit of the real owner of the property. An action for reconveyance based on an implied trust generally prescribes in 10 years, the reckoning point of which is the date of registration of the deed or the date of issuance of the certificate of title over the property. Thus, petitioners had 10 years from 1981 or until 1991 to file their complaint for reconveyance of property. The Complaint, however, was filed only on January 21, 2000, or more than 10 years from the issuance of TCT No. T-7133. Hence, the action is already barred by prescription. The exception to the ten-year rule on prescription is when the plaintiff is in possession of the land to be reconveyed. In such case, the action becomes one for quieting of title, which is imprescriptible.

4. **ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; SHALL RAISE ONLY QUESTIONS OF LAW AND NOT QUESTIONS OF FACT.—** Here, petitioners allege that they were in juridical possession of the property from the time they put up a fence on it until the filing of the Complaint. Respondent disputes this claim, countering that petitioners are not in actual and material possession of the property. Whether petitioners have actual possession of the lot is a question of fact. We have repeatedly ruled that a petition for review on *certiorari* under Rule 45 of the Rules of Court shall raise only questions of law and not questions of facts. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by us, unless the case falls under any of the recognized exceptions. Petitioners never raised any of these exceptions. Assuming they did, none of the exceptions would apply.

5. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP; TAX DECLARATIONS OR REALTY TAX PAYMENT OF PROPERTY ARE NOT CONCLUSIVE EVIDENCE OF OWNERSHIP, BUT THEY ARE GOOD INDICIA OF POSSESSION IN THE CONCEPT OF AN OWNER.— [R]espondent offered in evidence the tax declaration of Lot No. 532-C under his name, as well as the tax clearance and official receipts for payment of real property taxes for the period 2000 to 2003. We have held that although tax declarations or realty tax payment of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession.

APPEARANCES OF COUNSEL

Pallugna Law Offices for petitioners.
Boycillo Law Office co-counsel for petitioners.
Felicidad A. Sia for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] filed by Spouses Virgilio de Guzman, Jr.[2] and Lydia S. de Guzman (petitioners) assailing the *Decision*[3] and *Resolution*[4] dated August 27, 2008 and November 19, 2008, respectively, of the Court of Appeals

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[1] *Rollo,* pp. 3-17.

[2] Petitioner Virgilio de Guzman died on January 10, 2004 during the pendency of the suit. In a Resolution dated August 17, 2009, we granted the substitution of the surviving heirs of Virgilio de Guzman, namely, Lydia S. de Guzman, Ruel S. de Guzman, Lyla S. de Guzman, Emme D. Butted and Lyn S. de Guzman as party-petitioners in this case. *Id.* at 57-58.

[3] *Id.* at 26-35. Penned by Associate Justice Ruben C. Ayson with Associate Justices Rodrigo F. Lim, Jr. and Michael P. Elbinias concurring.

[4] *Id.* at 37-39.

(CA), Mindanao Station, in CA-G.R. CV No. 00194-MIN. The CA reversed and set aside the *Decision*[5] of the Regional Trial Court (trial court), Branch 42, Misamis Oriental, dated October 22, 2004 which granted the action for reconveyance and damages in favor of petitioners.

The Facts

The property subject of this case (property) is a 480-square meter lot that formed part of Lot No. 532 located at North Poblacion, Medina, Misamis Oriental. Lot No. 532, which has a total area of 25,178 square meters, was acquired by Lamberto Bajao's (respondent) parent, Leoncio Bajao,[6] through Free Patent No. 400087[7] issued on May 28, 1968.[8]

Petitioners acquired the property in two transactions. On May 24, 1969, Spouses Bajao sold 200 square meters of Lot No. 532 to them for ₱1,000.[9] On June 18, 1970, Spouses Bajao sold another 280 square meters of Lot No. 532 to petitioners for ₱1,400.[10] Both transactions were evidenced by separate Deeds of Absolute Sale.[11] Spouses Bajao allegedly promised to segregate the property from the remaining area of Lot No. 532[12] and to deliver a separate title to petitioners covering it.[13] However, because the promise was not forthcoming, petitioner Lydia S. de Guzman executed an Affidavit of Adverse Claim[14] on April 21, 1980 covering the property. This was

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[5] *Id.* at 18-24. Penned by Judge Oscar N. Abella.

[6] Leoncio Bajao was married to Anastacia Bajao. Collectively, they are referrred to as Spouses Bajao here.

[7] RTC records, pp. 173, 200.

[8] *Rollo,* pp. 27-28.

[9] RTC records, p. 170.

[10] *Id.* at 171.

[11] *Id.* at 170-171.

[12] *Rollo,* pp. 7-8.

[13] *Id.* at 28.

[14] RTC records, p. 177.

annotated on the title covering Lot No. 532, Original Certificate of Title (OCT) No. P-6903, on April 25, 1980.[15]

On May 29, 1980, petitioners initiated the segregation of the property from Lot No. 532 through a survey.[16] As a result of the survey, petitioners acquired Lot 2-A, Psd-10-002692.[17] They allegedly acquired possession over the land immediately, fenced the area, introduced improvements, and planted it with fruit-bearing trees.[18]

On September 26, 1980,[19] or after the death of Leoncio Bajao on February 1, 1972,[20] respondent and Anastacia Bajao executed an Extrajudicial Settlement Among Heirs[21] (Extrajudicial Settlement), which subdivided Lot No. 532 into three parts.[22] The property was included in Lot No. 532-C, which was adjudicated in favor of respondent.[23] The Extrajudicial Settlement was registered on December 10, 1980.[24]

On December 16, 1980, respondent caused the cancellation of petitioners' annotated adverse claim over the property and later obtained Transfer Certificate of Title (TCT) No. T-7133 on February 13 and October 2, 1981.[25] Petitioners thereafter requested respondent to deliver TCT No. T-7133 so they could present it to the Register of Deeds, together with the two Deeds of Absolute Sale, for proper annotation.[26] Respondent, however, refused to heed their request.[27]

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[15] *Id.* at 175. See also *rollo,* p. 28.

[16] *Rollo,* p. 28.

[17] RTC records, p. 180.

[18] *Id.* at 5, *rollo,* p. 28.

[19] *Rollo,* p. 28.

[20] RTC records, p. 238.

[21] *Id.* at 205-209.

[22] *Rollo,* p. 28.

[23] *Id.* at 28-29.

[24] RTC records, pp. 45, 209.

[25] *Id.* at 204, 228-229; *rollo,* p. 29.

[26] RTC records, p. 3.

[27] *Id.* at 3-4, 308.

Thus, on January 21, 2000, petitioners filed a Complaint for Reconveyance with Writ of Preliminary Mandatory Injunction and Damages.[28] They alleged that they were innocent purchasers for value who took possession of the property after the sale and religiously paid its real property taxes.[29] Petitioners also alleged that respondent was in bad faith since he knew about the sale of the property between them and his parents, and the existing survey and segregation over the area, yet he fraudulently included the same in his share upon the issuance of TCT. No. T-7133.[30]

In his Answer with Defenses and Counterclaims,[31] respondent argued that the action is time barred and there is no more trust to speak of.[32] He pointed out that more than 10 years have lapsed from the date of the registration of the Extrajudicial Settlement on December 10, 1980 and the registration of TCT. No. T-7133 on February and October 1981, to the date of filing of the Complaint.[33] Respondent also countered that there was no mistake or fraud in including the property in TCT No. T-7133 since his rights arose from the Extrajudicial Settlement.[34]

Ruling of the Trial Court

On October 22, 2004, the trial court promulgated its *Decision,*[35] the decretal portion of which reads:

WHEREFORE, all the foregoing premises considered, by preponderance of evidence, this Court finds for the plaintiffs and hereby orders the defendant:

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[28] *Id.* at 1-9.

[29] *Id.* at 5.

[30] *Id.* at 6.

[31] *Id.* at 42-50.

[32] *Id.* at 47.

[33] *Id.* 45-47

[34] *Id.* at 46.

[35] *Rollo,* pp. 18-24.

1. to reconvey to the plaintiffs the four hundred eighty square meter lot in question in accordance with the survey plan made by Engr. Pedro Q. Gonzales which was approved by Acting Director of Lands Guillermo C. Ferraris as certified by the Office of the Regional Executive Director of the Department of Environment and Natural Resources and to surrender TCT No. 7133 to the Register of Deeds of Misamis Oriental for appropriate annotation;

2. to pay to plaintiffs the sum of Twenty Five Thousand Pesos (₱25,000.00) as moral damages; and

3. to pay the costs.

SO ORDERED.[36]

The trial court found the two Deeds of Absolute Sale free from infirmities.[37] It ruled that their execution was equivalent to the delivery of the thing sold;[38] registration not being necessary to make the contract of sale valid and effective as between the parties.[39] Citing *Sanchez, et al. v. De la Cruz, et al.,*[40] and *Philippine Suburban Development Corporation v. Auditor General,*[41] the trial court held that as between the parties and their privies, an unrecorded deed of sale covering land registered under the Torrens system passes title of ownership once the land is conveyed to the vendee. Failure of registration does not, at anytime after the sale, vitiate or annul the right of ownership conferred to such sale.[42]

The trial court also found respondent in bad faith.[43] Respondent admitted that he was aware of the adverse claim annotated at the back of the title when he went to the Register of Deeds

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[36] *Id.* at 23.

[37] *Id.* at 20.

[38] *Id.* at 21.

[39] *Id*.

[40] OG 29 July 20, 1959, as cited in the RTC Decision, *rollo,* p. 21.

[41] G.R. No. L-19545, April 18, 1975, 63 SCRA 397.

[42] *Rollo*, p. 21.

[43] *Id*. at 22-23.

to register the Extrajudicial Settlement.[44] The ultimate paragraph of the Extrajudicial Settlement provides that what was being conveyed to respondent was the "[r]emaining portion of Lot [No.] 532, Cad-347, under O.C.T. Bo, P-6903." The trial court construed this provision to mean the remaining portion of Lot No. 532 after taking into consideration the 480-square meter lot sold to petitioners.[45]

Respondent appealed to the CA.[46] In his appellant's brief,[47] he argued that: (1) petitioners' Complaint is already barred by the statute of limitations, estoppel and laches;[48] (2) the "remaining portion" in the Extrajudicial Settlement refers to Lot No. 532-C with an area of 10,178 square meters;[49] and (3) the petitioners are not entitled to moral damages.[50]

Ruling of the Court of Appeals

The CA granted the appeal of respondent. The decretal portion of its *Decision*[51] reads:

> **WHEREFORE**, the appeal is hereby **GRANTED**. The Decision appealed from is **REVERSED AND SET ASIDE** and as a consequence, the Complaint for Reconveyance with Preliminary Mandatory Injunction and Damages is dismissed.
>
> **SO ORDERED.**[52]

The CA noted that an implied trust between the parties under Article 1456[53] of the Civil Code was created at the time Anastacia

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[44] *Id.* at 22.

[45] *Id.*

[46] RTC records, p. 339.

[47] CA *rollo*, pp. 36-59.

[48] *Id.* at 49-52.

[49] *Id.* at 52-53.

[50] *Id.* at 57-58.

[51] *Rollo,* pp. 26-35.

[52] *Id.* at 35. Emphasis in the original.

[53] Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

Bajao and respondent executed the Extrajudicial Settlement on September 26, 1980, with respondent becoming the trustee who holds the property in trust for the benefit of petitioners.[54] The CA held that an action for reconveyance based on an implied trust prescribes in 10 years from the registration of title in the Office of the Register of Deeds.[55] Thus, petitioners' action for reconveyance filed in January 2000 has already prescribed since more than 10 years have lapsed from October 1981, the date of registration of respondent's title.[56]

Further, the CA held that petitioners failed to prove their actual possession of the property by substantial evidence.[57] It was only in the 1980s that they fenced the area in a furtive attempt to establish possession.[58] The CA held them guilty of laches for failing to assert their right to be placed in control and possession of the property after its sale in 1969 and 1970 and to have it regestered.[59]

Finally, the CA held that the phrase "remaining portion of **Lot No. 532, Cad-347** under OCT No. P-6903" found in the Extrajudicial Settlement could also mean restricting respondent's share to the whole portion of Lot No. 532-C, which is the remaining portion of Lot No. 532 after subdividing it into three parcels and giving Lot Nos. 532-A and 532-B to Anastacia Bajao as her share.[60]

Petitioners filed a Motion for Reconsideration[61] of the *Decision.* They insisted that prescription and laches do not apply because respondent was in bad faith.[62] They maintained to be in possession of the property.[63] Thus, their action for

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[54] *Rollo,* p. 32.
[55] *Id.* at 32-33.
[56] *Id.* at 33.
[57] *Id.* at 33-34.
[58] *Id.* at 33.
[59] *Id.* at 34.
[60] *Id.* at 34-35. Emphasis in the original.
[61] CA *rollo,* pp. 84-95.
[62] *Id.* at 86-90.
[63] *Id.* at 87-88.

reconveyance partakes of a suit to quiet title which is imprescriptible.[64] The CA in its *Resolution*[65] dated November 19, 2008 denied the Motion for Reconsideration.

Hence, this petition, which essentially raises the issue of whether the CA erred in dismissing the Complaint on the ground of prescription.

The Court's Ruling

We deny the petition for lack of merit.

It is undisputed that Leoncio Bajao obtained Lot No. 532 through Free Patent No. 400087[66] granted and issued on May 28, 1968. Free Patent No. 400087 was used as basis in the issuance of OCT No. P-6903 which was transcribed in the Registration Book of the Register of Deeds of Misamis Oriental on August 4, 1970.[67] Section 11[68] of Commonwealth Act No. 141, otherwise known as the Public Land Act, prohibits the alienation or encumbrance of lands acquired under free patent or homestead within a period of five years from the date of issuance of the patent.[69] The parties,

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[64] *Id.* at 90.

[65] *Rollo,* pp. 37-40.

[66] RTC records, p. 173.

[67] *Id.* at 200; TSN, November 20, 2000, p. 35.

[68] Sec. 118. Except in favor of the Government or any of its branches, units, or institutions, **lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from <u>and after the date of issuance of the patent or grant,</u>** nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations. xxx (Emphasis and underscoring supplied.)

[69] In *Beniga v. Bugas,* G.R. No. L-28918, September 29, 1970, 35 SCRA 111, 114-115, we explained that the alienation of lands acquired by homestead or free patent grants is forbidden from the date of approval of the application, up to and including the fifth year from and after the date of the issuance of the patent or grant. We also held that the period is not computed from the date of registration with the Register of Deeds or ti·om the date of the certificate of title.

however, never raised this issue on prohibition, but this failure will not deter us from resolving the issue. We have held that:

> We cannot turn a blind eye on glaring misapplications of the law or patently erroneous decisions or resolutions simply because the parties failed to raise these errors before the court. Otherwise, we will be allowing injustice by reason of the mistakes of the parties' counsel and condoning reckless and negligent acts of lawyers to the prejudice of the litigants. Failure to rule on these issues amounts to an abdication of our duty to dispense justice to all parties.[70]

We have explained the rationale behind this prohibition in *Republic of the Philippines v. Court of Appeals:*[71]

> The prohibition against the encumbrance—lease and mortgage included—of a homestead which, by analogy applies to a free patent, is mandated by the rationale for the grant, *viz.*:
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> > "It is well-known that the homestead laws were designed to distribute disposable agricultural lots of the State to land-destitute citizens for their home and cultivation. Pursuant to such benevolent intention the State prohibits the sale or encumbrance of the homestead (Section 116) within five years after the grant of the patent. After that five-year period the law impliedly permits alienation of the homestead; but in line with **the primordial purpose to favor the homesteader and his family** the statute provides that such alienation or conveyance (Section 117) shall be subject to the right of repurchase by the homesteader, his widow or heirs within five years. This Section 117 is undoubtedly a complement of Section 116. **It aims to preserve and keep in the family of the homesteader that portion of public land which the State had gratuitously given to him**. It would, therefore, be in keeping with this fundamental idea to hold, as we hold, that the right to repurchase exists not only when the original homesteader makes the conveyance, but also when it is made

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[70] *Garcia v. Ferro Chemicals, Inc.,* G.R. No. 172505, October 1, 2014, 737 SCRA 252, 264.

[71] G.R. No. 100709, November 14, 1997, 281 SCRA 639.

by his widow or heirs. This construction is clearly deducible from the terms of the statute."[72]

Under Section 124 of the Public Land Act, any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of Sections 118 to 123 of the Public Land Act shall be unlawful and null and void from its execution. The violation shall also produce the effect of annulling and cancelling the grant, title, patent or permit originally issued, recognized or confirmed actually or presumptively. The violation shall also cause the reversion of the property and its improvements to the State. The contract executed in violation of these sections being void, it is not susceptible of ratification, and the action for the declaration of the absolute nullity of such a contract is imprescriptible.[73]

In this case, portions of Lot No. 532 were conveyed to petitioners by virtue of two Deeds of Absolute Sale executed on May 24, 1969 and June 18, 1970, or after the grant and issuance of Free Patent No. 400087[74] on May 28, 1968. Both Deeds of Absolute Sale were executed within the prohibited period of five years. Consequently, following Section 124, these Deeds are null and void and produce no effect. They did not convey any right from Spouses Bajao to petitioners on the property. The parties could not have claimed ignorance of the free patent grant. We held in *Beniga v. Bugas*:[75]

Section 118 does not exempt patentees and their purported transferees who had no knowledge of the issuance of the patent from the prohibition against alienation; for the law does not say that the five years are to be counted "from knowledge or notice of issuance" of the patent or grant. The date of the issuance of the patent is documented and is a matter of government and official record.

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[72] *Id.* at 650-651, citing *Pascua v. Talens,* 80 Phil. 792 (1948). Emphasis ours.

[73] See *Binayug v. Ugaddan,* G.R. No. 181623, December 5, 2012, 687 SCRA 260, 273, citing *Heirs of Policronio M. Ureta, Sr. v. Heirs of Liberato M. Ureta,* G.R. No. 165748, September 14, 2011, 657 SCRA 555, 580.

[74] RTC records, p. 173.

[75] G.R. No. L-28918, September 29, 1970, 35 SCRA 111.

As such, it is more reliable and precise than mere knowledge, with its inherent frailties. Indeed, the policy of the law, which is to give the patentee a place where to live with his family so that he may become a happy citizen and a useful member of our society, would be defeated were ignorance of the issuance of a patent a ground for the non-application of the prohibition.[76]

Nonetheless, although Section 124 states that a violation of Section 118 causes the reversion of the property to the State, we have held that a private individual may not bring an action for reversion or any action which would have the effect of cancelling a free patent and the corresponding certificate of title issued on the basis thereof, with the result that the land covered thereby will again form part of the public domain, since only the Solicitor General or the officer acting in his stead may do so.[77] Until then, respondent, as heir of the vendors, has the better right to remain in possession. of the property.[78]

The rule of *pari delicto* will not apply here in view of the nullity of the contracts of sale between the parties.[79] To have it otherwise would go against the public policy of preserving the grantee's right to the land under the homestead law.[80] In *Binayug v. Ugaddan,*[81] we returned the properties which were acquired through a grant of a homestead patent to the heirs of the original owner after it was proven that the properties were alienated

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[76] *Id.* at 115, citations omitted.

[77] *Egao v. Court of Appeals,* G.R. No. 79787, June 29, 1989, 174 SCRA 484, 492-493, citing *Sumail v. Judge of the Court of First Instance of Cotabato, et al.,* 96 Phil. 946, 953 (1955); *Lucas v. Durian,* 102 Phil. 1157, 1158 (1957); and *Acot, et al. v. Kempis,* 55 O.G., p. 2907, Apri1 20, 1959.

[78] See *Binayug v. Ugaddan,* G.R. No. 181623, December 5, 2012, 687 SCRA 260, 273-275, citing *De los Santos v. Roman Catholic Church of Midsayap, et al.,* 94 Phil. 405, 411 (1954).

[79] *Philippine National Bank v. De los Reyes,* G.R. Nos. L-46898-99, November 28, 1989, 179 SCRA 619.

[80] *Id.*; See also *Binayug v. Ugaddan, supra,* citing *De los Santos v. Roman Catholic Church of Midsayap, et al., supra.*

[81] G.R. No. 181623, December 5, 2012, 687 SCRA 260.

within the five-year prohibition period under Section 118 of the Public Land Act. Citing *De los Santos v. Roman Catholic Church of Midsayap, et al.,*[82] we explained:

In *De los Santos v. Roman Catholic Church of Midsayap,* a homestead patent covering a tract of land in Midsayap, Cotabato was granted to Julio Sarabillo (Sarabillo) on December 9, 1938. OCT No. RP-269 was issued to Sarabillo on March 17,1939. On December 31, 1940, Sarabillo sold two hectares of land to the Roman Catholic Church of Midsayap (Church). Upon Sarabillo's death, Catalina de los Santos (De los Santos) was appointed administratrix of his estate. In the course of her administration, De los Santos discovered that Sarabillo's sale of land to the Church was in violation of Section 118 of the Public Land Act, prompting her to file an action for the annulment of said sale. The Church raised as defense Section 124 of the Public Land Act, as well as the principle of *pari delicto.* The Court, in affirming the CFI judgment favoring De los Santos, ratiocinated:

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x x x Here [De Los Santos] desires to nullify a transaction which was done in violation of the law. Ordinarily the principle of *pari delicto* would apply to her because her predecessor-in-interest has carried out the sale with the presumed knowledge of its illegality, but **because the subject of the transaction is a piece of public land, public policy requires that she, as heir, be not prevented from re-acquiring it because it was given by law to her family for her home and cultivation. This is the policy on which our homestead law is predicated.** This right cannot be waived. "It is not within the competence of any citizen to barter away what public policy by law seeks to preserve". **We are, therefore, constrained to hold that [De Los Santos] can maintain the present action it being in furtherance of this fundamental aim of our homestead law.**

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Jurisprudence, therefore, supports the return of the subject properties to respondents as Gerardo's heirs following the declaration that the Absolute Deed of Sale dated July 10, 1951 between

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[82] 94 Phil. 405 (1954).

Gerardo and Juan is void for being in violation of Section 118 of the Public Land Act, as amended. That the subject properties should revert to the State under Section 124 of the Public Land Act, as amended, is a non-issue, the State not even being a party herein.[83]

With respect to the purchase price of ₱2,400 which petitioners paid for the land, respondent should return it with interest.[84] We similarly ruled in the recent case of *Tingalan v. Spouses Melliza*[85] which also involved the void sale of land covered by the Public Land Act, as amended. We applied the rule that upon annulment of the sale, the purchaser's claim is reduced to the purchaser price and its interest.[86]

But, even on the assumption that there was no violation of Section 118 of the Public Land Act, the ruling of the CA that petitioners' action has already prescribed would have been correct.

Petitioners allege that respondent fraudulently included the property in TCT No. T-7133, which was issued on February 13 and October 2, 1981.[87] Article 1456[88] of the Civil Code provides that a person acquiring property through mistake or fraud becomes, by operation of law, a trustee of an implied trust for the benefit of the real owner of the property. An action for reconveyance based on an implied trust generally prescribes

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[83] *Supra* note 81 at 273-276. Emphasis in the original.

[84] *Baje v. Court of Appeals,* G.R. No. L-18783, May 25, 1964, 11 SCRA 34, 39, citing *Angeles, et al. v. Court of Appeals, et al.,* 102 Phil. 1006, 1012 (1958) and *Medel v. Eliazo,* 106 Phil. 1157 (1959). See also *Philippine National Bank v. De los Reyes,* G.R. Nos. L-46898-99, November 28, 1989, 179 SCRA 619, 628 and *De Leon v. Court of Appeals,* G.R. No. 88788, September 4, 1992, 213 SCRA 596, 602.

[85] G.R. No. 195247, June 29, 2015.

[86] *De los Santos v. Roman Catholic Church of Midsayap, et al, supra* note 82 at 412.

[87] RTC records, pp. 6, 228.

[88] Art. 1456. If propety is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

in 10 years, the reckoning point of which is the date of registration of the deed or the date of issuance of the certificate of title over the property.[89] Thus, petitioners had 10 years from 1981 or until 1991 to file their complaint for reconveyance of property. The Complaint, however, was filed only on January 21, 2000,[90] or more than 10 years from the issuance of TCT No. T-7133. Hence, the action is already barred by prescription.

The exception to the ten-year rule on prescription is when the plaintiff is in possession of the land to be reconveyed.[91] In such case, the action becomes one for quieting of title, which is imprescriptible.[92] Here, petitioners allege that they were in juridical possession of the property from the time they put up a fence on it until the filing of the Complaint.[93] Respondent disputes this claim, countering that petitioners are not in actual and material possession of the property.[94] Whether petitioners have actual possession of the lot is a question of fact.[95] We have repeatedly ruled that a petition for review on *certiorari* under Rule 45 of the Rules of Court shall raise only questions of law and not questions of facts.[96] When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by us, unless the

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[89] *Brito, Sr. v. Dianala,* G.R. No. 171717, December 15, 2010, 638 SCRA 529, 535-537.

[90] RTC records, p. 1.

[91] *Yared v. Tiongco,* G.R. No. 161360, October 19, 2011, 659 SCRA 545, 552-553.

[92] *Francisco v. Rojas,* G.R. No. 167120, April 23, 2014, 723 SCRA 423, 454, citing *Philippine Economic Zone Authority v. Fernandez,* G.R. No. 138971, June 6, 2001, 358 SCRA 358 SCRA 489, 498.

[93] *Rollo*, p. 11.

[94] *Id.* at 96.

[95] *Heirs of Pedro Clemeña y Zurbano v. Heirs of Irene B. Bien,* G.R. No. 155508, September 11, 2006, 501 SCRA 405, 415.

[96] *Far Eastern Surety and Insurance Co., Inc. v. People,* G.R. No. 170618, November 20, 2013, 710 SCRA 358, 367-369.

case falls under any of the recognized exceptions.[97] Petitioners never raised any of these exceptions. Assuming they did, none of the exceptions would apply.

We affirm the CA's finding that petitioners were not able to establish their actual possession of the lot except by bare allegations not substantiated by evidence.[98] It is a basic rule that the party making allegations has the burden of proving them by a preponderance of evidence.[99] Moreover, parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent.[100]

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[97] In the case of *David v. Misamis Occidental II Electric Cooperative, Inc.,* G.R. No. 194785, July 11, 2012, 676 SCRA 367, 373-374, the recognized exceptions are as follows:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts;

(5) When the findings of fact are conflicting;

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) When the findings are contrary to those of the trial court;

(8) When the findings of fact are without citation of specific evidence on which the conclusions are based;

(9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

[98] *Rollo,* p. 33.

[99] *Ramos v. Obispo,* G.R. No. 193804, February 27, 2013, 692 SCRA 240, 248-249.

[100] *Id.*

During trial, petitioners testified that they do not live on the property.[101] They alleged putting up a fence after they purchased the lot but there was no evidence to support their allegations as to when this fence was constructed.[102] Respondent presented pictures showing a fence erected by petitioners only in 1996 and respondent contested such act through a letter sent to petitioners asking them to remove the fence.[103] Although there were mango trees and chico trees in the lot, it was unclear who planted them.[104] The tax declaration of Lot No. 532-C which respondent offered in evidence also shows that coconut trees were planted in the lot.[105] Petitioners never alleged having planted any coconut tree.

Further, petitioners failed to substantiate their claim that they have been paying real property taxes religiously from the time of the sale in 1969. They only formally offered in evidence official receipts issued for the period 2000 to 2002 showing payment of real property taxes.[106] No tax declaration of the lot was also formally offered[107] in evidence, although petitioners attached one in their Complaint.[108] Under Section 34, Rule 132 of the Rules of Court, however, the court shall consider no evidence which has not been formally offered.

Finally, the survey plan commissioned by petitioners does not prove their actual possession over the property. The survey plan merely proves the identity of the property. It plots the

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[101] TSN, February 26, 2001, p. 27.

[102] *Id.* at 26-29.

[103] RTC records, pp. 240, 242-243. See also TSN, October 28, 2003, p. 21.

[104] TSN, May 16, 2002, p. 7

[105] RTC records, pp. 232-233.

[106] *Id.* at 184-186.

[107] *Id.* at 166-169,

[108] *Id.* at 18.

location, the area and the boundaries of the property, but it hardly proves that petitioners actually possessed the property.[109]

On the other hand, respondent offered in evidence the tax declaration[110] of Lot No. 532-C under his name, as well as the tax clearance[111] and official receipts for payment of real property taxes for the period 2000 to 2003.[112] We have held that although tax declarations or realty tax payment of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner for no one in his right mind would be paying taxes tor a property that is not in actual or at least constructive possession.[113]

WHEREFORE, in view of the foregoing, the petition is **DENIED.** The *Decision* dated August 27, 2008 and the *Resolution* dated November 19, 2008 rendered by the CA in CA-G.R. CV No. 00194-MIN are **AFFIRMED,** insofar as they dismissed the Complaint for Reconveyance with Writ of Preliminary Mandatory Injunction and Damages. The Deeds of Absolute Sale are declared void. Respondent Bajao is **ORDERED** to return the purchase price of ₱2,400 to petitioners, with legal interest rate at 6% per annum computed from the time of the filing of the Complaint on January 21, 2000 until finality of judgement, and thereafter, at 6% per annum until fully paid.[114]

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Perez,* and *Reyes, JJ.,* concur.

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[109] See *Roman Catholic Archbishop of Manila v. Ramos.* G.R. No. 179181, November 18, 2013, 709 SCRA 576, 595.

[110] RTC records, pp. 232-233.

[111] *Id.* at 236-237.

[112] *Id.* at 234-235.

[113] *Republic v. Sta. Ana-Burgos,* G.R. No. 163254, June 1, 2007, 523 SCRA 309, 316, citing *Ganila v. Court of Appeals,* G.R. No. 150755, June 28, 2005, 461 SCRA 435, 448, also citing *Alcaraz v. Tangga-an,* G.R. No. 128568, April 9, 2003. 401 SCRA 84, 90-91.

[114] *Nacar v. Gallery of Frames,* G.R. No. 189871, August 13, 2013, 703 SCRA 439. See also *Tumibay v. Lopez,* G.R. No. 171692, June 3, 2013, 697 SCRA 21, 45.

THIRD DIVISION

[G.R. No. 191079. March 2, 2016]

JOEL CARDENAS, HEIR OF THE LATE ELINAIDA L. ALCANTARA, represented by ANTONIO IGNACIO, JR., *petitioner, vs.* **HEIRS OF THE LATE SPOUSES SIMPLICIA P. AGUILAR and MAXIMO V. AGUILAR and ATTY. NORMAN R. BUENO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; RULE ON SUBSTITUTION; NON-COMPLIANCE THEREWITH WOULD RENDER THE PROCEEDINGS AND THE JUDGMENT OF THE TRIAL COURT INFIRM BECAUSE THE COURT ACQUIRES NO JURISDICTION OVER THE PERSONS OF THE LEGAL REPRESENTATIVES OR OF THE HEIRS ON WHOM THE TRIAL AND THE JUDGMENT WOULD BE BINDING.—** The purpose behind the rule on substitution is the protection of the right of every party to due process. It is to ensure that the deceased party would continue to be properly represented in the suit through the duly appointed legal representative of his estate. Non-compliance with the rule on substitution would render the proceedings and the judgment of the trial court infirm because the court acquires no jurisdiction over the persons of the legal representatives or of the heirs on whom the trial and the judgment would be binding.
2. **ID.; ID.; ID.; ID.; A FORMAL SUBSTITUTION OF THE HEIRS IN PLACE OF THE DECEASED IS NO LONGER NECESSARY IF THE HEIRS CONTINUED TO APPEAR AND PARTICIPATED IN THE PROCEEDINGS OF THE CASE.—** In the case at bar, we find that no right to procedural due process was violated when the counsel for the respondents failed to notify the court of the fact of death of Simplicia P. Aguilar and even if no formal substitution of parties was effected after the such death. x x x [T]he rationale behind the rule on substitution is to apprise the heir or the substitute that he is being brought to the

jurisdiction of the court in lieu of the deceased party by operation of law. The said purpose was not defeated even if no proper substitution of party was made because Melba A. Clavo de Comer, the heir of the deceased Simplicia P. Aguilar, was already impleaded by petitioner as a party-defendant to Civil Case No. LP-02-0300 when the latter filed his Amended Complaint. For sure, petitioner is very much aware that despite the passing of the Spouses Aguilar, the case would still continue because de Comer, on her own behalf and as the legal representative of her deceased parents, possessed the authority to pursue the case to its end. In *Vda. De Salazar v. Court of Appeals,* we ruled that **a formal substitution of the heirs in place of the deceased is no longer necessary if the heirs continued to appear and participated in the proceedings of the case.** x x x Similarly in this case, the RTC had priorly acquired jurisdiction over the person of de Comer after she was served with summons as a party-defendant to the case and she continuously appeared and participated therein up to this point. Such jurisdiction previously acquired achieved the purpose of a formal substitution.

APPEARANCES OF COUNSEL

Erwin T. Daga for petitioner.

Mary Ann Del Prado-Arañas for respondent Norman R. Bueno.

Dan Clavo De Comer & Melba A. Clavo De Comer for respondent heirs of the late Spouses Simplicia P. Aguilar and Maximo V. Aguilar.

D E C I S I O N

PEREZ, *J.*:

This is a Petition for Review on *Certiorari* filed pursuant to Rule 45 of the Revised Rules of Court, assailing the Orders[1] dated 13 October 2009 and 18 January 2010 of the Regional

[1] *Rollo,* pp. 39-42; penned by Judge Erlinda Nicolas-Alvaro.

Trial Court (RTC) of Las Piñas City, Branch 198. In its assailed Orders the RTC directed the execution of its 27 February 2009 Decision.

The Facts

On 8 November 2000, Elinaida L. Alcantara (Alcantara) obtained a loan from the Spouses Maximo and Simplicia Aguilar (Spouses Aguilar) in the amount of ₱3,000,000.00 with fixed interest of ₱720,000.00. As a security for the said obligation, Alcantara executed an agreement denominated as *Venta con Pacto de Retro* (Sale With Right to Repurchase)[2] in favor of the Spouses Domingo over a parcel of land with an area of 410 square meters and registered under Transfer Certificate of Title (TCT) No. T-37319[3] under her name (subject property). It was agreed by the parties that the term of the loan shall be one year from the date of the execution of the contract on 8 November 2000 with a grace period of six months. After Alcantara failed to repurchase the subject property within the stipulated period, she sought for the extension of the period to exercise her right to repurchase which was granted by Melba A. Clavo de Comer, daughter of the Spouses Domingo, as shown in a letter 6 June 2002.[4]

In December 2002, Joel A. Cardenas (Cardenas), son of Alcantara, sought to exercise for himself, and on behalf of his mother, the redemption of the subject property by offering to pay the entire amount of the loan including the interest thereon, but it was refused by the Spouses Aguilar.

This prompted Alcantara to initiate Civil Case No. LP-02-0300 for the Reformation of Instrument and Specific Performance against the Spouses Aguilar, their daughter, Melba A. Clavo de Comer and her husband, Dan Clavo de Comer (Spouses de Comer) and Antonio Malinao, in his capacity as Register of Deeds of Las Piñas City. In her Complaint docketed as Civil

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[2] *Id*. at 71-72; records, Vol. 1, p. 10.

[3] *Id*. at 68-70; *id*. at 7-9.

[4] *Id*. at 80 marked as Annex "K"; *id*. Vol. 1, p. 12, marked as Annex "E".

Case No. LP-02-0300, plaintiff sought that the instrument denominated as *Venta con Pacto de Retro* be declared as equitable mortgage and to direct defendants Spouses Aguilar and Spouses de Comer to accept her offer to pay the loan and to release the mortgage constituted on the subject property.

After Alcantara passed away, she was substituted by her heir, Cardenas, who filed an Amended Complaint.[5]

Before the filing of the Amended Complaint, the counsel for the Spouses Aguilar also manifested that Maximo V. Aguilar likewise passed away by filing a Notice of Death with the trial court and serving a copy thereof on the opposing party. It was stated in the said notice that Maximo V. Aguilar is survived by his spouse, Simplicia P. Aguilar and his daughter, Melba A. Clavo de Comer and that both were already impleaded as original defendants in the complaint.

Subsequently defendants filed an Answer wherein they insisted that their transaction was not an equitable mortgage as claimed by the plaintiffs but a sale with a right to repurchase as clearly stipulated in the contract. Considering that Alcantara failed to exercise her right to repurchase the subject property within the period agreed upon by parties, defendants asked that the title thereon be consolidated in their names. In the alternative, defendants sought that the plaintiffs be directed to repurchase the property in the amount of ₱3,000,000.00 with an interest of 10% of the purchase price.

After the pre-trial conference, trial on the merits ensued.

On 27 February 2009, the RTC rendered a Decision[6] in favor of the plaintiffs and declared that the contract entered into by the parties is equitable mortgage and not a sale with a right to repurchase. Accordingly, the court *a quo* directed the defendants to release the mortgage constituted on the subject property upon payment of the principal amount of the loan. The dispositive portion of the RTC Decision reads:

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[5] *Id*. at 60-65.

[6] *Id*. at 44-49.

"WHEREFORE, premises considered, the court hereby declares that the contract entered into by the late Elinaida Alcantara is AN EQUITABLE MORTGAGE and NOT A SALE WITH RIGHT TO REPURCHASE. Accordingly, the parties are hereby ordered, as follows:

(1) the substituted plaintiff is ordered to pay defendants the principal loan of ₱3,000,000.00; and

(2) upon payment, the defendants are ordered to release the mortgage constituted on the property and to deliver the original copy of the owner's duplicate title of the property to the plaintiff.

SO ORDERED.

The period to file for a motion for reconsideration or for an appeal had lapsed but neither of the parties moved for the reconsideration of the decision nor appealed therefrom.

On 27 July 2009, defendants filed a Motion for Execution[7] of the RTC Decision which was surprisingly opposed by the plaintiff on the ground that the original defendants (the Spouses Aguilar) in Civil Case No. LP-02-0300 were already dead and no proper substitution of the parties was effected by the counsel as mandated by Section 16, Rule 3 of the Revised Rules of Civil Procedure.

Brushing aside the opposition of the plaintiff, the RTC, in an Order[8] dated 13 October 2009, directed the issuance of the Writ of Execution.[9]

The Motion for Reconsideration filed by the plaintiff was likewise denied by the lower court in its Order[10] dated 18 January 2010.

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[7] *Id.* at 85-86.

[8] Records, Vol. II, pp. 954-955.

[9] *Rollo,* pp. 87-90.

[10] *Id.* at 41-42.

Arguing that this case involves a genuine question of law, plaintiff (now petitioner herein) elevated the case before the Court and raised the following issues:

The Issues

I.

WHETHER OR NOT A MOTION FOR EXECUTION CAN BE FILED BY A COUNSEL WHEN THE JUDGMENT OBLIGEES WERE ALREADY DEAD AND NEITHER WAS THERE AN EXECUTOR OR ADMINISTRATOR APPOINTED BY THE COURT NOR AN HEIR SUBSTITUTED AS A PARTY TO THE CASE TO AUTHORIZE THE COUNSEL TO MOVE FOR THE EXECUTION OF THE JUDGMENT.

II.

WHETHER OR NOT THE COURT CAN GRANT A MOTION FOR EXECUTION FILED BY A COUNSEL WHEN THE JUDGMENT OBLIGEES WERE ALREADY DEAD AND NEITHER WAS THERE AN EXECUTOR OR ADMINISTRATOR APPOINTED BY THE COURT NOR AN HEIR SUBSTITUTED AS A PARTY TO THE CASE.[11]

The Court's Ruling

The resolution of this petition hinges on the propriety of the issuance of the Writ of Execution dated 13 October 2009.

In assailing the RTC Order dated 29 October 2009, petitioner averred that after the death of the original parties to the case, there was no proper substitution of the parties nor was there an appointment of an executor or administrator by the court. To petitioner, this constitutes a procedural *faux pas* which renders the proceedings before the lower court seriously infirmed.

Defendants before the trial court who are now respondents herein, on the other hand, insisted that after the death of Maximo V. Aguilar, a Notice of Death[12] was promptly filed by his counsel stating the fact of death and that he is survived by his spouse, Simplicia P. Aguilar, and daughter, Melba A. Clavo de Comer,

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[11] *Id*. at 22-23.

[12] *Id*. at 58.

who were both already impleaded as defendants to the case. While no notice of death was filed after the demise of Simplicia P. Aguilar, respondents argued that such procedural lapse is not fatal since the purpose of such notice is to acquire jurisdiction over the person of the substitute, which is no longer necessary in this case, because Melba A. Clavo de Comer was already part of the action after she was named as co-defendant upon the filing of the Amended Complaint.

After perusing the arguments of the parties, we find it perplexing why the petitioner, after going thru the process of filing the complaint and actively pursuing the case, and, eventually securing a favorable judgment, refused to have the said decision executed. After all, the reliefs mainly sought by the petitioner in his complaint, *(i.e.,* to declare the contract of sale with a right to repurchase as equitable mortgage and to direct the defendants to release the mortgage constituted on the property), were all granted by the court *a quo* as shown in its 27 February 2009 Decision. It is a source of wonder why instead of reveling in his success and pursuing an execution of the decision so as not to render his victory pyrrhic, petitioner inexplicably postured to sleep on his rights by not moving for the satisfaction of the judgment. And, when respondents took upon themselves the initiative to have the judgment executed, petitioner in all absurdity opposed it by hurling all possible procedural questions to prevent its satisfaction and even went to the extent of filing the instant petition before the Court.

Let this be a reminder to Atty. Erwin T. Daga, the counsel of the petitioner, not to trifle with court proceedings and needlessly waste the precious time and resources of the court by initiating and actively litigating a case, and, once a favorable judgment is obtained, taking the liberty to turn around completely to prevent its execution on grounds that are even without substance. Courts of law are created to settle the rights and obligations of the litigants and not to cater to every whim and caprice of the parties and their counsel. The remedies that are made available by statutes and the Rules to protect the interests of the parties must be pursued in good faith. A similar abuse of court processes in the future will be dealt with accordingly.

Even granting that petitioner was in good faith in assailing the execution of the RTC Decision, his argument that the RTC has no jurisdiction to issue the Writ of Execution absent proper substitution still holds no water.

The pertinent provision of the Revised Rules of Court provides:

Section 16. *Death of party; duty of counsel.* – Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

The purpose behind the rule on substitution is the protection of the right of every party to due process. It is to ensure that the deceased party would continue to be properly represented in the suit through the duly appointed legal representative of his estate. Non-compliance with the rule on substitution would render the proceedings and the judgment of the trial court infirm because the court acquires no jurisdiction over the persons of the legal representatives or of the heirs on whom the trial and the judgment would be binding.[13]

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[13] *Heirs of Bertuldo Hinog v. Hon. Melicor,* 495 Phil. 422, 438-439 (2005).

In the case at bar, we find that no right to procedural due process was violated when the counsel for the respondents failed to notify the court of the fact of death of Simplicia P. Aguilar and even if no formal substitution of parties was effected after the such death. As can be gleaned above, the rationale behind the rule on substitution is to apprise the heir or the substitute that he is being brought to the jurisdiction of the court in lieu of the deceased party by operation of law. The said purpose was not defeated even if no proper substitution of party was made because Melba A. Clavo de Comer, the heir of the deceased Simplicia P. Aguilar, was already impleaded by petitioner as a party-defendant to Civil Case No. LP-02-0300 when the latter filed his Amended Complaint. For sure, petitioner is very much aware that despite the passing of the Spouses Aguilar, the case would still continue because de Comer, on her own behalf and as the legal representative of her deceased parents, possessed the authority to pursue the case to its end.

In *Vda. De Salazar v. Court of Appeals,*[14] we ruled that **a formal substitution of the heirs in place of the deceased is no longer necessary if the heirs continued to appear and participated in the proceedings of the case.** In the cited case, we explained the rationale of our ruling and related it to the due process issue, to wit:

We are not unaware of several cases where we have ruled that a party having died in an action that survives, the trial held by the court without appearance of the deceased's legal representative or substitution of heirs and the judgment rendered after such trial, are null and void because the court acquired no jurisdiction over the persons of the legal representatives or of the heirs upon whom the trial and the judgment would be binding. This general rule notwithstanding, in denying petitioner's motion for reconsideration, **the Court of Appeals correctly ruled that formal substitution of heirs is not necessary when the heirs themselves voluntarily appeared, participated in the case and presented evidence in defense of deceased defendant. Attending the case at bench, after all, are these particular circumstances which negate petitioner's**

[14] G.R. No. 121510, November 23, 1995, 250 SCRA 305, as cited in *Sps. Berot v. Siapno,* G.R. No. 188944, 9 July 2014, 729 SCRA 475, 488-491.

belated and seemingly ostensible claim of violation of her rights to due process. We should not lose sight of the principle underlying the general rule that formal substitution of heirs must be effectuated for them to be bound by a subsequent judgment. Such had been the general rule established not because the rule on substitution of heirs and that on appointment of a legal representative are jurisdictional requirements per se but because non-compliance therewith results in the undeniable violation of the right to due process of those who, though not duly notified of the proceedings, are substantially affected by the decision rendered therein. Viewing the rule on substitution of heirs in this light, the Court of Appeals, in the resolution denying petitioner's motion for reconsideration, thus expounded:

> Although the jurisprudential rule is that failure to make the substitution is a jurisdictional defect, it should be noted that the purpose of this procedural rule is to comply with due process requirements. The original party having died, he could not continue to defend himself in court despite the fact that the action survived him. For the case to continue, the real party in interest must be substituted for the deceased. The real party in interest is the one who would be affected by the judgment. It could be the administrator or executor or the heirs. In the instant case, the heirs are the proper substitutes. Substitution gives them the opportunity to continue the defense for the deceased. Substitution is important because such opportunity to defend is a requirement to comply with due process. Such substitution consists of making the proper changes in the caption of the case which may be called the formal aspect of it. Such substitution also includes the process of letting the substitutes know that they shall be bound by any judgment in the case and that they should therefore actively participate in the defense of the deceased. This part may be called the substantive aspect. This is the heart of the procedural rule because this substantive aspect is the one that truly embodies and gives effect to the purpose of the rule. It is this court's view that compliance with the substantive aspect of the rule despite failure to comply with the formal aspect may be considered substantial compliance. Such is the situation in the case at bench because the only inference that could be deduced from the following facts was that there was active participation of the heirs in the defense of the deceased after his death:
>
> 1. The original lawyer did not stop representing the deceased. It would be absurd to think that the lawyer would

continue to represent somebody if nobody is paying him his fees. The lawyer continued to represent him in the litigation before the trial court which lasted for about two more years. A dead party cannot pay him any fee. With or without payment of fees, the fact remains that the said counsel was allowed by the petitioner who was well aware of the instant litigation to continue appearing as counsel until August 23, 1993 when the challenged decision was rendered;

2. After the death of the defendant, his wife, who is the petitioner in the instant case, even testified in the court and declared that her husband is already deceased. She knew therefore that there was a litigation against her husband and that somehow her interest and those of her children were involved;

3. This petition for annulment of judgment was filed only after the appeal was decided against the defendant on April 3, 1995, more than one and a half year (sic) after the decision was rendered (even if we were to give credence to petitioner's manifestation that she was not aware that an appeal had been made);

4. The Supreme Court has already established that there is such a thing as jurisdiction by estoppel. This principle was established even in cases where jurisdiction over the subject matter was being questioned. In the instant case, only jurisdiction over the person of the heirs is in issue. Jurisdiction over the person may be acquired by the court more easily than jurisdiction over the subject matter. Jurisdiction over the person may be acquired by the simple appearance of the person in court as did herein petitioner appear;

5. The case cited by the herein petitioner (Ferreria et al. vs. Manuela Ibarra vda. de Gonzales, et al.) cannot be availed of to support the said petitioner's contention relative to nonacquisition of jurisdiction by the court. In that case, Manolita Gonzales was not served notice and, more importantly, she never appeared in court, unlike herein petitioner who appeared and even testified regarding the death of her husband.[15]

[15] *ld.* at 308-310. (Citations omitted, emphasis supplied)

Similarly in this case, the RTC had priorly acquired jurisdiction over the person of de Comer after she was served with summons as a party-defendant to the case and she continuously appeared and participated therein up to this point. Such jurisdiction previously acquired achieved the purpose of a formal substitution.

WHEREFORE, premises considered, the petition is hereby **DENIED.** The assailed Orders of the Regional Trial Court are hereby **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Reyes,* and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 193134. March 2, 2016]

RAFAEL NADYAHAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS; IN INVOKING SELF-DEFENSE, WHETHER COMPLETE OR INCOMPLETE, THE *ONUS PROBANDI* IS SHIFTED TO THE ACCUSED TO PROVE BY CLEAR AND CONVINCING EVIDENCE ALL THE ELEMENTS.—** Case law has established that in invoking self-defense, whether complete or incomplete, the *onus probandi* is shifted to the accused to prove by clear and convincing evidence all the elements of the justifying circumstance, namely: (a) unlawful aggression on the part of the victim; (b) the reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.

2. **ID.; ID.; ID.; ID.; REASONABLE NECESSITY OF THE MEANS EMPLOYED TO PREVENT OR REPEL THE UNLAWFUL AGGRESSION; THE MEANS EMPLOYED BY THE PERSON INVOKING SELF-DEFENSE CONTEMPLATES A RATIONAL EQUIVALENCE BETWEEN THE MEANS OF ATTACK AND THE DEFENSE.—** Petitioner defends the use of a knife against four (4) men who were armed with a belt buckle and a club. Petitioner claims that since the aggressors were ganging up on him, he was put in a situation where he could not control or calculate the blows, nor could he have had time to reflect whether to incapacitate the victim or hit the less vital part of his body. Petitioner asserts that a penalty lower by two degrees under Article 69 of the Revised Penal Code is proper, assuming without admitting, that the evidence warrants a conviction. The means employed by the person invoking self-defense contemplates a rational equivalence between the means of attack and the defense. The x x x circumstances, as cited by the appellate court, negate the presence of a reasonable necessity of the means employed to prevent or repel it x x x.

3. **ID.; ID.; HOMICIDE; PENALTY WHEN THE PRIVILEGED MITIGATING CIRCUMSTANCE OF INCOMPLETE SELF-DEFENSE IS APPRECIATED; CASE AT BAR.—** Article 249 of the Revised Penal Code prescribes for the crime of homicide the penalty of reclusion temporal, the range of which is twelve (12) years and one (1) day to twenty (20) years. Under Article 69 of the Revised Penal Code, the privileged mitigating circumstance of incomplete self-defense reduces the penalty by one or two degrees than that prescribed by law. There being an incomplete self-defense, the penalty should be one (1) degree lower or from *reclusion temporal* to *prision mayor* to be imposed in its minimum period considering the presence of one ordinary mitigating circumstance of voluntary surrender pursuant to Article 64(2). Applying the Indeterminate Sentence Law, the maximum of the penalty shall be *prision mayor* minimum, the proper period after considering the mitigating circumstance, which has a range of six (6) years and one (1) day to eight (8) years. The minimum penalty is the penalty next lower in degree which is *prision correccional* in any of its periods, the range of which is six (6) months and one (1) day to six (6) years. Thus, the trial court correctly sentenced petitioner to four (4) years and two (2) months of *prision correccional* medium, as

minimum to eight (8) years of *prision mayor* minimum, as maximum.

APPEARANCES OF COUNSEL

Dionisio Milio for petitioner.
Office of the Solicitor General for respondent.

RESOLUTION

PEREZ, *J.*:

For review is the Decision[1] of the Court of Appeals dated 17 December 2009 affirming the Judgment[2] dated 5 February 2008 of the Regional Trial Court (RTC), Branch 34 of Lagawe, Ifugao finding petitioner Rafael Nadyahan guilty beyond reasonable doubt of homicide.

In an Information[3] filed by the Assistant Provincial Prosecutor on 2 July 2004, petitioner was charged with homicide, thus:

> That on or about the evening of May 26, 2004, at Banaue, Ifugao and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife and with intent to kill DID then and there willfully, unlawfully, and feloniously attack and stab one Mark Anthony D. Pagaddut inflicting multiple stab wounds on his body that caused his death thereafter.

When arraigned, petitioner pleaded not guilty to the charge.

The defense manifested at pre-trial that while petitioner indeed stabbed the victim, he did so in self-defense. For this reason, a reverse trial, upon agreement of the parties, was conducted with the defense presenting its evidence first.

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[1] *Rollo,* pp. 31-41; Penned by Associate Justice Amelita G. Tolentino with Associate Justices Estela M. Perlas-Bernabe (now a member of the Court) and Stephen C. Cruz concurring.

[2] Records, pp. 157-170; Presided by Judge Ester L. Piscoso-Flor.

[3] *Id.* at 1.

The defense presented petitioner himself as its principal witness and a certain Pedro Binwag who sought to corroborate the latter's statement.

Their version goes:

In the evening of 26 May 2004, petitioner was driving his motorcycle on the way to Poblacion with Mark Apilis at his back. As they reached the marker of the junction road going to Bontoc, they were flagged down by Marcial Acangan (Acangan), who was then accompanied by Elias Nabejet (Nabejet), Moreno Binwag (Binwag) and Mark Pagaddut (Pagaddut). Acangan asked petitioner for a ride home and the latter readily obliged. Acangan further asked that they be treated to a drink. Petitioner refused and explained that he had already spent his last money on drinks earlier in the day. This angered Acangan. He slapped petitioner on the forehead and kicked his foot. Petitioner did not back down. Instead, he got off his motorcycle and prepared to fight Acangan. At that instance, he saw Acangan' s companions pick up pieces of wood. Petitioner then ran towards Apilis and instructed the latter to start the engine of the motorcycle. Before petitioner could leave, he was struck on the back with a piece of wood by Nabejet. Petitioner impulsively took his knife from the windshield of the motorcycle and ran to the direction of his house. Acangan's group followed him. Upon reaching the parking area of the KMS Line, petitioner was met by Binwag. Petitioner even managed to ask Binwag why his group was ganging up on him when he was hit by Pagaddut with a belt buckle. As petitioner was starting to lose consciousness, he thrust his knife and stabbed Pagaddut before both of them fell down. Petitioner then got up, wiped his face and prepared to go home. He met Apilis who was driving his motorcycle. Apilis refused to go with him so petitioner drove the motorcycle away and proceeded towards the house of a congressman. Petitioner then spent four days in Barangay O-ong before going to San Jose City in Nueva Ecija to have his wounds treated. Finally, he went back to Ifugao to surrender.[4]

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[4] TSN, 14 March 2005, pp. 6-18.

Pedro Binwag witnessed a commotion while he was waiting for a jeepney near the junction road. He saw one person armed with a knife and running towards Bontoc while he was being chased by two men. The person holding a knife was eventually cornered by three men and he was struck in the head by a club. While he was about to fall down, he was bumped by another man holding a swinging object, causing the latter to fall. Sensing danger, Pedro Binwag immediately left the area.[5]

Petitioner presented a medical certificate[6] issued by the hospital in San Jose City to prove that he suffered a lacerated wound on his forehead.

The prosecution presented Acangan and Nabejet whose version portrayed petitioner as the aggressor. Acangan narrated that he and Pagaddut had just come from Viewer's Live Band located at the market where they had a few drinks. Pagaddut went inside the cab of a tricycle with Acangan as driver. While Acangan was about to start the engine, petitioner and Apilis, who were riding a motorcycle, approach them. After saying that he has no problem with Pagaddut, petitioner suddenly wielded a knife. Acangan ran and petitioner chased him around the tricycle. Pagaddut alighted from the tricycle cab and tried to start the motorcycle engine. When petitioner saw Pagaddut, he kicked the latter in the chest. Petitioner turned his ire on Pagaddut and stabbed his upper right buttock. Nabejet came and tried to hit petitioner with a piece of wood but he missed. Petitioner, in turn chased Nabejet. Acangan followed them and upon reaching the station of the KMS Line, he saw petitioner pull the knife from Pagaddut's body. Acangan brought Pagaddut to the hospital. Pagaddut expired at the hospital.[7]

Nabejet recounted that he had just come from a wake and was near Viewer's Live Band when he saw petitioner, who

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[5] TSN, 5 July 2005, pp. 7-10.

[6] Records, p. 28.

[7] TSN, 19 April 2006, pp. 3-11.

was armed with a knife, standing near Pagaddut. He took a piece of wood nearby and approached Pagaddut. He then saw petitioner chase Pagaddut. He saw petitioner stab Pagaddut in the back causing the latter to fall down. Petitioner continued stabbing Pagaddut but the latter was able to parry the blows. Nabejet tried to hit petitioner with a piece of wood but he missed. Petitioner turned his attention to Nabejet and chased him. Nabejet was able to escape.[8]

According to the Certificate of Death, Pagaddut sustained the following injuries:

1. Multiple Stab Wounds, Penetrating, perforating
   a. Right infraclavicular, 7 cm
   b. Right anterior axillary fold, 5 cm
2. Stab wound, penetrating 3 em. base of neck right
3. Stab wound, lateral aspect upper arm, 2 cm.[9]

Dr. Antonio Ligot testified that the victim had three stab wounds: 1) one was perforating and penetrating wound on the anterior chest wall on the right side; 2) other is perforating and penetrating stab wound at the base of the right side of the neck; and 3) one was a stab wound on the right upper arm.[10]

Finding an incomplete self-defense, the trial court found petitioner guilty beyond reasonable doubt of homicide. The dispositive portion reads:

WHEREFORE, there being an incomplete self-defense, ACCUSED, Rafael Nadyahan is found **GUILTY** beyond reasonable doubt of Homicide. Pursuant to Article 69 of the Revised Penal Code and applying the Indeterminate Sentence Law, he is hereby sentenced to suffer the penalty of imprisonment of four (4) years and two (2) months of prision correccional medium, as minimum, to eight (8) years of prision mayor minimum, as maximum. He is likewise ordered

[8] TSN, 1 August 2006, pp. 3-7.
[9] Records, p. 7.
[10] TSN, 22 March 2006, pp. 3-4.

to pay the heirs of the victim, Mark Anthony D. Pagaddut, the amount of Fifty Thousand (₱50,000.00) Pesos as civil indemnity.[11]

The trial court lent credence to the version of the defense that petitioner is not the aggressor. However, the trial court found that there is an incomplete self-defense on the part of petitioner. Particularly, the trial court ruled that based on the wounds sustained by the victim, the means used by petitioner to prevent or repel the attack was not reasonable. In the imposition of penalty, the trial court considered incomplete self-defense as a privileged mitigating circumstance and voluntary surrender as an ordinary mitigating circumstance.

On 17 December 2009, the appellate court rendered its decision affirming petitioner's conviction.

Petitioner maintains that the court a quo gravely erred: (1) in ruling that there is an incomplete self-defense; and (2) in sustaining the penalty imposed by the trial court without considering the circumstances favorable to accused.[12]

In its Comment,[13] the Office of the Solicitor-General (OSG) defends the ruling of the appellate court that there is incomplete self-defense. However, the OSG recommends the modification of the penalty to arresto mayor in its medium period to prision correccional minimum.

Case law has established that in invoking self-defense, whether complete or incomplete, the *onus probandi* is shifted to the accused to prove by clear and convincing evidence all the elements of the justifying circumstance, namely: (a) unlawful aggression on the part of the victim; (b) the reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.[14]

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[11] Records, p. 170.

[12] *Rollo,* pp. 10-12.

[13] *Id*. at 58-65.

[14] *People v. Tabuelog,* 566 Phil. 297, 304 (2008).

We agree with the trial court that there was unlawful aggression on the part of the victim and lack of sufficient provocation on the part of petitioner. We quote the pertinent portion of the decision of the trial court:

After a thorough evaluation of the evidence and testimonies from both parties, the court gives more weight to the account that the accused was not the aggressor. His narration that Marcial Acangan requested him to take Marcial Acangan home was supported by the statement in the affidavit of Marcial where the accused said "MIlD PROBLEMA INE TE BARKADA HI MARCIAL' (THERE IS NO PROBLEM WITH THAT BECAUSE MARCIAL IS A FRIEND). The records do not disclose previous conversation in Marcial's affidavit to which accused replied with such a statement but it jibes with the account of the accused that Marcial requested him to take the latter home. It is illogical that after saying that, accused alighted from the motorcycle and chased his friend with a knife without any provocation. There was also no mention in Marcial's affidavit that accused kicked and stabbed the victim. He narrated it in his oral testimony because it was in the affidavit of the other witnesses. We must bear in mind that Marcial was the companion of the victim as early as when they were inside Viewer's Live Band and was continuously in close proximity with the victim until the chase started so it is improbable that he did not mention such incident to the police if it indeed happened. As to the testimony of the other witness for the prosecution, Eleazar Nabejet, he was presented to prove lack of sufficient provocation on the part of the victim yet in his testimony he never mentioned any kicking incident. It is most likely that he arrived late at the scene to have witnessed the beginning of the altercation and without personal knowledge to judge who the aggressor was. He does not even have an accurate grasp of the time of the incident relative to the time they left the house where the wake was, saying that they left the house where the wake was, saying that they left about 9:00 o'clock and later saying that it was perhaps at 9:55 so that if they reached the road it was 10:00 o'clock. Finally Dr. Ligot stated in his testimony that there was no stab wound on the lower back portion of the victim, and that the injuries sustained by the victim were frontal wounds. This will explain the fact why Marcial Acangan, the first witness for the prosecution offered to answer when asked why he did not mention in his affidavit the stabbing incident in front of Viewer's Live Band. This testimony, supported with physical evidence impeaches the testimonies of the two earlier

witnesses for the prosecution. With the inconsistencies of the testimonies of the witnesses for the prosecution, the court concludes that the oral testimony of Marcial Acangan is not credible and he adapted it from the story narrated by the other witnesses. With the foregoing, the court gives full credence to the testimony of the accused that he was not the aggressor.

Another factor which contributed to the failure of the cause of the prosecution is the fact that not one of the prosecution witnesses had seen the exchange of blows between the accused and the victim. The prosecution evidence failed to prove the details on how the stabbing took place that led to the death of the victim. In fact the first witness for the prosecution who was supposed to have seen the accused stab the victim and whose testimony will prove that the accused inflicted the fatal wounds on the victim admitted in his testimony that he saw only the "last pull of the knife" and then accused went to his motorcycle. It appeared that during the span of time that the accused and the victim were facing each other and exchanging blows, the witnesses for the prosecution were not around to see what happened. Marcial stated that he noticed Moreno Binwag at the site of the incident. Eleazar Nabejet said he was not around as he was running back to where the wake was using the pathway near the Viewer's Live band. Moreno Binwag was not presented as witness. The evidence of both parties however, are one in saying that there was a chasing incident, one after the other, a few meters from each other. The court finds it strange that not one of the prosecution witnesses had seen the exchange of blows between the accused and the victim when they were only a few meters away from each other. Mr. Moreno Binwag who could have seen it all as he was the alleged companion of the victim in attacking the accused near the KMS Lines was not presented[.] In effect, the claim of the accused corroborated by his witness, Pedro Binwag, that the group of the victim were the aggressors is undisputed.

xxx xxx xxx

We go next to the other requirement of self-defense to qualify as justifying circumstance, lack of sufficient provocation on the part of the person defending him. The same set of testimonies may be appreciated to determine if the accused did not provide sufficient provocation. The court rules and so holds that there was no sufficient provocation on the part of the accused to invite the attack from Marcial Acangan and his companions. In fact he acceeded (sic)

to the request of Marcial to take him home. His subsequent refusal or failure to buy drinks as requested definitely is not sufficient provocation for the attack by the group of the vitim.[15]

Petitioner defends the use of a knife against four (4) men who were armed with a belt buckle and a club. Petitioner claims that since the aggressors were ganging up on him, he was put in a situation where he could not control or calculate the blows, nor could he have had time to reflect whether to incapacitate the victim or hit the less vital part of his body. Petitioner asserts that a penalty lower by two degrees under Article 69 of the Revised Penal Code is proper, assuming without admitting, that the evidence warrants a conviction.

The means employed by the person invoking self-defense contemplates a rational equivalence between the means of attack and the defense.[16]

The fol1owing circumstances, as cited by the appellate court, negate the presence of a reasonable necessity of the means employed to prevent or repel it:

First, there is intrinsic disproportion between a knife and a belt buckle. Although this disproportion is not conclusive and may yield a contrary conclusion depending on the circumstances, we mention this disproportionality because we do not believe that the circumstances of the case dictate a contrary conclusion.

Second, physical evidence shows that the accused-appellant suffered only a lacerated wound on the forehead. Contrary to what the accused-appellant wishes to imply, he could not have been a defender reeling from successive blows inflicted by the victim and Binwag.

Third, the victim Pagaddut and his companions were already drunk before the fatal fight. This state of intoxication, while not critically material to the stabbing that transpired, is still material for purposes of defining its surrounding circumstances, particularly the fact that a belt buckle and a piece of wood might not have been a potent weapon in the hands of a drunk wielder.

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[15] Records, pp. 165-168.

[16] *Dela Cruz v. People,* G.R. No. 189405, 19 November 2014.

Fourth, and as the trial court aptly observed, the knife wounds were all aimed at vital parts of the body, thus pointing a conclusion that the accused-appellant was simply warding off belt buckle thrusts and used his knife as a means commensurate to the thrusts he avoided.

To be precise, the accused-appellant inflicted on the victim: two penetrating and perforating stab wounds, one at the right infraclavicular, 7 cms. deep, and at the right anterior axillary fold, 5 cms. deep, anther was at the base of the neck, 5 cms. deep, and a last one was in the lateral aspect upper arm, 2 cms. deep. The depth of these wounds shows the force exerted in the accused-appellant's thrusts while the locations are indicative that the thrusts were all meant to kill, not merely disable the victim, and thereby avoid his drunken thrusts.[17]

In sum, we do not find any error in the Court of Appeals' ruling with respect to incomplete-self defense to warrant its reversal. However, we find the need to modify the penalty it imposed which is four (4) years and two (2) months of *prision correccional* medium, as minimum, to eight (8) years of *prision mayor* minimum, as maximum.

Article 249 of the Revised Penal Code prescribes for the crime of homicide the penalty of reclusion temporal, the range of which is twelve (12) years and one (1) day to twenty (20) years. Under Article 69 of the Revised Penal Code, the privileged mitigating circumstance of incomplete self-defense reduces the penalty by one or two degrees than that prescribed by law. There being an incomplete self-defense, the penalty should be one (1) degree lower or from *reclusion temporal* to *prision mayor* to be imposed in its minimum period considering the presence of one ordinary mitigating circumstance of voluntary surrender pursuant to Article 64(2).

Applying the Indeterminate Sentence Law, the maximum of the penalty shall be *prision mayor* minimum, the proper period after considering the mitigating circumstance, which has a range of six (6) years and one (1) day to eight (8) years. The minimum penalty is the penalty next lower in degree which is *prision*

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[17] *Rollo,* pp. 37-38.

correccional in any of its periods, the range of which is six (6) months and one (1) day to six (6) years. Thus, the trial court correctly sentenced petitioner to four (4) years and two (2) months of *prision correccional* medium, as minimum to eight (8) years of *prision mayor* minimum, as maximum.

WHEREFORE, the petition is **DENIED** and the Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 31643 dated 17 December 2009 and 21 July 2010, respectively, are **AFFIRMED.**

Costs against petitioner.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Reyes,* and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 197056. March 2, 2016]

FE P. ZALDIVAR, accompanied by her husband ELIEZER ZALDIVAR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and MAMERTO B. DUMASIS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; THE PRESENCE OR ABSENCE OF THE ELEMENTS OF THE CRIME IS EVIDENTIARY IN NATURE AND IS A MATTER OF DEFENSE THAT MAY BE PASSED UPON AFTER A FULL-BLOWN TRIAL ON THE MERITS.—** The CA was correct in ruling that Zaldivar's contention that the prosecution failed to establish by competent and admissible evidence of the crime charged is best left to the sound judgment of the trial court. Zaldivar should be

reminded of the rule that "the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits." Unless Zaldivar files a demurrer to the evidence presented by the prosecution, she cannot enjoin the trial court to terminate the case on the ground of the prosecution's alleged failure to establish and prove her guilt beyond reasonable doubt. The validity and merits of the prosecution's accusations, or Zaldivar's defense for that matter, as well as admissibility of testimonies and evidence, are better ventilated during trial proper.

2. **ID.; ID.; PRESENTATION OF EVIDENCE; RECALLING WITNESSES; PROCEDURAL LAPSES COMMITTED DURING THE PRESENTATION OF THE PROSECUTION'S EVIDENCE MAY BE CORRECTED BY RECALLING THE PROSECUTION'S WITNESSES AND HAVE THEM IDENTIFY THE EXHIBITS MENTIONED IN THEIR RESPECTIVE AFFIDAVITS; CASE AT BAR.—** The CA x x x correctly found grave abuse of discretion on the part of the trial court when it nullified the proceedings previously conducted and ordered anew a pre-trial of the case. Note that one of the main reasons presented by Judge Catilo in nullifying the pre-trial proceedings was that the proceedings conducted after the pre-trial conference did not comply with the prescribed procedure in the presentation of witnesses. But as propounded by the CA, and even the OSG who appeared for Judge Catilo, what the trial court should have done to correct any "perceived" procedural lapses committed during the presentation of the prosecution's evidence was to recall the prosecution's witnesses and have them identify the exhibits mentioned in their respective affidavits. This is explicitly allowed by the rules, specifically Section 9, Rule 132 of the Rules of Court x x x. The trial court may even grant the parties the opportunity to adduce additional evidence bearing upon the main issue in question, for strict observance of the order of trial or trial procedure under the rules depends upon the circumstance obtaining in each case at the discretion of the trial judge.

3. **ID.; CRIMINAL PROCEDURE; PRE-TRIAL; PURPOSE; THE PRE-TRIAL ORDER CANNOT BE NULLIFIED WHEN THERE WAS DUE COMPLIANCE WITH THE RULES RELATIVE TO**

THE CONDUCT OF THE PRE-TRIAL; CASE AT BAR.— Another reason adduced by the trial court in nullifying the pre-trial proceedings was that "[t]he pre-trial order of February 15, 2005 did not contain x x x matters ought to be the subject matter of a pre-trial conference under Sec. 1, Rule 118 of the Revised Rules on Criminal Procedure." x x x In this case, there is nothing on record that will show any disregard of the rule. Pieces of evidence were marked, objections thereto were raised, issues were identified, no admissions on factual matters were arrived at, and trial dates were set. As found by the CA, "[a] close scrutiny of the Pre-Trial Conference Order dated Februaiy 15, 2005, would show that there was due compliance with the Rules relative to the conduct of pre-trial. x x x Verily, there is nothing in the pre-trial order which calls for its nullification as the same clearly complies with the Rules." And while the Court recognizes the trial court's zeal in ensuring compliance with the rules, it cannot, however, simply set aside the proceedings that have been previously duly conducted, without treading on the rights of both the prosecution and the defense who did not raise any objection to the pre-trial proceedings. Pre-trial is a procedural device intended to clarify and limit the basic issues between the parties and to take the trial of cases out of the realm of surprise and maneuvering. Its chief objective is to simplify, abbreviate and expedite, or dispense with the trial. In this case, this purpose was clearly subverted when the trial court hastily set aside the pre-trial proceedings and its results. Absent any palpable explanation as to why and how said proceedings were conducted in violation of the rules and thus should be set aside, the Court sustains the CA's finding that the trial court committed grave abuse of discretion in nullifying the previous proceedings and setting the case anew for pre-trial.

APPEARANCES OF COUNSEL

Salvador A. Cabaluna, Jr., for petitioner.
The Solicitor General for respondents.

RESOLUTION

REYES, *J.*:

Petitioner Fe P. Zaldivar (Zaldivar) filed the present petition for review on *certiorari*[1] under Rule 45 of the Rules of Court questioning the Decision[2] dated May 31, 2010 and Resolution[3] dated December 15, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 02085, which set aside the Orders[4] dated November 18, 2005 and June 20, 2006 of the Regional Trial Court (RTC) of lloilo City, Branch 23, in Criminal Case No. 03-57161.

Facts

Zaldivar and Jeanette Artajo (Artajo) were charged with Estafa pursuant to a complaint filed by respondent Mamerto Dumasis (Dumasis) before the RTC, which was initially raffled to Branch 33. Pre-trial conference was held by the trial court and a Pre-Trial Order was issued on the same date, February 15, 2005. Zaldivar and her co-accused Artajo were then arraigned and both pleaded not guilty to the crime charged.[5]

During the trial of the case, the prosecution presented Alma Dumasis and Delia Surmieda as witnesses, and both identified their respective affidavits, which constituted their direct testimonies. Zaldivar's counsel, Atty. Salvador Cabaluna, opted not to cross-examine the witnesses, while Artajo's counsel was deemed to have waived his right to cross-examine in view of his absence despite notice.[6]

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[1] *Rollo,* pp. 4-30.

[2] Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Socorro B. Inting and Eduardo B. Peralta, Jr. concurring; *id*. at 31-38.

[3] *Id*. at 39-40.

[4] Rendered by Judge Edgardo L. Catilo.

[5] *Rollo,* p. 5.

[6] *Id*. at 32.

Dumasis, by himself and without the consent or acquiescence of the public prosecutor subsequently filed a Motion for Inhibition against Judge Virgilio Patag, which was granted by the latter. Hence, the case was re-raffled to Branch 23, presided by Judge Edgardo Catilo (Judge Catilo).[7]

On November 18, 2005, the RTC issued an Order, denying the admission of the prosecution's exhibits. The trial court also nullified and set aside the previous proceedings conducted and set the case anew for pre-trial conference. The dispositive portion of the order reads:

> WHEREFORE, in view of the foregoing considerations, this Court orders the following:
>
> a) The proceedings in this case wherein prosecution witnesses were presented but whose affidavits were only considered as their direct testimonies, are hereby nullified and set aside for want of procedural due process:
>
> b) The prosecution's formal offer of exhibits is also set aside for being premature, in view of the declaration of nullity of the proceeding for the presentation of prosecution witnesses; and
>
> c) In the greater interest of justice, this case is set for pre-trial conference anew to consider matters not covered by the pre-trial conference last February 15, 2005.
>
> The pre-trial conference in this case is set on January 19, 2006 at 8:30 in the morning.
>
> Notify the Public Prosecutor, the complaining witness, both accused, their surety, and their counsel.
>
> SO ORDERED.[8]

Zaldivar then filed on January 16, 2006 a Motion to Declare Prosecution's Case Terminated, which was denied by the RTC in its Order dated March 10, 2006. Zaldivar filed a Motion for Reconsideration, but it was also denied in the Order dated June 20, 2006.[9]

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[7] *Id.* at 33.

[8] *Id.*

[9] *Id.* at 33-34.

Aggrieved, Zaldivar filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with the CA, where the issues submitted for resolution are as follows:

(1) whether, by presenting only the affidavits of its witnesses, the prosecution failed to prove the commission of the crime charged, and which should have resulted in the dismissal of the criminal case; and

(2) whether there was grave abuse of discretion committed by Judge Catilo in nullifying the proceedings and setting the case anew for pre-trial.[10]

In the assailed Decision dated May 31, 2010, the CA found strong and compelling reasons to review the findings of the trial court presided by Judge Catilo, and set aside the Orders dated November 18, 2005 and June 20, 2006.[11] The dispositive portion of the CA decision provides:

WHEREFORE, in view of the foregoing, the assailed twin Orders rendered by the [RTC], Branch 23, Iloilo City in Criminal Case No. 03-57161 dated November 18, 2005 and June 20, 2006 respectively, are hereby ***SET ASIDE*** and the trial court is hereby ***DIRECTED*** to proceed with the trial of the case.

SO ORDERED.[12]

The CA dismissed Zaldivar's theory that the prosecution failed to prove by competent and admissible evidence the crime as charged in view of the prosecution's act of merely presenting the affidavits of its witnesses in lieu of giving their testimonies in open court. The CA ruled that such conclusion is best left to the sound judgment of the trial court and that the prosecution presented its evidence in a manner that it deems fit over which neither Zaldivar nor the trial judge has no control.[13]

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[10] *Id.* at 34.

[11] *Id.* at 35.

[12] *Id.* at 38.

[13] *Id.* at 35.

The CA also ruled that Judge Catilo grossly abused the exercise of his discretion and judgment when he nullified the pre-trial proceedings taken before Branch 33 and ordered the conduct of a new pre-trial. According to the CA, the trial court's order is tantamount to ordering a new trial or re-opening of the case to the prejudice of the rights of the accused.[14] The CA agreed with the Office of the Solicitor General's (OSG) contention that Judge Catilo is without authority to nullify and set aside the proceedings already conducted and to set the case for a second pre-trial conference to consider matters, which were not covered in the first pre-trial conference held on February 15, 2005.[15] Moreover, the CA stated that instead of calling for a new pre-trial, Judge Catilo could recall witnesses as provided for in Section 9, Rule 132 of the Rules of Court.[16]

Zaldivar filed a Motion for Reconsideration, which was denied by the CA in its Resolution dated December 15, 2010. Unsatisfied, she instituted this petition grounded on the same issues raised in the CA.

Zaldivar points out that the denial of the admission of exhibits of the prosecution upon timely and sustained objections of the accused has the effect of terminating the case of the prosecution for failure to adduce competent and admissible evidence during the trial proper.[17] Moreover, she argues that the prosecution has lamentably failed to establish by competent and admissible evidence the crime as charged and to prove the guilt of the accused beyond reasonable doubt and, therefore, the case should be dismissed instead of being tried anew or re-opened for further proceedings.[18] Finally, she contends that the RTC's Order dated November 18, 2005 directing the conduct of another pre-trial or re-opening of the case violates her right not to be prosecuted and tried twice on the same information against her.[19]

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[14] *Id*.

[15] *Id*. at 35-36.

[16] *Id*. at 37.

[17] *Id*. at 21.

[18] *Id*. at 24.

[19] *Id*. at 25.

Ruling of the Court

The assailed CA decision and resolution are affirmed for the following reasons:

The CA was correct in ruling that Zaldivar's contention that the prosecution failed to establish by competent and admissible evidence of the crime charged is best left to the sound judgment of the trial court.[20] Zaldivar should be reminded of the rule that "the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits."[21] Unless Zaldivar files a demurrer to the evidence presented by the prosecution,[22] she cannot enjoin the trial court to terminate the case on the ground of the prosecution's alleged failure to establish and prove her guilt beyond reasonable doubt.[23] The validity and merits of the prosecution's accusations, or Zaldivar's defense for that matter, as well as admissibility of testimonies and evidence,[24] are better ventilated during trial proper.

The CA, likewise, correctly found grave abuse of discretion on the part of the trial court when it nullified the proceedings previously conducted and ordered anew a pre-trial of the case.

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[20] *Id.* at 35.

[21] *Singian, Jr. v. Sandiganbayan (3rd Division),* G.R. Nos. 195011-19, September 30, 2013, 706 SCRA 451, 475, citing *Andres v. Justice Secretary Cuevas,* 499 Phil. 36, 49-50 (2005).

[22] Rule 119, Section 23 of the Rules of Court reads, in part: "After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court. x x x" Demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. *(People v. Go,* G.R. No. 191015, August 6, 2014,732 SCRA 216, 237-238.)

[23] See *rollo,* p. 24.

[24] *Id.*

Note that one of the main reasons presented by Judge Catilo in nullifying the pre-trial proceedings was that the proceedings conducted after the pre-trial conference did not comply with the prescribed procedure in the presentation of witnesses.[25] But as propounded by the CA, and even the OSG who appeared for Judge Catilo, what the trial court should have done to correct any "perceived" procedural lapses committed during the presentation of the prosecution's evidence was to recall the prosecution's witnesses and have them identify the exhibits mentioned in their respective affidavits.[26] This is explicitly allowed by the rules, specifically Section 9, Rule 132 of the Rules of Court, which provides:

> Sec. 9. *Recalling witnesses* - After the examination of a witness by both sides has been concluded, the witness cannot be recalled without leave of court. The court will grant or withhold leave in its discretion as the interest of justice may require.

The trial court may even grant the parties the opportunity to adduce additional evidence bearing upon the main issue in question, for strict observance of the order of trial or trial procedure under the rules depends upon the circumstance obtaining in each case at the discretion of the trial judge.[27]

Another reason adduced by the trial court in nullifying the pre-trial proceedings was that "[t]he pre-trial order of February 15, 2005 did not contain x x x matters ought to be the subject matter of a pre-trial conference under Sec. 1, Rule 118 of the Revised Rules on Criminal Procedure."[28]

The pertinent provision governing pre-trial in criminal cases states:

> SEC. 1. *Pre-trial; mandatory in criminal cases.* – In all criminal cases cognizable by the Sandiganbayan, [RTC], Metropolitan Trial

[25] *Id.* at 14-15.

[26] *Id.* at 36.

[27] *Valencia v. Sandiganbayan,* 510 Phil. 70, 81-82 (2005).

[28] *Rollo,* p. 15.

Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall, after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

(a) plea bargaining;
(b) stipulation of facts;
(c) marking for identification of evidence of the parties;
(d) waiver of objections to admissibility of evidence;
(e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
(f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.[29]

In this case, there is nothing on record that will show any disregard of the rule. Pieces of evidence were marked, objections thereto were raised, issues were identified, no admissions on factual matters were arrived at, and trial dates were set.[30] As found by the CA, "[a] close scrutiny of the Pre-Trial Conference Order dated Februmy 15, 2005, would show that there was due compliance with the Rules relative to the conduct of pre-trial. x x x Verily, there is nothing in the pre-trial order which calls for its nullification as the same clearly complies with the Rules."[31] And while the Court recognizes the trial court's zeal in ensuring compliance with the rules, it cannot, however, simply set aside the proceedings that have been previously duly conducted, without treading on the rights of both the prosecution and the defense who did not raise any objection to the pre-trial proceedings. Pre-trial is a procedural device intended to clarify and limit the basic issues between the parties and to take the trial of cases out of the realm of surprise and maneuvering. Its chief objective is to simplify, abbreviate and expedite or dispense with the trial.[32] In this case, this purpose was clearly

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[29] REVISED RULES ON CRIMINAL PROCEDURE, Rule 118.

[30] See *rollo,* pp. 36-37.

[31] *ld.* at 37.

[32] *LCK Industries, Inc. v. Planters Development Bank,* 563 Phil. 957, 968-969 (2007).

subverted when the trial court hastily set aside the pre-trial proceedings and its results. Absent any palpable explanation as to why and how said proceedings were conducted in violation of the rules and thus should be set aside, the Court sustains the CA's finding that the trial court committed grave abuse of disctretion in nullifying the previous proceedings and setting the case a new for pre-trial.

WHEREFORE, the petition for review is **DENIED** for lack of merit. The Decision dated May 31, 2010 and Resolution dated December 15, 2010 of the Court of Appeals in CA-G.R. SP No. 02085 are hereby **AFFIRMED**. The Regional Trial Court of Iloilo City, Branch 23, is **ORDERED** to proceed with Criminal Case No. 03-57-161 with dispatch.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Perez,* and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 202223. March 2, 2016]

JOEY R. PEÑA, *petitioner, vs.* **JESUS DELOS SANTOS AND THE HEIRS OF ROSITA DELOS SANTOS FLORES,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; SALES; CAPACITY TO BUY OR SELL; LAWYERS ARE PROHIBITED FROM ACQUIRING PROPERTY OR RIGHTS THAT MAY BE THE OBJECT OF ANY LITIGATION IN WHICH THEY MAY TAKE PART BY VIRTUE OF THEIR PROFESSION.—** The basis of Peña's motion for substitution is infirm because the lots were transferred to his predecessor-

in-interest, Atty. Robiso, through a prohibited sale transaction. Article 1491(5) of the Civil Code expressly prohibits lawyers from acquiring property or rights that may be the object of any litigation in which they may take part by virtue of their profession x x x. A complementary prohibition is also provided in Rule 10 of the Canons of Professional Ethics x x x. A property is in litigation if there is a contest or litigation over it in court or when it is subject of a judicial action. Records show that the judicial action over the subject lots was still in the appellate proceedings stage when they were conveyed to Jesus and Rosita's counsel, Atty. Robiso. The Deed of Transfer or Conveyance and the Deed of Absolute Sale both dated May 4, 2005 as well as the Confirmation of Sale and Transfer dated December 5, 2006 were all executed long before the termination of the appellate proceedings before this Court in G.R. Nos. 141810 and 141812 on February 2, 2007. Clearly then, since the property conveyed to Atty. Robiso by Jesus and Rosita was still the object of litigation, the deeds of conveyance executed by the latter are deemed inexistent. Under Article 1409 of the Code, contracts which are expressly prohibited or declared void by law are considered inexistent and void from the beginning. This being so, Atty. Robiso could not have transferred a valid title in favor of Peña over the lots awarded to Jesus and Rosita in Civil Case No. 3683. Consequently, Peña has no legal standing to be substituted in the stead of or joined with Jesus and Rosita as the first set of intervenors and to move for issuance of a writ of execution in Civil Case No. 3683.

2. **ID.; ID.; ID.; VOID OR INEXISTENT CONTRACTS; A SEPARATE ACTION FOR THE DECLARATION OF NULLITY OF A VOID OR INEXISTENT CONTRACT IS NOT REQUIRED; EXCEPTION.—** There is no need to bring a separate action for the declaration of the subject deeds of conveyance as void. A void or inexistent contract is one which has no force and effect from the very beginning. Hence, it is as if it has never been entered into and cannot be validated either by the passage of time or by ratification. The need to bring a separate action for declaration of nullity applies only if the void contract is no longer fully executory. Contrary to Peña's stance, the deeds of conveyance made in favor of Atty. Robiso in 2005 cannot be considered as executory because at that time the judgment award ceding the subject lots to Jesus and Rosita was not yet implemented. A writ of execution was issued only on July 10, 2008. "If the void contract is still fully

executory, no party need bring an action to declare its nullity; but if any party should bring an action to enforce it, the other party can simply set up the nullity as a defense."

3. **ID.; ID.; ID.; CONTINGENT FEE CONTRACT, DEFINED; THE PAYMENT OF THE CONTINGENT FEE IS NOT MADE DURING THE PENDENCY OF THE LITIGATION INVOLVING THE CLIENT'S PROPERTY BUT ONLY AFTER THE JUDGMENT HAS BEEN RENDERED IN THE CASE HANDLED BY THE LAWYER.—** It is true that contingent fee agreements are recognized in this jurisdiction as a valid exception to the prohibitions under Article 1491(5) of the Civil Code. The Court cannot extend a similar recognition to the present case, however, since the payment to Atty. Robiso of his contingency fees was made during the pendency of litigation. "A contingent fee contract is an agreement in writing where the fee, often a fixed percentage of what may be recovered in the action, is made to depend upon the success of the litigation. The payment of the contingent fee is not made during the pendency of the litigation involving the client's property but only after the judgment has been rendered in the case handled by the lawyer."

4. **ID.; ID.; ID.; ESTOPPEL; CANNOT GIVE VALIDITY TO AN ACT THAT IS PROHIBITED BY LAW OR ONE THAT IS AGAINST PUBLIC POLICY.—** Peña cannot rely on Article 1437 by claiming that Jesus and Rosita are already estopped from questioning the validity of their deeds of conveyance with Atty. Robiso. Estoppel is a principle in equity and pursuant to Article 1432 it is adopted insofar as it is not in conflict with the provisions of the Civil Code and other laws. Otherwise speaking, estoppel cannot supplant and contravene the provision of law clearly applicable to a case. Conversely, it cannot give validity to an act that is prohibited by law or one that is against public policy. The rationale advanced for the prohibition in Article 1491(5) is that public policy disallows the transactions in view of the fiduciary relationship involved, *i.e.,* the relation of trust and confidence and the peculiar control exercised by these persons. It is founded on public policy because, by virtue of his office, an attorney may easily take advantage of the credulity and ignorance of his client and unduly enrich himself at the expense of his client. The principle of estoppel runs counter to this policy and to apply it in this case will be tantamount to sanctioning a prohibited and void transaction.

APPEARANCES OF COUNSEL

Rodain & Mendiola for petitioner.

Desierto Ammuyutan Purisima & Desierto Law Firm for respondents.

R E S O L U T I O N

REYES, *J.*:

This resolves the Motion for Reconsideration[1] of petitioner Joey R. Peña (Peña) of the Court's Resolution[2] dated September 9, 2013 which denied his Petition for Review[3] on the ground of lack of reversible error in the assailed Decision[4] dated February 20, 2012 of the Court of Appeals (CA) in CA-G.R. CEB SP No. 03886.

The Facts

Jesus Delos Santos (Jesus) and Rosita Delos Santos Flores (Rosita) were the judgment awardees of the two-thirds portion or 9,915 square meters of four adjoining lots designated as Lots 393-A, 393-B, 394-D and 394-E, measuring 14,771 sq m, located in Boracay Island, Malay, Aklan.[5] The award was embodied in the Decision dated April 29, 1996 of the Regional Trial Court (RTC) of Kalibo, Aklan in the herein Civil Case No. 3683, the *fallo* of which reads:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered as follows:

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[1] *Rollo,* pp. 808-857.

[2] *Id.* at 807.

[3] *Id.* at 3-49.

[4] Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Nina G. Antonia-Valenzuela and Abraham B. Borreta concurring; *id.* at 51-65.

[5] See *Delos Santos v. Elizalde,* 543 Phil. 12, 18 (2007).

(1.) Dismissing the complaint filed by the plaintiffs [Vicente Delos Santos, et al.] as well [as] the complaint in intervention filed by the second set of intervenors Casimeros, *et al.* for lack of merit;

(2.) Declaring the two deeds of sale (Exhibits 29 and 30) as null and void insofar as they affect the two-thirds (2/3) share of intervenors Jesus and [Rosita];

(3.) **Declaring intervenors Jesus and [Rosita] as the lawful owners of the two-thirds portion of the land in question or 9,915 square meters on the northwest portion, representing as their shares in the intestate estate of Leonardo delos Santos;**

(4.) Declaring defendant Fred Elizalde as the rightful owner of one-third of the land in question or 4,957 square meters on the southeast portion, segregated by a boundary line running from the seashore to the inland or from the southwest to northeast;

(5.) Ordering the cancellation or revision of Tax Declaration No. 4422 in the name of Fred Elizalde (Exhibit 26) and all tax declarations issued subsequent thereto to conform to paragraphs 3 and 4 hereof as well as the issuance of a new tax declaration to intervenors Jesus and [Rosita] covering their two-thirds (2/3) share;

(6.) Ordering the plaintiffs or any persons claiming interest therein to deliver complete possession of the land to [Fred and Joan Elizalde] and Jesus and [Rosita].

No pronouncement as to costs.

SO ORDERED.[6] (Citation omitted and emphasis ours)

The losing parties in the case, Vicente Delos Santos, et al. (plaintiffs) and Spouses Fred and Joan Elizalde (appellants), appealed the foregoing judgment to the CA thru petitions separately docketed as CA-G.R. CV No. 54136 and CA-G.R. SP No. 48475, respectively. Both appeals were dismissed and considered withdrawn in the CA Resolution dated May 11, 1999 upon the appellants' motion to withdraw appeal. In the subsequent CA Resolution dated January 31, 2000, the motion for reconsideration and motion to reinstate appeal filed by the

[6] *Id.* at 19.

plaintiffs were denied for being time-barred as it was filed nine days late.[7]

The plaintiffs sought recourse with the Court *via* a petition for review on *certiorari* docketed as G.R. Nos. 141810 and 141812.[8] In a Decision dated February 2, 2007, the Court denied the petition on the ground that the plaintiffs already lost their right of appeal to the CA when they failed to file an appellant's brief during the more than 180-day extension.[9] The Court reiterated its ruling in a Resolution dated April 23, 2007, which denied reconsideration. An Entry of Judgment in the case was forthwith issued.[10]

The case was then remanded to the RTC of Kalibo, Aklan for the execution proceedings during which a *Motion for Substitution with a Motion for a Writ of Execution and Demolition*[11] dated March 14, 2008 was filed by Peña.

Peña averred that he is the transferee of Jesus and Rosita's adjudged allotments over the subject lots. He claimed that he bought the same from Atty. Romeo Robiso (Atty. Robiso) who in turn, acquired the properties from Jesus and Rosita through assignment and sale as evidenced by the following documents, *viz:*

a. Deed of Transfer or Conveyance dated May 4, 2005 transferring 2,000 sq m of Lots No. 394-PT and 393-A to Atty. Robiso;[12]

b. Deed of Absolute Sale dated May 4, 2005 over the 2,000 sq m of Lots No. 394-PT and 393-A in favor of Atty. Robiso;[13]

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[7] *Id*. at 19-23.

[8] *Id*. at 12, 17.

[9] *Id*. at 31-34.

[10] *Rollo,* p. 53.

[11] *Id*. at 107-114.

[12] *Id*. at 92-94.

[13] *Id*. at 95-98.

c. Confirmation of Sale and Transfer dated December 5, 2006 affirming the two foregoing instruments executed by Jesus and Rosita in favor of Atty. Robiso.[14]

Atty. Robiso later on sold Lots No. 393-A and 394-D to Peña on December 15, 2006 thru a Deed of Absolute Sale.[15] The tax declarations over the said portions were subsequently registered in Peña's name.[16]

The plaintiffs opposed Peña's motion claiming that the conveyance made by Jesus and Rosita in favor of Atty. Robiso was null and void for being a prohibited transaction because the latter was their counsel in the case.

Apparently, Atty. Robiso was engaged by Jesus and Rosita to be their counsel in Civil Case No. 3683 by virtue of an *Attorney's Agreement and Undertaking* dated July 11, 1998.[17] Under the agreement, Atty. Robiso bound himself to render his legal services in connection with Jesus and Rosita's involvement as party-litigants in Civil Case No. 3683 and to any proceedings that may arise in connection therewith before the CA and this Court. Atty. Robiso undertook to advance his own funds for all expenses and costs he may incur in relation to the case. In consideration thereof, Jesus and Rosita obliged themselves to give or pay to him as contingent professional fees, 2,000 sq m of any and all lands that the courts will award to them in the case.

Ruling of the RTC

In an Order[18] dated June 11, 2008, the RTC partially granted Peña's motion and ruled that Jesus and Rosita lost their standing in the case upon the conveyance of their adjudged 2,000 sq m

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[14] *Id.* at 101-102.

[15] *Id.* at 103-104.

[16] *Id.* at 105-106.

[17] *Id.* at 99-100.

[18] Issued by Acting Judge Elmo F. Del Rosario; *id.* at 226-241.

portion in favor of Atty. Robiso whose ownership rights were afterwards acquired by Peña.

The RTC upheld that the conveyance made by Jesus and Rosita in favor of Atty. Robiso is valid since it was not made during the pendency of litigation but after judgment has been rendered. The RTC disposed as follows:

> WHEREFORE, premises considered, the instant **Motion for Substitution and the Motion for a Writ of Execution and Demolition is partially granted.** Accordingly, it is hereby directed that:
>
> 1. Movant Joey Peña is joined with the original party in the First Set of Intervenors (Jesus and Rosita) in accordance with Section 19, Rule 3 of the Rules of Court; and
>
> 2. A Writ of Execution be issued to implement the Decision dated April 29, 1996.
>
> SO ORDERED.[19] (Emphasis in the original)

The writ of execution was issued on July 10, 2008.[20] The RTC denied reconsideration in an Order dated September 8, 2008.[21]

Ruling of the CA

Jesus, together with the heirs of Rosita, elevated the matter to the CA thru a special civil action for *certiorari* docketed as CA-G.R. CEB SP No. 03886.

In its Decision[22] dated February 20, 2012, the CA reversed the RTC and ruled that the conveyance made by Jesus and Rosita in favor of Atty. Robiso was null and void because it is a prohibited transaction under Article 1491(5) of the Civil Code. When the two Deeds of Sale in favor of Atty. Robiso were executed on May 4, 2005 and December 5, 2005 and the

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[19] *Id.* at 241.

[20] *Id.* at 608-610.

[21] *Id.* at 264.

[22] *Id.* at 51-65.

Confirmation of Sale on December 15, 2006, the case was still pending with the Supreme Court, before which Jesus and Rosita were still represented by Atty. Robiso. Accordingly, the CA decision disposed as follows:

> **WHEREFORE,** the Order dated June 11, 2008, Order dated September 8, 2008, and the Alias Writ of Execution dated July 10, 2008 in Civil Case No. 3683 are hereby ANNULLED and SET ASIDE. The trial court is directed to cause the execution of the final judgment in favor of [Jesus and the heirs of Rosita] in this case with dispatch.
>
> **SO ORDERED.** [23]

The CA reiterated the foregoing ruling when it denied Peña's motion for reconsideration in a Resolution[24] dated May 24, 2012. Aggrieved, Peña filed a petition for review on *certiorari* before the Court. In a Minute Resolution[25] dated September 9, 2013, the Court denied the petition for lack of reversible error in the assailed CA judgment.

On December 23, 2013, Peña filed a Motion for Reconsideration[26] insisting that the deeds of conveyance between Atty. Robiso and Jesus and Rosita were executed long after the decision in Civil Case No. 3683 became final and executory. Even assuming *arguendo* that the deeds were void, a separate action for declaration of their inexistence is necessary because their terms have already been fulfilled.

Ruling of the Court

The Court denies reconsideration.

The basis of Peña's motion for substitution is infirm because the lots were transferred to his predecessor-in-interest, Atty. Robiso, through a prohibited sale transaction. Article 1491(5) of the Civil Code expressly prohibits lawyers from acquiring property or rights that may be the object of any litigation in which they may take part by virtue of their profession, thus:

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[23] *Id*. at 64.
[24] *Id*. at 68-71.
[25] *Id*. at 807.
[26] *Id*. at 808-857.

Art. 1491. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

xxx xxx xxx

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.

xxx xxx xxx

A complementary prohibition is also provided in Rule 10 of the Canons of Professional Ethics which states:

10. Acquiring interest in litigation.

The lawyer should not purchase any interest in the subject matter of the litigation which he is conducting.

A property is in litigation if there is a contest or litigation over it in court or when it is subject of a judicial action.[27] Records show that the judicial action over the subject lots was still in the appellate proceedings stage when they were conveyed to Jesus and Rosita's counsel, Atty. Robiso. The Deed of Transfer or Conveyance and the Deed of Absolute Sale both dated May 4, 2005 as well as the Confirmation of Sale and Transfer dated December 5, 2006 were all executed long before the termination of the appellate proceedings betore this Court in G.R. Nos. 141810 and 141812 on February 2, 2007.

Clearly then, since the property conveyed to Atty. Robiso by Jesus and Rosita was still the object of litigation, the deeds of conveyance executed by the latter are deemed inexistent. Under Article 1409 of the Code, contracts which are expressly prohibited or declared void by law are considered inexistent

[27] *The Conjugal Partnership of the Spouses Vicente Cadavedo and Benita Arcoy-Cadavedo v. Lacaya,* G.R. No. 173188, January 15, 2014, 713 SCRA 397, 420.

and void from the beginning.[28] This being so, Atty. Robiso could not have transferred a valid title in favor of Peña over the lots awarded to Jesus and Rosita in Civil Case No. 3683. Consequently, Peña has no legal standing to be substituted in the stead of or joined with Jesus and Rosita as the first set of intervenors and to move for issuance of a writ of execution in Civil Case No. 3683.

There is no need to bring a separate action for the declaration of the subject deeds of conveyance as void. A void or inexistent contract is one which has no force and effect from the very beginning. Hence, it is as if it has never been entered into and cannot be validated either by the passage of time or by ratification.[29]

The need to bring a separate action for declaration of nullity applies only if the void contract is no longer fully executory. Contrary to Peña's stance, the deeds of conveyance made in favor of Atty. Robiso in 2005 cannot be considered as executory because at that time the judgment award ceding the subject lots to Jesus and Rosita was not yet implemented. A writ of execution[30] was issued only on July 10, 2008. "If the void contract is still fully executory, no party need bring an action to declare its nullity; but if any party should bring an action to enforce it, the other party can simply set up the nullity as a defense."[31]

This is notwithstanding the fact that the sale to Atty. Robiso was made pursuant to a contingency fee contract. It is true that contingent fee agreements are recognized in this jurisdiction as a valid exception to the prohibitions under Article 1491(5) of the Civil Code.[32] The Court cannot extend a similar recognition to the present case, however, since the payment to Atty. Robiso of his contingency fees was made during the pendency of litigation. "A contingent fee contract is an agreement in writing where the fee, often a fixed percentage of what may be recovered in the action, is made to depend upon the success of the litigation. The payment of the contingent fee is not made during

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[28] *Vda. de Guerra v. Suplico,* 522 Phil. 295, 310 (2006).

[29] *Francisco v. Herrera,* 440 Phil. 841, 849 (2002).

[30] *Rollo,* pp. 608-610.

[31] *Rubias v. Batiller,* 151-A Phil. 584, 602 (1973).

[32] *The Conjugal Partnership of the Spouses Vicente Cadavedo and Benita Arcoy-Cadavedo v. Lacaya, supra* note 27, at 421.

the pendency of the litigation involving the client's property but only after the judgment has been rendered in the case handled by the lawyer."[33]

Peña cannot rely on Article 1437[34] by claiming that Jesus and Rosita are already estopped from questioning the validity of their deeds of conveyance with Atty. Robiso. Estoppel is a principle in equity and pursuant to Article 1432 it is adopted insofar as it is not in conflict with the provisions of the Civil Code and other laws. Otherwise speaking, estoppel cannot supplant and contravene the provision of law clearly applicable to a case.[35] Conversely, it cannot give validity to an act that is prohibited by law or one that is against public policy.[36]

The rationale advanced for the prohibition in Article 1491(5) is that public policy disallows the transcations in view of the fiduciary relationship involved, *i.e.,* the relation of trust and confidence and the peculiar control exercised by these persons. It is founded on public policy because, by virtue of this office, an attorney may easily take advantage of the credulity and ignorance of his client and unduly enrich himself at the expense of his client.[37] The principle of estoppel runs counter to this policy and to apply it in this case will be tantamount to sanctioning a prohibited and void transaction.

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[33] *Id.* at 421-422.

[34] Art. 1437. When in a contract between third persons concerning immovable properly, one of them is misled by a person with respect to the ownership or real right over the real estate, the latter is precluded from asserting his legal title or interest therein, provided all these requisites are present:

(1) There must be fraudulent representation or wrongful concealment of facts known to the party estopped;

(2) The party precluded must intend that the other should act upon the facts as misrepresented;

(3) The party misled must have been unaware of the true facts; and

(4) The party defrauded must have acted in accordance with the representation.

[35] *Valdevieso v. Damalerio,* 492 Phil. 51, 59 (2005).

[36] *Ouano v. Court of Appeals,* 446 Phil. 690, 708 (2003).

[37] *Ramos v. Atty. Ngaseo*, 487 Phil. 40, 74 (2004).

The other issues raised by Peña are merely procedural in nature and are too inconsequential to override the fundamental considerations of public policy underlying theb prohibition set forth in Article 149(5) of the Civil Code.

WHEREFOR, foregoing considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Perez, and *Jardeleza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 204965. March 2, 2016]

SPOUSES ROMULO H. ESPIRITU and EVELYN ESPIRITU, *petitioners, vs.* **SPOUSES NICANOR SAZON and ANNALIZA G. SAZON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ELUCIDATED.— A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order requiring a party or a court, an agency, or a person to refrain from a particular act or acts. Its essential role is preservative of the rights of the parties in order to **protect the ability of the court to render a meaningful decision, or in order to guard against a change of circumstances that will hamper or prevent the granting of the proper relief after the trial on the merits.** In a sense, it is a regulatory process meant to prevent a case from being mooted by the interim acts of the parties. The controlling reason for the existence of the judicial power to issue the writ of injunction is that the court may thereby **prevent a threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly investigated and advisedly adjudicated.** The application for the writ rests upon an alleged existence of an emergency or of a special reason for such an order to issue before the case can be regularly heard, and the essential

conditions for granting such temporary injunctive relief are that the complaint alleges facts that appear to be sufficient to constitute a cause of action for injunction and that on the entire showing from both sides, it appears, in view of all the circumstances, that the injunction is reasonably necessary to protect the legal rights of plaintiff pending the litigation.

2. **ID.; ID.; ID.; ID.; THE GRANT OR DENIAL OF A WRIT OF PRELIMINARY INJUNCTION IS DISCRETIONARY UPON THE TRIAL COURT BECAUSE THE ASSESSMENT AND EVALUATION OF EVIDENCE TOWARDS THAT END INVOLVE THE FINDINGS OF FACT LEFT TO THE SAID COURT FOR ITS CONCLUSIVE DETERMINATION.—** [A] writ of preliminary injunction is generally based solely on **initial or incomplete evidence** as the plaintiff is only required to show that he has an **ostensible** right to the final relief prayed for in his complaint. As such, the evidence need only be a sampling intended merely to give the trial court an evidence of justification for a preliminary injunction pending the decision on the merits of the case. Significantly, the rule is well-entrenched that the grant or denial of a writ of preliminary injunction is discretionary upon the trial court because the assessment and evaluation of evidence towards that end involve findings of fact left to the said court for its conclusive determination. For this reason, the grant or denial of a writ of preliminary injunction shall not be disturbed unless it was issued with grave abuse of discretion amounting to lack or in excess of jurisdiction, which does not obtain in this case. Accordingly, the writ of preliminary injunction issued in the instant case must be upheld, and the ***status quo*** – or the **last actual, peaceful, and uncontested status that precedes the actual controversy, which is existing at the time of the filing of the case** – must be preserved until the merits of the case can be heard fully.

3. **ID.; ID.; ID.; ID.; NOT GRANTED FOR THE PURPOSE OF TAKING THE PROPERTY, THE LEGAL TITLE TO WHICH IS IN DISPUTE, OUT OF THE POSSESSION OF ONE PERSON AND PUTTING IT INTO THE HANDS OF ANOTHER BEFORE THE RIGHT OF OWNERSHIP IS DETERMINED.—** In issuing the writ of preliminary injunction, the RTC is presumed to have been guided by the dictum that it cannot make use of its injunctive power to alter the *status quo ante litem.* Hence, it could not have

contemplated the eviction of Sps. Espiritu from the subject land and the transfer of its possession to Sps. Sazon because it will defeat its *rationale* for issuing the injunctive writ in the first place, *i.e.,* in order not to preempt it from properly adjudicating on the merits and the various issues between the parties that would otherwise be rendered moot and academic. Indeed, the records are bereft of showing that such a scenario had been effected in the case. It is apropos to reiterate the settled rule that **injunctive reliefs are not granted for the purpose of taking the property, the legal title to which is in dispute, out of the possession of one person and putting it into the hands of another before the right of ownership is determined.** The reason for this doctrine is that before the issue of ownership is determined in light of the evidence presented, justice and equity demand that the parties be maintained in their *status quo* so that no advantage may be given to one to the prejudice of the other.

APPEARANCES OF COUNSEL

Proceso M. Nacino for petitioners.
Orlando R. Pangilinan for respondents.
Philip B. Lumboy collaborating counsel for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated March 5, 2012 and the Resolution[3] dated November 29, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 116303, which dismissed the petition for *certiorari* filed by petitioners-spouses Romulo and Evelyn Espiritu (Sps. Espiritu) against the Orders dated November

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[1] *Rollo,* pp. 9-32.
[2] *Id.* at 34-46. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Rosmari D. Carandang and Danton Q. Bueser concurring.
[3] *Id.* at 57.

11, 2009[4] and August 23, 2010[5] of the Regional Trial Court of Angeles City, Branch 57 (RTC) in Civil Case No. 13071, enjoining them from committing acts of possession and constructing a factory and warehouse over the property covered by Transfer Certificate of Title (TCT) No. 535706-R.

The Facts

Sps. Espiritu are the registered owners of an 8,268-square meter parcel of land situated in the Barangays of Bundagul and Paralayunan, Mabalacat, Pampanga (subject land) covered by TCT No. 535706-R.[6]

On October 5, 2006, respondents-spouses Nicanor and Annaliza Sazon (Sps. Sazon) filed before the RTC a Complaint[7] for Annulment of Sales, Cancellation of Titles, Recovery of Possession and Damages with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order (TRO) against Sps. Espiritu, Spouses Modesto and Leticia Diaz (Sps. Diaz), Marilyn M. Peco (Peco), Province of Pampanga Deputy Registers of Deeds Theresita Dela Cruz-Sonza[8] and Enrique M. Basa (Basa; collectively, RD of Pampanga). Sps. Sazon claimed to be the lawful owners of the subject land, having purchased the same from Sps. Diaz, which was then covered by TCT No. 19948/Emancipation Patent (EP) No. 413511[9] in Modesto Diaz's name. After the execution of the Deed of Absolute Sale[10] dated December 27, 1996 (December 27, 1996 Deed of Sale), Sps. Diaz surrendered the physical possession of the land and the corresponding owner's duplicate copy of the title to Sps. Sazon. However, sometime in August 2003, Sps. Espiritu occupied and fenced the subject land and

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[4] Records, Vol. II, pp. 444-454. Penned by Judge Omar T. Viola.

[5] *Id.* at 524-526.

[6] *Rollo,* pp. 35-36. See also Records, Vol. I, p. 267.

[7] Records, Vol. I, pp. 2-8.

[8] Dela Cruz-Sonza was dismissed from service for Grave Misconduct by the Office of the Deputy Ombudsman for Luzon. See Decision dated July 13, 2004; *id.* at 378-386.

[9] *Id.* at 121-122.

[10] *Id.* at 123-125.

claimed ownership thereof. Upon investigation, Sps. Sazon discovered that TCT No. 19948 was cancelled on October 4, 2002 by virtue of a purported sale by Sps. Diaz in favor of Peco, who was issued a new title. Thereafter, Peco sold the subject land to Sps. Espiritu, who were issued TCT No. 535706-R.[11]

Sps. Sazon alleged[12] that the titles of Peco and Sps. Espiritu are invalid, ineffective, null, void, and unenforceable, considering that: (*a*) the owner's duplicate copy of Modesto Diaz' TCT No. 19948 was never surrendered nor turned over to the RD of Pampanga for cancellation and/or transfer, and is still in Sps. Sazon's possession as the legitimate purchasers for value and in good faith; (*b*) the owner's duplicate copy of TCT No. 19948 was not reconstituted, re-issued, reported nor declared lost before any court or tribunal as certified by the Clerk of Court of the RTC of Pampanga[13] and the Provincial Agrarian Reform Officer II of the City of San Fernando, Pampanga;[14] (*c*) Sps. Diaz could not have possibly disposed or sold the subject land in favor of Peco on October 4, 2002 since Leticia Diaz had already passed away on March 17, 2001;[15] and (*d*) the transfers to Peco and Sps. Espiritu were not supported by the required Department of Agrarian Reform (DAR) clearance.[16] Thus, they prayed that judgment be rendered cancelling the titles of Peco and Sps. Espiritu for having been fraudulently obtained, and directing Sps. Espiritu to surrender possession of the subject land to them. They likewise prayed that pending final judgment, a TRO and/or a Writ of Preliminary and Mandatory Injunction be issued by the RTC restraining Sps. Espiritu or any persons acting in their behalf "from doing acts of possession and construction of building/s"[17] on the subject land.

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[11] *Id.* at 3-4.
[12] *Id.* at 4.
[13] *Id.* at 106.
[14] *Id.* at 107.
[15] *Id.* at 105.
[16] *Id.* at 108.
[17] *Id.* at 7.

Sps. Espiritu filed their answer,[18] praying for the dismissal of the complaint on the grounds that: (*a*) the complaint states no cause of action against them since the claim was merely based on an unregistered deed of sale, which is binding only between the parties thereto and cannot bind the land or third persons; (*b*) the complaint does not contain specific averments how they violated the rights of Sps. Sazon; and (*c*) Sps. Diaz are the real parties-in-interest who may institute the action.[19] They further claimed to be innocent purchasers for value.[20]

In his answer,[21] Basa claimed that: *(a)* the requirements for the registration of the Deed of Absolute Sale between Peco and Sps. Espiritu have been met; hence, it was ministerial for them to register the same and issue a new certificate of title in the latter's names; *(b)* the said registration enjoys the presumption of regularity; and (c) there was no necessity for a DAR clearance or certification, considering that DAR Administrative Order No. 1, Series of 1989[22] imposes only such requirement for transactions involving agricultural lands in excess of five (5) hectares.[23]

The RTC Ruling

After hearing the application for writ of preliminary injunction, the RTC issued an Order[24] dated November 11, 2009 (November 11, 2009 Order) granting the application, thereby enjoining Sps. Espiritu from committing acts of possession and constructing a factory, warehouse or other building over the subject land,

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[18] See Answer with Counterclaim and Opposition to the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction dated October 31, 2006; *id.* at 32-42.

[19] *Id.* at 33-35.

[20] *Id.* at 36.

[21] Dated November 8, 2006. *ld.* at 68-87.

[22] Entitled "RULES AND PROCEDURE GOVERNING LAND TRANSACTION" (January 26, 1989).

[23] See Records, Vol. I, pp. 71-73.

[24] Records, Vol. II, pp. 444-454.

conditioned upon the posting of a ₱1,000,000 indemnity bond by Sps. Sazon.

The RTC held that Sps. Sazon had sufficiently established that: (*a*) they have a right over the subject land by virtue of the December 27, 1996 Deed of Sale; (*b*) the physical possession of the subject land and as well as the owner's duplicate copy of the certificate of title were surrendered to them; (*c*) the certificate is still in their possession; and (*d*) Leticia Diaz was already dead when the sale to Peco was executed, rendering such transfer and the subsequent sale to Sps. Espiritu questionable. It reasoned that the non-issuance of the injunctive writ will pre-empt it from properly adjudicating on the merits and the various issues between the parties that would otherwise be rendered moot and academic if the complained acts are not enjoined.[25]

After Sps. Sazon had posted the required bond,[26] a writ of preliminary injunction[27] was issued and served[28] upon Sps. Espiritu. Aggrieved, the latter moved for reconsideration and for the dissolution and/or quashal of the writ[29] which was, however, denied for lack of merit in an Order[30] dated August 23, 2010, prompting them to file a petition for *certiorari*[31] before the CA, docketed as CA-G.R. SP No. 116303.

The CA Ruling

In a Decision[32] dated March 5, 2012, the CA denied the petition for *certiorari,* finding that the RTC did not abuse its

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[25] *Id.* at 452-453.

[26] *ld.* at 459.

[27] Dated November 17, 2009. *Id.* at 489-490.

[28] *Id.* at 488.

[29] Dated November 25, 2009. *Id.* at 491-503.

[30] *Id.* at 524-526.

[31] See Petitioners' Memorandum dated July 29, 2011; *id.* at 605-626.

[32] *Rollo,* pp. 34-46.

discretion when it granted the writ of preliminary injunction. It explained that the issuance of an injunctive writ is the prerogative of the trial court whose appreciation of the evidence in support of and in opposition thereto should not be interfered with by the appellate courts, save in instances where the court *a quo* gravely abused its discretion. It held that the RTC correctly appreciated the evidence which tended to put the validity of the sale between Peco and Sps. Espiritu doubtful,[33] justifying the issuance of the writ.

Dissatisfied, Sps. Espiritu filed a motion for reconsideration[34] which was, however, denied in a Resolution[35] dated November 29, 2012; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in finding that the RTC did not gravely abuse its discretion when it granted the writ of preliminary injunction in Sps. Sazon's favor.

The Court's Ruling

The petition lacks merit.

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order requiring a party or a court, an agency, or a person to refrain from a particular act or acts. Its essential role is preservative of the rights of the parties in order to **protect the ability of the court to render a meaningful decision, or in order to guard against a change of circumstances that will hamper or prevent the granting of the proper relief after the trial on the merits.**[36] In a sense, it is a regulatory process meant

[33] *Id.* at 43-44.

[34] Dated April 4, 2012. *Id.* at 47-56.

[35] *Id.* at 57.

[36] See *The City of Iloilo v. Honrado,* G.R. No. 160399, December 9, 2015.

to prevent a case from being mooted by the interim acts of the parties.[37]

The controlling reason for the existence of the judicial power to issue the writ of injunction is that the court may thereby **prevent a threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly investigated and advisedly adjudicated.** The application for the writ rests upon an alleged existence of an emergency or of a special reason for such an order to issue before the case can be regularly heard, and the essential conditions for granting such temporary injunctive relief are that the complaint alleges facts that appear to be sufficient to constitute a cause of action for injunction and that on the entire showing from both sides, it appears, in view of all the circumstances, that the injunction is reasonably necessary to protect the legal rights of plaintiff pending the litigation.[38]

In the present case, the CA found that the RTC correctly appreciated the evidence presented during the hearing on the application for writ of preliminary injunction.[39] At this point, it bears to stress that a writ of preliminary injunction is generally based solely on **initial or incomplete evidence** as the plaintiff is only required to show that he has an **ostensible** right to the final relief prayed for in his complaint. As such, the evidence need only be a sampling intended merely to give the trial court an evidence of justification for a preliminary injunction pending the decision on the merits of the case.[40] Significantly, the rule is well-entrenched that the grant or denial of a writ of preliminary injunction is discretionary upon the trial court because the assessment and evaluation of evidence towards that end involve findings of fact left to the said court for its conclusive

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[37] See *Carpio Morales v. CA,* G.R. Nos. 217126-27, November 10, 2015.

[38] *The City of Iloilo v. Honrado, supra* note 36, citing *Pahila-Garrido v. Tortogo,* 671 Phil. 320, 342 (2011).

[39] *Rollo,* p. 44.

[40] *Novecio v. Lim, Jr.,* G.R. No. 193809, March 23, 2015.

determination. For this reason, the grant or denial of a writ of preliminary injunction shall not be disturbed unless it was issued with grave abuse of discretion amounting to lack or in excess of jurisdiction,[41] which does not obtain in this case. Accordingly, the writ of preliminary injunction[42] issued in the instant case must be upheld, and the ***status quo*** – or the **last actual, peaceful, and uncontested status that precedes the actual controversy, which is existing at the time of the filing of the case** – must be preserved until the merits of the case can be heard fully.

The dispositive portion of the November 11, 2009 Order granting Sps. Sazon's application for an injunctive writ reads:

> WHEREFORE, PREMISES CONSIDERED, and it appearing to the satisfaction of this Court, but without necessarily going into the merits of the case, that the right of the plaintiff to the relief prayed for seems to have been duly established; that the considerations of relative inconvenience bear strongly in favor of the plaintiffs; that there seems to be a willful and unlawful invasion of plaintiff's right against his protests and remonstrance; that the injury being substantial, irreparable, and continuing one, let a writ of preliminary injunction be issued against the defendants and such other persons acting in their behalf, **restraining/ordering said defendants Espiritu from committing acts of possession over the subject parcel of land and restraining them from constructing a factory and warehouse thereat or other buildings,** provided, said plaintiff post a bond in the amount of ₱l,000,000.00 in favor of the defendants, to the effect that the same will pay to such party or person enjoined all damages which the latter may suffer/sustain by reason of the injunction if the court should finally decide that the plaintiff was not entitled thereto.[43] (Emphasis supplied)

To clarify, the scope of the directive in the afore-quoted order should be limited to **further** acts of dominion that may be conducted by Sps. Espiritu, *i.e.,* the construction of

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[41] *Liberty Broadcasting Network, Inc. v. Atlocom Wireless System, Inc.,* G.R. Nos. 205875 & 208916, June 30, 2015.

[42] Dated November 17, 2009. Records, Vol. II, pp. 489-490.

[43] *Id.* at 453-454.

factory, warehouse or other building on the subject land, or other similar acts that may be validly undertaken by an owner over his land, and **not** their eviction therefrom. Records show that prior to and during the institution of the complaint on October 5, 2006, Sps. Espiritu are in actual physical possession of the subject land, such possession appearing to have commenced as early as August 2003 when they fenced the same.[44] This is, therefore, the *status quo ante litem* or the state of affairs existing at the time of the filing of the complaint that must be preserved. As the present registered owners having a subsisting certificate of title in their names, Sps. Espiritu have the right to be maintained in the possession of the subject land[45] until their title is nullified,[46] which is the very issue in the proceedings *a quo*.

In issuing the writ of preliminary injunction, the RTC is presumed to have been guided by the dictum that it cannot make use of its injunctive power to alter the *status quo ante litem.*[47] Hence, it could not have contemplated the eviction of Sps. Espiritu from the subject land and the transfer of its possession to Sps. Sazon because it will defeat its *rationale* for issuing the injunctive writ in the first place, *i.e.,* in order not to preempt it from properly adjudicating on the merits and the various

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[44] See records, Vol. I, pp. 3 and 5.

[45] See *Gabriel, Jr. v. Crisologo,* G.R. No. 204626, June 9, 2014, 725 SCRA 528, 540-541.

See also Article 538 of the Civil Code which states:

Art. 538. Possession as a fact cannot be recognized at the same time in two different personalities except in the cases of co-possession. Should a question arise regarding the fact of possession, the present possessor shall be preferred; if there are two possessors, the one longer in possession; if the dates of the possession are the same, the one who presents a title; and if all these conditions are equal, the thing shall be placed in judicial deposit pending determination of its possession or ownership through proper proceedings.

[46] See *Spouses Pascual v. Spouses Coronel,* 554 Phil. 351, 361 (2007).

[47] *Cortez-Estrada v. Heirs of Samut,* 491 Phil. 458, 472 (2005).

issues between the parties that would otherwise be rendered moot and academic.[48] Indeed, the records are bereft of showing that such a scenario had been effected in the case.

It is apropos to reiterate the settled rule that **injunctive reliefs are not granted for the purpose of taking the property, the legal title to which is in dispute, out of the possession of one person and putting it into the hands of another before the right of ownership is determined.** The reason for this doctrine is that before the issue of ownership is determined in light of the evidence presented, justice and equity demand that the parties be maintained in their *status quo* so that no advantage may be given to one to the prejudice of the other.[49]

WHEREFORE, the petition is **DENIED.** The Decision dated March 5, 2012 and the Resolution dated November 29, 2012 of the Court of Appeals in CA-G.R. SP No. 116303, dismissing the petition for *certiorari* filed by petitioners-spouses Romulo and Evelyn Espiritu (petitioners) against the Orders dated November 11, 2009 and August 23, 2010 issued by the Regional Trial Court of Angeles City, Branch 57 in Civil Case No. 13071, are hereby **AFFIRMED** with the clarification that the writ of preliminary injunction shall be limited to further acts of dominion that may be conducted by petitioners, *i.e.,* the construction of factory, warehouse or other building on the subject land, or other similar acts that may be validly undertaken by an owner over his land, and not their eviction therefrom.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

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[48] See Order dated November 11, 2009; records, Vol. II, p. 453.

[49] *Cortez-Estrada v. Heirs of Samut, supra* note 47, at 475-476.

THIRD DIVISION

[G.R. No. 205966. March 2, 2016]

BANGKO SENTRAL NG PILIPINAS, *petitioner, vs.* **FELICIANO P. LEGASPI,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS.—** The principle that it is well settled that Rule 45 of the Rules of Court which provides that only questions of law shall be raised in an appeal by *certiorari* under Rule 45 of the Rules of Court before this Court admits of certain exceptions, namely: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record. Under the present case, the RTC and the CA have different findings of fact, hence, there is a need for this Court to address the issues raised by petitioner BSP.

2. **ID.; ID.; JURISDICTION; ANNEXES TO A COMPLAINT ARE DEEMED PART OF, AND SHOULD BE CONSIDERED TOGETHER WITH THE COMPLAINT IN DETERMINING THE COURT'S EXCLUSIVE ORIGINAL JURISDICTION; CASE AT BAR.—** Under Batas Pambansa Bilang 129, as amended by Republic Act No. 7691, the RTC has exclusive original jurisdiction over civil actions which involve title to possession

of real property, or any interest therein, where the assessed value of the property involved exceeds Twenty Thousand Pesos (₱20,000.00). Petitioner BSP insists that the property involved has an assessed value of more than ₱20,000.00, as shown in a Tax Declaration attached to the complaint. Incidentally, the complaint, on its face, is devoid of any amount that would confer jurisdiction over the RTC. The non-inclusion on the face of the complaint of the amount of the property, however, is not fatal because attached in the complaint is a tax declaration (Annex "N" in the complaint) of the property in question showing that it has an assessed value of ₱215,320.00. It must be emphasized that annexes to a complaint are deemed part of, and should be considered together with the complaint. In *Fluor Daniel, Inc.-Philippines v. E.B. Villarosa and Partners Co., Ltd.,* this Court ruled that in determining the sufficiency of a cause of action, the courts should also consider the attachments to the complaint x x x. Hence, being an annex to BSP's complaint, the tax declaration showing the assessed value of the property is deemed a part of the complaint and should be considered together with it in determining that the RTC has exclusive original jurisdiction.

3. **ID.; EVIDENCE; JUDICIAL NOTICE; THE COURT CAN TAKE JUDICIAL NOTICE WHEN A DOCUMENT WHICH IS A PUBLIC RECORD WAS ATTACHED TO THE COMPLAINT, AS THE SAME DOCUMENT IS ALREADY CONSIDERED AS ON FILE WITH THE COURT.—** [T]he RTC x x x committed no error in taking judicial notice of the assessed value of the subject property. A court will take judicial notice of its own acts and records in the same case, of facts established in prior proceedings in the same case, of the authenticity of its own records of another case between the same parties, of the files of related cases in the same court, and of public records on file in the same court. Since a copy of the tax declaration, which is a public record, was attached to the complaint, the same document is already considered as on file with the court, thus, the court can now take judicial notice of such.

4. **MERCANTILE LAW; REPUBLIC ACT NO. 7653 (THE NEW CENTRAL BANK ACT); BANGKO SENTRAL NG PILIPINAS (BSP); IN CASES INVOLVING THE BSP, THE MONETARY BOARD MAY AUTHORIZE THE BSP GOVERNOR TO REPRESENT IT PERSONALLY OR THROUGH A COUNSEL,**

EVEN A PRIVATE COUNSEL, AND THE AUTHORITY TO REPRESENT THE BSP MAY BE DELEGATED TO ANY OF ITS OFFICERS.— Under Republic Act No. 7653, or the *New Central Bank Act,* the BSP Governor is authorized to represent the Bangko Sentral, either personally or through counsel, including private counsel, as may be authorized by the Monetary Board, in any legal proceedings, action or specialized legal studies. Under the same law, the BSP Governor may also delegate his power to represent the BSP to other officers upon his own responsibility. As aptly found by the RTC, petitioner BSP was able to justify its being represented by a private counsel x x x. [I]n cases involving the BSP, the Monetary Board may authorize the BSP Governor to represent it personally or through a counsel, even a private counsel, and the authority to represent the BSP may be delegated to any of its officers.

APPEARANCES OF COUNSEL

Ongkiko Manhit Custodio & Acorda for petitioner.
Perdigon Duclan & Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is the Petition for Review on *Certiorari*[1] under Rule 45, dated March 13, 2013, of petitioner Bangko Sentral ng Pilipinas *(BSP),* seeking to reverse and set aside the Decision[2] dated August 15, 2012 and Resolution[3] dated February 18, 2013, both of the Court of Appeals *(CA)* that reversed the Order[4] dated January 20, 2009 of the Regional Trial Court *(RTC),* Branch 20, Malolos City, Bulacan regarding

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[1] *Rollo,* pp. 3-517.

[2] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Eduardo B. Peralta, Jr., concurring; *rollo,* pp. 27-42.

[3] *Rollo*, p.43.

[4] Penned by Judge Oscar C. Herrera, Jr., *id.* at 337-343.

a complaint for annulment of title, revocation of certificate and damages (with application for TRO/writ of preliminary injunction) filed by petitioner BSP against Secretary Jose L. Atienza, Jr., Luningning G. De Leon, Engr. Ramon C. Angelo, Jr., Ex-Mayor Matilde A. Legaspi and respondent Feliciano P. Legaspi, the incumbent Mayor of Norzagaray, Bulacan at the time of the filing of the said complaint.

The facts follow.

Petitioner BSP filed a Complaint for annulment of title, revocation of certificate and damages (with application for TRO/ writ of preliminary injunction) against Secretary Jose L. Atienza, Jr., Luningning G. De Leon, Engr. Ramon C. Angelo, Jr., Ex-Mayor Matilde A. Legaspi and respondent Feliciano P. Legaspi before the RTC of Malolos, Bulacan. Respondent, together with his fellow defendants, filed their Answer to the complaint. Thereafter, the RTC, on May 13, 2008, issued an Order mandating the issuance of preliminary injunction, enjoining defendants Engr. Ramon C. Angelo, Jr. and petitioner Feliciano P. Legaspi, and persons acting for and in their behalf, from pursuing the construction, development and/or operation of a dumpsite or landfill in Barangay San Mateo, Norzagaray, Bulacan, in an area allegedly covered by OCT No. P858/Free Patent No. 257917, the property subject of the complaint.

Herein respondent Legaspi filed a Motion to Dismiss dated August 15, 2008 alleging that the RTC did not acquire jurisdiction over the person of the petitioner BSP because the suit is unauthorized by petitioner BSP itself and that the counsel representing petitioner BSP is not authorized and thus cannot bind the same petitioner. Respondent Legaspi also alleged that the RTC did not acquire jurisdiction over the subject matter of the action because the complaint is *prima facie* void and that an illegal representation produces no legal effect. In addition, respondent Legaspi asserted that the complaint was initiated without the authority of the Monetary Board and that the complaint was not prepared and signed by the Office of the Solicitor General *(OSG)*, the statutory counsel of government agencies.

In opposing the Motion to Dismiss, petitioner BSP argued that the complaint was filed pursuant to Monetary Board Resolution No. 8865, dated June 17, 2004, and that the complaint was verified by Geraldine Alag, Director of Asset Management of the BSP, who stated that she was authorized by Monetary Board Resolutions No. 805 dated June 17, 2008 and 1005 dated July 29, 2005. Petitioner BSP further claimed that it is not precluded from being represented by a private counsel of its own choice.

After respondent Legaspi filed a Reply, to which petitioner BSP filed a Rejoinder, and against which, respondent Legaspi filed a Rejoinder, the RTC rendered its Order denying respondent Legaspi's motion to dismiss.

In denying the Motion to Dismiss, the RTC ruled that it had acquired jurisdiction over the person of the petitioner when the latter filed with the court the Complaint dated April 10, 2008. Furthermore, the RTC adjudged that in suits involving the BSP, the Monetary Board may authorize the Governor to represent it personally or through counsel, even a private counsel, and the authority to represent the BSP may be delegated to any other officer thereof. It took into account the fact that the BSP's complaint dated April 10, 2008 was verified by Geraldine C. Alag, an officer of the BSP being the Director of its Asset Management Department and the Secretary's Certificate issued by Silvina Q. Mamaril-Roxas, Officer-in- Charge, Office of the Secretary of BSP's Monetary Board attesting to Monetary Board Resolution No. 900, adopted and passed on July 18, 2008 containing the Board's approval of the recommendation of the Asset Management Department *(AMD)* to engage the services of Ongkiko Kalaw Manhit and Acorda Law Offices (*OKMA Law)*.

Respondent Legaspi filed a motion for reconsideration, adding as its argument that the RTC failed to acquire jurisdiction over the action because the complaint, a real action, failed to allege the assessed value of the subject property. As an opposition to respondent Legaspi's additional contention, petitioner BSP claimed that since the subject property contains an area of

4,838,736 square meters, it is unthinkable that said property would have an assessed value of less than ₱20,000.00 which is within the jurisdiction of the Municipal Trial Courts. Petitioner BSP further stated that a tax declaration showing the assessed value of ₱28,538,900.00 and latest zonal value of ₱145,162,080.00 was attached to the complaint.

The RTC, in its Order dated April 3, 2009, denied respondent Legaspi's motion for reconsideration. Hence, respondent Legaspi elevated the case to the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court. The CA, in its assailed Decision, dated August 15, 2012, granted respondent Legaspi's petition. The dispositive portion of the said decision reads as follows:

> WHEREFORE, the petition is GRANTED. The assailed January 20, 2009 and April 03, 2009 Orders are SET ASIDE and the complaint of BSP is hereby DISMISSED.
>
> SO ORDERED. [5]

Petitioner BSP moved for reconsideration, but the CA, in its Resolution dated February 18, 2013, denied the same motion. Hence, the present petition with the following grounds relied upon:

I.

The Regional Trial Court of Malolos City has exclusive original jurisdiction over the subject matter of Civil Case No. 209-M-2008.

II.

BSP lawfully engaged the services of [the] undersigned counsel.[6]

The principle that it is well settled that Rule 45 of the Rules of Court which provides that only questions of law shall be raised in an appeal by *certiorari* under Rule 45 of the Rules of Court before this Court admits of certain exceptions,[7] namely: (1) when the findings are grounded entirely on speculations,

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[5] *Rollo*, p. 41. (Emphases omitted)

[6] *Id.* at 10.

[7] *Atty. Uy v. Villanueva,* 553 Phil. 69 (2007).

surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[8] Under the present case, the RTC and the CA have different findings of fact, hence, there is a need for this Court to address the issues raised by petitioner BSP.

The petition is meritorious.

Under Batas Pambansa Bilang 129, as amended by Republic Act No. 7691, the RTC has exclusive original jurisdiction over civil actions which involve title to possession of real property, or any interest therein, where the assessed value of the property involved exceeds Twenty Thousand Pesos (₱20,000.00).[9] Petitioner BSP insists that the property involved has an assessed value of more than ₱20,000.00, as shown in a Tax Declaration attached to the complaint. Incidentally, the complaint,[10] on its face, is devoid of any amount that would confer jurisdiction over the RTC.

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[8] *Bernaldo v. The Ombudsman,* 584 Phil. 57, 67 (2008).

[9] Sec. 19. *Jurisdiction in Civil Cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction:

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(b) In all civil actions which involve title to or possession of real property, or any interest therein, where the assessed value of the property involved exceeds Twenty Thousand Pesos (₱20,000.00) x x x.

[10] *Rollo,* pp. 95-115.

The non-inclusion on the face of the complaint of the amount of the property, however, is not fatal because attached in the complaint is a tax declaration (Annex "N" in the complaint) of the property in question showing that it has an assessed value of ₱215,320.00. It must be emphasized that annexes to a complaint are deemed part of, and should be considered together with the complaint.[11] In *Fluor Daniel, Inc.-Philippines v. E.B. Villarosa and Partners Co., Ltd.,*[12] this Court ruled that in determining the sufficiency of a cause of action, the courts should also consider the attachments to the complaint, thus:

> We have ruled that a complaint should not be dismissed for insufficiency of cause of action if it appears clearly from the complaint and its attachments that the plaintiff is entitled to relief. The converse is also true. The complaint may be dismissed for lack of cause of action if it is obvious from the complaint and its annexes that the plaintiff is not entitled to any relief.[13]

Hence, being an annex to BSP's complaint, the tax declaration showing the assessed value of the property is deemed a part of the complaint and should be considered together with it in determining that the RTC has exclusive original jurisdiction.

In connection therewith, the RTC, therefore, committed no error in taking judicial notice of the assessed value of the subject property. A court will take judicial notice of its own acts and records in the same case, of facts established in prior proceedings in the same case, of the authenticity of its own records of another case between the same parties, of the files of related cases in the same court, and of public records on file in the same court.[14] Since a copy of the tax declaration, which is a public record, was attached to the complaint, the same document

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[11] *Jornales, et al. v. Central Azucarera de Bais, et al.,* 118 Phil. 909, 911 (1963).

[12] 555 Phil. 295 (2007).

[13] *Fluor Daniel, Inc.-Philippines v. E.B. Villarosa and Partners Co., Ltd., supra,* at 301.

[14] *Republic v. Court of Appeals,* 343 Phil. 428, 437 (1997).

is already considered as on file with the court, thus, the court can now take judicial notice of such.

In holding that the courts cannot take judicial notice of the assessed or market value of the land, the CA cited this Court's ruling in *Quinagoran v. Court of Appeals.*[15] This Court's ruling though in *Quinagoran* is inapplicable in this case because in the former, the complaint does not allege that the assessed value of the land in question is more than ₱20,000.00 and that there was no tax declaration nor any other document showing the assessed value of the property attached to the complaint. Thus, in *Quinagoran,* the assessed value of the land was not on record before the trial court, unlike in the present case.

Moreover, considering that the area of the subject land is four million eight hundred thirty-eight thousand seven hundred and thirty-six (4,838,736) square meters, the RTC acted properly when it took judicial notice of the total area of the property involved and the prevailing assessed value of the titled property, and it would also be at the height of absurdity if the assessed value of the property with such an area is less than ₱20,000.00.

Anent the issue of the legal representation of petitioner BSP, the CA ruled that the BSP, being a government-owned and controlled corporation, should have been represented by the Office of the Solicitor General (*OSG*) or the Office of the Government Corporate Counsel (*OGCC*) and not a private law firm or private counsel, as in this case.

Under Republic Act No. 7653, or the *New Central Bank Act,* the BSP Governor is authorized to represent the Bangko Sentral, either personally or through counsel, including private counsel, as may be authorized by the Monetary Board, in any legal proceedings, action or specialized legal studies.[16] Under

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[15] 557 Phil. 650, 661 (2007).

[16] R.A. No. 7653, Sec. 18. *Representation of the Monetary Board and the Bangko Sentral.* The Governor of the Bangko Sentral shall be the principal representative of the Monetary Board and of the Bangko Sentral and, in such capacity and in accordance with the instruction of the Monetary Board, shall be empowered to:

the same law, the BSP Governor may also delegate his power to represent the BSP to other officers upon his own responsibility.

As aptly found by the RTC, petitioner BSP was able to justify its being represented by a private counsel, thus:

> BSP's complaint dated April 10, 2008 was verified by Geraldine C. Alag, an officer of the BSP being the Director of its Asset Management Department. It has been explained that this was authorized by the Monetary Board, as per Resolution No. 865 dated June 17, 2004, which reads:
>
> > To approve delegation of authority to the Director, Asset Management Department (AMD), or in his absence, the Officer-in-Charge, AMD to sign all documents, contracts, agreements and affidavits relating to the consolidation of ownership, lease, cancellation of decision, redemption and sale of acquired assets, and all documents to be filed in court upon clearance by the Office of the General Counsel and Legal Services x x x.
>
> Also submitted to this Court is the Secretary's Certificate issued by Silvina Q. Mamaril-Roxas, Officer-in-Charge, Office of the Secretary of BSP's Monetary Board attesting to Monetary Board Resolution No. 900, adopted and passed on July 18, 2008, which reads:

(a) represent the Monetary Board and the Bangko Sentral in all dealings with other offices, agencies and instrumentalities of the Government and all other persons or entities, public or private, whether domestic, foreign or international;

(b) sign contracts entered into by the Bangko Sentral, notes and securities issued by the Bangko Sentral, all reports, balance sheets, profit and loss statements, correspondence and other documents of the Bangko Sentral.

The signature of the Governor may be in facsimile whenever appropriate;

(c) represent the Bangko Sentral, either personally or through counsel, as may be authorized by the Monetary Board, in any legal proceedings, action or specialized legal studies; and

(d) delegate his power to represent the Bangko Sentral, as provided in subsection (a), (b) and (c) of this section, to other officers upon his own responsibility; Provided, however, That in order to preserve the integrity and the prestige of his office, the

3. At the regular meeting of the MB on 18 July 2008, the MB adopted and passed MB Resolution No. 900, to wit:

> The Board approved the recommendation of the Asset Management Department (AMD) to engage the services of Ongkiko Kalaw Manhit and Acorda Law Offices (OKMA Law) as follows:
>
> 1. To act as counsel for the Bangko Sentral ng Pilipinas (BSP) in a complaint to be filed against the Department of Environment and Natural Resources (DENR) Secretary, et al., before the Regional Trial Court, Malolos, Bulacan, involving a BSP-acquired property covered by Transfer Certificate of Title No. 48694 P(M) with a total area of 483.87 hectares in Norzagaray, Bulacan, and under the terms and conditions of the service engagement and the fees as shown in Annex G of the memorandum of Ms. Geraldine C. Alag, Director, AMB, dated 8 July 2008; and
>
> 2. To act as true and lawful attorney-in-fact of the BSP, with full power and authority, as follows:
>
> a. To represent the BSP in the pre-trial conference and trial ofthe case;
> b. To negotiate, conclude, enter into and execute a compromise or amicable settlement of the case, under such terms and conditions as an attorney-in-fact may deem just and reasonable;
> c. To agree on the simplification of issues;
> d. To file and/or amend the necessary pleadings;
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> x x x x x x x x x

Thus, the filing of the instant suit and the engagement of the services of counsel are duly authorized.

It is significant to note that neither the Governor or General Counsel nor the Monetary Board of BSP has come out to disown

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Governor or the Bangko Sentral may choose not to participate in preliminary discussions with any multilateral banking or financial institution or any negotiations, he may instead be represented by a permanent negotiator. (Emphasis ours)

the authority given for the filing of the instant suit and for the engagement of the services of BSP's counsel of record in this case.[17]

Therefore, as discussed above, in cases involving the BSP, the Monetary Board may authorize the BSP Governor to represent it personally or through a counsel, even a private counsel, and the authority to represent the BSP may be delegated to any of its officers.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 dated March 13, 2013 of petitioner Bangko Sentral ng Pilipinas is **GRANTED.** Consequently, the Decision dated August 15, 2012 and Resolution dated February 18, 2013 of the Court of Appeals are **REVERSED** and **SET ASIDE** and the Orders dated January 20, 2009 and April 3, 2009 of the Regional Trial Court, Branch 20, Malolos City, Bulacan, are **AFFIRMED.**

Let this case, therefore, be **REMANDED** to the trial court for the continuation of its proceedings.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Perez, Reyes,* and *Jardeleza, JJ.,* concur.

FIRST DIVISION

[G. R. No. 210972. March 2, 2016]

ROGER ALLEN BIGLER, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and LINDA SUSAN PATRICIA E. BARRETO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT;

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[17] *Rollo,* pp. 341-343.

LIMITED TO REVIEW OF QUESTIONS OF LAW, FOR THE FINDINGS OF FACT MADE BY A TRIAL COURT ARE GENERALLY ACCORDED THE HIGHEST DEGREE OF RESPECT BY AN APPELLATE TRIBUNAL.— [A] petition for review under Rule 45 of the Rules of Court covers only questions of law. Questions of fact are not reviewable, absent any of the exceptions recognized by case law. This rule is rooted on the doctrine that findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not be ignored. Hence, absent any clear showing of abuse, arbitrariness or capriciousness committed by the lower court, its findings of facts, especially when affirmed by the Court of Appeals, are binding and conclusive upon this Court, as in this case.

2. **ID.; ID.; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENT; THE COURT MAY CORRECT THE PENALTIES IMPOSED, NOTWITHSTANDING THE FINALITY OF THE DECISIONS WHEN THEY ARE OUTSIDE THE RANGE OF PENALTY PRESCRIBED BY LAW; CASE AT BAR.—** [P]etitioner is found guilty beyond reasonable doubt of the crime of Libel. Applying the provisions of the Indeterminate Sentence Law, he should be sentenced to suffer the penalty of imprisonment for an indeterminate period of four (4) months of *arresto mayor*, as minimum, to two (2) years and four (4) months of *prision correccional*, as maximum. Unfortunately, the Decision dated November 25, 2003 of the RTC convicting petitioner of the said crime – which had long become final and executory – sentenced him to suffer the penalty of imprisonment for a period of one (1) year, eight (8) months, and twenty one (21) days to two (2) years, eleven (11) months, and ten (10) days. x x x In a catena of similar cases where the accused failed to perfect their appeal on their respective judgments of conviction, the Court corrected the penalties imposed, notwithstanding the finality of the decisions because they were outside the range of penalty prescribed by law. There is thus, no reason to deprive herein petitioner of the relief afforded the accused in the aforesaid similar cases. Verily, a sentence which imposes upon the defendant in a criminal prosecution a penalty in excess of the maximum which the court is authorized by law

to impose for the offense for which the defendant was convicted, is void for want or excess of jurisdiction as to the excess.

3. **ID.; ID.; ID.; ID.; DEFINED; THE COURT HAS THE POWER AND PREROGATIVE TO RELAX THE RULE IN ORDER TO SERVE THE DEMANDS OF SUBSTANTIAL JUSTICE.—** Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down. Nonetheless, the immutability of final judgments is not a hard and fast rule as the Court has the power and prerogative to relax the same in order to serve the demands of substantial justice considering: (*a*) matters of life, liberty, honor, or property; (*b*) the existence of special or compelling circumstances: (*c*) the merits of the case; (*d*) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (*e*) the lack of any showing that the review sought is merely frivolous and dilatory; and (*f*) that the other party will not be unjustly prejudiced thereby.

APPEARANCES OF COUNSEL

Tan Acut Lopez & Pison for petitioner.
Cayañga Zuñiga & Angel Law Offices for private respondent.
The Solicitor General for public respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 16, 2013 and the

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[1] *Rollo,* pp. 3-42.

[2] *Id.* at 44-51. Penned by Associate Justice Stephen C. Cruz with Associate Justices Normandie B. Pizarro and Myra V. Garcia-Fernandez concurring.

Resolution[3] dated January 21, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 119160, which affirmed *in toto* the Order[4] dated November 3, 2010 of the Regional Trial Court of Makati City, Branch 59 (RTC) in Criminal Case No. 99-2439 denying petitioner Roger Allen Bigler's (petitioner) Urgent Omnibus Motion (To: [1] Reopen proceedings and allow Accused to file his *Notice of Appeal;* [2] Recall the *Warrant of Arrest* dated 22 May 2006), thus, rendering final and unappealable the RTC's Decision[5] dated November 25, 2003 convicting petitioner of the crime of Libel.

The Facts

Petitioner was charged with the crime of Libel before the RTC for allegedly maligning his former spouse, private respondent Linda Susan Patricia E. Barreto, through a letter sent to her lawyer purportedly containing various malicious and defamatory imputations against her. Petitioner pleaded "not guilty" to the charge, and thereafter, trial on the merits ensued.[6] On November 21, 2003, petitioner's counsel, Capuyan Quimpo & Salazar, filed a Withdrawal of Appearance[7] and requested therein that "all notices, legal processes, and pleadings intended for petitioner be sent to his address at Portofino, Small La Laguna, Sabang, Puerto Galera, Oriental Mindoro or to his new counsel who shall enter an appearance in due time."

In a Decision[8] dated November 25, 2003, the RTC found petitioner guilty beyond reasonable doubt of the crime of Libel and, accordingly, sentenced him to suffer the penalty of imprisonment for a period of one (1) year, eight (8) months, and twenty one (21) days to two (2) years, eleven (11) months,

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[3] *Id*. at 53-56.

[4] *Id*. at 121-122. Penned by Presiding Judge Winlove M. Dumayas.

[5] *Id*. at 63-71.

[6] *Id*. at 44-45.

[7] *Id*. at 57-58.

[8] *Id*. at 63-71.

and ten (10) days, and to pay the costs of suit.[9] Aggrieved, petitioner moved for reconsideration,[10] which was, however, denied in an Order[11] dated May 22, 2006. On even date, a Warrant of Arrest was issued against petitioner. [12] Consequently, he was arrested and taken into custody on October 8, 2010.[13]

Following his arrest, petitioner filed an Urgent Omnibus Motion[14] dated October 13, 2010 praying that the RTC: *(a)* reopen the criminal proceedings against him; *(b)* allow him to file a notice of appeal; and *(c)* recall the Warrant of Arrest issued against him. In said Motion, petitioner questioned the validity of the promulgation of the RTC Decision convicting him of Libel, claiming that he never received notice of the same and that he was not present during such promulgation.[15] He likewise questioned the validity of the service of the Order dated May 22, 2006 denying his motion for reconsideration, maintaining that he never received a copy thereof.[16] In this relation, petitioner likewise filed a Notice of Appeal[17] dated October 22, 2010, claiming that he only knew of the RTC's Order dated May 22, 2006 on October 11, 2010.

The RTC Ruling

In an Order[18] dated November 3, 2010, the RTC denied petitioner's Urgent Omnibus Motion and, likewise, denied due course to his Notice of Appeal.[19]

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[9] *Id*. at 71.

[10] See Motion for Reconsideration dated February 9, 2004; *id*. at 72-78.

[11] *Id*. at 79.

[12] See *id*. at 121.

[13] *Id*. at 45.

[14] *Id*. at 81-91.

[15] See *id*. at 82-85.

[16] See *id*. at 86-88.

[17] *Id*. at 119.

[18] *Id*. at 121-122.

[19] *Id*. at 122.

The RTC found that the Notice of Promulgation was sent to petitioner's address through registered mail and was even received by a certain Sally Tanyag, his employee. In this relation, the RTC held that petitioner is estopped from feigning ignorance of the judgment of conviction against him and the promulgation of such judgment, considering that: *(a)* the RTC's Order dated January 27, 2004 clearly stated that "the subject judgment was promulgated by reading the same and furnishing [a] copy thereof to accused who was duly assisted by Atty. Danilo Macalino;" and *(b)* he caused the filing of the Motion for Reconsideration dated February 9, 2004 as evidenced by the Verification attached to the said Motion which bore his signature.[20]

Further, the RTC found as immaterial petitioner's contention that he did not receive the Order dated May 22, 2006, considering that he filed his Motion for Reconsideration dated February 9, 2004 only on February 13, 2004, or two (2) days beyond the prescribed 15-day period reckoned from the promulgation of the RTC order on January 27, 2004. Hence, the RTC concluded that its Decision convicting petitioner of the crime of Libel had long attained finality.[21]

Petitioner moved for reconsideration[22] but was denied in an Order[23] dated March 8, 2011. Aggrieved, petitioner filed a petition for *certiorari*[24] before the CA.

The CA Ruling

In a Decision[25] dated May 16, 2013, the CA affirmed the RTC ruling *in toto.* It held that while the service of the Notice of Promulgation *via* registered mail was indeed a slight

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[20] *Id*. at 121-122.

[21] *Id*. at 122.

[22] See Motion for Reconsideration dated December 2, 2010; *id.* at 123-135.

[23] *Id*. at 152-153.

[24] *Id*. at 154-186.

[25] *Id*. at 44-51.

deviation from Section 6, Rule 120 of the Rules of Criminal Procedure which requires personal service to the accused or through his counsel, such departure from the rules was completely justifiable given that petitioner's previous counsel withdrew its representation shortly before the judgment was set for promulgation. In any event, the CA opined that petitioner cannot feign ignorance of such promulgation as records reveal that he was present thereat. Further, the CA agreed with the RTC that petitioner's filing of his Motion for Reconsideration was made out of time, thus, rendering the guilty verdict against him final and executory.[26]

Dissatisfied, petitioner moved for reconsideration,[27] which was, however, denied in a Resolution[28] dated January 21, 2014; hence, this petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly affirmed the ruling of the RTC finding that: *(a)* the promulgation of the judgment of conviction against petitioner was valid; and *(b)* petitioner belatedly filed his Motion for Reconsideration, thus, rendering said judgment final and executory.

The Court's Ruling

The petition is without merit.

At the outset, it should be pointed out that in this case, both the RTC and the CA found that the promulgation of the judgment of conviction was valid, as records reveal that petitioner, assisted by Atty. Danilo Macalino, attended the same. Similarly, the courts *a quo* both found that petitioner belatedly filed his motion for reconsideration assailing said judgment of conviction, thus, rendering such judgment final and executory. Undoubtedly, these are findings of fact which cannot be touched upon in the instant petition.

It must be stressed that a petition for review under Rule 45 of the Rules of Court covers only questions of law. Questions of fact

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[26] *Id.* at 47-50.

[27] See Motion for Reconsideration dated June 13, 2013; *id.* at 313-334.

[28] *Id.* at 53-56.

are not reviewable,[29] absent any of the exceptions recognized by case law.[30] This rule is rooted on the doctrine that findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not be ignored.[31] Hence, absent any clear showing of abuse, arbitrariness or capriciousness committed by the lower court, its findings of facts, especially when affirmed

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[29] See *Uyboco v. People,* G.R. No. 211703, December 10, 2014, citing *Microsoft Corp. v. Maxicorp, Inc.,* 481 Phil. 550, 561 (2004).

[30] "As a rule, only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court. In many instances, however, this Court has laid down exceptions to this general rule, as follows:

(l) When the factual findings of the Court of Appeals and the trial court are contradictory;

(2) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures;

(3) When the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible;

(4) When there is grave abuse of discretion in the appreciation of facts;

(5) When the appellate court, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;

(6) When the judgment of the Court of Appeals is premised on misapprehension of facts;

(7) When the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;

(8) When the findings of fact are themselves conflicting;

(9) When the findings of fact are conclusions without citation of the specific evidence on which they are based; and

(10) When the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record." *(Treñas v. People,* 680 Phil. 368, 378 [2012], citing *Salcedo v. People,* 400 Phil. 1302, 1308 [2000])

[31] *Uyboco v. People, supra* note 29, citing *Navallo v. Sandiganbayan,* G.R. No. 97214, Ju1y 18, 1994, 234 SCRA 175, 185-186.

by the Court of Appeals, are binding and conclusive upon this Court,[32] as in this case.

In view of the foregoing, petitioner is found guilty beyond reasonable doubt of the crime of Libel. Applying the provisions of the Indeterminate Sentence Law, he should be sentenced to suffer the penalty of imprisonment for an indeterminate period of four (4) months of *arresto mayor,* as minimum, to two (2) years and four (4) months of *prision correccional,* as maximum. Unfortunately, the Decision dated November 25, 2003 of the RTC convicting petitioner of the said crime – which had long become final and executory – sentenced him to suffer the penalty of imprisonment for a period of one (1) year, eight (8) months, and twenty one (21) days to two (2) years, eleven (11) months, and ten (10) days.

Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.[33] Nonetheless, the immutability of final judgments is not a hard and fast rule as the Court has the power and prerogative to relax the same in order to serve the demands of substantial justice considering: (*a*) matters of life, liberty, honor, or property; (*b*) the existence of special or compelling circumstances; (*c*) the merits of the case; (*d*) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (*e*) the lack of any showing that the review sought is merely frivolous and dilatory; and (*f*) that the other party will not be unjustly prejudiced thereby.[34]

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[32] *Id*., citing *Plameras v. People,* G. R. No. 187268, September 4, 2013, 705 SCRA 104, 122.

[33] *Gadrinab v. Salamanca,* G.R No. 194560, June 11, 2014, 726 SCRA 315, 329, citing *FGU Insurance Corporation v. RTC of Makati, Br. 66,* 659 Phil. 117, 123 (2011).

[34] See *Sumbilla v. Matrix Finance Corporation,* G.R. No. 197582, June 29, 2015; citations omitted.

In a catena of similar cases where the accused failed to perfect their appeal on their respective judgments of conviction,[35] the Court corrected the penalties imposed, notwithstanding the finality of the decisions because they were outside the range of penalty prescribed by law. There is thus, no reason to deprive herein petitioner of the relief afforded the accused in the aforesaid similar cases. Verily, a sentence which imposes upon the defendant in a criminal prosecution a penalty in excess of the maximum which the court is authorized by law to impose for the offense for which the defendant was convicted, is void for want or excess of jurisdiction as to the excess.[36]

In sum, petitioner should only be sentenced to suffer the penalty of imprisonment for an indeterminate period of four (4) months of *arresto mayor,* as minimum, to two (2) years and four (4) months of *prision correccional,* as maximum.

WHEREFORE, the petition is **DENIED.** Accordingly, the Decision dated May 16, 2013 and the Resolution dated January 21, 2014 of the Court of Appeals in CA-G.R. SP No. 119160 are hereby **AFFIRMED.** However, in the interest of substantial justice, the Decision dated November 25, 2003 of the Regional Trial Court of Makati City, Branch 59 in Criminal Case No. 99-2439 is **MODIFIED,** sentencing herein petitioner Roger Allen Bigler to suffer the penalty of imprisonment for an indeterminate period of four (4) months of *arresto mayor,* as minimum, to two (2) years and four (4) months of *prision correccional,* as maximum.

SO ORDERED.

Sereno, C.J.(Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

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[35] See *id*. See also *Almuete v. People,* G.R. No. 179611, March 12, 2013, 693 SCRA 167; *Estrada v. People,* 505 Phil. 339 (2005); *Rigor v. The Superintendent, New Bilibid Prison,* 458 Phil. 561 (2003); *People v. Barro,* 392 Phil. 857 (2000); and *People v. Gatward,* 335 Phil. 440 (1997).

[36] See *Sumbilla v. Matrix Finance Corporation, supra* note 34.

SECOND DIVISION

[G.R. No. 216021. March 2, 2016]

SOLOMON VERDADERO *y* GALERA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS.—** Generally, questions of fact are beyond the ambit of a petition for review under Rule 45 of the Rules of Court as it is limited to reviewing only questions of law. The rule, however, admits of exceptions wherein the Court expands the coverage of a petition for review to include a resolution of questions of fact. In *Laborte v. Pagsanjan Tourism Consumers' Cooperative et al.*, the Court reiterated the following exceptions to the rule that only questions of law may be raised under Rule 45, to wit: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; **(4) when the judgment is based on misappreciation of facts**; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.
2. **CRIMINAL LAW; EXEMPTING CIRCUMSTANCES; INSANITY; ACCUSED MUST BE COMPLETELY DEPRIVED OF INTELLIGENCE BECAUSE OF HIS MENTAL CONDITION AT THE TIME OR IMMEDIATELY BEFORE THE COMMISSION OF THE OFFENSE.—** Under Article 12 of the RPC, an imbecile or an insane person is exempt from criminal liability, unless the latter had acted during a lucid interval. The defense of insanity or imbecility must be clearly proved for there is a presumption

that the acts penalized by law are voluntary. x x x [I]n order for the accused to be exempted from criminal liability under a plea of insanity, he must categorically demonstrate that: (1) he was completely deprived of intelligence because of his mental condition or illness; and (2) such complete deprivation of intelligence must be manifest **at the time or immediately before the commission of the offense**.

3. **ID.; ID.; ID.; HOW INSANITY MAY BE ESTABLISHED.—** In *People v. Opuran*, the Court explained how one's insanity may be established, to wit: Since insanity is a condition of the mind, it is not susceptible of the usual means of proof. As no man can know what is going on in the mind of another, the state or condition of a person's mind can only be measured and judged by his behavior. Thus, the vagaries of the mind can only be known by outward acts, by means of which we read the thoughts, motives, and emotions of a person, and then determine whether the acts conform to the practice of people of sound mind. Insanity is evinced by a deranged and perverted condition of the mental faculties which is manifested in language and conduct. x x x Establishing the insanity of an accused often requires opinion testimony which may be given by a witness who is intimately acquainted with the accused; has rational basis to conclude that the accused was insane based on his own perception; or is qualified as an expert, such as a psychiatrist. In the earlier case of *People v. Austria*, the Court elucidated that evidence of the mental condition of the accused during a reasonable period before and after the commission of the offense is material. x x x Direct testimony is not required nor are specific acts of disagreement essential to establish insanity as a defense. x x x To prove insanity, clear and convincing circumstantial evidence would suffice.

4. **ID.; ID.; ID.; EXONERATION ON THE GROUND OF INSANITY WARRANTS CONFINEMENT IN A MENTAL INSTITUTION INSTEAD OF INCARCERATION.—** Generally, evidence of insanity after the commission of the crime is immaterial. It, however, may be appreciated and given weight if there is also proof of abnormal behavior before or simultaneous to the crime. Indeed, the grant of absolution on the basis of insanity should be done with utmost care and circumspection as the State must keep its guard against murderers seeking to escape punishment through a general plea of insanity. x x x [Here] [i]n exonerating

Verdadero on the ground of insanity, the Court does not totally free him from the responsibilities and consequences of his acts. Article 12(1) of the RPC expressly states that "[w]hen an insane person has committed an act which the law defines as a felony, the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court." Instead of incarceration, Verdadero is to be confined in an institution where his mental condition may be addressed so that he may again function as a member of society. He shall remain confined therein until his attending physicians give a favorable recommendation for his release.

5. **ID.; ID.; ID.; IN APPRECIATING INSANITY, ACCUSED IS ABSOLVED FROM CRIMINAL LIABILITY BUT LIABLE FOR DAMAGES.—** In appreciating insanity in favor of Verdadero, the Court absolves him from criminal responsibility. He is, nevertheless, responsible to indemnify the heirs of Romeo for the latter's death. An exempting circumstance, by its nature, admits that criminal and civil liabilities exist, but the accused is freed from the criminal liability. The amount of damages awarded, however, must be modified in order to conform to recent jurisprudence. The ₱50,000.00 civil indemnity and ₱50,000.00 moral damages awarded by the RTC must each be increased to ₱75,000.00. In addition, an interest at the rate of six per cent (6%) per annum should be imposed on all damages awarded computed from the finality of the decision until the same have been fully paid.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

The expectations of a person possessed with full control of his faculties differ from one who is totally deprived thereof and is unable to exercise sufficient restraint on his. Thus, it is but reasonable that the actions made by the latter be measured under a lesser stringent

standard than that imposed on those who have complete dominion over their mind, body and spirit.

This petition for review on *certiorari* seeks to reverse and set aside the July 10, 2014 Decision[1] and the December 15, 2014 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CR No. 35894 which affirmed the May 30, 2013 Judgment[3] of the Regional Trial Court, Branch 03, Tuguegarao City *(RTC)* in Criminal Case No. 13283, finding accused Solomon Verdadero *y* Galera *(Verdadero)* guilty beyond reasonable doubt of the crime of Homicide, defined and penalized under Article 249 of the Revised Penal Code *(RPC).*

The Facts

In an Information,[4] dated September 9, 2009, Verdadero was charged with the crime of murder for killing Romeo B. Plata *(Romeo)*, the accusatory portion of which reads:

> That on or about March 12, 2009, in the municipality of Baggao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused **SOLOMON VERDADERO** armed with a Rambo knife, with intent to kill, evident premeditation and with treachery, did then and there wilfully, unlawfully and feloniously attack, assault and stab **ROMEO B. PLATA**, thereby inflicting upon him stab wounds on the different parts of his body which caused his death.
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> Contrary to law.[5]

On June 3, 2011, Verdadero was arraigned and pleaded "Not Guilty." During the pre-trial, he invoked the defense of insanity but did not consent to a reverse trial. Thereafter, trial ensued.[6]

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[1] Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Noel G. Tijam and Priscilla J. Baltazar-Padilla concurring; *rollo,* pp. 30-42.

[2] *Id.* at 44-45.

[3] Penned by Judge Marivic A. Cacatian-Beltran; *id.* at 72-88.

[4] RTC records, pp. 1-2.

[5] *Rollo*, p. 72.

[6] *Id.* at 74.

Evidence of the Prosecution

The evidence of the prosecution tended to establish the following:

On March 12, 2009, at around 3:00 o'clock in the afternoon, Maynard Plata *(Maynard)* and his father Romeo were at the Baggao Police Station. Together with Ronnie Elaydo *(Ronnie)*, they went there to report that Verdadero had stolen the fan belt of their irrigation pump.[7]

After a confrontation with Verdadero at the police station, the three men made their way home on a tricycle but stopped at a drugstore as Maynard intended to buy some baby supplies. Romeo proceeded towards a store near the drugstore while Ronnie stayed inside the tricycle. From the drug store, Maynard saw Verdadero stabbing Romeo, after he was alerted by the shouts of Ronnie.[8]

Verdadero stabbed Romeo on the left side of the latter's upper back with the use of a Rambo knife. He again struck Romeo's upper back, just below the right shoulder. Maynard tried to help his father but Verdadero attempted to attack him as well. He defended himself using a small stool, which he used to hit Verdadero in the chest.[9]

Meanwhile, Ronnie ran towards the police station to seek assistance. The responding police officers arrested Verdadero, while Maynard and Ronnie brought Romeo to a clinic but were advised to bring him to the Cagayan Valley Medical Center *(CVMC)*. Romeo, however, died upon arrival at the CVMC. Based on the Post-Mortem Examination Report, his cause of death was cardiopulmonary arrest secondary to severe hemorrhage secondary to multiple stab wounds and hack wounds.[10]

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[7] *Id*. at 31.

[8] *Id*. at 74.

[9] *Id*. at 31-32.

[10] *Id*. at 32.

Evidence of the Defense

The evidence for the defense did not refute the material allegations but revolved around Verdadero's alleged insanity, to wit:

Since 1999, Verdadero had been an outpatient of CVMC's Psychiatric Department as he claimed to hear strange voices and had difficulty in sleeping. Sometime in 2001, Miriam Verdadero *(Miriam)*, Verdadero's sister, again brought him to the Psychiatric Department of CVMC after he became violent and started throwing stones at a tricycle with a child on board. Verdadero was confined for two (2) months and was diagnosed to be suffering from mental depression.

On July 21, 2003, he was diagnosed with schizophrenia and was given medications to address his mental illness. Verdadero would irregularly consult with his doctors as he had a lifelong chronic disease. Then, in 2009, he was again confined for the fourth (4th) time at CVMC due to a relapse.

On March 12, 2009, Miriam proceeded to CVMC, after she heard of the stabbing incident. There, she saw Verdadero removing the IV tubes connected to his body and, thereafter, locked himself inside the comfort room. Eventually, Verdadero was given sedatives and was transferred to an isolation room after Miriam informed the nurses of the incident.[11]

On March 20, 2009, he was transferred to the Psychiatry Department after Dr. Leonor Andres-Juliana *(Dr. Andres-Juliana)* had diagnosed that he was having difficulty sleeping. Dr. Andres-Juliana opined that Verdadero suffered a relapse, as evidenced by his violent behaviour.

Acting on the January 4, 2011 Order of the RTC, Dr. Ethel Maureen Pagaddu *(Dr. Pagaddu)* conducted a mental examination on Verdadero. She confirmed that as early as 1999, he was already brought to CVMC and that he was diagnosed with schizophrenia on July 21, 2003. Dr. Pagaddu agreed with

[11] *Id*. at 33-34.

Dr. Andres-Juliana that Verdadero had suffered a relapse on the day of the stabbing incident.[12]

The RTC Ruling

On May 30, 2013, the RTC rendered a decision finding Verdadero guilty for the crime of homicide. The dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing, this Court finds the accused **SOLOMON VERDADERO *y* Galera GUILTY** beyond reasonable doubt of the felony of Homicide, defined and penalized under Article 249 of the Revised Penal Code, as amended, and hereby sentences him:
>
> 1. To suffer an indeterminate prison sentence ranging from twelve (12) years of *prision mayor* [as maximum] as minimum to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum; and,
>
> 2. To pay the heirs of Romeo Plata the amounts of:
>   a. ₱50,000.00 as death indemnity;
>   b. ₱50,000.00 as moral damages and
>   c. ₱30,000.00 as stipulated actual damages; and,
>
> 3. To pay the costs.
>
> **SO ORDERED.**[13]

The RTC ruled that the crime committed was only homicide, as the prosecution failed to establish the presence of treachery and evident premeditation to qualify the killing to murder. The trial court, however, opined that Verdadero failed to establish insanity as an exempting circumstance. The trial court posited that Verdadero was unsuccessful in establishing that he was not in a lucid interval at the time he stabbed Romeo or that he was completely of unsound mind prior to or coetaneous with the commission of the crime.

Aggrieved, Verdadero appealed before the CA.

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[12] *Id*. at 78-79.

[13] *Id*. at 87-88.

The CA Ruling

In its July 10, 2014 Decision, the CA upheld Verdadero's conviction of homicide. The appellate court agreed that the defense was able to establish that Verdadero had a history of schizophrenic attacks, but was unable to prove that he was not lucid at the time of the commission of the offense. The decretal portion of the decision states:

> **WHEREFORE**, in view of the foregoing, the Appeal is **DENIED.** The Judgment, dated May 30, 2013, rendered by the Regional Trial Court of Tuguegarao City, Branch 3 in Criminal Case No. 13283, is **AFFIRMED.**
>
> **SO ORDERED.**[14]

Verdadero moved for reconsideration, but his motion was denied by the CA in its resolution, dated December 15, 2014.

Hence, this present petition, raising the following

ISSUE

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE PETITIONER'S CONVICTION DESPITE THE FACT THAT HIS INSANITY AT THE TIME OF THE INCIDENT WAS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE.

Verdadero insists that he was able to fully support his defense of insanity. He claims that Maynard even admitted that he was not in the proper state of mind when they were at the police station before the stabbing took place. Further, it appeared that Verdadero was having hallucinations after the stabbing incident as testified to by Dr. Andres-Juliana. Verdadero notes that Dr. Pagaddu concluded that he had a relapse at the time of the stabbing incident on March 12, 2009.

In its Comment,[15] the Office of the Solicitor General *(OSG)* contended that the present petition presented a question of fact, which could not be addressed in a petition for review

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[14] *Id.* at 41.

[15] *Id.* at 106-111.

under Rule 45 of the Rules of Court. Moreover, it asserted that the CA did not misapprehend the facts as the evidence presented failed to completely establish Verdadero's insanity at the time of the stabbing.

In his Manifestation (in Lieu of Reply),[16] Verdadero indicated that he would no longer file a reply as his petition for review already contained an exhaustive discussion of the issues.

The Court's Ruling

The present petition primarily assails the conviction despite his defense of insanity. Before delving into the merits of the case, a discussion of the procedural issue is in order.

Only questions of law may be raised in a petition for review under Rule 45; Exceptions

The OSG argues that the Court should not entertain Verdadero's petition for review as it principally revolves around the issue of his insanity — a question of fact which should no longer be addressed in a petition for review. The Court disagrees.

Generally, questions of fact are beyond the ambit of a petition for review under Rule 45 of the Rules of Court as it is limited to reviewing only questions of law. The rule, however, admits of exceptions wherein the Court expands the coverage of a petition for review to include a resolution of questions of fact. In *Laborte v. Pagsanjan Tourism Consumers' Cooperative et al.*,[17] the Court reiterated the following exceptions to the rule that only questions of law may be raised under Rule 45, to wit: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; **(4) when the judgment is based on misappreciation of facts**; (5) when the findings of fact

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[16] *Id.* at 114-115.

[17] G.R. No. 183860, January 15, 2014, 713 SCRA 536, 549-550.

are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

The present petition mainly delves into Verdadero's state of mind at the time of the stabbing incident. Obviously, it is a question of fact, which, ordinarily is not entertained by the Court in a petition for review. As will be discussed below, the Court, nevertheless, finds that the circumstances in the case at bench warrant the application of the exception rather than the rule.

Insanity must be present at the time the crime had been committed

To completely evade culpability, Verdadero raises insanity as a defense claiming that he had suffered a relapse of his schizophrenia. Under Article 12 of the RPC, an imbecile or an insane person is exempt from criminal liability, unless the latter had acted during a lucid interval. The defense of insanity or imbecility must be clearly proved for there is a presumption that the acts penalized by law are voluntary.[18]

In the case at bench, it is undisputed that (1) as early as 1999, Verdadero was brought to the Psychiatrist Department of CVMC for treatment; (2) he was diagnosed with depression in 2001; (3) he was diagnosed with schizophrenia on July 21, 2003; (4) he was confined in the psychiatric ward sometime in 2009 due to a relapse; (5) he was in and out of psychiatric care from the time of his first confinement in 1999 until the stabbing incident; and (6) he was diagnosed to have suffered a relapse on March 20, 2009.

[18] *People v. Comanda*, 553 Phil. 655, 673 (2007).

Thus, it is without question that he was suffering from schizophrenia and the only thing left to be ascertained is whether he should be absolved from responsibility in killing Romeo because of his mental state.

Schizophrenia is a chronic mental disorder characterized by inability to distinguish between fantasy and reality, and often accompanied by hallucinations and delusions.[19] A showing that an accused is suffering from a mental disorder, however, does not automatically exonerate him from the consequences of his act. Mere abnormality of the mental faculties will not exclude imputability.[20]

In *People v. Florendo*,[21] the Court explained the standard in upholding insanity as an exempting circumstance, to wit:

> Insanity under Art. 12, par. 1, of *The Revised Penal Code* exists when there is a **complete deprivation of intelligence in committing the act**, i.e., appellant is deprived of reason; he acts without the least discernment because of complete absence of the power to discern; or, there is a total deprivation of freedom of the will. The *onus probandi* rests upon him who invokes insanity as an exempting circumstance, and he must prove it by clear and convincing evidence.
>
> [Emphasis Supplied]

In *People v. Isla*,[22] the Court elucidated that insanity must relate to the time immediately preceding or simultaneous with the commission of the offense with which the accused is charged. Otherwise, he must be adjudged guilty for the said offense. In short, in order for the accused to be exempted from criminal liability under a plea of insanity, he must categorically demonstrate that: (1) he was completely deprived of intelligence because of his mental condition or illness; and (2) such complete deprivation of intelligence must be manifest **at the time or immediately before the commission of the offense**.

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[19] *People v. Austria*, 328 Phil. 1208, 1220 (1996).

[20] *People v. Madarang*, 387 Phil. 846, 859 (2000).

[21] 459 Phil. 470, 477 (2003).

[22] G.R. No. 199875, November 21, 2012, 686 SCRA 267, 277.

In raising the defense of insanity, Verdadero admits to the commission of the crime because such defense is in the nature of a confession or avoidance.[23] As such, he is duty bound to establish with certainty that he was completely deprived, not merely diminished, of intelligence at the time of the commission of the crime. Failing which, Verdadero should be criminally punished for impliedly admitting to have stabbed Romeo to death.

Proving insanity is a tedious task for it requires an examination of the mental state of the accused. In *People v. Opuran*,[24] the Court explained how one's insanity may be established, to wit:

> Since insanity is a condition of the mind, it is not susceptible of the usual means of proof. As no man can know what is going on in the mind of another, the state or condition of a person's mind can only be measured and judged by his behavior. Thus, the vagaries of the mind can only be known by outward acts, by means of which we read the thoughts, motives, and emotions of a person, and then determine whether the acts conform to the practice of people of sound mind.
>
> Insanity is evinced by a deranged and perverted condition of the mental faculties which is manifested in language and conduct. x x x
>
> Establishing the insanity of an accused often requires opinion testimony which may be given by a witness who is intimately acquainted with the accused; has rational basis to conclude that the accused was insane based on his own perception; or is qualified as an expert, such as a psychiatrist.

In the earlier case of *People v. Austria*,[25] the Court elucidated that evidence of the mental condition of the accused during a reasonable period before and after the commission of the offense is material, to wit:

> In order to ascertain a person's mental condition at the time of the act, it is permissible to receive evidence of his mental condition during

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[23] *People v. Tibon*, 636 Phil. 521, 530-531 (2010).

[24] 469 Phil. 698, 712-713 (2004).

[25] 328 Phil. 1208, 1221-1222 (1996).

a reasonable period before and after. Direct testimony is not required nor are specific acts of disagreement essential to establish insanity as a defense. A person's mind can only be plumbed or fathomed by external acts. Thereby his thoughts, motives and emotions may be evaluated to determine whether his external acts conform to those of people of sound mind. To prove insanity, clear and convincing circumstantial evidence would suffice.

Guided by the precepts laid out by the above-mentioned jurisprudence, the Court finds that Verdadero sufficiently proved that he was insane at the time of the stabbing. Thus, the Court takes a view different from that of the CA as the latter concluded that Verdadero's insanity was not clearly proven.

It is true that there is no direct evidence to show Verdadero's mental state at the exact moment the crime was committed. This, however, is not fatal to the finding that he was insane. His insanity may still be shown by circumstances immediately before and after the incident. Further, the expert opinion of the psychiatrist Dr. Pagaddu may also be taken into account.

Dr. Pagaddu categorically testified that Verdadero was suffering a relapse at the time of the stabbing incident. During her testimony, she stated as follows:

On direct examination

Atty. Tagaruma
Q: By the way what was the mental condition of the accused referred which involved your diagnosis as a life long chronic disease?

Witness
A: The accused was diagnosed schizophrenia, sir.

Q: When for the first time Solomon Verdadero was diagnosed with schizophrenia?
A: It was on July 21, 2003, sir.

x x x x x x x x x

Q: As an expert witness tell the Honorable Court if a person who has relapse of schizophrenia could distinguish his act?
A: This mental disorder influence (sic) the impulse. It could at the

time of the commission of the crime that the impulse control and judgment of an individual was affected sir.

Q: Could it be accurate to state that a person who has the relapse of schizophrenia could not distinguish any act from right or wrong?
A: There is a possibility, sir.

Court
Q: Why did you say that Solomon Verdadero has the possibility of relapse upon admission on March 19, 2009?
A: There was a period of relapse meaning the symptom was present and there must be a remission if the symptom is abated, your Honor.

x x x x x x x x x

Atty. Tagaruma
Q: You have read for the record the report of Dr. Juliana on the alleged violent behavior of Solomon Verdadero on March 12, 2009 which is the date of the incident, as an expert psychiatrist is it possible that the violent behavior of Solomon Verdadero on March 12, 2009 was the basis of Dr. Juliana in diagnosing that the accused was in relapse upon admission on March 12, 2009?
A: Yes sir.

Q: Following the remark of scientific conclusion of Dr. Juliana, Dr. Janet Taguinod and the conclusion made by you, is it also your conclusion that Solomon Verdadero was in relapse on March 12, 2009 due to violent behavior?
A: Yes, sir.

On cross examination

Prosecutor Aquino

Q: But definitely during the disorder of the patient, the relapse would somewhat be continued even when medications is administered to him?
A: The symptom is controlled although there is a circumstances (sic) that the patient may have relapse (sic) even with medication, sir.

Q: If a continuous medication was undertaken by the accused-patient in this case could that have a long effect on his mental condition?

A: Continuous medication could somehow control the symptom and not absolutely eradicate the symptom.

Q: On March 12 , 2009 the accused-patient was on a lucid interval, in view of the medication undertaken as of January 19, 2009?
A: It's haphazard, sir.

x x x x x x x x x

Court
Q: Madam witness what type of schizophrenia the accused was diagnosed?
A: Undifferentiated, your honor.[26]

[Emphases Supplied]

Dr. Paggadu, without any reservations, stated that Verdadero was suffering a relapse of his schizophrenia at the time of the stabbing incident. In contrast, she was hesitant to opine that Verdadero might have been in a lucid interval because of the medications taken. Thus, it is reasonable to conclude, on the basis of the testimony of an expert witness, that Verdadero was of unsound mind at the time he stabbed Romeo.

Further, the finding of Verdadero's insanity is supported by the observations made by Maynard, a witness for the prosecution. In his testimony, Maynard gave his opinion on Verdadero's behavior and appearance when they met at the police station, to wit:

On cross examination

Atty. Tagurama
Q: Having made the report against Solomon Verdadero, do I (sic) correct to say that you are familiar with Solomon Verdadero even before March 12, 2009?
A: Yes, sir.

Q: Tell us why you are familiar to him even prior to March 12, 2009?
A: We are neighbors, sir.

Q: You are immediate neighbors?
A: Yes, sir

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[26] TSN, dated July 31, 2012, pp. 5-17.

Q: Since you are neighbors with Solomon Verdadero you see him almost a (sic) time?
A: Yes, sir. I saw him daily.

Q: When you see Solomon Verdadero daily you see his actuation?
A: Yes, sir.

x x x x x x x x x

Q: Sometimes he boxes when he is not in his proper mind, what aberrant behavior did you observe from him?
A: That's the only thing I observed and sometimes he steal (sic), sir.

Q: For a long time that Solomon Verdadero is your neighbor does his relapse or what you called not in his proper mind occurred often?
A: It occurred once in a while, sir.

Q: When you said it occurred once in a while, this relapse may occur once a week?
A: Yes, sir.

Q: Prior to March 12, 2009, when did you first observe that Solomon Verdadero appears not in his proper mind?
A: He was not in his proper mind for a long time, sir.

Q: Maybe it could be 5 months before March 12, 2009?
A: Yes, sir.

x x x x x x x x x

Court
Q: You testified that you observed the accused not in his proper mind for the passed (sic) years before this incident was he also violent like what happened on March 12, 2009?

Witness
A: Yes, your honor.

Q: When you went to the police station you allegedly reported the stolen fan belt do I get you right that Solomon Verdadero was with you at the police station?
A: Yes, your honor.

Q: When he was with you at the police station what did you observe?
A: He was not again in his proper mind *(sumro manen)*, your Honor.

x x x x x x x x x

Q: Can you describe his appearance?
A: His eyes was (sic) very sharp and reddish.

x x x x x x x x x

Q: As far as his appearance is concern (sic) do you remember his actuation or how he was reacting?
A: Yes, your honor. He was somewhat drank (sic).

Q: You said that he was not on his proper mind for the passed (sic) years?
A: Yes, your honor.[27]

[Emphases Supplied]

Maynard was familiar with Verdadero as the latter was his neighbor for a long time. He had observed that there were times that Verdadero appeared to be of unsound mind as he would sometimes become violent. On the day of the stabbing incident, Maynard perceived that Verdadero was again of unsound mind noting that he had reddish eyes and appeared to be drunk. Moreover, he was immediately transferred to the psychiatry department because of his impaired sleep and to control him from harming himself and others.[28]

These circumstances are consistent with Dr. Paggadu's testimony that **drinking wine, poor sleep and violent behavior were among the symptoms of a relapse**, the same testimony that was used as basis for his previous diagnosis.[29] The evidence on record supports the finding that Verdadero exhibited symptoms of a relapse of schizophrenia at the time of the stabbing incident. Thus, Dr. Pagaddu reiterated Dr. Andre-Juliana's conclusion that Verdadero was having a relapse of his illness on that fateful day.

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[27] TSN, dated May 4, 2012, pp. 12-22.

[28] TSN, dated July 31, 2012, p. 7.

[29] *Id*. at 12.

Further, on March 22, 2009, he was officially diagnosed to have suffered a relapse of schizophrenia. Generally, evidence of insanity after the commission of the crime is immaterial. It, however, may be appreciated and given weight if there is also proof of abnormal behavior before or simultaneous to the crime.[30]

Indeed, the grant of absolution on the basis of insanity should be done with utmost care and circumspection as the State must keep its guard against murderers seeking to escape punishment through a general plea of insanity.[31] The circumstances in the case at bench, however, do not indicate that the defense of insanity was merely used as a convenient tool to evade culpability.

The Court notes that at the very first opportunity, Verdadero already raised the defense of insanity and remained steadfast in asserting that he was deprived of intelligence at the time of the commission of the offense. He no longer offered any denial or alibi and, instead, consistently harped on his mental incapacity. Unlike in previous cases[32] where the Court denied the defense of insanity as it was raised only when the initial defense of alibi failed to prosper, Verdadero's alleged insanity was not a mere afterthought.

In exonerating Verdadero on the ground of insanity, the Court does not totally free him from the responsibilities and consequences of his acts. Article 12(1) of the RPC expressly states that "[w]hen an insane person has committed an act which the law defines as a felony, the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court." Instead of incarceration, Verdadero is to be confined in an institution where his mental condition may be addressed so that he may again function as a member of society. He shall remain confined therein until his attending physicians give a favorable recommendation for his release.

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[30] *People v. Belonio*, 473 Phil. 637, 649 (2004).

[31] *People v. Florendo*, 459 Phil. 470, 481 (2003).

[32] *People v. Ocfemia*, 398 Phil. 210 (2000); *People v. Opuran*, 469 Phil. 698 (2004).

Verdadero still liable for damages in spite of his exoneration

In appreciating insanity in favor of Verdadero, the Court absolves him from criminal responsibility. He is, nevertheless, responsible to indemnify the heirs of Romeo for the latter's death. An exempting circumstance, by its nature, admits that criminal and civil liabilities exist, but the accused is freed from the criminal liability.[33]

The amount of damages awarded, however, must be modified in order to conform to recent jurisprudence.[34] The ₱50,000.00 civil indemnity and ₱50,000.00 moral damages awarded by the RTC must each be increased to ₱75,000.00. In addition, an interest at the rate of six per cent (6%) per annum should be imposed on all damages awarded computed from the finality of the decision until the same have been fully paid.

WHEREFORE, the Court grants the petition and **ACQUITS** accused-appellant Solomon Verdadero *y* Galera of Homicide by reason of insanity. He is ordered confined at the National Center for Mental Health for treatment and shall be released only upon order of the Regional Trial Court acting on a recommendation from his attending physicians from the institution.

He is also ordered to pay the heirs of Romeo B. Plata the amounts of ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱30,000.00 as stipulated actual damages, plus interest on all damages awarded at the rate of 6% per annum from the date of finality of this decision until the same shall have been fully paid.

SO ORDERED.

Carpio (*Chairperson*), *del Castillo,* and *Leonen, JJ.,* concur.

Brion, J., on leave.

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[33] *Sierra v. People,* 609 Phil. 446. 460 (2009).

[34] *Wacoy v. People,* G.R. No. 213972, June 22, 2015.

FIRST DIVISION

[G.R. No. 218399. March 2, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GODOFREDO COMBOY *y* CRONICO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; IN CRIMINAL CASES, AN APPEAL THROWS THE ENTIRE CASE OPEN FOR REVIEW.—** [I]n criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. **CRIMINAL LAW; RAPE, STATUTORY RAPE AND QUALIFIED RAPE; ELEMENTS.—** The elements of Rape under Article 266-A (1) (a) are: (*a*) the offender had carnal knowledge of a woman; and (*b*) said carnal knowledge was accomplished through force, threat or intimidation. The gravamen of Rape is sexual intercourse with a woman against her will. On the other hand, Statutory Rape under Article 266-A (1) (d) is committed by having sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or lack of it, to the sexual act. Proof of force, threat, or intimidation, or consent of the offended party is unnecessary as these are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of twelve (12). The law presumes that the offended party does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to sustain a conviction for statutory rape, the prosecution must establish the following: *(a)* the age of the complainant; *(b)* the identity of the accused; and *(c)* the sexual intercourse between the accused and the complainant.

The foregoing acts of Rape shall be qualified pursuant to Article 266-B (1) of the RPC if: *(a)* the victim is under eighteen (18) years of age; and *(b)* the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

3. **REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CANNOT PREVAIL OVER POSITIVE AND CATEGORICAL TESTIMONY.—** Comboy's flimsy defense of denial and alibi cannot prevail over the positive and categorical testimony of AAA identifying him as the perpetrator of the crimes. In this regard, it has been long settled that "a young girl would not concoct a sordid tale of a crime as serious as rape at the hands of her very own father, allow the examination of her private part, and subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice. Hence, there is no plausible reason why AAA would testify against her own father, imputing to him the grave crime of rape, if this crime did not happen," as in this case.

4. **CRIMINAL LAW; QUALIFIED RAPE AND ATTEMPTED QUALIFIED RAPE; PENALTIES AND DAMAGES.—** Section 3 of RA 9346 (An Act Prohibiting the Imposition of Death Penalty) provides that "[p]ersons convicted of offenses punished with *reclusion perpetua,* or whose sentences will be reduced to *reclusion perpetua,* by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended." Pursuant thereto, and in accordance with Section 2 of the same law, accused-appellant must be sentenced to suffer the penalty of ***reclusion perpetua,* without eligibility for parole,** for each count of Qualified Rape. Furthermore, in view of prevailing jurisprudence, where the penalty for the crime committed is death, which, however, cannot be imposed because of the provisions of RA 9346, the Court hereby increases the damages awarded to AAA as follows: *(a)* ₱100,000.00 as civil indemnity, *(b)* ₱100,000.00 as moral damages, and *(c)* ₱100,000.00 as exemplary damages. [F]or [the conviction of] Attempted Qualified Rape, x x x the courts *a quo* properly took into consideration the provisions of Article 51 of the RPC, as well as the Indeterminate Sentence Law, in determining the imposable

penalty against him. Hence, it is correct that Comboy be meted the penalty of imprisonment for the indeterminate period of two (2) years and four (4) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. Further, Comboy should also be ordered to pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱10,000.00 as exemplary damages. In addition, the Court imposes interest at the legal rate of six percent (6%) per annum on all monetary awards from the date of finality of judgment until fully paid, for each count of Qualified Rape and Attempted Qualified Rape.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Godofredo Comboy *y* Cronico (Comboy) assailing the Decision[2] dated June 13, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC. No. 06194, which affirmed the Decision[3] dated February 22, 2013 of the Regional Trial Court of Tabaco City, Albay, Branch 16 (RTC) in Criminal Case Nos. T- 5006, T-5009, and T-5010[4] finding Comboy guilty beyond reasonable doubt of two (2) counts of the crime of Statutory Rape, and one (1) count of Attempted Rape under the Revised

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[1] See Notice of Appeal dated June 30, 2014; *rollo*, pp. 17-18.

[2] *Id*. at 2-16. Penned by Associate Justice Isaias P. Dicdican with Associate Justices Victoria Isabel A. Paredes and Zenaida T. Galapate-Laguilles concurring.

[3] CA *rollo*, pp. 50-80. Penned by Judge William B. Volante.

[4] The CA Likewise affirmed the acquittal of Comboy in Criminal Case Nos. T-5007 and T-5008. See *id*. at 79.

Penal Code (RPC), as amended by Republic Act No. (RA) 8353,[5] otherwise known as the "Anti-Rape Law of 1997."

The Facts

On August 6, 2009, five (5) Informations were filed before the RTC charging Comboy of raping his minor biological daughter, AAA,[6] *viz.*:

CRIM. CASE NO. T-5006

That on or about 11:00 o'clock in the evening for the first time in the year 2006, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being the father of [AAA] with lewd and unchaste design, exercising, moral ascendancy upon said private offended party, did then and there, willfully, unlawfully and feloniously have carnal knowledge with his own daughter [AAA], an 11 year old minor girl while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

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[5] Entitled "AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES" approved on September 30, 1997.

[6] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, ENTITLED "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 15, 2004. (See footnote 4 in *People v. Cadano, Jr.*, G.R. No. 207819, March 12, 2014, 719 SCRA 234, 237, citing *People v. Lomaque*, G.R. No. 189297, June 5, 2013, 697 SCRA 383, 389.)

CRIM. CASE NO. T-5007

That on or about 11:00 o'clock in the evening for the second time in the year 2006, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being the father of [AAA] with lewd and unchaste design, exercising, moral ascendancy upon said private offended party, did then and there, willfully, unlawfully and feloniously have carnal knowledge with his own daughter [AAA], an 11 year old minor girl while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

CRIM. CASE NO. T-5008

That on or about 11:00 o'clock in the evening for the third time in the year 2006, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being the father of [AAA] with lewd and unchaste design, exercising, moral ascendancy upon said private offended party, did then and there, willfully, unlawfully and feloniously have carnal knowledge with his own daughter [AAA], an 11 year old minor girl while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

CRIM. CASE NO. T-5009

That sometime in the month of February 2008, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines and within the jurisdiction of the Honorable Court the above named accused, being the father of [AAA] with lewd and unchaste design, exercising moral ascendancy upon said private offended party, and with the use of force and intimidation did then and there, willfully, unlawfully and feloniously have carnal knowledge with his own daughter [AAA], an (sic) 12 year old minor girl, while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

CRIM. CASE NO. T-5010

That on or about 2:00 o'clock in the morning of May 17, 2009, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines

and within the jurisdiction of this Honorable Court, the above named accused, being the father of [AAA], with lewd and unchaste design, exercising moral ascendancy upon said private offended party, and with the use of force and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of his own daughter [AAA], an (sic) 14 year old minor girl,[7] while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.[8]

The prosecution alleged that sometime in the year 2006, at around 11 o'clock in the evening, AAA, who was sleeping beside her brother BBB,[9] suddenly woke up with her father, Comboy, already on top of her, and the latter's penis already inside her vagina. Startled by the pain she felt in her vagina, AAA pushed Comboy and scampered away from him in order to move closer to BBB. This left Comboy no choice but to leave the room.[10]

The incident was repeated sometime in February 2008, when AAA, while sleeping beside her brother, BBB, was similarly awakened by the presence of her father, Comboy, on top of her with his penis already inside her vagina. During this time, Comboy told AAA not to make any noise so as not to disrupt the sleep of the other members of their family.[11]

Finally, at around 2 o'clock in the morning of May 17, 2009, AAA, while again sleeping beside her brother, BBB, woke up with her father, Comboy, already on top of her and in the process of removing her underwear.[12] However, AAA was able to push Comboy away and thereafter, went closer to BBB, who was also awakened by the commotion. This prompted

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[7] "11-year old minor girl" in some parts of the record; see *rollo*, p. 4.

[8] See CA *rollo*, pp. 50-52.

[9] See note 6.

[10] *Rollo*, p. 5. See also CA *rollo*, p. 54.

[11] *Rollo*, p. 5. See also CA *rollo*, pp. 54-55.

[12] See CA *rollo*, p. 57.

Comboy to simply leave the room. BBB then reported the matter to their stepmother.[13]

On May 28, 2009, AAA finally had the courage to report the foregoing incidents to Barangay *Kagawad* Donald Andres[14] Briobo, who in turn, helped AAA seek police assistance. AAA was then examined by Municipal Health Officer Dr. Sotera C. Copino, who found her to have sustained lacerations in her hymen which could have been caused by the penetration of a hard object, such as an erect penis.[15]

For his part, Comboy interposed the defenses of denial and alibi. He claimed that he was in Manila in February 2006 and February 2008, while AAA was in her mother's house in Albay, hence, he could not have raped her. Comboy, however, revealed that he was actually working in Olongapo City at the time of the incidents, and that on May 17, 2009, he was actually in Bicol but he was staying with his common-law spouse. He further averred that AAA fabricated the accusations against him as she was angry with him and his common-law spouse. He also presented his brother Juan (Juan) who corroborated his claims. Juan maintained that he stayed in Comboy's house to look after the latter's children, and that their mother's house was near Comboy's residence. He disclosed that Comboy occasionally visited Bolo from Manila to visit his children and that the latter would stay for one to two weeks.[16]

Upon his arraignment on October 23, 2009, Comboy pleaded not guilty to each of the charges levelled against him. At the pre-trial conference, the parties stipulated that AAA is a minor, as evidenced by her Birth Certificate, and that Comboy is her father.[17]

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[13] See *rollo*, p.6. See also CA *rollo*, pp. 55 and 57.

[14] "Andres" in some parts of the records.

[15] See *rollo*, p. 6. See also CA *rollo*, pp. 55-56.

[16] See *rollo*, pp. 7-8. See also CA *rollo*, pp. 57-58.

[17] See CA *rollo*, pp. 52-53.

The RTC Ruling

In a Decision[18] dated February 22, 2013, the RTC found Comboy guilty beyond reasonable doubt of two (2) counts of Statutory Rape (Crim. Case Nos. T-5006 and T-5009) and one (1) count of Attempted Rape (Crim. Case No. T-5010) and, accordingly, sentenced him as follows: (*a*) in Crim Case No. T-5006, he was sentenced to suffer the penalty of *reclusion perpetua* and was ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, and to pay the costs; (*b*) in Crim. Case No. T-5009, he was sentenced to suffer the penalty of *reclusion perpetua* and was ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, and to pay the costs; and (*c*) in Crim. Case No. T-5010, he was sentenced to suffer the penalty of imprisonment for an indeterminate period of two (2) years and four (4) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum and was ordered to pay the amounts of ₱30,000.00 as moral damages, and to pay the costs. Comboy, was however, acquitted in Crim. Case Nos. T-5007 and T-5008 for insufficiency of evidence.[19]

The RTC found that the prosecution successfully established that Comboy had carnal knowledge of AAA twice, the first time occurring sometime in 2006 and the other time in February 2008 (Crim. Case Nos. T- 5006 and T-5009). Anent the incident that happened on May 17, 2009, the RTC found that while Comboy was already on top of AAA and was in the act of removing her underwear, he failed to realize his lustful desires as BBB woke up and exclaimed the word "*ate*" to AAA, prompting Comboy to leave the room. In this regard, the RTC opined that Comboy commenced the performance of an act which indicated his intent to rape AAA but was stopped by a

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[18] *Id.* at 50-80.

[19] *Id.* at 78-80.

reason other than his own desistance, *i.e.*, BBB's intervention. On the other hand, the RTC did not lend credence to Comboy's defenses of denial and alibi in light of AAA's clear and categorical testimony which was corroborated by the medical findings.[20]

Dissatisfied, Comboy appealed[21] his conviction to the CA.

The CA Ruling

In a Decision[22] dated June 13, 2014, the CA affirmed the RTC's ruling *in toto*. It held that Comboy's moral ascendancy and influence over AAA as the latter's biological father were sufficient to comply with the force and intimidation required by law for one to have carnal knowledge without her consent.[23] Further, the CA gave scant consideration to Comboy's assertion that AAA merely fabricated the accusations against him as she was angry at him for being too strict, opining that such reason is "too flimsy and insignificant for a daughter to falsely charge her father with so serious a crime and to publicly disclose that she had been raped and then undergo the concomitant humiliation, anxiety, and exposure to public trial."[24]

Hence, the instant appeal.[25]

The Issue Before the Court

The issue for the Court's resolution is whether or not Comboy is guilty beyond reasonable doubt of two (2) counts of Rape and one (1) count of Attempted Rape.

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[20] See *id.* at 59-77.

[21] See Brief for Accused-Appellant dated December 16, 2013; *id.* at 23-48.

[22] *Rollo*, pp. 2-16.

[23] See *id.* at 13.

[24] *Id.* at 14.

[25] See Notice of Appeal dated June 30, 2014; *id.* at 17-18.

The Court's Ruling

The appeal is bereft of merit.

At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[26]

Proceeding from the foregoing, the Court deems it proper to modify Comboy's conviction from two (2) counts of Statutory Rape and one (1) count of Attempted Rape to **two (2) counts of Qualified Rape and one (1) count of Attempted Qualified Rape**, as will be explained hereunder.

Article 266-A (1) (a) and (d), in relation to Article 266-B (1), of the RPC, read as follows:

Article 266-A. Rape: When and How Committed. – Rape is committed –

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

x x x x x x x x x

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

xxx x x x x x x

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[26] See *Manansala v. People*, G.R. No. 215424, December 9, 2015, citing *Wacoy v. People*, G.R. No. 213792, June 22, 2015.

Article 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

l) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

x x x x x x x x x

The elements of Rape under Article 266-A (1) (*a*) are: (*a*) the offender had carnal knowledge of a woman; and (*b*) said carnal knowledge was accomplished through force, threat or intimidation.[27] The gravamen of Rape is sexual intercourse with a woman against her will.[28] On the other hand, Statutory Rape under Article 266-A (1) (*d*) is committed by having sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or lack of it, to the sexual act. Proof of force, threat, or intimidation, or consent of the offended party is unnecessary as these are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of twelve (12). The law presumes that the offended party does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to sustain a conviction for statutory rape, the prosecution must establish the following: (*a*) the age of the complainant; (*b*) the identity of the accused; and (*c*) the sexual intercourse between the accused and the complainant.[29] The foregoing acts of Rape shall be qualified pursuant to Article 266-B of the RPC if: (*a*) the victim is under

[27] *People v. Viojela*, 697 Phil. 513, 521 (2012).

[28] *People v. Mateo*, 588 Phil. 543, 554 (2008).

[29] *People v. Cadano, Jr.*, *supra* note 6, at 244.

eighteen (18) years of age; and (*b*) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

In the case at bar, the Court agrees with the finding of the courts *a quo* that the prosecution was able to prove that Comboy: (*a*) had carnal knowledge of her without her consent on two (2) separate occasions, the first occurring sometime in 2006 and the second in February 2008; and (*b*) attempted to have carnal knowledge of her on May 17, 2009, but was stopped by a reason other than his own desistance, *i.e.*, BBB's intervention. Suffice it to say that Comboy's flimsy defense of denial and alibi cannot prevail over the positive and categorical testimony of AAA identifying him as the perpetrator of the crimes.[30] In this regard, it has been long settled that "a young girl would not concoct a sordid tale of a crime as serious as rape at the hands of her very own father, allow the examination of her private part, and subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice. Hence, there is no plausible reason why AAA would testify against her own father, imputing to him the grave crime of rape, if this crime did not happen,"[31] as in this case. However, since a plain reading of the Informations in Crim. Case Nos. T-5006, T-5009, and T-5010[32] would readily reveal that Comboy was actually charged of raping his own biological minor daughter, AAA, which facts of minority and relationship were already stipulated upon during pre-trial,[33] the Court finds it appropriate to modify Comboy's conviction from two (2) counts of Statutory Rape and one (1) count of Attempted Rape to **two (2) counts of Qualified Rape and one (1) count of Attempted Qualified Rape**.

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[30] See *People v. Balcueva*, G.R. No. 214466, July 1, 2015, citing *People v. Amistoso*, G.R. No. 201447, January 9, 2013, 688 SCRA 376, 394.

[31] *Id.*, citing *People v. Rayon, Sr.*, G.R. No. 194236, January 30, 2013, 689 SCRA 745, 755.

[32] See CA *rollo*, pp. 51-52.

[33] See *id.* at 52-53.

Anent the proper penalty to be imposed upon Comboy in Crim. Case Nos. T-5006 and T-5009, it is noted that Section 3 of RA 9346[34] provides that "[p]ersons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended." Pursuant thereto, and in accordance with Section 2[35] of the same law, he must be sentenced to suffer the penalty of ***reclusion perpetua*, without eligibility for parole**, for each count of Qualified Rape.[36] Furthermore, in view of prevailing jurisprudence, where the penalty for the crime committed is death, which, however, cannot be imposed upon Comboy because of the provisions of RA 9346, the Court hereby increases the damages awarded to AAA as follows: (*a*) ₱100,000.00 as civil indemnity, (*b*) ₱100,000.00 as moral damages, and (*c*) ₱100,000.00 as exemplary damages.[37]

Finally, since Comboy was convicted for Attempted Qualified Rape in Crim. Case No. T-5010, the courts *a quo* properly took into consideration the provisions of Article 51[38] of the RPC,

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[34] Entitled "AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES" approved on June 24, 2006.

[35] Section 2. In lieu of the death penalty, the following shall be imposed:

a. the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

b. the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

[36] See *People v. Arguta*, G.R. No. 213216, April 20, 2015.

[37] See *People v. Balcueva*, *supra* note 30, citing *People v. Cataytay*, G.R. No. 196315, October 22, 2014. See also *People v. Bangsoy*, G.R. No. 204047, January 13, 2016, citing *People v. Gambao*, G.R. No. 172707, October 1, 2013, 706 SCRA 508, 533.

[38] Article 51 of the RPC reads:

Article 51. *Penalty to be imposed upon principals of attempted crime*. – A penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.

as well as the Indeterminate Sentence Law, in determining the imposable penalty against him. Hence, it is correct that Comboy be meted the penalty of imprisonment for the indeterminate period of two (2) years and four (4) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. Further, Comboy should also be ordered to pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱10,000.00 as exemplary damages.[39]

In addition, the Court imposes interest at the legal rate of six percent (6%) per annum on all monetary awards from the date of finality of judgment until fully paid, for each count of Qualified Rape and Attempted Qualified Rape.[40]

WHEREFORE, the appeal is **DENIED**. The Decision dated June 13, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 06194 is hereby **AFFIRMED** with **MODIFICATIONS**, finding accused-appellant Godofredo Comboy *y* Cronico (Comboy), **GUILTY** beyond reasonable doubt of two (2) counts of Qualified Rape and one (1) count of Qualified Attempted Rape, defined and penalized under Article 266-A (1) (a) and (d), in relation to Article 266-B (1), of the Revised Penal Code. Accordingly:

(*a*) In Criminal Case No. T-5006, Comboy is **SENTENCED** to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and is **ORDERED** to pay AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and the costs of suit, with interest at the rate of six percent (6%)

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[39] See *People v. Castillo*, G.R. No. 193666, February 19, 2014, 717 SCRA 113, 135, citing *People v. Brioso*, 600 Phil. 530, 546 (2009).

[40] See *People v. Balcueva*, *supra* note 30, citing *People v. Cataytay*, *supra* note 37, further citing *Roallos v. People*, G.R. No. 198389, December 11, 2013, 712 SCRA 593, 608.

per annum on all monetary awards from the date of finality of judgment until fully paid;

(*b*) In Criminal Case No. T-5009, Comboy is **SENTENCED** to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and is **ORDERED** to pay AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and the costs of suit, with interest at the rate of six percent (6%) per annum on all monetary awards from the date of finality of judgment until fully paid;

(*c*) In Criminal Case No. T-5010, Comboy is **SENTENCED** to suffer the penalty of imprisonment with an indeterminate period of two (2) years and four (4) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, and is **ORDERED** to pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱25,000.00 as moral damages, ₱10,000.00 as exemplary damages, and the costs of suit, with interest at the rate of six percent (6%) *per annum* on all monetary awards from the date of finality of judgment until fully paid.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

THIRD DIVISION

[GR. No. 191705. March 7, 2016]

BASIANA MINING EXPLORATION CORPORATION, BASIANA MINERALS DEVELOPMENT CORPORATION AND RODNEY O. BASIANA, IN HIS OWN PERSONAL CAPACITY AS PRESIDENT AND DULY AUTHORIZED REPRESENTATIVE OF BASIANA MINING EXPLORATION CORPORATION AND BASIANA MINING DEVELOPMENT CORPORATION, *petitioners, vs.* **HONORABLE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND SR METALS INC. (SRMI),** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; POWERS AND FUNCTIONS; ADMINSTRATIVE, QUASI-LEGISLATIVE AND QUASI-JUDICIAL.—** Depending on its enabling statute, administrative agencies possess distinct powers and functions–administrative, quasi-legislative, and quasi-judicial. "Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs." Quasi-judicial or administrative adjudicatory power, on the other hand, "is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law." "A government agency performs adjudicatory functions when it renders decisions or awards that **determine the rights of adversarial parties,** which decisions or awards have the same effect as a judgment of the court."

2. **ID.; ID.; ID.; DENR SECRETARY; POWER TO APPROVE AND ENTER INTO A MINERAL PRODUCTION SHARING AGREEMENT (MPSA) IS ADMINISTRATIVE IN NATURE THAT CANNOT BE INTERVENED BY THE COURTS.—**[T]he act of the DENR Secretary in approving SRMI's application

and entering into MPSA No. 261-2008-XIII is not an exercise of its quasi-judicial power; hence, it cannot be reviewed by the CA, whether by a petition for review under Rule 43 or a special civil action for *certiorari* under Rule 65 of the Rules of Court. x x x [The] power [of the DENR Secretary] to approve and enter into a MPSA is unmistakably administrative in nature as it springs from the mandate of the DENR under the Revised Administrative Code of 1987, which provides that "[t]he [DENR] shall x x x be in charge of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization, and conservation of the country's natural resources." x x x Given that it is the DENR Secretary that has the primary jurisdiction to approve and cancel mining agreements and contract, it is with the DENR Secretary that the petitioners should have sought the cancellation of MPSA No. 261-2008-XIII, and not with the courts. The DENR Secretary, no doubt, is under the control of the President; thus, his decision is subject to review of the latter. Consequently, the petitioners should have appealed its case to the Office of the President under A.O. No. 18, series of 1987, instead of directly seeking review by the court

APPEARANCES OF COUNSEL

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Factoran & Associates Law Office for respondent SR Metals, Inc.

D E C I S I O N

PERLAS-BERNABE, *J.*:

In this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, Basiana Mining Exploration Corporation

[1] *Rollo,* pp. 15-55.

(BMEC), Basiana Mining Development Corporation (BMDC), and Rodney O. Basiana (Basiana) (petitioners) assail the Amended Decision[2] dated June 18, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 103033, which granted the motions for reconsideration dated January 21, 2009[3] and December 23, 2008[4] of the Honorable Secretary of the Department of Environment and Natural Resources (DENR) and SR Metals, Inc. (SRMI), respectively, reversed and set aside the CA's Decision[5] dated December 10, 2008 and dismissed the petition for review filed by the petitioners, among others.

The Facts

Petitioner BMEC, headed by its President Basiana, applied on July 31, 1997 for a Mineral Production Sharing Agreement (MPSA) with the DENR for the extraction of nickel and other minerals covering an area of 6,642 hectares in Tubay and Jabonga, Agusan del Norte, docketed as MPSA (XIII)-00014.[6]

Pending approval of its application, BMEC, on April 29, 2000, assigned to Manila Mining Corporation (Manila Mining) all its rights and interest in MPSA (Xlll)-00014, with the latter acknowledging BMEC as the real and true owner of said application.[7] Manila Mining, in turn, assigned on October 17, 2005, its rights and interest to SRMI.[8] A day after, or on October

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[2] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Remedios Salazar Fernando and Isaias P. Dicdican concurring, and Associate Justices Pampio A. Abarintos and Ramon M. Bato, Jr. dissenting; *id*. at 74-89.

[3] *Id*. at 90-101.

[4] *Id*. at 102-115.

[5] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Edgardo F. Sundiam and Ramon M. Bato, Jr. concurring; *id*. at 60-72.

[6] *Id*. at 202-204.

[7] *Id*. at 447-448.

[8] *Id*. at 209-210.

18, 2005, Basiana and SRMI executed a Memorandum of Agreement where SRMI agreed, among others, to undertake technical and geological tests, exploration and small-scale mining operations of the site subject of MPSA (XIII)-00014.[9] Necessary permits and certificates were then issued by the DENR and the Provincial Government of Agusan del Norte to SRMI, San R Construction Corporation (San R) and Galeo Equipment Corporation (Galeo). Consequently, SRMI, using BMEC's application, applied for an MPSA for the extraction of nickel, iron and cobalt on a 591-ha area in Tubay, Agusan del Norte. The application was docketed as APSA-000014-XIII.[10]

On November 24, 2006, the DENR Secretary issued a cease and desist order against the mining operations due to excess in annual production, maximum capitalization and labor cost to equipment utilization. The Minerals Development Council, on December 7, 2006, also advised SRMI, San R and Galeo to immediately stop all mining activities in Tubay, which were conducted under the pretext of small-scale mining.[11]

Basiana then filed a complaint before the Regional Trial Court of Butuan City on May 15, 2007 for rescission of contract, abuse of rights and damages against SRMI, docketed as Civil Case No. 5728.[12] For its part, BMEC, then already known as BMDC, also filed a complaint for breach of trust, accounting and conveyance of proceeds, judicial confirmation of declaration of partial nullity of contract and termination of trust, and abuse of rights with damages against SRMI, San R, Galeo, et al. on July 13, 2007, docketed as Civil Case No. 5746.[13]

Subsequently, the Director of the Mines and Geosciences Bureau (MGB), on January 10, 2008, recommended the approval of APSA-000014-XIII filed by SRMI.[14] Thus, BMEC and Basiana

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[9] *Id*. at 211-213.
[10] *Id*. at 304-305.
[11] *Id*. at 62.
[12] *Id*. at 268-272.
[13] *Id*. at 214-267.
[14] *Id*. at 296-303.

filed with the MGB Panel of Arbitrators (MGB-POA) a petition to deny and/or disapprove and/or declare the nullity of the application for MPSA and/or cancellation, revocation and termination of MPSA.[15] Pending resolution of the protest before the MGB-POA, the Republic of the Philippines, represented by the DENR Secretary entered into MPSA No. 261-2008-XIII with SRMI for the development and commercial utilization of nickel, cobalt, iron and other associated mineral deposits in the 572.64-ha area in Tubay, Agusan del Norte.[16]

Hence, the herein petitioners filed a petition for review with the CA assailing the issuance of MPSA No. 261-2008-XIII on the grounds that (1) "there was clear violation of due process and the entire proceedings was railroaded and suited for the benefit of [SRMI]," and that (2) the approval of the application is a patent nullity and/or absolutely without any factual and legal basis.[17]

CA Decision dated December 10, 2008

The CA initially granted the petition and declared MPSA No. 261-2008-XIII null and void.[18] According to the CA, MPSA No. 261-2008-XIII should be stricken down for the reasons that the DENR Secretary has no authority and jurisdiction to approve SRMI's application pending resolution by the MGB-POA of the petitioners' protest. The CA ruled that the grounds raised by the petitioners in their protest, to wit: (a) "the application of [SRMI] to extract mineral and dispose nickel, iron and cobalt for commercial purposes is a falsified document;" and (b) "[SRMI] is not qualified to undertake the exploration, development and utilization of minerals in Tubay, Agusan del Norte," involve a dispute on rights to mining areas and fall within the jurisdiction of the MGB-POA.[19]

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[15] *Id*. at 284-295.

[16] *Id*. at 152-172.

[17] *Id*. at 191.

[18] *Id*. at 72.

[19] *Id*. at 65-66.

The CA also found that the petitioners adopted the wrong mode of appeal when it filed a petition for review before it; nevertheless, it resolved to treat the petition as one for *certiorari* since it alleged grave abuse of discretion on the part of the DENR Secretary in approving the application despite the pendency of the petitioners' protest.[20]

SRMI filed a motion for reconsideration of the CA decision, which was granted by the CA.[21]

CA Amended Decision dated June 18, 2009

According to the CA, the petition for review filed by the petitioners cannot be treated as a special civil action for *certiorari* for lack of jurisdictional grounds.[22] The CA ruled that the approval by the DENR Secretary of SRMI's application does not involve a quasi-judicial function since both the petitioners and SRMI are still applicants and there was yet an adjudication of rights between them.[23] The CA also ruled that the petition for review was premature due to the absence of any decision or resolution rendered by a competent body exercising a quasi-judicial function and the petitioners should have exhausted all administrative remedies available before it filed the petition for review.[24] The CA also stated that even if it were to treat the petition as a special civil action for *certiorari,* it failed to show any grave abuse of discretion committed by the DENR Secretary when it entered into MPSA No. 261-2008-XIII.[25] Citing *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation,*[26] the CA ruled that it is the DENR Secretary that

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[20] *Id*. at 67-68.

[21] A Division of Five was constituted due to the failure of the CA's Sixteenth Division to reach a unanimous opinion on SRMI's motion for reconsideration; *id*. at 75.

[22] *Id*. at 80.

[23] *Id*. at 80-81.

[24] *Id*. at 82.

[25] *Id*. at 83.

[26] 565 Phil. 466 (2007).

has jurisdiction to cancel existing mining agreements.[27] Finally, the CA found the petitioners to have committed forum shopping as the petition for review was filed despite the pendency of the protest with the MGB-POA.[28]

Petition before the Court

Hence, the present petition anchored on the ground that –

THE HONORABLE [CA], WITH DUE RESPECT, GRIEVOUSLY ERRED IN REVERSING ITS OWN RESOLUTION, X X X, DECLARING THAT THE MPSA ISSUED BY THE [DENR] AS NULL AND VOID, BY GIVING THE FOLLOWING SPECIOUS AND BASELESS LEGAL GROUNDS, WHICH ARE NOT IN ACCORD WITH EXISTING LAWS AND JURISPRUDENCE: X X X.[29]

The petitioners insist that they made the proper recourse when they filed a petition for review with the CA because the determination by the DENR Secretary as to the propriety of the MGB Director's recommendation of approval and SRMI's qualification to undertake development and its compliance with the law requires an exercise of its quasi-judicial function, and that the issue of whether the petitioners failed to exhaust its administrative remedies when it did not await the MGB-POA's resolution of its protest involves questions of law.[30]

The petitioners also take exception to the CA's use of the *Celestial Nickel Mining*[31] case, citing alleged differences. According to the petitioners, in *Celestial Nickel Mining,* the Court did not make an issue on the remedy resorted to by Blue Ridge Mineral Corporation (Blue Ridge) and instead, delved on the merits of the case thereby implying that the filing of a petition for *certiorari* resorted to by Blue Ridge was proper. Also, *Celestial Nickel Mining* did not rule into the action of

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[27] *Rollo,* p. 81.

[28] *Id*. at 85-86, 466 (2007).

[29] *Id*. at 32.

[30] *Id*. at 43-49.

[31] *Supra* note 26.

the DENR Secretary in entering into the mining agreement because its issuance was not raised before the MGB Director and the DENR Secretary and neither was it presented before the CA. This case, on the other hand, presents sufficient grounds why the DENR Secretary's approval was illegal and tainted with grave abuse of discretion, that is, despite that the DENR Secretary and the MGB Director knew of the existence of the protest before the MGB-POA, the agreement was still entered into.[32]

SRMI, meanwhile, argues that the DENR Secretary's signing of MPSA No. 261-2008-XIII was within his authority and that the grounds raised by the petitioners are mere rehash of the arguments raised in the CA.[33] On the other hand, the Office of the Solicitor General, who appeared for the DENR Secretary, maintains that the CA properly dismissed the petition on ground of forum shopping.[34]

Ruling of the Court

Without stamping approval on the validity of MPSA No. 261-2008-XIII, the Court dismisses the petition for the simple reason that the petitioners' recourse to the CA was erroneous.

First, the act of the DENR Secretary in approving SRMI's application and entering into MPSA No. 261-2008-XIII is not an exercise of its quasi-judicial power; hence, it cannot be reviewed by the CA, whether by a petition for review under Rule 43 or a special civil action for *certiorari* under Rule 65 of the Rules of Court.

Depending on its enabling statute,[35] administrative agencies possess distinct powers and functions – administrative, quasi-

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[32] *Rollo*, pp. 45-50.

[33] See Comment/Opposition of SRMI, *id*. at 324-337, at 324-331.

[34] Comment of the DENR Secretary, *id*. at 375-386, at 378.

[35] See *Republic of the Philippines v. Drugmaker's Laboratories, Inc.* G.R. No. 190837, March 5, 2014, 718 SCRA 153; The *City of Baguio v. Nino,* 521 Phil. 354 (2006).

legislative, and quasi-judicial. "Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs."[36] Quasi-judicial or administrative adjudicatory power, on the other hand, "is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law."[37] "A government agency performs adjudicatory functions when it renders decisions or awards that **determine the rights of adversarial parties,** which decisions or awards have the same effect as a judgment of the court."[38]

In the case of the DENR Secretary, its power to approve and enter into a MPSA is unmistakably administrative in nature as it springs from the mandate of the DENR under the Revised Administrative Code of 1987, which provides that "[t]he [DENR] shall x x x be in charge of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization, and conservation of the country's natural resources."[39] Contrary to the petitioners' position, the determination by the DENR Secretary as to (1) the propriety of the MGB Director's recommendation of approval, and (2) the qualification of SRMI to undertake development and its compliance with the law, does not involve the exercise of quasi-judicial power. Note that under Section 41 of DENR Administrative Order (A.O.) No. 96-40, initial evaluation of an application for an MPSA is made by the

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[36] *Jalosjos v. Commission on Elections,* G.R. No. 205033, June 18, 2013, 698 SCRA 742, 756; *The Alexandra Condominium Corporation v. Laguna Lake Development Authority,* 615 Phil. 516, 524 (2009).

[37] *Gov. Luis Raymund F. Villafuerte, Jr., and the Province of Camarines Sur v. Hon. Jesse M . Robredo, in his capacity as Secretary of the Department of the Interior and Local Government,* G.R. No. 195390, December 10, 2014; See *Villanueva, et al. v. Palawan Council for Sustainable Development, et al.,* 704 Phil. 555 (2013).

[38] *Villanueva, et al. v. Palawan Council for Sustainable Development, et al., id.* at 566.

[39] REVISED ADMINISTRATIVE CODE OF 1987, Title XIV (Environment and Natural Resources), Chapter I (General Provisions), Section 2.

MGB Regional Office in the area covered by the application. Thereafter, the application will be reviewed by the MGB Director for further evaluation.[40] It is only after the MGB Director has evaluated the application that the same will be forwarded to the DENR Secretary for final evaluation and approval. In approving an MPSA, the DENR Secretary does not determine the legal rights and obligations of adversarial parties, which are necessary in adjudication. In fact, it is only after an application is approved that the right to undertake the project accrues on the applicant's part, and until then, no rights or obligations can be enforced by or against any party.[41] Neither does the DENR Secretary resolve conflicting claims; rather, what is involved here is the determination whether a certain applicant complied with the conditions required by the law, and is financially and technically capable to undertake the contract, among others. Thus, in *Republic of the Philippines v. Express Telecommunication Co., lnc.,*[42] the Court stated that the powers granted to the Secretary of Agriculture and Commerce (natural resources) by law such as granting of licenses, permits, leases and contracts, or approving, rejecting, reinstating, or canceling applications, are all **executive and administrative** in nature. It even further ruled that purely administrative and discretionary functions may not be interfered with by the courts.[43]

Jurisprudence also emphasized the administrative nature of the grant by the DENR Secretary of license, permits, lease and contracts, reiterating the distinction made in *Pearson v.*

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[40] DENR A.O. No. 96-40 (Revised Implementing Rules and Regulations of Republic Act No. 7942, otherwise known as the "Philippine Mining Act of 1995), Chapter VI (Mineral Agreements), Section 41 (Evaluation of Mineral Agreement Application).

[41] See *Apex Mining Company, Inc. v. Southeast Mindanao Gold Mining Corporation,* G.R. Nos. 152613 & 152628, November 20, 2009, 605 SCRA 100.

[42] 424 Phil. 372 (2002).

[43] *Id.* at 401, citing *Lacuesta v. Judge Melencio-Herrera,* 159 Phil. 133, 140-141 (1975).

Intermediate Appellate Court[44] between the different mining claims/disputes, to wit:

> Decisions of the Supreme Court on mining disputes have recognized a distinction between (1) **the primary powers granted by pertinent provisions of law to the then Secretary of Agriculture and Natural Resources (and the bureau directors) of an executive or administrative nature, such as "granting of license, permits, lease and contracts, or approving, rejecting, reinstating or cancelling applications, or deciding conflicting applications,**" and (2) controversies or disagreements of civil or contractual nature between litigants which are questions of a judicial nature that may be adjudicated only by the courts of justice.[45] (Emphasis ours)

This distinction has been carried over under Republic Act No. 7942 (R.A. No. 7942) or the Philippine Mining Act of 1995.[46]

Moreover, even assuming, for the sake of argument, that recourse to the courts may be had by the petitioners, the circumstances of this case do not warrant its intervention at this point for the following reasons:

For one, in their petition for review filed with the CA, the petitioners prayed that MPSA No. 261-2008-XIII be set aside and its implementation enjoined.[47] In effect, the petitioners seek a cancellation of MPSA No. 261-2008-XIII. As earlier discussed, however, the power to approve and enter into agreements or contracts rests primarily with the DENR Secretary. Perforce, the power to cancel an MPSA likewise lies with the DENR Secretary. Such implied power of the DENR Secretary was upheld by the Court in *Celestial Nickel Mining*.

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[44] 356 Phil. 341 (1998).

[45] *Id*. at 358; *Cargill Philippines, Inc. v. San Fernando Regala Trading, Inc.,* 656 Phil. 29,48 (2011); *Asaphil Construction and Development Corporation v. Tuason, Jr.,* 522 Phil. 103, 113 (2006); *PNOC-Energy Development Corporation v. Veneracion, Jr.,* 538 Phil. 587, 602 (2006).

[46] *Cargill Philippines, Inc. v. San Fernando Regala Trading, Inc., id.*

[47] See *rollo,* p. 197.

Celestial Nickel Mining involved the cancellation of several mining lease contracts in favor of Macroasia Corporation. The pivotal issue in said case was defined by the Court as: "who has authority and jurisdiction to cancel existing mineral agreements under [R.A. No. 7942] in relation to [Presidential Decree No.] 463 and pertinent rules and regulations."[48] In acknowledging the DENR Secretary's power to cancel mining agreements, the Court provided the reasons, as follows: (1) the DENR Secretary's power to cancel mineral agreements emanates from his administrative authority, supervision, management, and control over mineral resources under Chapter I, Title XIV of Book IV of the Revised Administrative Code of 1987;[49] (2) R.A. No. 7942 confers to the DENR Secretary specific authority over mineral resources, which includes the authority to enter into mineral agreements on behalf of the Government upon the recommendation of the Director and corollarily, the implied power to terminate mining or mineral contracts;[50] (3) the power of control and supervision of the DENR Secretary over the MGB to cancel or recommend cancellation of mineral rights under R.A. No. 7942 demonstrates the authority of the DENR Secretary to cancel or approve the cancellation of mineral agreements;[51] and (4) the DENR Secretary's power to cancel mining rights or agreements can be inferred from Section 230, Chapter XXIV of DENR A.O. No. 96-40 on cancellation, revocation, and termination of a permit/mineral agreement/Financial and Technical Assistance Agreement.[52]

Given that it is the DENR Secretary that has the primary jurisdiction to approve and cancel mining agreements and contract, it is with the DENR Secretary that the petitioners should have sought the cancellation of MPSA No. 261-2008-XIII, and not with the courts. The doctrine of primary jurisdiction instructs that if a case is such that its determination requires the expertise,

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[48] *Supra* note 26, at 488.

[49] *Id*. at 492-493.

[50] *Id*. at 494-496.

[51] *Id*. at 496-497.

[52] *Id*. at 497-498.

specialized training and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resort to the courts is had.[53]

For another, the doctrine of exhaustion of administrative remedies bars recourse to the courts at the very first instance.

> The doctrine of non-exhaustion of administrative remedies requires that resort be first made with the administrative authorities in the resolution of a controversy falling under their jurisdiction before the controversy may be elevated to a court of justice for review. A premature invocation of a court's intervention renders the complaint without cause of action and dismissible.[54] (Citations omitted)

The DENR Secretary, no doubt, is under the control of the President; thus, his decision is subject to review of the latter.[55] Consequently, the petitioners should have appealed its case to the Office of the President under A.O. No. 18, series of 1987,[56] instead of directly seeking review by the court.[57]

WHEREFORE, the petition is **DENIED.** The Amended Decision dated June 18, 2009 of the Court of Appeals in CA-G.R. SP No. 103033 is **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Perez, and *Jardeleza, JJ.,* concur.

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[53] *Narra Nickel Mining and Development Corporation v. Redmont Consolidated Mines Corporation,* G.R. No. 195580, April 21, 2014, 722 SCRA 382, 438, citing *Euro-Med Laboratories Phil., Inc. v. Province of Batangas,* 527 Phil. 623, 626 (2006).

[54] *The Alexandra Condominium Corporation v. Laguna Lake Development Authority, supra* note 36.

[55] See *Orosa v. Roa,* 521 Phil. 347, 353 (2006).

[56] PRESCRIBING RULES AND REGULATIONS GOVERNING APPEALS TO THE OFFICE OF THE PRESIDENT OF THE PHILIPPINES.

[57] See *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation, supra* note 26.

THIRD DIVISION

[G.R. No. 198967. March 7, 2016]

JOSE EMMANUEL P. GUILLERMO, *petitioner, vs.* **CRISANTO P. USON,** *respondent.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATIONS; PIERCING THE VEIL OF CORPORATE FICTION; ALLOWED IN LABOR CASES EVEN AFTER FINAL JUDGMENT AND ON EXECUTION IN THE PRESENCE OF FRAUD, BAD FAITH OR MALICE.—** [T]he veil of corporate fiction can be pierced, and responsible corporate directors and officers or even a separate but related corporation, may be impleaded and held answerable solidarily in a labor case, even after final judgment and on execution, so long as it is established that such persons have deliberately used the corporate vehicle to unjustly evade the judgment obligation, or have resorted to fraud, bad faith or malice in doing so. x x x Bad faith, in this instance, does not connote bad judgment or negligence but imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud. As the foregoing implies, there is no hard and fast rule on when corporate fiction may be disregarded; instead, each case must be evaluated according to its peculiar circumstances.

2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; DISMISSAL OF EMPLOYEE IN A CORPORATION WHO IS ALSO A STOCKHOLDER AND DIRECTOR THEREIN, WHERE THE COMPLAINT DOES NOT INVOLVE HIS CAPACITY AS SUCH, IS NOT AN INTRA-CORPORATE CONTROVERSY.—** As for Guillermo's assertion that the case is an intra-corporate controversy, the Court sustains the finding of the appellate court that the nature of an action and the jurisdiction of a tribunal are determined by the allegations of the complaint at the time of its filing, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. Although Uson is also a stockholder and director of Royal Class Venture, it is settled in jurisprudence that not all conflicts between a

stockholder and the corporation are intra-corporate; an examination of the complaint must be made on whether the complainant is involved in his capacity as a stockholder or director, or as an employee. If the latter is found and the dispute does not meet the test of what qualifies as an intra-corporate controversy, then the case is a labor case cognizable by the NLRC and is not within the jurisdiction of any other tribunal. In the case at bar, Uson's allegation was that he was maliciously and illegally dismissed as an Accounting Supervisor by Guillermo, the Company President and General Manager, an allegation that was not even disputed by the latter nor by Royal Class Venture. It raised no intra-corporate relationship issues between him and the corporation or Guillermo; neither did it raise any issue regarding the regulation of the corporation.

APPEARANCES OF COUNSEL

Acsay Pascual Capellan & Associates Law Office for petitioner.

Alejandro M. Villamil for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Court of Appeals Decision[1] dated June 8, 2011 and Resolution[2] dated October 7, 2011 in CA-G.R. SP No. 115485, which

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[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Mariflor P. Punzalan-Castillo and Franchito N. Diamante, concurring; *rollo,* pp. 130-142.

The National Labor Relations Commission as well as Labor Arbiter Niña Fe S. Lazaga-Rafols were excluded as respondents by this Court in its Resolution in this case dated January 30, 2012, *id.* at 159-160, citing Section 4(a), Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Mariflor P. Punzalan-Castillo and Franchito Diamante concurring; *id.* at 155-158.

affirmed *in toto* the decision of the National Labor Relations Commission *(NLRC).*

The facts of the case follow.

On March 11, 1996, respondent Crisanto P. Uson *(Uson)* began his employment with Royal Class Venture Phils., Inc. *(Royal Class Venture)* as an accounting clerk.[3] Eventually, he was promoted to the position of accounting supervisor, with a salary of Php13,000.00 a month, until he was allegedly dismissed from employment on December 20, 2000.[4]

On March 2, 2001, Uson filed with the Sub-Regional Arbitration Branch No. 1, Dagupan City, of the NLRC a Complaint for Illegal Dismissal, with prayers for backwages, reinstatement, salaries and 13th month pay, moral and exemplary damages and attorney's fees against Royal Class Venture.[5]

Royal Class Venture did not make an appearance in the case despite its receipt of summons.[6]

On May 15, 2001, Uson filed his Position Paper[7] as complainant.

On October 22, 2001, Labor Arbiter Jose G. De Vera rendered a Decision[8] in favor of the complainant Uson and ordering therein respondent Royal Class Venture to reinstate him to his former position and pay his backwages, 13th month pay as well as moral and exemplary damages and attorney's fees.

Royal Class Venture, as the losing party, did not file an appeal of the decision.[9] Consequently, upon Uson's motion, a Writ of Execution[10] dated February 15, 2002 was issued to implement the Labor Arbiter's decision.

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[3] *Id.* at 165.
[4] *Id.*
[5] *Id.* at 24, 167.
[6] *Id.* at 59-61, 77, 80-81, 89-90, 137.
[7] *Id.* at 49-54.
[8] *Id.* at 57-64.
[9] *Id.* at 25, 65, 168.
[10] *Id.* at 65-66.

On May 17, 2002, an Alias Writ of Execution[11] was issued. But with the judgment still unsatisfied, a Second Alias Writ of Execution[12] was issued on September 11, 2002.

Again, it was reported in the Sheriffs Return that the Second Alias Writ of Execution dated September 11, 2002 remained "unsatisfied." Thus, on November 14, 2002, Uson filed a Motion for Alias Writ of Execution and to Hold Directors and Officers of Respondent Liable for Satisfaction of the Decision.[13] The motion quoted from a portion of the Sheriffs Return, which states:

> On September 12, 2002, the undersigned proceeded at the stated present business office address of the respondent which is at Minien East, Sta. Barbara, Pangasinan to serve the writ of execution. Upon arrival, I found out that the establishment erected thereat is not [in] the respondent's name but JOEL and SONS CORPORATION, a family corporation owned by the Guillermos of which, Jose Emmanuel F. Guillermo the General Manager of the respondent, is one of the stockholders who received the writ using his nickname "Joey," [and who] concealed his real identity and pretended that he [was] the brother of Jose, which [was] contrary to the statement of the guard-on-duty that Jose and Joey]were] one and the same person. The former also informed the undersigned that the respondent's (sic) corporation has been dissolved.
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> On the succeeding day, as per [advice] by the [complainant's] counsel that the respondent has an account at the Bank of Philippine Islands Magsaysay Branch, A.B. Fernandez Ave., Dagupan City, the undersigned immediately served a notice of garnishment, thus, the bank replied on the same day stating that the respondent [does] not have an account with the branch.[14]

On December 26, 2002, Labor Arbiter Irenarco R. Rimando issued an Order[15] granting the motion filed by Uson. The order

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[11] *Id.* at 67-68.

[12] *Id.* at 69-70.

[13] *Id.* at 71-74.

[14] *Id.* at 72.

[15] *Id.* at 75-79.

held that officers of a corporation are jointly and severally liable for the obligations of the corporation to the employees and there is no denial of due process in holding them so even if the said officers were not parties to the case when the judgment in favor of the employees was rendered.[16] Thus, the Labor Arbiter pierced the veil of corporate fiction of Royal Class Venture and held herein petitioner Jose Emmanuel Guillermo *(Guillermo),* in his personal capacity, jointly and severally liable with the corporation for the enforcement of the claims of Uson.[17]

Guillermo filed, by way of special appearance, a Motion for Reconsideration/To Set Aside the Order of December 26, 2002.[18] The same, however, was not granted as, this time, in an Order dated November 24, 2003, Labor Arbiter Niña Fe S. Lazaga-Rafols sustained the findings of the labor arbiters before her and even castigated Guillermo for his unexplained absence in the prior proceedings despite notice, effectively putting responsibility on Guillermo for the case's outcome against him.[19]

On January 5, 2004, Guillermo filed a Motion for Reconsideration of the above Order,[20] but the same was promptly denied by the Labor Arbiter in an Order dated January 7, 2004.[21]

On January 26, 2004, Uson filed a Motion for Alias Writ of Execution,[22] to which Guillermo filed a Comment and Opposition on April 2, 2004.[23]

On May 18, 2004, the Labor Arbiter issued an Order[24] granting Uson's Motion for the Issuance of an Alias Writ of Execution

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[16] *Id.* at 78.
[17] *Id.* at 78-79.
[18] *Id.* at 170.
[19] *Id.* at 80-81.
[20] *Id.* at 170-171.
[21] *Id.* at 171.
[22] *Id.* at 82-83.
[23] *Id.* at 172.
[24] *Id.* at 84.

and rejecting Guillermo's arguments posed in his Comment and Opposition.

Guillermo elevated the matter to the NLRC by filing a Memorandum of Appeal with Prayer for a (Writ of) Preliminary Injunction dated June 10, 2004.[25]

In a Decision[26] dated May 11, 2010, the NLRC dismissed Guillermo's appeal and denied his prayers for injunction.

On August 20, 2010, Guillermo filed a Petition for *Certiorari*[27] before the Court of Appeals, assailing the NLRC decision.

On June 8, 2011, the Court of Appeals rendered its assailed Decision[28] which denied Guillermo's petition and upheld all the findings of the NLRC.

The appellate court found that summons was in fact served on Guillermo as President and General Manager of Royal Class Venture, which was how the Labor Arbiter acquired jurisdiction over the company.[29] But Guillermo subsequently refused to receive all notices of hearings and conferences as well as the order to file Royal Class Venture's position paper.[30] Then, it was learned during execution that Royal Class Venture had been dissolved.[31] However, the Court of Appeals held that although the judgment had become final and executory, it may be modified or altered "as when its execution becomes impossible or unjust."[32] It also noted that the motion to hold officers and directors like Guillermo personally liable, as well as the notices to hear the same, was sent to them by registered mail, but no pleadings were submitted and no appearances were made by anyone of them

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[25] *Id.* at 172-173.

[26] *Id.* at 86-91.

[27] *Id.* at 92-110.

[28] *Id.* at 130-142.

[29] *Id.* at 137.

[30] *Id.*

[31] *Id.*

[32] *Id.* at 138.

during the said motion's pendency.[33] Thus, the court held Guillermo liable, citing jurisprudence that hold the president of the corporation liable for the latter's obligation to illegally dismissed employees.[34] Finally, the court dismissed Guillermo's allegation that the case is an intra-corporate controversy, stating that jurisdiction is determined by the allegations in the complaint and the character of the relief sought.[35]

From the above decision of the appellate court, Guillermo filed a Motion for Reconsideration[36] but the same was again denied by the said court in the assailed Resolution[37] dated October 7, 2011.

Hence, the instant petition.

Guillermo asserts that he was impleaded in the case only more than a year after its Decision had become final and executory, an act which he claims to be unsupported in law and jurisprudence.[38] He contends that the decision had become final, immutable and unalterable and that any amendment thereto is null and void.[39] Guillermo assails the so-called "piercing the veil" of corporate fiction which allegedly discriminated against him when he alone was belatedly impleaded despite the existence of other directors and officers in Royal Class Venture.[40] He also claims that the Labor Arbiter has no jurisdiction because the case is one of an intra-corporate controversy, with the complainant Uson also claiming to be a stockholder and director of Royal Class Venture.[41]

In his Comment,[42] Uson did not introduce any new arguments but merely cited *verbatim* the disquisitions of the Court of Appeals to counter Guillermo's assertions in his petition.

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[33] *Id.*

[34] *Id.* at 139-140.

[35] *Id.* at 140.

[36] *Id.* at 143-154.

[37] *Id.* at 155-158.

[38] *Id.* at 31.

[39] *Id.* at 32-33.

[40] *Id.* at 36-39.

[41] *Id.* at 40-42, 51 (Uson's Position Paper).

[42] *Id.* at 165-178.

To resolve the case, the Court must confront the issue of whether an officer of a corporation may be included as judgment obligor in a labor case for the first time only after the decision of the Labor Arbiter had become final and executory, and whether the twin doctrines of "piercing the veil of corporate fiction" and personal liability of company officers in labor cases apply.

The petition is denied.

In the earlier labor cases of *Claparols v. Court of Industrial Relations*[43] and *A.* C. *Ransom Labor Union-CCLU v. NLRC,*[44] persons who were not originally impleaded in the case were, even during execution, held to be solidarily liable with the employer corporation for the latter's unpaid obligations to complainant-employees. These included a newly-formed corporation which was considered a mere conduit or alter ego of the originally impleaded corporation, and/or the officers or stockholders of the latter corporation.[45] Liability attached, especially to the responsible officers, even after final judgment and during execution, when there was a failure to collect from the employer corporation the judgment debt awarded to its workers.[46] In *Naguiat v. NLRC,*[47] the president of the corporation was found, for the first time on appeal, to be solidarily liable to the dismissed employees. Then, in *Reynoso v. Court of Appeals,*[48] the veil of corporate fiction was pierced at the stage of execution, against a corporation not previously impleaded, when it was established that such corporation had dominant control of the original party corporation, which was a smaller company, in such a manner that the latter's closure was done by the former in order to defraud its creditors, including a former worker.

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[43] 160 Phil. 624 (1975).

[44] 226 Phil. 199 (1986).

[45] *Claparols v. Court of Industrial Relations, supra; A.C. Ransom Labor Union-CCLU v. NLRC, supra.*

[46] *Id.*

[47] 336 Phil. 545 (1997).

[48] 399 Phil. 38 (2000), citing *Claparols v. CIR, supra* note 43.

The rulings of this Court in *A. C. Ransom, Naguiat,* and *Reynoso,* however, have since been tempered, at least in the aspects of the lifting of the corporate veil and the assignment of personal liability to directors, trustees and officers in labor cases. The subsequent cases of *McLeod v. NLRC,*[49] *Spouses Santos v. NLRC*[50] and *Carag v. NLRC,*[51] have all established, save for certain exceptions, the primacy of Section 31[52] of the Corporation Code in the matter of assigning such liability for a corporation's debts, including judgment obligations in labor cases. According to these cases, a corporation is still an artificial being invested by law with a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected.[53] It is not in every instance of inability to collect from a corporation that the veil of corporate fiction is pierced, and the responsible officials are made liable. Personal liability attaches only when, as enumerated by the said Section 31 of the Corporation Code, there is a wilfull and knowing assent to patently unlawful acts of the corporation, there is gross negligence or bad faith in directing the affairs of the corporation, or there is a

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[49] 541 Phil. 214 (2007).

[50] 354 Phil. 918 (1998).

[51] 548 Phil. 581 (2007).

[52] Sec. 31. *Liability of directors, trustees or officers.* – Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquire, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as trustee of the corporation and must account for the profits which otherwise would have accrued to the corporation. (n)

[53] *McLeod v. NLRC, supra* note 49, at 238.

conflict of interest resulting in damages to the corporation.[54] Further, in another labor case, *Pantranco Employees Association (PEA-PTGWO), et al. v. NLRC, et al.*,[55] the doctrine of piercing the corporate veil is held to apply only in three (3) basic areas, namely: (1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; (2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or (3) *alter ego* cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities.[56] Indeed, in *Reahs Corporation v. NLRC,*[57] the conferment of liability on officers for a corporation's obligations to labor is held to be an exception to the general doctrine of separate personality of a corporation.

It also bears emphasis that in cases where personal liability attaches, not even all officers are made accountable. Rather, only the "responsible officer," *i.e.,* the person directly responsible for and who "acted in bad faith" in committing the illegal dismissal or any act violative of the Labor Code, is held solidarily liable, in cases wherein the corporate veil is pierced.[58] In other instances,

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[54] Further, as added in *McLeod,* there is personal liability also when directors, trustees or officers consent or fail to object to the issuance of watered down stocks, despite knowledge thereof; when they agree to hold themselves personally and solidarily liable with the corporation; or when they are made by specific provision of law personally answerable for their corporate action. *(Id.* at 242)

[55] 600 Phil. 645 (2009).

[56] *Pantranco Employees Association (PEA-PTGWO), et al. v. NLRC, et al., supra,* at 663.

[57] 337 Phil. 698 (1997).

[58] *Carag v. NLRC, supra* note 51, at 606-608, citing *McLeod v. NLRC, et al., supra* note 49.

such as cases of so-called corporate tort of a close corporation, it is the person "actively engaged" in the management of the corporation who is held liable.[59] In the absence of a clearly identifiable officer(s) directly responsible for the legal infraction, the Court considers the president of the corporation as such officer.[60]

The common thread running among the aforementioned cases, however, is that the veil of corporate fiction can be pierced, and responsible corporate directors and officers or even a separate but related corporation, may be impleaded and held answerable solidarily in a labor case, even after final judgment and on execution, so long as it is established that such persons have deliberately used the corporate vehicle to unjustly evade the judgment obligation, or have resorted to fraud, bad faith or malice in doing so. When the shield of a separate corporate identity is used to commit wrongdoing and opprobriously elude responsibility, the courts and the legal authorities in a labor case have not hesitated to step in and shatter the said shield and deny the usual protections to the offending party, even after final judgment. The key element is the presence of fraud, malice or bad faith. Bad faith, in this instance, does not connote bad judgment or negligence but imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud.[61]

As the foregoing implies, there is no hard and fast rule on when corporate fiction may be disregarded; instead, each case must be evaluated according to its peculiar circumstances.[62] For

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[59] *Naguiat v. NLRC, supra* note 47, at 562. A "corporate tort" is described as a violation of a right given or the omission of a duty imposed by law; a breach of a legal duty. Such legal duty includes that spelled out in Art. 238 of the Labor Code which mandates the employer to grant separation pay to employees in case of closure or cessation of operations not due to serious business losses or financial reverses.

[60] *Santos v. NLRC,* 325 Phil. 145 (1996); *Naguiat v. NLRC, supra* note 47, at 560.

[61] *Elcee Farms, Inc. v. NLRC (Fourth Div.),* 541 Phil. 576, 593 (2007).

[62] *Concept Builders, Inc. v. NLRC,* 326 Phil. 955, 965 (1996).

the case at bar, applying the above criteria, a finding of personal and solidary liability against a corporate officer like Guillermo must be rooted on a satisfactory showing of fraud, bad faith or malice, or the presence of any of the justifications for disregarding the corporate fiction. As stated in *McLeod,*[63] bad faith is a question of fact and is evidentiary, so that the records must first bear evidence of malice before a finding of such may be made.

It is our finding that such evidence exists in the record. Like the *A. C. Ransom,* and *Naguiat* cases, the case at bar involves an apparent family corporation. As in those two cases, the records of the present case bear allegations and evidence that Guillermo, the officer being held liable, is the person responsible in the actual running of the company and for the malicious and illegal dismissal of the complainant; he, likewise, was shown to have a role in dissolving the original obligor company in an obvious "scheme to avoid liability" which jurisprudence has always looked upon with a suspicious eye in order to protect the rights of labor.[64]

Part of the evidence on record is the second page of the verified Position Paper of complainant (herein respondent) Crisanto P. Uson, where it was clearly alleged that Uson was "illegally dismissed by the President/General Manager of respondent corporation (herein petitioner) Jose Emmanuel P. Guillermo when Uson exposed the practice of the said President/General Manager of dictating and undervaluing the shares of stock of the corporation."[65] The statement is proof that Guillermo was the responsible officer in charge of running the company as well as the one who dismissed Uson from employment. As this sworn allegation is uncontroverted – as neither the company nor Guillermo appeared before the Labor Arbiter despite the service of summons and notices – such stands as a fact of the case, and now functions as clear evidence of Guillermo's bad faith in his dismissal of Uson from employment, with the motive apparently being anger at the latter's reporting of unlawful activities.

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[63] *Supra* note 49, at 242.

[64] *Claparols v. CIR, supra* note 43, at 635-636.

[65] *Rollo,* pp. 50-51.

Then, it is also clearly reflected in the records that it was Guillermo himself, as President and General Manager of the company, who received the summons to the case, and who also subsequently and without justifiable cause refused to receive all notices and orders of the Labor Arbiter that followed.[66] This makes Guillermo responsible for his and his company's failure to participate in the entire proceedings before the said office. The fact is clearly narrated in the Decision and Orders of the Labor Arbiter, Uson's Motions for the Issuance of Alias Writs of Execution, as well as in the Decision of the NLRC and the assailed Decision of the Court of Appeals,[67] which Guillermo did not dispute in any of his belated motions or pleadings, including in his petition for *certiorari* before the Court of Appeals and even in the petition currently before this Court.[68] Thus, again, the same now stands as a finding of fact of the said lower tribunals which binds this Court and which it has no power to alter or revisit.[69] Guillermo's knowledge of the case's filing and existence and his unexplained refusal to participate in it as the responsible official of his company, again is an *indicia* of his bad faith and malicious intent to evade the judgment of the labor tribunals.

Finally, the records likewise bear that Guillermo dissolved Royal Class Venture and helped incorporate a new firm, located in the same address as the former, wherein he is again a stockholder. This is borne by the Sheriffs Return which reported: that at Royal Class Venture's business address at Minien East, Sta. Barbara, Pangasinan, there is a new establishment named "Joel and Sons Corporation," a family corporation owned by the Guillermos in which Jose Emmanuel F. Guillermo is again one of the stockholders; that Guillermo received the writ of execution but used the nickname "Joey" and denied being Jose

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[66] *Id.* at 59-61, 77, 80-81, 89-90, 137.

[67] *Id.*

[68] *Id.* at 2l-44, 92-109.

[69] *Zuellig Freight and Cargo Systems v. NLRC,* G.R. No. 157900, July 22, 2013, 701 SCRA 561.

Emmanuel F. Guillermo and, instead, pretended to be Jose's brother; that the guard on duty confirmed that Jose and Joey are one and the same person; and that the respondent corporation Royal Class Venture had been dissolved.[70] Again, the facts contained in the Sheriff 's Return were not disputed nor controverted by Guillermo, either in the hearings of Uson's Motions for Issuance of Alias Writs of Execution, in subsequent motions or pleadings, or even in the petition before this Court. Essentially, then, the facts form part of the records and now stand as further proof of Guillermo's bad faith and malicious intent to evade the judgment obligation.

The foregoing clearly indicate a pattern or scheme to avoid the obligations to Uson and frustrate the execution of the judgment award, which this Court, in the interest of justice, will not countenance.

As for Guillermo's assertion that the case is an intra-corporate controversy, the Court sustains the finding of the appellate court that the nature of an action and the jurisdiction of a tribunal are determined by the allegations of the complaint at the time of its filing, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[71] Although Uson is also a stockholder and director of Royal Class Venture, it is settled in jurisprudence that not all conflicts between a stockholder and the corporation are intra-corporate; an examination of the complaint must be made on whether the complainant is involved in his capacity as a stockholder or director, or as an employee.[72] If the latter is found and the dispute does not meet the test of what qualifies as an intra-corporate controversy, then the case is a labor case cognizable by the NLRC and is not within the jurisdiction of any other tribunal.[73] In the case at bar, Uson's allegation was

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[70] *Rollo,* p. 72.

[71] *Barrazona v. Regional Trial Court, Branch 21, Baguio City,* 521 Phil. 53 (2006).

[72] *Real v. Sangu Philippines, Inc. and/or Abe,* 655 Phil. 68, 83-84 (2011).

[73] *Id.*; *Aguirre v. FQB+7, Inc.,* G.R. No. 170770, January 9, 2013, 688 SCRA 242, 260, quoting *Speed Distribution, Inc. v. Court of Appeals,* 469 Phil. 739, 758-759 (2004), as follows: To determine whether a case involves an intra-corporate controversy, and is to be heard and decided

that he was maliciously and illegally dismissed as an Accounting Supervisor by Guillermo, the Company President and General Manager, an allegation that was not even disputed by the latter nor by Royal Class Venture. It raised no intra-corporate relationship issues between him and the corporation or Guillermo; neither did it raise any issue regarding the regulation of the corporation. As correctly found by the appellate court, Uson's complaint and redress sought were centered alone on his dismissal as an employee, and not upon any other relationship he had with the company or with Guillermo. Thus, the matter is clearly a labor dispute cognizable by the labor tribunals.

WHEREFORE, the petition is **DENIED.** The Court of Appeals Decision dated June 8, 2011 and Resolution dated October 7, 2011 in CA-G.R. SP No. 115485 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Perez, Reyes,* and *Jardeleza, JJ.,* concur.

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by the branches or the RTC specifically designated by the Court to try and decide such cases, two elements must concur: (a) the status or relationship of the parties; and (b) the nature of the question that is the subject of their controversy.

The first element requires that the controversy must arise out of intra-corporate or partnership relations between any or all of the parties and the corporation, partnership, or association of which they are stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the State insofar as it concerns their individual franchises. The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation. If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy. The determination of whether a contract is simulated or not is an issue that could be resolved by applying pertinent provisions of the Civil Code.

SECOND DIVISION

[G.R. No. 205703. March 7, 2016]

INDUSTRIAL PERSONNEL & MANAGEMENT SERVICES, INC. (IPAMS), SNC LAVALIN ENGINEERS & CONTRACTORS, INC. AND ANGELITO C. HERNANDEZ, *petitioners, vs.* **JOSE G. DE VERA AND ALBERTO B. ARRIOLA,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; OVERSEAS EMPLOYMENT CONTRACT; APPLICATION OF THE PHILIPPINE LAWS; AS AN EXCEPTION, THE PARTIES MAY AGREE THAT A FOREIGN LAW SHALL GOVERN THE EMPLOYMENT CONTRACT; REQUISITES.—** [T]he general rule is that Philippine laws apply even to overseas employment contracts. This rule is rooted in the constitutional provision of Section 3, Article XIII that the State shall afford full protection to labor, whether local or overseas. Hence, even if the OFW has his employment abroad, it does not strip him of his rights to security of tenure, humane conditions of work and a living wage under our Constitution. As an exception, the parties may agree that a foreign law shall govern the employment contract. A synthesis of the existing laws and jurisprudence reveals that this exception is subject to the following requisites: 1. That it is expressly stipulated in the overseas employment contract that a specific foreign law shall govern; 2. That the foreign law invoked must be proven before the courts pursuant to the Philippine rules on evidence; 3. That the foreign law stipulated in the overseas employment contract must not be contrary to law, morals, good customs, public order, or public policy of the Philippines; and 4. That the overseas employment contract must be processed through the POEA. The Court is of the view that these four (4) requisites must be complied with before the employer could invoke the applicability of a foreign law to an overseas employment contract.

2. **ID.; ID.; ID.; ID.; ID.; LACKING ANY ONE OF THE FOUR REQUISITES WOULD INVALIDATE THE APPLICATION OF THE FOREIGN LAW AND THE PHILIPPINE LAW SHALL GOVERN THE OVERSEAS EMPLOYMENT CONTRACT.—** If the first requisite is absent, or that no foreign law was expressly stipulated in the employment contract which was executed in the Philippines, then the domestic labor laws shall apply in accordance with the principle of *lex loci contractus*. If the second requisite is lacking, or that the foreign law was not proven pursuant to Sections 24 and 25 of Rule 132 of the Revised Rules of Court, then the international law doctrine of processual presumption operates. The said doctrine declares that "[w]here a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours." If the third requisite is not met, or that the foreign law stipulated is contrary to law, morals, good customs, public order or public policy, then Philippine laws govern. x x x Finally, if the fourth requisite is missing, or that the overseas employment contract was not processed through the POEA, then Article 18 of the Labor Code is violated. Article 18 provides that no employer may hire a Filipino worker for overseas employment except through the boards and entities authorized by the Secretary of Labor. In relation thereto, Section 4 of R.A. No. 8042, as amended, declares that the State shall only allow the deployment of overseas Filipino workers in countries where the rights of Filipino migrant workers are protected. x x x In other words, lacking any one of the four requisites would invalidate the application of the foreign law, and the Philippine law shall govern the overseas employment contract.

3. **ID.; TERMINATION OF EMPLOYMENT; ONLY FOR A JUST CAUSE OR WHEN AUTHORIZED BY LAW THAT MUST BE PROVEN BY THE EMPLOYER WITH SUBSTANTIAL EVIDENCE.—** Article 279 of our Labor Code has construed security of tenure to mean that the employer shall not terminate the services of an employee except for a just cause or when authorized by law x x x in the manner required by law. The purpose of these two-pronged qualifications is to protect the working class from the employer's arbitrary and unreasonable exercise of its right to dismiss. Some of the authorized causes to terminate employment under the

Labor Code would be installation of labor-saving devices, redundancy, retrenchment to prevent losses and the closing or cessation of operation of the establishment or undertaking. Each authorized cause has specific requisites that must be proven by the employer with substantial evidence before a dismissal may be considered valid x x x [T]he onus of proving that the employee was dismissed and that the dismissal was not illegal rests on the employer, and failure to discharge the same would mean that the dismissal is not justified and, therefore, illegal.

APPEARANCES OF COUNSEL

The Law Firm of Gappi Gappi & Partners for petitioners.
Elizabeth Del Fonso-Hidalgo for respondent Alberto Arriola.

D E C I S I O N

MENDOZA, *J.*:

When can a foreign law govern an overseas employment contract? This is the fervent question that the Court shall resolve, once and for all.

This petition for review on *certiorari* seeks to reverse and set aside the January 24, 2013 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. SP No. 118869, which modified the November 30, 2010 Decision[2] of the National Labor Relations Commission *(NLRC)* and its February 2, 2011 Resolution,[3] in NLRC LAC Case No. 08-000572-10/ NLRC Case No. NCR 09-13563-09, a case for illegal termination of an Overseas Filipino Worker *(OFW)*.

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[1] Penned by Associate Justice Edwin D. Sorongon with Associate Justice Hakim S. Abdulwahid and Associate Justice Marlene Gonzales-Sison, concurring; *rollo,* pp. 48-58.

[2] Penned by Presiding Commissioner Benedicto R. Palacol with Commissioner Isabel G. Panganiban-Ortiguerra and Commissioner Nieves Vivar-De Castro, concurring; *id.* at 66-72.

[3] *Id.* at 73-75.

The Facts

Petitioner Industrial Personnel & Management Services, Inc. *(IPAMS)* is a local placement agency duly organized and existing under Philippine laws, with petitioner Angelito C. Hernandez as its president and managing director. Petitioner SNC Lavalin Engineers & Contractors, Inc. *(SNC- Lavalin)* is the principal of IPAMS, a Canadian company with business interests in several countries. On the other hand, respondent Alberto Arriola *(Arriola)* is a licensed general surgeon in the Philippines.[4]

Employee's Position

Arriola was offered by SNC-Lavalin, through its letter,[5] dated May 1, 2008, the position of Safety Officer in its Ambatovy Project site in Madagascar. The position offered had a rate of CA$32.00 per hour for forty (40) hours a week with overtime pay in excess of forty (40) hours. It was for a period of nineteen (19) months starting from June 9, 2008 to December 31, 2009.

Arriola was then hired by SNC-Lavalin, through its local manning agency, IPAMS, and his overseas employment contract was processed with the Philippine Overseas Employment Agency *(POEA)*.[6] In a letter of understanding,[7] dated June 5, 2008, SNC-Lavalin confirmed Arriola's assignment in the Ambatovy Project. According to Arriola, he signed the contract of employment in the Philippines.[8] On June 9, 2008, Arriola started working in Madagascar.

After three months, Arriola received a notice of pre-termination of employment,[9] dated September 9, 2009, from SNC-Lavalin. It stated that his employment would be pre-terminated

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[4] *Id*. at 49 and 67.

[5] CA *rollo,* pp. 106-107.

[6] *Id*. at 70, citing NLRC Records, p. 5.

[7] *Id*. at 127-128.

[8] *Rollo,* pp. 59-60; see CA *rollo,* p. 126.

[9] CA *rollo,* p. 151

effective September 11, 2009 due to diminishing workload in the area of his expertise and the unavailability of alternative assignments. Consequently, on September 15, 2009, Arriola was repatriated. SNC-Lavalin deposited in Arriola's bank account his pay amounting to Two Thousand Six Hundred Thirty Six Dollars and Eight Centavos (CA$2,636.80), based on Canadian labor law.

Aggrieved, Arriola filed a complaint against the petitioners for illegal dismissal and non-payment of overtime pay, vacation leave and sick leave pay before the Labor Arbiter *(LA)*. He claimed that SNC-Lavalin still owed him unpaid salaries equivalent to the three-month unexpired portion of his contract, amounting to, more or less, One Million Sixty-Two Thousand Nine Hundred Thirty-Six Pesos (₱1,062,936.00). He asserted that SNC-Lavalin never offered any valid reason for his early termination and that he was not given sufficient notice regarding the same. Arriola also insisted that the petitioners must prove the applicability of Canadian law before the same could be applied to his employment contract.

Employer's Position

The petitioners denied the charge of illegal dismissal against them. They claimed that SNC-Lavalin was greatly affected by the global financial crises during the latter part of 2008. The economy of Madagascar, where SNC-Lavalin had business sites, also slowed down. As proof of its looming financial standing, SNC-Lavalin presented a copy of a news item in the Financial Post,[10] dated March 5, 2009, showing the decline of the value of its stocks. Thus, it had no choice but to minimize its expenditures and operational expenses. It re-organized its Health and Safety Department at the Ambatovy Project site and Arriola was one of those affected.[11]

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[10] CA *rollo,* pp. 130-131.

[11] *Rollo,* pp. 50 and 68-69.

The petitioners also invoked *EDI-Staffbuilders International, Inc. v. NLRC*[12] *(EDI-Staffbuilders),* pointing out that particular labor laws of a foreign country incorporated in a contract freely entered into between an OFW and a foreign employer through the latter's agent was valid. In the present case, as all of Arriola's employment documents were processed in Canada, not to mention that SNC-Lavalin's office was in Ontario, the principle of *lex loci celebrationis* was applicable. Thus, the petitioners insisted that Canadian laws governed the contract.

The petitioners continued that the pre-termination of Arriola's contract was valid for being consistent with the provisions of both the Expatriate Policy and laws of Canada. The said foreign law did not require any ground for early termination of employment, and the only requirement was the written notice of termination. Even assuming that Philippine laws should apply, Arriola would still be validly dismissed because domestic law recognized retrenchment and redundancy as legal grounds for termination.

In their Rejoinder,[13] the petitioners presented a copy of the Employment Standards Act *(ESA)* of Ontario, which was duly authenticated by the Canadian authorities and certified by the Philippine Embassy.

The LA Ruling

In a Decision,[14] dated May 31, 2010, the LA dismissed Arriola's complaint for lack of merit. The LA ruled that the rights and obligations among and between the OFW, the local recruiter/agent, and the foreign employer/principal were governed by the employment contract pursuant to the *EDI-Staffbuilders* case. Thus, the provisions on termination of employment found in the ESA, a foreign law which governed Arriola's employment contract, were applied. Given that SNC-Lavalin was able to

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[12] 563 Phil. 1 (2007).

[13] CA *rollo,* p. 201.

[14] Penned by Labor Arbiter Jose G. De Vera; *id.* at 59-65.

produce the duly authenticated ESA, the LA opined that there was no other conclusion but to uphold the validity of Arriola's dismissal based on Canadian law. The *fallo* of the LA decision reads:

WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered dismissing the complaint for lack of merit.

SO ORDERED.[15]

Aggrieved, Arriola elevated the LA decision before the NLRC.

The NLRC Ruling

In its decision, dated November 30, 2010, the NLRC reversed the LA decision and ruled that Arriola was illegally dismissed by the petitioners. Citing *PNB v. Cabansag*,[16] the NLRC stated that whether employed locally or overseas, all Filipino workers enjoyed the protective mantle of Philippine labor and social legislation, contract stipulations to the contrary notwithstanding. Thus, the Labor Code of the Philippines and Republic Act *(R.A.)* No. 8042, or the Migrant Workers Act, as amended, should be applied. Moreover, the NLRC added that the overseas employment contract of Arriola was processed in the POEA.

Applying the Philippine laws, the NLRC found that there was no substantial evidence presented by the petitioners to show any just or authorized cause to terminate Arriola. The ground of financial losses by SNC-Lavalin was not supported by sufficient and credible evidence. The NLRC concluded that, for being illegally dismissed, Arriola should be awarded CA$81,920.00 representing sixteen (16) months of Arriola's purported unpaid salary, pursuant to the *Serrano v. Gallant*[17] doctrine. The decretal portion of the NLRC decision states:

WHEREFORE, premises considered, judgment is hereby rendered finding complainant-appellant to have been illegally dismissed.

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[15] *Id*. at 65.

[16] 499 Phil. 512 (2005).

[17] 601 Phil. 245 (2009).

Respondents-appellees are hereby ordered to pay complainant-appellant the amount of CA$81,920.00, or its Philippine Peso equivalent prevailing at the time of payment. Accordingly, the decision of the Labor Arbiter dated May 31, 2010 is hereby VACATED and SET ASIDE.

SO ORDERED.[18]

The petitioners moved for reconsideration, but their motion was denied by the NLRC in its resolution, dated February 2, 2011.

Undaunted, the petitioners filed a petition for *certiorari* before the CA arguing that it should be the ESA, or the Ontario labor law, that should be applied in Arriola's employment contract. No temporary restraining order, however, was issued by the CA.

The Execution Proceedings

In the meantime, execution proceedings were commenced before the LA by Arriola. The LA granted the motion for execution in the Order,[19] dated August 8, 2011.

The petitioners appealed the execution order to the NLRC. In its Decision,[20] dated May 31, 2012, the NLRC corrected the decretal portion of its November 30, 2010 decision. It decreased the award of backpay in the amount of CA$26,880.00 or equivalent only to three (3) months and three (3) weeks pay based on 70-hours per week workload. The NLRC found that when Arriola was dismissed on September 9, 2009, he only had three (3) months and three (3) weeks or until December 31, 2009 remaining under his employment contract.

Still not satisfied with the decreased award, IPAMS filed a separate petition for *certiorari* before the CA. In its decision, dated July 25, 2013, the CA affirmed the decrease in Arriola's backpay because the unpaid period in his contract was just three (3) months and three (3) weeks.

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[18] *Rollo,* p. 72.

[19] See CA *rollo,* p. 794.

[20] *Id.* at 794-802.

Unperturbed, IPAMS appealed before the Court and the case was docketed as G.R. No. 212031. The appeal, however, was dismissed outright by the Court in its resolution, dated August 8, 2014, because it was belatedly filed and it did not comply with Sections 4 and 5 of Rule 7 of the Rules of Court. Hence, it was settled in the execution proceedings that the award of backpay to Arriola should only amount to three (3) months and three (3) weeks of his pay.

The CA Ruling

Returning to the principal case of illegal dismissal, in its assailed January 24, 2013 decision, the CA affirmed that Arriola was illegally dismissed by the petitioners. The CA explained that even though an authenticated copy of the ESA was submitted, it did not mean that the said foreign law automatically applied in this case. Although parties were free to establish stipulations in their contracts, the same must remain consistent with law, morals, good custom, public order or public policy. The appellate court wrote that the ESA allowed an employer to disregard the required notice of termination by simply giving the employee a severance pay. The ESA could not be made to apply in this case for being contrary to our Constitution, specifically on the right of due process. Thus, the CA opined that our labor laws should find application.

As the petitioners neither complied with the twin notice-rule nor offered any just or authorized cause for his termination under the Labor Code, the CA held that Arriola's dismissal was illegal. Accordingly, it pronounced that Arriola was entitled to his salary for the unexpired portion of his contract which is three (3) months and three (3) weeks salary. It, however, decreased the award of backpay to Arriola because the NLRC made a wrong calculation. Based on his employment contract, the backpay of Arriola should only be computed on a 40-hour per week workload, or in the amount of CA$19,200.00. The CA disposed the case in this wise:

WHEREFORE, in view of the foregoing premises, the petition is PARTIALLY GRANTED. The assailed Order of the National Labor Relations Commission in NLRC LAC No. 08- 000572-10/NLRC Case No. NCR 09-13563-09 is MODIFIED in that private respondent is only entitled to a monetary judgment equivalent to his unpaid salaries in the amount of CA$ 19,200.00 or its Philippine Peso equivalent.

SO ORDERED.[21]

Hence, this petition, anchored on the following

ISSUES

I

WHETHER OR NOT RESPONDENT ARRIOLA WAS VALIDLY DISMISSED PURSUANT TO THE EMPLOYMENT CONTRACT.

II

GRANTING THAT THERE WAS ILLEGAL DISMISSAL IN THE CASE AT BAR, WHETHER OR NOT THE SIX-WEEK ON, TWO-WEEK OFF SCHEDULE SHOULD BE USED IN THE COMPUTATION OF ANY MONETARY AWARD.

III

GRANTING THAT THERE WAS ILLEGAL DISMISSAL, WHETHER OR NOT THE AMOUNT BEING CLAIMED BY RESPONDENTS HAD ALREADY BEEN SATISFIED, OR AT THE VERY LEAST, WHETHER OR NOT THE AMOUNT OF CA$2,636.80 SHOULD BE DEDUCTED FROM THE MONETARY AWARD.[22]

The petitioners argue that the rights and obligations of the OFW, the local recruiter, and the foreign employer are governed by the employment contract, citing *EDI-Staffbuilders*; that the terms and conditions of Arriola's employment are embodied in the Expatriate Policy, Ambatovy Project – Site, Long Term, hence, the laws of Canada must be applied; that the ESA, or the Ontario labor law, does not require any ground for the early termination of employment and it permits the termination without

[21] *Rollo,* pp. 57-58.

[22] *Id.* at 267-268.

any notice provided that a severance pay is given; that the ESA was duly authenticated by the Canadian authorities and certified by the Philippine Embassy; that the NLRC Sixth Division exhibited bias and bad faith when it made a wrong computation on the award of backpay; and that, assuming there was illegal dismissal, the CA$2,636.80, earlier paid to Arriola, and his home leaves should be deducted from the award of backpay.

In his Comment,[23] Arriola countered that foreign laws could not apply to employment contracts if they were contrary to law, morals, good customs, public order or public policy, invoking *Pakistan International Airlines Corporation v. Ople (Pakistan International);*[24] that the ESA was not applicable because it was contrary to his constitutional right to due process; that the petitioners failed to substantiate an authorized cause to justify his dismissal under Philippine labor law; and that the petitioners could not anymore claim a deduction of CA$2,636.80 from the award of backpay because it was raised for the first time on appeal.

In their Reply,[25] the petitioners asserted that R.A. No. 8042 recognized the applicability of foreign laws on labor contracts; that the *Pakistan International* case was superseded by *EDI-Staffbuilders* and other subsequent cases; and that SNC-Lavalin suffering financial losses was an authorized cause to terminate Arriola's employment.

In his Memorandum,[26] Arriola asserted that his employment contract was executed in the Philippines and that the alleged authorized cause of financial losses by the petitioners was not substantiated by evidence.

In their Consolidated Memorandum,[27] the petitioners reiterated that the ESA was applicable in the present case and that recent

[23] *Id.* at 145-167.

[24] 268 Phil. 92 (1990).

[25] *Rollo,* pp. 170-196.

[26] *Id.* at 232-251.

[27] *Id.* at 256-308.

jurisprudence recognized that the parties could agree on the applicability of foreign laws in their labor contracts.

The Court's Ruling

The petition lacks merit.

Application of foreign laws with labor contracts

At present, Filipino laborers, whether skilled or professional, are enticed to depart from the motherland in search of greener pastures. There is a distressing reality that the offers of employment abroad are more lucrative than those found in our own soils. To reap the promises of the foreign dream, our unsung heroes must endure homesickness, solitude, discrimination, mental and emotional struggle, at times, physical turmoil, and, worse, death. On the other side of the table is the growing number of foreign employers attracted in hiring Filipino workers because of their reasonable compensations and globally-competitive skills and qualifications. Between the dominant foreign employers and the vulnerable and desperate OFWs, however, there is an inescapable truth that the latter are in need of greater safeguard and protection.

In order to afford the full protection of labor to our OFWs, the State has vigorously enacted laws, adopted regulations and policies, and established agencies to ensure that their needs are satisfied and that they continue to work in a humane living environment outside of the country. Despite these efforts, there are still issues left unsolved in the realm of overseas employment. One existing question is posed before the Court - when should an overseas labor contract be governed by a foreign law? To answer this burning query, a review of the relevant laws and jurisprudence is warranted.

R.A. No. 8042, or the Migrant Workers Act, was enacted to institute the policies on overseas employment and to establish a higher standard of protection and promotion of the welfare of migrant workers.[28] It emphasized that while recognizing the

[28] Azucena, *The Labor Code with Comments and Cases,* Volume I, 7th ed., 2010, p. 57.

significant contribution of Filipino migrant workers to the national economy through their foreign exchange remittances, the State does not promote overseas employment as a means to sustain economic growth and achieve national development.[29] Although it acknowledged claims arising out of law or contract involving Filipino workers,[30] it does not categorically provide that foreign laws are absolutely and automatically applicable in overseas employment contracts.

The issue of applying foreign laws to labor contracts was initially raised before the Court in *Pakistan International.* It was stated in the labor contract therein (1) that it would be governed by the laws of Pakistan, (2) that the employer have the right to terminate the employee at any time, and (3) that the one-month advance notice in terminating the employment could be dispensed with by paying the employee an equivalent one-month salary. Therein, the Court elaborated on the parties' right to stipulate in labor contracts, to wit:

> A contract freely entered into should, of course, be respected, as PIA argues, since a contract is the law between the parties. The principle of party autonomy in contracts is not, however, an absolute principle. The rule in Article 1306, of our Civil Code is that the contracting parties may establish such stipulations as they may deem convenient, "**provided they are not contrary to law, morals, good customs, public order or public policy."** Thus, counter-balancing the principle of autonomy of contracting parties is the equally general rule that provisions of applicable law, especially provisions relating to matters affected with public policy, are deemed written into the contract. Put a little differently, the governing principle is that parties may not contract away applicable provisions of law especially peremptory provisions dealing with matters heavily impressed with public interest. **The law relating to labor and employment is clearly such an area and parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other.** x x x[31]

[Emphases Supplied]

[29] Section 2(c), R.A. No. 8042, as amended.

[30] Section 10, R.A. No. 8042, as amended.

[31] *Supra* note 24, pp. 100-101.

In that case, the Court held that the labor relationship between OFW and the foreign employer is "much affected with public interest and that the otherwise applicable Philippine laws and regulations cannot be rendered illusory by the parties agreeing upon some other law to govern their relationship."[32] Thus, the Court applied the Philippine laws, instead of the Pakistan laws. It was also held that the provision in the employment contract, where the employer could terminate the employee at any time for any ground and it could even disregard the notice of termination, violates the employee's right to security of tenure under Articles 280 and 281 of the Labor Code.

In *EDI-Staffbuilders,* the case heavily relied on by the petitioners, it was reiterated that, "[i]n formulating the contract, the parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."[33] In that case, the overseas contract specifically stated that Saudi Labor Laws would govern matters not provided for in the contract. The employer, however, failed to prove the said foreign law, hence, the doctrine of processual presumption came into play and the Philippine labor laws were applied. Consequently, the Court did not discuss any longer whether the Saudi labor laws were contrary to Philippine labor laws.

The case of *Becmen Service Exporter and Promotion, Inc. v. Spouses Cuaresma,*[34] though not an illegal termination case, elucidated on the effect of foreign laws on employment. It involved a complaint for insurance benefits and damages arising from the death of a Filipina nurse from Saudi Arabia. It was initially found therein that there was no law in Saudi Arabia that provided for insurance arising from labor accidents. Nevertheless, the Court concluded that the employer and the recruiter in that case abandoned their legal, moral and social obligation to assist the victim's family in obtaining justice for her death, and so

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[32] *Id.* at 104.

[33] *Supra* note 12, p. 22.

[34] 602 Phil. 1058 (2009).

her family was awarded ₱5,000,000.00 for moral and exemplary damages.

In *ATCI Overseas Corporation v. Echin*[35] *(ATCI Overseas),* the private recruitment agency invoked the defense that the foreign employer was immune from suit and that it did not sign any document agreeing to be held jointly and solidarily liable. Such defense, however, was rejected because R.A. No. 8042 precisely afforded the OFWs with a recourse against the local agency and the foreign employer to assure them of an immediate and sufficient payment of what was due. Similar to *EDI-Staffbuilders*, the local agency therein failed to prove the Kuwaiti law specified in the labor contract, pursuant to Sections 24 and 25 of Rule 132 of the Revised Rules of Court.

Also, in the recent case of *Sameer Overseas Placement Agency, Inc. v. Cabiles*[36]*(Sameer Overseas),* it was declared that the security of tenure for labor was guaranteed by our Constitution and employees were not stripped of the same when they moved to work in other jurisdictions. Citing *PCL Shipping Phils., Inc. v. NLRC*[37] *(PCL Shipping),* the Court held that the principle of *lex loci contractus* (the law of the place where the contract is made) governed in this jurisdiction. As it was established therein that the overseas labor contract was executed in the Philippines, the Labor Code and the fundamental procedural rights were observed. It must be noted that no foreign law was specified in the employment contracts in both cases.

Lastly, in *Saudi Arabian Airlines (Saudia) v. Rebesencio,*[38] the employer therein asserted the doctrine of *forum non conveniens* because the overseas employment contracts required the application of the laws of Saudi Arabia, and so, the Philippine courts were not in a position to hear the case. In striking down such argument, the Court held that while a Philippine tribunal

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[35] 647 Phil. 43-52 (2010).

[36] G.R. No. 170139, August 5, 2014, 732 SCRA 22.

[37] 540 Phil. 65-85 (2006).

[38] G.R. No. 198587, January 14, 2015.

was called upon to respect the parties' choice of governing law, such respect must not be so permissive as to lose sight of considerations of law, morals, good customs, public order, or public policy that underlie the contract central to the controversy. As the dispute in that case related to the illegal termination of the employees due to their pregnancy, then it involved a matter of public interest and public policy. Thus, it was ruled that Philippine laws properly found application and that Philippine tribunals could assume jurisdiction.

Based on the foregoing, the general rule is that Philippine laws apply even to overseas employment contracts. This rule is rooted in the constitutional provision of Section 3, Article XIII that the State shall afford full protection to labor, whether local or overseas. Hence, even if the OFW has his employment abroad, it does not strip him of his rights to security of tenure, humane conditions of work and a living wage under our Constitution.[39]

As an exception, the parties may agree that a foreign law shall govern the employment contract. A synthesis of the existing laws and jurisprudence reveals that this exception is subject to the following requisites:

1. That it is expressly stipulated in the overseas employment contract that a specific foreign law shall govern;
2. That the foreign law invoked must be proven before the courts pursuant to the Philippine rules on evidence;
3. That the foreign law stipulated in the overseas employment contract must not be contrary to law, morals, good customs, public order, or public policy of the Philippines; and
4. That the overseas employment contract must be processed through the POEA.

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[39] 2nd Paragraph, Section 3, Article XIII, 1987 Constitution.

The Court is of the view that these four (4) requisites must be complied with before the employer could invoke the applicability of a foreign law to an overseas employment contract. With these requisites, the State would be able to abide by its constitutional obligation to ensure that the rights and well-being of our OFWs are fully protected. These conditions would also invigorate the policy under R.A. No. 8042 that the State shall, at all times, uphold the dignity of its citizens whether in country or overseas, in general, and the Filipino migrant workers, in particular.[40] Further, these strict terms are pursuant to the jurisprudential doctrine that "parties may not contract away applicable provisions of law especially peremptory provisions dealing with matters heavily impressed with public interest,"[41] such as laws relating to labor. At the same time, foreign employers are not at all helpless to apply their own laws to overseas employment contracts provided that they faithfully comply with these requisites.

If the first requisite is absent, or that no foreign law was expressly stipulated in the employment contract which was executed in the Philippines, then the domestic labor laws shall apply in accordance with the principle of *lex loci contractus*. This is based on the cases of *Sameer Overseas* and *PCL Shipping*.

If the second requisite is lacking, or that the foreign law was not proven pursuant to Sections 24 and 25 of Rule 132 of the Revised Rules of Court, then the international law doctrine of processual presumption operates. The said doctrine declares that "[w]here a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours."[42] This was observed in the cases of *EDI- Staffbuilders* and *ATCI Overseas.*

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[40] Section 2(a), R.A. No. 8042.

[41] *Halagueña v. PAL, Inc.,* 617 Phil. 502, 520 (2009); *Servidad v. NLRC*, 364 Phil. 518, 527 (1999); *Manila Resource Development Corp. v. NLRC,* G.R. No. 75242, September 2, 1992, 213 SCRA 296.

[42] *Philippine Export and Foreign Loan Guarantee Corp. v. V.P. Eusebio Construction, Inc.*, 478 Phil. 269, 289 (2004).

If the third requisite is not met, or that the foreign law stipulated is contrary to law, morals, good customs, public order or public policy, then Philippine laws govern. This finds legal bases in the Civil Code, specifically: (1) Article 17, which provides that laws which have, for their object, public order, public policy and good customs shall not be rendered ineffective by laws of a foreign country; and (2) Article 1306, which states that the stipulations, clauses, terms and conditions in a contract must not be contrary to law, morals, good customs, public order, or public policy. The said doctrine was applied in the case of *Pakistan International.*

Finally, if the fourth requisite is missing, or that the overseas employment contract was not processed through the POEA, then Article 18 of the Labor Code is violated. Article 18 provides that no employer may hire a Filipino worker for overseas employment except through the boards and entities authorized by the Secretary of Labor. In relation thereto, Section 4 of R.A. No. 8042, as amended, declares that the State shall only allow the deployment of overseas Filipino workers in countries where the rights of Filipino migrant workers are protected. Thus, the POEA, through the assistance of the Department of Foreign Affairs, reviews and checks whether the countries have existing labor and social laws protecting the rights of workers, including migrant workers.[43] Unless processed through the POEA, the State has no effective means of assessing the suitability of the foreign laws to our migrant workers. Thus, an overseas employment contract that was not scrutinized by the POEA definitely cannot be invoked as it is an unexamined foreign law.

In other words, lacking any one of the four requisites would invalidate the application of the foreign law, and the Philippine law shall govern the overseas employment contract.

As the requisites of the applicability of foreign laws in overseas labor contract have been settled, the Court can now discuss the merits of the case at bench.

A judicious scrutiny of the records of the case demonstrates that the petitioners were able to observe the second requisite,

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[43] See Section 4, R.A. 8042, as amended.

or that the foreign law must be proven before the court pursuant to the Philippine rules on evidence. The petitioners were able to present the ESA, duly authenticated by the Canadian authorities and certified by the Philippine Embassy, before the LA. The fourth requisite was also followed because Arriola's employment contract was processed through the POEA.[44]

Unfortunately for the petitioners, those were the only requisites that they complied with. As correctly held by the CA, even though an authenticated copy of the ESA was submitted, it did not mean that said foreign law could be automatically applied to this case. The petitioners miserably failed to adhere to the two other requisites, which shall be discussed *in seratim*.

The foreign law was not expressly specified in the employment contract

The petitioners failed to comply with the first requisite because no foreign law was expressly stipulated in the overseas employment contract with Arriola. In its pleadings, the petitioners did not directly cite any specific provision or stipulation in the said labor contract which indicated the applicability of the Canadian labor laws or the ESA. They failed to show on the face of the contract that a foreign law was agreed upon by the parties. Rather, they simply asserted that the terms and conditions of Arriola's employment were embodied in the Expatriate Policy, Ambatovy Project – Site, Long Term.[45] Then, they emphasized provision 8.20 therein, regarding interpretation of the contract, which provides that said policy would be governed and construed with the laws of the country where the applicable SNC-Lavalin, Inc. office was located.[46] Because of this provision, the petitioners insisted that the laws of Canada, not of Madagascar or the Philippines, should apply. Then, they finally referred to the ESA.

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[44] *Rollo,* p. 42.

[45] *Id.* at 19.

[46] CA *rollo,* p. 125.

It is apparent that the petitioners were simply attempting to stretch the overseas employment contract of Arriola, by implication, in order that the alleged foreign law would apply. To sustain such argument would allow any foreign employer to improperly invoke a foreign law even if it is not anymore reasonably contemplated by the parties to control the overseas employment. The OFW, who is susceptible by his desire and desperation to work abroad, would blindly sign the labor contract even though it is not clearly established on its face which state law shall apply. Thus, a better rule would be to obligate the foreign employer to expressly declare at the onset of the labor contract that a foreign law shall govern it. In that manner, the OFW would be informed of the applicable law before signing the contract.

Further, it was shown that the overseas labor contract was executed by Arriola at his residence in Batangas and it was processed at the POEA on May 26, 2008.[47] Considering that no foreign law was specified in the contract and the same was executed in the Philippines, the doctrine of *lex loci celebrationis* applies and the Philippine laws shall govern the overseas employment of Arriola.

The foreign law invoked is contrary to the Constitution and the Labor Code

Granting *arguendo* that the labor contract expressly stipulated the applicability of Canadian law, still, Arriola's employment cannot be governed by such foreign law because the third requisite is not satisfied. A perusal of the ESA will show that some of its provisions are contrary to the Constitution and the labor laws of the Philippines.

First, the ESA does not require any ground for the early termination of employment.[48] Article 54 thereof only provides that no employer should terminate the employment of an employee

[47] *Rollo,* p. 42.

[48] *Id.* at 20.

unless a written notice had been given in advance.[49] Necessarily, the employer can dismiss any employee for any ground it so desired. At its own pleasure, the foreign employer is endowed with the absolute power to end the employment of an employee even on the most whimsical grounds.

Second, the ESA allows the employer to dispense with the prior notice of termination to an employee. Article 65(4) thereof indicated that the employer could terminate the employment without notice by simply paying the employee a severance pay computed on the basis of the period within which the notice should have been given.[50] The employee under the ESA could be immediately dismissed without giving him the opportunity to explain and defend himself.

The provisions of the ESA are patently inconsistent with the right to security of tenure. Both the Constitution[51] and the Labor Code[52] provide that this right is available to any employee. In a host of cases, the Court has upheld the employee's right to security of tenure in the face of oppressive management behavior and management prerogative. Security of tenure is a right which cannot be denied on mere speculation of any unclear and nebulous basis.[53]

Not only do these provisions collide with the right to security of tenure, but they also deprive the employee of his constitutional right to due process by denying him of any notice of termination and the opportunity to be heard.[54] Glaringly, these disadvantageous provisions under the ESA produce the same evils which the Court vigorously sought to prevent in the cases of *Pakistan International* and *Sameer Overseas.* Thus, the Court concurs

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[49] CA *rollo,* p. 276.

[50] *Id.* at 284.

[51] 2nd Paragraph, Section 3, Article XIII, 1987 Constitution.

[52] Article 279.

[53] Azucena, *The Labor Code with Comments and Cases,* Volume II, 7th ed., 2010, p. 692.

[54] Section 1, Article III, 1987 Constitution.

with the CA that the ESA is not applicable in this case as it is against our fundamental and statutory laws.

In fine, as the petitioners failed to meet all the four (4) requisites on the applicability of a foreign law, then the Philippine labor laws must govern the overseas employment contract of Arriola.

No authorized cause for dismissal was proven

Article 279 of our Labor Code has construed security of tenure to mean that the employer shall not terminate the services of an employee except for a just cause or when authorized by law.[55] Concomitant to the employer's right to freely select and engage an employee is the employer's right to discharge the employee for just and/or authorized causes. To validly effect terminations of employment, the discharge must be for a valid cause in the manner required by law. The purpose of these two-pronged qualifications is to protect the working class from the employer's arbitrary and unreasonable exercise of its right to dismiss.[56]

Some of the authorized causes to terminate employment under the Labor Code would be installation of labor-saving devices, redundancy, retrenchment to prevent losses and the closing or cessation of operation of the establishment or undertaking.[57] Each authorized cause has specific requisites that must be proven by the employer with substantial evidence before a dismissal may be considered valid.

Here, the petitioners assert that the economy of Madagascar weakened due to the global financial crisis. Consequently, SNC-Lavalin's business also slowed down. To prove its sagging financial standing, SNC-Lavalin presented a copy of a news item in the Financial Post, dated March 5, 2009. They insist

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[55] *Supra* note 50, p. 692, citing *Rance v. NLRC,* 246 Phil. 287 (1988).

[56] *Deoferio v. Intel Technology Phil., Inc.* G.R. No. 202996, June 18, 2014, 726 SCRA 679, 686.

[57] Article 283, Labor Code.

that SNC-Lavalin had no choice but to minimize its expenditures and operational expenses.[58] In addition, the petitioners argued that the government of Madagascar prioritized the employment of its citizens, and not foreigners. Thus, Arriola was terminated because there was no more job available for him.[59]

The Court finds that Arriola was not validly dismissed. The petitioners simply argued that they were suffering from financial losses and Arriola had to be dismissed. It was not even clear what specific authorized cause, whether retrenchment or redundancy, was used to justify Arriola's dismissal. Worse, the petitioners did not even present a single credible evidence to support their claim of financial loss. They simply offered an unreliable news article which deserves scant consideration as it is undoubtedly hearsay. Time and again the Court has ruled that in illegal dismissal cases like the present one, the onus of proving that the employee was dismissed and that the dismissal was not illegal rests on the employer, and failure to discharge the same would mean that the dismissal is not justified and, therefore, illegal.[60]

As to the amount of backpay awarded, the Court finds that the computation of the CA was valid and proper based on the employment contract of Arriola. Also, the issue of whether the petitioners had made partial payments on the backpay is a matter best addressed during the execution process.

WHEREFORE, the petition is **DENIED**. The January 24, 2013 Decision of the Court of Appeals in CA-G.R. SP. No. 118869 is **AFFIRMED *in toto.***

SO ORDERED.

Carpio (Chairperson), del Castillo, and *Leonen, JJ.,* concur.

Brion, J., on leave.

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[58] *Rollo,* p. 50.

[59] *Id.* at 191.

[60] *Radar Security & Watchman Agency, Inc. v. Castro,* G.R. No. 211210, December 2, 2015.

EN BANC

[A.C. No. 8840. March 8, 2016]
(Formerly CBD Case No. 11-3121)

SPOUSES EDUARDO G. GACUYA and CARIDAD ROSARIO GACUYA, *complainants, vs.* **ATTY. REYMAN A. SOLBITA,** *respondent.*

SYLLABUS

LEGAL ETHICS; NOTARIES PUBLIC; ONLY THOSE WHO ARE QUALIFIED OR AUTHORIZED MAY ACT AS NOTARIES PUBLIC; PENALTY FOR UNATHORIZED NOTARIZATON DUE TO EXPIRED NOTARIAL COMMISSION.— Time and again, we have held that notarization of a document is not an empty act or routine. "It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. x x x In the instant case, Atty. Solbita's guilt of violating the notarial law is undisputed as he readily admitted that he had actually made the unauthorized notarization despite an expired notarial commission. x x x "The act of notarizing without the necessary commission is not merely a simple enterprise to be trivialized. So much so that one who stamps a notarial seal and signs a document as a notary public without being so authorized may be haled to court not only for malpractice but also for falsification." x x x **WHEREFORE,** x x x The notarial commission of [respondent], if still existing, is hereby **REVOKED,** and he is **PERMANENTLY BARRED** from being commissioned as notary public, effective upon receipt of the copy of this decision. He is also **SUSPENDED** from the practice of law for a period of two (2) years effective immediately, with a **WARNING** that a repetition of a similar violation will be dealt with even more severely. He is **DIRECTED** to report the date of his receipt of this Decision to enable this Court to determine when his suspension shall take effect.

DECISION

***PER CURIAM*:**

Before us is a Complaint for Disbarment filed by the Spouses Eduardo and Caridad Gacuya (*Spouses Gacuya*) against respondent Atty. Reyman A. Solbita (*Atty. Solbita*), docketed as A.C. No. 8840 for notarizing documents without a valid notarial commission.

The facts are as follows:

On February 21, 2006, the Spouses Gacuya went to the residence of Atty. Solbita at Bulanao, Tabuk City, Kalinga to request legal assistance for the purpose of drafting and notarizing a deed of sale of a parcel of land covered by Transfer Certificate of Title No. T-5925.

The deed of sale involving the subject parcel of land was then executed and signed by the Spouses Gacuya, as sellers, and the Spouses Fernando S. Gonzales, Jr. and Marivic P. Gonzales (*Spouses Gonzales*), as buyers. Standing as witnesses to the deed were Angelo Sanchez and Melanie Balbino who likewise affixed their signatures thereon. The total consideration is One Million Two Hundred Thousand Pesos (₱1,200,000.00), but what was reflected in the Deed of Sale was only the amount of One Hundred Thousand Pesos (₱100,000.00) to save on the capital gains tax.

Atty. Solbita then suggested that he will antedate the notarization of the deed of sale to December 31, 2005 since his Notarial Commission already expired and he was still in the process of renewing the same for the year 2006. However, Marivic Gonzales insisted that the instrument be notarized on the date it was executed to avoid penalties or surcharges by the Bureau of Internal Revenue (*BIR*) for late payment of capital gains tax. The contracting parties agreed and consented. Consequently, Atty. Solbita notarized the Deed of Sale on February 21, 2006, the date it was executed by the contracting parties and entered it as Doc. No. 440, Page No. 88, Page No. X (sic); Series of 2006 despite an expired notarial commission.

On February 22, 2006, the Spouses Gonzales completed the transfer of title of the subject lot in their favor with the issuance of Transfer Certificate of Title No. T-17611.

The Spouses Gacuya, on the other hand, used the proceeds of the sale of the property to pay their mortgaged debt with the Development Bank of the Philippines (*DBP*) which was already past due and subject to foreclosure, and thus, they were able to redeem the mortgaged property covered by Original Certificate of Title No. P-5215, situated in Poblacion, Tabuk, Kalinga.

Three (3) days from the execution and signing of the Deed of Sale, Eduardo Gacuya (*Gacuya*) went to Atty. Solbita carrying with him a Philippine National Bank (*PNB*) Manager's Check in the amount of One Million Two Hundred Thousand Pesos (₱1,200,000.00) and offered to return the money to the Spouses Gonzales because there was another buyer willing to buy the property at a higher price. However, the Spouses Gonzales did not accept the PNB Manager's Check in the amount of ₱1,200,000.00 and explained that the contract of sale was already consummated and that the property was already transferred to their name.

On April 11, 2006, Gacuya filed an action for declaration of nullity of documents, recovery of ownership and title with tender of payment, consignation and damages, before the Regional Trial Court of Bulanao, Tabuk City, Kalinga, Branch 25, entitled "*Eduardo G. Gacuya v. Spouses Fernando S. Gonzales, Jr. and Marivic Pagaduan Gonzales*", docketed as Civil Case No. 641.

Atty. Solbita alleged that Gacuya asked him to testify in his favor against the Spouses Gonzales, but he declined as he viewed the same to be unfair to the latter and he did not want to lie in court in violation of his lawyer's oath.

On October 28, 2009, the court *a quo*, in its Decision,[1] dismissed the complaint for insufficiency of evidence. The subsequent motion for reconsideration was, likewise, denied.

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[1] *Rollo*, pp. 28-68.

Thus, the instant petition for disbarment filed by the Spouses Gacuya against Atty. Solbita for alleged untruthful statement of facts in the subject deed of sale and for notarizing the same despite an expired notarial commission.[2]

On June 6, 2011, the Court required Atty. Solbita to file his Comment on the petition for disbarment, and referred the instant case to the Integrated Bar of the Philippines for investigation, report and recommendation.[3]

In his Comment[4] dated March 14, 2011, Atty. Solbita denied that he made untruthful statements in the deed of sale and alleged that the same were baseless. He claimed that he had neither interest on the subject property nor any motive so as to induce him to falsify or make untruthful statements to the detriment of the Spouses Gacuya. By way of defense, Atty. Solbita claimed that he informed the parties of his expired notarial commission as, in fact, he suggested to antedate the deed of sale to December 31, 2005. Atty. Solbita surmised that the Spouses Gacuya filed the instant petition for disbarment in order to get back at him due to the unfavorable decision in Civil Case No. 641 which the latter filed against the Spouses Gonzales.

On April 10, 2012, the Integrated Bar of the Philippines-Commission on Bar Discipline (*IBP-CBD*) found Atty. Solbita administratively liable for notarizing a deed of sale despite his expired notarial commission. It recommended that Atty. Solbita be reprimanded for violation of the lawyer's oath with stern warning that any repetition of the same or similar offense shall be dealt with more severely.

In Notice of Resolution No. XXI-2013-42 dated August 31, 2013, the IBP-Board of Governors adopted and approved *with modification* the Report and Recommendation of the IBP-CBD. Instead, Atty. Solbita was reprimanded and his notarial commission was revoked. He was further disqualified for reappointment as

[2] *Id.* at 1-5.

[3] *Id.* at 72.

[4] *Id.* at 16-24.

notary public for a period of one (1) year with stern warning that repetition of the same act shall be dealt with more severely.

We concur with the findings, except as to the penalty imposed by the IBP-CBD and the Board of Governors.

Time and again, we have held that notarization of a document is not an empty act or routine. "It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Notarization converts a private document into a public document, thus, making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument."[5] "For this reason, notaries public must observe with the utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined."[6]

In the instant case, Atty. Solbita's guilt of violating the notarial law is undisputed as he readily admitted that he actually made the unauthorized notarization despite an expired notarial commission. Indeed, Atty. Solbita's defense of voluntary disclosure to the parties of the fact that his notrial commission has expired cannot exonerate him from the present administrative sanctions. "The act of notarizing without the necessary commission is not merely a simple enterprise to trivialized. So much so that one who stamps a notarial seal and signs a document as a notary public without being so authorized may be haled to court not only for malpractice but also for falsification."[7]

It must be emphasized anew that "where the notarization of a document is done by a member of the Philippine Bar at a time when he has no authorization or commission to do so, the offender may be subjected to disciplinary action. For one, performing a notarial act without such commission is a violation of the lawyer's

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[5] *Bernardo v. Atty. Ramos*, 433 Phil. 8, 15-16 (2002).

[6] *Arrieta v. Llosa,* 346 Phil. 932, 937 (1997).

[7] *Manzano v. Atty. Soriano*, 602 Phil. 419, 425 (2009).

oath to obey the laws, more specifically, the Notarial Law. Then, too, by making it appear that he is duly commissioned when he is not, he is, for all legal intents and purposes, indulging in deliberate falsehood, which the lawyer's oath similarly proscribes. These violations fall squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility, which provides: '*A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.*'"[8] By acting as a notary public without the proper commission to do so, the lawyer likewise violates Canon 7 of the same Code, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession.

All told, Atty. Solbita cannot escape from disciplinary action in his capacity as a notary public and as a member of the Philippine Bar. By his unauthorized notarization, he clearly fell miserably short of his obligation under Canon 7 of the Code of Professional Responsibility, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession.

In a number of cases, the Court has subjected lawyers to disciplinary action for notarizing documents outside their territorial jurisdiction or with an expired commission. In the case of *Zoreta v. Atty. Simpliciano*,[9] the respondent was likewise suspended from the practice of law for a period of two (2) years and was permanently barred from being commissioned as a notary public for notarizing several documents after the expiration of his commission. In *Nunga v. Atty. Viray*,[10] a lawyer was suspended by the Court for three (3) years for notarizing an instrument without a commission. In the case of *Judge Laquindanum v. Atty. Quintana,*[11] the Court suspended a lawyer for six (6) months and was disqualified from being commissioned as notary public for a period of two (2) years because he notarized documents outside the area of his commission, and with an expired commission.

It should be emphasized anew that the Court will not tolerate lawyers who would dare violate the notarial law and fail to observe

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[8] *Almazan, Sr. v. Atty. Suerte-Felipe*, A.C. No. 7184, September 17, 2014, 735 SCRA 230, 235-236, citing *Tan Tiong Bio v. Atty. Gonzales*, 557 Phil. 496 (2007), citing *Nunga v. Atty. Viray*, 336 Phil. 155, 161 (1999).

[9] 485 Phil. 395 (2004).

[10] 366 Phil. 155, 162 (1999).

[11] 608 Phil. 727, 739 (2009).

and comply their sworn duties and responsibilities as members of the Bar and as notary public but, will likewise mete a heavier penalty to those found guilty thereof.

Corollary, following the recent ruling in *Maria Fatima Japitana v. Atty. Sylvester C. Parado*[12] wherein the Court held that for failing to perform the duties and responsibilities expected of a notary public and a lawyer, the imposition of a heavier sanction upon the erring lawyer was in order, we, thus, find that the IBP Board of Governors' recommended penalty should be increased to suspension from the practice of law for two (2) years and permanent disqualification from becoming a notary public.

WHEREFORE, this Court **ADOPTS** the findings of the Integrated Bar of the Philippines-Commission on Bar Discipline, but hereby **MODIFIES** the penalty recommended by the Board of Governors. The notarial commission of **Atty. Reyman A. Solbita**, if still existing, is hereby **REVOKED**, and he is **PERMANENTLY BARRED** from being commissioned as notary public, effective upon receipt of the copy of this decision. He is also **SUSPENDED** from the practice of law for a period of two (2) years effective immediately, with a **WARNING** that a repetition of a similar violation will be dealt with even more severely. He is **DIRECTED** to report the date of his receipt of this Decision to enable this Court to determine when his suspension shall take effect.

Let a copy of this decision be entered in the personal records of respondent as a member of the Bar, and copies 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.

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

Brion, J., on leave.

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[12] A.C. No. 10859, January 26 2016.

EN BANC

[A.M. No. P-10-2793. March 8, 2016]
(Formerly A.M. OCA IPI No. 06-2406-P)

SIMPLECIO A. MARSADA, *complainant, vs.* **ROMEO M. MONTEROSO, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 34, CABADBARAN, AGUSAN DEL NORTE,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; SHERIFFS; SIMPLE MISCONDUCT; FAILURE TO FAITHFULLY IMPLEMENT THE WRIT OF EXECUTION; CASE AT BAR.— Under [Section 8, Rule 39] of the *Rules of Court,* [Sheriff] Monteroso could enforce the writ of execution only "according to its terms, in the manner herein after provided." However, he was remiss in his duty to enforce the writ by collecting only ₱25,000.00 from the defendant. [H]e still exceeded his authority in requesting Marsada to sign the typewritten acknowledgment receipt reflecting the ₱25,000.00 as the full and complete satisfaction of the writ of execution. He had neither basis nor reason to have Marsada sign the receipt in that tenor because the text and tenor of the writ of execution expressly required the recovery of ₱35,000.00 from the losing party. x x x It clearly devolved upon [Monteroso] as the sheriff to levy upon the execution debtor's properties, if any, as well as to garnish the debts due to the latter and the credits belonging to the latter. The duty to exhaust all efforts to recover the balance was laid down in Section 9, Rule 39 of the *Rules of Court.* x x x Marsada did not establish that the act complained of was tainted with corruption, willful intent to violate the law, or disregard of established rules. Consequently, Monteroso's liability only amounted to simple misconduct, which is classified under Section 46, D, of the *Revised Uniform Rules on Administrative Cases in the Civil Service* as a less grave offense punishable by suspension of from one month and one day to six months for the first offense, and dismissal from the service for the second offense. Monteroso had previously been sanctioned twice. x x x Although his dismissal from the service

would have already been warranted under the circumstances, he is only being fined in the amount of ₱10,000.00 because he had meanwhile retired from the service as of December 7, 2007. The fine shall be paid out of his accrued leaves. In addition, his entire retirement benefits are hereby forfeited.

D E C I S I O N

BERSAMIN, *J*.:

A sheriff should enforce a writ of execution strictly according to its terms and in the manner provided in the *Rules of Court*. He is administratively liable if he deliberately contravenes the terms thereof, like having the judgment creditor accept an amount less than that stated in the writ of execution as the full and entire satisfaction thereof.

Antecedents

This administrative matter stemmed from the complaint for misconduct and dishonesty dated January 15, 2006[1] lodged by Simplecio A. Marsada, a winning litigant, against respondent Romeo M. Monteroso in his capacity as Sheriff IV of Branch 34 of the Regional Trial Court (RTC) in Cabadbaran, Agusan del Norte in relation to the latter's conduct in the service of the writ of execution issued under the judgment rendered in Civil Case No. 4658 entitled *Simplecio A. Marsada v. Rolando Ramilo*, an action for the collection of a monetary obligation.[2]

On October 23, 2001, Presiding Judge Orlando F. Doyon of Branch 34 of the RTC rendered judgment in Civil Case No. 4658 in favor of Marsada, the dispositive portion of which reads:

WHEREFORE, in the light of all the foregoing judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the defendant to pay plaintiff the amount of ₱151,708.30 representing the unpaid obligation to defendant plus 6% interest per annum

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[1] *Rollo,* pp. 2-4

[2] *Id.* at 18-21.

reckoned from the date of filing of the complaint and 12% per annum if the amount adjudged remains unpaid, attorney's fees of ₱35,000.00, litigation expenses in the amount of ₱5,000.00 and costs.[3]

On July 12, 2002, Judge Doyon issued the writ of execution only "as far as the amount of ₱35,000.00 is concerned."[4] After the appeal of the defendant did not prosper for failure to file the appellant's brief in the Court of Appeals within the reglementary period, Marsada sought the implementation of the writ of execution by Monteroso. Ultimately, however, Monteroso delivered only ₱25,000.00 to Marsada, but he requested the latter to sign a prepared typewritten acknowledgment receipt indicating that he received the amount of ₱25,000.00 as "FULL AND ENTIRE SATISFACTION"[5] of the defendant's obligation.

Marsada later asked Monteroso for the balance, but the latter informed him that the defendant no longer had any property or money with which to fully satisfy the judgment. Thus, Marsada went to see Judge Doyon to seek another writ of execution for the full satisfaction of the judgment, showing the receipt he had signed at Monteroso's request. At this, Judge Doyon blamed Marsada for signing the receipt as the full and entire satisfaction of the judgment debt.

Based on the foregoing circumstances, Marsada brought his administrative complaint against Monteroso.

In its Memorandum dated March 15, 2010,[6] the Office of the Court Administrator (OCA) recommended that the administrative complaint be re-docketed as an administrative matter, and be referred to the Executive Judge of the RTC in Cabadbaran, Agusan del Norte for investigation, report and recommendation. It observed that the culpability of Monteroso must be clearly established because this administrative charge, which would be his third offense, could warrant the forfeiture

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[3] *Id*. at 17.

[4] *Id*. at 22.

[5] *Id*. at 17.

[6] *Id*. at 106-108.

of his retirement benefits by virtue of his having meanwhile retired from the service.

It is relevant to mention that Monteroso was previously suspended from office for one year in *Beltran v. Monteroso* (A.M. No. P-06-2237, December 4, 2008), and for six months in *Cebrian v. Monteroso* (A.M. No. P-08-2461, April 23, 2008).

Report and Recommendation of the Investigating Judge

On January 20, 2012, Investigating RTC Judge Edgar G. Manilag found Monteroso guilty of misconduct for presenting to Marsada the prepared typewritten acknowledgment receipt indicating the amount of ₱25,000.00 written thereon as the "FULL AND ENTIRE SATISFACTION" despite the total amount stated in the writ of execution being ₱35,000.00. Judge Manilag observed that it was not for Monteroso as the sheriff to treat and consider the payment of ₱25,000.00 as the full satisfaction of the writ of execution despite the payment being insufficient. But Judge Manilag pointed out that the lack of substantial evidence to support the elements of corruption, or to show the clear intent to violate the law, or to establish the flagrant disregard of established rule rendered the transgression of Monteroso only as simple, not grave, misconduct.[7]

Accordingly, Judge Manilag recommended as follows:

> The Revised Uniform Rules on Administrative Cases in the Civil Service classifies simple misconduct as a less grave offense. Under Section 52 (B)(2), Rule IV of the Civil Service Rules, the commission of simple misconduct is penalized by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense. Considering that the respondent already retired from the service effective December 7, 2007, the penalty of suspension or dismissal could no longer be imposed. The record shows that respondent was earlier suspended from office for one (1) year in *Beltran vs. Monteroso* (A.M. No. P-06-2237, December 4, 2008) and for six (6) months in *Cebrian vs. Monteroso* (A.M. No. P-08-2461, April 23, 2008).

[7] *Id.* at 175-182.

WHEREFORE, it is respectfully recommended that a fine in the amount of Ten Thousand (₱10,000.00) Pesos be imposed upon the respondent.[8]

Evaluation and Recommendations of the OCA

In its Memorandum dated October 1, 2014,[9] the OCA rendered its evaluation and recommendation against Monteroso as follows:

After a careful review of the Report, this Office finds the recommendation of the Investigating Judge Manilag to be supported by the evidence on record.

x x x x x x x x x

Under the circumstances obtaining, this Office agrees with investigating Judge Manilag that the act of respondent Sheriff Monteroso in issuing the typewritten acknowledgment receipt as "full and entire satisfaction" of the Writ of Execution dated 12 July 2002 for ₱35,750.00 constitutes misconduct as he exceeded his authority in the enforcement of the Writ of Execution. It is not for respondent Sheriff Monteroso to determine whether the payment made, although insufficient, amounted to a full satisfaction of the judgment debt, upon his belief in good faith that defendant Ramilo is incapable of complying with his obligation. Thus, respondent Sheriff Monteroso's contention that the amount of ₱25,000.00 was all that defendant Ramilo could offer is not a valid justification to consider the same as fully paid.

As a sheriff and officer of the court charged with the dispensation of justice, respondent Sheriff Monteroso's conduct and behavior is circumscribed with the heavy burden of responsibility. By the very nature of his functions, respondent Sheriff Monteroso is called upon to discharge his duties with care and utmost diligence and, above all, to be above suspicion. Rather than plainly stating that the sum of ₱25,000.00 was only partial payment of the obligation pursuant to the Writ of Execution, respondent Sheriff Monteroso exceeded his authority by making it appear that it was already full and complete payment.[10]

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[8] *Id*. at 183.

[9] *Id*. at 192-197.

[10] *Id*. at 195-196.

To the OCA, Monteroso was liable for simple misconduct, but considering that he had meanwhile retired from the service on December 7, 2007, the penalty of dismissal from the service could no longer be meted on him; hence, he should be fined ₱10,000.00, the same to be deducted by the Finance Management Office from his accrued leave credits, if any.[11]

Ruling of the Court

We declare the findings of the OCA to be in accord with the evidence on record, and consider its recommendation of the penalty to be in consonance with jurisprudence.

The writ of execution should mirror the judgment that it enforces. The form and contents of the writ of execution are specified in Section 8, Rule 39 of the *Rules of Court*, *viz.*:

Section 8. *Issuance, form and contents of a writ of execution*. — The writ of execution shall: (1) issue in the name of the Republic of the Philippines from the court which granted the motion; (2) state the name of the court, the case number and title, the dispositive part of the subject judgment or order; and (3) **require the sheriff or other proper officer to whom it is directed to enforce the writ according to its terms**, **in the manner herein after provided**:

(a) If the execution be against the property of the judgment obligor, to satisfy the judgment, with interest, out of the real or personal property of such judgment obligor;

(b) If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants, or trustees of the judgment obligor, to satisfy the judgment, with interest, out of such properties;

(c) If it be for the sale of real or personal property, to sell such property, describing it, and apply the proceeds in conformity with the judgment, the material parts of which shall be recited in the writ of execution;

(d) If it be for the delivery of the possession of real or personal property, to deliver the possession of the same, describing it, to the

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[11] *Id*. at 197.

party entitled thereto, and to satisfy any costs, damages, rents, or profits covered by the judgment out of the personal property of the person against whom it was rendered, and if sufficient personal property cannot be found, then out of the real property; and

(e) In all cases, the writ of execution shall specifically state the amount of the interest, costs, damages, rents, or profits due as of the date of the issuance of the writ, aside from the principal obligation under the judgment. For this purpose, the motion for execution shall specify the amounts of the foregoing reliefs sought by the movant. (8a) (Emphasis added)

Under this provision of the *Rules of Court*, Monteroso could enforce the writ of execution only "according to its terms, in the manner herein after provided." However, he was remiss in his duty to enforce the writ by collecting only ₱25,000.00. Even assuming that he had only been successful in collecting ₱25,000.00 from the defendant, he still exceeded his authority in requesting Marsada to sign the typewritten acknowledgment receipt reflecting the ₱25,000.00 as the full and complete satisfaction of the writ of execution. He had neither basis nor reason to have Marsada sign the receipt in that tenor because the text and tenor of the writ of execution expressly required the recovery of ₱35,000.00 from the losing party.

Also, Marsada claimed that Monteroso had represented to him that the defendant could no longer pay the balance. The representation, even if true, did not justify Monteroso's unilateral decision to discontinue the effort to recover the balance. It clearly devolved upon him as the sheriff to levy upon the execution debtor's properties, if any, as well as to garnish the debts due to the latter and the credits belonging to the latter. The duty to exhaust all efforts to recover the balance was laid down in Section 9, Rule 39 of the *Rules of Court*, with special attention to the highlighted portions, to wit:

Section 9. *Execution of judgments for money, how enforced*.— (a) *Immediate payment on demand*.— **The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ**

of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amount to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

The clerk of court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

(b) *Satisfaction by levy*.— **If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment.** If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only

so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

(c) *Garnishment of debts and credits*.— **The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.**

The garnishee shall make a written report to the court within five (5) days from service of the notice of garnishment stating whether or not the judgment obligor has sufficient funds or credits to satisfy the amount of the judgment. If not, the report shall state how much funds or credits the garnishee holds for the judgment obligor. The garnished amount in cash, or certified bank check issued in the name of the judgment obligee, shall be delivered directly to the judgment obligee within ten (10) working days from service of notice on said garnishing requiring such delivery, except the lawful fees which shall be paid directly to the court.

In the event there are two or more garnishees holding deposits or credits sufficient to satisfy the judgment, the judgment obligor, if available, shall have the right to indicate the garnishee or garnishees who shall be required to deliver the amount due; otherwise, the choice shall be made by the judgment obligee.

The executing sheriff shall observe the same procedure under paragraph (a) with respect to delivery of payment to the judgment obligee. (8a, 15a)

Thus, Monteroso was guilty of misconduct, which the Court has defined in *Dela Cruz v. Malunao*[12] in the following manner:

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[12] A.M. No. P-11-3019, March 20, 2012, 668 SCRA 472, 482-483.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his position or office to procure some benefit for himself or for another person, contrary to duty and the rights of others. Section 2, Canon 1 of the Code of Conduct for Court Personnel states: "Court personnel shall not solicit or accept any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions."

Marsada did not establish that the act complained of was tainted with corruption, willful intent to violate the law, or disregard of established rules. Consequently, Monteroso's liability only amounted to simple misconduct, which is classified under Section 46, D, of the *Revised Uniform Rules on Administrative Cases in the Civil Service* as a less grave offense punishable by suspension of from one month and one day to six months for the first offense, and dismissal from the service for the second offense. As earlier mentioned, Monteroso had previously been sanctioned twice. In A.M. No. P-08-2461 (*Cebrian v. Monteroso*, April 23, 2008), he was found guilty of grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service for failure to implement the writs of execution assigned to him, and was meted the penalty of suspension without pay for six (6) months. In A.M. No. P-06-2237 (*Beltran v. Monteroso*, December 4, 2008, 573 SCRA 1), he was declared liable for grave misconduct, dishonesty and conduct prejudicial to the best interest of the service for persistently disregarding the basic rules on execution, and was suspended for one (1) year without pay and other benefits, with a stern warning that another transgression of a similar nature would merit his dismissal from the service. Although his dismissal from the service would have already been warranted under the circumstances, he is only being fined in the amount of ₱10,000.00 because he had meanwhile retired from the service as of December 7, 2007. The fine shall be paid out of his accrued leaves. In addition, his entire retirement benefits are hereby forfeited.

WHEREFORE, the Court **FINDS** and **DECLARES** respondent **ROMEO MONTEROSO** guilty of **SIMPLE MISCONDUCT**; **FINES** him in the amount of ₱10,000.00; **DIRECTS** the Employees Leave Division, Office of the Administrative Services, to determine the balance of his earned leave credits, and to deduct therefrom the fine of ₱10,000.00 imposed herein, if sufficient; and **FORFEITS** his entire retirement benefits.

SO ORDERED.

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

Brion, J., on leave.

EN BANC

[A.M. No. RTJ-11-2275. March 8, 2016]

SPOUSES CESAR and THELMA SUSTENTO, *complainants, vs.* **JUDGE FRISCO T. LILAGAN,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; ALLEGATION OF BEING BIASED BASED ON SUSPICION WAS UNTENABLE.—** The complainants' allegation against the respondent judge of being biased in favor of MTCC Judge Pocpoc-Lamoste, the respondent in the petition for *certiorari*, was untenable because it was based on suspicion. We emphasize that every allegation of bias against a judge should be established with proof of clear and actual bias. Otherwise, the allegation should be rejected as speculative.

2. **ID.; ID.; ID.; 90-DAY PERIOD TO RENDER DECISION; DELAY IN THE DISPOSITION OF ANY CASE OR MATTER BEYOND THE PRESCRIBED PERIOD WITHOUT THE COURT'S EXPRESS CLEARANCE IS GROSS INEFFICIENCY.—** Anent the delay in the resolution of the complainants' motion for reconsideration, we find that the respondent judge was guilty thereof. x x x To pursue [the aim] of speedy disposition of cases the Court, through the *Rules of Court* and other issuances, has fixed reglementary periods for acting on cases and matters. In respect of decisions, judges are given 90 days from the time the cases are submitted for determination within which to render their judgments. Also, Rule 3.05 of Canon 3 of the *Code of Judicial Conduct* admonishes all judges to promptly dispose of the court's business and to decide cases within the required periods. Failure to render a decision within the 90-day period from the submission of a case for decision is detrimental to the honor and integrity of the judicial office, and constitutes a derogation of the speedy administration of justice. Accordingly, any judge who delays the disposition of any case or matter beyond the prescribed period without the Court's express clearance is liable for gross inefficiency and must be administratively sanctioned.

3. **ID.; ID.; ID.; UNDUE DELAY IN RENDERING A DECISION; PENALTY.—** Under Section 9, Rule 140 of the *Rules of Court,* undue delay in rendering a decision or order falls within the category of a less serious charge, and is penalized as follows: SEC. 11. *Sanctions*. – x x x B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed: 1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or 2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00. x x x

D E C I S I O N

BERSAMIN, *J.*:

A judge is mandated to resolve with dispatch the cases and matters in his court, mindful that any delay in their disposition erodes the faith of the people in the judicial system.

Antecedents

The Office of the Court Administrator (OCA) summarized the antecedents as follows:

x x x In the **Administrative Complaint** dated 05 July 2010 filed by Spouses Cesar and Thelma Sustento, it was averred that the said complainants concurrently appear as the "Defendants" in an Unlawful Detainer case ("Wilfreda Pontillan vs. Spouses Cesar Sustento and Thelma Sustento," Civil Case No. 2008-05-CV-08, filed before the Municipal Trial Court in Cities, Branch 1, Tacloban City, Leyte) as well as the "Plaintiffs" in a Specific Performance and Damages case ("Spouses Cesar Sustento and Thelma Sustento vs. Wilfreda Pontillan, et al.," Civil Case no. 2005-03-37, before the Regional Trial Court, Branch 6, Tacloban City, Leyte). In the Unlawful Detainer case, complainants Spouses Sustento raised as one of their three affirmative defenses [in their Answer] the alleged violation of non-forum-shopping rule by the plaintiff for their failure to disclose the pending case for Specific Performance in the RTC, Branch 6, Tacloban City, Leyte, involving the same property subject matter of the ejectment case. On 09 September 2008, Judge Sylvia Z. Pocpoc-Lamoste issued an Order decreeing *inter alia* that "it is not plaintiff's duty to disclose the pendency of the case for Specific Performance since it was not she who filed the case and [that] the issues and cause of action of the cases are different x x x." On 29 September 2008, herein complainants Spouses Sustento filed an Omnibus Motion for a reconsideration of the 09 September 2008 Order. However, in an Order dated 24 November 2008, Judge Pocpoc-Lamoste denied the Omnibus Motion.

On 26 January 2009, complainants Spouses Sustento filed a Petition for Review on Certiorari before the Regional Trial Court, Branch 34, Tacloban City, Leyte, praying for the annulment of the aforecited Orders issued by Judge Pocpoc-Lamoste. In an Order dated 03 March 2009, respondent Judge Frisco T. Lilagan directed private respondents to file their comment to the petition. On 31 March 2009, private respondents filed their Comment/Answer. Complainants Spouses Sustento followed suit, filing a rejoinder to Private Respondent's Comments/Answer.

Almost six (6) months had already elapsed [and only after complainants filed a motion for Early Resolution, dated 08 September 2009] before respondent Judge Lilagan issued an Order dated 15

September 2009 dismissing the Petition for Certiorari. Complainants Spouses Sustento filed a Motion for Reconsideration. On 01 December 2009, private respondents' Comment/Opposition to the Motion for Reconsideration was filed. On 08 December 2009, complainants Spouses Sustento filed their Reply.

On 10 December 2009, respondent Judge Lilagan issued an Order deeming the Motion for Reconsideration submitted for resolution. However, up to the date of the instant administrative matter was filed, respondent Judge Lilagan has still yet to resolve the Motion for Reconsideration.[1]

On the basis of the foregoing, the complainants have charged the respondent with undue delay in the resolution of the petition for *certiorari* they had filed to assail the adverse order issued by Judge Sylvia Z. Pocpoc-Lamoste of the Municipal Trial Court in Cities (MTCC), Branch 1, in Tacloban City in Civil Case No. 2008-05-CV-08 entitled *Wilfreda Pontillan v. Spouses Cesar Sustento and Thelma Sustento*, and undue delay in the resolution of their motion for reconsideration beyond the prescribed 90-day period in violation of the Administrative Circular No. 38-98 and Section 15, Article VIII of the Constitution. They have further charged him with having issued the order of September 15, 2009 dismissing their petition for *certiorari* without passing upon the issues raised in the petition by making findings of fact bereft of factual basis, and relying on information that were immaterial and irrelevant to the petition.[2]

Later on, the complainants withdrew their charge against the respondent through their motion dated October 7, 2010,[3] stating that complainant Thelma Sustento had decided "to give herself a softer atmosphere to focus more on the appeal of the main case from which this complaint emanates."[4]

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[1] *Rollo,* pp. 216-217.

[2] *Id.* at 217-218.

[3] *Id.* at 68-69.

[4] *Id.* at 68.

In his comment with motion,[5] the respondent sought the termination of the case based on the withdrawal of the complaint against him.

The OCA denied the motions of the parties, however, pointing out instead that the complainants could not just withdraw the administrative complaint out of a sudden change of mind;[6] and that the unilateral act of the complainants did not control the Court's exercise of its disciplinary power.[7] It recommended to the Court the following actions on the complaint, to wit:

1. That the instant administrative case be **RE-DOCKETED** as a regular administrative matter;

2. That respondent Judge Frisco T. Lilagan of the Regional Trial Court, Branch 34, Tacloban City, be **DIRECTED** to submit a more responsive **COMMENT** to the Complaint dated 05 July 2010 of Spouses Cesar A. Sustento and Thelma C. Sustento within a **non-extendible period of ten (10) days** from notice; and

3. That failure to submit the required Comment within the given period shall be considered a **WAIVER** of his right to file his comment and/or related pleadings relative to the complaint.[8]

In the resolution promulgated on March 21, 2011,[9] the Court re-docketed the case as a regular administrative matter, and directed the respondent to submit a more responsive comment vis-à-vis the complaint.

In his comment dated May 28, 2011,[10] the respondent denied liability, and contended that the petition for *certiorari* subject of the complaint was a prohibited pleading for being brought against the interlocutory order issued by MTCC Judge Pocpoc-Lamoste in the *accion interdictal*; that, as such, he was not obliged

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[5] *Id*. at 97-98.

[6] *Id*. at 111.

[7] *Id*.

[8] *Id*. at 112-113.

[9] *Id*. at 114-115.

[10] *Id*. at 116-133.

to rule on the petition for *certiorari*;[11] that his failure to seasonably resolve the motion for reconsideration within the prescribed 90-day period did not amount to gross incompetence on his part because several reasons justified the delay, namely: (*a*) his increasing workload;[12] (*b*) his suspension from work for three months by virtue of another administrative case filed against him;[13] (*c*) the failure of his Clerk III (Ms. Jerlyn Lapesura) to remind him of the pendency of the motion for reconsideration;[14] and (*d*) the issuance of the order submitting the motion for reconsideration for resolution on December 10, 2009 coincided with "the period of euphoria for the Christmas holidays."[15] He pleaded for leniency considering that his lapse concerned the motion for reconsideration against the dismissal of the prohibited petition for *certiorari*.[16] He denied being biased in favor of a colleague, MTCC Judge Pocpoc-Lamoste, the respondent in the petition for *certiorari*, and insisted that such claim was not supported by evidence.[17]

On January 26, 2012, the OCA recommended that the respondent be held guilty of undue delay in resolving the motion for reconsideration; and that he be meted the penalty of suspension from office for six months without pay and without other benefits, with warning that a repetition of the same or similar acts would be dealt with more severely.[18]

Issue

Was the respondent guilty of the less serious offense of undue delay in rendering an order by not resolving the complainants' motion for reconsideration within the prescribed period?

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[11] *Id*. at 123.

[12] *Id*. at 129.

[13] *Id*. at 131.

[14] *Id*. at 150.

[15] *Supra* note 13.

[16] *Id*. at 129-130.

[17] *Id*. at 127.

[18] *Id*. at 225.

Ruling of the Court

We adopt the findings of the OCA.

The complainants' allegation against the respondent judge of being biased in favor of MTCC Judge Pocpoc-Lamoste, the respondent in the petition for *certiorari*, was untenable because it was based on suspicion. We emphasize that every allegation of bias against a judge should be established with proof of clear and actual bias. Otherwise, the allegation should be rejected as speculative.

Anent the delay in the resolution of the complainants' motion for reconsideration, we find that the respondent judge was guilty thereof. We remind that decision-making is primordial among the many duties of judges. The speedy disposition of cases thus becomes the primary aim of the Judiciary, for only thereby may the ends of justice not be compromised and the Judiciary may be true to its commitment of ensuring to all persons the right to a speedy, impartial and public trial.[19] To pursue this aim, the Court, through the *Rules of Court* and other issuances, has fixed reglementary periods for acting on cases and matters. In respect of decisions, judges are given 90 days from the time the cases are submitted for determination within which to render their judgments. Also, Rule 3.05 of Canon 3 of the *Code of Judicial Conduct* admonishes all judges to promptly dispose of the court's business and to decide cases within the required periods. Failure to render a decision within the 90-day period from the submission of a case for decision is detrimental to the honor and integrity of the judicial office, and constitutes a derogation of the speedy administration of justice.[20] Accordingly, any judge who delays the disposition of any case or matter beyond the prescribed period without the Court's express clearance is liable for gross inefficiency and must be administratively sanctioned.

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[19] *Cadauan v. Alivia,* A.M. No. RTJ-00-1595, October 24, 2000, 344 SCRA 174, 177.

[20] *Saylo v. Rojo*, A.M. No. MTJ-9-1225, April 12, 2000, 330 SCRA 243, 248.

On January 26, 2009, the complainants brought in the RTC in Tacloban City their petition for *certiorari* to annul the order issued by MTCC Judge Pocpoc-Lamoste in Civil Case No. 2008-05-CV-08, and the case was assigned to the respondent judge. It was only on March 3, 2009 when he directed the private respondent to file the comment on the petition. The comment was filed on March 31, 2009, and the complainants submitted their rejoinder to the comment. Subsequently, after they requested the resolution of the petition for *certiorari* by motion dated September 8, 2009, he issued his order of September 15, 2009 dismissing the petition for *certiorari*. In due time, they filed their motion for reconsideration. The parties exchanged their written submissions on the issue until the respondent judge issued the order of December 10, 2009 deeming the motion for reconsideration submitted for resolution. But he did not resolve the motion for reconsideration even by the time they filed their administrative complaint against him on July 26, 2010 in the Office of the Court Administrator.[21]

What is obvious is that the respondent judge took too much time in disposing of the petition for *certiorari* and the ensuing motion for reconsideration. The delays were plainly violative of the injunction to him to act expeditiously on the matters 90 days from their submission.

The respondent judge sought to justify his delay by citing the voluminous caseload he had as the presiding judge. The justification does not persuade. Although we are not insensitive to the heavy caseloads of the trial judges, we have allowed reasonable extensions of the periods for the trial judges to resolve their cases. If the heavy caseload of any judge should preclude his disposition of cases within the reglementary period, he should notify the Court, through the Court Administrator, of the reasons or causes for the delay, and request in writing a reasonable extension of the time to dispose of the affected cases. No judge should arrogate unto himself the prerogative to extend the period for deciding cases beyond the mandatory 90-day period.

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[21] *Rollo*, pp. 1-6.

The respondent judge insists that that he did not need to act on the resulting motion for reconsideration because the petition for *certiorari*, being a prohibited pleading, was a contravention of the rules of procedure.[22] Such insistence did not justify his inability to act promptly. The fact that the petition for *certiorari* was a prohibited pleading furnished him a better reason to act promptly on the petition for *certiorari* and the motion for reconsideration.

We are also not swayed by his other excuses of not having then a legal researcher assigned to him; and of his branch clerk of court being recently appointed. The court's business did not stop because of such events; hence, he could not use such excuses to delay his actions on the pending matters before his court. Verily, the responsibility for the prompt and expeditious action on the case, which belonged first and foremost to him as the presiding judge, could not be shifted to others like the legal researcher or the recently appointed branch clerk of court.

The respondent judge gave other justifications, like the time when the motion for reconsideration was submitted for resolution on December 10, 2009 being already in "the period of euphoria for the Christmas holidays;"[23] and that he was serving his three-month suspension from office relative to another administrative case of undue delay in rendering an order when the case was filed, but resolved the complainants' motion for reconsideration as soon as he reported back to work. We reject these justifications as unworthy explanations of the failure to resolve the motion for reconsideration in an expeditious and seasonal manner simply because they did not place the timely resolution beyond the control of the respondent judge.

The respondent cannot be spared from the consequences of his undue delays in the case of the complainants. He did not show that he ever requested the Court for the additional time within which to dispose of the matters therein. It then becomes inescapable for him to face the consequences of his inexplicable inaction. He was guilty of gross inefficiency and neglect of duty.

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[22] *Id*. at 130.

[23] *Id*. at 131.

Failure to render a decision within the 90-day period from the submission of a case for decision is detrimental to the honor and integrity of the judicial office, and constitutes a derogation of the speedy administration of justice.[24]

Under Section 9, Rule 140 of the *Rules of Court*, undue delay in rendering a decision or order falls within the category of a less serious charge, and is penalized as follows:

SEC. 11. *Sanctions.* – x x x

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

x x x x x x x x x

This case is not the first time that the respondent is found guilty of an administrative offense. Aside from the charge dealt with in *Daaco v. Judge Lilagan*,[25] where he was suspended for three months without pay for undue delay in rendering an order, he had been penalized five times, as follows:

1. A.M. No. RTJ-99-1490, for falsification of certificate of service, in which he was fined ₱1,000.00 on July 28, 1999;[26]

2. A.M. No. RTJ-01-1651, for gross ignorance of the law, gross abuse of judicial authority and willful disobedience to settled jurisprudence, in which he was fined ₱10,000.00;[27]

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[24] *Supra* note 20, at 248.

[25] A.M. No. RTJ-09-2172 (Formerly A.M. OCA IPI No. 08-2892-RTJ), April 14, 2010.

[26] See *Visbal v. Buban,* A.M. No. MTJ-02-1432, September 03, 2004, 437 SCRA 520, 526.

[27] *Tabao v. Lilagan,* A.M. No. RTJ-01-1651 (formerly A.M. No. 98-551-RTJ), September 4, 2001, 364 SCRA 322; see also *rollo,* p. 224.

3. A.M. No. RTJ-00-1564, for falsification of certificate of service, maltreatment and violation of the *Code of Judicial Conduct*, in which he was reprimanded;[28]

4. OCA IPI No. 01-1280-RTJ, for gross ignorance of the law, grave abuse of authority and serious misconduct, in which he was reprimanded;[29] and

5. A.M. No. RTJ-06-1985, for violation of the Constitution and *Code of Judicial Conduct*, in which he was reprimanded.[30]

Although the OCA has recommended the penalty of suspension from office for six months without salary and other benefits, the Court opts to impose on the respondent the penalty of fine of ₱45,000.00, with a warning that a similar infraction in the future will be more severely sanctioned.

WHEREFORE, the Court **FINDS** and **DECLARES** respondent Judge Frisco T. Lilagan, Presiding Judge of the Regional Trial Court, Branch 34, in Tacloban City **GUILTY** of gross inefficiency for his undue delay in resolving the pending motion for reconsideration; and, **ACCORDINGLY**, **FINES** him in the amount of ₱45,000.00, with a warning that a similar infraction in the future will be more severely sanctioned.

SO ORDERED.

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

Brion, J., on leave.

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[28] *Gordon v. Lilagan,* A.M. No. RTJ-00-1564, July 26, 2001, 361 SCRA 690, 700; see also *rollo,* p. 224.

[29] *Rollo,* p. 224.

[30] *Id*.

EN BANC

[G.R. No. 218072. March 8, 2016]

METROPOLITAN NAGA WATER DISTRICT, VIRGINIA I. NERO, JEREMIAS P. ABAN, JR., and EMMA A. CUYO, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; SALARY STANDARDIZATION LAW (SSL); CONSOLIDATION OF ALLOWANCES AND COMPENSATION; ALL ALLOWANCES, INCLUDING COST OF LIVING ALLOWANCE (COLA) WERE GENERALLY DEEMED INTEGRATED IN THE STANDARDIZED SALARY RECEIVED BY GOVERNMENT EMPLOYEES; COLA BACK PAYMENTS NOT PROPER BUT DISALLOWED COLA ALREADY PAID NEED NOT BE RETURNED ON THE BASIS OF GOOD FAITH. — On August 20, 2002, the Board of Directors (*the Board*) of petitioner MNWD passed a resolution granting the payment of accrued Cost of Living Allowance (COLA) covering the period from 1992 to 1999 in favor of qualified MNWD personnel. x x x The MNWD employees began receiving their respective accrued COLA in installment basis starting 2002. During the post-audit, the Audit Team Leader Jaime T. Posada, Jr. (*Posada*) observed that the payment of COLA in the amount of ₱3,499,681.14 in 2007 lacked documentation. x x x On June 15, 2009 Posada issued Notice of Disallowance (*ND*) No. 2009-001 disallowing the COLA paid in 2007 amounting to ₱3,499,681.14 x x x Essentially, the Court is tasked to resolve whether the back payment of the COLA was correctly disallowed; and in the event the disbursement was improper, whether MNWD is liable to refund the same. x x x The Court finds that the back payment of the COLA to MNWD employees was rightfully disallowed. Pertinent to the issue is Section 12 of the SSL, [on] *Consolidation of Allowances and Compensation.* x x x The consolidation of allowances in the standardized salary is a new rule in Philippine position classification and compensation system. In *Maritime Industry Authority v. COA (MIA),* the Court explained that, in line with

the clear policy of standardization set forth in Section 12 of the SSL, all allowances, including the COLA, were generally deemed integrated in the standardized salary received by government employees, and an action from the DBM was only necessary if additional non-integrated allowances would be identified. Accordingly, MNWD was without basis in claiming COLA back payments because the same had already been integrated into the salaries received by its employees. x x x MNWD, nonetheless, is not required to return the disallowed amount on the basis of good faith. x x x MNWD employees need not refund the amounts corresponding to the COLA they received. They had no participation in the approval thereof and were mere passive recipients without knowledge of any irregularity. Hence, good faith should be appreciated in their favor for receiving benefits to which they thought they were entitled. Further, good faith may also be appreciated in favor of the MNWD officers who approved the same. They merely acted in accordance with the resolution passed by the Board authorizing the back payment of COLA to the employees. Moreover, at the time the disbursements were made, no ruling similar to *MIA* was yet made declaring that the COLA was deemed automatically integrated into the salary notwithstanding the absence of a DBM issuance. In *Mendoza v. COA,* the Court considered the same circumstances as badges of good faith.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioners.
The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J*.:

This petition for *certiorari* under Rule 64 of the Revised Rules of Court seeks to reverse and set aside the September 10, 2014 Decision[1] and the March 9, 2015 Resolution of the

[1] Concurred in by Chairperson Ma. Gracia M. Pulido-Tan, Commissioner Heidi L. Mendoza and Commissioner Jose A. Fabia; *rollo*, pp. 20-27.

Commission on Audit *(COA)*[2] which affirmed the October 24, 2011 Decision[3] of the COA Regional Office No. V *(COA Regional Office)* disallowing the payment of backpay differential of Cost of Living Allowance *(COLA)* to the officials and employees of Metro Naga Water District *(MNWD)* in the amount of ₱3,499,681.14.

On August 20, 2002, the Board of Directors *(the Board)* of petitioner MNWD passed a resolution[4] granting the payment of accrued COLA covering the period from 1992 to 1999 in favor of qualified MNWD personnel. The Board issued the said resolution on the basis of the Court's ruling in *de Jesus v. COA*[5] and its subsequent rulings, and the series of opinions of the Office of the Government Corporate Counsel *(OGCC)*. The MNWD employees began receiving their respective accrued COLA in installment basis starting 2002.[6]

During the post-audit, the Audit Team Leader Jaime T. Posada, Jr. *(Posada)* observed that the payment of COLA in the amount of ₱3,499,681.14 in 2007 lacked documentation. Thus, Posada required MNWD to submit its payroll as of June 30, 1989 for COLA and its payroll as of July 31, 1989 for salary and other benefits including COLA. The purpose was to determine whether the COLA was received by MNWD employees prior to the effectivity of the Salary Standardization Law *(SSL)*.[7] MNWD failed to submit the requested documents.

On June 15, 2009 Posada issued Notice of Disallowance *(ND)* No. 2009-001[8] disallowing the COLA paid in 2007 amounting to ₱3,499,681.14 and directing the named MNWD officers to

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[2] *Id.* at 30.

[3] Penned by Regional Director Nilda B. Plaras; *id.* at 45-51.

[4] *Id.* at 31-32.

[5] 355 Phil. 584 (1998).

[6] *Rollo*, p. 5.

[7] *Id.* at 20.

[8] *Id.* at 33.

immediately settle the disallowance. On October 8, 2009, MNWD filed a notice of appeal with the COA Regional Office.

The COA Regional Office Ruling

In its October 24, 2011 decision, the COA Regional Office upheld the ND covering the disbursement of COLA in 2007 amounting to ₱3,499,681.14. It opined that MNWD could not rely on the case of *PPA Employees hired after July 1, 1989 v. COA (PPA Employees)*[9] because the circumstances were dissimilar considering that MNWD was unable to prove that it had granted COLA to its employees since July 1, 1989. Moreover, the COA Regional Office ruled that MWND could not assert that its employees were entitled to COLA by virtue of Letter of Implementation *(LOI)* No. 97[10] because the latter did not include water districts in its coverage.

Undaunted, MWND appealed before the COA.

The COA Ruling

On September 10, 2014, the COA rendered the assailed decision affirming the ruling of the COA Regional Office. It agreed with the COA Regional Office that there was substantial distinction between the case of Philippine Ports Authority *(PPA)* and that of MNWD which warranted the difference in the treatment of the back payment of COLA. The COA noted that in *PPA Employees*, it was established that the PPA had been paying COLA to its employees even prior to July 1, 1989. MNWD, on the other hand, admitted that it had not previously paid the COLA and merely disbursed the same after the passage of a board resolution in 2002. The COA also negated the argument of MNWD that its personnel were entitled to COLA as a matter of right. The COA ruled that water districts were not within the coverage of LOI No. 97.

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[9] 506 Phil. 382 (2005).

[10] Authorizing the Implementation of Standard Compensation and Position Classification Plans for the Infrastructure/Utilities Group of Government Owned or Controlled Corporations.

Aggrieved, MNWD moved for reconsideration, but its motion was denied by the COA in its assailed resolution, dated March 9, 2015.

Hence, this present petition raising the following

ISSUES

A. WHETHER COA GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION IN NOT RECOGNIZING WATER DISTRICT EMPLOYEES' ENTITLEMENT TO ACCRUED COLA FOR THE PERIOD 1992-1999 AS A MATER OF RIGHT IN ACCORDANCE WITH LOI 97.

B. **WHETHER COA GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO APPLY EXISTING JURISPRUDENCE IN FAVOR OF MNWD'S EMPLOYEES FOR COLA ENTITLEMENT.**[11]

Essentially, the Court is tasked to resolve whether the back payment of the COLA was correctly disallowed; and in the event the disbursement was improper, whether MNWD is liable to refund the same.

MNWD argues that its employees were entitled to receive COLA as local water districts *(LWD)* were covered under the provisions of LOI No. 97. It asserts that requiring proof that MNWD employees received their COLA prior to July 1, 1989 before they could be entitled to COLA under LOI No. 97 would be unrealistic and unjust because LWDs were declared government owned and controlled corporations *(GOCCs)* only on September 13, 1991 when the Court promulgated *Davao City Water District, et al. v. CSC and COA (Davao City Water District)*.[12] Further, MNWD insists

[11] *Rollo,* p. 7.

[12] 278 Phil. 605 (1991).

that pursuant to *PPA Employees*, MNWD employees must likewise enjoy their COLA from March 12, 1992 to March 16, 1999.

In its Comment,[13] dated September 7, 2015, the COA reiterated its reasons for upholding the disallowance of the disbursement in question. It asserted that MNWD could not rely on *PPA Employees* because, unlike the employees therein, the MNWD employees were not previously receiving COLA. In other words, MNWD could not claim that its employees were deprived of COLA because there was no showing that they were paid COLA in the first place.

In its Reply,[14] dated December 21, 2015, MNWD countered that it need not comply with the requirements laid out in *Aquino v. PPA (Aquino),*[15] where it was held that in order to be entitled to accrued fringe/amelioration benefits under LOI No. 97, it must be shown that (1) the employee was an incumbent; and (2) the employee was receiving those benefits as of July 1, 1989. It reasoned that what was involved in the said case was a claim for continuous enjoyment of Representation and Travel Allowance *(RATA)* and not the payment of accrued COLA.

The Court's Ruling

LWDs are included in the coverage of LOI No. 97

Section 1(d) of LOI No. 97 states:

1. Scope of the Plan – The Position and Compensation Plans for the Infrastructure and Utilities group shall apply to the corporations in the transport, the power, the infrastructure, and the water utilities sector, as follows: xxx

d. Water Utilities

Local Water Utilities

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[13] *Rollo,* pp. 94-117.

[14] *Id.* at 124-134.

[15] G.R. No. 181973, April 17, 2013, 696 SCRA 666.

Local Water Utilities Administration
Metropolitan Waterworks and Sewerage System[16]

As can be gleaned from above, LWDs are among those included in the scope of LOI No. 97. A local water utility is defined as any district, city, municipality, province, investor-owned public utility or cooperative corporation which owns or operates a water system serving an urban center in the Philippines, except that the said term shall not include the Metropolitan Waterworks and Sewerage System *(MWSS)* or any system operated by the Bureau of Public Works.[17] It is, therefore, categorical that MNWD, as a LWD, is included in the coverage of LOI No. 97.

So although it is correct for MNWD to insist that LWDs were subject to the provisions of LOI No. 97, it is erroneous for it to claim that LWDs started to be covered by LOI No. 97 only in 1991 when the Court promulgated *Davao City Water District*. In the said case, it was ruled that LWDs, created pursuant to Presidential Decree *(P.D.)* No. 198, were GOCCs with original charter. It must be remembered that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, as it merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[18] Thus, when P.D. No. 198 was enacted in 1973, LWDs were already GOCCs included in the coverage of LOI No. 97.

No need to establish that the benefits in question were received since July 1, 1989 by incumbent employees as of the said date

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[16] www.gov.ph/1979/08/31/letter-of-implementation-no.97-s-1979/ [date accessed February 29, 2016].

[17] Section 3(h) of Presidential Decree No. 198 or the *"Provincial Water Utilities Act of 1973."*

[18] *Republic v. Remman Enterprises, Inc.*, G.R. No. 199310, February 19, 2014, 717 SCRA 171.

MNWD correctly argues that the elements of incumbency and prior receipts are inapplicable in determining the propriety of its COLA back payments. In *Ambros v. COA*,[19] as cited in *Aquino*, the Court explained that in order for **non-integrated benefits** to be continued, they must have been received as of July 1, 1989 by incumbents as of the said date. Thus, when the benefit in question is not among the non-integrated benefits enumerated under Section 12 of the SSL or added by a subsequent issuance of the Department of Budget and Management *(DBM)*, the twin requirements of incumbency and prior receipt find no application. Hence, in resolving the propriety of the COLA back payments, a resort to the abovementioned requirements is unnecessary.

Integration is the rule and not the exception

The Court, nevertheless, finds that the back payment of the COLA to MNWD employees was rightfully disallowed. Pertinent to the issue is Section 12 of the SSL, which provides:

> SECTION 12. *Consolidation of Allowances and Compensation*. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

The consolidation of allowances in the standardized salary as stated in the above-cited provision is a new rule in Philippine position classification and compensation system. In *Maritime Industry Authority v. COA (MIA)*,[20] the Court explained that,

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[19] 501 Phil. 255 (2005).

[20] G.R. No. 185812, January 13, 2015.

in line with the clear policy of standardization set forth in Section 12 of the SSL, all allowances, including the COLA, were generally deemed integrated in the standardized salary received by government employees, and an action from the DBM was only necessary if additional non-integrated allowances would be identified. Accordingly, MNWD was without basis in claiming COLA back payments because the same had already been integrated into the salaries received by its employees.

Moreover, MNWD's reliance in *PPA Employees* is misplaced. The circumstances in the case at bench clearly differ from those in *PPA Employees* to warrant its application. In *Napocor Employees Consolidated Union v. The National Power Corporation (Napocor)*,[21] as cited in *MIA*, the Court clarified that the *PPA Employees* was inapplicable where there was no issue as to the incumbency of the employees, to wit:

> In setting aside COA's ruling, we held in *PPA Employees* that there was no basis to use the elements of incumbency and prior receipt as standards to discriminate against the petitioners therein. For, DBM-CCC No. 10, upon which the incumbency and prior receipt requirements are contextually predicated, was in legal limbo from July 1, 1989 (effective date of the unpublished DBM-CCC No. 10) to March 16, 1999 (date of effectivity of the heretofore unpublished DBM circular). And being in legal limbo, the benefits otherwise covered by the circular, if properly published, were likewise in legal limbo as they cannot be classified either as effectively integrated or not integrated benefits.
>
> There lies the difference.
>
> Here, the employee welfare allowance was, as above demonstrated, integrated by NPC into the employees' standardized salary rates effective July 1, 1989 pursuant to Rep. Act No. 6758. Unlike in *PPA Employees*, the element of discrimination between incumbents as of July 1, 1989 and those joining the force thereafter is not obtaining in this case. And while after July 1, 1989, PPA employees can rightfully complain about the discontinuance of payment of COLA and amelioration allowance effected due to the incumbency and prior receipt

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[21] 519 Phil. 372 (2006).

requirements set forth in DBM-CCC No. 10, NPC cannot do likewise with respect to their welfare allowance since NPC has, for all intents and purposes, never really discontinued the payment thereof.

To stress, herein petitioners failed to establish that they suffered a diminution in pay as a consequence of the consolidation of the employee welfare allowance into their standardized salary. There is thus nothing in this case which can be the subject of a back pay since the amount corresponding to the employee welfare allowance was never in the first place withheld from the petitioners.[22]

In *PPA Employees*, the crux of the issue was whether it was appropriate to distinguish between employees hired before and after July 1, 1989 in allowing the back payment of the COLA. In the said case, the Court ruled that there was no substantial difference between employees hired before July 1, 1989 and those hired thereafter to warrant the exclusion of the latter from COLA back payment. It is important to highlight that, in *PPA Employees,* the COLA was paid on top of the salaries received by the employees therein before it was discontinued.

The COA noted that the MNWD employees never received the COLA prior to 2002. Thus, following the ruling in *Napocor*, there is nothing in this case which could be the subject of back payment considering that the COLA was never withheld from MNWD employees in the first place. In *PPA Employees*, the Court allowed the back payment of the COLA because the employees hired after July 1, 1989 would suffer a diminution in pay if the back payment would be limited to employees hired before the said date. Here, no diminution would take place as the MNWD employees only received the COLA in 2002.

Refund not necessary when there is a showing of good faith

MNWD, nonetheless, is not required to return the disallowed amount on the basis of good faith. Good faith, in relation to the requirement of refund of disallowed benefits or allowances, is a

[22] *Id.* at 388-389.

"state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."[23]

MNWD employees need not refund the amounts corresponding to the COLA they received. They had no participation in the approval thereof and were mere passive recipients without knowledge of any irregularity. Hence, good faith should be appreciated in their favor for receiving benefits to which they thought they were entitled.[24]

Further, good faith may also be appreciated in favor of the MNWD officers who approved the same. They merely acted in accordance with the resolution passed by the Board authorizing the back payment of COLA to the employees. Moreover, at the time the disbursements were made, no ruling similar to *MIA* was yet made declaring that the COLA was deemed automatically integrated into the salary notwithstanding the absence of a DBM issuance. In *Mendoza v. COA*,[25] the Court considered the same circumstances as badges of good faith.

WHEREFORE, the September 10, 2014 Decision and the March 9, 2015 Resolution of the Commission on Audit are **AFFIRMED** with **MODIFICATION,** in that, petitioner Metro Naga Water District is absolved from refunding the total amount of ₱3,499,681.14 as reflected in the Notice of Disallowance.

SO ORDERED.

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

Brion, J., on leave.

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[23] *PEZA v. COA*, 690 Phil. 104, 115 (2012), as cited in *MIA*, *supra* note 20.

[24] *Silang, et al. v. COA*, G.R. No. 213189, September 8, 2015.

[25] G.R. No. 195395, September 10, 2013, 705 SCRA 306.

EN BANC

[G.R. No. 221697. March 8, 2016]

MARY GRACE NATIVIDAD S. POE-LLAMANZARES, *petitioner, vs.* **COMMISSION ON ELECTIONS AND ESTRELLA C. ELAMPARO,** *respondents.*

[G.R. Nos. 221698-700. March 8, 2016]

MARY GRACE NATIVIDAD S. POE-LLAMANZARES, *petitioner, vs.* **COMMISSION ON ELECTIONS, FRANCISCO S. TATAD, ANTONIO P. CONTRERAS AND AMADO D. VALDEZ,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); THE COMELEC CANNOT ITSELF, IN THE SAME CANCELLATION CASE, DECIDE THE QUALIFICATION OR LACK THEREOF OF THE CANDIDATE.—** The exclusivity of the ground should hedge in the discretion of the COMELEC and restrain it from going into the issue of the qualifications of the candidate for the position, if, as in this case, such issue is yet undecided or undetermined by the proper authority. The COMELEC cannot itself, in the same cancellation case, decide the qualification or lack thereof of the candidate. We rely, first of all, on the Constitution of our Republic, particularly its provisions in Article IX, C, Section 2 x x x. Not any one of the enumerated powers approximate the exactitude of the provisions of Article VI, Section 17 of the same basic law x x x or of the last paragraph of Article VII, Section 4 which provides that: The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President x x x. The tribunals which have jurisdiction over the question of the qualifications of the President, the Vice-President, Senators and the Members of the House of Representatives was made clear by the Constitution. There is no such provision for candidates for these positions.

2. **ID.; ID.; ID.; PRIOR AUTHORITATIVE FINDING THAT A CANDIDATE IS SUFFERING FROM A DISQUALIFICATION MUST BE HAD BEFORE A CERTIFICATE OF CANDIDACY CAN BE CANCELLED OR DENIED DUE COURSE ON GROUNDS OF FALSE REPRESENTATIONS.—** Insofar as the qualification of a candidate is concerned, Rule 25 and Rule 23 are flipsides of one to the other. Both *do not allow,* are not authorizations, are not vestment of jurisdiction, for the COMELEC to determine the qualification of a candidate. The facts of qualification must beforehand be established in a prior proceeding before an authority properly vested with jurisdiction. The prior determination of qualification may be by statute, by executive order or by a judgment of a competent court or tribunal. If a candidate cannot be disqualified without a prior finding that he or she is suffering from a disqualification "provided by law or the Constitution," neither can the certificate of candidacy be cancelled or denied due course on grounds of false representations regarding his or her qualifications, without a prior authoritative finding that he or she is not qualified, such prior authority being the necessary measure by which the falsity of the representation can be found. The only exception that can be conceded are self-evident facts of unquestioned or unquestionable veracity and judicial confessions. Such are, anyway, bases equivalent to prior decisions against which the falsity of representation can be determined.

3. **CIVIL LAW; PATERNITY AND FILIATION; FILIPINO PARENTAGE MAY BE PROVED BY EVIDENCE ON COLLATERAL MATTERS PURSUANT TO SECTION 4, RULE 128 OF THE RULES OF COURT.—** At the outset, it must be noted that presumptions regarding paternity is neither unknown nor unaccepted in Philippine Law. The Family Code of the Philippines has a whole chapter on Paternity and Filiation. That said, there is more than sufficient evidence that petitioner has Filipino parents and is therefore a natural-born Filipino. x x x The factual issue is not who the parents of the petitioner are, as their identities are unknown, but whether such parents are Filipinos. x x x There is a disputable presumption that things have happened according to the ordinary course of nature and the ordinary habits of life. All of the foregoing evidence, that a person with typical Filipino features is abandoned in Catholic

Church in a municipality where the population of the Philippines is overwhelmingly Filipinos such that there would be more than a 99% chance that a child born in the province would be a Filipino, would indicate more than ample probability if not statistical certainty, that petitioner's parents are Filipinos. That probability and the evidence on which it is based are admissible under Rule 128, Section 4 of the Revised Rules on Evidence.

4. **POLITICAL LAW; CONSTITUTIONAL LAW; 1935 CONSTITUTION; FOUNDLINGS ARE NATURAL-BORN CITIZENS.—** As a matter of law, foundlings are as a class, natural-born citizens. While the 1935 Constitution's enumeration is silent as to foundlings, there is no restrictive language which would definitely exclude foundlings either. Because of silence and ambiguity in the enumeration with respect to foundlings, there is a need to examine the intent of the framers. x x x As pointed out by petitioner as well as the Solicitor General, the deliberations of the 1934 Constitutional Convention show that the framers intended foundlings to be covered by the enumeration. The following exchange is recorded: x x x Sr. Busion: Mr. President, don't you think it would be better to leave this matter in the hands of the Legislature? Sr. Roxas: Mr. President, my humble opinion is that these cases are *few and far in between, that the constitution need [not] refer to them.* By international law *the principle that children or people born in a country of unknown parents are citizens in this nation is recognized, and it is not necessary to include a provision on the subject exhaustively.* Though the Rafols amendment was not carried out, it was not because there was any objection to the notion that persons of "unknown parentage" are not citizens but only because their number was not enough to merit specific mention.

5. **ID.; ID.; CITIZENSHIP; DOMESTIC LAWS ON ADOPTION SUPPORT THE PRINCIPLE THAT FOUNDLINGS ARE FILIPINOS.—** Domestic laws on adoption also support the principle that foundlings are Filipinos. These laws do not provide that adoption confers citizenship upon the adoptee. Rather, the adoptee must be a Filipino in the first place to be adopted. The most basic of such laws is Article 15 of the Civil Code which provides that "[l]aws relating to family rights, duties, status, conditions, legal capacity of persons are binding on citizens of the Philippines even though living abroad." Adoption

deals with status, and a Philippine adoption court will have jurisdiction only if the adoptee is a Filipino. x x x Recent legislation is more direct. R.A. No. 8043 entitled "An Act Establishing the Rules to Govern the Inter-Country Adoption of Filipino Children and For Other Purposes" (otherwise known as the "Inter-Country Adoption Act of 1995"), R.A. No. 8552, entitled "An Act Establishing the Rules and Policies on the Adoption of Filipino Children and For Other Purposes" (otherwise known as the Domestic Adoption Act of 1998) and this Court's A.M. No. 02-6-02-SC or the "Rule on Adoption," all expressly refer to "Filipino children" and include foundlings as among Filipino children who may be adopted.

6. **ID.; ID.; ID.; CURRENT LEGISLATION REVEALS THE ADHERENCE OF THE PHILIPPINES TO THE GENERALLY ACCEPTED PRINCIPLE OF INTERNATIONAL LAW; THE PRESUMPTION OF NATURAL-BORN CITIZENSHIP OF FOUNDLINGS IS A VIRTUAL CERTAINTY.—** The principles found in two conventions, while yet unratified by the Philippines, are generally accepted principles of international law. The first is Article 14 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws under which a foundling is presumed to have the "nationality of the country of birth," x x x. The second is the principle that a foundling is *presumed born of citizens* of the country where he is found, contained in Article 2 of the 1961 United Nations Conventions on the Reduction of Statelessness x x x. That the Philippines is not a party to the 1930 Hague Convention nor to the 1961 Convention on the Reduction of Statelessness does not mean that their principles are not binding. x x x Current legislation reveals the adherence of the Philippines to this generally accepted principle of international law. In particular, R.A. No. 8552, R.A. 8042 and this Court's Rules on Adoption, expressly refer to "Filipino children." In all of them foundlings are among the Filipino children who could be adopted. Likewise, it has been pointed that the DFA issues passports to foundlings. Passports are by law, issued only to citizens. This shows that even the executive department, acting through the DFA, considers foundlings as Philippine citizens. Adopting these legal principles from the 1930 Hague Convention and the 1961 Convention on Statelessness is rational and reasonable and consistent with the

jus sanguinis regime in our Constitution. The presumption of natural-born citizenship of foundlings stems from the presumption that their parents are nationals of the Philippines. As the empirical data provided by the PSA show, that presumption is at more than 99% and is a virtual certainty.

7. **ID.; ELECTIONS; CITIZENSHIP; CITIZENSHIP RETENTION AND RE-ACQUISITION ACT (R.A. 9225); IF PETITIONER REACQUIRES HIS FILIPINO CITIZENSHIP (UNDER R.A. NO. 9225), HE WILL RECOVER HIS NATURAL-BORN CITIZENSHIP.—** R.A. No. 9225 is a repatriation statute and has been described as such in several cases. They include *Sobejana-Candon v. COMELEC* where we described it as an "abbreviated *repatriation process that restores* one's Filipino citizenship x x x." Also included is *Parreño v. Commission on Audit*, which cited *Tabasa v. Court of Appeals*, where we said that "[t]he repatriation of the former Filipino will allow him to recover his natural-born citizenship. *Parreño v. Commission on Audit* is categorical that "if petitioner reacquires his Filipino citizenship (under R.A. No. 9225), he will … *recover his natural-born* citizenship."

8. **ID.; CONSTITUTIONAL LAW; COMELEC CANNOT REVERSE A JUDICIAL PRECEDENT; A NEW RULE REVERSING A STANDING DOCTRINE CANNOT BE RETROACTIVELY APPLIED.—** The COMELEC cannot reverse a judicial precedent. That is reserved to this Court. And while we may always revisit a doctrine, a new rule reversing standing doctrine cannot be retroactively applied. In *Morales v. Court of Appeals and Jejomar Erwin S. Binay, Jr.*, where we decreed reversed the condonation doctrine, we cautioned that it "should be prospective in application for the reason that judicial decisions applying or interpreting the laws of the Constitution, until reversed, shall form part of the legal system of the Philippines." This Court also said that "while the future may ultimately uncover a doctrine's error, it should be, as a general rule, recognized as good law prior to its abandonment. Consequently, the people's reliance thereupon should be respected."

9. **CIVIL LAW; ADOPTION; EFFECTS OF ADOPTION UNDER R.A. NO. 8552; AN ADOPTEE IS ENTITLED TO AN AMENDED BIRTH CERTIFICATE ATTESTING TO THE**

FACT THAT THE FORMER IS A CHILD OF THE ADOPTER(S).— One of the effects of adoption is "to sever all legal ties between the biological parents and the adoptee, except when the biological parent is the spouse of the adoptee." Under R.A. No. 8552, petitioner was also entitled to an amended birth certificate "attesting to the fact that the adoptee is the child of the adopter(s)" and which certificate "shall not bear any notation that it is an amended issue." That law also requires that "[a]ll records, books, and papers relating to the adoption cases in the files of the court, the Department [of Social Welfare and Development], or any other agency or institution participating in the adoption proceedings shall be kept strictly confidential." The law therefore allows petitioner to state that her adoptive parents were her birth parents as that was what would be stated in her birth certificate anyway. And given the policy of strict confidentiality of adoption records, petitioner was not obligated to disclose that she was an adoptee.

10. **POLITICAL LAW; ELECTION LAWS; ACQUISITION OF NEW DOMICILE, REQUISITES; COMPLIED WITH IN THE CASE AT BAR.—** There are three requisites to acquire a new domicile; 1. Residence or bodily presence in a new locality; 2. an intention to remain there; and 3. an intention to abandon the old domicile. To successfully effect a change of domicile, one must demonstrate an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one and definite acts which correspond with the purpose. In other words, there must basically be *animus manendi* coupled with *animus non revertendi*. The purpose 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. x x x [T]he evidence of petitioner is overwhelming and taken together leads to no other conclusion that she decided to permanently abandon her U.S. residence (selling the house, taking the children from U.S. schools, getting quotes from the freight company, notifying the U.S. Post Office fo the abandonment of their address in the U.S., donating excess items to the Salvation Army, her husband resigning from U.S. employment right after selling the the U.S. house) and permanently relocate to the Philippines and actually re-established her residence here on 24 May 2005 (securing T.I.N,

enrolling her children in Philippine schools, buying property here, constructing a residence here, returning to the Philippines after all trips abroad, her husband getting employed here). Indeed, coupled with her eventual application to reacquire Philippine citizenship and her family's actual continuous stay in the Philipppines over the years, it is clear that when petitioner returned on 24 May 2005 it was for good.

11. **ID.; CONSTITUTIONAL LAW; AN ACT INSTITUTING A BALIKBAYAN PROGRAM (R.A. NO. 6768, AS AMENDED); *BALIKBAYANS* ARE NOT ORDINARY TRANSIENTS.—** A closer look at R.A. No. 6768 as amended, otherwise known as the "An Act Instituting a Balikbayan Program," shows that there is no overriding intent to treat *balikbayans* as temporary visitors who must leave after one year. Included in the law is a former Filipino who has been naturalized abroad and "comes or returns to the Philippines." The law institutes a *balikbayan* program "providing the opportunity to avail of the necessary training to enable the *balikbayan* to become economically self-reliant members of society upon their return to the country" in line with the government's "reintegration program." Obviously, *balikbayans* are not ordinary transients. Given the law's express policy to facilitate the return of a *balikbayan* and help him reintegrate into society, it would be an unduly harsh conclusion to say in absolute terms that the *balikbayan* must leave after one year. That visa-free period is obviously granted him to allow him to re-establish his life and reintegrate himself into the community before he attends to the necessary formal and legal requirments of repatriation. And that is exactly what petitioner did – she reestablished life here by enrolling her children and buying property while awaiting the return of her husband and then applying for repatriation shortly thereafter.

12. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; COMELEC'S TREATMENT OF A CANDIDATE'S PREVIOUS CERTIFICATE OF CANDIDACY (COC) AS A BINDING AND CONCLUSIVE ADMISSION OF A MISTAKE AS TO THE PERIOD OF RESIDENCE CONSTITUTES GRAVE ABUSE OF DISCRETION WHEN THE SAME IS OVERCOME BY EVIDENCE.—** It was grave abuse of discretion for the COMELEC to treat the 2012 COC as a binding and conclusive

admission against petitioner. It could be given in evidence against her, yes, but it was by no means conclusive. There is precedent after all where a candidate's mistake as to period of residence made in a COC *was overcome by evidence*. In *Romualdez-Marcos v. COMELEC*, the candidate mistakenly put seven (7) months as her period of residence where the required period was a minimum of one year. We said that "*[i]t is the fact of residence, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the constitution's residency qualification requirement.*" The COMELEC ought to have looked at the evidence presented and see if petitioner was telling the truth that she was in the Philippines from 24 May 2005. Had the COMELEC done its duty, it would have seen that the 2012 COC and the 2015 COC *both* correctly stated the *pertinent* period of residency. The COMELEC, by its own admission, disregarded the evidence that petitioner actually and physically returned here on 24 May 2005 not because it was false, but only because COMELEC took the position that domicile could be established only from petitioner's repatriation under R.A. No. 9225 in July 2006. However, it does not take away the fact that in reality, petitioner had returned from the U.S. and was here to stay permanently, on 24 May 2005. When she claimed to have been a resident for ten (10) years and eleven (11) months, she could do so in good faith.

SERENO, *C.J.*, *concurring opinion:*

1. **POLITICAL LAW; ELECTION LAWS; COMMISSION ON ELECTIONS; COMELEC EXCEEDED ITS JURISDICTION WHEN IT RULED ON PETITIONER'S QUALIFICATIONS; REASONS.—** The brief reasons why the COMELEC exceeded its jurisdiction when it ruled on petitioner's qualifications are as follows. First, Section 78 of *Batas Pambansa Bilang* 118, or the Omnibus Election Code (OEC), does not allow the COMELEC to rule on the qualifications of candidates. Its power to cancel a Certificate of Candidacy (CoC) is circumscribed within the confines of Section 78 of the OEC that provides for a summary proceeding to determine the existence of the exclusive ground that any representation made by the candidate regarding a Section 74 matter was false. x x x Second, even assuming that the COMELEC may go beyond the determination of patent falsity

of the CoC, its decision to cancel petitioner's CoC must still be reversed. The factual circumstances surrounding petitioner's claims of residency and citizenship show that there was neither intent to deceive nor false representation on her part. x x x Most egregiously, the COMELEC blatantly disregarded a long line of decisions by this Court to come up with its conclusions. x x x **It is clear that what the minority herein is attempting to accomplish is to authorize the COMELEC to rule on the intrinsic qualifications of petitioner, and henceforth, of every candidate – an outcome clearly prohibited by the Constitution and by the Omnibus Election Code.** x x x It was also most unfair of COMELEC to suddenly impose a previously non-existing formal requirement on candidates – such as a permanent resident visa or citizenship itself – to begin the tolling of the required duration of residency. Neither statutes nor jurisprudence require those matters. COMELEC grossly acted beyond its jurisdiction by usurping the powers of the legislature and the judiciary.

2. **ID.; ID.; ID.; POWER OF THE COMELEC PRIOR TO SECTION 78 OF THE OMNIBUS ELECTION CODE, MINISTERIAL AND ADMINISTRATIVE; DISCUSSED.—** Prior to the OEC, the power of the COMELEC in relation to the filing of CoCs had been described as ministerial and administrative. In 1985, the OEC was passed, empowering the COMELEC to grant or deny due course to a petition to cancel a CoC. The right to file a verified petition under Section 78 was given to any person on the ground of material representation of the contents of the CoC as provided for under Section 74. Among the statements a candidate is required to make in the CoC, is that he or she is eligible for the office the candidate seeks. x x x In the deliberations of the *Batasang Pambansa* on what would turn out to be Section 78 of the Omnibus Election Code or *Batas Pambansa Bilang* (BP) 881, the lawmakers emphasized that **the fear of partisanship on the part of the COMELEC makes it imperative that it must only be for the strongest of reasons, i.e., material misrepresentation on the face of the CoC, that the COMELEC can reject any such certificates. Otherwise, to allow greater power than the quasi-ministerial duty of accepting facially compliant CoCs would open the door for COMELEC to engage in partisanship; the COMELEC may target any candidate at**

will. The fear was so real to the lawmakers that they characterized the power to receive CoCs not only as summary, but initially as, "ministerial."

3. **ID.; ID.; OMNIBUS ELECTION CODE; SECTION 78; SUMMARY NATURE OF PROCEEDINGS ONLY ALLOWS THE COMELEC TO RULE ON PATENT MATERIAL MISREPRESENTATION OF FACTS ON RESIDENCY AND CITIZENSHIP.—** The original intent of the legislature was clear: to make the denial of due course or cancellation of certificate of candidacy before the COMELEC a summary proceeding that would not go into the intrinsic validity of the qualifications of the candidate, even to the point of making the power merely ministerial in the absence of patent defects. x x x The summary nature of Section 78 proceeding implies the simplicity of subject-matter as it does away with long drawn and complicated trial-type litigation. Considering its nature, the implication therefore, is that Section 78 cases contemplate simple issues only. Any issue that is complex would entail the use of discretion, the exercise of which is reserved to the appropriate election tribunal.

4. **ID.; ID.; ID.; ID.; SECTION 78 PROCEEDINGS CANNOT TAKE THE PLACE OF A *QUO WARRANTO* PROCEEDING OR AN ELECTORAL PROTEST.—** The danger of the COMELEC effectively thwarting the voter's will was clearly articulated by Justice Vicente V. Mendoza in his separate opinion in the case involving Mrs. Imelda Romualdez Marcos. x x x Justice Mendoza explains Section 78 in relation to petitions for disqualification under the Constitution and relevant laws. The allegations in the Montejo's petition were characterized, thus: x x x Montejo's petition before the COMELEC was therefore not a petition for cancellation of certificate of candidacy under § 78 of the Omnibus Election Code, but essentially a petition to declare private respondent ineligible. It is important to note this, because, as will presently be explained, proceedings under § 78 have for their purpose to disqualify a person from being a *candidate*, whereas *quo warranto* proceedings have for their purpose to disqualify a person from holding *public office*. Jurisdiction over *quo warranto* proceedings involving members of the House of Representatives is vested in the Electoral Tribunal of that body.

5. **ID.; ID.; ID.; ID.; INTENT TO DECEIVE THE ELECTORATE IS AN ESSENTIAL ELEMENT FOR A SECTION 78 PETITION TO PROSPER.—** In a long line of cases, starting with *Romualdez-Marcos v. COMELEC* in 1995, this Court has invariably held that intent to deceive the electorate is an essential element for a Section 78 petition to prosper. In *Romualdez-Marcos*, the Court ruled that it is the fact of the qualification, not a statement in a certificate of candidacy, which ought to be decisive in determining whether or not an individual has satisfied the constitution's qualification requirements. The statement in the certificate of candidacy becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. x x x Thus, a petition to deny due course to or cancel a certificate of candidacy according to the prevailing decisions of this Court still requires the following essential allegations: (1) the candidate made a representation in the certificate; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate (the right to run for the election); and (3) the candidate made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact which would otherwise render him ineligible.

6. **ID.; ID.; ID.; ID.; A CLAIM OF GOOD FAITH IS A VALID DEFENSE.—** Considering that intent to deceive is a material element for a successful petition under Section 78, a claim of good faith is a valid defense. Misrepresentation means the act of making a false or misleading assertion about something, usually with the intent to deceive. It is not just written or spoken words, but also any other conduct that amounts to a false assertion. A material misrepresentation is a false statement to which a reasonable person would attach importance in deciding how to act in the transaction in question or to which the maker knows or has reason to know that the recipient attaches some importance. In the sphere of election laws, a material misrepresentation pertains to a candidate's act with the intention to gain an advantage by deceitfully claiming possession of all the qualifications and none of the disqualifications when the contrary is true. A material misrepresentation is incompatible with a claim of good faith. Good faith encompasses, among

other things, an honest belief, the absence of malice and the absence of a design to defraud or to seek an unconscionable advantage. It implies honesty of intention and honest belief in the validity of one's right, ignorance of a contrary claim, and absence of intention to deceive another.

7. **ID.; ID.; ID.; ID.; BURDEN OF PROOF IN SECTION 78 PROCEEDINGS, DISCUSSED.—** Section 1, Rule 131 of the Revised Rules on Evidence defines burden of proof as "the duty of a party to present evidence on the facts in issue necessary to establish his claim" "by the amount of evidence required by law." When it comes to a Section 78 proceeding, it is the petitioner who has the burden of establishing material misrepresentation in a CoC. Since the COMELEC is a quasi-judicial body, the petitioner must establish his case of material misrepresentation by substantial evidence. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Burden of proof never shifts. It is the burden of evidence that shifts. Hence, in a Section 78 proceeding, if the petitioner comes up with a prima facie case of material misrepresentation, the burden of evidence shifts to the respondent.

8. **REMEDIAL LAW; EVIDENCE; ADMISSIONS AGAINST INTEREST, EXPLAINED; CASE AT BAR.—** Admissions against interest are governed by Section 26, Rule 130 of the Rules of Court, which provides: Sec. 26. *Admissions of a party*. – The act, declaration or omission of a party as to a relevant fact may be given in evidence against him. It is well to emphasize that admissions against interest fall under the rules of admissibility. Admissions against interest pass the test of relevance and competence. They, however, do not guarantee their own probative value and conclusiveness. Like all evidence, they must be weighed and calibrated by the court against all other pieces at hand. **Also, a party against whom an admission against interest is offered may properly refute such declaration by adducing contrary evidence.** To be admissible, an admission must (1) involve matters of fact, and not of law; (2) be categorical and definite; (3) be knowingly and voluntarily made; and (4) be adverse to the admitter's interests, otherwise it would be self-serving and inadmissible. An admission against interest must consist of a categorical statement or document pertaining to a matter of fact. **If the statement or document**

pertains to a conclusion of law or necessitates prior settlement of questions of law, it cannot be regarded as an admission against interest. x x x The COMELEC was wrong, however, in ruling that petitioner attempted to overcome the alleged admission against interest merely by filing her 2016 CoC for president. Petitioner submitted severed various many and varied pieces of evidence to prove her declaration in her 2016 certificate of candidacy for president that as of May 2005, she had definitely abandoned her residence in the US and intended to reside permanently in the Philippines. x x x

9. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; CITIZENSHIP; DOMICILE; DEFINITION AND CLASSIFICATIONS.—** Section 2, Article VII of the Constitution requires that a candidate for president be "a resident of the Philippines for at least ten years immediately preceding such election." The term residence, as it is used in the 1987 Constitution and previous Constitutions, has been understood to be synonymous with domicile. Domicile means not only the intention to reside in one place, but also personal presence therein coupled with conduct indicative of such intention. It is the permanent home and the place to which one intends to return whenever absent for business or pleasure as shown by facts and circumstances that disclose such intent. Domicile is classified into three: (1) domicile of origin, which is acquired at birth by every person; and (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.

10. **ID.; ID.; ID.; ID.; THE PHILIPPINES' *BALIKBAYAN* PROGRAM; THE PROGRAM HAS NO REGARD AT ALL FOR THE CITIZENSHIP OF OVERSEAS FILIPINOS.—** R.A. 6768, enacted on 3 November 1989, instituted a *Balikbayan* Program under the administration of the Department of Tourism to attract and encourage overseas Filipinos to come and visit their motherland. Under R.A. 6768, the term *balikbayan* covers Filipino citizens who have been continuously out of the Philippines for a period of at least one year; Filipino overseas workers; and former Filipino citizens and their family who had been naturalized in a foreign country and comes or returns to the Philippines. x x x As shown by the foregoing discussion, the *Balikbayan* Program, as conceptualized from the very

beginning, envisioned a system not just of welcoming overseas Filipinos (Filipinos and/or their families and descendants who have become permanent residents or naturalized citizens of other countries) as short-term visitors of the country, but more importantly, one that will encourage them to come home and once again become permanent residents of the Philippines. Notably, the program has no regard at all for the citizenship of these overseas Filipinos. x x x **Further militating against the notion of *balikbayans* as mere visitors of the country are the privileges accorded to them under R.A. 9174, the current *balikbayan* law.**

11. **ID.; ID.; ID.; ID.; DOMICILE; VISA SHOULD NOT BE THE SOLE DETERMINANT OF INTENTION TO REACQUIRE DOMICILE IN THE PHILIPPINES; CASE AT BAR.—** In the case of petitioner Poe, she entered the Philippines visa-free under the *Balikbayan* program, left for a short while and legally re-entered under the same program. This is not a case where she abused any *Balikbayan* privilege because shortly after reentering the country on 11 March 2006, she applied for dual citizenship under R.A. 9225. Based on the foregoing, it was most unfair for COMELEC to declare that petitioner could not have acquired domicile in the Philippines in 2005 merely because of her status as a *balikbayan*. Her visa (or lack thereof) should not be the sole determinant of her intention to reacquire her domicile in the Philippines. x x x That being said, the registration of petitioner as voter bolsters petitioner's claim that she concretized her intent to establish a domicile in the country on 24 May 2005. Take note that if we use 24 May 2005 as the reckoning date for her establishment of domicile in the Philippines, she would have indeed been a resident for roughly one year and three months as of 31 August 2006, the date she registered as a voter in the Philippines. Besides, when we consider the other factors previously mentioned in this discussion – the enrolment of petitioner's children shortly after their arrival in the Philippines, the purchase of the condominium unit during the second half of 2005, the construction of their house in Corinthian Hills in 2006, the notification of the US Postal Service of petitioner's change of address – there can only be one conclusion: petitioner was here to stay in the Philippines for good when she arrived in May 2005. x x x As a result, petitioner's arrival in the Philippines on 24 May

2005 was definitely coupled with both *animus manendi* and *animus non revertendi.*

12. **ID.; ID.; ID.; ID.; ADOPTION; NATURE AND EFFECT OF ADOPTION DECREE.—** The adoption decree issued in favor of petitioner in 1974 allows her to legally claim to be the daughter of Ronald Allan Poe and Jesusa Sonora Poe. This proposition finds support in statutes and jurisprudence. In *Republic v. Court of Appeals*, We held that upon entry of an adoption decree, **the law creates a relationship in which adopted children were declared "born of" their adoptive parents.** Congress confirmed this interpretation when it enacted R.A. 8552, which provides that the "adoptee shall be considered the legitimate son/daughter of the adopter for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughter born to them without discrimination of any kind." Apart from obtaining the status of legitimate children, adoptees are likewise entitled to maintain the strict confidentiality of their adoption proceedings. x x x This grant of confidentiality would mean very little if an adoptee is required to go beyond this decree to prove her parentage.

13. **ID.; ID.; ID.; ID.; PHILIPPINE PASSPORT ACT OF 1996; A PASSPORT IS ISSUED BY THE PHILIPPINE GOVERNMENT TO ITS CITIZENS; CASE AT BAR.—** In 1996, R.A. 8239 (Philippine Passport Act of 1996) was passed. The law imposes upon the government the duty to issue passport or any travel document to any citizen of the Philippines or individual who complies with the requirements of the Act. "Passport" has been defined as a document issued by the Philippine government *to its citizens* and requesting other governments to allow its citizens to pass safely and freely, and in case of need to give him/her all lawful aid and protection. Section 5 of R.A. 8239 states that no passport shall be issued to an applicant unless the Secretary or his duly authorized representative is satisfied that the applicant is a Filipino citizen who has complied with the requirements. Conversely, a Philippine passport holder like petitioner is presumed to be a Filipino citizen, considering the presumption of regularity accorded to acts of public officials in the course of their duties. When the claim to Philippine citizenship is doubtful, only a "travel document" is issued.

14. **CIVIL LAW; FAMILY CODE; FILIATION; HOW ESTABLISHED.—** The Family Code also allows paternity and filiation to be established through any of the following methods: (1) record of birth; (2) written admission of filiation; (3) open and continuous possession of the status of a legitimate or an illegitimate child; (4) or other means allowed by the Rules or special laws. Notably, **none** of these methods requires physical proof of parentage x x x Evidently, there is no legal basis for the standard proposed by the COMELEC and private respondents. Physical or scientific proof of a blood relationship to a putative parent is not required by law to establish filiation or any status arising therefrom such as citizenship. In fact, this Court has repeatedly emphasized that DNA evidence is not absolutely essential so long as paternity or filiation may be established by other proof. There is, therefore, no reason to impose this undue burden on petitioner, particularly in light of her situation as a foundling.

15. **REMEDIAL LAW; EVIDENCE; ASCERTAINING EVIDENCE DOES NOT ENTAIL ABSOLUTE CERTAINTY; GROSS MISAPPRECIATION OF THE FACTS IN CASE AT BAR.—** It must be emphasized that ascertaining evidence does not entail absolute certainty. Under Rule 128 of the Rules of Court, evidence must only induce belief in the existence of a fact in issue, thus: **Section 4.** *Relevancy; collateral matters*. – Evidence must have such **a relation to the fact in issue as to induce belief in its existence or non-existence**. Evidence on collateral matters shall not be allowed, except **when it tends in any reasonable degree to establish the probability or improbability of the fact in issue.** Hence, judges are not precluded from drawing conclusions from inferences based on established facts. x x x In the instant case, COMELEC refused to consider evidence that tends to "establish the probability of a fact in issue," which in this case pertains to petitioner's citizenship, claiming that it "did not and could not show bloodline to a Filipino parent as required under jus sanguinis." This, to my mind, constitutes gross misappreciation of the facts. First and foremost, it is admitted that petitioner has typical Filipino features, with her brown eyes, low nasal bridge, black hair, oval-shaped face and height. This by itself, does not evince belief that as to her definite citizenship, but coupled with other circumstantial evidence—that she was

abandoned as an infant, that the population of Iloilo in 1968 was Filipino, and there were not international airports in Iloilo at that time—establishes the probability that she was born of Filipino parents.

16. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; INTERPRETATION OF THE CONSTITUTION; ORIGINALIST AND FUNCTIONALIST APPROACHES, DISCUSSED.—** In its Memorandum, the COMELEC asserted that foundlings cannot be considered natural-born citizens in light of the principle of *inclusion unius est exclusion alterius.* This line of reasoning stems from an originalist reading of the Constitution, which is anchored on the principle that constitutional issues are to be resolved by looking only at the text of the Constitution and at the clear intent of the framers. Intentionalism is a species of originalism. Another species is textualism, which has been described as "that [which] looks to the Constitution's original public meaning," or "read[s] the language of the Constitution as the man on the street would understand it." x x x In legal scholarship, the functionalist approach appears to be defined most clearly by what it is not – it is not formalism. x x x Theorists utilizing the functionalist approach have likened Constitutions to animate beings that can evolve to the extent that they become hardly recognizable by their framers. In other words, they believe that the Constitution may be interpreted in a manner that goes beyond the original intent of the persons who crafted the text.

17. **ID.; ID.; ID.; ID.; EXTRINSIC AIDS, EXPLAINED.—** Where the terms of the Constitution itself do not reveal the intent of the framers and the rest of the people, extrinsic aids may be resorted to, even when using an originalist approach. The answer may be provided by the debates or proceedings in the Constitutional Convention, the contemporaneous legislative or executive construction, history, and the effects resulting from the construction contemplated. Here, the records of the 1934 Constitutional Convention prove that the framers intended to accord natural-born citizenship to foundlings. It has been argued that the non-inclusion of a provision on "natural children of a foreign father and a Filipino mother not recognized by the father" negates the intent to consider foundlings natural-born citizens (or even merely citizens). However, the Court cannot infer the

absence of intent to include foundlings based on that fact alone. x x x What is clear from the deliberations is that the framers could not have intended to place foundlings in limbo, as the social justice principle embodied in Section 5, Article II of the 1935 Constitution indiscriminately covered "all of the people." Social justice has been defined as "the *humanization of laws* and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated." It means the promotion of the welfare *of all the people.*

18. **ID.; ID.; ID.; CITIZENSHIP; MODES OF ACQUIRING CITIZENSHIP; CITIZENSHIP LAWS IN THE PHILIPPINES, A MIXTURE OF *JUS SOLI* AND *JUS SANGUINIS*.—** The history of citizenship laws in the Philippines shows that we have never adopted a purely *jus sanguinis* regime. Ours is a mixture of elements of *jus soli* and *jus sanguinis*, which we inherited from the Americans and the Spaniards, respectively. In fact, as will be elaborated in the succeeding section, the concept of "natural-born citizenship" originated from a *jus soli* jurisdiction. x x x Far from adhering to an exclusively *jus sanguinis* regime, at least four modes of acquiring citizenship have operated in the Philippine jurisdiction since the turn of the century*: jus soli, jus sanguinis, res judicata* and naturalization. *Jus soli* used to predominate but upon the effectivity of the 1935 Constitution, *jus sanguinis* became the *predominating* regime. x x x Considering the mixture of citizenship regimes currently in force, it is not correct to say that there is an exclusive *jus sanguinis* principle in place, and because of that principle, that petitioner is thereby required, regardless of the fact that she is a foundling, to submit proof of her blood relationship to a Filipino father. To rule otherwise would be to implement a purely *jus sanguinis* regime contrary to the history of the Constitution.

19. **ID.; ID.; ID.; ID.; "NATURAL-BORN" CITIZEN; ORIGIN AND CONCEPT.—** An examination of the origin of the term "natural-born" reveals that it was lifted by the Philippines from the United States (U.S.) Constitution x x x As a matter of inclusion, it has been held that it is beyond dispute that anyone born on American soil with an American parent is a "natural born citizen." As a matter of exclusion, anyone whose citizenship is acquired after birth as a result of "naturalization" is not a

"natural born citizen." x x x The phrase "natural-born citizen" found its way to America from England. While there had been no extensive usage of the phrase during the founding era of the US (1774-1797), it seems clear that it was derived from "natural born subject," which had a technical meaning in English law and constitutional theory. x x x The word "natural-born" appeared thrice in the 1935 Constitution as a qualification for the presidency and vice-presidency, as well as membership in the Senate and House of Representatives. The framers of the 1935 Constitution, however, did not define the term. x x x The requirement of "natural-born" citizenship was carried over to the 1973 Constitution and then to the present Constitution. Confirming the original vision of the framers of the 1935 Constitution, the 1973 Constitution defined the term as "one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship." x x x Since the term was defined in the negative, it is evident that the term "natural-born citizens" refers to those who do not have to perform any act to acquire or perfect their Philippine citizenship. The definition *excludes* only those who are naturalized. From this interpretation, it may be inferred that a Filipino citizen who did not undergo the naturalization process is natural-born.

20. **ID.; PUBLIC INTERNATIONAL LAW; CITIZENSHIP; THE PHILIPPINES IS OBLIGATED TO RECOGNIZE THE CITIZENSHIP OF FOUNDLINGS.—** The Philippines is obligated by existing customary and conventional international law to recognize the citizenship of foundlings. x x x It must be remembered that norms of customary international law become binding on the Philippines as part of the law of the land by virtue of the Incorporation Clause in the Constitution. For incorporation to occur, however, two elements must be established: (a) widespread and consistent practice on the part of states; and (b) a psychological element known as the *opinio juris sive necessitatis* or a belief on the part of states that the practice in question is rendered obligatory by the existence of a rule of law requiring it. x x x In view of the concurrence of these two elements, it is evident that a rule requiring states to accord citizenship to foundlings has crystallized into a customary norm. The Philippines is therefore bound at present to act in compliance with these obligations.

VELASCO, JR., *J.*, *concurring opinion:*

1. **POLITICAL LAW; ELECTION LAWS; ACQUISITION OF NEW DOMICILE, REQUISITES; INTENT TO CHANGE DOMICILE CAN BE MADE THROUGH AN "INCREMENTAL PROCESS" OR THE EXECUTION OF "INCREMENTAL TRANSFER MOVERS".—** It is established that to acquire a new domicile one must demonstrate three things: (1) residence or bodily presence in the new locality; (2) an intention to remain there (*animus manendi*); and (3) an intention to abandon the old domicile (*animus non revertendi*). x x x [T]he fulfillment of the intent to change domicile can be made via a series of steps through what the Court adverts in *Mitra v. COMELEC* and *Sabili v. COMELEC* as an "incremental process" or the execution of "incremental transfer moves." The facts of the case suggest that Sen. Poe's change of domicile and repatriation from the US to the Philippines was, to borrow from *Mitra*, "accomplished, not in a single key move but, through an incremental process" that started in early 2005. x x x The suggestion that Sen. Poe's *animus manendi* only existed at the time she took her oath of allegiance under RA 9225 in July 2006 and that her *animus non revertendi* existed only in October 2010 when she renounced her US citizen is simply illogical. The fact that what is involved is a change of national domicile from one country to another, separated as it were by oceans, and not merely from one neighboring municipality to another like in *Mitra* and *Sabili*, it is with more reason that the teachings in Mitra and Sabili are applicable.

2. **ID.; ID.; ID.; INTENT TO ABANDON AN OLD DOMICILE DOES NOT REQUIRE A COMPLETE AND ABSOLUTE SEVERANCE OF ALL PHYSICAL LINKS TO THAT COUNTRY.—** The alleged fact that Sen. Poe acquired a house in the US in 2008, cannot be taken as an argument against her *animus non revertendi* vis-à-vis the evidence of her manifest intent to stay, and actual stay, in the Philippines. Certainly, the element of intent to abandon an old domicile does not require a complete and absolute severance of all physical links to that country, or any other country for that matter. It is simply too archaic to state, at a time where air travel is the norm, that ownership of a secondary abode for a temporary visit or holiday negates an intent to abandon a foreign country as a legal domicile.

LEONEN, *J.*, *concurring opinion:*

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RULE 64, SECTION 2 OF RULES OF COURT PROVIDES FOR A JUDICIAL REVIEW OF THE COMMISSION ON ELECTIONS' RESOLUTION UNDER RULE 65.—** Under Rule 64, Section 2 of the Rules of Court, a judgment or final order or resolution of the Commission on Elections may be brought to this court on certiorari under Rule 65. For a writ of certiorari to be issued under Rule 65, the respondent tribunal must have acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. x x x Article VIII, Section 1 of the Constitution is designed to ensure that this court will not abdicate its duty as guardian of the Constitution's substantive precepts in favor of alleged procedural devices with lesser value. Given an actual case or controversy and in the face of grave abuse, this court is not rendered impotent by an overgenerous application of the political question doctrine. In general, the present mode of analysis will often require examination of the potential breach of the Constitution in a justiciable controversy.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; ELECTION LAWS; COMMISSION ON ELECTIONS' RULES OF PROCEDURE; RULE 23, SECTION 8 THEREOF INSOFAR AS IT STATES THAT THE COMMISSION ON ELECTIONS' DECISIONS BECOME FINAL AND EXECUTORY FIVE (5) DAYS AFTER RECEIPT DOES NOT VIOLATE ARTICLE IX, SECTION 7 OF THE CONSTITUTION.—** Rule 23, Section 8 of the Commission on Elections' Rules of Procedure, insofar as it states that the Commission on Elections' decisions become final and executory five (5) days after receipt, is valid. It does not violate Article IX, Section 7 of the Constitution. x x x Finally, it should be noted that in promulgating this rule, the Commission on Elections was simply fulfilling its constitutional duty to "promulgate its rules of procedure in order ***to expedite disposition of election cases***." Cases before the Commission on Elections must be disposed of without delay, as the date of the elections is constitutionally and statutorily fixed. The five-day rule is based on a reasonable ground: the necessity to prepare for the elections.

3. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EXISTS WHEN COMELEC ALLOWED A PETITION DIRECTLY QUESTIONING THE QUALIFICATIONS OF A CANDIDATE BEFORE ELECTIONS.—** Significantly, Tatad was not the only petitioner in those cases. There were three other petitions against one candidate, which already contained most if not all the arguments on the issues raised by Tatad. There was, thus, no discernable reason for the Commission on Elections not to dismiss a clearly erroneous petition. The Commission on Elections intentionally put itself at risk of being seen not only as being partial, but also as a full advocate of Tatad, guiding him to do the correct procedure. On this matter, the Commission on Elections clearly acted arbitrarily. x x x The law does not allow petitions directly questioning the qualifications of a candidate before the elections. Tatad could have availed himself of a petition to deny due course to or cancel petitioner's certificate of candidacy under Section 78 on the ground that petitioner made a false material representation in her certificate of candidacy. However, Tatad's petition before the Commission on Elections did not even pray for the cancellation of petitioner's certificate of candidacy. The Commission on Elections gravely abused its discretion in either implicitly amending the petition or incorrectly interpreting its procedural device so as to favor Tatad and allow his petition. The Commission should have dismissed Tatad's petition for want of jurisdiction. In failing to do so, it acted arbitrarily, whimsically, and capriciously. The Commission on Elections on this point acted with grave abuse of discretion.

4. **POLITICAL LAW; CONSTITUTIONAL LAW; ELECTION LAWS; THERE IS NO MATERIAL MISREPRESENTATION WHEN A CANDIDATE STATED THAT SHE WAS A NATURAL-BORN FILIPINA IN HER COC DESPITE ADMISSION THAT SHE IS A FOUNDLING; BURDEN OF PROOF THAT PETITIONER MADE A MATERIAL MISREPRESENTATION IN HER COC UNDER SECTION 78 OF THE OMNIBUS ELECTION CODE IS WITH THE COMELEC.—**There was no material misrepresentation with respect to petitioner's conclusion that she was a natural-born Filipina. Her statement was not false. x x x Petitioner's admission that she is a foundling merely established that her biological parents were unknown. It did

not establish that she falsely misrepresented that she was born of Filipino parents. It did not establish that ***both*** her biological parents were foreign citizens. x x x The Commission on Elections was mistaken when it concluded that the burden of evidence shifted upon admission of the status of a foundling. For purposes of Section 78 of the Omnibus Election Code, private respondents still had the burden of showing that: (1) ***both*** of petitioner's biological parents were foreign citizens; (2) petitioner had actual knowledge of both her biological parents' foreign citizenship at the time of filing of her Certificate of Candidacy; and (3) she had intent to mislead the electorate with regard to her qualifications.

5. **ID.; ID.; CITIZENSHIP; TWO APPROACHES TO AN INDIVIDUAL BEING A NATURAL-BORN; THERE IS NO REQUIREMENT OF FILIPINO BLOODLINE UNDER THE SECOND APPROACH.—** Petitioner is natural-born under any of two possible approaches. The first approach is to assume as a matter of constitutional interpretation that all foundlings found in the Philippines, being presumptively born to either a Filipino biological father or a Filipina biological mother, are natural-born, unless there is substantial proof to the contrary. There must be substantial evidence to show that there is a reasonable probability that ***both,*** not just one, of the biological parents are not Filipino citizens. x x x The second approach is to read the definition of natural-born in Section 2 in relation to Article IV, Section 1 (2). Section 1 (2) requires that the father ***or*** the mother is a Filipino citizen. x x x There is no requirement of citizenship beyond the first degree of ascendant relationship. In other words, there is no necessity to prove indigenous ethnicity. Contrary to the strident arguments of the Commission on Elections, there is no requirement of Filipino bloodline.

6. **ID.; ID.; ELECTION LAWS; REACQUISITION OF NATURAL-BORN CITIZENSHIP WITHIN THE ENTIRE TEN-YEAR PERIOD PRIOR TO THE ELECTION IS NOT REQUIRED BY THE CONSTITUTION; THE LOSS AND REACQUISITION OF NATURAL-BORN CITIZENSHIP IS AN ISSUE THAT MAY BE CONSIDERED BY THE ELECTORATE WHEN THEY CAST THEIR BALLOTS.—** The phrase, "ten years immediately preceding such election" qualifies "a resident of the Philippines" as part of the fifth minimum constitutional requirement. x x x [T]he ten-year requirement also

does not qualify "a natural born citizen." Being natural-born is an inherent characteristic. Being a citizen, on the other hand, may be lost or acquired in accordance with law. The provision clearly implies that: (a) one must be a natural-born citizen at least upon election into office, and (b) one must be a resident at least ten years prior to the election. Citizenship and residency as minimum constitutional requirements are two different legal concepts. *In other words, there is no constitutional anchor for the added requirement that within the entire ten-year period prior to the election when a candidate is a resident, he or she also has to have reacquired his or her natural-born citizen status.* x x x Thus, that petitioner once lost and then reacquired her natural-born citizenship is not part of the minimum constitutional requirements to be a candidate for President. It is an issue that may be considered by the electorate when they cast their ballots.

7. **REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE CAN SATISFY THE STANDARD OF PROOF REQUIRED IN CASES BEFORE A QUASI-JUDICIAL BODY, SUCH AS THE COMELEC; CIRCUMSTANCES PROVIDE SUBSTANTIAL EVIDENCE THAT PETITIONER IS BORN A FILIPINA AT BIRTH.—** If circumstantial evidence may be sufficient to satisfy conviction on the basis of the highest standard of proof, i.e. beyond proof beyond reasonable doubt, then it can also satisfy the less stringent standard of proof required in cases before the Commission on Elections. As a quasi-judicial body, the Commission on Elections requires substantial evidence, or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." x x x These circumstances provide substantial evidence to infer the citizenship of her biological parents. Her physical characteristics are consistent with that of many Filipinos. Her abandonment at a Catholic Church is consistent with the expected behavior of a Filipino in 1968 who lived in a predominantly religious and Catholic environment. The nonexistence of an international airport in Jaro, Iloilo can reasonably provide context that it is illogical for a foreign father and a foreign mother to visit a rural area, give birth and leave their offspring there. x x x [O]ut of the 900,165 recorded births in the Philippines in 1968, only 1,595 or 0.18% of newborns were foreign. This translates to roughly 99.8% chance that petitioner was born a Filipina at birth.

8. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EXISTS WHEN THE COMELEC HELD THAT PETITIONER COMMITTED A MATERIAL MISREPRESENTATION IN HER COC FOR PRESIDENT WITH RESPECT TO HER RESIDENCY.—** Petitioner committed no material misrepresentation with respect to her residency. The facts that can reasonably be inferred from the evidence presented clearly show that she satisfied the requirement that she had residency 10 years immediately preceding the election. x x x In this jurisdiction, it is settled doctrine that for election purposes, the term "residence" contemplates "domicile." x x x [P]etitioner satisfied the residence requirement provided in Article VII, Section 2 of the 1987 Constitution. It was grave abuse of discretion for the Commission on Elections to hold that she committed a material misrepresentation in her Certificate of Candidacy for President. The Commission on Elections committed a grievous error when it invoked the date petitioner's Philippine citizenship was reacquired (i.e., July 7, 2006) as the earliest possible point when she could have reestablished residence in the Philippines. This erroneous premise was the basis for summarily setting aside all the evidence submitted by petitioner which pointed to the reestablishment of her residence at any point prior to July 7, 2006. Thus, by this faulty premise, the Commission on Elections justified the evasion of its legally enjoined and positive duty to treat petitioner's residence controversy as a factual matter and to embark on a meticulous and comprehensive consideration of the evidence. x x x

9. **POLITICAL LAW; CONSTITUTIONAL LAW; ELECTION LAWS; NON-POSSESSION OF A PERMANENT RESIDENT OR IMMIGRANT VISA DOES NOT NEGATE RESIDENCY FOR ELECTION PURPOSES; PETITIONER FALLS WITHIN THE DEFINITION OF A BALIKBAYAN, UNDER SECTION 2(A) OF REPUBLIC ACT NO. 6768, AS AMENDED.—** As with citizenship, non-possession of a permanent resident or immigrant visa does not negate residency for election purposes. x x x Beginning May 24, 2005, petitioner's entries to the Philippines were through the visa-free Balikbayan Program provided for by Republic Act No. 6768, as amended

by Republic Act No. 9174. x x x Petitioner falls within the definition of a balikbayan, under Section 2(a) of Republic Act No. 6768, as amended. She is a "Filipino citizen ... who had been naturalized in a foreign country [who came] or return[ed] to the Philippines." She was, thus, well-capacitated to benefit from the Balikbayan Program.

10. **ID.; ID.; ID.; PETITIONER'S STATEMENT IN HER COC FOR SENATOR AS REGARDS RESIDENCE IS NOT FATAL TO HER CAUSE; INDICATING A CANDIDATE'S PERIOD OF RESIDENCE AS OF THE FILING OF HIS OR HER CERTIFICATE OF CANDIDACY WOULD NOT BE PROBLEMATIC FOR AS LONG AS THE TOTAL PERIOD OF RESIDENCE RELEVANT TO THE POSITION ONE WAS RUNNING FOR WAS COMPLIED WITH.—** The statement petitioner made in her Certificate of Candidacy for Senator as regards residence is not fatal to her cause. x x x The standard form for the certificate of candidacy that petitioner filed for Senator required her to specify her "Period of Residence in the Philippines before May 13, 2013." This syntax lent itself to some degree of confusion as to what the "period before May 13, 2013" specifically entailed. It was, thus, quite possible for a person filling out a blank certificate of candidacy to have merely indicated his or her period of residence *as of the filing of his or her Certificate of Candidacy.* This would not have been problematic for as long as the total period of residence relevant to the position one was running for was complied with. x x x Accordingly, the conclusion warranted by the evidence stands. The fact of petitioner's residence as having commenced on May 24, 2005, completed through an incremental process that extended until April/May 2006, was "established by means more convincing than a mere entry on a piece of paper."

JARDELEZA, *J.*, *concurring opinion:*

1. **POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); JURISDICTION; THE COMELEC HAS JURISDICTION OVER SECTION 78 OF THE OMNIBUS ELECTION CODE.—** I agree with the COMELEC that it has jurisdiction over the petitions to cancel or deny due course to a COC. As a consequence, it has the authority to determine

therein the truth or falsity of the questioned representations in Poe's COC. Section 78 of the Omnibus Election Code (OEC) allows a person to file a verified petition seeking to deny due course to or cancel a COC exclusively on the ground that any of the material representations it contains, as required under Section 74, is false. The representations contemplated by Section 78 generally refer to qualifications for elective office, such as age, residence and citizenship, or possession of natural-born Filipino status. It is beyond question that the issues affecting the citizenship and residence of Poe are within the purview of Section 78. There is also no dispute that the COMELEC has jurisdiction over Section 78 petitions. Where the parties disagree is on whether intent to deceive is a constitutive element for the cancellation of a COC on the ground of false material representation.

2. **ID.; OEC; INTENT TO DECEIVE NOT CONSTITUTIVE ELEMENT FOR CANCELLATION OF COC UNDER SEC. 78; ALL DECLARATIONS REQUIRED UNDER SEC. 74 ARE "MATERIAL".—** Understated in our jurisprudence, however, are representations mentioned in Section 74 that do not involve a candidate's eligibility. In this regard, there appears to be a prevailing misconception that the "material representations" under Section 78 are limited only to statements in the COC affecting eligibility. Such interpretation, however, runs counter to the clear language of Section 78, which covers "any material representation contained therein *as required under Section 74.*" A plan reading of this phrase reveals no decipherable intent to categorize the information required by Section 74 between material nonmaterial, much less to exclude certain items explicitly enumerated therein from the coverage of Section 78. *Ubi lex non distinguit, nec nos distinguere debemus.* When the law does not distinguish, neither should the court. The more accurate interpretation, one that is faithful to the text, is that the word "material" describes—not qualifies—the representations required by Section 74. Therefore, the declarations required of the candidate by Section 74 are all material. In enumerating the contents of the COC. Section 74 uses the word "shall" in reference to non-eligibility-related maters, including "the political party to which he belongs," "civil status," "his post office address for all election purposes,"

"his profession or occupation," and "the name by which he has been baptized, or … registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or … his Hadji name after performing the prescribed religious pilgrimage." The presumption is that the word "shall" in a statute is used in an imperative, and not in a directory, sense. The mandatory character of the provision, coupled with the requirement that the COC be executed under oath, strongly suggests that the law itself considers certain non-eligibility-related information as material—otherwise, the law could have simply done away with them. What this means relative to Section 78 is that there are material representations which may pertain to matters not involving a candidate's eligibility.

3. **ID.; ID.; ID.; ID.; GOVERNMENTAL INTERESTS SOUGHT TO BE ADVANCED BY SEC. 78.—** It is apparent that the interests sought to be advanced by Section 78 are twofold. The first is to protect the sanctity of the electorate's votes by ensuring that the candidates whose names appear in the ballots are qualified and thus mitigate the risk of votes being squandered on an eligible candidate. The second is to penalize candidates who commit a perjurious act by preventing them from running for public office. This is a policy judgment by the legislature that those willing to perjure themselves are not fit to hold an elective office, presumably with the ultimate aim of protecting the constituents from a candidate who committed an act involving moral turpitude. In a way, this protectionist policy is not dissimilar to the underlying principle for allowing a petition for disqualification based on the commission of prohibited acts and election offenses under Section 68. These two considerations, seemingly overlooked in *Salcedo,* are precisely why the "consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws."

4. **ID.; ID.; ID.; ID.; TWO CLASSES OF MATERIAL REPRESENTATIONS CONTEMPLATED BY SEC. 78; APPLICATIONS OF THE CASES OF *SALCEDO V. COMELEC* AND *TAGOLINO V. HRET*.—** Therefore, there are two classes of material representations contemplated by Section 78: (1) those that concern eligibility for public office; and (2) those erstwhile enumerated in Section 74 which do not

affect eligibility. *Tagolino* applies to the former; *Salcedo* to the latter. This is a logical distinction once we connect the factual settings of the two cases with the aforementioned state interests. The need to apply *Tagolino* to the first class is highlighted by an inherent gap in *Salcedo*'s analysis, which failed to take into account a situation where a candidate indicated in good faith that he is eligible when he is in fact not. If *Salcedo* is to be followed to a tee, the COMELEC cannot cancel his COC because he acted in good faith. This would lead to a situation where the portion of the electorate who voted for the ineligible candidate would face the threat of disenfranchisement should the latter win the elections and face a *quo warranto* challenge. In the latter proceeding, not even good faith can cure the inherent defect in his qualifications. *Tagolino* is therefore preferable in instances involving eligibility-related representations because it fills this gap. Indeed, the law should not be interpreted to allow for such disastrous consequences.

5. **ID.; ID.; ID.; ID.; IN ELIGIBILITY-RELATED REPRESENTATION, THE COURT HAS NEVER CONSIDERED INTENT TO DECEIVE AS THE DECISIVE ELEMENT.—** In fact, in cases involving eligibility-related representations, the Court has never considered intent to deceive as the decisive element, even in those that relied on *Salcedo*. In *Tecson v. COMELEC*, which involved a question on the eligibility of Fernando Poe, Jr. for the 2004 presidential elections by way of a Section 78 petition, the Court determined whether he was a natural-born citizen of the Philippines. Intent to deceive the electorate was never discussed. In *Ugdoracion v. COMELEC*, which involved residency, the Court determined that the candidate lost his residency when he became a US green card holder despite his mistaken belief that he retained his domicile in the Philippines. The candidate, invoking the legal definition of domicile, claimed that even if he was physically in the US, he always intended to return to the Philippines. The Court, placing emphasis on his permanent resident status in the US, merely *inferred* his intent to deceive when he failed to declare that he was a green card holder. Then in *Jalosjos v. COMELEC,* also involving residency, the Court found that the claim of domicile was contradicted by the temporary nature of the candidate's stay. This time, the Court simply *deemed* that "[w]hen the candidate's claim of eligibility is proven false, as when the

candidate failed to substantiate meeting the required residency in the locality, the representation of eligibility in the COC constitutes a 'deliberate attempt to mislead, misinform, or hide the fact' of ineligibility." The Court owes candor to the public. Inferring or deeming intent to deceive from the fact of falsity is, to me, just a pretense to get around the gap left by *Salcedo*, *i.e.,* an ineligible candidate who acted in good faith. I believe the more principled approach is to adopt *Tagolino* as the controlling rule.

6. **ID.; POWER OF CONGRESS TO APPORTION JURISDICTION; IT IS WITHIN THE POWER OF CONGRESS TO PRESCRIBE A PRE-ELECTION REMEDY LIKE SEC. 78.—** [T]he Constitution neither allocates jurisdiction over pre-election controversies involving the eligibility of candidates nor forecloses legislative provision for such remedy. Absent such constitutional proscription, it is well within the plenary powers of the legislature to enact a law providing for this type of pre-election remedy, as it did through Section 78. In this regard, Poe's statement that the COMELEC essentially arrogated unto itself the jurisdiction to decide upon the qualifications of candidates is inaccurate. It is Congress that granted the COMELEC such jurisdiction; the COMELEC only exercised the jurisdiction so conferred. When the COMELEC takes cognizance of a Section 78 petition, its actions are not repugnant to, but are actually in accord with, its constitutional mandate to enforce and administer all laws relative to the conduct of an election. To be clear, the proceeding under Section 78 is not an election contest and therefore does not encroach upon PET's jurisdiction over elections contests involving the President and Vice-President.

7. **ID.; OMNIBUS ELECTION CODE (OEC); A SECTION 78 PETITION IS THE ONLY INSTANCE WHERE THE QUALIFICATIONS OF A CANDIDATE FOR ELECTIVE OFFICE CAN BE CHALLENGED BEFORE AN ELECTION.—** We have already recognized that a Section 78 petition is one instance – the only instance – where the qualifications of a candidate for elective office can be challenged before an election. Although the denial of due course to or the cancellation of the COC is ostensibly based on a finding that the candidate made a material representation that is false, the determination of the

factual correctness of the representation necessarily affects eligibility.

8. ID.; CONSTITUTIONAL LAW; CITIZENSHIP; A STATE HAS THE POWER TO CONFER ITS CITIZENSHIP.— The power of a state to confer its citizenship is derived from its sovereignty. It is an attribute of its territorial supremacy. As a sovereign nation, the Philippines has the inherent right to determine for itself, and according to its own Constitution and laws, who its citizens are. x x x "[T]here is no rule of international law, whether customary or written, which might be regarded as constituting any restriction of, or exception to, the jurisdiction or [individual states to determine questions of citizenship]." The foregoing considerations militate against the formation of customary law in matters concerning citizenship, at least not one directly enforceable on particular states as advocated by Poe. Accordingly, the provisions of the 1930 Hague Convention and 1961 Convention on the Reduction of Statelessness purportedly conferring birth citizenship upon foundlings, or creating a presumption thereof, cannot be considered customary. x x x Finally, the CRC, ICCPR, and UDHR all refrained from imposing a direct obligation to confer citizenship at birth. This must be understood as a deliberate recognition of sovereign supremacy over matters relating to citizenship. It bears emphasis that none of the instruments concern themselves with natural-born and naturalized classifications. This is because this distinction finds application only in domestic legal regimes. Ergo, it is one for each sovereign to make.

9. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS; IMPOSES UPON THE COMELEC THE DUTY TO CONSIDER ALL RELEVANT EVIDENCE BEFORE ARRIVING AT A CONCLUSION.— The appropriate due process standards that apply to the COMELEC as a quasi-judicial tribunal, are those outlined in the seminal case of *Ang Tibay v. Court of Industrial Relations*. Commonly referred to as the "cardinal primary rights" in administrative proceedings, these include: x x x (3) while the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision; (4) not only must there be some evidence

to support a finding or conclusion, but the evidence must be "substantial;" x x x. The COMELEC failed to comply with the third and fourth requirements when it *first*, decided the question of foundlings on a pure question of law, *i.e.*, whether foundlings are natural-born, without making a determination based on the evidence on record and admissions of the parties of the probability or improbability that Poe was born of Filipino parents; and *second*, by concluding that Poe can only prove her parentage through DNA or other definitive evidence, set a higher evidentiary hurdle than mere substantial evidence. x x x The COMELEC's duty under a Section 78 petition questioning a candidate's citizenship qualification is to determine the probability that her father or mother is a Filipino citizen using substantial evidence. And there lies the second fault of the COMELEC: regardless of who had the burden of proof, by requiring DNA or other definitive evidence, it imposed a quantum of evidence higher than substantial evidence. x x x When the COMELEC insisted that Poe must present DNA or other definitive evidence, it effectively subjected her to a higher standard of proof, that of absolute certainty. x x x Under the due process clause, as expounded in *Ang Tibay*, the COMELEC was duty-bound to consider all relevant evidence before arriving at a conclusion. x x x Thus, the COMELEC gravely abused its discretion when it failed or refused to consider these.

10. **ID.; ID.; ID.; CONCLUSIVE PRESUMPTIONS; LOOKED UPON WITH DISFAVOR ON DUE PROCESS GROUNDS.—** In this jurisdiction, conclusive presumptions are looked upon with disfavor on due process grounds. In *Dycaico v. Social Security System*, the Court struck down a provision in Republic Act No. 8282 or the Social Security Law "because it presumes a fact which is not necessarily or universally true. In the United States, this kind of presumption is characterized as an irrebuttable presumption and statutes creating permanent and irrebutable presumptions have long been disfavored under the due process clause." In the earlier case of *Government Service Insurance System v. Montesclaros,* the Court similarly found as unconstitutional a proviso in Presidential Decree No. 1146 or the Revised Government Service Insurance Act of 1977 that prohibits the dependent spouse form receiving survivorship pension if such dependent spouse married the pensioner within three years before the pensioner qualified for the pension. In

finding that the proviso violated the due process and equal protection guarantees, the Court stated that "[t]he proviso is unduly oppressive in outrightly denying a dependent spouses claim for survivorship pension if the dependent spouse contracted marriage to the pensioner within the three-year prohibited period," and "[t]here is outright confiscation of benefits due the surviving spouse without giving the surviving spouse an opportunity to be heard." The same considerations obtain here. The COMELEC's approach presumes a fact which is not necessarily or universally true. Although the possibility that the parents of a foundling are foreigners can never be discounted, this is not always the case. It appears that because of its inordinate focus on trying to interpret the Constitution, the COMELEC disregarded the incontrovertible fact that Poe, like any other human being, has biological parents. Logic tells us that there are four possibilities with respect to the biological parentage of Poe: (1) both her parents are Filipinos; (2) her father is a Filipino and her mother is a foreigner; (3) her mother is a Filipino and her father is a foreigner; and (4) both her parents are foreigners. In three of the four possibilities, Poe would be considered as a natural-born citizen. In fact, data from the Philippine Statistics Authority (PSA) suggest that, in 1968, there was a 99.86% statistical probability that her parents were Filipinos. That Poe's parents are unknown does not automatically discount the possibility that either her father or mother is a citizen of the Philippines. Indeed, the *verbal legis* interpretation of the constitutional provision on citizenship as applied to foundlings is that they *may* be born of a Filipino father or mother. There is no presumption for or against them.

11. **ID.; ID.; ID.; ID.; VIOLATES EQUAL PROTECTION CLAUSE.—** The COMELEC's unwarranted presumption against Poe, and foundlings in general, likewise violates the equal protection clause. x x x The COMELEC's *de facto* conclusive presumption that foundlings are not natural-born suffers from the same vice. In placing foundlings at a disadvantaged evidentiary position at the start of the hearing then imposing a higher quantum of evidence upon them, the COMELEC effectively created two classes of children: (1) those who know their biological parents; and (2) those whose biological parents are unknown. x x x I find the COMELEC's classification objectionable on equal protection grounds because, in the first

place, it is not warranted by the text of the Constitution. When the 1935 Constitution referred to "those whose fathers [or mothers] are citizens of the Philippines," it necessarily included foundlings whose fathers or mothers are Filipino citizens.

12. **ID.; ID.; EQUAL PROTECTION CLAUSE; STRICT SCRUTINY STANDARD APPLICABLE TO GOVERNMENTAL ACTIONS THAT DISCRIMINATE AGAINST DISCRETE AND INSULAR MINORITIES.—** My second objection is that x x x foundlings are a "discrete and insular" minority who are entitled to utmost protection against unreasonable discrimination applying the strict scrutiny standard. According to this standard, government action that impermissibly interferes with the exercise of a "fundamental right" or operates to the peculiar class disadvantage of a "suspect class" is presumed unconstitutional. The burden is on the government to prove that the classification is necessary to achieve a compelling state interest and that it is the least restrictive means to protect such interest. The underlying rationale for the heightened judicial scrutiny is that the political processes ordinarily relied upon to protect minorities may have broken down. Thus, one aspect of the judiciary's role under the equal protection clause is to protect discrete and insular minorities from majoritarian prejudice or indifference. The fundamental right warranting the application of the strict scrutiny standard is the right to a nationality embodied in the UDHR—properly understood in the context of preventing statelessness and arbitrary denial of citizenship. x x x Foundlings also comprise a suspect class under the strict scrutiny analysis. The traditional indicia of "suspectness" are (1) if the class possesses an "immutable characteristic determined solely by the accident of births," or (2) when the class is "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." Here, the COMELEC's classification is based solely on the happenstance that foundlings were abandoned by their biological parents at birth and who, as a class, possess practically no political power. The classification is therefore suspect and odious to a nation committed to a regime of equality. Applying the strict scrutiny standard, the COMELEC failed to identify a compelling

state interest to justify the suspect classification and infringement of the foundlings' fundamental right.

13. **REMEDIAL LAW; ACTIONS; JUDGMENTS; *STARE DECISIS* DOCTRINE; FOUR-POINT TEST TO JUSTIFY DEVIATION FROM PRECEDENT.—** Absent any **powerful countervailing considerations**, like cases ought to be decided alike. The reason why we adhere to judicial precedents is not only for certainty and predictability in our legal order but equally to have an institutional safeguard for the judicial branch. x x x In the Philippines, using as reference the cited US case, we have adopted a four-point test to justify deviation from precedent, which include the determination of: (1) whether the older doctrine retained the requirements of "practical workability;" (2) whether the older doctrine had attracted the kind of reliance that would add a special hardship to the consequences of overruling it and "add inequity to the cost of repudiation;" (3) whether the related principles of law have developed in a different direction so as to render the older rule "no more than the remnant of an abandoned doctrine;" and, (4) whether the contextual facts of the older doctrine have so changed as to deprive the old rule of "significant application or justification."

14. **POLITICAL LAW; ELECTION LAWS; ACQUISITION OF NEW DOMICILE; REQUISITES OF *ANIMUS MANENDI ET NON REVERTENDI*, COMPLIED WITH IN THE CASE AT BAR.—** Unlike residence which may be proved by mere physical presence, *animus manendi et non revertendi* refers to a state of mind. Thus, there is no hard and fast rule to determine a candidate's compliance with the residency requirement. Its determination is essentially dependent on evidence of contemporary and subsequent acts that would tend to establish the fact of intention. Although the appreciation of evidence is made on a case-to-case basis, there are three basic postulates to consider: *first*, that a man must have a residence or domicile somewhere; *second*, that where once established it remains until a new one is acquired; and *third*, a man can have but one domicile at a time. In addition, the Court has devised reasonable standards to guide tribunals in evaluating the evidence. x x x The facts that Poe did not renounce her US citizenship until 2010 and used her US passport between 2006 and 2010 do not affect her establishment of domicile in the Philippines. The circumstance that Poe, after leaving the US and fixing her residence in the

Philippines, may have had what is called a "floating intention" to return to her former domicile upon some indefinite occasion, does not give her the right to claim such former domicile as her residence. It is her establishment of domicile in the Philippines with the intention of remaining here for an indefinite time that severed the respondent's domiciliary relation with her former home. This is consistent with the basic rule that she could have only one domicile at a time.

15. **ID.; ID.; ID.; TO ESTABLISH LAWFUL DOMICILE IN THE PHILIPPINES, A FOREIGNER MUST COMPLY WITH OUR IMMIGRATION LAWS.—** In principle, I agree with the COMELEC's proposition that "a foreigner's capacity to establish her domicile in the Philippines is … limited by and subject to regulations and prior authorization by the BID." This appears to be based on rulings of US federal courts, which distinguish "lawful" from "unlawful" domicile. The requisites for domicile remain the same, *i.e.,* physical presence, *animus manendi,* and *animus non revertendi.* But "[i]n order to a 'lawful domicile,' then, an alien must have the ability, under the immigration laws, to form the intent to remain in the [country] indefinitely. The basis for this is the sovereign's inherent power to regulate the entry of immigrants seeking to establish domicile within its territory. It is not an additional requisite or the establishment of domicile; rather, it is a precondition that capacitates a foreigner to lawfully establish domicile. This is the import of the statement in *Coquilla* that "an alien [is] without any right to reside in the Philippines save as our immigration laws may have allowed him to stay."

16. **ID.; ID.; ID.; THE ONE-YEAR VISA-FREE ENTRY DOES NOT CREATE A LEGAL DISABILITY WHICH WOULD PREVENT *BALIKBAYANS* FROM DEVELOPING *ANIMUS MANENDI*.—** RA 9174 expressly declared that one of the purposes of establishing a *balikbayan* program is to "to enable the *balikbayan* to become economically self-reliant members of society upon their return to the country." To this end, the law instructs government agencies to "provide the necessary entrepreneurial training and livelihood skills programs and marketing assistance to a *balikbayan*, including his or her immediate family members, who shall avail of the *kabuhavan* program in accordance with the existing rules on the government's reintegration program." This is a clear

acknowledgement by Congress that it is possible for a *balikbayan* to form the intent needed to establish his domicile in the Philippines. Notably, there are no qualifications, such as acquisition of permanent resident status or reacquisition of Filipino citizenship, before a *balikbayan* may avail of the *kabuhayan* program. Applying the well-established interpretive rule that a statute must be so construed as to harmonize and give effect to all its provisions whenever possible, the one-year visa-free entry does not create a legal disability which would prevent *balikbayans* from developing *animus manendi*.

CAGUIOA, *J.*, *separate concurring opinion:*

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE COMELEC ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT CANCELLED THE PETITIONER'S CERTIFICATE OF CANDIDACY.— I believe that the COMELEC committed grave abuse of discretion by *(1)* misinterpreting the jurisprudential requirements of cancellation of a certificate of candidacy under Section 78, and *(2)* for placing the burden of proof upon the petitioner to show that she complies with the residency and citizenship qualifications for the position of President. The COMELEC grossly misinterpreted the law in the manner it treated the jurisprudential requirements of cancellation under Section 78. Specifically, it gravely abused its discretion by failing to determine the existence of petitioner's intent to deceive separate from the determination of whether there were false material representations in her certificate of candidacy.

CARPIO, *J.*, *dissenting opinion:*

1. **POLITICAL LAW; ELECTION LAWS; COMMISSION ON ELECTIONS; POWERS OF THE COMELEC; COMELEC CAN *MOTU PROPRIO* CANCEL A NUISANCE CANDIDATE'S CERTIFICATE OF CANDIDACY.—** Section 2(1), Article IX-C of the Constitution vests in the COMELEC the power, among others, to "[e]nforce and administer all laws and regulations relative to the conduct of an election, x x x." Screening initially the qualifications of all candidates lies within this specific power. x x x Section 2(3), Article IX-C of the Constitution also empowers the Comelec to "*[D]ecide, except those involving the right to vote, all questions affecting elections x x x*." The power to decide "all

questions affecting elections" necessarily includes the power to decide whether a candidate possesses the qualifications required by law for election to public office. This broad constitutional power and function vested in the Comelec is designed precisely to avoid any situation where a dispute affecting elections is left without any legal remedy. x x x It cannot be disputed that a person, not a natural-born Filipino citizen, who files a certificate of candidacy for President, "put[s] the election process in mockery" and is therefore a nuisance candidate. Such person's certificate of candidacy can *motu proprio* be cancelled by the COMELEC under Section 69 of the Omnibus Election Code, which empowers the COMELEC to cancel *motu proprio* the COC if it "**has been filed to put the election process in mockery**." x x x Allowing a nuisance candidate to run for President renders meaningless the COMELEC's constitutional power to "[e]nforce and administer all laws x x x relative to the conduct of an election, xxx." The election process becomes a complete mockery since the electorate is mercilessly offered choices which include patently ineligible candidates.

2. **ID.; CONSTITUTIONAL LAW; 1935 CONSTITUTION; CITIZENSHIP; WHO ARE FILIPINO CITIZENS, ENUMERATED.—** Section 1, Article IV of the 1935 Constitution identifies who are Filipino citizens, thus: Article IV. – Citizenship Section 1. The following are citizens of the Philippines: 1. Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution. 2. Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands. 3. Those whose fathers are citizens of the Philippines. 4. Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship. 5. Those who are naturalized in accordance with law.

3. **ID.; ID.; ID.; ID.; TWO METHODS OF ACQUIRING CITIZENSHIP; THE PHILIPPINES ADHERES TO THE *JUS SANGUINIS* PRINCIPLE, EXPLAINED.—** From this constitutional provision, we find that, except for those who were already considered citizens at the time of the adoption of the Constitution, there were, as there are still now, only two methods of acquiring Philippine citizenship: (1) by blood relation

to the father (or the mother under the 1987 Constitution) who must be a Filipino citizen; and (2) by naturalization according to law. The Philippines adheres to the *jus sanguinis* principle or the "law of the blood" to determine citizenship at birth. An individual acquires Filipino citizenship at birth **solely** by virtue of biological descent from a Filipino father or mother. The framers of the 1935 Constitution clearly intended to make the acquisition of citizenship available on the basis of the *jus sanguinis* principle. This view is made evident by the suppression from the Constitution of the *jus soli* principle, and further, by the fact that the Constitution has made definite provisions for cases not covered by the *jus sanguinis* principle, such as those found in paragraph 1, Section 1 of Article IV, i.e., those who are citizens of the Philippines at the time of the adoption of the Constitution, and in paragraph 2, Section 1 of the same Article, i.e., those born in the Philippines of foreign parents who, before the adoption of the Constitution, had been elected to public office in the Philippines.

4. ID.; ID.; ID.; ID.; WHO ARE CONSIDERED "NATURAL-BORN CITIZENS."— Of the Filipino citizens falling under paragraphs (3), (4) and (5), only those in paragraph (3) of Section 1, whose fathers are citizens of the Philippines, can be considered natural-born Filipino citizens since they are Filipino citizens from birth without having to perform any act to acquire or perfect their Philippine citizenship. x x x However, under paragraph (2), Section 1 of Article IV of the 1987 Constitution, those whose fathers are Filipino citizens and those whose mothers are Filipino citizens are treated equally. They are considered natural-born Filipino citizens. Moreover, under Section 2, Article IV of the 1987 Constitution, in relation to paragraph (3), Section 1 of the same Article, those born before 17 January 1973 of Filipino mothers and who elected Philippine citizenship upon reaching the age of majority are also deemed natural-born Filipino citizens. x x x Therefore, the following are deemed natural-born Filipino citizens: (1) those whose fathers or mothers are Filipino citizens, and (2) those whose mothers are Filipino citizens and were born before 17 January 1973 and who elected Philippine citizenship upon reaching the age of majority. x x x The Constitution defines natural-born citizens as "those who are citizens of the Philippines **from birth without having to perform any act to acquire or perfect their Philippine**

citizenship." "From birth" means that the possession of natural-born citizenship starts at birth and continues to the present without interruption.

5. **ID.; ID.; ID.; ID.; NATURALIZED CITIZENS, DISCUSSED.—** Stated differently, those whose fathers or mothers are neither Filipino citizens are not natural-born Filipino citizens. If they are not natural-born Filipino citizens, they can acquire Philippine citizenship **only** under paragraph (5), Section 1 of Article IV of the 1935 Constitution which refers to Filipino citizens who are naturalized in accordance with law. x x x The phrase **"without having to perform any act to acquire or perfect their Philippine citizenship"** means that a person is not a natural-born Filipino citizen if he or she has to take an oath of allegiance before a public official to acquire or reacquire Philippine citizenship. This precludes the reacquisition of natural-born citizenship that has been lost through renunciation of Philippine citizenship. The fact that the reacquisition of citizenship is made possible **only** through legislation by Congress – Republic Act No. 9225 – means that Philippine citizenship is acquired pursuant to paragraph (4), Section 1 of Article IV of the 1987 Constitution, referring to "[t]hose who are naturalized in accordance with law." In short, natural-born Filipino citizens who have renounced Philippine citizenship and pledged allegiance to a foreign country have become **aliens**, and can reacquire Philippine citizenship, just like other aliens, only if "**naturalized in accordance with law**." Otherwise, a natural-born Filipino citizen who has **absolutely renounced and abjured allegiance to the Philippines** and pledged sole allegiance to the United States, undertaking to bear arms against any foreign country, including the Philippines, when required by U.S. law, could still become the Commander-in Chief of the Armed Forces of the Philippines by performing a simple act – taking an oath of allegiance before a Philippine public official – to reacquire natural-born Philippine citizenship.

6. **ID.; ID.; ID.; ID.; FOUNDLINGS, DISCUSSED.—** The framers of the 1935 Constitution voted to categorically reject the proposal to include foundlings as citizens of the Philippines. Petitioner's Petition, and the Solicitor General's Comment, **glaringly omitted that the 1934 Constitutional Convention actually voted upon, and rejected, the proposal to include foundlings as citizens of the Philippines.** x x x Clearly, there is no "silence of the

Constitution" on foundlings because the majority of the delegates to the 1934 Constitutional Convention expressly rejected the proposed amendment of Delegate Rafols to classify children of unknown parentage as Filipino citizens. There would have been "silence of the Constitution" if the Convention never discussed the citizenship of foundlings. **There can never be "silence of the Constitution" if the Convention discussed a proposal and rejected it, and because of such rejection the subject of the proposal is not found in the Constitution**. The absence of any mention in the Constitution of such rejected proposal is not "silence of the Constitution" but "express rejection in the Constitution" of such proposal.

7. **ID.; PUBLIC INTERNATIONAL LAW; STATE; EACH STATE DETERMINES ITS CITIZENS.—** Fundamental is the principle that every independent state has the right and prerogative to determine who are its citizens. In *United States v. Wong Kim Ark*, decided in 1898, the United States Supreme Court enunciated this principle: It is the inherent right of every independent nation to determine for itself, and according to its own constitution and laws, what classes of persons shall be entitled to its citizenship. In our jurisdiction, the Court similarly echoed in the 1912 case of *Roa v. Collector of Customs* this incontrovertible right of each state to determine who are its citizens. x x x Article 1, Chapter I of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws explicitly provides: It is for each state to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality. x x x This means that municipal law, both constitutional and statutory, determines and regulates the conditions on which citizenship is acquired. There is no such thing as international citizenship or international law by which citizenship may be acquired.

8. **ID.; ID.; SOURCES OF INTERNATIONAL LAW.—** Article 38 of the Statute of the International Court of Justice sets out the following sources of international law: (1) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (2) international custom, as evidence of a general practice accepted as law; (3) general principles of law recognized by civilized nations; and

(4) judicial decisions and the teachings of the most highly qualified publicists of the various nations as subsidiary means for the determination of rules of law. Essentially, conventional international law is the body of international legal principles contained in treaties or conventions as opposed to customary international law or other sources of international law. Customary international law is defined as a general and consistent practice of states followed by them from a sense of legal obligation. x x x Moreover, to be considered as customary international law, a rule must apply to all, or majority of all, states. x x x Generally accepted principles of international law are those legal principles which are so basic and fundamental that they are found universally in the legal systems of the world. These principles apply all over the world, not only to a specific country, region or group of states. Legal principles such as laches, estoppel, good faith, equity and *res judicata* are examples of generally accepted principles of international law.

9. **ID.; ID.; ID.; CUSTOMARY INTERNATIONAL LAW; NO PRESUMPTION THAT A FOUNDLING IS A CITIZEN OF THE COUNTRY WHERE THE FOUNDLING IS FOUND.—** 1. ***The 1989 Convention on the Rights of the Child*** - The Convention guarantees a child the right to acquire a nationality, and requires the contracting states to ensure the implementation of this right, in particular where the child would otherwise be stateless. Thus, as far as nationality is concerned, the Convention guarantees the right of the child to acquire a nationality so that the child will not be stateless. Thus, as far as nationality is concerned, the Covention guarantees the right of the child to acquire a nationaltiy so that the child will not be stateless. **The Convention does not guarantee a child a nationality atbirth, much less a natural-born citizenship at birth as understood under the Philippine Constitution, but merely the right to acquire a nationality in accordance with municipal law.** x x x 2. ***The 1966 International Convenant on Civil and Political Rights*** **–** Similar to the text of the Convention on the Rights of the Child, the ICCPR does not obligate states to automatically grant a nationality to children at birth. **The Covenant merely recognizes the right of a child to acquire a nationality.** x x x 3. ***The 1984 Universal Declaration of Human Rights*** **– Article 15(1) of the UDHR simpky affirms the right of every human being to a**

nationality. Being a mere declaration , such right guaranteed by the UDHR does not obligate states to automatically confer nationality to a foundling at birth, much less natural-born citizenship at birth as understood under the Philippine Constitution. x x x 4. ***The 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws*** – The Philippines is not a signatory to this Convention, and therefore, it is not bound by the Convention. x x x Article 14 merely states that a foundling "shall have the nationality of the **country *of* birth.**" It does not say that a foundling shall have the **nationality *at* birth** of the country where the foundling is found. x x x **Article 15 expressly states that municipal law shall "determine the conditions governing the acquisition of its nationality" by a foundling.** x x x 5. ***The 1961 Convention on the Reduction of Statelessness*** **– To prevent statelessness in such cases, states have the option to grant nationality (1) at birth by operation of law, or (2) subsequently by application.** x x x The Philippines is not a signatory to this Convention, and thus, the Philippines is a non-contracting state. **The Convention does not bind the Philippines.**

10. **ID.; ID.; ID.; ID.; ELEMENTS FOR AN INTERNATIONAL RULE TO BE CONSIDERED CUSTOMARY.—** We shall first lay down the basic premise for an international rule to be considered customary international law. Such a rule must comply with the twin elements of widespread and consistent state practice, the objective element; and *opinio juris sive necessitatis,* the subjective element. State practice refers to the continuous repetition of the same or similar kind of acts or norms by states. It is demonstrated upon the existence of the following elements: (1) generality or widespread practice; (2) uniformity and consistency; and (3) duration. On the other hand, *opinio juris*, the psychological element, requires that the state practice or norm be carried out in the belief that this practice or norm is obligatory as a matter of law.

11. **ID.; ID.; ID.; GENERAL PRINCIPLE OF INTERNATIONAL LAW APPLICABLE TO FOUNDLINGS.—** Considering that there is no conventional or customary international law automatically conferring nationality to foundlings at birth, there are only two general principles of international law applicable to foundlings. *First* is that a foundling is deemed domiciled in the country where the foundling is found. **A foundling is merely**

considered to have a *domicile at birth, not a nationality at birth.* Stated otherwise, a foundling receives at birth a domicile of origin which is the country in which the foundling is found. *Second,* in the absence of proof to the contrary, a foundling is deemed born in the country where the foundling is found. These two general principles of international law have nothing to do with conferment of nationality.

12. **ID.; ID.; STATUS OF INTERNATIONAL LAW PRINCIPLES IN THE PHILIPPINES, DISCUSSED.—** Under Section 3, Article II of the 1935 Constitution, Section 3, Article II of the 1973 Constitution, and Section 2, Article II of the 1987 Constitution, the Philippines adopts the generally accepted principles of international law as part of the law of the land. International law can become part of domestic law either by transformation or incorporation. The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as domestic legislation. The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law. The Philippine Constitution adheres to the incorporation method. x x x Any treaty, customary international law, or generally accepted international law principle has the status of **municipal statutory law**. As such, it must conform to our Constitution in order to be valid in the Philippines. x x x The Constitution remains supreme and prevails over any international legal instrument or principle in case of conflict.

13. **ID.; ID.; ID.; CUSTOMARY INTERNATIONAL LAW SUFFICIENTLY ADDRESSES THE ABSENCE OF A DOMESTIC LAW ON THE NATURALIZATION OF FOUNDLINGS.—** Customary international law can fill the gap in our municipal statutory law on naturalization of foundlings in order to prevent foundlings from being stateless. x x x Customary international law has the same status as a statute enacted by Congress. Thus, it must not run afoul with the Constitution. Customary international law cannot validly amend the Constitution by adding another category of natural-born Filipino citizens, specifically by considering foundlings with no known parents as natural-born citizens. x x x Applying customary international law to the present case, specifically the right of every human being to a nationality and the

Philippines' obligation to grant citizenship to persons who would otherwise be stateless, a foundling may be naturalized as a Filipino citizen upon proper application for citizenship. x x x It must be proven that the child has no known parentage before the state can grant citizenship on account of the child being a foundling. In the Philippines, a child is determined to be a foundling after an administrative investigation verifying that the child is of unknown parentage. The Implementing Rules and Regulations (IRR) of Act No. 3753 and Other Laws on Civil Registration provide that the *barangay* captain or police authority shall certify that no one has claimed the child or no one has reported a missing child with the description of the foundling.

14. **ID.; CONSTITUTIONAL LAW; CONSTITUTION; CITIZENSHIP; NATURAL-BORN CITIZENSHIP CANNOT BE CONFERRED ON A FOUNDLING BASED ALONE ON STATISTICAL PROBABILITY.—** During the Oral Arguments, the Solicitor General insisted that petitioner is a natural-born Filipino citizen based on the 99.93% statistical probability that any child born in the Philippines from 2010 to 2014 would be a natural-born Filipino citizen. From 1965 to 1975, there is a 99.83% statistical probability that a child born in the Philippines would be a natural-born Filipino citizen. To buttress his position, the Solicitor General presented a certification from the Philippine Statistics Authority showing the "**number of foreign and Filipino children born in the Philippines: 1965-1975 and 2010-2014**." This is grave error. There is no law or jurisprudence which supports the Solicitor General's contention that natural-born citizenship can be conferred on a foundling based alone on statistical probability. x x x The Solicitor General's data speak of **foreign and Filipino births** in the Philippines. The data collected show the number of foreign and Filipino children born in the Philippines during the periods covered. x x x For the Solicitor General's proposition to be correct, he should have presented statistics specifically based on the number of foundlings born in the Philippines, and not on the number of children born in the Philippines with known foreign or Filipino parents.

15. **ID.; ID.; ID.; ID.; PHILIPPINE LAWS AND JURISPRUDENCE ON ADOPTION NOT DETERMINATIVE OF NATURAL-BORN CITIZENSHIP.—** During the Oral Arguments, the Chief

Justice cited Republic Act No. 8552 (RA 8552) or the *Domestic Adoption Act of 1998* and Republic Act No. 8043 (RA 8043) or the *Inter-Country Adoption Act of 1995* in arguing that there are domestic laws which govern the citizenship of foundlings. This is an obvious mistake. The term "natural-born Filipino citizen" does not appear in these statutes describing qualified adoptees. In fact, while the term "Filipino" is mentioned, it is found only in the title of RA 8552 and RA 8043. The texts of these adoption laws do not contain the term "Filipino." x x x However, the Implementing Rules and Regulations of RA 8552, issued by the Department of Social and Welfare Development, provide that they shall "apply to the adoption in the Philippines of a *Filipino child* by a Filipino or alien qualified to adopt under Article III, Section 7 of RA 8552." The IRR, in effect, restricted the scope of RA 8552 when the IRR expressly limited its applicability to the adoption of a Filipino child when the law itself, RA 8552, does not distinguish between a Filipino and an alien child. In such a case, the IRR must yield to the clear terms of RA 8552.

16. **ID.; ID.; ID.; ID.; BURDEN OF PROVING PHILIPPINE CITIZENSHIP; ISSUE OF PARENTAGE MAY BE RESOLVED BY CONVENTIONAL METHODS OR BY USING AVAILABLE MODERN AND SCIENTIFIC MEANS; CASE AT BAR.—** Any person who claims to be a citizen of the Philippines has the burden of proving his or her Philippine citizenship. x x x *Paa* and *Go* lay down three doctrines: *First,* a person claiming Philippine citizenship has the burden of proving his claim. *Second,* there can be no presumption in favor of Philippine citizenship. This negates petitioner's claim to any presumption that she is a natural-born Filipino citizen. *Third,* any doubt on citizenship is resolved against the person claiming Philippine citizenship. Therefore, a person claiming to be a Filipino citizen, whether natural-born or naturalized, cannot invoke any presumption of citizenship but must establish such citizenship as a matter of fact and not by presumptions, with any doubt resolved against him or her. x x x As the burden of evidence has shifted to petitioner, it is her duty to present evidence to support her claim that she is a national-born Filipino citizen, and thus eligible to run for President. The issue of parentage may be resolved by conventional methods or by using available modern and scientific means. **One of the evidence** that she could have presented is

deoxyribonucleic acid (DNA) evidence which could conclusively show that she is biologically (maternally or paternally) related to a Filipino citizen, which in turn would determine whether she is a natural-born Filipino citizen. The probative value of such DNA evidence, however, would still have to be examined by the Court.

17. **ID.; ID.; ID.; ID.; CITIZENSHIP CASES ARE *SUI GENERIS;* REQUISITES OF *RES JUDICATA* IN CASES OF CITIZENSHIP.—** However, a decision denying natural-born citizenship to a foundling on the ground of absence of proof of blood relation to a Filipino parent never becomes final. *Res judicata* does not apply to questions of citizenship. x x x Likewise, in *Go, Sr. v. Ramos*, which involved the citizenship of Jimmy T. Go, as well as his father Carlos, who was alleged to be an illegal and undesirable alien in our country and thus was subjected to deportation proceedings, the Court stated that citizenship cases are *sui generis* and *res judicata* does not apply in such cases: x x x *Res judicata* may be applied in cases of citizenship only if the following concur: 1. a person's citizenship must be raised as a material issue in a controversy where said person is a party; 2. the Solicitor General or his authorized representative took active part in the resolution thereof; and 3. the finding or citizenship is affirmed by this Court.

LEONARDO-DE CASTRO, *J.*, *separate dissenting opinion:*

1. **POLITICAL LAW; CONSTITUTIONAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE (B.P. BLG. 881); COMMISSION ON ELECTIONS (COMELEC); HAS JURISDICTION OVER PETITIONS FOR THE CANCELLATION OF A CERTIFICATE OF CANDIDACY (COC) ON THE GROUND OF A CANDIDATE'S QUALIFICATION.—** Section 2(2), Article IX of the 1987 Constitution which expressly vests upon the COMELEC exclusive original jurisdiction and appellate jurisdiction over election "contests" involving local officials is consistent with this doctrine. Election "contests" has a definite meaning under the Constitution, which involve the qualification of proclaimed winning candidates in an election. On the other hand, Section 2, Article IX(C) of the 1987 Constitution x x x is sufficient basis to entrust to the COMELEC all issues relative to the qualifications of all "candidates" to run in National or Local Elections. Implementing the aforementioned provision is *Batas Pambansa Bilang* 881, or the "*Omnibus Election Code of the*

Philippines" (OEC), which provides for the cancellation of a candidate's Certificate of Candidacy on grounds stated in Section 78 thereof. A contrary construction of the Constitution will result in emasculating the Constitutional mandate of the COMELEC to ensure fair, honest and credible elections. The overbroad interpretation of the power of the PET under the Constitution will prohibit the COMELEC from even disqualifying nuisance candidates for President. Hence, it is beyond cavil that it is the COMELEC, not the PET, which has jurisdiction over the petitions for the cancellation of the COC of petitioner Poe who is still a candidate at this time.

2. **ID.; ID.; ID.; ID.; ID.; FIXING OF A SHORTER PERIOD FOR THE FINALITY OF ITS DECISION AND ITS IMMEDIATE EXECUTION UNDER SECTION 8, RULE 23 OF THE COMELEC IS VALID NOTWITHSTANDING SECTION 7, ARTICLE IX OF THE 1987 CONSTITUTION.—** Section 8, Rule 23 of the COMELEC Rules is a valid exercise of the rule-making powers of the COMELEC notwithstanding Section 7, Article IX of the 1987 Constitution. The condition "*[u]nless otherwise provided by this Constitution or by law*" that is mentioned in the latter provision gives the COMELEC the flexibility to fix a shorter period for the finality of its decision and its immediate execution in consonance with the necessity to speedily dispose of election cases, but without prejudice to the continuation of the review proceedings before this Court. Certainly, this is not inconsistent with Commission's constitutional mandate to promulgate its own rules of procedure to expedite the dispositions of election cases x x x.

3. **ID.; ID.; CITIZENSHIP; PHILIPPINE CONSTITUTIONS ADHERE TO THE *JUS SANGUINIS* PRINCIPLE.—** It was in the 1935 Constitution that the Philippines adopted the doctrine of *jus sanguinis*, literally translated to *right by blood*, or the acquisition of citizenship by birth to parents who are citizens of the Philippines. The doctrine of *jus sanguinis* considers blood relationship to one's parents as a sounder guarantee of loyalty to the country than the doctrine of *jus soli*, or the attainment of a citizenship by the place of one's birth. The case of *Tecson v. Commission on Elections* traced the history, significance, and evolution of the doctrine of *jus sanguinis* in our jurisdiction x x x. Thus, contrary to the insistence of petitioner Poe that

there is nothing in our Constitutions that enjoin our adherence to the principle of "*jus sanguinis*" or "by right of blood," said principle is, in reality, well-entrenched in our constitutional system. One needs only to read the 1935, 1973 and 1987 Constitutions and the jurisprudence detailing the history of the well deliberated adoption of the *jus sanguinis* principle as the basis for natural-born Filipino citizenship, to understand that its significance cannot be lightly ignored, misconstrued, and trivialized.

4. **ID.; ID.; ID.; ID.; NATURAL-BORN CITIZENSHIP CANNOT BE PRESUMED BY LAW NOR EVEN BE LEGISLATED BY CONGRESS WHERE NO BLOOD TIES EXIST.—** In this case, petitioner Poe's original birth certificate stated that she was a foundling, or a child of unknown father or mother, found in Jaro, Iloilo, on September 3, 1968. The Constitution in effect then was the 1935 Constitution. To reiterate, it enumerated the "citizens of the Philippines" in Section 1, Article IV, which included the following: **(3) Those whose fathers are citizens of the Philippines. (4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.** x x x Undeniably, petitioner Poe does not come within the scope of Filipino citizens covered by paragraphs (3) and (4). From a literal meaning of the said provisions, she cannot be considered a natural-born citizen. Paragraphs 3 and 4, Section 1, Article IV of the 1935 Constitution, the organic law in effect during the birth of petitioner Poe, were clear and unambiguous, it did not provide for any exception to the application of the principle of "*jus sanguinis*" or blood relationship between parents and child, such that natural-born citizenship cannot be presumed by law nor even be legislated by Congress where no blood ties exist.

5. **ID.; ID.; CONSTITUTION; RESORT TO EXTRINSIC AIDS IS NEITHER NECESSARY NOR PERMISSIBLE GIVEN THE CLEAR LANGUAGE OF THE CONSTITUTION.—** Thus, in the construction of the Constitution, the Court is guided by the principle that it (constitution) is the fundamental and paramount law of the nation, and it is supreme, imperious, absolute, and unalterable except by the authority from which it emanates. x x x In the present case, given that the language of the third and fourth paragraphs of the article on citizenship of the 1935 Philippine Constitution clearly follow only the doctrine

of *jus sanguinis,* it is, therefore, neither necessary nor permissible to resort to extrinsic aids, like the records of the constitutional convention. A foundling, whose parentage and/or place of birth is obviously unknown, does not come within the letter or scope of the said paragraphs of the Constitution. Considering the silence of the Constitution on foundlings, the people who approved the Constitution in the plebiscite had absolutely no idea about the debate on the citizenship of foundlings and therefore, they could not be bound by it.

6. **ID.; STATUTES; STATUTORY CONSTRUCTION; SPECIFIC PROVISIONS OF LAW PREVAIL OVER GENERAL PROVISIONS.—** The specific provision of Article IV of the Constitution prevails over the general provisions of Section 21, Article III of the Constitution. General international law principles cannot overturn specifically ordained principles in the Constitution. x x x Petitioner Poe would like to apply to her situation several international law conventions that supposedly point to her entitlement to a natural-born Filipino citizenship, notwithstanding her lack of biological ties to a Filipino father or mother. In effect, she wants to carve an exception to the "*jus sanguinis"* principle through that generally accepted principles of international law which, under the theory of incorporation, is considered by the Constitution as part of the law of the land. Basic is the principle in statutory construction that specific provisions must prevail over general ones x x x. Hence, the general provision of Section 2, Article II of the Constitution on "Declaration of Principles and State Policies" cannot supersede, amend or supplement the clear provisions of Article IV on "Citizenship."

7. **ID.; PUBLIC INTERNATIONAL LAW; INTERNATIONAL LAW INSTRUMENTS/CONVENTIONS ARE NOT SELF-EXECUTING; INTERNATIONAL INSTRUMENTS MUST COMPLY WITH THE "*TRANSFORMATION METHOD*".—** Petitioner Poe cannot find succor in the provisions of the *1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws* and the *1961 Convention on the Reduction of Statelessness*, in claiming natural-born Filipino citizenship primarily for the following reasons: firstly, the Philippines has not ratified said International Conventions; secondly, they espouse a presumption by fiction of law which is disputable and not based on the physical fact of biological ties to a Filipino

parent; thirdly, said conventions are not self-executing as the Contracting State is granted the discretion to determine by enacting a domestic or national law the conditions and manner by which citizenship is to be granted; and fourthly, the citizenship, if acquired by virtue of such conventions will be akin to a citizenship falling under Section 1(4), Article IV of the 1987 Constitution, recognizing citizenship by naturalization in accordance with law or by a special act of Congress. x x x Notice must be made of the fact that the treaties, conventions, covenants, or declarations invoked by petitioner Poe are not self-executing, *i.e.,* the international instruments invoked must comply with the ***"transformation method"*** whereby "an international law [must first] be transformed into a domestic law through a constitutional mechanism such as local legislation."

8. **ID.; CONSTITUTIONAL LAW; CITIZENSHIP; NATURAL-BORN CITIZENSHIP, AS A QUALIFICATION FOR PUBLIC OFFICE, SHOULD NOT BE SUBJECTED TO UNCERTAINTY NOR BE BASED ON STATISTICAL PROBABILITIES.—** The Solicitor General x x x claims that based on statistics, the statistical probability that any child **born in the Philippines** would be a natural-born Filipino is either 99.93% or 99.83%, respectively, during the period between 2010 to 2014 and 1965 to 1975. This argument, to say the least, is fallacious. Firstly, we are determining blood ties between a child and her/his parents. **Statistics have never been used to prove paternity or filiation.** x x x Secondly, the place of birth of the foundling is unknown but the argument is based on the wrong premise that a foundling was born in the place where he/she was found. x x x Natural-born citizenship, as a qualification for public office, must be an established fact in view of the *jus sanguinis* principle enshrined in the Constitution, which should not be subjected to uncertainty nor be based in statistical probabilities. A disputable presumption can be overcome anytime by evidence to the contrary during the tenure of an elective official. Resort to this interpretation has a great potential to prejudice the electorate who may vote a candidate in danger of being disqualified in the future and to cause instability in public service**.**

9. **ID.; ID.; ID.; A FOUNDLING DOES NOT MEET THE DEFINITION OF A NATURAL-BORN FILIPINO CITIZEN UNDER SECTION 2, ARTICLE IV OF THE 1987**

CONSTITUTION.— Other than those whose fathers or mothers are Filipinos, Section 2, Article IV of the Constitution further defines *"natural-born citizens"* to cover **"those who are citizens of the Philippines from birth without having to perform an act to acquire or perfect their Philippine citizenship."** A foundling is one who must first go through a legal process to obtain an official or formal declaration proclaiming him/her to be a foundling in order to be granted certain rights reserved to Filipino citizens. This will somehow prevent opening the floodgates to the danger foreseen by Justice del Castillo that non-Filipinos may misuse a favorable ruling on foundlings to the detriment of national interest and security. Stated otherwise, the fact of being a foundling must first be officially established before a foundling can claim the rights of a Filipino citizen. This being the case, a foundling does not meet the above-quoted definition of a natural-born citizen who is such "from birth".

10. **ID.; ID.; ELECTIONS; CITIZENSHIP; CITIZENSHIP RETENTION AND RE-ACQUISITION ACT (R.A. No. 9225); IT IS THE TAKING OF OATH OF ALLEGIANCE TO THE REPUBLIC ON JULY 7, 2006 THAT PETITIONER'S STAY IN THE PHILIPPINES CAN FALL UNDER THE CONCEPT OF RESIDENCE FOR PURPOSES OF ELECTIONS.—** [I]t is the taking of the oath of allegiance to the Republic on July 7, 2006 presumably conferred upon petitioner Poe not only Philippine citizenship but also the right to stay in the Philippines for an unlimited period of time. It was only then that she can claim subject to proof, that her physical presence in the Philippines was coupled with *animus manendi.* Any temporary stay in the Philippines prior to the aforesaid date cannot fall under the concept of residence for purposes of elections. The *animus manendi* must be proven by clear and unmistakable evidence since a dual citizen can still freely enjoy permanent resident status in her/his domicile of choice if said status is not given up or officially waived.

11. **ID.; ID.; ELECTION LAWS; PETITIONER'S STATEMENT IN HER CERTIFICATE OF CANDIDACY (COC) THAT SHE HAS COMPLIED WITH THE REQUIRED TEN-YEAR RESIDENCY WHEN SHE ACTUALLY DID NOT, IS A FALSE MATERIAL REPRESENTATION THAT JUSTIFIED THE COMELEC'S CANCELLATION OF HER COC.—** As pointed out by Justice Del Castillo, the continued

use of her American passport in her travels to the U.S., as well as her ownership and maintenance of two residential houses in the said country until the present time, only served to weaken her stance that she actually and deliberately abandoned her domicile in the U.S. when she came here on May 24, 2005. This is because she continued to represent herself as an American citizen who was free to return to the said country whenever she wished. Moreover, although petitioner Poe supposedly reacquired her Philippine citizenship on July 7, 2006, she was issued a Philippine passport only three years thereafter on October 13, 2009. Thus, I concur with the finding of the *Ponencia* that petitioner Poe's affidavit of renunciation of U.S. citizenship was the only clear and positive proof of her abandonment of her U.S. domicile. Given the above findings, the petitioner's evidence fails to substantiate her claim that she had established her domicile of choice in the Philippines starting on May 24, 2005. By stating in her COC that she had complied with the required ten-year residency when she actually did not, petitioner made a false material representation that justified the COMELEC's cancellation of her COC.

12. ID.; ID.; AN ACT INSTITUTING A BALIKBAYAN PROGRAM (R.A. NO. 6768, AS AMENDED); NOT BEING AN OVERSEAS FILIPINO WORKER (OFW), PETITIONER IS NOT THE *BALIKBAYAN* THAT IS ENVISIONED TO BE THE RECIPIENT OF THE REINTEGRATION PROGRAM.— On this point, the majority apparently lost sight of the fact that the training program envisioned in Republic Act No. 6768, as amended, that is to be pursued in line with the government's reintegration program does not apply to petitioner Poe. It applies to another set of *balikbayans* who are Filipino overseas workers. Section 6 of the law expressly states that: SEC. 6. *Training Programs.* – The **Department of Labor and Employment (DOLE)** through the **OWWA**, x x x shall provide the **necessary entrepreneurial training and livelihood skills programs and marketing assistance** to a *balikbayan,* x x x who shall avail of the *kabuhayan* program **in accordance with the existing rules on the government's reintegration program.** x x x Indeed, the Overseas Workers Welfare Administration (OWWA) is a government agency that is primarily tasked to protect the interest and promote the welfare of overseas Filipino workers (OFWs).

Among the benefits and services it renders is a Reintegration Program, which defines reintegration as "a way of preparing for the return of OFWs into the Philippine society." Not being an OFW, petitioner Poe is not the *balikbayan* that is envisioned to be the recipient of the above reintegration program.

13. **ID.; ID.; ELECTION LAWS; OMNIBUS ELECTION CODE (OEC); THE REQUIREMENT UNDER SECTION 78 OF THE OEC SHOULD ONLY PIVOT ON THE CANDIDATE'S DECLARATION OF A MATERIAL QUALIFICATION THAT IS FALSE, AND NOT ON THE DELIBERATE INTENT TO DEFRAUD.—** A deeper analysis and research on the import and meaning of the language of Section 78, led to the conclusion that as opposed to the use of the term *"**misrepresentation**"* which, colloquially is understood to mean a statement **made to deceive or mislead**, the qualifying term *"**false**"* referring to the phrase *"**material representation**"* is said to have "**two distinct and well-recognized meanings**. It signifies (1) intentionally or knowingly, or negligently untrue, and (2) untrue by mistake, accident, or honestly after the exercise of reasonable care." Thus, the word *"false"* does not necessarily imply an intention to deceive. What is important is that an untrue material representation is made. Relating to the disqualification under Section 78 of the OEC, the requirement of the said law (that a cancellation of a candidate's COC be exclusively grounded on the presence of any **material representation** contained therein that is required under Section 74 of the same **is false**) should only pivot on the candidate's declaration of a material qualification that is false, and not on the deliberate intent to defraud. With this, good faith on the part of the candidate would be inconsequential. In these present cases, there is no need to go into the matter of questioning petitioner Poe's *intent* in making a material representation that is false. It is enough that she signified that she is eligible to run for the Presidency notwithstanding the fact that she appeared to know the legal impediment to her claim of natural-born Filipino citizenship, as borne out by her concealment of her true personal circumstances, and that she is likewise aware of the fact that she has not fulfilled the ten-year residency requirement as shown by her inconsistent and ambivalent stand as to the start of her domicile in the Philippines. Apparently, she is cognizant of the fact that she is actually ineligible for the position.

BRION, ***J., dissenting opinion:***

1. **POLITICAL LAW; CONSTITUTIONAL LAW; CITIZENSHIP; NO PRESUMPTION CAN BE INDULGED IN FAVOR OF THE CLAIMANT OF PHILIPPINE CITIZENSHIP AND ANY DOUBT REGARDING CITIZENSHIP MUST BE RESOLVED IN FAVOR OF THE STATE.—** This Court has held that any doubt regarding citizenship must be resolved in favor of the State. ***In other words, citizenship cannot be presumed; the person who claims Filipino citizenship must prove that he or she is in fact a Filipino***. It is only upon proper proof that a claimant can be entitled to the rights granted by the State. This was the Court's ruling in *Paa v. Chan* where this Court categorically ruled that it is incumbent upon the person who claims Philippine citizenship, to prove to the satisfaction of the court that he is really a Filipino. This should be true particularly after proof that the claimant has not proven (and even admits the lack of proven) Filipino parentage. ***No presumption can be indulged in favor of the claimant of Philippine citizenship, and any doubt regarding citizenship must be resolved in favor of the State***.
2. **ID.; ELECTION LAWS; ELECTION OF A FORMER FILIPINO TO OFFICE DOES NOT AUTOMATICALLY RESTORE PHILIPPINE CITIZENSHIP.—** *Court ruled that the election of a former Filipino to office does not automatically restore Philippine citizenship, the possession of which is an indispensable requirement for holding public office. "The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this case, that the candidate was qualified."*
3. **TAXATION; INCOME TAX RETURN; FILING OF A RETURN SHALL BE SUPPLIED WITH A TAX IDENTIFICATION NUMBER (TIN).—** "Any person, whether natural or juridical, required under the authority of the Internal Revenue Code to make, render or file a return, statement or other documents, shall be supplied with or assigned a Taxpayer Identification Number (TIN) to be indicated in the return, statement or document to be filed with the Bureau of Internal Revenue, for his proper identification for tax purposes."
4. **POLITICAL LAW; CONSTITUTIONAL LAW; CITIZENSHIP; DUAL CITIZENS; DO NOT BECOME**

PHILIPPINE DOMICILIARIES UPON THE APPROVAL OF THEIR R.A. NO. 9225 PETITIONS.— *Dual citizens do not become Philippine domiciliaries upon the approval of their RA No. 9225 petitions; note that former natural-born Filipino citizens who are U.S. residents can apply under RA No. 9225 even without need of establishing actual Philippine residence. All they have after approval is the* ***civil and political right to establish residence in the Philippines,*** *but this they must do by complying with the rules on change of domicile.*

5. **ID.; ID.; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; LIMITED TO THE CONSTITUTIONAL QUESTIONS RAISED OR THE VERY *LIS MOTA* PRESENTED.—** 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. In the seminal case of *Angara v. Electoral Tribunal* the Court mandated in no uncertain terms that judicial review is *"limited to the constitutional question raised or the very lis mota presented," and without passing upon "questions of wisdom, justice or expediency of legislation."* With the scope of the justiciable issue so delimited, the Court in resolving the constitutional issues likewise ***cannot add to, detract from, or negate what the Constitution commands****;* it cannot simply follow its sense of justice based on how things out to be, nor lay down its own policy, nor slant its ruling towards the individual Justices' pet advocacies. *The individual Justices themselves cannot simply raise issues that the parties did not raise at the COMELEC level, nor explore constitutional issues for the first time at this stage of the case.*

6. **ID.; ID.; SEPARATION OF POWERS; DIVIDES THE POWERS OF THE GOVERNMENT INTO THE LEGISLATIVE, THE EXECUTIVE, AND JUDICIAL.—** *Separation of powers* is a fundamental principle in our system of government that divides the powers of government into the legislative, the executive, and judicial. The power to enact laws lies with the legislature; the power to execute is with the executive; and, the power to interpret laws rests with the judiciary. Each branch is supreme within its own sphere. Thus, the judiciary can only interpret and apply the Constitution and the laws as

they are written; ***it cannot, under the guise of interpretation in the course of adjudication, add to, detract from or negate what these laws provide except to the extent that they run counter to the Constitution***. With respect to the Constitution and as already mentioned above, ***the judiciary cannot interpret the Constitution to read into it what is not written there***.

7. ID.; ID.; EQUAL PROTECTION CLAUSE; EQUAL PROTECTION OF THE LAWS GUARANTY IS NOT VIOLATED BY A LEGISLATION BASED ON REASONABLE CLASSIFICATION.— The well-settled principle is that the equal protection of the laws guaranty is not violated by a legislation based on ***reasonable classification***. Thus, the problem in equal protection cases is primarily in the determination of the validity of the classification made by law, if resort to classification is justified. For this reason, three *(3)* different standards of scrutiny in testing the constitutionality of classifications have been developed over time – the <u>rational basis</u> test; the <u>intermediate scrutiny</u> test; and <u>strict scrutiny</u> test.

8. ID.; ID.; ID.; RATIONAL BASIS TEST; COURTS WILL UPHOLD A CLASSIFICATION IF IT BEARS A RATIONAL RELATIONSHIP TO AN ACCEPTED OR ESTABLISHED GOVERNMENTAL END.— Under the *rational basis test,* courts will uphold a classification if it bears a rational relationship to an accepted or established governmental end. This is a relatively relaxed standard reflecting the Court's awareness that classification is an unavoidable legislative task. The presumption is in favor of the classification's validity. If the classification, while not facially invidious, nonetheless gives rise to recurring constitutional difficulties, or if a classification disadvantages a "quasi-suspect class" it will be treated under a heightened review called *the intermediate scrutiny test.* Intermediate scrutiny requires that the classification serve an important governmental end or objective and is substantially related to the achievement of this objective. The classification is presumed unconstitutional and the burden of justification for the classification rests entirely with the government. Finally, the *strict scrutiny test* is used when suspect classifications or fundamental rights are involved. This test requires that the classification serve a compelling state interest and is necessary to achieve such interest.

9. **ID.; ID.; ID.; EQUAL PROTECTION GUARANTY OF THE LAWS IS NOT VIOLATED BY LEGISLATION BASED ON REASONABLE CLASSIFICATION; REQUISITES FOR CLASSIFICATION TO BE REASONABLE; ENUMERATED.—** It is a well-settled principle that the equal protection guaranty of the laws is not violated by a legislation (or governmental action) based on reasonable classification. A classification, to be reasonable must: 1) rely on substantial distinctions; 2) be germane to the purpose of the law; 3) not be limited to existing conditions only; and 4) apply equally to all members of the same class.

10. **ID.; ID.; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; STATUTORY POWERS; AUTHORITY TO CANCEL A CERTIFICATE OF CANDIDACY UNDER SECTION 78 OF THE OMNIBUS ELECTION CODE.—** As the constitutional authority tasked to ensure clean, honest and orderly elections, the COMELEC exercises administrative, quasi-legislative, and quasi-judicial powers granted under Article IX of the 1987 Constitution. These constitutional powers are refined and implemented by legislation, among others, through the powers expressly provided in the Omnibus Election Code *(OEC).* These statutory powers include the **authority to cancel a certificate of candidacy under Section 78** of the OEC, which provides: Sec. 78. Petition to deny due course to or cancel a certificate of candidacy. - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any **material representation** contained therein as required under Section 74 hereof is **false.** The petition may be filed at any time not later than twenty- five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

11. **ID.; ID.; ID.; ID.; DECISION TO CANCEL A CANDIDATE'S COC BASED ON GROUNDS PROVIDED IN SECTION 78 INVOLVES EXERCISE OF JUDGMENT OR DISCRETION THAT QUALIFIES AS A QUASI-JUDICIAL FUNCTION BY THE COMELEC.—** In *Cipriano v. COMELEC,* this Court recognized that this authority is **quasi-judicial in nature.** The decision to cancel a candidate's CoC, based on grounds provided in Section 78, involves an exercise

of judgment or discretion that qualifies as a quasi-judicial function by the COMELEC. Quasi-judicial power has been defined as: xx x the power of the administrative agency to adjudicate the rights of persons before it. It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.

12. **ID.; ID.; ID.; ID.; ITS DECISIONS ARE NOT SUBJECT TO APPEAL BUT ONLY TO THE *CERTIORARI* JURISDICTION OF THIS COURT FOR CORRECTION OF GRAVE ABUSES IN THE EXERCISE OF ITS JURISDICTION.—** COMELEC is not an ordinary court or quasi-judicial body that falls within the judicial supervision of this Court. It is an independent constitutional body that enjoys both **decisional AND institutional independence** from the three branches of the government. Its decisions are not subject to appeal but only to the *certiorari* jurisdiction of this Court for the correction of grave abuses in the exercise of its discretion – a very high threshold of review as discussed above.

13. **POLITICAL LAW; ELECTIONS; PRESIDENTIAL ELECTORAL TRIBUNAL; JURISDICTION OF PET DOES NOT PERTAIN TO PRESIDENTIAL OR VICE-PRESIDENTIAL CANDIDATES BUT TO THE PRESIDENT ELECT AND VICE-PRESIDENT ELECT.—** The grant of jurisdiction to the PET is **exclusive** but at the same time, **limited.** The constitutional phraseology limits the PET's jurisdiction to **election contests** which can only contemplate a post-election and post- proclamation controversy since no *"contest"* can exist before a winner is proclaimed. Understood in this sense, the jurisdiction of the members of the Court, sitting as PET, does *not* pertain to Presidential or

Vice-Presidential *candidates* but to the President (elect) and Vice-President (elect).

14. **ID.; CONSTITUTIONAL LAW; STATUTORY CONSTRUCTION; *VERBA LEGIS NON EST RECEDENDUM, RATIO LEGIS EST ANIMA* AND *UT MAGIS VALEAT QUAM PEREAT;* DEFINED.—** Jurisprudence has established three principles of constitutional construction: **first,** *verba legis non est recedendum* – from the words of the statute there should be no departure; **second,** when there is ambiguity, *ratio legis est anima* – the words of the Constitution should be interpreted based on the intent of the framers; and **third,** *ut magis valeat quam pereat* – the Constitution must be interpreted as a whole.

15. **ID.; ID.; ID.; *EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS*; ITEMS NOT PROVIDED IN A LIST ARE PRESUMED NOT TO BE INCLUDED IN IT.—** In interpreting the Constitution from the perspective of what it **expressly** contains *(verba legis),* only the terms of the Constitution itself require to be considered. Article IV, Section 1 of the 1935 Constitution on Citizenship provides: ARTICLE IV CITIZENSHIP Section 1. The following are citizens of the Philippines: (1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution. (2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands. (3) Those whose fathers are citizens of the Philippines. (4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship. (5) Those who are naturalized in accordance with law. Section 2. Philippine citizenship may be lost or reacquired in the manner provided by law. To reiterate, the list of persons who may be considered Philippine citizens is an ***exclusive*** list. According to the principle of *expressio unius est exclusio alterius,* items not provided in a list are presumed not to be included in it.

16. **ID.; ID.; ID.; INTENT OF THE CONSTITUTION'S DRAFTERS MAY ONLY BE RESORTED TO IN CASE OF AMBIGUITY.—** The primordial rule in constitutional construction, that is, ***the text of the constitutional provision applies and is controlling. Intent of the Constitution's drafters***

may only be resorted to in case of ambiguity, and after examining the entire text of the Constitution. Even then, the opinion of a member of the Constitutional Convention is merely instructive, it cannot be considered conclusive of the people's intent.

17. **ID.; PUBLIC INTERNATIONAL LAW; DOCTRINE OF TRANSFORMATION; UPON RATIFICATION, A TREATY IS TRANSFORMED INTO A DOMESTIC LAW AND BECOMES EFFECTIVE IN THE PHILIPPINES.—** Treaties are entered into by the President and must be ratified by a two-thirds vote of the Philippine Senate in order to have legal effect in the country. Upon ratification, a treaty is transformed into a domestic law and becomes effective in the Philippines. Depending on the terms and character of the treaty obligation, some treaties need additional legislation in order to be implemented in the Philippines. This process takes place pursuant to the ***doctrine of transformation.***

18. **ID.; ID.; PHILIPPINES HAS A DUALIST APPROACH IN ITS TREATMENT OF INTERNATIONAL LAW.—** The Philippines has a ***dualist*** approach in its treatment of international law. Under this approach, the Philippines sees international law and its international obligations from two perspectives: *first,* from the ***international plane,*** where international law reigns supreme over national laws; and *second,* from the ***domestic plane,*** where the international obligations and international customary laws are considered in the same footing as national laws, and do not necessarily prevail over the latter.

19. **ID.; ID.; TREATY PROVISIONS CANNOT PREVAIL OVER CONSTITUTIONAL PROVISIONS.—** Under Article VIII of the 1987 Constitution, a treaty may be the subject of judicial review, and is thus characterized as an instrument with the same force and effect as a domestic law. From this perspective, treaty provisions cannot prevail over, or contradict, *constitutional provisions;* they can also be amended by *domestic laws,* as they exist and operate at the same level as these laws.

20. **ID.; CONSTITUTIONAL LAW; CITIZENSHIP; ARTICLE IV OF THE 1935 CONSTITUTION GENERALLY FOLLOWS THE *JUS SANGUINIS* RULE.—** Article IV of the 1935 Constitution generally follows the ***jus sanguinis* rule:** Philippine citizenship is determined **by blood**, *i.e.,* by the

citizenship of one's parents. The Constitution itself provides the instances when *jus sanguinis* is not followed: for inhabitants who had been granted Philippine citizenship at the time the Constitution was adopted; those who were holding public office at the time of its adoption; and those who are naturalized as Filipinos in accordance with law.

21. **ID.; PUBLIC INTERNATIONAL LAW; STATES FOLLOW INTERNATIONAL LAW ON THE BELIEF THAT THESE NORMS EMBODY OBLIGATIONS THAT THESE STATES ARE BOUND TO PERFORM.—** Generally accepted principles of international law are legal norms that are recognized as customary in the international plane. ***States follow them on the belief that these norms embody obligations that these States, on their own, are bound to perform.*** Also referred to as customary international law, generally accepted principles of international law pertain to the collection of international behavioral regularities that nations, over time, come to view as binding on them as a matter of law.

22. **ID; ID; LEGAL NORM; ELEMENTS BEFORE IT MAY BE CONSIDERED AS A GENERALLY ACCEPTED PRINCIPLE OF INTERNATIONAL LAW.—** A legal norm requires the concurrence of two elements before it may be considered as a generally accepted principle of international law: the ***established, widespread, and consistent practice on the part of States;*** and a ***psychological element known as the*** **opinio juris sive necessitates** ***(opinion as to law or necessity).*** Implicit in the latter element is the belief that the practice is rendered obligatory by the existence of a rule of law requiring it.

23. **ID.; ELECTION LAWS; CANDIDATES WHO REACQUIRED PHILIPPINE CITIZENSHIP UNDER R.A. NO. 9225; THEIR LEGAL RESIDENCE IN THE PHILIPPINES ONLY BEGAN AFTER THEIR REACQUISITION OF PHILIPPINE CITIZENSHIP.—** Aliens who reacquire Philippine citizenship under RA No. 9225 may only begin establishing legal residence in the Philippines from the time they reacquire Philippine citizenship. **This is the clear import from the Court's rulings in *Japzon v. COMELEC* and *Caballero v. COMELEC,*** cases involving candidates who reacquired Philippine citizenship under RA No.

9225; ***their legal residence in the Philippines only began after their reacquisition of Philippine citizenship***.

24. **ID.; ID.; RESIDENCE; GENERALLY MEANS ACTUAL RESIDENCE WHEN PERTAINING TO THE EXERCISE OF CIVIL RIGHTS AND FULFILMENT OF CIVIL OBLIGATIONS.—** Generally, we have used the term "residence" to mean actual residence when pertaining to the exercise of civil rights and fulfilment of civil obligations. Residence, in this sense pertains to a place of abode, whether permanent or temporary, or as the Civil Code aptly describes it, a place of habitual residence. Thus, the Civil Code provides: Art. 50. For the exercise of **civil rights** and the fulfillment of **civil obligations,** the domicile of natural persons is the place of their habitual residence. Art. 51. When the law creating or recognizing them, or any other provision does not fix the domicile of juridical persons, the same shall be understood to be the place where their legal representation is established or where they exercise their principal functions.

25. **ID.; ID.; ID.; THE TERM "RESIDENCE" IN ELECTION LAWS IS SYNONYMOUS WITH DOMICILE.—** We generally reserve the use of the term residence as domicile for purposes of ***exercising political rights***. Jurisprudence has long established that the term "residence" in election laws is *synonymous with domicile.* ***When the Constitution or the election laws speak of residence, it refers to the legal or juridical relation between a person and a place–the individual's permanent home irrespective of physical presence***.

26. **ID.; ID.; DOMICILE; THREE CLASSIFICATIONS OF DOMICILE; ENUMERATED.—** 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.

27. **ID.; ID.; ID.; REQUISITES TO EFFECT A CHANGE OF DOMICILE.—** To effect a change of domicile, a person must comply with the following requirements: (1) an actual removal or an actual change of domicile; (2) a *bona fide* intention of abandoning the former place of residence and establishing a new one; and (3) acts which correspond with such purpose.

In other words, a change of residence requires *animus manendi* coupled with *animus non revertendi.* 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.***

28. ID.; ID.; RESIDENCE; BASIC FOUNDATIONAL RULES IN CONSIDERATION OF RESIDENCY ISSUES; ENUMERATED.— 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.***

29. ID.; ID.; ID.; OBTAINING A PERMANENT RESIDENT VISA WAS VIEWED AS AN ACT THAT ESTABLISHES DOMICILE IN THE PHILIPPINES FOR PURPOSES OF COMPLYING WITH CA NO. 473.— ***Ujano v. Republic*** interpreted this residence requirement to mean domicile, that is, prior to applying for naturalization, the applicant must have maintained a permanent residence in the Philippines. In this sense, *Ujano* held that an alien staying in the Philippines under a temporary visa does not comply with the residence requirement, and to become a qualified applicant, an alien must have secured a permanent resident visa to stay in the Philippines. Obtaining a permanent resident visa was, thus, viewed as the act that establishes domicile in the Philippines for purposes of complying with CA No. 473.

30. ID.; ID.; ID.; PERMANENT RESIDENCE REQUIREMENT UNDER CA NO. 473 DOES NOT PROVIDE THE APPLICANT ALIEN WITH THE RIGHT TO PARTICIPATE IN THE COUNTRY'S POLITICAL PROCESS.— The permanent residence requirement under CA No. 473 ***does not provide the applicant alien with the right to participate in the country's political process and should thus be distinguished from domicile in election laws.*** In other words, an alien may be considered a permanent resident of the Philippines, but without Philippine citizenship, his stay cannot be considered in establishing domicile in the Philippines for purposes of exercising political rights. Neither could this period be

retroactively counted upon gaining Philippine citizenship, as his stay in the Philippines at that time was as an alien with no political rights.

31. **ID.; ID.; CITIZENSHIP; A PERSON WHO HAS REACQUIRED PHILIPPINE CITIZENSHIP UNDER R.A. NO. 9225 DOES NOT AUTOMATICALLY BECOME DOMICILED IN THE PHILIPPINES.—** Upon reacquisition of Philippine citizenship under RA No. 9225, a person becomes entitled to full political and civil rights, subject to its attendant liabilities and responsibilities. These include the right to re-establish domicile in the Philippines for purposes of participating in the country's electoral processes. Thus, ***a person who has reacquired Philippine citizenship under RA No. 9225 does not automatically become domiciled in the Philippines, but is given the option to establish domicile in the Philippines to participate in the country's electoral process***.

32. **ID.; ID.; ID.; PHYSICAL PRESENCE ALLEGEDLY COUPLED WITH INTENT SHOULD BE COUNTED ONLY FROM HER REACQUISITION OF PHILIPPINE CITIZENSHIP OR SURRENDER OF IMMIGRANT STATUS.— The COMELEC correctly applied the doctrine laid out in *Coquilla, Japzon,* and *Caballero* in Poe's case,** *i.e.,* ***that her physical presence allegedly coupled with intent should be counted, for election purposes, only from her reacquisition of Philippine citizenship or surrender of her immigrant status***. Any period of residence prior to such reacquisition of Philippine citizenship or surrender of immigrant status cannot simply be counted as Poe, at such time, was an alien non-resident who had no right to permanently reside anywhere in the Philippines.

33. **ID.; ID.; ID.; REPATRIATION PROCEDURE UNDER R.A. NO. 9225 APPLIES ONLY TO FORMER NATURAL BORN FILIPINO CITIZENS WHO BECAME NATURALIZED FOREIGN CITIZENS.—** The simplified repatriation procedure under RA No. 9225 applies only to former natural-born Filipino citizens who became naturalized foreign citizens. Thus, ***persons who were not natural-born citizens prior to their foreign naturalization cannot reacquire Philippine citizenship through the simplified RA No. 9225***

procedure, but may do so only through the other modes CA No. 63 provides, i.e., by naturalization under CA No. 473, as amended by RA No. 530, or by direct act of Congress. Prior to a valid reacquisition under RA No. 9225, a former Philippine citizen does not have political rights in the Philippines, as he or she is considered an alien. His political rights begin only upon reacquisition of Philippine citizenship: ***the right to establish domicile as an aspect in the exercise of these political rights begin only upon becoming a Philippine citizen***.

34. ID.; ID.; DOMICILE; REQUIREMENT TO ESTABLISH A DOMICILE; PERSON MUST SHOW THAT HE OR SHE HAS *ANIMUS NON-REVERTENDI* OR INTENT TO ABANDON HIS OR HER OLD DOMICILE.— As a requirement to establish domicile, a person must show that he or she has *animus non-revertendi,* or intent to abandon his or her old domicile. This requirement reflects two key characteristics of a domicile: ***first,*** that a person can have only one residence at any time, and ***second,*** that a person is considered to have an *animus revertendi* (intent to return) to his current domicile. Thus, for a person to demonstrate his or her *animus non revertendi* to the old domicile, he or she must have <u>abandoned it completely</u>, such that he or she can no longer entertain any *animus revertendi* with respect to such old domicile. This complete abandonment is necessary in light of the ***one-domicile*** rule. In more concrete terms, a person seeking to demonstrate his or her *animus non-revertendi* must not only leave the old domicile and is no longer physically present there, he or she must have also shown <u>*acts cancelling his or her animus revertendi to that place.*</u>

DEL CASTILLO, *J., dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; COMELEC'S QUASI-JUDICIAL FUNCTIONS PERTAIN TO ITS POWER TO RESOLVE CONTROVERSIES ARISING FROM THE ENFORCEMENT OF ELECTION LAWS, AND TO BE THE SOLE JUDGE OF ALL PRE-PROCLAMATION CONTROVERSIES.— Section 2(1), Article IX(C) of the 1987 Constitution vests upon the Comelec the power and function to "[e]nforce and administer all laws and regulations relative

to the conduct of an election, plebiscite, initiative, referendum, and recall." This constitutional grant of power is echoed in Section 52 of the OEC which emphasizes that the Comelec has "exclusive charge of the enforcement and administration of all laws relative to the conduct of elections." Also, in *Bedol v. Commission on Elections,* this Court explained that the Comelec's *quasi-judicial* functions pertain to its power "to resolve controversies arising from the enforcement of election laws, and to be the sole judge of all pre-proclamation controversies x x x."

2. **ID.; ID.; ID.; ID.; SECTION 78 OF THE OMNIBUS ELECTION CODE (OEC); FOR THE CANCELLATION OR DENIAL OF DUE COURSE TO A CERTIFICATE OF CANDIDACY (COC) BASED ON THE EXCLUSIVE GROUND OF MATERIAL MISREPRESENTATION; CONTENTS OF PETITION, ENUMERATED.—** Section 78 of the OEC, in relation to Section 74 thereof, provides for a mechanism for the cancellation or denial of due course to a CoC based on the exclusive ground of material misrepresentation. The misrepresentation must refer to a material fact, such as one's citizenship or residence. To be sufficient, a Section 78 petition must contain the following ultimate facts: "(1) the candidate made a representation in his certificate; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate (the right to run for the elective position for which he filed his certificate); and (3) the candidate made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform or hide a fact which would otherwise render him ineligible."

3. **STATUTORY CONSTRUCTION; WHEN THE LAW DOES NOT DISTINGUISH, WE MUST NOT DISTINGUISH.—** Anent the contention that the Comelec lacks jurisdiction over candidates for national positions, suffice it to state that Section 78 of the OEC does not distinguish between CoCs of candidates running for local and those running for national positions. It simply mentions "certificate of candidacy." *Ubi lex non distinguit nec nos distinguere debemus* – when the law does not distinguish, we must not distinguish. This is a basic rule in statutory construction that is applicable in these cases. Hence, the Comelec

has the power to determine if the CoC of candidates, whether running for a local or for a national position, contains false material representation. In other words, any person may avail himself/herself of Section 78 of the OEC to assail the CoC of candidates regardless of the position for which they are aspiring.

4. **POLITICAL LAW; ELECTION LAWS; SECTION 78 OF THE OEC AND *QUO WARRANTO* PROCEEDING BOTH DEAL WITH THE ELIGIBILITY OR QUALIFICATION OF A CANDIDATE; DISTINCTION.—** While it is admitted that there is a similarity between a petition under Section 78 of the OEC and a *quo warranto* proceeding in that they both deal with the eligibility or qualification of a candidate, what sets them apart is the time when the action is filed, that is, *before* or *after* an election and proclamation. As the election subject of these petitions is yet to be held, there can be no doubt that the issues raised by respondents were properly set forth in their respective petitions for cancellation and/or denial of due course to petitioner's CoC.

5. **ID.; ID.; ID.; COMELEC IS THE SOLE JUDGE OF ALL PRE-PROCLAMATION CONTROVERSIES WHILE THE PRESIDENTIAL ELECTORAL TRIBUNAL (PET) IS THE SOLE JUDGE OF ALL CONTESTS RELATING TO THE ELECTION, RETURNS, AND QUALIFICATIONS OF THE PRESIDENT OR VICE-PRESIDENT.—** As heretofore stated, a petition under Section 78 seeks to cancel a candidate's CoC before there has been an election and proclamation. Such a petition is within the Comelec's jurisdiction as it is "the sole judge of all pre-proclamation controversies." On the other hand, the PET is "the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President of the Philippines." Particularly, the PET has jurisdiction over an election contest initiated through an election protest or a petition for *quo warranto* against the President or Vice-President. The PET's adjudicative powers come into play after the President or the Vice-President concerned had been elected and proclaimed. Under the PET Rules an election protest may be filed only within 30 days after proclamation of the winner, while a *quo warranto* petition may be initiated within 10 days after the proclamation of the winner. In other words, it is the date of proclamation of the candidate concerned that is determinative of the time when the PET's jurisdiction attaches.

6. **ID.; ID.; ID.; ID.; COMELEC HAS JURISDICTION TO RULE ON A PETITION TO DENY DUE COURSE TO OR TO CANCEL THE COC OF A CANDIDATE, WHETHER FOR A LOCAL OR NATIONAL POSITION, WHO MAY HAVE COMMITTED MATERIAL MISREPRESENTATION IN HIS/HER COC.—** [It] is beyond cavil that the Comelec has the power and jurisdiction to rule on a petition to deny due course to or to cancel the CoC of a candidate, whether for a local or national position, who may have committed material misrepresentation in his/her CoC.

7. **ID.; CONSTITUTIONAL LAW; CITIZENSHIP; REQUISITES IN ORDER FOR *RES JUDICATA* TO APPLY IN CITIZENSHIP CASES.—** In *Go, Sr. v. Ramos,* this Court held that *res judicata* may apply in citizenship cases only if the following conditions or circumstances concur: 1. a person's citizenship must be raised as a material issue in a controversy where said person is a party; 2. the Solicitor General or his authorized representative took active part in the resolution thereof; and 3. the finding o[f] citizenship is affirmed by this Court.

8. **ID.; ID.; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; COMELEC MAY DENY DUE COURSE TO AND/OR CANCEL A CERTIFICATE OF CANDIDACY; REQUISITES.—** Stated differently, before the Comelec may deny due course to and/or cancel a CoC, it must be shown: (a) that the representation pertains to a material fact; (b) that it is in fact false; and (c) that there was a deliberate attempt to deceive, mislead, misinform, or hide a fact, which would otherwise render the candidate ineligible to run for the position. Under the third element, the deception must be such as to lead the electorate to believe that the candidate possesses the qualifications for the position he/she is running for, when in truth the candidate does not possess such qualifications, thus making him/her ineligible to run.

9. **ID.; EXECUTIVE DEPARTMENT; QUALIFICATION FOR PRESIDENCY; A PRESIDENT MUST BE A RESIDENT OF THE PHILIPPINES FOR AT LEAST 10 YEARS IMMEDIATELY PRECEDING THE ELECTION.—** Section 2 of Article VII of the 1987 Constitution, as reproduced above, requires, among others, that a person aspiring to become a President must be a resident of the Philippines for at least 10

years immediately preceding the election. This requirement is mandatory and must be complied with strictly. For one, no less than our Constitution itself imposes it.

10. **ID.; ELECTION LAWS; REQUIREMENT OF RESIDENCE; RESIDENCE IS SYNONYMOUS WITH DOMICILE; DOMICILE DENOTES THE PLACE WHERE A PARTY ACTUALLY OR CONSTRUCTIVELY HAS HIS PERMANENT HOME.—** For purposes of election laws, this Court, as early as 1928, held that the term residence is synonymous with domicile. Domicile denotes the place "'where a party actually or constructively has his permanent home,' where he, no matter where he may be found at any given time, eventually intends to return and remain" *(animus manendi).*

11. **ID.; ID.; DOMICILE; THREE TYPES ACCORDING TO ITS SOURCE.—** Domicile is classified into three types according to its source, namely: (1) domicile of origin, which an individual acquires at birth or his first domicile; (2) domicile of choice, which the individual freely chooses after abandoning the old domicile; and (3) domicile by operation of law, which the law assigns to an individual independently of his or her intention. A person can only have a single domicile at any given time.

12. **ID.; ID.; ID.; TO SUCCESSFULLY EFFECT A CHANGE OF DOMICILE, THERE MUST BE A BONA FIDE INTENTION OF ABANDONING THE FORMER PLACE OF RESIDENCE AND ESTABLISHING A NEW ONE AND DEFINITE ACTS WHICH CORRESPOND WITH THE PURPOSE.—** "To successfully effect a change of domicile, one must demonstrate an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one and definite acts which correspond with the purpose." In the absence of clear and positive proof of the above mentioned requisites, the current domicile should be deemed to continue. Only with clear evidence showing concurrence of *all three requirements* can the presumption of continuity of residence be rebutted, for a change of legal residence requires an actual and deliberate abandonment of the old domicile. Elsewise put, if any of the above requisites is absent, no change of domicile will result.

13. **ID.; ID.; ID.; REQUIREMENTS IN ESTABLISHING A NEW DOMICILE OF CHOICE; ENUMERATED.—** [R]equirements in establishing a new domicile of choice, to wit: a) residence or bodily presence in the new locality; b) an intention to remain there *(animus manendi);* and c) an intention to abandon the old domicile *(animus non revertendi).*

14. **REMEDIAL LAW; EVIDENCE; ADMISSIONS; REQUISITES TO BE ADMISSIBLE; ENUMERATED.—** Sec. 26. *Admissions of a party.* – The act, declaration or omission of a party as to a relevant fact may be given in evidence against him. "To be admissible, an admission must: (a) involve matters of fact, and not of law; (b) be categorical and definite; (c) be knowingly and voluntarily made; and (d) be adverse to the admitter's interests, otherwise it would be self- serving and inadmissible."

15. **POLITICAL LAW; CONSTITUTIONAL LAW; CITIZENSHIP; FILIPINO CITIZEN WHO BECOMES NATURALIZED ELSEWHERE EFFECTIVELY ABANDONS HIS DOMICILE OF ORIGIN.—** [A]Filipino citizen who becomes naturalized elsewhere effective1y abandons his domicile of origin. **Upon re-acquisition of Filipino citizenship pursuant to RA 9225, he must still show that he chose to establish his domicile in the Philippines through positive acts, and the period of his residency shall be counted from the time he made it his domicile of choice.**

16. **ID.; LEGISLATIVE DEPARTMENT; QUALIFICATIONS FOR A SENATORIAL CANDIDATE; ENUMERATED.—** For a senatorial candidate, the required qualifications are found under Section 3, Article VI of the Constitution which provides, *viz.*: *Section 3.* No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and **a resident of the Philippines for not less than two years immediately preceding the day of the election.**

17. **ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; DOCTRINE OF CONSTITUTIONAL AVOIDANCE; DEFINED.—** [The] Doctrine of Constitutional Avoidance [is that] under which this Court may choose to ignore

or side-step a constitutional question if there is some other ground upon which the case can be disposed of.

PERLAS-BERNABE, *J., dissenting opinion:*

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE RULES OF COURT PROVIDE FOR A SEPARATE RULE (RULE 64) SPECIFICALLY APPLICABLE ONLY TO DECISIONS OF THE COMELEC AND THE COMMISSION ON AUDIT; THIS RULE EXPRESSLY REFERS TO THE APPLICATION OF RULE 65 IN THE FILING OF A PETITION FOR *CERTIORARI*.—** In *Mitra v. COMELEC (Mitra),* it was explained that "[t]he basis for the Court's review of COMELEC rulings under the standards of Rule 65 of the Rules of Court is Section 7, Article IX-A of the [1987] Constitution which provides that '[u]nless otherwise provided by the Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court ***on certiorari*** by the aggrieved party within thirty [(30)] days from receipt of a copy thereof.' For this reason, the Rules of Court provide for a separate rule (Rule 64) specifically applicable only to decisions of the COMELEC and the Commission on Audit. This Rule expressly refers to the application of Rule 65 in the filing of a petition for *certiorari,* subject to the exception clause – 'except as hereinafter provided.'"

2. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; THE CONSTITUTION GIVES THE COMELEC THE BROAD POWER TO ENFORCE AND ADMINISTER ALL LAWS AND REGULATIONS RELATIVE TO THE CONDUCT OF AN ELECTION, PLEBISCITE, INITIATIVE, REFERENDUM AND RECALL.—** The COMELEC's power to deny due course to or cancel a candidate's CoC stems from Section 2, Article IX-C of the 1987 Constitution which grants it the authority to **"[e]nforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall"** and to **"[d]ecide, except those involving the right to vote, all questions affecting elections** x x x." In *Loong v. COMELEC,* it was elucidated that: Section 2(1) of Article IX(C) of the Constitution gives the COMELEC

the broad power "to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum[,] and recall." **Undoubtedly, the text and intent of this provision is to give COMELEC all the necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful, and credible elections.** Congruent to this intent, this Court has not been niggardly in defining the parameters of powers of COMELEC in the conduct of our elections.

3. **ID.; ID.; ID.; ID.; THE COMELEC UNDER RULE 25 OF ITS RESOLUTION NO. 9523 DATED SEPTEMBER 25, 2012 MAY DISQUALIFY ANY CANDIDATE FOUND BY THE COMMISSION TO BE SUFFERING FROM ANY DISQUALIFICATION PROVIDED BY LAW OR THE CONSTITUTION.—** The COMELEC, under Rule 25 of its Resolution No. 9523 dated September 25,2012, may disqualify any candidate **found by the Commission to be suffering from any disqualification provided by law or the Constitution**: **Rule 25 – Disqualification of Candidates** Section 1. *Grounds.* – Any candidate who, in an action or protest in which he is a party, is declared by final decision of a competent court, guilty of, **or found by the Commission to be suffering from any disqualification provided by law or the Constitution**.

4. **ID.; ID.; ID.; ID.; A PRE-PROCLAMATION CONTROVERSY MAY ARISE FROM A PETITION TO DENY DUE COURSE OR CANCEL A CERTIFICATE OF CANDIDACY.—** A "pre-proclamation controversy" may arise from a petition to deny due course to or cancel a CoC. This remedy – which is filed before and falls under the adjudicatory jurisdiction of the COMELEC – is governed by Section 78, Article IX of *Batas Pambansa Bilang* 881, otherwise known as the "Omnibus Election Code of the Philippines" (OEC): Section 78. Petition to deny due course to or cancel a certificate of candidacy.–A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively **on the ground that any material representation contained therein as required under Section 74 hereof is false**. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later

than fifteen days before the election. As worded, **a Section 78 petition is <u>based exclusively on the ground that a CoC contains a material representation that is false</u>**. "The false representation contemplated by Section 78 of the [OEC] pertains to [a] material fact, and is not simply an innocuous mistake. A material fact refers to a candidate's qualification for elective office such as one's citizenship and residence.

5. **ID.; DOMICILE; TO SUCCESSFULLY EFFECT A CHANGE OF DOMICILE, THERE MUST BE *ANIMUS MANENDI* COUPLED WITH ANIMUS NON REVERTENDI.—** "To successfully effect a change of domicile[,] one must demonstrate an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one and definite acts which correspond with the purpose. **<u>In other words, there must basically be *animus manendi* coupled with *animus non revertendi.*</u>** The purpose 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."

6. **ID.; CITIZENSHIP; TWO KINDS OF CITIZENS; NATURAL BORN CITIZEN AND NATURALIZED CITIZEN; NATURAL BORN CITIZENS ARE THOSE WHO ARE CITIZENS OF THE PHILIPPINES FROM BIRTH WITHOUT HAVING TO PERFORM ANY ACT TO ACQUIRE OR PERFECT THEIR PHILIPPINE CITIZENSHIP.— "**There are two ways of acquiring citizenship: (1) by birth, and (2) by naturalization. These ways of acquiring citizenship correspond to the two kinds of citizens: the natural-born citizen, and the naturalized citizen." "A person who at the time of his birth is a citizen of a particular country, is a natural-born citizen thereof." As defined under the present Constitution, "**<u>[n]atural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship.</u>**" "On the other hand, naturalized citizens are those who have become Filipino citizens through naturalization x x x."

7. **ID.; ID.; PHILIPPINE LAW ON CITIZENSHIP ADHERES TO THE PRINCIPLE OF *JUS SANGUINIS*; A CHILD FOLLOWS THE NATIONALITY OR CITIZENSHIP OF THE PARENTS REGARDLESS OF THE PLACE OF HIS/HER BIRTH.—**

> "**The Philippine law on citizenship adheres to the principle of *jus sanguinis***. Thereunder, a child follows the nationality or citizenship of the parents regardless of the place of his/her birth, as opposed to the doctrine of *jus soli* which determines nationality or citizenship on the basis of place of birth." In *Valles v. COMELEC,* this Court held that "**[t]he signing into law of the 1935 Philippine Constitution has established the principle of *jus sanguinis* as basis for the acquisition of Philippine citizenship** x x x. So also, **the principle of *jus sanguinis,* which confers citizenship by virtue of blood relationship**, was subsequently **retained under the 1973 and 1987 Constitutions**." Following this principle, proof of blood relation to a Filipino parent is therefore necessary to show that one is a Filipino citizen by birth.

APPEARANCES OF COUNSEL

G.E. Garcia Law Office and *Poblador Bautista & Reyes* for petitioner.

The Solicitor General for public respondent.

Manuelito R. Luna for private respondent Francisco Tatad.

Amado D. Valdez, Melquiades Marcus N. Valdes II, Donna S. Agoncillo, Mark Andrew M. Santiago and *Lorenze Angelo G. Dionisio* for private respondent Amado D. Valdez.

D E C I S I O N

PEREZ, *J.*:

Before the Court are two consolidated petitions under Rule 64 in relation to Rule 65 of the Rules cf Court with extremely urgent application for an *ex parte* issuance of temporary restraining order/ *status quo ante* order and/or writ of preliminary injunction assailing the following: (1) 1 December 2015 Resolution of the Commission on Elections (COMELEC) Second Division; (2) 23 December 2015 Resolution of the COMELEC *En Banc,* in SPA No. 15-001 (DC); (3) 11 December 2015 Resolution of the COMELEC First Division; and (4) 23 December 2015 Resolution of the COMELEC *En Banc,* in SPA No. 15-002 (DC), SPA No. 15-007 (DC) and SPA No. 15-139 (DC) for having been issued without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Facts

Mary Grace Natividad S. Poe-Llamanzares (petitioner) was found abandoned as a newborn infant in the Parish Church of Jaro, Iloilo by a certain Edgardo Militar (Edgardo) on 3 September 1968. Parental care and custody over petitioner was passed on by Edgardo to his relatives, Emiliano Militar (Emiliano) and his wife. Three days after, 6 September 1968, Emiliano reported and registered petitioner as a foundling with the Office of the Civil Registrar of Iloilo City (OCR-Iloilo). In her Foundling Certificate and Certificate of Live Birth, the petitioner was given the name "Mary Grace Natividad Contreras Militar."[1]

When petitioner was five (5) years old, celebrity spouses Ronald Allan Kelley Poe (a.k.a. Fenando Poe, Jr.) and Jesusa Sonora Poe (a.k.a. Susan Roces) filed a petition for her adoption with the Municipal Trial Court (MTC) of San Juan City. On 13 May 1974, the trial court granted their petition and ordered that petitioner's name be changed from "Mary Grace Natividad Contreras Militar" to "Mary Grace Natividad Sonora Poe." Although necessary notations were made by OCR-Iloilo on petitioner's foundling certificate reflecting the court decreed adoption,[2] the petitioner's adoptive mother discovered only sometime in the second half of 2005 that the lawyer who handled petitioner's adoption failed to secure from the OCR-Iloilo a new Certificate of Live Birth indicating petitioner's new name and the name of her adoptive parents.[3] Without delay, petitioner's mother executed an affidavit attesting to the lawyer's omission which she submitted to the OCR-Iloilo. On 4 May 2006, OCR-Iloilo issued a new Certificate of Live Birth in the name of Mary Grace Natividad Sonora Poe.[4]

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[1] Petition for *Certiorari* in G.R. Nos. 221698-700, pp. 15-16; COMELEC First Division Resolution dated 11 December 2015 in SPA No. 15-002 (DC), SPA No. 15-007 (DC) and SPA No. 15-139 (DC), p. 2.

[2] Petition for *Certiorari, id.* at 16-17.

[3] COMELEC First Division Resolution, *supra* note 1 at 4.

[4] Petition for *Certiorari, supra* note 1 at 22.

Having reached the age of eighteen (18) years in 1986, petitioner registered as a voter with the local COMELEC Office in San Juan City. On 13 December 1986, she received her COMELEC Voter's Identification Card for Precinct No. 196 in Greenhills, San Juan, Metro Manila.[5]

On 4 April 1988, petitioner applied for and was issued Philippine Passport No. F927287[6] by the Department of Foreign Affairs (DFA). Subsequently, on 5 April 1993 and 19 May 1998, she renewed her Philippine passport and respectively secured Philippine Passport Nos. L881511 and DD156616.[7]

Initially, the petitioner enrolled and pursued a degree in Development Studies at the University of the Philippines[8] but she opted to continue her studies abroad and left for the United States of America (U.S.) in 1988. Petitioner graduated in 1991 from Boston College in Chestnuts Hill, Massachusetts where she earned her Bachelor of Arts degree in Political Studies.[9]

On 27 July 1991, petitioner married Teodoro Misael Daniel V. Llamanzares (Llamanzares), a citizen of both the Philippines and the U.S., at Sanctuario de San Jose Parish in San Juan City.[10] Desirous of being with her husband who was then based in the U.S., the couple flew back to the U.S. two days after the wedding ceremony or on 29 July 1991.[11]

While in the U.S., the petitioner gave birth to her eldest child Brian Daniel (Brian) on 16 April 1992.[12] Her two daughters

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[5] *Id*. at 17; Comment (on the Petition for *Certiorari* in G.R. No. 221697) filed by respondent COMELEC dated 11 January 2016, p. 6.

[6] Petition for *Certiorari, id*.; *id*. at 7.

[7] *Id*. at 18.

[8] *Supra* note 6.

[9] *Id*.

[10] COMELEC First Division Resolution, *supra* note 1 at 3.

[11] Petition for *Certiorari, supra* note 1 at I7.

[12] *Id*. at 18.

Hanna MacKenzie (Hanna) and Jesusa Anika (Anika) were both born in the Philippines on 10 July 1998 and 5 June 2004, respectively.[13]

On 18 October 2001, petitioner became a naturalized American citizen.[14] She obtained U.S. Passport No. 017037793 on 19 December 2001.[15]

On 8 April 2004, the petitioner came back to the Philippines together with Hanna to support her father's candidacy for President in the May 2004 elections. It was during this time that she gave birth to her youngest daughter Anika. She returned to the U.S. with her two daughters on 8 July 2004.[16]

After a few months, specifically on 13 December 2004, petitioner rushed back to the Philippines upon learning of her father's deteriorating medical condition.[17] Her father slipped into a coma and eventually expired. The petitioner stayed in the country until 3 February 2005 to take care of her father's funeral arrangements as well as to assist in the settlement of his estate.[18]

According to the petitioner, the untimely demise of her father was a severe blow to her entire family. In her earnest desire to be with her grieving mother, the petitioner and her husband decided to move and reside permanently in the Philippines sometime in the first quarter of 2005.[19] The couple began preparing for their resettlement including notification of their children's schools that they will be transferring to Philippine schools for the next semester;[20] coordination with property movers

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[13] *Id*.

[14] COMELEC First Division Resolution, *supra* note 10.

[15] *Id*.

[16] *Supra* note 1 at 17-18.

[17] COMELEC First Division Resolution, *supra* note 10.

[18] *Id*.

[19] *Id*.

[20] Petition for *Certiorari, supra* note 1 at 20.

for the relocation of their household goods, furniture and cars from the U.S. to the Philippines;[21] and inquiry with Philippine authorities as to the proper procedure to be followed in bringing their pet dog into the country.[22] As early as 2004, the petitioner already quit her job in the U.S.[23]

Finally, petitioner came home to the Philippines on 24 May 2005[24] and without delay, secured a Tax Identification Number from the Bureau of Internal Revenue. Her three (3) children immediately followed[25] while her husband was forced to stay in the U.S. to complete pending projects as well as to arrange the sale of their family home there.[26]

The petitioner and her children briefly stayed at her mother's place until she and her husband purchased a condominium unit with a parking slot at One Wilson Place Condominium in San Juan City in the second half of 2005.[27] The corresponding Condominium Certificates of Title covering the unit and parking slot were issued by the Register of Deeds of San Juan City to petitioner and her husband on 20 February 2006.[28] Meanwhile, her children of school age began attending Philippine private schools.

On 14 February 2006, the petitioner made a quick trip to the U.S. to supervise the disposal of some of the family's remaining household belongings.[29] She travelled back to the Philippines on 11 March 2006.[30]

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[21] *Id*.

[22] *Supra* note 3.

[23] *Supra* note 20.

[24] *Supra* note 3.

[25] *Supra* note 20.

[26] *Supra* note 3.

[27] Petition for *Certiorari, supra* note 4.

[28] *Id*.

[29] *Id*. at 23; COMELEC First Division Resolution, *supra* note 3.

[30] *Id.; id.*

In late March 2006, petitioner's husband officially informed the U.S. Postal Service of the family's change and abandonment of their address in the U.S.[31] The family home was eventually sold on 27 April 2006.[32] Petitioner's husband resigned from his job in the U.S. in April 2006, arrived in the country on 4 May 2006 and started working for a major Philippine company in July 2006.[33]

In early 2006, petitioner and her husband acquired a 509-square meter lot in Corinthian Hills, Quezon City where they built their family home[34] and to this day, is where the couple and their children have been residing.[35] A Transfer Certificate of Title covering said property was issued in the couple's name by the Register of Deeds of Quezon City on 1 June 2006.

On 7 July 2006, petitioner took her Oath of Allegiance to the Republic of the Philippines pursuant to Republic Act (R.A.) No. 9225 or the Citizenship Retention and Re-acquisition Act of 2003.[36] Under the same Act, she filed with the Bureau of Immigration (BI) a sworn petition to reacquire Philippine citizenship together with petitions for derivative citizenship on behalf of her three minor children on 10 July 2006.[37] As can be gathered from its 18 July 2006 Order, the BI acted favorably on petitioner's petitions and declared that she is deemed to have reacquired her Philippine citizenship while her children are considered as citizens of the Philippines.[38] Consequently, the BI issued Identification

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[31] *Id.*; *id.*

[32] *Id.*; *id.*

[33] *Id.* at 23-24; COMELEC First Division Resolution, *supra* note 1 at 5.

[34] *Id.* at 24; *id.*

[35] *Id.*

[36] *Supra* note 34.

[37] Petition for *Certiorari, supra* note 1 at 25; COMELEC First Division Resolution, *supra* note 1 at 5.

[38] *Id.* at 25-26; *id.*

Certificates (ICs) in petitioner's name and in the names of her three (3) children.[39]

Again, petitioner registered as a voter of *Barangay* Santa Lucia, San Juan City on 31 August 2006.[40] She also secured from the DFA a new Philippine Passport bearing the No. XX4731999.[41] This passport was renewed on 18 March 2014 and she was issued Philippine Passport No. EC0588861 by the DFA.[42]

On 6 October 2010, President Benigno S. Aquino III appointed petitioner as Chairperson of the Movie and Television Review and Classification Board (MTRCB).[43] Before assuming her post, petitioner executed an "Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship" before a notary public in Pasig City on 20 October 2010,[44] in satisfaction of the legal requisites stated in Section 5 of R.A. No. 9225.[45] The following day, 21 October 2010

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[39] *Id*. at 26; *id*.

[40] *Id.; id.*

[41] *Id.; id.*

[42] *Id*. at 32; *id*. at 6.

[43] *Supra* note 39.

[44] Petition for *Certiorari, supra* note 1 at 26-27; COMELEC First Division Resolution, *supra* note 1 at 5.

[45] Section 5, R.A. No. 9225 states:

> SEC. 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:
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> x x x x x x x x x
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> 3. Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: Provided, That they renounce their oath of allegiance to the country where they took that oath;
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> x x x x x x x x x

petitioner submitted the said affidavit to the BI[46] and took her oath of office as Chairperson of the MTRCB.[47] From then on, petitioner stopped using her American passport.[48]

On 12 July 2011, the petitioner executed before the Vice Consul of the U.S. Embassy in Manila an "Oath/Affirmation of Renunciation of Nationality of the United States."[49] On that day, she accomplished a sworn questionnaire before the U.S. Vice Consul wherein she stated that she had taken her oath as MTRCB Chairperson on 21 October 2010 with the intent, among others, of relinquishing her American citizenship.[50] In the same questionnaire, the petitioner stated that she had resided outside of the U.S., specifically in the Philippines, from 3 September 1968 to 29 July 1991 and from May 2005 to present.[51]

On 9 December 2011, the U.S. Vice Consul issued to petitioner a "Certificate of Loss of Nationality of the United States" effective 21 October 2010.[52]

On 2 October 2012, the petitioner filed with the COMELEC her Certificate of Candidacy (COC) for Senator for the 2013 Elections wherein she answered "6 years and 6 months" to the question "Period of residence in the Philippines before May 13, 2013."[53] Petitioner obtained the highest number of votes and was proclaimed Senator on 16 May 2013.[54]

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[46] Petition for *Certiorari,* supra note 1 at 27.

[47] *Id*. at 29.

[48] *Supra* note 46; *supra* note 1 at 6.

[49] Petition for *Certiorari, supra* note 1 at 30; *id*.

[50] *Id*.

[51] *Supra* note 48.

[52] Petition for *Certiorari, supra* note 1 at 31; COMELEC First Division Resolution, *supra* note 1 at 6.

[53] Comment, *supra* note 5 at 9.

[54] Petition for *Certiorari, supra* note 1 at 31.

On 19 December 2013, petitioner obtained Philippine Diplomatic Passport No. DE0004530.[55]

On 15 October 2015, petitioner filed her COC for the Presidency for the May 2016 Elections.[56] In her COC, the petitioner declared that she is a natural-born citizen and that her residence in the Philippines up to the day before 9 May 2016 would be ten (10) years and eleven (11) months counted from 24 May 2005.[57] The petitioner attached to her COC an "Affidavit Affirming Renunciation of U.S.A. Citizenship" subscribed and sworn to before a notary public in Quezon City on 14 October 2015.[58]

Petitioner's filing of her COC for President in the upcoming elections triggered the filing of several COMELEC cases against her which were the subject of these consolidated cases.

Origin of Petition for *Certiorari* in G.R. No. 221697

A day after petitioner filed her COC for President, Estrella Elamparo (Elamparo) filed a petition to deny due course or cancel said COC which was docketed as SPA No. 15-001 (DC) and raffled to the COMELEC Second Division.[59] She is convinced that the COMELEC has jurisdiction over her petition.[60] Essentially, Elamparo's contention is that petitioner committed material misrepresentation when she stated in her COC that she is a natural-born Filipino citizen and that she is a resident of the Philippines for at least ten (10) years and eleven (11) months up to the day before the 9 May 2016 Elections.[61]

On the issue of citizenship, Elamparo argued that petitioner cannot be considered as a natural-born Filipino on account of

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[55] *Id*. at 32; Comment, *supra* note 53 at 10.

[56] *Id.;* COMELEC First Division Resolution, *supra* note 1 at 6.

[57] *Id.; id*. at 7.

[58] *Id.; id.*

[59] Comment (on the Petition in G.R. No. 221697) filed by respondent Elamparo, dated January 6, 2016, p. 7.

[60] COMELEC Second Division Resolution dated December 1, 2015 in SPA No. 15-001 (DC), p. 7.

[61] *Id*. at 7-8.

the fact that she was a foundling.[62] Elamparo claimed that international law does not confer natural-born status and Filipino citizenship on foundlings.[63] Following this line of reasoning, petitioner is not qualified to apply for reacquisition of Filipino citizenship under R.A. No. 9225 for she is not a natural-born Filipino citizen to begin with.[64] Even assuming *arguendo* that petitioner was a natural-born Filipino, she is deemed to have lost that status when she became a naturalized American citizen.[65] According to Elamparo, natural-born citizenship must be continuous from birth.[66]

On the matter of petitioner's residency, Elamparo pointed out that petitioner was bound by the sworn declaration she made in her 2012 COC for Senator wherein she indicated that she had resided in the country for only six (6) years and six (6) months as of May 2013 Elections. Elamparo likewise insisted that assuming *arguendo* that petitioner is qualified to regain her natural-born status under R.A. No. 9225, she still fell short of the ten-year residency requirement of the Constitution as her residence could only be counted at the earliest from July 2006, when she reacquired Philippine citizenship under the said Act. Also on the assumption that petitioner is qualified to reacquire lost Philippine Citizenship, Elamparo is of the belief that she failed to reestablish her domicile in the Philippines.[67]

Petitioner seasonably filed her Answer wherein she countered that:

(1) the COMELEC did not have jurisdiction over Elamparo's petition as it was actually a petition for *quo warranto* which could only be filed if Grace Poe wins in the Presidential elections, and that the Department of Justice (DOJ) has primary jurisdiction to revoke the BI's July 18, 2006 Order;

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[62] *Supra* note 60.
[63] *Id.*
[64] *Id.* at 8.
[65] *Id.*
[66] Petition for *Certiorari* in G.R. No. 221697, p. 7.
[67] *Supra* note 64.

(2) the petition failed to state a cause of action because it did not contain allegations which, if hypothetically admitted, would make false the statement in her COC that she is a natural-born Filipino citizen nor was there any allegation that there was a willful or deliberate intent to misrepresent on her part;

(3) she did not make any material misrepresentation in the COC regarding her citizenship and residency qualifications for:

a. the 1934 Constitutional Convention deliberations show that foundlings were considered citizens;

b. foundlings are presumed under international law to have been born of citizens of the place where they are found;

c. she reacquired her natural-born Philippine citizenship under the provisions of R.A. No. 9225;

d. she executed a sworn renunciation of her American citizenship prior to the filing of her COC for President in the May 9, 2016 Elections and that the same is in full force and effect and has not been withdrawn or recanted;

e. the burden was on Elamparo in proving that she did not possess natural-born status;

f. residence is a matter of evidence and that she reestablished her domicile in the Philippines as early as May 24, 2005;

g. she could reestablish residence even before she reacquired natural-born citizenship under R.A. No. 9225;

h. statement regarding the period of residence in her 2012 COC for Senator was an honest mistake, not binding and should give way to evidence on her true date of reacquisition of domicile;

i. Elamparo's petition is merely an action to usurp the sovereign right of the Filipino people to decide a purely political question, that is, should she serve as the country's next leader.[68]

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[68] Petition for *Certiorari, supra* note 65 at 8; COMELEC Second Division Resolution, *supra* note 60 at 8-11.

After the parties submitted their respective Memoranda, the petition was deemed submitted for resolution.

On 1 December 2015, the COMELEC Second Division promulgated a Resolution finding that petitioner's COC, filed for the purpose of running for the President of the Republic of the Philippines in the 9 May 2016 National and Local Elections, contained material representations which are false. The *fallo* of the aforesaid Resolution reads:

> **WHEREFORE,** in view of all the foregoing considerations, the instant Petition to Deny Due Course to or Cancel Certificate of Candidacy is hereby **GRANTED.** Accordingly, the Certificate of Candidacy for President of the Republic of the Philippines in the May 9, 2016 National and Local Elections filed by respondent Mary Grace Natividad Sonora Poe Llamanzares is hereby **CANCELLED.**[69]

Motion for Reconsideration of the 1 December 2015 Resolution was filed by petitioner which the COMELEC *En Banc* resolved in its 23 December 2015 Resolution by denying the same.[70]

Origin of Petition for *Certiorari* in GR. Nos. 221698-700

This case stemmed from three (3) separate petitions filed by Francisco S. Tatad (Tatad), Antonio P. Contreras (Contreras) and Amado D. Valdez (Valdez) against petitioner before the COMELEC which were consolidated and raffled to its First Division.

In his petition to disqualify petitioner under Rule 25 of the COMELEC Rules of Procedure,[71] docketed as SPA No.

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[69] COMELEC Second Division Resolution, *supra* note 60 at 34.

[70] Comment, *supra* note 59 at 10.

[71] Section 1 of Rule 25 of the COMELEC Rules of Procedure, as amended, states:

Rule 25 – Disqualification of Candidates

Section 1. *Grounds.* – Any candidate who, in an action or protest in which he is a party, is declared by final decision of a competent court,

15-002 (DC), Tatad alleged that petitioner lacks the requisite residency and citizenship to qualify her for the Presidency.[72]

Tatad theorized that since the Philippines adheres to the principle of *jus sanguinis,* persons of unknown parentage, particularly foundlings, cannot be considered natural-born Filipino citizens since blood relationship is determinative of natural-born status.[73] Tatad invoked the rule of statutory construction that what is not included is excluded. He averred that the fact that foundlings were not expressly included in the categories of citizens in the 1935 Constitution is indicative of the framers' intent to exclude them.[74] Therefore, the burden lies on petitioner to prove that she is a natural-born citizen.[75]

Neither can petitioner seek refuge under international conventions or treaties to support her claim that foundlings have a nationality.[76] According to Tatad, international conventions and treaties are not self-executory and that local legislations are necessary in order to give effect to treaty obligations assumed by the Philippines.[77] He also stressed that there is no standard state practice that automatically confers natural-born status to foundlings.[78]

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guilty of, or found by the Commission to be suffering from any disqualification provided by law or the Constitution.

A Petition to Disqualify a Candidate invoking grounds for a Petition to Deny to or Cancel a Certificate of Candidacy or Petition to Declare a Candidate as a Nuisance Candidate, or a combination thereof, shall be summarily dismissed.

[72] Petition to Disqualify dated 19 October 2015 filed by Tatad in SPA No. 15-002 (DC), p. 9.

[73] *Id*., at 9 and 14.

[74] *Id*. at 10.

[75] *Id*. at 12.

[76] *ld*. at 11.

[77] COMELEC First Division Resolution, *supra* note 1 at 8.

[78] *Id.*

Similar to Elamparo's argument, Tatad claimed that petitioner cannot avail of the option to reacquire Philippine citizenship under R.A. No. 9225 because it only applies to former natural-born citizens and petitioner was not as she was a foundling.[79]

Referring to petitioner's COC for Senator, Tatad concluded that she did not comply with the ten (10) year residency requirement.[80] Tatad opined that petitioner acquired her domicile in Quezon City only from the time she renounced her American citizenship which was sometime in 2010 or 2011.[81] Additionally, Tatad questioned petitioner's lack of intention to abandon her U.S. domicile as evinced by the fact that her husband stayed thereat and her frequent trips to the U.S.[82]

In support of his petition to deny due course or cancel the COC of petitioner, docketed as SPA No. 15-139 (DC), Valdez alleged that her repatriation under R.A. No. 9225 did not bestow upon her the status of a natural-born citizen.[83] He advanced the view that former natural-born citizens who are repatriated under the said Act reacquires only their Philippine citizenship and will not revert to their original status as natural- born citizens.[84]

He further argued that petitioner's own admission in her COC for Senator that she had only been a resident of the Philippines for at least six (6) years and six (6) months prior to the 13 May 2013 Elections operates against her. Valdez rejected petitioner's claim that she could have validly reestablished her domicile in the Philippines prior to her reacquisition of Philippine citizenship. In effect, his position was that petitioner did not meet the ten (10) year residency requirement for President.

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[79] Petition to Disqualify, *supra* note 72 at 11.

[80] *Id*. at 21.

[81] *Id.*

[82] *Id.*

[83] *Supra* note 1 at 8.

[84] *Id.*

Unlike the previous COMELEC cases filed against petitioner, Contreras' petition,[85] docketed as SPA No. 15-007 (DC), limited the attack to the residency issue. He claimed that petitioner's 2015 COC for President should be cancelled on the ground that she did not possess the ten-year period of residency required for said candidacy and that she made false entry in her COC when she stated that she is a legal resident of the Philippines for ten (10) years and eleven (11) months by 9 May 2016.[86] Contreras contended that the reckoning period for computing petitioner's residency in the Philippines should be from 18 July 2006, the date when her petition to reacquire Philippine citizenship was approved by the BI.[87] He asserted that petitioner's physical presence in the country before 18 July 2006 could not be valid evidence of reacquisition of her Philippine domicile since she was then living here as an American citizen and as such, she was governed by the Philippine immigration laws.[88]

In her defense, petitioner raised the following arguments:

First, Tatad's petition should be dismissed outright for failure to state a cause of action. His petition did not invoke grounds proper for a disqualification case as enumerated under Sections 12 and 68 of the Omnibus Election Code.[89] Instead, Tatad completely relied on the alleged lack of residency and natural-

[85] Contreras' petition is a petition for cancellation of Grace Poe's COC under Section 78 of the Omnibus Election Code which states that:

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 the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

[86] Petition for Cancellation of Grace Poe's COC dated 17 October 2015 filed by Contreras in SPA No. 15-007 (DC), pp. 2-4.

[87] *Id.* at 3; Petition for *Certiorari, supra* note 1 at 13.

[88] *ld.* at 3-4.

[89] Sections 12 and 68 of the Omnibus Election Code provide:

born status of petitioner which are not among the recognized grounds for the disqualification of a candidate to an elective office.[90]

Second, the petitions filed against her are basically petitions for *quo warranto* as they focus on establishing her ineligibility for the Presidency.[91] A petition for *quo warranto* falls within the exclusive jurisdiction of the Presidential Electoral Tribunal (PET) and not the COMELEC.[92]

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

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

Sec. 68. *Disqualifications.* – Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

[90] COMELEC First Division Resolution, *supra* note 1 at 12.

[91] *Id*. at 10.

[92] *Id*.

Third, the burden to prove that she is not a natural-born Filipino citizen is on the respondents.[93] Otherwise stated, she has a presumption in her favor that she is a natural-born citizen of this country.

Fourth, customary international law dictates that foundlings are entitled to a nationality and are presumed to be citizens of the country where they are found.[94] Consequently, the petitioner is considered as a natural-born citizen of the Philippines.[95]

Fifth, she claimed that as a natural-born citizen, she has every right to be repatriated under R.A. No. 9225 or the right to reacquire her natural-born status.[96] Moreover, the official acts of the Philippine Government enjoy the presumption of regularity, to wit: the issuance of the 18 July 2006 Order of the BI declaring her as natural-born citizen, her appointment as MTRCB Chair and the issuance of the decree of adoption of San Juan RTC.[97] She believed that all these acts reinforced her position that she is a natural-born citizen of the Philippines.[98]

Sixth, she maintained that as early as the first quarter of 2005, she started reestablishing her domicile of choice in the Philippines as demonstrated by her children's resettlement and schooling in the country, purchase of a condominium unit in San Juan City and the construction of their family home in Corinthian Hills.[99]

Seventh, she insisted that she could legally reestablish her domicile of choice in the Philippines even before she renounced her American citizenship as long as the three determinants for

[93] *Id.* at 9.

[94] *Id.*

[95] *Id.*

[96] *Id.*

[97] *Id.*

[98] *Id.*

[99] *Id.* at 9-10.

a change of domicile are complied with.[100] She reasoned out that there was no requirement that renunciation of foreign citizenship is a prerequisite for the acquisition of a new domcile of choice.[101]

Eighth, she reiterated that the period appearing in the residency portion of her COC for Senator was a mistake made in good faith.[102]

In a Resolution[103] promulgated on 11 December 2015, the COMELEC First Division ruled that petitioner is not a natural-born citizen, that she failed to complete the ten (10) year residency requirement, and that she committed material misrepresentation in her COC when she declared therein that she has been a resident of the Philippines for a period of ten (10) years and eleven (11) months as of the day of the elections on 9 May 2016. The COMELEC First Division concluded that she is not qualified for the elective position of President of the Republic of the Philippines. The dispositive portion of said Resolution reads:

> **WHEREFORE**, premises considered, the Commission **RESOLVED**, as it hereby **RESOLVES**, to **GRANT** the Petitions and cancel the Certificate of Candidacy of **MARY GRACE NATIVIDAD SONORA POE-LLAMANZARES** for the elective position of President of the Republic of the Philippines in connection with the 9 May 2016 Synchronized Local and National Elections.

Petitioner filed a motion for reconsideration seeking a reversal of the COMELEC First Division's Resolution. On 23 December 2015, the COMELEC *En Banc* issued a Resolution denying petitioner's motion for reconsideration.

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[100] *Id*.

[101] *Id.*

[102] *Id.*

[103] The 11 December 2015 Resolution of the COMELEC First Division was concurred in by Commissioner Louie Tito F. Guia and Ma. Rowena Amelia V. Guanzon. Presiding Commissioner Christian Robert S. Lim issued a Separate Dissenting Opinion.

Alarmed by the adverse rulings of the COMELEC, petitioner instituted the present petitions for *certiorari* with urgent prayer for the issuance of an *ex parte* temporary restraining order/ *status quo ante* order and/or writ of preliminary injunction. On 28 December 2015, temporary restraining orders were issued by the Court enjoining the COMELEC and its representatives from implementing the assailed COMELEC Resolutions until further orders from the Court. The Court also ordered the consolidation of the two petitions filed by petitioner in its Resolution of 12 January 2016. Thereafter, oral arguments were held in these cases.

The Court GRANTS the petition of Mary Grace Natividad S. Poe-Llamanzares and to ANNUL and SET ASIDE the:

1. Resolution dated 1 December 2015 rendered through its Second Division, in SPA No. 15-001 (DC), entitled *Estrella C. Elamparo, petitioner, vs. Mary Grace Natividad Sonora Poe-Llamanzares.*

2. Resolution dated 11 December 2015, rendered through its First Division, in the consolidated cases SPA No. 15-002 (DC) entitled *Francisco* S. *Tatad, petitioner, vs. Mary Grace Natividad Sonora Poe-Llamanzares, respondent;* SPA No. 15-007 (DC) entitled *Antonio P. Contreras, petitioner, vs. Mary Grace Natividad Sonora Poe-Llamanzares, respondent;* and SPA No. 15-139 (DC) entitled *Amado D. Valdez, petitioner, v. Mary Grace Natividad Sonora Poe- Llamanzares, respondent.*

3. Resolution dated 23 December 2015 of the Commission En Banc, upholding the 1 December 2015 Resolution of the Second Division.

4. Resolution dated 23 December 2015 of the Commission En Banc, upholding the 11 December 2015 Resolution of the First Division.

The procedure and the conclusions from which the questioned Resolutions emanated are tainted with grave abuse of discretion

amounting to lack of jurisdiction. The petitioner is a QUALIFIED CANDIDATE for President in the 9 May 2016 National Elections.

The issue before the COMELEC is whether or not the COC of petitioner should be denied due course or cancelled "on the exclusive ground" that she made in the certificate a false material representation. The exclusivity of the ground should hedge in the discretion of the COMELEC and restrain it from going into the issue of the qualifications of the candidate for the position, if, as in this case, such issue is yet undecided or undetermined by the proper authority. The COMELEC cannot itself, in the same cancellation case, decide the qualification or lack thereof of the candidate.

We rely, first of all, on the Constitution of our Republic, particularly its provisions in Article IX, C, Section 2:

Section 2. *The Commission on Elections shall exercise the following powers and functions:*

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

(3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

(4) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines,

for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.

(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.

(6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

(7) Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.

(8) Recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision.

(9) Submit to the President and the Congress a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.

Not any one of the enumerated powers approximate the exactitude of the provisions of Article VI, Section 17 of the same basic law stating that:

The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

or of the last paragraph of Article VII, Section 4 which provides that:

The Supreme Court, sitting *en banc,* shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

The tribunals which have jurisdiction over the question of the qualifications of the President, the Vice-President, Senators and the Members of the House of Representatives was made clear by the Constitution. There is no such provision for candidates for these positions.

Can the COMELEC be such judge?

The opinion of Justice Vicente V. Mendoza in *Romualdez-Marcos v. Commission on Elections,*[104] which was affirmatively cited in the *En Banc* decision in *Fermin v. COMELEC*[105] is our guide. The citation in *Fermin* reads:

Apparently realizing the lack of an authorized proceeding for declaring the ineligibility of candidates, the COMELEC amended its rules on February 15, 1993 so as to provide in Rule 25 §1, the following:

Grounds for disqualification.– Any candidate who does not possess all the qualifications of a candidate as provided for by

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[104] 318 Phil. 329 (1995).

[105] 595 Phil. 449 (2008).

the Constitution or by existing law or who commits any act declared by law to be grounds for disqualification may be disqualified from continuing as a candidate.

The lack of provision for declaring the ineligibility of candidates, however, cannot be supplied by a mere rule. Such an act is equivalent to the creation of a cause of action which is a substantive matter which the COMELEC, in the exercise of its rule-making power under Art. IX, A, §6 of the Constitution, cannot do it. It is noteworthy that the Constitution withholds from the COMELEC even the power to decide cases involving the right to vote, which essentially involves an inquiry into *qualifications* based on *age, residence* and *citizenship* of voters. [Art. IX, C, §2(3)]

The assimilation in Rule 25 of the COMELEC rules of grounds for ineligibility into grounds for disqualification is contrary to the evident intention of the law. For not only in their grounds but also in their consequences are proceedings for "disqualification" different from those for a declaration of "ineligibility." "Disqualification" proceedings, as already stated, are based on grounds specified in §12 and §68 of the Omnibus Election Code and in §40 of the Local Government Code and are for the purpose of barring an individual from *becoming a candidate or from continuing as a candidate* for public office. In a word, their purpose is to *eliminate a candidate from the race* either from the start or during its progress. "Ineligibility," on the other hand, refers to the lack of the qualifications prescribed in the Constitution or the statutes for *holding public office* and the purpose of the proceedings for declaration of ineligibility is to *remove the incumbent from office.*

Consequently, that an individual possesses the qualifications for a public office does not imply that he is not disqualified from becoming a candidate or continuing as a candidate for a public office and vice versa. We have this sort of dichotomy in our Naturalization Law. (C.A. No. 473) That an alien has the qualifications prescribed in §2 of the Law does not imply that he does not suffer from any of [the] disqualifications provided in §4.

Before we get derailed by the distinction as to grounds and the consequences of the respective proceedings, the importance of the opinion is in its statement that "the lack of provision for declaring the ineligibility of candidates, however, cannot be

supplied by a mere rule". Justice Mendoza lectured in *Romualdez-Marcos* that:

Three reasons may be cited to explain the absence of an authorized proceeding for determining *before election* the qualifications of a candidate.

First is the fact that unless a candidate wins and is proclaimed elected, there is no necessity for determining his eligibility for the office. In contrast, whether an individual should be disqualified as a candidate for acts constituting election offenses *(e.g.,* vote buying, over spending, commission of prohibited acts) is a prejudicial question which should be determined lest he wins because of the very acts for which his disqualification is being sought. That is why it is provided that if the grounds for disqualification are established, a candidate will not be voted for; if he has been voted for, the votes in his favor will not be counted; and if for some reason he has been voted for and he has won, either he will not be proclaimed or his proclamation will be set aside.

Second is the fact that the determination of a candidates' eligibility, *e.g.,* his citizenship or, as in this case, his domicile, may take a long time to make, extending beyond the beginning of the term of the office. This is amply demonstrated in the companion case (G.R. No. 120265, *Agapito A. Aquino v. COMELEC) where the determination of Aquino's residence was still pending in the COMELEC even after the elections of May 8, 1995. This is contrary to the summary character proceedings relating to certificates of candidacy. That is why the law makes the receipt of certificates of candidacy a ministerial duty of the COMELEC and its officers.* The law is satisfied if candidates state in their certificates of candidacy that they are eligible for the position which they seek to fill, leaving the determination of their qualifications to be made after the election and only in the event they are elected. Only in cases involving charges of false representations made in certificates of candidacy is the COMELEC given jurisdiction.

Third is the policy underlying the prohibition against pre-proclamation cases in elections for President, Vice President, Senators and members of the House of Representatives. (R.A. No. 7166, § 15) The purpose is to preserve the prerogatives of the House of Representatives Electoral Tribunal and the other Tribunals

as "sole judges" under the Constitution of the *election, returns* and *qualifications* of members of Congress of the President and Vice President, as the case may be.[106]

To be sure, the authoritativeness of the *Romualdez* pronouncements as reiterated in *Fermin,* led to the amendment through COMELEC Resolution No. 9523, on 25 September 2012 of its Rule 25. This, the 15 February 1993 version of Rule 25, which states that:

> *Grounds for disqualification.* – Any candidate who does not possess all the qualifications of a candidate as provided for by the Constitution or by existing law or who commits any act declared by law to be grounds for disqualification may be disqualified from continuing as a candidate.[107]

was in the 2012 rendition, drastically changed to:

> *Grounds.* – Any candidate who, in action or protest in which he is a party, is declared by final decision of a competent court, guilty of, or found by the Commission to be suffering from any disqualification provided by law or the Constitution.
>
> A Petition to Disqualify a Candidate invoking grounds for a Petition to Deny to or Cancel a Certificate of Candidacy or Petition to Declare a Candidate as a Nuisance Candidate, or a combination thereof, shall be summarily dismissed.

Clearly, the amendment done in 2012 is an acceptance of the reality of absence of an authorized proceeding for determining *before election* the qualifications of candidate. Such that, as presently required, to disqualify a candidate there must be a declaration by a final judgment of a competent court that the candidate sought to be disqualified "is guilty of or found by the Commission to be suffering from any disqualification provided by law or the Constitution."

Insofar as the qualification of a candidate is concerned, Rule 25 and Rule 23 are flipsides of one to the other. Both *do not allow,*

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[106] *Romualdez-Marcos v. COMELEC, supra* note 104 at 396-397.

[107] *Id.* at 397-398; *Fermin v. COMELEC, supra* note 105 at 471-472.

are not authorizations, are not vestment of jurisdiction, for the COMELEC to determine the qualification of a candidate. The facts of qualification must beforehand be established in a prior proceeding before an authority properly vested with jurisdiction. The prior determination of qualification may be by statute, by executive order or by a judgment of a competent court or tribunal.

If a candidate cannot be disqualified without a prior finding that he or she is suffering from a disqualification "provided by law or the Constitution," neither can the certificate of candidacy be cancelled or denied due course on grounds of false representations regarding his or her qualifications, without a prior authoritative finding that he or she is not qualified, such prior authority being the necessary measure by which the falsity of the representation can be found. The only exception that can be conceded are self-evident facts of unquestioned or unquestionable veracity and judicial confessions. Such are, anyway, bases equivalent to prior decisions against which the falsity of representation can be determined.

The need for a predicate finding or final pronouncement in a proceeding under Rule 23 that deals with, as in this case, alleged false representations regarding the candidate's citizenship and residence, forced the COMELEC to rule essentially that since foundlings[108] are not mentioned in the enumeration of citizens under the 1935 Constitution,[109] they then cannot be citizens. As the COMELEC stated in oral arguments, when petitioner admitted that she is a foundling, she said it all. This borders on bigotry. Oddly, in an effort at tolerance, the COMELEC, after saying that it cannot rule that herein petitioner possesses blood relationship with a Filipino citizen when "it is certain that such relationship is indemonstrable," proceeded

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[108] In A.M. No. 02-6-02-SC, Resolution Approving The Proposed Rule on Adoption (Domestic and Inter-Country), effective 22 August 2002, "foundling" is defined as "a deserted or abandoned infant or child whose parents, guardian or relatives are unknown; or a child committed to an orphanage or charitable or similar institution with unknown facts of birth and parentage and registered in the Civil Register as a "foundling."

[109] Article 1V-*Citizenship.*

to say that "she now has the burden to present evidence to prove her natural filiation with a Filipino parent."

The fact is that petitioner's blood relationship with a Filipino citizen is DEMONSTRABLE.

At the outset, it must be noted that presumptions regarding paternity is neither unknown nor unaccepted in Philippine Law. The Family Code of the Philippines has a whole chapter on Paternity and Filiation.[110] That said, there is more than sufficient evider1ce that petitioner has Filipino parents and is therefore a natural-born Filipino. Parenthetically, the burden of proof was on private respondents to show that petitioner is not a Filipino citizen. The private respondents should have shown that both of petitioner's parents were aliens. Her admission that she is a foundling did not shift the burden to her because such status did not exclude the possibility that her parents were Filipinos, especially as in this case where there is a high probability, if not certainty, that her parents are Filipinos.

The factual issue is not who the parents of petitioner are, as their identities are unknown, but whether such parents are Filipinos. Under Section 4, Rule 128:

Sec. 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution,

(2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

(3) Those whose fathers are citizens of the Philippines.

(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

(5) Those who are naturalized in accordance with law.

Section 2. Philippine citizenship may be lost or reacquired in the manner provided by law.

[110] Articles 163 to 182, Title VI of Executive Order No. 209, otherwise known as The Family Code of the Philippines, which took effect on 4 August 1988.

Sec. 4. *Relevancy, collateral matters* – Evidence must have such a relation to the fact in issue as to induce belief in its existence or no-existence. Evidence on collateral matters shall not be allowed, except when it tends in any reasonable degree to establish the probability or improbability of the fact in issue.

The Solicitor General offered official statistics from the Philippine Statistics Authority (PSA)[111] that from 1965 to 1975, the total number of foreigners born in the Philippines was 15,986 while the total number of Filipinos born in the country was 10,558,278. The statistical probability that any child born in the Philippines in that decade is natural-born Filipino was **99.83%.** For her part, petitioner presented census statistics for Iloilo Province for 1960 and 1970, also from the PSA. In 1960, there were 962,532 Filipinos and 4,734 foreigners in the province; **99.62%** of the population were Filipinos. In 1970, the figures were 1,162,669 Filipinos and 5,304 foreigners, or **99.55%**. Also presented were figures for the child producing ages (15-49). In 1960, there were 230,528 female Filipinos as against 730 female foreigners or **99.68%.** In the same year, there were 210,349 Filipino males and 886 male aliens, or **99.58%.** In 1970, there were 270,299 Filipino females versus 1,190 female aliens, or **99.56%.** That same year, there were 245,740 Filipino males as against only 1,165 male aliens or **99.53%.** COMELEC did not dispute these figures. Notably, Commissioner Arthur Lim admitted, during the oral arguments, that at the time petitioner was found in 1968, the majority of the population in Iloilo was Filipino.[112]

Other circumstantial evidence of the nationality of petitioner's parents are the fact that she was abandoned as an infant in a Roman Catholic Church in Iloilo City. She also has typical Filipino features: height, flat nasal bridge, straight black hair, almond shaped eyes and an oval face.

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[111] Statistics from the PSA or its predecessor agencies are admissible evidence. See *Herrera v. COMELEC,* 376 Phil. 443 (1999) and *Bagabuyo v. COMELEC,* 593 Phil. 678 (2008). In the latter case, the Court even took judicial notice of the figures.

[112] Transcipt of Stenographic Notes, 9 February 2016, p. 40.

There is a disputable presumption that things have happened according to the ordinary course of nature and the ordinary habits of life.[113] All of the foregoing evidence, that a person with typical Filipino features is abandoned in Catholic Church in a municipality where the population of the Philippines is overwhelmingly Filipinos such that there would be more than a 99% chance that a child born in the province would be a Filipino, would indicate more than ample probability if not statistical certainty, that petitioner's parents are Filipinos. That probability and the evidence on which it is based are admissible under Rule 128, Section 4 of the Revised Rules on Evidence.

To assume otherwise is to accept the absurd, if not the virtually impossible, as the norm. In the words of the Solicitor General:

> Second. It is contrary to common sense because foreigners do not come to the Philippines so they can get pregnant and leave their newborn babies behind. We do not face a situation where the probability is such that every foundling would have a 50% chance of being a Filipino and a 50% chance of being a foreigner. We need to frame our questions properly. What are the chances that the parents of anyone born in the Philippines would be foreigners? Almost zero. What are the chances that the parents of anyone born in the Philippines would be Filipinos? 99.9%.
>
> According to the Philippine Statistics Authority, from 2010 to 2014, on a yearly average, there were 1,766,046 children born in the Philippines to Filipino parents, as opposed to 1,301 children in the Philippines of foreign parents. Thus, for that sample period, the ratio of non-Filipino children to natural born Filipino children is 1:1357. This means that the statistical probability that any child born in the Philippines would be a natural born Filipino is 99.93%.
>
> From 1965 to 1975, the total number of foreigners born in the Philippines is 15,986 while the total number of Filipinos born in the Philippines is 15,558,278. For this period, the ratio of non-Filipino children is 1:661. This means that the statistical probability that any child born in the Philippines on that decade would be a natural born Filipino is 99.83%.

[113] Section 3 (y), Rule 131.

We can invite statisticians and social anthropologists to crunch the numbers for us, but I am confident that the statistical probability that a child born in the Philippines would be a natural born Filipino will not be affected by whether or not the parents are known. If at all, the likelihood that a foundling would have a Filipino parent might even be higher than 99.9%. Filipinos abandon their children out of poverty or perhaps, shame. We do not imagine foreigners abandoning their children here in the Philippines thinking those infants would have better economic opportunities or believing that this country is a tropical paradise suitable for raising abandoned children. I certainly doubt whether a foreign couple has ever considered their child excess baggage that is best left behind.

To deny full Filipino citizenship to all foundlings and render them stateless just because there may be a theoretical chance that one among the thousands of these foundlings might be the child of not just one, but two, foreigners is downright discriminatory, irrational, and unjust. It just doesn't make any sense. Given the statistical certainty – 99.9% – that any child born in the Philippines would be a natural born citizen, a decision denying foundlings such status is effectively a denial of their birthright. There is no reason why this Honorable Court should use an improbable hypothetical to sacrifice the fundamental political rights of an entire class of human beings. Your Honor, constitutional interpretation and the use of common sense are not separate disciplines.

As a matter of law, foundlings are as a class, natural-born citizens. While the 1935 Constitution's enumeration is silent as to foundlings, there is no restrictive language which would definitely exclude foundlings either. Because of silence and ambiguity in the enumeration with respect to foundlings, there is a need to examine the intent of the framers. In *Nitafan v. Commissioner of Internal Revenue,*[114] this Court held that:

The ascertainment of that intent is but in keeping with the fundamental principle of constitutional construction that the intent of the framers of the organic law and of the people adopting it should be given effect. The primary task in constitutional construction is to ascertain and thereafter assure the realization of the purpose of the framers and of the people in the adoption of the Constitution. It may

[114] 236 Phil. 307 (1987).

also be safely assumed that the people in ratifying the Constitution were guided mainly by the explanation offered by the framers.[115]

As pointed out by petitioner as well as the Solicitor General, the deliberations of the 1934 Constitutional Convention show that the framers intended foundlings to be covered by the enumeration. The following exchange is recorded:

Sr. Rafols: For an amendment. I propose that after subsection 2, the following is inserted: "The natural children of a foreign father and a Filipino mother not recognized by the father.

x x x x x x x x x

President: [We] would like to request a clarification from the proponent of the amendment. The gentleman refers to natural children or to any kind of illegitimate children?

Sr. Rafols: To all kinds of illegitimate children. It also includes natural *children of unknown parentage,* natural or illegitimate children of unknown parents.

Sr. Montinola: For clarification. The gentleman said "of unknown parents." Current codes consider them Filipino, that is, I refer to the Spanish Code wherein all children of unknown parentage born in Spanish territory are considered Spaniards, because the presumption is that a child of unknown parentage is the son of a Spaniard. This may be applied in the Philippines in that a child of unknown parentage born in the Philippines is deemed to be Filipino, and there is no need ...

[115] *Id.* at 314-315.

Sr. Rafols:	There is a need, because we are relating the conditions that are [required] to be Filipino.
Sr. Montinola:	But that is the interpretation of the law, therefore, there is no [more] need for amendment.
Sr. Rafols:	The amendment should read thus: "Natural or illegitimate of a foreign father and a Filipino mother recognized by one, or the children of unknown parentage."
Sr. Briones:	The amendment [should] mean children born in the Philippines of unknown parentage.
Sr. Rafols:	The son of a Filipina to a Foreigner, although this [person] does not recognize the child, is not unknown.
President:	Does the gentleman accept the amendment or not?
Sr. Rafols:	I do not accept the amendment because the amendment would exclude the children of a Filipina with a foreigner who does not recognize the child. Their parentage is not unknown and I think those of overseas Filipino mother and father [whom the latter] does not recognize, should also be considered as Filipinos.
President:	The question in order is the amendment to the amendment from the Gentleman from Cebu, Mr. Briones.
Sr. Busion:	Mr. President, don't you think it would be better to leave this

	matter in the hands of the Legislature?
Sr. Roxas:	Mr. President, my humble opinion is that these cases are *few and far in between, that the constitution need [not] refer to them.* By international law *the principle that children or people born in a country of unknown parents are citizens in this nation is recognized and is not necessary to include a provision on th e subject exhaustively.*[116]

Though the Rafols amendment was not carried out, it was not because there was any objection to the notion that persons of "unknown parentage" are not citizens but only because their number was not enough to merit specific mention. Such was the account,[117] cited by petitioner, of delegate and constitution law author Jose Aruego who said:

> During the debates on this provision, Delegate Rafols presented an amendment to include as Filipino citizens the illegitimate children with a foreign father of a mother who was a citizen of the Philippines, and also <u>foundlings;</u> but this amendment was defeated primarily because the Convention believed that the cases, being <u>too few to warrant the inclusion of a provision in the Constitution to apply to them,</u> should be governed by statutory legislation. Moreover, it was believed that the rules of international law were already clear to the effect that illegitimate children followed the citizenship of the mother, and that <u>foundlings followed the nationality of the place where they were found,</u> thereby <u>making unnecessary the inclusion</u> in the Constitution of the proposed amendment.

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[116] English translation of the Spanish original presented in the petitioner's pleadings before the COMELEC and this Court. The COMELEC and private respondents have not disputed the accuracy and correctness of the translation.

[117] 1 Jose M. Aruego, *The Framing of the Philippine Constitution* 209 (1949).

This explanation was likewise the position of the Solicitor General during the 16 February 2016 Oral Arguments:

> We all know that the Rafols proposal was rejected. But note that what was declined was the proposal for a textual and explicit recognition of foundlings as Filipinos. And so, the way to explain the constitutional silence is by saying that it was the view of Montinola and Roxas which prevailed that there is no more need to expressly declare foundlings as Filipinos.
>
> Obviously, it doesn't matter whether Montinola's or Roxas' views were legally correct. Framers of a constitution can constitutionalize rules based on assumptions that are imperfect or even wrong. They can even overturn existing rules. This is basic. What matters here is that Montinola and Roxas were able to convince their colleagues in the convention that there is no more need to expressly declare foundlings as Filipinos because they are already impliedly so recognized.
>
> In other words, the constitutional silence is fully explained in terms of linguistic efficiency and the avoidance of redundancy. The policy is clear: it is to recognize foundlings, as a class, as Filipinos under Art. IV, Section 1(3) of the 1935 Constitution. This inclusive policy is carried over into the 1973 and 1987 Constitution. It is appropriate to invoke a famous scholar as he was paraphrased by Chief Justice Fernando: the constitution is not silently silent, it is silently vocal.[118]

The Solicitor General makes the further point that the framers "worked to create a just and humane society," that "they were reasonable patriots and that it would be unfair to impute upon them a discriminatory intent against foundlings." He exhorts that, given the grave implications of the argument that foundlings are not natural-born Filipinos, the Court must search the records of the 1935, 1973 and 1987 Constitutions "for an express intention to deny foundlings the status of Filipinos. The burden is on those who wish to use the constitution to discriminate against foundlings to show that the constitution really intended to take this path to the dark side and inflict this across the board marginalization."

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[118] TSN, 16 February 2016, pp. 20-21.

We find no such intent or language permitting discrimination against foundlings. On the contrary, all three Constitutions guarantee the basic right to equal protection of the laws. All exhort the State to render social justice. Of special consideration are several provisions in the present charter: Article II, Section 11 which provides that the "State values the dignity of every human person and guarantees full respect for human rights," Article XIII, Section 1 which mandates Congress to "give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities x x x" and Article XV, Section 3 which requires the State to defend the "right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development." Certainly, these provisions contradict an intent to discriminate against foundlings on account of their unfortunate status.

Domestic laws on adoption also support the principle that foundlings are Filipinos. These laws do not provide that adoption confers citizenship upon the adoptee. Rather, the adoptee must be a Filipino in the first place to be adopted. The most basic of such laws is Article 15 of the Civil Code which provides that "[l]aws relating to family rights, duties, status, conditions, legal capacity of persons are binding on citizens of the Philippines even though living abroad." Adoption deals with status, and a Philippine adoption court will have jurisdiction only if the adoptee is a Filipino. In *Ellis and Ellis v. Republic,*[119] a child left by an unidentified mother was sought to be adopted by aliens. This Court said:

> In this connection, it should be noted that this is a proceedings *in rem,* which no court may entertain unless it has jurisdiction, not only over the subject matter of the case and over the parties, *but also over the res,* which is the personal status of Baby Rose as well as that of petitioners herein. Our Civil Code (Art. 15) adheres to the theory that jurisdiction over the status of a natural person is determined by the latter's nationality. Pursuant to this theory, we have jurisdiction

[119] 117 Phil. 976 (1963).

over the status of Baby Rose, she being a citizen of the Philippines, but not over the status of the petitioners, who are foreigners.[120] (Underlining supplied)

Recent legislation is more direct. R.A. No. 8043 entitled "An Act Establishing the Rules to Govern the Inter-Country Adoption of Filipino Children and For Other Purposes" (otherwise known as the "Inter-Country Adoption Act of 1995"), R.A. No. 8552, entitled "An Act Establishing the Rules and Policies on the Adoption of Filipino Children and For Other Purposes" (otherwise known as the Domestic Adoption Act of 1998) and this Court's A.M. No. 02-6-02-SC or the "Rule on Adoption," all expressly refer to "Filipino children" and include foundlings as among Filipino children who may be adopted.

It has been argued that the process to determine that the child is a foundling leading to the issuance of a foundling certificate under these laws and the issuance of said certificate are acts to acquire or perfect Philippine citizenship which make the foundling a naturalized Filipino at best. This is erroneous. Under Article IV, Section 2 "Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship." In the first place, "having to perform an act" means that the act must be personally done by the citizen. In this instance, the determination of foundling status is done not by the child but by the authorities.[121] Secondly, the object of the process is the determination of the whereabouts of the parents, not the citizenship of the child. Lastly, the process is certainly not analogous to naturalization proceedings to acquire Philippine citizenship, or the election of such citizenship by one born of

[120] *Id.* at 978-979.

[121] See Section 5 of the RA No. 8552: "Location of Unknown Parent(s).– It shall be the duty of the Department or the child-caring agency which has custody of the child to exert all efforts to locate his/her unknown biological parent(s). If such efforts fail, the child shall be registered as a foundling and subsequently be the subject of legal proceedings where he/she shall be declared abandoned." (Underlining supplied)

an alien father and a Filipino mother under the 1935 Constitution, which is an act to perfect it.

In this instance, such issue is moot because there is no dispute that petitioner is a foundling, as evidenced by a Foundling Certificate issued in her favor.[122] The Decree of Adoption issued on 13 May 1974, which approved petitioner's adoption by Jesusa Sonora Poe and Ronald Allan Kelley Poe, expressly refers to Emiliano and his wife, Rosario Militar, as her "foundling parents," hence effectively affirming petitioner's status as a foundling.[123]

Foundlings are likewise citizens under international law. Under the 1987 Constitution, an international law can become part of the sphere of domestic law either by transformation or incorporation. The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as local legislation.[124] On the other hand, generally accepted principles of international law, by virtue of the incorporation clause of the Constitution, form part of the laws of the land even if they do not derive from treaty obligations. Generally accepted principles of international law include international custom as evidence of a general practice accepted as law, and general principles of law recognized by civilized nations.[125] International customary rules are accepted as binding as a result from the combination of two elements: the established, widespread, and consistent practice on the part of States; and a psychological element known as the opinion *juris sive necessitates* (opinion as to law or necessity). Implicit in the latter element is a belief that the practice in question is rendered obligatory by the existence of a rule of law requiring

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[122] See Exhibit "1" in SPA No. 15-001 (DC) and SPA No. 15-00 (DC).

[123] See Exhibit "2" in SPA No. 15-001 (DC) and SPA No. 15-00 (DC).

[124] *Razon, Jr. v. Tagitis,* 621 Phil. 536, 600 (2009) citing *Pharmaceutical and Health Care Assoc. of the Philippines v. Duque III,* 561 Phil. 386, 398 (2007).

[125] Article 38.1, paragraphs (b) and (c) of the Statute of the International Court of Justice.

it.[126] "General principles of law recognized by civilized nations" are principles "established by a process of reasoning" or judicial logic, based on principles which are "basic to legal systems generally,"[127] such as "general principles of equity, *i.e.,* the general principles of fairness and justice," and the "general principle against discrimination" which is embodied in the "Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Discrimination in Education, the Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation."[128] These are the same core principles which underlie the Philippine Constitution itself, as embodied in the due process and equal protection clauses of the Bill of Rights.[129]

Universal Declaration of Human Rights ("UDHR") has been interpreted by this Court as part of the generally accepted principles of international law and binding on the State.[130] Article 15 thereof states:

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The Philippines has also ratified the UN Convention on the Rights of the Child (UNCRC). Article 7 of the UNCRC imposes the following obligations on our country:

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire

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[126] *Mijares v. Rañada,* 495 Phil. 372, 395 (2005).

[127] *Pharmaceutical and Health Care Assoc. of the Philippines v. Duque III,* 561 Phil. 386, 400 (2007). [128] *International School Alliance of Educators v. Quisumbing,* 388 Phil. 661, 672-673 (2000).

[129] CONSTITUTION, Art. III, Sec. 1.

[130] *Rep. of the Philippines v. Sandiganbayan,* 454 Phil. 504, 545 (2003).

a nationality and as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

In 1986, the country also ratified the 1966 International Covenant on Civil and Political Rights (ICCPR). Article 24 thereof provide for the right of *every child "to acquire a nationality:"*

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right, to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

The common thread of the UDHR, UNCRC and ICCPR is to obligate the Philippines to grant nationality from birth and ensure that no child is stateless. This grant of nationality must be at the time of birth, and it cannot be accomplished by the application of our present naturalization laws, Commonwealth Act No. 473, as amended, and R.A. No. 9139, both of which require the applicant to be at least eighteen (18) years old.

The principles found in two conventions, while yet unratified by the Philippines, are generally accepted principles of international law. The first is Article 14 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws under which a foundling is presumed to have the "nationality of the country of birth," to wit:

Article 14

A <u>child</u> whose <u>parents are both unknown</u> shall have the nationality <u>of the country of birth.</u> If the child's parentage is established, its

nationality shall be determined by the rules applicable in cases where the parentage is known.

A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found. (Underlining supplied)

The second is the principle that a foundling is *presumed born of citizens* of the country where he is found, contained in Article 2 of the 1961 United Nations Convention on the Reduction of Statelessness:

Article 2

A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within the territory of parents possessing the nationality of that State.

That the Philippines is not a party to the 1930 Hague Convention nor to the 1961 Convention on the Reduction of Statelessness does not mean that their principles are not binding. While the Philippines is not a party to the 1930 Hague Convention, it is a signatory to the Universal Declaration on Human Rights, Article 15(1) of which[131] effectively affirms Article 14 of the 1930 Hague Convention. Article 2 of the 1961 "United Nations Convention on the Reduction of Statelessness" merely "gives effect" to Article 15(1) of the UDHR.[132] In *Razon v. Tagitis,*[133] this Court noted that the Philippines had not signed or ratified the "International Convention for the Protection of All Persons from Enforced Disappearance." Yet, we ruled that the proscription against enforced disappearances in the said convention was nonetheless binding as a "generally accepted principle of international law." *Razon v. Tagitis* is likewise notable for declaring the ban as a

[131] "Everyone has the right to a nationality."

[132] See Introductory Note to the United Nations Convention on the Reduction of Statelessness issued by the United Nations High Commissioner on Refugees.

[133] *Supra* note 124.

generally accepted principle of international law although the convention had been ratified by only sixteen states and had not even come into force and which needed the ratification of a minimum of twenty states. Additionally, as petitioner points out, the Court was content with the practice of international and regional state organs, regional state practice in Latin America, and State Practice in the United States.

Another case where the number of ratifying countries was not determinative is *Mijares v. Rañada,*[134] where only four countries had "either ratified or acceded to"[135] the 1966 "Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters" when the case was decided in 2005. The Court also pointed out that nine member countries of the European Common Market had acceded to the Judgments Convention. The Court also cited U.S. laws and jurisprudence on recognition of foreign judgments. In all, only the practices of fourteen countries were considered and yet, there was pronouncement that recognition of foreign judgments was widespread practice.

Our approach in *Razon* and *Mijares* effectively takes into account the fact that "generally accepted principles of international law" are based not only on international custom, but also on "general principles of law recognized by civilized nations," as the phrase is understood in Article 38.1 paragraph (c) of the ICJ Statute. Justice, fairness, equity and the policy against discrimination, which are fundamental principles underlying the Bill of Rights and which are "basic to legal systems generally,"[136] support the notion that the right against enforced disappearances and the recognition of foreign judgments, were correctly considered as "generally accepted principles of international law" under the incorporation clause.

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[134] *Supra* note 126.

[135] *Id.* at 392; See footnote No. 55 of said case.

[136] *Pharmaceutical and Health Care Assoc. of the Philippines v. Duque III, supra* note 127.

Petitioner's evidence[137] shows that at least sixty countries in Asia, North and South America, and Europe have passed legislation recognizing foundlings as its citizen. Forty-two (42) of those countries follow the *jus sanguinis* regime. Of the sixty, only thirty-three (33) are parties to the 1961 Convention on Statelessness; twenty-six (26) are not signatories to the Convention. Also, the Chief Justice, at the 2 February 2016 Oral Arguments pointed out that in 166 out of 189 countries surveyed (or 87.83%), foundlings are recognized as citizens. These circumstances, including the practice of *jus sanguinis* countries, show that it is a generally accepted principle of international law to presume foundlings as having been born of nationals of the country in which the foundling is found.

Current legislation reveals the adherence of the Philippines to this generally accepted principle of international law. In particular, R.A. No. 8552, R.A. No. 8042 and this Court's Rules on Adoption, expressly refer to "Filipino children." In all of them, foundlings are among the Filipino children who could be adopted. Likewise, it has been pointed that the DFA issues passports to foundlings. Passports are by law, issued only to citizens. This shows that even the executive department, acting through the DFA, considers foundlings as Philippine citizens.

Adopting these legal principles from the 1930 Hague Convention and the 1961 Convention on Statelessness is rational and reasonable and consistent with the *jus sanguinis* regime in our Constitution. The presumption of natural-born citizenship of foundlings stems from the presumption that their parents are nationals of the Philippines. As the empirical data provided by the PSA show, that presumption is at more than 99% and is a virtual certainty.

In sum, all of the international law conventions and instruments on the matter of nationality of foundlings were designed to address the plight of a defenseless class which suffers from a

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[137] See Exhibits 38 and 39-series.

misfortune not of their own making. We cannot be restrictive as to their application if we are a country which calls itself civilized and a member of the community of nations. The Solicitor General's warning in his opening statement is relevant:

> ... the total effect of those documents is to signify to this Honorable Court that those treaties and conventions were drafted because the world community is concerned that the situation of foundlings renders them legally invisible. It would be tragically ironic if this Honorable Court ended up using the international instruments which seek to protect and uplift foundlings a tool to deny them political status or to accord them second-class citizenship.[138]

The COMELEC also ruled[139] that petitioner's repatriation in July 2006 under the provisions of R.A. No. 9225 did not result in the reacquisition of natural-born citizenship. The COMELEC reasoned that since the applicant must perform an act, what is reacquired is not "natural-born" citizenship but only plain "Philippine citizenship."

The COMELEC's rule arrogantly disregards consistent jurisprudence on the matter of repatriation statutes in general and of R.A. No. 9225 in particular.

In the seminal case of *Bengson III v. HRET,*[140] repatriation was explained as follows:

> Moreover, repatriation results in the recovery of the original nationality. This means that a naturalized Filipino who lost his citizenship will be restored to his prior status as a naturalized Filipino citizen. On the other hand, if he was originally a natural-born citizen before he lost his Philippine citizenship, he will be restored to his former status as a natural-born Filipino.

R.A. No. 9225 is a repatriation statute and has been described as such in several cases. They include *Sobejana-Condon v.*

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[138] Opening Statement of the Solicitor General, p. 6.

[139] First Division resolution dated 11 December 2015, upheld *in toto* by the COMELEC *En Banc.*

[140] 409 Phil. 633, 649 (2001).

COMELEC[141] where we described it as an "abbreviated *repatriation process that restores* one's Filipino citizenship x x x." Also included is *Parreño v. Commission on Audit,*[142] which cited *Tabasa v. Court of Appeals,*[143] where we said that "[t]he repatriation of the former Filipino will allow him to recover his natural-born citizenship. *Parreño v. Commission on Audit*[144] is categorical that "if petitioner reacquires his Filipino citizenship (under R.A. No. 9225), he will ... *recover his natural-born* citizenship."

The COMELEC construed the phrase "from birth" in the definition of natural citizens as implying "that natural-born citizenship must begin at birth and remain uninterrupted and continuous from birth." R.A. No. 9225 was obviously passed in line with Congress' sole prerogative to determine how citizenship may be lost or reacquired. Congress saw it fit to decree that natural-born citizenship may be reacquired even if it had been once lost. It is not for the COMELEC to disagree with the Congress' determination.

More importantly, COMELEC's position that natural-born status must be continuous was already rejected in *Bengson III v. HRET*[145] where the phrase "from birth" was clarified to mean at the time of birth: "A person who at the time of his birth, is a citizen of a particular country, is a natural-born citizen thereof." Neither is "repatriation" an act to "acquire or perfect" one's citizenship. In *Bengson III v. HRET,* this Court pointed out that there are only two types of citizens under the 1987 Constitution: natural-born citizen and naturalized, and that there is no third category for repatriated citizens:

> It is apparent from the enumeration of who are citizens under the present Constitution that there are only two classes of citizens: (1)

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[141] 692 Phil. 407, 420 (2012).

[142] 551 Phil. 368, 381 (2007).

[143] 531 Phil. 407, 417 (2006).

[144] *Supra* note 142.

[145] *Supra* note 140 at 646.

those who are natural-born and (2) those who are naturalized in accordance with law. A citizen who is not a naturalized Filipino, ie., did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is a natural-born Filipino. Noteworthy is the absence in said enumeration of a separate category for persons who, after losing Philippine citizenship, subsequently reacquire it. The reason therefor is clear: as to such persons, they would either be natural-born or naturalized depending on the reasons for the loss of their citizenship and the mode prescribed by the applicable law for the reacquisition thereof. As respondent Cruz was not required by law to go through naturalization proceedings in order to reacquire his citizenship, he is perforce a natural-born Filipino. As such, he possessed all the necessary qualifications to be elected as member of the House of Representatives.[146]

The COMELEC cannot reverse a judicial precedent. That is reserved to this Court. And while we may always revisit a doctrine, a new rule reversing standing doctrine cannot be retroactively applied. In *Morales* v. *Court of Appeals and Jejomar Erwin* S. *Binay, Jr.,*[147] where we decreed reversed the condonation doctrine, we cautioned that it "should be prospective in application for the reason that judicial decisions applying or interpreting the laws of the Constitution, until reversed, shall form part of the legal system of the Philippines." This Court also said that "while the future may ultimately uncover a doctrine's error, it should be, as a general rule, recognized as good law prior to its abandonment. Consequently, the people's reliance thereupon should be respected."[148]

Lastly, it was repeatedly pointed out during the oral arguments that petitioner committed a falsehood when she put in the spaces for "born to" in her application for repatriation under R.A. No. 9225 the names of her adoptive parents, and this misled the BI to presume that she was a natural-born Filipino. It has been contended that the data required were the names of her biological parents which are precisely unknown.

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[146] *Id.* at 651.

[147] G.R. Nos. 217126-27, 10 November 2015.

[148] *Id.*

This position disregards one important fact – petitioner was legally adopted. One of the effects of adoption is "to sever all legal ties between the biological parents and the adoptee, except when the biological parent is the spouse of the adoptee."[149] Under R.A. No. 8552, petitioner was also entitled to an amended birth certificate "attesting to the fact that the adoptee is the child of the adopter(s)" and which certificate "shall not bear any notation that it is an amended issue."[150] That law also requires that "[a]ll records, books, and papers relating to the adoption cases in the files of the court, the Department [of Social Welfare and Development], or any other agency or institution participating in the adoption proceedings shall be kept strictly confidential."[151] The law therefore allows petitioner to state that her adoptive parents were her birth parents as that was what would be stated in her birth certificate anyway. And given the policy of strict confidentiality of adoption records, petitioner was not obligated to disclose that she was an adoptee.

Clearly, to avoid a direct ruling on the qualifications of petitioner, which it cannot make in the same case for cancellation of COC, it resorted to opinionatedness which is, moreover, *erroneous.* The whole process undertaken by COMELEC is wrapped in grave abuse of discretion.

On Residence

The tainted process was repeated in disposing of the issue of whether or not petitioner committed false material representation when she stated in her COC that she has before and until 9 May 2016 been a resident of the Philippines for ten (10) years and eleven (11) months.

Petitioner's claim that she will have been a resident for ten (10) years and eleven (11) months on the day before the *2016 elections,* is true.

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[149] Implementing Rules and Regulations of Republic Act No. 8552, Art. VI, Sec. 33.

[150] Republic Act No. 8552 (1998), Sec. 14.

[151] Republic Act No. 8552 (1998), Sec. 15.

The Constitution requires presidential candidates to have ten (10) years' residence in the Philippines before the day of the elections. Since the forthcoming elections will be held on 9 May 2016, petitioner must have been a resident of the Philippines prior to 9 May 2016 for ten (10) years. In answer to the requested information of "Period of Residence in the Philippines up to the day before May 09, 2016," she put in "10 years 11 months" which according to her pleadings in these cases corresponds to a beginning date of 25 May 2005 when she returned for good from the U.S.

When petitioner immigrated to the U.S. in 1991, she lost her original domicile, which is the Philippines. There are three requisites to acquire a new domicile: 1. Residence or bodily presence in a new locality; 2. an intention to remain there; and 3. an intention to abandon the old domicile.[152] To successfully effect a change of domicile, one must demonstrate an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one and definite acts which correspond with the purpose. In other words, there must basically be *animus manendi* coupled with *animus non revertendi.* The purpose 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.[153]

Petitioner presented voluminous evidence showing that she and her family abandoned their U.S. domicile and relocated to the Philippines for good. These evidence include petitioner's former U.S. passport showing her arrival on 24 May 2005 and her return to the Philippines every time she travelled abroad; e-mail correspondences starting in March 2005 to September 2006 with a freight company to arrange for the shipment of

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[152] *Fernandez v. House of Representatives Electoral Tribunal,* 623 Phil. 628, 660 (2009) citing *Japzon v. COMELEC,* 596 Phil. 354, 370-372 (2009) further citing *Papandayan, Jr. v. COMELEC,* 430 Phil. 754, 768-770 (2002) citing *Romualdez v. RTC, Br. 7*, *Tacloban City,* G.R. No. 104960, 14 September 1993, 226 SCRA 408, 415.

[153] *Domino v. COMELEC,* 369 Phil. 798, 819 (1999).

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

The foregoing evidence were undisputed and the facts were even listed by the COMELEC, particularly in its Resolution in the Tatad, Contreras and Valdez cases.

However, the COMELEC refused to consider that petitioner's domicile had been timely changed as of 24 May 2005. At the oral arguments, COMELEC Commissioner Arthur Lim conceded the presence of the first two requisites, namely, physical presence and *animus manendi,* but maintained there was no *animus non-revertendi.*[154] The COMELEC disregarded the import of all the evidence presented by petitioner on the basis of the position that the earliest date that petitioner could have started residence in the Philippines was in July 2006 when her application under R.A. No. 9225 was approved by the BI. In this regard, COMELEC

[154] TSN, 16 February 2016, p. 120.

relied on *Coquilla v. COMELEC,*[155] *Japzon v. COMELEC*[156] and *Caballero v. COMELEC.*[157] During the oral arguments, the private respondents also added *Reyes v. COMELEC.*[158] Respondents contend that these cases decree that the stay of an alien former Filipino cannot be counted until he/she obtains a permanent resident visa or reacquires Philippine citizenship, a visa-free entry under a *balikbayan* stamp being insufficient. Since petitioner was still an American (without any resident visa) until her reacquisition of citizenship under R.A. No. 9225, her stay from 24 May 2005 to 7 July 2006 cannot be counted.

But as the petitioner pointed out, the facts in these four cases are very different from her situation. In *Coquilla v. COMELEC,*[159] the only evidence presented was a community tax certificate secured by the candidate and his declaration that he would be running in the elections. *Japzon v. COMELEC*[160] did not involve a candidate who wanted to count residence prior to his reacquisition of Philippine citizenship. With the Court decreeing that residence is distinct from citizenship, the issue there was whether the candidate's acts after reacquisition sufficed to establish residence. In *Caballero v. COMELEC,*[161] the candidate admitted that his place of work was abroad and that he only visited during his frequent vacations. In *Reyes v. COMELEC,*[162] the candidate was found to be an American citizen who had not even reacquired Philippine citizenship under R.A. No. 9225 or had renounced her U.S. citizenship. She was disqualified on the citizenship issue. On residence, the only proof she offered was a seven-month stint as provincial officer.

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[155] 434 Phil. 861 (2002).

[156] 596 Phil. 354 (2009).

[157] G.R. No. 209835, 22 September 2015.

[158] G.R. No. 207264, 25 June 2013, 699 SCRA 522.

[159] *Supra* note 155.

[160] *Supra* note 156.

[161] *Supra* note 157.

[162] *Supra* note 158.

The COMELEC, quoted with approval by this Court, said that "such fact alone is not sufficient to prove her one-year residency."

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

In this connection, the COMELEC also took it against petitioner that she had entered the Philippines visa-free as a *balikbayan.* A closer look at R.A. No. 6768 as amended, otherwise known as the "An Act Instituting a Balikbayan Program," shows that there is no overriding intent to treat *balikbayans* as temporary visitors who must leave after one year. Included in the law is a former Filipino who has been naturalized abroad and "comes or returns to the Philippines."[163] The law institutes a *balikbayan* program "providing the opportunity to avail of the necessary training to enable the *balikbayan* to become economically self-reliant members of society upon their return to the country"[164] in line

[163] Republic Act No. 6768 (1989), as amended, Sec. 2(a).

[164] Republic Act No. 6768 (I989), as amended, Sec. 1

with the government's "reintegration program."[165] Obviously, *balikbayans* are not ordinary transients.

Given the law's express policy to facilitate the return of a *balikbayan* and help him reintegrate into society, it would be an unduly harsh conclusion to say in absolute terms that the *balikbayan* must leave after one year. That visa-free period is obviously granted him to allow him to re-establish his life and reintegrate himself into the community before he attends to the necessary formal and legal requirements of repatriation. And that is exactly what petitioner did - she reestablished life here by enrolling her children and buying property while awaiting the return of her husband and then applying for repatriation shortly thereafter.

No case similar to petitioner's, where the former Filipino's evidence of change in domicile is extensive and overwhelming, has as yet been decided by the Court. Petitioner's evidence of residence is unprecedented. There is no judicial precedent that comes close to the facts of residence of petitioner. There is no indication in *Coquilla v. COMELEC,*[166] and the other cases cited by the respondents that the Court intended to have its rulings there apply to a situation where the facts are different. Surely, the issue of residence has been decided particularly on the facts-of-the case basis.

To avoid the logical conclusion pointed out by the evidence of residence of petitioner, the COMELEC ruled that petitioner's claim of residence of ten (10) years and eleven (11) months by 9 May 2016 in her 2015 COC was false because she put six (6) years and six (6) months as "period of residence before May 13, 2013" in her 2012 COC for Senator. Thus, according to the COMELEC, she started being a Philippine resident only in November 2006. In doing so, the COMELEC automatically assumed as true the statement in the 2012 COC and the 2015 COC as false.

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[165] Republic Act No. 6768 (1989), as amended, Sec. 6.

[166] *Supra* note 155.

As explained by petitioner in her verified pleadings, she misunderstood the date required in the 2013 COC as the period of residence as of the day she submitted that COC in 2012. She said that she reckoned residency from April-May 2006 which was the period when the U.S. house was sold and her husband returned to the Philippines. In that regard, she was advised by her lawyers in 2015 that residence could be counted from 25 May 2005.

Petitioner's explanation that she misunderstood the query in 2012 (period of residence before 13 May 2013) as inquiring about residence as of the time she submitted the COC, is bolstered by the change which the COMELEC itself introduced in the 2015 COC which is now "period of residence in the Philippines up to the day before May 09, 2016." The COMELEC would not have revised the query if it did not acknowledge that the first version was vague.

That petitioner could have reckoned residence from a date earlier than the sale of her U.S. house and the return of her husband is plausible given the evidence that she had returned a year before. Such evidence, to repeat, would include her passport and the school records of her children.

It was grave abuse of discretion for the COMELEC to treat the 2012 COC as a binding and conclusive admission against petitioner. It could be given in evidence against her, yes, but it was by no means conclusive. There is precedent after all where a candidate's mistake as to period of residence made in a COC *was overcome by evidence.* In *Romualdez-Marcos v. COMELEC,*[167] the candidate mistakenly put seven (7) months as her period of residence where the required period was a minimum of one year. We said that *"[i]t is the fact of residence, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the constitution's residency qualification requirement."* The COMELEC ought to have looked at the evidence presented

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[167] *Supra* note 104 at 326. (Emphasis supplied)

and see if petitioner was telling the truth that she was in the Philippines from 24 May 2005. Had the COMELEC done its duty, it would have seen that the 2012 COC and the 2015 COC *both* correctly stated the *pertinent* period of residency.

The COMELEC, by its own admission, disregarded the evidence that petitioner actually and physically returned here on 24 May 2005 not because it was false, but only because COMELEC took the position that domicile could be established only from petitioner's repatriation under R.A. No. 9225 in July 2006. However, it does not take away the fact that in reality, petitioner had returned from the U.S. and was here to stay permanently, on 24 May 2005. When she claimed to have been a resident for ten (10) years and eleven (11) months, she could do so in good faith.

For another, it could not be said that petitioner was attempting to hide anything. As already stated, a petition for *quo warranto* had been filed against her with the SET as early as August 2015. The event from which the COMELEC pegged the commencement of residence, petitioner's repatriation in July 2006 under R.A. No. 9225, was an established fact to repeat, for purposes of her senatorial candidacy.

Notably, on the statement of residence of six (6) years and six (6) months in the 2012 COC, petitioner recounted that this was first brought up in the media on 2 June 2015 by Rep. Tobias Tiangco of the United Nationalist Alliance. Petitioner appears to have answered the issue immediately, also in the press. Respondents have not disputed petitioner's evidence on this point. From that time therefore when Rep. Tiangco discussed it in the media, the stated period of residence in the 2012 COC and the circumstances that surrounded the statement were already matters of public record and were not hidden.

Petitioner likewise proved that the 2012 COC was also brought up in the SET petition for *quo warranto.* Her Verified Answer, which was filed on 1 September 2015, admitted that she made a mistake in the 2012 COC when she put in six (6) years and six (6) months as she misunderstood the question and could

have truthfully indicated a longer period. *Her answer in the SET case was a matter of public record. Therefore, when petitioner accomplished her COC for President on 15 October 2015, she could not be said to have been attempting to hide her erroneous statement in her 2012 COC for Senator* which was expressly mentioned in her Verified Answer.

The facts now, if not stretched to distortion, do not show or even hint at an intention to hide the 2012 statement and have it covered by the 2015 representation. Petitioner, moreover, has on her side this Court's pronouncement that:

> Concededly, a candidate's disqualification to run for public office does not necessarily constitute material misrepresentation which is the sole ground for denying due course to, and for the cancellation of, a COC. Further, as already discussed, the candidate's misrepresentation in his COC must not only refer to a material fact (eligibility and qualifications for elective office), but should evince a deliberate intent to mislead, misinform or hide a fact which would otherwise render a candidate ineligible. It must be made with an intention to deceive the electorate as to one's qualifications to run for public office.[168]

In sum, the COMELEC, with the same posture of infallibilism, virtually ignored a good number of evidenced dates all of which can evince *animus manendi* to the Philippines and *animus non revertendi* to the United States of America. The veracity of the events of coming and staying home was as much as dismissed as inconsequential, the focus having been fixed at the petitioner's "sworn declaration in her COC for Senator" which the COMELEC said "amounts to a declaration and therefore an admission that her residence in the Philippines only commence sometime in November 2006"; such that "based on this declaration, [petitioner] fails to meet the residency requirement for President." This conclusion, as already shown, ignores the standing jurisprudence that it is the fact of residence, not the statement of the person that determines residence for purposes of compliance with the constitutional requirement of residency

[168] *Ugdoracion, Jr. v. COMELEC,* 575 Phil. 253, 265-266 (2008).

for election as President. It ignores the easily researched matter that cases on questions of residency have been decided favorably for the candidate on the basis of facts of residence far less in number, weight and substance than that presented by petitioner.[169] It ignores, above all else, what we consider as a primary reason why petitioner cannot be bound by her declaration in her COC for Senator which declaration was not even considered by the SET as an issue against her eligibility for Senator. When petitioner made the declaration in her COC for Senator that she has been a resident for a period of six (6) years and six (6) months counted up to the 13 May 2013 Elections, she naturally had as reference the residency requirements for election as Senator which was satisfied by her declared years of residence. It was uncontested during the oral arguments before us that at the time the declaration for Senator was made, petitioner did not have as yet any intention to vie for the Presidency in 2016 and that the general public was never made aware by petitioner, by word or action, that she would run for President in 2016. Presidential candidacy has a length-of-residence different from that of a senatorial candidacy. There are facts of residence other than that which was mentioned in the COC for Senator. Such other facts of residence have never been proven to be false, and these, to repeat include:

> [Petitioner] returned to the Philippines on 24 May 2005. [petitioner's] husband however stayed in the USA to finish pending projects and arrange the sale of their family home.
>
> Meanwhile [petitioner] and her children lived with her mother in San Juan City. [Petitioner] enrolled Brian in Beacon School in Taguig City in 2005 and Hanna in Assumption College in Makati City in 2005. Anika was enrolled in Learning Connection in San Juan in 2007, when she was already old enough to go to school.
>
> In the second half of 2005, [petitioner] and her husband acquired Unit 7F of One Wilson Place Condominium in San Juan. [Petitioner]

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[169] In *Mitra v. COMELEC, et al.,* [636 Phil. 753 (2010)], It was ruled that the residence requirement can be complied with through an incremental process including acquisition of business interest in the pertinent place and lease of feedmill building as residence.

and her family lived in Unit 7F until the construction of their family home in Corinthian Hills was completed.

Sometime in the second half of 2005, [petitioner's] mother discovered that her former lawyer who handled [petitioner's] adoption in 1974 failed to secure from the Office of the Civil Registrar of Iloilo a new Certificate of Live Birth indicating [petitioner's] new name and stating that her parents are "Ronald Allan K. Poe" and "Jesusa L. Sonora."

In February 2006, [petitioner] travelled briefly to the US in order to supervise the disposal of some of the family's remaining household belongings. [Petitioner] returned to the Philippines on 11 March 2006.

In late March 2006, [petitioner's] husband informed the United States Postal Service of the family's abandonment of their address in the Us.

The family home in the US was sole on 27 April 2006.

In April 2006, [petitioner's] husband resigned from his work in the US. He returned to the Philippines on 4 May 2006 and began working for a Philippine company in July 2006.

In early 2006, [petitioner] and her husband acquired a vacant lot in Corinthian Hills, where they eventually built their family home.[170]

In light of all these, it was arbitrary for the COMELEC to satisfy its intention to let the case fall under the exclusive ground of false representation, to consider no other date than that mentioned by petitioner in her COC for Senator.

All put together, in the matter of the citizenship and residence of petitioner for her candidacy as President of the Republic, the questioned Resolutions of the COMELEC in Division and *En Banc* are, one and all, deadly diseased with grave abuse of discretion from root to fruits.

WHEREFORE, the petition is **GRANTED.** The Resolutions, to wit:

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[170] COMELEC Resolution dated 11 December 2015 in SPA No. 15-002 (DC), pp. 4-5.

1. dated 1 December 2015 rendered through the COMELEC Second Division, in SPA No. 15-001 (DC), entitled *Estrella C. Elamparo, petitioner, vs. Mary Grace Natividad Sonora Poe-Llamanzares, respondent,* stating that:

> [T]he Certificate of Candidacy for President of the Republic of the Philippines in the May 9, 2016 National and Local Elections filed by respondent Mary Grace Natividad Sonora Poe-Llamanzares is hereby GRANTED.

2. dated 11 December 2015, rendered through the COMELEC First Division, in the consolidated cases SPA No. 15-002 (DC) entitled *Francisco S. Tatad, petitioner, vs. Mary Grace Natividad Sonora Poe-Llamanzares, respondent;* SPA No. 15-007 (DC) entitled *Antonio P. Contreras, petitioner, vs. Mary Grace Natividad Sonora Poe-Llamanzares, respondent;* and SPA No. 15-139 (DC) entitled *Amado D. Valdez, petitioner, v. Mary Grace Natividad Sonora Poe-Llamanzares,* respondent; stating that:

> WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to GRANT the petitions and cancel the Certificate of Candidacy of MARY GRACE NATIVIDAD SONORA POE-LLAMANZARES for the elective position of President of the Republic of the Philippines in connection with the 9 May 2016 Synchronized Local and National Elections.

3. dated 23 December 2015 of the COMELEC *En Banc,* upholding the 1 December 2015 Resolution of the Second Division stating that:

> WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to DENY the Verified Motion for Reconsideration of SENATOR MARY GRACE NATIVIDAD SONORA POE-LLAMANZARES. The Resolution dated 11 December 2015 of the Commission First Division is AFFIRMED.

4. dated 23 December 2015 of the COMELEC *En Banc,* upholding the 11 December 2015 Resolution of the First Division.

are hereby **ANNULED** and **SET ASIDE**. Petitioner MARY GRACE NATIVIDAD SONORA POE-LLAMANZARES is **DECLARED QUALIFIED** to be a candidate for President in the National and Local Elections of 9 May 2016.

SO ORDERED.

Bersamin and *Mendoza, JJ.,* concur.

Sereno, C.J., Velasco, Jr., Leonen, Jardeleleza, and *Caguioa, JJ.,* see concurring opinions.

Peralta, J., joins the concurring opinion of *J*. Caguioa.

Carpio, Leonardo-de Castro, Brion, del Castillo, and *Perlas-Bernabe, JJ.,* see dissenting opinions.

Reyes, J., concurs with the dissenting opinion of *J*. Perlas-Bernabe.

CONCURRING OPINION

SERENO, *C.J.:*

It is important for every Member of this Court to be and to remain professionally indifferent to the outcome of the 2016 presidential election. Whether it turns out to be for a candidate who best represents one's personal aspirations for the country or who raises one's fears, is a future event we must be blind to while we sit as magistrates. We are not the electorate, and at this particular juncture of history, our only role is to adjudicate as our unfettered conscience dictates. We have no master but the law, no drumbeater but reason, and in our hearts must lie only the love for truth and for justice. This is what the Constitution requires of us.

It is *apropos* at this point to recall the principles that Justice Angelina Sandoval-Gutierrez evoked in her concurring opinion in *Tecson v. COMELEC,*[1] the landmark case involving as respondent a presidential candidate for 2014, the late Ronald Allan Kelly-Poe:

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[1] 468 Phil. 421 (2004).

x x x x x x x x x

Let it not be forgotten that the historic core of our democratic system is political liberty, which is the right and opportunity to choose those who will lead the governed with their consent. This right to choose cannot be subtly interfered with through the elimination of the electoral choice. The present bid to disqualify respondent Poe from the presidential race is a clear attempt to eliminate him as one of the choices. This Court should resist such attempt. **The right to choose is the single factor that controls the ambitions of those who would impose through force or stealth their will on the majority of citizens**. We should not only welcome electoral competition, we should cherish it. Disqualifying a candidate, particularly the popular one, on the basis of doubtful claims does not result to a genuine, free and fair election. It results to violence. x x x. We have seen Edsa I and Edsa II, thus, we know that when democracy operates as intended, an aroused public can replace those who govern in a manner beyond the parameters established by public consent.[2]

x x x x x x x x x

When the people vote on May 10 and cast their ballots for President, they will be exercising a sovereign right. They may vote for respondent Poe, or they may not. When they vote, they will consider a myriad of issues, some relevant, others trivial, including the eligibility of the candidates, their qualities of leadership, their honesty and sincerity, perhaps including their legitimacy. That is their prerogative. After the election, and only after, and that is what the Constitution mandates, the election of whoever is proclaimed winner may be challenged in an election contest or a petition for *quo warranto.* Where the challenge is because of ineligibility, he will be ousted only if this Court exerts utmost effort to resolve the issue 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.[3]

That is what the COMELEC rulings in these cases would have precisely accomplished had they been affirmed:

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[2] *Id.* at 490.

[3] *Id.* at 494.

the illegitimate elimination of an electoral choice, a choice who appears to be one of the frontrunners in all the relevant surveys. For the reasons set forth below, I concur with Justice Jose Portugal Perez, and am herein expounding in detail the reasons for such concurrence.

With the majority of the Members of the Court declaring, by a vote of 9 as against 6, that petitioner Mary Grace Poe-Llamanzares has no legal impediment to run for the presidency, it is most unfortunate that one of the Dissenting Opinions opens with a statement that tries to cast uncertainty on an already tense situation. The dissent gives excessive weight to the fact that there are 5 Justices in the minority who believe that petitioner does not have the qualifications for presidency, while ignoring the reality that there at least 7 Justices who believe that petitioner possesses these qualifications.

Note that the *fallo* needed only to dispose of the grant or denial of the petitions and nothing more. Ideally, no further interpretation of the votes should have been made. Unfortunately, there are attempts to make such an interpretation. We therefore need to look to our internal rules for clarification on the matter to avoid exacerbating matters.

If we were to apply the rules on voting in the Internal Rules of the Supreme Court, it is clear that the Court decided on the matter of petitioner's intrinsic qualifications in accordance with Rule 12, Section 1 of these rules:

Section 1. *Voting requirements.* – (a) All decisions and actions in Court *en banc* cases shall be made up upon the concurrence of the majority of the Members of the Court who actually took part in the deliberation on the issues or issues involved and voted on them.

Out of the 12 Members who voted on the substantive question on citizenship, a clear majority of 7 voted in favor of petitioner. As to residency, 7 out of 13 voted that petitioner complied with the 10-year residency requirement. These votes, as explained in the extended opinions submitted by the

members of the majority, must be respected. Granting therefore that we need to address the question of substantive qualifications of petitioner, she clearly possesses the qualifications for presidency on the matter of residency and citizenship.

I.

The Proceedings Before the Court

On 28 December 2015, petitioner filed two separate Petitions for Certiorari before this Court assailing the Resolutions dated 23 December 2015 of the COMELEC En Banc, which ordered the cancellation of her Certificate of Candidacy (CoC) for the 2016 presidential elections.[4] Both petitions included a prayer for the issuance of Temporary Restraining Orders (TRO) against the COMELEC.

In the afternoon of 28 December 2015, by my authority as Chief Justice and upon the written recommendation of the Members-in-Charge, the Court issued two separate orders enjoining COMELEC and its representatives from implementing the assailed Resolutions, pursuant to Section 6(g), Rule 7 of the Supreme Court Internal Rules.[5]

The issuance of the TROs was confirmed by the Court En Banc, voting 12-3, in Resolutions dated 12 January 2016.

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[4] The petition docketed as G.R. No. 221697 assailed the COMELEC *En Banc* Resolution dated 23 December 2015 in SPA No. 15-001 (DC) denying petitioner's motion for reconsideration of the COMELEC Second Division Resolution dated 1 December 2015. On the other hand, the petition docketed as G.R. Nos. 221698-700 assails the COMELEC *En Banc* Resolution dated 23 December 2015 in the consolidated cases docketed as SPA Nos. 15-002 (DC), 15-007 (DC) and 15-139 (DC). The COMELEC *En Banc* denied petitioner's motion for reconsideration of the COMELEC First Division Resolution dated 11 December 2015.

[5] This provision states: "When the Court in recess and the urgency of the case requires immediate action, the Clerk of Court or the Division Clerk of Court shall personally transmit the *rollo* to the Chief Justice or the Division Chairperson for his or her action."

In the same resolutions, the Court ordered the consolidation of the two petitions.

Oral arguments were then held on the following dates: January 19 and 26; February 2, 9 and 16, 2016. During these proceedings, the parties were ordered in open court to submit their Memoranda within five days from the conclusion of the oral arguments, after which the consolidated petitions would be deemed submitted for resolution.

On 29 February 2016, the draft report of the Member-in-Charge was circulated to the Members of the Court. The Court then decided to schedule the deliberations on the case on 8 March 2016. A reserved date – 9 March 2016 – was also agreed upon, in the event that a decision is not reached during the 8 March 2016 session.

In keeping with the above schedule, the Members of the Court deliberated and voted on the case on 8 March 2016.

II.

COMELEC exceeded its jurisdiction when it ruled on petitioner's qualifications under Section 78 of the Omnibus Election Code.

The brief reasons why the COMELEC exceeded its jurisdiction when it ruled on petitioner's qualifications are as follows.

First, Section 78 of *Batas Pambansa Bilang* 881, or the Omnibus Election Code (OEC), does not allow the COMELEC to rule on the qualifications of candidates. Its power to cancel a Certificate of Candidacy (CoC) is circumscribed within the confines of Section 78 of the OEC that provides for a summary proceeding to determine the existence of the exclusive ground that any representation made by the candidate regarding a Section 74 matter was false. Section 74 requires, among others a statement by the candidate on his eligibility for office. To authorize the COMELEC to go beyond its mandate and rule on the intrinsic qualification of petitioner, and henceforth, of every candidate, is an outcome clearly prohibited by the Constitution and by the OEC.

Second, even assuming that the COMELEC may go beyond the determination of patent falsity of the CoC, its decision to cancel petitioner's CoC must still be reversed. The factual circumstances surrounding petitioner's claims of residency and citizenship show that there was neither intent to deceive nor false representation on her part. Worse, the COMELEC's unmerited use of this Court's dissenting opinions as if they were pronouncements of the Court itself[6] misleads both the Court and the public, as it evinces a refusal to acknowledge a dissent's proper place – not as law, but as the personal views of an individual member of this Court. Most egregiously, the COMELEC blatantly disregarded a long line of decisions by this Court to come up with its conclusions.

The Power of the COMELEC Prior to Section 78 of the Omnibus Election Code

Prior to the OEC, the power of the COMELEC in relation to the filing of CoCs had been described as ministerial and administrative.[7] In 1985, the OEC was passed, empowering the COMELEC to grant or deny due course to a petition to cancel a CoC. The right to file a verified petition under Section 78 was given to any person on the ground of material representation of the contents of the CoC as provided for under Section 74. Among the statements a candidate is required to make in the CoC, is that he or she is eligible for the office the candidate seeks.

The fundamental requirements for electoral office are found in the Constitution. With respect to the petitions at hand, these are the natural-born Filipino citizenship and the 10-year residency requirements for President found under Section 2, Article VII in relation to Section 1, Article IV of the Constitution.

[6] For instance, see the COMELEC's use of a dissent in *Tecson v. COMELEC,* Omnibus Resolution dated 11 December 2015, pp. 24, 46.

[7] *Sanchez v. Rosario,* 111 Phil. 733 (1961), citing *Abcede v. Imperial,* 103 Phil. 136-145 (1958).

In the deliberations of the *Batasang Pambansa* on what would turn out to be Section 78 of the Omnibus Election Code or *Batas Pambansa Bilang* (BP) 881, the lawmakers emphasized that **the fear of partisanship on the part of the COMELEC makes it imperative that it must only be for the strongest of reasons, i.e., material misrepresentation on the face of the CoC, that the COMELEC can reject any such certificates. Otherwise, to allow greater power than the quasi-ministerial duty of accepting facially compliant CoCs would open the door for COMELEC to engage in partisanship; the COMELEC may target any candidate at will.** The fear was so real to the lawmakers that they characterized the power to receive CoCs not only as summary, but initially as, "ministerial." Allow me to quote:

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

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

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

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

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

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

HON. GONZALES. *At saka* the Constitution says, *di ba?* "The Commission on Election is the sole judge of all the contest." This merely refers to contest e. Petition *lang* to give due course e. You will only be declared disqualified.

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

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

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

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

THE CHAIRMAN. These are the cases I am sure, that are ...

HON. ADAZA. I see. No, no, but let us get rid of the provision. This is dangerous.

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

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

THE CHAIRMAN. But in the mean time, why ...

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

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

THE CHAIRMAN. Suppose on the basis of...

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

HON. FERNAN. But where are the grounds here?

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

THE CHAIRMAN. Okay, okay.

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

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

HON. GONZALES. *Dito ba, kasama iyong* proceedings *sa* ... ? What I'm saying is: *Kagaya iyong nabanggit kay* Nonoy, natural course of margin, imagine, it will eventually reach the Supreme Court. The moment that the disqualification is pending, *lalong lalo na kung may* decision *ng* Comelec and yet pending *pa* before the Supreme Court, that already adversely affect a candidate, *mabigat na iyan.* So, what I'm saying is, on this disqualification sub-judice, *alisin ito* except if on the ground that he is a nuisance candidate or that his Certificate of Candidacy has been filed in bad faith. But if his Certificate of Candidacy appears to be regular and valid on the basis that his certificate has been filed on time, then it should be given due couse.[8]

The same concerns were raised when the provision was taken up again:

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

HON. ADAZA. Page 45.

THE PRESIDING OFFICER. Section 71.

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

THE PRESIDING OFFICER. In case of nuisance, who will determine, *hindi ba* Comelec *iyan?*

HON. ADAZA. *lyon na nga,* except in those cases, *eh. Ito,* this covers a provision not only in reference to nuisance candidates.

HON. CUENCO. Will you read the provision?

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[8] Deliberations of the Committe: *Ad Hoc,* Revision of Laws, 20 May 1985, pp. 65-68.

HON. ADAZA. "Any person seeking due course to or the cancellation ... " because our position here is that these are matters that should be contained in an election protest or in a *quo warranto* proceedings, eh. You know, you can be given a lot of problems in the course of the campaign.

HON. ASOK. But we already have a specific provision on this.

HON. ADAZA. (MP Adaza reading the provision.) You know, we should not have this as a provision anymore because whatever matters will be raised respecting this certificate of candidacy, these are normal issues for protest or *quo warranto, eh.*

HON. CUENCO. So you now want to remove this power from the Comelec?

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

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

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

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

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

HON. CUENCO. Everybody will be vulnerable?

HON. ADAZA. Yeah, everybody will be vulnerable, *eh.*

HON. CUENCO. Even if you are a serious candidate?

HON. ADAZA. Even if you are a serious candidate because, for instance, they will file a petition for *quo warranto,* they can file a petition to the Comelec to cancel your certificate of candidacy. These are actually grounds for protest or for *quo warranto* proceedings.

x x x x x x x x x

HON. CUENCO. By merely alleging, for example, that you are a subversive.

HON. ADAZA. OO*, iyon na nga, eh.*

x x x x x x x x x

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

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

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

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

THE PRESIDING OFFICER. That's why.

HON. ADAZA. We should not allow that thing to crop up within the powers of the Comelec because anyone can create problem for everybody. You know, that's a proper subject for protest or *quo warranto.* But not to empower the Comelec to cancel. That's a very dangerous provision. It can reach all of us.

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

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

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

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

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

HON. ADAZA. No, let me cite to you cases, most people running for instance in the last Batasan, especially in the highly urbanized city, they were residence in one particular city but actually running in the province. You see, how you can be bothered if you empower the Comelec with this authority to cancel, there would have been many that would have been cancelled.

THE PRESIDING OFFICER. There were many who tried to beat the deadline.

HON. ADAZA. No, there are many who did not beat the deadline, I know.

HON. LOOD. The matter of point is the word Article 8, Article 8, provides full responsibility for ...

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

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

HON. ADAZA. No, it's very dangerous. We will be all in serious trouble. Besides, that covered already by specific provisions. So, can we agree. Anyway it is this new provision which is dangerous.

HON CUENCO. So, you want the entire provision?

HON. LOOD. Unless we make exception.[9]

The Summary Nature of Proceedings under Section 78 Only Allow the COMELEC to Rule on Patent Material Misrepresentation of Facts on Residency and Citizenship, not of Conclusions of Law, and especially, not in the Absence of Established Legal Doctrines on the Matter

The original intent of the legislature was clear: to make the denial of due course or cancellation of certificate of candidacy before the COMELEC a summary proceeding that would not go into the intrinsic validity of the qualifications of the candidate, even to the point of making the power merely ministerial in the absence of patent defects. There was concern among some other members about giving the COMELEC the power to deny due course to or cancel outright the certificate of candidacy. As such, the proposal was to remove Section 78 entirely or to lay down specific parameters in order to limit the power of the

[9] Deliberations of the Committee: Revision of Laws, 30 May 1985.

COMELEC under the provision. Thus, in interpreting the language of Section 78 as presently crafted, those intended limitations must be kept in mind. This includes retaining the summary nature of Section 78 proceedings.

Reyes v. Commission on Elections[10] provides an insight into the summary nature of a Section 78 proceeding:

> The special action before the COMELEC which was a Petition to Cancel Certificate of Candidacy was a SUMMARY PROCEEDING or one "heard summarily." The nature of the proceedings is best indicated by the COMELEC Rule on Special Actions, **Rule 23, Section 4 of which states that the Commission may designate any of its officials who are members of the Philippine Bar to hear the case and to receive evidence. COMELEC Rule 17 further provides in Section 3 that when the proceedings are authorized to be summary, in lieu of oral testimonies, the parties may, after due notice, be required to submit their position paper together with affidavits, counter-affidavits and other documentary evidence; . . .** and that "[t]his provision shall likewise apply to cases where the hearing and reception of evidence are delegated by the Commission or the Division to any of its officials . . ."
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> In fact, in summary proceedings like the special action of filing a petition to deny due course or to cancel a certificate of candidacy, **oral testimony is dispensed with and, instead, parties are required to submit their position paper together with affidavits, counter affidavits and other pieces of documentary evidence.**

The Summary nature of Section 78 proceeding implies the simplicity of subject-matter[11] as it does away with long drawn and complicated trial-type litigation. Considering its nature, the implication therefore, is that Section 78 cases contemplate

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[10] G.R. No. 207264, October 2013.

[11] *Black's Law Dictionary* defines "summary proceeding" as "a nonjury proceeding that settles a controversy or disposes of a case in a relatively prompt and simple manner." (*Black's Law Dictionary* 1242 [8th ed. 2004]).

simple issues only. Any issue that is complex would entail the use of discretion, the exercise of which is reserved to the appropriate election tribunal. **With greater reason then, claims of candidate on a matter of opinion on unsettled questions of law, cannot be the basis for the denial of a CoC.**

Section* 78 *Proceedings Cannot Take the Place of a Quo Warranto Proceeding or an Electoral Protest

The danger of the COMELEC effectively thwarting the voter's will was clearly articulated by Justice Vicente V. Mendoza in his separate opinion in the case involving Mrs. Imelda Romualdez Marcos.[12] The Court voted to grant the Rule 64 Petition of Mrs. Marcos to invalidate the COMELEC's Resolution denying her Amended CoC,'. Justice Mendoza wanted the Court to do so on the prior threshold issue of jurisdiction, *i. e.,* that the COMELEC did not have even the power to assume jurisdiction over the petition of Cirilo Montejo because it was in effect a petition for disqualification. Thus, the COMELEC resolution was utterly void. Justice Mendoza explains Section 78 in relation to petitions for disqualification under the Constitution and relevant laws. The allegations in the Montejo's petition were characterized, thus:

> The petition filed by private respondent Cirilo Roy Montejo in the COMELEC, while entitled "For Cancellation and Disqualification," contained no allegation that private respondent Imelda Romualdez-Marcos made material representations in her certificate of candidacy which were false, it sought her disqualification on the ground that "on the basis of her Voter Registration Record and Certificate of Candidacy, [she] is disqualified from running for the position of Representative, considering that on election day, May 8, 1995, [she] would have resided less than ten (10) months in the district where she is seeking to be elected." For its part, the COMELEC's Second Division, in its resolution of April 24, 1995, cancelled her certificate of candidacy and corrected certificate of candidacy on the basis of its finding that petitioner is "not qualified to run for the position of Member of the House of Representatives for the First Legislative District

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[12] 318 Phil. 329 (1995).

of Leyte" and not because of any finding that she had made false representations as to material matters in her certificate of candidacy.

Montejo's petition before the COMELEC was therefore not a petition for cancellation of certificate of candidacy under § 78 of the Omnibus Election Code, but essentially a petition to declare private respondent ineligible. It is important to note this, because, as will presently be explained, proceedings under § 78 have for their purpose to disqualify a person from being a *candidate,* whereas *quo warranto* proceedings have for their purpose to disqualify a person from holding *public office*. Jurisdiction over *quo warranto* proceedings involving members of the House of Representatives is vested in the Electoral Tribunal of that body.[13]

Justice Mendoza opined that the COMELEC has no power to disqualify candidates on the ground of ineligibility, elaborating thus:

In my view the issue in this case is whether the Commission on Elections has the power to disqualify candidates on the ground that they lack eligibility for the office to which they seek to be elected. I think that it has none and that the qualifications of candidates may be questioned only in the event they are elected, by filing a petition for quo warranto or an election protest in the appropriate forum, not necessarily in the COMELEC but, as in this case, in the House of Representatives Electoral Tribunal. That the parties in this case took part in the proceedings in the COMELEC is of no moment. Such proceedings were unauthorized and were not rendered valid by their agreement to submit their dispute to that body.

The various election laws will be searched in vain for authorized proceedings for determining a candidate's qualifications for an office before his election. There are none in the Omnibus Election Code (B.P. Blg. 881), in the Electoral Reforms Law of 1987 (R.A. No. 6646), or in the law providing for synchronized elections (R.A. No. 7166). There are, in other words, no provisions for pre-proclamation contests but only election protests or *quo warranto* proceedings against winning candidates.

To be sure, there are provisions denominated for "disqualification," but they are not concerned with a declaration of the ineligibility of

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[13] *Id*. at 460-461.

a candidate. These provisions are concerned with the incapacity (due to insanity, incompetence or conviction of an offense) of a person either *to be a candidate* or *to continue as a candidate* for public office. There is also a provision for the denial or cancellation of certificates of candidacy, but it applies only to cases involving false representations as to certain matters required by law to be stated in the certificates.[14]

He then proceeded to cite the three reasons explaining the absence of an authorized proceeding for determining *before election* the qualifications of a candidate:

First is the fact that unless a candidate wins and is proclaimed elected, there is no necessity for determining his eligibility for the office. In contrast, whether an individual should be disqualified as a candidate for acts constituting election offenses (e.g., vote buying, over spending, commission of prohibited acts) is a prejudicial question which should be determined lest he wins because of the very acts for which his disqualification is being sought. That is why it is provided that if the grounds for disqualification are established, a candidate will not be voted for; if he has been voted for, the votes in his favor will not be counted; and if for some reason he has been voted for and he has won, either he will not be proclaimed or his proclamation will be set aside.

Second is the fact that the determination of a candidate's eligibility, e.g., his citizenship or, as in this case, his domicile, may take a long time to make, extending beyond the beginning of the term of the office. This is amply demonstrated in the companion case (G.R. No. 120265, *Agapito A. Aquino v. COMELEC)* where the determination of Aquino's residence was still pending in the COMELEC even after the elections of May 8, 1995. **This is contrary to the summary character of proceedings relating to certificates of candidacy. That is why the law makes the receipt of certificates of candidacy a ministerial duty of the COMELEC and its officers. The law is satisfied if candidates state in their certificates of candidacy that they are eligible for the position which they seek to fill, leaving the determination of their qualifications to be made after the**

[14] *Id.* at 457-458. Justice Mendoza then quotes Sections 12, 68 and 78 of the Omnibus Election Code, Sections 6 and 7 of the Electoral Reforms Law, R.A. 6646, and Section 40 of the Local Government Code, (R.A.7160).

election and only in the event they are elected. Only in cases involving charges of false representations made in certificates of candidacy is the COMELEC given jurisdiction.

Third is the policy underlying the prohibition against pre-proclamation cases in elections for President, Vice President, Senators and members of the House of Representatives. (R.A. No. 7166, § 15) The purpose is to preserve the prerogatives of the House of Representatives Electoral Tribunal and the other Tribunals as "sole judges" under the Constitution of the *election, returns* and *qualifications* of members of Congress or of the President and Vice President, as the case may be.[15]

The legal differentiation between Section 78 *vis-a-vis* quo warranto proceedings and electoral protests made by Justice Mendoza in the Romualdez Marcos case was completely adopted, and affirmed by a unanimous Court in *Fermin v. COMELEC.*[16] *Fermin v. COMELEC* has been affirmed in *Munder v. Commission on Elections,*[17] *Agustin v. Commission on Elections,*[18] *Talaga v. Commission on Elections,*[19] *Mitra v. Commission on Elections,*[20] *Hayundini v. Commission on Elections,*[21] *Aratea v. Commission on EIections,*[22] *Gonzalez v. Commission on Elections,*[23] *Jalosjos, Jr. v. Commission on Elections,*[24] *Dela Cruz v. Commission on Elections,*[25] and *Maruhom*

[15] *Id.* at 462-463.

[16] *Fermin v. COMELEC,* 595 Phil. 449 (2008).

[17] G.R. No. 194076, G.R. No. 194160 [October 18, 2011].

[18] G.R. No. 207105, [November 10, 2015].

[19] G.R. Nos. 196804, 197015, [October 9, 2012], 696 Phil. 786-918.

[20] G.R. No. 191938, [July 2, 2010], 636 Phil. 753-815.

[21] G.R. No. 207900, [April 22, 2014].

[22] G.R. No. 195229, [October 9, 2012], 696 Phil. 700-785.

[23] G.R. No. 192856, [March 8, 2011].

[24] G.R. Nos. 193237, 193536, [October 9, 2012], 696 Phil. 601-700.

[25] G.R. No. 192221, [November 13, 2012].

v. COMELEC[26], thus the Mendoza formulation has become settled doctrine.

It is clear that what the minority herein is attempting to accomplish is to authorize the COMELEC to rule on the intrinsic qualifications of petitioner, and henceforth, of every candidate – an outcome clearly prohibited by the Constitution and by the Omnibus Election Code. That this was also the objective of the minority justices in *Tecson v. COMELEC* should warn us that the proposal of the minority herein will result in the direct reversal of the said case.

In *Tecson,* the COMELEC contended it did not have the jurisdiction to rule on the qualification of Ronald Allan Kelley Poe. The COMELEC stated that it could only rule that FPJ did not commit material misrepresentation in claiming that he was a natural-born Filipino citizen, there being substantial basis to support his belief that he was the son of a Filipino. The Court upheld this conclusion of the COMELEC, and in the dispositive conclusions portion of the Decision held:

> (4) But while the totality of the evidence may not establish conclusively that respondent FPJ is a natural-born citizen of the Philippines, the evidence on hand still would preponderate in his favor enough to hold that he cannot be held guilty of having made a material misrepresentation in his certificate of candidacy in violation of Section 78, in relation to Section 74, of the Omnibus Election Code. Petitioner has utterly failed to substantiate his case before the Court, notwithstanding the ample opportunity given to the parties to present their position and evidence, and to prove whether or not there has been material misrepresentation, which, as so ruled in *Romualdez-Marcos vs. COMELEC,* must not only be material, but also deliberate and willful.

The Court made two important rulings on this particular point. First, that Mr. Fornier, the petitioner in the COMELEC case to deny Mr. Poe's CoC, had the burden to prove that Mr. Poe committed material misrepresentation. Second, even assuming that the petitioner therein was able to make out a prima facie

[26] G.R. No. 179430, [July 27, 2009] 611 Phil. 501-517.

case of material misrepresentation, the evidence on Mister Poe's side preponderated in favor of the conclusion that he did not make any material misrepresentation. Thus, the COMELEC was correct in saying that there was no basis to grant Fornier's Section 78 petition. **Mr. Poe, We said, did not have to conclusively establish his natural-born citizenship; preponderance of evidence was sufficient to prove his right to be a candidate for President.**

It is absolutely offensive to Our concept of due process for the COMELEC to insist on its own interpretation of an area of the Constitution that this Court has yet to squarely rule upon, such as the citizenship of a foundling. It was also most unfair of COMELEC to suddenly impose a previously non-existing formal requirement on candidates–such as a permanent resident visa or citizenship itself–to begin the tolling of the required duration of residency. Neither statutes nor jurisprudence require those matters. COMELEC grossly acted beyond its jurisdiction by usurping the powers of the legislature and the judiciary.

Section 78 and Material Misrepresentation

It must be emphasized that all the decisions of the COMELEC where the Court upheld its denial of a CoC on the basis of an alleged misrepresentation pertaining to citizenship and residency, were all denials on matters of fact that were either uncontroverted, or factual matters that were proven to be false. None of them had to do with any question of law.

In the following cases, we upheld the COMELEC'S denial of the CoCs: *Labo, Jr. v. COMELEC*[27], (Labo's statement that he was a natural-born citizen was disproved on the ground that he failed to submit any evidence proving his reacquisition of Philippine citizenship); *Abella v. COMELEC*[28] (Abella, a candidate for governor of Leyte, and undisputedly a resident of Ormoc City, an independent component city,

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[27] G.R. Nos. 105111, 105384, July 3,1992.

[28] G.R. Nos. 100710, 100739, September 3, 1991, 278 Phil. 275-302.

failed to establish a new domicile in Kananga, Leyte); *Domino v. Commission on Elections,*[29] (the lease contract over a residence in Sarangani Province failed to produce the kind of permanency necessary to establish abandonment of one's original domicile); *Caballero v. Commission on Elections,*[30] (petitioner, who had effectively transferred his domicile of choice in Canada, failed to present competent evidence to prove that he was able to re-establish his residence in Uyugan); *Jalosjos v. Commission on Elections,*[31] (Svetlana Jalosjos, whose domicile of origin was San Juan, Metro Manila, failed to acquire a domicile of choice in Baliangao, Misamis Occidental, prior to the May 2010 elections); *Aquino v. Commission on Elections,*[32] (Aquino, whose domicile of origin was San Jose, Concepcion, Tarlac, failed to established a new domicile in the Second District of Makati City on the mere basis of a lease agreement of a condominium unit); *Reyes v. Commission on Elections*[33] (where petitioner, who previously admitted that she was a holder of a U.S. passport, failed to submit proof that she reacquired her Filipino citizenship under RA 9225 or that she maintained her domicile of origin in Boac, Marinduque); *Dumpit-Michelena v. Boado*[34] (candidate Dumpit-Michelena was not a resident of Agoo, La Union – voter's registration at Naguilian, La Union and joint affidavit of all *barangay* officials of San Julian West, Agoo taken as proof that she was not a resident of the *barangay)*; *Hayudini v. Commission on Elections*[35] (candidate Hayudini was not a resident of South Ubian, Tawi-Tawi – based on a final RTC Decision ordering the deletion of Hayudini's name in *Barangay* Bintawlan's

[29] G.R. No. 134015, July 19, 1999, 369 Phil. 798-829.

[30] G.R. No. 209835, September 22, 2015.

[31] G.R. No. 193314, February 26, 2013.

[32] G.R. No. 120265, September 18, 1995, 318 Phil. 467-539.

[33] G.R. No. 207264, 25 June 2013.

[34] 511 Phil. 720 (2005).

[35] G.R. No. 207900, 22 April 2014.

permanent list of voters); *Velasco v. Commission on Elections*[36] (court ruling that he was not a registered voter of Sasmuan, Pampanga); *Bautista v. Commission on Elections*[37] (admission that he was not a registered voter of Lumbangan, Nasugbu, Batangas where he was running as *punong barangay); Ugdoracion, Jr. v. Commission on Elections*[38] (admission that he was at the time of the filing of the CoC still a holder of a then valid green card); and *Jalosjos v. Commission on Elections*[39] (temporary and intermittent stay in a stranger's house does not amount to residence).

In fact, in the only case of material misrepresentation on citizenship where the Supreme Court agreed to a Section 78 denial by the COMELEC, was in the case of Mr. Ramon L. Labo, Jr. of Baguio City[40] who had previously been declared by the Supreme Court itself as not a Filipino citizen.[41] In the *Labo* case, there was a prior binding conclusion of law that justified the action of the COMELEC in denying the CoC. lt is important to emphasize this considering the dangers of an overly broad reading of the COMELEC's power under Section 78.

A candidate commences the process of being voted into office by filing a certificate of candidacy (CoC). A candidate states in his CoC, among others, that he is eligible to run for public office, as provided under Section 74 of the Omnibus Election Code. Thus:

> 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

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[36] 595 Phil. 1172 (2008).

[37] 460 Phil. 459 (2003).

[38] 575 Phil. 253 (2008).

[39] G.R. No. 193314 (Resolution), 25 June 2013.

[40] *Labo, Jr. v. Commission on Elections,* G.R. Nos. 105111, 105384, 3 July 1992.

[41] *Labo, Jr. v. Commission on Elections,* 257 Phil. 1-23 (1989).

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.

As used in Section 74, the word "eligible" means having the right to run for elective public office; that is, having all the qualifications and none of the ineligibilities.[42] The remedy to remove from the electoral ballot, the names of candidates who are not actually eligible, but who still state under oath in their CoCs that they are eligible to run for public office, is for any person to file a petition under Section 78, which provides:

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

How Legally Significant is the Intent to Deceive for a Section 78 OEC Petition to Prosper?

It was proposed by Justice Dante O. Tinga in his Dissenting Opinion in *Tecson v. COMELEC* that the intent to deceive was never contemplated as an essential element to prove a Section 78

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[42] *Aratea v. COMELEC,* G.R. No. 195229, 9 October 2012.

petition.[43] The problem with this opinion is that it remains a proposed reversal of a doctrine that remains firmly entrenched in our jurisprudence. In a long line of cases, starting with *Romualdez-Marcos v. COMELEC*[44] in 1995, this Court has invariably held that intent to deceive the electorate is an essential element for a Section 78 petition to prosper.

In *Romualdez-Marcos,* the Court ruled that it is the fact of the qualification, not a statement in a certificate of candidacy, which ought to be decisive in determining whether or not an individual has satisfied the constitution's qualification requirements. The statement in the certificate of candidacy becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.[45]

This ruling was adopted by the Court in a long line of cases, in which it was ruled that aside from the requirement of materiality, a petition under Section 78 must also show that there was malicious intent to deceive the electorate as to the candidate's qualifications for public office.

In *Salcedo II v. COMELEC,*[46] the Court affirmed the decision of the COMELEC denying the petition to cancel the CoC filed by Ermelita Cacao Salcedo, a candidate for mayor of Sara, Iloilo. Apart from finding that the use of the surname "Salcedo" was not a material qualification covered by Section 78, the Court also declared that there was no intention on the part of the candidate to mislead or deceive the public as to her identity. We concluded that, in fact, there was no showing that the voters of the municipality were deceived by Salcedo's use of such surname; consequently, the COMELEC correctly refused to cancel her CoC.

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[43] *See* Dissenting Opinion of Justice Dante O. Tinga in *Tecson v. COMELEC,* 468 Phil. 421-755 (2004).

[44] G.R. No. 119976, 18 September 1995.

[45] *Id*.

[46] 371 Phil. 377-393 (1999).

On the other hand, in *Velasco v. COMELEC,*[47] We upheld the cancellation of the CoC filed by Nardo Velasco because he made a material misrepresentation as to his registration as a voter. In Our discussion, We emphasized that Velasco knew that his registration as a voter had already been denied by the RTC, but he still stated under oath in his CoC that he was a voter of Sasmuan.[48] This was considered sufficient basis for the COMELEC to grant the Section 78 petition.[49]

In *Justimbaste v. Commission on Elections,*[50] this Court sustained the COMELEC's dismissal of the petition of cancellation filed against Rustico B. Balderian because there was no showing that he had the intent to deceive the voting public as to his identity when he used his Filipino name, instead of his Chinese name, in his CoC.

On the other hand, in *Maruhom v. COMELEC,*[51] We upheld the cancellation of the CoC of Jamela Salic Maruhom because she had subsisting voter registrations in both the municipalities of Marawi and Marantao in Lanao del Sur. We emphasized that Maruhom deliberately attempted to conceal this fact from the electorate as it would have rendered her ineligible to run as mayor of Marantao.

The element of intent was again required by this Court in *Mitra v. COMELEC.*[52] In that case, We reversed the ruling of the COMELEC, which cancelled the CoC filed by Abraham Kahlil B. Mitra because the commission "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." Upon an

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[47] G.R. No. 180051, 24 December 2008.

[48] *Id.*

[49] *Id.*

[50] 593 Phil. 383-397 (2008).

[51] G.R. No. 179430, 27 July 2009.

[52] 636 Phil. 753-815 (2010).

examination of the evidence in that case, We concluded that there was no basis for the COMELEC's conclusion that Mitra deliberately attempted to mislead the Palawan electorate.

The presence of intent to deceive the electorate was also a controlling factor in the decision of the Court in *Panlaqui v. COMELEC.*[53] We ruled that the decision of the Regional Trial Court to exclude Nardo Velasco as a voter did not result in the cancellation of his CoC for mayor of Sasmuan, Pampanga. Said this Court:

> It is not within the province of the RTC in a voter's inclusion/exclusion proceedings to take cognizance of and determine the presence of a false representation of a material fact. It has no jurisdiction to try the issues of whether the misrepresentation relates to material fact and whether there was an intention to deceive the electorate in terms of one's qualifications for public office. The finding that Velasco was not qualified to vote due to lack of residency requirement does not translate into a finding of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render him ineligible.

In *Gonzales v. COMELEC,*[54] the Court distinguished between a petition for cancellation under Section 78 and a petition for cancellation under Section 68 of the OEC, in order to determine whether the petition filed against Ramon Gonzales was filed on time. We declared that a Section 78 petition must pertain to a false representation on a material matter that is made with the deliberate intent to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. Upon finding these elements in the petition filed against Fernando V. Gonzales, We ruled that the applicable period for filing the petition is that prescribed under Section 78 *i.e.* within twenty-five days from the filing of the CoC. Since the petition was filed beyond this period, this Court declared that the COMELEC erred in giving due course to the same.

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[53] G.R. No. 188671, 24 February 2010.

[54] G.R. No. 192856, 8 March 2011.

The requirement of intent was likewise reiterated in *Tecson v. COMELEC,*[55] *Ugdoracion, Jr. v. Commission on Elections,*[56] *Fermin v. Commission on Elections,*[57] *Aratea v. Commission on Elections*[58] and *Talaga v. Commission on Elections.*[59]

It has been claimed, however, that this Court in *Tagolino v. HRET,*[60] abandoned this requisite when it stated that "deliberateness of the misrepresentation, much less one's intent to defraud, is of bare significance in a Section 78 petition as it is enough that the person's declaration of a material qualification in the [certificate of candidacy] be false." In that case, the Court, using *Miranda v. Abaya*[61] as basis, stated that:

> In this relation, jurisprudence holds that an express finding that the person committed any deliberate misrepresentation is of little consequence in the determination of whether one's CoC should be deemed cancelled or not. What remains material is that the petition essentially seeks to deny due course to and/or cancel the CoC on the basis of one's ineligibility and that the same be granted without any qualification.[62]

It is important to note that the statement regarding intent to deceive was only an obiter dictum. The primary issue in both *Tagolino* and *Miranda* is whether a candidate whose certificate of candidacy had been denied due course or cancelled may be validly substituted in the electoral process. In other words, the cases dealt with the *effect* of the denial of due course or cancellation of a certificate of candidacy, and not on the validity or soundness of the denial or cancellation itself.

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[55] 468 Phil. 421-755 (2004).

[56] 575 Phil. 253-266 (2008).

[57] 595 Phil. 449-479 (2008).

[58] 696 Phil. 700-785 (2012).

[59] 696 Phil. 786-918 (2012).

[60] G.R. No. 202202, 19 March 2013.

[61] G.R. No. 136351, 28 July 1999.

[62] *Tagolino v. HRET,* G.R. No. 202202, 19 March 2013.

Furthermore, in *Miranda,* We clarified the COMELEC's use of the word "disqualified" when granting a petition that prays for the denial of due course or cancellation of a certificate of candidacy. This Court said:

> From a plain reading of the dispositive portion of the Comelec resolution of May 5, 1998 in SPA No. 98-019, it is sufficiently clear that the prayer specifically and particularly sought in the petition was GRANTED, there being no qualification on the matter whatsoever. The disqualification was simply ruled over and above the granting of the specific prayer for denial of due course and cancellation of the certificate of candidacy.[63]

Clearly, the phrase "no qualification" in *Miranda,* which was essentially echoed in *Tagolino,* referred to the ruling of the COMELEC to grant the petition to deny due course to or cancel the certificate of candidacy. It did not refer to the false representation made by the candidate in his certificate of candidacy.

At any rate, after *Tagolino,* We reiterated the requirement of deceit for a Section 78 petition to prosper in four more cases.[64] Our most recent pronouncements in *Jalover v. Osmeña,*[65] reiterated that a petition under **Section 78 cannot prosper in a situation where the intent to deceive or defraud is patently absent, or where no deception of the electorate results. Furthermore, the misrepresentation cannot be the result of a mere innocuous mistake, but must pertain to a material fact.**

Said Justice Arturo D. Brion in the 2014 unanimous *Jalover v. Osmeña* decision:

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[63] *Miranda v. Abaya,* G.R. No. 136351, 28 July 1999.

[64] *Villafuerte v. Commission on Elections,* G.R. No. 206698, 25 February 2014; *Hayudini v. Commission on Elections,* G.R. No. 207900, 22 April 2014; *Agustin v. Commission on Elections,* G.R. No. 207105, 10 November 2015.

[65] G.R. No. 209286, 23 September 2014.

Separate from the requirement of materiality, a false representation under Section 78 must consist of a deliberate attempt to mislead, misinform, or hide a fact, which would otherwise render a candidate ineligible." (citing *Ugdoracion, Jr. v. Commission on Elections)* In other words, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. In *Mitra v. COMELEC,* we held that the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception of the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run.

Thus, a petition to deny due course to or cancel a certificate of candidacy according to the prevailing decisions of this Court still requires the following essential allegations: (1) the candidate made a representation in the certificate; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate (the right to run for the election); and (3) the candidate made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact which would otherwise render him ineligible.[66]

Romualdez-Marcos v. COMELEC is again worth recalling.[67] We ruled therein that it is the fact of the disqualification, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the constitution's qualification requirements. The statement in the certificate of candidacy becomes material only when there is or appears to be a deliberate attempt to mislead, misinform or hide a fact which would otherwise render a candidate ineligible.[68]

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[66] *Fermin v. COMELEC,* G.R. Nos. 179695 & 182369, 18 December 2008.

[67] G.R. No. 119976, 18 September 1995.

[68] *Id*.

In *Mitra v. COMELEC,*[69] We gave importance to the character of a representation made by a candidate in the certificate of candidacy. This Court found grave abuse of discretion on the part of the COMELEC when it failed to take into account whether there had been a deliberate misrepresentation in *Mitra's* certificate of candidacy.[70] The COMELEC cannot simply assume that an error in the certificate of candidacy was necessarily a deliberate falsity in a material representation.[71]

It must be emphasized that under Section 78, it is not enough that a person lacks the relevant qualification; he must have also made a false representation of the lack of qualification in the certificate of candidacy.[72] The denial of due course to, or the cancellation of the certificate of candidacy, is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which relates to the qualifications required of the public office the candidate is running for.[73]

Considering that intent to deceive is a material element for a successful petition under Section 78, a claim of good faith is a valid defense.

Misrepresentation means the act of making a false or misleading assertion about something, usually with the intent to deceive.[74] It is not just written or spoken words, but also any other conduct that amounts to a false assertion.[75] A material misrepresentation is a false statement to which a reasonable person would attach importance in deciding how to act in

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[69] G.R. No. 191938, 2 July 2010.

[70] *Id*.

[71] *Id*.

[72] *Tagolino v. HRET, supra*.

[73] *Fermin v. COMELEC, supra*.

[74] *Almagro v. Spouses Amaya, Sr.,* G.R. No. 179685, 19 June 2013.

[75] *Id*.

the transaction in question or to which the maker knows or has reason to know that the recipient attaches some importance.[76]

In the sphere of election laws, a material misrepresentation pertains to a candidate's act with the intention to gain an advantage by deceitfully claiming possession of all the qualifications and none of the disqualifications when the contrary is true.

A material misrepresentation is incompatible with a claim of good faith. Good faith encompasses, among other things, an honest belief, the absence of malice and the absence of a design to defraud or to seek an unconscionable advantage.[77] It implies honesty of intention and honest belief in the validity of one's right, ignorance of a contrary claim, and absence of intention to deceive another.[78]

Burden of Proof in Section 78 Proceedings

Section 1, Rule 131 of the Revised Rules on Evidence defines burden of proof as "the duty of a party to present evidence on the facts in issue necessary to establish his claim" "by the amount of evidence required by law." When it comes to a Section 78 proceeding, it is the petitioner who has the burden of establishing material misrepresentation in a CoC.[79]

Since the COMELEC is a quasi-judicial body, the petitioner must establish his case of material misrepresentation by substantial evidence.[80] Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

Burden of proof never shifts.[81] It is the burden of evidence that shifts.[82] Hence, in a Section 78 proceeding, if the petitioner

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[76] *Id.*

[77] *Heirs of Limense v. Vda. de Ramos,* G.R. No. 152319, 28 October 2009.

[78] *Id*.

[79] See *Tecson v. COMELEC,* G.R. Nos. 161434, 161634, 161824, March 3, 2004, 468 Phil. 421-755; and *Salcedo II v. COMELEC,* 371 Phil. (1999).

[80] Rules of Court, Rule 133, Section 5.

[81] See *Jison v. Court of Appeals,* G.R. No. 124853, 24 February 1998.

[82] *Id*.

comes up with a prima facie case of material misrepresentation, the burden of evidence shifts to the respondent.

In this case, respondents had the burden to establish the following: (1) falsity of the representations made by petitioner with regard to her citizenship and residence; and (2) intent to deceive or mislead the electorate.

On residence

As will be further discussed below, respondents mainly relied on the representation that petitioner previously made in her 2012 CoC for the position of Senator to establish the requirements of falsity and intent to deceive. Petitioner, however, has shown by an abundance of substantial evidence that her residence in the Philippines commenced on 24 May 2005 and that the statement she made in the 2012 CoC was due to honest mistake. But respondents failed to meet head on this evidence. Hence, they failed to discharge their burden of proving material misrepresentation with respect to residency.

Furthermore, the COMELEC unreasonably shifted the burden of proof to petitioner, declaring that she had the burden to show that she possessed the qualifications to run for President. As previously discussed, respondents had the burden to establish the key elements for a Section 78 petition to prosper.

On citizenship

With respect to the issue of citizenship, respondents leaned heavily on petitioner's admission that she was a foundling. Nevertheless, this did not establish the falsity of petitioner's claim that she was a natural-born citizen. Presumptions operated profoundly in her favor to the effect that a foundling is a natural-born citizen. Further, she had a right to rely on these legal presumptions, thus negating the notion of deception on her part. Thus, respondents failed to discharge their burden of proving material misrepresentation with respect to residency.

Yet, the COMELEC unfairly placed the burden of proof on petitioner when, for reasons already discussed, the onus properly

fell on respondents. This point will be more comprehensively discussed below.

III.

The COMELEC acted with grave abuse of discretion when it cancelled petitioner's 2016 Certificate of Candidacy in the absence of any material misrepresentation on residency or citizenship.

In my view, the fact that the COMELEC went beyond an examination of the patent falsity of the representations in the CoC is enough to demonstrate its grave abuse of discretion. I maintain that a Section 78 proceeding must deal solely with "patent defects in the certificates" and not the question of eligibility or ineligibility. The commission clearly exceeded the limited authority granted to it under Section 78 of the OEC when it determined petitioner's intrinsic qualifications, not on the basis of any uncontroverted fact, but on questions of law.

With this conclusion, the Court already has sufficient justification to reverse and set aside the assailed COMELEC Resolutions. Consequently, I believe that it is no longer necessary for us to decide questions pertaining to petitioner's qualifications.

However, given the factual milieu of this case and its significance to the upcoming electoral exercise, I am likewise mindful of the duty of the Court to allay the doubts created by the COMELEC ruling in the minds of the voting public. Furthermore, the dissents have already gone to the intrinsic qualification of petitioner as to cast doubt on her viability as a candidate. These positions must be squarely addressed; hence this extended opinion is inevitable.

Grave Abuse of Discretion

In *Mitra v. COMELEC,*[83] this Court held that COMELEC's use of wrong or irrelevant considerations in the resolution of an issue constitutes grave abuse of discretion:

[83] G.R. No. 191938, 2 July 2010.

As a concept, "grave abuse of discretion" defies exact definition; generally, it refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction;" the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough; it must be grave. **We have held, too, that the use of wrong or irrelevant considerations in deciding an issue is sufficient to taint a decision-maker's action with grave abuse of discretion.**

Closely related with the limited focus of the present petition is the condition, under Section 5, Rule 64 of the Rules of Court, that findings of fact of the COMELEC, supported by substantial evidence, shall be final and non-reviewable. Substantial evidence is that degree of evidence that a reasonable mind might accept to support a conclusion.

In light of our limited authority to review findings of fact, we do not ordinarily review in a certiorari case the COMELEC's appreciation and evaluation of evidence. Any misstep by the COMELEC in this regard generally involves an error of judgment, not of jurisdiction. (Emphasis supplied)

For reasons discussed below, I find that the COMELEC committed a grossly unreasonable appreciation of both the evidence presented by petitioner to prove her residency, as well the legal standards applicable to her as a foundling. For purposes of clarity, I will discuss residency and citizenship separately.

In *Sabili,*[84] we noted that the Court does not ordinarily review the COMELEC's appreciation and evaluation of evidence. However, when the appreciation and evaluation of evidence is so grossly unreasonable as to turn into an error of jurisdiction, the Court is duty-bound to intervene. In that case, petitioner was able to show that the COMELEC relied on wrong or irrelevant considerations – like property ownership in another municipality – in deciding the issue of whether petitioner made a material misrepresentation regarding his residence.

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[84] 686 Phil. 649 (2012).

IV.

A. ON RESIDENCY

The COMELEC made two findings as far as petitioner's compliance with the 10-year residency requirement is concerned. First, petitioner committed a false material representation regarding her residency in her 2016 CoC for President, as shown by her declaration in her 2013 CoC for senator. Second, petitioner's alien citizenship at the time she allegedly abandoned her domicile in the US was a legal impediment which prevented her from re-establishing her domicile in the Philippines, considering her failure to obtain an authorization from the Bureau of Immigration as permanent resident in the country early enough to start the count of the 10-year residency requirement.

These conclusions reveal the failure of the COMELEC to properly appreciate and evaluate evidence, so much so that it overstepped the limits of its discretion to the point of being grossly unreasonable.

There was no deliberate intent on the part of petitioner to make a material misrepresentation as to her residency.

In the assailed Resolutions, the COMELEC had concluded that petitioner committed a false material representation about her residency in her 2016 CoC for president on the basis of her declaration in her 2013 CoC for senator. According to the Commission, this 2012 declaration showed a deliberate intent to mislead the electorate and the public at large.

Public respondent's conclusions are unjustified. In the first place, the COMELEC misapplied the concepts of admissions and honest mistake in weighing the evidence presented by petitioner. As will be discussed below, declarations against interest are *not* conclusive evidence and must still be evaluated to determine their probative value. Neither does the declaration in her 2013 CoC foreclose the presentation of evidence of petitioner's good faith and honest belief that she has complied with the 10-year residency requirement for presidential candidates.

Admissions against Interest

Admissions against interest are governed by Section 26, Rule 130 of the Rules of Court, which provides:

Sec. 26. *Admissions of a party.* — The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

It is well to emphasize that admissions against interest fall under the rules of admissibility.[85] Admissions against interest pass the test of relevance and competence. They, however, do not guarantee their own probative value and conclusiveness. Like all evidence, they must be weighed and calibrated by the court against all other pieces at hand. **Also, a party against whom an admission against interest is offered may properly refute such declaration by adducing contrary evidence**.[86]

To be admissible, an admission must (1) involve matters of fact, and not of law; (2) be categorical and definite; (3) be knowingly and voluntarily made; and (4) be adverse to the admitter's interests, otherwise it would be self-serving and inadmissible.[87] An admission against interest must consist of a categorical statement or document pertaining to a matter of fact. **If the statement or document pertains to a conclusion of law or necessitates prior settlement of questions of law, it cannot be regarded as an admission against interest**.[88]

Even a judicial admission, which does not require proof, for judicial admissions under Section 4, Rule 129 of the Rules of Court[89] But even then, contrary evidence may be admitted

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[85] Rule 130 of the Rules of Court.

[86] *Rufina Patis Factory v. Alusitain, supra.*

[87] *Lacbayan v. Samoy, Jr., supra.*

[88] *Id.*

[89] Sec. 4. Judicial admissions. – An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

to show that the admission was made through palpable mistake. In *Bitong v. CA,*[90] the Court ruled that although acts or facts admitted in a pleading do not require proof and can no longer be contradicted, evidence *aliunde* can be presented to show that the admission was made through palpable mistake. Said the Court:

A party whose pleading is admitted as an admission against interest is entitled to overcome by evidence the apparent inconsistency, and it is competent for the party against whom the pleading is offered to show that the statements were inadvertently made or were made under a mistake of fact. In addition, a party against whom a single clause or paragraph of a pleading is offered may have the right to introduce other paragraphs which tend to destroy the admission in the paragraph offered by the adversary.

Every alleged admission is taken as an entirety of the fact which makes for the one side with the qualifications which limit, modify or destroy its effect on the other side. The reason for this is, where part of a statement of a party is used against him as an admission, the court should weigh any other portion connected with the statement, which tends to neutralize or explain the portion which is against interest.

In other words, while the admission is admissible in evidence, its probative value is to be determined from the whole statement and others intimately related or connected therewith as an integrated unit.[91]

COMELEC Conclusions on Admission against Interest

In the Resolution dated 1 December 2015 of the Second Division in SPA No. 15-001 *(Elamparo v. Llamanzares),* the COMELEC ruled as follows:

Respondent ran for Senator in the May 13, 2013 Senatorial Elections. In her COC for Senator, she answered "6 years and 6 months" in the space provided for the candidate's period of residence in the Philippines. Based on her own declaration, respondent admitted under

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[90] G.R. No. 123553, 13 July 1998.

[91] *Id.*

oath that she has been a resident of the country only since **November 2006.**

Undeniably, this falls short by 6 months of the required May 2006 commencement of the residence in the Philippines in order for respondent to qualify as a candidate for President of the Philippines in the May 9, 2016 elections. If we reckon her period of residency from November 2006, as she herself declared, she will be a resident of the Philippines by May 9, 2016 only for a period of **9 years and 6 months.**

As correctly pointed out by petitioner, this sworn statement by respondent is an admission against her interest.

Section 26, Rule 130, Rules of Court (which is of suppletory application) expressly states:

> Section 26. Admission of a party. — The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

The rationale for the rule was explained by the Supreme Court in *Manila Electric Company v. Heirs of Spouses Dionisio Deloy:*

> Being an admission against interest, the documents are the best evidence which affords the greatest certainty of the facts in dispute. The rationale for the rule is based on the presumption that no man would declare anything against himself **UNLESS SUCH DECLARATION WAS TRUE.** Thus, it is fair to presume that the declaration corresponds to the truth, and it is his fault if it does not.

Respondent's representation in her COC for Senator that she had been a resident of the Philippines for a period of 6 years and 6 months by May 2013 is an admission that is binding on her. After all, she should not have declared it under oath if *such declaration was not true.*

Respondent's convenient defense that she committed an honest mistake on a difficult question of law, when she stated in her COC for Senator that her period of residence in the Philippines before May 13, 2013 was 6 years and 6 months, is at best self-serving. It cannot overturn the weight given to the admission against interest voluntarily made by respondent.

Assuming *arguendo* that as now belatedly claimed the same was due to an honest mistake, no evidence has been shown that there was an attempt to rectify the so-called honest mistake. The attempt

> to correct it in her present COC filed only on October 15, 2015 cannot serve to outweigh the probative weight that has to be accorded to the admission against interest in her 2013 COC for Senator.
>
> Certainly, it is beyond question that her declaration in her 2013 COC for Senator, under oath at that, that she has been a resident of the Philippines since **November 2006** still stands in the record of this Commission as an official document, which *may be given in evidence against her,* and the probative weight and binding effect of which is neither obliterated by the passing of time nor by the belated attempt to correct it in her present COC for President of the Philippines.
>
> Respondent cannot now declare an earlier period of residence. Respondent is already stopped from doing so. If allowed to repudiate at this late stage her prior sworn declaration, We will be opening the floodgates for candidates to commit material misrepresentations in their COCs and escape responsibility for the same through the mere expedient of conveniently changing their story in a subsequent COC. Worse, We will be allowing a candidate to run for President when the COC for Senator earlier submitted to the Commission contains a material fact or data barring her from running for the position she now seeks to be elected to. Surely, to rule otherwise would be to tolerate a cavalier attitude to the requirement of putting in the correct data in a COC. In fact, the COC filer, in that same COC, certifies under oath that the data given are indeed "true and correct".

As shown by the above-cited Resolution, the COMELEC Second Division regarded the declaration of petitioner in her 2013 certificate of candidacy for senator – that she had been a resident of the Philippines only since November 2006 – as a binding and conclusive statement that she can no longer refute. It appeared to confuse admissions against interest with judicial admissions.

However, in the Resolution dated 23 December 2015 of the En Banc, COMELEC conceded that such statement may indeed be overcome by petitioner through the presentation of competent evidence of greater weight. According to the COMELEC En Banc:

> On the allegation that the Second Division chose to rely **solely** on the declarations of respondent in her 2013 COC: we are not persuaded.

Again, the Second Division was not constrained to mention every bit of evidence it considered in arriving at the assailed Resolution. Concededly, however, it did put ample attention on Respondent's 2013 COC, but not without good reason.

To recall, Respondent, in her 2013 COC for Senator, indicated, under oath, that her period of residence in the Philippines from May 13, 2013 is "6 years and 6 months." Following this, she became a resident on November 2006. This is entirely inconsistent with her declaration in the present 2016 COC for president that immediately before the May 9, 2016 elections, she will be a resident of the country for "10 years and 11 months," following which she was a resident since May, 2005. -The Second Division struck respondent's arguments mainly on the basis of this contradiction.

Respondent cannot fault the Second Division for using her statements in the 2013 COC against her. Indeed, the Second Division correctly found that this is an admission against her interest. Being such, it is "the best evidence which affords the greatest certainty of the facts in dispute. The rationale for the rule is based on the presumption that no man would declare anything against himself unless such declaration was true. Thus, it is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not."

Moreover, a COC, being a notarial document, has in its favor the presumption of regularity. To contradict the facts stated therein, there must be evidence that is clear, convincing and more than merely preponderant. In order for a declarant to impugn a notarial document which he himself executed, it is not enough for him to merely execute a subsequent notarial document. After executing an affidavit voluntarily wherein admissions and declarations against the affiant's own interest are made under the solemnity of an oath, the affiant cannot just be allowed to spurn them and undo what he has done.

Yes, the statement in the 2013 COC, albeit an admission against interest, may later be impugned by respondent. However, she cannot do this by the mere expedient of filing her 2016 COC and claiming that the declarations in the previous one were "honest mistakes". The burden is upon her to show, by clear, convincing and more than preponderant evidence, that, indeed, it is the latter COC that is correct and that the statements made

in the 2013 COC were done without bad faith. Unfortunately for respondent, she failed to discharge this heavy burden.

As shown by the foregoing, the COMELEC *en banc* had a proper understanding of an admission against interest – that it is one piece of evidence that should be evaluated against all other pieces presented before it.

The COMELEC was wrong, however, in ruling that petitioner attempted to overcome the alleged admission against interest merely by filing her 2016 CoC for president. Petitioner submitted severed various many and varied pieces of evidence to prove her declaration in her 2016 certificate of candidacy for president that as of May 2005, she had definitely abandoned her residence in the US and intended to reside permanently in the Philippines. They are the following:

1. Petitioner's US passport showing that she returned to the Philippines on 24 May 2005 and from then would always return to the Philippines after every trip to a foreign country.
2. Email exchanges showing that as early as March 2005, petitioner had begun the process of relocating and reestablishing her residence in the Philippines and had all of the family's valuable movable properties packed and stored for shipping to the Philippines.
3. School records of petitioner's school-aged children showing that they began attending Philippine schools starting June 2005.
4. Identification card issued by the BIR to petitioner on 22 July 2005.
5. Condominium Certificate of Title covering a unit with parking slot acquired in the second half of 2005 which petitioner's family used as residence pending the completion of their intended permanent family home.
6. Receipts dated 23 February 2006 showing that petitioner had supervised the packing and disposal of some of the family's household belongings.
7. Confirmation of receipt of the request for change of address sent by the US Postal Service on 28 March 2006;

8. Final settlement of the selling of the family home in the US as of 27 April 2006.
9. Transfer Certificate of Title dated 1 June 2006 showing the acquisition of a vacant lot where the family built their family home.
10. Questionnaire issued by the US Department of State – Bureau of Consular Affairs regarding the possible loss of US citizenship, in which petitioner answered that she had been a resident of the Philippines since May 2005.
11. Affidavits of petitioner's mother and husband attesting to the decision of the family to move to the Philippines in early 2005 shortly after the death of petitioner's father.

Unfortunately, the COMELEC En Banc found that these pieces of evidence failed to overcome the probative weight of the alleged admission against interest. According to the COMELEC, the discrepancy between petitioner's 2013 and 2016 certificates of candidacy only goes to show that she suits her declarations regarding her period of residency in the Philippines when it would be to her advantage. Hence, her deliberate attempt to mislead, misinform, or hide the fact of her ineligibility insofar as residency is concerned.

The statement that she would be a resident of the Philippines for six years and six months as of May 2013 (reckoned from November 2006) in her 2013 certificate of candidacy was admittedly made under oath. However, **while notarized documents fall under the category of public documents,**[92] **they are**

[92] Rules of Court, Rule 132, Section 19 provides:

Sec. 19. *Classes of Documents.* — For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) **Documents acknowledged before a notary public** except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private. (Emphasis supplied)

not deemed *prima facie* evidence of the facts therein stated.[93] Section 23, Rule 132 of the Rules of Court states:

> Sec. 23. *Public documents as evidence.* — Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

Clearly, notarized documents are merely proof of the fact which gave rise to their execution and of the date stated therein.[94] They require no further proof to be admissible, because the certificate of acknowledgement serves as the *prima facie* evidence of its execution.[95]

Thus while petitioner's 2013 certificate of candidacy may be presented as proof of its regularity and due execution, it is not *prima facie* evidence of the facts stated therein, i.e. the declaration that she essentially became a resident of the Philippines only in November 2006. Furthermore, while a notarized document carries the evidentiary weight conferred upon it with respect to its due execution and regularity, even such presumption is not absolute as it may be rebutted by clear and convincing evidence to the contrary.[96]

Thus, where the document or its contents are in question, the person who executed the same may submit contrary evidence to establish the truth of the matter. In this case, petitioner submitted the above-cited pieces of evidence to prove that her 2016 certificate of candidacy declared the truth about her residence in the Philippines, and that her declaration in her 2013 certificate of candidacy was the result of an honest mistake.

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[93] *Philippine Trust Co. v. CA,* G.R. No. 150318, 22 November 2010.

[94] *Id*.

[95] *Chua v. CA,* G.R. No. 88383, 19 February 1992.

[96] *China Banking Corp., Inc. v. CA,* G.R. No. 155299, 24 July 2007.

Honest Mistake

The COMELEC gave scant consideration to petitioner's assertion that she made an honest mistake in her 2013 certificate of candidacy for senator. The Commission hypothesized that if petitioner truly believed that the period of residency would be counted backwards from the day of filing the CoC for Senator in October 2012, she should always reckon her residency from April 2006. The COMELEC observed that the period of residency indicated in the 2015 CoC for President was reckoned from May 2005. The COMELEC took the alleged unexplained inconsistency as a badge of intent to deceive the electorate.

To a malicious mind, the assertions of petitioner are nothing but sinister. Considering the contradicting and inconsistent dates alleged before the COMELEC, an indiscriminate observer may be tempted to think the worst and disbelieve a claim to the common experience of human mistake.

United States v. Ah Chong.[97] has taught generations of lawyers that **the question as to whether one honestly, in good faith, and without fault or negligence fell into the mistake, is to be determined by the circumstances as they appeared to him at the time when the mistake was made, and the effect which the surrounding circumstances might reasonably be expected to have on his mind, in forming the intent upon which he acted.**

In the petitions before us, petitioner explained her mistake in the following manner:

> 5.268. [Petitioner] committed an <u>honest mistake</u> when she stated in her COC for Senator that her "PERIOD OF RESIDENCE BEFORE MAY 13, 2013" is "6" years and "6" months.
>
> 5.268.1. Only a two-year period of residence in the Philippines is required to qualify as a member of the Senate of the Republic of the Philippines. [Petitioner] sincerely had *no doubt* that she

[97] G.R. No. L-5272, 19 March 1910.

had satisfied this residence requirement. She even accomplished her COC for Senator *without the assistance of a lawyer.* x x x

5.268.2. It is no wonder that [petitioner] *did not know* that the use of the phrase "Period of Residence in the Philippines before May 13, 2013" in her COC for Senator, actually referred to the period *immediately preceding* 13 May 2013, or to her period of residence *on the day right before* the 13 May 2013 elections. **[Petitioner] therefore interpreted this phrase to mean her period of residence in the Philippines as of the submission of COCs in October 2012 (which is technically also a period "before May 13, 2013").**

5.268.3. In terms of abandoning her domicile in the U.S.A. and permanently relocating to the Philippines, nothing significant happened in *"November 2006."* Moreover, private respondent was *not* able to present any evidence which would show that [petitioner] returned to the Philippines with the intention to reside here permanently *only in November 2006.* Thus, there would have been *no* logical reason for [petitioner] to reckon the start of her residence in the Philippines *from this month.* Even the COMELEC considered a date *other than* **November 2006** as the reckoning point of [petitioner's] residence (i.e., August 2006). **This date is, of course, not the day [petitioner] established her domicile in the Philippines. Nonetheless, that even the COMELEC had another date in mind bolsters the fact that [petitioner]'s representation in her COC for Senator regarding her period of residence was based on her *honest misunderstanding* of what was asked of her in Item No.7 of her COC for Senator, and that she indeed counted backward from October 2012 (instead of from 13 May 2013).**

x x x x x x x x x

When [petitioner] accomplished her COC for Senator, she reckoned her residence in the Philippines from March-April 2006, which is when (to her recollection at the time she signed this COC) she and her family had substantially wound up their affairs in the U.S.A. in connection with their relocation to the Philippines. Specifically, March 2006 was when [petitioner] arrived in the Philippines after her last lengthy stay in the U.S.A., and April 2006 was when she and her husband were finally able to sell their house in the U.S.A. The month of April

2006 is also when [petitioner's] husband had resigned from his job in the U.S.A. The period between **March-April 2006 to September 2012 is around six (6) years and six (6) months. Therefore, this is the period [petitioner] indicated (albeit, mistakenly) in her COC for Senator as her "Period of Residence in the Philippines before May 13, 2013."**

5.268.7. **This erroneous understanding of the commencement of her residence in the Philippines, together with the confusing question in Item No.7 of her COC for Senator, explains why [petitioner] mistakenly indicated in that COC that her "Period of Residence in the Philippines before May 13, 2013" would be "6" years and "6" months.**

5.268.8. [Petitioner] was later advised *(only last year, 2015)* by legal counsel that the concept of "residence," for purposes of election law, takes into account the period when she was physically present in the Philippines starting from 24 May 2005, (after having already abandoned her residence in the U.S.A., coupled with the intent to reside in the Philippines) and not just the period after her U.S.A. residence was sold and when her family was already complete in the country, after her husband's return. [Petitioner]'s period of residence in her COC for Senator should, therefore, have been counted *from 24 May 2005,* and extended all the way "up to the day before" the *13 May 2013 elections.* [Petitioner] realized *only last year, 2015,* that she should have stated "7" years and "11" months (instead of "6" years and "6" months) as her period of residence in her COC for Senator.[98] (Emphases supplied)

To an open mind, the foregoing explanation proffered by petitioner does not appear to be concocted, implausible, or the product of mere afterthought. The circumstances as they appeared to her at the time she accomplished her 2013 certificate of candidacy for senator, without the assistance of counsel, may indeed reasonably cause her to fill up the residency item with the answer "6 years and 6 months." It does not necessarily mean, however, that she had not been residing in the Philippines on a permanent basis for a period longer than that.

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[98] Memorandum of petitioner, pp. 284-287.

The fact that it was the first time that petitioner ran for public office; that only a two-year period of residence in the country is required for those running as senator; and that the item in the certificate of candidacy providing "Period of Residence in the Philippines before May 13, 2013" could be open to an interpretation different from that required, should have been taken into consideration in appreciating whether petitioner made the subject entry honestly, in good faith, and without fault or negligence.

The surrounding circumstances in this case do not exclude the possibility that petitioner made an honest mistake, both in reckoning her period of residence in the Philippines as well as determining the proper end period of such residence at the time. That petitioner is running for the highest public office in the country should not be the only standard by which we weigh her actions and ultimately her mistakes. Not all mistakes are made with evil motives, in much the same way that not all good deeds are done with pure intentions. Good faith is always presumed, and in the face of tangible evidence presented to prove the truth of the matter, which is independent of the circumstances that caused petitioner to make that fateful statement of "6 years and 6 months," it would be difficult to dismiss her contention that such is the result of an honest mistake.

To reiterate, the COMELEC incorrectly applied the rule on admissions in order to conclude that petitioner deliberately misrepresented her qualifications—notwithstanding a reasonable explanation as to her honest mistake, and despite the numerous pieces of evidence submitted to prove her claims.

If petitioner honestly believed that she can reckon her residency in the Philippines from May 2005 because she had already relocated to the country with the intent to reside here permanently, then her statement in her 2016 certificate of candidacy for president cannot be deemed to have been made with intent to deceive the voting public. The COMELEC has clearly failed to prove the element of deliberate intent to deceive, which is necessary to cancel certificates of candidacy under Section 78.

In any case, the single declaration of petitioner in her 2013 certificate of candidacy for senator cannot be deemed to overthrow the entirety of evidence showing that her residence in the Philippines commenced in May 2005.

Petitioner was able to prove the fact of the reestablishment of her domicile in the Philippines since May 2005.

Section 2, Article VII of the Constitution requires that a candidate for president be "a resident of the Philippines for at least ten years immediately preceding such election." The term residence, as it is used in the 1987 Constitution and previous Constitutions, has been understood to be synonymous with domicile.[99] Domicile means not only the intention to reside in one place, but also personal presence therein coupled with conduct indicative of such intention.[100] It is the permanent home and the place to which one intends to return whenever absent for business or pleasure as shown by facts and circumstances that disclose such intent.[101]

Domicile is classified into three: (1) domicile of origin, which is acquired at birth by every person; and (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.[102]

Domicile by operation of law applies to infants, incompetents, and other persons under disabilities that prevent them from acquiring a domicile of choice.[103] It also accrues by virtue of marriage when the husband and wife fix the family domicile.[104]

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[99] *Co v. HRET,* G.R. Nos. 92191-92 & 92202-03, 30 July 1991.

[100] *Nuval v. Guray,* G.R. No. L-30241, 29 December 1928.

[101] *Corre v. Corre,* G.R. No. L-l0128, 13 November 1956.

[102] *Ugdoracion, Jr. v. COMELEC,* G.R. No. 179851, 18 April 2008.

[103] 25 Am Jur 2d, Domicil § 13, cited in the Concurring and Dissenting Opinion of *J.* Puno, *Macalintal v. COMELEC,* G.R. No. 157013, 10 July 2003.

[104] *Limbona v. COMELEC,* G.R. No. 181097, 25 June 2008.

A person's domicile of origin is the domicile of his parents.[105] It is not easily lost and continues even if one has lived and maintained residences in different places.[106] Absence from the domicile to pursue a profession or business, to study or to do other things of a temporary or semi-permanent nature, and even travels abroad,[107] does not constitute loss of residence.[108]

In contrast, immigration to a foreign country with the intention to live there permanently constitutes an abandonment of domicile in the Philippines.[109] In order to qualify to run for public office in the Philippines, an immigrant to a foreign country must waive such status as manifested by some act or acts independent of and done prior to the filing of the certificate of candidacy.[110]

A person can have but one domicile at a time.[111] Once established, the domicile remains until a new one is acquired.[112] In order to acquire a domicile by choice, there must concur: (a) physical presence in the new place, (b) an intention to remain there *(animus manendi),* and (c) an intention to abandon the former domicile *(animus non revertendi).*[113]

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[105] *Romualdez-Marcos v. COMELEC,* G.R. No. 119976, 18 September 1995.

[106] *Romualdez-Marcos v. COMELEC,* G.R. No. 119976, 18 September 1995.

[107] *Japzon v. COMELEC,* G.R. No. 180088, 19 January 2009; *Gayo v. Verceles,* G.R. No. 150477, 28 February 2005.

[108] *Sabili v. COMELEC,* G.R. No. 193261, 24 April 2012; *Papandayan, Jr. v. COMELEC,* G.R. No. 147909, 16 April 2002; *Romualdez-Marcos v. COMELEC,* G.R. No. 119976, 18 September 1995; *Co v. HRET,* G.R. Nos. 92191-92 & 92202-03, 30 July 1991; *Faypon v. Quirino,* G.R. No. L-7068, 22 December 1954.

[109] *Caasi v. CA,* G.R. Nos. 88831 & 84508, 8 November 1990.

[110] *Caasi v. CA,* G.R. Nos. 88831 & 84508, 8 November 1990.

[111] *Jalosjos v. COMELEC,* G.R. No. 191970, 24 April 2012.

[112] *Jalosjos v. COMELEC,* G.R. No. 191970, 24 April 2012.

[113] *Gallego v. Verra,* G.R. No. L-48641, 24 November 1941.

Without clear and positive proof of the concurrence of these requirements, the domicile of origin continues.[114] In *Gallego v. Verra,*[115] we emphasized what must be shown by the person alleging a change of domicile:

The purpose to remain in or at the domicile of choice must be for an indefinite period of time. The acts of the person must conform with his purpose. The change of residence must be voluntary; the residence at the place chosen for the domicile must be actual; and to the fact of residence there must be added the *animus manendi.*[116]

The question of whether COMELEC committed grave abuse of discretion in its conclusion that petitioner failed to meet the durational residency requirement of 10 years goes into the COMELEC's appreciation of evidence. In *Sabili v. COMELEC,*[117] we held that:

As a general rule, the Court does not ordinarily review the COMELEC's appreciation and evaluation of evidence. However, exceptions thereto have been established, including when the COMELEC's appreciation and evaluation of evidence become so grossly unreasonable as to turn into an error of jurisdiction. In these instances, the Court is compelled by its bounden constitutional duty to intervene and correct the COMELEC's error.[118]

Sabili was an instance of grossly unreasonable appreciation in evaluation of evidence, very much like the lopsided evaluation of evidence of the COMELEC in the present case.

Further, in *Mitra v. COMELEC,*[119] we held that COMELEC's use of wrong or irrelevant considerations in the resolution of an issue constitutes grave abuse of discretion:

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[114] *Dumpit-Michelena v. Boado,* G.R. Nos. 163619-20, 17 November 2005.

[115] *Gallego v. Verra,* G.R. No. L-48641, 24 November 1941.[116] *Gallego v. Verra,* G.R. No.L-48641, 24 November 1941, p. 456.

[117] *Id.*

[118] *Id.* at 668.

[119] G.R. No. 191938, 2 July 2010.

As a concept, "grave abuse of discretion" defies exact definition; generally, it refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction;" the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough; it must be grave. **We have held, too, that the use of wrong or irrelevant considerations in deciding an issue is sufficient to taint a decision-maker's action with grave abuse of discretion.**

Closely related with the limited focus of the present petition is the condition, under Section 5, Rule 64 of the Rules of Court, that findings of fact of the COMELEC, supported by substantial evidence, shall be final and non-reviewable. Substantial evidence is that degree of evidence that a reasonable mind might accept to support a conclusion.

In light of our limited authority to review findings of fact, we do not ordinarily review in a certiorari case the COMELEC's appreciation and evaluation of evidence. Any misstep by the COMELEC in this regard generally involves an error of judgment, not of jurisdiction. (Emphasis supplied)

However, before going into a discussion of the evidence submitted by petitioner, a threshold issue must first be resolved: whether petitioner's status as a visa-free *balikbayan* affected her ability to establish her residence in the country. I believe that it did not.

The Philippines' Balikbayan Program

On 31 July 1973, President Marcos issued Letter of Instructions No. (LOI) 105[120] designating the period from 1

[120] Designating 1 September 1973 to 28 February 1974 as a Homecoming Season for Overseas Filipinos. Pursuant to the program, the executive departments were mobilized to welcome and extend privileges to overseas Filipinos who are coming home to the Philippines. It called for the preparation of a hospitality program for overseas Filipinos, as well as the offering of promotional round-trip airline fares for foreign and domestic flights. A temporary "tax holiday" was also declared for the Homecoming Season in

September 1973 to 28 February 1974 as a "Homecoming Season" for Filipinos – and/or their families and descendants – who are now residents or citizens of other countries (referred to as overseas Filipinos). Due to its overwhelming success,[121] the *Balikbayan* Program was extended. This was further enhanced in 1974 under LOI 163.[122]

In 1975, professionals and scientists were targeted in the program by encouraging their return under LOI 210, and then by PD 819. Overseas Filipino scientists and technicians were being encouraged to come home and apply their knowledge to the development programs of the country, and to take advantage of the *Balikbayan* Program. It was also decreed

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which all tax clearance requirements involved in the travel of overseas Filipinos to and from the Philippines shall be suspended and waived. A program of rewards was initiated for local governments which are able to invite the most number of overseas Filipinos. The presidential issuance also constituted a National Hospitality Committee for Overseas Filipinos, which shall organize and supervise the operations of local hospitality committees, especially in regard to sharing with overseas Filipinos a traditional Filipino Christmas.

[121] The introductory statement of LOI No. 163 dated 7 February 1974 provides:

While projected arrivals by February 28 was 30,000, the 35,000th *Balikbayan* participant has already actually arrived as of this date.

Numerous requests and petitions for the extension of the *Balikbayan* program have been received by the Office of the President and the Department of Tourism from individual Overseas Filipinos, from associations thereof, and from officials of the Philippine foreign service. They cite as reasons the non-coincidence of the original Homecoming season (1 September 1973 to 28 February 1974) with the school vacation period overseas, and the lack of time of Overseas Filipinos to arrange for their vacations and leave of absences from their occupations due to the suddenness of the launching of the *Balikbayan* program.

A common reason, moreover, is that, with the stories about the new Philippines related by *Balikbayan* participants who have returned to their overseas residences, our countrymen who were unable to participate in *Balikbayan* are now more eager than ever to observe for themselves the New Society in action and to share the pride of the new Filipino in himself and in his reborn nation.

[122] Six-month Extension of the *Balikbayan* Program.

that any overseas Filipino arriving in the Philippines under the *Balikbayan* Program shall be authorized to remain in the country for a period of one year from the date of arrival within the extended period.

Pursuant to the stated purpose of LOI 210, P.D. 819[123] was issued on 24 October 1975 in recognition of the "need of attracting foreign-based scientists, professionals, or persons with special skill or expertise who are of Filipino descent or origin."[124] It was decreed that these persons, who are licensed to practice their profession, special skill or expertise in their host, adopted or native countries, may practice their profession, special skill or expertise while staying in the Philippines either on a temporary or permanent basis, together with their families upon approval by the Secretary of Health. They are only required to register with the Professional Regulation Commission, regardless of whether or not their special skill or expertise falls within any of the regulated professions and vocations in the Philippines, and pay the required license fee. They are entitled to all incentives, benefits and privileges granted to or being enjoyed by overseas Filipinos *(balikbayans).*

As a means of attracting more "returnees,"[125] LOI 1044 provided for additional incentives such as attendance in international scientific conferences, seminars, meetings along the field of expertise with the **travel of the returnees funded by the program at least once per year**. Also, they shall **have priority to obtain housing loans** from GSIS, SSS and Development Bank of the Philippines to assure their continued stay in the country.

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[123] Declaring A Balik-Scientist Program, Allowing any Foreign-Based Scientist, Professional, Technician, or any Person with Special Skill or Expertise who is of Filipino Origin or Descent to Practice His/Her Profession or Expertise in the Philippines and Aligning Incentives for Him/Her and for Other Purposes.

[124] 5th "Whereas" clause of P.D. 819.

[125] "Now, therefore" clause of LOI 1044.

By virtue of LOI 272-A[126], the *Balikbayan* Program was extended to another period beginning 1 March 1976 to 28 February 1977 featuring the same incentives and benefits provided by LOI 210. It was again extended to 28 February 1978,[127] to 28 February 1979,[128] to 29 February 1980,[129] and to 28 February 1981.[130]

On 28 February 1981, President Marcos issued Executive Order No. (EO) 657 extending the *Balikbayan* Program for overseas Filipinos for a period of five years beginning 1 March 1981 to 28 February 1986.

Executive Order No. (E.O.) 130[131] issued on 25 October 1993 by President Ramos institutionalized the *Balik* Scientist Program under the Department of Science and Technology (DOST) but with different features. It defined a *Balik* Scientist as a science or technology expert who is a Filipino citizen or a foreigner of Filipino descent, residing abroad and contracted by the national government to return and work in the Philippines along his/her field of expertise for a short term with a duration of at least one month (Short-Term Program) or long term with a duration of at least two years (Long-Term Program).

A *Balik* Scientist under the Short-Term Program may be entitled to free round-trip economy airfare originating from a foreign country to the Philippines by direct route, and grants-in-aid for research and development projects approved by the Secretary of Science and Technology.

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[126] Extension of the "BALIKBA YAN" Program dated 9 February 1976.

[127] LOI 493 entitled Extension of Effectivity of the Balikbayan Program dated 30 December 1976.

[128] LOI 652 entitled Extension of the Balikbayan Program dated 6 January 1978.

[129] LOI 811 entitled Extension of Period for Operation of the Balikbayan Program dated 14 February 1979.

[130] LOI 985 entitled Extension of the Balikbayan Program dated 21 January 1980.

[131] Instituting the Balik Scientist Program under the Department of Science and Technology.

A *Balik* Scientist under the Long-Term Program and returning new graduates from DOST-recognized science and technology foreign institutions may be entitled to the following incentives:

1. Free one-way economy airfare from a foreign country to the Philippines, including airfare for the spouse and two minor dependents; and free return trip economy airfare after completion of two years in the case of *Balik* Scientists, and three years in the case of new graduates;
2. Duty-free importation of professional instruments and implements, tools of trade, occupation or employment, wearing apparel, domestic animals, and personal and household effects in quantities and of the class suitable to the profession, rank or position of the persons importing them, for their own use and not for barter or sale, in accordance with Section 105 of the Tariff and Customs Code;
3. No-dollar importation of motor vehicles;
4. Exemption from payment of travel tax for Filipino permanent residents abroad;
5. Reimbursement of freight expenses for the shipment of a car and personal effects;
6. Reimbursement of the freight expenses for 2-1/2 tons volume weight for surface shipment of a car and personal effects, as well as excess baggage not exceeding 20 kilograms per adult and 10 kilograms per minor dependent when travelling by air;
7. Housing, which may be arranged through predetermined institutions;
8. Assistance in securing a certificate of registration without examination or an exemption from the licensure requirement of the Professional Regulation Commission to practice profession, expertise or skill in the Philippines;
9. Grants-in-aid for research and development projects approved by the Secretary of Science and Technology; and

10. Grant of special non-immigrant visas[132] under Section 47 (a) (2) of the Philippine Immigration Act of 1940, as amended, after compliance with the requirements therefor.

R.A. 6768,[133] enacted on 3 November 1989, instituted a *Balikbayan* Program under the administration of the Department of Tourism to attract and encourage overseas Filipinos to come and visit their motherland. Under R.A. 6768, the term *balikbayan* covers Filipino citizens who have been continuously out of the Philippines for a period of at least one year; Filipino overseas workers; and former Filipino citizens and their family who had been naturalized in a foreign country and comes or returns to the Philippines.

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[132] Special non-immigrant visas are issued in accordance with Section 47 of The Philippine Immigration Act of 1940, as amended. It states:

Section 47. Notwithstanding the provisions of this Act, the President is authorized —

(a) When the public interest so warrants —

(1) To waive the documentary requirements for any class of nonimmigrants, under such conditions as he may impose;

(2) To admit, as nonimmigrants, aliens not otherwise provided for by this Act, who are coming for temporary period only, under such conditions as he may prescribe;

(3) To waive the passport requirements for immigrants, under such conditions as he may prescribe;

(4) To reduce or to abolish the passport visa fees in the case of any class of nonimmigrants who are nationals of countries which grant similar concessions to Philippine citizens of a similar class visiting such countries;

(5) To suspend the entry of aliens into the Philippines from any country in which cholera or other infectious or contagious disease is prevalent;

(b) For humanitarian reasons, and when not opposed to the public interest, to admit aliens who are refugees for religious, political, or racial reasons, in such classes of cases and under such conditions as he may prescribe.

[133] An Act Instituting a *Balikbayan* Program.

The law provided various privileges to the *balikbayan*:

1. Tax-free maximum purchase in the amount of US$1,000 or its equivalent in other acceptable foreign currencies at Philippine duty-free shops;
2. Access to a special promotional/incentive program provided by the national flag air carrier;
3. Visa-free entry to the Philippines for a period of one year for foreign passport holders, with the exception of restricted nationals;
4. Travel tax exemption;[134] and
5. Access to especially designated reception areas at the authorized ports of entry for the expeditious processing of documents.

It is emphasized inthe law that the privileges granted thereunder shall be in addition to the benefits enjoyed by the *balikbayan* under existing laws, rules and regulations.

R.A. 9174[135] dated 7 November 2002 amended R.A. 6768 by extending further the privileges of a *balikbayan* to include:

1. *Kabuhayan* shopping privilege through an additional tax-exempt purchase in the maximum amount of US$2,000 or its equivalent in Philippine peso and other acceptable foreign currencies, exclusively for the

[134] Presidential Decree No. 1183 (Amending and Consolidating the Provisions on Travel Tax of Republic Act No. 1478 as Amended and Republic Act No. 6141, Prescribing the Manner of Collection Thereof, Providing Penalties for Violations Thereof, and for Other Purposes, dated 21 August 1977) and Executive Order No. 283 (Restructuring the Travel Tax Exemptions and Restoring the Reduced Rates on Certain Individuals, Amending for this Purpose, Presidential Decree No. 1183, as Amended, dated July 25, 1987) exempted only Filipino overseas contract workers from the payment of the travel tax.

[135] An Act Amending Republic Act Numbered 6768, Entitled, "An Act Instituting A "Balikbayan Program," by Providing Additional Benefits and Privileges to Balikbayan and for Other Purposes.

purchase of livelihood tools at all government-owned and - controlled/operated duty-free shops;

2. **Access to necessary entrepreneurial training and livelihood skills programs and marketing assistance, including the *balikbayan's* immediate family members, under the government's reintegration program;** and
3. Access to accredited transportation facilities that will ensure their safe and convenient trips +upon arrival.

It was again emphasized that the privileges granted shall be in addition to the benefits enjoyed by the *balikbayan* under existing laws, rules and regulations.

Balikbayans are not Mere Visitors

As shown by the foregoing discussion, the *Balikbayan* Program, as conceptualized from the very beginning, envisioned a system not just of welcoming overseas Filipinos (Filipinos and/or their families and descendants who have become permanent residents or naturalized citizens of other countries) as short-term visitors of the country, but more importantly, one that will encourage them to come home and once again become permanent residents of the Philippines.

Notably, the program has no regard at all for the citizenship of these overseas Filipinos. To qualify for the benefits, particularly the exemptions from the payment of customs duties and taxes on personal effects brought home and tax exemptions for local purchases, all they have to do is prove their desire to become permanent residents of the Philippines. This is done through the simple expedient of the presentation of the official approval of change of residence by the authorities concerned in their respective foreign host countries.

As originally intended in the case of the *balik* scientists, they are also welcome to practice their profession, special skill or expertise while staying in the Philippines either on temporary or permanent bases. Again, there was no regard for their citizenship considering that the program is open to both foreign-based Filipinos and those of Filipino origin or descent, as long

as they were licensed to practice their profession, special skill or expertise in their host, adopted or native countries.

Therefore, as far as our immigration laws are concerned with regard to *balikbayans,* they and their families may reside in the Philippines either on temporary or permanent bases even though they remain nationals of their host, adopted or native countries. The special treatment accorded to *balikbayans* finds its roots in recognition of their status as former Filipinos and not as mere aliens.

Further militating against the notion of *balikbayans* as mere visitors of the country are the privileges accorded to them under R.A. 9174, the current *balikbayan* law. It specifically provides for a *Kabuhayan* shopping privilege for the purchase of livelihood tools as well as access to the necessary entrepreneurial training and livelihood skills programs and marketing assistance in accordance with the existing rules on the government's reintegration program.

Livelihood tools have been defined as "instruments used by hand or by machine necessary to a person in the practice of his or her trade, vocation or profession, such as hand tools, power tools, precision tools, farm tools, tools for dressmaking, shoe repair, beauty parlor, barber shop and the like,"[136] as well as a computer unit and its accessories.

Access to the reintegration program is one of the social services and family welfare assistance benefits (aside from insurance and health care benefits, loan guarantee fund, education and training benefits and workers assistance and on-site services) that are available, to Overseas Workers Welfare Administration (OWWA) members.[137] It incorporates community organizing, capability-building, livelihood loans and other social preparations subject to the policies formulated by the OWWA Board.[138]

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[136] Republic Act No. 6768, as emended by Republic Act No. 9174, Section 2(c).

[137] OWWA Board Resolution No. 038-03 dated 19 September 2003 entitled Guidelines on OWWA Membership, Article VIII, Section 2(4)(b).

[138] *Id.* at Section 6(b).

The reintegration program aims to prepare the OFW in his/her return to Philippine society.[139] It has two aspects.The first is reintegration preparedness (On-Site) which includes interventions on value formation, financial literacy, entrepreneurial development training (EDT), technological skills and capacity building.[140] The second is reintegration proper (In- Country) which consists of job referrals for local and overseas employment, business counselling, community organizing, financial literacy seminar, networking with support institutions and social preparation programs.[141]

As the Philippine government's reintegration manager,[142] the Department of Labor and Employment National Reintegration Center for OFWs (NRCO) provides the following services:

1. Develop and support programs and projects for livelihood, entrepreneurship, savings, investments and, financial literacy for returning Filipino migrant workers and their families in coordination with relevant stakeholders, service providers and international organizations;
2. Coordinate with appropriate stakeholders, service providers and relevant international organizations for the promotion, development and the full utilization of overseas Filipino worker returnees and their potentials;
3. Institute, in cooperation with other government agencies concerned, a computer-based information system on returning Filipino migrant workers which shall be accessible to all local recruitment agencies and employers, both public and private;

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[139] < http://www.owwa.gov.ph/?g=content/programs-services>, (last visited 9 March 2016).

[140] *Id.*

[141] *Id.*

[142] < http://nrco.dole.gov.ph/index.php/about-us/who-we-are>, (last visited 9 March 2016).

4. Provide a periodic study and assessment of job opportunities for returning Filipino migrant workers;
5. Develop and implement other appropriate programs to promote the welfare of returning Filipino migrant workers;
6. Maintain an internet-based communication system for on-line registration and interaction with clients, and maintain and upgrade computer-based service capabilities of the NRCO;
7. Develop capacity-building programs for returning overseas Filipino workers and their families, implementers, service providers, and stakeholders; and
8. Conduct research for policy recommendations and program development.[143]

While the reintegration program covers only OFWs,[144] non-OFW *balikbayans* can also avail of possible livelihood training in coordination with the Department of Tourism, the Technology and Livelihood Resource Center and other training institutions.[145]

R.A. 9174 is the government's latest thrust in its consistent efforts in attracting *balikbayans* to come home to the Philippines and build a new life here. Notwithstanding our immigration laws, *balikbayans* may continue to stay in the Philippines for the long-term even under a visa-free entry, which is extendible upon request.[146]

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[143] Republic Act No. 8042 (Migrant Workers and Overseas Filipinos Act of 1995), as amended by Republic Act No. 10022 dated 8 March 2010, Section 17.

[144] An OFW is a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a citizen or on board a vessel navigating the foreign seas other than a government ship used for military or non-commercial purposes or on an installation located offshore or on the high seas [Republic Act No. 8042, Section 3(a)].

[145] Republic Act No. 6768, as amended by Republic Act No. 9174, Section 6, par. 2.

[146] <http://www.immigration.gov.ph/faqs/visa-inquiry/balikbayan-previlege>The website of the Bureau of Immigration states:

Those who are admitted as Balikbayans are given an initial stay of one (1) year. They may extend their stay for another one (1), two (2) or six (6) months

It must be emphasized that none of the Court's previous decisions has ever looked at the very extensive privileges granted to Balikbayan entrants.

Coquilla, Japzon, Caballero, Jalosjos and the Balikbayan Program

In ruling that petitioner can only be said to have validly re-established her residency in the Philippines when she reacquired her Philippine citizenship, the COMELEC invoked the ruling in *Coquilla v. COMELEC.*[147]

In *Coquilla,* petitioner was a former natural-born citizen and who reacquired Philippine citizenship on November 10, 2000. He was not able to show by any evidence that he had been a one-year resident of Oras, Eastern Samar prior to the May 14, 2001 local elections. His argument was that he had been a resident of the said town for two years, but was not able to show actual residence one year from before the said election. Evidence shows on the contrary that his last trip to the United States, of which he was a former citizen was from July 6 to August 5, 2000. The only evidence he was able to show was a residence certificate and his bare assertion to his townmates that he intended to have himself repatriated. He did not make much of a claim, except to advert to the fulfillment of the required residence by cumulating his visits and actual residence. The Court said:

> Second, it is not true, as petitioner contends, that he reestablished residence in this country in 1998 when he came back to prepare for the mayoralty elections of Oras by securing a Community Tax Certificate in that year and by constantly declaring to his townmates of his intention to seek repatriation and run for mayor in the May 14, 2001 elections. The status of being an alien and a non-resident can be waived either separately, when one acquires the status of a resident alien before acquiring Philippine citizenship, or at the same

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provided that they present their valid passport and filled out the visa extension form and submit it to the Visa Extension Section in the BI Main Office or any BI Offices nationwide. An additional requirement will be ask (sic) for (sic) Balikbayans who have stayed in the Philippines after thirty six (36) months.

[147] G.R. No. 151914, 31 July 2002.

time when one acquires Philippine citizenship. As an alien, an individual may obtain an immigrant visa under 13 of the Philippine Immigration Act of 1948 and an Immigrant Certificate of Residence (ICR) and thus waive his status as a non- resident. On the other hand, he may acquire Philippine citizenship by naturalization under C.A. No. 473, as amended, or, if he is a former Philippine national, he may reacquire Philippine citizenship by repatriation or by an act of Congress, in which case he waives not only his status as an alien but also his status as a non-resident alien.

In the case at bar, the only evidence of petitioners status when he entered the country on October 15, 1998, December 20, 1998, October 16, 1999, and June 23, 2000 is the statement Philippine Immigration Balikbayan in his 1998-2008 U.S. passport. As for his entry on August 5, 2000, the stamp bore the added inscription good for one year stay. Under Section 2 of R.A. No. 6768 (An Act Instituting a *Balikbayan* Program), the term *balikbayan* includes a former Filipino citizen who had been naturalized in a foreign country and comes or returns to the Philippines and, if so, he is entitled, among others, to a visa-free entry to the Philippines for a period of one (1) year (3(c)). It would appear then that when petitioner entered the country on the dates in question, he did so as a visa-free *balikbayan* visitor whose stay as such was valid for one year only. Hence, petitioner can only be held to have waived his status as an alien and as a non-resident only on November 10, 2000 upon taking his oath as a citizen of the Philippines under R.A. No. 8171. He lacked the requisite residency to qualify him for the mayorship of Oras, Eastern, Samar.

Note that the record is bare of any assertion, unlike in the case before Us, that Coquilla had bought a residence, relocated all his effects, established all the necessities of daily living to operationalize the concept of actual residence to show residence for the minimum period of one year. Even if in fact the period of reckoning for Coquilla were to start from his entry into the country on 5 August 2000, it would still be only nine months; thus there was not even any necessity to discuss the effect of his having been classified as a *Balikbayan* when he entered the country in 1998, 1999 and 2000.

The COMELEC tries to assert that its interpretation of the ruling in *Coquilla* was carried over in *Japzon v. COMELEC*[148] and *Caballero v. COMELEC*[149] as to bar petitioner's claims on residency. The COMELEC is dead wrong.

In *Japzon,* private respondent Ty was a natural-born Filipino who left to work in the US and eventually became an American citizen. On 2 October 2005, Ty reacquired his Filipino citizenship by taking his Oath of Allegiance to the Republic of the Philippines in accordance with the provisions of Republic Act No. (R.A.) 9225.[150] Immediately after reacquiring his Philippine citizenship, he performed acts (i.e. applied for a Philippine passport, paid community tax and secured Community Tax Certificates (CTC) and registered as a voter) wherein he declared that his residence was at General Macarthur, Eastern Samar. On 19 March 2007, **Ty renounced his American citizenship before a notary public. Prior to this, however, Ty had been bodily present in General Macarthur, Eastern Samar for a more than a year before the May 2007 elections. As such, the Court brushed aside the contention that Ty was ineligible to run for mayor on the ground that he did not meet the one-year residency requirement. If anything,** *Japzon* reinforces petitioner's position.

In *Caballero,* petitioner was a natural-born Filipino who was naturalized as a Canadian citizen. On 13 September 2012, petitioner took his Oath of Allegiance to the Republic of the Philippines in accordance with the provisions of Republic Act No. 9225. On 1 October 2012, he renounced his Canadian citizenship. He filed his certificate of candidacy for mayor of Uyugan, Batanes on 3 October 2012.

We ruled that it was incumbent upon petitioner to prove that he made Uyugan, Batanes his domicile of choice upon reacquisition of his Philippine citizenship. Aside from his

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[148] G.R. No. 180088, 19 January 2009.

[149] G.R. No. 209835, 22 September 2015.

[150] Citizenship Retention and Re-acquisition Act of 2003.

failure to discharge this burden, the period reckoned from 13 September 2012 to the May 2013 elections is only nine months – clearly short of the required one-year residency requirement for mayoralty candidates. Caballero is thus clearly not applicable. Indeed, it is to be noted that it is only Justice Brion in his Separate Concurring Opinion who opines that a permanent resident visa is required for reestablishment of domicile to take place, a view not shared by the majority.

Justice Brion needed to state in his Separate Concurring Opinion that a permanent residency visa is necessary for the start of residency for election purposes is precisely because such view is not found in the Ponencia, hence, contraries to be legally inapplicable.

There are categorical rulings in U.S. state courts that are squarely as all fours with the petition before us. In *Elkins v. Moreno,*[151] **aliens with a non-immigrant visa were considered as having the legal capacity to change their domiciles.** In reaching this conclusion, the US Supreme Court took into account the intention of Congress when it enacted the terms and restrictions for specific classes of non-immigrants entering the United States:

> Although nonimmigrant aliens can generally be viewed as temporary visitors to the United States, the nonimmigrant classification is by no means homogeneous with respect to the terms on which a nonimmigrant enters the United States. For example, Congress expressly conditioned admission for some purposes on an intent not to abandon a foreign residence or, by implication, on an intent not to seek domicile in the United States. Thus, the 1952 Act defines a visitor to the United States as "an alien . . . having a residence in a foreign country which he has no intention of abandoning" and who is coming to the United States for business or pleasure. Similarly, a nonimmigrant student is defined as "an alien having a residence in a foreign country which he has no intention of abandoning . . . and who seeks to enter the United States temporarily and solely for the purpose of pursuing . . . a course of study . . ." See also (aliens in

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[151] 435 U.S. 647 (1978).

"immediate and continuous transit"); (vessel crewman "who intends to land temporarily"); (temporary worker having residence in foreign country "which he has no intention of abandoning").

By including restrictions on intent in the definition of some nonimmigrant classes, Congress must have meant aliens to be barred from these classes if their real purpose in coming to the United States was to immigrate permanently. x x x.

But Congress did *not* restrict every nonimmigrant class. In particular, no restrictions on a nonimmigrant's intent were. placed on aliens admitted under §101(a)(15)(G)(iv). Since the 1952 Act was intended to be a comprehensive and complete code, the conclusion is therefore inescapable that, where as with the G-4 class Congress did not impose restrictions on intent, this was deliberate. Congress' silence is therefore pregnant, and we read it to mean that Congress, while anticipating that permanent immigration would normally occur through immigrant channels, was willing to allow nonrestricted nonimmigrant aliens to adopt the United States as their domicile.

Under present law, therefore, were a G-4 alien to develop a subjective intent to stay indefinitely in the United States he would be able to do so without violating either the 1952 Act, the Service's regulations, or the terms of his visa. Of course, should a G-4 alien terminate his employment with an international treaty organization, both he and his family would lose their G-4 status. Nonetheless, such an alien would not necessarily be subject to deportation nor would he have to leave and re-enter the country in order to become an immigrant.[152] **(Citations omitted) (Emphasis supplied)**

In *Toll v. Morena,*[153] the Supreme Court of Maryland applied the ruling in *Elkins* and held that the ordinary legal standard for the establishment of domicile may be used even for non-immigrants:

If under federal law a particular individual must leave this country at a certain date, or cannot remain here indefinitely, then he could

[152] *Id*.

[153] 284 Md. 425 (1979).

not become domiciled in Maryland. Any purported intent to live here indefinitely would be inconsistent with law. It would at most be an unrealistic subjective intent, which is insufficient under Maryland law to establish domicile.

x x x x x x x x x

In light of the Supreme Court's interpretation of federal law, **it is obvious that nothing inherent in the nature of a G-4 visa would render the holder of such visa absolutely incapable of establishing a Maryland domicile. Assuming the correctness of the defendant's assertion that most G-4 visa holders will leave this country, if in a particular case one of these individuals is in a minority and, as shown by objective factors, intends for Maryland to be his fixed place of abode and intends to remain here indefinitely, he will have satisfied the Maryland standard for establishing domicile in this State.**

The fact that an alien holds a non-immigrant visa is thus not controlling. What is crucial in determining whether an alien may lawfully adopt a domicile in the country is the restriction placed by Congress on a specific type of non-immigrant visa. **So long as the intended stay of a non-immigrant does not violate any of the legal restriction, sufficient *animus manendi* may be appreciated and domicile may be established.**

In the case of *balikbayans,* the true intent of Congress to treat these overseas Filipinos not as mere visitors but as prospective permanent residents is evident from the letter of the law. While they are authorized to remain in the country for a period of only one year from their date of arrival, the laws, rules and regulations under the *Balikbayan* Program do not foreclose their options should they decide to actually settle down in the country. In fact, the *Balikbayan* Program envisions a situation where former Filipinos would have been legally staying in the Philippines visa-free for more than 36 months.[154] In the

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[154] The website of the Bureau of Immigration states:

Those who are admitted as Balikbayans are given an initial stay of one (1) year. They may extend their stay for another one (1), two (2) or six (6) months provided that they present their valid passport and filled outthe visa extension form and submit it to the Visa Extension Section in the BI

case of petitioner Poe, she entered the Philippines visa-free under the *Balikbayan* program, left for a short while and legally re-entered under the same program. This is not a case where she abused any *Balikbayan* privilege because shortly after reentering the country on 11 March 2006,[155] she applied for dual citizenship under R.A. 9225.

Based on the foregoing, it was most unfair for COMELEC to declare that petitioner could not have acquired domicile in the Philippines in 2005 merely because of her status as a *balikbayan.* Her visa (or lack thereof) should not be the sole determinant of her intention to reacquire her domicile in the Philippines.

Congress itself welcomes the return of overseas Filipinos without requiring any type of visa. Although visa-free entry is for a limited time, the period is extendible and is not conditioned upon the acquisition of a permanent resident visa. Considering that the law allows a *balikbayan* to stay in the Philippines for a certain period even without a visa and to settle in the country during that period, there is no reason to reject petitioner's intent to re-establish a residence from the date she entered the country. In fact, petitioner's permanent resettlement, as one millions of Filipino who had gone abroad, is an end-goal of the *Balikbayan* Program.

If we were to apply the standard for determining the effect of a visa on the ability of petitioner to re-establish her domicile in the Philippines, the U.S. cases of *Elkins v. Moreno* and *Toll v. Moreno,* beg the question: Does her entry as a *Balikbayan* restrict her from re-establishing her domicile in the Philippines? The answer would be a resounding NO, for precisely the legislative policy of the *Balikbayan* Program is to assist in the reintegration of former Filipino citizen back into the country.

Main Office or any BI Offices nationwide. An additional requirement will be ask (sic) for (sic) Balikbayans Who have stayed in the Philippines after thirty six (36 months).

This is available at *http://www.immigratian.gav.ph/faqs/visa-inquiry/balikbayan-privilege.* (last visited 8 March 2016).

[155] Petition to Deny Due Course, dated 21 Oct. 2015 (Elamparo), Annex E.

The Court must also note that the visa-free entry is good for one year and renewable, even to the extent of authorizing the *Balikbayan* to stay much longer. The *Balikbayan* program is fully compatible and supportive of the re-establishment by a *Balikbayan of her* residence in her native land, her domicile of origin.

And this is not a case when petitioner abused the privileges of visa-free entry considering that, a year after her relocation, she immediately took steps to reacquire her Philippine citizenship.

Petitioner was able to prove that she reacquired her domicile in the Philippines beginning May 2005.

As discussed, there are only three requisites for a person to acquire a new domicile by choice: (1) residence or bodily presence in the new domicile; (2) an intention to remain there; and (3) an intention to abandon the old domicile.[156] In my view, the pieces of evidence submitted by petitioner sufficiently prove that she re-established her domicile in the Philippines as early as May 2005.

I shall discuss the fulfillment of the requirements in the following order: (1) intention to remain in the new domicile; (2) intention to abandon the old domicile; and (3) bodily residence in the new domicile.

Intent to Establish a New Domicile

To prove her intent to establish a new domicile in the Philippines on 24 May 2005, petitioner presented the following evidence: (1) *school records* indicating that her children attended Philippine schools starting June 2005;[157] (2) *Taxpayer's*

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[156] *Jalosjos v. COMELEC,* G.R. No. 193314, 26 February 2013; *Mitra v. COMELEC,* G.R. No. 191938, 2 July 2010; *Gayo v. Verceles,* G.R. No. 150477, 28 February 2005.

[157] Petitioner submitted as evidence Exhibit "7", which is Brian's official transcript of records from the Beacon School in Taguig City. It states that Brian was enrolled in Grade 8 at the Beacon School for

Identification Number (TIN) Card,[158] showing that she registered with and secured the TIN from the BIR on 22 July 2005; (3) *Condominium Certificates of Title (CCTS)*[159]*and Tax Declarations* covering Unit 7F and a parking slot at One Wilson Place Condominium, 194 Wilson Street, San Juan, Metro Manila, purchased in early 2005 and served as the family's temporary residence; (4) *Transfer Certificate of Title (TCT)*[160] in the name of petitioner and her husband issued on 1 June 2006, covering a residential lot in Corinthian Hills, Quezon City in 2006; and (5) registration as a voter on 31 August 2006.

Enrollment of Children in Local Schools

Whether children are enrolled in local schools is a factor considered by courts when it comes to establishing a new domicile. In *Fernandez v. HRET,*[161] we used this *indicium:*

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the academic year 2005-2006. Exhibit 7-A, a Certification from Sandra Bernadette Firmalino, Registrar of the De La Salle High School Department, indicates that in 2006, Brian transferred to La Salle Greenhills, and that he studied there until he graduated from high school in 2009. Exhibits "7-B" and "7-C" are Hanna's permanent records at the Assumption College as an elementary and secondary student, respectively. They show that Hanna was enrolled in Grade 2 at Assumption College in Marikina City for Academic year 2005-2006.

As for Anika, petitioner alleged that Anika was just under a year old when the former and her family relocated to the Philippines in May 2005 and therefore Anika was not enrolled in any school in 2005. Petitioner presented Exhibit "7-D", which is a Certificate of Attendance dated 8 April 2015 issued by the Directress of the Learning Connection, Ms. Julie Pascual Penaloza. It states that Anika attended pre-school at the Learning Connection in San Juan City from January to March 2007. Petitioner likewise offered as evidence Exhibit "7-E", a Certification dated 14 April 2015 issued by the Directress of the Greenmeadows Learning Center, Ms. Anna Villaluna-Reyes, Anika studied at the Greenmeadows Learning Center in Quezon City for academic year 2007-2008. Exhibit "7-F" is the Elementary Pupil's Permanent Record showing that Anika spent her kindergarten and grade school years at the Assumption College. The record covers the years 2007 to 2013. The same Exhibit "7-F" indicates that Anika was born on 5 June 2004.

[158] Marked as Exhibit "8".

[159] Marked as Exhibits "11" and "12".

[160] TCT No. 290260, issued by the Register of Deeds of Quezon City.

[161] G.R. No. 187478 (2009).

In the case at bar, there are real and substantial reasons for petitioner to establish Sta. Rosa as his domicile of choice and abandon his domicile of origin and/or any other previous domicile. To begin with, petitioner and his wife have owned and operated businesses in Sta. Rosa since 2003. Their **children have attended schools in Sta. Rosa** at least since 2005. x x x (Emphasis supplied)

In *Blount v. Boston,*[162] the Supreme Court of Maryland identified location of the school attended by a person's children as one of the factors in determining a change of domicile. The discourse is reproduced here:

Where actual residence and/or place of voting are not so clear or there are special circumstances explaining particular place of abode or place of voting, court will look to myriad of other factors in deciding person's domicile, such as paying of taxes and statements on tax returns, ownership of property, **where person's children attend school,** address at which person receives mail, statements as to residency in contracts, statements on licenses or governmental documents, where personal belongings are kept, which jurisdiction's banks are utilized, and any other facts revealing contact with one or the other jurisdiction.[163] (Emphasis supplied)

The fact that petitioner's children began their schooling in the Philippines shortly after their arrival in the country in May 2005 is no longer in dispute. In its Comment, the COMELEC noted this as one of the facts "duly proven" by petitioner.[164] By "duly proven," the COMELEC explained during the oral arguments that the term meant that documentary proof substantiated the pertinent allegation:

CHIEF JUSTICE SERENO:

All right. Let me turn your attention to page 56 of the COMELEC Comment. It says, "the COMELEC noted the following facts as duly proven by the petitioner. Petitioner's children arrived in the

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[162] 718 A.2d 1111 (1984).

[163] *Id.*

[164] COMELEC Comment dated 7 January 2016, p. 56.

Philippines during the latter half of 2005. Shortly after their arrival, petitioner's children began their schooling in the country. Petitioner purchased a condominium unit in San Juan City during the second half of 2005. Petitioner and husband started the construction of their house in 2006. Petitioner and her husband informed the U.S. Postal Service in 2006 of their abandonment of their U.S. Address." What does the commission mean when it says that these facts are duly proven?

COMMISSIONER LIM:

Your Honor please, the proceeding before the commission was summary. There was a preliminary conference, submission of exhibits, stipulations, comparison between the originals and the photocopies, and offer of evidence. **We considered these facts as non-controverted in the sense that they are covered by documentary proof, Your Honor.** (Emphasis supplied)

Acquisition of a New Residence

The COMELEC, in its Comment, found the following facts to be duly proven: that petitioner purchased a condominium unit in San Juan City during the second half of 2005, and that petitioner and her husband started the construction of their house in Corinthian Hills in 2006.[165] That petitioner purchased the residential lot in Corinthian Hills is not up for debate. Taken together, these facts establish another *indicium* of petitioner's establishment of a new domicile in the Philippines.

Our very own jurisdiction treats acquisition of residential property as a factor indicating establishment of a new domicile. Take the 2012 case of *Jalosjos v. COMELEC,*[166] in which we held that Rommel Jalosjos acquired a new domicile in Zamboanga Sibugay:

Jalosjos presented the affidavits of next-door neighbors, attesting to his physical presence at his residence in Ipil. These adjoining neighbors are no doubt more credible since they have a better chance of noting his presence or absence than his other neighbors, whose affidavits Erasmo presented, who just sporadically passed by the

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[165] COMELEC Comment, page 56.

[166] G.R. No. 191970, 24 April 2012.

subject residence. **Further, it is not disputed that Jalosjos bought a residential lot in the same village where he lived and a fish pond in San Isidro, Naga, Zamboanga Sibugay.** He showed correspondences with political leaders, including local and national party-mates, from where he lived. Moreover, Jalosjos is a registered voter of Ipil by final judgment of the Regional Trial Court of Zamboanga Sibugay. (Emphasis supplied)

It has been argued that the acquisition of a temporary dwelling in Greenhills, the purchase of a residential lot in Corinthian Hills, and the eventual construction of a house in the latter place do not indicate an intent on the part of petitioner to stay in the country for good. The 2013 case of *Jalosjos v. COMELEC*[167] has been cited to support this conclusion, as we purportedly held in that case that ownership of a house "does not establish domicile."

This reading of *Jalosjos* is not accurate. By no means did *Jalosjos* rule out ownership of a house or some other property as a factor for establishing a new domicile. To appreciate the statement in its proper context, the relevant discussion in *Jalosjos* is quoted below:

Assuming that the claim of property ownership of petitioner is true, *Fernandez v. COMELEC* has established that the ownership of a house or some other property does not establish domicile. This principle is especially true in this case as petitioner has failed to establish her bodily presence in the locality and her intent to stay there at least a year before the elections, to wit:

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

As can be seen from the quoted discourse, the case did not throw out ownership of a house as a factor for determining establishment of a new domicile. Rather, it discarded ownership

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[167] *Jalosjos v. Commission on Elections,* G.R. No. 193314, 26 February 2013.

of a house as a controlling factor for determining establishment of a new domicile.

Even US courts consider acquisition of property as a badge of fixing a new domici1e.[168] In *Hale v. State of Mississipi Democratic EC,*[169] the Supreme Court of Mississippi used acquisition of a new residence as a factor for determining transfer of domicile. In that case, William Stone sought the Democratic Party nomination for Senate District 10, a district covering parts of Marshall County, including Stone's home in Holly Springs. Hale argued that Stone was not eligible to run for that office because he did not meet the two-year residency requirement. Specifically, Hale argued that Stone could not be a resident of Marshall County because Stone had not abandoned his domicile in Benton County. He had moved to Holly Springs in October 2013.

The Mississippi Supreme Court ruled that Stone had proven that he established his domicile in Marshall County. It relied, among others, on acquisition of a home in the new domicile as a factor:

> To prove his position that he had changed his domicile from Benton County to Marshall County, Stone provided an abundance of evidence. In October 2013, Stone rented a house at 305 Peel Lane in Holly Springs, the county seat of Marshall County, and he obtained utility service for the home. **In July 2014, he bought a home at 200 Johnson Park in Holly Springs.** Furthermore, he notified the Senate comptroller about his change of address, and the comptroller sent an e-mail to every member of the Senate informing them of the change.
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> x x x x x x x x x

We have held that **'[t]he exercise of political rights, admissions, declarations, the acts of purchasing a home and long-**

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[168] *Oglesby State Election Bd. v. Bayh,* 521 N.E. 2d 1313 (1988); *Farnsworth v. Jones,* 114 N.C. App. 182 (1994)*; Hale v. State of Mississippi Democratic Executive Committee* (168 So. 3d 946 (2015).

[169] No. 2015–EC–00965–SCT(2015).

continued residency are circumstances indicative of his intention to abandon his domicile of origin and to establish a new domicile.' Taking into consideration all of these factors, the circuit court did not err in determining that Stone's domicile has existed in Marshall County since October of 2013. (Emphases supplied and citations omitted)

Securing a Taxpayer's Identification Number (TIN) Card

In his Comment-Opposition to the Petition for Certiorari in G.R. Nos. 221698-700, private respondent Valdez posited that securing a TIN does not conclusively establish petitioner's *animus manendi* in the Philippines.[170] He reasons that any person, even a non-resident, can secure a TIN. On this matter, I must agree with him.

Indeed, the 1997 Tax Code mandates all persons required under our tax laws to render or file a return to secure a TIN.[171] This would include a non-resident so long as he or she is mandated by our tax laws to file a return, statement or some other document.[172] It is thus correct to say that a TIN Card does not conclusively evince the notion that petitioner is a resident of the Philippines.

Nevertheless, the significance of the TIN Card lies in the fact that it lists down the address of petitioner as No. 23 Lincoln St. West Greenhills, the very same address of her mother, Jesusa Sonora Poe, as reflected in the latter's affidavit.[173] Therefore,

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[170] *See* p. 47, par. 157.

[171] Section 236 (J) of the Tax Reform Act of 1997, R.A. No. 8424, 11 December 1997 provides:

(J) *Supplying of Taxpayer Identification Number* (TIN). — Any person required under the authority of this Code to make, render or file a return, statement or other document shall be supplied with or assigned a Taxpayer Identification Number (TIN) which he shall indicate in such return, statement or document filed with the Bureau of Internal Revenue for his proper identification for tax purposes, and which he shall indicate in certain documents, such as, but not limited to the following:

[172] *Id*.

[173] Affidavit, p. 1.

the TIN Card, which was issued on 22 July 2005, corroborates the assertion that petitioner, upon her arrival in 2005, was then staying at her mother's home.

Registration as Voter

Petitioner registered as a voter on 31 August 2006. This speaks loudly of the intent to establish a domicile in the country. In *Hale v. State of Mississippi Democratic EC,*[174] the Supreme Court of Mississippi considered registering to vote as a factor indicative of the intent to acquire a new domicile. More importantly, *Oglesby v. Williams* treats voter registration as one of the two most significant indicia of acquisition of a new domicile. The *Oglesby* discussion is informative:

> This Court's longstanding view on determining a person's domicile was stated in Roberts, where the Court wrote:
>
> > The words reside or resident mean domicile unless a contrary intent is shown. A person may have several places of abode or dwelling, but he can have only one domicile at a time. Domicile has been defined as the place with which an individual has a settled connection for legal purposes and the place where a person has his true, fixed, permanent home, habitation and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning. The controlling factor in determining a person's domicile is his intent. One's domicile, generally, is that place where he intends to be. The determination of his intent, however, is not dependent upon what he says at a particular time, since his intent may be more satisfactorily shown by what is done than by what is said. Once a domicile is determined or established a person retains his domicile at such place unless the evidence affirmatively shows an abandonment of that domicile. In deciding whether a person has abandoned a previously established domicile and acquired a new one, courts will examine and weigh the factors relating to each place. This Court has never deemed any single

[174] No. 2015–EC–00965–SCT(2015).

circumstance conclusive. **However, it has viewed certain factors as more important than others, the two most important being where a person actually lives and where he votes. Where a person lives and votes at the same place such place probably will be determined to constitute his domicile.** Where these factors are not so clear, however, or where there are special circumstances explaining a particular place of abode or place of voting, the Court will look to and weigh a number of other factors in deciding a person's domicile.

Furthermore, this Court has stated that the place of voting is the "highest evidence of domicile." ("the two most important elements in determining domicile are where a person actually lives and where he votes"); ("Evidence that a person registered or voted is ordinarily persuasive when the question of domicile is at issue," quoting Comptroller v. Lenderking). **Furthermore, actual residence, coupled with voter registration, "clearly create[s] a presumption that [the person] was domiciled"** there. ("[w]here the evidence relating to voting and the evidence concerning where a person actually lives both clearly point to the same jurisdiction, it is likely that such place will be deemed to constitute the individual's domicile"). In other words, the law presumes that where a person actually lives and votes is that person's domicile, unless special circumstances explain and rebut the presumption. (Citations omitted) (Emphases supplied)

This Court, too, shares this reverence for the place of voting as an evidence of domicile. In *Templeton v. Babcock,*[175] we held as follows:

The finding of the trial court to the effect that the deceased had acquired a domicile in the State of California is in our opinion based upon facts which sufficiently support said finding. In particular, we are of the opinion that the trial court committed no error in attaching importance to the circumstance that the deceased had voted in California elections.

Though not of course conclusive of acquisition of domicile, voting in a place is an important circumstance and, where the evidence is scanty, may have decisive weight. The exercise of the franchise is one of the highest prerogatives of citizenship, and in no other act of

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[175] G.R. No. L-28328, 2 October 1928, 52 Phil. 130-138.

his life does the citizen identify his interests with the state in which he, lives more than in the act of voting. (Emphasis supplied)

In sum, the evidence of petitioner substantiates her claim of the intent to establish a new domicile in the country. The enrollment of her children in local schools since 2005, the family's temporary stay in her mother's home followed by the purchase of the Greenhills condominium unit and the subsequent establishment of the Corinthian Hills family home, the registration of petitioner as a voter and the issuance of a TIN Card in her favor, collectively demonstrate the conclusion that she has established an incremental transfer of domicile in the country.

Respondent Valdez, however, points out that petitioner currently maintains two residential properties in the US, one purchased in 1992 and the other in 2008.[176] According to him, this is inconsistent with *animus manendi.*

This argument disregards overwhelming evidence showing that petitioner intended to establish a new domicile in the country. Petitioner has uprooted her family from Virginia, US to Manila, enrolled her children soon after her arrival in the Philippines, acquired residential properties in the new domicile – one of which now serves as the current family home – and registered as a voter. These factors all point to one direction: petitioner is in the country and is here to stay. We cannot disregard these factors, all of which establish a nexus to the new domicile, because of a solitary fact: the retention of two residential houses in the US. To be sure, it is difficult to justify a conclusion which considers only one contact in the old domicile and ignores many significant contacts established by the removing person in the new domicile.

Moreover, petitioner only admitted[177] that she owns the two houses. She never admitted that she resides in any of them. At best, what can only be established is that petitioner owns properties classified as residential properties. Undoubtedly, we cannot make

[176] Comment-Opposition to the Petition for *Certiorari* (G.R. Nos. 221698-700) dated 8 January 2015, p. 51, par. 174.

[177] Petitioner's Memorandum p. 279.

a conclusion that petitioner failed to meet the *animus manendi* requirement in the absence of proof that petitioner uses one of the properties as a place of abode. In fact, all the evidence points to the fact that she leaves the Philippines only for brief periods of time; obviously with no intention to reside elsewhere.

It is important to always remember that domicile is in the main a question of intent.[178] It requires fact-intensive analysis. Not a single factor is conclusive. It is the totality of the evidence that must be considered.

Even the US Supreme Court admitted that domicile is a difficult question of fact that its resolution commands a pragmatic and careful approach. In *The District of Columbia v. Murphy,*[179] the US High Court remarked:

> [T]he question of domicile is a difficult one of fact to be settled only by a **realistic and conscientious review** of the many relevant (and frequently conflicting) indicia of where a man's home is and according to the established modes of proof.[180]

It is interesting to note that the US Supreme Court appended a footnote on the term home in the above quoted statement. Footnote 10 states:

> Of course, this term does not have the magic qualities of a divining rod in locating domicile. **In fact, the search for the domicile of any person capable of acquiring a domicile of choice is but a search for his "home."** *See* Beale, Social Justice and Business Costs, 49 Harv.L.Rev. 593, 596; 1 Beale, Conflict of Laws, § 19.1.[181]

Now, if we are to adopt the view that petitioner failed to meet the *animus manendi* requirement on the ground that she maintains two houses in the US, I pose this question: in our search for petitioner's home, are we making a realistic and conscientious review of all the facts?

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[178] 372 Md. 360 (2002).

[179] 314 U.S. 441 (1941).

[180] 314 U.S. 456.

[181] *Id.*

Additionally, it is not required for purposes of establishing a new domicile that a person must sever all contacts with the old domicile."[182] I therefore find nothing wrong with petitioner maintaining residential properties in the old domicile.

It has been further suggested that petitioner's invocation of acquisition of residential property as a factor showing *animus manendi* does not benefit her considering that she purchased in 2008 a residential property in the US, which was subsequent to her purchase of the condominium unit and the residential lot in the Philippines, and that she maintained the one she acquired in 1992. But what is considered for *animus manendi* purposes as a factor is acquisition of a house in the new domicile. Acquisition of a house in the old domicile is not a factor for determining *animus manendi.*

That petitioner still maintains two houses in the US does not negate her abandonment of her US domicile. First, it has not been shown that petitioner actually lived in the residential house acquired in 1992. What is clear is that there was only one family home in Virginia, US, and petitioner had already reestablished her residence in the Philippines before it was even sold.

Second, the residential house acquired in 2008 has no bearing in the cases before us with regard to determining the validity of petitioner's abandonment of her US domicile, particularly because it was purchased after she had already reacquired her Filipino citizenship. In this regard, even respondent Valdez claims that "it is only upon her reacquisition of Filipino citizenship on

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[182] Superior Court of North Carolina. *Wake County. Business Court. Steve W. Fowler and Elizabeth P. Fowler v. North Carolina Department of Revenue,* No. 13 CVS 10989, 6 August 2014, citing *Hall v. Wake Cnty. Bd. of Elections,* 280 N.C. 600, 187 S .E.2d 52 (1972). See also *Robin Cates v. Olga Mescherskaya and Progressive Casualty Insurance Company.* Civil Action No. 14-00729. / Signed 1 July 2014. United States District Court, E.D. Louisiana, citing *Cox, Cox, Filo, Camel & Wilson, LLC v. Sasol North Am.,* No. 11-856, 2012 WL 262613, at *5 (W.D.La. Jan. 30, 2012).

18 July 2006, that she can be considered to have established her domicile in the Philippines."[183] This concession already leaves no question as to petitioner's abandonment of her US domicile and intent to reside permanently in the Philippines at the time that the residential house in the US was purchased in 2008.

1. Intent to Abandon the Old Domicile

To prove her intent to abandon her old domicile in the US, petitioner presented the following evidence: (1) email exchanges between petitioner or her husband and the property movers regarding relocation of their household goods, furniture and vehicles from the US to the Philippines; (2) invoice document showing delivery from the US and to the Philippines of the personal properties of petitioner and her family; (3) acknowledgment of change of address by the US Postal Service; (4) sale of the family home on 27 April 2006.

Plans to Relocate

In *Oglesby v. Williams,*[184] the Court of Appeals of Maryland noted that plans for removal show intent to abandon the old domicile. The Court said:

> [T]here are many citizens of Maryland who intend to change their domicile upon retirement and may make quite **elaborate plans** toward fulfilling that intent by building a retirement home in the place where they intend to retire. **Such plans, by themselves, do not prove the abandonment of an existing domicile, although it is evidence of the intention to do so.** Were such planning to be sufficient, the intent requirement would swallow the requirement of an actual removal to another habitation with the intent to reside there indefinitely. (Emphasis Supplied.)

In this case, petitioner submitted email exchanges showing that the family began planning to move back to the Philippines as early as March 2005. Exhibit "6-series" includes an email

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[183] Memorandum for respondent Amado D. Valdez, p. 25.

[184] 372 Md. 360 (2002).

letter dated 17 March 2005 and sent to petitioner by Karla Murphy on 18 March 2005. Based on the email, Karla worked at Victory Van, a company engaged in moving personal belongings. Apparently, petitioner had asked for an estimate of moving personal properties from the US to the Philippines. The email reply reads:

From: Karla Murphy MURPHY@VictoryVan.com
To: gllamanzares gllamanzares@aol.com
Subject: Relocation to Manila Estimate
Date: **Fri, 18 Mar 2005**
3.17.05

Hi Grace:
Sorry for the delay in getting this to you. I know you are eager to get some rates for budgetary purposes.

I estimate that you have approximately **28,000 lbs of household goods plus your two vehicles. This will necessitate using THREE 40' containers. You not only have a lot of furniture but many of your pieces plus the toys are very voluminous.** We will load the containers from bottom to top not to waste any space but I sincerely believe you will need two containers just for your household goods.

To provide you with door to door service which would include packing, export wrapping, custom crating for chandeliers, marble top and glass tops, loading of containers at your residence, US customs export inspection for the vehicles, transportation to Baltimore, ocean freight and documentation to **arrival Manila,** customs clearance, delivery, with collection of vehicles from agent in Manila unwrapping and placement of furniture, assisted unpacking, normal assembly **(beds; tables, two piece dressers and china closets),** container return to port and same day debris removal based on three 40' containers, with 28,000 lbs of HHG and two autos will be USD 19,295.

Grace, I predict you will have some questions. I will be out of the office tomorrow and will be in the office all day on Monday. If your questions can't wait please call me on my cell number at 703 297 27 88.
I'll talk to you soon.
Kind regards and again, thanks for your patience.
Karla (Emphases Supplied)

The email indicates that petitioner was planning to move an estimated 28,000 pounds of household goods plus two vehicles from Virginia, US to Manila. The email further shows that three forty-foot containers were estimated to be used in the movement of these items.

Twenty-eight thousand pounds of personal properties, including two vehicles, is not difficult to visualize. The exchanges during the oral arguments held by this Court for this case shows that three forty-foot containers is about the size of a three-storey house. The exchange is quoted below:

CHIEF JUSTICE SERENO:
Okay. Alright. Now when you come, you see you have thrown out the fact of relocation, continuous schooling, you have thrown that out. May I now ask you what you did in looking at the e-mail that they submitted dated 18 March 2005. Have you [looked] closely at that e-mail?

COMMISSIONER LIM:
Yes, Your Honor.

CHIEF JUSTICE SERENO:
Okay. Can you tell us what that e-mail said?

COMMISSIONER LIM:
These correspondences, e-mail correspondences evinced a strong desire to bring your belongings here to seemingly on the surface, Your Honor, to transfer residence here and to inquire about the cost of moving to the Philippines, Your Honor ...

CHIEF JUSTICE SERENO:
Did you look at the, how much they were planning to move back to the Philippines?

COMMISSIONER LIM:
Well they said they sold their house there already, Your Honor ...

CHIEF JUSTICE SERENO:
Twenty eight thousand pounds.

COMMISSIONER LIM:
Yes, Your Honor.

CHIEF JUSTICE SERENO:
And the estimate of the forwarding company is that they need three forty foot containers, correct?

COMMISSIONER LIM:
No question as to, no question as to that, Your Honor.

CHIEF JUSTICE SERENO:
Okay. Alright. Including can you look at what a forty foot container looks like. This. (image flashed on the screen) Please look at this Commissioner Lim.

COMMISSIONER LIM:
I'm quite familiar having been a maritime lawyer in the past . . .

CHIEF JUSTICE SERENO:
Alright. Thank you very much. You see one forty foot container already contains an office, and an entire residence. And then if you put three on top of the other, okay, . . . (image flashed on the screen)

COMMISSIONER LIM:
Yes, Your Honor.

CHIEF JUSTICE SERENO:
That's already the content of an entire house. And they're talking about glass tops, marble tops, chandeliers, in addition to that two cars and pets. Of course, it's not in the e-mail.

In other words, even this there is no intention, Commissioner Lim?[185]

Definitely, the email shows that as early as 18 March 2005, petitioner already had plans to relocate to Manila. It must be

[185] Transcript of Stenographic Notes taken during the Oral Arguments on 16 February 2016, pp. 85-86.

stressed that not only household goods would be moved to Manila, but two vehicles as well. Petitioner was certainly not planning for a short trip. The letter, therefore, shows the intent of petitioner to abandon her old domicile in the US as early as March of 2005.

Change of Postal Address

Petitioner also adduced as evidence the email of the US Postal Service acknowledging the notice of change of address made by petitioner's husband. It has been argued that the online acknowledgment merely establishes that petitioner's husband only requested a change of address and did not notify the US Postal service of the abandonment of the old US address. This reasoning fails to appreciate that a notice of change of address is already considered an *indicium* sufficient to establish the intent to abandon a domicile.

The already discussed *Hale v. State of Mississippi Democratic EC*[186] utilized change of postal address as a factor for determining the intent to abandon a domicile. In the case of *Farnsworth v. Jones,*[187] the Court of Appeals of North Carolina noted, among others, the failure of the candidate to change his address. It ruled out the possibility that defendant had actually abandoned his previous residence.

> To the contrary, defendant maintained the condominium at Cramer Mountain, ate dinner weekly at the Country Club there, exercised there, and spent approximately 50% of his time there. **He additionally did not change his address to Ashley Arms for postal purposes, or for any other purposes. He executed a month-to-month lease for a furnished apartment because he wanted to "see what would happen" in the election. Although defendant acquired a new residence at the Ashley Arms address and expressed his intention to remain there permanently, there is little evidence in the record to indicate that he was actually residing there.** x x x. (Emphasis supplied)

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[186] No. 2015-EC-00965-SCT (2015).

[187] 114 N.C. App. 182 (1994).

I do agree with the observation that the online acknowledgement never showed that the change of address was from the old US address to the new Philippine address. To my mind, however, the deficiency is not crucial considering that there are other factors (discussed elsewhere in this opinion) showing that petitioner's intent was to relocate to the Philippines. What matters as far as the online acknowledgement is concerned is that it indicates an intent to abandon the old domicile of petitioner.

Sale of Old Residence

Another factor present in this case is the sale of petitioner's family home in the US.

In *Imbraguglio v. Bernadas*[188] decided by the Court of Appeals of Louisiana, Fourth Circuit, Bernard Bernadas filed a "Notice of Candidacy" for the office of Sheriff of St. Bernard Parish. Petrina Imbraguglio filed a petition objecting to the candidacy of Bernadas on the ground of failure to establish residence in the parish. It was found that Bernardas sold his home on Etienne Drive on 23 February 2006. Since 31 August 2006, Bernadas has lived with his family at a home he purchased at 7011 General Haig Street in New Orleans. The Louisiana appellate court ruled that Bernardas had abandoned his domicile in the parish by selling his home therein and had not reestablished the same. The Louisiana appellate court held that:

> We also find no error in the trial court's finding that the defendant established a new domicile **for purposes of La. R.S. l8:451.3 (which took effect on June 8, 2006) by voluntarily selling his home,** the only property owned in St. Bernard Parish, and moving to New Orleans without residing anywhere in St. Bernard Parish for two years preceding the date he filed his notice of candidacy to run for sheriff. (Emphasis supplied)

Location of personal belongings

Another vital piece of evidence is the invoice issued by Victory Van to petitioner indicating the actual delivery of personal

[188] 968 So. 2d 745 (2007).

property to Manila in September 2006 and the cost of shipping of the household goods. Pertinent portions of the Invoice dated 13 September 2006 are quoted below:

Hello! As you may have heard from your agent in the Philippines, there was an overflow. Every effort was made to make it fit in the two 40's and all went except for about 1900 lbs, which will be sent in lift vans. An invoice is attached. Thank you.

x x x x x x x x x

CUSTOMER:	Grace Llamanzares	DATE:	9/13/2006
ORIGIN:	Sterling, VA	REFERENCE #:	EXP06020
DESTINATION:	Manila, Philippines		

WEIGHT:	**25,241 lbs**
VOLUME:	2-40' S-SC
VOLUME	2 - Lift Vans Overflow LCI, Shipment (293 Cu Ft.)

The invoice proves that 25, 241 pounds of personal property owned by petitioner and her family were moved from Sterling, Virginia, US to Manila, Philippines. This proves another factor: the consummation of the previously discussed plan to relocate to Manila. The location of the majority of the personal belongings matters in the determination of a change in domicile. This factor was used in the already discussed *Oglesby* and in *Bell v. Bell.*[189]

It must be noted that *Bell* held that unimportant belongings are not considered in that determination. In that case, the wife sought before a Pennsylvania court the issuance of an injunction restraining the husband from obtaining a divorce in Nevada. She filed the suit on the ground that the husband failed to establish a domicile in Nevada as he once lived in Pennsylvania. Also, he was away from Nevada most of the time since he worked in Nigeria.

The Pennsylvania Superior Court, in holding that the husband succeeded in establishing a domicile in Nevada, disregarded

[189] Pa. Superior Ct. 237 (1984) 473 A.2d 1069.

the fact that the husband left behind a crate of his clothing at the home in Pennsylvania.

As for the relevancy of the clothing left behind at the Pennsylvania location by Mr. Bell after his departure, we, as did the trial court, find this element to be "of little moment. That [Mr. Bell] has done without them for so long shows that they **are not of particular importance to him.**" (Emphasis supplied)

It is worthy to note that the case did not reject movement/ non-movement of personal belongings as a factor for determining domicile. Rather, what it rejected was unimportant personal properties. Thus, this case, combined with the *Oglesby* case, provides that movement of properties that are valuable/important indicates intent to abandon the previous domicile. Another take-away from this case is that when only unimportant belongings remain in the old domicile, the intent to abandon the old domicile is not diminished.

What is more, it must be emphasized that petitioner donated to the Salvation Army, as shown by Exhibit "15" and Exhibit "15-A," which are receipts showing donations to the Salvation Army of clothes, books and miscellaneous items. The receipts are dated 23 February 2006. The value of the personal effects donated was placed by petitioner's husband at USD300.00 and USD575.00,[190] certainly little personal items that were even then, fully disposed.

What can be gleaned from the above facts is that petitioner intended to bring along with her in the Philippines only those items she deemed important to her, and that those that were left behind were unimportant. It should be stressed that the items donated to charity included books and clothes, which presumably are not valuable to petitioner; hence, the donations to the Salvation Army. Accordingly, petitioner was able to establish another factor indicating the intent of petitioner to abandon her old domicile and establish a new domicile in the Philippines.

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[190] Receipt Nos. 827172 and 8220421, dated 23 February 2006.

In sum, there is more than sufficient evidence indicating petitioner's intent to abandon her domicile in the US. Several factors have been established: plans to transfer to the Philippines, sale lof the residence in the old domicile, change of postal address, and relocation of valuable personal belongings to the new domicile.

2. Actual removal from old domicile and relocation to new domicile

The third requirement for establishment of a new domicile is bodily presence in or the actual removal to the new domicile.

In *Oglesby v. Williams,*[191] the Court of Appeals of Maryland faced the issue of whether Beau H. Oglesby met the two-year residency requirement to run for State's Attorney for Worcester County in the November 2002 general election. Oglesby admitted that he had been domiciled in Wicomico County for a period of time beginning in December 1995. He argued, however, that his purchase of real property in Worcester County on 5 September 2000, more than two years before the election, coupled with his intention to be domiciled there, effectively established that he had changed his domicile to Worcester County.

> We do not question, to be sure, that the appellant intended to make Worcester County his residence, his fixed, permanent home and habitation and, thus, to abandon his Wicomico County residence. **We simply do not believe that the intent was perfected before the appellant moved into the Worcester County home; the appellant's intent was not actualized until then.**
>
> [T]here are many citizens of Maryland who intend to change their domicile upon retirement and may make quite elaborate plans toward fulfilling that intent by building a retirement home in the place where they intend to retire. Such plans, by themselves, do not prove the abandonment of an existing domicile, although it is evidence of the intention to do so. Were such planning to be sufficient, the intent

[191] 372 Md. 360 (2002).

requirement would swallow the requirement of an actual removal to another habitation with the intent to reside there indefinitely.

x x x x x x x x x

The evidence shows that the appellant established a domicile in Wicomico County in December, 1995 and remained domiciled in that county until, at the earliest, December, 2000. He voted in the November 7, 2000 election in Wicomico County **and he did not move into a residence in Worcester County until December, 2000. We hold that the appellant did not become a domiciliary of Worcester County until, at the earliest, he actually moved into his new home on December 20, 2000.**

Oglesby makes the date of actual transfer as the reckoning point for the change of domicile. Had the actual removal happened prior to the two-year period, Oglesby would have satisfied the residency requirement in that case.

Applying the rule to this case, it appears that the intent was actualized in 24 May 2005, the date when petitioner arrived in the Philippines, as revealed by her US passport bearing a stamp showing her entry in the Philippines. The fact that she arrived here for the purpose of moving back to the Philippines was not denied by COMELEC during the oral arguments, although it did not recognize the legal implications of such fact.

We must not lose sight of the fact that petitioner registered as a voter in this country on 31 August 2006. Thus, the implication of petitioner having registered on 31 August 2006 is that she had already been a resident in the country for at least one year as of the day of her registration. The reason is that the Voter's Registration Act of 1996[192] requires among other things that the citizen must have resided in the Philippines for at least one year.

That being said, the registration of petitioner as voter bolsters petitioner's claim that she concretized her intent to establish

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[192] Republic Act No. 8189, 11 June 1996.

a domicile in the country on 24 May 2005. Take note that if we use 24 May 2005 as the reckoning date for her establishment of domicile in the Philippines, she would have indeed been a resident for roughly one year and three months as of 31 August 2006, the date she registered as a voter in the Philippines.

Besides, when we consider the other factors previously mentioned in this discussion – the enrolment of petitioner's children shortly after their arrival in the Philippines, the purchase of the condominium unit during the second half of 2005, the construction of their house in Corinthian Hills in 2006, the notification of the US Postal Service of petitioner's change of address – there can only be one conclusion: petitioner was here to stay in the Philippines for good when she arrived in May 2005.

Let me highlight the fact of enrolment of petitioner's children in 2005. This happened shortly after their arrival in the Philippines, which was in May 2005. Taking together the two facts – the arrival of the family in May and the subsequent attendance of the children in local schools the following month – the logical conclusion that we can derive from them is that petitioner arrived early in May so as to prepare her children's schooling in the Philippines. Now, given that in May, she already had in mind the attendance of her children in local schools, this indicates that petitioner, at the time of her arrival already had the intent to be in the country for the long haul.

Lastly, we must not overlook the proximity of her date of arrival in the Philippines in 24 May 2005 to the death of her father in 14 December 2004. The closeness of the dates confirms the claim of petitioner that the untimely death of her father and the need to give her mother moral support and comfort. The return to the country, it must be emphasized, happened within one year of the death of petitioner's father. It reflects the motive of petitioner for her return to the Philippines: the only child had to return to the Philippines as soon as possible so that she could be with her grieving mother. More important, this very same motive justifies the acts of relocation she

executed, several of which occurred within a year of the death of her father.

As a result, petitioner's arrival in the Philippines on 24 May 2005 was definitely coupled with both *animus manendi* and *animus non revertendi.*

True, petitioner's transfer in this case was incremental. But this Court has already recognized the validity of incremental transfers. In *Mitra v. COMELEC,*[193] We stated:

> Mitra's feed mill dwelling cannot be considered in isolation and separately from the circumstances of his transfer of residence, specifically, his expressed intent to transfer to a residence outside of Puerto Princesa City to make him eligible to run for a provincial position; his preparatory moves starting in early 2008; his initial transfer through a leased dwelling; the purchase of a lot for his permanent home; and the construction of a house in this lot that, parenthetically, is adjacent to the premises he leased pending the completion of his house. **These incremental moves do not offend reason at all, in the way that the COMELEC's highly subjective non-legal standards do.** (Emphasis supplied)

Even the Superior Court of Pennsylvania in *Bell v. Bell*[194] recognized the notion of incremental transfers in a change of domicile:

> Intent, being purely subjective, must to a large extent be determined by the acts which are manifestations of that intent. **However it does not follow from that that the acts must all occur simultaneously with the formation of the intent.** Such a conclusion would becontrary to human nature. One does not move to a new domicile and immediately change church membership, bank account, operator's license, and club memberships. Nor does he immediately select a neighborhood, purchase a home and buy furniture. **All of those acts require varying degrees of consideration and as a consequence cannot be done hastily nor simultaneously.** (Emphases supplied)

The foregoing considered, the COMELEC used a wrong consideration in reaching the conclusion that petitioner failed

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[193] G.R. No. 191938, 19 October 2010.

[194] 473 A.2d 1069 (1984).

to meet the durational residency requirement of 10 years. There is no falsity to speak of in the representation made by petitioner with regard to her residence in the country. For using wrong or irrelevant considerations in deciding the issue, COMELEC tainted its cancellation of petitioner's 2016 certificate of candidacy for president with grave abuse of discretion.

Long Residence in the Philippines

We must remember that petitioner and her children would have stayed in the Philippines for 10 years and 11 months by 9 May 2016. For nearly 11 years, her children have studied and spent a substantial part of their formative years here. On this, the case of *Hale* is again instructive:

> We have held that **'[t]he exercise of political rights, admissions, declarations, the acts of purchasing a home and long-continued residency are circumstances indicative of his intention to abandon his domicile of origin and to establish a new domicile.'** Taking into consideration all of these factors, the circuit court did not err in determining that Stone's domicile has existed in Marshall County since October of 2013. (Emphasis supplied and citations omitted)

Petitioner's intention to abandon US domicile was not negated

The COMELEC First Division and the COMELEC En Banc in SPA Nos. 15-002 (DC), 15-007 (DC) and 15-139 (DC) ruled that the fact that petitioner's husband remained and retained his employment in the US in May 2005 negated her intent to reside permanently in the Philippines. Furthermore, petitioner travelled frequently to the US using her US passport even after she reacquired her Philippine citizenship. According to the COMELEC, these show that she has not abandoned her domicile in the US. Respondent Valdez also points to two houses in the US that petitioner maintains up to the present, and alleges that this fact also negates her alleged intent to reside permanently in the Philippines.

The fact that petitioner's husband was left in the US and retained his employment there should be viewed based on

the totality of the circumstances and the reason for such separation. There is no question that the impetus for petitioner to move back to the Philippines was the death of her father in December 2004 and the desire to be back in the Philippines and comfort her grieving mother. There is also no question that by May 2005, petitioner and her children were already living in the Philippines and the children already enrolled in Philippine schools.

Petitioner and her family could not have been expected to uproot their lives completely from the US and finish all arrangements in the span of six months. One of the spouses had to remain in the US to wind up all logistical affairs. There is also no showing that petitioner is able to readily find a job in the Philippines upon their return. Again, one of the spouses has to continue earning a living for the family's upkeep and to finance the heavy cost of relocation. The conjugal decision became clear when it was the husband who kept his employment in the US and came to join his family in the Philippines only after the sale of the house in the US.

To my mind, that petitioner's husband remained in the US until April 2006 only showed that the family endured a period of separation in order to rebuild their family life together in the Philippines. The fact that the husband stayed behind should not have been considered in isolation but contemplated in light of the realities of the situation.

The COMELEC also faults petitioner for travelling to the US "frequently" using her US passport. A closer examination of the factual circumstances at the time, however, reveals that petitioner had a justifiable reason for doing so.

When petitioner came back to the Philippines in May 2005, she was admittedly still a US citizen. She reacquired her Philippine citizenship on 7 July 2006 under the auspices of Republic Act No. 9225 and became a dual citizen of the Philippines and the US. It was only on 20 October 2010 that petitioner renounced her US citizenship and became a pure Filipino citizen. Thus, petitioner was a US citizen from May 2005 to 20 October 2010.

Section 215(b) of the US Immigration and Nationality Act provides that "it shall be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid United States passport." This provision is echoed in Section 53.1 of the US Code of Federal Regulations, unless the US citizen falls under any of the exceptions provided therein.[195]

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[195] §53.2 Exceptions.

(a) U.S. citizens, as defined in §41.0 of this chapter, are not required to bear U.S. passports when traveling directly between parts of the United States as defined in §51.1 of this chapter.

(b) A U.S. citizen is not required to bear a valid U.S. passport to enter or depart the United States:

(1) When traveling as a member of the Armed Forces of the United States on active duty and when he or she is in the uniform of, or bears documents identifying him or her as a member of, such Armed Forces, when under official orders or permit of such Armed Forces, and when carrying a military identification card; or

(2) When traveling entirely within the Western Hemisphere on a cruise ship, and when the U.S. citizen boards the cruise ship at a port or place within the United States and returns on the return voyage of the same cruise ship to the same United States port or place from where he or she originally departed. That U.S. citizen may present a government-issued photo identification document in combination with either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services before entering the United States; if the U.S. citizen is under the age of 16, he or she may present either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services; or

(3) When traveling as a U.S. citizen seaman, carrying an unexpired Merchant Marine Document (MMD) in conjunction with maritime business. The MMD is not sufficient to establish citizenship for purposes of issuance of a United States passport under part 51 of this chapter; or

(4) *Trusted traveler programs*—(i) *NEXUS Program.* When traveling as a participant in the NEXUS program, he or she may present a valid NEXUS program card when using a NEXUS Air kiosk or when entering the United States from contiguous territory or adjacent

Petitioner, as a US citizen, was required by law to use her US passport when travelling to and from the US. Notwithstanding her dual citizenship and the abandonment

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islands at a land or sea port-of-entry. A U.S. citizen who enters the United States by pleasure vessel from Canada under the remote inspection system may also present a NEXUS program card;

(ii) *FAST program.* A U.S. citizen who is traveling as a participant in the FAST program may present a valid FAST card when entering the United States from contiguous territory or adjacent islands at a land or sea port-of-entry;

(iii) *SENTRI program.* A U.S. citizen who is traveling as a participant in the SENTRI program may present a valid SENTRI card when entering the United States from contiguous territory or adjacent islands at a land or sea port-of-entry; The NEXUS, FAST, and SENTRI cards are not sufficient to establish citizenship for purposes of issuance of a U.S. passport under part 51 of this chapter; or

(5) When arriving at land ports of entry and sea ports of entry from contiguous territory or adjacent islands, Native American holders of American Indian Cards (Form I-872) issued by U.S. Citizenship and Immigration Services (USCIS) may present those cards; or

(6) When arriving at land or sea ports of entry from contiguous territory or adjacent islands, U.S. citizen holders of a tribal document issued by a United States qualifying tribal entity or group of United States qualifying tribal entities as provided in 8 CFR 235.1(e) may present that document, Tribal documents are not sufficient to establish citizenship for purposes of issuance of a United States passport under part 51 of this chapter; or

(7) When bearing documents or combinations of documents the Secretary of Homeland Security has determined under Section 7209(b) of Public Law 108-458 (8 U.S.C. 1185 note) are sufficient to denote identity and citizenship. Such documents are not sufficient to establish citizenship for purposes of issuance of a U.S. passport underpart 51 of this chapter; or

(8) When the U.S. citizen is employed directly or indirectly on the construction, operation, or maintenance of works undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission (IBWC), TS 994, 9 Bevans 1166, 59 Stat. 1219, or other related agreements, provided that the U.S. citizen bears an official identification card issued by the IBWC and is traveling in connection with such employment; or

(9) When the Department of State waives, pursuant to EO 13323 of December 30, 2003, Section 2, the requirement with respect to the U.S. citizen because there is an unforeseen emergency; or

of her US domicile, she could not have entered or departed from the US if she did not use her US passport.

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(10) When the Department of State waives, pursuant to EO 13323 of December 30, 2003, Sec 2, the requirement with respect to the U.S. citizen for humanitarian or national interest reasons; or

(11) When the U.S. citizen is a child under the age of 19 arriving from contiguous territory in the following circumstances:

(i) *Children under age 16.* A United States citizen who is under the age of 16 is permitted to present either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when entering the United States from contiguous territory at land or sea ports-of-entry; or

(ii) *Groups of children under age 19.* A U.S. citizen who is under age 19 and who is traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization may present either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when arriving in the United States from contiguous territory at all land or sea ports of entry, when the group, organization or team is under the supervision of an adult affiliated with the organization and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person who is age 19 or older. The following requirements will apply:

(A) The group, organization, or team must provide to CBP upon crossing the border on organizational letterhead:

(1) The name of the group, organization or team, and the name of the supervising adult;

(2) A list of the children on the trip; and

(3) For each child, the primary address, primary phone number, date of birth, place of birth, and the name of at least one parent or legal guardian.

(B) The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by certifying in the writing submitted in paragraph (b)(11)(ii)(A) of this section that he or she has obtained for each child the consent of at least one parent or legal guardian.

(C) The procedure described in this paragraph is limited to members of the group, organization, or team who are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in 8 CFR parts 211, 212, or 235.

In ***Maquiling v. COMELEC,***[196] which I penned for the Court, while we ruled that the use of a foreign passport negates the earlier renunciation of such foreign citizenship, **did not say, however, that the use of a foreign passport after reacquisition of Philippine citizenship and before the renunciation of the foreign citizenship adversely affects the residency of a candidate for purposes of running in the elections. This case cannot, therefore, be used as basis to negate petitioner's residency.** This *Maquiling* decision involved Rommel Arnado who was elected Mayor of Kauswagan, Lanao del Norte in the 2010 elections. He ran also for the 2013 elections for the same post and won again. The Court affirmed the *Maquiling* doctrine in the case of *Arnado v. COMELEC.*[197] The doctrine was not expanded in any manner as to affect petitioner's citizenship claim. The *Maquiling* doctrine solely has to do with the effect of the continued use of a US passport **after** the renunciation of US citizenship. In the case of petitioner, there is absolutely no evidence, which even COMELEC admits, that she used a US passport **after** she renounced her US citizenship on 20 October 2010. Clearly, **Maquiling and Arnado are not relevant to the petitioner's case until new proof can be adduced contradicting the present state of the evidence on record that petitioner never used her US passport after she renounced her US citizenship.**

Taking into account all these pieces of evidence, it cannot be said that petitioner made a false material representation in her 2016 certificate of candidacy for president as far as her residency is concerned. The totality of these circumstances shows that indeed, she had re-established her residence in the Philippines for 10 years and 11 months until the day before the elections in May 2016, which is sufficient to qualify her to run for president in the country. At the very least, it negates a finding of deliberate intention on her part to mislead the electorate with regard to her residency.

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[196] G.R. No. 195649, 16 April 2013.

[197] G.R. No. 210164, 18 August 2015.

Evidently, a single statement in her 2013 certificate of candidacy for senator cannot be deemed to overthrow the entirety of the evidence on record, which shows that her residence in the Philippines commenced in May 2005.

IV.

B. ON CITIZENSHIP

In the assailed Resolutions, the COMELEC also declared that petitioner made a false material representation when she declared that she was a natural-born citizen of the Philippines. According to the commission, petitioner's inability to prove her blood relationship to a Filipino parent precluded her from ever claiming natural-born status under the 1935 Constitution. COMELEC argues, therefore, that her declaration as to her citizenship must necessarily be considered false.

I find no support whatsoever for these legal conclusions.

Petitioner did not make a false material representation regarding her citizenship in her 2016 Certificate of Candidacy for president.

Considering that there has been no definitive ruling on the citizenship of foundlings, it would be unreasonable and unfair for the COMELEC to declare that petitioner deliberately misrepresented her status as a natural-born citizen of the Philippines. In fact, the evidence she submitted in support of her claim of citizenship gives us every reason to accept her assertion of good faith.

In any event, I believe that there is sufficient legal basis to sustain a presumption of citizenship in favor of petitioner notwithstanding the absence of any physical proof of her filiation. Her natural-born status can be founded from solid interpretation of the provisions of the Constitution.

There was no deliberate attempt to mislead, misinform, or hide a fact that would otherwise render her ineligible.

Contrary to claims that petitioner committed deliberate misrepresentation when she declared that she is a natural-born Filipino citizen, the following documents support a finding of good faith on her part:

1. Adoption Decree

The adoption decree issued in favor of petitioner in 1974 allows her to legally claim to be the daughter of Ronald Allan Poe and Jesusa Sonora Poe. This proposition finds support in statutes and jurisprudence.

In *Republic v. Court of Appeals,* We held that upon entry of an adoption decree, **the law creates a relationship in which adopted children were declared "born of" their adoptive parents.**[198]

Congress confirmed this interpretation when it enacted R.A. 8552, which provides that the "adoptee shall be considered the legitimate son/daughter of the adopter for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughter born to them without discrimination of any kind."[199]

Apart from obtaining the status of legitimate children, adoptees are likewise entitled to maintain the strict confidentiality of their adoption proceedings. The provisions of P.D. 603,[200] R.A. 8552[201] and the Rule on Adoption[202] stipulate that all records, books, and papers relating to the adoption cases in the files of the court, the Department of Social Welfare and Development, or any other agency or institution participating in the adoption proceedings shall be kept strictly confidential. The records are permanently sealed and may be opened only upon the court's

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[198] *Republic v. Court of Appeals,* G.R. No. 97906, 21 May 1992.

[199] Section 17.

[200] Child and Youth Welfare Code (1974), Article 38.

[201] Domestic Adoption Act of 1998, Sec. 15.

[202] A.M. No. 02-6-02-SC, Sec. 18.

determination that the disclosure of information to third parties if "necessary" and "for the best interest of the adoptee."[203] This grant of confidentiality would mean very little if an adoptee is required to go beyond this decree to prove her parentage.

2. Certificate of Live Birth

Upon the issuance of an adoption decree, an amended certificate of birth is issued by the civil registrar attesting to the fact that the adoptee is the child of the adopters by being registered with their surname.[204] Like all persons, petitioner has the right to rely on this birth certificate for information about her identity, status and filiation.

Article 410 of the Civil Code states that the books making up the civil register and all documents relating thereto are considered public documents and shall be *prima facie* evidence of the facts therein contained.[205] As a public document, a registered certificate of live birth enjoys the presumption of validity.[206]

Petitioner's birth certificate also has the imprimatur of no less than the Municipal Court of San Juan, Rizal Province.[207] In the absence of a categorical pronouncement in an appropriate proceeding that the decree of adoption is void, the birth certificate and the facts stated thereinare deemed legitimate, genuine and real.[208]

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[203] It must be noted that in the US, adoption statutes prohibit adoption files from being inspected by birth parents, the general public, and even the adult adoptees themselves, with most states providing that sealed adopted records could be opened only by court order.[203] In the case of *In Re: Roger B* 418 N.E.2d 751 (III.1981), the Court eventually held that the adoptee has no fundamental right to view his adoption records since the status of an adoptee does not result at birth. It is derived from legal proceedings the purpose of which is to protect the best interests of the child.

[204] Republic Act No. 8552 entitled "Domestic Adoption Act of 1998," Section 14.

[205] CIVIL CODE, Art. 410.

[206] *Baldos v. Court of Appeals and Pillazar,* 638 Phil. 601 (2010).

[207] Marked as Exhibit "2".

[208] *Reyes v. Sotero,* 517 Phil. 708 (2006).

Petitioner thus cannot be faulted for relying on the contents of a public document which enjoys strong presumptions of validity under the law. She is actually obliged to do so because the law does not provide her with any other reference for information regarding her parentage. It must be noted that records evidencing her former foundling status 'have been sealed after the issuance of the decree of adoption. In *Baldos v. Court of Appeals and Pillazar,*[209] We held that it is not for a person to prove the facts stated in his certificate of live birth, but for those who are assailing the certificate to prove its alleged falsity.

The issuance of an amended certificate without any notation that it is new or amended or issued pursuant to an adoption decree, should not be taken against petitioner, because it merely complies with the confidentiality provisions found in adoption laws.[210] Under Section 16 of the Rule on Adoption (A.M. No. 02-6-02-SC, 31 July 2002), it shall be the responsibility of the civil registrar where the foundling was registered to annotate the adoption decree on the foundling certificate, and to prepare and a new birth certificate without any notation that it is a new or amended certificate.

3. Voter's ID

The Voter's ID issued to petitioner likewise prove that she acted in good faith when she asserted that she was a natural-born citizen of the Philippines. Precisely because of the entries in these documents, Poe could not be expected to claim any citizenship other than that of the Philippines. Hence, she could

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[209] *Id.*

[210] The original certificate of birth shall be stamped "cancelled," annotated with the issuance of an amended birth certificate in its place, and shall be sealed in the civil registry records. With due regard to the confidential nature of the proceedings and records of adoption, the civil registrar where the foundling was registered is charged with the duty to seal the foundling certificate in the civil registry records, which can be opened only upon order of the court which issued the decree of adoption (Section 16(B)(3)(c), A.M. No. 02-6-02-SC, 31 July 2002).

not have committed a material misrepresentation in making this declaration.

4. Philippine Passport

In 1996, R.A. 8239 (Philippine Passport Act of 1996) was passed. The law imposes upon the government the duty to issue passport or any travel document to any citizen of the Philippines or individual who complies with the requirements of the Act.[211] "Passport" has been defined as a document issued by the Philippine government *to its citizens* and requesting other governments to allow its citizens to pass safely and freely, and in case of need to give him/her all lawful aid and protection.[212]

Section 5 of R.A. 8239 states that no passport shall be issued to an applicant unless the Secretary or his duly authorized representative is satisfied that the applicant is a Filipino citizen who ihas complied with the requirements. Conversely, a Philippine passport holder like petitioner is presumed to be a Filipino citizen, considering the presumption of regularity accorded to acts of public officials in the course of their duties.

When the claim to Philippine citizenship is doubtful, only a "travel document" is issued.[213] A travel document, in lieu of a passport, is issued to stateless persons who are likewise permanent residents, or refugees granted such status or asylum in the Philippines.[214] If the State considers foundlings to be anything else but its citizens (stateless persons, for example), it would not have given them passports. However, since the 1950s, the Department of Foreign Affairs (DFA) has been issuing passports to foundlings.[215] A quick look at the official

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[211] Section 2, Statement of Policy.

[212] Section 3(d).

[213] Section 3(e).

[214] Section 13(e).

[215] In 1950, an application for a Philippine passport was filed for a boy, who had been found by Sps. Hale in an air raid shelter. The boy was only three years old when he was found. His parents, sister and grandmother were among the dead. The DFA asked for a DOJ opinion with the regard to the

website[216] of the DFA would show an enumeration of supporting documents required of foundlings for the issuance of a Philippine passport; to wit, certificate of foundling authenticated by the Philippine Statistics Authority, clearance from the Department of Social Work and Development (DSWD), passport of the person who found the applicant, and letter of authority or endorsement from DSWD for the issuance of passport. The only conclusion that can be made is that foundlings are considered by the State, or at least by the executive, to be Philippine citizens.

Rule 130, Section 44[217] of the Rules of Court has been cited by the Court to support the finding that entries in the passport are presumed true.[218] On its face, the Philippine passport issued to Poe on 16 March 2014 indicates her citizenship to be "Filipino." Hence, the COMELEC committed grave abuse of discretion in not even considering this as evidence in determining whether Poe intended to deceive the electorate when she indicated that she was a natural-born Filipino.

5. Bureau of Immigration Order

While findings made by Bureau of Immigration (BI) on the citizenship of petitioner is not conclusive on the COMELEC,[219] such negate any notion of bad faith or malice

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status of foundlings. In 1951, the Secretary of Justice released DOJ Opinion No. 189, series of 1951 which stated that, following international conventions, a foundling is presumed to have assumed the citizenship of the place where he or she is found. Since then, the DFA has been issuing passports to foundlings.

[216] < http://www.dfa.gov.ph/index.php/consular-services/passport-information> (last accessed 8 March 2016).

[217] Section 44. *Entries in official records.* — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated. (38)

[218] *Lejano v. People,* 652 Phil. 512 (2010).

[219] In *Go, Sr. v. Ramos,* G.R. Nos. 167569, 167570, 171946, 4 September 2009, 614 Phil. 451-484, the Court explained that *res judicata* applies only when the following concur: (a) a person's citizenship is raised as a material issue in a

on the part of petitioner when she made the representation in her CoC that she was a natural-born citizen. At the time, the presumption created by the Order was in operation. In effect, petitioner had color of authority to state that she was a natural-born citizen of the Philippines.

It has been argued that petitioner had obtained the BI order only because she misrepresented herself to have been "born ...to Ronald Allan Kelley Poe and Jesusa Sonora Poe."[220] However, as previously discussed, the potent policy interests[221] embedded in the confidentiality of adoption records fully justifies her decision

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controversy where that person is a party; (b) the Solicitor General or an authorized representative took active part in the resolution of the issue; and (c) the finding of citizenship is affirmed by this Court. These conditions do not obtain in this case.

[220] Petition for *Certiorari* (G.R. No. 221697) dated 28 December 2015, Annex I-series, Exhibit 20.

[221] In *In Re: Roger B,* the Supreme Court of Illinois explained the potent policy interests which are promoted by the sealing of adoption records. Included in those interests are the facilitation of the adoption process by maintaining the anonymity and the right to privacy of the natural parents, and the integrity of the new adoptive family:

Confidentiality is needed to protect the right to privacy of the natural parent. The natural parents, having determined it is in the best interest of themselves and the child, have placed the child for adoption. This process is not done merely with the expectation of anonymity, but also with the statutory assurance that his or her identity will be shielded from public disclosure. Quite conceivably, the natural parents have established a new family unit with the expectation of confidentiality concerning the adoption that occurred several years earlier.

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> Confidentiality also must be promoted to protect the right of the adopting parents. The adopting parents have taken into their home a child whom they will regard as their own and whom they will love, support, and raise as an integral part of the family unit. They should be given the opportunity to create a stable family relationship free from unnecessary intrusion. The Section creates a situation in which the emotional attachments are directed toward the relationship with the new parents. The adoptive parents need and deserve the child's loyalty as they grow older, and particularly in their later years.

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to write the names of her adoptive parents as indicated in her birth certificate.

The State's concern of promoting confidentiality to protect the integrity of the adoption process is well expressed by the following excerpt from Klibanoff, *Genealogical Information in Adoption: The Adoptees Quest and the Law:*

> "The primary interest of the public is to preserve the integrity of the adoptive process. That is, the continued existence of adoption as a humane solution to the serious social problem of children who are or may become unwanted, abused or neglected. In order to maintain it, the public has an interest in assuring that changes in law, policy or practice will not be made which negatively affect the supply of capable adoptive parents or the willingness of biological parents to make decisions which are best for them and their children. We should not increase the risk of neglect to any child, nor should we force parents to resort to the black market in order to surrender children they can't care for.
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> x x x x x x x x x
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> No one has yet shown that decades of policy protecting the anonymity of the biological parents and the security from intrusion of the parent-child relationship after adoption have been misguided. Quite the contrary. The overwhelming success of adoption as an institution which has provided millions of children with families, and vice-versa, cannot be easily attacked.
>
> The public has a strong interest, too, in preserving the confidential non-public nature of the process. Public attitudes toward illegitimacy and parents who neglect or abuse children have not changed sufficiently to warrant careless disclosure of the circumstances leading to adoption.
>
> But the public also has an interest in the mental health of children who have been adopted-in order that they not become burdens to society. Some provision for the relatively small group of adoptees whose psychological needs are compelling would appear necessary."

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The State certainly must protect the interest of the adoptee, as well as the rights of the natural and adopting parents. When the adoptee is a minor, there is no dispute that the sealed-record provisions serve this end. The child, in his new family environment, is insulated from intrusion

6. The Decision of the Senate Electoral Tribunal in SET Case No. 001-05

The SET Decision is a *prima facie* finding of natural-born citizenship that petitioner can rely on. The fact that the SET Decision was issued later than the filing by petitioner of her CoC for president does not take away from its validity as another tangible basis of petitioner to validly claim that she was a natural-born Filipino. It should be borne in mind that the SET Decision is a determination of petitioner's natural-born status as of the time she was elected and assumed her duties as senator of the Philippines. While the Decision was later in issuance, the application of this ruling by the SET significantly predates the filing of her 2016 certificate of candidacy for president.

Taken together, the enumerated documents provide petitioner with sufficient basis for her claim of citizenship. She cannot be faulted for relying upon these pieces of evidence, particularly considering that at the time she made her declaration that she was a natural-born citizen, the presumption created by these documents has not been overturned.

At any rate, it would be absurd for petitioner to answer "foundling" in every document where her filiation and citizenship is required when her birth certificate and other

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from the natural parents. The child is protected from any stigma resulting from illegitimacy, neglect, or abuse. The preclusion of outside interference allows the adopted child to develop a relationship of love and cohesiveness with the new family unit. Prior to adulthood, the adoptee's interest is consistent with that of the adopting and natural parents.

Upon reaching majority, the adoptee often develops a countervailing interest that is in direct conflict with the other parties, particularly the natural parents. The adoptee wishes to determine his natural identity, while the privacy interest of the natural parents remain, perhaps stronger than ever. The Section recognizes that the right of privacy is not absolute. It allows the court to evaluate the needs of the adoptee as well as the nature of the relationships and choices made by all parties concerned. The statute, by providing for release of adoption records only upon issuance of a court order, does no more than allow the court to balance the interests of all the parties and make a determination based on the facts and circumstances of each individual case.[221] (Citations omitted)

official documents provide otherwise. Not only would this defeat the purpose of the degree of confidentiality prescribed by the law, she would even run the risk of causing offense to her parents whom she would deprive of actual recognition.

Petitioner's honest belief that she was a natural-born citizen is further shown by her constant assertion of her status and is corroborated by official documents and acts of government issued in her favor. I believe that these documents, at the very least, negate any deliberate intent on her part to mislead the electorate as to her citizenship qualification.

Legal Significance of Confirmation of Renunciation

It had been posited that petitioner' s repatriation as a citizen of the Philippines under R.A. 9225 had been rendered doubtful by her subsequent acts in 2011, in particular her execution of an Oath/Affirmation of Renunciation of Nationality of United States before a Vice Consul of the U.S. Embassy in the Philippines;[222] her completion of a Questionnaire on Information for Determining Possible Loss of U.S. Citizenship;[223] and the issuance of a Confirmation of Loss of Nationality of the United States.[224]

Suffice it to state that these documents were executed by petitioner only for the purpose of complying with the requirements of U.S. law. It had no relevance to petitioner's reacquisition of citizenship under Philippine law. The fact remains that she had already properly renounced her U.S. citizenship by executing the Affidavit of Renunciation

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[222] Exhibit 30, Annex I-series in G.R. No. 229697; Exhibit 30 (Tatad), Exhibits 20-22 (Contreras/Valdez), Annex M-series of Petition for *Certiorari* in G.R. Nos. 229688-700.

[223] Exhibit 30-A, Annex I-series in G.R. No. 229697; Exhibit 30-A (Tatad), Exhibit 23 (Contreras/Valdez), Annex M-series of Petition for *Certiorari* in G.R. Nos. 229688-700.

[224] Exhibit 31, Annex I-series in G.R. No. 229697; Exhibit 31 (Tatad), Exhibit 34 (Contreras/Valdez), Annex M-series of Petition for *Certiorari* in G.R. Nos. 229688-700.

required in Section 5 of R.A. 9225. Any act done thereafter served only to confirm this earlier renunciation of foreign citizenship.

Respondent validly presumed that she is a citizen of the Philippines.

The failure of the COMELEC to properly appreciate evidence showing good faith on the part of petitioner is compounded by its narrow-minded approach to the question of citizenship. There is sufficient basis to support the presumption that foundlings are citizens of the Philippines. Although the citizenship of foundlings is not expressly addressed by the language of Article IV of the Constitution, Philippine statutes, administrative regulations and jurisprudence support this conclusion, even in light of the absence of physical proof to establish foundlings filiation.

Moreover, a presumption of foundlings' their natural-born status can be established by the deliberations of the 1935 Constitution and the history of its provisions. These legal authorities and materials serve as sufficient justification for any foundlings good faith belief that she is a natural-born citizen.

The standard proposed by the COMELEC – physical proof of blood relation to a parent who is a citizen of the Philippines – is an impossible, oppressive and discriminatory condition. To allow the imposition of this unjust and unreasonable requirement is to sanction a violation of the Constitution and our obligations under existing international law.

In Philippine law, a foundling refers to a deserted or abandoned infant; or a child whose parents, guardian, or relatives are unknown; or a child committed to an orphanage or charitable or similar institution with unknown facts of birth and parentage, and registered as such in the Civil Register.[225]

[225] Section 3(h), Rules and Regulations to Implement the Domestic Adoption Act of 1998, IRR-R.A. 8552 (1998); *Also see* Rule 26, Implementing Rules and Regulations of Act No. 3753 and Other Laws on Civil Registration, NSO Administrative Order No. 1-93 (1992); Section 3(e), Rule on Adoption, A.M. No. 02-6-02-SC (2002).

The ruling of the COMELEC is premised solely on the admitted fact that petitioner is a foundling. As explained in the assailed Resolutions, petitioner was found abandoned in the parish church of Jaro, Iloilo, on 3 September 1968 by a certain Edgardo Militar. She was later on legally adopted by Ronald Allan Poe and Jesusa Sonora Poe. To date, however, her biological parents are unknown.

According to the COMELEC, these circumstances render the citizenship of petitioner questionable. It claims that since she is unable to establish the identities of her parents, she is likewise incapable of proving that she is related by blood to a Filipino parent. Accordingly, she cannot be considered a natural-born Filipino citizen. These arguments are unmeritorious.

Filiation as a matter of legal fiction

Under Philippine law, the parentage of a child is a matter of legal fiction. Its determination relies not on physical proof, but on legal presumptions and circumstantial evidence. For instance, a child is disputably or conclusively presumed legitimate, i.e. born of two married individuals depending on the period that elapsed between the birth of that child and the celebration[226]

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[226] Articles 255 and 258 of the Civil Code state:

Article 255. Children born after one hundred and eighty days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses shall be presumed to be legitimate.

Against this presumption no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred and twenty days of the three hundred which preceded the birth of the child.

Article 258. A child born within one hundred eighty days following the celebration of the marriage is *prima facie* presumed to be legitimate. Such a child is conclusively presumed to be legitimate in any of these cases:

(1) If the husband, before the marriage, knew of the pregnancy of the wife;

or termination[227] of the spouses' marriage. The presumption of the fact of legitimacy is one of the strongest known to

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(2) If he consented, being present, to the putting of his surname on the record of birth of the child;

(3) If he expressly or tacitly recognized the child as his own.

A similar provision is found in the Family Code:

> Article 168. If the marriage is terminated and the mother contracted another marriage within three hundred days after such termination of the former marriage, these rules shall govern in the absence of proof to the contrary:
>
> (1) A child born before one hundred eighty days after the solemnization of the subsequent marriage is considered to have been conceived during the former marriage, provided it be born within three hundred days after the termination of the former marriage;
>
> (2) A child born after one hundred eighty days following the celebration of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within the three hundred days after the termination of the former marriage.

[227] Rule 131, Section 3 of the Rules of Court, states:

Section 3. Disputable presumptions. —The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence.

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(dd) That if the marriage is terminated and the mother contracted another marriage within three hundred days after such termination of the former marriage, these rides shall govern in the absence of proof to the contrary:

(1) A child born before one hundred eighty days after the solemnization of the subsequent marriage is considered to have been conceived during the former marriage, provided it be born within three hundred days after the termination of the former marriage;

(2) A child born after one hundred eighty days following the celebration of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within the three hundred days after the termination of the former marriage.

the law, and cannot be overthrown except by stronger evidence.[228] As the Court explained in *Rodolfo A. Aguilar v. Edna G. Siasat:*[229]

"There is perhaps no presumption of the law more firmly established and founded on sounder morality and more convincing reason than the presumption that children born in wedlock are legitimate. This presumption indeed becomes conclusive in the absence of proof that there is physical impossibility of access between the spouses during the first 120 days of the 300 days which immediately precedes the birth of the child due to (a) the physical incapacity of the husband to have sexual intercourse with his wife; (b) the fact that the husband and wife are living separately in such a way that sexual intercourse is not possible; or (c) serious illness of the husband, which absolutely prevents sexual intercourse. **Quite remarkably, upon the expiration of the periods set forth in Article 170, and in proper cases Article 171, of the Family Code (which took effect on 03 August 1988), the action to impugn the legitimacy of a child would no longer be legally feasible and the status conferred by the presumption becomes fixed and unassailable.** (Emphases supplied)

The Family Code also allows paternity and filiation to be established through any of the following methods: (1) record of birth; (2) written admission of filiation; (3) open and continuous possession of the status of a legitimate or an illegitimate child; (4) or other means allowed by the Rules or special laws.[230] Notably, **none** of these methods requires physical proof of parentage:

(a) The entries in a record of birth depend only on the statements of certain persons identified by law: in general, administrator of the hospital, or in absence thereof, either of the following: the physician/nurse/midwife/*hilot* who attended the birth. In default of both, either or both parents shall cause the registration of the

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[228] Alejandro E. Sebastian, *The Philippine Law on Legitimacy,* 11 Phil. L.J. 35 (1931), p. 42.

[229] G.R. No. 200169, 28 January 2015.

[230] CIVIL CODE, Art. 172.

birth; and if the birth occurs in a vessel/vehicle/airplane while in transit, registration shall be the joint responsibility of the driver/captain/pilot and the parents.[231]

(b) Filiation may also be proved by an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned. In *Aguilar,* the Court declared that such due recognition in any authentic writing is, in itself, a consummated act of acknowledgment of the child and requires no further court action.[232]

(c) With respect to open and continuous possession of the status of children and other means allowed by the Rules of Court, the relevant sections of Rule 130 provide:

SEC. 39. Act or declaration about pedigree. — The act or declaration of a person deceased, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship befween the two persons is shown

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[231] Section 5, Act No. 3753 states:

SECTION 5. *Registration and Certification of Births.—* The declaration of the physician or midwife in attendance at the birth or, in default thereof, the declaration of either parent of the newborn child, shall be sufficient for the registration of a birth in the civil register. Such declaration shall be exempt from the documentary stamp tax and shall be sent to the local civil registrar not later than thirty days after the birth, by the physician, or midwife in attendance at the birth or by either parent of the newly born child.

In such declaration, the persons above mentioned shall certify to the following facts: (a) date and hour of birth; (b) sex and nationality of infant; (c) names, citizenship, and religion of parents or, in case the father is not known, of the mother alone; (d) civil status of parents; (e) place where the infant was born; (f) and such other data may be required in the regulation to be issued.

In case of an illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only the mother if the father refuses. In the latter case, it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge the child, or to give therein any information by which such father could be identified.

[232] *Supra* note 229.

by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree.

SEC. 40. Family reputation or tradition regarding pedigree. — The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of anyone of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. Entries in family bibles or other family books or charts, engraving on rings, family portraits and the like, may be received as evidence of pedigree.

Evidently, there is no legal basis for the standard proposed by the COMELEC and private respondents. Physical or scientific proof of a blood relationship to a putative parent is <u>not</u> required by law to establish filiation or any status arising therefrom such as citizenship. In fact, this Court has repeatedly emphasized that DNA evidence is not absolutely essential so long as paternity or filiation may be established by other proof.[233] There is, therefore, no reason to impose this undue burden of petitioner, particularly in light of her situation as a foundling. Instead of requiring foundlings to produce evidence of their filiation – a nearly impossible condition – administrative

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[233] In *Lucas v. Lucas* (G.R. No. 190710, 665 Phil. 795-815 [2011]), the Court explained:

Notwithstanding these, it should be stressed that the issuance of a DNA testing order remains discretionary upon the court. The court may, for example, consider whether there is absolute necessity for the DNA testing. If there is already preponderance of evidence to establish paternity and the DNA test result would only be corroborative, the court may, in its discretion, disallow a DNA testing.

This pronouncement was reiterated in *Tecson v. COMELEC* (G.R. Nos. 161434, 161634, 161824, 468 Phil. 421-75 [2004]), in which the Court stated: In case proof of filiation or paternity would be unlikely to satisfactorily establish or would be difficult to obtain, DNA testing; which examines genetic codes obtained from body cells of the illegitimate child and any physical residue of the long dead parent could be resorted to.

agencies, the courts and even Congress have instead proceeded on the assumption that these children are citizens of the Philippines.

Contemporaneous and subsequent construction by the legislature, executive and judicial branches of government

Although the details of their births cannot be established, foundlings are provided legal protection by the state through statutes, rules, issuances and judicial decisions allowing their adoption. As early as 1901, the Code of Civil Procedure[234] recognized that children whose parents are unknown have a right to be adopted. Failure to identify the parents of the child was not made an obstacle to adoption; instead, the rules allowed a legal guardian, or the trustees/directors of an orphan asylum, to grant the required consent on behalf of the unknown parents. Similar provisions were included in the

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[234] Section 765 of Act 190 states:

SECTION 765. How a Child May be Adopted. — **An inhabitant of the Philippine Islands,** not married, or a husband and wife jointly, **may petition the Court of First Instance of the province** in which they reside for **leave to adopt a minor child:** but a written consent must be given for such adoption by the child, if of the age of fourteen years, and by each of his or her living parents who is not hopelessly insane or intemperate, or has not abandoned such child, **or if there are <u>no such parents,</u> or if the parents are <u>unknown</u>, or have abandoned such child,** or if they are hopelessly insane or intemperate, then by the **legal guardian,** or if there is no such guardian, then by a discreet and suitable person appointed by the court to act in the proceedings as the next friend of such child; **but when such child is an inmate of an orphan asylum or children's home, organized under the laws of the Philippine Islands, and has been <u>previously abandoned by its parents or guardians,</u>** or voluntarily surrendered by its parents or guardians to the trustees or directors of an asylum or children's home, then the **written consent of the president of the board of trustees or directors of such asylum** must be given: Provided, nevertheless, That nothing herein contained shall authorize a guardian to adopt his ward before the termination of the guardianship and the final settlement and approval of his accounts as guardian by the court. (Emphases supplied)

subsequent revisions of the Rules of Court in 1940[235] and 1964.[236]

Early statutes also specifically allowed the adoption of foundlings. Act No. 1670 was enacted precisely to provide for the adoption of poor children who were in the custody of asylums

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[235] Sections 3 and 7, Rule 100 (Adoption and Custody of Minors) of the 1940 Rules of Court, state:

SECTION 3. Consent to Adoption. — There shall be filed with the petition a **written consent** to the **adoption** signed by the child, if over fourteen years of age and not incompetent, and by each of its known living parents who is not insane or hopelessly intemperate or has not abandoned such child, **or if there are <u>no such parents</u> by the general guardian or guardian *ad litem* of the child,** or if the child is in the custody of an orphan asylum, children's home, or benevolent society or person, by the proper officer or officers of such asylum, home, or society, or by such person; but if the child is illegitimate and has not been recognized, the consent of its father to the adoption shall not be required.

SECTION 7. Proceedings as to Vagrant or Abused Child. — When the **parents of any minor child are dead, or by reason of long absence or legal or physical disability have <u>abandoned it,</u>** or cannot support it through vagrancy, negligence, or misconduct, or neglect or refuse to support it, or unlawfully beat or otherwise habitually maltreat it, or cause or allow it to engage in common begging, or to commit offenses against the law, the proper Court of First Instance, upon petition filed by some reputable resident of the province setting forth the facts, may issue **an order requiring such parents to show cause, or, if the <u>parents are dead or cannot be found,</u> requiring the fiscal of the province to show cause,** at a time and place fixed in the order, why the child should not be taken from its parents, if living; and if upon hearing it appears that the allegations of the petition are true, and that it is for the best interest of the child, **the court may make an order taking it from its parents,** if living, and **committing it to any suitable orphan asylum, children's home, or benevolent society or person, to be ultimately placed, by adoption** or otherwise, in a home found for it by such asylum, children's home, society, or person.

[236] Sections 3 and 7, Rule 99 of the 1964 Rules of Court, provide:

SECTION 3. Consent to Adoption. — There shall be filed with the petition a written consent to the adoption signed by the child, if fourteen years of age or over and not incompetent, and by the child's spouse, if any, and by each of its known living parents who is not insane or hopelessly intemperate or has not abandoned such child, or **if there are <u>no such parents</u> by the general guardian or guardian *ad litem* of the child,** or if the child is in the custody of an orphan

and other institutions. These children included orphans or "any other other child so maintained therein whose parents are unknown":[237]

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asylum, children's home, or benevolent society or person, by the proper officer or officers of such asylum, home, or society, or by such person; but if the child is illegitimate and has not been recognized, the consent of its father to the adoption shall not be required. If the person to be adopted is of age, only his or her consent and that of the spouse, if any, shall be required.

SECTION 7. Proceedings as to Vagrant or Abused Child. — **When the parents of any minor child** are dead, or **by reason of** **long absence or legal or physical disability** **have abandoned it,** or cannot support it through vagrancy, negligence, or misconduct, or neglect or refuse to support it, or treat it with excessive harshness or give it corrupting orders, counsels, or examples, or cause or allow it to engage in begging, or to commit offenses against the law, the proper Court of First Instance, upon petition filed by some reputable resident of the province setting forth the facts, may issue an order requiring such parents to show cause, or, **if the parents are dead or cannot be found, requiring the fiscal of the province to show cause, at a time and place fixed in the order,** why the child should not be taken from its parents, if living; and if upon the hearing it appears that the allegations of the petition are true, and that it is for the best interest of the child, the court may make an order taking it from its parents, if living; and committing it to any suitable orphan asylum, children's home, or benevolent society or person to be ultimately placed, by adoption or otherwise, in a home found for it by such asylum, children's home, society or person.

[237] Sections 1 and 5 of Act No. 1670 provide:

SECTION 1. The **board of trustees or directors of any asylum or institution in which poor children are cared for and maintained** at public expense are hereby authorized, with the consent of the Director of Health, to **place any orphan or other child so maintained therein whose parents are unknown,** or being known are unable or unwilling to support such child, **in charge of any suitable person** who may desire to take such child and shall furnish satisfactory evidence of his ability suitably to maintain, care for, and educate such child.

SECTION 5. **Upon the application of any person** to the trustees or directors of any asylum or institution where poor children are maintained at public expense **to adopt any child so maintained therein,** it shall be the **duty of such trustees or directors,** with the approval of the Director of Health, to report the fact to the provincial fiscal, or in the city of Manila to the city attorney, and such **official shall hereupon prepare the necessary adoption papers** and present the matter to the proper court. The costs of such proceedings in court shall be *de oficio.*

SECTION 548. Adoption of child from institution for poor children. — **Upon the application of any person to the competent authorities of any asylum or institution** where the poor children are maintained at public expense to **adopt any child so maintained therein,** it shall be the duty of such authorities, with the approval of the Secretary of the Interior, to report the fact to the provincial fiscal, or in the City of Manila to the fiscal of the city, and such Official shall thereupon prepare the necessary adoption papers and present the matter to the proper court. The costs of such proceeding in court shall be de oficio.

The provisions of Act No. 1670 were substantially included in the Administrative Code of 1916[238] and in the Revised Administrative Code of 1917.[239]

In 1995, Congress enacted Republic Act No. 8043 to establish the rules governing the "Inter-country Adoption of <u>Filipino</u>

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[238] Administrative Code, Act No. 2657, 31 December 1916.

[239] Sections 545 and 548 of Act No. 2711 provide:

SECTION 545. Transfer of child from institution for poor children. — The **competent authorities of any asylum or institution in which poor children are cared for and maintained** at public expense are authorized, subject to regulations approved by the Secretary of the Interior, to **place any orphan or other child so maintained therein whose <u>parents are unknown,</u>** or being known are unable or unwilling to support such child, **in charge of any suitable person** who may desire to take such child and shall furnish satisfactory evidence of his ability suitably to maintain, care for, and educate such child.

The intrusting of a child to any person as herein provided shall not constitute a legal adoption and shall not affect the civil status of such child or prejudice the right of any person entitled to its legal custody or guardianship.

SECTION 548. Adoption of child from institution for poor children. — **Upon the application of any person to the competent authorities of an asylum or institution** where the poor children are maintained at public expense to **adopt any child so maintained therein,** it shall be the duty of such authorities, with the approval of the Secretary of the Interior, to report the fact to the provincial fiscal, or in the City of Manila to the fiscal of the city, and such official shall thereupon prepare the necessary adoption papers and present the matter to the proper court. The costs of such proceeding proceeding in court shall be *de oficio.*

Children." The adoption of a foundling was similarly recognized under Section 8 of the statute, which allowed the submission of a foundling certificate to facilitate the inter-country adoption of a child.[240] A few years later or in 1998, the law on "Domestic Adoption of Filipino Children" was amended through R.A. 8552. This time, a specific provision was included to govern the registration of foundlings for purposes of adoption:

SECTION 5. Location of Unknown Parent(s). —It shall be the duty of the Department or the child-placing or child-caring agency which has custody of the child to exert all efforts to locate his/her unknown biological parent(s). **If such efforts fail, the child shall be registered as a foundling and subsequently be the subject of legal proceedings where he/she shall be declared abandoned.**

In 2009, Congress passed R.A. 9523,[241] which allowed the Department of Social Welfare and Development (DSWD) to declare a child "legally available for adoption" as a prerequisite for adoption proceedings. Under this statute, foundlings were

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[240] The law provides:

SECTION 8. Who May Be Adopted. — Only a legally free child may be the subject of inter-country adoption. In order that such child may be considered for placement, the following documents must be submitted to the Board:

a) Child study;

b) Birth certificate/**foundling certificate;**

c) Deed of voluntary commitment/decree of abandonment/death certificate of parents;

d) Medical evaluation/history;

e) Psychological evaluation, as necessary; and

f) Recent photo of the child

[241] An Act Requiring the Certification of the Department of Social Welfare and Development (DSWD) to Declare a "Child Legally Available for Adoption" as a Prerequisite for Adoption Proceedings (2009).

included in the definition of abandoned children[242] and expressly allowed to be adopted, provided they were first declared by the DSWD as available for adoption.[243] Administrative Order No. 011-09 was adopted by that department in 2009 to implement the status.[244]

These enactments and issuances on adoption are significant, because they effectively recognize foundlings as citizens of the Philippines. It must be emphasized that jurisdiction over adoption case is determined by the citizenship of the adopter and the adoptee. As explained by this Court in *Spouses Ellis v. Republic,*[245]

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[242] Pursuant to Section 2(3) of R.A. 9523, an "Abandoned Child" refers to a child who has no proper parental care or guardianship, or whose parent(s) have deserted him/her for a period of at least three (3) continuous months, and the term includes a foundling.

[243] Sections 4 and 5 of R.A. 9523 state:

Section 4. Procedure for the Filing of the Petition. — The petition shall be filed in the regional office of the DSWD where the child was found or abandoned.

The Regional Director shall examine the petition and its supporting documents, if sufficient in form and substance and shall authorize the posting of the notice of the petition conspicuous place for five (5) consecutive days in the locality where the child was found.

The Regional Director shall act on the same and shall render a recommendation not later than five (5) working days after the completion of its posting. He/she shall transmit a copy of his/her recommendation and records to the Office of the Secretary within forty-eight (48) hours from the date of the recommendation.

Section 5. Declaration of Availability for Adoption. – Upon finding merit in the petition, the Secretary shall issue a certification declaring the child legally available for adoption within seven (7) working days from receipt of the recommendation.

Said certification, by itself shall be the sole basis for the immediate issuance by the local civil registrar of a foundling certificate. Within seven (7) working days, the local civil registrar shall transmit the foundling certificate to the National Statistics Office (NSO).

[244] Guidelines on the Issuance of DSWD Certification Declaring a Child Legally Available for Adoption, DSWD Administrative Order No. 012-11 (2011).

[245] G.R. No. L-16922, 30 April 1963.

the Philippine Civil Code adheres to the theory that jurisdiction over the status of a natural person is determined by the latter's nationality. This ruling cites Article 15 of the Civil Code:

ARTICLE 15. Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.

The citizenship of a person is a "status" governed by this provision is clear, pursuant to our ruling in *Board of Immigration Commissioners v. Callano.*[246] In that case, We applied the nationality rule in Article 15 to determine whether some individuals had lost their Philippine citizenship:

"The question, whether petitioners who are admittedly Filipino citizens at birth subsequently *acquired* Chinese citizenship under the Chinese Law of Nationality by reason of recognition or a prolonged stay in China, is a fit subject for the Chinese law and the Chinese court to determine, which cannot be resolved by a Philippine court without encroaching on the legal system of China. For, the settled rule of international law, affirmed by the Hague Convention on Conflict of Nationality Laws of April 12, 1930 and by the International Court of Justice, is that." Any question as to whether a person possesses the nationality of a particular state should be determined in accordance with the laws of that state." (quoted in Salonga, Private International Law, 1957 Ed., p. 112.) There was no necessity of deciding that question because so far as concerns the petitioners' status, the only question in this proceeding is: **Did the petitioners lose their Philippine citizenship upon the performance of certain acts or the happening of certain events in China? In deciding this question no foreign law can be applied. The petitioners are admittedly Filipino citizens at birth, and their status must be governed by Philippine law wherever they may**

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[246] 134 Phil. 901-912 (1968).

be, in conformity with Article 15 (formerly Article 9) of the Civil Code which provides as follows: "Laws relating to family rights and duties, or to the status, conditions and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad." Under Article IV, Section 2, of the Philippine Constitution, "Philippine citizenship may be lost or reacquired in the manner provided by law," which implies that the question of whether a Filipino has lost his Philippine citizenship shall be determined by no other than the Philippine law. (Emphasis supplied)

Ellis **also discredits the assertion that this Court has no power to determine the citizenship of a foundling based only on presumptions.** In that case, an infant named Baby Rose was abandoned at the Heart of Mary Villa, an institution for unwed mothers. When an American couple, the Spouses Ellis, later sought to adopt Baby Rose, the Supreme Court *presumed* the citizenship of the infant for purposes of adoption:

"In this connection, it should be noted that this is a proceedings in rem, which no court may entertain unless it has jurisdiction, not only over the subject matter of the case and over the parties, but also over the res, which is the personal status of Baby Rose as well as that of petitioners herein. **Our Civil Code (Art. 15) adheres to the theory that jurisdiction over the status of a natural person is determined by the latters, nationality. Pursuant to this theory, we have jurisdiction over the status of Baby Rose, she being a citizen of the Philippines, but not over the status of the petitioners, who are foreigners.** Under our political law, which is patterned after the Anglo-American legal system, we have, likewise, adopted the latter's view to the effect that personal status, in general, is determined by and/or subject to the jurisdiction of the domiciliary law (Restatement of the Law of Conflict of Laws, p. 86; The Conflict of Laws by Beale, Vol. I, p. 305, Vol. II, pp. 713-714). This, perhaps, is the reason why our Civil Code does not permit adoption by non-resident aliens, and we have consistently refused to recognize the validity of foreign decrees of divorce — regardless of the grounds upon

which the same are based — involving citizens of the Philippines who are not bona fide residents of the forum, even when our laws authorized absolute divorce in the Philippines. (citations omitted and emphasis supplied)

In the 1976 case *Duncan v. CFI of Rizal*,[247] the Court again presumed the Philippine citizenship of a foundling for purposes of adoption. Notwithstanding the refusal of the de facto guardian to reveal the identity of the child's mother, the adoption of the abandoned child was allowed in order to prevent a "cruel sanction on an innocent child":

Having declared that the child was an abandoned one by an unknown parent, there appears to be no more legal need to require the written consent of such parent of the child to the adoption. xxx.

The trial court in its decision had sought refuge in the ancient Roman legal maxim "Dura lexsedlex" to cleanse its hands of the hard and harsh decision it rendered. While this old adage generally finds apt application in many other legal cases, in adoption of children, however, this should be softened so as to apply the law with less severity and with compassion and humane understanding, for adoption is more or the benefit of unfortunate children, particularly those born out of wedlock, than for those born with a silver spoon in their mouths. All efforts or acts designed to provide homes, love, care and education for unfortunate children, who otherwise may grow from cynical street urchins to hardened criminal offenders and become serious social problems, should be given the widest latitude of sympathy, encouragement and assistance. **The law is not, and should not be made, an instrument to impede the achievement of a salutary humane policy As often as is legally and lawfully possible, their texts and intendments should be construed so as to give all the chances for human life to exist — with a modicum promise of a useful and constructive existence.**

[247] G.R. No. L-30576, 10 February 1976.

. . . **If we are now to sustain the decision of the court below, this Tribunal will be doing a graver injustice to all concerned particularly to said spouses, and worse, it will be imposing a cruel sanction on this innocent child and on all other children who might be similarly situated. We consider it to be justifiable and more humane to formalize a factual relation, that of parents and son, existing between the herein petitioning spouses and the minor child baptized by them as Colin Berry Christensen Duncan, than to sustain the hard, harsh and cruel interpretation of the law that was done by the private respondent court and Judge. It is Our view that it is in consonance with the true spirit and purpose of the law, and with the policy of the State, to uphold, encourage and give life and meaning to the existence of family relations.**

Although the citizenship of the child in *Duncan* was not elaborated upon, the Court proceeded to assume jurisdiction over the adoption proceedings. From this act, it may be inferred that the Court *presumed* that the child was a Philippine citizen whose status may be determined by a Philippine court pursuant to Article 15 of the Civil Code.

The foregoing enactments and decisions prove the contemporaneous and subsequent interpretation of the Constitution by the three branches of government. It is evident that Congress, certain administrative agencies and even the courts have always proceeded on the assumption that these children are Filipino citizens in the absence of evidence to the contrary.

The assertion that citizenship cannot be made to rest upon a presumption is contradicted by the previous pronouncements of this Court. In *Board of Commissioners et al v. Dela Rosa,*[248] the Court utilized a presumption of citizenship in favor of respondent William Gatchalian on the basis of an Order of the Bureau of Immigration admitting him as a Filipino citizen.

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[248] 274 Phil. 1157-1249 (1991).

On March 15, 1973, then Acting Commissioner Nituda issued an Order (Annex "6", counter-petition) which affirmed the Board of Special Inquiry No. 1 decision dated July 6, 1961 admitting respondent Gatchalian and others as Filipino citizens; recalled the July 6, 1962 warrant of arrest and revalidated their Identification Certificates.

The above order admitting respondent as a Filipino citizen is the last official act of the govemment on the basis of which respondent William Gatchalian continually exercised the rights of a Filipino citizen to the present. Consequently, the presumption of citizenship lies in favor of respondent William Gatchalian.

In 2004, **a presumption was likewise made by this Court to resolve issues involving the citizenship of presidential candidate Fernando Poe, Jr. in *Tecson v. COMELEC.***[249] In particular, the presumption that Poe's grandfather had been a resident of San Carlos, Pangasinan, from 1898 to 1902, entitled him to benefit from the *en masse* Filipinization effected by the Philippine Bill of 1902. We explained:

> The death certificate of Lorenzo Pou would indicate that he died on 11 September 1954, at the age of 84 years, in San Carlos, Pangasinan. It could thus be assumed that Lorenzo Pou was born sometime in the year 1870 when the Philippines was still a colony of Spain. Petitioner would argue that Lorenzo Pou was not in the Philippine during the crucial period of from 1898 to 1902 considering that there was no existing record about such fact in the Records Management and Archives Office. Petitioner, however, likewise failed to show that Lorenzo Pou was at any other place during the same period. In his death certificate, the residence of Lorenzo Pou was stated to be San Carlos, Pangasi an. **In the absence of any evidence to the contrary, it should be sound to conclude, or at least to presume, that the place of residence of a person at the time of his death was also his residence before death.** It would be extremely doubtful if the Records Management and Archives Office would have had complete records of all residents of the Philippines from 1898 to 1902.

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[249] G.R. Nos. 161434, 161634, 161824, 468 Phil. 421-75 (2004).

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(3) In ascertaining, in G.R. No. 161824, whether grave abuse of discretion has been committed by the COMELEC, it is necessary to take on the matter of whether or not private respondent FPJ is a natural-born citizen, which, in turn, depended on whether or not the father of private respondent, Allan F. Poe, would have himself been a Pilipino citizen and, in the affirmative, whether or not the alleged illegitimacy of private respondent prevents him from taking after the Filipino citizenship of his putative father. **Any conclusion on the Filipino citizenship of Lorenzo Pou could only be drawn from the presumption that having died in 1954 at 84 years old, Lorenzo would have been born sometime in the year 1870, when the Philippines was under Spanish rule, and that San Carlos, Pangasinan, his place of residence upon his death in 1954, in the absence of any other evidence, could have well been his place of residence before death, such that Lorenzo Pou would have benefited from the *en masse* Filipinization that the Philippine Bill had effected in 1902.** That citizenship (of Lorenzo Pou), if acquired, would thereby extend to his son, Allan F. Poe, father of private respondent FPJ. The 1935 Constitution, during which regime private respondent FPJ has seen first light, confers citizenship to all persons whose fathers are Filipino citizens regardless of whether such children are legitimate or illegitimate. (Emphasis supplied)

It is reasonable to presume that petitioner is a Filipino Citizen, considering that she was found abandoned in Iloilo at a time when the number of children born to foreigners in the country was but a small fraction of the total number of births in the Philippines.[250] Without evidence to the contrary, this presumption must stand in accordance with the rules on evidence.

The Place of Probability in the Rule of Law

Obedience to the rule of law is the bedrock of the Philippine justice system.[251] In order to expound and define the true meaning and operation of these laws, they must first be ascertained by judicial

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[250] The Solicitor-General, during the oral arguments claimed that based on statistics obtained from the Philippine Statistics Authority, 10,558,278 children (99.03%) were born to Filipino parents while 15,986 (0.07%) were born to foreigners in the Philippines from 1965 to 1975.

[251] *People v. Veneracion,* 319 Phil. 364 (1995).

determination, and in order "**to produce uniformity in these determinations, they ought to be submitted, in the last resort, to one supreme tribunal xxx authorized to settle and declare in the last resort a uniform rule of civil justice.**"[252]

The rules of evidence, authorized by the Constitution, is a means by which uniformity is instituted in the judicial system —whether in courts of law or administrative agencies granted quasi-adjudicatory power. These rules govern the means of ascertaining the truth respecting a matter of fact.[253]

It must be emphasized that ascertaining evidence does not entail absolute certainty. Under Rule 128 of the Rules of Court, evidence must only induce belief in the existence of a fact in issue, thus:

> **Section 4.** *Relevancy; collateral matters.*— Evidence must have such **a relation to the fact in issue as to induce belief in its existence or non-existence.** Evidence on collateral matters shall not be allowed, except **when it tends in any reasonable degree to establish the probability or improbability of the fact in issue.** (Emphasis supplied)

Hence, judges are not precluded from drawing conclusions from inferences based on established facts. In the case of *Joaquin v. Navarro,*[254] the Court proceeded to discuss this process:[255]

> In speaking of inference the rule can not mean beyond doubt, for **"inference is never certainty, but it may be plain enough to justify a finding of fact."**
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> x x x x x x x x x
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> **"Juries must often reason," says one author, "according to probabilities, drawing an inference that the main fact in issue existed from collateral facts not directly proving, but strongly tending**

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[252] Alexander Hamilton, *Federalist Paper No. 22;* emphasis supplied.

[253] RULES OF COURT Rule 128, Sec. 1.

[254] 93 Phil. 257 (1953).

[255] *Id*. The passage cited *In re Bohenko's Estate,* 4 N.Y.S. 2nd. 427, which also cited *Tortora vs. State of New York,* 269 N.Y. 199 N.E. 44; *Hart vs. Hudson River Bridge Co.,* 80 N.Y. 622.

to prove, its existence. The vital question in such cases is the cogency of the proof afforded by the secondary facts. How likely, according to experience, is the existence of the primary fact if certain secondary facts exist?" The same author tells us of a case where "a jury was justified in drawing the inference that the person who was caught firing a shot at an animal trespassing on his land was the person who filed a shot about an hour before at the same animal also trespassing." That In fact, the circumstances in the illustration leave greater room for another possibility than do the facts of the case at hand.[256] (Emphasis supplied and citations omitted)

This is enshrined in established legal doctrines, including that of probable cause for preliminary invcstigation,[257] probable cause for issuance of a warrant of arrest,[258] substantial evidence,[259] preponderance

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[256] *Id.* The passage cited 1 Moore on Facts, Sec. 596.

[257] RULES OF COURT, Rule 112

Section 1. *Preliminary Investigation Defined; When Required* - Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been

[258] Section 6. *When warrant of arrest may issue.*— (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dimiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

[259] RULES OF COURT, Rule 133

Section 5. *Substantial evidence.* — In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

of evidence,[260] and character evidence.[261]

Jurisprudence is replete with cases decided on the basis of probability. For example, the Court affirmed an award of work-related compensation to an employee who contracted rectal cancer based on a probability, stating thus:

> The degree of proof required to establish work connection between the disabling ailment and the working conditions is merely substantial evidence, or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" *Probability not certainty is the touchstone in testing evidence of work-connection.*[262] (Emphasis in the original and citations omitted).

In criminal cases, it has also been ruled that "extrajudicial confessions, independently made without collusion, which

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[260] RULES OF COURT, Rule 133

Section 1. *Preponderance of evidence, how determined.* — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involve lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

[261] RULES OF COURT, Rule 130

Section 51. *Character evidence not generally admissible; exceptions:—*

a) In Criminal Cases:

(l) The accused may prove his good moral character which is pertinent to the moral trait involved in the offense charged.

(2) Unless in rebuttal, the prosecution may not prove his bad moral character which is pertinent to the moral trait involved in the offense charged.

(3) The good or bad moral character of the offended party may be **proved if it tends to establish in any reasonable degree the probability or improbability of the offense charged.**

[262] *Mercado, Jr. v. Employees' Compensation Commission,* 223 Phil. 483-493 (1985).

are identical with each other in their essential details and are corroborated by other evidence on record, are admissible as circumstantial evidence against the person implicated to **show the probability of the latter's actual participation in the commission of the crime."**[263]

Note that the two cases cited pertain to different quantum of evidence (substantial for administrative and beyond reasonable doubt for criminal), but both have relied upon probabilities to rule upon issue. In that sense, it can be concluded that probabilities are considered essential elements of the judicial determination of relevant evidence.

While it is true that administrative or quasi-judicial bodies are not bound by the technical rules of procedure in the adjudication of cases, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules.[264] In the instant case, COMELEC refused to consider evidence that tends to "establish the probability of a fact in issue," which in this case pertains to petitioner's citizenship, claiming that it "did not and could not show bloodline to a Filipino parent as required under jus sanguinis."[265] This, to my mind, constitutes gross misappreciation of the facts.

First and foremost, it is admitted that petitioner has typical Filipino features, with her brown eyes, low nasal bridge, black hair, oval-shaped face and height. This by itself, does not evince belief that as to her definite citizenship, but coupled with other circumstantial evidence—that she was abandoned as an infant, that the population of Iloilo in 1968 was Filipino[266], and there were not international airports in Iloilo at that time—establishes the probability that she was born of Filipino parents.

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[263] *People vs. Condemena,* L-22426, May 29, 1968, 23 SCRA 910, 919.

[264] *Lepanto Consolidated Mining Company v. Dumapis,* G.R. No. 163210, 13 August 2008, 562 SCRA 103, 113-114.

[265] Memorandum for public respondent COMELEC, p. 21

[266] Petition for *Certiorari* (G.R. No. 221697), p. 107.

Such probability is further enhanced by the statistics obtained from the Philippine Statistics Authority, showing that 10,558,278 children (99.03%) were born to Filipino parents while 15,986 (0.07%) were born to foreigners in the Philippines from 1965 to 1975.[267] Considering that the election cases require a mere preponderance of evidence,[268] then it can be reasonably concluded that petitioner has fulfilled the requirements of citizenship under the law. In the words of Justice Tuazon in *Joaquin,* this conclusion is not airtight but rational; never certain but plain enough to justify a fact.

The rationale for implementing this policy is simple – to require abandoned children to prove their parentage or status before they are granted protection would compound their already dire predicament. That requirement would render these unfortunate children even more vulnerable, in contravention of the declared policy of the State to "defend the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty exploitation, and other conditions prejudicial to their development."[269]

Respondent may be considered a natural-born citizen under the 1935 Constitution.

Having established that foundlings may be presumed citizens of the Philippines, the question now turns to whether they may be considered natural-born. I believe that this issue may be resolved by utilizing both an originalist and a functionalist approach to the interpretation of the Constitution.

Originalist v. Functionalist Interpretation

In its Memorandum, the COMELEC asserted that foundlings cannot be considered natural-born citizens in light of the principle of *inclusion unius est exclusion alterius*.[270]

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[267] Oral Arguments, TSN, 16 August 2016.

[268] *Tecson v. COMELEC,* 468 Phil. 421 (2004).

[269] 1987 Constitution, Article XV, Section 3(2).

[270] See p. 55

This line of reasoning stems from an originalist reading of the Constitution, which is anchored on the principle that constitutional issues are to be resolved by looking only at the text of the Constitution and at the clear intent of the framers.[271] Intentionalism is a species of originalism. Another species is textualism, which has been described as "that [which] looks to the Constitution's original public meaning,"[272] or "read[s] the language of the Constitution as the man on the street would understand it."[273]

It is a fallacy, however, to assert that that there is only one – originalist/ textualist – approach to interpret the Constitution. There are many approaches to constitutional interpretation, sub-classified into a) originalism v. non-originalism, and b) formalism *v.* functionalism, among others. In his commentary on the Philippine Constitution, Bernas enumerated and described at least five modes of constitutional interpretation, i.e., historical approach,[274] structural approach,[275] doctrinal approach,[276] ethical approach,[277] and prudential approach.[278]

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[271] Erwin Chemerinsky, *Constitutional Law: Principles and Policies* 17-19 (3rd ed. 2006).

[272] William Michael Treanor, Against Textualism, 103 Nw. U.L. Rev. 983-1006 (2009). :http://scholarship.law.georgetown.edu/facpub, Last Accessed: 8 March 2016.

[273] Joaquin Bernas, SJ, *The 1987 Constitution of the Republic of the Philippines; A Commentary,* p. 997 (2009).

[274] In this approach, the justice analyzes the intention of the framers of the Constitution and the circumstances of its ratification.

[275] The justice draws inferences from the "three-cornered power relationships" found in the Constitution. He gives as example "separation of powers." In other words, a justice relies, not on the text of the Constitution, but on structure.

[276] This relies on established precedents. For Bernas, the Supreme Court decisions are, to a certain extent, a "second set of constitutional texts."

[277] This form of interpretation "seeks to interpret the Filipino moral commitments that are embedded in the constitutional document. The Constitution, after all, as the Preamble says, is meant to be an embodiment of 'our ideals and aspirations.' among these may be our innate religiosity, respect for human dignity, and the celebration of cultural and ethnic diversity."

[278] The justice weighs and compares the costs to benefits that might be found in conflicting rules.

In legal scholarship, the functionalist approach appears to be defined most clearly by what it is not — it is not formalism.[279] William Eskridge, a member of the Yale Law School faculty wrote a paper entitled "Relationships between Formalism and Functionalism in Separation of Powers Cases" in which he distinguished formalism from functionalism:

> There are no fewer than three different ways that constitutional formalism and functionalism can be contrasted. One is their apparently different approach to legal rules and standards. Formalism might be associated with bright-line rules that seek to place determinate, readily enforceable limits on public actors. Functionalism, at least as an antipode, might be associated with standards or balancing tests that seek to provide public actors with greater flexibility.
>
> Another way of contrasting formalism and functionalism focuses on the reasoning process by which we reach rules or standards. Formalism might be understood as deduction from authoritative constitutional text, structure, original intent, or all three working together. Functionalism might be understood as induction from constitutional policy and practice, with practice typically being examined over time. Formalist reasoning promises stability and continuity of analysis over time; functionalist reasoning promises adaptability and evolution.
>
> Finally and relatedly, formalism and functionalism could be contrasted as emphasizing different goals for law. Formalism might be understood as giving priority to rule of law values such as transparency, predictability, and continuity in law. Functionalism, in turn, might be understood as emphasizing pragmatic values like adaptability, efficacy, and justice in law.[280]

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[279] *Madisonian Tectonics:How Form Follows Function in Constitutional and Architectural Interpretation,* Jonathan Turley, *The George Washington Law Review,* Vol. 83: 308.

[280] Eskridge,William N. Jr ., *"Relationships between Formalism and Functionalism in Separation of Powers Cases'"* (1998). Faculty Scholarship Series. Available online at http://digitalcommons.law.yale.edu/fss papers/3807. Last Accessed on: 8 March 2016.

I emphasize that this Court has utilized different approaches to interpreting the Constitution. It is not mandated to fake only an originalist view of the fundamental law. On the contrary: the Court, through Justice Jose P. Laurel, considered the 1935 Constitution to be a "living constitution."[281] This concept is said to have originated from *Missouri v. Holland*[282] penned by Justice Oliver Wendell Holmes:

When we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation. (Emphasis supplied)

Chief Justice William H. Rehnquist, in his *Notion of Living Constitution.*[283] ventured to say that the framers purposely couched the United States Constitution in general terms:

The framers of the Constitution wisely spoke in general language and left to succeeding generations the task of applying that language to the unceasingly changing environment in which they would live. Those who framed, adopted, and ratified the Civil War amendments to the Constitution likewise used what have been aptly described as "majestic generalities" in composing the fourteenth amendment. Merely because a particular activity may not have existed when the Constitution was adopted, or because the framers could not have conceived of a particular method of transacting affairs, cannot mean that general language in the Constitution may not be applied to such a course of conduct. Where the framers of the Constitution have used general language, they have given latitude to those who would later interpret the instrument to make that language applicable to cases that the framers might not have foreseen. (Emphasis supplied)

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[281] *Angara v. Electoral Commission,* 63 Phil. 139 (1936).

[282] 252 U.S. 416 (1920).

[283] Harvard Journal of Law & Public Policy, Vol. 29, pp. 401-415.

Theorists utilizing the functionalist approach have likened Constitutions to animate beings that can evolve to the extent that they become hardly recognizable by their framers. In other words, they believe that the Constitution may be interpreted in a manner that goes beyond the original intent of the persons who crafted the text.

In this case, the use of both the originalist and the functionalist approaches leads to the same result – that petitioner had sufficient reason to believe that she is a natural-born citizen despite the admitted fact that she was a foundling.

The Originalist Approach: Interpretation in accordance with the intent of the framers

Respondents urge the Court to resolve the citizenship issue in this case by using the originalist approach, i.e. to make an interpretation based primarily on an examination of the text and the original intent of the framers of the 1935 Constitution. They posit that there was no intent on the part of the delegates to the 1934 Constitutional Convention to consider foundlings as natural-born citizens, "for had it been so, the text of the provision would have explicitly stated it."[284] In my opinion, this is a simplistic reading of the Constitution that disregards the intent of the framers.

Where the terms of the Constitution itself do not reveal the intent of the framers and the rest of the people, extrinsic aids may be resorted to, even when using an originalist approach. The answer may be provided by the debates or proceedings in the Constitutional Convention, the contemporaneous legislative or executive construction, history, and the effects resulting from the construction contemplated.[285] Here, the records of the 1934 Constitutional Convention prove that the framers intended to accord natural-born citizenship to foundlings.

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[284] Petition, p. 12.

[285] Tañada and Fernando, *Constitution of the Philippines,* Vol. I, 4th Ed., pp. 23-24 (1952).

It has been argued that the non-inclusion of a provision on "natural children of a foreign father and a Filipino mother not recognized by the father" negates the intent to consider foundlings natural-born citizens (or even merely citizens). However, the Court cannot infer the absence of intent to include foundlings based on that fact alone. Indeed, the transcript of the deliberations during the 1934 Constitutional Convention shows why it was decided that foundlings were not to be expressly mentioned in Section 1, Article IV of the 1935 Constitution:

Sr. Rafols: For an amendment, I propose that after subsection 2, the following is inserted: 'The natural children of a foreign father and a Filipino mother not recognized by the father.'

El Presidente: We would like to request a clarification from the proponent of the amendment. The gentleman refers to natural chiidren or to any kind of illegitimate children?

Sr. Rafols: To all kinds of illegitimate children. It also includes natural children of unknown parentage, natural or illegitimate children of unknown parents.

Sr. Montinola: For clarification. The gentleman said 'of unknown parents.' Current codes consider them Filipino, that is, I refer to the Spanish Code wherein all children of unknown parentage born in Spanish territory are considered Spaniards, because the presumption is that child of unknown parentage is the son of a Spaniard. This may be applied in the Philippines in that a child of unknown parentage born in the Philippines is deemed to be Filipino, and there is no need ...

Sr. Rafols: There is a need, because we are relating the conditions that are [required] to be Filipino.

Sr. Montinola: But that is the interpretation of the law, therefore, there is no need for the amendment.

Sr. Rafols: The amendment should read thus: 'Natural or illegitimate of a foreign father and a Filipino mother recognized by one, or the children of unknown parentage.'

Sr. Briones: The amendment [should] mean children born in the Philippines of unknown parentage.

Sr. Rafols: The son of a Filipina to a foreigner, although this [person] does not recognize the child, is not unknown.

El Presidente: Does the gentleman accept the amendment or not?

Sr. Rafols: I do not accept the amendment because the amendment would exclude the children of a Filipina with a foreigner who does not recognize the child. Their parentage is not unknown and I think those children of overseas Filipino mother and father [whom the latter] idoes not recognize, should also be considered as Filipinos.

El Presidente: The question in order is the amendment to the amendment from the gentleman from Cebu, Mr. Briones.

Mr. Bulson: Mr. President, don't you think it would be better to leave this matter in the hands of the Legislature?

Sr. Roxas: Mr. President, my humble opinion is that these cases are few and far between, that the constitution need [not] refer to them. By international law the principle that children or people born in a country of unknown parents are citizens in this nation is recognized, and it is not necessary to include a provision on the subject exhaustively.

The delegates appeared to have been convinced that there was no need to include a binding provision on the subject for the following reasons: the Spanish Civil Code already recognizes foundlings were born of Spanish citizens, and were thus Spanish (Sr. Montinola); that the citizenship of foundlings could be determined by Congress (Sr. Buslon); that the cases were so few and far between that the Constitution did not need to refer to them (Sr. Roxas); or international law already recognized children or people born in a country of unknown parents as citizens of that country (Sr. Roxas). For these reasons, they believed that it was no longer necessary to include foundlings among those to be expressly enumerated in the 1935 Constitution. **The record is bereft of any proposal by any delegate to deny foundlings Filipino citizenship. It would even appear that those delegates who spoke could not imagine any other interpretation than that foundlings are to be considered Filipinos.**

The textual silence on foundlings in Article IV, Section 1 is consistent with the principle that a good Constitution

is brief, comprehensive, and definite.[286] The majority[287] of the delegates, being lawyers, must have subscribed to the accepted principle that the Constitution is unavoidably required to be couched in general language:

> It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers or to declare the means by which those powers should be carried into execution. It was foreseen that this would be a perilous and difficult, if not an impracticable, task. The instrument was not intende:d to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence. It could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter, and restrictions and specifications which at the present might seem salutary might in the end prove the overthrow of the system itself. Hence its powers are expressed in general terms, leaving to the legislature from time to time to adopt its own means to effectuate legitimate objects and to mould and model the exercise of its powers as its own wisdom and the public interests, should require.[288]

The understanding that the Constitution must be brief even as it is broad is evident in Sr. Roxas' statement during the deliberations that cases of children born of unknown parentage were so "few and far in between, that the constitution need not refer to them." Notably, no one raised a comment or an objection in response to Delegate Roxas' remark. The framers might have

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[286] Tañada and Fernando, *Constitution of the Philippines,* Vol. I, 4th Ed. p. 13, (1952).

[287] A majority of the delegates elected – 142 out of 202 – were lawyers. Of these lawyers, 10 were law professors. Likewise there were 6 other educators who were elected as delegates, 2 of them political scientists. There were also a respectable number of farmers and businessmen, Fifty-five of them can be classified under this category. Almost a majority of the total number of delegates had previously served as public officials mostly in an elective capacity. Thus there were many former senators, and representatives and assemblymen in the ranks of the delegates (*Id.* at 6).

[288] *Martin v. Hunter's Lessee,* 14 U.S. 304 (1816).

also accepted, regardless of its veracity, that international law regards foundlings as citizens of the country where they were found. They may have believed, as a matter of fact, that current codes already considered children of unknown parents as Filipinos.

What is clear from the deliberations is that the framers could not have intended to place foundlings in limbo, as the social justice principle embodied in Section 5, Article II of the 1935 Constitution indiscriminately covered "all of the people." Social justice has been defined as "the *humanization of laws* and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated."[289] It means the promotion of the welfare *of all the people.*[290] It is founded on the recognition of the necessity of interdependence among diverse units of a society and of the *protection that should be equally and evenly extended to all groups* as a combined force in our social and economic life. This recognition is consistent with the state's fundamental and paramount objective of promoting the health, comfort, and quiet of all persons and bringing about the greatest good to the greatest number.[291]

The Functionalist Approach: Interpretation consistent with natural justice

The issue of citizenship may also be resolved using the functional approach to constitutional interpretation. Under this method, the Court should adopt an interpretation that would allow the Constitution to fulfill its purpose.

Taking historical considerations into account, it is beyond cavil that the Constitution would not function as envisioned if we give judicial imprimatur to the COMELEC's argument. It claims that the 1935 Constitution, as well as the 1973 and 1987

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[289] *Calalang v. Williams,* 70 Phil. 726 (1940).

[290] *Id*.

[291] *Id*.

constitutions, excluded foundlings from being citizens merely on the ground that they could not establish a blood relationship with a Filipino father. This interpretation would likewise go against the fundamental principle of natural justice.

Mixture of jus soli and jus sanguinis

The history of citizenship laws in the Philippines shows that we have never adopted a purely *jus sanguinis* regime. Ours is a mixture of elements of *jus soli* and *jus sanguinis,* which we inherited from the Americans and the Spaniards, respectively. In fact, as will be elaborted in the succeeding section, the concept of "natural-born citizenship" originated from a *jus soli* jurisdiction.

The COMELEC however, opines that only those whose fathers are citizens of the Philippines are considered natural-born citizens under the 1935 Constitution.[292] Citing *Valles v. Comelec,*[293] it argues that natural-born Philippine citizenship is acquired at the moment of birth on the basis of blood relationship.[294] This is a gross misreading of the case. The Court in *Valles* did say that the principle of *jus sanguinis,* which confers citizenship by virtue of blood relationship, was subsequently retained under the 1973 and 1987 Constitutions; however, the Court never stated that *jus sanguinis* had ever been the exclusive regime in this jurisdiction. On the contrary, Rosalind Lopez's father, from whom she derived her Philippine citizenship, was considered by the Court as a Philippine citizen based on his birth in Daet, Camarines Norte, in 1879, a *jus soli* application: of citizenship rules.

Far from adhering to an exclusively *jus sanguinis* regime, at least four modes of acquiring citizenship have operated in the Philippine jurisdiction since the turn of the century: *jus soli, jus sanginis, res judicata* and naturalization. *Jus soli* used

[292] Memorandum for public respondent COMELEC, p. 56.

[293] 392 Phil. 327 (2000).

[294] COMELEC Comment, p. 28.

to predominate but upon the effectivity of the 1935 Constitution, *jus sanguinis* became the *predominating* regime.[295]

Citizenship prior to the 1935 Constitution

The first Civil Code adopted in the Philippines was the Spanish Civil Code,[296] which became effective on 18 December 1889. It enumerated who were Spaniards:

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[295] The following excerpts show that the Court characterized *jus sanguinis* as the predominating regime of citizenship:

a) *Roa v. Insular Collector of Customs* (1912)

"A reading of Article 17 of the Civil Code, above copied, is sufficient to show that the first paragraph affirms and recognizes the principle of nationality by place of birth, *jus soli.* The second, that of *jus sanguinis;* and the last two that of free selection, with the first predominating."

b) *Torres v. Tan Chim* (1940)

"In abrogating the doctrine laid down in the Roa case and making *jus sanguinis* the predominating principle in the determination of Philippine citizenship, the Constitution did not intend to exclude those who were citizens of the Philippines by judicial declaration at the time of its adoption. If on the strength of the Roa decision a person was considered a full-pledged Philippine citizen (Art. IV, Sec. 1, No. 1) on the date of the adoption of the Constitution when *jus soli* had been the prevailing doctrine, he cannot be divested of his Filipino citizenship."

c) *Villahermosa v. Commissioner of Immigration* (1948)

"After the Constitution, mere birth in the Philippines of a Chinese father and Filipino mother does not *ipso facto* confer Philippine citizenship, and *jus sanguinis* instead of *jus soli* is the predominating factor on questions of citizenship, thereby rendering obsolete the decision in *Roa vs. Collector of Customs,* 23 Phil., and *U. S. vs. Lim Bin,* 36 Phil., and similar cases on which petitioner's counsel relies."

d) *Talaroc v. Uy* (1952)

"In abrogating the doctrine laid down in the Roa case and making *jus sanguinis* the predominating principle in the determination of Philippine citizenship, the Constitution did not intend to exclude those who were citizens of the Philippines by judicial declaration at the time of its adoption. If on the strength of the Roa decision a person was considered a full-pledged Philippine citizen (Art. IV, Sec. 1, No. 1) on the date of the adoption of the Constitution when *jus soli* had been the prevailing doctrine, he cannot be divested of his Filipino citizenship."

[296] Translated by Licenciados Clifford S. Walton and Nestor Ponce de Leon. Published under authority of Major-General William Ludlow Military

Article 17. The following are Spaniards:
(a) **Persons born in Spanish territory,**
(b) Children of a Spanish father or mother, even if they were born outside of Spain,
(c) Foreigners who have obtained naturalization papers,
(d) Those who, without such papers, may have become domiciled inhabitants of any town of the Monarchy. (Emphasis supplied)

On 21 January 1899, the Malolos Constitution, which was framed by the national assembly of the first Philippine Republic, was promulgated. All persons born in the Philippine territory were considered as Filipinos:

Article 6. The following are Filipinos:
1. **All persons born in the Philippine territory**. A vessel of Philippine registry is considered, for this purpose, as part of Philippine territory.
2. Children of a Filipino father or mother, although born outside of the Philippines.
3. Foreigners who have obtained certification of naturalization.
4. Those who, without such certificate, have acquired a domicile in any town within Philippine territory.

It is understood that domicile is acquired by uninterrupted residence for two years in any locality within Philippine territory, with an open abode and known occupation, and contributing to all the taxes imposed by the Nation.

The condition of being a Filipino is lost in accordance with law. (Emphasis supplied)

The Malolos Constitution was short-lived and was in force only in the places were the first Philippine Republic had control. On 11 April 1899, the Treaty of Paris between Spain and America took effect. Justice Jose C. Vitug, in *Tecson v. Comelec*[297] implied that between 10 December 1898 when the parties entered

Governor of Havana. Edited by Major Clifford S. Walton. Available online at https://archive.org/stream/spanishcivilcode00spairich/spanishcivilcode00spairich_djvu.txt. (last visited at 9 March 2016).

[297] *Supra* note 1.

into the treaty and 11 April 1899, when it took effect, Spanish civil law remained intact.[298]

The term "citizens of the Philippine Islands" was introduced a few years later through Section 4 of the Philippine Bill of 1902:

Section 4. That all **inhabitants** of the Philippine Islands continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Philippine Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain signed at Paris December tenth, eighteen hundred and ninety-eight.

Under the Philippine Bill, a citizen of the Philippines was one who was an inhabitant of the Philippines and a Spanish subject on 11 April 1899. The term inhabitant was taken to include 1) a native-born inhabitant; 2) an inhabitant who was a native of Peninsular Spain; or 3) an inhabitant who obtained Spanish papers on or before 11 April 1899.[299]

Controversy arose on the status of children born in the Philippines from 11 April 1899 to 1 July 1902, during which period no citizenship law was extant in the Philippines. Weight was given to the view, articulated in jurisprudential writing at the time that the common law principle of *jus soli* governed those born in the Philippine Archipelago within that period.[300] *Jus soli* was also known as the principle of territoriality, which was operative in the United States and England.

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[298] Justice Vitug wrote: "The year 1898 was another turning point in Philippine history. Already in the state of decline as a superpower, Spain was forced to so cede her sole colony in the East to an upcoming world power, the United States. An accepted principle of international law dictated that a change in sovereignty, while resulting in an abrogation of all political laws then in force, would have no effect on civil laws, which would remain virtually intact."

[299] *Tecson v. Comelec* citing Leon T. Garcia, The *Problems of Citizenship in the Philippines,* Rex Bookstore, 1949, at pp. 31-32, *supra* note 1.

[300] *Id* at. 23-26, cited in *Tecson v. Comelec, supra* note 1.

In 1916, the Philippine Autonomy Act, also known as the Jones Law, restated virtually the provisions of the Philippine Bill of 1902 as amended by the Act of Congress in 1912:[301]

Section 2. That all **inhabitants** of the Philippine Islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Islands, and their children born subsequently thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December tenth, eighteen hundred and ninety-eight and except such others as have since become citizens of some other country; Provided, That the Philippine Legislature, herein provided for, is hereby authorized to provide for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States, if residing therein."

Under the Jones Law, native-born inhabitants of the Philippines were deemed to be citizens of the Philippines as of 11 April 1899 if they were (1) subjects of Spain on 11 April 1899; (2) residing in the Philippines on that date; and (3) since that date, not citizens of some other country.[302]

Citizenship under the 1935, 1973 and 1987 Constitutions

Article IV, Section 1 of the 1935 Constitution provides:

Section 1. The following are citizens of the Philippines:

1. Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

2. Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

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[301] *Tecson v. Comelec, supra* note 1.

[302] *Tecson v. Comelec, supra* note___.

3. Those whose fathers are citizens of the Philippines.

4. Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

5. Those who are naturalized in accordance with law.

Items 1 and 4 of the foregoing section show that the 1935 Constitution was not based purely on the *jus sanguinis* principle. taking into account the history of our citizenship provisions, the phrase "those who were citizens of the Philippine Islands at the time of the adoption of this Constitution" clearly included those who did not have a single drop of Filipino blood in them. Moreover, "those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office" were also automatically considered citizens despite the fact that they were of foreign blood.

Significantly, the provisions of Section 1(1) of Article IV of the 1935 Constitution were carried over to the 1973 and 1987 Constitutions.[303] The only difference was the reference to the country as "Philippines" instead of "Philippine Islands."

Considering the mixture of citizenship regimes currently in force, it is not correct to say that there is an exclusive *jus sanguinis* principle in place,and because of that principle, that petitioner is thereby required, regardless of the fact that she is a foundling, to submit proof of her blood relationship to a Filipino father.

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[303] Article III, Section 1 of the 1973 Constitution states:

Section I. The following are citizens of the Philippines:

1. Those who are citizens of the Philippines at the time of the adoption of this Constitution.

x x x x x x x x x

Article IV, Section 1 of the 1987 Constitution, states:

Section 1. The following are citizens of the Philippines:

1. Those who are citizens of the Philippines at the time the adoption of this Constitution;

x x x x x x x x x

To rule otherwise would be to implement a purely *jus sanguinis* regime contrary to the history of the Constitution.

Functionality in accord with natural justice

As previously explained, the Constitution is meant to advance the fundamental values of the Filipino people, in particular, those articulated in the Preamble: the promotion of general welfare;[304] the creation of a just and humane society;[305] and the protection of the blessings of independence and democracy under a regime of truth, justice, freedom, love, equality, and peace in accordance with the rule of law.[306] The Constitution must be interpreted to allow it to function in accordance with these ideals. Thus, the Court should not construe the citizenship provisions of the 1935 Constitution in a manner that would unjustly deprive foundlings of citizenship and render them stateless.

To emphasize, from the time that the Supreme Court was vested with the power to interpret the law, We have exercised this power in accordance with what is right and just. Citizenship cases are no exception. In previous cases, the Court has in fact interpreted the law on citizenship in accordance with natural justice.

In *Roa v. Collector,*[307] We have assumed that the principle of *jus soli* was applicable. This assumption was affirmed in *Torres v. Tan Chim*[308] *and Gallofin v. Ordonez*[309] in which this Court held that the principle of *jus soli* was followed with reference to individuals who were born of Chinese fathers and Filipino mothers.[310]

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[304] 1987 Constitution, Preamble.

[305] *Id*.

[306] *Id*.

[307] 23 Phil. 315 (1912).

[308] 69 Phil. 518 (1940).

[309] 70 Phil. 287 (1940).

[310] Tañada and Fernando, *Constitution of the Philippines,* Vol. II, 4th Ed. (1952), p. 649.

In *Talaroc v. Uy,*[311] We held that in making *jus sanguinis* the predominating principle in the determination of Philippine citizenship, the Constitution did not intend to exclude those who were citizens of the Philippines by judicial declaration at the time of its adoption. We ruled that if, on the strength of *Roa,* a person was considered a full-fledged Philippine citizen on the date of the adoption of the Constitution when *jus soli* was the prevailing doctrine, that person cannot be divested of Filipino citizenship.[312] The Court also stated that "it would be neither fair nor good policy to hold Uy an alien after he had exercised the privileges of citizenship in the face of legal principles that have the force of law."[313]

The principles of natural justice were also utilized in other cases to avoid an unfair outcome. In *Sale de Porkan v. Yatco,*[314] We upheld the validity of a contract over a parcel of land in favor of a "non-Christian inhabitant of the Department of Mindanao and Sulu." The contract was considered valid despite the lack of approval by the provincial governor of the province where the contract was executed as mandated by the Administrative Code of Mindanao and Sulu. The Court held:

> But if the contract, Exhibit B, is avoided, the result would be just the contrary, for the non-Christian plaintiff-appellant here would

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[311] *Talaroc v. Uy,* 92 Phil. 52 (1952).

Facts: This is an action to contest the election of Uy to the office of Municipal Mayor on the ground that he is Chinese, therefore, ineligible. He was born in the Philippines in 1912 of a Filipino mother and a Chinese father. His parents did not get married unti11914. His father died in 1917, while his mother died in 1949. Uy had voted in previous elections and held various positions in the government. He never went to China.

Held: On the strength of the Roa doctrine, Uy can be considered a Filipino citizen on the date of the adoption of the Constitution when *jus soli* has been the prevailing doctrine. The status of those persons who were considered Filipino citizens under the prevailing doctrine of *jus soli* would not be affected by the change of doctrine upon the effectivity of the Philippine Constitution.

[312] *Id*.

[313] 92 Phil. 61 (1952).

[314] 70 Phil. 161-166 (1940).

be divested of ownership over the houses which were ceded to him by C de S and which he now possesses. This would defeat the: legislative aim and purpose, destroy substantial equities, and thwart the postulates of natural justice.

In *Van Dorn v. Romillo,*[315] We also prevented injustice by freeing a Filipino woman from her marital obligations after she had been divorced by her foreigner husband:

To maintain, as private respondent does, that, under our laws, petitioner has to be considered still married to private respondent and still subject to a wife's obligations under Article 109, et. seq. of the Civil Code cannot be just. Petitioner should not be obliged to live together with, observe respect and fidelity, and render support to private respondent. The latter should not continue to be one of her heirs with possible rights to conjugal property. She should not be discriminated against in her own country if the ends of justice are to be served.

Concept of "natural-born" citizenship

The requirement of natural-born citizenship should serve only to deny certain privileges to those who have gone through the process of naturalization in order to acquire and perfect their citizenship. The concept, originally meant to distinguish those who are "natural-born" from those who are "foreign-born" in *jus soli* jurisdictions, cannot, be used to justify the denial of citizenship status to foundlings because of their inability to prove a certain blood relationship. .

"Natural-born" citizenship and jus soli

An examination of the origin of the term "natural-born" reveals that it was lifted by the Philippines from the United States (U.S.) Constitution, which states:

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of the President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five

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[315] 223 Phil. 357-363 (1985).

Years, and been fourteen Years a Resident within the United States.[316] (Capitalization in the original)

The U.S. Constitution itself does not define the term. However, numerous holdings and references in federal and state cases have clearly indicated that those born in the United States and subject to its jurisdiction (i.e., not born to foreign diplomats or to occupying military forces), even if they were born to alien parents, are citizens "at birth" or "by birth," and are "natural born," as opposed to "naturalized," U.S. citizens.[317]

As a matter of inclusion, it has been held that it is beyond dispute that anyone born on American soil with an American parent is a "natural born citizen."[318] As a matter of exclusion, anyone whose citizenship is acquired after birth as a result of "naturalization" is not a "natural born citizen."[319] The meaning of the natural-born citizen clause became politically salient in the U.S. when John McCain became the Republican nominee for President in September of 2008. He was born in the Panama Canal Zone to parents who were American citizens.[320]

The phrase "natural-born citizen" found its way to America from England. While there had been no extensive usage of the phrase during the founding era of the US (1774-1797), it seems clear that it was derived from "natural born subject," which had a technical meaning in English law and constitutional theory.[321] The framers of the US Constitution would have been familiar with *Blackstone's Commentaries* – which James Madison (hailed as the "Father of the Constitution") described as "a book which is

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[316] U.S. Constitution, Art. II, Sec. 1.

[317] Jack Maskell, "Qualifications for President and the 'Natural Born' Citizenship Eligibility Requirement", Congressional Research Service, 14 November 2011 <https://fas.org;sgp/crs/misc/R42097.pdt> (last visited 8 March 2016).

[318] Lawrence B. Solum, *Commentary, "Originalism and the Natural Born Citizen Clause*," 107 Mich. L. Rev First Impressions 22, 22 (2010).

[319] *Id*.

[320] *Id*.

[321] *Id*. at 26.

in every man's hand"– and would have understood that the fundamental premise of natural-born citizenship was a concept of allegiance to the sovereign at birth.[322]

Indeed, the English lexicographer Samuel Johnson defined "natural" as "native," which may mean either an "inhabitant" or an "offspring."[323] The conception of natural-born subjects under British law is tied to that of natural allegiance to a sovereign. This conception is based primarily on being born within the the territory subject to the sovereign's rule, but with the addition of others (such as the children of ambassadors or of the sovereigns themselves) who have a "natural allegiance" to the sovereign.

Blackstone writes:

The first and most obvious division of the people is into aliens and natural-born subjects. Natural-born subjects are such as are born within the dominions of the crown of England, that is, within the ligeance, or as it is generally called, the allegiance of the king; and aliens, such as are born out of it. Allegiance is the tie, or ligamen, which binds the subject to the king, in return for that protection which the king affords the subject. The thing itself, or substantial part of it, is founded in reason and the nature of government; the name and the form are derived to us from our Gothic ancestors.

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Allegiance, both express and implied, is however distinguished by the law into two sorts or species, the one natural, the other local; the former being also perpetual, the latter temporary. Natural allegiance is such as is due from all men born within the king's dominions immediately upon their birth. For, immediately upon their birth, they are under the king's protection;

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[322] See *id*; F.E. Edwards, *Natural Born British Subject at Common Law,* 14 Journal of the Society of Comparative Legislation 314, 315 (1914) <http://www.jstor.org/stable/752349> (last visited 8 March 2016).

[323] A Dictionary Of The English Language: In Which The Words are Deduced from Their Originals, And Illustrated in Their Different Significations By Examples from the Best Writers, To Which Are Prefixed, A History of the Language, And An English Grammar (2nd ed. 1756)

at a time too, when (during their infancy) they are incapable of protecting themselves.

x x x x x x x x x

When I say, that an alien is one who is born out of the king's dominions, or allegiance, this also must be understood with some restrictions. The common law indeed stood absolutely so; with only a very few exceptions: so that a particular act of parliament became necessary after the restoration, for the naturalization of children of his majesty's English subjects, born in foreign countries during the late troubles. And this maxim of the law proceeded upon a general principle, that every man owes natural allegiance where he is born, and cannot owe two such allegiances, or serve two masters, at once. Yet the children of the king's ambassadors born abroad were always held to be natural subjects: for as the father, though in a foreign country, owes not even a local allegiance to the prince to whom he is sent; so, with regard to the son also, he was held (by a kind of postliminium) to be born under the king of England's allegiance, represented by his father, the ambassador.[324] (Emphasis supplied)

Based on the foregoing, **it appears that the original opposite of the term "natural-born" is not "naturalized," but "foreign-born."** The term was meant to distinguish between those born within a certain territory and those born outside it. Blood or descent was irrelevant. However, because of the mixture of common law and civil law in our jurisdiction, the original concept of natural-born citizenship seems to have been diluted.

Citizens by Birth v. Citizens by Naturalization

Irrespective of the origin of the concept, the term "natural-born" was used by the framers of the 1935, 1973 and 1987 Constitutions to delineate the privileges of those who are citizens at birth, from those enjoyed by citizens who are naturalized.

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[324] The Founders' Constitution, Volume 2, Article 1, Section 8, Clause 4 (Cititzenship), Document 1, The University of Chicago Press http//press-pubs.uchicago.edu/founders/documents/al 8 4 citizenships 1. htm1 (last visisted 8 March 2016).

The word "natural-born" appeared thrice in the 1935 Constitution as a qualification for the presidency and vice-presidency, as well as membership in the Senate and House of Representatives.[325] The framers of the 1935 Constitution, however, did not define the term.

In their commentary on the 1935 Constitution, Tañada and Fernando opined that the requirement that a person be a natural-born citizen may be interpreted to mean that at the time of birth, the candidate was a Filipino citizen; naturalized citizens are excluded.[326] Proceeding from this logic, **citizens who did not acquire their Philippine citizenship through naturalization have the citizenship qualification to run for the presidency.**

The statements in these commentaries are supported by the deliberations of the framers of the 1935 Constitution. During the 1934 Constitutional Convention, Delegate Alejandrino proposed to limit eligibility for the presidency and vice-presidency only to Filipino citizens born in the Philippines of parents who were not naturalized.[327] This proposal was shot down. It must be noted,

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[325] Sections 4 and 7, Article VI of the 1935 Constitution states:

Section 4, No person shall be a Senator unless he be a **natural born** citizen of the Philippines and at the time of his election, is at least thirty-five years of age, a qualified elector, and a resident of the Philippines for not less than two years immediately prior to his election.

Section 7. No person shall be a Member of the House of Representatives unless he be a **natural born** citizen of the Philippines, and, at the time of his election, is at least twenty-five years of age, a qualified elector, and a resident of the province in which he his chosen for not less than one year immediately prior to his elections.

Section 3, Art. VII of the 1935 Constitution states:

Setion 3. No person may be elected to the President or Vice-President, unless he be **natural born** citizen of the Philippines, a qualified voter, forty years of age or over, and has been a resident of the Philippines for at least ten years immediately preceding the election.

[326] Tañada and Fernando, Constitution of the Philippines, Vol. II, 4th Ed. (1952), pp. 974-975.

[327] Tañada and Fernando, *Constitution of the Philippines,* Vo. II, 4th Ed. (1952), p. 975.

though, that he referred to parents who were "not naturalized," instead of those who were "natural-born." It may be inferred that the framers of the 1935 Constitution only intended to exclude those citizens who had been naturalized from occupying certain positions. Another section of the deliberations proceeded in this manner:

Delegate Artadi. – I am going to ask a reconsideration with respect to the matter appearing on page 22-A which treats of the interpretation of the words, 'natural-born,' because I would like to inform the Assembly that I have had a conversation with some members of the committee... and they explained to me that the words, 'natural-born,' do not necessarily mean 'born in the Philippines;' that is to say, translated into Spanish, they mean that one who possesses all the qualifications to be President of the republic, as it is written, is not necessarily born in the Philippines. So that for purposes of the record, I would like one of the members of the committee to explain the true interpretation of the words, natural-born,' for the information of the Assembly.

The President. – The delegate from Capiz, Mr. Roxas, may please tell what is the exact equivalent of those words.

Delegate Roxas. – Mr. President, the phrase, 'natural-born citizen' appears in the Constitution of the United States; but the authors say that this phrase has never been authoritatively interpreted by the Supreme Court of the United States in view of the fact that there has never been raised the question of whether or not an elected President fulfilled this condition. The authors are uniform in the **fact that the words, 'natural-born' citizen,' means a citizen by birth, a person who is a citizen by reason of his birth, and not by naturalization or by a further declaration required by law for citizenship.** In the Philippines, for example, under the provisions of the article on citizenship which we have approved, all those born of a father who is a Filipino citizen, be they persons born in the Philippines or outside, would be citizens by birth or 'natural-born.'

And with respect to one born of a Filipino mother but of a foreign father, the article which we approved about citizenship requires that, upon reaching the age of majority, this child needs to indicate the citizenship which he prefers, and if he elects Philippine citizenship upon reaching the age of majority, then he shall be considered a Filipino citizen. According to this interpretation, the child of a Filipino mother with a foreign father would not be a citizen by birth, because the law

or the Constitution requires that he make a further declaration after his birth. Consequently, **the phrase, 'natural-born citizen,' as it is used in the English text means a Filipino citizen by birth, regardless of where he was born.**[328] (Emphasis supplied)

The requirement of "natural-born" citizenship was carried over to the 1973 Constitution[329] and then to the present Constitution.[330] Confirming the original vision of the framers of the 1935 Constitution, the 1973 Constitution defined the term as "one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship."[331] The 1973 definition was adopted in the present Constitution, with the added proviso that those who elect Philippine citizenship in accordance with paragraph (3),[332] Section 1 of Article IV, shall be deemed natural-born citizens:

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[328] *Id.* at 404-405.

[329] Sections 4 and 2, Art. II of the 1973 Constitution, state:

Section 4. No person may be elected President unless he is a **natural-born** citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election and a resident of the Philippines for at least ten years immediately preceding such election. (as amended in the January 27, 1984 Plebiscite) Section 2. There shall be a Vice-President who shall have the same qualifications and term of office as the President and may be removed from office in the same manner as the President as provided in Article XIII, Section 2 of this Constitution.

[330] Sections 2 and 3, Art. VII of the 1987 Constitution, read:

Section 2. No person may be elected President unless he is a **natural-burn** citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

Section 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. He may be removed from office in the same manner as the President.

[331] Section 4, Article III.

[332] This section states:

Section 1. The following are citizens of the Philippines:

x x x x x x x x x

(3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and

x x x x x x x x x

Art. IV, Section 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

Since the term was defined in the negative, it is evident that the term "natural-born citizens" refers to those who do not have to perform any act to acquire or perfect their Philippine citizenship. The definition *excludes* only those who are naturalized. From this interpretation, it may be inferred that a Filipino citizen who did not undergo the naturalization process is natural-born. As We explained in *Bengson III v. House of Representatives Electoral Tribunals:*[333]

A citizen who is not a naturalized Filipino, i.e., did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is a natural-born Filipino. Noteworthy is the absence in said enumeration of a separate category for persons who, after losing Philippine citizenship, subsequently reacquire it. The reason therefor is clear: as to such persons, they would either be natural-born or naturalized depending on the reasons for the loss of their citizenship and the mode prescribed by the applicable law for the reacquisition thereof.

In *Bengson,* We also ruled that private respondent regained his status as a natural-born citizen the moment he reacquired his Filipino citizenship through repatriation. That part of the Decision will be discussed in further detail in the succeeding sections.

Not Purity of Blood

Naturalized citizens are former aliens or foreigners who had to undergo a rigid procedure, in which they had to adduce sufficient evidence to prove that they possessed all the qualifications and none of the disqualifications to become Filipino citizens as provided by law.[334] In contrast, as stated

[333] 409 Phil. 633 (2001).

[334] Chief Justice (then Associate Justice) Panganiban's Concurring Opinion in *Bengson III, id.*

in the early case *Roa v. Collector of Customs,*[335] a natural-born citizen is one who has become such at the moment of birth.

It may be observed from the exchanges during the deliberations on the qualifications of members of the Supreme Court that the concern about the natural-born requirement was not all about the questionable allegiance of those without Filipino blood, but of those born abroad of Filipino parents. Delegate Lim expressed his understanding that the requirement was for the President to be "native-born," and his reservations about installing as magistrates those who are not familiar with the "idiosyncrasies of the people:"

> How can we figure out that naturalized citizens could really interpret the purposes of this Constitution including the idiosyncrasies of the people? We have as a matter of policy adopted the principle that the President of the Commonwealth should be a native born. Our Supreme Court in some instances has the power much bigger than that of the President by declaring our laws passed by the National Assembly as unconstitutional. That power makes the Supreme Court the supreme interpreter of our laws of the land, and who else but native born persons, individuals who have been born in the country, can interpret, as I said, the customs and habits of our people?[336]

It must be emphasized that natural-born status was never intended to be a measure of the purity of blood. This Court, on reconsideration in *Tan Chong,*[337] explained why birth alone may not be sufficient basis for the acquisition of citizenship. Some of the important elements that would make a person living in a country its citizen: youth spent in the country; intimate and endearing association with the citizens among whom they live; knowledge and pride of the country's past; belief in the greatness and security of its institutions, in the loftiness of its ideas, and in the ability of the country's government to protect them, their children and their earthy possessions against perils

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[335] 23 Phil. 315, 338 (1912).

[336] Laurel, *Proceedings of the Philippine Constitutional Convention,* Vol. V, p. 1032.

[337] 79 Phil. 249, 256 (1947).

from within and from without; and their readiness to defend the country against those perils.[338]

In the same manner, blood relationship alone is not controlling.[339] The following groups of people, who technically have no "Filipino blood," were effectively considered citizens by virtue of Commonwealth Act No. 473 or the "Revised Naturalization Law":

> Section 15. Effect of the Naturalization on Wife and Children. — Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines.
>
> Minor children of persons naturalized under this law who have been born in the Philippines shall be considered citizens thereof.
>
> A foreign-born minor child, if dwelling in the Philippines at the time of the naturalization of the parent, shall automatically become a Philippine citizen, and a foreign-born minor child, who is not in the Philippines at the time the parent is naturalized, shall be deemed a Philippine citizen only during his minority, unless he begins to reside permanently in the Philippines when still a minor, in which case, he will continue to be a Philippine citizen even after becoming of age.
>
> A child born outside of the Philippines after the naturalization of his parent, shall be considered a Philippine citizen, unless within one year after reaching the age of majority, he fails to register himself as a Philippine citizen at the American Consulate of the country where he resides, and to take the necessary oath of allegiance. (Emphasis supplied)

A necessary implication of the above provision is that children born *within* the Philippines after the naturalization of their parent are unqualifiedly citizens of the country. This implication holds true even if the naturalized parent is *purely* of foreign blood. Moreover, because they do not need to perform any act to acquire Philippine citizenship, they must be considered natural-born citizens by definition.

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[338] *Id.*

[339] Tañada and Fernando, *supra.*

Like foundlings, these groups are not expressly mentioned in the Constitution. However, by implication of law, they are considered natural-born citizens despite the absence of a single drop of Filipino blood in them. From this fact, one can draw no other conclusion: that the natural-born classification has nothing to do with bloodline or birthright.

Foundling not "naturalized in accordance with law"

It has been argued that a foundling may obtain only naturalized citizenship, because an act is supposedly required to acquire this status, i.e., the registration of the child as a foundling after an administrative proceeding. In other words, it is contended that the process of registration effectively amounts to naturalization in accordance with law. This contention is unacceptable for three reasons.

First, the phrase "naturalized in accordance with law" must be understood with reference to the naturalization process provided under naturalization statutes. In several decisions, this Court has construed the meaning of the expression "in accordance with law" as an allusion to enabling legislation.[340] Hence, naturalization in Article IV, Section 1 of the 1935 Constitution, does not refer to just any act, but to the specific procedure for naturalization prescribed by the legislature. The Court does not have the right to engage in judicial legislation on naturalization when the Constitution exclusively vests said power in -Congress.

Second, registration is not an act that can be attributed to a foundling. Pursuant to Section 5 of Act No. 3752,[341] the person

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[340] See: *Ang Bagong Bayani-OFW v. Commission on Elections,* 412 Phil. 308-374 (2001).

[341] The provision states:

SECTION 5. *Registration and Certification of Births.*— x x x

In the case of an exposed child, the person who found the same shall report to the local civil registrar the place, date and hour of finding and other attendant circumstances.

who finds an abandoned child shall report the place, date and hour of finding and other attendant circumstances to the local civil registrar for purposes of registration. This prescribed act is in sharp contrast to the naturalization process provided under the Revised Naturalization Law,[342] which requires the applicants to themselves personally and voluntarily perform certain acts to avail of naturalized citizenship. In particular, applicants are required to (a) file a declaration under oath their *bona fide* intention to become a citizen of the Philippines;[343] (b) file a petition for citizenship with a competent court;[344] (c) participate

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[342] Commonwealth Act No. 473 (1939).

[343] Section 5 of C.A. 473 states:

SECTION 5. Declaration of Intention. — One year prior to the filing of his petition for admission to Philippine citizenship, the applicant for Philippine citizenship shall file with the Bureau of Justice a declaration under oath that it is bona fide his intention to become a citizen of the Philippines. Such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel or aircraft, if any, in which he came to the Philippines, and the place of residence in the Philippines at the time of making the declaration. No declaration shall be valid until lawful entry for permanent residence has been established and a certificate showing the date, place, and manner of his arrival has been issued. The declarant must also state that he has enrolled his minor children, if any, in any of the public schools or private schools recognized by the Office of Private Education of the Philippines, where Philippine history, government, and civics are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen. Each declarant must furnish two photographs of himself.

[344] Section 7 of C.A. 473 states:

SECTION 7. Petition for Citizenship. — Any person desiring to acquire Philippine citizenship shall file with the competent court, a petition in triplicate, accompanied by two photographs of the petitioner, setting forth his name and surname; his present and former places of residence; his occupation; the place and date of his birth; whether single or married and if the father of children, the name, age, birthplace and residence of the wife and of the children; the approximate date of his or her arrival in the Philippines, the name of the port of debarkation, and, if he remembers it, the name of the ship on which he came; a declaration that he has the qualifications required by this Act, specifying the same, and that he is not disqualified for naturalization under the provisions of

in a hearing before a competent court;[345] and (d) take an oath of allegiance to the Philippines.[346] Needless to state, foundlings do not perform acts equivalent to any of these when they are registered. More often than not, they are not aware of their circumstances when they are being registered as foundlings.

Third, it is possible to register a foundling by reporting the circumstances of the discovery to the local civil registrar *without* any administrative proceeding, if the registration is done prior to the surrender of the custody of the child to the DSWD or an

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this Act; that he has complied with the requirements of section five of this Act; and that he will reside continuously in the Philippines from the date of the filing of the petition up to the time of his admission to Philippine citizenship. The petition must be signed by the applicant in his own handwriting and be supported by the affidavit of at least two credible persons, stating that they are citizens of the Philippines and personally know the petitioner to be a resident of the Philippines for the period of time required by this Act and a person of good repute and morally irreproachable, and that said petitioner has in their opinion all the qualifications necessary to become a citizen of the Philippines and is not in any way disqualified under the provisions of this Act. The petition shall also set forth the names and post-office addresses of such witnesses as the petitioner may desire to introduce at the hearing of the case. The certificate of arrival, and the declaration of intention must be made part of the petition.

[345] Section 10 of C.A. 473 provides:

SECTION 10. Hearing of the Petition. — No petition shall be heard within the thirty days preceding any election. The hearing shall be public, and the Solicitor-General, either himself or through his delegate or the provincial fiscal concerned, shall appear on behalf of the Commonwealth of the Philippines at all the proceedings and at the hearing. If, after the hearing, the court believes, in view of the evidence taken, that the petitioner has all the qualifications required by, and none of the disqualifications specified in, this Act and has complied with all requisites herein established, it shall order the proper naturalization certificate to be issued and the registration of the said naturalization certificate in the proper civil registry as required in section ten of Act Numbered Three thousand seven hundred and fifty-three.

[346] Pursuant to Section 12 of C.A. 473, the petitioner shall, in open court, take the following oath before the naturalization certificate is issued:

"I,________________, solemnly swear that I renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state of sovereignty, and particularly to the________________of which at this time I am a subject

institution.[347] It is only when the child is turned over to the DSWD without having been registered with the local civil registrar that an administrative proceeding is required prior to the issuance of a Foundling Certificate.[348] If a child is already registered by the

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or citizen; that I will support and defend the Constitution of the Philippines and that I will obey the laws, legal orders and decrees promulgated by the duly constituted authorities of the Commonwealth of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the United States of America in the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.

"So help me God."

[347] Rule 28 of the Implementing Rules and Regulations of Act No. 3753 and Other Laws on Civil Registration (NSO Administrative Order No. 1-93 [1992]) provides:

Immediately after finding a foundling, the finder shall report the case to the barangay captain of the place where the foundling was found, or to the police headquarters, whichever is nearer or convenient to the finder. When the report is duly noted either by the barangay captain or by the police authority, the finder shall commit the child to the care of the Department of Social Welfare and Development or to a duly licensed orphanage or charitable or similar institution. **Upon commitment, the finder shall give to the charitable institution his copy of the Certificate of Foundling, if he had registered the foundling.** (emphasis supplied)

[348] Pursuant to R.A. 9523 (2009), the DSWD may declare a child legally available for adoption in accordance with the following procedure:

SECTION 4. Procedure for the Filing of the Petition. — The petition shall be filed in the regional office of the DSWD where the child was found or abandoned.

The Regional Director shall examine the petition and its supporting documents, if sufficient in form and substance and shall authorize the posting of the notice of the petition in conspicuous places for five (5) consecutive days in the locality where the child was found.

The Regional Director shall act on the same and shall render a recommendation not later than five (5) working days after the completion of its posting. He/she shall transmit a copy of his/her recommendation and records to the Office of the Secretary within forty- eight (48) hours from the date of the recommendation.

SECTION 5. Declaration of Availability for Adoption. — Upon finding merit in the petition, the Secretary shall issue a certification declaring the child legally available for adoption within seven (7) working days from receipt of the recommendation.

finder, the administrative proceeding under the Rules of the DSWD[349] is followed not for the purpose of allowing that registration, but only to determine whether the child may be declared legally available for adoption.

Petitioner did not lose her natural-born status when she reacquired Philippine citizenship under R.A. 9225.

Respondents also question the reacquisition by petitioner of her citizenship under R.A. 9225 or the Citizenship Retention and Re-acquisition Act of 2003. They claim that only natural-born citizens are allowed to reacquire citizenship under the law. Since petitioner is allegedly not a citizen of the Philippines, she is not entitled to this privilege.

The premise of petitioner's argument has already been extensively addressed above. For reasons previously explained, petitioner may be considered a natural-born citizen; hence, she may validly reacquire her citizenship under R.A. 9225. The other arguments raised by respondents are addressed below.

Adoption Decree and Amended Birth Certificate

In my view, petitioner was entitled to rely upon the adoption decree issued in her favor and the amended birth certificate issued pursuant thereto. These documents named Fernando Poe, Jr. and Susan Roces, and no other, as her parents for all intents and purposes. Her reliance on these documents justifies her belief that she is a natural-born citizen entitled to avail herself of the provisions of R.A. 9225.

Said certification, by itself, shall be the sole basis for the immediate issuance by the local civil registrar of a foundling certificate. Within seven (7) working days, the local civil registrar shall transmit the foundling certificate to the National Statistics Office (NSO).

[349] Rules and Regulations to Implement the Domestic Adoption Act of 1998, IRR-R.A. 8552, Section 5 (1998).

It must be emphasized that adoption severs all legal ties between the biological parents and the adoptee and vests those rights in the adopter.[350] Section 17 of R.A. 8552, in particular, provides that the "adoptee shall be considered the legitimate son/daughter of the adopter for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughter born to them without discrimination of any kind." Hence, upon the entry of an adoption decree, the law creates a relationship in which adopted children are deemed "born of" their adoptive parents:

> ... **The act of adoption fixes a status, viz., that of parent and child. More technically, it is an act by which relations of paternity and affiliation are recognized as legally existing between persons not so related by nature. It has been defined as the taking into one's family of the child of another as son or daughter and heir and conferring on it a title to the rights and privileges of such.** The purpose of an adoption proceeding is to effect this new status of relationship between the child and its adoptive parents, the change of name which frequently accompanies adoption being more an incident than the object of the proceeding. The welfare of the child is the primary consideration in the determination of an application for adoption. On this part, there is unanimous agreement.
>
> It is the usual effect of a decree of adoption to transfer from the natural parents to the adoptive parents the custody of the child's person, the duty of obedience owing by the child, **and all other legal consequences and incidents of the natural relation, in the same manner as if the child had been born of such adoptive parents in lawful wedlock,** subject, however, to such limitations and restrictions as may be by statute imposed.[351] (Emphasis supplied)

As proof of this new relationship, an adoptee's original birth certificate is cancelled and sealed in the records of the Civil Registry. Thereafter, an amended birth certificate is issued in its place "attesting to the fact that the adoptee is the child of the adoptert(s)."[352] This amended certificate is issued without

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[350] Section 16, R.A. 8552.

[351] *Republic v. Court of Appeals,* G.R. No. 97906, 21 May 1992.

[352] Section 14, R.A. 8552.

any notation that it is new or amended.[353] Once issued, this document has the same legal effect as any other birth certificate, and is entitled to a presumption of validity as a public document.[354]

Evidently, to require adoptees to go beyond the parentage established in their birth certificates would defeat the purpose of R.A. 8552 in requiring courts and other institutions to seal adoption records, including the child's original birth certificate, and to maintain the confidentiality of those papers.[355]

By these provisions, the legislature clearly intended to protect the privacy of the parties to the adoption, thereby allowing them to avoid the stigma resulting from the proceedings. The rationale behind these confidentiality provisions was elucidated by the U.S. Court of Appeals, Second Circuit, in *Alma Society Incorporated v. Mellon.*[356] In that decision, which was later affirmed by the U.S. Supreme Court,[357] the U.S. Court of Appeals explained:

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[353] *Id*.

[354] See *Baldos v. Court of Appeals and Pillazar,* 638 Phil. 601 (2010); *Heirs of Cabais v. Court of Appeals,* 374 Phil. 681-691 (1999).

[355] Sections 14 and 15 of R.A. 8552 state:

Section 14. *Civil Registry Record.* — An amended certificate of birth shall be issued by the Civil Registry, as required by the Rules of Court, attesting to the fact that the adoptee is the child of the adopter(s) by being registered with his/her surname. The original certificate of birth shall be stamped *"cancelled"* with the annotation of the issuance of an amended birth certificate in its place and shall be sealed in the civil registry records. The new birth certificate to be issued to the adoptee shall not bear any notation that it is an amended issue.

Section 15. *Confidential Nature of Proceedings and Records.* — All hearings in adoption cases shall be confidential and shall not be open to the public. All records, books, and papers relating to the adoption cases in the files of the court, the Department, or any other agency or institution participating in the adoption proceedings shall be kept strictly confidential.

If the court finds that the disclosure of the information to a third person is necessary for purposes connected with or arising out of the adoption and will be for the best interest of the adoptee, the court may merit the necessary information to be released, restricting the purposes for which it may be used.

[356] 601 F.2d 1225, 1235 (2d Cir. 1979).

[357] 444 U.S. 995, 100 S. Ct. 531, 62 L. Ed. 2d 426 (1979).

Judged by these standards, the New York sealed record statutes do not want constitutional validity. The statutes, we think, serve important interests. New York Domestic Relations Law s 114 and its related statutes represent a considered legislative judgment that the confidentiality statutes promote the social policy underlying adoption laws. See In re Anonymous, 89 Misc.2d 132, 133, 390 N.Y.2D 779, 781 (Surr.Ct.1976).Originally, sealing adoption records was discretionary with the court, 1924 N.Y.Laws, ch. 323, s 113, but in 1938 confidentiality of adoption records became mandatory. 1938 N.Y.Laws, ch. 606 s 114. As late as 1968, the legislature enacted various amendments to increase the assurance of confidentiality. 1968 N.Y.Laws, ch. 1038. **Moreover, the purpose of a related statute, Section 4138 of the Public Health Laws, was to erase the stigma of illegitimacy from the adopted child's life by sealing his original birth certificate and issuing a new one under his new surname. And the major purpose of adoption legislation is to encourage natural parents to use the process when they are unwilling or unable to care for their offspring. New York has established a careful legislative scheme governing when adoption may occur and providing for judicial review, to encourage and facilitate the social policy of placing children in permanent loving homes when a natural family breaks up.** As the court of appeals stated in Scarpetta v. Spence-Chapin Adoption Service, 28 N.Y.2d 185, 195, 321 N.Y.S.2d 65, 73, Cert. denied, 404 U.S. 805, 321 N.Y.S.2d 65, 269 N.E.2d 787 (1971), "i)t cannot be doubted that the public policy of our State is contrary to the disclosure of the names and identities of the natural parents and prospective adoptive parents to each other." (Footnote omitted.) Forty-two other states, according to the State of New York, require that birth and adoption records be kept confidential, indicating the importance of the matter of confidentiality. See also Uniform Adoption Act (U.L.A.) s 16(2) (rev. 1969) (adoption records "are subject to inspection only upon consent of the Court and all interested persons; or in exceptional cases, only upon an order of the Court for good cause shown"). These significant legislative goals clearly justify the State's decision to keep the natural parents' names secret from adopted persons but not from non-adopted persons. (Emphasis supplied)

Applicability of Bengson v. HRET

As to whether petitioner also reacquired her natural-born status, the Court must apply the ruling in *Bengson III v.*

HRET,[358] which allowed the applicant to reacquire not only his citizenship, but also his original natural-born status. In that case, the Court noted that those who reacquire Philippine citizenship must be considered natural-born or naturalized citizens, since the Constitution does not provide a separate category for them. Between the two categories, the Court found it more appropriate to consider them natural-born citizens, since they were not required to go through the tedious naturalization procedure provided under the law:

The present Constitution, however, now considers those born of Filipino mothers before the effectivity of the 1973 Constitution and who elected Philippine citizenship upon reaching the majority age as natural-born. After defining who are natural-born citizens, Section 2 of Article IV adds a sentence: "Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens." Consequently, only naturalized Filipinos are considered not natural-born citizens. It is apparent from the enumeration of who are citizens under the present Constitution that there are only two classes of citizens: (1) those who are natural-born and (2) those who are naturalized in accordance with law. A citizen who is not a naturalized Filipino, i.e., did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is a natural-born Filipino. Noteworthy is the absence in said enumeration of a separate category for persons who, after losing Philippine citizenship, subsequently reacquire it. The reason therefor is clear: as to such persons, they would either be natural-born or naturalized depending on the reasons for the loss of their citizenship and the mode prescribed by the applicable law for the reacquisition thereof. As private respondent Cruz was not required by law to go through naturalization proceedings in order to reacquire his citizenship, he is perforce a natural-born Filipino. As such, he possessed all the necessary qualifications to be elected as member of the House of Representatives.

Although *Bengson* referred to R.A. 2630 or the repatriation of persons who served in the U.S. Armed Forces,[359] a similar process

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[358] 409 Phil. 633-672 (200I).

[359] Reacquisition of Philippine Citizenship by Persons Who Served in US Armed Forces (1960).

is undergone by those who reacquire citizenship under R.A. 9225. In previous cases, this Court has also consistently characterized R.A. 9225 as a "repatriation" statute[360] that allows former Filipino citizens to recover their natural-born status.[361]

Accordingly, the logic used by this Court in *Bengson* also applies to this case – the procedure provided by R.A. 9225 does not amount to naturalization; consequently, a citizen who reacquires citizenship under this statute cannot be deemed naturalized.

Determination of natural-born status at birth

When R.A. 9225 provides for the loss, reacquisition and retention of citizenship, it refers only to the fact of citizenship, not natural-born status:

> Section 2. *Declaration of Policy.* — It is hereby declared the policy of the State that all Philippine citizens who become citizens of another country shall be deemed not to have **lost their Philippine citizenship** under the conditions of this Act.
>
> Section 3. Retention of Philippine Citizenship. — Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have **lost their Philippine citizenship** by reason of their naturalization as citizens of a foreign country are hereby deemed to have **re-acquired Philippine citizenship** upon taking the following oath of allegiance to the Republic:
>
> "I_______________, solemnly swear (or affirm) that I will support and defend the Constitution of theRepublic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines, and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion."
>
> Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall **retain**

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[360] See *Sobejana-Condon v. COMELEC,* G.R. No. 198742, 692 Phil. 407-431 (2012).

[361] See *Parreño v. COA,* G.R. No. 162224, 551 Phil. 368-381 (2007).

their Philippine citizenship upon taking the aforesaid oath. (Emphasis supplied)

These provisions are consistent with Article IV,[362] Section 2 of the 1935 Constitution, which indicates that what may be lost or reacquired is Philippine citizenship and not natural-born status. These terms were carried over into the 1973 and 1987 Constitutions.

The precise character of the citizenship reacquired under the law was no longer made an issue in these provisions, because natural-born status is determined at the time of birth.[363] This characteristic cannot be changed, unless an individual undergoes naturalization in any of the instances provided by law.[364] As

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[362] Article IV, Section 2, states:

Section 2. **Philippine citizenship** may be lost or re-acquired in the manner provided by law.

[363] In *Bengson v. HRET* (409 Phil. 633-672 [2001]), the Court declared: "A person who **at the time of his birth** is a citizen of a particular country, is a **natural-born citizen** thereof." (Emphasis supplied)

[364] Sections 2 and 3 of Commonwealth Act 63 provides:

SECTION 2. How citizenship may be reacquired. — Citizenship may be reacquired:

(1) By naturalization: Provided, That the applicant possess none of the disqualifications prescribed in section two of Act Numbered Twenty-nine hundred and twenty-seven;

(2) By repatriation of deserters of the Army, Navy or Air Corps Provided, That a woman who lost her citizenship by reason of her marriage to an alien may be repatriated in accordance with the provisions of this Act after the termination of the marital status; and

(3) By direct act of the National Assembly.

SECTION 3. *Procedure incident to reacquisition of Philippine citizenship.* – The procedure prescribed for naturalization under Act Numbered Twenty-nine hundred and twenty-seven, as amended, shall apply to the reacquisition of Philippine citizenship by naturalization provided for in the next preceding section: *Provided,* That the qualifications and special qualifications prescribed in sections three and four of said Act shall not be required: *And provided, further,*

(1) That the applicant be at least twenty-one years of age and shall have resided in the Philippines at least six months before he applies for naturalization;

will be explained below, the procedure for the reacquisition of citizenship under R.A. 9225 does not amount to naturalization.

Reacquisition is not naturalization

It has been argued that the taking of an oath under R.A. 9225, as petitioner has done, should be considered as an "act to acquire or perfect citizenship" under Section 2, Article IV of the present Constitution. As previously discussed, however, there are only two classes of citizens under the Constitution–those who are natural-born and those who are naturalized. The "act" adverted to in the Constitution must therefore be understood as pertaining only to the act of naturalization.

The 1935, 1973, and 1987 Constitutions conferred on Congress the power to determine who are naturalized citizens:

1935 CONSTITUTION
ARTICLE IV
Citizenship

Section 1. The following are citizens of the Philippines:

x x x x x x x x x

(5) Those who are **naturalized in accordance with law**. (Emphasis supplied)

1973 CONSTITUTION
ARTICLE III
Citizenship

Section 1. The following are citizens of the Philippines:

x x x x x x x x x

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(2) That he shall have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines, in his relations with the constituted government as well as with the community in which he is living; and

(3) That he subscribes to an oath declaring his intention to renounce absolutely and perpetually all faith and allegiance to the foreign authority, state or sovereignty of which he was a citizen or subject.

(4) Those who are **naturalized** **in accordance with law.** (Emphasis supplied)

1987 CONSTITUTION
ARTICLE IV
Citizenship

Section 1. The following are citizens of the Philippines:

x x x x x x x x x

(4) Those who are **naturalized in accordance with law.** (Emphasis supplied)

In compliance with this constitutional mandate, Congress enacted the required enabling statute in 1939 when it passed Commonwealth Act No. 473 or the Revised Naturalization Law. This piece of legislation identifies those who are to be considered naturalized citizens of the country, and it is not the province of the Court to encroach upon this legislative prerogative. Accordingly, we cannot unilaterally declare those who have availed themselves of the benefits of R.A. 9225 and similar laws as naturalized citizens. To do so would violate the principle of separation of powers.

It must be emphasized that R.A. 9225 merely discusses the retention and reacquisition of citizenship, not naturalization. As early as 1936, Congress already treated naturalization as a different species apart from repatriation and other modes that may later be introduced by the national assembly:

Section. 2. How citizenship may be reacquired. – Citizenship may be reacquired:

1) By naturalization: Provided, That the applicant possess none of the disqualification's prescribed in section two of Act Numbered Twenty-nine hundred and twenty-seven,

2) By repatriation of deserters of the Army, Navy or Air Corp: Provided, That a woman who lost her citizenship by reason of her marriage to an alien may be repatriated in accordance with the provisions of this Act after the termination of the marital status; and

(3) By direct act of the National Assembly.[365]

The reacquisition and retention of citizenship under R.A. 9225 or R.A. 2630[366] and repatriation under R.A. 8171[367] are different from naturalization under C.A. 473. Reacquisition, retention, and repatriation are effected by merely taking the necessary oath of allegiance and registering in the proper civil registry (and in the Bureau of Immigration in accordance with R.A. 8171). On the other hand, naturalization is a tedious process that begins with the filing of a declaration of intention one year prior to filing a petition for admission to Philippine citizenship and ends with the issuance of a certificate of naturalization.

Here, petitioner did not have to undergo the process of naturalization in order to reacquire her Philippine citizenship. She only had to follow the procedure specified in R.A. 9225. In this light, to declare her a naturalized citizen would thus be contrary to law.

To refuse to recognize foundlings as citizens of the Philippines is to contravene our obligations under existing international law.

The Philippines is obligated by existing customary and conventional international law to recognize the citizenship of foundlings.

Customary International Law

Petitioner asserts that international law in the 1930s granted a foundling the right to acquire a nationality "from birth." In my

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[365] Commonwealth Act No. 63, Ways in Which Philippine Citizenship May be Lost or Reacquired (1936).

[366] An Act Providing for Reacquisition of Philippine Citizenship by Persons Who Lost Such Citizenship by Rendering Service To, or Accepting Commission In the Armed Forces of the United States (1960).

[367] Repatriation of Filipino Women and of Natural-Born Filipinos Who Lost Their Philippine Citizenship (1995).

opinion, she has not presented sufficient evidence to prove that in 1935, the Philippines was bound by customary international law to recognize foundlings as Philippine citizens.

It must be remembered that norms of customary international law become binding on the Philippines as part of the law of the land by virtue of the Incorporation Clause in the Constitution.[368] For incorporation to occur, however, two elements[369] must be established: (a) widespread and consistent practice on the part of states; and (b) a psychological element known as the *opinio juris sive necessitatis* or a belief on the part of states that the practice in question is rendered obligatory by the existence of a rule of law requiring it.[370] For evident reasons, a statement made by one of the framers of the 1935 Constitution and the Hague Convention cannot, by themselves, prove widespread state practice or *opinio juris.* Without more, We cannot declare the existence of a binding norm of customary international law granting citizenship to foundlings in 1935.

I believe, however, that **this customary norm exists in international law at present. Although matters of citizenship were traditionally considered to be within the exclusive jurisdiction of states, contemporary developments indicate that their powers in this area are now "circumscribed by their obligations to ensure the full protection of human rights."**[371]

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[368] Article II, Section 2 of the 1987 Constitution, provides:

The Philippines xxx **adopts the generally accepted principles of international law as part of the law of the land** and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

[369] Article 38(l)(b) of the Statute of the International Court of Justice states:

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

x x x x x x x x x

a. international custom, as evidence of a general practice accepted as law;

[370] *Razon, Jr. v. Tagitis,* 621 Phil. 536-635 (2009).

[371] Inter-American Court of Human Rights, Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 35.

In particular, the right of children to acquire a nationality is enshrined in a number of international[372] and regional[373] conventions. The presumption of citizenship accorded to foundlings in a state's territory is specifically mentioned in three conventions: the 1930 Hague Convention,[374] the 1961 Covention on the Reduction of Statelessness[375] and the European Convention on Nationality.[376] These treaties, concurred in by various state parties[377] show that on the part of the members

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[372] International Covenant on Civil and Political Rights, Article 24; United Nations Convention on the Rights of the Child, Article 7.

[373] See the 1997 European Covention on Nationality, Article 6; 1969 American Convention on Human Rights (Pact of San Jose, Costa Rica), Article 20; 1999 African Charter on the Rights and Welfare of the Child, Article 6; 2008 Revised Arab Charter on Human Rights, Article 29.

[374] Article 14 of the Convention states:

A child whose parents are both unknown shall have the nationality of the country of birth. If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known.

A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found.

[375] Article 2 of the Convention provides:

Article 2

A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.

[376] Article 6(1)(b) of the Convention states:

Article 6 – Acquisition of nationality

1. Each State Party shall provide in its internal law for its nationality to be acquired ex lege by the following persons:

x x x x x x x x x

(b) foundlings found in its territory who would otherwise be stateless.

[377] Based on the databases of the United Nations Treaty Collection (https: treaties.un.org), the number of state parties in the conventions mentioned are as follows: International Covenant on Civil and Political Rights – 168; Convention on the Rights of the Child – 196; Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws – 13; Convention on the Reduction of Statelessness - 65; European Convention on Nationality - 20.

of the international community, there is widespread recognition of the right to nationality of children in general and foundlings in particular.

As important as these international instruments are the actions of states in their own domestic spheres. The International Court of Justice itself has considered national legislation as sufficient evidence of state practice.[378] In this case, a survey of the citizenship laws of 189 countries all over the world reveals that 165 of these nations consider foundlings as citizens by operation of law. Twenty-three of these states[379] grant citizenship to foundlings in observance of the *jus soli* principle, or the general grant of citizenship to all individuals born within their territory. Meanwhile, one hundred forty-two countries[380]

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[378] See *Jurisdictional Immunities of the State (Germany v. Italy),* Judgment, I.C.J. Reports 2012, p. 99; Arrest Warrant of 11 April 2000 *(Democratic Republic of Congo v. Belgium),* I.C.J. Reports 2002, p. 3.

[379] Argentina (See Database of European Union Democracy Observatory on Citizenship); Bolivia (Article 141, New Constitution of Bolivia); Brazil (Article 12[1], Constitution of the Federative Republic of Brazil); Chile (Article 10, Constitution); Cuba (Article 29, The Constitution of the Republic of Cuba as amended); Dominica (Article 98, Constitution of the Commonwealth of Dominica, 1978); Dominican Republic (Article 18, Constitution), Article 7, Ecuador Constitution); El Salvador (Article 90, Constitution of the Republic of El Salvador as amended), Equatorial Guinea (Article 10, Fundamental Law of Equatorial Guinea, 1982); Grenada (Item 6, 97, Grenada Constitution, 7 February 1974); Guatemala (Article 144, Guatemalan Constitution), Jamaica (Item 3B, Jamaican Constitution August 1962); Kiribati (Kiribati Independence Order dated July 12,1979); Niger (Directory of Citizenship Laws compiled by the United States Office of Personnel Management Investigations Service); Pakistan (Sections 4 and 5, Pakistan Citizenship Act 1951, as amended); Palau (The Citizenship Act, 13 PNCA, 1 January 1995); Panama (Article 9, Constitution of Panama); Saint Vincent and the Grenadines (Items 90-91, Constitution of 1979); Tanzania (Sections 5 and 6, Tanzania Citizenship Act No. 6 of 1995, 10 October 1995); Thailand (Section 7, Nationality Act B.E.2508); Venezuela (Article 32, Constitution of the Bolivarian Republic of Venezuela) and Zimbabwe (Section 5, Constitution of Zimbabwe).

[380] Afghanistan (Article 3, Law of Citizenship in Afghanistan, 6 November 1936); Albania (Article 8[1], Law on Albanian Citizenship, Law No. 8389, 6 September 1998); Algeria (Article 7, Ordinance No. 70-86 du 15 decembre

have enacted foundling statutes to grant citizenship to a child found in their territories if the

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1970 portant code de la nationalite algerienne, 18 December 1970); Andorra (Nationality Act, 5 October 1997); Angola (Article 9, Constituicao da Republica de Angola aos, 21 Janeiro de 2010); Antigua and Barbuda (Article 3 [1], Constitution of Antigua and Barbuda) Armenia (Article 12, Law of the Republic of Armenia on the Citizenship of the Republic of Armenia as amended, 27 November 2005); Australia (Section 14, Australian Citizenship Act 2007); Austria (Article 8[1], Federal Law Concerning the Austrian Nationality [Nationality Act of 1985]); Azerbaijan (Article 13, Law of the Azerbaijan Republic on Citizenship of the Azerbaijan Republic, 15 March 1994); Bahrain (Item No. 5[B], Bahraini Citizenship Act for 1963, 16 September 1963); Barbados (Cap. 186, Section 4[1], Barbados Citizenship Act); Belgium (Code of Belgian Nationality, 28 June 1984), Belize (Part III, 7, Belizean Nationality Act, Cap. 161); Benin (Article 10, Code de la nationalitedahomeenn, Loi No. 65-17, 23 June 1965); Bosnia and Herzegovina (Section 7, Bosnia and Herzegovina Nationality Law, 7 October 1992); Bulgaria (Article II, Law on Bulgarian Citizenship, November 1998); Burkina Faso (Zatu No. An VIA 0013/FP/PRES du 16 Novembre 1989); Burundi (Article 3, Loi No 1/013 du 18 juillet 2000 portantreforme du code de la nationalite, 18 July 2000), Cambodia (Article 4 [2]) [b], Law on Nationality, 9 October 1996); Cameroon (Section 9, Law No. 1968-LF-3 of the 11th June 1968 to set up the Cameroon Nationality Code); Canada (Section 4[1], Canadian Citizenship Act); Cape Verde (Nationality law, Law No. 80/III/90, from 29th of June); Central African Republic (Article 10, RepubliqueCentrafricaine: Loi No. 1961.212 du 1961 portant code de la nationalitecentrafricaine, 21 April 1961); Chad (Ordonnance 33/PG.-INT. du 14 aout 1962 code de la nationalitetchadienne as cited in the Directory of Citizenship Laws compiled by the United States Office of Personnel Management Investigations Service); China (Article 6, Nationality Law of the People's Republic of China, 10 September 1980); Comoros (Article 13, Code of Nationality, Law No. 79-12); Costa Rica (Article 13[4], Political Constitution of the Republic of Costa Rica), Croatia (Law of Croatian Citizenship, June 1991); Czech Republic, Denmark, Djibouti (Article 6, Code de la NationaliteDjiboutienne [Djibouti], Loi nO79/AN/04/5eme L, 24 October 2004); Democratic Republic of Congo (Article 2[3], LOI No. 87.010 Du ler AOUT 1987, Portant Code de la Famille); Egypt (Article 2[4], Law No. 26 of 1975 Concerning Egyptian Nationality, Official Journal No. 22, 29 May 1975), Eritrea (Item 2[3], Eritrean Nationality Proclamation No. 21/1992, 6 April 1992); Estonia (Section 5[2], Citizenship Act of Estonia); Ethiopia (Article 3[2], Proclamation No. 378/ 2003, A Proclamation on Ethiopian Nationality, 23 December 2003); Fiji (Section 7, Citizenship of Fiji Decree 2009); Finland (Section 12, Finnish Nationality Act 359/2003 as amended); France (Article 19, Title 1, French Civil Code),

parents are unknown, unless parents are unknown, unless there is proof to the contrary.

G. Bissau, Gabon (Article 11[2], Code de la Nationalite Loi No. 37-1998); Georgia (Article 15, Organic Law of Georgia on Georgian Citizenship); Germany (Section 4[2], Nationality Act of 22 July 1913 as amended); Ghana (Citizenship Act, Act 591, 5 January 2001); Greece (Article 1[2][b], Greek Citizenship Code); Guinea (Directory of Citizenship Laws compiled by the United States Office of Personnel Management Investigations Service); Guinea Bissau (Article 5[2], Lei da Cidadania Lei n.o 2/92 De 6 de Abril); Guyana (Item 8[2], Guyana Citizenship Act, Cap. 14:01); Haiti (Article 4, Haiti Citizenship Act); Honduras (Article 23, Constitution of the Republic of Honduras); Hungary (Section 3[3][b], Act LV of 1993 as amended); Iceland (Article 1[1], Icelandic Nationality Act No. 100/1952, 1 January 1953); Indonesia (Article 4[9], 4[10], 4[11], Law of the Republic of Indonesia No. 12 on Citizenship of the Republic of Indonesia, 1 August 2006); Iran (Article 976[3], Iran Nationality Law); Iraq (Article 4[6], Law No. 46 of 1963); Ireland (Item 10, Irish Nationality and Citizenship Act 1956 as amended), Israel (Article 4[A], Nationality Law 5712-1952, 14 July 1953); Italy (Article 1[2], Law no. 91/1992); Jamaica, Japan (Article 2[3], Nationality Law-Law No.147 of 1950, as amended); Jordan (Article 3[4], Jordanian Nationality Law 1954, Law No.6 of 1954 on Nationality, 1 January 1954); Kazakhstan (Article 13, Law on Citizenship of the Republic of Kazakhstan, 1 March 1992); Kenya (Article 9, Kenya Citizenship and Immigration Act No. 12 of 2011, 30 August 2011); Korea (Article 2[1][3], 2[2] Law No. 16 of 1948, Nationality Act as amended, 20 December 1948); Kosovo (Article 7, Law Nr. 03/L-034 on Citizenship of Kosovo); Kuwait (Article 3, Nationality Law of 1959); Kyrgyz Republic (Article 2[5], The Law of the Kyrgyz Republic on citizenship of the Kyrgyz Republic as amended, 21 March 2007); Lao PDR (Law on Lao Nationality, 29 November 1990); Latvia (Section 2(1)(3) and 2(1)(5), Law of Citizenship 1994 [as amended]); Lebanon (Article 1[3], Decree No.15 on Lebanese Nationality including Amendments, 19 January 1925); Lesotho (Item 38, Lesotho Constitution of 1993, 2 April 1993); Liberia (Constitution of the Republic of Liberia); Libya (Section 3, Item 3, Law Number (24) for 2010/1378 On Libyan Nationality, 24 May 2010); Liechtenstein (Section 4[a], Act of 4 January 1934 on the Acquisition and Loss of Citizenship); Lithuania (Article 16, Republic of Lithuania Law on Citizenship No. XI-1196, 2 December 2010); Luxembourg (Article 1[2], Luxembourg Nationality Law of 23 October 2008); Macedonia (Article 6, Law on Citizenship of the Republic of Macedonia); Madagascar (Directory of Citizenship Laws compiled by the United States Office of Personnel Management Investigations Service); Malawi (Item 2[5], Malawi Citizenship Act 1966); Malaysia (Second Schedule [Article 39], Part I: Citizenship by Operation of Law of Persons Born before Malaysia Day [Article 14 [1][a] – Section 1, Federal Constitution of Malaysia, 31 August 1957); Mali (Article 11, Loi No. 6218 AN-RM du 3 fevrier 1962 portant Code de la nationaliternalienne); Malta (Item 17[3], Maltese Citizenship Act); Marshall

Depending on the rule followed by the state, the foundling

Islands (Directory of Citizenship Laws compiled by the United States Office of Personnel Management Investigations Service); Mauritania (Article 11, Loi N° 1961-112, Loiportant code de la nationalitemauritanienne); Mexico (Article 7, Law of Nationality as cited in the database of European Union Democracy Observatory on Citizenship); Moldova (Article 11 [2], Law on Citizenship of the Republic of Moldova); Mongolia (Article 7[4], Law of Mongolia on Citizenship, 5 June 1995); Montenegro (Article 7, Montenegrin Citizenship Act); Morocco (Article 11, Code de la nationalitemarocaine (2011), Dahir n. 1-58-250 du 21 safar 1378, 6 September 1958); Mozambique (Article 10[b], Nationality Act, 25 June 1975); Nepal (Item 3[3], Nepal Citizenship Act 2063, 2006), Netherlands (Article 3 (2), Netherlands Nationality Act as in force on 8 February 2015); New Zealand (Section 6, Citizenship Act 1977 061); Nicaragua (Article 16[4], Constitution of Nicaragua); Norway (Section 4, Act on Norwegian Nationality); Oman (Article 1[3], Royal Decree No. 3/83 – Law on the Organization of the Omani Nationality); Papua New Guinea (Section 77, Constitution); Paraguay (Article 146[1], Constitution of Paraguay); Peru (Article 2[2], Constitution); Poland (Article 15, Law of 2 April 2009 on Polish Citizenship); Portugal (Article 1[2] Portuguese Nationality Act, Law 37/81 of 3 October as amended); Qatar (Article 1[3], Law No. 38 of 2005 on the Acquisition of Qatari nationality 38/2005); Romania (Article 3(1), Law No. 21 of 1 March 1991), Russia (Article 12[2], Federal Law on the Citizenship of the Russian Federation, 15 May 2002); Rwanda (Article 9, Organic Law N° 30/ 2008 of 25/07/2008 relating to Rwandan Nationality 25 July 2008); Saint Kitts and Nevis (Items 95[5][c], 1983 Constitution); Saint Lucia (Article 7[2] of the Law of Nationality, Constitution of 1978 as cited in the database of European Union Democracy Observatory on Citizenship); Samoa (Part II, Item 6(3),Citizenship Act of 2004); San Marino (See Council of Europe bulletin: http://www/.coe.int/t/dghl/standardsetting/nationality/Bulletin_en_files San%20Marino%20E.pdf); Sao Tome & Principe (Article 5(1) (e) and 5(2), Law of Nationality dated September 13, 1990); Saudi Arabia (Item No. 7[2], Saudi Arabian Citizenship System (Regulation), Decision no. 4 of 25/1/1374 Hijra, 23 September 1954); Serbia (Article 13, Law on Citizenship of the Republic of Serbia); Singapore (Article 140[13], Third Schedule, Constitution of the Republic of Singapore, 9 August 1965); Slovakia (Section 5(2)(b), Act No. 40/1993 Coll. On nationality of the Slovak Republic of 19 January 1993); Slovenia (Article 9, Citizenship of the Republic of Slovenia Act); Somalia (Article 15, Law No. 28 of 22 December 1962 Somali Citizenship as amended); South Africa (Article 44, South African Citizenship Act No. 88 of 1995); South Sudan (Item 8[4], Nationality Act of 2011, 7 July 2011); Spain (Spanish Civil Code, Book One Title I, Article 17[1][d]); Sri Lanka (Item No.7, Citizenship Act of Sri Lanka); Sudan (Section 5, Sudanese Nationality Act 1994); Suriname (Article 4, State Ordinance of 24 November 1975 for the Regulation of the

is presumed either to have been born in the territory[381] or to have been born to citizens of the state.[382]

That states have agreed to be bound by these obligations under various conventions and have even enacted domestic legislation to fulfill their responsibilities under the law of nations indicates their recognition of the binding character of this norm. These acts demonstrate the *opinio juris* of those states, i.e., their recognition that the grant of nationality to foundlings is obligatory under international law.[383]

Surinamese Nationality and Residence in Suriname), Swaziland (Section 17, Swaziland Citizenship Act, 1992, Act 14/1992, 1 December 1992); Sweden (Section 2, Swedish Citizenship Act); Switzerland (Article 6, Federal Act on the Acquisition and Loss of Swiss Citizenship as amended); Taiwan (Article 2[3], Nationality Act as amended, 5 February 1929), Tajikistan (Article 19, 13 Constitutional Law of the Republic of Tajikistan on Nationality of the Republic of Tajikistan, 8 August 2015); Timor-Leste (Section 3[2][b], Constitution of the Democratic Republic of Timor Leste); Togo (Article 2, Nationality Act); Tunisia (Articles 9 and 10, Code of Tunisian Nationality Law No. 63-6); Turkey (Article 8, Turkish Citizenship Law of 2009); Turkmenistan (Article II [1][8], Law of 2013 on Citizenship, 22 June 2013) Uganda (Item 11, Constitution of the Republic of Uganda); Ukraine (Article 7, Law on Ukrainian Citizenship); United Arab Emirates (Article 2[5], Federal Law No. 17 for 1972 Concerning Nationality, Passports and Amendments Thereof, 18 November 1972); United Kingdom (Part I, Item 1(2), British Nationality Act of 1984); United States of America (Immigration and Nationality Act 301(a), 302, 306, 307); Uruguay (Article 74, Constitution of the Oriental Republic of Uruguay); Uzbekistan (Article 16, Law on Citizenship in the Republic of Uzbekistan, 28 July 1992); Vietnam (Article 18, Law on Vietnamese Nationality, Resolution No: 24/2008/QH12, 13 November 2008); and Yemen (Law No.6 of 1990 on Yemeni Nationality, 26 August 1990).

[381] See for instance the Law of Nationality of Mexico, Law No. 63-6.

[382] See the Portuguese Nationality Act, Law 37/81, of 3 October as amended; Spanish Civil Code, Book One: Title II; Cameroon Law No. 1968-LF-3 of the 11th June 1968; Loi nº 1961.212 du 1961 portant code de la nationalitécentrafricaine of the Central African Republic; Code of Nationality, Law No. 79-12 of Comoros; Loi No. 6218 AN-RM du 3 février 1962 portant Code de la nationalitémalienne of Mali; Code de la nationalitémarocaine (2011), Dahir n. 1-58-250 du 21 safar 1378, 6 September 1958 of Morocco; Law of Nationality dated September 13, 1990 of Sao Tome and Principe; Law No. 28 of 22 December 1962 Somali Citizenship as amended; Code of Tunisian Nationality Law No. 63.

[383] See *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America),* Judgment, ICJ Reports 1984, p. 299.

In view of the concurrence of these two elements, it is evident that a rule requiring states to accord citizenship to foundlings has crystallized into a customary norm. The Philippines is therefore bound at present to act in compliance with these obligations.

The ICCPR and the CRC

As a state party to the ICCPR[384] and the CRC,[385] the Philippines is also obligated to respect the right of every child to acquire a nationality. While these treaties ostensibly pertain only to a "right to acquire" a nationality, this right has been interpreted as the duty of a state to "grant nationality," particularly where there is a link only with the state on whose territory the child was born. As the United Nations (UN) Human Rights Committee explained:

> 64. Regardless of the general rules which govern acquisition of nationality, States should ensure that safeguards are in place to ensure that nationality is not denied to persons with relevant links to that State who would otherwise be stateless. This is of particular relevance in two situations, at birth and upon State succession. As regards the right to acquire a nationality under article 24, paragraph 3, of the International Covenant on Civil and Political Rights, the Human Rights Committee stated that "States are required to adopt every appropriate measure ... to ensure that every child has a nationality when he is born". In this context, birth on the territory of a State and

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[384] Article 24 of the ICCPR states:

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

[385] Article 7 of the CRC states:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

birth to a national are the most important criteria used to establish the legal bond of nationality. **Where there is only a link with the State on whose territory the child was born, this State must grant nationality as the person can rely on no other State to ensure his or her right to acquire a nationality and would otherwise be stateless. Indeed, if nationality is not granted in such circumstances then article 24, paragraph 3, of the International Covenant as well as article 7 of the Convention on the Rights of the Child would otherwise be meaningless.** In concrete terms, the circumstance referred to above may arise, for example, where a child is born on the territory of a State to stateless parents or with respect to foundlings. Given the consequences to the children concerned, denial of nationality in such instances must be deemed arbitrary.[386] (Emphasis supplied)

In its Concluding Observations on Fiji's compliance with the CRC, the UN Committee on the Rights of the Child likewise directed states to take all measures to avoid statelessness in compliance with their obligations under Article 7 of the CRC:

The Committee takes note of Article 7 of the Citizens Decree, which stipulates that any infant found abandoned in Fiji is deemed to have been born in Fiji unless there is evidence to the contrary. However, the Committee is concerned that this stipulation might carry a risk of statelessness for children of whom it can be proven that they have not been born in Fiji, but whose nationality can nevertheless not be established. [...] The Committee recommends that the State party take all the necessary measures to avoid a child found abandoned in Fiji being stateless.[387]

Considering these international norms, it is the obligation of the Philippines not only to grant nationality to foundlings, but also to ensure that none of them are arbitrarily deprived of their nationality. Needless to state, the Court cannot interpret the Constitution in a manner contrary to these obligations. We cannot sanction a violation of international law.

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[386] Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary General. Arbitrary deprivation of nationality: report of the Secretary-General, A/HRC/l0/34, 26 January 2009.

[387] Committee on the Rights of the Child, Concluding observations on the combined 2-4th Periodic Reports of Fiji, adopted by the committee at its sixty-seventh session (1-19 September 2014), CRC/C/FIJ/CO/2-4.

A declaration that foundlings are stateless persons would have unconscionable consequences.

The duty of the Court to interpret the Constitution is impressed with the equally vital obligation to ensure that the fundamental law serves the ends of justice and promotes the common good. After all, the Constitution is meant to be the legal embodiment of these values, and to be the people's instrument for the protection of existing natural rights and basic human liberties. As Chief Justice Reynato Puno explained in his Separate Opinion in *Republic v. Sandiganbayan:*

> But while the constitution guarantees and protects the fundamental rights of the people, it should be stressed that it does not create them. As held by many of the American Revolution patriots, "liberties do not result from charters; charters rather are in the nature of declarations of pre-existing rights." John Adams, one of the patriots, claimed that natural rights are founded "in the frame of human nature, rooted in the constitution of the intellect and moral world." Thus, it is said of natural rights *vis-a-vis* the constitution:
>
> . . . (t)hey exist before constitutions and independently of them. *Constitutions enumerate such rights and provide against their deprivation or infringement, but do not create them.* It is supposed that all power, all rights, and all authority are vested in the people before they form or adopt a constitution. By such an instrument, they create a government, and define and limit the powers which the constitution is to secure and the government respect. But they do not thereby invest the citizens of the commonwealth with any natural rights that they did not before possess. (Italics supplied)
>
> A constitution is described as follows:
>
> A Constitution is not the beginning of a community, nor the origin of private rights; it is not the fountain of law, nor the incipient state of government; it is not the cause, but consequence, of personal and political freedom; it grants no rights to the people, but is the creature of their power, the instrument of their convenience. *Designed for their protection in the enjoyment of the rights and powers which they possessed before the Constitution was made,* it is but the framework of the political government, and

necessarily based upon the preexisting condition of laws, rights, habits and modes of thought. There is nothing primitive in it; it is all derived from a known source. **It presupposes an organized society, law, order, propriety, personal freedom, a love of political liberty, and enough of cultivated intelligence to know how to guard against the encroachments of tyranny.**[388] (Citations omitted and emphasis supplied)

I believe that disputes involving the Constitution must be resolved with these precepts in mind. As the Constitution is no ordinary legal document, this Court should strive to give meaning to its provisions not only with reference to its text or the original intention of its framers. Behind the text are the ideals and aspirations of the Filipino people – their intent to "promote the general welfare;"[389] to "build a just and humane society;[390] and to "secure the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace."[391] Any construction that would derogate from these fundamental values cannot be countenanced.

In this case, a declaration that foundlings are natural-born citizens are unconscionable. First, such a declaration would effectively render all children of unknown parentage stateless and would place them

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[388] 454 Phil. 504-642 (2003).

[389] The Preamble of the 1935 Constitution states:

The Filipino people, imploring the aid of Divine Providence, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty, and democracy, do ordain and promulgate this Constitution.

[390] The Preamble of the 1987 Constitution provides:

We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society, and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity, the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.

[391] *Id.*

in a condition of extreme vulnerability.[392] As citizenship is "nothing less than the right to have rights,"[393] its deprivation would leave foundlings without any right or measure of protection. During the proceedings of the 1st European Conference on Nationality, the Senior Legal Adviser of the United Nations High Commissioner for Refugees explained the nature of the right to citizenship:

The Right to a Given Nationality in the Avoidance of Statelessness

Citizenship, or nationality, has been described as man's basic right, as, in fact, the right to have rights. Nationality is not only a right of itself, it is a necessary precursor to the exercise of other rights. Nationality provides the legal connection between an individual and a State, which serves as a basis for certain rights for both the individual and the State, including the State's entitlement to grant diplomatic protection.[394]

In the Philippines, a stateless individual is deprived of countless rights and opportunities under the Constitution, statutes and administrative regulations. These include the rights to suffrager;[395] education and training;[396] candidacy and occupation of public office and other positions in government;[397] use and enjoyment of natural resources;[398]

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[392] Inter-American Court of Human Rights, Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 35.

[393] *See* Dissenting Opinion of Chief Justice Warren in *Perez v. Brownwell,* 356 U.S. 44, 64-65, 78 S. Ct. 568, 579-80, 2 L. Ed. 2d 603 (1958).

[394] Batchelor, Carol A. *Developments in International Law: the Avoidance of Statelessness through Positive Application of the Right to a Nationality.* 1st European Convention on Nationality.(Strasbourg, 18 and 19 October 1999).

[395] 1987 Constitution, Article V, Section 1.

[396] *Id.*, Article XIV, Section 1 (right to quality education at all levels); Article XIV, Section 2(5) (right to be provided training in civics, vocational efficiency and other skills.

[397] *Id.*, Section 18, Article XI.

[398] The following economic rights are restricted to Philippine citizens under the Constitution: right to the exclusive use and enjoyment of the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone (Article XII, Section 2); right to engage in small-scale utilization of natural resources (Article XII, Section 2); right to lease not more than five hundred

investment;[399] ownership and control of certain types of businesses;[400] practice of professions;[401] engagement in certain

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hectares, or acquire not more than twelve hectares of public alienable land, by purchase, homestead, or grant (Article XII, Section 3); right to be a transferee of public land (Article XII, Section 7).

[399] These include the right to participate in certain areas of investments (Article XII, Section 10); right to be granted a franchise certificate, or any other form of authorization for the operation of a public utility (Article XII, Section 11).

[400] The Constitution allows only citizens to exercise the following rights: the right to be the executive and managing officers of a corporation or association engaged in any public utility enterprise (Article XII, Section 11); Right to practice a profession (Article XII, Section 14); right to own, control and administer educational institutions (Article XIV, Section [2]); Right to own and manage mass media (Article XVI, Section 11[1]); Right to become an executive and managing officer of an entity engaged in the advertising industry (Article XVI, Section 11 [2]); Right to engage in the advertising industry (Article XVI, Section 11[2]).

The ownership of the following businesses are also reserved for Philippine citizens: Retail trade enterprises with paid-up capital of less than US $2,500,000 (Section 5, R.A. 8762); cooperatives (Chapter III, Article 26, R.A. 6938); private security agencies (Section 4, R.A. 5487); small-scale mining (Section 3[C], R.A. 7076); ownership, operation and management of cockpits (Section 5[a], PD 449); Manufacture of firecrackers and other pyrotechnic devices (Section 5, R.A. 7183).

[401] Article XII, Section 14; The following professions are also restricted by statute: Aeronautical engineering (Section 14[b], R.A. 1570); Agricultural engineering (Section 13[a], R.A. 8559); Chemical engineering (Section 2, R.A. 9297); Civil engineering (Section 12[b], R.A. 544); Electrical engineering (Section 16[a], R.A. 7920); Electronics and communication engineering (Section 14[a], R.A. 9292); Geodetic engineering (Section 12[a], R.A. 8560); Mechanical engineering (Section 14[a], R.A. 8495); Metallurgical engineering (Section 17[a], R.A. 10688); Mining engineering (Section 19[a], R.A. 4274); Naval architecture and marine engineering (Section 11 [b], R.A. 4565); Sanitary engineering (Section 17[b], R.A. 1364); Medicine (Section 9[1], R.A. 2382 as amended); Medical technology (Section 8[1], R.A. 5527 as amended); Dentistry (Section 14[a], R.A. 9484); Midwifery (Section 13, R.A. 7392); Nursing (Section l3[a], R.A. 9173); Nutrition and dietetics (Section 18[a], P.D. 1286); Optometry (Section 19[a], R.A. 8050); Pharmacy (Section 18[a], R.A. 5921); Physical and occupational therapy (Section 15[a], R.A. 5680); Radiologic and x-ray technology (Section 19[a], R.A. 7431); Veterinary medicine (Section 15[a], R.A. 9268); Accountancy (Section 14[a], R.A. 9298); Architecture (Section 13[a], R.A.

occupations;[402] and even participation in legal proceedings involving status, condition and legal capacity.[403]

Second, a declaration that petitioner is a citizen but is not natural-born is no less odious to foundlings considering the privileges that would be deemed unavailable to them. These include certain state scholarships[404] and a number of government positions requiring natural-born citizenship as a qualification, i.e. a range of national[405]

R.A. 8544); Master plumbing (Section 12[b], R.A. 1378); Sugar technology (Section 14[a], R.A. 5197); Social work (Section 12[a], R.A. 4373); Teaching (Section 15[a], R.A. 7836); Agriculture (R.A. 8435); Fisheries (Section 2[b], R.A. 8550); Guidance counseling (Section 13[a], R.A. 9258); Real estate service (Section 14[a], R.A. 9646); Respiratory therapy (R.A. 10024); and Psychology (Section 12[a], R.A. 10029).

[402] Right to manufacture, repair, stockpile and/or distribute biological, chemical and radiological weapons and anti-personnel mines; and the right to manufacture, repair, stockpile and/or distribute nuclear weapons (10th Foreign Negative Investment List, Executive Order 184, 29 May 2015, citing Article II, Section 8 of the 1987 Constitution and Conventions and Treaties to which the Philippines is a signatory); and right to become members of local police agencies (Section 9[1]R.A. 4864).

[403] See Civil Code, Article 15. The next section includes a more detailed discussion of adoption and foundlings.

[404] See Section 2, R.A. 4090: Providing for State Scholarships for Poor But Deserving Students (1964); Part V(A)(1)(1.3), Amended Implementing Rules and Regulations for Republic Act No. 7687, DOST-DepED Joint Circular (2005); Section 5 (a) (i), Administrative Order No. 57, Educational Reform Assistance Package for Mindanaoan Muslims (1999).

[405] The following positions in the Executive branch must be occupied by natural-born Philippine citizens: President (Article VII, Section 2, 1987 Constitution); Vice-President (Article VII, Section 3, 1987 Constitution); Director or Assistant Director of the Bureau of Mines and Geo-Sciences (Section 2, PD 9266); Criminology (Section 12[a], R.A. 6506); Chemistry (Section 13[a], R.A. 754); Customs brokerage (Section 16[a], R.A. 9280); Environmental planning (Section l3[b], P.D. 1308); Forestry (Section 14[b], R.A. 6239); Geology (Section 15, R.A. 4209); Interior design (Section l3[a], R.A. 8534); Law (Art. VIII, Section 5[5],1987 Constitution; Rule 138[2], Rules of Court); Librarianship (Section 15[a], R.A. 9246); Marine deck officers (Section 14[a], R.A. 8544); Marine engine officers (Section 14[a], R.A. 1281 as amended by PD 1654 [1979]; Undersecretary of Defense for Munitions (Section 2, R.A. 1884, Establishment of a Government Arsenal [1957]); Assistant Director of the Forest Research

and local[406] offices, various post in

Institute (Section 7[a], PD 607, Creating the Forest Research Institute in the Department of Natural Resources [1974]); Officers of the Philippine Coast Guard (Section 12, R.A. 9993, Philippine Coast Guard Law of 2009 [2010]); Commissioner or Deputy Commissioners of Immigration (Section 4[b], C.A. 613, The Philippine Immigration Act of 1940 [1940]); Secretary and Undersecretary of the Department of Agrarian Reform (Section 50, R.A. 3844 as amended by R.A. 6389 [1971]); Directors, Assistant Directors of Bureaus in the Department of Agrarian Reform (Section 50-G, R.A. 3844 as amended by R.A. 6389, Agricultural Land Reform Code [1971)); Chairman and Commissioners of the Tariff Commission (Section 502, PD 1464 as amended, Harmonized Commodity Description and Coding System 2002 Tariff and Customs Code of the Philippines [2002)); Director or Assistant Directors of the Bureau of Forest Development (Section 6, PD 705, Revised Forestry Code of the Philippines [1975]); City Fiscal and Assistant City Fiscals of Manila (Section 38, R.A. 409 as amended by R.A. 4631, Revised Charter of City of Manila [1965)); and Prosecutors in the National Prosecution Service (Section 603, DOJ Department Circular No. 050-10, [2010).

In the legislative branch, the occupants of the following posts are required to be natural-born citizens: Senator (Article VI, Section 6, 1987 Constitution); Members of the House of Representatives (Article VI, Section 3, 1987 Constitution); nominees for party-list representatives (Section 9, Party-List System Act, R.A. 7941 [1995]).

The following members of the judicial branch are required to be natural-born citizens: Members of the Supreme Court and lower collegiate courts (Article VIII, Section 7, 1987 Constitution); Regional Trial Court Judges (Section 15, BP 129 as amended by R.A. 8369, the Family Courts Act of 1997 [1997]); Judges of a Metropolitan Trial Court, Municipal Trial Court, or Municipal Circuit Trial Court (Section 26, BP 129 as amended); Presiding Judge and Associate Justices of the Sandiganbayan (Section 1, PD 1486 as amended by PD 1606, Creating the Sandiganbayan [1978]); Judges of the Shari'a Circuit Court (Art. 152, PD 1083, Code of Muslim Personal Laws of the Philippines [1977]).

Other constitutional offices are reserved to natural-born citizens: Ombudsman and his Deputies (Article XI, Section 8, 1987 Constitution); BSP Board of Governors (Article XII, Section 20, 1987 Constitution); Chairman and Commissioners of the Civil Service Commission (Article IX [B], Section 1, 1987 Constitution; Book V, Title I, Subtitle A, Chapter 3, Section 10; Executive Order No. 292, Administrative Code of 1987; Article V, Section 8 (b); PD 807, Civil Service Decree of the Philippines or Civil Service Law of 1975 [1975]; Chairman and Commissioners of the Commission on Elections (Article IX[C], Section 1, 1987 Constitution; Book V, Title II, Subtitle C, Chapter 2, Section 4, EO 292, Administrative Code of 1987 [1987]); Chairman and Commissioners of the Commission on Audit (Article IX [D], Section 1, 1987 Constitution); Chairman and Members of the Commission on Human Rights (Article XIII, Section 17[2], 1987 Constitution; Book V, Title II, Subtitle A, Section 1, EO 292, Administrative Code of 1987 [1987]).

[406] The following positions in the local government are included: Regional Governor and Vice Governor of the ARMM (Article VII, Section 3, R.A. 9054, Strengthening and Expanding the ARMM Organic Act [2001]; Members of the Regional Assembly of the ARMM (Article VI, Section 6 [1], R.A. 9054, Strengthening and Expanding the ARMM Organic Act [2001]; Regional Secretary, Regional

government commissions,[407] corporations,[408] banks,[409]

Undersecretaries, Assistant Regional Secretary, Assistant Secretary for Madaris, Bureau Directors, and Assistant Bureau Directors of the ARMM Department of Education (Article II, Section 22, Muslim Mindanao Autonomy Act No. 279-10, ARMM Basic Education Act of 2010 [2010]; Regional Governor and Vice Governor of the Cordillera Autonomous Region (Article V, Sections 2 and 3, R.A. 8438, Organic Act of Cordillera Autonomous Region [1997]).

[407] Members of these government commissions, boards, administrations are required to be natural-born citizens: Chairman and Members of the Energy Regulatory Commission (Section 38, R.A. 9136, Electric Power Industry Reform Act of 2001 [2001]; Commissioners of the Commission on the Filipino Language (Section 6, R.A. 7104, Commission on the Filipino Language Act [1991]; Board of the National Historical Commission of the Philippines (Section 9 [a], R.A. 10086, Strengthening Peoples' Nationalism Through Philippine History Act [2010]; Executive Director and Deputy Executive Directors of the NHCP (Section 17, R.A. 10086, Strengthening Peoples' Nationalism Through Philippine History Act [2010]; Commissioners of National Commission on Indigenous Peoples (Section 3 [a] Rules and Regulations Implementing The Indigenous Peoples' Rights Act of 1997, NCIP Administrative Order No. 01-98, [1998]; Members of Provincial, Regional and National Consultative Bodies of the NCIP (Sections 22 [a] NCIP Administrative Order No. 1-03, Guidelines for the Constitution and Operationalization of the Consultative Body [2003]); Chairman and Members of the Board of Agriculture (Article III, Section 6 [a] PRC Board of Agriculture Resolution No. 02-02, Rules and Regulations implementing PRC Resolution No. 2000-663 [2002]); Members of the Board of the Movie and Television Review and Classification Board (Section 2, PD 1986, Creating the Movie and Television Review and Classification Board [1985]); Chairman and Members of the Board of Fisheries (Article III, Section 7 [a] PRC Board of Fisheries Resolution no. 01-02, Rules and Regulations Implementing PRC Resolution No. 2000-664); Representative of Consumers at the Price Control Council (Section 2, R.A. 6124, Fixing of the Maximum Selling Price of Essential Articles or Commodities [1970]); Members of the Anti-Dummy Board (Section 1, R.A. 1130 as amended by R.A. 6082 [1969]); Chairman, Members of the Board and General Manager of the Public Estates Authority/ Philippine Reclamation Authority, (Section 6, PD 1084, Charter of the Public Estates Authority [1977]); Chairman and Members of the Land Tenure Administration (Section 4, R.A. 1400, Land Reform Act of 1955 [1955]); Board of Directors of the Panay Development Authority (Section 17, R.A. 3856, Creation of Panay Development Authority [1964]; Administrator of the Agricultural Credit Administration (Section 101, R.A. 3844 as amended by R.A. 6389, Agricultural Land Reform Code [1971]); Director-General, Deputy Director-General, and Executive Directors of the National Manpower Youth Council [absorbed by TESDA pursuant to PD 850] (Article 53, PD 442 as amended by PD 850 Amendments to P.D. No. 442, Labor Code of the Philippines [1975]); Governor and Deputy Governors of the Land Authority (Section 50, R.A. 3844, Agricultural Land Reform Code, [1963]).

[408] Project Director of the Mindoro Office of the Mindoro Integrated Rural Development Office (Section 6 [a], PD 805, Implementing the Mindoro Integrated Rural Development Program and Providing Funds therefore [1975]); Project Director of the Cagayan Integrated Agricultural Development Project (Section 6 [a], PD

educational institutions,[410] professional regulatory boards[411]

189, Implementing the Cagayan Integrated Agricultural Development Project [1977]); Project Director of the Samar Office of the Samar Integrated Rural Development Project (Section 4 [a], PD 1048, Implementation of the Samar Integrated Rural Development Project [1976]); Members of the Central Luzon-Cagayan Valley Authority (Section 2 [e], R.A. 3054, Creation of Central Luzon-Cagayan Valley Authority [1961]); Project Director of the Rural Infrastructure Project Office in the DOTC (Section 3, PD 1298, Implementing the Rural Infrastructure Project [1978]); Members of the Cooperative Development Authority (Section 5 [a], R.A. 6939, Cooperative Development Authority Law [1990]); Board of Directors of the Bases Conversion and Development Authority (Section 9 [b], Bases Conversion and Development Act of 1992, R.A. 7227 [1992]); Program Director at the Cotabato-Agusan River Basin Program Office (Section 3, PD 1556, Creation of the Cotabato-Agusan River Basin Program Office [1978]); Executive Director of the River Basin Council (Section 5, EO 412, Creation of Bicol River Basin Council [1973]); Board of Directors of the Philippine National Oil Company (Section 6, Presidential Decree 334 as amended by PD 405, Creating the Philippine National Oil Company); Board of Governors of the Ospital ng Bagong Lipunan (Section 3, PD 1411, Dissolving the GSIS Hospital, Inc. [1978]); Board of Directors of the Philippine Export Credit Insurance and Guarantee Corporation (Section 8, R.A. 6424, Philippine Export Credit Insurance and Guarantee Corporation Act [1972]); President of the Philippine Export and Foreign Loan Guarantee Corporation [later Trade and Investment Development Corporation, now Phil. Export- Import Credit Agency (Section 14, PD 1080 as amended by R.A. 8494).

[409] Members of the Board of Directors of the following banks are required to be natural-born citizens: Philippine National Bank (Section 10, EO 80, The 1986 Revised Charter of the Philippine National Bank [1986]); Land Bank of the Philippines (Section 86, Republic Act No. 3844 as amended by R.A. 7907, Code of Agrarian Reform in the Phil. [1995]); Development Bank of the Philippines (Section 8, R.A. 8523, Strengthening the Development Bank of the Philippines [1998]).

[410] Presidents of State Universities and Colleges (Section 5.1, CHED Memorandum Order 16 [2009]) and the College President of the Compostela Valley State College (Implementing Rules and Regulations of Republic Act No. 10598 [2014]).

[411] These include: Members of the Board of Examiners of Criminologists (Section 3 [1], R.A. 6506, Creation of Board of Examiners for Criminologists [1972]); Chairman and Members of the Professional Regulatory Board of Geology (Section 8 [a], R.A. 10166, Geology Profession Act of 2012 [2012]); Chairperson and Members of the Professional Regulatory Board of Psychology (Section 5 [a], R.A. 10029, Philippine Psychology Act of

and the military.[412]

The repercussions of such a ruling for foundlings currently holding the enumerated positions are too compelling to ignore. A declaration that individuals of unknown parentage are not Filipinos, or at best naturalized citizens, may lead to their removal from government posts; a demand to return all emoluments and benefits granted in connection with their offices; and even the end of pension benefits presently being enjoyed by affected retirees. The proposal for Congress to remedy the unjust situation that

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2009 [2010]); Chairperson and Members of the Board of Respiratory Therapy (Section 5 [a], R.A. 10024, Philippine Respiratory Therapy Act of 2009 [2010]); Chairman and Members of the Professional Regulatory Board of Dentistry (Section 7 [a], R.A. 9484, The Philippine Dental Act of 2007 [2007]); Chairperson and Members of the Professional Regulatory Board for Librarians (Section 7 [a], R.A. 9246, The Philippine Librarianship Act of 2003 [2004]); Members of the Professional Regulatory Board of Accounting (Section 6 [a], R.A. 9298, Philippine Accountancy Act of 2004 [2004]); Chairman and Members of the Board of Chemical Engineering (Section 7[a], R.A. 9297, Chemical Engineering Law of 2004 [2004]); Members of the Philippine Landscape Architecture Board (Section 4 [a], R.A. 9053, Philippine Landscape Architecture Act of 2000 [2001]); Chairperson and Members of the Board of the Professional Regulatory Board of Nursing Section 4, R.A. 9173, Philippine Nursing Act of 2002 [2002]); Member of the Professional Regulatory Board of Accountancy (Section 6 [a], R.A. 9298, Philippine Accountancy Act of 2004 [2004]); Members of the Board of Agricultural Engineering (Section 5 [a], R.A. 8559, Philippine Agricultural Engineering Act of 1998 [1998]); Members of the Board of Geodetic Engineering (Section 4 [a], R.A. 8560, Philippine Geodetic Engineering Act of 1998 [1998]); Chairperson and members of the Professional Regulatory Board for Foresters (Section 7 [a], R.A. 10690, The Forestry Profession Act [2015]); Members of the Board of Examiners for Forester (Section 6[a], R.A. 6239, The Forestry Law [1971]; Members of the Board of Pharmacy Section 7[a], R.A. 5921, Pharmacy Law [1969]); Members of the Board of Medical Examiners (Section 14, R.A. 2382 as amended by R.A. 4224, The Medical Act of 1959 as amended [1959]); Members of the Philippine of Mechanical Engineering (Section 5[a] R.A. 8495, Philippine Mechanical Engineering Act of 1998 [1998]); Members of the Board of Optometry, (Section 8[a], R.A. 8050, Revised Optometry Law of 1995[1995]); Members of the Board of Electrical Engineering (Section 5 [a]), R.A. 7920, New Electrical Engineering Law [1995]).

[412] In particular, all officers of the Regular Forces of the Armed Forces of the Philippines (Section 4 [b], R.A. 291, Armed Forces Officer Personnel Act of 1948 [1948]); Officers of the Womens's Auxiliary Corps (Section 2, R.A. 3835, An Act to Establish the Women's Auxiliary Corps in the Armed Forces of the Philippines, to provide the Procurement of its Officers and Enlisted personnel, and for Other Purposes [1963]).

would result from an affirmance by this Court of unjust COMELEC rulings is too odious a solution to even consider. It is not the function of Congress to correct any injustice that would result from this Court's proposed unhappy ruling on foundlings. Rather, it is this Court's first and foremost duty to render justice to them, as the Constitutions requires.

WHEREFORE, I vote to GRANT the consolidated petitions.

CONCURRING OPINION

VELASCO, JR., *J.*:

I concur with the *ponencia* and will add the following only for emphasis.

On Residency

It is established that to acquire a new domicile one must demonstrate three things: (1) residence or bodily presence in the new locality; (2) an intention to remain there *(animus manendi);* and (3) an intention to abandon the old domicile *(animus non revertendi).*

There is no issue as to Sen. Poe's actual bodily presence in the Philippines since May 24, 2005, whence she, per her 2015 Certificate of Candidacy, reckons her residency in the country. What has been questioned is the *animus to* stay in the Philippines and to abandon the domicile in the United States of America (US) since then. As the *ponencia* explained, the facts recited, and the evidence presented by Sen. Poe sufficiently portrays her intent to stay in the Philippines and to abandon the US since May 2005, to wit:

> 35. As a result of the untimely demise of her father, and her desire to be with and to comfort her grieving mother, Petitioner and her husband, sometime in the first quarter of 2005, decided to return to the Philippines for good. They consulted their children, who likewise expressed their wish to relocate permanently to the Philippines. The children also wanted to support their grandmother and Petitioner.

36. In 2004, petitioner had already resigned from her work in the U.S.A. and she never again sought employment there. In early 2005, Brian (Poe's son) and Hanna's (Poe's eldest daughter) schools in Virginia, U.S.A., were likewise notified that they would be transferring to Philippine schools for the next semester.

37. As early as March 2005, Petitioner and her husband began obtaining quotations and estimates from property movers regarding the total cost of relocating to Manila all of their household goods, furniture, and cars then in Virginia, U.S.A. One of these property movers was Victory Van International, a private freight forwarding company, with whom Petitioner and her husband had a series of email correspondence from 2005 to 2006. The spouses also intended to bring along their pet dog and they inquired with Philippine authorities on the procedure to accomplish this in August 2005.

38. On 24 May 2005, or shortly before the start of the academic year in the Philippines, Petitioner returned to the country. Her three (3) children also arrived in the country in the first half of 2005. Petitioner's husband, on the other hand, stayed in the U.S.A. to finish pending projects, and to arrange for the sale of the family home there.

39. After their arrival in the Philippines from the U.S.A., Petitioner and her children initially lived with Petitioner's mother in x x x San Juan City. The existing living arrangements at the house of Petitioner's mother even had to be modified to accommodate Petitioner and her children, Petitioner's mother also assigned to Petitioner her father's long-time driver, because Petitioner and her family would henceforth be based in the Philippines. Meanwhile, Petitioner and her children prepared for the start of the school year, with Brian and Hanna attending Philippine schools starting June 2005.

x x x x x x x x x

40. Shortly after arriving in the Philippines, Petitioner immediately submitted herself to the local tax jurisdiction by registering and securing a TIN from the BIR.

x x x

42. In the meantime, in the second half of 2005, Petitioner and her husband had acquired Unit 7F of One Wilson Place Condominium (and its corresponding parking slot), located at x x x San Juan, Metro Manila, to be used as the family's temporary residence.

42.1 On 20 February 2006, the Register of Deeds for San Juan City issued to Petitioner and her husband CCT No. x x x covering Unit 7F of One Wilson Place, and CCT No. x x x covering the parking slot for Unit 7F.

42.2 On 25 April 2006, Unit 7F of One Wilson Place and its corresponding parking slot were declared, for real estate tax purposes, in Petitioner's and her husband's names.

42.3 Petitioner and her family lived at One Wilson Place until the completion of their family home at Corinthian Hills, Quezon City. x x x

43. On 14 February 2006, Petitioner briefly travelled to the U.S.A. for the purpose of supervising the disposal of some of the family'S remaining household belongings. Around this time, Petitioner's and her family's furniture and other household goods were still in the process of being packed for collection, storage and eventual transport to the Philippines. Petitioner donated to the Salvation Army some of the family's personal properties which could no longer be shipped to the Philippines. Petitioner returned to the Philippines shortly after, or on 11 March 2006.

44. In late March 2006, petitioner's husband officially informed the United States Postal Service of the family's change, and abandonment, of their former address in the U.S.A. The family home in the U.S.A. was eventually sold on 27 April 2006.

45. In April 2006, Petitioner's husband resigned from his work in the U.S.A., and on 4 May 2006, he returned to the Philippines. Beginning July 2006, he worked in the Philippines for a major Philippine company.

46. Meanwhile, in early 2006, Petitioner and her husband acquired a vacant 509-square meter lot at x x x Corinthian Hills, Bagong Ugong Norte, Quezon City (the "Corinthian Hills Lot") where her family could finally establish their new family home.

46.1 On 1 June 2006, the Register of Deeds for Quezon City issued to Petitioner and her husband Transfer Certificate of Title ("TCT") No. 290260 covering the *Corinthian Hills Lot.*

46.2 Petitioner and her husband eventually built a house on the *Corinthian Hills Lot.* To this day, this house is their family home.

47. After Petitioner and her family settled themselves, she turned her attention to regaining her natural-born Filipino citizenship. She was advised that she could legally reacquire her natural-born Philippine citizenship by taking an oath of allegiance to the Republic of the Philippines, pursuant to the provision of R.A. No. 9225, otherwise known as the "Citizenship Retention and Re-Acquisition Act of 2003."

48. On July 7, 2006, Petitioner took her Oath of Allegiance to the Republic of the Philippines, as required under Section 3 of R.A. No. 9225, to wit: x x x

49. On 10 July 2006, petitioner filed with the B.I. a sworn petition to reacquire her natural-born Philippine citizenship pursuant to R.A. No. 9225 and its implementing rules and regulations. Upon advice, and simultaneous with her own petition, petitioner filed petitions for derivative citizenship on behalf of her three children who were all below eighteen (18) years of age at that time. x x x

50. On 18 July 2006, the B.I. issued an Order granting Petitioner's applications x x x.

51. On 31 July 2006, the B.I. issued Identification Certificates ("I.C.") in Petitioner's name and in the name of her three children x x x.

52. On 31 August 2006, the COMELEC registered Petitioner as a voter at Barangay Santa Lucia, San Juan City.

53. On 13 October 2009, or over two (2) years before her U.S.A. Passport was set to expire (on 18 December 2011), Petitioner secured from the DFA her new Philippine Passport with No. x x x (which was valid until 12 October 2014). .

54. On 6 October 2010, President Benigno S. Aquino III appointed Petitioner as Chairperson of the MTRCB, a post which requires natural-born Philippine citizenship. Petitioner did not accept the appointment immediately, because she was advised that before assuming any appointive public office, Section 5(3), R.A. No. 9225 required her to: (a) take an Oath of Allegiance to the Republic of the Philippines; and (b) renounce her U.S.A. citizenship. She complied with the requirements before assuming her posts as MTRCB Chairperson on 26 October 2010.

55. On 20 October 2010, Petitioner executed before a notary public in Pasig City an "Affidavit of Renunciation of Allegiance to the

United States of America and Renunciation of American Citizenship" of even date. x x x

56. On 21 October 2010, in accordance with Presidential Decree No. 1986 and Section 5 (3) of R.A. No. 9225, Petitioner took her oath of office as Chairperson of the MTRCB, before President Benigno S. Aquino III. x x x

57. To ensure that even under the laws of the U.S.A., she would no longer be considered its citizen, Petitioner likewise renounced her U.S.A. citizenship in accordance with the laws of that country. However, Petitioner was not legally required under Philippine law to make another renunciation, as her earlier renunciation of U.S.A. citizenship on October 20, 2010 was sufficient to qualify her for public office.

57.1 On 12 July 2011, Petitioner executed before the Vice Consul at the U.S.A. Embassy in Manila, an Oath/Affirmation of Renunciation of Nationality of the United States.

57.2. On the same day, Petitioner accomplished a sworn "Questionnaire" before the U.S. Vice Consul, wherein she stated that she had taken her oath as MTRCB Chairperson on 21 October 2010, with the intent, among others, of relinquishing her U.S.A. citizenship.

57.3 In the same *Questionnaire,* Petitioner stated that she had resided "Outside of the United States," i.e., in the "Philippines," from 3 September 1968 to 29 July 1991 and from "05 2005" to "Present." On page 4 of the *Questionnaire,* Petitioner stated:

> I became a resident of the Philippine once again since 2005. My mother still resides in the Philippines. My husband and I are both employed and own properties in the Philippines. As a dual citizen (Filipino-American) since 2006, I've voted in two Philippine national elections. My three children study and reside in the Philippines at the time I performed the act as described in Part I item 6.

58. On 9 December 2011, the U.S.A. Vice Consul issued to petitioner a "Certificate of Loss of Nationality of the United States." Said Certificate attests that under U.S.A. laws, Petitioner lost her U.S.A. citizenship effective 21 October 2010, which is when she took her oath of office as MTRCB Chairperson. This fact is likewise reflected on the last page of Petitioner's former U.S.A. Passport.

59. On 27 September 2012, Petitioner accomplished her COC for Senator, which she filed with the COMELEC on 2 October 2012. Section 12 of the COC was, again, an affirmation of the Oath of Allegiance to the Republic of the Philippines which Petitioner had taken on 7 July 2006 (and which she had reaffirmed on 21 October 2010 when she took her oath of office as MTRCB Chairperson). x x x

60. During the 13 May 2013 National Elections, petitioner ran for and was overwhelmingly elected as Senator. She garnered over 20 million votes, the highest among her fellow Senatorial candidates, and a record in Philippine election history. On 16 May 2013, Petitioner was proclaimed Senator of the Republic of the Philippines.

61. On 19 December 2013, the DFA issued to Sen. Poe Diplomatic Passport No. x x x (valid until December 2018), and on 18 March 2014, the DFA issued in her favor Philippine Passport No. x x x. Like her earlier Philippine passports, these two (2) most recent passports uniformly state that Sen. Poe is a "citizen of the Philippines."

62. On 15 October 2015, Sen. Poe filed with COMELEC her COC as President ("COC for President") in the 9 May 2016 national and local elections. In her COC, she stated that she is a "NATURAL-BORN FILIPINO CITIZEN" and that her "RESIDENCE IN THE PHILIPPINES UP TO THE DAY BEFORE MAY 09, 2016" would be "10" years and "11" months (counted from 24 May 2005).

As "intent" is basically a "state of mind" that exists only in idea;[1] its existence can only be determined by the overt acts that translate it to fact. The realization of such intent need not be made in one fell swoop by the execution of a single formal act. Rather, the fulfillment of the intent to change domicile can be made via a series of steps through what the Court adverts in *Mitra v. COMELEC*[2] and *Sabili v. COMELEC*[3] as an "incremental process" or the execution of "incremental transfer moves."

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[1] *Black's Law Dictionary,* 9th Ed., for the iPhone/iPad/iPod touch. Version 2.1.2 (B 13195), p. 883 *citing* John Salmond, *Jurisprudence* 378 (Glanville L. Williams ed., 10th ed. 1947).

[2] G.R. No. 191938, July 2, 2010 and October 19, 2010.

[3] G.R. No. 193261, April 24, 2012.

The facts of the case suggest that Sen. Poe's change of domicile and repatriation from the US to the Philippines was, to borrow from *Mitra,* "accomplished, not in a single key move but, through an incremental process"[4] that started in early 2005. Specifically, Sen Poe took definite albeit incremental moves to reacquire her domicile of origin as shown by the repatriation of her children and their pet, if I may add, from the US to the Philippines; the enrollment of her children in Philippine schools; the sale of their family home in the US; the repatriation of her husband and his employment in the Philippines; the transfer of their household goods, furniture, cars and personal belongings from the US to the Philippines; the purchase of a residential condominium in the Philippines; the purchase of a residential lot; the construction of her family home in the country; her oath of allegiance under RA 9225; her children's acquisition of derivative Philippine citizenship; the renunciation of her US citizenship; her service as chairperson of the MTRCB; and her candidacy and service as a senator of the Philippines. All these acts are indicative of the intent to stay and serve in the country permanently, and not simply to make a "temporary" sojourn.

Indeed, the foreknowledge of Sen. Poe's repatriation and her desire for it, i.e., her intent to go back to and reestablish her domicile the Philippines, is readily discernible from her acts executed even before her return to the country in May 2005.

The foregoing indicia of Sen. Poe's intent to reestablish her domicile in the country cannot be frivolously dismissed as insufficient on the pretext that "this case involves relocation of national domicile from the US to the Philippines by an alien, which requires much stronger proof, both as to fact and intent."[5]

The suggestion that Sen. Poe's *animus manendi* only existed at the time she took her oath of allegiance under RA 9225 in July 2006 and that her *animus non revertendi* existed only in October 2010 when she renounced her US citizen is

[4] *Mitra, supra.*

[5] Justice Del Castillo's Opinion.

simply illogical. The fact that what is involved is a change of national domicile from one country to another, separated as it were by oceans, and not merely from one neighboring municipality to another like in *Mitra* and *Sabili,* it is with more reason that the teachings in *Mitra* and *Sabili* are applicable.

It should be of judicial cognizance that even a temporary travel from one country to another is no easy feat. It takes weeks or even months to plan and execute. By no means is the permanent transfer of residence in one country to another an easier undertaking. Like in petitioner's case, it would be a long process that will take months, if not years, to accomplish from the initial inquiry with the movers and the concerned government agencies in both countries, to the actual packing and transportation of one's belongings, the travel of the children and the pet, their enrollment in schools, the acquisition of a new family home, and the reintegration to Philippine society. The intent to reestablish national domicile cannot be plausibly determined by one isolated formal act or event but by a series of acts that reveal the preceding desire and intent to return to one's country of origin.

Sen. Poe is not an ordinary "alien" trying to establish her domicile in a "foreign country." She was born and raised in the Philippines, who went through the tedious motions of, and succeeded in, reestablishing her home in the country. **She is, by no means, foreign to the Philippines nor its people.** She maintained close ties to the country and has frequently visited it even during the time she was still recognized as a US citizen. Her parents lived in the country, her friends she grew up with stayed here. In a manner of speaking, her past, her roots were in the Philippines so that it should not be rendered more burdensome for her to establish her future in the country.

After all, the residence requirement was in context intended to prevent a stranger from holding office on the assumption that she would be insufficiently acquainted with the conditions and needs of her prospective

constituents.[6] Having helped her father during his presidential campaign and having served as a senator and before that an MTRCB chairperson, it cannot be contested that she has more than enough knowledge of the country, its people, and the many issues and problems that beset them. The mischief that the residency requirement was designed to prevent is clearly not present in this case.

The Court's pronouncements in *Coquilla v. Commission on Elections,*[7] *Caballero v. Commission on Elections*[8] and *Japzon v. Commission on Elections and Jaime S. Ty*[9] did not establish an absolute rule that a Filipino who became naturalized under the laws of a foreign country can only re-establish his or her domicile in the Philippines from the moment he or she swears allegiance to the country under RA 9225. Instead, the Court considered the acquisition of dual-citizenship under RA 9225 or the application for a residency permit as one of many possible, not the only, evidence of *animus manendi.* The Court did not state that any evidence of residence <u>before</u> the acquisition of a residence visa or the reacquisition of citizenship must be ignored.

Unfortunately, in these three cases, the concerned candidates had presented negligible or no evidence of reestablishment of domicile in the Philippines before their repatriation. As Sen. Poe pointed out, the only pieces of evidence in *Coquilla* showing that he might had had the intent to reside in the Philippines were: (a) his Community Tax Certificate; and (b) his verbal declarations that he intended to run for office. In *Japzon,* there was absolutely no evidence of the candidate's residence before he reacquired his citizenship and all the evidence pertained to events after his repatriation. Finally,

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[6] *Gallego v. Vera,* 73 Phil. 453, 459 (1941); cited in *Fernandez v. HRET,* G.R. No. 187478, December 21, 2009.

[7] G.R. No. 151914, July 31, 2002, 385 SCRA 607.

[8] G.R. No. 209835, September 22, 2015.

[9] G.R. No. 180088, January 19, 2009, 596 SCRA 354.

in *Caballero,* the candidate failed to show that his residence had been for more than a year prior to the May 2013 elections. On the contrary, he admitted that he had only 9 months "actual stay" in Uyugan, Batanes.

Thus, the Court had no choice but to reckon the residency of the concerned candidates in *Coquilla, Japzon,* and *Caballero* either from the time they reacquired their citizenship or the time they procured a resident visa because there was simply insufficient proof offered by the candidates before such event. The same cannot be said of Sen. Poe in the instant case.

As previously discussed, Sen. Poe presented overwhelming evidence of her permanent relocation to the Philippines, her actual residence, and intent to stay in the Philippines since May 2005, i.e., even before she took her oath of allegiance under RA 9225 in July 2006. Hence, *Jalosjos v. Commission on Elections*[10] is the better precedent. In *Jalosjos,* the Court reckoned the candidate's domicile in the Philippines even before he reacquired his citizenship under RA 9225, without mentioning the need for a residence visa, because he was able to satisfactorily prove that he had lived with his brother prior to taking his oath of allegiance. The Court held, thus:

> But it is clear from the facts that Quezon City was Jalosjos' domicile of origin, the place of his birth. It may be taken for granted that he effectively changed his domicile from Quezon City to Australia when he migrated there at the age of eight, acquired Australian citizenship, and lived in that country for 26 years. Australia became his domicile by operation of law and by choice.
>
> On the other hand, **when he came to the Philippines in November 2008 to live with his brother in Zamboanga Sibugay, it is evident that Jalosjos did so with intent to change his domicile for good.** He left Australia, gave up his Australian citizenship, and renounced his allegiance to that country. In addition, he reacquired his old citizenship by taking an oath of allegiance to the Republic of the Philippines, resulting in his being issued a Certificate of

[10] G.R. No. 191970, April 24, 2012.

Reacquisition of Philippine Citizenship by the Bureau of Immigration. By his acts, Jalosjos forfeited his legal right to live in Australia, clearly proving that he gave up his domicile there. And he has since lived nowhere else except in Ipil, Zamboanga Sibugay.

To hold that Jalosjos has not establish a new domicile in Zamboanga Sibugay despite the loss of his domicile of origin (Quezon City) and his domicile of choice and by operation of law (Australia) would violate the settled maxim that **a man must have a domicile or residence somewhere.**[11]

Yet, it has also been advanced that Sen. Poe has not positively shown an intent to abandon the US, or *animus non revertendi,* prior to her formal renunciation of her American citizenship in October 2010. To this is added that she even acquired a house in the US in 2008 as proof of her alleged intent not to abandon that country. Proponents of this argument cite *Reyes v. Commission on Elections.*[12] However, *Reyes* was on a starkly different factual milieu. Unlike Sen. Poe, the petitioner therein had not reacquired her Philippine citizenship under RA 9225 or renounced her American citizenship.[13] In fact, the only proof she offered of her residency was her service as a provincial officer for seven (7) months.

The alleged fact that Sen. Poe acquired a house in the US in 2008, cannot be taken as an argument against her *animus non revertendi* vis-a-vis the evidence of her manifest intent to stay, and actual stay, in the Philippines. Certainly, the element of intent to abandon an old domicile does not require a complete and absolute severance of all physical links to that country, or any other country for that matter. It is simply too archaic to

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[11] Emphasis supplied.

[12] G.R. No. 207264, June 25, 2013, 699 SCRA 522.

[13] Regina O. Reyes. admitted in her submissions under oath before the COMELEC in SPA 13-053 that RA 9225 does not apply to her as she claims to be a dual citizen of the United States of America and the Philippines by virtue of her marriage to a US citizen. Belatedly, Reyes attempted to show that she availed of RA 9225, in a volte face, before the Court in G.R. No. 207264, entitled *Reyes v. COMELEC,* by presenting a questionable Identification Certificate allegedly issued by the Bureau of Immigration.

state, at a time where air travel is the norm, that ownership of a secondary abode for a temporary visit or holiday negates an intent to abandon a foreign country as a legal domicile.

On Citizenship

There is no question that Sen. Poe has no known biological parents and was found on September 3, 1968 in Jaro, Iloilo when she was but a newborn. She was then adopted by spouses Ronald Allan Kelly and Jesusa Sonora Poe in May 1974. The nagging question is: Is Sen. Poe a natural- born Filipino citizen?

Article IV, Section 1 of the 1935 Constitution merely provides:

> Section 1. The following are citizens of the Philippines:
>
> 1. Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.
> 2. Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.
> 3. Those whose fathers are citizens of the Philippines.
> 4. Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.
> 5. Those who are naturalized in accordance with law.

The term "natural-born" Filipino does not even appear in the above- quoted provision. This Court, however, has construed the term to refer to those falling under items one to four of the section, as opposed to those who underwent naturalization under item number 5. But Sen. Poe was not born before the adoption of the 1935 Constitution so that the first item is inapplicable. That being said, her status as a foundling does not foreclose the likelihood that either or both of her biological parents were Filipinos rendering her a natural-born Filipino under items 3 and/or 4 of Section 1, Article IV of the 1935 Constitution.

Indeed, while it is not denied that Sen. Poe was abandoned by her biological parents, her abandonment on the date and specific place above indicated does not obliterate the fact that she had biological parents and the private respondents had not shown any proof that they were not Filipino citizens.

Section 1, Rule 131 of the Rules of Court provides that the burden of proof is the duty of a party to prove the truth of his claim or defense, or any fact in issue by the amount of evidence required by law. The private respondents had not presented even an iota of proof to show that Sen. Poe was not born to Filipino parents. Thus, it was grave abuse of discretion for the COMELEC to conclude that Sen. Poe was not a natural-born Filipino and had deliberately misrepresented such fact.

To shift the burden of proof to foundlings like, Sen. Poe, to prove the citizenship of their parents who had abandoned them is as preposterous as rubbing salt on an open bleeding wound; it adds insult to injury. The State cannot allow such unconscionable interpretation of our laws. Instead, the judiciary, as the instrumentality of the State in its role of *parens patriae,* must ensure that the abandoned children, the foundlings, those who were forced into an unfavorable position are duly protected.

As pointed out by petitioner, the same view was shared by the framers of the 1935 Constitution. A delegate to the 1934 Constitutional Convention, Sr. Nicolas Rafols, proposed to explicitly include "children of unknown parentage" in the enumeration of *jus sanguinis* Philippine Citizens in Section 1, Article IV of the 1935 Constitution. The suggestion, however, was not accepted but not on the ground that these children are not Philippine citizens. Rather, that the cases of foundlings are "few and far in between," as pointed out by delegate Manuel Roxas, and that citing a similar Spanish Law, they are already presumed to have been born to Filipinos.[14]

An alternative construction of the 1935, not to say the present Constitution, presents dire consequences. In such a scenario, abandoned children with no known parents will be considered stateless. This violates the rights of a child to immediate registration and nationality after birth, as recognized in the United Nation's Convention on the Rights of a Child. Thus, I cannot subscribe to the proposal that foundlings, like Sen. Poe, are not natural-born Filipino citizens.

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[14] Per the interpellation of Delegate Ruperto Montinola.

CONCURRING OPINION

LEONEN, *J.*:

I am honored to concur with the ponencia of my esteemed colleague, Associate Justice Jose Portugal Perez. I submit this Opinion to further clarify my position.

Prefatory

The rule of law we swore to uphold is nothing but the rule of ***just*** law. The rule of law does not require insistence in elaborate, strained, irrational, and irrelevant technical interpretation when there can be a clear and rational interpretation that is more just and humane while equally bound by the limits of legal text.

The Constitution, as fundamental law, defines the minimum qualifications for a person to present his or her candidacy to run for President. It is this same fundamental law which prescribes that it is the People, in their sovereign capacity as electorate, to determine who among the candidates is best qualified for that position.

In the guise of judicial review, this court is not empowered to constrict the electorate's choice by sustaining the Commission on Elections' actions that show that it failed to disregard doctrinal interpretation of its powers under Section 78 of the Omnibus Election Code, created novel jurisprudence in relation to the citizenship of foundlings, misinterpreted and misapplied existing jurisprudence relating to the requirement of residency for election purposes, and declined to appreciate the evidence presented by petitioner as a whole and instead insisted only on three factual grounds which do not necessarily lead to its inference. The Commission on Elections' actions are a clear breach of its constitutional competence. It acted with grave abuse of discretion amounting to lack of as well as excess of jurisdiction.

It is our law that a child, abandoned by her parents and left at the doorsteps of a rural cathedral, can also dream to become President of the Republic of the Philippines. The minimum requirements of the Constitution is that she be a natural-born Filipina at the

time of the filing of her Certificate of Candidacy and have domicile in the Philippines for at least ten (10) years prior to the elections.[1]

Given the facts of this case, petitioner has complied with these requirements.

When she filed her certificate of candidacy, this court has yet to squarely rule on the issue of whether a foundling—a child abandoned by her parents—is a natural-born Filipino citizen.

There are earlier rulings—Senate Electoral Tribunal Decision[2] and the Bureau of Immigration Order[3]—that clearly state that petitioner is a natural-born Filipina. She was elected as Senator of the Republic, garnering more than 20 million votes.[4] The position of Senator requires that the person be a natural-born Filipino.[5]

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[1] Const., Art. VII, Sec. 2 provides:

ARTICLE VII. Executive Department

x x x x x x x x x

SECTION 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

[2] *Rollo* (G.R. No. 221697), pp. 2706-2736. The Decision was concurred in by Senators Paolo Benigno "Bam" A. Aquino IV, Pilar Juliana "Pia" S. Cayetano, Cynthia A. Villar, Vicente C. Sotto III, and Loren B. Legarda, and dissented from by Senior Associate Justice Antonio T. Carpio, Associate Justices Teresita J. Leonardo-De Castro and Arturo D. Brion, and Senator Maria Lourdes Nancy S. Binay.

[3] *Id*. at 3827, Petitioner's Memorandum.

[4] COMELEC Official May 13, 2013 National and Local Elections Results <http://www.comelec.gov.phl?r=Archives/RegularElections/2013NEL/Results/SenatorialElections2013> (visited March 7, 2016).

[5] Const., Art. VI, Sec. 3 provides:

ARTICLE VI. The Legislative Department

x x x x x x x x x

SECTION 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

The assertion that petitioner made in her Certificate of Candidacy for President that she is a natural-born citizen is a grounded opinion. It does not constitute a material misrepresentation of fact. In much the same way, a Justice of this court does not commit material misrepresentation when he or she construes the Constitution in an opinion submitted for this case that a foundling is a natural-born citizen absent any clear and convincing evidence to the contrary. In the first place, this is an interpretation of law—not a statement of material fact.

Doing justice and discharging our duty to uphold the rule of law require that we conclude that foundlings are natural-born Filipino citizens absent any evidence that proves the contrary. This is the inescapable conclusion when we read the provisions on citizenship in the context of the entire Constitution, which likewise mandates equality, human dignity, social justice, and care for abandoned children.

The Constitution requires that either the father or the mother is a Filipino citizen.[6] It does not require an abandoned child or a foundling to identify his or her biological parents.[7] It is enough to show that there is a convincing likelihood that one of the parents is a Filipino. Contrary to the respondents' submissions, it is not blood line that is required. One of the parents can be a naturalized Filipino citizen.[8] The reference is only one ascendant generation. The constitutional provision does not absolutely require being born to an indigenous ethnicity.

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[6] CONST., Art. IV, Sec. 1 provides:

ARTICLE IV. Citizenship

SECTION 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;

(2) Those whose fathers or mothers are citizens of the Philippines;

(3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and

(4) Those who are naturalized in accordance with law.

[7] CONST., Art. IV, Sec. 1.

[8] CONST., Art. IV, Sec. 1.

There is no rational basis to conclude that the loyalty to this country of a foundling, discovered in a rural area and adopted by well-to-do parents, will be more suspect than a child born to naturalized Filipino parents.

That a foundling is a natural-born Filipino, unless clear and convincing evidence is shown otherwise, is also the definitive inference from contemporaneous acts of Congress[9] and the Executive.[10] This is also the availing conclusion considering our binding commitments in international law.[11] There is clear and convincing evidence from the history of the actual text of the entire Constitution.

In the case at bar, petitioner discharged her burden to prove that she is natural-born when the parties stipulated as to her status as a foundling found in front of a church in Jaro, Iloilo.[12] When the yardsticks of common sense and statistics are used,[13] it borders on the absurd to start with the presumption that she was born to both a foreign father ***and*** a foreign mother. In all likelihood, she was born to at least a Filipino father or to a Filipino mother, or both. Foundlings present the only ambiguous situation in our Constitution. There is no slippery slope. Malevolent actors that wish to avail themselves of this doctrine will have to prove that they are foundlings. They will have to

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[9] *See* Rep. Act No. 8552 (1998) and Rep. Act No. 8043 (1995).

[10] *See Rollo* (G.R. No. 221697), pp. 22-26, Petition. Petitioner was granted an order of reacquisition of natural-born citizenship under Republic Act No. 9225 by the Bureau of Immigration on July 18, 2006. The President of the Philippines appointed her as Chairperson of the Movie and Television Review and Classification Board—a government position that requires natural-born citizenship—on October 6, 2010.

[11] On August 21, 1990, we ratified the United Nations Convention on the Rights of the Child. We also ratified the 1966 International Covenant on Civil and Political Rights on October 23, 1986.

[12] *Rollo* (G.R. No. 221697), p. 5, Petition.

[13] *Rollo* (G.R. Nos. 221698-221700), p. 4566, Annex C of the Solicitor General's Memorandum, Certification issued on February 9, 2016 by the Philippine Statistics Office, signed by Deputy National Statistician Estela T. De Guzman.

do so with the requisite quantum of proof for immigration purposes. They will have to do so if it is also necessary for them for purposes of being candidates in a relevant election.

The Commission on Elections committed grave abuse of discretion amounting to lack of jurisdiction when it went beyond its competence under Section 78[14] of the Omnibus Election Code and the Constitution by not ruling exclusively on whether there was material misrepresentation. The questioned Resolutions of the Commission on Elections En Banc in these cases create a new and erroneous doctrine on this point of law. It is contrary to the text and spirit of the Constitution.

Likewise, this court has yet to decide on a case that squarely raises the issue as to whether the period of residency required by the Constitution of a candidate running for public office can only commence after he or she reacquires his or her Filipino citizenship. Neither has this court expressed the ratio decidendi that only when he or she has a resident visa can we commence to count his or her period of residency for election purposes. No ratio decidendi exists for these rules because there has not yet been a case that squarely raised these as issues. No ratio decidendi exists because this is not relevant nor organic to the purpose of residency as a requirement for elective public offices.

Our standing doctrines are that: (a) residency is a question of fact;[15] (b) residency, for election purposes, is equivalent to domicile;[16] and (c) domicile requires physical presence and

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[14] Batas Blg. 881 (1985), Omnibus Election Code, Sec. 78 provides:

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

[15] *Romualdez-Marcos v. COMELEC,* 318 Phil. 329, 377 (1995) [Per *J.* Kapunan, *En Banc*].

[16] *Gallego v. Vera,* 73 Phil. 453, 455-456 (1941) [Per *J.* Ozaeta, *En Banc*].

animus manendi.[17] Animus manendi is negated by the absence of animus non-revertendi.

To require a new element for establishing residency in order to deny petitioner's Certificate of Candidacy is not only unfair; it communicates a suspicious animus against her. It may give rise to a fair implication that there is partiality for one or another candidate running for the Office of President. It is a dangerous move on the part of this court. It will affect the credibility of the next administration and will undermine our standing as a sentinel for the protection of what is just and what is prescribed by the rule of law.

However, the grave abuse of discretion by the Commission on Elections does not end there. The Commission on Elections obviously did not appreciate all of the evidence presented by the parties in inferring when the residency of petitioner for the purpose of this election commenced. They relied on only three points: (a) a prior statement in an earlier Certificate of Candidacy for Senator submitted by petitioner;[18] (b) inferences from some of the actions of petitioner's husband;[19] and (c) the use of her United States passports.[20]

Petitioner has asserted that her statement in her present Certificate of Candidacy for President is accurate. She explains that her prior statement in her 2012 Certificate of Candidacy for Senator was a mistake committed in good faith. The Commission on Elections rejects these statements without valid evidence. It insists that it is the 2012 Certificate of Candidacy that is true and, thus, the present Certificate of Candidacy that is falsely represented. In doing so, the Commission on Elections acts arbitrarily and disregards the doctrine in *Romualdez-Marcos v. Commission on Elections.*[21] In

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[17] *Id.* at 456.

[18] *Rollo* (G.R. Nos. 221698-221700), p. 254, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[19] *Id.*

[20] *Id.*

[21] 318 Phil. 329, 386 (1995) [Per *J.* Kapunan, *En Banc*].

effect, it proposes to overturn the precedent pronounced by this court.

It is true that petitioner is a political studies graduate.[22] However, it is likewise true that this court should not expect petitioner to have been thoroughly familiar with the precise interpretation of the legal concept of residence and to correctly apply it when she filed her Certificate of Candidacy for Senator. We do not expect that much even from our lawyers. We accept that there can be honest mistakes in interpretation and application. Otherwise, we should discipline any lawyer who loses a case with finality in any court filed in this country.

To imply petitioner's lack of intent to establish domicile from the actions of her husband is a willful misappreciation of the evidence presented by petitioner with the Commission on Elections. The Commission on Elections infers that the wife cannot establish domicile separated from the husband. This is clearly not the state of Philippine law, which requires fundamental equality between men and women. The Commission on Elections isolates the fact of her husband's continued—albeit short—presence in the United States when petitioner and her children returned to the Philippines, From there, the Commission on Elections infers that when petitioner and her children returned to the Philippines, they did not intend to establish their new permanent home.

The Commission on Elections did not appreciate the following established facts that established the context of petitioner's return to the Philippines on May 24, 2005:

First, the husband was both a Filipino and American citizen.[23]

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[22] *Rollo* (G.R. No. 221697), p. 3816, Petitioner's Memorandum.

[23] *Id.*; *Rollo* (G.R. Nos. 221698-221700), p. 218, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

Second, the husband and the wife uprooted their children, removed them from their schools in the United States, and enrolled them in schools in the Philippines.[24]

Third, one of their children, a baby, was likewise uprooted and brought to the Philippines to stay here permanently.[25]

Fourth, arrangements were made to transfer their household belongings in several container vans from the United States to the Philippines.[26]

Fifth, petitioner did not seek further employment abroad.[27]

Sixth, petitioner's husband resigned from his work and moved to the Philippines.[28]

Seventh, petitioner's husband was employed in the Philippines.[29]

Eighth, they sold the place where they stayed in the United States.[30]

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[24] *Rollo* (G.Rs. No. 221697), pp. 3821-3822, Petitioner's Memorandum; *Rollo* (G.R. Nos. 221698-221700), p. 218, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[25] *Rollo* (G.R. No. 221697), p. 3822, Petitioner's Memorandum; *Rollo* (G.R. Nos. 221698-221700), p. 218, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[26] *Rollo* (G.R. No. 221697), pp. 3819-3820 and 3824, Petitioner's Memorandum; *Rollo* (G.R. Nos. 221698-221700), p. 218, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[27] *Rollo* (G.R. No. 221697), p. 3819, Petitioner's Memorandum.

[28] *Rollo* (G.R. No. 221697), pp. 3824-3825, Petitioner's Memorandum; *Rollo* (G.R. Nos. 221698-221700), p. 220, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[29] *Rollo* (G.R. No. 221697), p. 3825, Petitioner's Memorandum; *Rollo* (G.R. Nos. 221698-221700), p. 220, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[30] *Rollo* (G.R. No. 221697), p. 3824, Petitioner's Memorandum; *Rollo* (G.R. Nos. 221698-221700), p. 219, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

Ninth, they bought property in the Philippines and built a new family home.[31]

Tenth, petitioner registered as a voter again in the Philippines and actually voted.[32]

Eleventh, petitioner registered as a taxpayer in the Philippines and paid taxes.[33]

Lastly, petitioner and her husband formally made announcements with respect to their change of postal address.[34]

None of these facts suggested by the Dissenting Opinions can negate the inevitable conclusion of the intent attendant to the establishment of petitioner's presence in the Philippines on May 24, 2005.

That she had properties in the United States is not inconsistent with establishing permanent residence in the Philippines. One who is domiciled in the Philippines is not prohibited from owning properties in another country. Besides, petitioner's assertion that the properties they have in the United States are not their residence was not successfully refuted by private respondents.

Petitioner's reacquisition of Filipino citizenship in July 2006 does not negate physical presence and her intention to establish permanent residence in the country. It is not improbable that a foreigner may establish domicile in the Philippines. She is a returning balikbayan with roots in the Philippines who went

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[31] *Rollo* (G.R. No. 221697), p. 3825, Petitioner's Memorandum; *Rollo* (G.R. Nos. 221698-221700), p. 220, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[32] *Rollo* (G.R. No. 221697), pp. 3816 and 3833, Petitioner's Memorandum; *Rollo* (G.R. Nos. 221698-221700), p. 220, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[33] *Rollo* (G.R. No. 221697), p. 3822, Petitioner's Memorandum.

[34] *Id*. at 3824; *Rollo* (G.R. Nos. 221698-221700), p. 219, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

through a process to establish her residency in the Philippines and then applied for the recognition of her dual citizenship.

Many of the 47 years that petitioner has lived was spent in the Philippines. Except for the 16 years that she was in the United States, the other 31 years of her life were spent here in the Philippines. The person who became her mother is of advanced age and is in the Philippines. She went to school in this country and made friendships as well as memories. She, together with her husband, now has significant property here in the Philippines. That she intended to come back to take care of her recognized mother is a tendency so culturally Filipino, but which may have been forgotten by the Commission on Elections.

Some of the Dissenting Opinions suggest a new doctrine: the failure of a balikbayan who is allowed to enter the Philippines visa-free to accomplish an application to get a resident visa is a requirement to establish residency for election purposes. This is a new element not contemplated in our current doctrines on domicile.

Residency for election purposes is different from residency for immigration purposes. Applying for an alien resident visa was not required of petitioner. She was legally allowed visa-free entry as a balikbayan pursuant to Republic Act No. 6768, as amended. Within the one-year period of her visa-free stay, there is no prohibition for a balikbayan to apply to reacquire Philippine citizenship under Republic Act No. 9225. This she did. At no time was her stay in the Philippines illegal.

More importantly, the purpose of the residency requirement is already doctrinally established. *Torayno, Sr. v. Commission on Elections*[35] explained that it is meant "to give candidates the opportunity to be familiar with the needs, difficulties, aspirations, potentials for growth and all matters vital to the welfare of their constituencies; likewise, it enables the electorate to evaluate the office seekers' qualifications and fitness for the job they aspire for."[36]

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[35] 392 Phil. 342 (2000) [Per *J.* Panganiban, *En Banc*].

[36] *Id.* at 345.

The requirement to procure a resident visa has no rational relation to this stated purpose. It is a stretch to create a new doctrine. To require it now in this case will have considerable repercussions to the future of our country.

There is no evidence that can challenge the conclusion that on May 24, 2005, petitioner physically came back with the intention to establish her permanent home in the Philippines. In truth, the entire process of establishing petitioner's permanent residence here was completed in April 2006, well before May 9, 2006, 10 years prior to the upcoming elections.

Neither would it be logical to assert that until July 2006, petitioner had not legally established domicile in the Philippines. Before May 2006, petitioner and her husband were already in the Philippines. Neither of them were employed in the United States. They had their family home here. Their children were enrolled in schools in the Philippines.

The Commission on Elections' proposed conclusion is simply too absurd.

Given the evidence on which petitioner reckoned her residency, she did not commit material misrepresentation. Thus, it was not only an error but grave abuse of discretion on the part of the Commission on Elections to trivialize the pieces of evidence presented by petitioner in order to justify its conclusion.

In a proceeding under Section 78 of the Omnibus Election Code, the Commission on Elections is neither constitutionally nor statutorily empowered to enunciate new legal doctrine or to reverse doctrines laid down by this court. It cannot, on the basis of new doctrines not known to the candidate, declare that his or her certificate of candidacy is infected with material misrepresentation.

The Commission on Elections is mandated by the Constitution to enforce and administer election laws. It cannot discharge this duty when there is any suspicion that it favors or disfavors a candidate. When it goes beyond its competency under Section 78 to deny a certificate of candidacy "exclusively

on the ground that any material representation contained therein . . . is false," it does not only display a tendency to abuse its power; it seriously undermines its neutrality. This is quintessentially grave abuse of discretion.

No effort should be spared so as to ensure that our political preferences for or against any present candidate for the Presidency do not infect our reading of the law and its present doctrines. We should surmount every real or imagined pressure, communicated directly or indirectly by reading the entire Constitution and jurisprudence as they actually exist.

The propositions of respondents require acceptance of doctrines not yet enunciated and inferences that do not arise from the evidence presented. This will have nothing to do with reality. It will be unfair to petitioner, and will amount to misusing our power of judicial review with an attitude less deferential to the sovereign People's choices expressed both in the Constitution and in elections. Upholding the Commission on Elections' Resolutions, which stand on shaky legal grounds, amounts to multiplying each of our individual political preferences more than a millionfold.

The Facts

Before this court are consolidated Petitions for Certiorari under Rule 64 in relation to Rule 65 of the Rules of Court filed by petitioner Mary Grace Natividad S. Poe-Llamanzares. She prays for the nullification of the Resolutions of the Commission on Elections, which cancelled her Certificate of Candidacy for President of the Republic of the Philippines in connection with the May 9, 2016 National and Local Elections.

The Petition docketed as G.R. No. 221697 assails the December 1, 2015 Resolution of the Commission on Elections Second Division, which granted the Petition to Deny Due Course to or Cancel Certificate of Candidacy filed by private respondent Estrella C. Elamparo (Elamparo) and the Commission on Elections En Banc's December 23, 2015

Resolution,[37] which denied petitioner's Motion for Reconsideration.[38]

On the other hand, the Petition docketed as G.R. No. 221698-700 assails the December 11, 2015 Resolution[39] of the Commission on Elections First Division, which granted the Petitions filed by private respondents Francisco S. Tatad (Tatad), Antonio P. Contreras (Contreras), and Amado T. Valdez (Valdez) and the Commission on Elections En Banc's December 23, 2015 Resolution,[40] which denied petitioner's Motion for Reconsideration.[41]

The facts of the case are generally stipulated and well-known.

Petitioner is a foundling. Her biological parents are unknown. All that is known about her origin is that at about 9:30 a.m. on September 3, 1968, she was found in the parish church of Jaro, Iloilo by one Edgardo Militar. Edgardo Militar opted to place petitioner in the care and custody of his relative Emiliano Militar and the latter's wife.[42]

Emiliano Militar reported the discovery to the Office of the Local Civil Registrar in Jaro, Iloilo on September 6, 1968.[43] A Foundling Certificate was issued. This Certificate indicated

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[37] *Rollo* (G.R. No. 221697), pp. 224-259, COMELEC *En Banc* Resolution (SPA Nos. 15-001 (DC) was signed by Commissioners J. Andres D. Bautista (Chair), Christian Robert S. Lim, Al A. Parreño, Luie Tito F. Guia, Arthur D. Lim, Ma. Rowena Amelia V. Guanzon, and Sheriff M. Abas.

[38] *Id.* at 258.

[39] *Rollo* (G.R. Nos. 221698-221700), pp. 216-264, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)) was signed by Presiding Commissioner Christian Robert S. Lim, and Commissioners Luie Tito F. Guia, and Ma. Rowena Amelia V. Guanzon.

[40] *Id.* at 352-381.

[41] *Id.* at 381.

[42] *Rollo* (G.R. No. 221697), p. 3814, Petitioner's Memorandum.

[43] *Rollo* (G.R. Nos. 221698-221700), p. 217, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

petitioner's date of birth to be September 3, 1968. Petitioner's full name was recorded as "Mary Grace Natividad Contreras Militar."[44]

When petitioner was five (5) years old, she was legally adopted by spouses Ronald Allan Poe (Fernando Poe, Jr.) and Jesusa Sonora Poe (Susan Roces). The Decision dated May 13, 1974 by the Municipal Trial Court of San Juan, Rizal granted the Petition for Adoption filed by Fernando Poe, Jr. and Susan Roces.[45] The court ordered that petitioner's name be changed "from Mary Grace Natividad Contreras Militar to Mary Grace Natividad Sonora Poe."[46]

On April 11, 1980, the Office of the Civil Registrar of Iloilo City received a copy of the May 13, 1974 Decision of the Municipal Trial Court of San Juan. It inscribed on petitioner's Foundling Certificate that she was adopted by Fernando Poe, Jr. and Susan Roces on May 13, 1974.[47] A hand-written notation was made on the right-hand side of petitioner's Foundling Certificate, as follows:

> NOTE: Adopted child by the Spouses Ronald Allan Poe and Jesusa Sonora Poe as per Court Order, Mun. Court, San Juan, Rizal, by Hon. Judge Alfredo M. Gorgonio dated May 13, 1974, under Sp. Proc. No. 138.[48]

In accordance with the May 13, 1974 Decision, the Office of the Civil Registrar of Iloilo City amended petitioner's Foundling Certificate so that her middle name ("Contreras") and last name ("Militar") were to be replaced with "Sonora" and "Poe," respectively. Further, the names "Ronald Allan Poe" and "Jesusa Sonora Poe" were entered into petitioner's Foundling Certificate in the spaces reserved for the names of

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[44] *Rollo* (G.R. No. 221697), p. 3814, Petitioner's Memorandum.

[45] *Id*. at 3815.

[46] *Id*.

[47] *Id*.

[48] *Id*.

the individuals who are legally considered as petitioner's parents.[49]

On December 13, 1986, when petitioner was 18 years old, the Commission on Elections issued her a Voter's Identification Card for Precinct No. 196, Greenhills, San Juan, Metro Manila.[50]

On April 4, 1988, petitioner was issued a Philippine passport by the then Ministry of Foreign Affairs. This passport stated that "(t)he Government of the Republic of the Philippines requests all concerned to permit the bearer, *a citizen of the Philippines* to pass safely and freely and, in case of need, to give (her) lawful aid and protection."[51]

This passport was valid for a period of five (5) years.[52] It was renewed on April 5, 1993, and subsequently on May 19, 1998, October 13, 2009, December 19, 2013, and March 18, 2014.[53]

Petitioner initially enrolled in the Development Studies Program of the University of the Philippines. However, in 1988, petitioner transferred to the Boston College in Chestnut Hill, Massachusetts, USA, where she obtained her Bachelor of Arts degree in Political Studies in 1991.[54]

On July 27, 1991, petitioner married Teodoro Misael V. Llamanzares (Teodoro Llamanzares), a citizen from birth[55] of both the Philippines and the United States.[56] Teodoro Llamanzares was

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[49] *Id*.

[50] *Id*. at 3816.

[51] *Id*. Emphasis supplied.

[52] *Id*.

[53] *Id*. at 2707, SET Decision (SET Case No. 001-15).

[54] *Id.* at 3816, Petitioner's Memorandum.

[55] *Id*.

[56] *Rollo* (G.R. Nos. 221698-221700), p. 218, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

then based in the United States. On July 29, 1991, petitioner went to the United States to live with her husband.[57]

Petitioner and her husband bore three (3) children. Brian Daniel (Brian) was born in the United States on April 16, 1992, Hanna MacKenzie (Hanna) in the Philippines on July 10, 1998, and Jesusa Anika (Anika) in the Philippines on June 5, 2004.[58]

Ten years after having been based in the United States,[59] petitioner became a naturalized American citizen on October 18, 2001.[60] On December 19, 2001 she was issued United States Passport No. 017037793.[61]

On April 8, 2004, petitioner, who was then pregnant with her third child, returned to the Philippines.[62] She was accompanied by her daughter Hanna.[63] Petitioner asserted that her return had two purposes: first, to support her parents as Fernando Poe, Jr. was then running for President of the Philippines; and second, to give birth to her third child, Anika, in the Philippines.[64]

It was only on July 8, 2004, after Anika was born on June 5, 2004, that petitioner returned to the United States.[65]

On December 11, 2004, petitioner's father Fernando Poe, Jr. slipped into a coma and was confined at St. Luke's Medical Center in Quezon City. Rushing to return to the Philippines, petitioner arrived on December 13, 2004. Unfortunately, Fernando Poe, Jr. died before petitioner could reach the

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[57] *Id.*

[58] *Rollo* (G.R. No. 221697), p. 3817, Petitioner's Memorandum.

[59] *Id.*

[60] *Rollo* (G.R. Nos. 221698-221700), p. 218, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[61] *Id.*

[62] *Rollo* (G.R. No. 221697), pp. 3817-3818, Petitioner's Memorandum.

[63] *Id.* at 3817.

[64] *Id.* at 3818.

[65] *Id.*

hospital.[66] Petitioner stayed until February 3, 2005 to allegedly "comfort her grieving mother and to assist [her] in taking care of the funeral arrangements and ... the settlement of her father's estate."[67]

In 2004, petitioner resigned from her work in the United States.[68] Following her resignation, she did not seek employment there again.[69]

Petitioner claims that in the first quarter of 2005, after her father's untimely death and to give moral support to her mother, she and her husband decided to return to the Philippines for good.[70]

Early in 2005, Brian and Hanna's schools in the United States were informed of their family's intention to transfer them to Philippine schools for the following semester.[71]

Beginning March 2005, petitioner and her husband began receiving cost estimates from property movers as regards the relocation of their properties from the United States to the Philippines. Among these were those from Victory Van International (Victory Van).[72] Petitioner noted that e-mails between her and her husband, on one hand, and Victory Van, on the other, "show the process that [she] and her family went through to permanently relocate and reestablish themselves in Philippines[.]"[73] As recalled by petitioner:

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[66] *Id.*

[67] *Rollo* (G.R. Nos. 221698-221700), p. 218, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[68] *Rollo* (G.R. No. 221697), p. 3819, Petitioner's Memorandum; *Rollo* (G.R. Nos. 221698-221700), p. 218, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[69] *Rollo* (G.R. No. 221697), p. 3819, Petitioner's Memorandum.

[70] *Id.*

[71] *Id.*

[72] *Id.*; *Rollo* (G.R. Nos. 221698-221700), p. 218, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[73] *Rollo* (G.R. No. 221697), p. 3819, Petitioner's Memorandum.

2.22.1. On 18 March 2005, with subject heading "Relocation to Manila Estimate", a representative of Victory Van replied to an inquiry made by Petitioner, and informed her that they would need at least three (3) forty foot containers to transport all of the family's household goods, furniture, and two (2) vehicles from Virginia, U.S.A. to Manila, Philippines. The service would include "packing, export wrapping, custom crating for chandeliers, marble top and glass tops, loading of containers ..., US customs export inspection for the vehicles, transportation to Baltimore, ocean freight and documentation to arrival Manila, customs clearance, delivery, ... unwrapping and placement of furniture, assisted unpacking, normal assembly ..., container return to port and same day debris removal based on three 40' containers."

2.22.2. Petitioner and her husband eventually engaged the services of Victory Van, and scheduled two (2) moving phases for the packing, collection and storage of their household goods for eventual transport to the Philippines. The "first phase" was scheduled sometime in February 2006, with Petitioner flying in to the U.S.A. to supervise the packing, storage, and disposal of their household goods in Virginia. The "second phase" was supervised by Petitioner's husband and completed sometime in April 2006.[74] (Citations omitted)

Apart from making arrangements for the transfer of their properties, petitioner and her husband also asked Philippine authorities about the procedure for bringing their dogs into the country.[75] They processed an application for import permit from the Bureau of Animal Industry - National Veterinary and Quarantine Service.[76]

Petitioner and her three (3) children returned to the Philippines on May 24, 2005.[77] Petitioner's husband was unable to join them and had to stay in the United States as, according to petitioner, he still had "to finish pending projects and to arrange

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[74] *Id.* at 3819-3820.

[75] *Rollo* (G.R. Nos. 221698-221700), pp. 218-219, COMELEC First Division Resolution (SPA Nos. 15- 002 (DC), 15-007 (DC), and 15-139 (DC)).

[76] *Rollo* (G.R. No. 221697), p. 3820, Petitioner's Memorandum.

[77] *Id*. at 3820-3821.

for the sale of the family home there."[78]

In returning to the Philippines, petitioner and her children did not obtain visas. Petitioner emphasized that a visa was not legally required since she and her children availed themselves of the benefit allowed under the Balikbayan Program of one-year visa-free entry.[79]

Upon arrival in the Philippines, petitioner and her children initially lived with petitioner's mother Susan Roces at 23 Lincoln St., Greenhills West, San Juan City.[80] Petitioner emphasized that the living arrangements at her mother's house were modified to accommodate her and her children.[81] Further, her father's long-time driver was permanently assigned to her.[82]

For the academic year 2005-2006, petitioner enrolled Brian and Hanna in Philippine schools. Brian was enrolled at Beacon School in Taguig City,"[83] while Hanna at Assumption College in Makati City.[84] In 2007, when she was old enough to go to school, Anika was enrolled in Learning Connection in San Juan City.[85] Brian subsequently transferred to La Salle

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[78] *Id.* at 3821.

[79] *Id.* Rep. Act No. 6768, Sec. 3(c), as amended by Rep. Act No. 9174, Sec. 3 provides:

SEC. 3 Benefits and Privileges of the Balikbayan. – The balikbayan and his or her family shall be entitled to the following benefits and privileges:

x x x x x x x x x

(c) Visa-free entry to the Philippines for a period of one (1) year for foreign passport holders, with the exception of restricted nationals;

[80] *Rollo* (G.R. No. 221697), p. 3821, Petitioner's Memorandum.

[8I] *Id.*

[82] *Id.*

[83] *Rollo* (G.R. No. 221697), p. 3822, Petitioner's Memorandum; *Rollo* (G.R. Nos. 221698-221700), p. 219, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[84] *Id.*

[85] *Id.*

Greenhills in 2006, where he finished his high school education in 2009.[86] Hanna finished her grade school and high school education at Assumption College,[87] where Anika also completed Kindergarten.[88] She is now a sixth grader in the same school.[89]

Shortly after her arrival in the Philippines, petitioner also registered as a taxpayer with the Bureau of Internal Revenue.[90] She was issued a Tax Identification Number by the Bureau of Internal Revenue on July 22, 2005.[91]

Petitioner asserted that sometime in the latter part of 2005, Susan Roces discovered that the lawyer in charge of petitioner's adoption in 1974 failed to secure from the Office of the Civil Registrar of Iloilo City a new Certificate of Live Birth indicating petitioner's adopted name and the names of her adoptive parents.[92] Thus, on November 8, 2005, she executed an affidavit attesting to the lawyer's omission and submitted it to the Office of the Civil Registrar of Iloilo City. On May 4, 2006, the Office of the Civil Registrar of Iloilo City issued a new Certificate of Live Birth indicating petitioner's name to be "Mary Grace Natividad Sonora Poe."[93]

In addition, around that time, petitioner and her husband "acquired Unit 7F of One Wilson Place Condominium in San Juan"[94] (along with a corresponding parking slot).[95] According

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[86] *Rollo* (G.R. No. 221697), p. 3822, Petitioner's Memorandum.

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] *Id.* at 2707, SET Decision (SET Case No. 001-15).

[92] *Rollo* (G.R. Nos. 221698-221700), p. 219, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[93] *Rollo* (G.R. No. 221697), p. 3822, Petitioner's Memorandum.

[94] *Rollo* (G.R. Nos. 221698-221700), p. 219, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[95] *Rollo* (G.R. No. 221697), p. 3822, Petitioner's Memorandum.

to petitioner, this was to serve as their temporary residence until the completion of their family home in Corinthian Hills, Quezon City.[96]

On February 14, 2006, petitioner left for the United States allegedly to supervise the disposal her family's remaining belongings. She returned to the Philippines on March 11, 2006.[97]

On March 28, 2006, as the disposal of their remaining properties had been completed, petitioner's husband informed the United States Postal Service of their family's abandonment of their address in the United States.[98]

In April 2006, petitioner's husband resigned from his work in the United States.[99] The packing of petitioner's family's properties, which were to be transported to the Philippines, was also completed on or about April 25 to 26, 2006. Their home in the United States was sold on April 27, 2006.[100] Petitioner's husband then returned to the Philippines on May 4, 2006. By July 2006, he found employment in the Philippines.[101]

In the meantime, in early 2006, petitioner and her husband acquired a 509-square-meter lot in Corinthian Hills, Barangay Ugong Norte, Quezon City. They built a house on this lot, which, as petitioner points out, remains to be their family home to this day.[102]

On July 7, 2006, petitioner took the Oath of Allegiance to the Republic of the Philippines[103] pursuant to Section 3 of

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[96] *Id.*

[97] *Id.* at 3824.

[98] *Id.*

[99] *Id.*

[100] *Id.*

[101] *Id.* at 3824-3825.

[102] *Id.* at 3825.

[103] *Rollo* (G.R. Nos. 221698-221700), p. 220, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

Republic Act No. 9225, otherwise known as the Citizenship Retention and Re-acquisition Act of 2003. Three days later, on July 10, 2006, she likewise filed before the Bureau of Immigration a Petition for Reacquisition of Filipino Citizenship.[104] She also filed Petitions for Derivate Citizenship on behalf of her three children who were at that time all below 18 years old.[105]

On July 18, 2006, the Bureau of Immigration issued the Order granting all these Petitions.[106] The Order stated:

> A careful review of the documents submitted in support of the instant petition indicate that the petitioner was a former citizen of the Republic of the Philippines being born to Filipino parents and is presumed to be a natural born Philippine citizen; thereafter, became an American citizen and is now a holder of an American passport; was issued an ACT and ICR and has taken her oath of allegiance to the Republic of the Philippines on July 7, 2006 and so is thereby deemed to have re-acquired her Philippine Citizenship.[107]

The Bureau of Immigration issued Identification Certificates for petitioner and her three children.[108] Petitioner's Identification Certificate states that she is a "citizen of the Philippines pursuant to the Citizenship Retention and Re-acquisition Act of 2003 (RA 9225) in relation to Administrative Order No. 91, Series of 2004 and Memorandum Circular No. AFF-2-005 per Office Order No. AFF-06-9133 signed by Associate Commissioner Roy M. Almoro dated July 18, 2006."[109]

On August 31, 2006, petitioner registered as a voter of Barangay Santa Lucia, San Juan City.[110]

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[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] *Rollo* (G.R. No. 221697), p. 3827, Petitioner's Memorandum.

[108] *Rollo* (G.R. Nos. 221698-221700), p. 220, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[109] *Rollo* (G.R. No. 221697), p. 3827, Petitioner's Memorandum.

[110] *Rollo* (G.R. Nos. 221698-221700), p. 220, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

On October 13, 2009, the Department of Foreign Affair issued to petitioner a Philippine passport with Passport Number XX4731999.[111]

On October 6, 2010, President Benigno S. Aquino III appointed petitioner as Chairperson of the Movie and Television Review and Classification Board.[112] Petitioner asserts that she did not immediately accept this appointment as she was advised that Section 5(3) of the Citizenship Retention and Re-acquisition Act of 2003 required two things of her before assuming any appointive public office: first, to take the Oath of Allegiance to the Republic of the Philippines; and second, to renounce her American citizenship.[113]

Thus, on October 20, 20I0, petitioner executed an Affidavit of Renunciation of Allegiance to the [United States of America] and Renunciation of American Citizenship,[114] stating:

I, MARY GRACE POE-LLAMANZARES, Filipino, of legal age, and presently residing at No. 107 Rodeo Drive, Corinthian Hills, Quezon City, Philippines, after having been duly sworn to in accordance with the law, do hereby depose and state that with this affidavit, I hereby expressly and voluntarily renounce my United States nationality/American citizenship, together with all rights and privileges and all duties and allegiance and fidelity thereunto pertaining. I make this renunciation intentionally, voluntarily, and of my own free will, free of any duress or undue influence.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 20th day of October 2010 at Pasig City, Philippines.[115]

An original copy of the Affidavit was submitted to the Bureau of Immigration on the same day.[116]

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[111] *Id.*

[112] *Id*.

[113] *Rollo* (G.R. No. 221697), p. 3828, Petitioner's Memorandum.

[114] *Rollo* (G.R. Nos. 221698-221700), p. 220, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[115] *Rollo* (G.R. No. 221697), p. 3828, Petitioner's Memorandum.

[116] *Id.* at 2708, SET Decision (SET Case No. 001-15).

Petitioner took her Oath of Office as Chairperson of the Movie and Television Review and Classification Board on October 21, 2010.[117] She formally assumed office as Chairperson on October 26, 2010.[118]

In addition to her Affidavit renouncing her American citizenship, petitioner executed on July 12, 2011 an Oath/Affirmation of Renunciation of Nationality of the United States before Somer E. Bessire-Briers, Vice-Consul of the Embassy of the United States of America in Manila.[119]

On the same day, she accomplished a Questionnaire Information for Determining Possible Loss of U.S. Citizenship,[120] where she stated that on October 21, 2010 she had taken her oath as Chairperson of the Movie and Television Review and Classification Board with the intent of relinquishing her American citizenship.[121] She further stated that she had been living in the Philippines from September 3, 1968 to July 29, 1991 and from May 2005 to this present day.[122] On page 4 of this Questionnaire, petitioner asserted that:

> I became a resident of the Philippines once again since 2005. My mother still resides in the Philippines. My husband and I are both employed and own properties in the Philippines. As a dual citizen (Filipino-American) since 2006, I've voted in two Philippine national elections. My three children study and reside in the Philippines at the time I performed the act as described in Part I item 6.[123]

On December 9, 2011, petitioner was issued a Certificate of Loss of Nationality by Jason Galian, Vice-Consul of the Embassy of the United States of America.[124] The Certificate was approved

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[117] *ld*. at 23, Petition.
[118] *Id.*
[119] *Rollo* (G.R. No. 221697), p. 2708, SET Decision (SET Case No. 001-15).
[120] *Id*.
[121] *Id.* at 3832.
[122] *Id*.
[123] *Id*. at 3833.
[124] *Id*. at 2708, SET Decision (SET Case No. 001-15).

by the Overseas Citizen Service of the United States' Department of State on February 3, 2012.[125]

Petitioner ran for Senator of the Philippines in the May 2013 elections.[126] She executed her Certificate of Candidacy on September 27, 2012 and filed it before the Commission on Elections on October 2, 2012.[127] Petitioner "declared that she had been a resident of the Philippines for six (6) years and six (6) months immediately before the 13 May 2013 elections."[128]

On May 16, 2013, petitioner's election as Senator was formally proclaimed by the Commission on Elections.[129] Petitioner is currently serving her term as Senator.[130]

On December 19, 2013, the Department of Foreign Affairs issued petitioner a Diplomatic passport with Passport Number DE0004530 valid until December 18, 2018. Petitioner was also issued a Philippine passport with Passport No. EC0588861 valid until March 17, 2019.[131]

On October 15, 2015, petitioner filed her Certificate of Candidacy for President of the Republic of the Philippines in connection with the May 9, 2016 Elections.[132] She stated that she is a natural-born Filipino citizen and that her "residence in the Philippines up to the day before May 9, 2016" was to be "10" years and "11" months.[133]

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[125] *Id.*

[126] *Rollo* (G.R. Nos. 221698-221700), p. 221, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[127] *Rollo* (G.R. No. 221697), p. 3823, Petitioner's Memorandum.

[128] *Rollo* (G.R. Nos. 221698-221700), p. 221, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[129] *Rollo* (G.R. No. 221697), p. 3824, Petitioner's Memorandum.

[130] *Id.* at 2708, SET Decision (SET Case No. 001-15), p. 3.

[131] *Rollo* (G.R. Nos. No. 221698-221700), p. 221, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[132] *Id*.

[133] at 222.

Petitioner attached to her Certificate of Candidacy the Affidavit Affirming Renunciation of U.S.A. Citizenship,[134] in which she emphasized that she never recanted the Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship that she executed on October 20, 2010. Further, she stated that effective October 21, 2010, she was no longer an American citizen, even within the contemplation of the laws of the United States.[135] She further stated:

> Although I have long ceased to be a U.S.A. citizen, and without implying that my previous renunciation of U.S.A. citizenship was in any manner ineffective or recanted, but solely for the purpose of complying with the requirements for filing my Certificate of Candidacy ('COC') for President in the 9 May 2016 election (specifically. Item 10 of the COC) and in light of the pronouncement of the Supreme Court in Arnado vs. COMELEC (G.R. No. 210164, 18 August 2015) the '(t)here is no law prohibiting (me) from executing asn Affidavit of Renunciation every election period if only avert possible question s about (my) qualifications ." I hereby affirm and reiterate that I personally renounce my previous U.S.A. citizenship, together with all rights, privileges, duties, allegiance and fidelity pertaining thereto. I likewise declare that, aside from that renounced U.S.A. citizenship, I have never possessed any other foreign citizenship.[136] (Citation omitted)

On October 16, 2015, Elamparo filed a Petition to Deny Due Course to or Cancel the Certificate of Candidacy of petitioner.[137] The case was raffled to the Second Division of the Commission on Elections.[138] On October 19, 2015, Tatad filed a Verified Petition for Disqualification against petitioner.[139] On October 20, 2015,

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[134] *Id*.

[135] *Rollo* (G.R. No. 221697), p. 3835, Petitioner's Memorandum.

[136] *Id.*

[137] *Id.* at 9, Petition.

[138] *Id.* at 4.

[139] *Rollo* (G.R. Nos. 221698-221700), p. 222, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)) dated December 11.

Contreras filed a Petition to Deny Due Course to or Cancel the Certificate of Candidacy of petitioner.[140] On November 9, 2015, Valdez also filed a Petition to Deny Due Course to or Cancel the Certificate of Candidacy of petitioner. [141] The Petitions of Tatad, Contreras, and Valdez were raffled to the Commission on Elections First Division.[142]

On November 25, 2015, a clarificatory hearing was conducted on the three Petitions before the Commission on Elections First Division.[143] The parties were directed to file their respective memoranda until December 3, 2015, 10 days from the date of the preliminary conference.[144] The case was deemed submitted for resolution on December 3, 2015, when the parties had submitted their respective Memoranda.[145]

The Petition filed by Elamparo was likewise submitted for resolution after the parties had submitted their respective memoranda.[146]

In the Order dated December 1, 2015, the Second Division of the Commission on Elections granted the Petition of Elamparo.[147]

On December 2, 2015, Elamparo filed an Urgent Motion to Exclude petitioner from the list of candidates for the Office of President in the official ballots to be printed for the May 2016 National Elections.[148] Petitioner filed her Partial

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[140] *Id.*

[141] *Id.*

[142] *Id.* at 217.

[143] *Id.* at 222.

[144] *Id.*

[145] *Id.*

[146] *Rollo* (G.R. No. 221697), p. 3556-B, Supreme Court Resolution dated February 16, 2016.

[147] *Id.* at 29-30, Petition.

[148] *Id.* at 33.

Motion for Reconsideration before the Commission on Elections En Banc on December 7, 2015.[149]

Meanwhile, in the Order dated December 11, 2015, the Commission on Elections First Division granted the Petitions of Tatad, Contreras, and Valdez and ordered the cancellation of the Certificate of Candidacy of petitioner for the position of President of the Republic of the Philippines.[150] On December 16, 2015, petitioner moved for reconsideration before the Commission on Elections En Banc.[151]

In the resolutions dated December 23, 2015, the Commission on Elections En Banc denied petitioner's motions for reconsideration.[152]

On December 28, 2015, petitioner filed before this court the present Petitions with an accompanying Extremely Urgent Application for an *Ex Parte* Temporary Restraining Order/ Status Quo Ante Order and/or Writ of Preliminary Injunction.[153]

On December 28, 2015, this court issued a temporary restraining order.[154] Respondents were similarly ordered to comment on the present Petitions.[155] The Petitions were later consolidated.[156]

Oral arguments were conducted from January 19, 2016 to February 16, 2016. Thereafter, the parties submitted their memoranda and the case was deemed submitted for resolution.

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[149] *Id*.

[150] *Rollo* (G.R. Nos. 221698-221700), p. 263, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[151] *Id*. at 357, COMELEC *En Banc* Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

[152] *Id.* at 381.

[153] *Rollo* (G.R. No. 221697), p. 3.

[154] *Id*. at 2011-2013.

[155] *Id*. at 2012.

[156] *Id*. at 3084-P, Supreme Court Advisory.

The Issues

For resolution are the following issues:

A. Whether a review of the Commission on Elections' assailed Resolutions via the consolidated Petitions for certiorari under Rule 64, in relation to Rule 65 of the 1997 Rules of Civil Procedure is warranted;

B. Whether Rule 23, Section 8 of the Commission on Elections' Rules of Procedure is valid;

(1) Whether Rule 23, Section 8 of the Commission on Election's Rules of Procedure violates Article IX-A, Section 7 of the 1987 Constitution;

(2) Whether the Commission on Elections may promulgate a rule—stipulating a period within which its decisions shall become final and executory—that is inconsistent with the rules promulgated by this court with respect to the review of judgments and final orders or resolutions of the Commission on Elections;

C. Whether the Commission on Elections should have dismissed and not entertained the Petition filed by private respondent Francisco S. Tatad against petitioner Mary Grace Natividad S. Poe-Llamanzares:

(1) On the ground of failure to state the cause of action;

(2) For invoking grounds for a petition to cancel or deny due course to a certificate of candidacy under Section 78 of the Omnibus Election Code, in relation to Rule 23 of the Commission on Election's Rules of Procedure.

D. Whether the Commission on Elections has jurisdiction over the Petitions filed by private respondents Estrella C. Elamparo, Francisco S. Tatad, Antonio P. Contreras, and Amado D. Valdez;

(1) Whether the Commission on Elections acted with grave abuse of jurisdiction and/or in excess of

jurisdiction in ruling on petitioner's intrinsic eligibility, specifically with respect to her citizenship and residency;

E. Whether grounds exist for the cancellation of petitioner's Certificate of Candidacy for President;

(i) Whether petitioner made any material misrepresentation in her Certificate of Candidacy for President;

(a) Whether petitioner's statement that she is a natural-born Filipino citizen constitutes material misrepresentation warranting the cancellation of her Certificate of Candidacy for President;

i. Whether the Commission on Elections' conclusion that petitioner, being a foundling, is not a Filipino citizen under Article IV, Section 1 of the 1935 Constitution, is warranted and sustains the cancellation of her Certificate of Candidacy for President;

- Whether the Commission on Elections gravely abused its discretion in ruling that petitioner has the burden of proving her natural-born citizenship in proceedings under Section 78 of the Omnibus Election Code in relation to Rule 23 of the Commission on Elections' Rules;

ii. Whether the Commission on Elections' conclusion that petitioner did not validly reacquire natural-born Philippine citizenship is warranted and sustains the cancellation of her Certificate of Candidacy for President;

(b) Whether petitioner's statement in her Certificate of Candidacy that her period of residence in the Philippines is ten (10) years and eleven (11) months until May 9, 2016 constitutes material misrepresentation warranting the cancellation of her Certificate of Candidacy for President;

- Whether the Commission on Elections' conclusion that petitioner did not meet the required period of residence is warranted and sustains the cancellation of her Certificate of Candidacy for President;

(2) Whether petitioner intended to mislead the electorate in the statements she made in her Certificate of Candidacy for President;

(1) Whether petitioner intended to mislead the electorate by stating in her Certificate of Candidacy that she is a natural-born Filipino Citizen; and

(2) Whether petitioner's statement in her Certificate of Candidacy that her period of residence by May 9, 2016 would be ten (10) years and eleven (11) months constitutes concealment of "ineligibility" for the Presidency and an attempt to mislead or deceive the Philippine electorate.

The Petitions should be granted.

I

We clarify the mode of review and its parameters.

This court's power of judicial review is invoked through petitions for certiorari seeking to annul the Commission on Elections' resolutions which contain conclusions regarding petitioner Poe's citizenship, residency, and purported misrepresentation.

Under Rule 64, Section 2 of the Rules of Court, a judgment or final order or resolution of the Commission on Elections may be brought to this court on certiorari under Rule 65.[157] For a writ of certiorari to be issued under Rule 65, the respondent tribunal must have acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[158]

The concept of judicial power under the 1987 Constitution recognizes this court's jurisdiction to settle actual cases or controversies. It also underscores this court's jurisdiction to determine whether a government agency or instrumentality committed grave abuse of discretion in the fulfillment of its actions. Judicial review grants this court authority to invalidate acts—of the legislative, the executive, constitutional bodies, and administrative agencies—when these acts are contrary to the Constitution.[159]

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[157] RULES OF COURT, Rule 64 provides:

Sec. 2.*Mode of review.* A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided.

[158] RULES OF COURT, Rule 65 provides:

Section 1. *Petition for certiorari.* When any tribunal, board or officer exercising judicial or quasi- judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

[159] *Araullo v. Aquino III,* G.R. No. 209287, February 3, 2015, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/209287.pdf> 8-9 [Per *J.* Bersamin, *En Banc*].

The term "grave abuse of discretion," while defying exact definition, generally refers to such arbitrary, capricious, or whimsical exercise of judgment that is equivalent to lack of jurisdiction:

> [T]he abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough must be grave.[160]

In other words: arbitrary, capricious, or whimsical exercise of any constitutionally mandated power has never been sanctioned by the sovereign to any constitutional department, agency, or organ of government.

The Commission on Elections argues that alleged errors in its conclusions regarding petitioner's citizenship, residency, and purported misrepresentation were based on its findings and the evidence submitted by the parties. It emphasizes that even if its conclusions might have been erroneous, it nevertheless based these on its own appreciation of the evidence in relation to the law and the Constitution. It claims to have only exercised its constitutionally bounded discretion. Consequently, in its view, the Commission on Elections cannot be deemed to have acted without or in excess of its jurisdiction.[161]

Grave abuse of discretion exists when a constitutional body makes patently gross errors in making factual inferences such that critical pieces of evidence presented by a party not traversed or even stipulated by the other parties are ignored.[162] Furthermore a misinterpretation of the text of the Constitution or provisions of law, or otherwise a misreading or misapplication of the current

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[160] *Mitra v. Commission on Elections,* 636 Phil. 753, 777 (2010) [Per *J.* Brion, *En Banc*].

[161] *Rollo* (G.R. Nos. 221698-221700), p. 4590, COMELEC Memorandum.

[162] *Abasta Shipmanagement Corporation,* 670 Phil. 136, 151 (2011) [Per *J*. Brion, Second Division].

state of jurisprudence, also amounts to grave abuse of discretion.[163] In such cases, decisions are arbitrary in that they do not relate to the whole corpus of evidence presented. They are arbitrary in that they will not be based on the current state of our law. Necessarily, these give the strongest suspicion of either capriciousness or partiality beyond the imagination of our present Constitution.

Thus, writs of certiorari are issued: (a) where the tribunal's approach to an issue is tainted with grave abuse of discretion, as where it uses wrong considerations and grossly misreads the evidence at arriving at its conclusion;[164] (b) where a tribunal's assessment is "far from reasonable[,] [and] based solely on very personal and subjective assessment standards when the law is replete with standards that can be used[;]"[165](c) where the tribunal's action on the appreciation and evaluation of evidence oversteps the limits of its discretion to the point of being grossly unreasonable"[166] and (d) where the tribunal uses wrong or irrelevant considerations in deciding an issue.[167]

Article VIII, Section 1 of the Constitution is designed to ensure that this court will not abdicate its duty as guardian of the Constitution's substantive precepts in favor of alleged procedural devices with lesser value.[168] Given an actual case or controversy and in the face of grave abuse,

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[163] *Nightowl Watchman & Security Agency, Inc. v. Lumahan,* G.R. No. 212096, October 14, 2015, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/212096.pdf> 7 [Per *J.* Brion, Second Division].

[164] *Mitra v. Commission on Elections,* 636 Phil. 753, 777-778, 782 (2010) [Per *J.* Brion, *En Banc*].

[165] *Id.* at 787.

[166] *Id.* at 778.

[167] *Varias v. Commission on Elections,* 626 Phil. 292, 314 (2010) [Per *J.* Brion, *En Banc*].

[168] *Lambino v. Commission on Elections,* 536 Phil. 1, 111 (2006) [Per *J.* Carpio, *En Banc*]

this court is not rendered impotent by an overgenerous application of the political question doctrine.[169] In general, the present mode of analysis will of ten require examination of the potential breach of the Constitution in a justiciable controversy.

II

Rule 23, Section 8 of the Commission on Elections' Rules of Procedure, insofar as it states that the Commission on Elections' decisions become final and executor five (5) days after receipt, is valid. It does not violate Article IX, Section 7 of the Constitution.

Article IX of the 1987 Constitution provides that any decision, order, or ruling of the Commission on Elections may be brought to this court on certiorari within thirty (30) days from receipt of a copy:

> Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. *Unless otherwise provided* ***by this Constitution or by law,*** *any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party* ***within thirty days from receipt of a copy*** *thereof* (Emphasis supplied)

Rule 23, Section 8 of the Commission on Elections' Rules of Procedure, on the other hand, provides that decisions and rulings of the Commission on Elections En Banc are deemed final and executory if no restraining order is issued by this court within five (5) days from receipt of such a decision or resolution, thus:

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[169] *Diocese of Bacolod v. COMELEC,* G.R. No. 205728, January 21, 2015, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file= jurisprudence/ 2015/january2015/20572 8.pdf> [Per *J.* Leonen, *En Banc*].

Section *8.Effect if Petition Unresolved. –*

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A Decision or Resolution is deemed final and executory if, in case of a Division ruling, no motion for reconsideration is filed within the reglementary period, or in cases of rulings of the Commission *En Banc,* no restraining order is issued by the Supreme Court within five (5) days from receipt of the decision or resolution.

Under the 1987 Constitution, the Commission on Elections has the power to promulgate its own rules of procedure. Article IX-A provides:

Section 6. Each Commission *en banc* may promulgate its own rules concerning pleadings and practice before it or before any of its offices. Such rules, however, shall not diminish, increase, or modify substantive rights.

Similarly, in Article IX-C:

Section 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc.*

The interpretation of any legal provision should be one that is in harmony with other laws on the same subject matter so as to form a complete, coherent, and intelligible system. *"Interpretare et concordare legibus est optimus interpretand,"* or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[170] Assessing the validity of the Commission on Elections' Rules of Procedure includes a determination of whether these rules can co-exist with the remedy of certiorari as provided by Article IX, Section 7 of the Constitution.

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[170] *Lim v. Gamosa,* G.R. No. 193964, December 2, 2015<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/december2015/ 93964.pdf>15 [Per *J.* Perez, First Division].

A wide breadth of discretion is granted a court of justice in certiorari proceedings.[171] In exercising this power, this court is to be guided by all the circumstances of each particular case "as the ends of justice may require."[172] Thus, a writ of certiorari will be granted where necessary in order to prevent a substantia1 wrong or to do substantial justice.[173]

The Commission on Elections' Rules of Procedure are evidently procedural rules; they are remedial in nature. They cover only rules on pleadings and practice. They are the means by which its power or authority to hear and decide a class of cases is put into action.[174] Rule 23, Section 8 of the Commission on Elections' Rules of Procedure refers only to the pleadings and practice before the Commission on Elections itself, and does not affect the jurisdiction of this court.

Accordingly, that the Commission on Elections may deem a resolution final and executory under its rules of procedure does not automatically render such resolution beyond the scope of judicial review under Article IX of the 1987 Constitution. Rule 23, Section 8 of the Commission on Elections' Rules of Procedure merely guides the Commission as to the status of a decision for its own operations; it does not prevent this court from acting on the same decision via certiorari proceedings. In any event, while it is true that certiorari does not immediately stay a decision of a constitutional commission, a temporary restraining order can still be issued, as in this case.

Finally, it should be noted that in promulgating this rule, the Commission on Elections was simply fulfilling its constitutional duty to "promulgate its rules of procedure in

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[171] *Gutib v. Court of Appeals,* 371 Phil. 293, 307 (1999) [Per *J*. Bellosillo, Second Division].

[172] *Id*. at 308.

[173] *Id.*

[174] *Department of Agrarian Reform Adjudication Board v. Lubrica,* 497 Phil. 313, 326 (2005) [Per *J*. Tinga, Second Division].

order ***to expedite disposition of election cases.***"[175] Cases before the Commission on Elections must be disposed of without delay, as the date of the elections is constitutionally and statutorily fixed.[176] The five-day rule is based on a reasonable ground: the necessity to prepare for the elections.

III

Any interpretation of the scope of the statutory power granted to the Commission on Elections must consider all the relevant constitutional provisions allocating power to the different organs of government.

Reading the entirety of the Constitution leads to the inescapable conclusion that the Commission on Elections' jurisdiction, statutorily granted in Section 78 of the Omnibus Election Code, with respect to candidates for the Offices of President and Vice President, is only with respect to determining whether a material matter asserted in a candidate's certificate of candidacy is false. For purposes of Section 78, a matter may be true or false only when it is verifiable. Hence, the section only refers to a matter of fact. It cannot refer to a legal doctrine or legal interpretation. Furthermore, the false representation on a material fact must be shown to have been done with intent. It must be accompanied with intent to deceive. It cannot refer to an honest mistake or error made by the candidate.

III.A

A certificate of candidacy is filed to announce a person's candidacy and to declare his or her eligibility for elective office. Section 74 of the Omnibus Election Code enumerates the items that must be included in a certificate of candidacy:

> 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,

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[175] CONST., Art. IX-C, Sec. 3.

[176] CONST., Art. VI, Sec. 8 and Art. VII, Sec. 4.

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

Unless a candidate has officially changed his name through a court approved proceeding, a candidate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his *Hadji* name after performing the prescribed religious pilgrimage: *Provided,* That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware or such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

Generally, the Commission on Elections has the ministerial duty to receive and acknowledge receipt of certificates of candidacy.[177] The Commission on Elections has the competence to deny acceptance of a certificate of candidacy when a candidate's lack of qualifications ***appears patent on the face of the certificate of candidacy and is indubitable.***[178] This is

[177] Batas Blg. 881 (1985), Omnibus Election Code, Sec. 76.

[178] *Cipriano v. Comelec,* 479 Phil. 677, 689 (2004) [Per *J.* Puno, *En Banc*].

in line with its power to "[e]nforce and administer all laws and regulations relative to the conduct of an election."[179]

For instance, if the date of birth in the certificate of candidacy clearly and patently shows that the candidate has not met the required age requirement for the office for which he or she is running, the Commission on Elections may motu proprio deny acceptance. Specifically, in such cases, the candidate has effectively made an admission by swearing to the certificate of candidacy. Therefore, in the interest of an orderly election, the Commission on Elections may simply implement the law.

This is not the situation in this case. Petitioner's Certificate of Candidacy did not patently show any disqualification or ineligibility. Thus, the denial of due course or cancellation of the certificate cannot be done motu proprio, but only when a petition is filed. The petition must be verified and based on the *exclusive* ground that a material representation in the certificate of candidacy is false.

Section 78 of the Omnibus Election Code provides:

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

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[179] CONST., Art. IX-C, Sec. 2(1) provides:

ARTICLE IX. Constitutional Commissions

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C. The Commission on Elections

SECTION 2. The Commission on Elections shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

[Note however paragraph (2), which limits its quasi judicial power.]

III.B

The Commission on Elections' discretion with respect to Section 78 is limited in scope.

The constitutional powers and functions of the Commission on Elections are enumerated in Article IX-C, Section 2 of the 1987 Constitution:

SECTION 2. The Commission on Elections shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

(3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

(4) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.

(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through

> violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.
>
> Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.
>
> (6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.
>
> (7) Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.
>
> (8) Recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision.
>
> (9) Submit to the President and the Congress a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.

Except for item (2), all the powers enumerated in Article IX-C, Section 2 are administrative in nature.[180] These powers relate to the Commission's general mandate to "[e]nforce and administer all laws and regulations relative to the conduct of an election." The Commission on Elections' adjudicatory powers are limited to having "exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications

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[180] *Baytan v. Commission on Elections,* 444 Phil. 812, 824 (2003) [Per *J*. Carpio, *En Banc*].

of all elective regional, provincial, and city officials" and "appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction."

The Commission on Elections has no jurisdiction over the elections, returns, and qualifications of those who are candidates for the Office of President. They also do not have jurisdiction to decide issues "involving the right to vote[.]"[181]

The Commission on Elections was originally only an administrative agency.[182] Under Commonwealth Act No. 607, it took over the President's function to enforce election laws.

Pursuant to amendments made to the 1935 Constitution, the Commission on Elections was transformed into a constitutional body "[having] exclusive charge of the enforcement and administration of all laws relative to the conduct of elections[.]"[183]

It was in the 1973 Constitution that the Commission on Elections was granted quasi-judicial powers in addition to its administrative powers. The Commission on Elections became the sole judge of all election contests relating to the elections, returns, and qualifications of members of the national legislature and elective provincial and city officials. Thus, in Article XII-C, Section 2(2) of the 1973 Constitution, the Commission on Elections was granted the power to:

SEC. 2....

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(2) Be the sole judge of all contests relating to the elections, returns, and qualifications of *all Members of the Batasang Pambansa and elective provincial and city officials.* (Emphasis supplied)

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[181] CONST., Art. IX-C, Sec. 2(3).

[182] *Loong v. Commission on Elections,* 365 Phil. 386, 423 (1999) [Per *J.* Puno, En Banc].

[183] *Id.*

At present, the quasi-judicial power of the Commission on Elections is found in item (2) of Article IX-C, Section 2 of the Constitution.

"Contests" are post-election scenarios.[184] Article IX-C, Section 2(2) of the Constitution speaks of "elective officials," not "candidates for an elective position." This means that the Commission on Elections may take cognizance of petitions involving qualifications for public office only after election, and this is only with respect to elective regional, provincial, city, municipal, and barangay officials.

With respect to candidates for President and Vice President, the Constitution reserved adjudicatory power with this court. Article VII, Section 4 of the 1987 Constitution outlines the dynamic relationship of the various constitutional organs in elections for President and Vice President, thus:

SECTION 4....

x x x x x x x x x

The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of Senate shall, not later than thirty days after the day of the election, open all certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of the Congress, voting separately.

The Congress shall promulgate its rules for the canvassing of the certificates.

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[184] See *Tecson v. Commission on Elections,* 468 Phil. 421, 461 (2004) [Per *J.* Vitug, *En Banc*].

The Supreme Court, sitting en banc, shall be the ***sole judge of all contests relating to the election, returns, and qualifications of the President*** *or Vice-President, and may promulgate its rules for the purpose.* (Emphasis supplied)

Reading the text of similar provisions[185] relating to the House of Representatives Electoral Tribunal,[186] Former Associate Justice Vicente V. Mendoza observed in his Separate Opinion in *Romualdez-Marcos* that there are no "authorized proceedings for determining a candidate's qualifications for an office before his election."[187] He proposed that the Commission on Elections cannot remedy the perceived lacuna by deciding petitions questioning the qualifications of candidates before the election under its power to enforce election laws.[188]

This reading was later on qualified.

In *Tecson v. Commission on Elections,*[189] the petitions filed by Maria Jeanette Tecson and Zoilo Velez were dismissed for lack of jurisdiction. The petitions questioned directly before this court, before the elections were held, the

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[185] CONST., Art. VI, Sec. 17.

[186] CONST., Art. VI, Sec. 17 provides:

ARTICLE VI. The Legislative Department

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SECTION 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

[187] *J*. Mendoza, Separate Opinion in *Romualdez-Marcos v. Commission on Elections,* 318 Phil. 329, 457 (1995) [Per *J*. Kapunan, *En Banc*].

[188] *Id.* at 461-462.

[189] 468 Phil. 421 (2004) [Per *J*. Vitug, *En Banc*].

qualifications of Fernando Poe, Jr. as a presidential candidate. With unanimity on this point, this court stated:

> The rules categorically speak of the jurisdiction of the tribunal over contests relating to the election, returns and qualifications of the "President" or "Vice President", of the Philippines, and not of "candidates for President or Vice President. A *quo warranto* proceeding is generally defined as being an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office. In such context, the election contest can only contemplate a post-election *scenario.* In Rule 14, only a registered candidate who would have received either the second or third highest number of votes could file an election protest. This rule again presupposes a post election *scenario.*
>
> It is fair to conclude that the jurisdiction of the Supreme Court, defined by Section 4, paragraph 7, of the 1987 Constitution, would not include cases directly brought before it, questioning the qualifications of a candidate for the presidency or vice-presidency before the elections are held.
>
> Accordingly, G.R. No. 161434, entitled "Maria Jeanette C. Tecson, et al., vs. Commission on Elections et al.," and G.R. No. 161634, entitled "Zoilo Antonio Velez vs. Ronald Allan Kelley Poe a.k.a. Fernando Poe, Jr." would have to be dismissed for want of jurisdiction.[190]

On the other hand, with respect to the petitions that questioned the resolutions of the Commission on Elections, which in turn were decided on the basis of Section 78 of the Omnibus Election Code, *Tecson* clarified, with respect to the Petition docketed as G.R. No. 161824:

> In seeking the disqualification of the candidacy of FPJ and to have the COMELEC deny due course to or cancel FPJ's certificate of candidacy for alleged misrepresentation of a material fact (i.e., that FPJ was a natural-born citizen) before the COMELEC, petitioner Fornier invoked Section 78 of the Omnibus Election Code—
>
> > Section 78. Petition to deny due course to or cancel a certificate of candidacy. — A verified petition seeking to deny due course

[190] *Id.* at 462.

> 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.—

in consonance with the general powers of COMELEC expressed in Section 52 of the Omnibus Election Code —

> Section 52. Powers and functions of the Commission on Elections. In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections —

and in relation to Article 69 of the Omnibus Election Code which would authorize "any interested party" to file a verified petition to deny or cancel the certificate of candidacy of any nuisance candidate.

Decisions of the COMELEC on disqualification cases may be reviewed by the Supreme Court per Rule 64 in an action for certiorari under Rule 65 of the Revised Rules of Civil Procedure. Section 7, Article IX, of the 1987 Constitution also reads—

> Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum, required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

Additionally, Section 1, Article VIII, of the same Constitution provides that judicial power is vested in one Supreme Court and in such lower courts as may be established by law which 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.

It is sufficiently clear that the petition brought up in G.R. No. 161824 was aptly elevated to, and cold well be taken cognizance of by, this Court. A contrary view would be a gross denial to our people of their fundamental right to be fully informed, and to make a proper choice, on who could or should be elected to occupy the highest government post in the land.[191] (Citations omitted)

A proper reading of the Constitution requires that every provision be given effect. Thus, the absurd situation where "contests" are entertained even if no petition for quo warranto was filed before the Presidential Electoral Tribunal,[192] the Senate Electoral Tribunal,[193] or the House of Representatives Electoral Tribunal[194] must be avoided. This will be the case should the Commission on Elections be allowed to take cognizance of all petitions questioning the eligibility of a candidate. The provisions

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[191] *Id.* at 458-460.

[192] CONST., Art. VII, Sec. 4 partly provides:

ARTICLE VII. Executive Department

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SECTION 4....

x x x x x x x x x

The Supreme Court sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

[193] CONST., Art. VI, Sec. 17 provides:

ARTICLE VI. The Legislative Department

x x x x x x x x x

SECTION 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

[194] CONST., Art. VI, Sec. 17.

of the Constitution on the jurisdiction of the electoral tribunals over election contests would be rendered useless.

More importantly, the Commission on Elections' very existence and effectiveness inherently depend on its neutrality. Scrutiny of the qualifications of candidates for electoral positions of national importance was intentionally and expressly delegated to special electoral tribunals. Clearly, the credibility—and perhaps even the legitimacy—of those who are elected to these important public offices will be undermined with the slightest suspicion of bias on the part of the Commission on Elections. This is why the pressure to determine the qualifications of candidates to these positions has been purposely removed from the Commission on Elections. After all, given Article IX-A, Section 7 of the Constitution, any "case or matter" decided by a constitutional commission "may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof."[195] The Commission on Elections will find itself in a very difficult situation should it disqualify a candidate on reasons other than clearly demonstrable or factual grounds only for this court to eventually overturn its ruling. The Commission on Elections, wittingly or unwittingly, would provide justifiable basis for suspicions of partiality.

It is also this evil that we must guard against as we further sketch the contours of the jurisdiction of the Commission on Elections and of this court.

Before elections, the Commission on Elections, under Section 78 of the Omnibus Election Code, may take cognizance of petitions involving qualifications for public office regardless of the elective position involved, but only on the limited and exclusive ground that a certificate of candidacy contains a material representation that is false.

Intent to deceive should remain an element of Section 78 petitions. Otherwise, the only issue to be resolved in Section 78 petitions would be whether the candidate possesses the

[195] CONST., Art. IX-A, Sec. 7. See discussion in part II.

qualifications required under the law. If the Commission acts on these petitions, it acts in excess of its jurisdiction. As discussed, the Commission on Elections may validly take cognizance of petitions involving qualifications only if the petitions were filed after election and only with respect to elective regional, provincial, city, municipal, and barangay officials.

III.C

Thus, to successfully challenge a certificate of candidacy under Section 78, a petitioner must establish that:

First, that the assailed certificate of candidacy contains a representation that is false;

Second, that the false representation is material, i.e., it involves the candidate's qualifications for elective office,[196] such as citizenship[197] and restidency;[198] and

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[196] See *Jalover v. Osmeña,* G.R. No. 209286, September 23, 2014, 736 SCRA 267 [Per *J*. Brion, *En Banc*]; *Hayudini v. Commission on Elections,* G.R. No. 207900, April 22, 2014, 723 SCRA 223 [Per *J*. Peralta, *En Banc*]; *Villafuerte v. Commission on Elections,* G.R. No. 206698, February 25, 2014, 717 SCRA 312 [Per *J*. Peralta, *En Banc*]; *Gonzalez v. Commission on Elections,* 660 Phil. 225 (2011) [Per *J*. Villarama, Jr., *En Banc*]; *Mitra v. Commission on Elections,* 636 Phil. 753 (2010) [Per *J*. Brion, *En Banc*]; *Maruhom v. Commission on Elections,* 611 Phil. 501 (2009) [Per *J*. Chico-Nazario, *En Banc*]; *Velasco v. Commission on Elections,* 595 Phil. 1172 (2008) [Per *J*. Brion, *En Banc*]; *Justimbaste v. Commission on Elections,* 593 Phil. 383 (2008) (Per *J*. Carpio Morales, *En Banc*]; *Lluz v. Commission on Elections,* 551 Phil. 428 (2007) [Per *J*. Carpio, *En Banc*]; and *Salcedo II v. Commission on Elections,* 371 Phil. 377, 389 (1999) [Per *J*. Gonzaga-Reyes, *En Banc*].

[197] See *Gonzalez v. Commission on Elections,* 660 Phil. 225 (2011) [Per *J*. Villarama,]; *Justimbaste v. Commission on Elections,* 593 Phil. 383 (2008) [Per *J*. Carpio Morales, *En Banc*]; *Tecson* v. *Commission on Elections,* 468 Phil. 421 (2004) (Per *J*. Vitug, *En Banc*].

[198] See *Jalover v. Osmeña*, G.R. No. 209286, September 23, 2014, 736 SCRA 267 [Per *J*. Brion, *En Banc*]; *Hayudini v. Commission on Elections,* G.R. No. 207900, April 22, 2014, 723 SCRA 223 [Per *J*. Peralta, *En Banc*]; *Mitra v. Commission on Elections,* 636 Phil. 753 (2010) (Per *J*. Brion, *En Banc*]; *Velasco v. Commission on Elections,* 595 Phil. 1172 (2008) [Per *J*. Brion, *En Banc*]; and *Ugdoracion. Jr. v. Commission on Elections,* 575 Phil. 253 (2008) [Per *J*. Nachura, *En Banc*].

Third, that the false material representation was made with a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible"[199] or "with an intention to deceive the electorate as to one's qualifications for public office."[200]

In using its powers under Section 78, the Commission on Elections must apply these requirements strictly and with a default preference for allowing a certificate of candidacy in cases affecting the positions of President, Vice President, Senator, or Member of the House of Representatives. Section 78 itself mentions that the ground of material misrepresentation is ***exclusive*** of any other ground. Furthermore, in the guise of this statutory grant of power, the Commission on Elections cannot usurp the functions of this court sitting as the Presidential Electoral Tribunal nor of the Senate Electoral Tribunal, and the House of RepresentativesElectoral Tribunal. Likewise, it cannot keep the most important collective of government—the People acting as an electorate—from exercising its most potent power: the exercise of its right to choose its leaders in a clean, honest, and orderly election.

As petitioner suggests, "the sovereign people, in ratifying the Constitution, intended that questions of a candidate's qualification ... be submitted directly to them."[201] In the words of Former Chief Justice Reynato Puno in *Frivaldo v. Commission on Elections,*[202] the People, on certain legal issues, choose to be the "final power of final legal adjustment."[203]

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[199] *Romualdez-Marcos v. Commission on Elections,* 318 Phil. 329, 380 (1995) [Per *J.* Kapunan, *En Banc*].

[200] *Salcedo II v. Commission on Elections,* 371 Phil. 377, 390 (1999) [Per *J.* Gonzaga-Reyes, *En Banc*].

[201] *Rollo* (G.R. No. 221697), p. 3871, Petitioner's Memorandum.

[202] 327 Phil. 521 (1996) [Per *J.* Panganiban, *En Banc*].

[203] *J.* Puno, Concurring Opinion in *Frivaldo v. Commission on Elections,* 327 Phil. 521, 578 (1996) [Per *J.* Panganiban, *En Banc*].

Consistent with this legal order, only questions of fact may be resolved in Section 78 proceedings. Section 78 uses the word "false;" hence, these proceedings must proceed from doubts arising as to the truth or falsehood of a representation in a certificate of candidacy.[204] Only a fact is verifiable, and conversely, falsifiable, as opposed to an opinion on a disputed point of law where one's position is only as good as another's. Under Section 78, the Commission on Elections cannot resolve questions of law— as when it resolves the issue of whether a candidate is qualified given a certain set of facts—for it would arrogate upon itself the powers duly reserved to the electoral tribunals established by the Constitution.

Romualdez-Marcos v. Commission on Elections articulated the requirement of "deliberate attempt to mislead" in order that a certificate of candidacy may be cancelled.[205] In 1995, Imelda Romualdez-Marcos filed her Certificate of Candidacy for Representative of the First District of Leyte, alleging that she resided in the district for seven (7) months. She later amended her Certificate to state that she had resided in Tacloban City "since childhood,"[206] explaining that her original answer was an "honest mistake."[207] The Commission on Elections nonetheless cancelled her Certificate of Candidacy for her failure to meet the one-year residency requirement for the position she was seeking.[208]

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[204] *Guzman v. Commission on Elections,* 614 Phil. 143, 153 (2009) [Per *J*. Bersamin, *En Banc*].

[205] *Romualdez-Marcos v. Commission on Elections,* 318 Phil. 329, 380 (1995) [Per *J*. Kapunan, *En Banc*].

[206] *Id.* at 366.

[207] *Id.* at 367.

[208] CONST., Art. VI, Sec. 6 provides:

ARTICLE VI. The Legislative Department

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SECTION 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

Admitting the defense of honest mistake and finding that Imelda Romualdez-Marcos satisfied the required period of residence, this court reversed the Commission on Elections' ruling. It stated that:

[I]t is the fact of residence, not a statement in certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the constitution's residency qualification requirement. [The statement in the certificate of candidacy] becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. It would be plainly ridiculous for a candidate to deliberately and knowingly make a statement in a certificate of candidacy which would lead to his or her disqualification.[209]

In *Salcedo II v. Commission on Elections,*[210] this court affirmed the proclamation of Ermelita Cacao Salcedo as Mayor of Sara, Iloilo despite the contention that her marriage to Neptali Salcedo was void and that she, therefore, had materially misrepresented her surname to be "Salcedo."[211] This court ruled that the use of a specific surname in a certificate of candidacy is not the material representation contemplated in Section 78.[212] There was no intent to deceive on the part of Ermelita Cacao Salcedo as she has been using "Salcedo" years before the election; hence, this court refused to cancel her Certificate of Candidacy.[213]

Intent to deceive has consistently been required to justify the cancellation of certificates of candidacy.[214] Yet, in 2013,

[209] *Romualdez-Marcos v. Commission on Elections,* 318 Phil. 329, 380 (1995) [Per *J*. Kapunan, *En Banc*].

[210] 371 Phil. 377 (1999) [Per *J*. Gonzaga-Reyes, *En Banc*].

[211] *Id.* at 381.

[212] *Id.* at 390-391.

[213] *Id*. at 391.

[214] See *Talaga v. Commission on Elections,* 696 Phil. 786 (2012) [Per *J*. Bersamin, *En Banc*]; *Gonzalez v. Commission on Elections,* 660 Phil. 225 (2011) [Per *J*. Villarama, Jr., *En Banc*]; *Mitra v. Commission on Elections,*

this court in *Tagolino v. House of Representatives Electoral Tribunal*[215] stated that intent to deceive "is of bare significance to a Section 78 petition."[216] This statement must be taken in context.

In *Tagolino,* Richard Gomez (Gomez) filed his Certificate of Candidacy for Representative for the Fourth District of Leyte. An opposing candidate, Buenaventura Juntilla (Juntilla), filed a petition before the Commission on Elections, alleging that Gomez resided in Greenhills, San Juan City, contrary to his representation in his Certificate of Candidacy that he resided in Ormoc City. Juntilla prayed for the cancellation of Gomez's Certificate of Candidacy.[217]

In its Resolution dated February 17, 2010, the First Division of the Commission on Elections granted Juntilla's Petition and declared Gomez *"disqualified* as a candidate for the Office of Congressman, Fourth District of Leyte, for lack of residency requirement."[218] This Resolution was affirmed by the Commission on Elections En Banc, after which Gomez manifested that he accepted the finality of the Resolution.[219]

Thereafter, Lucy Torres-Gomez (Torres-Gomez) filed her Certificate of Candidacy as substitute candidate for her husband. The Liberal Party, to which Gomez belonged, endorsed Torres-Gomez's candidacy. Upon recommendation of its Law Department, the Commission on Elections En Banc allowed

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636 Phil. 753 (2010) [Per *J.* Brion, *En Banc*]; *Maruhom v.Commission on Elections,* 611 Phil. 501 (2009) [Per *J.* Chico-Nazario, *En Banc*]; *Velasco v. Commission on Elections,* 595 Phil. 1172 (2008) [Per *J.* Brion, *En Banc*]; *Justimbaste v. Commission on Elections,* 593 Phil. 383 (2008) [Per *J.* Carpio Morales, *En Banc*]; and *Tecson v. Commission on Elections,* 468 Phil. 421 (2004) [Per *J.* Vitug, *En Banc*].

[215] 706 Phil. 534 (2013) [Per *J.* Perlas-Bernabe, *En Banc*].

[216] *Id.* at 551.

[217] *Id.* at 542-543.

[218] *Id.* at 543.

[219] *Id.*

Torres-Gomez to substitute for Gomez in its Resolution dated May 8, 2010.[220]

The next day, on May 9, 2010, Juntilla moved for reconsideration. After the conduct of elections on May 10, 2010, Gomez, whose name remained on the ballots, garnered the highest number of votes among the candidates for representative.[221] In view of his substitution, the votes were counted in favor of Torres-Gomez. Torres-Gomez was then "proclaimed the duly elected Representative of the Fourth District of Leyte."[222]

To oust Torres-Gomez, Silverio Tagolino filed a petition for *quo warranto* before the House of Representatives Electoral Tribunal. Tagolino argued, among others, that Torres-Gomez failed to validly substitute Gomez, the latter's Certificate of Candidacy being void.[223]

The House of Representatives Electoral Tribunal dismissed the petition for quo warranto and ruled that Torres-Gomez validly substituted for her husband. According to the tribunal, the Commission on Elections declared Gomez disqualified; the Commission did not cancel Gomez's Certificate of Candidacy. Since Gomez was merely disqualified, a candidate nominated by the political party to which he belonged could validly substitute him.[224]

On certiorari, this court reversed and set aside the Decision of the House of Representatives Electoral Tribuna1.[225] Juntilla's Petition prayed for the cancellation of Gomez's certificate of candidacy.[226] Although the Commission's First Division declared Gomez "disqualified" as a candidate for representative, the

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[220] *Id.* at 544.

[221] *Id.* at 545.

[222] *Id.* at 546.

[223] *Id.* at 546.

[224] *Id.* at 547.

[225] *Id.* at 561.

[226] *Id.* at 543.

Commission nonetheless granted Juntilla's Petition "without any qualification."[227]

Juntilla's Petition was granted, resulting in the cancellation of Gomez's Certificate of Candidacy. Hence, Gomez was deemed a non-candidate for the 2010 Elections and could not have been validly substituted by Torres-Gomez. Torres-Gomez then could not have been validly elected as Representative of the Fourth District of Leyte.

In deciding *Tagolino,* this court distinguished a petition for disqualification under Section 68 of the Omnibus Election Code from a petition to deny due course to or cancel a certificate of candidacy under Section 78.[228] As to whether intent to deceive should be established in a Section 78 petition, this court stated:

> [I]t must be noted that the deliberateness of the misrepresentation, much less one's intent to defraud, is of bare significance in a Section 78 petition as it is enough that the person's declaration of a material qualification in the [certificate of candidacy] be false. In this relation, jurisprudence holds that an express finding that the person committed any deliberate misrepresentation is of little consequence in the determination of whether one's [certificate of candidacy] should be deemed cancelled or not. What remains material is that the petition essentially seeks to deny due course to and/or cancel the [certificate of candidacy] on the basis of one's ineligibility and that the same be granted without any qualification.[229] (Citations omitted)

Tagolino notwithstanding, intent to deceive remains an indispensable element of a petition to deny due course to or cancel a certificate of candidacy.

As correctly pointed out by petitioner, the contentious statement in *Tagolino* is mere *obiter dictum.*[230] That statement was not essential in resolving the core issue in *Tagolino: **whether a person whose certificate of candidacy was cancelled***

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[227] *Id.*

[228] *Id.* at 550-551.

[229] *Id.* at 551.

[230] *Rollo* (G.R. No. 221697), p. 3860, Petitioner's Memorandum.

may be validly substituted. This had no direct relation to the interpretation of false material representations in the certificate of candidacy.

Moreover, this court En Banc affirmed the requirement after *Tagolino.*

In *Villafuerte v. Commission on Elections,*[231] *Hayudini v. Commission on Elections,*[232] *Jalover v. Osmeña,*[233] and *Agustin v. Commission on Elections*[234]—***all decided after Tagolino*** this court reaffirmed "intent to deceive" as an integral element of a Section 78 petition. Unlike *Tagolino,* this court's Decisions in *Villafuerte, Hayudini, Jalover,* and *Agustin* directly dealt with and squarely ruled on the issue of whether the Commission on Elections gravely abused its discretion in granting or denying Section 78 petitions. Their affirmation of intent to deceive as an indispensable requirement was part of their very ratio decidendi and not mere obiter dicta. Since this ratio decidendi has been repeated, it now partakes of the status of jurisprudential doctrine. Accordingly, the statement in *Tagolino* that dispenses with the requirement of intent to deceive cannot be considered binding.

It is true that Section 78 makes no mention of "intent to deceive." Instead, what Section 78 uses is the word "representation." Reading Section 78 in this way creates an apparent absence of textual basis for sustaining the claim that intent to deceive should not be an element of Section 78 petitions. It is an error to read a provision of law.

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[231] G.R. No. 206698, February 25, 2014, 717 SCRA 312, 322-323 [Per *J*. Peralta, *En Banc*].

[232] G.R. No. 207900, April 22, 2014, 723 SCRA 223, 246 [Per *J*. Peralta, *En Banc*].

[233] G.R. No. 209286, September 23, 2014, 736 SCRA 267, 282 [Per *J*. Brion, *En Banc*].

[234] G.R. No. 207105, November 10, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/207105.pdf> 8-9 [Per *J*. Bersamin, *En Banc*].

"Representation" is rooted in the word "represent," a verb. Thus, by a representation, a person *actively* does something. There is *operative engagement* in that the doer brings to fruition what he or she is pondering—something that is abstract and otherwise known only to him or her, a proverbial "castle in the air." The "representation" is but a concrete product, a manifestation, or a perceptible expression of what the doer has already cognitively resolved to do. One who makes a representation is one who *intends to articulate* what, in his or her mind, he or she wishes to represent. He or she actively and intentionally uses signs conventionally understood in the form of speech, text, or other acts.

Thus, representations are *assertions.* By asserting, the person making a statement pushes for, affirms, or insists upon something. These are hardly badges of something in which intent is immaterial. On the contrary, no such assertion can exist unless a person actually wishes to, that is, *intends,* to firmly stand for something.

In Section 78, the requirement is that there is "material representation contained therein as required by Section 74 hereof ***is faise.***"[235] A "misrepresentation" is merely the obverse of "representation." They are two opposite concepts. Thus, as with making a representation, a person who misrepresents cannot do so without intending to do so.

That intent to deceive is an inherent element of a Section 78 petition is reflected by the grave consequences facing those who make false material representations in their certificates of candidacy.[236] They are deprived of a fundamental political right to run for public office. [237] Worse, they may be criminally charged with violating election laws, even with perjury.[238]

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[235] Batas Pambansa Blg. 881 (1985), Omnibus Election Code, Sec. 78.

[236] *Salcedo II v. Commission on Elections,* 371 Phil. 377, 389 (1999) [Per *J*. Gonzaga-Reyes, *En Banc*).

[237] *Id.*

[238] *Id*. See also *Lluz v. Commission on Elections,* 551 Phil. 428, 445-446 (2007) [Per *J*. Carpio, *En Banc*).

For these reasons, the false material representation referred to in Section 78 cannot "just [be] any innocuous mistake."[239]

Petitioner correctly argued that Section 78 should be read in relation to Section 74's enumeration of what certificates of candidacy must state. Under Section 74, a person filing a certificate of candidacy declares that the facts stated in the certificate "are true to the best of his [or her] knowledge." The law does not require "absolute certainty"[240] but allows for mistakes in the certificate of candidacy if made in good faith.[241] This is consistent with the "summary character of proceedings relating to certificates of candidacy."[242]

IV

From these premises, the Commission on Elections should have dismissed Tatad's Petition for Disqualification. The Commission on Elections showed bias and acted arbitrarily when it motu proprio converted the Petition into one which Tatad did not intend, contrary to the interest of the other party. While the Commission on Elections has the necessary and implied powers concomitant with its constitutional task to administer election laws, it cannot do so by favoring one party over the other.

Significantly, Tatad was not the only petitioner in those cases. There were three other petitions against one candidate, which already contained most if not all the arguments on the issues raised by Tatad. There was, thus, no discernable reason for the Commission on Elections not to dismiss a clearly erroneous petition. The Commission on Elections intentionally put itself at risk of being seen not only as being partial, but

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[239] *Salcedo II v. Commission on Elections,* 371 Phil. 377, 389 (1999) [Per *J.* Gonzaga-Reyes, *En Banc*].

[240] *Rollo* (G.R. No. 221697), p. 3862, Petitioner's Memorandum.

[241] See *Romualdez-Marcos v. Commission on Elections,* 318 Phil. 329 (1995) [Per *J.* Kapunan, *En Banc*].

[242] *J*. Mendoza, Separate Opinion in *Romualdez-Marcos v. Commission on Elections,* 318 Phil. 329, 463 (1995) [Per *J.* Kapunan, *En Banc*).

also as a full advocate of Tatad, guiding him to do the correct procedure.

On this matter, the Commission on Elections clearly acted arbitrarily.

Section 68 of the Omnibus Election Code grants the Commission on Elections jurisdiction over petitions for disqualification. Section 68 enumerates the grounds for filing a disqualification petition:

Sec. 68 ***Disqualifications***. - Any candidate who, in action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

Apart from the grounds provided in Section 68, the grounds in Section 12 of the Omnibus Election Code may likewise be raised in a petition for disqualification.[243] Section 12 of the Omnibus Election Code states:

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

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[243] The grounds under Section 40 of the Local Government Code may likewise be raised against a candidate for a local elective position.

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

Although denominated as a Petition for Disqualification, Tatad's Petition before the Commission on Elections did not raise any ground for disqualification under Sections 12 and 68 of the Omnibus Election Code. Instead, Tatad argued that petitioner lacked the required qualifications for presidency; hence, petitioner should not be allowed to run for president.

The law does not allow petitions directly questioning the qualifications of a candidate before the elections. Tatad could have availed himself of a petition to deny due course to or cancel petitioner's certificate of candidacy under Section 78 on the ground that petitioner made a false material representation in her certificate of candidacy. However, Tatad's petition before the Commission on Elections did not even pray for the cancellation of petitioner's certificate of candidacy.

The Commission on Elections gravely abused its discretion in either implicitly amending the petition or incorrectly interpreting its procedural device so as to favor Tatad and allow his petition. The Commission should have dismissed Tatad's petition for want of jurisdiction. In failing to do so, it acted arbitrarily, whimsically, and capriciously. The Commission on Elections on this point acted with grave abuse of discretion.

V

There was no material misrepresentation with respect to petitioner's conclusion that she was a natural-born Filipina. Her statement was not false.

The facts upon which she based her conclusion of law was laid bare through her allegations, and a substantial number of these were the subject of stipulation of the parties. Neither private respondents nor the Commission on Elections was able to disprove any of the material facts supporting the legal conclusion of the petitioner. Petitioner was entitled to make

her own legal conclusion from her interpretation of the relevant constitutional and statutory provisions. This court has yet to rule on a case that—at the time of the filing of the certificate of candidacy until this moment—squarely raised the issue of the citizenship and the nature of citizenship of a foundling.

Thus, the Commission on Elections had no jurisdiction under Section 78 of the Omnibus Election Code to rule on the nature of citizenship of petitioner. Even assuming without granting that it had that competence, the Commission gravely abused its discretion when it cancelled petitioner's Certificate of Candidacy on this ground. There was no material misrepresentation as to a matter of fact. There was no intent to deceive. Petitioner, even as a foundling, presented enough facts to make a reasonable inference that either or both of her parents were Filipino citizens when she was born.

V.A

The Commission on Elections submits that since petitioner admitted that she is a foundling, the burden of evidence was passed on to her "to prove that her representation in her [Certificate of Candidacy]—that she is eligible to run for President—is not false."[244] The Commission argues that this declaration carried an admission that petitioner is of unknown parentage. Thus, private respondents do not need to prove that petitioner's parents are foreigners. Instead, it was petitioner's burden to show evidence that she is a natural-born Filipino citizen.[245]

Elamparo echoed the Commission on Elections' arguments. Petitioner's admission that she is a foundling was enough substantial evidence on the part of private respondents to discharge the burden that rested upon them as petitioners before the Commission on Elections. Petitioner's admission trumped all other evidence submitted to the Commission on Elections of government recognition of her citizenship.[246]

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[244] *Rollo* (G.R. Nos. 221698-221700), p. 4619, COMELEC Memorandum.

[245] *Id.*

[246] *Id.* at 5092-5093, Respondent's Memorandum.

As opposed to burden of proof,[247] burden of evidence shifts between the parties.[248] The party who alleges must initially prove his or her claims.[249] Once he or she is able to show a prima facie case in his or her favor, the burden of evidence shifts to the other party.[250]

Thus, in an action for cancellation of a certificate of candidacy under Section 78 of the Omnibus Election Code, the person who filed the petition alleging material misrepresentation has the burden of proving such claim.[251] He or she must establish that there is material misrepresentation under the required standard of evidence. In cases before quasi-judicial bodies, the standard of evidence is "substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[252]

If, during the course of hearing, petitioner shows a prima facie case of material misrepresentation, the burden of evidence shifts. The opposing party will then need to controvert the claims made.[253]

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[247] *See* RULES OF COURT, Rule 131. See also *Matugas v. Commission on Elections,* 465 Phil. 299, 307 (2004) [Per *J.* Tinga, *En Banc*], citing *Cortes v. Court of Appeals,* 443 Phil. 42 (2003) [Per *J.* Austria-Martinez, Second Division] in that "one who alleges a fact has the burden of proving it."

[248] See *J.* Tinga, Dissenting Opinion in *Tecson v. Commission on Elections,* 468 Phil. 421, 612 (2004) [Per *J.* Vitug, *En Banc*], citing *Bautista v. Judge Sarmiento,* 223 Phil. 181, 185-186 (1985) [Per *J.* Cuevas, Second Division].

[249] See *Advincula v. Atty. Macabata,* 546 Phil. 431, 446 (2007) [Per *J.* Chico-Nazario, Third Division], *citing Uytengsu III v. Baduel,* 514 Phil. 1 (2005) [Per *J.* Tinga, Second Division] in that "the burden of proof lies on the party who makes the allegations – *ei incumbit probation qui decit, non qui negat; cum per rerum naturam factum negantis probation nulla sit."*

[250] See *Jison v. Court of Appeals,* 350 Phil. 138 (1998) [Per *J.* Davide, Jr., First Division].

[251] See, for example, *Salcedo II v. Commission on Elections,* 371 Phil. 377 (1999) [Per *J.* Gonzaga-Reyes, *En Banc*].

[252] RULES OF COURT, Rule 133, Sec. 5.

[253] See *Jison v. Court of Appeals,* 350 Phil. 138 (1998) [Per *J.* Davide, Jr., First Division].

Private respondents who initiated the action before the Commission on Elections failed to establish a prima facie case of material misrepresentation to warrant a shift of burden of evidence to petitioner. Based on this ground, the petitions for cancellation of certificate of candidacy should have already been dismissed at the level of the Commission on Elections.

Even assuming that the burden of proof and evidence shifted to petitioner, the Commission on Elections erred in only considering petitioner's statement that she is a foundling. It committed a grave error when it excluded all the other pieces of evidence presented by petitioner and isolated her admission (and the other parties' stipulation) that she was a foundling in order to conclude that the burden of evidence already shifted to her.

Petitioner's admission that she is a foundling merely established that her biological parents were unknown. It did not establish that she falsely misrepresented that she was born of Filipino parents. It did not establish that ***both*** her biological parents were foreign citizens.

The Commission on Elections was blind to the following evidence alleged by petitioner and accepted by the other parties:

(1) She was found in a church in Jaro, Iloilo;

(2) When she was found, she was only an infant sufficient to be considered newborn;

(3) She was found sometime in September 1968;

(4) She was immediately registered as a foundling;

(5) Jaro, Iloilo did not have an international airport; and

(6) The physical characteristics of petitioner are consistent with a large majority of Filipinos.

All these facts can be used to infer that ***at least one*** of her biological parents is Filipino. These should be sufficient to establish that she is natural-born in accordance with the relevant provisions of the Constitution. The Commission on Elections arbitrarily disregarded these pieces of evidence. It chose to

rely only on the admitted fact that she was a foundling to claim that the burden of evidence has already shifted.

V.B

The Commission on Elections was mistaken when it concluded that the burden of evidence shifted upon admission of the status of a foundling.

For purposes of Section 78 of the Omnibus Election Code, private respondents still had the burden of showing that: (l) ***both*** of petitioner's biological parents were foreign citizens; (2) petitioner had actual knowledge of both her biological parents' foreign citizenship at the time of filing of her Certificate of Candidacy; and (3) she had intent to mislead the electorate with regard to her qualifications.

The Commission on Elections cited and relied heavily on Senior Associate Justice Antonio Carpio's ***Dissenting Opinion*** in *Tecson.* ***On the basis of this Dissent,*** the Commission on Elections concluded that petitioner cannot invoke any presumption of natural-born citizenship.[254] The Dissenting Opinion quoted *Paa v. Chan,*[255] in that "[i]t is incumbent upon a person who claims Philippine citizenship to prove to the satisfaction of the Court that he is really a Filipino. No presumption can be indulged in favor of the claimant of Philippine citizenship, and any doubt regarding citizenship must be resolved in favor of the State."[256]

Elementary in citing and using jurisprudence is that the main opinion of this court, not the dissent, is controlling. Reliance by the Commission on Elections on the dissent without sufficiently relating it to the pronouncements in the main opinion does not only border on contumacious misapplication of court doctrine; it is utterly grave abuse of discretion.

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[254] *Rollo* (G.R. Nos. 221698-221700), p. 4627, COMELEC Memorandum.

[255] 128 Phil. 815 (1967) [Per *J. Zaldivar, En Banc*].

[256] *J.* Carpio, Dissenting Opinion in *Tecson v. Commission on Elections,* 468 Phil. 421, 634 (2004) [Per *J.* Vitug, *En Banc*].

Tecson, correctly read, resolved the issue of citizenship using presumptions. From the death certificate of Fernando Poe, Jr.'s grandfather Lorenzo Pou, this court assumed that he was born sometime in 1870 or during the Spanish regime.[257] Lorenzo Pou's death certificate shows San Carlos, Pangasinan as his place of residence. On this basis, this court inferred that San Carlos, Pangasinan was also Lorenzo Pou's residence before death such that he would have benefitted from the Philippine Bill's *"en masse* Filipinization" in 1902:[258]

> In ascertaining, in G.R. No. 161824, whether grave abuse of discretion has been committed by the COMELEC, it is necessary to take on the matter of whether or not respondent FPJ is a natural-born citizen, which, in turn, depended on whether or not the father of respondent, Allan F. Poe, would have himself been a Filipino citizen and, in the affirmative, whether or not the alleged illegitimacy of respondent prevents him from taking after the Filipino citizenship of his putative father. Any conclusion on the Filipino citizenship of Lorenzo Pou could only be drawn from the presumption that having died in 1954 at 84 years old, when the Philippines was under Spanish rule, and that San Carlos, Pangasinan, his place of residence upon his death in 1954, in the absence of any other evidence, could have well been his place of residence before death, such that Lorenzo Pou would have benefited from the *"en masse* Filipinization" that the Philippine Bill had effected in 1902. That citizenship (of Lorenzo Pou), if acquired, would thereby extend to his son, Allan F. Poe, father of respondent FPJ. The 1935 Constitution, during which regime respondent FPJ has seen first light, confers citizenship to all persons whose fathers are Filipino citizens regardless of whether such children are legitimate or illegitimate.[259]

The Commission on Elections acted with utter arbitrariness when it chose to disregard this finding and its analogous application to petitioner and, instead, chose to rely on one of the *dissenting opinions.*

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[257] *Tecson v. Commission on Elections,* 468 Phil. 421, 473-474 (2004) [Per *J.* Vitug, *En Banc*].

[258] *Id.* at 473-474 and 488.

[259] *Id.* at 487-488.

Moreover, the 1967 case of *Paa v. Chan* cited by the dissent favored by the Commission on Elections does not apply to this case.

Paa involved a *quo warranto* petition questioning the eligibility of an elected councilor on the ground of being a Chinese citizen.[260] It did not involve a petition for cancellation of certificate of candidacy.

In *Paa,* the councilor's registration as alien before the Bureau of Immigration was undisputed. The councilor's father was also registered as an alien on April 30, 1946.[261]

In petitioner's case, private respondents only relied on her foundling status to prove her alleged material misrepresentation of her qualifications. They did not present evidence, direct or circumstantial, to substantiate their claims against petitioner's candidacy. In other words, unlike *Paa* where evidence existed to support a claim of foreign citizenship, private respondents in this case showed none.

Even assuming that it could apply to this case, the 2004 case of *Tecson* had already overturned the 1967 pronouncements in *Paa.*

The Commission on Elections further submits the 2009 case of *Go v. Ramos,*[262] which reestablished the ruling against the use of presumptions in favor of claimants of Filipino citizenship when it reiterated *Paa.*[263]

Go is likewise inapplicable to this case. It involved a deportation complaint with allegations that a person—Go, the petitioner—was an illegal and undesirable alien.[264] Unlike in this case, it involved birth certificates clearly showing that Go and his siblings were Chinese citizens.[265] Furthermore, *Go* was

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[260] *Paa v. Chan,* 128 Phil. 815, 817 (1967) [Per *J.* Zaldivar, *En Banc*].

[261] *Id.* at 823.

[262] 614 Phil. 451, 479 (2009) [Per *J.* Quisumbing, Second Division].

[263] *Rollo* (G.R. Nos. 221698-221700), p. 4627, COMELEC Memorandum.

[264] *Go v. Ramos,* 614 Phil. 451, 458 (2009) [Per *J.* Quisumbing, Second Division].

[265] *Id.* at 475.

also decided by this court sitting in Division. Thus, it cannot overturn *Tecson,* which was decided by this court sitting En Banc.

V.C

Tecson v. Commission on Elections[266] involved a similar petition alleging material misrepresentation in the Certificate of Candidacy of Fernando Poe, Jr. who claimed to have been a natural-born Filipino citizen.[267] This court ruled in favor of Fernando Poe, Jr. and dismissed the petitions even though his natural-born citizenship could not be established conclusively. This court found that petitioner in that case failed to substantiate his claim of material rnisrepresentation.[268] Former Associate Justice Vitug, speaking for the majority, discussed:

> But while the totality of the evidence may not establish conclusively that respondent FPJ is a natural-born citizen of the Philippines, the evidence on hand still would preponderate in his favor enough to hold that he cannot be held guilty of having made a material misrepresentation in his certificate of candidacy in violation of Section 78, in relation to Section 74, of the Omnibus Election Code. *Petitioner has utterly failed to substantiate his case before the Court, notwithstanding the ample opportunity given to the parties to present their position and evidence, and to prove whether or not there has been material misrepresentation,* which, as so ruled in *Romualdez-Marcos v. COMELEC,* must not only be material, but also deliberate and willful.[269] (Emphasis supplied)

[266] 468 Phil. 421 (2004) [Per *J.* Vitug, *En Banc*]. C.*J.* Davide, Jr. with separate opinion, concurring; *J.* Puno was on leave but was allowed to vote, with separate opinion; *J.* Panganiban was on official leave; was allowed to vote but did not send his vote on the matter; *J.* Quisumbing joins the dissent of Justices Tinga and Morales; case should have been remanded; *J.* Ynares-Santiago concurs, and also with *J.* Puno separate opinion; *J.* Sandoval-Gutierrez concurs; with separate opinion; *J.* Carpio, with dissenting opinion; *J.* Austria-Martinez, concurs; with separate opinion; *J.* Corona, joins the dissenting opinion of Justice Morales; *J.* Carpio Morales, with dissenting opinion; *J.* Callejo, Sr, with concurring opinion; *J.* Azcuna, concurs in a separate opinion; *J.* Tinga, dissents per separate opinion.

[267] *Id.* at 456.

[268] *Id.* at 488.

[269] *Id.*

V.D

Even if we assume that it was petitioner who had the burden of evidence, a complete and faithful reading of the provisions of the entire Constitution, together with the evidence that petitioner presented, leads to the inescapable conclusion that as a newborn abandoned by her parents in Jaro, Iloilo in 1968, she was at birth Filipina. Thus, being Filipina at birth, petitioner did not have to do anything to perfect her Filipino citizenship. She is natural-born.

Furthermore, there is no shred of evidence to rebut the circumstances of her birth. There is no shred of evidence that can lead to the conclusion that ***both*** her parents were not Filipino citizens.

The whole case of private respondents, as well as the basis of the Commission on Elections' Resolutions, is a presumption that all newborns abandoned by their parents even in rural areas in the Philippines are presumed not to be Filipinos. Private respondents' approach requires that those who were abandoned—even because of poverty or shame—must exert extraordinary effort to search for the very same parents who abandoned them and might not have wanted to be identified in order to have a chance to be of public service.

V.E

Constitutional construction mandates that we begin with the relevant text and give its words their ordinary meaning whenever possible, consistent with *verba legis.*[270] As much as possible, the language of the text must be understood in its common usage and sense so as to maintain its presence in the People's consciousness.[271] The language of the provision itself is the primary source from which this court determines constitutional intent.[272] Thus:

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[270] See *J.* Leonen, Dissenting Opinion in *Chavez v. Judicial and Bar Council,* G.R. No. 202242, April 16, 2013, 696 SCRA 496, 530 [Per *J.* Mendoza, *En Banc*].

[271] See *Atty. Macalintal v. Presidential Electoral Tribunal,* 650 Phil. 326, 340 (2010) [Per *J.* Nachura, *En Banc*], citing *J.M. Tuason & Co, Inc. v. Land Tenure Administration,* 142 Phil. 393 (1970) [Per *J.* Fernando, Second Division].

[272] *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections,* 412 Phil. 308, 338 (2001) [Per *J.* Panganiban, *En Banc*].

We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin. It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus, these are the cases where the need for construction is reduced to a minimum.[273] (Emphasis supplied)

Reading the text of the Constitution requires that its place in the whole context of the entire document must be considered. The Constitution should be read as a whole—*ut magis valeat quam pereat.*[274] Thus, in *Civil Liberties Union v. Executive Secretary*:[275]

It is a well-established rule in constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another,

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[273] *Francisco v. House of Representatives,* 460 Phil. 830, 885 (2003) [Per *J*. Carpio Morales, *En Banc*], citing *J.M. Tuason & Co., Inc. v. Land Tenure Administration,* 142 Phil. 393 (1970). This was also cited in *Saguisag v. Ochoa,* G.R. No. 212426, January 12, 2016<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudenee/20l6/january20 16/212426.pdf> [Per C.*J*. Sereno, *En Banc*].

[274] *Francisco v. House of Representatives,* 460 Phil. 830, 886 (2003) [Per *J*. Carpio Morales, *En Banc*].

[275] 272 Phil. 147 (1991) [Per C. *J*. Fernan, *En Banc*].

if by any reasonable construction, the two can be made to stand together.

In other words, the court must harmonize them, if practicable, and must lean in favor of construction which will render every word operative, rather than one which may make the words idle and nugatory.[276] (Citations omitted)

In granting reconsideration in *La Bugal-B'laan Tribal Association, Inc. v. Ramos,*[277] this court discussed that "[t]he Constitution should be read in broad, life-giving strokes. It should not be used to strangulate economic growth or to serve narrow, parochial interests."[278]

In *Social Weather Stations, Inc. v. Commission on Elections,*[279] this court's discussion on statutory construction emphasized the need to adhere to a more holistic approach in interpretation:

[T]he assumption that there is, in all cases, a universal plain language is erroneous. In reality, universality and uniformity in meaning is a rarity. A contrary belief wrongly assumes that language is static.

The more appropriate and more effective approach is, thus holistic rather than parochial: to consider context and the interplay of the historical, the contemporary, and even the envisioned. Judicial interpretation entails the convergence of social realities and social ideals. The latter are meant to be effected by the legal apparatus, chief of which is the bedrock of the prevailing legal order: the Constitution. Indeed, the word in the vernacular that describes the Constitution – *saligan* – demonstrates this imperative of constitutional primacy.

Thus, we refuse to read Section 5.2(a) of the Fair Election Act in isolation. Here, we consider not an abstruse provision but a stipulation that is part of the whole, i.e., the statute of which it is a part, that is

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[276] *Id.* at 162, as cited in *Atty. Macalintal v. Presidential Electoral Tribunal,* 650 Phil. 326, 341 (2010) [Per *J.* Nachura, *En Banc*].

[277] 486 Phil. 754 (2004) (Resolution) [Per *J.* Panganiban, *En Banc*].

[278] *Id.* at 773.

[279] G.R. No. 208062, April 7, 2015<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/208062.pdf>[Per *J.* Leonen, *En Banc*].

aimed at realizing the ideal of *fair* elections. We consider not a cloistered provision but a norm that should have a present authoritative effect to achieve the ideals of those who currently read, depend on, and demand fealty from the Constitution.[280] (Emphasis supplied)

Still faithful with the relevant text and its place in the entire document, construction of constitutional meaning allows a historical trace of the changes that have been made in the text—from the choice of language, the additions, the omissions, and the revisions. The present constitutional text can be compared to our earlier Constitutions. Changes or retention of language and syntax congeals meaning.

Article IV, Section 1 of the Constitution on who are citizens of the Philippines, for example, may be traced back to earlier organic laws,[281] and even farther back to laws of colonizers that were made effective in the Philippine Islands during their occupation.[282] Some influences of their history, as enshrined in their laws, were taken and reflected in our fundamental law.

We resort to contemporaneous construction and aids only when the text is ambiguous or capable of two or more possible meanings.[283] It is only when the ambiguity remains even after a plain and contemporary reading of the relevant words in the text and within the context of the entire document that legal

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[280] *Id.* at 26.

[281] The adoption of the Philippine Bill of 1902, otherwise known as the Philippine Organic Act of 1902, crystallized the concept of "Philippine citizens." See *Tecson v. Commission on Elections,* 468 Phil. 421, 467-468 (2004) [Per *J.* Vitug, *En Banc*].

[282] For example, the Civil Code of Spain became effective in the jurisdiction on December 18, 1889, making the first categorical listing on who were Spanish citizens. See *Tecson v. Commission on Elections,* 468 Phil. 421, 465 (2004) [Per *J.* Vitug, *En Banc*].

[283] *Sobejana-Condon v. Commission on Elections,* 692 Phil. 407 (2012) [Per *J.* Reyes, *En Banc*]: "Ambiguity is a condition of admitting two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time. For a statute to be considered ambiguous, it must admit of two or more possible meanings."

interpretation requires courts to go further. This includes examining the contemporaneous construction contained in analogous cases, statutes, and international norms that form part of the law of the land. This also includes discerning the purpose of the constitutional provision in light of the facts under consideration. For this purpose, the original understanding of the provisions by the People that ratified the document, as well as the discussions of those that participated in the constitutional convention or commission that drafted the document, taken into its correct historical context, can be illuminating.

Discerning constitutional meaning is an exercise in discovering the sovereign's purpose so as to judge the more viable among competing interpretations of the same legal text. The words as they reside in the whole document should primarily provide the clues. Secondarily, contemporaneous construction may aid in illumination if *verba legis* fails. Contemporaneous construction may also validate the clear textual or contextual meaning of the Constitution.

Contemporaneous construction is justified by the idea that the Constitution is not exclusively read by this court. The theory of a constitutional order founded on democracy is that all organs of government and its People can read the fundamental law. Only differences in reasonable interpretation of the meaning of its relevant text, occasioned by an actual controversy, will be mediated by courts of law to determine which interpretation applies and would be final. The democratic character of reading the Constitution provides the framework for the policy of deference and constitutional avoidance in the exercise of judicial review. Likewise, this is implied in the canonical doctrine that this court cannot render advisory opinions. Refining it further, this court decides only constitutional issues that are as narrowly framed, sufficient to decide an actual case.[284]

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[284] See , for example*, In the Matter of: Save the Supreme Court Judicial Independence and Fiscal Autonomy Movement v. Abolition of Judiciary Development Fund,* UDK-15143, January 21, 2015<http://sc.judiciary.gov.ph/

Contemporaneous construction engages jurisprudence and relevant statutes in determining the purpose behind the relevant text.

In the hierarchy of constitutional interpretation, discerning purpose through inference of the original intent of those that participated in crafting the draft Constitution for the People's ratification, or discerning the original understanding of the past society that actually ratified the basic document, is the weakest approach.

Not only do these interpretative methodologies allow the greatest subjectivity for this court, it may also be subject to the greatest errors. For instance, those that were silent during constitutional conventions may have voted for a proposition due to their own reasons different from those who took the floor to express their views. It is even possible that the beliefs that inspired the framers were based on erroneous facts.

Moreover, the original intent of the framers of the Constitution is different from the original understanding of the People who ratified it. Thus, in *Civil Liberties Union:*

> While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give is no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave the instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face." *The proper interpretation therefore depends more on how it was understood by*

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pdf/web/viewer.html?file=/jurisprudence/2015/january2015/15143.pdf> [Per *J*. Leonen, *En Banc*], citing *J*. Leonen, Concurring Opinion in *Belgica v. Ochoa,* G.R. No. 208566, November 19, 2013, 710 SCRA 1, 278-279 [Per *J*. Perlas-Bernabe, *En Banc*].

the people adopting it than in the framer's understanding thereof.[285] (Emphasis supplied)

We apply these considerations in the interpretation of the provisions of the Constitution relevant to this case.

V.F

Petitioner is natural-born under any of two possible approaches.

The first approach is to assume as a matter of constitutional interpretation that all foundlings found in the Philippines, being presumptively born to either a Filipino biological father or a Filipina biological mother, are natural-born, unless there is substantial proof to the contrary. There must be substantial evidence to show that there is a reasonable probability that ***both****,* not just one, of the biological parents are not Filipino citizens.

This is the inevitable conclusion reached when the entirety of the provisions of the Constitution is considered alongside the contemporary construction based on statutes and international norms that form part of the law of the land. It is also the most viable conclusion given the purpose of the requirement that candidates for President must be natural-born.

The second approach is to read the definition of natural-born in Section 2 in relation to Article IV, Section 1(2). Section 1(2) requires that the father ***or*** the mother is a Filipino citizen.[286]

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[285] *Francisco, Jr. v. House of Representatives,* 460 Phil. 830, 887 [Per *J*. Carpio Morales, *En Banc*], citing *Civil Liberties Union v. Executive Secretary,* 272 Phil. 147, 169-170 (1991) [Per *C.J.* Fernan, *En Banc*].

[286] CONST., Art. IV, Sec. 1(2) provides:

ARTICLE IV. Citizenship

SECTION I. The following are citizens of the Philippines:

x x x x x x x x x

(2) Those whose fathers or mothers are citizens of the Philippines[.]

There is no requirement that the father or mother should be natural-born Filipino citizens. It is possible that one or both of the parents are ethnically foreign. Thus, physical features will not be determinative of natural-born citizenship.

There is no requirement of citizenship beyond the first degree of ascendant relationship. In other words, there is no necessity to prove indigenous ethnicity. Contrary to the strident arguments of the Commission on Elections, there is no requirement of Filipino bloodline.

Significantly, there is also no requirement that the father or mother should be definitively identified. There can be proof of a reasonable belief that evidence presented in a relevant proceeding substantially shows that either the father or the mother is a Filipino citizen.

V.G

The minimum constitutional qualifications for President are clearly enumerated in Article VII, Section 2:

> Section 2. No person may be elected President unless he is a natural born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines at least ten years immediately preceding such election.

Parsing the provision's clear meaning in the order enumerated, the qualifications are:

One, he or she must be "a natural born citizen";

Two, he or she must be "a registered voter";

Three, he or she must be "able to read and write";

Four, he or she must be "at least forty years of age on the day of the election"; and

Five, he or she must be "a resident of the Philippines at least ten years immediately preceding such election."

Petitioner's possession of the second, third, and fourth minimum qualifications are not in issue in this case. A closer analysis of this provision makes certain conclusions apparent.

The phrase, "ten years immediately preceding such election" qualifies "a resident of the Philippines" as part of the fifth minimum constitutional requirement. It does not qualify any of the prior four requirements. The ten-year requirement does not qualify "able to read and write." Likewise, it cannot textually and logically qualify the phrase, "at least forty years of age" or the phrase, "a registered voter."

Certainly then, the ten-year requirement also does not qualify "a natural born citizen." Being natural-born is an inherent characteristic. Being a citizen, on the other hand, may be lost or acquired in accordance with law. The provision clearly implies that: (a) one must be a natural-born citizen at least upon election into office, and (b) one must be a resident at least ten years prior to the election. Citizenship and residency as minimum constitutional requirements are two different legal concepts.

In other words, there is no constitutional anchor for the added requirement that within the entire ten-year period prior to the election when a candidate is a resident, he or she also has to have reacquired his or her natural-born citizen status.

Citizenship refers to political affiliation. It is a fiction created by law. Residence, on the other hand, refers to one's domicile. It is created by one's acts, which is indicative of his or her intentions.

To require her natural-born citizenship status in order to legally consider the commencement of her residency is, therefore, to add and amend the minimum requirements of the Constitution.

Furthermore, the Constitution intends minimum qualifications for those who wish to present themselves to be considered by the People for the Office of President. No educational attainment, profession, or quality of character is constitutionally required as a minimum. Inherent in the text of the Constitution is an implied dynamic. The electorate, acting collectively during a specific election, chooses the weight of other considerations. It is not for the Commission on Elections or this court to discreetly implant and, therefore, dictate on the electorate in the guise of interpreting the provisions of the Constitution and declaring

what is legal, the political wisdom of considerations. This is consistent also with Article II, Section 1 of the Constitution.[287]

Thus, that petitioner once lost and then reacquired her natural-born citizenship is not part of the minimum constitutional requirements to be a candidate for President. It is an issue that may be considered by the electorate when they cast their ballots.

On a second level of constitutional interpretation, a contemporaneous construction of Article VII, Section 2 with Republic Act No. 9225, otherwise known as the Citizenship Retention and Re-acquisition Act on 2003,[288] supports this reading.

The Constitution provides that "Philippine citizenship may be lost or reacquired in the manner provided by law."[289] On July 7, 2006, petitioner took her Oath of Allegiance under Section 3 of Republic Act No. 9225. On July 10, 2006, she filed a Petition for Reacquisition of her Philippine citizenship before the Bureau of Immigration and Deportation, and her Petition was granted.[290]

Section 3 of Republic Act No. 9225 provides for the Oath of Allegiance to the Republic that may be taken by natural-born citizens of the Philippines who lost their Philippine citizenship when they became naturalized citizens of another country, in order to reacquire their Philippine citizenship:

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[287] CONST., Art. II, Sec. 1 provides:

ARTICLE II. Declaration of Principles and State Policies

Principles

SECTION 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and ***ALL*** government authority emanates from them. (Emphasis supplied).

[As the source of all governmental power, it must be presumed that certain powers are to be exercised by the people when it conflicts with any competence of a constitutional organ like the judiciary or the COMELEC.]

[288] Rep. Act No. 9225 was approved on August 29, 2003.

[289] CONST. Art. IV, Sec. 3.

[290] *Rollo* (G.R. Nos. 221698-221700), p. 4578, COMELEC Memorandum.

Section 3. *Retention of Philippine Citizenship.* – Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason on their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

"I ______________, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion."

Natural-born citizens of (the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.[291]

Upon taking this Oath, those who became citizens of another country prior to the effectivity of Republic Act No. 9225 reacquire their Philippine citizenship, while those who became citizens of another country after the effectivity of Republic Act No. 9225 retain their Philippine citizenship.

Taking the Oath enables the enjoyment of full civil and political rights, subject to all attendant liabilities and responsibilities under existing laws and the different solemnities under Section 5 of Republic Act No. 9225. Different conditions must be complied with depending on whether one intends to exercise the right to vote, seek elective public office, or assume an appointive public office, among others:

Sec. 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:

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[291] Rep. Act No. 9225 (2003), Sec. 3.

(1) Those intending to exercise their right of suffrage must meet the requirements under Section 1, Article V of the Constitution, Republic Act No. 9189, otherwise known as the Overseas Absentee Voting Act of 2003' and other existing laws;

(2) Those seeking elective public office in the Philippines shall meet the qualifications 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;

(3) Those appointed to any public office shall subscribe and swear to an ***oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office;*** *Provided,* That they renounce their oath of allegiance to the country where they took that oath;

(4) Those intending to practice their profession in the Philippines shall apply with the proper authority for a license or permit to engage in such practice; and

(5) That the right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who:

a. are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or

b. are in active service as commissioned or non-commissioned officers in the armed forces of the country which they are naturalized citizens. (Emphasis supplied)

Sobejana-Condon v. Commission on Elections[292] discussed the mandatory nature of the required sworn renunciation under Section 5 of Republic Act No. 9225. This provision was intended to complement Article XI, Section 18 of the Constitution in that "[p]ublic officers and employees owe the State and this Constitution allegiance at all times and any public officer or

[292] 692 Phil. 407 (2012) [Per *J.* Reyes, *En Banc*].

employee who seeks to change his citizenship or acquire the status of an immigrant of another country during his tenure shall be dealt with by law."[293]

Republic Act No. 9225 only requires that the personal and sworn renunciation of foreign citizenship be made "at the time of the filing of the certificate of candidacy" for those seeking elective public position. It does not require a ten-year period similar to the residency qualification.

V.H

The concept of natural-born citizens is in Article IV, Section 2:

Sec. 2. Natural-born citizens are those who are ***citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship.*** Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens. (Emphasis supplied)

Citizens, on the other hand, are enumerated in Section 1 of the same Article:

Section 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;
(2) Those whose fathers or mothers are citizens of the Philippines;
(3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
(4) Those who are naturalized in accordance with law.[294]

The critical question is whether petitioner, as a foundling, was Filipina at birth.

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[293] See *Sobejana-Condon v. Commission on Elections,* 692 Phil. 407 (2012) [Per *J.* Reyes, *En Banc*].

[294] The 1935 Constitution was in effect when petitioner was born. However, the provisions are now substantially similar to the present Constitution, except that the present Constitution provides clarity for "natural born" status. For comparison, the 1935 provisions state:

Citizenship essentially is the "right to have rights."[295] It is one's "personal and more or less permanent membership in a political community. . . . The core of citizenship is the capacity to enjoy political rights, that is, the right to participate in government principally through the right to vote, the right to hold public office[,] and the right to petition the government for redress of grievance."[296]

Citizenship also entails obligations to the community.[297] Because of the rights and protection provided by the state, its citizens are presumed to be loyal to it, and even more so if it is the state that has protected them since birth.

V.I

The first level of constitutional interpretation permits a review of the evolution of these provisions on citizenship in the determination of its purpose and rationale.

This court in *Tecson* detailed the historical development of the concept of Philippine citizenship, dating back from the

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SECTION I. The following are citizens of the Philippines.

(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

(2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

(3) Those whose fathers are citizens of the Philippines.

(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

(5) Those who are naturalized in accordance with law.

SECTION 2. Philippine citizenship may be lost or reacquired in the manner provided by law.

[295] C.J. Warren, *Dissenting Opinion in Perez v. Brownwell,* 356 U.S. 44 (1958).

[296] *Go v. Republic of the Philippines,* G.R. No. 202809, July 2, 2014, 729 SCRA 138, 149 [Per *J.* Mendoza, Third Division], *citing* BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, A COMMENTARY* (2009 ed.).

[297] *Id.*

Spanish occupation.[298] During the Spanish regime, the native inhabitants of the Islands were denominated as "Spanish subjects" or "subject of Spain" to indicate their political status.[299] The Spanish Constitution of 1876 declared persons born in Spanish territory as Spaniards, but this was never extended to the Philippine Islands due to the mandate of Article 89 in that the Philippines would be governed by special laws.[300] The Civil Code of Spain became effective in this jurisdiction on December 18, 1889, making the first categorical listing on who were Spanish citizens,[301] thus:

(a) Person born in Spanish territory,
(b) Children of a Spanish father or mother, even if they were born outside of Spain,
(c) Foreigners who have obtained naturalization papers,
(d) Those who, without such papers, may have become domiciled inhabitants of any town of the Monarchy.[302]

The Philippine Revolution in 1898 marked the end of the Spanish era and the entry of the Americans. Spain was forced to cede the Philippine colony to the United States. Pursuant to the Treaty of Paris between the two countries on December 10, 1989, the native inhabitants were not automatically converted to American citizens.[303] Since they also ceased to be "Spanish subjects," they were "issued passports describing them to be citizens of the Philippines entitled to the protection of the United States":[304]

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[298] *Tecson v. Commission on Elections,* 468 Phil. 421, 464-470 (2004) [Per *J.* Vitug, *En Banc*].

[299] *Id.* at 464.

[300] *Id.* at 465.

[301] *Id.*

[302] *Id*. at 465-466, *citing* The Civil Code of Spain, Art. 17.

[303] *Id.* at 466-467, *citing* RAMON M. VELAYO, PHILIPPINE CITIZENSHIP AND NATURALIZATION, 22-23 (1965).

[304] *Id.* at 467.

Spanish subject, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty may remain in such territory or may remove therefrom . . . In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making . . . a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

Thus-

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress.[305]

The concept of "Philippine citizens" crystallized with the adoption of the Philippine Bill of 1902,[306] where the term "citizens of the Philippine Islands" first appeared:[307]

Section 4. That all inhabitants of the Philippine Islands continuing to reside therein, who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Islands, and their children born subsequent thereto, ***shall be deemed and held to be citizens"of the Philippine Islands*** and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain signed at Paris December tenth, eighteen hundred and ninety-eight. (Emphasis supplied)

The United States Congress amended this section on March 23, 1912 to include a proviso for the enactment by the legislature of a law on acquiring citizenship. This was restated

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[305] *Id.* at 466, *citing* RAMON M. VELAYO, PHILIPPINE CITIZENSHIP AND NATURALIZATION 22-23 (1965) .

[306] The Philippine Bill of 1902 is otherwise known as the Philippine Organic Act of 1902.

[307] *Tecson v. Commission on Elections,* 468 Phil. 421, 467-468 (2004) [Per *J.* Vitug, *En Banc*].

in the Jones Law of 1916, otherwise known as the Philippine Autonomy Act.[308] The proviso in the 1912 amendment reads:

> *Provided,* That the Philippine Legislature, herein provided for, is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein.[309]

Thus, the Jones Law of 1916 provided that native-born inhabitants of the Philippines were deemed Philippine citizens as of April 11, 1899 if he or she was "(1) a subject of Spain on April 11, 1899, (2) residing in the Philippines on said date, and (3) since that date, not a citizen of some other country."[310]

While common law used by the United States follows *jus soli* as the mode of acquiring citizenship, the 1935 Constitution adopted *jus sanguinis* or blood relations as basis for Philippine citizenship,[311] thus:

> SECTION 1. The following are citizens of the Philippines:
>
> (1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution
> (2) Those born in the Philippines Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.
> (3) Those whose fathers are citizens of the Philippines.
> (4) Those whose mothers are citizens of the Philippines and upon reaching the age of majority, elect Philippine citizenship.
> (5) Those who are naturalized in accordance with law.[312]

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[308] *Id.* at 468.

[309] *Tecson v. Commission on Elections,* 468 Phil. 421 (2004) [Per *J.* Vitug, *En Banc*].

[310] *Tecson v. Commission on Elections,* 468 Phil. 421, 469 (2004) [Per *J.* Vitug, *En Banc*].

[311] *ld*.

[312] CONST. (1935), Art. III, Sec. 1.

Subsection (4), when read with then civil law provision on the automatic loss of Filipino citizenship by women who marry foreign husbands and automatically acquire his foreign citizenship, posed a discriminatory situation for women and their children.[313] Thus, the 1973 Constitution addressed this concern with the following revisions:

SECTION 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution.
(2) Those whose fathers or mothers are citizens of the Philippines.
(3) Those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five.
(4) Those who are naturalized in accordance with law.

SEC. 2. A female citizen of the Philippines who marries an alien shall retain her Philippine citizenship, unless by her act or omission she is deemed, under the law, to have renounced her citizenship.[314]

The 1973 Constitution also provided a definition for "natural-born citizens" since the 1935 Constitution, similar to the United States Constitution, required the President to be a "natural-born citizen" without defining the term. Prior to the 1935 Constitution, public offices were filled through appointment by the colonizer.[315]

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[313] *Tecson v. Commission on Elections,* 468 Phil. 421, 469 (2004) [Per *J.* Vitug, *En Banc*].

[314] CONST. (1973), Art. III, Secs. 1 and 2.

[315] *See, few example,* Philippine Bill of 1902, Sec. 1, which provides that the highest positions were to be filled through appointment by the United States President:

Section 1. That the action of the President of the United States in creating the Philippine Commission and authorizing said Commission to exercise the powers of government to the extent and in the manner and form and subject to the regulation and control set forth in the instructions of the President to the Philippine Commission, dated April seventh, nineteen hundred, and in creating the offices of Civil Governor and Vice-Governor of the Philippine Islands, and authorizing said Civil Governor and Vice-Governor to exercise the powers of government to the extent and in the manner and form set forth in the Executive Order dated June twenty-first,

Thus, Article III, Section 4 of the 1973 Constitution added a definition for natural-born citizen, as follows:

SEC. 4. A natural-born citizen is one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship.[316]

The current Constitution adopted most of the provisions of the 1973 Constitution on citizenship, with further amendment in subsection (3) for purposes of correcting the irregular situation created by the 1935 Constitution.

V.J

Natural-born citizenship is an American concept that we adopted in our Constitution. This term appears only once in the United States Constitution—in the presidential qualification clause[317]—and has no definition in American laws. No explanation on the origin or purpose of the presidential qualification clause can even be found in the Convention's recorded deliberations.[318] Since the United States was under

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nineteen hundred and one, and in establishing four Executive Departments of government in said Islands as set forth in the Act of the Philippine Commission, entitled "An Act providing an organization for the Departments of the Interior, of Commerce and Police, of Finance and Justice, and of Public Instruction," enacted September sixth, nineteen hundred and one, is hereby approved, ratified, and confirmed, and until otherwise provided by law the said Islands shall continue to be governed as thereby and herein provided, and all laws passed hereafter by the Philippine Commission shall have an enacting clause as follows. "By authority of the United States, be it enacted by the Philippine Commission." The provisions of section eighteen hundred and ninety-one of the Revised Statutes of eighteen hundred and seventy-eight shall not apply to the Philippine Islands.

Future appointments of Civil Governor, Vice-Governor, members of said Commission and heads of Executive Departments shall be made by the President, by and with the advice and consent of the Senate.

[316] CONST. (1973), Art. III, Sec. 4.

[317] *See* Charles Gordon, *Who Can Be President of the United States: The Unresolved Enigma,* 28 Md. L. Rev. 1, 5 (1968).

[318] *Id.* at 3-4.

British rule prior to their independence, some theories suggest that the concept was introduced in the text as a check against foreign infiltration in the administration of national government, thus:

> It has been suggested, quite plausibly, that this language was inserted in response to a letter sent by John Jay to George Washington, and probably to other delegates, on July 25, 1787, which stated:
>
> > Permit me to hint, whether it would be wise and seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in Chief of the American army shall not be given to nor devolve on, any but a natural *born* Citizen.
>
> Possibly this letter was motivated by distrust of Baron Von Steuben, who had served valiantly in the Revolutionary forces, but whose subsequent loyalty was suspected by Jay. Another theory is that the Jay letter, and the resulting constitutional provision, responded to rumors that the Convention was concocting a monarchy to be ruled by a foreign monarch.[319]

The 1935 Constitution borrowed the term "natural-born citizen" without defining the concept. It was only the 1973 Constitution that provided that "[a] natural-born citizen is one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship."

V.K

There are only two categories of citizens: natural-born and naturalized.

A natural-born citizen is defined in Article IV, Section 2 as one who is a citizen of the Philippines "from birth without having to perform any act to acquire or perfect Philippine citizenship." On the other hand, a naturalized citizen is one who is not natural-born.

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[319] *Id.* at 5.

In *Bengson v. House of Representatives Electoral Tribunal,*[320] this court ruled that if a person is not naturalized, he or she is considered a natural-born citizen of the Philippines:

> [O]nly naturalized Filipinos are considered not natural-born citizens. It is apparent from the enumeration of who are citizens under the present Constitution that there are only two classes of citizens: ... A citizen who is not a naturalized Filipino, i.e., did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is a natural-born Filipino.[321]

Former Associate Justice Panganiban clarifies this concept in his Concurring Opinion in *Bengson.* Naturalized citizens are "former aliens or foreigners who had to undergo a rigid procedure, in which they had to adduce sufficient evidence to prove that they possessed all the qualifications and none of the disqualifications provided by law in order to become Filipino citizens."[322]

A person who desires to acquire Filipino citizenship is generally required to file a verified petition.[323] The applicant

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[320] 409 Phil. 633 (2001) [Per *J*. Kapunan, *En Banc*].

[321] *Id.* at 651.

[322] *Id.* at 656.

[323] See Rep. Act No. 9139 (2000), Sec. 5 provides:

SECTION 5. *Petition for Citizenship.* — (1) Any person desiring to acquire Philippine citizenship under this Act shall file with the Special Committee on Naturalization created under Section 6 hereof, a petition of five (5) copies legibly typed and signed, thumbmarked and verified by him/her, with the latter's passport-sized photograph attached to each copy of the petition, and setting forth the following:

x x x x x x x x x

Com. Act No. 473, Sec.7 provides:

SECTION 7. *Petition for Citizenship.* — Any person desiring to acquire Philippine citizenship shall file with the competent court, a petition in triplicate, accompanied by two photographs of the petitioner, setting forth his name and surname; his present and former places of residence; his occupation; the place and date of his birth; whether single or married and if the father of children, the name, age, birthplace and residence of the

must prove, among others, that he or she is of legal age, with good moral character, and has the capacity to adapt to Filipino culture, tradition, and principles, or otherwise has resided in the Philippines for a significant period of time.[324] The applicant

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wife and of the children; the approximate date of his or her arrival in the Philippines, the name of the port of debarkation, and, if he remembers it, the name of the ship on which he came; a declaration that he has the qualifications required by this Act, specifying the same, and that he is not disqualified for naturalization under the provisions of this Act; that he has complied with the requirements of section five of this Act; and that he will reside continuously in the Philippines from the date of the filing of the petition up to the time of his admission to Philippine citizenship. The petition must be signed by the applicant in his own handwriting and be supported by the affidavit of at least two credible persons, stating that they are citizens of the Philippines and personally know the petitioner to be a resident of the Philippines for the period of time required by this Act and a person of good repute and morally irreproachable, and that said petitioner has in their opinion all the qualifications necessary to become a citizen of the Philippines and is not in any way disqualified under the provisions of this Act. The petition shall also set forth the names and post-office addresses of such witnesses as the petitioner may desire to introduce at the hearing of the case. The certificate of arrival, and the declaration of intention must be made part of the petition.

[324] *See* Rep. Act No. 9139 (2000), Sec. 3 provides:

SECTION 3. Qualifications. — Subject to the provisions of the succeeding section, any person desiring to avail of the benefits of this Act must meet the following qualifications:

(a) The applicant must be born in the Philippines and residing therein since birth;

(b) The applicant must not be less than eighteen (18) years of age, at the time of filing of his/her petition;

(c) The applicant must be of good moral character and believes in the underlying principles of the Constitution, and must have conducted himself/herself in a proper and irreproachable manner during his/her entire period of residence in the Philippines in his relation with the duly constituted government as well as with the community in which he/she is living;

(d) The applicant must have received his/her primary and secondary education in any public school or private educational institution duly recognized by the Department of Education, Culture and Sports, where Philippine history, government and civics are taught and prescribed as part of the school curriculum and where enrollment is not limited to any race or nationality: Provided, That should he/she have minor children of school age, he/she must have enrolled them in similar schools;

must prove himself or herself not to be a threat to the state, the public, and to the Filipinos'core beliefs.[325]

(e) The applicant must have a known trade, business, profession or lawful occupation, from which he/she derives income sufficient for his/her support and if he/she is married and/or has dependents, also that of his/her family: Provided, however, That this shall not apply to applicants who are college degree holders but are unable to practice their profession because they are disqualified to do so by reason of their citizenship;

(f) The applicant must be able to read, write and speak Filipino or any of the dialects of the Philippines; and

(g) The applicant must have mingled with the Filipinos and evinced a sincere desire to learn and embrace the customs, traditions and ideals of the Filipino people.

Comm. Act No. 473, Sec. 2 provides:

SECTION 2. Qualifications. — Subject to section four of this Act, any person having the following qualifications may become a citizen of the Philippines by naturalization:

First. He must be not less than twenty-one years of age on the day of the hearing of the petition;

Second. He must have resided in the Philippines for a continuous period of not less than ten years;)

Third. He must be of good moral character and believes in the principles underlying the Philippine Constitution, and must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation with the constituted government as well as with the community in which he is living.

Fourth. He must own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, or must have some known lucrative trade, profession, or lawful occupation;

Fifth. He must be able to speak and write English or Spanish and any of the principal Philippine languages;

Sixth. He must have enrolled his minor children of school age, in any of the public schools or private schools recognized by the Office of Private Education of the Philippines, where Philippine history, government and civics are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen.

[325] Rep. Act No. 9139 (2000), Sec. 4 provides:

SECTION 4. Disqualifications. — The following are not qualified to be naturalized as Filipino citizens under this Act:

Petitioner did not undergo the naturalization process. She reacquired her Filipino citizenship through Republic Act No. 9225.

(a) Those opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments;

(b) Those defending or teaching the necessity of or propriety of violence, personal assault or assassination for the success or predominance of their ideas;

(c) Polygamists or believers in the practice of polygamy;

(d) Those convicted of crimes involving moral turpitude;

(e) Those suffering from mental alienation or incurable contagious diseases;

(f) Those who, during the period of their residence in the Philippines, have not mingled socially with Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions and ideals of the Filipinos;

(g) Citizens or subjects with whom the Philippines is at war, during the period of such war; and

(h) Citizens or subjects of a foreign country whose laws do not grant Filipinos the right to be naturalized citizens or subjects thereof.

Com. Act No. 473 (1939), Sec. 4 provides:

SECTION 4. Who are Disqualified. — The following can not be naturalized as Philippine citizens:

(a) Persons opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments;

(b) Persons defending or teaching the necessity or propriety of violence, personal assault, or assassination for the success and predominance of their ideas;

(c) Polygamists or believers in the practice of polygamy;

(d) Persons convicted of crimes involving moral turpitude;

(e) Persons suffering from mental alienation or incurable contagious diseases;

(f) Persons who, during the period of their residence in the Philippines, have not mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos;

(g) Citizens or subjects of nations with whom the United States and the Philippines are at war, during the period of such war;

(h) Citizens or subjects of a foreign country other than the United States, whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof.

The Commission on Elections contends that in availing herself of the benefits under Republic Act No. 9225, petitioner reacquired Philippine citizenship by naturalization, not natural-born citizenship, since she had to perform several acts to perfect this citizenship.[326] Moreover, the earliest time Philippine residency can be reestablished for those who reacquire Philippine citizenship under Republic Act No. 9225 is upon reacquisition of citizenship.[327]

Our jurisprudence holds otherwise. Those who avail themselves of the benefits under Republic Act No. 9225 reacquire natural-born citizenship. *Bengson* ruled that repatriation involves the restoration of former status or the recovery of one's original nationality:

> Moreover, repatriation results in the recovery of the original nationality. This means that a naturalized Filipino who lost his citizenship will be restored to his prior status as a naturalized Filipino citizen. On the other hand, *if he was originally a natural-born citizen before he lost his Philippine citizenship, he will be restored to his former status as a natural-born Filipino.*[328]

While *Bengson* involved Commonwealth Act No. 63, its ruling is still consistent with the declared policy under the current system of reacquiring Philippine citizenship pursuant to Republic Act No. 9225. One's status as a natural-born Filipino is immutable: "all Philippine citizens of another country shall be deemed not to have lost their Philippine citizenship."[329] Republic Act No. 9225 requires certain solemnities, but these requirements are only for the purpose of effecting the incidents of the citizenship that a naturalized Filipino never lost. These requirements do not operate to make new citizens whose citizenship commences only from the time they have been complied with.

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[326] *Rollo* (G.R. Nos. 221698-221700), p. 4627, COMELEC Memorandum.

[327] *Id.* at 4636.

[328] *Bengson v. House of Representatives Electoral Tribunal,* 409 Phil. 633 (2001) [Per *J.* Kapunan, *En Banc*].

[329] Rep. Act No. 9225 (2003), Sec. 2.

To consider petitioner, a foundling, as not natural-born will have grave consequences. Naturalization requires that petitioner is of legal age. While it is true that she could exert time and extraordinary expense to find the parents who might have abandoned her, this will not apply to all foundlings. Thus, this approach will concede that we will have a class of citizens who are stateless due to no fault of theirs.

V.L

There is no need for an express statement in the Constitution's citizenship provisions that foundlings are natural-born Filipino citizens. A contrary interpretation will be inconsistent with the other provisions of the Constitution. The Constitution should be interpreted as a whole to "effectuate the whole purpose of the Constitution."[330]

Article II, Section 13 and Article XV, Section 3 of the 1987 Constitution enjoin the state to defend children's well-being and protect them from any condition that is prejudicial to their development. This includes preventing discriminatory conditions in fact as well as in law:

Article II, SECTION 13. The State recognizes the vital role of the youth in nation-building and **shall promote and protect their physical, moral, spiritual, intellectual, and social well-being.** It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

Article XV, SECTION 3. The State shall defend:

x x x x x x x x x

(2) **The right of children to** assistance, including proper care and nutrition, and **special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development**[.] (Emphasis supplied)

Crucial government positions are exclusive to natural-born citizens of the Philippines. The 1987 Constitution requires the following positions to be filled by natural-born citizens:

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[330] *Civil Liberties Union v. Executive Secretary,* 272 Phil. 147, 162 (1991) [Per *C.J.* Fernan, *En Banc*].

(1) President;[331]
(2) Vice President;[332]
(3) Senator;[333]
(4) Member of the House of Representatives;[334]
(5) Member of the Supreme Court or any lower collegiate court;[335]

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[331] CONST., Art. VII, Sec. 2 provides:

ARTICLE VII. Executive Department

x x x x x x x x x

SECTION 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philinpines for at least ten years immediately preceding such election.

[332] CONST., Art. VII, Sec. 3.

[333] CONST., Art. VI, Sec. 3 provides:

ARTICLE VI. The Legislative Department

x x x x x x x x x

SECTION 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

[334] CONST., Art. VI, Sec. 6 provides:

ARTICLE VI. The Legislative Department

x x x x x x x x x

SECTION 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

[335] CONST., Art. VIII, Sec. 7(1) provides:

ARTICLE VIII. Judicial Department

x x x x x x x x x

SECTION 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.

(6) Chairperson and Commissioners of the Civil Service Commission;[336]

(7) Chairperson and Commissioners of the Commission on Elections;[337]

(8) Chairperson and Commissioners of the Commission on Audit;[338]

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[336] CONST., Art. IX-B, Sec. 1(1) provides:

ARTICLE IX. Constitutional Commissions

x x x x x x x x x

B. The Civil Service Commission

SECTION 1. (1) The Civil Service shall be administered by the Civil Service Commission composed of a Chairman and two Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, with proven capacity for public administration, and must not have been candidates for any elective position in the elections immediately preceding their appointment.

[337] CONST., Art. IX-C, Sec. 1(1) provides:

ARTICLE IX. Constitutional Commissions

x x x x x x x x x

C. The Commission on Elections

SECTION 1. (1) There shall be a Commission on Elections composed of a Chairman and six Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, holders of a college degree, and must not have been candidates for any elective position in the immediately preceding elections. However, a majority thereof, including the Chairman, shall be Members of the Philippine Bar who have been engaged in the practice of law for at least ten years.

[338] CONST., Art. IX-D, Sec. 1(1) provides:

ARTICLE IX. Constitutional Commissions

x x x x x x x x x

D. Commission on Audit

SECTION 1. (1) There shall be a Commission on Audit composed of a Chairman and two Commissioners, who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, certified public accountants with not less than ten years of auditing experience, or members of the Philippine Bar who have been engaged in the practice of law for at least ten years, and must not have been candidates for any elective position in the elections immediately preceding their appointment. At no time shall all Members of the Commission belong to the same profession.

(9) Ombudsman and his deputies;[339]
(10) Board of Governors of the Bangko Sentral ng Pilipinas;[340] and
(11) Chairperson and Members of the Commission on Human Rights.[341]

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[339] CONST., Art. XI, Sec. 8 provides:

ARTICLE XI. Accountability of Public Officers

x x x x x x x x x

SECTION 8. The Ombudsman and his Deputies shall be natural-born citizens of the Philippines, and at the time of their appointment, at least forty years old, of recognized probity and independence, and members of the Philippine Bar, and must not have been candidates for any elective office in the immediately preceding election. The Ombudsman must have for ten years or more been a judge or engaged in the practice of law in the Philippines.

[340] CONST., Art. Xll, Sec. 20 provides:

ARTICLE XII. National Economy and Patrimony

x x x x x x x x x

SECTION 20. The Congress shall establish an independent central monetary authority, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law. The authority shall provide policy direction in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.

[341] CONST., Art. XIII, Sec. 17(2) provides:

ARTICLE XIII. Social Justice and Human Rights

x x x x x x x x x

Human Rights

SECTION 17....

(2) The Commission shall be composed of a Chairman and four Members who must be natural-born citizens of the Philippines and a majority of whom shall be members of the Bar. The term of office and other qualifications and disabilities of the Members of the Commission shall be provided by law.

Other positions that are required to be filled by natural-born citizens include, among others, city fiscals,[342] assistant city fiscals,[343] Presiding Judges and Associate Judges of the Sandiganbayan, other public offices,[344] and some professions.[345] Other incentives are also limited to natural-born citizens.[346]

An interpretation that foundlings are not natural-born Filipino citizens would mean that we should teach our foundling citizens to never aspire to serve the country in any of the above capacities.

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[342] Rep. Act No. 3537 (1963), Sec. 1. Section thirty-eight of Republic Act Numbered Four hundred nine, as amended by Republic Act Numbered Eighteen hundred sixty and Republic Act Numbered Three thousand ten, is further amended to read as follows:

Sec. 38. *The City Fiscal and Assistant City Fiscals.* — There shall be in the Office of the City Fiscal one chief to be known as the City Fiscal with the rank, salary and privileges of a Judge of the Court of First Instance, an assistant chief to be known as the first assistant city fiscal, three second assistant city fiscals who shall be the chiefs of divisions, and fifty-seven assistant fiscals, who shall discharge their duties under the general supervision of the Secretary of Justice. *To be eligible for appointment as City Fiscal one must be a natural born citizen of the Philippines* and must have practiced law in the Philippines for a period of not less than ten years or held during a like period of an office in the Philippine Government requiring admission to the practice of law as an indispensable requisite. *To be eligible for appointment as assistant fiscal one must be a natural born citizen of the Philippines* and must have practiced law for at least five years prior to his appointment or held during a like period an office in the Philippine Government requiring admission to the practice of law as an indispensable requisite. (Emphasis supplied)

[343] Rep. Act No. 3537 (1963).

[344] Examples of these are: the Land Transportation Office Commissioner, the Mines and Geosciences Bureau Director, the Executive Director of Bicol River Basin, the Board Member of the Energy Regulatory Commission, and the National Youth Commissioner, among others.

[345] Examples of these are pharmacists and officers of the Philippine Coast Guard, among others.

[346] Among these incentives are state scholarships in science and certain investment rights.

This is not only inconsistent with the text of our Constitution's citizenship provisions, which required only evidence of citizenship and not of the identities of the parents. It unnecessarily creates a classification of citizens with limited rights based on the circumstances of their births. This is discriminatory.

Our Constitution provides that citizens shall have equal protection of the law and equal access to opportunities for public service. They are protected from human indignities and political inequalities:

Article II, SECTION 26. The State shall **guarantee equal access to opportunities for public service,** and prohibit political dynasties as may be defined by law.

Article III, SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the **equal protection of the laws.**

Article XIII, SECTION 1. The Congress shall give highest priority to the enactment of measures that **protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.** (Emphasis supplied)

The equal protection clause guarantees that "persons under like circumstances and falling within the same class are treated alike, in terms of 'privileges conferred and liabilities enforced.' It is a guarantee against 'undue favor and individual or class privilege, as well as hostile discrimination or oppression of inequality.'"[347]

Apart from the anonymity of their biological parents, there is no substantial distinction[348] between foundlings and children with known Filipino parents, all of whom are protected by the state from birth. The foundlings' fortuitous inability to

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[347] *Sameer v. Cabiles,* G.R. No. 170139, August 5, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/170139.pdf> 18 [Per *J.* Leonen, *En Banc*].

[348] *People v. Cayat,* 68 Phil. 12, 18 (1939) [Per *J.* Moran, First Division].

identify their biological parents who abandoned them cannot be the basis of a law or an interpretation that has the effect of treating them as less entitled to the rights and protection given by the state. To base a classification on this circumstance would be to sanction statelessness and the marginalization of a particular class who, by force of chance, was already made to start life under tragic circumstances.

This court, as an agent of the state, is constitutionally mandated to defend the well-being and development of children. We have no competence to reify classes that discriminate children based on the circumstances of their births. These classifications are prejudicial to a child's development.

Further, inasmuch as foundlings are citizens of the Philippines, they are human beings whose dignity we value and rights we respect. Thus:

Article II, SECTION 11. The State values the dignity of every human person and guarantees **full respect for human rights.** (Emphasis supplied)

V.M

Contemporaneous construction by other constitutional organs deserves consideration in arriving at a correct interpretation of the Constitution.

Illuminating guidance from how other constitutional organs interpret the fundamental legal document is premised on the understanding of a basic principle: the Constitution as law is legible to all of government as well as its People. Its plain reading, therefore, is accessible to all. Thus, interpretation and application of its provision are not the sole prerogative of this court, although this court's interpretation is final for each actual case or controversy properly raised.

The legislature has provided statutes essentially based on a premise that foundlings are Filipino citizens at birth.

It is also our state policy to protect children's best interest. In Republic Act No. 9344, otherwise known as the Juvenile Justice and Welfare Act of 2006:

SEC. 2. ***Declaration of State Policy.*** – The following State policies shall be observed at all times:

x x x x x x x x x

(b) The State shall protect the best interests of the child through measures that will ensure the observance of international standards of child protection, especially those to which the Philippines is a party. Proceedings before any authority shall be conducted in the best interest of the child and in a manner which allows the child to participate and to express himself/herself freely. The participation of children in the program and policy formulation and implementation related to juvenile justice and welfare shall be ensured by the concerned government agency. (Emphasis supplied)

The "best interest of the child" is defined as the "totality of the circumstances and conditions which are most congenial to the survival, protection and feelings of security of the child and most encouraging to the child's physical, psychological and emotional development."[349]

Consistent with this law is the Philippines' ratification[350] of the United Nations Convention on the Rights of the Child. This treaty has the effect of law and requires the domestic protection of children's rights to immediate registration and nationality after birth, against statelessness, and against discrimination based on their birth status.[351] Pertinent provisions of the treaty read:

Preamble

The State Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the **inherent dignity and of the equal and inalienable rights of all members**

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[349] Section 4(b).

[350] Ratified on August 21, 2000.

[351] *See* United Nations Treaty Collection, *Convention on the Rights of the Child* <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11 &chapter=4&lang=en> (visited March 7, 2016).

of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, **reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person,** and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that **everyone is entitled to all the rights and freedoms** set forth therein, **without distinction of any kind,** such as race, colour, sex, language, religion, political or other opinion, **national or social origin,** property, **birth or other status,**

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that **childhood is entitled to special care and assistance,**

x x x x x x x x x

Have agreed as follows:

x x x x x x x x x

Article 2

1. State parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction **without discrimination of any kind, irrespective of the child's or his or her parent's** or legal guardian's race, colour, sex, language, religion, political or other opinion, national, **ethnic or social origin, property, disability, birth or other status.**

2. **States Parties shall take appropriate measures to ensure that the child is protected against all forms of discrimination** or punishment **on the basis of the status,** activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. **In all actions concerning children,** whether undertaken by public or private social welfare institutions, **courts of**

law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration.**

2. **States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being,** taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Article 7

1. The child shall be **registered immediately after birth** and shall have the right from birth to a name, the **right to acquire a nationality** and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties **shall ensure the implementation of these rights** in accordance with their national law and their obligations under the relevant international instruments in this field, **in particular where the child would otherwise be stateless.** (Emphasis supplied)

The Philippines also ratified[352] the 1966 International Covenant on Civil and Political Rights. This treaty, which has the effect of law, also requires that children have access to immediate registration and nationality, and defends them against discrimination, thus:

Article 24....

1. **Every child shall have, without any discrimination as to** race, colour, sex, language, religion, national or social origin, property **or birth,** the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be **registered immediately after birth** and shall have a name.

3. Every child has the **right to acquire a nationality.**

x x x x x x x x x

[352] Ratified on October 23, 1986.

Article 26. **All persons** are equal before the law and are **entitled without any discrimination to the equal protection of the law.** In this respect, the law shall **prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground** such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, **birth or other status.** (Emphasis supplied)

Treaties are "international agreement[s] concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."[353] They require concurrence by the Senate before they become binding upon the state. Thus, Article VII, Section 21 of the Constitution provides:

SECTION 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

Ratification of treaties by the Senate makes it legally effective and binding by transformation. It is treated similar to a statute. In *Pharmaceutical and Health Care Association of the Philippines v. Duque III, et al.*:[354]

Under the 1987 Constitution, international law can become part of the sphere of domestic law either by transformation or incorporation. **The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as local legislation.** The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.

Treaties become part of the law of the land through transformation pursuant to Article VII, Section 21 of the Constitution which provides that "[n]o treaty or international

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[353] See *Bayan v. Zamora,* 396 Phil. 623, 657-660 (2000) [Per *J.* Buena, *En Banc*], *citing* the Vienna Convention on the Laws of Treaties.

[354] 561 Phil. 386 (2007) [Per *J.* Austria-Martinez, *En Banc*).

agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate." Thus, treaties or conventional international law must go through a process prescribed by the Constitution for it to be transformed into municipal law that can be applied to domestic conflicts.[355] (Emphasis supplied)

No further legislative act apart from ratification is necessary. Government—including the judiciary—is obligated to abide by these treaties in accordance with the Constitution and with our international obligations captured in the maxim *pacta sunt servanda.*

Foundlings, by law and through our Constitution, cannot be discriminated against. They are legally endowed with rights to be registered and granted nationality upon birth. Statelessness unduly burdens them, discriminates against them, and is detrimental to their development.

V.N

Republic Act No. 8552, otherwise known as the Domestic Adoption Act of 1998, is entitled An Act Establishing the Rules and Policies on Domestic Adoption **of Filipino Children** and for Other Purposes. It was enacted as a means to "provide alternative protection and assistance through foster care or adoption of every child who is neglected, orphaned, or abandoned."[356]

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[355] *Id.* at 397-398.

[356] Rep. Act No. 8552 (1998), Sec. 2(b) provides:

Section 2 (b). In all matters relating to the care, custody and adoption of a child, his/her interest shall be the paramount consideration in accordance with the tenets set forth in the United Nations (UN) Convention on the Rights of the Child; UN Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption, Nationally and Internationally; and the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. Toward this end, the State shall provide alternative protection and assistance through foster care or adoption for every child who is neglected, orphaned, or abandoned.

Abandoned children may include foundlings:[357]

SECTION 5. *Location of Unknown Parent(s).* — It shall be the duty of the Department or the child-placing or child-caring agency which has custody of the child to exert all efforts to locate his/her unknown biological parent(s). **If such efforts fail, the child shall be registered as a foundling and subsequently be the subject of legal proceedings where he/she shall be declared abandoned.** (Emphasis supplied)

Similarly, Republic Act No. 8043, otherwise known as the Inter- Country Adoption Act of 1995, is entitled An Act establishing the Rules to Govern Inter-Country **Adoption of Filipino Children,** and For Other Purposes. It includes foundlings among those who may be adopted:

SECTION 8. *Who May Be Adopted.* — Only a legally free child may be the subject of inter-country adoption. In order that such child may be considered for placement, the following documents must be submitted to the Board:

a) Child study;

b) Birth certificate/foundling certificate;

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[357] *See also* Rep. Act No. 9523 (2009), An Act Requiring the Certification of the Department of Social Welfare and Development (DSWD) to Declare a "Child Legally Available for Adoption" as a Prerequisite for Adoption Proceedings, Amending for this Purpose Certain Provision of Rep. Act No. 8552, otherwise known as the Inter-country Adoption Act of 1995, Pres. Dec. No. 603, otherwise known as the Child and Youth Welfare Code, and for Other Purposes.

SECTION 2. *Definition of Terms.* — As used in this Act, the following terms shall mean:

(1) Department of Social Welfare and Development (DSWD) is the agency charged to implement the provisions of this Act and shall have the sole authority to issue the certification declaring a child legally available for adoption.

x x x x x x x x x

(3) Abandoned Child refers to a child who has no proper parental care or guardianship, or whose parent(s) have deserted him/her for a period of at least three (3) continuous months, which includes a foundling.

c) Deed of voluntary commitment/decree of abandonment/ death certificate of parents;

d) Medical evaluation/history;

e) Psychological evaluation, as necessary; and

f) Recent photo of the child. (Emphasis supplied)

Further, foundling certificates may be presented in lieu of authenticated birth certificates as requirement for the issuance of passports to foundlings to be adopted by foreign parents under Republic Act No. 8043:

SECTION 5. If the applicant is an adopted person, he must present a certified true copy of the Court Order of Adoption, certified true copy of his original and amended birth certificates as issued by the OCRG. If the applicant is a minor, a Clearance from the DSWD shall be required. In case the applicant is for adoption by foreign parents under R.A. No. 8043, the following, shall be required:

a) Certified true copy of the Court Decree of Abandonment of Child, the Death Certificate of the child's parents, or the Deed of Voluntary Commitment executed after the birth of the child.

b) Endorsement of child to the Intercountry Adoption Board by the DSWD.

c) **Authenticated Birth or Foundling Certificate.**[358] (Emphasis supplied)

The statutes providing for adoption only allow the recognition of filiation for children who are Filipinos. They allow adoption of foundlings. Therefore, foundlings are, by law, presumed to be Filipino.

The executive branch has also assumed petitioner's natural-born status as Filipina.

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[358] DFA Order No. 11-97, Implementing Rules and Regulations for Rep. Act No. 9239 (1997), Philippine Passport Act.

Petitioner's citizenship status was never questioned throughout her entire life until she filed her Certificate of Candidacy for President in 2015. Until the proceedings that gave rise to these consolidated cases, her natural-born status was affirmed and reaffirmed through different government acts.

Petitioner was granted an order of reacquisition of natural-born citizenship under Republic Act No. 9225 by the Bureau of Immigration on July 18, 2006. The President of the Philippines appointed her as Chairperson of the Movie and Television Review and Classification Board—a government position that requires natural-born citizenship[359]—on October 6, 2010. The Commission on Elections also allowed her to run for Senator in the 2013 Elections despite public knowledge of her foundling status. Petitioner's natural-born status was recognized by the People when she was elected, and by the Senate Electoral Tribunal when it affirmed her qualifications to run for Senator on November 17, 2015.

Petitioner was likewise provided a foundling certificate after she was found. She was also the subject of an adoption process.

V.O

Even if there is no legal presumption of natural-born status for all foundlings, enough evidence was presented by petitioner before the Commission on Elections to prove that at least one—if not both—of her parents were Filipino citizens.

Petitioner's Filipino biological lineage cannot be proven easily by direct evidence such as birth certificates or witness testimonies of her birth. Her status as an abandoned child makes it improbable, if not too expensive, to prove her citizenship through DNA evidence.

Our rules, however, allow different manners of proving whether any one of her biological parents were Filipinos.

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[359] Pres. Decree No. 1986, Sec. 2 provides:

Aside from direct evidence, facts may be proved by using circumstantial evidence. In *Suerte-Felipe v. People*:[360]

> Direct evidence is that which proves the fact in dispute without the aid of any inference or presumption; (Lack County vs. Neilon, 44 Or. 14, 21, 74 P. 212) while circumstantial evidence is the proof of fact or facts from which, taken either singly or collectively, the existence of a particular fact in dispute may be inferred as a necessary or probable consequence (State vs. Avery, 113 Mo. 475, 494, 21 S.W. 193; Reynolds Trial Ev., Sec. 4, p. 8).[361]

Circumstantial evidence is further defined in *People v. Raganas*:[362]

Section 2. Composition; qualifications; benefits. – The BOARD shall be composed of a Chairman, a Vice-Chairman and thirty (30) members, who shall all be appointed by the President of the Philippines. The Chairman, the Vice-Chairman, and the members of the BOARD, shall hold office for a term of one (1) year, unless sooner removed by the President for any cause; Provided, That they shall be eligible for re-appointment after the expiration of their term. If the Chairman, or the Vice-Chairman or any member of the BOARD fails to complete his term, any person appointed to fill the vacancy shall serve only for the unexpired portion of the term of the BOARD member whom he succeeds.

No person shall be appointed to the BOARD, unless he is a natural-born citizen of the Philippines, not less than twenty-one (21) years of age, and of good moral character and standing in the community; Provided, That in the selection of the members of the BOARD due consideration shall be given to such qualifications as would produce a multi-sectoral combination of expertise in the various areas of motion picture and television; Provided, further, That at least five (5) members of the BOARD shall be members of the Philippine Bar. Provided, finally That at least fifteen (15) members of the BOARD may come from the movie and television industry to be nominated by legitimate associations representing the various sectors of said industry.

The Chairman, the Vice-Chairman and the other members of the BOARD shall be entitled to transportation, representation and other allowances which shall in no case exceed FIVE THOUSAND PESOS (₱5,000.00) per month.

[360] 571 Phil. 170 (2008) [Per *J*. Chico-Nazario, Third Division].

[361] *Id*. at 189-190.

[362] 374 Phil. 810 (1999) [Per *J*. Quisumbing, Second Division].

Circumstantial evidence is that which relates to a series of facts other than the fact in issue, which by experience have been found so associated with such fact that in a relation of cause and effect, they lead us to a satisfactory conclusion.[363] (Citation omitted)

Rule 133, Section 4 of the Rules of Court provides when circumstantial evidence is sufficient for conviction:

Section 4. *Circumstantial evidence, when sufficient.*— Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstances;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Circumstantial evidence is generally used for criminal cases. This court, however, has not hesitated to use circumstantial evidence in other cases.[364] There is no reason not to consider circumstantial facts as evidence as a method of proof.

If circumstantial evidence may be sufficient to satisfy conviction on the basis of the highest standard of proof, i.e. beyond proof beyond reasonable doubt, then it can also satisfy the less stringent standard of proof required in cases before the Commission on Elections. As a quasi-judicial body, the Commission on Elections requires substantial evidence, or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[365]

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[363] *Id.* at 822.

[364] See *Lua v. O'Brien, et al.,* 55 Phil. 53 (1930) [Per *J.* Street, *En Banc*]; *Vda. De Laig, et al. v. Court of Appeals,* 172 Phil. 283 (1978) [Per *J.* Makasiar, First Division]; *Baloloy v. Huller,* G.R. No. 157767, September 9, 2004, 438 SCRA 80 [Per *J.* Callejo, Sr., Second Division]; and *Heirs of Celestial v. Heirs of Celestial,* G.R. No. 142691, August 5, 2003, 408 SCRA 291 [Per *J.* Ynares-Santiago, First Division].

[365] *Ang Tibay v. Court of Industrial Relations,* 69 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

Petitioner was found in Jaro, Iloilo at a parish church on September 3, 1968.[366] Iloilo, as in most if not all provinces of the Philippines, had a population composed mostly of Filipinos.[367] Petitioner is described as having "brown almond-shaped eyes, a low nasal bridge, straight black hair and an oval-shaped face."[368] She is only 5 feet and 2 inches tall.[369]

Petitioner wants this court to take judicial notice that majority of Filipinos are Roman Catholics. Many Filipinos are poor. Poverty and shame may be dominant reasons why infants are abandoned.[370]

There was also no international airport in Jaro, Iloilo at the time when petitioner was born.

These circumstances provide substantial evidence to infer the citizenship of her biological parents. Her physical characteristics are consistent with that of many Filipinos. Her abandonment at a Catholic Church is consistent with the expected behavior of a Filipino in 1968 who lived in a predominantly religious and Catholic environment. The nonexistence of an international airport in Jaro, Iloilo can reasonably provide context that it is illogical for a foreign father and a foreign mother to visit a rural area, give birth and leave their offspring there.

The Solicitor General adds that petitioner is, in terms of probability, more likely born a Filipina than a foreigner with the submission of this table:[371]

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[366] *Rollo* (G.R. No. 221697), p. 5, Petition.

[367] *Rollo* (G.R. Nos. 221698-221700), p. 4874, Petitioner's Memorandum.

[368] *Id.*

[369] *Id.*

[370] *Id.*

[371] *Rollo* (G.R. Nos. 221698-221700), p. 4566, Annex C of the Solicitor General's Memorandum, Certification issued on February 9, 2016 by the Philippine Statistics Office, signed by Deputy National Statistician Estela T. De Guzman.

NUMBER OF FOREIGN AND FILIPINO CHILDREN BORN IN THE PHILIPPINES: 1965-1975 AND 2010-2014

YEAR	FOREIGN CHILDREN BORN IN THE PHILIPPINES	FILIPINO CHILDREN BORN IN THE PHILIPPINES
1965	1,479	795,415
1966	1,437	823,342
1967	1,440	840,302
1968	1,595	898,570
1969	1,728	946,753
1970	1,521	966,762
1971	1,401	963,749
1972	1,784	968,385
1973	1,212	1,045,290
1974	1,496	1,081,873
1975	1,493	1,223,837
2010	1,244	1,782,877
2011	1,140	1,746,685
2012	1,454	1,790,367
2013	1,315	1,751,523
2014	1,351	1,748,782

Source: Philippine Statistics Authority
[illegible]

Based on the above data, out of the 900,165 recorded births in the Philippines in 1968, only 1,595 or 0.18% of newborns were foreign. This translates to roughly 99.8% chance that petitioner was born a Filipina at birth.

VI

Petitioner committed no material misrepresentation with respect to her residency. The facts that can reasonably be inferred from the evidence presented clearly show that she satisfied the requirement that she had residency 10 years immediately preceding the election.

VI.A

The requirement for residency is stated in the 1987 Constitution as: "[n]o person may be elected President unless

he is . . . a resident of the Philippines for at least ten years immediately preceding such election."[372]

In this jurisdiction, "residence" does not admit of a singular definition. Its meaning varies to relate to the purpose. The "term 'resides,' like the terms 'residing' and 'residence,' is elastic and should be interpreted in light of the object or purpose of the statute or rule in which it is employed."[373] Residence, thus, is different under immigration laws, the Civil Code or the Family Code, or election laws.

Article 50 of the Civil Code spells out a distinction between "residence" and "domicile":

> Article 50. For the exercise of civil rights and the fulfillment of civil obligations, the domicile of natural persons is the place of their habitual residence.

This distinction has been further explained, as follows:

> There is a difference between domicile and residence. 'Residence' is used to indicate the place of abode, whether permanent or temporary' 'domicile' denotes a fixed permanent residence to which, when absent, one has the intention of returning. A man may have a residence in one place and a domicile in another.' 'Residence is not domicile, but domicile is residence coupled with intention to remain for an unlimited time. A man can have but one domicile for one and the same purpose at any time, but he may have numerous places of residence. His place of residence generally is his place of domicile, but is not by any means necessarily so, since no length of residence without intention of remaining will constitute domicile.[374]

Procedural law on venue follows this conception of residence as "the place of abode, whether permanent or temporary"[375] and

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[372] CONST., Art. VII, Sec. 2.

[373] *Fule v. Court of Appeals,* 165 Phil. 785, 797 (1976) [Per *J.* Martin, First Division].

[374] KENAN ON RESIDENCE AND DOMICILE 26,31-35, as cited in *In re: Wilfred Uytengsu v. Republic of the Philippines,* 95 Phil. 890 (1954) [Per *J.* Concepcion, *En Banc*].

[375] *Id.*

which is distinct from domicile (also referred to as "legal residence") as "fixed permanent residence."[376] In *Ang Kek Chen v. Spouses Calasan*:[377]

The crucial distinction that must be made is between "actual residence" and "domicile." The case of *Garcia Fule v. Court of Appeals* had already made the distinction in 1976. The pertinent portion of the case reads as follows:

> But, the far-ranging question is this: What does the term "resides" mean? . . . We lay down the doctrinal rule that the term "resides" connotes *ex vi termini* "actual residence" as distinguished from "legal residence or domicile." This term "resides," like the terms "residing" and "residence," is elastic and should be interpreted in the light of the object or purpose of the statute or rule in which it is employed. In the application of venue statutes and rules — . . . residence rather than domicile is the significant factor. Even where the statute uses the word "domicile" still it is construed as meaning residence and not domicile in the technical sense. Some cases make a distinction between the terms "residence" and "domicile" but as generally used in statutes fixing venue, the terms are synonymous, and convey the same meaning as the term "inhabitant." In other words, "resides" should be viewed or understood in its popular sense, meaning the personal, actual or physical habitation of a person, actual residence or place of abode. It signifies physical presence in a place and actual stay thereat. In this popular sense, the term means merely residence, that is personal residence, not legal residence or domicile. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile. No particular length of time of residence is required though; however, the residence must be more than temporary.[378]

It is clear that in granting respondents' Motion for Reconsideration, the CA accepted the argument of respondent Atty. Calasan that "residence" is synonymous with "domicile."

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[376] *Id.*

[377] 555 Phil. 115 (2007) [Per *J.* Velasco, Jr., Second Division).

[378] *Id.* at 123-124.

In *Saludo, Jr. v. American Express International, Inc.,* the term "residence" was equated with "domicile" as far as election law was concerned. However, the case also stated that:

> [F]or purposes of venue, the less technical definition of "residence" is adopted. Thus, it is understood to mean as "the personal, actual or physical habitation of a person, actual residence or place of abode. It signifies physical presence in a place and actual stay thereat. In this popular sense, the term means merely residence, that is, personal residence, not legal residence or domicile. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile."[379](Citations omitted)

In this jurisdiction, it is settled doctrine that for election purposes, the term "residence" contemplates "domicile."[380]

As early as 1928, when the Jones Law of 1916 was still in effect, this court noted in *Nuval v. Guray*[381] that the term residence "is so used as synonymous with domicile."[382] The 1941 case of *Gallego v. Vera,*[383] which was promulgated when the 1935 Constitution was in effect, cited *Nuval* and maintained the same position. Under the auspices of the present 1987 Constitution, this court stated in *Co v. Electoral Tribunal of the House of Representatives*[384] that "the term residence has been understood as synonymous with domicile not only under

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[379] *Id.* at 601.

[380] *Gallego v. Vera,* 73 Phil. 453, 455-456 (1941) [Per *J.* Ozaeta, *En Banc*]; *Romualdez-Marcos v. Commission on Elections,* 318 Phil. 329 (1995) [Per *J.* Kapunan, *En Banc*]; and *Co v. Electoral Tribunal of the House of Representatives,* 276 Phil. 758 (1991) [Per *J.* Gutierrez, Jr., *En Banc*].

[381] 52 Phil. 645 (1928) [Per *J.* Villareal, *En Banc*].

[382] *Id.* at 651.

[383] *Gallego v. Vera,* 73 Phil. 453 (1941) [Per *J.* Ozaeta, *En Banc*].

[384] *Co v. Electoral Tribunal of the House of Representatives,* 276 Phil. 758 (1991) [Per *J.* Gutierrez, Jr., *En Banc*].

the previous Constitutions but also under the 1987 Constitution."[385]

For the same purpose of election law, the question of residence is ***mainly one of intention.***[386] In *Gallego v. Vera*:[387]

The term "residence" as used in the election law is synonymous with "domicile," which imports not only intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. In order to acquire a domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. In other words, there must be an animus non revertendi and an animus manendi. The purpose to remain in or at the domicile of choice must be for an indefinite period of time. The acts of the person must conform with his purpose. The change of residence must be voluntary; the residence at the place chosen for the domicile must be actual; and to the fact of residence there must be added the animus manendi.[388]

Jurisprudence has established three (3) fundamental principles governing domicile: "first, that a man [or woman] must have a residence or domicile somewhere; second, that where once established it remains until a new one is acquired; and third, a man [or woman] can have but one domicile at a time."[389]

Domicile may be categorized as: "(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;

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[385] *Id.* at 792.

[386] *Limbona v. Commission on Elections,* 578 Phil. 364, 374 (2008) [Per *J.* Ynares-Santiago, *En Banc*].

[387] 73 Phil. 453 (1941) [Per *J.* Ozaeta, *En Banc*].

[388] *Id.* at 455-456, citing *Nuval v. Guray,* 52 Phil. 645 (1928) [Per *J.* Villareal, *En Banc*] and 17 Am. Jur., Section 16, pp. 599-601.

[389] *Limbona v. Commission on Elections,* 578 Phil. 364, 374 (2008) [Per *J.* Ynares-Santiago, *En Banc*]. Gender bias corrected.

and (3) domicile by operation of law, which the law, attributes to a person independently of his residence or intention."[390]

Domicile of origin is acquired at birth and continues until replaced by the acquisition of another domicile. In effect, one's domicile of origin is the domicile of one's parents or of the persons upon whom one is legally dependent at birth.[391]

Building on this concept, this court has emphasized that as a rule, "domicile of origin is not easily lost and that it is lost only when there is an actual removal or change of domicile, a bona fide intention of abandoning the former residence and establishing a new one, and acts which correspond with such purpose."[392] Consistent with this, it has held that there is a "presumption in favor of a continuance of an existing domicile."[393] Controversies adverting to loss of domicile must overcome the presumption that domicile is retained.[394] The burden of proof is, thus, on the party averring its loss.[395] This presumption is "particularly strong"[396] when what is involved is domicile of origin.[397]

The rationale for this was explained in this court's citation in *In re Eusebio v. Eusebio*:[398]

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[390] *Ugroracion, Jr. v. Commission on Elections,* 575 Phil. 253, 263 (2008) [Per. *J*. Nachura, *En Banc*].

[391] *Macalintal v. Commission on Elections,* 453 Phil. 586, 634-635 (2003) [Per *J*. Austria-Martinez, *En Banc*].

[392] *Ugroracion v. Commission on Elections,* 575 Phil. 253, 264 (2008) [Per *J*. Nachura, *En Banc*].

[393] *Sabili v. Commission on Elections,* 686 Phil. 649, 701 (2012) [Per *J*. Sereno, *En Banc*].

[394] *In re Eusebio v. Eusebio,* 100 Phil. 593, 598 (1956) [Per *J*. Concepcion, *En Banc*].

[395] *Id.*

[396] *Id*. at 598.

[397] *Id*. See also *Romualdez-Marcos v. COMELEC,* 318 Phil. 329 (1995) [Per *J*. Kapunan, *En Banc*].

[398] 100 Phil. 593 (1956) [Per *J*. Concepcion, *En Banc*].

It is often said, particularly in the English cases, that there is a stronger presumption against change from a domicile of origin than there is against other changes of domicile. 'Domicile of origin . . . differs from domicile of choice mainly in this — that is character is more enduring, its hold stronger, and less easily shaken off.' The English view was forcibly expressed in a Pennsylvania case in which Lewis, J., said: 'The attachment which every one feels for his native land is the foundation of the rule that the domicile of origin is presumed to continue until it is actually changed by acquiring a domicile elsewhere. No temporary sojourn in a foreign country will work this change.' In a federal case in Pennsylvania the same point was emphasized.[399]

Likewise, in *Faypon v. Quirino*:[400]

It finds justification in the natural desire and longing of every person to return to the place of his birth. This strong feeling of attachment to the place of one's birth must be overcome by positive proof of abandonment for another.[401]

Domicile may be lost and reacquired. Domicile of choice "is a domicile chosen by a person to replace his or her former domicile."[402] It is the domicile acquired by a person through the exercise of his or her own free will and shown by his or her specific acts and conduct.

The election of a new domicile must be shown by clear and convincing evidence that: one, there is an actual removal or an actual change of domicile; two, there is a bona fide intention of abandoning the former place of residence and establishing a new one; and three, there must be definite acts which correspond to the purpose of establishing a new domicile.[403]

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[399] *Id.* at 598-599, *citing* I BEALE, THE CONFLICTS OF LAW 129.

[400] 96 Phil. 294 (1956) [Per *J.* Padilla, Second Division).

[401] *Id.* at 300.

[402] *J.* Puno, Concurring and Dissenting Opinion in *Macalintal v. Commission on Elections,* 453 Phil. 586, 719 (2003) [Per *J.* Austria-Martinez, *En Banc*].

[403] *Romualdez-Marcos v. Commission on Elections,* 318 Phil. 329 (1995) [Per *J.* Kapunan, *En Banc*].

As mentioned, domicile by operation of law is the "domicile that the law attributes to a person independent of a person's residence or intention."[404] This court has previously stated that "a minor follows the domicile of his parents."[405] Thus, a minor's domicile of origin is replaced (by operation of law) when the minor's parents take the minor along with them in reestablishing their own domicile.

VI.B

This jurisdiction's imposition of residency as a qualification for elective public office traces its roots from the United States' own traditions relating to elections. These traditions were imparted to the Philippines as it transitioned from Spanish colonial rule to American colonial rule, evolving alongside the Philippines' passage from a colony to a commonwealth of the United States, and ultimately, to an independent state.

The fifth paragraph of Article II, Section 1 of the United States Constitution[406] sets forth the eligibility requirements for President of the United States:

> No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, *and been fourteen Years a Resident within the United States.*[407] (Emphasis supplied)

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[404] *Macalintal v. Commission on Elections,* 453 Phil. 586 (2003) [Per *J.* Austria-Martinez, *En Banc*].

[405] *Romualdez- Marcos v. Commission on Elections,* 318 Phil. 329 (1995) [Per *J.* Kapunan, *En Banc*].

[406] U.S. CONST, Art. 2, Sec. 1: " . . . No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States[.]"

[407] U.S. CONST, Art. 2, Sec. 1: " . . . No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall

The residency requirement was included in order that the People may "have a full opportunity to know [the candidate's] character and merits, and that he may have mingled in the duties, and felt the interests, and understood the principles and nourished the attachments, belonging to every citizen in a republican government."[408] Under the framework of the United States Constitution, residence was "to be understood as not an absolute inhabitancy within the United States during the whole period; but such an inhabitancy, as includes a permanent domicile in the United States."[409]

In the Philippines, residency as a requirement for elective public office was incorporated into the Jones Law of 1916, pertinent provisions of which provided:

Section 13.— Election and Qualification of Senators. That the members of the Senate of the Philippines, except as herein provided, shall be elected for terms of six and three years, as hereinafter provided, by the qualified electors of the Philippines. Each of the senatorial districts defined as hereinafter provided shall have the right to elect two senators. No person shall be an elective member of the Senate of the Philippines who is not a qualified elector and over thirty years of age, and who is not able to read and write either the Spanish or English language, and *who has not been a resident of the Philippines for at least two consecutive years and an actual resident of the senatorial district from which chosen for a period of at least one year immediately prior to his election.*

Section 14.— Election and Qualifications of Representatives. That the members of the House of Representatives shall, except as herein provided, be elected triennially by the qualified electors of the Philippines. Each of the representative districts hereinafter provided for shall have the right to elect one representative. No person shall be an elective member of the House of Representatives who is not

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any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States[.]"

[408] 3 JOSEPH STORY, *COMMENTARIES ON THE CONSTITUTION* 1472-1473 (1833).

[409] *Id.*

a qualified elector and over twenty-five years of age, and who is not able to read and write either the Spanish or English language, *and who has not been an actual resident of the district from which elected for at least one year immediately prior to his election: Provided,* That the members of the present Assembly elected on the first Tuesday in June, nineteen hundred and sixteen, shall be the members of the House of Representatives from their respective districts for the term expiring in nineteen hundred and nineteen.[410] (Emphasis supplied)

Under the Jones Law of 1916, the requirement was relevant solely to members of the Legislature as it was only the positions of Senator and Member of the House of Representatives that were susceptible to popular election. Executive power was vested in the Governor-General who was appointed by the President of the United States with the advice and the consent of the Senate of the United States.[411]

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[410] Philippine Autonomy Act of 1916, Sections 13 – Election and Qualification of Senators.That the members of the Senate of the Philippines, except as herein provided, shall be elected for terms of six and three years, as hereinafter provided, by the qualified electors of the Philippines. Each of the senatorial districts defined as hereinafter provided shall have the right to elect two senators. No person shall be an elective member of the Senate of the Philippines who is not a qualified elector and over thirty years of age, and who is not able to read and write either the Spanish or English language, and who has not been a resident of the Philippines for at least two consecutive years and an actual resident of the senatorial district from which chosen for a period of at least one year immediately prior to his election; and 14 Election and Qualifications of Representatives. That the members of the House of Representatives shall, except as herein provided, be elected triennially by the qualified electors of the Philippines. Each of the representative districts hereinafter provided for shall have the right to elect one representative. No person shall be an elective member of the House of Representatives who is not a qualified elector and over twenty-five years of age, and who is not able to read and write either the Spanish or English language, and who has not been an actual resident of the district from which elected for at least one year immediately prior to his election: *Provided,* That the members of the present Assembly elected on the first Tuesday in June, nineteen hundred and sixteen, shall be the members of the House of Representatives from their respective districts for the term expiring in nineteen hundred and nineteen.

[411] Philippine Autonomy Act of 1916, Section 21 (a).Title, appointment, residence.— That the supreme executive power shall be vested in an executive officer, whose official title shall be "The Governor-General of the Philippine

The Independence Act of 1934, otherwise known as the Tydings-McDuffie Act, paved the way for the Philippines' transition to independence. Under this Act, the 1935 Constitution was adopted. The residency requirement, which under the Jones Law already applied to legislators, was extended to the President and the Vice President. Relevant provisions of the 1935 Constitution stated:

Article VI. Section 2. No person shall be a Member of the National Assembly unless he has been five years a citizen of the Philippines, is at least thirty years of age, and, at the time of his election, a qualified elector, *and a resident of the province in which he is chosen for not less than one year immediately prior to his election.*

Article VII. Section 3. No person may be elected to the office of President or Vice-President, unless he be a natural-born citizen of the Philippines, a qualified voter, forty years of age or over, *and has been a resident of the Philippines for at least ten years immediately preceding the election.* (Emphasis supplied)

When the 1973 Constitution was adopted, the same residency requirement of 10 years was retained for the position of President. The 1973 Constitution abolished the position of Vice President. Article VII, Section 2 of the 1973 Constitution provided:

No person may be elected President unless he is a natural-born citizen of the Philippines. a registered voter, able to read and write, at least fifty years of age on the day of election for President, *and a resident of the Philippines for at least ten years immediately preceding such election.* (Emphasis supplied)

The 1973 Constitution also retained the residency requirement for those seeking to become members of the Batasang Pambansa. Article VIII, Section 4 of the 1973 Constitution provided:

No person shall be a Member of the Batasang Pambansa as a regional representative unless he is a natural-born citizen of the

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Islands." He shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and hold his office at the pleasure of the President and until his successor is chosen and qualified. The Governor-General shall reside in the Philippine Islands during his official incumbency, and maintain his office at the seat of Government.

Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, a registered voter in the Region in which he shall be elected, *and a resident thereof for a period of not less than one year immediately preceding the day of the election.*

> A sectoral representative shall be a natural-born citizen, able to read and write, and shall have such other qualifications as may be provided by law. (Emphasis supplied)

The present 1987 Constitution retains the residency requirement for elective officials both in the executive (i.e., President and Vice President) and legislative (i.e., Senators and Members of the House of Representatives) branches:

Article VI. Section 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, *and a resident of the Philippines for not less than two years immediately preceding the day of the election.*

Article VI. Section 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, *and a resident thereof for a period of not less than one year immediately preceding the day of the election.*

Article VII. Section 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, *and a resident of the Philippines for at least ten years immediately preceding such election.*

Article VII. Section 3. There shall be a Vice-President who shall have the *same qualifications and term of office and be elected with and in the same manner as the President.* He may be removed from office in the same manner as the President.

The Vice-President may be appointed as a Member of the Cabinet. Such appointment requires no confirmation. (Emphasis supplied)

Similarly, Section 39(a) of the Local Government Code[412] provides that, in order to be eligible for local elective public office, a candidate must possess the following qualifications: (1) a citizen of the Philippines; (2) 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 or she intends to be elected; (3) *a resident therein for at least one* (1) *year immediately preceding the day of the election;* and (4) able to read and write Filipino or any other local language or dialect.

VI.C

This jurisdiction's requirement of residency for elective public office seeks to ensure that a candidate is acquainted with the conditions of the community where he or she seeks

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[412] LOC. GOV. CODE, Sec. 39 provides:

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.

(b) Candidates for the position of governor, vice-governor, or member of the sangguniang panlalawigan, or mayor, vice-mayor or member of the sangguniang panlungsod of highly urbanized cities must be at least twenty-three (23) years of age on election day.

(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.

(d) Candidates for the position of member of the sangguniang panlungsod or sangguniang bayan must be at least eighteen (18) years of age on election day.

(e) Candidates for the position of punong barangay or member of the sangguniang barangay must be at least eighteen (18) years of age on election day.

(f) Candidates for the sangguniang kabataan must be at least fifteen (15) years of age but not more than twenty-one (21) years of age on election day.

to be elected and to serve.[413] It is meant "to give candidates the opportunity to be familiar with the needs, difficulties, aspirations, potentials for growth and all matters vital to the welfare of their constituencies; likewise, it enables the electorate to evaluate the office seekers' qualifications and fitness for the job they aspire for."[414] Stated differently, it seeks "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[.]"[415] As *Aquino v. Commission on Elections*[416] added, it is also a safeguard against candidates "from taking advantage of favorable circumstances existing in that community for electoral gain."[417]

The length of residency required for an elective post is commensurate with what is deemed to be the period necessary to acquire familiarity with one's intended constituency and sensitivity to their welfare.

VI.D

Both requirements for elective public office, citizenship and residency, are two distinct concepts. One is not a function of the other; the latter is not contingent on the former. Thus, the loss or acquisition of one does not necessarily result in the loss or acquisition of the other. Change of domicile as a result of acquiring citizenship elsewhere is neither inevitable nor inexorable. This is the clear import of *Japzon v. Commission on Elections,*[418] where this court dissociated domicile from citizenship by explaining that the reacquisition of one does not *ipso facto* result in the reacquisition of the other:

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[413] *Gallego v. Vera,* 73 Phil. 453, 459 (1941) (Per *J*. Ozaeta, *En Banc*].

[414] *Torayno, Sr. v. Commission on Elections,* 392 Phil. 342, 345 (2000) (Per *J*. Panganiban, *En Banc*].

[415] *Gallego v. Vera,* 73 Phil. 453, 459 (2000) [Per *J*. Ozaeta, *En Banc*].

[416] *Aquino v. Commission on Elections,* 318 Phil. 467 (1995) [Per *J*. Kapunan, *En Banc*].

[417] *Id.* at 449.

[418] 596 Phil. 354 (2009) [Per *J*. Chico-Nazario, *En Banc*].

As has already been previously discussed by this Court herein, Ty's reacquisition of his Philippine citizenship under Republic Act No. 9225 had no automatic impact or effect on his residence / domicile. He could still retain his domicile in the USA, and he *did not necessarily regain his domicile* in the Municipality of General Macarthur, Eastern Samar, Philippines. *Ty merely had the option* to again establish his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines, said place becoming his new domicile of choice. The length of his residence therein shall be determined from the time he made it his domicile of choice, and it shall not retroact to the time of his birth.[419] (Emphasis supplied)

Though distinct, residency and citizenship may both consider locus. They both have geographical aspects: citizenship entails inclusion in a political community, which generally has established territory; residency pertains to one's place of abode.

Thus, in *Caballero v. Commission on Elections,*[420] citing *Coquilla v. Commission on Elections,*[421] we noted that the acquisition of citizenship in a foreign country ***may*** result in an abandonment of domicile in the Philippines. This statement was premised on the specific observation that in Canada, permanent residence was a requirement for naturalization as a Canadian citizen. Caballero's naturalization as a Canadian citizen, therefore, also necessarily meant that he was a resident of Canada:

Petitioner was a natural born Filipino who was born and raised in Uyugan, Batanes. Thus, it could be said that he had his domicile of origin in Uyugan, Batanes. However, he later worked in Canada and became a Canadian citizen. In *Coquilla v. COMELEC* we ruled that naturalization in a foreign country ***may*** result in an abandonment of domicile in the Philippines. This holds true in petitioner's case as

[419] *Japzon v. Commission on Elections,* 596 Phil. 354, 369-370 (2009) [Per *J.* Chico-Nazario, *En Banc*].

[420] *Caballero v. Commission on Elections,* G.R. No. 209835, September 22, 2015<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/september2015/209835.pdf> [Per *J.* Peralta, *En Banc*].

[421] *Coquilla v. Commission on Elections,* 434 Phil. 861 (2002) [Per *J.* Mendoza, *En Banc*].

permanent resident status in Canada is required for the acquisition of Canadian citizenship. Hence, petitioner had effectively abandoned his domicile in the Philippines and transferred his domicile of choice in Canada. His frequent visits to Uyugan, Batanes during his vacation from work in Canada cannot be considered as waiver of such abandonment.[422] (Emphasis supplied)

VI.E

Even as this court has acknowledged that citizenship may be associated with residency, the decisive factor in determining whether a candidate has satisfied the residence requirement remains to be the unique "fact of residence."[423]

There is no shortcut to determining one's domicile. Reference to formalities or indicators may be helpful—they may serve as guideposts—but these are not conclusive. *It remains that domicile is a matter of intention.* For domicile to be lost and replaced, there must be a manifest intention to abandon one's existing domicile. If one does not manifestly establish his or her (new) domicile of choice, his or her (old) domicile of origin remains.

The primacy of intention is settled. In *Limbona v. Commission on Elections,*[424] this court stated in no uncertain terms that "for purposes of election law, the question [of] residence is *mainly one of intention.*"[425]

This primacy is equally evident in the requisites for acquisition of domicile of choice (and concurrent loss of one's old domicile):

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[422] *Caballero v. Commission on Elections,* G.R. No. 209835, September 22, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/september2015/209835.pdf> [Per *J.* Peralta, *En Banc*].

[423] *Romualdez-Marcos v. Commission on Elections,* 318 Phil. 329 (1995) [Per *J.* Kapunan, *En Banc*].

[424] 578 Phil. 364 (2008) [Per *J.* Ynares-Santiago, *En Banc*].

[425] *Limbona v. COMELEC,* 578 Phil. 364, 374 (2008) [Per *J.* Ynares-Santiago, *En Banc*].

In order to acquire a domicile by choice, these must concur: (1) residence or bodily presence in the new locality, (2) an intention to remain there[in], and (3) an intention to abandon the old domicile.[426]

These requisites were refined in *Romualdez-Marcos:*[427]

[D]omicile of origin is not easily lost. To successfully effect a change of domicile, one must demonstrate:

1. An actual removal or an actual change of domicile;
2. A bona fide intention of abandoning the former place of residence and establishing a new one; and
3. Acts which correspond with the purpose.[428]

Intention, however, is a state of mind. It can only be ascertained through overt acts. Ascertaining the second requirement—a bona fide intention to abandon and replace one's domicile with another—further requires an evaluation of the person's "acts, activities and utterances."[429] *Romualdez-Marcos'* inclusion of the third requirement demonstrates this; bona fide intention cannot stand alone, it must be accompanied by and attested to by "[a]cts which correspond with the purpose."[430]

Examining a person's "acts, activities and utterances"[431] requires a nuanced approach. It demands a consideration of context. This court has made it eminently clear that there is no expedient solution as to how this is determined: "There is no

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[426] *Gallego v. Vera,* 73 Phil. 453, 456 (1941) [Per *J.* Ozaeta, *En Banc*].

[427] 318 Phil. 329 (1995) [Per *J.* Kapunan, *En Banc*].

[428] *Id.*

[429] *Faypon v. Quirino,* 96 Phil. 294, 298 (1956) [Per *J.* Padilla, Second Division].

[430] *Romualdez-Marcos v. COMELEC,* 318 Phil. 329 (1995) [Per *J.* Kapunan, *En Banc*].

[431] *Faypon v. Quirino,* 96 Phil. 294, 298 (1956) [Per *J.* Padilla, Second Division].

hard and fast rule by which to determine where a person actually resides."[432] Domicile is ultimately a factual matter and is not so easily resolved by mere reference to whether formalities have been satisfied or whether preconceived *a priori* indicators are attendant.

The better considered cases delved deeply and analytically into the overt acts of the person whose domicile is under scrutiny.

For instance, in *Co v. Electoral Tribunal of the House of Representatives,*[433] respondent Jose Ong, Jr. was proclaimed by the Commission on Elections as the duly elected Representative of the Second Congressional District of Samar. Petitioner Antonio Co protested Ong's proclamation, but the House of Representatives Electoral Tribunal upheld his election. This court sustained the ruling of the House of Representatives Electoral Tribunal. Adverting to the concept of *animus revertendi,* this court noted that Ong's prolonged stay in Manila to study and to practice his profession as an accountant was not tantamount to abandoning his domicile of origin in Laoang, Samar. Instead, the court appreciated his many trips back to Laoang, Samar as indicative of animus revertendi:

> [T]he private respondent stayed in Manila for the purpose of finishing his studies and later to practice his profession. There was no intention to abandon the residence in Laoang, Samar. On the contrary, the periodical journeys made to his home province reveal that he always had the animus revertendi.[434]

In *Mitra v. Commission on Elections,*[435] this court considered as grave abuse of discretion the Commission on Elections' use of "highly subjective non-legal standards" in determining whether an individual has established a new domecile.[436]

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[432] *Limbona v. COMELEC,* 578 Phil. 364, 374 (2008) [Per *J*. Ynares-Santiago, *En Banc*]

[433] 276 Phil. 758 (1991) [Per *J*. Gutierrez, Jr., *En Banc*].

[434] *Id.* at 794.

[435] 636 Phil. 753 (2010) [Per *J*. Brion, *En Banc*].

[436] See *Mitra v. COMELEC,* 636 Phil. 753 (2010) [Per *J*. Brion, *En Banc*].

To hearken to *Japzon,* naturalization has no automatic effect on domicile. One who changes his or her citizenship merely acquires an option to establish his or her new domicile of choice.[437]

Romualdez-Marcos[438] emphasized that "it is the fact of residence, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the constitution's residency qualification requirement."[439] A singular statement in a prior certificate of candidacy should "not, however, be allowed to negate the fact of residence . . . if such fact were established by means more convincing than a mere entry on a piece of paper."[440]

Likewise, this court has held that being a registered voter in a specific district does not *ipso facto* mean that a candidate must have been domiciled in that district, thereby precluding domicile in another district.[441] So too, it has been held that the exercise of the right of suffrage does not sufficiently establish election of residency in a specific place, although it engenders a strong presumption of residence.[442]

In appropriate cases, this court has not shied away from laboring to scrutinize attendant facts. This court's pronouncements in *Dumpit-Michelena v. Commission on Elections*[443] hinged on the observation that a beach house can hardly be considered a place of residence as it is at most a place of temporary

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[437] 596 Phil. 354 (2009) [Per *J.* Chico-Nazario, *En Banc*].

[438] 318 Phil. 329 (1995) [Per *J.* Kapunan, *En Banc*].

[439] *Id.*

[440] *Id.*

[441] See *Perez v. COMELEC,* 375 Phil. 1106 (1999) [Per *J.* Mendoza, *En Banc*].

[442] See *Pundaodaya v. COMELEC,* 616 Phil. 167 (2009) [Per *J.* Ynares-Santiago, *En Banc*].

[443] See *Dumpit-Michelena v. COMELEC,* 511 Phil. 720 (2005) [Per *J.* Carpio, *En Banc*].

relaxation.[444] In *Sabili v. Commission on Elections,*[445] this court noted that apart from the presence of a place (i.e., a house and lot) where one can actually live in, actual physical presence may also be established by "affidavits of various person . . . and the Certification of [the] barangay captain."[446]

Even less does the residence requirement justify reference to misplaced, inordinate standards. A person is not prohibited from travelling abroad lest his or her domicile be considered lost. This court has clarified that, if at all, return to the Philippines after travelling abroad affirms one's animus manendi and animus revertendi.[447] So too, this court has emphasized that the establishment of a new domicile does not require one to be in that abode 24 hours a day, seven (7) days a week.[448] It has been stressed that ultimately, what matters is the candidate's demonstration of intention to establish domicile through clear acts.

Blanket reliance on pre-determined indicators of what suffices to establish or retain domicile is misguided. Each case arises from a unique context. A nuanced, context-based examination of each case is imperative.

VI.F

Ideally, one can point to a singular definitive moment when new residence is acquired and previous residence is simultaneously lost. Good sense, however, dictates that this situation is hardly availing. This is especially true when a person

[444] See *Dumpit-Michelena v. COMELEC,* 511 Phil. 720 (2005) [Per *J.* Carpio, *En Banc*].

[445] *Sabili v. Commission on Elections,* 686 Phil. 649 (2012) [Per *J.* Sereno, *En Banc*].

[446] *Id.*

[447] See *Japzon v. COMELEC,* 596 Phil. 354 (2009) [Per *J.* Chico-Nazario, *En Banc*].

[448] *Jalover v. Osmeña,* G.R. No. 209286, September 23, 2014, 736 SCRA 267, 284 [Per *J.* Brion, *En Banc*], citing *Fernandez v. HRET,* G.R. No. 187478, December 21, 2009, 608 SCRA 733.

is not acting out of a premeditated design to establish formalistic compliance with legal requirements.

Thus, this court has acknowledged that establishing residence may be an "incremental process"[449] that may last for an extended period. This highlights the factual nature of residency questions. Acknowledging that establishing residence may be effected through a step-by-step process requires a careful examination of the acts of the person whose residence is in question.

This court has expressly acknowledged that "initial"[450] and "preparatory moves"[451] count. Thus, residence is deemed acquired (or changed) as soon as these moves are established. Equally vital are the context in which he or she accomplished such actions and even seemingly innocuous nuances that could have actually tilted the course of that person's actions.

This court's Decision in *Mitra*[452] illustrates how the acquisition or establishment of residence may transpire through an incremental process. This court agreed with the position of gubernatorial candidate Abraham Mitra that he had established a new domicile in Aborlan, Palawan as early as 2008. This court, thus, disagreed with the Commission on Elections' observation that "the Maligaya Feedmill building could not have been Mitra's residence because it is cold and utterly devoid of any indication of Mitra's personality and that it lacks loving attention and details inherent in every home to make it one's residence."[453]

The following actions of Mitra were instead particularly notable: in January 2008, he "started a pineapple growing project

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[449] *Mitra v. Commission on Elections,* 636 Phil. 753-815 (2010) [Per *J.* Brion, *En Banc*).

[450] *Id.*

[451] *Id.*

[452] *Id.*

[453] *Id*.

in a rented farmland near Maligaya Feedmill and Farm located in Barangay lsaub, Aborlan";[454] a month later, he "leased the residential portion of the said Maligaya Feedmill."[455] In March 2008, he "started to occupy and reside in said premises."[456]

Holding that the Commission on Elections committed grave abuse of discretion in concluding that Mitra failed to satisfy the residence requirement to qualify him as a candidate for Governor of Palawan, this court explained:

> The respondents significantly ask us in this case to adopt the same faulty approach of using subjective norms, as they now argue that given his stature as a member of the prominent Mitra clan of Palawan, and as a three term congressman, it is highly incredible that a small room in a feed mill has served as his residence since 2008.
>
> We reject this suggested approach outright for the same reason we condemned the COMELEC's use of subjective non-legal standards. *Mitra's feed mill dwelling cannot be considered in isolation* and separately from the circumstances of his transfer of residence, specifically, his expressed intent to transfer to a residence outside of Puerto Princesa City to make him eligible to run for a provincial position; *his preparatory moves starting in early 2008; his initial transfer through a leased dwelling;* the purchase of a lot for his permanent home; and the construction of a house in this lot that, parenthetically, is adjacent to the premises he leased pending the completion of his house. *These incremental moves do not offend reason at all,* in the way that the COMELEC's highly subjective non-legal standards do.[457] (Emphasis supplied, citations omitted)

Sabili v. Commission on Elections[458] similarly acknowledged that establishing residence may be an incremental process. In sustaining petitioner Meynardo Sabili' s position that he

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[454] *Id.* at 772.

[455] *Id.*

[456] *Id.*

[457] *Id.* at 789.

[458] *Sabili v. Commission on Elections,* 686 Phil. 649 (2012) [Per *J.* Sereno, *En Banc].*

has been a resident of Lipa City for two (2) years and eight (8) months leading to the May 2010 Elections, thereby qualifying him to run for Mayor of Lipa City, this court explained:

> [A] transfer of domicile/residence need not be completed in one single instance. Thus, in *Mitra v. Commission on Elections,* where the evidence showed that in 2008, petitioner Mitra had leased a small room at Maligaya Feedmills located in Aborlan and, in 2009 purchased in the same locality a lot where he began constructing his house, we recognized that petitioner "transferred by incremental process to Aborlan beginning 2008 and concluded his transfer in early 2009" and thus, he transferred his residence from Puerto Princesa City to Aborlan within the period required by law. We cannot treat the transfer to the Pinagtong-ulan house any less than we did Mitra's transfer to the Maligaya Feedmills room.[459]

In approaching residence questions, therefore, what is crucial is a comprehensive or holistic, rather than a myopic or isolationist, appreciation of the facts. Not only must all the pertinent facts be considered, so too must be their relationships and synergies. To do otherwise would be to render lip service to the basic imperative of an exacting consideration of facts in residence controversies.

VI.G

Applying these doctrinal principles, petitioner satisfied the residence requirement provided in Article VII, Section 2 of the 1987 Constitution. It was grave abuse of discretion for the Commission on Elections to hold that she committed a material misrepresentation in her Certificate of Candidacy for President.

The Commission on Elections committed a grievous error when it invoked the date petitioner's Philippine citizenship was reacquired (i.e., July 7, 2006) as the earliest possible point when she could have reestablished residence in the Philippines. This erroneous premise was the basis for summarily setting aside all the evidence submitted by petitioner which pointed to the reestablishment of her residence at any point prior to July 7,

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[459] *Id.* at 685.

2006. Thus, by this faulty premise, the Commission on Elections justified the evasion of its legally enjoined and positive duty to treat petitioner's residence controversy as a factual matter and to embark on a meticulous and comprehensive consideration of the evidence.

At the onset, the Commission on Elections flat-out precluded the timely reestablishment of petitioner's residence in the Philippines because it held that "the earliest possible date that the respondent could have re-established her residence in the Philippines is when she reacquired her Filipino Citizenship on July 2006."[460] In doing so, it relied on this court's Decisions in *Coquillia v. Commission on Elections,*[461] *Japzon v. Commission on Elections,*[462] and *Caballero v. Commission on Elections.*[463]

In its assailed December 23, 2015 Resolution denying petitioner's Motion for Reconsideration with respect to the Petition filed by Elamparo, the Commission on Elections explained:

> Foremost, the Commission is not convinced that the Second Division "chose to rely on a single piece of evidence" - respondent's 2013 COC, to the exclusion of all others, in resolving the issue of residence. It does not persuade us that as the Second Division "entirely omitted" to mention the evidence of respondent enumerated in Respondent's Motion, it did not consider them at all. A judge is not bound to mention in his decision every bit of evidence on record. He is presumed to have regularly discharged his duty to consider and weigh all evidence formally offered by the parties which are admissible.

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[460] *Rollo* (G.R. No. 221697, Vol. V), p. 3667, COMELEC Comment.

[461] 434 Phil. 861 (2002) [Per *J.* Mendoza, *En Banc*]

[462] See *Japzon v. COMELEC,* 596 Phil. 354 (2009) [Per *J.* Chico-Nazario, *En Banc*]

[463] *Caballero v. COMELEC,* G.R. No. 209835, September 22, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/september2015/209835.pdf> [Per *J.* Peralta, *En Banc*].

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To indulge respondent, however, the Commission now looks, one by one on the pieces of evidence allegedly ignored by the Second Division which are, along with their purpose for offer, are enumerated in Respondent's Motion. Unfortunately, an examination of these evidence leads to but one crucial and fatal conclusion: that all of them were executed before July 2006, and/or are offered to prove that she can reckon her residency before July 2006 - the date of reacquisition by respondent of her Filipino citizenship. This is fatal because, following the cases of Coquilla v. COMELEC, Japzon v. COMELEC, and Caballero v. COMELEC, the earliest possible date that respondent could have re-established her residence in the Philippines is when she re-acquired her Filipino Citizenship on July 2006. Yes, on this finding, we affirm the Second Division for the reasons that follow.[464]

In its assailed December 23, 2015 Resolution denying petitioner's Motion for Reconsideration with respect to the petitions filed by Tatad, Contreras, and Valdez, the Commission on Elections explained:

As a US citizen and a foreigner, Respondent was allowed only temporary residence in the Philippines, Respondent's alien citizenship remained a legal impediment which prevented her from establishing her domicile in the Philippines. To establish permanent residence in the Philippines, it was necessary for Respondent to secure prior authorization from the Bureau of Immigration and Deportation ""BID"), such as in the form of a permanent resident visa issued by the Republic of the Philippines showing that she was authorized to permanently reside in the Philippines. This is the rule enunciated by the Supreme Court in the case of *Coquilla vs. Commission on Elections et al.*[465]

It is this dogmatic reliance on formal preconceived indicators that this court has repeatedly decried is grave abuse of discretion. Worse, the Commission on Elections relied on the wrong formal indicators of residence.

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[464] *Rollo* (G.R. No. 221697, Vol. 1), pp. 236-237, Resolution of the COMELEC *En Banc* dated December 23, 2015.

[465] *Rollo* (G.R. Nos. 221698-221700, Vol. I), pp. 372-373, Resolution of the COMELEC *En Banc* dated December 23, 2015.

The Commission on Elections ignored the basic distinction between citizenship and residence. Likewise, it erroneously considered a visa—a mere permission to enter—as a badge of residence, and equated an immigrant with one who is domiciled in the Philippines. So too, the Commission on Elections' indiscriminate reliance on *Coquilla, Japzon,* and *Caballero* indicates a failure in properly appreciating the factual nuances of those cases as against those of this case.

Citizenship and residency are distinct, mutually exclusive concepts. One is not a function of the other. Residence is not necessarily contingent on citizenship. The loss or acquisition of one does not mean the automatic loss or acquisition of the other. Change of domicile as a result of acquiring citizenship elsewhere is neither inevitable nor inexorable.

Japzon v. Commission on Elections[466] could not have been more emphatic: "[R]eacquisition of . . . Philippine citizenship . . . [has] no automatic impact or effect on residence/domicile."[467]

Residence, as does citizenship, entreats a consideration of locus or geography. It is true that they may be related or connected, but association is different from causation.

Caballero v. Commission on Elections[468] was extremely careful in its syntax: "naturalization in a foreign country ***may*** result in an abandonment of domicile in the Philippines."[469] The use of the word "may" reveals this court's recognition that citizenship is not conclusive of domicile. In controversies relating to a candidate's residence, citizenship may be considered and it may engender implications, but these implications are never to be considered infallible.

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[466] 596 Phil. 354 (2009) [Per *J.* Chico-Nazario, *En Banc*].

[467] *Id.* at 369-370.

[468] *Caballero v. Commission on Elections,* G.R. No. 209835, September 22, 2015, http://sc.judiciary.gov.ph/pdf/web/viewer.html?fiIe=/jurisprudence/2015/september2015/209835.pdf [Per *J.* Peralta, *En Banc*).

[469] *Id.*

VI.H

As with citizenship, non-possession of a permanent resident or immigrant visa does not negate residency for election purposes.

A visa is but a travel document given by the issuing country to travelers for purposes of border control.[470] Holders of a visa are "conditionally authorised to enter or leave a territory for which it was issued, subject to permission of an immigration official at the time of actual entry."[471] Conditions of entry usually include date of validity, period of stay, number of allowed entry, and territory covered.[472]

In this jurisdiction, visas are issued by a consular officer of the Philippine Embassy or Consulate as a permit to go to the Philippines and seek permission to enter the country at its port of entry. The decision to admit or disallow entry into the country belongs to immigration authorities at the port of entry.[473] Hence, the mere issuance of a visa does not denote actual admission into, let alone prolonged stay, i.e., domicile, in the country.

The statutory definition of "immigrant," as provided in Section 50 (j) of Commonwealth Act No. 613, otherwise known as the Philippine Immigration Act of 1940, sustains the distinction between an immigrant and one who is actually domiciled in the Philippines:

SEC. 50. As used in this Act:–

x x x x x x x x x

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[470] *See* Department of Foreign Affairs, Visa Guidelines Requirements <http://www.dfa.gov.ph/guidelines- requirements> (visited March 7, 2016).

[471] RONGXING GUO, *CROSS-BORDER MANAGEMENT: THEORY, METHOD, AND APPLICATION* 368(2015).

[472] *Id.*

[473] *See* Department of Foreign Affairs, Visa Guidelines/Requirements <http://www.dfa.gov.ph/guidelines-requirements> (visited March 7, 2016).

> (j) The term "immigrant" means any alien *departing from* any place outside the Philippines *destined for* the Philippines, other than a nonimmigrant. (Emphasis supplied)

The definition's operative terms are contained in the phrases "departing from" and "destined for." These phrases, which are but different sides of the same coin, attest to how an immigrant is not necessarily one who establishes domicile in the Philippines, but merely one who travels from a foreign country into the Philippines. ***As with a visa, the pivotal consideration is entry into, not permanent stay, in the Philippines.***[474]

In fact, a former Filipino may obtain an immigrant visa without even intending to reside or actually residing in the Philippines. As petitioner pointed out:

> 5.289.5. Thus, a former Filipino who has previously been allowed entry into the Philippines may secure a "non-quota immigrant visa" provided he or she submits the following documentary requirements: (a) "Letter request addressed to the Commissioner;" (b) "Duly accomplished CGAF (BI Form CGAF-001-Rev 2);" (c) "Photocopy

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[474] Section 50 (j) references or distinguishes an "immigrant" from a "nonimmigrant." This may tempt one into concluding that an "immigrant" must be exclusively or wholly equated with a "permanent resident." However, the concept of a nonimmigrant, provided in Section 9, also encompasses returning permanent residents. Thus, a line cannot be drawn between "immigrants" and "non immigrants" that exclusively and wholly equates an "immigrant" with a "permanent resident." Section 9(e) of the Philippine Immigration Act of 1940 states:

> SEC. 9. Aliens departing from any place outside the Philippines, who are otherwise admissible and who qualify within one of the following categories, may be admitted as nonimmigrants:
>
> x x x x x x x x x
>
> (e) A person previously lawfully admitted into the Philippines for permanent residence, who is returning from a temporary visit abroad to an unrelinquished residence in the Philippines; and
>
> x x x x x x x x x

of passport bio-page and latest admission with valid authorized stay;" (d) "Birth Certificate of the applicant;" (e) "Valid National Bureau of Investigation [NBI] Clearance, if application is filed six (6) months or more from the date of first arrival in the Philippines;" (f) "BI Clearance Certificate;" and (g) "Original or certified true copy of Bureau of Quarantine Medical Clearance, if applicant is a national of any of the countries listed under Annex 'A' of Immigration Operations order No. SBM-14-059-A who arrived in the Philippines on or after June 2014."

5.289.6. *None of the 7 documentary requirements listed above would indicate whether the applicant intends to make the Philippines his or her "permanent home." None of these documents would show whether he or she, indeed, necessarily intends to abandon his or her foreign domicile.* Indeed, a foreigner may want to be an permanent resident here, but would always want to return to his or her home country, which intent to return is determinative of what domicile is under election law.

5.289.7. *It is highly probable, therefore, for a former Filipino to secure an "immigrant" visa, without really being a "resident" of the Philippines,* as the term is understood in election law.[475] (Emphasis supplied)

The Commission on Elections insists that petitioner should have obtained a visa that supposedly evidences permanent resident status. However, it failed to acknowledge that petitioner did not even need a visa to accomplish the purpose that a visa serves, that is, to enter the Philippines.

Beginning May 24, 2005, petitioner's entries to the Philippines were through the visa-free Balikbayan Program provided for by Republic Act No. 6768, as amended by Republic Act No. 9174. Section 3(c) of Republic Act No. 6768, as amended, provides:

SEC. 3 Benefits and Privileges of the Balikbayan. - The balikbayan and his or her family shall be entitled to the following benefits and privileges:

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[475] *Rollo* (G.R. No. 221697, Vol. VI), pp. 4064-4065, Petitioner's Memorandum, *citing* BI Form V-I-O11- Rev, Conversion to Non-Quota Immigrant Visa of a Former Filipino Citizen Naturalize in a Foreign Country (taken from www.immigration.gov.ph).

x x x x x x x x x

(c) Visa-free entry to the Philippines for a period of one (1) year for foreign passport holders, with the exception of restricted nationals;

Petitioner falls within the definition of a balikbayan, under Section 2(a) of Republic Act No. 6768, as amended.[476] She is a "Filipino citizen . . . who had been naturalized in a foreign country [who came] or return[ed] to the Philippines."[477] She was, thus, well-capacitated to benefit from the Balikbayan Program.

The Balikbayan Program is not only a scheme that dispenses with the need for visas; it is a system that affirmatively works to enable balikbayans to reintegrate themselves into the Philippines. Alternatively stated, it works to enable balikbayans to reestablish domicile in the Philippines. Pertinent provisions of Republic Act No. 6768, as amended, spell out a "Kabuhayan Program":

Section 1. Balikbayan Program. - ...

The program shall include a kabuhayan shopping privilege allowing tax-exempt purchase of livelihood tools providing the opportunity to avail of the necessary training to enable the balikbayan to become economically self-reliant members of society upon their return to the country. The program shall likewise showcase competitive and outstanding Filipino-made products.

Sec. 6. Training Programs. - The Department of Labor and Employment (DOLE) through the OWWA, in coordination with the Technology and Livelihood Resource Center (TLRC), Technical Education and

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[476] Rep. Act No. 6768 (1989), Sec. 2 provides:

SEC. 2. Definition of Terms.- For purposes of this Act:

(a) The term "balikbayan" shall mean a Filipino citizen who has been continously out of the Philippines for a period of at least one (1) year, a Filipino overseas worker, or former Filipino citizen and his or her family, as this term is defined hereunder, who had been naturalized in a foreign country and comes or returns to the Philippines.

[477] Rep. Act No. 6768 (1989), Sec. 2(a), as amended.

Skills Development Authority (TESDA), livelihood corporation and other concerned government agencies, shall provide the necessary entrepreneurial training and livelihood skills programs and marketing assistance to a balikbayan, including his or her immediate family members, who shall avail of the kabuhayan program in accordance with the existing rules on the government's reintegration program.

In the case of non-OFW balikbayan, the Department of Tourism shall make the necessary arrangement with the TLRC and other training institutions for possible livelihood training.

Enabling balikbayans to establish their livelihood in the Philippines, Republic Act No. 6768, as amended, can have as a logical result their reestablishment here of their permanent abodes.

VI.I

The Commission on Elections' erroneous reliance on *Coquilla, Japzon,* and *Caballero* demonstrates its evasion of its duty to engage in the required meticulous factual analysis. A closer examination of these cases as well as of a similar case that private respondents Elamparo and Valdez invoked in the February 16, 2016 oral arguments—*Reyes v. Commission on Elections*[478]—reveals that the conclusions in those cases were reached not because of a practically spellbound invocation of citizenship.

Rather, they were reached because: first, the persons whose residence were in question failed to present any evidence at all of reestablishing residence of choice in the Philippines before their repatriation was effected (or if they did, their evidence were deemed negligible); and second, the countervailing evidence presented against them demonstrated that they failed to reestablish residence ahead of their repatriation.

Coquilla involved only two (2) pieces of evidence in favor of Teodulo Coquilla:[479] first, his Community Tax Certificate;

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[478] G.R. No. 207264, October 22, 2013, 708 SCRA 197 [Per *J.* Perez, *En Banc*],

[479] *Coquilla v. COMELEC,* 434 Phil. 861, 875 (2002) [Per *J.* Mendoza, *En Banc*].

and second, his own *verbal* statements regarding his intent to run for public office. With only these in support of his cause, the more reasonable conclusion was that Coquilla did not intend to return for good to the Philippines, but only to temporarily vacation.[480]

Japzon was not even about reestablishing residence ahead of reacquiring natural-born citizenship pursuant to Republic Act No. 9225. *Japzon* even militates against the Commission on Elections' position as it expressly stated that "reacquisition of his Philippine citizenship under Republic Act No. 9225 had no automatic impact or effect on [the candidate's] residence/ domicile"[481] and, thus, should be taken as an indicator of when residence may or may not be reckoned.

In *Reyes,* Regina Ongsiako-Reyes argued that she never lost her domicile of origin (i.e., Boac, Marinduque).[482] As to her claim that she satisfied the residence requirement, this court approvingly quoted the following observations of the Commission on Elections First Division:

> The only proof presented by [petitioner] to show that she has met the one-year residency requirement of the law and never abandoned her domicile of origin in Boac, Marinduque is her claim that she served as Provincial Administrator of the province from January 18, 2011 to July 13, 2011. But such fact alone is not sufficient to prove her one-year residency. For, [petitioner] has never regained her domicile in Marinduque as she remains to be an American citizen. No amount of her stay in the said locality can substitute the fact that she has not abandoned her domicile of choice in the USA.[483] (Citations omitted)

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[480] *Id.*

[481] *Japzon v. COMELEC,* 596 Phil. 354, 369-370 (2009) [Per *J.* Chico-Nazario, *En Banc*].

[482] *Reyes v. COMELEC,* G.R. No. 207264, June 25, 2013, 699 SCRA 522 [Per *J.* Perez, *En Banc*].

[483] *Id.* at 543.

Caballero cited *Coquilla* and, as previously discussed, took pains to dissociate residence from citizenship. In any case, Rogelio Batin Caballero, candidate for Mayor of Uyugan, Batanes, himself admitted that he only had an actual stay of nine (9) months in Uyugan, Batanes prior to the 2013 Elections, albeit claiming that it was substantial compliance with the Local Government Code's one-year residence requirement.[484]

In contrast with *Coquilla, Japzon, Reyes,* and *Caballero,* petitioner here presented a plethora of evidence attesting to the reestablishment of her domicile well ahead of her reacquisition of Philippine citizenship on July 7, 2006:

(1) United States Passport No. 017037793 issued to petitioner on December 18, 2001, indicating that she travelled back to the Philippines on May 24, 2005, consisting of 13 pages

(2) E-mail exchanges on various dates from March 18, 2005 to September 29, 2006 between petitioner and her husband and representatives of Victory Van Corporation, and National Veterinary Quarantine Service of the Bureau of Animal Industry of the Philippines, consisting of 23 pages

(3) Official Transcript of Records of Brian Daniel Poe Llamanzares, issued by the Beacon School, consisting of one (1) page

(4) Certification issued by the Registrar of La Salle Green Hills dated April 15, 2015, consisting of one (1) page

(5) Elementary Pupil's Permanent Record for Hanna Mackenzie Llamanzares, issued by Assumption College, consisting of two (2) pages

(6) Secondary Student's Permanent Record for Hanna Mackenzie Llamanzares, issued by Assumption College, consisting of two (2) pages

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[484] *Caballero v. Commission on Elections,* G.R. No. 209835, September 22, 2015<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/september2015/209835.pdf> [Per *J.* Peralta, *En Banc*].

(7) Certificate of Attendance dated April 8, 2015, issued by the Directress of the Learning Connection, Ms. Julie Pascual Peñaloza, consisting of one (1) page

(8) Certification dated April 14, 2015 issued by the Directress of the Green Meadows Learning Center, Ms. Anna Villaluna- Reyes, consisting of one (1) page

(9) Elementary Pupil's Permanent Record for JesusaAnika Carolina Llamanzares, issued by Assumption College, consisting of one (1) page

(10) Identification Card, issued by the Bureau of Internal Revenue to petitioner on July 22, 2005, consisting of one (1) page

(11) Condominium Certificate of Title No. 11985-R covering Unit 7F of One Wilson Place, issued by the Registry of Deeds of San Juan City on February 20, 2006, consisting of four (4) pages

(12) Condominium Certificate of Title No. 11986-R covering the parking slot for Unit 7F of One Wilson Place, issued by the Registry of Deeds of San Juan City on February 20, 2006, consisting of two (2) pages

(13) Declaration of Real Property No. 96-39721 covering Unit 7F of One Wilson Place, issued by the Office of the City Assessor of San Juan City on April 25, 2006, consisting of one (1) page

(14) Declaration of Real Property No. 96-39722 covering the parking slot of Unit 7F of One Wilson Place, issued by the Office of the City Assessor of San Juan City on April 25, 2006, consisting of one page

(15) Receipt No. 8217172, issued by the Salvation Army on February 23, 2006, consisting of one (1) page

(16) Receipt No. 8220421, issued by the Salvation Army on February 23, 2006, consisting of one (1) page

(17) E-mail from the U.S.A. Postal Service, sent on March 28, 2006 to petitioner's husband, confirming the latter's submission of a request for change of address to the U.S.A. Postal Service, consisting of one (1) page

(18) Final Statement issued by the First American Title Insurance Company, which indicates as Settlement Date: "04-27/2006", consisting of two (2) pages

(19) Transfer Certificate of Title No. 290260 covering a 509-square meter lot at No. 106, Rodeo Drive, Corinthian Hills, Barangay Ugong Norte, Quezon City, issued by the Registry of Deeds of Quezon City on June 1, 2006, consisting of four (4) pages

(20) Questionnaire Information for Determining Possible Loss of U.S. Citizenship issued by the U.S. Department of State, Bureau of Consular Affairs, accomplished by petitioner on July 12, 2011

(21) Affidavit of Jesusa Sonora Poe dated November 8, 2015, consisting of three (3) pages

(22) Affidavit of Teodoro Llamanzares dated November 8, 2015, consisting of three (3) pages[485]

The Commission on Elections chose to ignore all these pieces of evidence showing reestablishment of residence prior to July 7, 2006 by the mere invocation of petitioner's then status as one who has not yet reacquired Philippine citizenship.The Commission on Elections relied on a manifestly faulty premise to justify its position that all of petitioner's evidence relating to the period before July 7, 2006 deserved no consideration. Clearly, this was grave abuse of discretion on the part of the Commission on Elections in two (2) respects: first, in using citizenship as a shortcut; and second, in evading its positive duty to scrutinize the facts and evidence.

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[485] *Rollo* (G.R. Nos. 221698-221700), pp. 151-157, Petition.

VI.J

As with *Mitra* and *Sabili,* petitioner has shown by substantial evidence that the incremental process of establishing her residence in the Philippines commenced on May 24, 2005 and was completed in the latter part of April 2006. The Constitution requires that a candidate for tje May 9, 2016[486] Presidential Elections must establish residency at least by May 9, 2006.

Her evidence satisfies the three (3) requisites for establishing domicile of choice in the Philippines:

First, bodily presence in the Philippines is demonstrated by her actual arrival in the country on May 24, 2005.

Second, *animus manendi* or intent to remain in the Philippines is demonstrated by:

(1) Petitioner's travel records, which indicate that even as she could momentarily leave for a trip abroad, she nevertheless constantly returned to the Philippines;

(2) Affidavit of Jesusa Sonora Poe, which attests to how, upon their arrival in the Philippines on May 24, 2005, petitioner and her children first lived with her at 23 Lincoln St., Greenhills West, San Juan City, thereby requiring a change in the living arrangements at her own residence;

(3) The school records of petitioner's children, which prove that they have been continuously attending Philippine schools beginning in June 2005;

(4) Petitioner's Tax Identification Number Identification Card, which indicates that "shortly after her return in May 2005, she considered herself a taxable resident and submitted herself to the Philippines' tax jurisdiction";[487]and

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[486] CONST., Art. VII, Sec. 4, par. 3 states: "Unless otherwise provided by law, the regular election for President and Vice President shall be held on the second Monday of May."

[487] *Rollo* (G.R. No. 221697, Vol. VI), p. 4016, Petitioner's Memorandum.

(5) Two condominium certificates of title (one for Unit 7F, One Wilson Place, and another for a corresponding parking slot which were both purchased in early 2005), and along with corresponding Declarations of Real Property Tax Declarations which establish intent to permanently reside in the Philippines.

Lastly, *animus non revertendi* or intent to abandon domicile in the United States is demonstrated by:

(1) Affidavit of Jesusa Sonora Poe, which "attests to, among others, the reasons which prompted [petitioner] to leave the [United States] and return permanently to the Phillppines";[488]

(2) Affidavit of petitioner's husband, which affirms petitioner's explanations of how they made arrangements for their relocation to the Philippines as early as March 2005;

(3) Petitioner and her husband's documented inquiries and exchanges with property movers as regards the transfer of their effects and belongings from the United States to the Philippines, which affirms their intent to permanently leave the United States as early as March 2005;

(4) The actual relocation and transfer of effects and belongings, "which were packed and collected for storage and transport to the Philippines on February and April 2006";[489]

(5) Petitioner's husband's act of informing the United States Postal Service that he and his family are abandoning their address in the United States as of March 2006;

(6) Petitioner and her husband's sale of their family home in the United States on April 27, 2006;

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[488] *Id*. at 4017.

[489] *Id*.

(7) Petitioner's husband's resignation from his work in the United States effective April 2006; and

(8) Petitioner's husband's actual return to the Philippines on May 4, 2006.

With due recognition to petitioner's initial and preparatory moves (as was done in *Mitra* and *Sabili),* it is clear that petitioner's residence in the Philippines was established as early as May 24, 2005.

Nevertheless, even if we are to depart from *Mitra* and *Sabili* and insist on reckoning the reestablishment of residence only at that point when all of its steps have been consummated, it remains that petitioner has proven that she has satisfied Article VII, Section 2 of the 1987 Constitution's ten-year residence requirement.

VI.K

The evidence relied upon by the Commission on Elections fail to controvert the timely reestablishment of petitioner's domicile.

Insisting that petitioner failed to timely reestablish residence, the Commission on Elections underscores three (3) facts: first, her husband, Teodoro Llamanzares, "remained a resident of the US in May 2005, where he kept and retained his employment";[490] second, petitioner, using her United States passport, supposedly travelled frequently to the United States from May 2005 to July 2006; and third, a statement in the Certificate of Candidacy she filed for Senator indicating that she was a resident of the Philippines for only six (6) years and six (6) months as of May 13, 2013, which must mean that: first, by May 9, 2016, she shall have been a resident of the Philippines for a cumulative period of nine (9) years and six (6) months; and second, she started to be a resident of the Philippines only in November 2006.

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[490] *Rollo* (G.R. Nos. 221698-221700), p. 254, COMELEC First Division Resolution (SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)).

None of these facts sustain the Commission on Elections' conclusions.

Relying on the residence of petitioner's husband is simply misplaced. He is not a party to this case. No incident relating to his residence (or even citizenship) binds the conclusions that are to be arrived at in this case. Petitioner was free to establish her own residence.

The position that the residence of the wife follows that of the husband is antiquated and no longer binding. Article 110 of the Civil Code[491] used to provide that "[t]he husband shall fix the residence of the family." But it has long been replaced by Article 152 of the Family Code,[492] which places the wife on equal footing as the husband.

To accept the Commission on Elections' conclusions is to accept an invitation to return to an antiquated state of affairs. The Commission's conclusions not only run counter to the specific text of Article 152 of the Family Code; it renounces the entire body of laws upholding "the fundamental equality before the law of women and men."[493]

Chief of these is Republic Act No. 7192, otherwise known as the Women in Development and Nation Building Act. Section 5 of this Act specifically states that "[w]omen of legal age, regardless of civil status, shall have the capacity to act . . . which shall in every respect be equal to that of men under similar circumstances." As underscored by Associate Justice Lucas P. Bersamin in the February 9, 2016 oral arguments, a wife may choose "to have her own domicile for purposes of conducting her own profession or business":[494]

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[491] Article 110. The husband shall fix the residence of the family. But the court may exempt the wife from living with the husband if he should live abroad unless in the service of the Republic.

[492] Art. 152. The family home, constituted jointly by the husband and the wife or by an unmarried head of a family, is the dwelling house where they and their family reside, and the land on which it is situated.

[493] CONST., Art. II, Sec. 14.

[494] TSN, February 9, 2016 Oral Arguments, pp. 101-102.

JUSTICE BERSAMIN:
Yes. Is the position of the COMELEC like this, that a dual citizen can only have one domicile or ...

COMMISSIONER LIM:
Yes, definitely because that is the ruling in jurisprudence, "A person can have only one domicile at that time."

JUSTICE BERSAMIN:
Alright, who chooses that domicile for her?

COMMISSIONER LIM:
In the . . . (interrupted)
JUSTICE BERSAMIN:
At that time when he or she was a dual citizen.

COMMISSIONER LIM:
In the context of marriage, it's a joint decision of husband and wife, Yes, Your Honor.

JUSTICE BERSAMIN:
Okay, we have a law, a provision in the Civil Code reiterated in the Family Code . . . (interrupted)

COMMISSIONER LIM:
Yes . . .

JUSTICE BERSAMIN:
. . . that it is the husband who usually defines the situs of the domicile?

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE BERSAMIN:
Except if the wife chooses to have her own domicile for purposes of conducting her own profession or business.

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE BERSAMIN:
That's under the Women in Nation Building Act.

COMMISSIONER LIM:
Yes, Your Honor.[495]

Reliance on petitioner's husband's supposed residence reveals an even more basic flaw. This presupposes that residence as used in the Civil Code and the Family Code is to be equated with residence as used in the context of election laws. Even if it is to be assumed that the wife follows the residence fixed by the husband, it does not mean that what is reckoned in this sense as residence, i.e., the family home, is that which must be considered as residence for election purposes.

In any case, petitioner amply demonstrated that their family home had, in fact, been timely relocated from the United States. Initially, it was in her mother's residence at 23 Lincoln St., Greenhills West, San Juan City. Later, it was transferred to Unit 7F, One Wilson Place; and finally to Corinthian Hills, Quezon City.

Apart from the sheer error of even invoking a non-party's residence, petitioner's evidence established the purpose for her husband's stay in the United States after May 24, 2005: that it was "for the sole and specific purpose of 'finishing rending projects, and to arrange for the sale of the family home there.'"[496] This assertion is supported by evidence to show that a mere seven (7) days after their house in the United States was sold, that is, as soon as his reason for staying in the United States ceased, petitioner's husband returned to the Philippines on May 4, 2006.[497]

Equally unavailing are petitioner's travels to the United States from May 2005 to July 2006.

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[495] *Id.*

[496] *Rollo* (G.R. No. 221697), p. 4026, Petitioner's Memorandum.

[497] *Id.* at 21.

In the first place, petitioner travelled to the United States only twice within this period. This hardly qualifies as "frequent," which is how the Commission on Elections characterized her travels.[498] As explained by petitioner:

Her cancelled U.S.A. Passport shows that she travelled to the U.S.A. only twice during this period. Moreover, each trip (from 16 December 2005 to 7 January 2006 and from 14 February 2006 to 11 March 2006) did not last more than a month.[499]

The Commission on Elections' choice to characterize as "frequent" petitioner's two trips, neither of which even extended longer than a month, is a red flag, a badge of how it gravely abused its discretion in refusing to go about its task of meticulously considering the evidence.

Moreover, what is pivotal is not that petitioner travelled to the United States. Rather, it is the purpose of these trips. If at all, these trips attest to the abandonment of her domicile in the United States and her having reestablished it in the Philippines. As petitioner explained, it was not out of a desire to maintain her abode in the United States, but it was precisely to wrap up her affairs there and to consummate the reestablishment of her domicile in the Philippines:

5.258.1. In her Verified Answers, Sen. Poe explained why she had to travel to the U.S.A. on 14 February 2006, and it had, again, nothing to do with supposedly maintaining her domicile in the U.S.A.

5.258.2. To reiterate, Sen. Poe's trip to the U.S.A. in February 2006 was "for the purpose of supervising the disposal of some of the family's remaining household belongings." The circumstances that lead to her travel to the U.S.A. were discussed in detail in pars. 5.241 to 5.243 above. During this February 2006 trip to the U.S.A., Sen. Poe even donated some of the family's household belongings to the Salvation Army.

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[498] *Rollo* (G.R. Nos. 221698-700), p. 254.

[499] *Id*. at 4027.

5.258.3. On the other hand, Sen. Poe's trip to the U.S.A. from 16 December 2005 to 7 January 2006 was also intended, in part, to "to attend to her family's ongoing relocation."[500]

The Commission on Elections' begrudging attitude towards petitioner's two trips demonstrates an inordinate stance towards what animus non revertendi or intent to abandon domicile in the United States entails. Certainly, reestablishing her domicile in the Philippines cannot mean a prohibition against travelling to the United States. As this court emphasized in *Jalover v. Osmeña,*[501] the establishment of a new domicile does not require a person to be in his home 24 hours a day, seven (7) days a week.[502] To hold otherwise is to sustain a glaring absurdity.

The statement petitioner made in her Certificate of Candidacy for Senator as regards residence is not fatal to her cause.

The assailed Commission on Elections' Resolution in G.R. No. 221697 stated that:

Respondent cannot fault the Second Division for using her statements in the 2013 COC against her. Indeed, the Second Division correctly found that this is an admission against her interest. Being such, it is 'the best evidence which affords the greatest certainty of the facts in dispute. The rationale for the rule is based on the presumption that no man would declare anything against himself unless such declaration was true. Thus, it is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not.'

Moreover, a [Certificate of Candidacy], being a notarial document, has in its favor the presumption of regularity. To contradict the facts stated therein, there must be evidence that is clear, convincing and more than merely preponderant. In order for a declarant to impugn a notarial document which he himself executed, it is not enough for him to merely execute a subsequent notarial document. After executing

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[500] *Id*. at 4028.

[501] G.R. No. 209286, September 23, 2014, 736 SCRA 267 [Per *J*. Brion, *En Banc*].

[502] *Id*. at 284.

an affidavit voluntarily wherein admissions and declarations against the affiant's own interest are made under the solemnity of an oath, the affiant cannot just be allowed to spurn them and undo what he has done.

Yes, the statement in the 2013 COC, albeit an admission against interest, may later be impugned by respondent. However, she cannot do this by the mere expedient of filing her 2016 COC and claiming that the declarations in the previous one were "honest mistakes". The burden is upon her to show, by clear, convincing and more than preponderant evidence, that, indeed, it is the latter COC that is correct and that the statements made in the 2013 COC were done without bad faith. Unfortunately for respondent, she failed to discharge this heavy burden.[503]

Untenable is the Commission on Elections' conclusion that a certificate of candidacy, being a notarized document, may only be impugned by evidence that is clear, convincing, and more than merely preponderant because it has in its favor a presumption of regularity. Notarizing a document has nothing to do with the veracity of the statements made in that document. All that notarization does is to convert a private document into a public document, such that when it is presented as evidence, proof of its genuineness and due execution need no longer be shown.[504] Notarization does not sustain a presumption that the facts stated in notarized documents are true and correct.

More importantly, *Romualdez-Marcos*[505] has long settled that "[i]t is the fact of residence, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the constitution's residency qualification requirement."[506] It further stated that an "honest

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[503] *Rollo* (G.R. No. 221697), p. 241, COMELEC Resolution dated December 23,2015.

[504] See *Elena Leones vda. de Miller v. Atty. Rolando Miranda,* A.C. 8507, November 10, 2015<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/8507.pdf> [Per *J.* Perlas-Bernabe, First Division].

[505] 318 Phil. 329 (1995) [Per *J.* Kapunan, *En Banc*].

[506] *Id.* at 380.

mistake should not, however, be allowed to negate the fact of residence . . . if such fact were established by means more convincing than a mere entry on a piece of paper."[507]

The facts—as established by the evidence—will always prevail over whatever inferences may be drawn from an admittedly mistaken declaration. Jurisprudence itself admits of the possibility of a mistake. Nevertheless, the mistaken declaration serves neither as a perpetually binding declaration nor as estoppel. This is the unmistakable import of *Romualdez.*

This primacy of the fact of residence, as established by the evidence, and how it prevails over mere formalistic declarations, is illustrated in *Perez v*. C*ommission on Elections.*[508]

In *Perez,* the petitioner Marcita Perez insisted that the private respondent Rodolfo Aguinaldo, a congressional candidate in the 1998 Elections, remained a resident of Gattaran, Cagayan, and that he was unable to establish residence in Tuguegarao, Cagayan. In support of her claims, she "presented private respondent's [previous] certificates of candidacy for governor of Cagayan in the 1988, 1992, and 1995 elections; his voter's affidavit which he used in the 1987, 1988, 1992, 1995, and 1997 elections; and his voter registration record dated June 22, 1997, in all of which it is stated that he is a resident of Barangay Calaoagan Dackel, Municipality of Gattaran."[509]

This court did not consider as binding "admissions" the statements made in the documents presented by Perez. Instead, it sustained the Commission on Elections' appreciation of other evidence proving that Aguinaldo managed to establish residence in Tuguegarao. It also cited *Romualdez-Marcos* and affirmed the rule that the facts and the evidence will prevail over prior (mistakenly made) declarations:

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[507] *Id*.

[508] 375 Phil. 1106 (1999) [Per *J*. Mendoza, *En Banc*].

[509] *Id.*

In the case at bar, the COMELEC found that private respondent changed his residence from Gattaran to Tuguegarao, the capital of Cagayan, in July 1990 on the basis of the following: (1) the affidavit of Engineer Alfredo Ablaza, the owner of the residential apartment at 13-E Magallanes St., Tuguegarao, Cagayan, where private respondent had lived in 1990; (2) the contract of lease between private respondent, as lessee, and Tomas T. Decena, as lessor, of a residential apartment at Kamias St., Tanza, Tuguegarao, Cagayan, for the period July 1, 1995 to June 30, 1996; (3) the marriage certificate, dated January 18, 1998, between private respondent and Lerma Dumaguit; (4) the certificate of live birth of private respondent's second daughter; and (5) various letters addressed to private respondent and his family, which all show that private respondent was a resident of Tuguegarao, Cagayan for at least one (l) year immediately preceding the elections on May 11, 1998.

There is thus substantial evidence supporting the finding that private respondent had been a resident of the Third District of Cagayan and there is nothing in the record to detract from the merit of this factual finding.

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Moreover, as this Court said in *Ramualdez-Marcos v. COMELEC:*

It is the fact of residence, not a statement in a certificate of candidacy, which ought to be decisive in determining whether or not an individual has satisfied the constitution's residency qualification requirement. The said statement becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.

In this case, although private respondent declared in his certificates of candidacy prior to the May 11, 1998 elections that he was a resident of Gattaran, Cagayan, the fact is that he was actually a resident of the Third District not just for one (1) year prior to the May 11, 1998 elections but for more than seven (7) years since July 1990. His claim that he had been a resident of Tuguegarao since July 1990 is credible considering that he was governor from 1988 to 1998 and, therefore, it would be convenient for him to maintain his residence in Tuguegarao, which is the capital of the province of Cagayan.[510]

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[510] *Id.* at 1117-1119.

Even assuming that an "admission" is worth considering, the mere existence of any such admission does not imply its conclusiveness. "No doubt, admissions against interest may be refuted by the declarant."[511] This is true both of admissions made outside of the proceedings in a given case and of "[a]n admission, verbal or written, made by the party in the course of the proceedings in the same case." [512] As regards the latter, the Revised Rules on Evidence explicitly provides that "[t]he admission may be contradicted . . . by showing that it was made through palpable mistake." Thus, by *mistakenly* "admitting," a party is not considered to have brought upon himself or herself an inescapable contingency. On the contrary, that party is free to present evidence proving not only his or her mistake but also of what the truth is.

Petitioner here has established her good faith, that is, that she merely made an honest mistake. In addition, she adduced a plethora of evidence, "more convincing than a mere entry on a piece of paper,"[513] that proves the fact of her residence, which was reestablished through an incremental process commencing on May 24, 2005.

The fact of petitioner's honest mistake is accounted for. Working in her favor is a seamless, consistent narrative. This controverts any intent to deceive. It is an honest error for a layperson.

Firstly, her Certificate of Candidacy for Senator must be appreciated for what it is: a document filed in relation to her candidacy for Senator, *not* for President. Under Article VI, Section 3 of the 1987 Constitution, all that election to the Senate requires is residence in the Philippines for "not less than two years immediately preceding the day of the election." For

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[511] *Rufina Patis Factory* v. *Alusitain,* 478 Phil. 544, 558 (2004) [Per *J.* Carpio Morales, Third Division].

[512] RULESOF COURT, Rule 129, Sec. 4.

[513] *Romualdez-Marcos v. COMELEC,* 318 Phil. 329, 382 (1995) [Per *J.* Kapunan, *En Banc*].

purposes of her Certificate of Candidacy for Senator, petitioner needed to show residence for only two (2) years and not more. As petitioner explained, she accomplished this document without the assistance of a lawyer.[514] Thus, it should not be taken against her (and taken as a badge of misrepresentation) that she merely filled in information that was then apropos, though inaccurate.

As Commission on Elections Chairperson Andres Bautista noted in his Concurring and Dissenting Opinion to the assailed Commission on Elections' Resolution in G.R. No. 221697:

> [The] residency requirement for Senator is two (2) years. Hence, when [petitioner] stated in her 2013 COC that she was a resident . . . for [6 years and 6 months], it would seem that she did so without really considering the legal or constitutional requirement as contemplated by law. After all, she had already fully complied with the two-year residence requirement.[515]

The standard form for the certificate of candidacy that petitioner filed for Senator required her to specify her "Period of Residence in the Philippines before May 13, 2013."[516] This syntax lent itself to some degree of confusion as to what the "period before May 13, 2013" specifically entailed. It was, thus, quite possible for a person filling out a blank certificate of candidacy to have merely indicated his or her period of residence *as of the filing of his or her Certificate of Candidacy.* This would not have been problematic for as long as the total period of residence relevant to the position one was running for was complied with.

Affirming the apparent tendency to confuse, the Commission on Elections itself revised the template for certificates of candidacy for the upcoming 2016 Elections. As petitioner pointed out, the certificate of candidacy prepared for the May 9, 2016 Elections is now more specific. It now requires candidates to

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[514] *Rollo* (G.R. No. 221697), p. 29, Petition.

[515] *Id.* at 290.

[516] *Id.*

specify their "Period of residence in the Philippines *up to the* ***day before May 09, 2016."***[517]

It is true that reckoning six (6) years and six (6) months from October 2012, when petitioner filed her Certificate of Candidacy for Senator, would indicate that petitioner's residence in the Philippines commenced only in April 2006. This seems to belie what petitioner now claims: that her residence in the Philippines commenced on May 24, 2005. This, however, can again be explained by the fact that petitioner, a layperson, accomplished her own Certificate of Candidacy for Senator without the better advice of a legal professional.

To recall, jurisprudence appreciates the establishment of domicile as an incremental process. In this incremental process, even initial, preparatory moves count.[518] Residence is deemed acquired (or changed) as soon as these moves are demonstrated.[519] Nevertheless, the crucial fact about this manner of appreciating the establishment of domicile is that this is a technical nuance in jurisprudence. Laypersons can reasonably be expected to not have the acumen to grasp this subtlety. Thus, as petitioner explained, it was reasonable for her to reckon her residency from April 2006, when all the actions that she and her family needed to undertake to effect their transfer to the Philippines were consummated.[520] Indeed, as previously pointed out, the latter part of April leading to May 2006 is the terminal point of the incremental process of petitioner's reestablishing her residence in the Philippines.

Insisting on November 2006 as petitioner's supposedly self-declared start of residence in the Philippines runs afoul of the entire corpus of evidence presented. Neither petitioner's evidence nor the entirety of the assertions advanced by respondents against her manages to account for any significant occurrence in November 2006 that explains why petitioner would

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[517] *Rollo* (G.R. No. 221697), p. 4037, Petitioner's Memorandum. Emphasis supplied.

[518] *Mitra v. COMELEC,* 636 Phil. 753,786 (2010) [Per *J*. Brion, *En Banc*].

[519] *Id.* at 788.

[520] *Rollo* (G.R. No. 221697), pp. 4047-4048.

choose to attach her residency to this date. In the face of a multitude of countervailing evidence, nothing sustains November 2006 as a starting point.

There were two documents—a 2012 Certificate of Candidacy for Senator and a 2015 Certificate of Candidacy for President—that presented two different starting points for the establishment of residency. Logic dictates that if one is true, the other must be false.

The Commission on Elections insisted, despite evidence to the contrary, that it was the 2015 Certificate of Candidacy for President that was false. Petitioner admitted her honest mistake in filling out the 2012 Certificate of Candidacy for Senator. She explained how the mistake was made. She further presented evidence to show that it is the 2015 Certificate of Candidacy that more accurately reflects what she did and intended.

By itself, the Commission on Elections' recalcitrance may reasonably raise public suspicion that its conclusions in its Resolutions were preordained despite the compendium of evidence presented. It was clearly unfounded and arbitrary—another instance of the Commission on Elections' grave abuse of discretion.

Accordingly, the conclusion warranted by the evidence stands. The fact of petitioner's residence as having commenced on May 24, 2005, completed through an incremental process that extended until April/May 2006, was "established by means more convincing than a mere entry on a piece of paper."[521]

VI.L

Another fact cited against petitioner is her continuing ownership of two (2) real properties in the United States. Specifically, Valdez noted that petitioner "still maintains two (2) residential houses in the US, one purchased in 1992, and the other in 2008."[522]

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[521] *Id.*

[522] *Id.*

This fails to controvert the timely reestablishment of petitioner's residence in the Philippines.

First, Valdez's characterization of the two properties as "residential" does not mean that petitioner has actually been using them as her residence. Classifying real properties on the basis of utility (e.g., as residential, agricultural, commercial, etc.) is merely a descriptive exercise. It does not amount to an authoritative legal specification of the relationship between the real property owner and the property. Thus, one may own agricultural land but not till it; one may own a commercial property but merely lease it out to other commercial enterprises.

To say that petitioner owns "residential" property does not mean that petitioner is actually residing in it.

In the Answer[523] she filed before the Commission on Elections, petitioner has even explicitly denied Valdez's assertion "insofar it is made to appear that (she) 'resides' in the 2 houses mentioned."[524] As against Valdez's allegation, petitioner alleged and presented supporting evidence that her family's residence has been established in Corinthian Hills, Quezon City. As pointed out by petitioner, all that Valdez managed to do was to make an allegation, considering that he did not present proof that any of the two (2) properties in the United States has been and is still being used by petitioner's family for their residence.

Second, even on the assumption that the remaining properties in the United States may indeed be characterized as petitioner's residence, Valdez's assertion fails to appreciate the basic distinction between residence and domicile. It is this distinction that permits a person to maintain a separate residence simultaneously with his or her domicile.

Ultimately, it does not matter that petitioner owns residential properties in the United States, or even that she actually uses them as temporary places of abode. What matters is that

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[523] *Id*.

[524] *Id*.

petitioner has established and continues to maintain domicile in the Philippines.

Romualdez-M*arcos*[525] is on point:

> Residence, in its ordinary conception, implies the factual relationship of an individual to a certain place. It is the physical presence of a person in a given area, community or country. The essential distinction between residence and domicile in law is that residence involves the intent to leave when the purpose for which the resident has taken up his abode ends. One may seek a place for purposes such as pleasure, business, or health. If a person's intent be to remain, it becomes his domicile; if his intent is to leave as soon as his purpose is established it is residence. It is thus, quite perfectly normal for an individual to have different residences in various places. However, a person can only have a single domicile, unless, for various reasons, he successfully abandons his domicile in favor of another domicile of choice. In *Uytengsu vs. Republic,* we laid this distinction quite clearly:
>
> > "There is a difference between domicile and residence. 'Residence['] is used to indicate a place of abode, whether permanent or temporary; 'domicile' denotes a fixed permanent residence to which, when absent, one has the intention of returning. A man may have a residence in one place and a domicile in another. Residence is not domicile, but domicile is residence coupled with the intention to remain for an unlimited time. A man can have but one domicile for the same purpose at any time, but he may have numerous places of residence. His place of residence is generally his place of domicile, but it is not by any means necessarily so since no length of residence without intention of remaining will constitute domicile."[526] (Citations omitted)

There is nothing preventing petitioner from owning properties in the United States and even from utilizing them for residential purposes. To hold that mere ownership of these is tantamount to abandonment of domicile is to betray a lack of understanding

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[525] 318 Phil. 329 (1995) [Per *J.* Kapunan, *En Banc*).

[526] *Id.* at 377-378.

of the timelessly established distinction between domicile and residence.

VII

It was grave abuse of discretion for the Commission on Elections to cancel petitioner's Certificate of Candidacy on grounds that find no support in law and jurisprudence, and which are not supported by evidence. Petitioner made no false representation in her Certificate of Candidacy, whether in respect of her citizenship or in respect of her residence. She is a natural-born Filipina at the time of her filing of her Certificate of Candidacy. She satisfies the requirement of having been a resident of the Philippines 10 years prior to the upcoming elections.

The burden of evidence rests on the person who makes the affirmative allegation. In an action for cancellation of certificate of candidacy under Section 78 of the Omnibus Election Code, it is the person who filed the action who has the burden of showing that the candidate made false representations in his or her certificate of candidacy.

To prove that there is misrepresentation under Section 78, the person claiming it must not only show that the candidate made representations that are false and material. He or she must also show that the candidate intentionally tried to mislead the electorate regarding his or her qualifications. Without showing these, the burden of evidence does not shift to the candidate.

Private respondents failed to show the existence of false and material misrepresentation on the part of petitioner. Instead, it relied on petitioner's admission that she is a foundling.

Relying on the single fact of being an abandoned newborn is unreasonable, arbitrary, and discriminatory. It fails to consider all other pieces of evidence submitted by petitioner for the fair and unbiased consideration of the Commission on Elections.

The principles of constitutional construction favor an interpretation that foundlings like petitioner are natural-born

citizens of the Philippines absent proof resulting from evidence to the contrary. Such proof must show that **both**—not only one—of petitioner's parents were foreigners at the time of her birth.

Without conceding that foundlings are not—even presumptively—natural-born Filipinos, petitioner has presented substantial evidence that her biological parents are Filipinos.

The Constitution provides for only two types of citizens: (1) natural- born, and (2) naturalized citizens. Natural-born citizens are specifically defined as persons who do not have to perform any act to acquire or perfect their Filipino citizenship. These acts refer to those required under our naturalization laws. More particularly, it involves the filing of a petition as well as the establishment of the existence of all qualifications to become a Filipino citizen.

Petitioner never had to go through our naturalization processes. Instead, she has been treated as a Filipino citizen upon birth, subject to our laws. Administrative bodies, the Commission on Elections, the President, and most importantly, the electorate have treated her as a Filipino citizen and recognized her natural-born status.

Not being a Filipino by naturalization, therefore, petitioner could have acquired Filipino citizenship because her parent/s, from her birth, has/have always been considered Filipino citizen/s who, in accordance with our *jus sanguinis* principle, bestowed natural-born citizenship to her under Article IV, Section 1(1) to (3) of the Constitution.

Our Constitution and our domestic laws, including the treaties we have ratified, enjoin us from interpreting our citizenship provisions in a manner that promotes exclusivity and an animus against those who were abandoned and neglected.

We have adopted and continue to adopt through our laws and practice policies of equal protection, human dignity, and a clear duty to always seek the child's well-being and best interests. We have also obligated ourselves to defend our People

against statelessness and protect and ensure the status and nationality of our children immediately upon birth.

Therefore, an interpretation that excludes foundlings from our natural-born citizens is inconsistent with our laws and treaty obligations. It necessarily sanctions unequal treatment of a particular class through unnecessary limitation of their rights and capacities based only on their birth status.

Petitioner cannot be expected to present the usual evidence of her lineage. It is precisely because she is a foundling that she cannot produce a birth record or a testimony on the actual circumstances and identity of her biological parents.

However, the circumstances of and during her birth lead to her parent/s' Filipino citizenship as the most probable inference.

Petitioner was born in Jaro, Iloilo, the population of which consisted mainly of Filipinos. Her physical features are consistent with the physical features of many Filipinos. She was left in front of a Catholic Church, no less—consistent with the expectation from a citizen in a predominantly Catholic environment. There was also no international airport in Jaro, Iloilo to and from which foreigners may easily come and go to abandon their newborn children. Lastly, statistics show that in 1968, petitioner had a 99.8% chance of being born a Filipino.

For these reasons, a claim of material misrepresentation of natural-born status cannot be based solely on a candidate's foundling status. Private respondents should have been more diligent in pursuing their claim by presenting evidence other than petitioner's admission of foundling status.

The conclusion that she is a natural-born Filipina is based on a fair and reasonable reading of constitutional provisions, statutes, and international norms having the effect of law, and on the evidence presented before the Commission on Elections.

Petitioner has shown by a multitude of evidence that she has been domiciled in the Philippines beginning May 24, 2005. Her reestablishment of residence was not accomplished in

a singular, definitive episode but spanned an extended period. Hers was an incremental process of reestablishing residence.

This incremental process was terminated and completed by April 2006 with the sale of her family's former home in the United States and the return of her husband to the Philippines following this sale. Specifically, her husband returned to the Philippines on May 4, 2006.

Whichever way the evidence is appreciated, it is clear that petitioner has done all the acts necessary to become a resident on or before May 9, 2006, the start of the ten-year period for reckoning compliance with the 1987 Constitution's residence requirement for presidential candidates.

The Commission on Elections did not examine the evidence deliberately and with the requisite analytical diligence required by our laws and existing jurisprudence. Instead, it arbitrarily ignored petitioner's evidence. It chose to anchor its conclusions on formalistic requirements and technical lapses: reacquisition of citizenship, issuance of a permanent resident or immigrant visa, and an inaccuracy in a prior Certificate of Candidacy.

Misplaced reliance on preconceived indicators of what suffices to establish or retain domicile—a virtual checklist of what one should, could, or would have done—is precisely what this court has repeatedly warned against. This is tantamount to evasion of the legally ordained duty to engage in a meticulous examination of the facts attendant to residency controversies.

Worse, the Commission on Elections went out of its way to highlight supposedly damning details—the circumstances of petitioner's husband, her intervening trips to the United States—to insist upon its conclusions. This conjectural posturing only makes more evident how the Commission on Elections gravely abused its discretion. Not only did it turn a blind eye to the entire body of evidence demonstrating the restoration of petitioner's domicile; it even labored at subverting them.

Clearly, the Commission on Elections' actions constituted grave abuse of discretion amounting to utter lack of jurisdiction.

These actions being unjust as well as unchristian, we have no choice except to annul this unconstitutional act.

Admittedly, there is more to democracy than having a wider choice of candidates during periodic elections. The quality of democracy increases as people engage in meaningful deliberation often moving them to various types of collective action to achieve a better society. Elections can retard or aid democracy. It weakens society when these exercises reduce the electorate to subjects of entertainment, slogans, and empty promises. This kind of elections betrays democracy.They transform the exercise to a contest that puts premium on image rather than substance. The potential of every voter gets wasted. Worse, having been marginalized as mere passive subjects, voters are then manipulated by money and power.

Elections are at their best when they serve as venues for conscious and deliberate action. Choices made by each voter should be the result of their own reasoned deliberation. These choices should be part of their collective decision to choose candidates who will be accountable to them and further serious and workable approaches to the most pressing and relevant social issues. Elections are at their best when the electorate are not treated simply as numbers in polling statistics, but as partners in the quest for human dignity and social justice.

This case should be understood in this context. There are no guarantees that the elections we will have in a few months will lead us to more meaningful freedoms. How and when this comes about should not solely depend on this court. In a working constitutional democracy framed by the rule of just law, how we conceive and empower ourselves as a people should also matter significantly.

ACCORDINGLY, I vote to **GRANT** the consolidated Petitions for Certiorari. The assailed Resolutions dated December 1, 2015 of the Commission on Elections Second Division and December 23, 2015 of the Commission on Elections En Banc in SPA No. 15-001 (DC), and the assailed Resolutions dated December 11, 2015 of the Commission on Elections First Division and December 23, 2015 of the Commission on Elections En Banc

in SPA No. 15-002 (DC), SPA No. 15-007 (DC), and SPA No. 15-139 (DC) must be **ANNULLED and SET ASIDE.**

Petitioner Mary Grace Natividad S. Poe-Llamanzares made no material misrepresentation in her Certificate of Candidacy for President in connection with the May 9, 2016 National and Local Elections. There is no basis for the cancellation of her Certificate of Candidacy.

CONCURRING OPINION

JARDELEZA, *J*.:

The Philippine Constitution requires that a person aspiring for the presidency must be a natural-born Filipino citizen and a resident of the Philippines for at least ten years immediately preceding the election.[1] The question is whether the petitioner, as a foundling and former resident citizen of the United States (US), satisfies these requirements.

I

I first consider the issue of jurisdiction raised by the parties.

A

Petitioner Mary Grace Natividad S. Poe-Llamanzares (Poe) contends that in the absence of any material misrepresentation in her certificate of candidacy (COC), the public respondent Commission on Elections (COMELEC) had no jurisdiction to rule on her eligibility. She posits that the COMELEC can only rule on whether she intended to deceive the electorate when she indicated that she was a natural-born Filipino and that she has been a resident for 10 years and 11 months. For the petitioner, absent such intent, all other attacks on her citizenship and residency are premature since her qualifications can only be

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[1] CONSTITUTION, Art. VII, Sec. 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

challenged through the post-election remedy of a petition for *quo warranto.* On the other hand, the COMELEC argues that since citizenship and residency are material representations in the COC affecting the qualifications for the office of President, it necessarily had to rule on whether Poe's statements were true. I agree with the COMELEC that it has jurisdiction over the petitions to cancel or deny due course to a COC. As a consequence, it has the authority to determine therein the truth or falsity of the questioned representations in Poe's COC.

Section 78[2] of the Omnibus Election Code (OEC) allows a person to file a verified petition seeking to deny due course to or cancel a COC exclusively on the ground that any of the material representations it contains, as required under Section 74,[3] is false. The representations contemplated by Section 78 generally refer to qualifications for elective office,[4] such as age, residence

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[2] OMNIBUS ELECTION CODE, 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 the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

[3] OMNIBUS ELECTION CODE, Sec. 74 par. l. *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.

[4] *Salcedo II v. COMELEC,* G.R. No. 135886, August 16, 1999, 312 SCRA 447, 458; *Ugdoracion, Jr. v. COMELEC,* G.R. No. 179851, April l8, 2008,

and citizenship, or possession of natural-born Filipino status.[5] It is beyond question that the issues affecting the citizenship and residence of Poe are within the purview of Section 78. There is also no dispute that the COMELEC has jurisdiction over Section 78 petitions. Where the parties disagree is on whether intent to deceive is a constitutive element for the cancellation of a COC on the ground of false material representation.

The divide may be attributed to the two tracks of cases interpreting Section 78. On the one hand, there is the line originating from *Salcedo II v. COMELEC,* decided in 1999, where it was held that "[a]side from the requirement of materiality, a false representation under section 78 must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible."[6] On the other hand, in the more recent case of *Tagolino v. House of Representatives Electoral Tribunal,* we stated that "the deliberateness of the misrepresentation, much less one's intent to defraud, is of bare significance in a Section 78 petition as it is enough that the person's declaration of a material qualification in the COC be false."[7]

To reconcile these two cases, it is important to first understand the coverage of Section 78. The provision refers to material representations required by Section 74 to appear in the COC. In turn, Section 74 provides for the contents of the COC, which includes not only eligibility requirements such as citizenship, residence, and age, but also other information such as the

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552 SCRA 231, 239; *Lluz v. COMELEC,* G.R. No. 172840, June 7, 2007, 523 SCRA 456, 471; *Talaga v. COMELEC,* G.R. Nos. 196804 & 197015, October 9, 2012, 683 SCRA 197, 234.

[5] *Tagolino v. House of Representatives Electoral Tribunal,* G.R. No. 202202, March 19, 2013, 693 SCRA 574, 596; *Gonzalez v. COMELEC,* G.R. No. 192856, March 8, 2011, 644 SCRA 761, 781; *Salcedo II v. COMELEC, supra* at 457-459.

[6] *Supra* at 459.

[7] *Supra* at 592.

candidate's name, civil status, profession, and political party affiliation. Section 78 has typically been applied to representations involving eligibility requirements, which we have likened to a *quo warranto* petition under Section 253 of the OEC.[8]

Understated in our jurisprudence, however, are representations mentioned in Section 74 that do not involve a candidate's eligibility. In this regard, there appears to be a prevailing misconception that the "material representations" under Section 78 are limited only to statements in the COC affecting eligibility.[9] Such interpretation, however, runs counter to the clear language of Section 78, which , covers "any material representation contained therein *as required under Section 74."* A plain reading of this phrase reveals no decipherable intent to categorize the information required by Section 74 between material and nonmaterial, much less to exclude certain items explicitly enumerated therein from the coverage of Section 78. *Ubi lex non distinguit, nec nos distinguere debemus.* When the law does not distinguish, neither should the court.[10] The more accurate interpretation, one that is faithful to the text, is that the word "material" describes—not qualifies— the representations required by Section 74. Therefore, the declarations required of the candidate by Section 74 are all material.[11]

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[8] *Fermin v. COMELEC,* G.R. Nos. 17695 & 182369, December 18, 2008, 574 SCRA 782, 792-794.

[9] This can also be traced to *Salcedo, supra* at 458: "the material misrepresentation contemplated by Section 78 of the Code refers to qualifications for elective office." Yet, *Salcedo* left open the possibility that a candidate's stated name in the COC may fall within the coverage of Section 78, *supra* at 459: "The use of a surname, **when not intended to mislead or deceive the public** as to one's identity, is not within the scope of the provision." (Emphasis added)

[10] *Ejercito v. COMELEC,* G.R. No. 212398, November 25, 2014, 742 SCRA 210, 299; *Yu v. Samson-Tatad,* G.R. No. 170979, February 9, 2011, 642 SCRA 421, 428; *People v. Sandiganbayan,* G.R. No. 164185, July 23, 2008, 559 SCRA 449, 459.

[11] The form of the COC prescribed by the COMELEC contains items not enumerated in Section 74, such as "nickname or stage name," "name to appear in the ballot," and "gender." It is with respect to these items that a distinction between material and nonmaterial is proper.

In enumerating the contents of the COC, Section 74 uses the word "shall" in reference to non-eligibility- related matters, including "the political party to which he belongs," "civil status," "his post office address for all election purposes," "his profession or occupation," and "the name by which he has been baptized, or . . . registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or ... his Hadji name after performing the prescribed religious pilgrimage." The presumption is that the word "shall" in a statute is used in an imperative, and not in a directory, sense.[12] The mandatory character of the provision, coupled with the requirement that the COC be executed under oath,[13] strongly suggests that the law itself considers certain non-eligibility-related information as material—otherwise, the law could have simply done away with them. What this means relative to Section 78 is that there are material representations which may pertain to matters not involving a candidate's eligibility.[14]

It is apparent that the interests sought to be advanced by Section 78 are twofold. The first is to protect the sanctity of the electorate's votes by ensuring that the candidates whose names appear in the ballots are qualified and thus mitigate the risk of votes being squandered on an ineligible candidate. The second is to penalize candidates who commit a perjurious act

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[12] *Codoy v. Calugay,* G.R. No. 123486, August 12, 1999, 312 SCRA 333, 342; *Gonzales v. Chavez,* G.R. No. 97351, February 4, 1992, 205 SCRA 816, 837; *Lacson v. San Jose-Lacson,* G.R. Nos. L-23482, L- 23767 & L-24259, August 30, 1968, 24 SCRA 837, 848.

[13] OMNIBUS ELECTION CODE, Sec. 73 par. (1). *Certificate of candidacy.* — No person shall be eligible for any elective public office unless he files a **sworn** certificate of candidacy within the period fixed herein. (Emphasis added)

[14] The statement of the law in *Fermin v. COMELEC, supra* at 792, is thus more accurate:

> [T]he denial of due course to or the cancellation of the COC is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which ***may*** [or may not] relate to the qualifications required of the public office he/she is running for.

by preventing them from running for public office. This is a policy judgment by the legislature that those willing to perjure themselves are not fit to hold an elective office, presumably with the ultimate aim of protecting the constituents from a candidate who committed an act involving moral turpitude.[15] In a way, this protectionist policy is not dissimilar to the underlying principle for allowing a petition for disqualification based on the commission of prohibited acts and election offenses under Section 68. These two considerations, seemingly overlooked in *Salcedo,* are precisely why the "consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws."[16]

Therefore, there are two classes of material representations contemplated by Section 78: (1) those that concern eligibility for public office; and (2) those erstwhile enumerated in Section 74 which do not affect eligibility. *Tagolino* applies to the former; *Salcedo* to the latter. This is a logical distinction once we connect the factual settings of the two cases with the aforementioned state interests. Ironically, *Salcedo,* oft-cited in Section 78 cases as authority for requiring intent in cases *involving eligibility-related representations,* actually did not concern a representation in the COC affecting the candidate's eligibility. *Salcedo* involved a candidate who used the surname of her husband of a void marriage. Her COC was challenged on the ground that she had no right to use such surname because the person she married had a subsisting marriage with another person. We held that petitioner therein failed to discharge the burden of proving that the alleged misrepresentation regarding the candidate's surname pertains to a material matter, and that it must equally be proved that there was an intention to deceive the electorate as to the would-be candidate's qualifications for public office to justify

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[15] "The crime of perjury undisputedly involves moral turpitude." *Republic v. Guy,* G.R. No. L-41399, July 20, 1982, 115 SCRA 244, 254.

[16] *Salcedo II v. COMELEC, supra* at 458.

the cancellation of the COC.[17] The rationale is that the penalty of removal from the list of candidates is not commensurate to an honest mistake in respect of a matter not affecting one's eligibility to run for public office. "It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake."[18] Notably, a finding in *Salcedo* that the candidate had no intention to deceive the electorate when she used her married name, notwithstanding the apparent invalidity of the marriage, would have been sufficient to arrive at the same conclusion (that is, allowing her to run) without making a sweeping rule that only matters pertaining to eligibility are material.

By contrast, *Tagolino* inyolved a false representation with respect to a candidate's residence and its subsequent effect on the substitution by a replacement candidate. The false representation affected the one-year residency requirement imposed by the Constitution on members of the House of Representatives[19]—in other words, it went into the eligibility of the candidate. "[A]n express finding that the person committed any deliberate misrepresentation is of the consequence in the determination of whether one's COC should be deemed cancelled or not."[20] It is the fact of eligibility, not the intent to deceive, that should be decisive in determining compliance with constitutional and statutory provisions on qualifications for public office. This reading is more in accord with the text of Section 78, which does not specify intent as an element for a petition to prosper. In this context, the term "material misrepresentation" is a misnomer because it implies that the candidate consciously misrepresented himself. But all Section 78 textually provides is that "any material representation . . . is false." Thus, in

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[17] *Id.* at 458-460.

[18] *Id.* at 458.

[19] CONSTITUTION Art. VI, Sec. 6.

[20] *Tagolino v. House of Representatives Electoral Tribunal,* G.R. No. 202202, March 19, 2013, 693 SCRA 574, 592.

resolving a Section 78 petition, truth or falsity ought to be the definitive test. The COMELEC's duty, then, is to make findings of fact with respect to the material representations claimed to be false.

The need to apply *Tagolino* to the first class is highlighted by an inherent gap in *Salcedo's* analysis, which failed to take into account a situation where a candidate indicated in good faith that he is eligible when he is in fact not. It is not inconceivable that a child, for example, born in 1977, but whose parents simulated the birth certificate to make it appear that he was born in 1976, would believe himself to be qualified to run for president in the 2016 elections. However, if the simulation of birth is proved, and hospital records and family history show that he was indeed born in 1977, then he would fall short of the minimum age requirement prescribed by the Constitution. If *Salcedo* is to be followed to a tee, the COMELEC cannot cancel his COC because he acted in good faith. This would lead to a situation where the portion of the electorate who voted for the ineligible candidate would face the threat of disenfranchisement should the latter win the elections and face a *quo warranto* challenge. In the latter proceeding, not even good faith can cure the inherent defect in his qualifications. *Tagolino* is therefore preferable in instances involving eligibility-related representations because it fills this gap. Indeed, the law should not be interpreted to allow for such disastrous consequences.

In fact, in cases involving eligibility-related representations, the Court has never considered intent to deceive as the decisive element, even in those that relied on *Salcedo.* In *Tecson v. COMELEC,*[21] which involved a question on the eligibility of Fernando Poe, Jr. for the 2004 presidential elections by way of a Section 78 petition, the Court determined whether he was a natural-born citizen of the Philippines. Intent to deceive the electorate was never discussed. In *Ugdoracion v. COMELEC,*[22]

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[21] G.R. Nos. 161434, 161634, 161824, March 3, 2004, 424 SCRA 277.

[22] G.R. No. 179851, April 18, 2008, 552 SCRA 231.

which involved residency, the Court determined that the candidate lost his residency when he became a US green card holder despite his mistaken belief that he retained his domicile in the Philippines. The candidate, invoking the legal definition of domicile, claimed that even if he was physically in the US, he always intended to return to the Philippines. The Court, placing emphasis on his permanent resident status in the US, merely *inferred* his intent to deceive when he failed to declare that he was a green card holder. Then in *Jalosjos v. COMELEC,*[23] also involving residency, the Court found that the claim of domicile was contradicted by the temporary nature of the candidate's stay. This time, the Court simply *deemed* that "[w]hen the candidate's claim of eligibility is proven false, as when the candidate failed to substantiate meeting the required residency in the locality, the representation of eligibility in the COC constitutes a 'deliberate attempt to mislead, misinform, or hide the fact' of ineligibility."[24]

The Court owes candor to the public. Inferring or deeming intent to deceive from the fact of falsity is, to me, just a pretense to get around the gap left by *Salcedo, i.e.,* an ineligible candidate who acted in good faith. I believe the more principled approach is to adopt *Tagolino* as the controlling rule. The decision in *Agustin v. COMELEC*[25] is a step towards that direction: "[e]ven if [the COMELEC] made no finding that the petitioner had deliberately attempted to mislead or to misinform as to warrant the cancellation of his COC, the COMELEC could still declare him disqualified for not meeting the requisite eligibility . . . ." Of course, *Salcedo* remains applicable to cases where the material representation required by Section 74 does not relate to eligibility, such as in *Villafuerte v. COMELEC,*[26] which, similar to *Salcedo,* involved a candidate's name.[27]

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[23] G.R. No. 193314, June 25, 25, 2013, 699 SCRA 507.

[24] *Id.* at 516-517.

[25] G.R. No. 207105 November 10, 2015.

[26] G.R. No. 206698, February 25, 2014, 717 SCRA 312.

[27] The foregoing analysis is limited to the interpretation of Section 78 in relation to Section 74. It is not intended to affect the existing doctrine involving the penal provisions of the OEC, specifically Section 262 *vis-a-vis* Section 74, as enunciated in *Luz v. COMELEC,* G.R. No. 172840, June 7, 2007, 523 SCRA 456.

B

The 1987 Constitution designated the Supreme Court *en banc,* acting as the Presidential Electoral Tribunal (PET), as the "sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President."[28] Poe argues that allowing the COMELEC to rule on the eligibility of the candidate regardless of intent would be tantamount to the usurpation of the PET's authority (and that of the electoral tribunals of both the Senate and the House of Representatives) as the sole judge of qualifications. This, however, is an incorrect reading of the provision. The phrase "contests relating to the election, returns, and qualifications" is a legal term of art that is synonymous to "election contests." "As used in constitutional provisions, election contest relates only to statutory contests in which the contestant seeks not only to oust the intruder, but also to have himself inducted into the office."[29] Thus, an election contest can only contemplate a post-election,[30] post-proclamation situation.[31] While the power of electoral tribunals is exclusive,[32] full, clear, and complete,[33] it is nonetheless subject to a temporal limitation—their jurisdiction may only be invoked after the election is held and the winning candidate is proclaimed.[34]

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[28] CONSTITUTION, Art. VII, Sec. 4 par. (7).

[29] *Vera v. Avelino,* G.R. No. L-543, August 31, 1946, 77 Phil. 192, 209.

[30] *Tecson v. COMELEC, supra* at 325.

[31] *Limkaichong v. COMELEC,* G.R. Nos. 178831-32, 179120, 179132-33, April 1, 2009, 583 SCRA 1, 33.

[32] *Gonzalez v. COMELEC,* G.R. No. 192856 March 8, 2011, 644 SCRA 761, 790-791.

[33] *Veloso v. Board of Canvassers,* G.R. No. L-15620, July 10, 1919, 39 Phil. 886, 888.

[34] The word "sole" was originally used to bar either House of Congress (and the courts) from interfering with the judgment of the other House *(Angara v. Electoral Commission,* G.R. No. L- 45081, July 15, 1936, 63 Phil. 139, 162):

> The original provision regarding this subject in the Act of Congress of July 1, 1902 (Sec. 7, par. 5) laying down the rule that "the assembly

Notably, the Constitution neither allocates jurisdiction over pre- election controversies involving the eligibility of candidates nor forecloses legislative provision for such remedy. Absent such constitutional proscription, it is well within the plenary powers of the legislature to enact a law providing for this type of pre-election remedy, as it did through Section 78.[35] In this regard, Poe's statement that the COMELEC essentially arrogated unto itself the jurisdiction to decide upon the qualifications of candidates is inaccurate. It is Congress that granted the COMELEC such jurisdiction; the COMELEC only exercised the jurisdiction so conferred. When the COMELEC takes cognizance of a Section 78 petition, its actions are not repugnant to, but are actually in accord with, its constitutional mandate to enforce and administer all laws relative to the conduct of an election.[36] To be clear, the proceeding under Section 78 is not an election contest and therefore does not encroach upon PET's jurisdiction over election contests involving the President and Vice-President.

We have already recognized that a Section 78 petition is one instance—the only instance—where the qualifications of a candidate for elective office can be challenged before an election.[37] Although the denial of due course to or the cancellation

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shall be the judge of the elections, returns, and qualifications of its members", was taken from clause 1 of Section 5, Article 1 of the Constitution of the United States providing that "Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members, ..." The Act of Congress of August 29, 1916 (Sec. 18, par. 1) modified this provision by the insertion of the word "sole" as follows: "That the Senate and House of Representatives, respectively, shall be the sole judges of the elections, returns, and qualifications of their elective members, ..." apparently in order to emphasize the exclusive character of the jurisdiction conferred upon each of the House of Legislature over the particular cases therein specified.

[35] CONSTITUTION, Art. VI, Sec. 1. See also *Occeña v. COMELEC,* G.R. No. 52265, January 28, 1980, 95 SCRA 755.

[36] CONSTITUTION, Art. IX(C), Sec. 2(1).

[37] *Gonzalez v. COMELEC, supra* at 777; *Aznar v. COMELEC,* G.R. No. 83820, May 25, 1990, 185 SCRA 703, 708.

of the COC is ostensibly based on a finding that the candidate made a material representation that is false,[38] the determination of the factual correctness of the representation necessarily affects eligibility. Essentially, the ground is lack of eligibility under the pertinent constitutional and statutory provisions on qualifications or eligibility for public office,[39] similar to a petition for *quo warranto* which is a species of election contest. "The only difference between the two proceedings is that, under Section 78, the qualifications for elective office are misrepresented in the COC and the proceedings must be initiated before the elections, whereas a petition for *quo warranto* under Section 253 may be brought on the basis of two grounds—(1) ineligibility or (2) disloyalty to the Republic of the Philippines, and must be initiated within ten days after the proclamation of the election results."[40] Put simply, the main distinction is the time the action is filed.[41] If a person fails to file a Section 78 petition within the 25-day period prescribed in the OEC, the election laws afford him another chance to raise the ineligibility of the candidate by filing a petition for *quo warranto*.[42]

The reason why the COMELEC, pursuant to a valid law, is allowed to determine a candidate's constitutional and statutory eligibility prior to the election is not difficult to fathom. As earlier alluded to, there is legitimate value in shielding the electorate from an ineligible candidate. In addition, there are sound fiscal considerations supporting this remedy. These include the more efficient allocation or COMELEC's resources,

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[38] *Fermin v. COMELEC,* G.R. Nos. 179695 & 182369, December 18, 2008, 574 SCRA 782, 792.

[39] *Jalosjos, Jr. v. COMELEC,* G.R. Nos. 193237, 193536, October 9, 2012, 683 SCRA 1, 45 (Brion, *J., dissenting)* citing *Fermin v. COMELEC, supra.*

[40] *Salcedo II v. COMELEC,* G.R. No. 135886, August 16, 1999, 312 SCRA 447, 457.

[41] *Fermin v. COMELEC, supra* at 794.

[42] *Loong v. COMELEC*, G.R. No. 93986, December 22, 1992, 216 SCRA 760, 768-769.

ultimately funded by taxpayers' money, and a check on unnecessary campaign spending, an activity with minimal economic utility. A contrary ruling could lead to the *de facto* disenfranchisement of those who voted for a popular but ineligible candidate. The possibility of a constitutional and political crisis arising from such a result is one we dare not risk.

II

Article VII, Section 2 of the 1987 Constitution lays down the eligibility requirements for the office of President:

> No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

Citizenship is determined by the organic law in force at the time of birth.[43] When Poe was found in 1968, the 1935 Constitution was still in effect. It enumerated the following as citizens of the Philippines: (1) those who are citizens of the Philippines at the time of the adoption of the 1935 Constitution; (2) those born in the Philippines of foreign parents who, before the adoption of the 1935 Constitution, had been elected to public office; (3) those whose fathers are citizens of the Philippines; (4) those whose mothers are citizens of the Philippines; and, upon reaching the age of majority, elect Philippine citizenship; and (5) those who are naturalized in accordance with law.[44] For obvious reasons, the first two classes are not applicable to the present controversy. I therefore limit my discussion to the remaining three classes.

The 1987 Constitution defines "natural-born citizens" as those who are Filipino citizens "from birth without having to perform any act to acquire or perfect their Philippine

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[43] *Tan Chong v. Secretary of Labor,* G.R. Nos. L-47616 & L-47623, September 16, 1947, 79 Phil. 249, 258.

[44] 1935 CONSTITUTION, Art. IV, Sec. 1.

citizenship."[45] Children born of Filipino fathers under the 1935 Constitution fall under this category. By express declaration, the 1987 Constitution also considered those born of Filipino mothers who elect Philippine citizenship by age of majority as natural-born citizens.[46] On the other hand, those who become Filipino citizens through the naturalization process are evidently excluded from the constitutional definition. Therefore, there are two kinds of Filipino citizens recognized under the Constitution: natural-born citizens and naturalized citizens.[47] Only the former are eligible to be President of the Philippines.

Poe contends that she is a natural-born citizen because there is a presumption under intemational law that a foundling is a citizen of the place where he was born. She further argues that the deliberations of the 1934 Constitutional Convention reveal an intent by the framers to consider foundlings as Filipino citizens from birth. In any case, she believes that she has proved, by substantial evidence, that she is a natural-born citizen. The Solicitor General supports the second and third arguments of Poe.

On the other hand, the COMELEC and private respondents maintain that because she is a foundling whose parentage is unknown, she could not definitively prove that either her father or mother is a Filipino. They dispute the applicability of international conventions which the Philippines is not a party to, while those which have been ratified require implementing legislation. Assuming *arguendo* that she was a natural-born citizen, respondents are unanimous that she lost such status when she became a naturalized American citizen. Her subsequent repatriation under RA 9225 only conferred upon her Filipino citizenship but not natural-born status.

I take their arguments in turn.

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[45] CONSTITUTION, Art. IV, Sec. 2.

[46] *Id*.

[47] *Bengson III v. HRET,* G.R. No. 142840, May 7, 2001, 357 SCRA 545, 557-558.

A

The power of a state to confer its citizenship is derived from its sovereignty. It is an attribute of its territorial supremacy.[48] As a sovereign nation, the Philippines has the inherent right to determine for itself, and according to its own Constitution and laws, who its citizens are.[49] International law, as a matter of principle, respects such sovereign determination and recognizes that the acquisition and loss of citizenship fall within the domestic jurisdiction of each state.[50] Domestic rules on citizenship vary greatly from sovereign to sovereign,[51] a necessary consequence of divergent demography, geography, history, and culture among the many states. As explained in the *Nottebohm Case:*

> [T]he diversity of demographic conditions has thus far made it impossible for any general agreement to be reached on the rules relating to nationality, although the latter by its very nature affects international relations. It has been considered that the best way of making such rules accord with the varying demographic conditions in different countries is to leave the fixing of such rules to the competence of each State.[52]

Thus, "[t]here is no rule of international law, whether customary or written, which might be regarded as constituting any restriction of or exception to, the jurisdiction of [individual states to determine questions of citizenship]."[53] The foregoing

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[48] PAUL WEIS, *NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW,* 101 (1979).

[49] *Roa v. Collector of Customs,* G.R. No. L-7011, October 30, 1912, 23 Phil. 315, 320-321, citing *US v. Wong Kim Ark*, 169 US 649 (1898).

[50] HANS KELSEN, *PRINCIPLES OF INTERNATIONAL LAW* 374-375 (2nd ed. 1979, Tucker rev. ed. 1967); IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 385 (5th ed. 1998).

[51] GERALD VON GLAHN, *LAW AMONG NATIONS; INTRODUCTION TO PUBLIC INTERNATIONAL LAW* 177 (1965).

[52] *Nottebohm Case (Second Phase) (Liechtenstein v. Guatemala),* Judgment, 1955 I.C.J., 4, 23 (April 6).

[53] League of Nations Committee of Experts for the Progressive Codification of International Law, Nationality, 20 AJIL 21, 23 (1926).

considerations militate against the formation of customary law in matters concerning citizenship, at least not one directly enforceable on particular states as advocated by Poe. Accordingly, the provisions of the 1930 Hague Convention and 1961 Convention on the Reduction of Statelessness purportedly conferring birth citizenship upon foundlings, or creating a presumption thereof, cannot be considered customary.

At this juncture, it may not be amiss to explain that another reason why we judiciously scrutinize an invocation of customary international law based on treaties the Philippines has not acceded to is out of deference to the President's treaty-ratification power[54] and the Senate's treaty-concurring power.[55] The doctrine of separation of powers dictates that, unless the existence of customary international law is convincingly shown, courts of law should not preempt the executive and legislative branches' authority over the country's foreign relations policy, including the negotiation, ratification, and approval of treaties.[56]

In respect of international covenants that the Philippines is a party to, Poe invokes the following which allegedly recognize her right to natural-born citizenship: the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR), and the Universal Declaration of Human Rights (UDHR). The CRC and the ICCPR both speak of a child's "right to acquire a nationality." A plain reading indicates that the right simply means that a child shall be

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[54] *Bayan (Bagong alyansang Makabayan) v. Zamora,* G.R. No. 138570, October 10, 2000, 342 SCRA 449, 449-494-495.

[55] CONSTITUTION, Art. VI, Sec. 21.

[56] For an incisive analysis on the constitutional of international law principles as interpreted by the Supreme Court, *see* MARLIN M. MAGALLONA. THE SUPREME COURT AND INTERNATIONAL LAW (2010). Dean Magallona argues that ". . .in cases where State sovereignty is at stake, the Court could have been a decisive factor in reshaping it long the contours of integrity of the Filipino nation." *Id*. at iii. "The heavy burden of judicial interpretation in problems of international law lies in the modality by which the will of the national community finds juridical expression." *Id*. at 119.

given the opportunity to become a Filipino citizen.[57] It does not by itself create an enforceable right to birth citizenship. The obligation imposed upon states parties is for them to either enact citizenship statutes specifically for children or to equally extend to children the benefits of existing citizenship laws. In the Philippines' case, the Constitution grants birth citizenship to those born of Filipino parents and our naturalization statutes provide for derivative citizenship of children born of non-Filipino parents.[58] The Philippines is, therefore, compliant with this specific obligation under the CRC and the ICCPR.

The same can be said about the UDHR, even though it uses a slightly different wording.[59] Preliminarily, it must be clarified that the UDHR is technically not a treaty and therefore, it has no obligatory character. Nonetheless, over time, it has become an international normative standard with binding character as part of the law of nations. In other words, it has acquired the force of customary international law.[60] The "right to a nationality" under the UDHR must be interpreted as being subject to the conditions imposed by domestic law, given the broad scope of the declaration, *i.e.,* it covers "everyone." A contrary interpretation would effectively amount to an unqualified adoption of the *jus soli* principle, which would be repugnant to our constitutional structure. Such interpretation would, in fact, be contrary to the intent of the UDHR itself. The correlative state obligation under the UDHR is for a state not to withdraw or withhold the benefits of citizenship from whole sections of

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[57] Notably, both the CRC and ICCPR speak of children in general, not just foundlings; they apply to Filipino children, foreign children domiciled in the Philippines, and foundlings alike. This only highlights that the conventions could not have contemplated an automatic grant of citizenship without imposing the *jus soli* principle on all state-parties.

[58] *See* Commonwealth Act No. 473, Sec. 15; Republic Act No. 9225, Sec. 4.

[59] UDHR, Art. 15(l). Everyone has the right to a nationality.

[60] MERLIN M. MAGALLONA, *FUNDAMENTALS OF PUBLIC INTERNATIONAL LAW* 255-258 (2005).

the population who can demonstrate a genuine and effective link with the country.[61] It does not purport to indiscriminately grant citizenship to any person. Taking into consideration the historical context of the UDHR,[62] it may be said that the right, really, is one against statelessness; and the obligation is a negative duty not to create or perpetuate statelessness.[63] It proscribes an arbitrary deprivation of citizenship and an unreasonable discrimination in the operation of naturalization law against stateless persons.

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[61] United Nations High Commissioner for Refugees, THE STATE OF THE WORLD'S REFUGEES: A HUMANITARIAN AGENDA, *available at* http://www.unhcr.org/3eb7ba7d4.pdf.

[62] *Id.* The UDHR was precipitated by citizenship issues arising from large-scale population movements and formation of new states after World War I. It is in this context that the "right to a nationality" should be understood. Notable events include the disintegration of the Austro-Hungarian, German, and Ottoman empires leading to the establishment of new states, such as Czechoslovakia, Hungary, and Yugoslavia, the restoration of the former state of Poland, and the simultaneous adjustment of many international borders in the area directly or indirectly affected by the conflict. "Some five million people were moved, . . . which evidently required the states concerned and the international community as a whole to address some complex citizenship questions." Then in the 1940s, there was the decolonization and partition of India in 1947 and the subsequent movement of Hindus and Muslims between India and Pakistan; the conflict over Palestine and the creation of Israel in 1948 creating a Palestinian diaspora in the Middle East and beyond; and the Chinese revolution of 1949, which led to the establishment of a communist government on the mainland and a nationalist government on the island of Taiwan.

[63] Commission on Human Rights, Memorandum (As *Amicus Curiae* Submission), p. 10, *citing Reports of Special Rapporteurs and Other Documents Considered During the 48th Session,* [1996] 2 Y.B. lnt'l L. Comm'n 126, UN Doc. A/CN.4/SER.A/1996/Add.l (Part 1).

> The right to a nationality, as a human right, is conceivable as a right of an individual *vis-a-vis* a certain State, deriving, under certain conditions, from international law. As the case may be, it is the right to be *granted the nationality of the successor State* or *not to be deprived of the nationality of the successor State.* The obligation not to create statelessness, however, is a State-to-State *erga omnes* obligation, conceivable either as a corollary of the above right to a nationality or as an autonomous obligation existing in the sphere of inter-State relations only and having *no direct legal consequences in the relationship between State and individuals* (Emphasis added)

Finally, the CRC, ICCPR, and UDHR all refrained from imposing a direct obligation to confer citizenship at birth. This must be understood as a deliberate recognition of sovereign supremacy over matters relating to citizenship. It bears emphasis that none of the instruments concern themselves with natural-born and naturalized classifications. This is because this distinction finds application only in domestic legal regimes. Ergo, it is one for each sovereign to make.

B

The 1935 Constitution did not explicitly address the citizenship of foundlings. For the COMELEC and private respondents, the silence means exclusion, following the maxim *expressio unius est exclusio alterius.* They point to the *jus sanguinis* principle adopted by the Constitution to conclude that a foundling who cannot establish a definite blood relation to a Filipino parent is not natural-born. For Poe and the Solicitor General, the deliberations of the 1934 Constitutional Convention indicate the intention to categorize foundlings as citizens and the textual silence "does not indicate any discriminatory *animus* against them." They argue that the Constitution does not preclude the possibility that the parents of a foundling are in fact Filipinos.

In interpreting the silence of the Constitution, the best guide is none other than the Constitution itself.[64] As Prof. Laurence Tribe suggests, giving meaning to constitutional silence involves the twin tasks of articulating the relevant constitutional norms that determine how the silence ought to be interpreted and propounding principles of statutory construction consistent with these norms.[65] There is no question that since 1935, the Philippines has adhered to the *jus sanguinis* principle as the primary basis for determining citizenship. Under the 1935

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[64] *Optima statuti interpretatrix est ipsum statutum* (The best interpreter of a statute is the statute itself). *Serana v. Sandiganbayan,* G.R. No. 162059, January 22, 2008, 542 SCRA 224, 245.

[65] Laurence Tribe, *Toward a Syntax of the Unsaid: Construing the Sounds of Congressional and Constitutional Silence*, 57 IND. L.J. 515, 531 (1982).

Constitution, a child follows the citizenship of the parents regardless of the place of birth, although there was a caveat that if only the mother is Filipino, the child has to elect Philippine citizenship by age of majority. Determining a person's parentage, of course, requires a determination of facts in an appropriate proceeding. Consequently, to arrive at a correct judgment, the fundamental principles of due process and equal protection[66] demand that the parties be allowed to adduce evidence in support of their contentions, and for the decision-maker to make a ruling based on the applicable quantum of evidence.

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The appropriate due process standards that apply to the COMELEC, as a quasi-judicial tribunal, are those outlined in the seminal case of *Ang Tibay v. Court of Industrial Relations.*[67] Commonly referred to as the "cardinal primary rights" in administrative proceedings, these include: (1) the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof; (2) not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts, but the tribunal must consider the evidence presented; (3) while the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision; (4) not only must there be some evidence to support a finding or conclusion, but the evidence must be "substantial"; (5) the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) the tribunal must act on its or his own independent consideration of the law and facts of the controversy; and (7) the tribunal should render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision

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[66] CONSTITUTION, Art. III, Sec. 1.

[67] G.R. No.L-46496, February 27, 1940, 69 Phil. 635.

rendered.[68] The COMELEC failed to comply with the third and fourth requirements when it *first,* decided the question of foundlings on a pure question of law, *i.e.,* whether foundlings are natural-born, without making a determination based on the evidence on record and admissions of the parties of the probability or improbability that Poe was born of Filipino parents; and *second,* by concluding that Poe can only prove her parentage through DNA or other definitive evidence, set a higher evidentiary hurdle than mere substantial evidence.

The COMELEC's starting position is that foundlings are not natural-born citizens[69] unless they prove by DNA or some other definitive evidence[70] that either of their biological parents are

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[68] *Id.* at 642-644.

[69] COMELEC *En Banc* Resolution, SPA Nos. 15-002, 15-007 & 15-139, p. 17:

> The fact that Respondent was a foundling with no known parentage or blood relative effectively excluded her from the coverage of the definition of a natural-born citizen" (at p. 15). "To reiterate, natural-born citizenship is founded on the principle of *jus sanguinis*. Respondent is a foundling. Her parentage is unknown. There is thus no basis to hold that respondent has blood relationship with a Filipino parent. This Commission therefore cannot rule or presume that Respondent possesses blood relationship with a Filipino citizen when it is certain that such relationship is indemonstrable.

[70] COMELEC First Division Resolution, SPA Nos. 15-002, 15-007 & 15-139, p. 25:

> To be a natural-born citizen of the Philippines, however, Respondent must be able to definitively show her direct blood relationship with a Filipino parent and—consistent with Section 2, Article IV of the 1987 Constitution—demonstrate that no other act was necessary for her to complete or perfect her Filipino citizenship.

TSN, February 9, 2016, pp. 64-65:

J. JARDELEZA: Now, [] when you say that the petitioner has only one type of evidence that can prove her parentage and that's only DNA[?]

COMM. LIM: Seemingly for now ...

J. JARDELEZA: And what is the meaning of seemingly for now"?

> COMM. LIM: That is what a reasonable mind could possibly approximate, because we have a situation where a child is of unknown biological parents. From the premise that the parents are biologically

Filipino citizens. Thus, it limited its inquiry to the question of whether the 1935 Constitution considered foundlings as natural-born citizens. In effect, the COMELEC has created a conclusive or irrebuttable presumption against foundlings, *i.e.,* they are not natural-born citizens. This is true notwithstanding the apparently benign but empty opening allowed by the COMELEC. By definition, foundlings are either "deserted or abandoned ... whose parents, guardian or relatives are unknown," or "committed to an orphanage or charitable or similar institution with unknown facts of birth and parentage."[71] Considering these unusual circumstances common to all foundlings, DNA or other definitive evidence would, more often than not, not be available. A presumption disputable only by an impossible, even cruel, condition is, in reality, a conclusive presumption.

In this jurisdiction, conclusive presumptions are looked upon with disfavor on due process grounds. In *Dycaico v. Social Security System,* the Court struck down a provision in Republic Act No. 8282 or the Social Security Law "because it presumes a fact which is not necessarily or universally true. In the United States, this kind of presumption is characterized as an irrebuttable presumption and statutes creating permanent and irrebutable presumptions have long been disfavored under the due process clause."[72]

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unknown it cannot admit of proof that parentage exists, identity wise that is otherwise the parents would be known. So in a situation such as this, Your Honor, it is our respectful submission that some other modality other than the surfacing of the parents, other than evidence of family relations, one plausible evidence would be what Justice Carpio suggested, DNA. And although we did not discuss that in our decisions not being necessary anymore to a disposition of the issues before us, this humble representation accepts that suggestion to be very sound. Because in all fairness, a foundling status need not be attached to a person forever.

[71] Rule on Adoption, A.M. No. 02-6-02-SC (2002), Sec. 3(e).

[72] *Dycaico v. SSS,* G.R. No. 161357, November 30, 2005, 476 SCRA 538, 558-559 citing *Jimenez v. Weinberger,* 417 US 628 (1974); *US. Department of Agriculture v. Murry,* 413 US 508, 37 (1973); *Vlandis v. Kline,* 412 US 441 (1973). See *Cleveland Board of Education v. Lafleur,*

The case involved a proviso in the Social Security Law which disqualified the surviving spouses whose respective marriages to SSS members were contracted after the latter's retirement. The Court found that this created the presumption that marriages contracted after the retirement date of SSS members were sham and therefore entered into for the sole purpose of securing the benefits under the Social Security Law. This conclusive presumption violated the due process clause because it deprived the surviving spouses of the opportunity to disprove the presence of the illicit purpose.

In the earlier case of *Government Service Insurance System v. Montesclaros,* the Court similarly found as unconstitutional a proviso in Presidential Decree No. 1146 or the Revised Government Service Insurance Act of 1977 that prohibits the dependent spouse from receiving survivorship pension if such dependent spouse married the pensioner within three years before the pensioner qualified for the pension. In finding that the proviso violated the due process and equal protection guarantees, the Court stated that "[t]he proviso is unduly oppressive in outrightly denying a dependent spouses claim for survivorship pension if the dependent spouse contracted marriage to the pensioner within the three-year prohibited period," and "[t]here is outright confiscation of benefits due

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414 U.S. 632 (1974) which involved school board rules that mandated maternity leaves for teachers beginning their fifth or sixth month of pregnancy and prohibited reemployment prior to a semester at least 3 months after delivery. The US Supreme Court found that the mandatory leave requirement conclusively presumed "that every pregnant teacher who reaches the fifth or sixth month of pregnancy is incapable of continuing," while the 3-month delay conclusively presumed the teacher's unfitness to work during that period. This conclusive presumption is "neither 'necessarily [nor] universally true,' and is violative of the Due Process Clause." In his concurring opinion, Justice Powell applied an equal protection analysis and found the school board rules "either counterproductive or irrationally overinclusive" and therefore violative of equal protection. *See also* GERALD GUNTHER, *CONSTITUTIONAL LAW: CASES AND MATERIALS* 888-897 (1975).

the surviving spouse without giving the surviving spouse an opportunity to be heard."[73]

The same considerations obtain here. The COMELEC's approach presumes a fact which is not necessarily or universally true. Although the possibility that the parents of a foundling are foreigners can never be discounted, this is not always the case. It appears that because of its inordinate focus on trying to interpret the Constitution, the COMELEC disregarded the incontrovertible fact that Poe, like any other human being, has biological parents. Logic tells us that there are four possibilities with respect to the biological parentage of Poe: (1) both her parents are Filipinos; (2) her father is a Filipino and her mother is a foreigner; (3) her mother is a Filipino and her father is a foreigner; and (4) both her parents are foreigners. In three of the four possibilities, Poe would be considered as a natural-born citizen.[74] In fact, data from the Philippine Statistics Authority (PSA) suggest that, in 1968, there was a 99.86% statistical probability that her parents were Filipinos.[75] That Poe's parents are unknown does not automatically discount the possibility that either her father or mother is a citizen of the Philippines. Indeed, the *verba legis* interpretation of the constitutional provision on citizenship as applied to foundlings is that they *may* be born of a Filipino father or mother. There is no presumption for or against them. The COMELEC's duty under a Section 78 petition questioning a candidate's citizenship qualification is to determine the probability that her father or mother is a Filipino citizen using substantial evidence. And there lies the second fault of the COMELEC: regardless of who had the burden of proof, by requiring DNA or other definitive

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[73] *GSIS v. Montesclaros,* G.R. No. 146494, July 14, 2004, 434 SCRA 441, 449.

[74] If she falls under the third category, her acts of obtaining a Philippine passport and registering as a voter may be considered as election of Filipino citizenship. *(In re Florencio Mallare,* A.C. No. 533, September 12, 1974, 59 SCRA 45, 52. Art IV, Sec. 2 of the 1987 Constitution provides that those who elect Filipino citizenship are deemed natural-born.)

[75] OSG Memorandum, Exhibits C & D.

evidence, it imposed a quantum of evidence higher than substantial evidence.

In proceedings before the COMELEC, the evidentiary bar against which the evidence presented is measured is substantial evidence, which is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[76] This is the least demanding in the hierarchy of evidence, as compared to the highest, proof beyond reasonable doubt applicable to criminal cases, and the intermediate, preponderance of evidence applicable to civil cases.[77] When the COMELEC insisted that Poe must present DNA or other definitive evidence, it effectively subjected her to a higher standard of proof, that of absolute certainty. This is even higher than proof beyond reasonable doubt, which requires only moral certainty; in criminal cases, neither DNA evidence[78] nor direct evidence[79] are always necessary to sustain a conviction. The COMELEC's primary justification is the literal meaning of *jus sanguinis, i.e.,* right of blood. This, however, is an erroneous understanding because *jus sanguinis* is a principle of nationality law, not a rule of evidence. Neither is it to be understood in a scientific sense. Certainly, the 1935 Constitution could not have intended that citizenship must be proved by DNA evidence for the simple reason that DNA profiling was not introduced until 1985.

Since the COMELEC created a presumption against Poe that she was not a natural-born citizen and then set an unreasonably high burden to overcome such presumption, it unduly deprived her of citizenship, which has been described as "the right to

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[76] *Sabili v. COMELEC,* G.R. No. 193261, April 24, 2012, 670 SCRA 664, 683.

[77] *Salvador v. Philippine Mining Service Corp.,* G.R. No. 148766, January 22, 2003, 395 SCRA 729, 738.

[78] *People v. Cabigquez,* G.R. No. 185708, September 29, 2010, 631 SCRA 653, 671.

[79] *Zabala v. People,* G.R. No. 210760, January 26, 2015, 748 SCRA 246, 253.

have rights,"[80] from which the enjoyment of all other rights emanates. The Commission on Human Rights (CHR), in its *amicus* submission, accurately described the bundle of rights that flow from the possession of citizenship: "[it is] oftentimes the precursor to other human rights, such as the freedom of movement, right to work, right to vote and be voted for, access to civil service, right to education, right to social security, freedom from discrimination, and recognition as a person before the law."[81]

The purpose of evidence is to ascertain the truth respecting a matter of fact.[82] Evidence is relevant when it induces belief in the existence or non-existence of a fact in issue or fends in any reasonable degree to establish its probability or improbability.[83] It is a fundamental requirement in our legal system that questions of fact must be resolved according to the proof.[84] Under the due process clause, as expounded in *Ang Tibay,* the COMELEC was duty-bound to consider all relevant evidence before arriving at a conclusion. In the proceedings before the COMELEC, Poe presented evidence that she is 5 feet 2 inches tall, has brown eyes, low nasal bridge, black hair and an oval-shaped face, and that she was found abandoned in the Parish Church of Jaro, Iloilo. There are also admissions by the parties that she was abandoned as an infant, that the population of Iloilo in 1968 was Filipino, and that there were no international airports in Iloilo at that time. Poe's physical features, which are consistent with those of an ordinary Filipino, together with the circumstances of when and where she was found are all relevant evidence tending

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[80] *Go v. Bureau of Immigration,* G.R. No. 191810, June 22, 2015, (Velasco, *J., dissenting*) *citing* CJ Warren's dissenting opinion in *Perez v. Brownell,* 356 U.S. 44, 64 (1958).

[81] Commission on Human Rights, Memorandum (As *Amicus Curiae* Submission), p. 12.

[82] RULES OF COURT, Rule 128, Sec. 1.

[83] RULES OF COURT, Rule 128, Sec. 4.

[84] *U.S. v. Provident Trust Co.,* 291 U.S. 272 (1934).

to establish the probability that her parents are Filipinos. Thus, the COMELEC gravely abused its discretion when it failed or refused to consider these. On the other hand, the private respondents presented absolutely no evidence before the COMELEC that would tend to establish the improbability that both of Poe's parents are Filipino citizens, and instead chose to rely solely on the undisputed fact that Poe is a foundling. The COMELEC's stance that "the probability that [Poe] might be born of a Filipino parent is not sufficient to prove her case"[85] is a blatant misunderstanding of the purpose of evidence. Tribunals, whether judicial or quasi-judicial, do not deal in absolutes, which is why we lay down rules of evidence. The determination of facts in legal proceedings is but a weighing of probabilities.[86] "[A judge] must reason according to probabilities, drawing an inference that the main fact in issue existed from collateral facts not directly proving, but strongly tending to prove, its existence. The vital question in such cases is the cogency of the proof afforded by the secondary facts. How likely, according to experience, is the existence of the primary fact if certain secondary facts exist?"[87] This is different from a mere "possibility" that is borne out of pure conjecture without proof.

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[85] *Rollo,* p. 180.

[86] *See* RULES OF COURT, Rule 128, Sec. 4; Rule 130, Sec. 51, par. (a)(3); Rule 133, Sec. 1.

In filiation cases, Sec. 3(f) of the Rule on DNA Evidence (A.M. No. 06-11-5-SC) refers to the "Probability of Parentage". It is "the numerical estimate for the likelihood of parentage of a putative parent compared with the probability of a random match of two unrelated individuals in a given population."

"Preponderance of evidence is a phrase which, in the last analysis, means **probability of the truth**." *Sevilla v. Court of Appeals,* G.R. No. 150284, November 22, 2010, 635 SCRA 508, 515-516. (Emphasis added)

"Probability, and not mere possibility, is required; otherwise, the resulting conclusion would proceed from deficient proofs." *Sea Power Shipping Enterprises, Inc. v. Salazar,* G.R. No. 188595, August 28, 2013, 704 SCRA 233, 251.

[87] *Joaquin v. Navarro,* G.R. Nos. L-5426-28. May 29, 1953, 93 Phil. 257, 269 *citing* 1 Moore on Facts, Sec. 596.

To my mind, the foregoing evidence, admissions on record, data from the PSA, which we may take judicial notice of,[88] showing that 99.55% of the population of Iloilo province in 1970 were Filipinos[89] and that 99.82% of children born in the Philippines in 1968 are natural-born Filipinos,[90] and absence of contrary evidence adequately support the conclusion that Poe's parents are Filipinos and, consequently, that she is a natural-born citizen. If circumstantial evidence is sufficient to establish proof beyond reasonable doubt,[91] then it should also be sufficient to hurdle the lower threshold of substantial evidence, particularly in the present case where there are a number of circumstances in favor of Poe.

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The COMELEC's unwarranted presumption against Poe, and foundlings in general, likewise violates the equal protection clause. In *Dycaico,* the Court ruled that the proviso in the Social Security Law disqualifying spouses who contracted marriage after the SSS members' retirement were unduly discriminated against, and found that the "nexus of the classification to the policy objective is vague and flimsy."[92] In *Montesclaros,* the Court considered as "discriminatory and arbitrary" the questioned proviso of the GSIS Act that created a category for spouses who contracted marriage to GSIS members within three years before they qualified for the pension.[93]

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[88] RULES OF COURT, Rule 129, Section 2. *Judicial notice, when discretionary.* — A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. See *Bagabuyo v. COMELEC,* G.R. No.176970, December 8, 2008, 573 SCRA 290, 309.

[89] Poe Memorandum, p. 205.

[90] OSG Memorandum, Exh. C

[91] RULES OC COURT, Rule 133, Sec. 4.

[92] *Dycaico v. SSS,* G.R. No. 161357, November 30, 2005, 476 SCRA 538, 553.

[93] *GSIS v. Montesclaros,* G.R. No. 146494, July 14, 2004, 434 SCRA 441, 453.

The COMELEC's *de facto* conclusive presumption that foundlings are not natural-born suffers from the same vice. In placing foundlings at a disadvantaged evidentiary position at the start of the hearing then imposing a higher quantum of evidence upon them, the COMELEC effectively created two classes of children: (1) those who know their biological parents; and (2) those whose biological parents are unknown. As the COMELEC would have it, those belonging to the first class face no presumption that they are not natural-born and, if their citizenship is challenged, they may prove their citizenship by substantial evidence. On the other hand, those belonging to the second class, such as Poe, are presumed not natural-born at the outset and must prove their citizenship with near absolute certainty. To illustrate how the two classes are treated differently, in *Tecson,*[94] which involved Poe's adoptive father, the COMELEC did not make a presumption that Fernando Poe was not a natural-born citizen. Instead, it considered the evidence presented by both parties and ruled that the petition before it failed to prove by substantial evidence that Fernando Poe was not natural-born. On *certiorari,* the Court sustained the COMELEC. In this case, the COMELEC presumed that Poe was not natural-born and failed or refused to consider relevant pieces of evidence presented by Poe. Evidently, the COMELEC's only justification for the different treatment is that Fernando Poe knew his biological parents, while herein petitioner does not.

I find the COMELEC's classification objectionable on equal protection grounds because, in the first place, it is not warranted by the text of the Constitution. The maxim *expressio unius est exclusio alterius* is just one of the various rules of interpretation that courts use to construe the Constitution; it is not the be-all and end-all of constitutional interpretation. We have already held that this maxim should not be applied if it would result in incongruities and in a violation of the equal protection guarantee.[95] The more appropriate interpretive rule to apply is the doctrine of necessary implication, which holds that

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[94] G.R. Nos. 161434, 161634 & 161824, March 3, 2004, 424 SCRA 277.

[95] *Chua v. Civil Service Commission,* G.R. No. 88979, February 7, 1992, 206 SCRA 65, 77.

No statute can be enacted that can provide all the details involved in its application. There is always an omission that may not meet a particular situation. What is thought, at the time of enactment, to be an all-embracing legislation may be inadequate to provide for the unfolding events of the future. So-called gaps in the law develop as the law is enforced. One of the rules of statutory construction used to fill in the gap is the doctrine of necessary implication. The doctrine states that what is implied in a statute is as much a part thereof as that which is expressed.[96]

When the 1935 Constitution referred to "those whose fathers [or mothers] are citizens of the Philippines," it necessarily included foundlings whose fathers or mothers are Filipino citizens. As previously discussed, the parentage of foundlings may be proved by substantial evidence. Conversely, foundlings whose parents are both foreigners are excluded from the constitutional provision. This would be the case if in an appropriate proceeding there is deficient relevant evidence to adequately establish that either of the parents is a Filipino citizen.

Another useful interpretive rule in cases with equal protection implications is the one embodied in Article 10 of the Civil Code: "In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail." "When the statute is silent or ambiguous, this is one of those fundamental solutions that would respond to the vehement urge of conscience."[97] Indeed, it would be most unkind to the delegates of the 1934 Constitutional Convention to ascribe upon them any discriminatory *animus* against foundlings in the absence of any positive showing of such intent. It is conceded that the *exact reason* why the Convention voted down Sr. Rafols' proposal to explicitly include "children of unknown parent" may never fully be settled. Srs. Montinola, Bulson, and Roxas all had their respective views on why the amendment was not necessary.[98] The parties

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[96] *Id.; Department of Environment and Natural Resources v. United Planners Consultants, Inc.,* G.R. No. 212081, February 23, 2015.

[97] *Padilla v. Padilla,* G.R. No. L-48137, October 3, 1947, 74 Phil. 377, 387.

[98] Sr. Montinola saw no need for the amendment because he believed that this was already covered by the Spanish Code. Sr. Bulson thought that it would be best to leave the matter to the hands of the legislature.

herein have diametrically opposed interpretations on the proposal: the respondents argue that the fact that the amendment is defeated should be conclusive—after all, not all delegates expressed their views—and that the deliberations were not submitted to the people for ratification; Poe contends that the deliberations reveal that rules of international law already considers foundlings as citizens of the place where they are found, thus making the inclusion unnecessary; and finally, the Solicitor General maintains that the silence may be fully explained in terms of linguistic efficiency and the avoidance of redundancy. These are all valid points, but I believe the only thing we can unquestionably take away from the deliberations is that there was at least *no intent to consider foundlings as stateless,* and consequently deprive them of the concomitant civil and political rights associated with citizenship.

My second objection is that—as the Solicitor General points out—foundlings are a "discrete and insular"[99] minority who are entitled to utmost protection against unreasonable discrimination applying the strict scrutiny standard. According to this standard, government action that impermissibly interferes with the exercise of a "fundamental right" or operates to the peculiar class disadvantage of a "suspect class" is presumed unconstitutional. The burden is on the government to prove that the classification is necessary to achieve a

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Sr. Roxas believed that foundlings are rare cases and that it would be superfluous to include them in the Constitution because, in his view, this was already covered by international law.

[99] First coined by Justice Stone in the famous "Footnote Four" in *U.S v. Carolene Products Co.,* 304 U.S. 144 (1938), where the US Supreme Court established that state-sanctioned discriminatory practices against discrete and insular minorities are entitled to a diminished presumption of constitutionality. Cited in *Central Bank Employees Ass'n., Inc. v. Bangko Sentral ng Pilipinas,* G.R. No. 148208, December 15, 2004, 446 SCRA 299, 488 (Carpio-Morales, *J., dissenting); White Light Corp. v. City of Manila,* G.R. No. 122846, January 20, 2009, 576 SCRA 416, 436; *Ang Ladlad LGBT Party v. COMELEC,* G.R. No. 190582, April 8, 2010, 618 SCRA 32, 87-99 (Puno, *C.J., concurring); Garcia v. Drilon,* G.R. No. 179267, June 25, 2013, 699 SCRA 352, 447-451 (Leonardo-De Castro, *J., concurring).*

compelling state interest and that it is the least restrictive means to protect such interest.[100] The underlying rationale for the heightened judicial scrutiny is that the political processes ordinarily relied upon to protect minorities may have broken down.[101] Thus, one aspect of the judiciary's role under the equal protection clause is to protect discrete and insular minorities from majoritarian prejudice or indifference.[102]

The fundamental right warranting the application of the strict scrutiny standard is the right to a nationality embodied in the UDHR—properly understood in the context of preventing statelessness and arbitrary denial of citizenship. Citizenship has been described as "man's basic right for it is nothing less than the right to have rights," and the effects of its loss justly have been called "more serious than a taking of one's property, or the imposition of a fine or other penalty."[103] It is the

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[100] *Disini, Jr. v. Secretary of Justice,* G.R. No. 203335, February 18, 2014, 716 SCRA 237, 301.

[101] *Johnson v. Robison,* 415 U.S. 361 (1974); In one article, Justice Powell, although not in entire agreement with the theory of Footnote Four, summarized many scholars' formulation of the theory as follows:

> The fundamental character of our government is democratic. Our constitution assumes that majorities should rule and that the government should be able to govern. Therefore, for the most part, Congress and the state legislatures should be allowed to do as they choose. But there are certain groups that cannot participate effectively in the political process. And the political process therefore cannot be trusted to protect these groups in the way it protects most of us. Consistent with these premises, the theory continues, the Supreme Court has two special missions in our scheme of government:
>
> First, to clear away impediments to participation, and ensure that all groups can engage equally in the process; and
>
> Second, to review with heightened scrutiny legislation inimical to discrete and insular minorities who are unable to protect themselves in the legislative process.

Lewis F. Powell, Jr., *"Carolene Products" Revisited,* 82 COLUM. L. REV. 1087, 1088-1089.

[102] *Richmond v. J.A. Croson Co.,* 488 U.S. 169 (1989).

[103] *Fedorenko v. U.S.,* 449 U.S. 490, 522-523 (1981).

individual's "legal bond [with the state] having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties."[104] Although the COMELEC primarily argues that Poe is not natural-born, its rigid exclusionary approach,[105] taken to its logical conclusion, would actually have deprived Poe of her Filipino citizenship—natural-born or otherwise. This is an infringement of a fundamental right that threatens to deprive foundlings not only of their civil and political rights under domestic law but also deny them of the state's protection on an international level.

Foundlings also comprise a suspect class under the strict scrutiny analysis. The traditional indicia of "suspectness" are (1) if the class possesses an "immutable characteristic determined solely by the accident of birth,"[106] or (2) when the class is "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process."[107] Thus, in the US, suspect classes for equal protection purposes include classifications based on race, religion, alienage, national origin, and ancestry.[108] In the Philippines, the Court has extended the scope to include distinctions based on economic class and status,[109] and period of employment contract.[110]

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[104] *Nottebohm Case (Second Phase) (Liechtenstein v. Guatemala),* Judgment, 1955 I.C.J., 4, 23 (April 6).

[105] "Neither will petitioner (Poe) fall under Section 1, paragraphs 3, 4, and 5." COMELEC Memorandum, p. 56.

[106] *Frontiero v. Richardson,* 411 U.S. 677, 686 (1973).

[107] *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1, 28 (1973).

[108] *Ang Ladlad LGBT Party v. COMELEC, supra* at 93, (Puno, *C.J., concurring).*

[109] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas, supra* at 391.

[110] *Serrano v. Gallant Maritime Services, Inc.,* G.R. No. 167614, March 24, 2009, 582 SCRA 255, 282.

Here, the COMELEC's classification is based solely on the happenstance that foundlings were abandoned by their biological parents at birth and who, as a class, possess practically no political power.[111] The classification is therefore suspect and odious to a nation committed to a regime of equality.[112]

Applying the strict scrutiny standard, the COMELEC failed to identify a compelling state interest to justify the suspect classification and infringement of the foundlings' fundamental right.[113] Indeed, the Solicitor General, appearing as Tribune of the People,[114] disagrees with the COMELEC's position. When the Solicitor General acts as the People's Tribune, it is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to the position of the affected government office.[115] In

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[111] Only 4, 483 individuals were registered since 1950. Poe Memorandum, Annex B.

[112] CONSTITUTION, Preamble; Art. II, Sec. 26: Art. XIII, Sec. 1.

[113] TSN, February 16, 2016, p. 29:

> *J.* JARDELEZA: x x x Under strict scrutiny analysis, the government has to meet a compelling interest test. Meaning, the government has to articulate a compelling State interest why you are discriminating against the foundling. ... So, state for me in your memo what is the compelling State interest to make a discrimination against the foundling." COMELEC did not address this in its memorandum.

[114] The Solicitor General's discretion to appear as Tribune of the People is one undoubtedly recognized in Philippine jurisprudence. See *Orbos v. Civil Service Commission,* G.R. No. 92561, September 12, 1990, 189 SCRA 459; *Gonzales v. Chavez,* G.R. No. 97351, February 4, 1992, 205 SCRA 816; *Martinez v. Court of Appeals,* G.R. No. 112387, October 13, 1994, 237 SCRA 575; *Pimentel, Jr. v. COMELEC,* G.R. No. 126394, April 24, 1998, 289 SCRA 586; *City Warden of Manila v. Estrella,* G.R. No. 141211, August 31, 2001; *Constantino-David v. Pangandaman-Gania,* G.R. No. 156039, August 14, 2003, 409 SCRA 80; *Salenga v. Court of Appeals,* G.R. No. 174941, February 1, 2012, 664 SCRA 635.

[115] *Orbos v. Civil Service Commission, supra* at 466. Indeed, the OSG is expected to look beyond the narrow interest of the government in a particular case and take the long view of what will best benefit the Filipino people in the long run. As we explained in *Gonzales v. Chavez,* "it is the

such instances, the Court has considered his opinion and recommendations "invaluable aid[s] in the disposition of the case."[116] His opinion that there is no compelling state interest to justify discrimination against foundlings, while in no way conclusive upon the Court, must be afforded weight.

It may nonetheless be deduced that the interest sought to be protected by the COMELEC is the same as the concern of John Jay, the future first US Chief Justice, when he suggested to George Washington that it would be wise "to provide a ... strong check into the admission of Foreigners into the administration of our national government; and to declare expressly that the Command in chief of the american (sic) army shall not be given to, nor devolve on, any but a natural born Citizen."[117] The rationale behind requiring that only natural-born citizens may hold certain high public offices is to insure that the holders of these high public offices grew up knowing they were at birth citizens of the Philippines. It flows from the presumption that, in their formative year, they knew they owed from birth their allegiance to the Philippines and that in case any other country claims their allegiance, they would be faithful and loyal to the Philippines. This is particularly true to the President who is the commander-in-chief of the armed forces.[118] To be sure, this interest is compelling because the Constitution itself demands it. Nonetheless, it can only be used where the issue involves the bright-line between natural-born and naturalized

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Filipino people as a collectivity that constitutes the Republic of the Philippines. Thus, the distinguished client of the OSG is the people themselves x x x." This is but an affirmation that the privilege, and at times, even the duty, to appear as Tribune of the People springs from the constitutional precept that sovereignty resides in the people and all government authority, including that of the Solicitor General, emanates from them.

[116] *Id*.

[117] Neal Katyal & Paul Clement, *On the Meaning of "Natural Born Citizen,"* 128 HARV. L. REV. F. 161, *available at* http://harvardlawreview.org/2(015/03/on-the-meaning-of-natural-born-citizen/.

[118] *Tecson v. COMELEC,* G.R. Nos. 161434, 161634, 161824, March 3, 2004, 424 SCRA 277, 422 (Carpio, *J., dissenting).*

citizens. It cannot be used as justification in a case where no clear constitutional line has been drawn, *i.e.,* between foundlings and persons who know their parents. It finds no application in this case where there was absolutely no evidence, not even an allegation, that Poe's parents were foreign nationals. I simply find the risk that a Manchurian candidate[119] was planted by a foreign sovereign in the form of a foundling too remote to justify an *en masse* discrimination against all foundlings. If the underlying premise for the natural-born requirement is that natural-born citizens consider themselves as Filipino citizens since birth, then foundlings surely fit into this category as well.

In any case, the COMELEC failed to adopt the least restrictive means to protect such interest.[120] By imposing a heavy burden upon Poe just because she was abandoned as an infant with unknown facts of birth and parentage, the COMELEC haphazardly acted without regard to the far-reaching consequences to a discrete and insular minority. Needless to say, a more narrowly tailored approach would avoid making a sweeping presumption. The COMELEC's fixation with a scientific application of the *jus sanguinis* principle, as opposed to a legal one guided by rules of evidence, led to its discriminatory interpretation of the Constitution. It acted with "an evil eye and unequal hand,"[121] denying foundlings equal justice guaranteed by the fundamental law. This is grave abuse of discretion.

C

The COMELEC and private respondent Amado Valdez both argue that even assuming that Poe was a natural-born citizen, she forever lost such status when she became a naturalized american in 2001. Her repatriation in 2006 only restored her

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[119] RICHARD CONDON, *THE MANCHURIAN CANDIDATE* (1959). A political thriller novel about the son of a prominent US political family, who was brainwashed as part of a Communist conspiracy. It was twice adapted into a feature film (1962 and 2004).

[120] *Serrano v. Gallant Maritime Services, Inc., supra* at 278.

[121] *Yick Wo v. Hopkins,* 118 US 356 (1886) cited in *People v. Dela Piedra,* G.R. No. 121777, January 24, 2001, 350 SCRA 163, 181.

Filipino citizenzhip, but not her natural-born status. They cite as legal basis the constitution definition of natural-born citizens, *i.e.,* those who are citizens from birth without having to perform any act to acquire or perfect their Philippine citizenship.[122] Poe and the Solicitor General refute this by invoking the Court's ruling in *Bengson III v. HRET,*[123] where it was held that the act of repatriation allows a former natural-born citizen to recover, or return to, his original status before he lost his Philippine citizenship.

The COMELEC and Valdez, without stating it directly, are asking for a reexamination of *Bengson.* Valdez, on the one hand, frames his argument by differentiating RA 9225 from Republic Act No. 2630 (RA 2630) the old repatriation law in effect at the time *Bengson* was decided. He argues that RA 9225 had a more tedious process than RA 2630. On the other hand, the COMELEC points to the text of RA 9225 noting that it only mentioned reaquisition of citizenship, not reacquition of natural-born status. These are, of course, thin attempts to differentiate this case from *Bengson*. But the problem is that they never directly question the legal soundness of *Bengson*. And, to me, this half-hearted challenge is insufficient justification to depart from *tare decisis.*

Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. Absent any **powerful countervailing considerations,** like cases ought to be decided alike.[124] The reason why we adhere to judicial precedents is not only for certainty and predictability in our legal order but equally to have an institutional safeguard for the judicial branch.

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[122] CONSTITUTION, Art. IV, Sec. 2.

[123] G.R. No. 142840, May 7, 2001, 357 SCRA 545.

[124] *Ty v. Banco Filipino Savings & Mortgage Bank,* G.R. No. 144705, November 15, 2005, 475 SCRA 65, 75-76.

As articulated by the US Supreme Court in *Planned Parenthood v. Casey,*

> There is a limit to the amount of error that can plausibly be imputed to prior Courts. If that limit should be exceeded, disturbance of prior rulings would be taken as evidence that justifiable reexamination of principle had given way to drives for particular results in the short term. The legitimacy of the Court would fade with the frequency of its vacillation.[125]

In the Philippines, using as reference the cited US case, we have adopted a four-point test to justify deviation from precedent, which include the determination of: (1) whether the older doctrine retained the requirements of "practical workability"; (2) whether the older doctrine had attracted the kind of reliance that would add a special hardship to the consequences of overruling it and "add inequity to the cost of repudiation"; (3) whether the related principles of law have developed in a different direction so as to render the older rule "no more than the remnant of an abandoned doctrine"; and, (4) whether the contextual facts of the older doctrine have so changed as to deprive the old rule of "significant application or justification."[126] Thus, before we could venture into a full-blown reexamination of *Bengson,* it was necessary for respondents to have shown, at the first instance, that their case hurdled the foregoing test.

III

It is well settled in election law that residence is synonymous with domicile.[127] Domicile denotes a fixed permanent residence where, when absent for business or pleasure, or for like reasons, one intends to return.[128] To establish domicile, three elements must

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[125] 505 U.S. 833 (1992).

[126] *Ting v. Velez-Ting,* G.R. No. 166562, March 31, 2009, 582 SCRA 694, 707-708.

[127] *Caballero v. COMELEC,* G.R. No. 209835, September 22, 2015; *Limbona v. COMELEC,* G.R. No. 186006, October 16, 2009, 604 SCRA 240, 246; *Romualdez-Marcos v. COMELEC,* G.R. No. 119976, September 18, 1995, 248 SCRA 300, 323.

[128] *Asistio v. Aguirre,* G.R. No. 191124, April 27, 2010, 619 SCRA 518, 529-530.

concur: (1) residence or bodily presence in the new locality; (2) an intention to remain there *(animus manendi);* and (3) an intention to abandon the old domicile *(animus non revertendi)*.[129]

There is no question that Poe has complied with the first requirement. She has been residing in the Philippines together with her children since May 24, 2005, save for brief travels abroad. The point of contention between the parties is whether Poe satisfied the concurrent requisites of *animus manendi et non revertendi.* In the proceedings before the COMELEC, Poe presented evidence that: she and her husband enrolled their US-based children in Philippine schools in June 2005; they purchased a condominium in the second half of 2005 which was intended to be used as the family abode; they made inquiries with property movers as early as March 2005 and actually relocated household goods, furniture, cars, and other personal properties to the Philippines during the first half of 2006; she secured a Tax Identification Number from the Bureau of Internal Revenue in July 2005; her husband notified the US Postal Service that they will no longer be using their former US address in March 2006; they sold their family home in the US in April 2006; her husband resigned from his work in the US to join the family in May 2006; and her application for reacquisition of Filipino citizenship and her application for derivative citizenship of her minor children, which were subsequently approved on July 18, 2006. The COMELEC, however, relied on the declaration in her 2013 COC for Senator, where she stated that she was a resident for 6 years and 6 months, which would peg her residency in November 2006. Even if the previous COC was not controlling, the COMELEC determined that the earliest Poe could have established domicile here was when the BI approved her application to reacquire her Filipino citizenship on July 18, 2006. It emphasized that when Poe entered the Philippines in May 2005, she did so as a foreign national availing of a *balikbayan* visa-free entry privilege valid for one year. In other words, she was a temporary visitor. Citing *Coquilla v. COMELEC,*[130] the COMELEC ruled that Poe should have either secured an Immigrant Certificate of Residence

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[129] *Caballero v. COMELEC, supra.*

[130] G.R. No. 151914, July 31, 2002, 385 SCRA 607.

or reacquired Filipino citizenship to be able to waive her non-resident status.

Unlike residence which may be proved by mere physical presence, *animus manendi et non revertendi* refers to a state of mind. Thus, there is no hard and fast rule to determine a candidate's compliance with the residency requirement.[131] Its determination is essentially dependent on evidence of contemporary and subsequent acts that would tend to establish the fact of intention. Although the appreciation of evidence is made on a case-to-case basis, there are three basic postulates to consider: *first,* that a man must have a residence or domicile somewhere; *second,* that where once established it remains until a new one is arquired; and *third,* a man can have but one domicile at a time.[132] In addition, the Court has devised reasonable standards to guide tribunals in evaluating the evidence.

In *Mitra v. COMELEC,*[133] the Court recognized that the establishment of domicile may be **incremental.** The Court considered the following "incremental moves" undertaken by Mitra as sufficient to establish his domicile: (1) his expressed intent to transfer to a residence outside of Puerto Princesa City to make him eligible for a provincial position; (2) *his preparatory moves;* (3) the transfer of registration as a voter; (4) his initial transfer through a leased dwelling; (5) *the purchase of a lot for his permanent home;* and (6) the construction of a house on the said lot which is adjacent to the premises he was leasing pending the completion of his house.

In *Fernandez v. HRET,*[134] the Court held that the transfer of domicile must be *bona fide.* In ruling in favor of the petitioner whose residency was challenged in a *quo warranto* proceeding, the Court found that there are **real and substantial reasons** for

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

[132] *Id.*

[133] G.R. No. 191938, July 2, 2010, 622 SCRA 744.

[134] G.R. No. 187478, December 21, 2009, 608 SCRA 733.

Fernandez to establish a new domicile in Sta. Rosa, Laguna for purposes of qualifying for the May 2007 elections. The ruling was based on a finding that: (a) Fernandez and his wife owned and operated businesses in Sta. Rosa since 2003; (b) *their children attended schools in Sta. Rosa* at least since 2005; (c) although ownership of property should never be considered a requirement for any candidacy, *Fernandez purchased residential properties* in that city even prior to the May 2007 election; and (d) *Fernandez and his spouse subsequently purchased another lot* in April 2007, about a month before election day, where they have constructed a home for their family's use as a residence.

In *Japzon v. COMELEC,*[135] also involving residency, the Court ruled that **residence is independent of citizenship.** The Court found that although respondent Ty did not automatically reestablish domicile in the Philippines upon reacquisition of citizenship under RA 9225, his **subsequent acts** proved his intent to establish a new domicile in the Philippines. The Court based its finding on the following circumstances: (a) he applied for a Philippine passport indicating in his application that his residence in the Philippines was in General Macarthur, Eastern Samar; (b) for the years 2006 and 2007, Ty voluntarily submitted himself to the local tax jurisdiction of General Macarthur by paying community tax and securing CTCs from the said municipality stating therein his local address; (c) thereafter, Ty applied for and was registered as a voter in the same municipality; and (d) *Ty had also been bodily present in General Macarthur except for short trips abroad.*

In *Romualdez-Marcos v. COMELEC,*[136] one of the issues presented was an apparent mistake with regard to the period of residency stated in the COC of Imelda Marcos, which would have made her ineligible. In finding that Marcos was eligible, the Court held that "[i]t is the **fact of residence,** not a statement in a certificate of candidacy which ought to be decisive in

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[135] G.R. No. 180088, January 19, 2009, 576 SCRA 331.

[136] *Romualdez-Marcos v. COMELEC,* G.R. No. 119976, September 18, 1995, 248 SCRA 300.

determining whether or not an individual has satisfied the [C]onstitution's residency qualification requirement."[137]

Guided by the foregoing, it is clear to me that Poe has adequately established her *animus manendi et non revertendi* by substantial evidence. There are real and substantial reasons for her establishment of domicile in the Philippines. Her father died on December 2004, which Poe claims, was crucial in her decision to resettle in the Philippines for good. She and her family then began the incremental process of relocating by making preparatory inquiries with property movers as early as March 2005. She then entered the Philippines in May 2005 and enrolled her children in Philippine schools for the academic year starting in June 2005. It cannot be overemphasized that it defies logic that one would uproot her children from US schools and transfer them to schools in a different country if the intent was only to stay here temporarily. The intent to stay in the Philippines permanently is further reinforced by the purchase of real property to serve as the family abode and relocation of household goods, furniture, cars, and other personal properties from the US. The sale of their family residence in the US and her husband's arrival in the Philippines to join the family all but confirmed her abandonment of her US domicile and a definitive intent to remain in the Philippines. Poe has also been physically present in the Philippines since May 2005, and the fact that she returned after short trips abroad is strongly indicative that she considers the Philippines as her domicile. Her subsequent act of acquiring Filipino citizenship for herself and her minor children, renouncing her US citizenship, and holding public office are all consistent with the intent formed as early as 2005. Although these acts are subsequent to May 2005, they are relevant because they tend to prove a specific intent formed at an earlier time.[138] Taken together, these facts trump an innocuous statement in her 2013 COC.

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[137] *Id.* at 326.

[138] RULES OF COURT, Rule 130, Sec. 34. *Similar acts as evidence.*— Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or similar thing at another time; but it may be received to **prove a specific intent** or knowledge; identity, plan, system, scheme, habit, custom or usage, and the like. (Emphasis added)

The facts that Poe did not renounce her US citizenship until 2010 and used her US passport between 2006 and 2010 do not affect her establishment of domicile in the Philippines. The circumstance that Poe, after leaving the US and fixing her residence in the Philippines, may have had what is called a "floating intention" to return to her former domicile upon some indefinite occasion, does not give her the right to claim such former domicile as her residence. It is her establishment of domicile in the Philippines with the intention of remaining here for an indefinite time that severed the respondent's domiciliary relation with her former home.[139] This is consistent with the basic rule that she could have only one domicile at a time.

I now discuss the effect of the fact that Poe entered the country in May 2005 as an American citizen under the *balikbayan* visa-free program. There is no dispute among the parties that citizenship and residence are distinct concepts. A foreign national can establish domicile here without undergoing naturalization. Where there is disagreement is whether Poe could have established her domicile in the Philippines in May 2005 considering that her entry was through the *balikbayan* program, which is valid for one year. Respondents, on the one hand, believe it was not possible because of the temporary nature of her stay. For them, Poe should have first secured an Immigrant Certificate of Residence or repatriated earlier than July 2006. On the other hand, Poe contends that to require either would be to add a fourth requisite to the establishment of domicile.

In principle, I agree with the COMELEC's proposition that "a foreigner's capacity to establish her domicile in the Philippines is ... limited by and subject to regulations and prior authorization by the BID."[140] This appears to be based on rulings of US federal courts, which distinguish "lawful" from "unlawful" domicile.[141]

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[139] *Tanseco v. Arteche,* G.R. No. L-36300, September 13, 1932, 57 Phil. 227, 235.

[140] COMELEC Resolution dated December 23, 2015, p. 23.

[141] *Castellon-Contreras v. Immigration and Naturalization Service,* 45 F.3d 149 (7th Cir. 1995); *Melian v. Immigration and Naturalization Service,* 987 F.2d 1521 (11th Cir. 1993); *Lok v. Immigration and Naturalization Service,* 681 F.2d 107, 109 (2nd Cir. 1982).

The requisites for domicile remain the same, *i.e.,* physical presence, *animus manendi,* and *animus non revertendi.* But "[i]n order to have a 'lawful domicile,' then, an alien must have the ability, under the immigration laws, to form the intent to remain in the [country] indefinitely.[142] The basis for this is the sovereign's inherent power to regulate the entry of immigrants seeking to establish domicile within its territory. It is not an additional requisite for the establishment of domicile; rather, it is a precondition that capacitates a foreigner to lawfully establish domicile. This is the import of the statement in *Coquilla* that "an alien [is] without any right to reside in the Philippines save as our immigration laws may have allowed him to stay."[143]

The point of inquiry, therefore, is if, under our immigration laws, Poe has the ability to form the intent to establish domicile. In resolving this issue, the analysis in the US case of *Elkins v. Moreno*[144] is instructive. In *Elkins,* the US Supreme Court resolved the question of whether a holder of a "G-4 visa" (a nonimmigrant visa granted to officers or employees of international treaty organizations and members of their immediate families) cannot acquire Maryland domicile because such a visa holder is incapable of demonstrating an essential element of domicile—the intent to live permanently or indefinitely in Maryland (a "legal disability"). In resolving the issue, the US Court analyzed federal immigration laws and found that where the US Congress intended to restrict a nonimmigrant's capacity to establish domicile, it did so expressly. Since there was no similar restriction imposed on G-4 aliens, the US Court considered the legislature's silence as pregnant, and concluded that the US Congress, while anticipating that permanent immigration would normally occur through immigrant channels, was willing to allow non-restricted nonimmigrant aliens to adopt the US as their domicile.[145]

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[142] *Castellon-Contreras v. Immigration and Naturalization Service, supra.*

[143] G.R. No. 151914, July 31, 2002, 385 SCRA 607, 616.

[144] 435 U.S. 647 (1978).

[145] *Id.*

In the Philippines, the primary immigration law is Commonwealth Act No. 613 (CA 613) or the Philippine Immigration Act of 1940. In defining certain nonimmigrant classes, Congress explicitly limited the purpose for entry into the Philippines. For example, a nonimmigrant student's entry is "solely for the purpose of study."[146] In other instances, it uses language that identifies a specific purpose and the transient nature of the nonimmigrant's entry.[147] By including such restrictions on intent, it may be deduced that Congress aimed to exclude aliens belonging to these restricted classes if their real purpose in coming to the Philippines was to immigrate permanently. This is further supported by Section 37(d) of the Act which provides as ground for deportation the nonimmigrant's violation of any limitation or condition under which he was admitted.

But Congress made no such clear restrictions in Republic Act No. 9174 (RA 9174), which amended Republic Act No. 6768 (RA 6768).[148] The law allows *balikbayans* who hold foreign passports to enter the Philippines visa-free for a period of one year, except for those considered as restricted nationals.[149] It defines a *balikbayan* as "a Filipino citizen who has been continuously out of the Philippines for a period of at least one (1) year, a Filipino overseas worker, or former Filipino

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[146] CA 613, Sec. 9(f). *See also* 9(c) "A seaman serving as such on a vessel arriving at a port of the Philippines and seeking to enter **temporarily and solely in the pursuit of his calling as a seaman**"; and 9(d) "A person seeking to enter the Philippines **solely to carry on trade between the Philippines and the foreign state** of which he is a national, his wife, and his unmarried children under twenty-one years of age, if accompanying or following to join him, subject to the condition that citizen of the Philippines under similar conditions are accorded like privileges in the foreign state of which such person is a national." (Emphasis added)

[147] *Id.,* Sec. 9(a) "A **temporary** visitor coming **for business or for pleasure or for reasons of health**"; (b) "A person **in transit to a destination outside the Philippines.**" (Emphasis added)

[148] An Act Instituting a Balikbayan Program (1989).

[149] RA 6768, as amended by RA 9174, Sec. 3(c).

citizen and his or her family, as this term is defined hereunder, who had been naturalized in a foreign country and comes or returns to the Philippines."[150] Unlike the restricted classes of nonimmigrants under the Immigration Act, there was no definite restriction on intent or purpose imposed upon *balikbayans,* although there was a temporal restriction on the validity of the visa-free entry. Taken alone, the one-year limit may be interpreted as an implied limitation. However, RA 9174 expressly declared that one of the purposes of establishing a *balikbayan* program is to "to enable the *balikbayan* to become economically self-reliant members of society upon their return to the country."[151] To this end, the law instructs government agencies to "provide the necessary entrepreneurial training and livelihood skills programs and marketing assistance to a *balikbayan,* including his or her immediate family members, who shall avail of the *kabuhayan* program in accordance with the existing rules on the government's reintegration program."[152] This is a clear acknowledgement by Congress that it is possible for a *balikbayan* to form the intent needed to establish his domicile in the Philippines. Notably, there are no qualifications, such as acquisition of permanent resident status or reacquisition of Filipino citizenship, before a *balikbayan* may avail of the *kabuhayan* program. Applying the well-established interpretive rule that a statute must be so construed as to harmonize and give effect to all its provisions whenever possible,[153] the one-year visa-free entry does not create a legal disability which would prevent *balikbayans* from developing *animus manendi.*

The amendments introduced by RA 9174 to RA 6768 differentiate the present case from *Coquilla.* In that case, decided prior to the enactment of RA 9174, the Court concluded that a visa-free *balikbayan* visitor could not have established domicile

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[150] *Id.,* Sec. 2(a).

[151] *Id.,* Sec. 1.

[152] *Id.,* Sec. 6.

[153] *Uy v. Sandiganbayan,* G.R. Nos. 105965-70, March 20, 2001, 354 SCRA 651, 672-673.

in the Philippines prior to a waiver of his non-resident status. This is because under RA 6768, the only declared purpose was "to attract and encourage overseas Filipinos to come and visit their motherland." Coupled with the one-year visa-free limit, this most likely led to the Court's interpretation that a *balikbayan's* entry was merely temporary. However, with the amendments introducing the reintegration provisions, a *balikbayan* is no longer precluded from developing an intent to stay permanently in the Philippines. Therefore, Poe, who entered the Philippines after the effectivity of RA 9174, had the ability to establish a lawful domicile in the Philippines even prior to her reacquisition of Filipino citizenship.

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For the foregoing reasons, I vote to **GRANT** the petitions.

SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

I concur. The Commission on Elections ***("COMELEC")*** committed grave abuse of discretion amounting to lack or excess of jurisdiction when it cancelled the petitioner's certificate of candidacy.

At the outset, this discussion is necessarily framed in the context of the nature of the petitions brought before the COMELEC and the resultant scope of this Court's review.

The Omnibus Election Code ***("OEC")*** positively requires an aspiring candidate to formally manifest his or her intention to run through the filing of a certificate of candidacy.[1] Section 74 of the OEC enumerates the information required to be stated by a candidate in his or her certificate of candidacy, thus:

> 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,

[1] OMNIBUS ELECTION CODE, Sec. 73.

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.

x x x x x x x x x

Under Section 78, a certificate of candidacy can be denied due course or cancelled in case of false material representation therein. The jurisprudential requirements for the cancellation of a certificate of candidacy under Section 78 of the OEC are clear: *(1)* that a representation is made with respect to a material fact, *(2)* that the representation is false, and *(3)* that there is intent to deceive or mislead the electorate.[2]

The Assailed Resolutions were issued by the COMELEC disposing of Petitions for Disqualification and Cancellation of Certificate of Candidacy filed by the respondents against the petitioner. Treating all petitions filed as Section 78 Petitions, the Assailed Resolutions held that *(1)* the representations made by the petitioner with respect to her citizenship and residence were false, and *(2)* she intended to deceive or mislead the electorate as to her qualifications to run for office. In determining the existence of false material representation, the COMELEC declared that the petitioner cannot claim that May 24, 2005 was the starting point of her period of residence, and that she is not a natural-born citizen. Consequently, her certificate of candidacy was cancelled.

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[2] *Caballero v. COMELEC,* G.R. No. 209835, September 22, 2015; See also *Villafuerte v. COMELEC,* G.R. No. 206698, February 25, 2014, 717 SCRA 312, citing *Salcedo II v. COMELEC,* 371 Phil. 377 (1999).

In these Consolidated Petitions for *certiorari,* the petitioner ascribes grave abuse of discretion to the COMELEC for, among others, ruling on her qualifications in a Section 78 petition. In other words, the extent of the COMELEC's jurisdiction in a Section 78 petition should have been to check the accuracy of the material representations made in a certificate of candidacy and to determine the existence of an intent to mislead — only for the purpose of deciding whether the certificate of candidacy should be denied due course or cancelled.

The limited scope of this Court's review on *certiorari* of a judgment, final order or resolution of the COMELEC under Rule 64 is well-defined. Time and again, this Court has held that the extent of its review is limited to the determination of whether the COMELEC acted without jurisdiction, or committed grave abuse of discretion amounting to lack or excess of jurisdiction.[3]

"Grave abuse of discretion," under Rule 65, has been described in a number of cases as 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 a 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.[4] This Court has also previously held that wrong or irrelevant considerations in deciding an issue is sufficient to taint COMELEC's action with grave abuse of discretion, and that in exceptional cases, when the COMELEC's action on the appreciation and evaluation of evidence oversteps the limits of its discretion to the point of

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[3] *Dela Cruz v. COMELEC,* 698 Phil. 548, 559 (2012); *Laurena, Jr. v. COMELEC,* 553 Phil. 210, 217 (2007), citing *Manzala v. COMELEC,* 551 Phil. 28, 35 (2007).

[4] *Alliance for Nationalism and Democracy (ANAD) v. COMELEC,* G.R. No. 206987, September 10, 2013, 705 SCRA 340, 344, citing *Beluso v. COMELEC,* 635 Phil. 436, 443 (2010); *Velasco v. COMELEC,* 595 Phil. 1172, 1183 (2008), citing *Gonzales v. Intermediate Appellate Court,* 252 Phil. 253, 262 (1989); *Lalican v. Vergara,* 342 Phil. 485, 495 (1997).

being grossly unreasonable, this Court is not only obliged, but has the constitutional duty to intervene.[5]

The question in these Consolidated Petitions is whether or not the Assailed Resolutions of the COMELEC are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. If the COMELEC committed grave abuse, then it becomes this Court's bounden duty to strike down the assailed judgment. Moreso in this case, when the right of an individual to run and be voted for public office and the right of the electorate to choose their leader are at stake.

Necessarily, therefore, this Court's jurisdiction and its exercise neither hinge on nor require a final determination of the petitioner's qualifications. Keeping in mind the narrow confines of this Court's *certiorari* jurisdiction as invoked, and the principle of judicial restraint, I confine my views only to those matters that are absolutely necessary to resolve the Petitions, and accordingly leave the resolution of the questions of her qualifications to the Presidential Electoral Tribunal if and when such a petition is filed before it.

With this framework, I proceed to examine whether the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it cancelled petitioner's certificate of candidacy.

The COMELEC acted with grave abuse of discretion when it cancelled the petitioner's certificate of candidacy.

I believe that the COMELEC committed grave abuse of discretion by *(1)* misinterpreting the jurisprudential requirements of cancellation of a certificate of candidacy under Section 78, and *(2)* for placing the burden of proof upon the petitioner to show that she complies with the residency and citizenship qualifications for the position of President.

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[5] *Sabili v. COMELEC,* 686 Phil. 649 (2012), and *Jalover v. Osmeña,* G.R. No. 209286, September 23, 2014, 736 SCRA 267, citing *Mitra v. COMELEC,* 648 Phil. 165 (2010).

The COMELEC grossly misinterpreted the law in the manner it treated the jurisprudential requirements of cancellation under Section 78. Specifically, it gravely abused its discretion by failing to determine the existence of petitioner's intent to deceive separate from the determination of whether there were false material representations in her certificate of candidacy.

In *Mitra v. COMELEC,*[6] this Court elucidated on the nature of the element of intent to deceive, thus:

> [T]he misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception of the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run; x x x.

Proceeding from this statement, this Court found in that case that Mitra did not commit any deliberate material misrepresentation in his certificate of candidacy. Moreover, this Court held that the COMELEC gravely abused its discretion in its appreciation of the evidence which led it to conclude that Mitra was not a resident of Aborlan, Palawan. The COMELEC, too, 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.

In *Jalover v. Osmeña,*[7] the requirement of intent to deceive was restated, thus:

> Separate from the requirement of materiality, a false representation under Section 78 must consist of a "deliberate attempt to mislead, misinform, or hide a fact, which would otherwise render a candidate ineligible." In other words, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. x x x

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[6] 636 Phil. 753, 780 (2010).

[7] *Supra* note 5, at 282.

These cases show that there must be a *deliberate* attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. Therefore, the requirement of intent cannot be disposed of by a simple finding that there was false representation of a material fact; to be sure, there must also be a showing of the candidate's intent to deceive as animating the making of the false material representation.[8]

In the case of petitioner, apart from the finding that there were false material representations in the petitioner's certificate of candidacy, the COMELEC relied mainly on the representation previously made by the petitioner in her 2012 certificate of candidacy for the position of Senator, and that she is a foundling, to support the inference that the petitioner intended to mislead the electorate into believing that she has the requisite residency and natural-born status. The existence of intent to mislead is not a question of law — and I find that the petitioner has adduced substantial evidence to show, contrary to any intent to mislead, that she honestly believed herself to have the requisite qualifications to run for President. Her evidence should have been directly met by the respondents. As it was, her evidence

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[8] In *Tagolino v. House of Representatives Electoral Tribunal,* 706 Phil. 534, 551 (2013), a case that dealt with the question of whether a disqualified candidate whose certificate of candidacy was not cancelled could be substituted, the Court ratiocinated:

> Corollary thereto, it must be noted that the deliberateness of the misrepresentation, much less one's intent to defraud, is of bare significance in a Section 78 petition as it is enough that the person's declaration of a material qualification in the CoC be false. In this relation, jurisprudence holds that an express finding that the person committed any deliberate misrepresentation is of little consequence in the determination of whether one's CoC should be deemed cancelled or not. What remains material is that the petition essentially seeks to deny due course to and/or cancel the CoC on the basis of one's ineligibility and that the same be granted without any qualification.

However, cases on cancellation of certificate of candidacy under Section 78 (which were promulgated after *Tagolino)* retained the element of intent: *Villafuerte v. COMELEC, supra* note 2 and *Hayudini v. COMELEC,* G.R. No. 207900, April 22, 2014, 723 SCRA 223.

was not considered by the COMELEC. On this ground, its judgment was tainted with grave abuse of discretion.

Moreover, contrary to the rules of evidence, the COMELEC shifted the burden of proof to the petitioner, ascribing to her the onus of showing that she had the qualifications to run for President, instead of requiring the respondents to prove the three elements that furnish the grounds for denial of due course or cancellation of certificate of candidacy.

Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.[9] This Court has consistently held, and it is an established rule, that the burden of evidence may shift depending upon the exigencies of the case in the course of trial;[10] however, the burden of proof remains with the party upon whom it is originally imposed[11] — he who seeks the affirmative of an issue. In this case, as with other election cases, the burden of proof is placed upon the parties seeking the denial of due course or cancellation of a certificate of candidacy.[12]

In this case, this shifting of burden of proof to the petitioner unfairly skewed the analysis and resulting conclusions reached by the COMELEC in the petitions for cancellation against the petitioner. It would appear that the COMELEC relied merely on its judgment being based on substantial evidence, without considering the effect upon the petitions for cancellation of the: *(1)* respondents' claims and evidence being met by those of the petitioner, and *(2)* evidence of both parties at equipoise. This erroneous consideration similarly taints the judgment with grave abuse of discretion.

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[9] RULES OF COURT, RULE 131, Sec. l.

[10] *Bautista v. Sarmiento,* 223 Phil. 181, 186 (1985); See also *De Leon v. Bank of the Philippine Islands,* G.R. No. 184565, November 20, 2013, 710 SCRA 443; *Vitarich Corporation v. Losin,* 649 Phil. 164 (2010).

[11] *Bautista v. Sarmiento, id.* at 185.

[12] *Reyes v. COMELEC,* G.R. No. 207264, June 25, 2013, 699 SCRA 522 the same discussion repeated in the Resolution dated October 22, 2013; *Tecson v. COMELEC,* 468 Phil. 421 (2004).

Consequent to the finding that the COMELEC gravely abused its discretion, this case falls within the exception whereby this Court can examine the factual conclusions of the COMELEC.

There was no intent to deceive.

A. With respect to residency

Mitra, while admittedly not on all fours with this case, shares enough similarities to this case on a conceptual level that the analysis used therein can be applied by parity of reasoning. Inasmuch as we held in *Mitra* that the establishment of a new domicile may be an incremental process and that the totality of the evidence should he considered in determining whether or not a new domicile was established, the same disquisition applies to the instant case.

The totality of evidence presented by the petitioner points to a decision and action to establish a new domicile of choice in the Philippines as early as 2005. Stated differently, my considered appreciation of the totality of all these overt acts done by the petitioner is that she had believed in good faith that when she filled up her certificate of candidacy she was correctly reckoning the period of her residency from the time that she had taken concrete steps to transfer her domicile. Using the standard of Section 74 of the OEC, petitioner filled in the certificate of candidacy to "the best of her knowledge". To impute intent to mislead upon a person who represents what she knows to the best of her knowledge and belief to be true, as supported by the evidence, is to commit grave abuse of discretion.

The petitioner did not fasely represent her length of residence.

All told, the evidence of petitioner preponderantly shows that she *(1)* has been physically present in the country from 2005; *(2)* had intended to remain in the Philippines, and *(3)* abandoned her domicile in the United States.

Actual physical presence

The petitioner sufficiently established that after she came to the Philippines in 2004 to support her father's campaign, she

returned in 2005 with a more permanent stay in mind and had been physically present in the country since; that she had brought her children to the Philippines in mid-2005.

Animus manendi and animus non revertendi

Similar to evidence showing physical presence, the petitioner sufficiently showed that since 2005, she and her entire family had taken steps to permanently relocate in the Philippines. Petitioner showed that as early as March 2005, her husband had begun the process of transporting and disposing of their household belongings in the United States. By the middle of 2005, the petitioner and her children had arrived in the Philippines; the children, enrolled in Philippine schools by June 2005. The next year, they began the construction of a home and acquired a condominium unit to stay in until the construction is completed.

Her travel documents also show that whenever she left the country, she returned to the Philippines. By July 2006, she had taken her *Oath of Allegiance to the Republic of the Philippines* pursuant to the provisions of Republic Act No. 9225. Her husband had also formally notified the United States Postal Service of their change of address. The entire process culminated in her acceptance of the Movie and Television Review and Classification Board ***("MTRCB")*** Chairmanship and her renunciation of her American citizenship in 2010.

To an unbiased mind, all these overt acts would show that the intent and demonstrative acts to transfer to or establish a new domicile of choice began in 2005. The evidence clearly preponderates in favor of the conclusion that the petitioner's physical presence, *animus manendi* and *animus non revertendi* had concurred by clear overt acts obtaining as early as 2005. While admittedly, the last acts that foreclose any other conclusion were done in 2010, more than substantial evidence is present to support her claim that she had established a new domicile of choice in the Philippines from May 24, 2005. As in *Mitra,*[13]

[13] *Supra* note 5.

the transfer was an incremental process, nowhere near completed in 2005, but already existing then. I submit that these facts lead to no other conclusion than that the petitioner had already determined to permanently reside in the Philippines.

On this point, I quote with approval the Separate Opinion[14] of Commissioner Luie Tito F. Guia:

> To prove her claims, Respondent presented, among others, the following: a) E-mail exchanges from 18 March 2005 to 29 September 2006 with Victory Van Corporation and National Veterinary Quarantine Service Bureau of Animal Industry of the Philippines indicating respondent and her husband's plan of relocating all their movable properties from the United States to the Philippines; b) Official Transcripts, Permanent School Records and Registrar Certification showing the enrolment of her school-aged children in Philippine schools before June 2005; c) her Philippine Bureau of Internal Records [sic] or Tax Identification Number 239-290- 513-000; and d) Condominium Certificate Titles, Declarations of Real Property and a Transfer Certificate of Title indicating acquisitions of different real properties in the country.
>
> It is clear from the foregoing that Respondent was physically and actually present in the Philippines since May 2005. This is one of the requisites for an effective change of domicile. It is also evident that, independent of her still being a US citizen at that time, Respondent had already intended to change her domicile from the US to the Philippines. All her acts and conduct points to her intention to transfer her residence to the Philippines.
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> x x x x x x x x x
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> From the substantial evidence on record, I find that there is no misrepresentation in Respondent's CoC in so far as her period of residency in the Philippines is concerned. It is an error for the Commission to cancel Respondent's CoC on this ground.
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> x x x x x x x x x

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[14] In the Consolidated Petitions docketed as SPA No. 15-002 (DC), SPA No. 15-007 (DC), and SPA No. 15-139 (DC).

To my mind, there can be no clearer manifestation of the earlier concurrence of the petitioner's *animus manendi* and *animus non revertendi* with her physical presence in the country than when she brought her children to the Philippines in the middle of 2005 and enrolled them in the same year in Philippine schools. To any parent, this is a very big decision that is not lightly made. To uproot teens from the world they know, and to displace them from the environment in which they grew up, is, to say the least, a very significant decision for any parent to make. Indeed, as a parent, the petitioner is presumed to be acting in the best interest of her children. And that petitioner did this convinces me that petitioner's decision to permanently reside in the Philippines was already made at the time, or just before, the children were brought to the Philippines to stay with her and to study, in the middle of 2005.

Given the totality of evidence presented by petitioner, the inaccuracies with respect to the period of her residency can be considered an honest mistake. The petitioner had admitted to making a mistake in determining the precise date of the start of her residency when she filed her certificate of candidacy for the position of Senator in 2012. The filing of the 2015 certificate of candidacy is the earliest opportunity that the petitioner had to correct her previous representation — the very fact that she changed her period of residence, on its own, cannot be the basis of a finding that there was deliberate intent to mislead as to her residency.

As for the 2015 certificate of candidacy, even assuming that the representation that her period of residence began on May 24, 2005 is false, the petitioner had sufficiently shown that the effective transfer of domicile occurred in 2005. Even in an effect-based analysis, therefore, there should not have been a finding that there was intent to mislead. By fact and law, she complies with the residency requirement, and no deception of the electorate as to her qualification ensues by virtue of her representation.

What is more, she has in her favor substantial evidence to show that she had been physically present and had taken overt actions demonstrative of her *animus manendi* and *animus non*

revertendi from the time of her claimed period of residence on May 24, 2005.[15] In fine, the evidence presented preponderated in favor of the petitioner. And even if we were to assume arguendo that the evidence of the parties is at equipoise, still, the COMELEC should have ruled against the party with the burden of proof — the respondents.

This application of burden of proof can be seen in one of the holdings in *Tecson v. COMELEC,* thus:

> [B]ut while the totality of the evidence may not establish conclusively that respondent FPJ is a natural-born citizen of the Philippines, the evidence on hand still would preponderate in his favor enough to hold that he cannot be held guilty of having made a material misrepresentation in his certificate of candidacy in violation of Section 78, in relation to Section 74, of the Omnibus Election Code. Petitioner has utterly failed to substantiate his case before the Court, notwithstanding the ample opportunity given to the parties to present their position and evidence, and to prove whether or not there has been material misrepresentation, which, as so ruled in *Romualdez-Marcos vs. COMELEC,* must not only be material, but also deliberate and willful."[16]

B. With respect to citizenship

On this point I deviate from the majority opinion when it proceeded to rule on the question of the petitioner's citizenship. Keeping in mind the nature of this Court's limited *certiorari* review, I believe that this Court need not have made a definitive ruing on petitioner's status as a natural-born Filipino citizen.

I concur, however, that the COMELEC grossly misappreciated the evidence when it found that the petitioner deliberately intended to mislead the electorate when she stated that she is a natural-born Filipino citizen, knowing full well that she is a

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[15] The amount of evidence presented by the petitioner sufficiently distinguishes her case from the cases of *Coquilla v. COMELEC,* 434 Phil. 861 (2002), *Caballero v. COMELEC, supra* note 2 and *Reyes v. COMELEC, supra* note 12, wherein this Court was constrained to either closely link or reckon the period of residence to the reacquisition of citizenship for sheer dearth of evidence.

[16] *Supra* note 12, at 488; citations omitted.

foundling. The COMELEC would have us believe that the petitioner knew that she was not a natural-born citizen at the time that she accomplished and filed her certificate of candidacy, and knowing this, deliberately attempted to deceive the electorate by claiming that she is a natural-born Filipino citizen.

The question of petitioner's citizenship as a foundling is subject to legal interpretation. Any conclusion reached on this point is necessarily a legal conclusion. If one needs proof to show how intricate and susceptible to several interpretations her real status is as a foundling, one needs only to look at the different interpretations advanced by the members of the COMELEC and of this Court.

The rule is that any mistake on a doubtful or difficult question of law may be the basis of good faith.[17] In *Kasilag v. Rodriguez,*[18] this Court, citing Manresa, recognized the possibility of an excusable ignorance of or error of law being a basis for good faith:

> We do not believe that in real life there are not many cases of good faith founded upon an error of law. When the acquisition appears in a public document, the capacity of the parties has already been passed upon by competent authority, and even established by appeals taken from final judgments and administrative remedies against the qualification of registrars, and the possibility of error is remote under such circumstances; but, unfortunately, private documents and even verbal agreements far exceed public documents in number, and while no one should be ignorant of the law, the truth is that even we who are called upon to know and apply it fall into error not infrequently. However, a clear, manifest, and truly unexcusable ignorance is one thing, to which undoubtedly refers Article 2, and another and different thing is possible and excusable error arising from complex legal principles and from the interpretation of conflicting doctrines.

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[17] *Lecaroz v. Sandiganbayan,* 364 Phil. 890 (1999); *Kasilag v. Rodriguez,* G.R. No. L- 46623, 69 Phil. 217 (1939).

[18] *Id*. at 230-231, citing Manresa, *Commentaries on the Spanish Civil Code,* Volume IV, pp. 100, 101 and 102.

But even ignorance of the law may be based upon an error of fact, or better still, ignorance of a fact is possible as to the capacity to transmit and as to the intervention of certain persons, compliance with certain formalities and appreciation of certain acts, and an error of law is possible in the interpretation of doubtful doctrines.

If indeed a mistake was made by petitioner as to her real status, this could be considered a mistake on a difficult question of law that could be the basis for good faith. In this regard, good faith is presumed.[19] In the same vein, it is presumed that a person is innocent of a crime or wrong, and that the law was obeyed.[20] Without more, the legal conclusion alleged by the respondents in the petitions for cancellation, and thereafter reached by the COMELEC, that the petitioner was not a natural-born citizen simply because she is a foundling is not sufficient to overcome the presumption that the petitioner made the representation as to her citizenship in good faith.

Even assuming that these presumptions cannot be considered in the petitioner's favor, the lack of intent to deceive is fully supported by evidence tending to show that she fully discharged the burden of her oath in the certificate of candidacy that her status as a natural-born Filipino is true and correct to the best of her knowledge. The evidence submitted by the petitioner tends to more than adequately establish that before her naturalization as an American citizen, she consistently comported herself as, and was deemed, a Filipino citizen, even by the government. Though this by no means determines her real status, it cannot be gainsaid that any reasonable person can be led to believe that he is how he was deemed or treated, i.e., a natural born citizen. Given what the petitioner believed of her status, the claim that she is a natural-born Filipino citizen is far

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[19] *GSIS v. Sps. Labung-Deang,* 417 Phil. 662 (2001); *Bermudez v. Gonzales,* 401 Phil. 38, 47 (2000).

[20] RULES OF COURT, Rule 131, Sec. 3, pars. (a) and (ff).

from groundless or deceptive. It is credible that she believed in good faith that she is a natural-born Filipino citizen, and that this fact is true and correct to the best of her knowledge—as she so swore in her certificate of candidacy.

In the final analysis, even assuming falsity in her representation as to her citizenship similar to her residency, this fact alone should not have led to an automatic finding of intent to mislead and deceive the electorate, and ultimately to the cancellation of her certificate of candidacy under Rule 78.

A final word. The function of this Court's review in this Petition does not absolutely require an examination of the petitioner's qualifications, but only to determine whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it cancelled the petitioner's Certificate of Candidacy. This is in keeping with the limited scope of review in this *certiorari* petition. By applying the standards that have been previously set, this Court can dispense justice without presuming to make that determination.

For these reasons, I vote to **GRANT** the consolidated Petitions.

DISSENTING OPINION

CARPIO, *J.*:

I dissent from the majority opinion.

With the ruling of the majority today, a presidential candidate who is deemed a natural-born Filipino citizen by less than a majority of this Court, deemed not a natural-born Filipino citizen by five Justices, and with no opinion from three Justices, can now run for President of the Philippines even after having been unanimously found by the Commission on Elections *En Banc* (COMELEC) to be not a natural-born Filipino citizen. What is clear and undeniable is that there is no majority of this Court that holds that petitioner Mary Grace Natividad S. Poe Llamanzares

(petitioner) is a natural-born Filipino citizen. This ruling of the majority will lead to absurd results, making a mockery of our national elections by allowing a presidential candidate with uncertain citizenship status to be potentially elected to the Office of the President, an office expressly reserved by the Constitution exclusively for natural-born Filipino citizens.

This means that the majority of this Court wants to resolve the citizenship status of petitioner after the elections, and only if petitioner wins the elections, despite petitioner having already presented before the COMELEC all the evidence she wanted to present to prove her citizenship status. This will make a mockery of our election process if petitioner wins the elections but is later disqualified by this Court for not possessing a basic qualification for the Office of the President—that of being a natural-born Filipino citizen. Those who voted for petitioner would have utterly wasted their votes. This is not how the natural-born citizenship qualification for elective office mandated by the Constitution should be applied by the highest court of the land.

There is no dispute that petitioner is a Filipino citizen, as she publicly claims to be. However, she has failed to prove that she is a **natural-born** Filipino citizen and a resident of the Philippines for at least ten years immediately preceding the 9 May 2016 elections. Petitioner is not eligible to run for President of the Republic of the Philippines for lack of the essential requirements of citizenship and residency under Section 2, Article VII of the 1987 Constitution.[1] Petitioner's certificate of candidacy (COC), wherein she stated that she is qualified for the position of President, contains false material representations, and thus, must be cancelled. Petitioner, not being a natural-born Filipino citizen, is also a nuisance candidate whose COC can *motu proprio* be cancelled by the COMELEC under Section 69 of the Omnibus Election Code.

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[1] This provision reads:

SECTION 2. No person may be elected President unless he is a **natural-born citizen of the Philippines,** a registered voter, able to read and write, at least forty years of age on the day of the election, and **a resident of the Philippines for at least ten years immediately preceding such election.** (Emphasis supplied)

The Case

These consolidated certiorari petitions[2] seek to nullify the Resolutions[3] of the COMELEC for allegedly being issued with grave abuse of discretion amounting to lack or excess of jurisdiction. In the assailed Resolutions, the COMELEC cancelled petitioner's COC for the position of President for the 9 May 2016 elections on the ground of "false material representations" when she stated therein that she is a "natural-born Filipino citizen" and that her "period of residence in the Philippines up to the day before May 09, 2016" is "10 years and 11 months," which is contrary to the facts as found by the COMELEC.

The Issues

The core issues in this case are (1) whether petitioner, being a foundling, is a natural-born Filipino citizen, and (2) whether she is a resident of the Philippines for ten years immediately preceding the 9 May 2016 national elections. The resolution of these issues will in turn determine whether petitioner committed false material representations in her COC warranting the cancellation of her COC. If petitioner is not a natural-born Filipino citizen, the issue arises as a necessary consequence whether she is a nuisance candidate whose COC can *motu proprio* be cancelled by the COMELEC.

COMELEC Jurisdiction

Section 2(1), Article IX-C of the Constitution vests in the COMELEC the power, among others, to "[e]nforce and administer all laws and regulations relative to the conduct of an election, x x x."[4] Screening initially the qualifications of all candidates lies

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[2] Under Rule 65, in relation to Rule 64, of the Rules of Civil Procedure.

[3] In G.R. Nos. 221698-700, petitioner assails the COMELEC Resolutions dated 11 December 2015 (issued by the COMELEC's First Division) and 23 December 2015 (issued by the COMELEC *En Banc).*

In G.R. No. 221697, petitioner assails the COMELEC Resolutions dated 1 December 2015 (issued by the COMELEC's Second Division) and 23 December 2015 (issued by the COMELEC *En Banc).*

[4] This provision pertinently reads:

within this specific power. In my dissent in *Tecson v. COMELEC,*[5] involving the issue of Fernando Poe, Jr.'s citizenship, I discussed the COMELEC's jurisdiction, to wit:

x x x. Under Section 2(1), Article IX-C of the Constitution, the Comelec has the power and function to *"[E]nforce and administer all laws and regulations relative to the conduct of an election.*" The initial determination of who are qualified to file certificates of candidacies with the Comelec clearly falls within this all-encompassing constitutional mandate of the Comelec. The conduct of an election necessarily includes the initial determination of who are qualified under existing laws to run for public office in an election. Otherwise, the Comelec's certified list of candidates will be cluttered with unqualified candidates making the conduct of elections unmanageable. For this reason, the Comelec weeds out every presidential election dozens of candidates for president who are deemed nuisance candidates by the Comelec.

Section 2(3), Article IX-C of the Constitution also empowers the Comelec to *"[D]ecide, except those involving the right to vote, all questions affecting elections x x x.*" The power to decide "all questions affecting elections" necessarily includes the power to decide whether a candidate possesses the qualifications required by law for election to public office. This broad constitutional power and function vested in the Comelec is designed precisely to avoid any situation where a dispute affecting elections is left without any legal remedy. **If one who is obviously not a natural-born Philippine citizen, like Arnold Schwarzenneger, runs for President, the Comelec is certainly not powerless to cancel the certificate of candidacy of such candidate. There is no need to wait until after the elections before such candidate may be disqualified**.[6] (Italicization in the original; boldfacing supplied)

SECTION 2. The Commission on Elections shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

[5] 468 Phil. 421, 624-642 (2004).

[6] *Id.* at 625-626.

Clearly, pursuant to its constitutional mandate, the COMELEC can initially determine the qualifications of all candidates and disqualify those found lacking any of such qualifications before the conduct of the elections. In fact, the COMELEC is empowered to *motu proprio* cancel COCs of nuisance candidates.[7] In *Timbol v. COMELEC,*[8] the Court stated thus:

Respondent's power to *motu proprio* deny due course to a certificate of candidacy is subject to the candidate's opportunity to be heard.

Under Article II, Section 26 of the Constitution, "[t]he State shall guarantee equal access to opportunities for public service[.]" This, however, does not guarantee "a constitutional right to run for or hold public office[.]" To run for public office is a mere "privilege subject to limitations imposed by law." Among these limitations is the prohibition on nuisance candidates.

Nuisance candidates are persons who file their certificates of candidacy "to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate." x x x. (Emphasis supplied)

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[7] Section 69 of the Omnibus Election Code provides:

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

[8] G.R. No. 206004, 24 February 2015.

It cannot be disputed that a person, not a natural-born Filipino citizen, who files a certificate of candidacy for President, "put[s] the election process in mockery" and is therefore a nuisance candidate. Such person's certificate of candidacy can *motu proprio* be cancelled by the COMELEC under Section 69 of the Omnibus Election Code, which empowers the COMELEC to cancel *motu proprio* the COC if it "**has been filed to put the election process in mockery**."

In *Pamatong v. COMELEC,*[9] cited in *Timbol,*[10] the Court explained the reason why nuisance candidates are disqualified to run for public office:

> The rationale behind the prohibition against nuisance candidates and the disqualification of candidates who have not evinced a *bona fide* intention to run for office is easy to divine. The State has a compelling interest to ensure that its electoral exercises are rational, objective, and orderly. Towards this end, the State takes into account the practical considerations in conducting elections. Inevitably, the greater the number of candidates, the greater the opportunities for logistical confusion, not to mention the increased allocation of time and resources in preparation for the election. These practical difficulties should, of course, never exempt the State from the conduct of a mandated electoral exercise. At the same time, remedial actions should be available to alleviate these logistical hardships, whenever necessary and proper. Ultimately, a disorderly election is not merely a textbook example of inefficiency, but a rot that erodes faith in our democratic institutions. x x x.
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> x x x x x x x x x
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> x x x. The organization of an election with *bona fide* candidates standing is onerous enough. To add into the mix candidates with no serious intentions or capabilities to run a viable campaign would actually impair the electoral process. This is not to mention the candidacies which are palpably ridiculous so as to constitute a one-note joke. The poll body would be bogged by irrelevant minutiae covering every step of the electoral process, most probably posed

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[9] G.R. No. 161872, 13 April 2004, 427 SCRA 96, 104, 105.

[10] *Supra* note 8.

at the instance of these nuisance candidates. It would be a senseless sacrifice on the part of the State.

To allow a person, who is found by the COMELEC not to be a natural-born Filipino citizen, to run for President of the Philippines constitutes a mockery of the election process. Any person, who is not a natural-born Filipino citizen, running for President is obviously a nuisance candidate under Section 69 of the Omnibus Election Code. Allowing a nuisance candidate to run for President renders meaningless the COMELEC's constitutional power to "[e]nforce and administer all laws x x x relative to the conduct of an election, x x x." The election process becomes a complete mockery since the electorate is mercilessly offered choices which include patently ineligible candidates. The electorate is also needlessly misled to cast their votes, and thus waste their votes, for an ineligible candidate. The COMELEC cannot be a party to such mockery of the election process; otherwise, the COMELEC will be committing a grave abuse of discretion.

Citizens of the Philippines

It is the sovereign power and inherent right of every independent state to determine who are its nationals. The Philippines, and no other state, shall determine who are its citizens in accordance with its Constitution and laws.

In this case, the 1935 Philippine Constitution shall be applied to determine whether petitioner is a natural-born citizen of the Philippines since she was born in 1968 when the 1935 Constitution was in effect.

Section 1, Article IV of the 1935 Constitution identifies who are Filipino citizens, thus:

Article IV.—Citizenship

Section 1. The following are citizens of the Philippines:

1. Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.
2. Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

3. Those whose fathers are citizens of the Philippines.
4. Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.
5. Those who are naturalized in accordance with law.

From this constitutional provision, we find that, except for those who were already considered citizens at the time of the adoption of the Constitution, there were, as there are still now, only two methods of acquiring Philippine citizenship: (1) by blood relation to the father (or the mother under the 1987 Constitution) who must be a Filipino citizen; and (2) by naturalization according to law.[11]

The Philippines adheres to the *jus sanguinis* principle or the "law of the blood" to determine citizenship at birth. An individual acquires Filipino citizenship at birth **solely** by virtue of biological descent from a Filipino father or mother. The framers of the 1935 Constitution clearly intended to make the acquisition of citizenship available on the basis of the *jus sanguinis* principle. This view is made evident by the suppression from the Constitution of the *jus soli* principle, and further, by the fact that the Constitution has made definite provisions for cases not covered by the *jus sanguinis* principle, such as those found in paragraph 1, Section 1 of Article IV, i.e., those who are citizens of the Philippines at the time of the adoption of the Constitution, and in paragraph 2, Section 1 of the same Article, i.e., those born in the Philippines of foreign parents who, before the adoption of the Constitution, had been elected to public office in the Philippines.[12]

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[11] Eduardo Abaya, *A Critical Study on the Effect of Adoption on Citizenship Status in the Philippines,* Philippine Law Journal, Vol. XXIII, No. l, February 1948,p.4444(http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20 volume% 2023/PLJ%20volume%2023%20number%201/PLJ% 20volume % 2023% 20 number%201%20-04-%20Eduardo%20Abaya%20-%20A%20Critical %20Study%20on%20the%20effect%20%20of%20adoption%on20on% citizeship%20status%20in%20the%20Philippines.pdf; last accessed on 2 March 2016.)

[12] Eduardo Abaya, *A Critical Study on the Effect of Adoption on Citizenship Status in the Philippines,* Philippine Law Journal, Vol. XXIII, No. 1, February 1948, p. 448,http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2023/ PLJ%20volume%2023%20number%201/PLJ%20volume%2023%20number% 201%20-04-%20Eduardo%20Abaya%20-%20A%20Critical%20Study%20on %

In terms of jurisprudence, there was a period when the Court was uncertain regarding the application of *jus soli* or "law of the soil" as a principle of acquisition of Philippine citizenship at birth.[13] In *Tan Chong v. Secretary of Labor,*[14] decided in 1947, the Court finally abandoned the *jus soli* principle, and *jus sanguinis* has been exclusively adhered to in the Philippines since then.[15]

Based on Section 1, Article IV of the 1935 Constitution, petitioner's citizenship may be determined only under paragraphs (3), (4) and (5). Paragraph (1) of Section 1 is not applicable since petitioner is not a Filipino citizen at the time of the adoption of the 1935 Constitution as petitioner was born after the adoption of the 1935 Constitution. Paragraph (2) of Section 1 is likewise inapplicable since petitioner was not born in the Philippines of foreign parents who, before the adoption of the Constitution, had been elected to public office in the Philippines.

Of the Filipino citizens falling under paragraphs (3), (4) and (5), only those in paragraph (3) of Section 1, whose fathers are citizens of the Philippines, can be considered natural-born Filipino citizens since they are Filipino citizens from birth without having to perform any act to acquire or perfect their Philippine

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20on%20the%20effect%20of%20adoption%20on%20citizenship%20status%20in%20the%20Philippines.pdf; last accessed on 2 March 2016).

[13] Some of the cases applying the *jus soli* principle:

Roa v. Collector of Customs, 23 Phil. 315 (1912)
Vaño v. Collector of Customs, 23 Phil. 480 (1912)
US v. Ang, 36 Phil. 858 (1917)
US v. Lim Bin, 36 Phil. 924 (1917)
Go Julian v. Government of the Philippines, 45 Phil. 289 (1923)

[14] 79 Phil. 249 (1947).

[15] See Irene R. Cortes and Raphael Perpetuo M. Lotilla, *Nationality and International Law from the Philippine Perspective, Philippine Law Journal,* Vol. 60, No. 1, Supplemental Issue, 1985, p. 18 (http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2060/PLJ%20volume%2060%20supplemental%20issue/PLJ%20Volume %2060%20supplemental%20issue%20-01-%20Irene%20R.%20Cortez%20&%20Rapael%20Perpetuo%20M.%20Lotilla%20-%20Nationality%20and%201nternational%20Law.pdf; last accessed on 2 March 2016).

citizenship.[16] In short, they are Filipino citizens by the mere fact of birth.

Under paragraph (4) of Section 1, those Filipino citizens whose mothers are Filipinos and whose fathers are aliens cannot be considered natural-born Filipino citizens since they are still required to elect Philippine citizenship upon reaching the age of majority-they are not Filipino citizens by the mere fact of birth.

However, under paragraph (2), Section 1 of Article IV of the 1987 Constitution, those whose fathers are Filipino citizens and those whose mothers are Filipino citizens are treated equally. They are considered natural-born Filipino citizens.[17] Moreover, under Section 2, Article IV of the 1987 Constitution, in relation to paragraph (3), Section 1 of the same Article, those born before 17 January 1973 of Filipino mothers and who elected Philippine citizenship upon reaching the age of majority are also deemed natural-born Filipino citizens.

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[16] Section 2, Article IV of the 1987 Constitution reads:

SECTION 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

[17] Sections 1 and 2, Article IV of the 1987 Constitution provide: SECTION 1. The following are citizens of the Philippines:

(l) Those who are citizens of the Philippines at the time of the adoption of this Constitution;

(2) Those whose fathers or mothers are citizens of the Philippines;

(3) Those born before January 17, 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and

(4) Those who are naturalized in accordance with law.

SECTION 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section l hereof shall be deemed natural-born citizens.

In *Co v. Electoral Tribunal of the House of Representatives,*[18] the Court held that the constitutional provision treating as natural-born Filipino citizens those born before 17 January 1973 of Filipino mothers and alien fathers, and who elected Philippine citizenship upon reaching the age of majority, has a retroactive effect. The Court declared that this constitutional provision was enacted "to correct the anomalous situation where one born of a Filipino father and an alien mother was automatically granted the status of a natural-born citizen while one born of a Filipino mother and an alien father would still have to elect Philippine citizenship. If one so elected, he was not, under earlier laws, conferred the status of a natural-born."[19] The Court explained:

The provision in Paragraph 3 was intended to correct an unfair position which discriminates against Filipino women. There is no ambiguity in the deliberations of the Constitutional Commission, *viz:*

> Mr. Azcuna: With respect to the provision of section 4, would this refer only to those who elect Philippine citizenship after the effectivity of the 1973 Constitution or would it also cover those who elected it under the 1973 Constitution?
>
> Fr. Bernas: *It would apply to anybody who elected Philippine citizenship by virtue of the provision of the 1935 Constitution whether the election was done before or after January 17, 1973.* (Records of the Constitutional Commission, Vol. 1, p. 228; Emphasis supplied.)
>
> x x x x x x x x x
>
> Mr. Trenas: The Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights has more or less decided to extend the interpretation of who is a natural-born citizen as provided in section 4 of the 1973 Constitution by adding that persons who have elected Philippine citizenship under the 1935 Constitution shall be natural-born? Am I right Mr. Presiding Officer?
>
> Fr. Bernas: Yes.

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[18] 276 Phil. 758 (1991).

[19] *Id.* at 784.

x x x x x x x x x

Mr. Nolledo: And I remember very well that in the Reverend Father Bernas' well written book, he said that the decision was designed merely to accommodate former delegate Ernesto Ang and that the definition on natural-born has no retroactive effect. Now it seems that the Reverend Father Bernas is going against this intention by supporting the amendment?

Fr. Bernas: As the Commissioner can see, there has been an evolution in my thinking. (Records of the Constitutional Commission, Vol. 1, p. 189)

x x x x x x x x x

Mr. Rodrigo: But this provision becomes very important because his election of Philippine citizenship makes him not only a Filipino citizen but a natural-born Filipino citizen entitling him to run for Congress ...

Fr. Bernas: Correct. We are quite aware of that and for that reason we will leave it to the body to approve that provision of Section 4.

Mr. Rodrigo: I think there is a good basis for the provision because it strikes me as unfair that the Filipino citizen who was born a day before January 17, 1973 cannot be a Filipino citizen or a natural-born citizen. (Records of the Constitutional Commission, Vol. 1, p. 231)

x x x x x x x x x

Mr. Rodrigo: The purpose of that provision is to remedy an inequitable situation. Between 1935 and 1973 when we were under the 1935 Constitution, those born of Filipino fathers but alien mothers were natural-born Filipinos. However, those born of Filipino mothers but alien fathers would have to elect Philippine citizenship upon reaching the age of majority; and if they do elect, they become Filipino citizens but not natural-born Filipino citizens. (Records ofthe Constitutional Commission, Vol. 1, p. 356)

The foregoing significantly reveals the intent of the framers. To make the provision prospective from February 3, 1987 is to give a narrow interpretation resulting in an inequitable situation. It must also be retroactive.[20]

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[20] *Id*. at 782-783.

Therefore, the following are deemed natural-born Filipino citizens: (1) those whose fathers or mothers are Filipino citizens, and (2) those whose mothers are Filipino citizens and were born before 17 January 1973 and who elected Philippine citizenship upon reaching the age of majority. Stated differently, those whose fathers or mothers are neither Filipino citizens are not natural-born Filipino citizens. If they are not natural-born Filipino citizens, they can acquire Philippine citizenship **only** under paragraph (5), Section 1 of Article IV of the 1935 Constitution which refers to Filipino citizens who are naturalized in accordance with law.

Intent of the Framers of the 1935 Constitution

Petitioner concedes that she does not fall under paragraphs (1) and (2) of Section 1, Article IV of the 1935 Constitution. However, petitioner claims that the mere fact that she is a foundling does not exclude her from paragraphs (3) and (4) of the same provision. Petitioner argues in her Petition that "the pertinent deliberations of the 1934 Constitutional Convention, on what eventually became Article IV of the 1935 Constitution, show that **the intent of the framers was not to exclude foundlings from the term "citizens" of the Philippines.**"[21]

Likewise, the Solicitor General asserts in his Comment[22] that "[t]he deliberations of the 1934 Constitutional Convention indicate the intention to categorize foundlings as a class of persons considered as Philippine citizens. x x x. **The 1935 Constitution's silence** cannot simply be interpreted as indicative of an intent to entrench a disadvantaged class in their tragedy. **Not only is there no evidence of such intent,** but also the silence can be explained in a compassionate light, one that is geared towards addressing a fundamental question of justice."[23]

[21] Petitioner's Petition, p. 112. Underscoring in the original and boldfacing supplied.

[22] Manifestation dated 4 January 2016, adopting the Solicitor General's Comment in G.R. No. 221538, *Rizalito Y. David v. Senate Electoral Tribunal.* Emphasis supplied.

[23] Comment in G.R. No. 221538, pp. 6, 9, 10.

Petitioner and the Solicitor General are gravely mistaken. The framers of the 1935 Constitution voted to categorically reject the proposal to include foundlings as citizens of the Philippines. Petitioner's Petition, and the Solicitor General's Comment, **glaringly omitted that the 1934 Constitutional Convention actually voted upon, and rejected, the proposal to include foundlings as citizens of the Philippines.** The following exchange during the deliberations of the Convention shows this unequivocally.

SPANISH	ENGLISH
SR. RAFOLS: Para una enmienda. Propongo que despues del inciso 2 se inserte lo siguiente: "Los hijos naturales de un padre extranjero y de una madre filipina no reconocidos por aquel. x x x EL PRESIDENTE: La Mesa desea pedir una aclaracion del proponente de la enmienda. Se refiere Su The Señoria a hijos naturales o a toda clase de hijos ilegitimos? SR. RAFOLS: A toda clase de hijos ilegitimos. Tambien se incluye a los hijos naturales de padres desconocidos, los hijos naturales o ilegitimos, de padres desconocidos. SR. MONTINOLA: Para una aclaracion. Alli se dice "de padres desconocidos." Los Codigos actuales consideran como filipino, es decir, Spanish me refiero al codigo español quien considera como españoles a todos los hijos de padres desconocidos nacidos en territorio español, porque la presuncion es que el hijo de padres desconocidos es hijo de un español, y de esa manera se podra a aplicar en Filipinas de que un hijo desconocido aqui y nacido en Filipinas se considerara que es hijo filipino y no hay necesidad ... SR. RAFOLS: Hay necesidad, porque estamos relatando las condiciones de los que van a ser filipinos. SR. MONTINOLA: Pero esa es la interpretacion de la ley, ahora, de manera que no hay necesidad de Ia enmienda.	MR. RAFOL: For an amnedment, I propose that after subsection 2, the following is inserted "The natural children of a foreign father and a Filipino mother not recognized by the father. x x x PRESIDENT: [We] would like to request a clarification; from the proponent of the amendment. gentleman refers to natural children or to any kind of illegitimate children? MR. RAFOLS: To all kinds of illegitimate children. It also includes natural children of unknown parentage, natural or illegitimate children of unknown parents. MR. MONTINOLA: For clarification. The gentleman said "of unknown parents." Current codes consider them Filipino, that is, I refer to the Code wherein all children of unknown parentage born in Spanish territory are considered Spaniards, because the presumption is that a child of unknown parentage is the son of a Spaniard. This may be applied in the Philippines in that child of unknown parentage born in the Philippines is deemed to be Filipino, and there is no need ... MR. RAFOLS: There is a need, because we are relating the conditions that are [required] to be Filipino. MR. MONTINOLA: But that is the interpretation of the law, therefore, there is no [more] need for the amendment.

SR. RAFOLS: La enmienda debe leerse de esta manera: "Los hijos naturales o ilegitimos de un padre extranjero y de una madre filipina reconocidos por aquel o los hijos de padres desconocidos.	MR.RAFOLS: The amendment should read thus: "Natural or illegitimate children of a foreign father and a Filipino mother recognized by the former, or the children of unknown parentage."
SR. BRIONES: Para una enmienda con el fin de significar los hijos nacidos en Filipinas de padres desconocidos.	MR. BRIONES: The amendment [should] mean children born in the Philippines of unknown parentage.
SR. RAFOLS: Es que el hijo de una filipina con un extranjero, aunque este no reconozca al hijo, no es desconocido.	MR.RAFOLS: The son of a Filipina to a foreigner, although the latter does not recognize the child, is not of unknown parentage.
EL PRESIDENTE: Acepta Su Señora o no la enmienda? amendment	PRESIDENT: Does the gentleman accept the or not?
SR. RAFOLS: No acepto la enmienda, porque la the enmienda excluiria a los hijos de una filipina con un extranjero que este no reconoce. No son desconocidos y yo creo not que esos hijos de madre filipina con extranjero y el padre no reconoce, deben ser tambien considerados como filipinos.	MR.RAFOLS: I do not accept the amendment because amendment would exclude the children of a Filipina with a foreigner who does not recognize the child. Their parentage is unknown and I believe that these children of a Filipino mother by a foreigner who does not recognize them should also be considered Filipinos.
EL PRESIDENTE: La cuestion en orden es la enmienda a la enmienda del Delegado por Cebu, Sr. Briones.	PRESIDENT: The question to be settled is the amendment to the amendment of the delegate from Cebu, Mr. Briones.
MR.BUSLON: Mr. President, don't you think it would be better to leave this matter in the hands of the Legislature?	MR. BUSLON: Mr. President, don't you think it would be better to leave the matter in the hands of the Legislature?
SR.ROXAS: Senor Presidente, mi opinion humilde es que estos son casos muy pequeños y very contados, para que la constitucion necesite referirse a ellos. Por !eyes internacionales se reconoce el principio de que los hijos las personas nacidas en un pais de padres desconocidos son ciudadanos de esa nacion, y no es necesario incluir una disposicion taxativa sobre el particular.	MR. ROXAS: Mr. President, my humble opinion is that these cases are very insignificant and few that the constitution need not make reference to them. International law recognizes the principle that the children or persons in a country of unknown parents are citizens of that nation and it is not necessary to include a restrictive provision on this subject.
LA ENMIENDA BRIONES ES RETIRADA	THE BRIONES AMENDMENT IS WITHDRAWN
EL PRESIDENTE: Insiste el Caballero por Cebu, Sr. Briones, en su enmienda?	PRESIDENT: Does the gentleman from Cebu, Mr. Briones, insist in his amendment?

SR. BRIONES: No tengo especial interes, senor Presidente, en esa enmienda y la retiro.	SR. BRIONES: I have no special interest, Mr. President, in the amendment and I withdraw.
EL PRESIDENTE: Por retirada.	PRESIDENT: Withdrawn
LA ENMIENDA RAFOLS ES RECHAZADA	**THE RAFOLS AMENDMENT IS REJECTED**
EL PRESIDENTE: Insiste el Caballero por Cebu, Sr. Rafols, en su enmienda?	PRESIDENT: Does the gentleman from Cebu, Mr. Rafols, insist in his amendment?
SR. RAFOLS: Si.	SR. RAFOLS: Yes.
EL PRESIDENTE: La Mesa sometera a votacion dicha enmienda. Los que esten conformes con Ia misma, que digan si. (Una minoria: SI.) Los que no lo esten, que digan no. (Una mayoria: NO.) Queda rechazada la enmienda.[24]	PRESIDENT: Let us submit to a vote the amendment. Those who agree with it, say yes. (a minority: YES.) Those who are not, say no. (a majority: NO.) **The amendment is rejected**. (Emphasis supplied)

During the 26 November 1934 deliberations of the Constitutional Convention, Delegate Rafols proposed an amendment to declare as Filipino citizens those natural or illegitimate children of Filipino mothers and alien fathers who do not acknowledge them. Such proposed amendment, according to Delegate Rafols, included "**children of unknown parentage**."

Three delegates voiced their objections to Rafols's amendment, namely Delegates Buslon, Montinola, and Roxas.

Delegate Teofilo Buslon suggested that the subject matter be left in the hands of the legislature, which meant that Congress would decide whether to categorize as Filipinos (1) natural or illegitimate children of Filipino mothers and alien fathers who do not recognize them; and (2) children of unknown parentage. If that were the case, foundlings were not and could not validly be considered as natural-born Filipino citizens as defined in the Constitution since Congress would then provide the enabling law for them to be regarded as Filipino citizens. Foundlings would be naturalized citizens since they acquire Filipino citizenship "in accordance with law" under paragraph (5), Section

[24] Proceedings of the Philippine Constitutional Convention, Vol. IV, 26 November 1934, pp. 186-188.

1 of Article IV of the 1935 Constitution. Significantly, petitioner and the Solicitor General, who agrees with petitioner's position, conveniently left out Delegate Buslon's opinion.

Petitioner quotes the opinions of Delegates Ruperto Montinola and Manuel Roxas to support her theory. Petitioner argues that "the pertinent deliberations of the 1934 Constitutional Convention show that the intent of the framers was not to exclude foundlings from the term 'citizens of the Philippines,' but simply to avoid redundancy occasioned by explicating what to them was already a clear principle of existing domestic and international law."[25]

Petitioner is again gravely mistaken.

There was no domestic law as well as international law existing during the proceedings of the 1934 Constitutional Convention explicitly governing citizenship of foundlings, and thus, there could not have been a redundancy of any law to speak of.

Delegate Montinola applied the Spanish Civil Code provision, stating that children of unknown parentage born in Spanish territory were considered Spaniards, and opined that the same concept could be applied in the Philippines and thus children of unknown parentage born in the Philippines should be considered Filipino citizens.

However, this was an erroneous application since the provisions of the Spanish Civil Code (which Delegate Montinola was relying on) were no longer in effect as of the end of Spanish rule in the Philippines. The provisions of the Spanish Civil Code cited by Delegate Montinola ceased to have effect upon the cession by Spain of the Philippines to the United States. As early as 1912, in *Roa v. Collector of Customs,*[26] the Court stated:

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[25] Petitioner's Memorandum, pp. 103-104.

[26] 23 Phil. 315, 330-331 (1912).

Articles 17 to 27, inclusive, of the Civil Code deal entirely with the subject of Spanish citizenship. When these provisions were enacted, Spain was and is now the sole and exclusive judge as to who shall and who shall not be subjects of her kingdom, including her territories. Consequently, the said articles, being political laws (laws regulating the relations sustained by the inhabitants to the former sovereign), must be held to have been abrogated upon the cession of the Philippine Islands to the United States.

> "By well-settled public law, upon the cession of territory by one nation to another, either following a conquest or otherwise, * * * those laws which are political in their nature and pertain to the prerogatives of the former government immediately cease upon the transfer of sovereignty." (Opinion, Atty. Gen., July 10, 1889.)

Thus, Delegate Montinola's opinion was based on an erroneous premise since the provisions of the Spanish Civil Code he cited had already long been repealed and could no longer be applied in the Philippines.

The same can be said of Delegate Manuel Roxas's opinion regarding the supposed international law principle which recognizes a foundling to be a citizen of the country where the foundling is found. At that time, there was nothing in international law which automatically granted citizenship to foundlings at birth. In fact, Delegate Roxas did not cite any international law principle to that effect.

Only the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, which articulated the presumption on the **place of birth** of foundlings, was in existence during the deliberations on the 1935 Constitution. As will be discussed further, the 1930 Hague Convention does not guarantee a nationality to a foundling **at birth.** Therefore, there was no prevailing customary international law at that time, as there is still none today, conferring automatically a nationality to foundlings at birth.

Moreover, none of the framers of the 1935 Constitution mentioned the term "natural-born" in relation to the citizenship of foundlings. Again, under the 1935 Constitution, only those

whose fathers were Filipino citizens were considered natural-born Filipino citizens. Those who were born of Filipino mothers and alien fathers were still required to elect Philippine citizenship, preventing them from being natural-born Filipino citizens. If, as petitioner would like us to believe, the framers intended that foundlings be considered natural-born Filipino citizens, this would have created an absurd situation where a child with unknown parentage would be placed in a better position than a child whose mother is actually known to be a Filipino citizen. The framers of the 1935 Constitution could not have intended to create such an absurdity.

In any event, Delegate Rafols's amendment, when put to a vote, was clearly rejected by the majority of the delegates to the 1934 Constitutional Convention. **To reiterate, Delegate Rafols's proposal was defeated in the voting.** The rejection of the Rafols amendment not only meant the non-inclusion in the text of the Constitution of a provision that children with unknown parentage are Filipino citizens, but also signified the rejection by the delegates of the idea or proposition that foundlings are Filipino citizens at birth just like natural-born citizens. While the framers discussed the matter of foundlings because of Delegate Rafols's amendment, they not only rejected the Rafols proposal but also clearly manifested that foundlings could not be citizens of the Philippines at birth like children of Filipino fathers. Stated differently, the framers intended to exclude foundlings from the definition of natural-born Filipino citizens.

Clearly, there is no "silence of the Constitution" on foundlings because the majority of the delegates to the 1934 Constitutional Convention expressly rejected the proposed amendment of Delegate Rafols to classify children of unknown parentage as Filipino citizens. There would have been "silence of the Constitution" if the Convention never discussed the citizenship of foundlings. **There can never be "silence of the Constitution" if the Convention discussed a proposal and rejected it, and because of such rejection the subject of the proposal is not found in the Constitution.** The absence of any mention in the

Constitution of such rejected proposal is not "silence of the Constitution" but "express rejection in the Constitution" of such proposal.

Further, to include foundlings among those born of Filipino fathers or Filipino mothers based solely on Montinola's and Roxas's opinions during the deliberations of the Constitutional Convention is a strained construction of the Constitution which clearly runs counter to the express provisions of the Constitution and contravenes the *jus sanguinis* principle underlying the citizenship provisions of the Constitution.

Besides, there is nothing in the deliberations of the 1934 Constitutional Convention indicating that a majority of the delegates agreed with the opinion of either Delegate Montinola or Delegate Roxas. The opinions of Delegates Montinola and Roxas remained their personal opinions, just like the countless opinions of other delegates who aired their opinions during the deliberations of the Convention without such opinions being put to a vote. Delegate Buslon proposed that the citizenship of foundlings be addressed through legislation by Congress, a proposal that carried more weight since it falls squarely under paragraph 5, Section 1 of Article IV of the 1935 Constitution authorizing Congress to enact naturalization laws.

Definition of the Term "'Natural-Born Citizens"

The term "natural-born citizen" was first discussed by the framers of the 1935 Constitution in relation to the qualifications of the President and Vice-President. In particular, Delegate Roxas elaborated on this term, explaining that a natural-born citizen is a **"citizen by birth"** — a person who is a citizen by reason of his or her birth and not by operation of law. Delegate Roxas explained:

> Delegate Roxas. - Mr. President, the phrase, 'natural-born citizen,' appears in the Constitution of the United States; but the authors say that this phrase has never been authoritatively interpreted by the Supreme Court of the United States in view of the fact that there has never been raised the question of whether or not an elected President fulfilled this condition. The authors are uniform in the fact that the words, **'natural-born citizen,' means a citizen by birth, a person**

who is a citizen by reason of his birth, and not by naturalization or by a further declaration required by law for his citizenship. In the Philippines, for example, under the provisions of the article on citizenship which we have approved, **all those born of a father who is a Filipino citizen, be they persons born in the Philippines or outside, would be citizens by birth or 'natural-born.'**

And with respect to one born of a Filipino mother but of a foreign father, the article which we approved about citizenship requires that, upon reaching the age of majority, this child needs to indicate the citizenship which he prefers, and if he elects Philippine citizenship upon reaching the age of majority, then he shall be considered a Filipino citizen. **According to this interpretation, the child of a Filipino mother with a foreign father would not be a citizen by birth, because the law or the Constitution requires that he make a further declaration after his birth.** Consequently, the phrase, 'natural-born citizen,' as it is used in the English text means a Filipino citizen by birth, regardless of where he was born.[27] (Emphasis supplied)

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[27] This is the English translation of the explanation given by Delegate Roxas during the deliberations. Jose M. Aruego, *The Framing of the Philippine Constitution,* 1949, Vol. 1, pp. 404-405.

The portions of the records read:

SR. ROXAS. Señor Presidente, la frase *natural born citizen* aparece en la Constitucion de los Estados Unidos; pero los autores dicen que esta frase nunca ha sido interpretada autoritativamente por la Corte Suprema de los Estados Unidos, en vista de que nunca se habia suscitado la cuestion de si un Presidente elegido, reunia o no esta condicion. Los autores estan uniformes en que las palabras *natural born citizen,* quiere decir un ciudadano por nacimiento, una persona que es ciudadano por razon de su nacimiento y no por naturalizacion o por cualquiera declaracion ulterior exigida por la ley para su ciudadania. En Filipinas, por ejemplo, bajo las disposiciones de los articulos sobre ciudadania que hemos aprobado, seria ciudadano por nacimiento, o sea *natural born* todos aquellos nacidos de un padre que es ciudadano filipino, ya sea una persona nacida en Filipinas o fuera de ellas.

Y con respeto de uno nacido de madre filipina, pero de padre extranjero, el articulo que aprobamos sobre ciudadania, requiere de que al llegar a la mayoria de edad, este hijo necesita escoger la ciudadania por Ia cual opta, y si opta por la ciudadania filipina al llegar a la mayoria de edad, entonces sera considerado ciudadano filipino. Bajo esta interpretacion el hijo de unamadre filipina con padre extranjero, no seria un ciudadano por nacimiento, por aquello de que la ley o la Constitucion requiere que haga una declaracion ulterior a su nacimiento. Por lo tanto, la frase *a natural born citizen,* tal como se emplea en el texto ingles, quiere decir un ciudadano filipino por nacimiento, sin tener en cuenta donde ha nacido. (Proceedings of the Philippine Constitutional Convention, Vol. V, 18 December 1934, pp. 307-308).

Clearly, it was the intent of the framers of the 1935 Constitution to refer to natural-born citizens as only those who were Filipino citizens by the mere fact of being born to fathers who were Filipino citizens—nothing more and nothing less. To repeat, under the 1935 Constitution, only children whose fathers were Filipino citizens were natural-born Filipino citizens. Those who were born of alien fathers and Filipino mothers were not considered natural-born Filipino citizens, despite the fact that they had a blood relation to a Filipino parent. Since a natural-born citizen is a citizen by birth who need not perform any act to acquire or perfect Philippine citizenship, then those born of Filipino mothers and alien fathers and who had to elect citizenship upon reaching the age of majority, an overt act to perfect citizenship, were not considered natural-born Filipino citizens. As a matter of course, those whose parents are neither Filipino citizens or are both unknown, such as in the case of foundlings, cannot be considered natural-born Filipino citizens.

Foundlings and International Law

A. Each State Determines its Citizens

Fundamental is the principle that every independent state has the right and prerogative to determine who are its citizens. In *United States v. Wong Kim Ark,*[28] decided in 1898, the United States Supreme Court enunciated this principle:

> It is the inherent right of every independent nation to determine for itself, and according to its own constitution and laws, what classes of persons shall be entitled to its citizenship.

In our jurisdiction, the Court similarly echoed in the 1912 case of *Roa v. Collector of Customs*[29] this incontrovertible right of each state to determine who are its citizens. Hence, every independent state cannot be denied this inherent right to determine who are its citizens according to its own constitution and laws.

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[28] 169 U.S. 649 (1898).

[29] *Supra* note 26.

Article 1, Chapter I of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws explicitly provides:

> It is for each state to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.

This means that municipal law, both constitutional and statutory, determines and regulates the conditions on which citizenship is acquired.[30] There is no such thing as international citizenship or international law by which citizenship may be acquired.[31] Whether an individual possesses the citizenship of a particular state shall be determined in accordance with the constitution and statutory laws of that state.

B. Conventional International Law, Customary International Law, and Generally Accepted Principles of International Law

Petitioner invokes conventional international law, customary international law and generally accepted principles of international law to support her claim that she is a natural-born Filipino citizen. A review of these concepts is thus inevitable.

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[30] Eduardo Abaya, *A Critical Study on the Effect of Adoption on Citizenship Status in the Philippines, Philippine Law Journal,* Vol. XXIII, No. 1, February 1948, p. 443 (http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2023/PLJ%20vo1ume%2023%20number%201/PLJ%20volume%2023%20number%201%20-04-%20Eduardo%20Abaya%20-%20A% 20Critical %20Study%20on%20the%20effect%20of%20adoption%20on%20citizenship%20status%20in%20the %20Philippines. pdf; last accessed on 2 March 2016).

[31] Eduardo Abaya, *A Critical Study on the Effect of Adoption on Citizenship Status in the Philippines, Philippine Law Journal,* Vol. XXIII, No. 1, February 1948, p. 443 (http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2023/PLJ%20volume%2023%20number%201/PJ%20volume%2023%20number%201%20-04%20Eduardo%20Abaya%20-/%20A%20Critical%20Study%20on%20the%20effect%20of%20adoption%20on%20citizenship%20status%20in%20the %20Philippines.pdf; last accessed on 2 March 2016).

Article 38 of the Statute of the International Court of Justice sets out the following sources of international law: (1) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (2) international custom, as evidence of a general practice accepted as law; (3) general principles of law recognized by civilized nations; and (4) judicial decisions and the teachings of the most highly qualified publicists of the various nations as subsidiary means for the determination of rules of law.[32]

Essentially, conventional international law is the body of international legal principles contained in treaties or conventions as opposed to customary international law or other sources of international law.[33]

Customary international law is defined as a general and consistent practice of states followed by them from a sense of legal obligation.[34] I had occasion to explain the concept of customary international law as used in our Constitution in this wise:

> Generally accepted principles of international law, as referred to in the Constitution, include customary international law. Customary international law is one of the primary sources of international law under Article 38 of the Statute of the International Court of Justice. Customary international law consists of acts which, by repetition of States of similar international acts for a number of years, occur out of a sense of obligation, and taken by a significant number of States. It is based on custom, which is a clear and continuous habit of doing certain actions, which has grown under the aegis of the conviction that these actions are, according to international law, obligatory or right. Thus, customary international law requires the concurrence of two elements: [1] the established, wide-spread, and consistent practice

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[32] http://www.icj-cij.org/documents/?p1=4&p2=2; last accessed on 2 March 2016.

[33] https://www.law.cornell.edu/wex/conventional_ international_law; last accessed on 2 March 2016.

[34] *Pharmaceutical and Health Care Association of the Philippines v. Duque III,* 561 Phil. 386 (2007).

on the part of the States; and [2] a psychological element known as *opinio juris sive necessitatis* (opinion as to law or necessity). Implicit in the latter element is a belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it.[35]

In the *North Sea Continental Shelf Cases,*[36] the International Court of Justice held that "[n]ot only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by existence of a rule of law requiring it. The need for such a belief, i.e., the existence of a subjective element is implicit in the very notion of the *opinio juris sive necessitatis."*

Moreover, to be considered as customary international law, a rule must apply to all, or majority of all, states. One possible exception to the universal applicability of customary international law is local or special custom. A local or special customary international rule binds only a group of states, regional or otherwise.[37] "Regional customary international law refers to customary international law that arises from state practice and *opinio juris* of a discrete and limited number of states; as it departs from generally applicable customary international law, it is only binding upon and opposable against those states participating in its formation."[38]

Generally accepted principles of international law are those legal principles which are so basic and fundamental that they are found universally in the legal systems of the world. These principles apply all over the world, not only to a specific country, region or

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[35] Dissenting Opinion, *Bayan Muna v. Romulo,* 656 Phil. 246, 326 (2011).

[36] Judgment of 20 February 1969, at 77 (http://www.icj-cij.org/docket/files/52/556l.pdf; last accessed on 1 March 2016).

[37] *Formation and Evidence of Customary International Law,* International Law Commission, UFRGS Model United Nations Journal, p. 192 (http://www.ufrgs.br/ufrgsmun/2013/wp-content/uploads/201310/Formation-and-Evidence-of-Customary-International-Law.pdf; last accessed on 1 March 2016).

[38] John H. Currie, *PUBLIC INTERNATIONAL LAW*, Second Edition, 2008 (https://www.irwinlaw.com/cold/regional_ customary_ international_law; last accessed on 1 March 2016).

group of states. Legal principles such as laches, estoppel, good faith, equity and *res judicata* are examples of generally accepted principles of international law.[39] In *Pharmaceutical and Health Care Association of the Philippines v. Duque III,*[40] the Court further explained the concept of generally accepted principles of law, to wit:

> Some legal scholars and judges look upon certain "general principles of law" as a primary source of international law because they have the "character of *jus rationale"* and are "valid through all kinds of human societies." (Judge Tanaka in his dissenting opinion in the 1966 South West Africa Case, 1966 I.C.J. 296). O'Connell holds that certain principles are part of international law because they are "basic to legal systems generally" and hence part of the *jus gentium.* These principles, he believes, are established by a process of reasoning based on the common identity of all legal systems. If there should be doubt or disagreement, one must look to state practice and determine whether the municipal law principle provides a just and acceptable solution. x x x.

C. *There is No Customary International Law Presuming a Foundling as a Citizen of the Country Where the Foundling is Found*

Petitioner claims that under customary international law and generally accepted principles of international law, she (1) has a right to a nationality from birth; (2) has a right to be protected against statelessness; and (3) is presumed to be a citizen of the Philippines where she was found.

Petitioner anchors her claims on the (1) 1989 Convention on the Rights of the Child (CRC), (2) 1966 International Covenant on Civil and Political Rights (ICCPR), (3) 1948 Universal Declaration of Human Rights (UDHR), (4) 1930 Hague Convention on Certain Questions Relating to the Conflict of

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[39] See Malcolm N. Shaw, *INTERNATIONAL LAW,* Seventh Edition, 2014, pp. 69-77.

[40] *Supra* note 34, at 400, citing Louis Henkin, Richard C. Pugh, Oscar Schachter, Hans Smith, *International Law, Cases and Materials,* 2nd Ed., p. 96. Emphasis omitted.

Nationality Laws (1930 Hague Convention), and (5) the 1961 Convention on the Reduction of Statelessness (CRS), among others.

1. ***The 1989 Convention on the Rights of the Child***

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, **the right to acquire a nationality** and as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this fields, in particular where the child would otherwise be stateless. (Emphasis supplied)

The Philippines signed the Convention on the Rights of the Child on 26 January 1990 and ratified the same on 21 August 1990. The Convention defines a child to mean every human being below the age of eighteen years unless, under then law applicable to the child, the age of majority is attained earlier.

Since petitioner was born in 1968 or more than 20 years before the Convention came into existence, the Convention could not have applied to the status of her citizenship at the time of her birth in 1968. Petitioner's citizenship at birth could not be affected in any way by the Convention.

The Convention guarantees a child the right to acquire a nationality, and requires the contracting states to ensure the implementation of this right, in particular where the child would otherwise be stateless. Thus, as far as nationality is concerned, the Convention guarantees the right of the child to acquire a nationality so that the child will not be stateless. **The Convention does not guarantee a child a nationality at birth, much less a natural-born citizenship at birth as understood under the Philippine Constitution, but merely the right to acquire a nationality in accordance with municipal law.**

2. ***The 1966 International Covenant on Civil and Political Rights***

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

x x x x x x x x x

3. **Every child has the right to acquire a nationality**. (Emphasis supplied)

Adopted on 16 December 1966 and entered into force on 23 March 1976, the International Covenant on Civil and Political Rights recognizes "the ideal of free human beings enjoying civil and political freedom and freedom from fear and want which can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights."[41]

The Philippines is a signatory to this international treaty. Similar to the text of the Convention on the Rights of the Child, the ICCPR does not obligate states to automatically grant a nationality to children at birth. **The Covenant merely recognizes the right of a child to acquire a nationality. In short, the Covenant does not guarantee a foundling a nationality at birth, much less natural-born citizenship at birth as understood under the Philippine Constitution.**

*3. **The 1948 Universal Declaration of Human Rights***

Article 15.

(1) **Everyone has the right to a nationality.**

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. (Emphasis supplied)

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on 10 December 1948

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[41] http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx; last accessed on 2 March 2016.

whereby "Member States (including the Philippines) have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms."[42] It sets out, for the first time, fundamental human rights to be universally protected.[43]

Article 15(1) of the UDHR simply affirms the right of every human being to a nationality. Being a mere declaration, such right guaranteed by the UDHR does not obligate states to automatically confer nationality to a foundling at birth, much less natural-born citizenship at birth as understood under the Philippine Constitution.

*4. **The 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws***

Article 14.
A child whose parents are both unknown shall have the nationality of the country of birth. If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known.

A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found.

Article 15.
Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State. **The law of that State shall determine the conditions governing the acquisition of its nationality in such cases.** (Emphasis supplied)

The Philippines is not a signatory to this Convention, and therefore, it is not bound by the Convention. Petitioner, however, claims that this Convention is evidence of "generally accepted principles of international law," which allegedly created the

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[42] http://www.un.org/en/documents/udhr/; last accessed on 2 March 2016.

[43] http://www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx; last accessed on 2 March 2016.

presumption that a foundling is a citizen at birth of the state in which the foundling is found.

Article 14 merely states that a foundling "shall have the nationality of the **country *of* birth**." It does not say that a foundling shall have the **nationality *at* birth** of the country where the foundling is found. Nowhere in Article 14 is nationality guaranteed to a foundling ***at*** **birth, much less natural-born citizenship at birth as understood under the Philippine Constitution.** Likewise, Article 14 merely lays down the presumption that a foundling is born in the territory of the state in which the foundling is found. This is the **only presumption** that Article 14 establishes.

Article 15 acknowledges the fact that acquisition of nationality by reason of birth in a state's territory is not automatic. **Article 15 expressly states that municipal law shall "determine the conditions governing the acquisition of its nationality" by a foundling**. Thus, to implement the Convention the contracting parties have to enact statutory legislation prescribing the conditions for the acquisition of citizenship by a foundling. This rules out any automatic acquisition of citizenship at birth by a foundling.

5. ***The 1961 Convention on the Reduction of Statelessness***

Article 1
1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. **Such nationality shall be granted:**
(a) at birth, by operation of law, or
(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

x x x x x x x x x

Article 2
A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State. (Emphasis supplied)

A 1961 United Nations multilateral treaty, the primary aim of the Convention is the prevention of statelessness by requiring states to grant citizenship to children born in their territory, or born to their nationals abroad, who would otherwise be stateless. **To prevent statelessness in such cases, states have the option to grant nationality (1) at birth by operation of law, or (2) subsequently by application. In short, a contracting state to the Convention must enact an implementing law choosing one of the two options before the Convention can be implemented in that state.**

The Philippines is not a signatory to this Convention, and thus, the Philippines is a non-contracting state. **The Convention does not bind the Philippines**. Moreover, this Convention does not provide automatically that a foundling is a citizen at birth of the country in which the foundling is found.

Article 2 of the Convention provides, "A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born of parents possessing the nationality of that state." Dr. Laura van Waas explains the meaning of Article 2 of the Convention, as follows:

Once more, the wording of this provision is evidence of the compromise reached between *jus soli* and *jus sanguinis* countries. **Rather than determining that a child found abandoned on the territory of the state will automatically acquire the nationality of that state,** it declares that the child will be assumed to have both the necessary *jus soli* and *jus sanguinis* links with the state: born on the territory to parents possessing the nationality of the state. **This means that the child will then simply acquire nationality *ex lege* under the normal operation of the state's nationality regulations** — the effect being the same in *bothjus soli* and *jus sanguinis* regimes. No attempt is made to further define the type of evidence that may be accepted as "proof to the

contrary", this being left to the discretion of the contracting states.[44] (Emphasis supplied)

First, Article 2 applies only to a **"foundling found in the territory of a Contracting State."** The Philippines is not a contracting state to the Convention and thus Article 2, and the entire Convention, does not apply to the Philippines.

Second, there must be "absence of proof" that the parents of the foundling do not possess the nationality of another state. This means there must be an administrative or judicial proceeding to determine this factual issue, an act necessary to acquire the citizenship of the state where the foundling is found. This also means that the grant of citizenship under Article 2 is not automatic, as Dr. Laura van Waas explains. This factual determination prevents the foundling from acquiring natural-born citizenship at birth as understood under our Constitution, assuming Article 2 applies to the Philippines.

Third, the grant of citizenship under Article 2 is *ex lege*– which means by operation of law – referring to municipal **statutory** law. Assuming Article 2 applies to the Philippines, and it does not, this grant of citizenship refers to naturalization by operation of law, the category of citizens under paragraph (5), Section 1 of Article IV of the 1935 Constitution (now Section 1(4), Article IV of the 1987 Constitution), or "[t]hose who are naturalized in accordance with law."

Nationality at birth may result because the law applicable is either *jus soli* or *jus sanguinis.* A child born in the United States to foreign parents is a citizen of the United States at birth because the United States adopts the *jus soli* principle. Under the *jus soli* principle, the place of birth determines citizenship at birth, not blood relation to the parents. In contrast, a child born in

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[44] Laura van Waas, *Nationality Matters: Statelessness under International Law,* pp. 69-70, Volume 29, School of Human Rights Research Series, Intersentia, 2008 (http://www.stichtingros.nl/site/kennis/files/Onderzoek%20statenloosheid%20Laura%20van%20Waas.pdf; last accessed on 2 March 2016).

the Philippines to foreign parents is not a Philippine citizen at birth but a foreigner because the Philippines follows the *jus sanguinis* principle. Under the *jus sanguinis* principle, citizenship at birth is determined by blood relation to the parents.

Nationality at birth does not necessarily mean natural-born citizenship as prescribed under the Philippine Constitution. The Constitution recognizes natural-born citizens at birth only under the principle of *jus sanguinis*—there must be a blood relation by the child to a Filipino father or mother. Even assuming, and there is none, that there is an international law granting a foundling citizenship, at birth, of the country where the foundling is found, it does not necessarily follow that the foundling qualifies as a natural-born citizen under the Philippine Constitution. In the Philippines, any citizenship granted at birth to a child with no known blood relation to a Filipino parent canonly be allowed by way of naturalization as mandated by the Constitution, under paragraph 5, Section 1 of Article IV of the 1935 Constitution,[45] paragraph 4, Section 1 of Article III of the 1973 Constitution,[46] and paragraph 4, Section1of Article IV of the 1987 Constitution.[47] **Such a child is a naturalized Filipino citizen, not a natural-born Filipino citizen.**

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[45] Section 1, Article IV of the 1935 Constitution reads in part:

Section 1. The following are citizens of the Philippines:

x x x x x x x x x

(5) Those who are naturalized in accordance with law.

[46] Section 1, Article III of the 1973 Constitution reads in part:

Section 1. The following are citizens of the Philippines:

x x x x x x x x x

(4) Those who are naturalized in accordance with law.

[47] Section 1, Article IV of the 1987 Constitution reads in part:

Section 1. The following are citizens of the Philippines:

x x x x x x x x x

(4) Those who are naturalized in accordance with law.

In sum, there is no international treaty to which the Philippines is a contracting party, which provides expressly or impliedly that a foundling is deemed a **natural-born** citizen of the country in which the foundling is found.[48] There is also obviously no international treaty, to which the Philippines is not a party, obligating the Philippines to confer automatically Philippine citizenship to a foundling at birth.

Since the Philippines is not a signatory to the various international conventions regulating nationality,[49] we shall scrutinize whether the relevant provisions on foundlings contained in the international conventions cited by petitioner have become part of customary international law or generally accepted principles of international law on nationality.

We shall first lay down the basic premise for an international rule to be considered customary international law. Such a rule must comply with the twin elements of widespread and consistent state practice, the objective element; and *opinio juris sive necessitatis,* the subjective element. State practice refers to the continuous repetition of the same or similar kind of acts or norms by states. It is demonstrated upon the existence of the following elements: (1) generality or widespread practice; (2) uniformity and consistency; and (3) duration. On the other hand, *opinio juris,* the psychological element, requires that the state practice or norm be carried out in the belief that this practice or norm is obligatory as a matter of law.[50]

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[48] See Jaime S. Bautista, *No customary international law automatically confers nationality to foundlings,The Manila Times Online* (http://www.manilatimes.net/no-customary-international-law-automatically- confers-nationality-to- foundlings/221126; last accessed on 2 March 2016).

[49] See Irene R. Cortes and Raphael Perpetuo M. Lotilla, *Nationality and International Law from the Philippine Perspective, Philippine Law Journal,* Vol. 60, No. 1, Supplemental Issue, 1985, p. 16 (http://plj. upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2060/PLJ%20volume%2060%20supplemental%20issue/PLJ%20Volume%2060%20supplemental %20issue%20-0I-%20Irene%20R. %20Cortez%20&%20Rapael%20Perpetuo%20M.%20Lotilla%20-%20Nationality%20and%20Intemational%20Law.pdf;last accessed on 2 March 2016).

[50] *Bayan Muna v. Romulo,* 656 Phil. 246, 303 (2011).

The pertinent provisions on foundlings are found in the 1930 Hague Convention and the 1961 Convention on the Reduction of Statelessness. Article 14 of the 1930 Hague Convention and Article 2 of the 1961 Convention on the Reduction of Statelessness state, respectively: (1) "A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found"; and (2) "A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State."

We shall limit our discussion to Article 2 of the Convention on the Reduction of Statelessness since the presumption in Article 14 of the 1930 Hague Convention concerns merely the **place of birth** of foundlings. In this case, the parties admit that petitioner was born in Jaro, Iloilo in the Philippines, which is the same place where she was found. Therefore, it is no longer presumed that petitioner was born in the territory of the Philippines since it is already an admitted fact that she was born in the Philippines.

There are only 64 States which have ratified the Convention on the Reduction of Statelessness as of February 2016.[51] Out of the 193 Member-States of the United Nations,[52] **far less than a majority** signified their agreement to the Convention.

One of the essential elements of customary international law is the widespread and consistent practice by states of a specific international principle, in this case, that foundlings are presumed to be born to parents who are citizens of the state where the foundling is found. **Petitioner failed to prove this objective element.** Prof. Malcolm N. Shaw, in his widely used textbook *International Law,* explains the meaning of widespread and consistent practice in this way:

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[51] See Dean Ralph A. Sarmiento, *The Right to Nationality of Foundlings in International Law,* (http://attyralph.com/2015/12/03/foundlingsnationality/; last accessed on 1 March 2016).

[52] http://www.un.org/en/members/index.shtml, last accessed on 7 March 2016.

One particular analogy that has been used to illustrate the general nature of customary law as considered by de Visscher. He likened the growth of custom to the gradual formation of a road across vacant land. After an initial uncertainty as to direction, the **majority** of users begin to follow the same line which becomes a single path. Not long elapses before that path is transformed into a road accepted as the only regular way, even though it is not possible to state at which precise moment this latter change occurs. And so it is with the formation of a custom. De Visscher develops this idea by reflecting that just as some make heavier footprints than others due to their greater weight, the more influential states of the world mark the way with more vigour and tend to become the guarantors and defenders of the way forward.[53] (Emphasis supplied)

Prof. Shaw concludes, "Accordingly, custom should to some extent mirror the perceptions of the **majority of states,** since it is based upon usages which are practiced by nations as they express their power and their hopes and fears."[54]

Petitioner manifestly failed to show that Article 2 of the Convention on the Reduction of Statelessness is an "established, **widespread and consistent practice"** of a **majority** of sovereign states. There is no showing that this Convention was in fact enforced or practiced by at least a majority of the members of the United Nations. Petitioner claims that "ratification by a majority of states is not essential for a principle contained in an international treaty or convention to be 'customary international law.'"[55] On the other hand, it is generally accepted by international law writers that the Convention on the Reduction of Statelessness does not constitute customary international law precisely because of the small number of states that have ratified the Convention. Dr. Laura van Waas summarizes the state of the law on this issue:

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[53] Malcolm N. Shaw, *INTERNATIONAL LAW*, Seventh Edition, 2014, p. 56, citing De Visscher, *Theory and Reality*, p. 149. See also Hersch Lauterpacht, *THE DEVELOPMENT OF INTERNATIONAL LAW*, p. 368; Pitt Cobbett, *LEADING CASES ON INTERNATIONAL LAW,* 4th Edition, London, 1922, p. 5, and Michael Akehurst, *Custom as a Source of International Law,* British Yearbook of International Law, 1975, Vol. 47, pp. 22-3.

[54] *Id.*

[55] Petitioner's Memorandum, p. 174, citing *Mijares v. Rañada* (495 Phil. 372 [2005]) and *Razon v. Tagitis* (621 Phil. 536 [2009]).

In order to contend that a rule of customary international law has thereby been established, we must also prove that states are legislating in this way due to the conviction that they are legally compelled to do so — the *opinio juris sive necessitatis.* **The codification of the obligation to grant nationality to foundlings in the 1930 Hague Convention and the 1961 Statelessness Convention cannot be taken as sufficient evidence due, mainly, to the low number of state parties to both instruments.**[56] (Emphasis supplied)

It is hornbook law that there is no general international law, whether customary international law or generally accepted principle of international law, obligating the Philippines, or any state for that matter, to automatically confer citizenship to foundlings at birth. As Prof. Serena Forlati writes: "It is thus not possible to conclude that every child who would otherwise be stateless is automatically entitled to the nationality of her or his country of birth under the ICCPR, the CRC or **general international law."**[57]

Out of the 64 parties to the Convention on the Reduction of Statelessness, **only 13 states provide for the automatic and unconditional acquisition of nationality by foundlings.**[58] This means that the majority of the contracting states to the Convention do not automatically confer nationality to foundlings at birth. In fact, the majority of the contracting states impose various

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[56] Laura van Waas, *Nationality Matters: Statelessness under International Law,* pp. 70-71, Volume 29, School of Human Rights Research Series, lntersentia, 2008 (http://www.stichtingros.nl/site/kennis/files/Onderzoek%20statenloosheid%20Laura%20van%20Waas.pdf; last accessed on 2 March 2016).

[57] Prof. Serena Forlati, *Nationality as a Human Right,* pp. 22-23, The Changing Role of Nationality in International Law, edited by Alessandra Annoni and Serena Forlati, Routledge Research International Law, 2015 Kindle Edition; emphasis supplied.

[58] http://eudo-citizenship.eu/databases/protection-against-statelessness?p=dataEUCIT&application=modesProtectionStatelessness&search=1&modeby=idmode&idmode=S02; last accessed on 2 March 2016.

These countries are:

1. Belgium
2. Bulgaria
3. Croatia
8. Lithuania
9. Montenegro
10. Netherlands

conditions for the acquisition of nationality to prevent statelessness, such as proof of unknown parentage, the specific place where the foundling is found, and whether the foundling is a newborn infant or a child of a certain age, among others. These conditions must necessarily be established in the appropriate proceeding before the foundling can acquire citizenship. These conditions for the acquisition of citizenship effectively prevent a foundling from being automatically considered a citizen at birth. In the Philippines, such conditions will prevent a foundling from being considered a natural-born citizen as defined under the Philippine Constitution.

Since the first essential element for an international rule to be considered a customary international law is missing in this case, the second essential element of *opinio juris* is logically lacking as well. In fact, petitioner failed to demonstrate that any compliance by member states with the Convention on the Reduction of Statelessness was obligatory in nature. In *Bayan Muna v. Romulo,*[59] the Court held:

> Absent the widespread/consistent-practice-of-states factor, the second or the psychological element must be deemed non-existent, for an inquiry on why states behave the way they do presupposes, in the first place, that they are actually behaving, as a matter of settled and consistent practice, in a certain manner. This implicitly requires belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it. Like the first element, the second element has likewise not been shown to be present.

Moreover, aside from the fact that the Philippines is not a contracting party to the Convention on the Reduction of Statelessness, Article 2 of the Convention is inapplicable to this case because the Convention, which took effect after the birth of petitioner, does not have retroactive effect. Paragraph

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4. Finland
5. France
6. Germany
7. Hungary
11. Romania
12. Serbia
13. Sweden

[59] 656 Phil. 246, 306 (2011).

3, Article 12 of the Convention explicitly states:

> 3. The provisions of Article 2 of this Convention shall apply only to foundlings found in the territory of a Contracting State **after the entry into force of the Convention for that State.** (Emphasis supplied)

In short, even if the Philippines were to ratify the Convention today, the Convention would still not benefit petitioner who was born in 1968.

D. Applicable Customary International Law on Citizenship of Foundlings

While there is no customary international law conferring nationality to foundlings at birth, there is no dispute that petitioner has the right to a nationality and the corollary right to be protected against statelessness.

The Philippines is not a signatory to the 1930 Hague Convention or to the Convention on the Reduction of Statelessness. However, the Philippines is a signatory to the Convention on the Rights of the Child and to the International Covenant on Civil and Political Rights. The Philippines also adheres to the Universal Declaration of Human Rights.

The salient provisions of the CRC, the ICCPR and the UDHR on nationality establish principles that are considered customary international law because of the widespread and consistent practice of states and their obligatory nature among states. Generally, most states recognize the following core nationality provisions: (1) every human being has a right to a nationality; (2) states have the obligation to avoid statelessness; and (3) states have the obligation to facilitate the naturalization of stateless persons, including foundlings living within such states.

Right to a Nationality

Article 15 of the Universal Declaration of Human Rights affirms that "everyone has the right to a nationality." With these words, the international community recognizes that

every individual, everywhere in the world, should hold a legal bond of nationality with a state.[60]

The right to a nationality is a fundamental human right[61] from which springs the realization of other cardinal human rights. Possession of a nationality carries with it the diplomatic protection of the country of nationality and is also often a legal or practical requirement for the exercise of political and civil rights. Consequently, the right to a nationality has been described as the **"right to have rights."**[62]

Obligation to Avoid Statelessness

Closely linked to the right of the individual to a nationality is every state's obligation to avoid statelessness since the non-fulfillment of such right results in statelessness.[63] In determining who are its nationals, every state has an obligation to avoid cases of statelessness.

Obligation to Facilitate the Naturalization of Stateless Persons, Including Foundlings

The right to confer nationality, being an inherent right of every independent state, carries with it the obligation to grant nationality to individuals who would otherwise be stateless. To do this, states must facilitate the naturalization of stateless persons, including foundlings. Therefore, states must institute the appropriate processes and mechanisms, through the passage of appropriate statutes or guidelines, to comply with this obligation.

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[60] https ://www.unhcr.it/sites/53a161110b80eeaac7000002/assets/53a 164 ab0b80eeaac70001fe/preventing_and_reducing_statelessness.pdf;last accessed on 2 March 2016.

[61] http://www.ohchr.org/EN/Issues/Pages/Nationality.aspx; last accessed on 2 March 2016.

[62] See http://www.ijrcenter.org/thematic-research-guides/nationality-citizenship/; last accessed on 2 March 2016.

[63] http://eudo-citizenship.eu/InternationalDB/docs/Explanatory %20report%20Convention%20avoidance%20statelessness%20in %20relation %20to%20State%20succession%20CETS %20200%20PDF.pdf; last accessed on 1 March 2016.

Most states recognize as customary international law the right of every human being to a nationality which in turn, requires those states to avoid statelessness, and to facilitate the naturalization of stateless persons, including foundlings. However, there is no customary international law conferring automatically citizenship at birth to foundlings, much less natural-born citizenship at birth as understood under the Philippine Constitution.

E. General Principle of International Law Applicable to Foundlings

Considering that there is no conventional or customary international law automatically conferring nationality to foundlings at birth, there are only two general principles of international law applicable to foundlings. *First* is that a foundling is deemed domiciled in the country where the foundling is found. **A foundling is merely considered to have a *domicile at birth, not a nationality at birth.*** Stated otherwise, a foundling receives at birth a domicile of origin which is the country in which the foundling is found.[64] *Second,* in the absence of proof to the contrary, a foundling is deemed born in the country where the foundling is found.[65] These two general principles of international law have nothing to do with conferment of nationality.

[64] See The Law Commission and the Scottish Law Commission, *Privateional Law, The Law of Domicile,* p. 4 (http://www.scotlawcom.gov.uk/files/3212/7989/6557/repl07.pdf; last accessed on 3 March 2016). See also M.W. Jacobs, *A Treatise on the Law of Domicil,* 1887, p. 167 (http://famguardian.org/Publications/TreatOnLawOfDomicile/A_Treatise_on_the_Law_ of_Domicil_Nation.pdf, citing Savigny, System, etc. § 359 (Guthrie's trans. p. 132), citing Linde, Lehrbuch, § 89; Felix, Droit Int. Priv. no. 28; Calvo, Manuel, § 198; *Id*. Dict. *verb.* Dom.; Westlake, Priv. Int. L. 1st ed. no. 35, rule 2; *Id*. 2d ed. § 236; Dicey, Dom. p. 69, rule 6; Foote, Priv. Int. Jur. p. 9; Wharton, Confl. of L. § 39, citing Heffter, pp. 108, 109, last accessed on 3 March 2016).

[65] John Bassett Moore, *A Digest of International Law,* Vol. III, 1906, p. 281 (http://www.unz.org/Pub/MooreJohn-1906v03:289; last accessed on 3 March 2016).

F. Status of International Law Principles in the Philippines

Under Section 3, Article II of the 1935 Constitution,[66] Section 3, Article II of the 1973 Constitution,[67] and Section 2, Article II of the 1987 Constitution,[68] the Philippines adopts the generally accepted principles of international law as part of the law of the land. International law can become part of domestic law either by transformation or incorporation.[69] The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as domestic legislation.[70] The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.[71] The Philippine Constitution adheres to the incorporation method.

Any treaty, customary international law, or generally accepted international law principle has the status of **municipal statutory law**. As such, it must conform to our Constitution in order to

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[66] Section 3, Article II of the 1935 Constitution provides:

The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as a part of the law of the Nation.

[67] Section 3, Article II of the 1973 Constitution provides:

The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

[68] Section 2, Article II of the 1987 Constitution provides:

The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

[69] *Pharmaceutical and Health Care Association of the Philippines v. Duque III, supra* note 34, citing Joaquin G. Bernas, S.J., CONSTITUTIONAL STRUCTURE AND POWERS OF GOVERNMENT *(NOTES AND CASES)*, Part I (2005).

[70] *Id.*

[71] *Id.*

be valid in the Philippines. If a treaty, customary international law or generally accepted international law principle does not contravene the Constitution and statutory laws, then it becomes part of the law of the land. If a treaty, customary international law or generally accepted international law principle conforms to the Constitution but conflicts with statutory law, what prevails is the later law in point of time as international law has the same standing as municipal statutory law.[72] However, if a treaty, customary international law or generally accepted international law principle conflicts with the Constitution, it is the Constitution that prevails. The Constitution remains supreme and prevails over any international legal instrument or principle in case of conflict. In explaining Section 2, Article II of the 1987 Constitution, the constitutionalist Father Joaquin Bernas, S.J. narrated:

> When Commissioner Guingona asked whether "generally accepted principles of international law" were adopted by this provision as part of statutory law or of constitutional law, Nolledo's answer was unclear. He seemed to suggest that at least the provisions of the United Nations Charter would form part of both constitutional and statutory law. Nobody adverted to the fact that Nolledo's interpretation was a departure from what had hitherto been the accepted meaning of the provision. Later, however, during the period of amendment, **Commissioner Azcuna clarified this by saying that generally accepted principles of international law were made part only of statutory law and not of constitutional law.**[73] (Emphasis supplied)

Treaties, customary international law and the generally accepted principles of international law concerning citizenship cannot prevail over the provisions of the Constitution on citizenship in case of conflict with the latter.[74] Treaties, customary international law or

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[72] *Secretary of Justice v. Lantion,* 379 Phil. 165 (2000).

[73] Joaquin Bernas, S.J.,*The Intent of the 1986 Constitution Writers,* 1995, pp. 75-76.

[74] See Irene R. Cortes and Raphael Perpetuo M. Lotilla, *Nationality and International Law from the Philippine Perspective, Philippine Law Journal,* Vol. 60, No. 1, Supplemental Issue, 1985, p. 1. (http://plj.upd.edu.ph/wp-content/uploads/plj/PLJ%20volume%2060/PLJ%20volume%2060%20supplemental%20issue/PLJ%20Volume%2060%20supplemental%20issue%20-01%20Irene%20R.%20Cortez%20&%20Rapael%20Perpetuo%20M.%20Lotilla%20-

generally accepted international law principles on acquisition of citizenship that contravene the language and intent of the Constitution cannot be given effect in the Philippines for being unconstitutional.

Assuming *arguendo* that there was in 1935 and thereafter a customary international law conferring nationality to foundlings at birth, still foundlings could not be considered as natural-born Filipino citizens since to treat them as such would conflict with the concept of *jus sanguinis* under the1935 Constitution. As stated, in case of conflict between customary international law and the Constitution, it is the Constitution that prevails. The 1935 Constitution clearly required blood relation to the father to establish the natural-born citizenship of a child. The 1935 Constitution did not contain any provision expressly or impliedly granting Filipino citizenship to foundlings on the basis of birth in the Philippines *(jus soli* or law of the soil),[75] with the presumption of Filipino parentage so as to make them natural-born citizens.

Even assuming there was in 1935 and thereafter a customary international law granting to foundlings citizenship at birth, such citizenship at birth is not identical to the citizenship of a child who is biologically born to Filipino parents. The citizenship of a foundling can be granted at birth by operation of law, but the foundling is considered "naturalized in accordance with law" and not a natural-born citizen. Since a foundling's nationality is merely granted by operation of statutory law, specifically customary international law (which has the status of statutory law) assuming such exists, a foundling can only be deemed a Filipino citizen under paragraph 5, Section 1 of Article IV of the 1935 Constitution

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%20Nationality%20and%20Intemational%20Law. pdf; last accessed on 2 March 2016).

[75] See Jaime S. Bautista, *No customary international law automatically confers nationality to foundlings, The Manila Times,* 28 September 2015 (http://www.manilatimes.net/no-customary-intemational-Iaw- automatically-confers-nationality-to-foundlings/221126/, last accessed on 2 March 2016). See also Joel Ruiz Butuyan, *Legal and emotional entanglements in Poe issue,* 6 October 2015, *Philippine Daily Inquirer* (http://opinion. inquirer.net/ 89141/legal-and-emotional-entanglements-in-poe-issue, last accessed on 2 March 2016).

which refers to naturalized Filipino citizens. To add another category of natural-born Filipino citizens, particularly foundlings born in the Philippines whose parents are unknown, conflicts with the express language and intent of the 1935 Constitution to limit natural-born Filipino citizens to those whose fathers are Filipino citizens.

In short, there is a difference between citizenship at birth because of *jus soli,* and citizenship at birth because of *jus sanguinis*. The former may be granted to foundlings under Philippine statutory law pursuant to paragraph (5), Section 1 of Article IV of the 1935 Constitution but the Philippine citizenship thus granted is not that of a natural-born citizen but that of a naturalized citizen. Only those citizens at birth because of *jus sanguinis,* **which requires blood relation to a parent,** are natural-born Filipino citizens under the 1935, 1973 and 1987 Constitutions.

Foundlings as Naturalized Filipino Citizens

If a child's parents are neither Filipino citizens, the only way that the child may be considered a Filipino citizen is through the process of naturalization in accordance with statutory law under paragraph (5), Section 1 of Article IV of the 1935 Constitution. If a child's parents are unknown, as in the case of a foundling, there is no basis to consider the child as a natural-born Filipino citizen since there is no proof that either the child's father or mother is a Filipino citizen. Thus, the only way that a foundling can be considered a Filipino citizen under the 1935 Constitution, as well as under the 1973 and 1987 Constitutions, is for the foundling to be naturalized in accordance with law.

In the Philippines, there are laws which provide for the naturalization of foreigners. These are Commonwealth Act No. 473,[76] as amended by Republic Act No. 530, known as the Revised Naturalization Law, which refers to judicial naturalization, and

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[76] An Act to Provide for the Acquisition of Philippine Citizenship by Naturalization, and to Repeal Acts Numbered Twenty-Nine Hundred and Twenty-Seven and Thirty-Four Hundred and Forty-Eight.

Republic Act No. 9139,[77] which pertains to administrative naturalization.

Significantly, there is no Philippine statute which provides for the grant of Filipino citizenship specifically to foundlings who are found in the Philippines. The absence of a domestic law on the naturalization of foundlings can be sufficiently addressed by customary international law, which recognizes the right of every human being to a nationality and obligates states to grant nationality to avoid statelessness. Customary international law can fill the gap in our municipal statutory law on naturalization of foundlings in order to prevent foundlings from being stateless. Otherwise, a foundling found in the Philippines with no known parents will be stateless on the sole ground that there is no domestic law providing for the grant of nationality. This not only violates the right of every human being to a nationality but also derogates from the Philippines' obligation to grant nationality to persons to avoid statelessness.

Customary international law has the same status as a statute enacted by Congress. Thus, it must not run afoul with the Constitution. Customary international law cannot validly amend the Constitution by adding another category of natural-born Filipino citizens, specifically by considering foundlings with no known parents as natural-born citizens. Again, under paragraphs (3) and (4) of Section 1, Article IV of the 1935 Constitution, in relation to Sections 1 and 2, Article IV of the 1987 Constitution, only those born of Filipino fathers or Filipino mothers are considered natural-born Filipino citizens.

Applying customary international law to the present case, specifically the right of every human being to a nationality and the Philippines' obligation to grant citizenship to persons who would otherwise be stateless, a foundling may be naturalized as a Filipino citizen upon proper application for citizenship. This application should not be interpreted in the strictest sense

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[77] An Act Providing for the Acquisition of Philippine Citizenship for Certain Aliens by Administrative Naturalization and for Other Purposes.

of the word. On the contrary, the term "application" for purposes of acquiring citizenship must be construed liberally in order to facilitate the naturalization of foundlings. The application for citizenship may be any overt act which involves recognition by the Philippines that the foundling is indeed its citizen. Thus, the application for citizenship may be as simple as applying for a Philippine passport, which serves as evidence of citizenship.[78] An application for a passport is an application for recognition that the holder is a citizen of the state issuing such passport. In the case of petitioner, she applied for, and was issued a Philippine passport on the following dates: (1) 4 April 1988;[79] (2) 5 April 1993;[80] (3) 19 May 1998;[81] (4) 13 October 2009;[82] (5) 19 December 2013;[83] and (6) 18 March 2014.[84]

In any event, for a foundling to be granted citizenship, it is necessary that the child's status as a foundling be first established. It must be proven that the child has no known parentage before the state can grant citizenship on account of the child being a foundling. In the Philippines, a child is determined to be a foundling after an administrative investigation verifying that the child is of unknown parentage. The Implementing Rules

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[78] See Francis Wharton, LL.D., *A DIGEST OF THE INTERNATIONAL LAW OF THE UNITED STATES,* Vol. II, 1886, p. 465, § 192 (Mr. Fish, Secretary of State, to Mr. Davis, January 14, 1875, MSS. lnst., Germ. XVI 6). See also Paul Weis, *NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW,* Second Edition, 1979, p. 228 (https://books.google.com.ph/books?

id=hSL GDXqXeegC&printsec=frontcover&dq=paul+weis+nationality&hl= en&sa =X& redir_ esc=y#v=onepage&q=paul%20weis %20 nationality &f= false; last accessed on 2 March 2016).

[79] Philippine Passport No. F927287.

[80] Philippine Passport No. L881511.

[81] Philippine Passport No. DD156616.

[82] Philippine Passport No. XX4731999.

[83] Philippine Passport No. DE0004530.

[84] Philippine Passport No. EC0588861.

and Regulations (IRR) of Act No. 3753[85] and Other Laws on Civil Registration provide that the *barangay* captain or police authority shall certify that no one has claimed the child or no one has reported a missing child with the description of the foundling.[86] Rule 29 of the said IRR provides:

RULE 29. Requirements for Registration of Foundling. — No foundling shall be recorded in the civil registrar unless the following requirements are complied with:

a) Certificate of Foundling (OCRG Form No. 101, Revised January 1993) accomplished correctly and completely;

b) Affidavit of the finder stating the facts and circumstances surrounding the finding of the child, and the fact that the foundling has been reported to the barangay captain or to the police authority, as the case may be; and

c) **Certification of the *barangay* captain or police authority regarding the report made by the finder, stating among other things, that no one has claimed the child or no one has reported a missing child whose description may be the same as the foundling as of the date of the certification.** (Emphasis supplied)

Before a foundling is conferred Philippine citizenship, there must first be a factual determination of the child's status as a foundling after an administrative investigation. Once factually determined that a child is a foundling, that child through its guardian may thereafter initiate proceedings to apply for Philippine citizenship, e.g., apply for a Philippine passport.

This need for a factual determination prevents the foundling from automatically acquiring Philippine citizenship at birth. The fact of unknown parentage must first be proven in an administrative proceeding before a foundling is granted citizenship on account of the child's foundling status. Such factual determination is a necessary act to acquire Philippine

[85] Civil Registry Law, 27 February 1931.

[86] See Rules 26-30, IRR of Act No. 3753 and Other Laws on Civil Registration, 18 December 1992.

citizenship, preventing the foundling from being a natural-born Filipino citizen. In contrast, for natural-born Filipino citizens, no factual determination in an administrative proceeding is required to grant citizenship since the certificate of live birth speaks for itself–it establishes natural-born citizenship.

Erroneous Interpretation of Statistics

During the Oral Arguments, the Solicitor General insisted that petitioner is a natural-born Filipino citizen based on the 99.93% statistical probability that any child born in the Philippines from 2010 to 2014 would be a natural-born Filipino citizen. From 1965 to 1975, there is a 99.83% statistical probability that a child born in the Philippines would be a natural-born Filipino citizen. To buttress his position, the Solicitor General presented a certification from the Philippine Statistics Authority showing the "**number of foreign and Filipino children born in the Philippines: 1965-1975 and 2010-2014**."

This is grave error.

There is no law or jurisprudence which supports the Solicitor General's contention that natural-born citizenship can be conferred on a foundling based alone on statistical probability. Absent any legal foundation for such argument, the Solicitor General cannot validly conclude that a 99.93% (or 99.83%) statistical probability that a foundling born in the Philippines is a natural-born Filipino citizen legally confers on such foundling natural-born citizenship. There is no constitutional provision or statute that confers natural-born citizenship based on statistical probability.

The Solicitor General's data speak of **foreign and Filipino births** in the Philippines. The data collected show the number of foreign and Filipino children born in the Philippines during the periods covered. This means that the figures reflect the total number of children born in the Philippines with **known parents, either Filipino or foreigner.** The data do not show the number of foundlings (those with unknown parentage) born in the Philippines from 1965 to 1975 and from 2010 to 2014. The

data also do not show the number of foundlings who were later determined to have Filipino parentage. This is precisely because foundlings have unknown parents. A foundling's unknown parentage renders it quite difficult, if not impossible, to collect data on "the number of foreign and Filipino foundlings."

For the Solicitor General's proposition to be correct, he should have presented statistics specifically based on the number of foundlings born in the Philippines, and not on the number of children born in the Philippines with known foreign or Filipino parents. Children with known parents constitute a class entirely different from foundlings with unknown parents. Gathering data from the number of children born in the Philippines with known parents to determine the number of foundlings born in the Philippines to confer natural-born citizenship on foundlings resembles comparing apples with oranges and avocados. Since the figures were collected from the universe of children with known parents, either Filipinos or foreigners, and not from the universe of foundlings, the Solicitor General's proposition is fallacious in concluding that foundlings in the Philippines are natural-born Filipino citizens.

Further, if there is a 99.93% (or 99.83%) probability that a child born in the Philippines is a natural-born Filipino citizen, it does not automatically follow that there is a 99.93% (or 99.83%) probability that a foundling born in the Philippines is a natural-born Filipino citizen. The data, if any, on the universe of foundlings may show a different statistical probability. There is evidently no such statistical data. Therefore, the Solicitor General's argument that the probability that a foundling born in the Philippines would be a natural-born Filipino is 99.93% (or 99.83%) based on the number of children born in the Philippines with known parents is glaringly *non-sequitur.*

The following exchange between Justice Carpio and the Solicitor General illustrates the fallacy of the so-called 99.93% (99.83%) statistical probability advanced by the Solicitor General. Such statistical probability would result in patent absurdities.

JUSTICE CARPIO:

Now, how does the Constitution define natural-born citizen?

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SOLICITOR GENERAL HILBAY:

Natural-born citizens of the Philippines from birth without having to perform any act to acquire or perfect their citizenship.

JUSTICE CARPIO:

Okay. Let us assume that an infant is found, a three-day infant is found today in front of the Manila Cathedral. The infant has blue eyes, blonde hair, milky white skin. The parish priest looks around and doesn't find any one claiming the child. So, the parish priest goes to the DSWD, turns over the child to the DSWD. The DSWD conducts an investigation, a formal investigation, to find out if the biological parents are around if they can be found. Nobody comes out, so the DSWD issues a foundling certificate, okay. What is the nationality of the child? Is the child a natural-born citizen of the Philippines?

SOLICITOR GENERAL HILBAY:

I would consider the child a natural-born citizen of the Philippines because 99.9 percent of the time, that child will be a natural-born citizen.

JUSTICE CARPIO:

So even if the child has blue eyes, blonde hair, Caucasian skin...

SOLICITOR GENERAL HILBAY:

It's possible for Filipinos to have blue eyes, Your Honor.

JUSTICE CARPIO:

Blonde hair?

SOLICITOR GENERAL HILBAY:

It's possible Your Honor.

JUSTICE CARPIO:

How many percent?

SOLICITOR GENERAL HILBAY:

Again, Your Honor, if we are looking at percentage ...

JUSTICE CARPIO:

How many percent of Filipinos, natural-born, have blue eyes, blonde hair, white skin, 99.9 percent?

SOLICITOR GENERAL HILBAY:
I don't know about the specific numbers ...

x x x x x x x x x

JUSTICE CARPIO:
You don't have the statistics.

x x x x x x x x x

SOLICITOR GENERAL HILBAY:
I don't, Your Honor, I don't.

x x x x x x x x x

JUSTICE CARPIO:
So, you would say that every child born in the Philippines who has blue eyes, blonde hair, white skin, whose parents cannot be found, and there is a certificate by the DSWD that's a foundling, they are all natural-born citizens of the Philippines. If Filipino...

SOLICITOR GENERAL HILBAY:
Your Honor, I am not threatened by people with blue eyes and, you know, blonde ...

JUSTICE CARPIO:
Yes, but my question is, what is the nationality of those children, of those infants?

SOLICITOR GENERAL HILBAY:
Natural-born Filipinos still, Your Honor.

x x x x x x x x x

JUSTICE CARPIO:
Supposing now, there is a DNA taken from the child[ren], you say they are natural-born citizens. The DNA shows that they have Caucasian genes, no Asian genes at all, would you say they are natural-born citizens of the Philippines?

SOLICITOR GENERAL HILBAY:

Well, it's possible for Caucasians to be Filipinos, Your Honor, and natural-born Filipinos.

JUSTICE CARPIO:
If their parents are Filipinos.

SOLICITOR GENERAL HILBAY:
Yes, exactly, Your Honor.

JUSTICE CARPIO:
But if you don't know who their parents ...

SOLICITOR GENERAL HILBAY:
Then I, again, would go back to 99.9 percent, which is a rather comfortable number for me.

JUSTICE CARPIO:
Yes, but how many percent of Filipinos have blue eyes, blonde hair and white skin?

SOLICITOR GENERAL HILBAY:
That is an irrelevant fact for me, Your Honor. I'm not looking at the class of citizens...

x x x x x x x x x

JUSTICE CARPIO:
You have to look at the statistics also.

SOLICITOR GENERAL HILBAY:
Yes, Your Honor, of course.[87] (Emphasis supplied)

For the Solicitor General to assert that a foundling with blond hair, blue eyes, and milky white Caucasian skin, with no Asian gene in the foundling's DNA, is a natural-born Filipino citizen, is the height of absurdity. The Solicitor General's position amends the Constitution and makes *jus soli* the governing principle for foundlings, contrary to the *jus sanguinis* principle enshrined in the 1935, 1973, and 1987 Constitutions.

Philippine Laws and Jurisprudence on Adoption Not Determinative of Natural-Born Citizenship

During the Oral Arguments, the Chief Justice cited Republic Act No. 8552 (RA 8552) or the *Domestic Adoption Act of 1998* and Republic Act No. 8043 (RA 8043) or the *Inter-Country Adoption Act of 1995* in arguing that there are domestic laws which govern the citizenship of foundlings.

[87] TSN, 16 February 2016, pp. 152-157.

This is an obvious mistake.

The term "natural-born Filipino citizen" does not appear in these statutes describing qualified adoptees. In fact, while the term "Filipino" is mentioned, it is found only in the title of RA 8552 and RA 8043. The texts of these adoption laws do not contain the term "Filipino." Specifically, the provisions on the qualified adoptees read:

RA 8552, Section 8

Section 8. *Who May Be Adopted.–* The following may be adopted:

(a) Any person below eighteen (18) years of age who has been administratively or judicially declared available for adoption;

(b) The legitimate son/daughter of one spouse by the other spouse;

(c) An illegitimate son/daughter by a qualified adopter to improve his/her status to that of legitimacy;

(d) A person of legal age if, prior to the adoption, said person has been consistently considered and treated by the adopter(s) as his/her own child since minority;

(e) A child whose adoption has been previously rescinded; or

(f) A child whose biological or adoptive parent(s) has died: *Provided,* That no proceedings shall be initiated within six (6) months from the time of death of said parent(s).

RA 8053, Section 8

Sec. 8. Who May be Adopted. — Only a legally free child may be the subject of inter-country adoption. x x x.

Clearly, there is no specific provision in these adoption laws requiring that adoptees must be Filipinos, much less natural-born Filipinos. These adoption laws do not distinguish between a Filipino child and an alien child found in the Philippines, and thus these adoption laws apply to both Filipino and alien children found in the Philippines. In other words, either Filipino or alien children found in the Philippines, over which the Philippine government exercises jurisdiction as they are presumed domiciled in the Philippines, may be subject to adoption under RA 8552 or RA 8043.

However, the Implementing Rules and Regulations of RA 8552, issued by the Department of Social Welfare and Development, provide that they shall "apply to the adoption in the Philippines of a *Filipino child* by a Filipino or alien qualified to adopt under Article III, Section 7 of RA 8552."[88] The IRR, in effect, restricted the scope of RA 8552 when the IRR expressly limited its applicability to the adoption of a Filipino child when the law itself, RA 8552, does not distinguish between a Filipino and an alien child. In such a case, the IRR must yield to the clear terms of RA 8552. Basic is the rule that the letter of the law is controlling and cannot be amended by an administrative rule. In *Perez v. Phil. Telegraph and Telephone Co.,*[89] the Court declared:

> At the outset, we reaffirm the time-honored doctrine that, **in case of conflict, the law prevails over the administrative regulations implementing it.** The authority to promulgate implementing rules proceeds from the law itself. To be valid, a rule or regulation must conform to and be consistent with the provisions of the enabling statute. As such, it cannot amend the law either by abridging or expanding its scope. (Emphasis supplied)

In *Hijo Plantation, Inc. v. Central Bank of the Philippines,*[90] the Court ruled:

> x x x [I]n case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law. Rules that subvert the statute cannot be sanctioned.

In *Cebu Oxygen & Acetylene Co., Inc. v. Drilon,*[91] the Court stated:

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[88] Section 2 of the Implementing Rules and Regulations pertinently reads:

SECTION 2. Applicablity.– These Rules shall apply to the adoption in the Philippines of a Filipino child by a Filipino or alien qualified to adopt under Article III, Section 7 of RA 8552.

x x x x x x x x x

[89] 602 Phil. 537 (2009).

[90] 247 Phil. 154, 162 (1988). Citations omitted.

[91] 257 Phil. 23, 29 (1989).

x x x **[I]t is a fundamental rule that implementing rules cannot add or detract from the provisions of law it is designed to implement.** The provisions of Republic Act No. 6640, do not prohibit the crediting of CBA anniversary wage increases for purposes of compliance with Republic Act No. 6640. The implementing rules cannot provide for such a prohibition not contemplated by the law.

Administrative regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and should be for the sole purpose of carrying into effect its general provisions. The law itself cannot be expanded by such regulations. An administrative agency cannot amend an act of Congress. (Emphasis supplied)

The following exchange during the Oral Arguments highlights the Chief Justice's glaringly erroneous interpretation of RA 8552 and RA 8043, thus:

JUSTICE CARPIO:
Okay, Let's go to x x x adoption laws. x x x [W]e have an adoption law, correct?

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
x x x Republic Act...8552?

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
It says who can be adopted, correct? Who may be adopted? Section 8, correct?

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
Does it say there that the adoptee must be a citizen of the Philippines?

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
x x x Can you read Section 8.

COMMISSIONER LIM:
I stand corrected, Your Honor, it does not require citizenship.

JUSTICE CARPIO:
There is no requirement.

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
Because the law covers citizens of the Philippines and children not citizens of Philippines but found here.

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
If a foundling cannot be shown to be a citizen of the Philippines, can we exercise jurisdiction and have that child adopted?

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
Do we have the power, the State has the power? Yes, because a foundling is deemed to be domiciled where?

COMMISSIONER LIM:
In the place of his birth.

JUSTICE CARPIO:
If his place [of] birth is unknown, where is he presumed to be domiciled?

COMMISSIONER LIM:
He is presumed to be domiciled in the territory of the State where the foundling is found.

JUSTICE CARPIO:
Yes, because the domicile of a foundling is presumed to be where he is found.

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
That's why the State has jurisdiction over him for adoption purposes. And if no other State will claim him with more reason, we will have jurisdiction over a foundling, correct?

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
Okay. So, the law does not distinguish whether Philippine citizen or non-Philippine citizen, whether natural born- Filipinos or naturalized, none. There's no distinction?

COMMISSIONER LIM:
That's correct, Your Honor.

JUSTICE CARPIO:
Okay. Let's go to the Supreme Court x x x rule on adoption. We adopted this in 2002. What does it say? Who may be adopted?

COMMISSIONER LIM:
Any person below 18 years of age...

JUSTICE CARPIO:
Does it say that only citizens of the Philippines?

COMMISSIONER LIM:
No, Your Honor.

JUSTICE CARPIO:
There's no...

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
...nothing there which says only citizens of the Philippines can be adopted.

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
Precisely because we don't know the citizenship of a foundling.

COMMISSIONER LIM:
That's right, Your Honor.

JUSTICE CARPIO:
That's why it's not required that he would be a Filipino, correct?

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
Okay. Let's go to the implementing rule and regulation of R.A. 8552. x x x. It says here, this is an implementing rule and regulation to implement Republic Act 8552. So this was promulgated by the administrative agency, by DSWD, correct?

COMMISSIONER LIM:
Correct, Your Honor.

JUSTICE CARPIO:
Okay. It says here applicability, Section 2, the Rule shall apply to the adoption in the Philippines of a Filipino child by a Filipino or alien qualified to adopt. So it limits adoption to Philippines citizens, to a Filipino child?

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
Okay, This is supposed to implement the law. Can the implementing rules restrict the law?

COMMISSIONER LIM:
Water cannot rise higher than its source, Your Honor...

JUSTICE CARPIO:
Okay.

COMMISSIONER LIM:
The IRR ....

JUSTICE CARPIO:
Do you have a decision, jurisprudence for that, that an Implementing Rule cannot expand and cannot deduct from what the law provides?

COMMISSIONER LIM:
I cannot cite one now, Your Honor.

JUSTICE CARPIO:
Okay. *Cebu Oxygen v. Drilon,* x x x. It says here it is a fundamental rule that Implementing Rules cannot add or detract from the provisions of law it is designed to implement. x x x. But this implementing rule says only Filipinos can be adopted. That cannot be done, correct?

COMMISSIONER LIM:
Yes, Your Honor.

JUSTICE CARPIO:
Fundamental rule, if the Court says fundamental rule, all practicing lawyers must know that, correct?

COMMISSIONER LIM:
Yes, Your Honor.[92]

Moreover, contrary to the opinion of the Chief Justice during the Oral Arguments, the cases of *Ellis v. Republic of the Philippines*[93] and *Duncan v. CFI Rizal*[94] do not apply in this case since the *Ellis* and *Duncan* cases do not involve foundlings or their citizenship. These two cases are about adoption, not about citizenship or foundlings.

In *Ellis,* the only issue before the Court was whether petitioners, not being permanent residents in the Philippines,

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[92] TSN, 2 February 2016, pp. 135-141.

[93] 117 Phil. 976 (1963).

[94] 161 Phil. 397 (1976).

were qualified to adopt Baby Rose. The citizenship of the abandoned Baby Rose was not put in issue. Baby Rose's mother was known since she delivered Baby Rose at the Caloocan Maternity Hospital but left Baby Rose four days later to the Heart of Mary Villa, an institution for unwed mothers and their babies. The Court in *Ellis* stated:

> Baby Rose was born on September 26, 1959, at the Caloocan Maternity Hospital. Four or five days later, the mother of Rose left her with the Heart of Mary Villa — an institution for unwed mothers and their babies — stating that she (the mother) could not take of Rose without bringing disgrace upon her (the mother's family.).[95]

In short, Baby Rose was not a foundling because her mother was known. The Court merely mentioned in the decision that Baby Rose was a "citizen of the Philippines," thus, the local courts have jurisdiction over her status. The term "natural-born Filipino citizen" is not found in the decision.

On the other hand, the case of *Duncan* involved solely the issue of whether or not the person who gave the consent for adoption, Atty. Corazon de Leon Velasquez, was the proper person required by law to give such consent. The unwed mother entrusted the baby to Atty. Velasquez who knew the mother. The Court in *Duncan* stated:

> Sometime in May of 1967, the child subject of this adoption petition, undisputedly declared as only three days old then, was turned over by its mother to witness Atty. Corazon de Leon Velasquez. The natural and unwedded mother, from that date on to the time of the adoption proceedings in court which started in mid- year of said 1967, and up to the present, has not bothered to inquire into the condition of the child, much less to contribute to the livelihood, maintenance and care of the same. x x x.We are convinced that in fact said mother had completely and absolutely abandoned her child.[96]

In short, the baby was not a foundling because the mother was known. Again, the Court did not mention the term "natural-

[95] *Supra* note 93, at 978.

[96] *Supra* note 94, at 407.

born Filipino citizen." Neither did the Court classify the abandoned infant as a Filipino citizen.

Burden of Proof

Any person who claims to be a citizen of the Philippines has the burden of proving his or her Philippine citizenship.[97] Any person who claims to be qualified to run for the position of President of the Philippines because he or she is, among others, a natural-born Filipino citizen, has the burden of proving he or she is a natural-born Filipino citizen. Any doubt whether or not he or she is natural-born Filipino citizen is resolved against him or her. The constitutional requirement of a natural-born citizen, being an express qualification for election as President, must be complied with strictly. As the Court ruled in *Paa v. Chan*:[98]

> It is incumbent upon the respondent, who claims Philippine citizenship, to prove to the satisfaction of the court that he is really a Filipino. **No presumption can be indulged in favor of the claimant of Philippine citizenship,** and any doubt regarding citizenship must be resolved in favor of the State.[99] (Emphasis supplied)

This statement in *Paa* was reiterated in the 2009 case of *Go, Sr. v. Ramos.*[100] *Paa* and *Go* lay down three doctrines: *First,* a person claiming Philippine citizenship has the burden of proving his claim. *Second,* there can be no presumption in favor of Philippine citizenship. This negates petitioner's claim to any presumption that she is a natural-born Filipino Citizen. *Third,* any doubt on citizenship is resolved against the person claiming Philippine citizenship. Therefore, a person claiming to be a Filipino citizen, whether natural-born or naturalized, cannot invoke any presumption of citizenship but must establish such citizenship as a matter of fact and not by presumptions, with any doubt resolved against him or her.

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[97] Carpio, *J.*, Dissenting Opinion, *Tecson v. Comelec,* 468 Phil. 421, 634 (2004).

[98] 128 Phil. 815 (1967).

[99] *Id.* at 825.

[100] G.R. No. 167569, 4 September 2009, 598 SCRA 266.

While it is the burden of the private respondents to first prove the fact of disqualification before the petitioner is called upon to defend herself with countervailing evidence,[101] in this case, there is no dispute that petitioner is a foundling with unknown biological parents. Since petitioner's parentage is unknown as shown in her Certificate of Live Birth, such birth certificate does not show on its face that she is a natural-born Filipino citizen. This shifted the burden of evidence to petitioner to prove that she is a natural-born Filipino citizen eligible to run as President of the Philippines.

Since the Constitution requires that the President of the Philippines shall be a natural-born citizen of the Philippines, it is imperative that petitioner prove that she is a natural-born Filipino citizen, despite the fact that she is a foundling. The burden of evidence shifted to her when she admitted her status as a foundling with no known biological parents. At that moment, it became her duty to prove that she is a natural-born Filipino citizen.[102]

DNA Evidence

As the burden of evidence has shifted to petitioner, it is her duty to present evidence to support her claim that she is a natural-born Filipino citizen, and thus eligible to run for President. The issue of parentage may be resolved by conventional methods or by using available modem and scientific means.[103] **One of the evidence** that she could have presented is deoxyribonucleic acid (DNA) evidence[104] which could conclusively show that she is biologically (maternally or paternally) related to a Filipino

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[101] *Fernandez v. HRET,* 623 Phil. 628 (2009).

[102] See *Reyes v. Commission on Elections,* G.R. No. 207264, 25 June 2013, 699 SCRA 522.

[103] *Tijing v. Court of Appeals,* 406 Phil. 449 (2001).

[104] In *Tijing v. Court of Appeals,* 406 Phil. 449 (2001), the Court held that to establish parentage, the DNA from the mother, alleged father and child are analyzed since the DNA of a child, which has two copies, will have one copy from the mother and another copy from the father.

citizen, which in turn would determine whether she is a natural-born Filipino citizen.

The probative value of such DNA evidence, however, would still have to be examined by the Court. In assessing the probative value of DNA evidence, the Court would consider, among other things, the following data: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.[105] More specifically, they must be evaluated in accordance with A.M. No. 06-11-5-SC or the Rule on DNA Evidence:[106]

Sec. 9. Evaluation of DNA Testing Results. – In evaluating the results of DNA testing, the court shall consider the following:

(a) The evaluation of the weight of matching DNA evidence or the relevance of mismatching DNA evidence;
(b) The results of the DNA testing in the light of the totality of the other evidence presented in the case; and that
(c) DNA results that exclude the putative parent from paternity shall be conclusive proof of non-paternity. If the value of the Probability of Paternity[107] is less than 99.9% the results of the DNA testing shall be considered as corroborative evidence. If the value of the Probability of Paternity is 99.9% or higher, there shall be a disputable presumption of paternity.

Petitioner is Not a Natural-Born Filipino Citizen

The 1987 Philippine Constitution is clear: "No person may be elected President unless he is a **natural-born citizen of the Philippines,** x x x, and a resident of the Philippines for at least

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[105] See *People v. Vallejo,* 431 Phil. 798 (2002).

[106] Dated 2 October 2007.

[107] Section 3(f) of the Rule on DNA Evidence defines "Probability of Parentage" as the numerical estimate for the likelihood of parentage of a putative parent compared with the probability of a random match of two unrelated individuals in a given population.

ten years immediately preceding such election." Is petitioner, being a foundling, a natural-born Filipino citizen?

The answer is clearly no. *First,* there is no Philippine law automatically conferring Philippine citizenship to a foundling at birth. Even if there were, such a law would only result in the foundling being a naturalized Filipino citizen, not a natural-born Filipino citizen.

Second, there is no legal presumption in favor of Philippine citizenship, whether natural-born or naturalized. Citizenship must be established as a matter of fact and any doubt is resolved against the person claiming Philippine citizenship.

Third, the letter and intent of the 1935 Constitution clearly excluded foundlings from being considered natural-born Filipino citizens. The Constitution adopts the *jus sanguinis* principle, and identifies natural-born Filipino citizens as only those whose fathers or mothers are Filipino citizens. Petitioner failed to prove that either her father or mother is a Filipino citizen.

Fourth, there is no treaty, customary international law or a general principle of international law granting automatically Philippine citizenship to a foundling at birth. Petitioner failed to prove that there is such a customary international law. At best, there exists a presumption that a foundling is domiciled, and born, in the country where the foundling is found.

Fifth, even assuming that there is a customary international law presuming that a foundling is a citizen of the country where the foundling is found, or is born to parents possessing the nationality of that country, such presumption cannot prevail over our Constitution since customary international law has the status merely of municipal statutory law. This means that customary international law is inferior to the Constitution, and must yield to the Constitution in case of conflict. Since the Constitution adopts the *jus sanguinis* principle, and identifies natural-born Filipino citizens as only those whose fathers or mothers are Filipino citizens, then petitioner must prove that either her father or mother is a Filipino citizen for her to be considered a natural-born Filipino citizen. Any international

law which contravenes the *jus sanguinis* principle in the Constitution must of course be rejected.

Sixth, petitioner failed to discharge her burden to prove that she is a natural-born Filipino citizen. Being a foundling, she admitted that she does not know her biological parents, and therefore she cannot trace blood relation to a Filipino father or mother. Without credible and convincing evidence that petitioner's biological father or mother is a Filipino citizen, petitioner cannot be considered a natural-born Filipino citizen.

Seventh, a foundling has to perform an act, that is, prove his or her status as a foundling, to acquire Philippine citizenship. This being so, a foundling can only be deemed a naturalized Filipino citizen because the foundling has to perform an act to acquire Philippine citizenship. Since there is no Philippine law specifically governing the citizenship of foundlings, their citizenship is addressed by customary international law, namely: the right of every human being to a nationality, and the State's obligations to avoid statelessness and to facilitate the naturalization of foundlings.

During the Oral Arguments, the purportedly sad and depressing plight of foundlings if found not to be natural-born Filipino citizens, particularly their disqualification from being elected to high public office and appointed to high government positions, had been pointed out once again. As I have stated, this appeals plainly to human emotions.[108] This emotional plea, however, conveniently forgets the express language of the Constitution reserving those high positions, particularly the Presidency, exclusively to natural-born Filipino citizens. Even naturalized Filipino citizens, whose numbers are far more than foundlings, are not qualified to run for President. The natural-born citizenship requirement under the Constitution to qualify as a candidate for President must be complied with strictly. To rule otherwise

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[108] See Joel Ruiz Butuyan, *Legal and emotional entanglements in Poe issue,* 6 October 2015, *Philippine Daily Inquirer* (http://opinion.inquirer.net/89141/legal-and-emotional-entanglements-in-poe-issue; last accessed on 2 March 2016).

amounts to a patent violation of the Constitution. It is basic in Constitutional Law that the qualification requirements prescribed by the Constitution must be complied with by all presidential candidates, regardless of popularity or circumstances. Being sworn to uphold and defend the Constitution, the Members of this Court have no other choice but to apply the clear letter and intent of the Constitution.

However, a decision denying natural-born citizenship to a foundling on the ground of absence of proof of blood relation to a Filipino parent never becomes final.[109] *Res judicata* does not apply to questions of citizenship. In *Moy Ya Lim Yao v. Commissioner of Immigration,*[110] cited in *Lee v. Commissioner of Immigration,*[111] this Court declared that:

> [e]very time the citizenship of a person is material or indispensable in a judicial or administrative case, whatever the corresponding court or administrative authority decides therein as to such citizenship is generally not considered as *res adjudicata,* hence it has to be threshed out again and again as the occasion may demand. x x x.

Likewise, in *Go, Sr. v. Ramos,*[112] which involved the citizenship of Jimmy T. Go, as well as his father Carlos, who was alleged to be an illegal and undesirable alien in our country and thus was subjected to deportation proceedings, the Court stated that citizenship cases are *sui generis* and *res judicata* does not apply in such cases:

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[109] See *Kilosbayan Foundation v. Ermita,* 553 Phil. 331, 343-344 (2007), where the Court stated in the dispositive portion of the Decision that "respondent Gregory S. Ong x x x is hereby ENJOINED from accepting an appointment to the position of Associate Justice of the Supreme Court or assuming the position and discharging the functions of that office, until he shall have successfully completed all necessary steps, through the appropriate adversarial proceedings in court, to show that he is a natural- born Filipino citizen and correct the records of his birth and citizenship."

[110] 148-B Phil. 773, 855 (1971).

[111] 149 Phil. 661, 665 (1971).

[112] *Supra* note 100, at 288, 290-291.

x x x Cases involving issues on citizenship are *sui generis.* Once the citizenship of an individual is put into question, it necessarily has to be threshed out and decided upon. In the case of *Frivaldo v. Commission on Elections,* we said that decisions declaring the acquisition or denial of citizenship cannot govern a person's future status with finality. This is because a person may subsequently reacquire, or for that matter, lose his citizenship under any of the modes recognized by law for the purpose. Indeed, if the issue of one's citizenship, after it has been passed upon by the courts, leaves it still open to future adjudication, then there is more reason why the government should not be precluded from questioning one's claim to Philippine citizenship, especially so when the same has never been threshed out by any tribunal.

x x x x x x x x x

Citizenship proceedings, as aforestated, are a class of its own, in that, unlike other cases, *res judicata* does not obtain as a matter of course. In a long line of decisions, this Court said that every time the citizenship of a person is material or indispensable in a judicial or administrative case, whatever the corresponding court or administrative authority decides therein as to such citizenship is generally not considered as *res judicata;* hence, it has to be threshed out again and again as the occasion may demand. *Res judicata* may be applied in cases of citizenship only if the following concur:

1. a person's citizenship must be raised as a material issue in a controversy where said person is a party;

2. the Solicitor General or his authorized representative took active part in the resolution thereof; and

3. the finding or citizenship is affirmed by this Court.

Consequently, if in the future, petitioner can find a DNA match to a Filipino parent, or any other credible and convincing evidence showing her Filipino parentage, then petitioner can still be declared a natural-born Filipino citizen.

Not being a natural-born Filipino citizen, petitioner is a nuisance candidate whose certificate of candidacy for President can *motu proprio* be cancelled by the COMELEC. In fact, the COMELEC is duty-bound to cancel petitioner's COC because

to allow a person who, as found by the COMELEC is not a natural-born Filipino citizen, to run for President makes a mockery of the election process. Since petitioner is not a natural-born Filipino citizen, I deem it irrelevant to discuss the issue of whether petitioner complied with the ten-year residency requirement to run for President. At any rate, assuming petitioner is a natural-born Filipino citizen, which she is not, I concur with Justice Mariano C. Del Castillo's Dissenting Opinion on the residency issue.

A final word. The Constitution defines natural-born citizens as "those who are citizens of the Philippines **from birth without having to perform any act to acquire or perfect their Philippine citizenship." "From birth"** means that the possession of natural-born citizenship starts at birth and continues to the present without interruption. The phrase **"without having to perform any act to acquire or perfect their Philippine citizenship"** means that a person is not a natural-born Filipino citizen if he or she has to take an oath of allegiance before a public official to acquire or reacquire Philippine citizenship. This precludes the reacquisition of natural-born citizenship that has been lost through renunciation of Philippine citizenship. The fact that the reacquisition of citizenship is made possible **only** through legislation by Congress — Republic Act No. 9225[113]— means that Philippine citizenship is acquired pursuant to paragraph (4), Section 1 of Article IV of the 1987 Constitution, referring to "[t]hose who are naturalized in accordance with law."

In short, natural-born Filipino citizens who have renounced Philippine citizenship and pledged allegiance to a foreign country have become **aliens**, and can reacquire Philippine citizenship, just like other aliens, only if **"naturalized in accordance with law."** Otherwise, a natural-born Filipino citizen who has **absolutely renounced and abjured allegiance to the Philippines** and pledged sole allegiance to the United States, undertaking to bear arms against any foreign country, including

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[113] Citizenship Retention and Re-acquisition Act of 2003.

the Philippines, when required by U.S. law,[114] could still become the Commander-in Chief of the Armed Forces of the Philippines by performing a simple act – taking an oath of allegiance before a Philippine public official – to reacquire natural-born Philippine citizenship. The framers of the Constitution, and the Filipino people who ratified the Constitution, could not have intended such an anomalous situation. For this reason, this Court should one day revisit the doctrine laid down in *Bengson III v. HRET.*[115]

ACCORDINGLY, there being no grave abuse of discretion on the part of the Commission on Elections *En Banc,* I vote to **DISMISS** the petitions.

SEPARATE DISSENTING OPINION

LEONARDO-DE CASTRO, *J.*:

I begin this Dissenting Opinion by outrightly expressing my view that the opinion of Honorable Justice Jose P. Perez on the issue of natural-born citizenship which was joined by six (6) other Justices including the Honorable Chief Justice Ma. Lourdes P.A. Sereno, if not overturned, will wreak havoc on our constitutional system of government.

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[114] The oath of allegiance to the United States that naturalized Americans take states:

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

(https://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america; last accessed on 7 March 2016). Emphasis supplied.

[115] 409 Phil. 633 (2001).

By their opinion, the seven (7) Justices would amend the 1935 Constitution which was in effect when petitioner was born, to add "foundlings found in the Philippines whose parents are unknown" in the enumeration of natural-born citizen, as follows:

ARTICLE IV
CITIZENSHIP
(1935 Constitution)

Section 1. The following are citizens of the Philippines

(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

(2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

(3) Those whose fathers are citizens of the Philippines **[and foundlings found in the Philippines whose parents are unknown].**

(4) Those whose mothers are citizens of the Philippines and upon reaching the age of majority, elect Philippine citizenship.

(5) Those who are naturalized in accordance with the law. (Emphases supplied.)

This amendment of the Constitution by the judicial opinion put forth by the seven (7) Justices is based mainly on extralegal grounds and a misreading of existing laws, which will have unimaginable grave and far- reaching dire consequences in our constitutional and legal system and national interest which this Dissenting Opinion will explain below.

For the above reason and other reasons, I dissent to the *Ponencia* of Mr. Justice Jose P. Perez that the four consolidated petitions seeking the annulment and setting aside of the Commission on Elections (COMELEC) December 1, 2015 and December 23, 2015 Resolutions in SPA Nos. 15-001 (DC); and, the December 11, 2015 and December 23, 2015 Resolutions in 15-002 (DC), 15-007 (DC), and 15-139 (DC) should be granted.

It is my humble submission that petitioner Senator Mary Grace Natividad S. Poe-Llamanzares (Poe for brevity) failed to show that the COMELEC *En banc* gravely abused its discretion in affirming its Second Division's December 1, 2015 and its First Division's December 11, 2015 Resolutions, both denying due course to and/or cancelling her Certificate of Candidacy (COC) for the position of President of the Republic of the Philippines, particularly with respect to the finding that she made therein material representations that were false relating to her natural-born citizenship and ten-year period of residence in the Philippines that warrant the cancellation of her COC.

In gist, the bases for my dissent in the disposition of the cases, which will be discussed *in seriatim,* are as follows — contrary to the findings in the *Ponencia:*

On the Procedural/Technical Issues

I. The review power of this Court relative to the present petitions filed under Rule 64 *vis-a-vis* Rule 65 both of the Rules of Court, as amended, is limited to the jurisdictional issue of whether or not the COMELEC acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction;

II. Petitioner Poe failed to satisfactorily show that the COMELEC was so grossly unreasonable in its appreciation and evaluation of the pieces of evidence submitted by the parties as to transgress the limits of its jurisdiction;

III. All the four petitions filed, inclusive of the Tatad Petition, subject of the assailed resolutions of the COMELEC, adduced ultimate facts establishing the cause of action for a petition based on Section 78 of the Omnibus Election Code (OEC);

IV. The COMELEC correctly considered the allegations contained in the Tatad Petition as one filed under Section 78 of the OEC;

V. The COMELEC did not encroach upon the jurisdiction of the Presidential Electoral Tribunal when it took cognizance of the petitions to deny due course to or cancel the COC of petitioner Poe; the distinction between jurisdictions of the two tribunals has already been settled in *Tecson v. COMELEC,* the jurisdiction of the PET can only be invoked after the election and proclamation of a President or Vice President and the question of qualifications of candidates for President or Vice-President properly belongs to the COMELEC;

VI. Section 8, Rule 23 of the COMELEC Rules of Procedure is a valid exercise of the rule-making powers of the COMELEC, which is not inconsistent and can be harmonized with its constitutional mandate to promulgate rules of procedure to expedite the dispositions of election cases;

VII. The COMELEC has the power to determine petitioner Poe's citizenship notwithstanding the decision of the Senate Electoral Tribunal which is still pending appeal and which deals with different issues; and

On the Substantive/Focal Issues

I. Sections 1 and 2, Article IV of the 1987 Constitution clearly and categorically define who are natural-born citizens: they are citizens from birth with blood relationship to a Filipino father or mother, following the *"jus sanguinis"* principle;

II. Salient Rules of Interpretation and/or Construction of the Constitution dictate that the clear and unambiguous letter of the Constitution must be obeyed;

III. Statutes, Treaties and International Covenants or Instruments must conform to the provisions of the Constitution;

IV. Pursuant to the Constitution, natural-born citizenship is an indispensable requirement for eligibility to constitutionally identified elective positions like the Presidency;

V. Republic Act No. 9225, otherwise known as the *"Citizenship Retention and Re-acquisition Act of 2003,"* makes natural-born citizenship an indispensable requirement for the retention and/ or re-acquisition of Philippine citizenship; in other words, the right to avail of dual citizenship is only available to natural-born citizens who have earlier lost their Philippine citizenship by reason of acquisition of foreign citizenship;

VI. Petitioner Poe obtained dual citizenship under Republic Act No. 9225 by misrepresenting to the Bureau of Immigration that she is the biological child of a Filipino father and Filipino mother such that the Bureau was misled into believing that *"[petitioner Poe] was a former citizen of the Republic of the Philippines being born to Filipino parents,"* which is a <u>false factual averment</u> not an erroneous legal conclusion; and *(ii)* the said order was not signed by the Commissioner of the BI as required by Department of Justice (DOJ) Regulation;

VII. As a consequence of petitioner Poe's above-stated misrepresentations, the July 18, 2006 Order of the Bureau of Immigration granting petitioner Poe's application for dual citizenship or the re-acquisition of Philippine citizenship was clearly invalid and her taking of an oath of allegiance to the Republic did not result in her re-acquisition of Philippine citizenship; and

VIII. Not having validly reacquired natural-born citizenship, she is not eligible to run for the Presidency pursuant to Section 2, Article VII of the 1987 Constitution; and even assuming *arguendo*

that she has re-acquired natural-born citizenship under Republic Act No. 9225, petitioner Poe has failed to establish her change of domicile from the United States, her domicile of choice to the Philippines through clear and unmistakable evidence.

The Procedural Issues

Petitioner Poe seeks the annulment of the December 1, 2015 Resolution of the COMELEC Second Division and December 23, 2015 Resolution of the COMELEC *En banc,* in SPA Nos. 15-001 (DC); and the December 11, 2015 Resolution of the COMELEC First Division and December 23,2015 Resolution of the COMELEC *En banc,* in SPA Nos. 15-002 (DC), 15-007 (DC) and 15-139 (DC) *via* the instant consolidated petitions for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court.[1] This mode of review is based on the limited ground of **whether the COMELEC acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.** The Court held in *Jalover v. Osmeña*[2] that:

> "Grave abuse of discretion" defies exact definition; generally, it refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction;" the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough; it must be grave. We have held, too, that the use of *wrong or irrelevant considerations* in deciding an issue is sufficient to taint a decision maker's action with grave abuse of discretion.

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[1] Section 2, Rule 64 of the Rules of Court states:

SEC. 2. *Mode of review.* —A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided.

[2] G.R. No. 209286, September 23, 2014, 736 SCRA 267, 279-280.

Closely related with the limited focus of the present petition is the condition, under Section 5, Rule 64 of the Rules of Court, that *findings of fact of the COMELEC, supported by substantial evidence, shall be final and non-reviewable.* Substantial evidence is that degree of evidence that *a reasonable mind* might accept to support a conclusion. In light of our limited authority to review findings of fact, we do not *ordinarily* review in a *certiorari* case the COMELEC's appreciation and evaluation of evidence. Any misstep by the COMELEC in this regard generally involves an error of judgment, not of jurisdiction.

In exceptional cases, however, when the COMELEC's action on the appreciation and evaluation of evidence oversteps the limits of its discretion to the point of being grossly unreasonable, the Court is not only obliged, but has the constitutional duty to intervene. When grave abuse of discretion is present, resulting errors arising from the grave abuse *mutate* from error of judgment to one of jurisdiction. (Citations omitted.)

The COMELEC's appreciation and evaluation of the evidence adduced by petitioner Poe is said to be tainted with grave abuse of discretion.

Petitioner Poe failed to hurdle the bar set by this Court in *Mitra v. Commission on Elections*[3] and *Sabili v. Commission on Elections,*[4] which is to prove that the COMELEC was so grossly unreasonable in its appreciation and evaluation of evidence as to amount to an error of jurisdiction. Petitioner Poe's insistence that the COMELEC utterly disregarded her *"overwhelming and unrefuted evidence"* is baseless. As stated in *Mitra,* substantial evidence is not a simple question of number. The emphasis must be on what the pieces of evidence are able to substantiate and what they cannot. I find that the COMELEC's assessment of the evidence is logical and well-founded. The conclusions it reached are adequately supported by evidence and are well in accord with the applicable laws and settled jurisprudence on the matter.

[3] 636 Phil. 753 (2010).

[4] 686 Phil. 649 (2012).

The petitions filed by respondents Elamparo, Contreras, and Valdez sufficiently alleged the ultimate facts constituting the cause(s) of action for a petition under Section 78 of the OEC, that petitioner Poe falsely represented in her COC that she is a natural-born Filipino citizen and that she complied with the ten-year residency requirement. Also, they averred that such false representations were made with intent to deceive the electorate.

With respect to the petition of private respondent Tatad, the COMELEC properly relied on the allegation of said petition instead of its caption as a petition for disqualification under Rule 25 of the COMELEC Rules of Procedure. Clearly, private respondent Tatad squarely put in issue the truthfulness of the declarations of petitioner Poe in her COC. Specifically, he alleged that petitioner Poe lacked natural-born citizenship and failed to meet the ten-year residency requirement, which are grounds for the cancellation of her COC under Section 78.

As to the jurisdiction of the COMELEC *vis-a-vis* that of the Presidential Electoral Tribunal's (PET), I strongly disagree in the conclusion that the COMELEC, in ruling on the four Section 78-petitions, usurped the jurisdiction of the PET. Petitioner Poe espouses that due to the absence of a false material misrepresentation in her COC, the COMELEC should have dismissed the petitions outright for being premature as they are in the nature of petitions for *quo warranto,* which is within the sole and exclusive jurisdiction of the PET. This is plain error. The jurisdiction of the PET over election contests attaches only after the President or the Vice-President concerned had been elected and proclaimed. *Tecson v. Commission on Elections*[5] clearly laid out that:

> Ordinary usage would characterize a "contest" in reference to a **post-election *scenario.*** Election contests consist of either an election protest or a *quo warranto* which, although two distinct remedies, would have one objective in view, *i.e.,* to dislodge the winning candidate from office. x x x.

[5] 468 Phil. 421, 461-462 (2004).

x x x x x x x x x

The rules [Rules of the Presidential Electoral Tribunal] categorically speak of the jurisdiction of the tribunal over contests relating to the election, returns and qualifications of the **"President" or "Vice-President,"** of the Philippines, and **not of "candidates" for President or Vice-President.** A *quo warranto* proceeding is generally defined as being an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office. In such context, the election contest can only contemplate a post-election *scenario.* In Rule 14, only a registered candidate who would have received either the second or third highest number of votes could file an election protest. This rule again presupposes a post-election *scenario.*

It is fair to conclude that the jurisdiction of the Supreme Court, defined by Section 4, paragraph 7, of the 1987 Constitution, would **not** include cases directly brought before it, questioning the qualifications of a candidate for the presidency or vice-presidency **before the elections are held**. (Emphases supplied, citation omitted.)

Section 4, Article VII of the 1987 Constitution sustains this above-quoted ruling. The grant of jurisdiction to the PET **follows** the provisions on the preparations of the returns and certificates of canvass for every election for President and Vice-President and the proclamation of the person who obtained the highest number of votes.

SECTION 4. The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date six years thereafter. The President shall not be eligible for any reelection. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

No Vice-President shall serve for more than two successive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected.

Unless otherwise provided by law, the regular election for President and Vice-President shall be held on the second Monday of May.

The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all the certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.

The Congress shall promulgate its rules for the canvassing of the certificates.

The Supreme Court, sitting *en banc,* shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose. (Emphasis, supplied.)

In his separate opinion in *Tecson,* retired Chief Justice Reynato S. Puno was uncompromising about the jurisdiction of the PET, to wit:

The word "contest" in the provision means that the jurisdiction of this Court **can only be invoked after the election and proclamation of a President or Vice President. There can be no "contest" before a winner is proclaimed.**[6] (Emphasis supplied.)

And likewise in a separate opinion in the same case, retired Justice Alicia Austria-Martinez emphasized that –

The Supreme Court, as a Presidential Electoral Tribunal (PET), the Senate Electoral Tribunal (SET) and House of Representatives Electoral Tribunal (HRET) are electoral tribunals, each specifically and exclusively clothed with jurisdiction by the Constitution to act respectively as "sole judge of all contests relating to the election, returns, and

[6] *Id*. at 518.

qualifications" of the President and Vice-President, Senators, and, Representatives. **In a litany of cases, this Court has long recognized that these electoral tribunals exercise jurisdiction over election contests only after a candidate has already been proclaimed winner in an election.** Rules 14 and 15 of the Rules of the Presidential Electoral Tribunal provide that, for President or Vice-President, election protest or *quo warranto* may be filed *after the proclamation of the winner.*[7] (Emphasis supplied, citations omitted.)

Section 2(2), Article IX of the 1987 Constitution which expressly vests upon the COMELEC exclusive original jurisdiction and appellate jurisdiction over election "contests" involving local officials is consistent with this doctrine. Election "contests" has a definite meaning under the Constitution, which involve the qualification of proclaimed winning candidates in an election.

On the other hand, Section 2, Article IX(C) of the 1987 Constitution providing that the COMELEC shall have the power to:

(1) **Enforce and administer all laws and regulations relative to the conduct of an election,** plebiscite, initiative, referendum, and recall. (Emphasis supplied.)

is sufficient basis to entrust to the COMELEC all issues relative to the qualifications of all "candidates" to run in National or Local Elections. Implementing the aforementioned provision is *Batas Pambansa Bilang* 881, or the *"Omnibus Election Code of the Philippines"* (OEC), which provides for the cancellation of a candidate's Certificate of Candidacy on grounds stated in Section 78 thereof. A contrary construction of the Constitution will result in emasculating the Constitutional mandate of the COMELEC to ensure fair, honest and credible elections. The overbroad interpretation of the power of the PET under the Constitution will prohibit the COMELEC from even disqualifying nuisance candidates for President.

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[7] *Id.* at 562-563.

Hence, it is beyond cavil that it is the COMELEC, not the PET, which has jurisdiction over the petitions for the cancellation of the COC of petitioner Poe who is still a candidate at this time.

With the foregoing, I cannot but register my strong dissent to the opinion in the *Ponencia* that *"(t)he exclusivity of the ground (that petitioner Poe made in the certificate a false material representation) should hedge in the discretion of the COMELEC and restrain it from going into the issues of the qualifications of the candidate for the position, if, as in this case, such issue is yet undecided or undetermined by the proper authority. The COMELEC cannot itself, in the same cancellation case, decide the qualification of lack thereof of the candidate."* This opinion is contrary to the ruling penned by Justice Perez himself in *Reyes v. COMELEC.*[8]

According to the *Ponencia,* the COMELEC cannot, in a Section 78- petition, look into the qualification of the candidate (for Representative, Senator, Vice-President and President) simply because per its perusal of the 1987 Constitution, the latter failed to categorically state that the COMELEC was granted the power to look into the qualifications of candidates for President, Vice-President, Senator and Representatives. It is insisted that the specific provisions of the same giving the PET, SET and HRET jurisdiction over the *"election, returns, and qualifications"* of the President, Vice- President, Senator and Representatives are sure fire evidence that the COMELEC does not have the authority to look into the qualification of said candidates prior to a determination in a prior proceeding by an authority with proper jurisdiction to look in to the same. Simply put, the *Ponencia* would have the fact of a Presidential, Vice-Presidential, Senatorial or Congressional candidate's qualification established in a prior proceeding that may be by statute, executive order, or judgment by a competent court or tribunal, before her/his COC can be cancelled or denied due

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[8] G.R. No. 207264, June 25, 2013.

course on grounds of false material representations as to her/ his qualifications.

The *Ponencia's* analysis is utterly incorrect. As shown above, such analysis disregards existing jurisprudence stating that these electoral tribunals exercise jurisdiction over election contests only after a candidate has already been proclaimed winner in an election.

If the *Ponencia's* analysis is allowed to become the leading jurisprudence on the matter, the Court is as good as amending the OEC by deleting the Section 78 thereof—there can no longer be a petition for denial of due course to or cancellation of COC because the COMELEC has now been disallowed to look into the whether or not a candidate has made a false claim as to her/his material qualifications for the elective office that she/he aspires for. That a Section 78-petition would naturally look into the candidate's qualification is expected of the nature of such petition. As elucidated in *Fermin v. COMELEC,*[9] to wit:

> After studying the said petition in detail, the Court finds that the same is in the nature of a petition to deny due course to or cancel a CoC under Section 78 of the OEC. The petition contains the essential allegations of a "Section 78" petition, namely: (1) the candidate made a representation in his certificate; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate (the right to run for the election for which he filed his certificate); and (3) the candidate made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact which would otherwise render him ineligible. **It likewise appropriately raises a question on a candidate's eligibility for public office, in this case, his possession of the one-year residency requirement under the law.**
>
> Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is *not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the*

[9] 595 Phil. 449 (2008).

public office he/she is running for. It is noted that the **candidate states in his/her CoC that he/she is eligible for the office he/she seeks. Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the winning candidate.**

At this point, we must stress that a "Section 78" petition ought not to be interchanged or confused with a "Section 68" petition. **They are different remedies, based on different grounds, and resulting in different eventualities.** Private respondent's insistence, therefore, that the petition it filed before the COMELEC in SPA No. 07-372 is in the nature of a disqualification case under Section 68, as it is in fact captioned a "Petition for Disqualification," does not persuade the Court.

But the *Ponencia* misconstrues the above clear import of *Fermin.* It uses the latter case as its authority to push its erroneous view that the COMELEC has no jurisdiction or power to look into the eligibility of candidates in the absence of a specific law to that effect.

Further, with all due respect to the *Ponente,* I submit that his position that it is only the PET/SET/HRET that has jurisdiction over the qualifications of candidates for President, Vice-President, Senator, or Representative runs counter to this Court's pronouncement in its Resolution in G.R. No. 207264, *Reyes v. Commission on Elections and Joseph Socorro, B. Tan,*[10] **of which he was also the *Ponente,*** that –

Contrary to petitioner's claim, however, the COMELEC retains jurisdiction for the following reasons:

[10] June 25, 2013.

First, the HRET does not acquire jurisdiction over the issue of petitioner's qualifications, as well as over the assailed COMELEC Resolutions, unless a petition is duly filed with said tribunal. Petitioner has not averred that she has filed such action.

Second, the jurisdiction of the HRET begins only after the candidate is considered a Member of the House of Representatives, as stated in Section 17, Article VI of the 1987 Constitution:

> Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective **Members** x x x.

As held in *Marcos v. COMELEC,* the HRET does not have jurisdiction over a candidate who is not a member of the House of Representatives, *to wit:*

> As to the House of Representatives Electoral Tribunal's supposed assumption of jurisdiction over the issue of petitioner's qualifications after the May 8, 1995 elections, suffice it to say that HRET's jurisdiction as the sole judge of all contests relating to the elections, returns and qualifications of members of Congress begins **only after a candidate has become a member of the House of Representatives. Petitioner not being a member of the House of Representatives, it is obvious that the HRET at this point has no jurisdiction over the question.** (Emphasis supplied.)

And, interestingly, it was held that –

As to the issue of whether petitioner failed to prove her Filipino citizenship, as well as her one-year residency in Marinduque, suffice it to say that the COMELEC committed no grave abuse of discretion in finding her ineligible for the position of Member of the House of Representatives.

With the indulgence of my colleagues, to emphasize the incongruity of the position taken by the majority in this case led by the *Ponente,* allow me to quote verbatim the relevant facts and findings of the Court in *Reyes* as **written by the *Ponente* of this case,** to wit:

Let us look into the events that led to this petition: In moving for the cancellation of petitioner's COC, respondent submitted records of the Bureau of Immigration showing that petitioner is a holder of a US passport, and that her status is that of a *"balikbayan."* At this point, the burden of proof shifted to petitioner, imposing upon her the duty to prove that she is a natural-born Filipino citizen and has not lost the same, or that she has re-acquired such status in accordance with the provisions of R.A. No. 9225. Aside from the bare allegation that she is a natural-born citizen,however, petitioner submitted no proof to support such contention. Neither did she submit any proof as to the inapplicability of R.A. No. 9225 to her.

x x x x x x x x x

These circumstances, taken together, show that a doubt was clearly cast on petitioner's citizenship. Petitioner, however, failed to clear such doubt.

x x x x x x x x x

All in all, considering that the petition for denial and cancellation of the COC is summary in nature, the COMELEC is given much discretion in the evaluation and admission of evidence pursuant to its principal objective of determining of whether or not the COC should be cancelled x x x.

Here, this Court finds that petitioner failed to adequately and substantially show that grave abuse of discretion exists.

With the above, I am at a loss how the Court, through the majority, could rule the way it did in this case when not so long ago it took the opposite position and dismissed the petition of Reyes.

Section 8, Rule 23 of the COMELEC Rules of Procedure, as amended, which reads:

SEC. 8. Effect if Petition Unresolved. – If a Petition to Deny Due Course to or Cancel a Certificate of Candidacy is unresolved by final judgment on the day of elections, the petitioner may file a motion with the Division or Commission *En Banc,* as may be applicable, to suspend the proclamation of the candidate concerned, provided that the evidence for the grounds for denial to or cancel certificate of candidacy is strong. For this purpose, at least three (3) days prior to

any election, the Clerk of the Commission shall prepare a list of pending cases and furnish all Commissioners copies of the said list.

A Decision or Resolution is deemed final and executory if, in case of a Division ruling, no motion for reconsideration is filed within the reglementary period, or in cases of rulings of the Commission *En Banc,* no restraining order is issued by the Supreme Court **within five (5) days from receipt** of the decision or resolution. (Emphasis supplied.)

does not violate Section 7, Article IX-A of the 1987 Constitution, which states that –

SEC. 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. **Unless otherwise provided by this Constitution or by law,** any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party **within thirty days from receipt** of a copy thereof. (Emphasis supplied.)

Section 8, Rule 23 of the COMELEC Rules is a valid exercise of the rule-making powers of the COMELEC notwithstanding Section 7, Article IX of the 1987 Constitution. The condition *"[u]nless otherwise provided by this Constitution or by law"* that is mentioned in the latter provision gives the COMELEC the flexibility to fix a shorter period for the finality of its decision and its immediate execution in consonance with the necessity to speedily dispose of election cases, but without prejudice to the continuation of the review proceedings before this Court. Certainly, this is not inconsistent with Commission's constitutional mandate to promulgate its own rules of procedure to expedite the dispositions of election cases, *viz.*:

ARTICLE IX
CONSTITUTIONAL COMMISSION
C. THE COMMISSION ON ELECTIONS

SEC. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to

expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc.*

The Substantive Issues

The issue is whether or not the COMELEC *En banc* acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it cancelled the COC for Presidency of Petitioner Poe on the substantive grounds of lack of citizenship and residency qualifications.

I hold that it did not.

Ground for Petition for Cancellation of COC under Section 78 of the OEC

Section 78 of the OEC provides that –

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

In relation thereto, Section 74 also of the OEC requires:

> SECTION 74. *Contents of certificate of candidacy.* — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the *Batasang Pambansa,* the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities;

that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: *Provided,* That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

In her 2016 COC for President, much like in her 2013 COC for Senator, petitioner Poe made the following verified representations, *viz.*:

7. PERIOD OF RESIDENCE IN THE PHILIPPINES UP TO THE DAY BEFORE MAY 09, 2016:

   10 No. of Years 11 No. of Months

8. I AM A NATURAL-BORN FILIPINO CITIZEN.

x x x x x x x x x

9. I AM ELIGIBLE FOR THE OFFICE I SEEK TO BE ELECTED TO.[11]

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[11] Annex "B" of the Petition in G.R. No. 221697.

Materiality of the Representation

With respect to the issue of materiality of the representation, as above discussed, *Mitra* has settled that *"critical material facts are those that refer to a candidate's qualifications for elective office, such as his or her citizenship and residence";* thus, the materiality of the representations on citizenship, residence and/or eligibility is no longer in issue.

Falsity of the Representation

But the truthfulness of the material representation remains an issue to be resolved.

Citizenship Requirement

In the present case, I submit that petitioner Poe's representation that she is a natural-born Filipino citizen, hence, eligible to run for and hold the position of President, is false. My position is anchored on the following reasons:

Under the Constitution, natural-born Filipino citizenship is based on blood relationship to a Filipino father or mother following the *"jus sanguinis"* principle

Petitioner Poe being a foundling, does not come within the purview of this constitutionally ordained principle.

During the effectivity of the Spanish Civil Code in the Philippines on December 8, 1889, the doctrines of *jus soli* and *jus sanguinis* were adopted as the principles of attribution of nationality at birth.[12]

Upon approval of the Tydings-McDuffie Act (Public Act No. 127), a Constitutional Convention was organized in 1934.

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[12] Irene R. Cortes and Raphael Perpetuo M. Lotilla, *Nationality and International Law from the Philippine Perspective,* published in the Philippine Law Journal, Volume LX, March 1985, University of the Philippines (UP) College of Law, p. 7.; citing Art. 17 (1 and 2) Spanish Civil Code.

The Constitution proposed for adoption by the said Convention was ratified by the Philippine electorate in 1935 after its approval by the President of the United States.[13]

It was in the 1935 Constitution that the Philippines adopted the doctrine of *jus sanguinis,* literally translated to *right by blood,* or the acquisition of citizenship by birth to parents who are citizens of the Philippines. The doctrine of *jus sanguinis* considers blood relationship to one's parents as a sounder guarantee of loyalty to the country than the doctrine of *jus soli,* or the attainment of a citizenship by the place of one's birth.[14] The case of *Tecson v. Commission on Elections* traced the history, significance, and evolution of the doctrine of *jus sanguinis* in our jurisdiction as follows:

> While there was, at one brief time, divergent views on whether or not *jus soli* was a mode of acquiring citizenship, the 1935 Constitution brought to an end to any such link with common law, by adopting, once and for all, *jus sanguinis* or blood relationship as being the basis of Filipino citizenship —
>
> "Section 1, Article III, 1935 Constitution. The following are citizens of the Philippines —
>
> (1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution
>
> (2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.
>
> (3) Those whose fathers [or mothers] are citizens ofthe Philippines.
>
> (4) Those whose mothers are citizens of the Philippines and upon reaching the age of majority, elect Philippine citizenship.
>
> (5) Those who are naturalized in accordance with law."

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[13] *Id*. at 10.

[14] *Id*.

Subsection (4), Article III, of the 1935 Constitution, taken together with existing civil law provisions at the time, which provided that women would automatically lose their Filipino citizenship and acquire that of their foreign husbands, resulted in discriminatory situations that effectively incapacitated the women from transmitting their Filipino citizenship to their legitimate children and required illegitimate children of Filipino mothers to still elect Filipino citizenship upon reaching the age of majority. Seeking to correct this anomaly, as well as fully cognizant of the newly found status of Filipino women as equals to men, the framers of the 1973 Constitution crafted the provisions of the new Constitution on citizenship to reflect such concerns —

> "Section 1, Article III, 1973 Constitution — The following are citizens of the Philippines:
>
> (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution.
>
> (2) *Those whose fathers or mothers are citizens of the Philippines.*
>
> (3) Those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five.
>
> (4) Those who are naturalized in accordance with law."

For good measure, Section 2 of the same article also further provided that—

> "A female citizen of the Philippines who marries an alien retains her Philippine citizenship, unless by her act or omission she is deemed, under the law to have renounced her citizenship."

The 1987 Constitution generally adopted the provisions of the 1973 Constitution, except for subsection (3) thereof that aimed to correct the irregular situation generated by the questionable *proviso* in the 1935 Constitution.

"Section 1, Article IV, 1987 Constitution now provides:

The following are citizens of the Philippines:

(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution.

(2) *Those whose fathers or mothers are citizens of the Philippines.*

(3) *Those born before January 17, 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority;* and

(4) Those who are naturalized m accordance with law."

The Case Of FPJ

Section 2, Article VII, of the 1987 Constitution expresses:

> No person may be elected President unless he is a *natural-born citizen of the Philippines,* a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

The term "natural-born citizens," is defined to include 'those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship.'

The date, month and year of birth of FPJ appeared to be 20 August 1939 during the regime of the 1935 Constitution. Through its history, four modes of acquiring citizenship—naturalization, *jus soli, res judicata and jus sanguinis—* had been in vogue. Only two, *i.e., jus soli and jus sanguinis,* could qualify a person to being a "natural-born" citizen of the Philippines. *Jus soli,* per *Roa vs. Collector of Customs* (1912), did not last long. With the adoption of the 1935 Constitution and the reversal of *Roa* in *Tan Chong vs. Secretary of Labor* (1947), ***jus sanguinis* or blood relationship would now become the primary basis of citizenship by birth.**[15] (Emphasis supplied.)

The changes in the provisions on citizenship was done to harmonize the Article on Citizenship with the State policy of ensuring the fundamental equality before the law of women and men under Section 14, Article II of the 1987 Constitution.

Thus, contrary to the insistence of petitioner Poe that there is nothing in our Constitutions that enjoin our adherence to the principle of *"jus sanguinis"* or "by right of blood," said principle is, in reality, well- entrenched in our constitutional system.

[15] *Tecson v. Commission on Elections, supra* note 5 at 469-471.

One needs only to read the 1935, 1973 and 1987 Constitutions and the jurisprudence detailing the history of the well deliberated adoption of the *jus sanguinis* principle as the basis for natural-born Filipino citizenship, to understand that its significance cannot be lightly ignored, misconstrued, and trivialized.

Natural-born Citizenship by Legal Fiction or Presumption of Law is Contrary to the Constitution under Salient Rules of Interpretation of the Constitution

In this case, petitioner Poe's original birth certificate stated that she was a foundling, or a child of unknown father or mother, found in Jaro, Iloilo, on September 3, 1968. The Constitution in effect then was the 1935 Constitution. To reiterate, it enumerated the "citizens of the Philippines" in Section 1, Article IV, which included the following:

> **(3) Those whose fathers are citizens of the Philippines.**
>
> **(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.**

Petitioner Poe would want this Court to look beyond the above-quoted enumeration and apply the disputable or rebuttable presumption brought about by the principles of international law and/or customary international law. However, the above-quoted paragraphs (3) and (4) of Article IV are clear, unequivocal and leave no room for any exception.

Rule of *Verba Legis*

Basic in statutory construction is the principle that when words and phrases of a statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says. This plain-meaning or *verba legis rule,* expressed in the

Latin maxim *"verba legis non est recedendum,"* dictates that "from the words of a statute there should be no departure."[16]

Undeniably, petitioner Poe does not come within the scope of Filipino citizens covered by paragraphs (3) and (4). From a literal meaning of the said provisions, she cannot be considered a natural-born citizen. Paragraphs 3 and 4, Section 1, Article IV of the 1935 Constitution, the organic law in effect during the birth of petitioner Poe, were clear and unambiguous, it did not provide for any exception to the application of the principle of *"jus sanguinis"* or blood relationship between parents and child, such that natural-born citizenship cannot be presumed by law nor even be legislated by Congress where no blood ties exist.

Function of Extrinsic Aid Such as the Deliberations of the 1934 Constitutional Convention

Petitioner Poe claims that "foundlings" were intended by the delegates of the 1934 Constitutional Commission to be considered natural-born citizens. Specifically, she maintains that during the debates on this provision, Delegate Rafols proposed an amendment to include foundlings as among those who are to be considered natural-born citizens; that the only reason that there was no specific reference to foundlings in the 1935 Philippine Constitution was because a delegate mentioned that foundlings were too few to warrant inclusion in a provision of the Constitution and their citizenship is dealt with by international law.

The above inference or conclusion drawn from the debates adverted to is not accurate.

<u>*Firstly*</u>, the deliberations did not evince the collective intent of the members of the 1934 Constitutional Convention to include *"foundlings"* in the list of Filipino citizens in the Article on Citizenship. Moreover, there was no mention at all of granting them natural-born citizenship.

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[16] *Garcia v. Commission on Elections,* G.R. No. 216691, July 2l, 2015.

A review of the transcript of the deliberations of the 1934 Constitutional Convention actually proved prejudicial to petitioner Poe's cause. The suggestion of Delegate Rafols to include in the list of Filipino citizens children of unknown parentage was **voted down** by the delegates when the amendment and/or suggestion was put to a vote. In other words, the majority thereof voted not to approve Delegate Rafol's amendment.

Secondly. Petitioner Poe's use of the deliberations of the 1934 Constitutional Convention to expand or amend the provision of the Constitution is unwarranted.

The Constitution is the basis of government. It is established by the people, in their original sovereign capacity, to promote their own happiness, and permanently to secure their rights, property, independence, and common welfare. When the people associate, and enter into a compact, for the purpose of establishing government, that compact, whatever may be its provisions, or in whatever language it may be written, is the Constitution of the state, revocable only by people, or in the manner they prescribe. It is by this instrument that government is instituted, its departments created, and the powers to be exercised by it conferred.[17]

Thus, in the construction of the Constitution, the Court is guided by the principle that it (constitution) is the fundamental and paramount law of the nation, and it is supreme, imperious, absolute, and unalterable except by the authority from which it emanates.[18]

In *Civil Liberties Union v. Executive Secretary,*[19] this Court enunciated that –

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[17] *Words and Phrases,* Vol. 2, p. 1462; Citing *McKoan vs. Devries,* 3 Barb., 196, 198 [quoting 1 Story, Const., Secs. 338, 339]*;Church vs. Kelsey,* 7 Sup. Ct., 897, 898; 121 U. S., 282; 30 L. ed., 960, and *Bates vs. Kimball* [Vt.], 2 D. Chip., 77, 84.

[18] *Manila Prince Hotel v. Government Service Insurance System,* 335 Phil. 82, 101 (1997).

[19] 272 Phil. 147, 169-170 (1991).

While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, **resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear**. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, **but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law.** We think it safer to construe the constitution **from what appears upon its face**." The proper interpretation therefore depends more on **how it was understood by the people adopting it** than in the framer's understanding thereof. (Emphases supplied, citations omitted.)

And as eloquently observed by Charles P. Curtis, Jr. –

The intention of the framers of the Constitution, even assuming we could discover what it was, **when it is not adequately expressed in the Constitution,** that is to say, what they meant when they did not say it, surely that has **no binding force upon us**. If we look behind or beyond what they set down in the document, prying into what else they wrote and what they said, anything we may find is only advisory. They may sit in at our councils. There is no reason why we should eavesdrop on theirs.[20]

Synthesized from the aforequoted, it is apparent that debates and proceedings of constitutional conventions lack binding force. Hence –

If at all, they only have persuasive value as they may throw a useful light upon the purpose sought to be accomplished or upon the meaning attached to the words employed, or they may not. And the courts are at liberty to avail themselves of any light derivable from such sources, but are **not bound to adopt it** as the sole ground of their decision.[21]

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[20] Charles P. Curtis, *LIONS UNDER THE THRONE 2,* Houghton Mifflin, 1947.

[21] Dennis B. Funa, *Cannons of Statutory Construction* (2012 Edition); Citing Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws,* p. 30, quoting *City of Springfield v. Edwards,* 84 III. 626.

Moreover, while the opinions of the members of the constitutional convention on the article on citizenship of the 1935 Philippine Constitution may have a persuasive value, it is, to repeat, **not expressive of the people's intent.** To recap:

> The proceedings of the Convention are less conclusive on the proper construction of the fundamental law than are legislative proceedings of the proper construction of a statute, for in the latter case it is the intent of the legislature the courts seek, while in the former, courts seek to arrive at the intent of the people through the discussions and deliberations of their representatives. **The conventional wisdom is that the Constitution does not derive its force from the convention which framed it, but from the people who ratified it, the intent to be arrived at is that of the people**.[22]

In the present case, given that the language of the third and fourth paragraphs of the article on citizenship of the 1935 Philippine Constitution clearly follow only the doctrine of *jus sanguinis,* it is, therefore, neither necessary nor permissible to resort to extrinsic aids, like the records of the constitutional convention. A foundling, whose parentage and/or place of birth is obviously unknown, does not come within the letter or scope of the said paragraphs of the Constitution. Considering the silence of the Constitution on foundlings, the people who approved the Constitution in the plebiscite had absolutely no idea about the debate on the citizenship of foundlings and therefore, they could not be bound by it.

Rule that Specific Provisions of Law Prevails Over General Provisions

The specific provision of Article IV of the Constitution prevails over the general provisions of Section 21, Article III of the Constitution. General international law principles cannot overturn specifically ordained principles in the Constitution.

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[22] Retired Chief Justice Reynato S. Puno's Separate Opinion in *Integrated Bar of the Philippines v. Zamora,* 392 Phil. 618, 668-669 (2000).

Section 2, Article II of the 1987 Constitution provides:

SECTION 2. The Philippines renounces war as an instrument of national policy, **adopts the generally accepted principles of international law as part of the law of the land** and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations. (Emphasis supplied.)

Generally accepted principles of international law "may refer to rules of customary law, to general principles of law x x x, or to logical propositions resulting from *judicial reasoning* on the basis of existing international law and municipal analogies."[23] And it has been observed that, certainly, it is this *judicial reasoning* that has been the anchor of Philippine jurisprudence on the determination of generally accepted principles of international law and consequent application of the incorporation clause.[24]

Petitioner Poe would like to apply to her situation several international law conventions that supposedly point to her entitlement to a natural-born Filipino citizenship, notwithstanding her lack of biological ties to a Filipino father or mother. In effect, she wants to carve an exception to the *"jus sanguinis"* principle through that generally accepted principles of international law which, under the theory of incorporation, is considered by the Constitution as part of the law of the land.[25]

Basic is the principle in statutory construction that specific provisions must prevail over general ones, to wit:

A special and specific provision prevails over a general provision irrespective of their relative positions in the statute. *Generalia specialibus non derogant.* Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular

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[23] Separate Opinion of *J.* Carpio Morales in *Rubrico v. Macapagal-Arroyo,* 627 Phil. 37, 80 (2010); citing IAN BROWNLIE, *Principles of Public International Law,* Sixth Ed., 18 (2003).

[24] *Id.*

[25] 1987 Constitution, Article II, Section 2.

enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.

Hence, the general provision of Section 2, Article II of the Constitution on "Declaration of Principles and State Policies" cannot supersede, amend or supplement the clear provisions of Article IV on "Citizenship."

International Law Instruments/ Conventions are not self-executing

Petitioner Poe cannot find succor in the provisions of the *1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws* and the *1961 Convention on the Reduction of Statelessness,* in claiming natural-born Filipino citizenship primarily for the following reasons: firstly, the Philippines has not ratified said International Conventions; secondly, they espouse a presumption by fiction of law which is disputable and not based on the physical fact of biological ties to a Filipino parent; thirdly, said conventions are not self-executing as the Contracting State is granted the discretion to determine by enacting a domestic or national law the conditions and manner by which citizenship is to be granted; and fourthly, the citizenship, if acquired by virtue of such conventions will be akin to a citizenship falling under Section 1(4), Article IV of the 1987 Constitution, recognizing citizenship by naturalization in accordance with law or by a special act of Congress.

The cited international conventions are as follows:

(a) 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws;

(b) 1961 Convention on the Reduction of Statelessness;

(c) 1989 UN Convention on the Rights of the Child;

(d) 1966 International Covenant on Civil and Political Rights; and

(e) 1947 UN Declaration on Human Rights

Notice must be made of the fact that the treaties, conventions, covenants, or declarations invoked by petitioner Poe are not self-executing, *i.e.,* the international instruments invoked must comply with the ***"transformation method'*** whereby "an international law [must first] be transformed into a domestic law through a constitutional mechanism such as local legislation."[26]

Each of the aforementioned recognizes the need for its respective provisions to be transformed or embodied through an enactment of Congress before it forms part of the domestic or municipal law, *viz.*:

(a) The 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, which provides:

Article 14.

A child whose parents are both unknown **shall have the nationality of the country of birth.** If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known.
A foundling is, until the contrary is proved, **presumed to have been born on the territory of the State in which it was found.**

Article 15.

Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State. **The law of that State shall determine the conditions governing the acquisition of its nationality in such cases.**

(b) The 1961 Convention on the Reduction of Statelessness, provides:

Article 1

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

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[26] *Pharmaceutical and Health Care Association of the Philippines v. Duque III,* 561 Phil. 386, 398 (2007).

(a) At birth, by operation of law, or

(b) **Upon an application** being lodged with the appropriate authority, by or on behalf of the person concerned, **in the manner prescribed by the national law.** Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with subparagraph (b) of this paragraph **may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the natonal law.**

x x x x x x x x x

Article 2

A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, **be considered to have been born within that territory of parents possessing the nationality of that State.**

Conspicuously, the Philippines has neither acceded nor ratified any of the above conventions.

The other international instruments to which the Philippines has acceded, require initially conversion to domestic law *via* the transformation method of implementing international instruments. They are:

(a) The 1989 UN Convention on the Rights of the Child, ratified by the Philippines on August 21, 1990, providing that:

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, **the right to acquire a nationality** and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the **implementation of these rights in accordance with their national law** and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

(b) The 1966 International Covenant on Civil and Political Rights, which the Philippines ratified on October 23, 1986 providing that:

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. **Every child has the right to acquire a nationality.**

(c) The 1947 Universal Declaration on Human Rights.

Article 15

(1) **Everyone has the right to a nationality.**

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The foregoing international conventions or instruments, requiring implementing national laws to comply with their terms, adhere to the concept of statehood and sovereignty of the State, which are inviolable principles observed in the community of independent States. The primary objective of said conventions or instruments is to avoid statelessness without impairing State sovereignty. Hence, the Contracting State has the discretion to determine the conditions and manner by which the nationality or citizenship of a stateless person, like a foundling, may be acquired. Neither do they impose a particular type of citizenship or nationality. The child of unknown parentage may acquire the status of a mere "national." Nowhere in the identified international rules or principles is there an obligation to accord the stateless child a citizenship that is of a "natural-born" character. Moreover, even if it so provided, it cannot be enforced in our jurisdiction because it would go against the provisions of the Constitution.

Statutes and Treaties or International Agreements or Conventions are accorded the Same Status in Relation to the Constitution

In case of conflict between the Constitution and a statute, the former always prevails because the Constitution is the basic law to which all other laws, whether domestic or international, must conform to. The duty of the Court under Section 4(2), Article VIII is to uphold the Constitution and to declare void all laws, and by express provisions of said Section treaties or international agreements that do not conform to it.[27] In a catena of cases, the Supreme Court further instructed that:

In *Social Justice Society v. Dangerous Drugs Board,* the Court held that, **"It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution."** In *Sabio v. Gordon,* the Court held that, **"the Constitution is the highest law of the land. It is the 'basic and paramount law to which all other laws must conform."** In *Atty. Macalintal v. Commission on Elections,* the Court held that, "The Constitution is the fundamental and paramount law of the nation to which all other laws must conform and in accordance with which all private rights must be determined and all public authority administered. **Laws that do not conform to the Constitution shall be stricken down for being unconstitutional."** In *Manila Prince Hotel v. Government Service Insurance System,* the Court held that:

> Under the doctrine of constitutional supremacy, **if a law** or contract **violates any norm of the constitution that law** or contract **whether promulgated by the legislative or by the executive branch** or entered into by private persons for private purposes **is null and void and without any force and effect.** Thus, **since the Constitution is the fundamental, paramount and supreme**

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[27] *Tawang Multi-Purpose Cooperative v. La Trinidad Water District,* 661 Phil. 390 (2011).

law of the nation, it is deemed written in every statute and contract.[28] (Emphases supplied; citations omitted.)

Citizenship by "Naturalization" under International Law

Citizenship is not automatically conferred under the international conventions cited but will entail an affirmative action of the State, by a national law or legislative enactment, so that the nature of citizenship, if ever acquired pursuant thereto, is citizenship by naturalization. There must be a law by which citizenship can be acquired by a foundling. By no means will this citizenship can be considered that of a natural-born under the principle of *jus sanguinis,* which is based on the physical existence of blood ties to a Filipino father or Filipino mother. It will be akin to citizenship by naturalization if conferred by fiction created by an international convention, which is of legal status equal to a statute or law enacted by Congress.

Probabilities/Possibilities Based on Statistics

The Solicitor General argues for Petitioner Poe citing the ratio of children born in the Philippines of Filipino parents to children born in the Philippines of foreign parents during specific periods. He claims that based on statistics, the statistical probability that any child **born in the Philippines** would be a natural-born Filipino is either 99.93% or 99.83%, respectively, during the period between 2010 to 2014 and 1965 to 1975. This argument, to say the least, is fallacious.

Firstly, we are determining blood ties between a child and her/his parents. **Statistics have never been used to prove paternity or filiation**. With more reason, it should not be used to determine natural-born citizenship, as a qualification to hold public office, which is of paramount importance to national interest. The issue here is the biological ties between a specific or named foundling and her parents, which must be supported by credible and competent evidence. We are not dealing with

[28] *Id*. at 402-403.

the entire population of our country that will justify a generalized approach that fails to take into account that the circumstances under which a foundling is found may vary in each case.

Secondly, the place of birth of the foundling is unknown but the argument is based on the wrong premise that a foundling was born in the place where he/she was found. The age of the foundling may indicate if its place of birth is the place where he or she is found. If the foundling is a newly born baby, the assumption may have solid basis. But this may not always be the case. It does not appear from the documents on record that petitioner Poe was a newborn baby when she was found. There is no evidence as to her place of birth. The Solicitor General cannot, therefore, use his statistics of the number of children born to Filipino parents and to alien parents in the Philippines since the places of birth of foundlings are unknown.

Natural-born citizenship, as a qualification for public office, must be an established fact in view of the *jus sanguinis* principle enshrined in the Constitution, which should not be subjected to uncertainty nor be based in statistical probabilities. A disputable presumption can be overcome anytime by evidence to the contrary during the tenure of an elective official. Resort to this interpretation has a great potential to prejudice the electorate who may vote a candidate in danger of being disqualified in the future and to cause instability in public service.

A Foundling does not Meet the Definition of a Natural-born Filipino Citizen under Section 2, Article IV of the 1987 Constitution

Other than those whose fathers or mothers are Filipinos, Section 2, Article IV of the Constitution further defines *"natural-born citizens"* to cover **"those who are citizens of the Philippines from birth without having to perform an act to acquire or perfect their Philippine citizenship."**

A foundling is one who must first go through a legal process to obtain an official or formal declaration proclaiming him/her to be a foundling in order to be granted certain rights reserved

to Filipino citizens. This will somehow prevent opening the floodgates to the danger foreseen by Justice del Castillo that non-Filipinos may misuse a favorable ruling on foundlings to the detriment of national interest and security. Stated otherwise, the fact of being a foundling must first be officially established before a foundling can claim the rights of a Filipino citizen. This being the case, a foundling does not meet the above-quoted definition of a natural-born citizen who is such "from birth".

To illustrate, Republic Act Nos. 8552 and 9523, provide, respectively:

Section 5 of Republic Act No. 8552:

SECTION 5. *Location of Unknown Parent(s).* — It shall be the duty of the Department or the child-placing or child-caring agency which has custody of the child to exert all efforts to locate his/her unknown biological parent(s). If such efforts fail, the child shall be **registered as a foundling** and subsequently be the **subject of legal proceedings** where he/she shall be declared abandoned.

Section 2 of Republic Act No. 9523:

SECTION 2. Definition of Terms. – As used in this Act, the following terms shall mean:

x x x x x x x x x

(3) Abandoned Child refers to a child who has no proper parental care or guardianship, or whose parent(s) have deserted him/her for a period of at least three (3) continuous months, which includes a foundling.

x x x x x x x x x

SECTION 4. Procedure for the Filing of the Petition. — The petition shall be filed in the regional office of the DSWD where the child was found or abandoned.

The Regional Director shall examine the petition and its supporting documents, if sufficient in form and substance and shall authorize the posting of the notice of the petition in conspicuous places for five (5) consecutive days in the locality where the child was found.

The Regional Director shall act on the same and shall render a recommendation not later than five (5) working days after the

completion of its posting. He/she shall transmit a copy of his/her recommendation and records to the Office of the Secretary within forty-eight (48) hours from the date of the recommendation.

SECTION 5. Declaration of Availability for Adoption. — Upon finding merit in the petition, the Secretary shall **issue a certification** declaring the child legally available for adoption within seven (7) working days from receipt of the recommendation.

Said certification, by itself, shall be the sole basis for the immediate issuance by the local civil registrar of a foundling certificate. Within seven (7) working days, the local civil registrar shall transmit the foundling certificate to the National Statistics Office (NSO).

SECTION 8. – The certification that a child is legally available for adoption shall be issued by the DSWD in lieu of a judicial order, thus, making the entire process **administrative in nature.**

The certification, shall be, for all intents and purposes, the primary evidence that the child is legally available in domestic adoption proceeding, as provided in Republic Act No. 8552 and in an inter-country adoption proceeding, as provided in Republic Act No. 8043.

The above laws, though pertaining to adoption of a Filipino child, clearly demonstrate that a *foundling* first undergoes a legal process to be considered as one before he/she is accorded rights to be adopted available only to Filipino citizens. When the foundling is a minor, it is the State under the concept of *"parens patriae"* which acts for or on behalf of the minor, but when the latter reaches majority age, she/he must, by herself/himself, take the necessary step to be officially recognized as a foundling. Prior to this, the error of out-rightly invoking the "disputable presumption" of alleged "natural-born citizenship" is evident as there can be no presumption of citizenship before there is an official determination of the fact that a child or person is a foundling. It is only after this factual premise is established that the inference or presumption can arise.[29]

That being so, a foundling will not come within the definition of a natural-born citizen who by birth right, being the biological

[29] *Martin v. Court of Appeals, supra.*

child of a Filipino father or mother, does not need to perform any act to acquire or perfect his/her citizenship.

It should also be emphasized that our adoption laws do not confer "natural-born citizenship" to foundlings who are allowed to be adopted. To read that qualification into the adoption laws would amount to **judicial legislation.** The said laws of limited application which allows the adoption of a foundling, cannot also be used as a basis to justify the natural-born citizenship of a foundling who has reached majority age like petitioner Poe who applied to reacquire her citizenship under R.A. No. 9225. The opinion of the seven (7) Justices if pursued, there will be no need for a foundling to **misrepresent** himself or herself as a biological child of her adoptive parents like what petitioner Poe did, and instead, a foundling can be truthful and just submit a Foundling Certificate to be entitled to the benefits of R.A. No. 9225. Since from their point of view a foundling need not perform any act to be considered a natural-born citizen, said foundling need not prove the veracity of the Foundling Certificate. This will include a Foundling Certificate in the Bureau of Immigration (BI) prepared list of evidence of natural-born citizenship. This is pure and simple judicial legislation. Foundlings are not even mentioned at all in R.A. No. 9225.

Pursuing this logic further, will one who wish to take the Bar Examinations or to be appointed to the Judiciary need to submit only a Foundling Certificate to the Supreme Court and the Judicial Bar Council to prove his/her qualification as a natural-born citizen? The same question can be raised in other situations where natural-born citizenship is required, not only by law, but most especially by the Constitution. Do the seven (7) Justices intend that the question be answered in the affirmative? If so, my humble submission is that, apart from violating the Constitution, it will be a reckless position to take as a Foundling Certificate should not automatically confer natural-born citizenship as it can easily be obtained by impostors who pretend to have found a child of unknown parents.

The July 18, 2006 Order of the Bureau of Immigration approving petitioner Poe's application for dual citizenship was not valid.

First, petitioner Poe's claim to a dual citizenship by virtue of R.A. No. 9225 is invalid for the simple reason that the said law limits its application to natural-born Filipino citizens only. In other words, the right to avail of dual citizenship is only available to natural-born citizens who have earlier lost their Philippine citizenship by reason of acquisition of foreign citizenship. Second, petitioner Poe obtained dual citizenship under Republic Act No. 9225 by misrepresenting to the BI that she is the biological child of a Filipino father and Filipino mother such that the Bureau was misled in to believing that *"[petitioner Poe] was a former citizen of the Republic of the Philippines being born to Filipino parents.* Third, the said order was not signed by the Commissioner of the BI as required by implementing regulations. And her re-acquisition of Philippine citizenship being clearly invalid, petitioner Poe's acceptance and assumption to public office requiring natural-born citizenship as condition *sine qua non* is likewise invalid.

Republic Act No. 9225 (the Citizenship Retention and Reacquisition Act of 2003)[30] governs the reacquisition or retention of Philippine citizenship by a natural-born Filipino who acquired citizenship in a foreign country. Under Section 3 thereof, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are deemed to have re-acquired Philippine citizenship upon taking the oath of allegiance to the Republic of the Philippines specifically stated therein.[31]

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[30] Approved on August 29, 2003.

[31] Section 3 of Republic Act No. 9225 states:

SEC. 3. *Retention of Philippine Citizenship.* — Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

The foregoing point is reiterated under the Bureau of Immigration's Memorandum Circular No. AFF. 05-002 (Revised Rules Governing Philippine Citizenship under Republic Act No. 9225 and Administrative Order No. 91, Series of 2004), particularly Section 1 thereof, it is categorically provided that –

> Section 1. Coverage. — These rules shall apply to **natural-born citizens** of the Philippines as defined by Philippine law and jurisprudence, who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country.

Hence, given my preceding discussion on the citizenship of petitioner Poe, I submit that she could not have validly repatriated herself under the provisions of Republic Act No. 9225 for purposes of "reacquiring" natural-born Filipino citizenship.

Another point that I wish to emphasize is the fact that in her Petition for Retention and/or Re-acquisition of Philippine Citizenship filed before the BI on July 10, 2006, petitioner Poe knowingly committed a false representation when she declared under oath that she was "**a former natural-born Philippine citizen, born** on Sept. 3, 1968 at Iloilo City **to** Ronald Allan Kelly Poe, a Filipino citizen and Jesusa Sonora Poe, a Filipino citizen[.]" [Emphasis supplied.]

In so answering the blank form of the petition, petitioner Poe plainly represented that she is the <u>biological child</u> of the spouses Ronald Allan Kelly Poe and Jesusa Sonora Poe; thereby effectively concealing the fact that she was a foundling who was subsequently adopted by the said spouses.

"I _____________, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion."

Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

This false representation paved the way for the issuance by the BI of the Order dated July 18, 2006 that granted Poe's petition, which declared that she "was a former citizen of the Republic of the Philippines, being born to Filipino parents and is presumed to be a natural-born Philippine citizen[.]"

Another point worthy of note is the fact that the said Order was not signed by the Commissioner of the BI as required under the aforementioned Memorandum Circular No. AFF. 05-002, to wit:

> Section 10. Compliance and approval procedures. – All petitions must strictly comply with the preceding requirements prior to filing at the Office of the Commissioner or at nearest Philippine Foreign Post, as the case may be x x x.
>
> If the petition is found to be sufficient in form and in substance, the evaluating officer shall submit the findings and recommendation to the Commissioner of Immigration or Consul General, as the case may be x x x.
>
> **[T]he Commissioner of Immigration,** x x x, or the Consul General, x x x, <u>**shall**</u> **issue,** within five (5) days from receipt thereof, **an Order of Approval** indicating that the petition complies with the provisions of R.A. 9225 and its IRR, and the corresponding IC, as the case may be. (Emphasis supplied.)

A perusal of the said order will show that an indecipherable signature or autograph is written above the type written name of then Commissioner Alipio F. Fernandez, Jr. (Fernandez). The said writing was not made by Commissioner Fernandez as the word *"for"* was similarly written beside the name of the latter indicating that the said signature/autograph was made in lieu of the named person's own signature/autograph. Whose signature/autograph it was, and under whose authority it was made, are not evident from the document.

On the basis of the above undisputed facts, I submit that the July 18, 2006 Order of the BI granting petitioner Poe's application for the reacquisition of her supposedly lost natural-born citizenship was not only improvidently issued, but more importantly, it was null and void. The nullity stemmed from

her concealment or misrepresentation of a material fact, not an error of law, regarding the identity of her biological parents. **The unlawful product of this concealment was carried over in her pursuit of high government positions requiring natural-born citizenship as a qualification.** Therefore, the same could not be the source of her reacquisition of all the attendant civil and political rights, including the rights and responsibilities under existing laws of the Philippines, granted to natural-born Filipino citizens.

Petitioner Poe's re-acquisition of Philippine citizenship was not validly approved as it was based on an erroneous finding of fact based on the false representation by petitioner Poe as to her parentage.

The Residency Requirement

The assailed COMELEC resolutions uniformly held that petitioner Poe falsely claimed in her COC that she had been a resident of the Philippines for ten years and eleven months up to the day before the May 9, 2016 elections. Assuming petitioner Poe may be validly repatriated under Republic Act No. 9225, the COMELEC ruled that it was only when she reacquired her Filipino citizenship on July 18, 2006 that she could have re-established her domicile in the Philippines.

Before this Court, petitioner Poe primarily argues that the COMELEC "acted whimsically and capriciously, ignored settled jurisprudence and disregarded the evidence on record in ruling that she made a false material representation in her COC for President when she stated therein that her 'period of residence in the Philippines up to the day before May 09, 2016' would be '10' years and '11' months."[32] Petitioner Poe contends that she re-established her domicile of choice in the Philippines as early as May 24, 2005, even before she reacquired her Filipino citizenship under Republic Act No. 9225.

Section 2, Article VII of the 1987 Constitution provides for the qualifications for the position of President, to wit:

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[32] Petitioner's Memorandum, p. 241.

ARTICLE VII
EXECUTIVE DEPARTMENT

SECTION 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and **a resident of the Philippines for at least ten years immediately preceding such election.** (Emphasis supplied.)

For election purposes, the term residence is to be understood not in its common acceptation as referring to dwelling or habitation.[33] In contemplation of election laws, residence is synonymous with domicile. Domicile is the place where a person actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain. It consists not only in the intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention.[34]

In *Domino v. Commission on Elections,*[35] the Court stressed that domicile denotes a fixed permanent residence to which, whenever absent for business, pleasure, or some other reasons, one intends to return. It is a question of intention and circumstances. In the consideration of circumstances, three rules must be borne in mind, namely: (1) that a man must have a residence or domicile somewhere; (2) when once established it remains until a new one is acquired; and (3) a man can have but one residence or domicile at a time.

Domicile is classified into: (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.[36] To acquire

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[33] *Coquilla v. Commission on Elections,* 434 Phil. 861, 871 (2002).

[34] *Ugdoracion, Jr. v. Commission on Elections,* 575 Phil. 253, 263 (2008).

[35] 369 Phil. 798, 818 (1999).

[36] *Ugdoracion, Jr. v. Commission on Elections, supra* at 263.

a new domicile of choice, the following requirements must concur: (1) residence or bodily presence in the new locality; (2) an intention to remain there; and (3) an intention to abandon the old domicile. There must be *animus manendi* coupled with *animus non revertendi.* The purpose 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.[37]

In *Coquilla v. Commission on Elections,*[38] the Court held in no uncertain terms that naturalization in a foreign country results in the abandonment of domicile in the Philippines.

Thereafter, in *Japzon v. Commission on Elections,*[39] the Court construed the requirement of residence under election laws *vis-a-vis* the provisions of Republic Act No. 9225. The respondent in said case, Jaime S. Ty, was a natural-born Filipino who became an American citizen. He later reacquired his Philippine citizenship under Republic Act No. 9225 and ran for Mayor of the Municipality of General Macarthur, Eastern Samar. Manuel B. Japzon, a rival candidate, questioned Ty's residency in said place. The Court ruled that —

> It bears to point out that Republic Act No. 9225 governs the manner in which a natural-born Filipino may reacquire or retain his Philippine citizenship despite acquiring a foreign citizenship, and provides for his rights and liabilities under such circumstances. A close scrutiny of said statute would reveal that it does not at all touch on the matter of residence of the natural-born Filipino taking advantage of its provisions. **Republic Act No. 9225 imposes no residency requirement for the reacquisition or retention of Philippine citizenship; nor does it mention any effect of such reacquisition or retention of Philippine citizenship on the current residence of the concerned natural-born Filipino. Clearly, Republic Act No. 9225 treats citizenship independently of residence.** This is only logical and consistent with the general intent of the law to allow for

[37] *Papandayan, Jr. v. Commission on Elections,* 430 Phil. 754, 770 (2002).

[38] *Supra* at 872.

[39] 596 Phil. 354 (2009).

dual citizenship. Since a natural-born Filipino may hold, at the same time, both Philippine and foreign citizenships, he may establish residence either in the Philippines or in the foreign country of which he is also a citizen.

Residency in the Philippines only becomes relevant when the natural-born Filipino with dual citizenship decides to run for public office.

Section 5(2) of Republic Act No. 9225 reads:

> SEC. 5. *Civil and Political Rights and Liabilities.* — Those who retain or reacquire 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 office in the Philippines shall meet the qualifications 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.

Breaking down the aforequoted provision, for a natural-born Filipino, who reacquired or retained his Philippine citizenship under Republic Act No. 9225, to run for public office, he must: (1) **meet the qualifications for holding such public office as required by the Constitution and existing laws;** and (2) **make a personal and sworn renunciation of any and all foreign citizenships before any public officer authorized to administer an oath.**

x x x x x x x x x

As has already been previously discussed by this Court herein, Ty's reacquisition of his Philippine citizenship under Republic Act No. 9225 had no automatic impact or effect on his residence/domicile. He could still retain his domicile in the USA, and he did not necessarily regain his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines. **Ty merely had the option to again establish his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines, said place becoming his new domicile of choice. The length of his residence therein shall be determined**

from the time he made it his domicile of choice, and it shall not retroact to the time of his birth.[40] (Citations omitted; emphasis supplied.)

Applying the foregoing disquisition to the instant cases, it is beyond question that petitioner Poe lost her domicile in the Philippines when she became a naturalized American citizen on **October 18, 2001.** From then on, she established her new domicile of choice in the U.S. Thereafter, on **July 7, 2006,** petitioner Poe took her oath of allegiance to the Republic of the Philippines under Republic Act No. 9225. Again, on the *assumption* that petitioner Poe can validly avail herself of the provisions of said law, she was deemed to have reacquired her Philippine citizenship under the latter date. Subsequently, on **October 20, 2010,** petitioner Poe executed an Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship (Affidavit of Renunciation).

Following *Japzon,* petitioner Poe's reacquisition of her Philippine citizenship did not automatically make her regain her residence in the Philippines. She merely had the option to again establish her domicile here. The length of petitioner Poe's residence herein shall be determined from the time she made the Philippines her domicile of choice. Whether petitioner Poe complied with the ten-year residency requirement for running for the position of the President of the Philippines is essentially a question of fact that indeed requires the review and evaluation of the probative value of the evidence presented by the parties before the COMELEC.

On this note, I concur with the ruling in Justice Del Castillo's Dissenting Opinion that the evidence[41] submitted by petitioner

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[40] *Id*. at 367-370.

[41] In petitioner's Memorandum, she cited the following pieces of evidence to prove her *animus manendi,* or intent to stay permanently in the Philippines, among others:

(a) Petitioner's travel records, which show that whenever she was absent for a trip abroad, she would consistently return to the Philippines;

(b) Affidavit of Ms. Jesusa Sonora Poe, attesting to, *inter alia,* the fact that after their arrival in the Philippines in early 2005, petitioner and her children first lived with her at 23 Lincoln St., Greenhills West, San Juan City, which

Poe was insufficient to establish her claim that when she arrived in the Philippines on May 24, 2005, her physical presence was imbued with *animus manendi.* At that point in time, petitioner Poe's status was merely that of a non-resident alien.

Notably, when petitioner arrived in the Philippines on May 24, 2005, the same was through a visa-free entry under the *Balikbayan* Program.[42] Under Republic Act No. 6768 (An Act Instituting a *Balikbayan* Program),[43] as amended by Republic Act No. 9174,[44] the said program was instituted "to attract and encourage overseas Filipinos to come and **visit** their motherland."[45]

Under Section 3 of the above-mentioned law, petitioner Poe was merely entitled to a visa-free entry to the Philippines for a period of one (1) year.[46] Thus, her stay then in the Philippines was

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even necessitated a modification of the living arrangements at her house to accommodate petitioner's family;

(c) School records of petitioner's children, which show that they had been attending Philippine schools continuously since June 2005;

(d) Petitioner's TIN I.D., which shows that shortly after her return in May 2005, she considered herself a taxable resident and submitted herself to the Philippines' tax jurisdiction; and

(e) CCT for Unit 7F and a parking slot at One Wilson Place, purchased in early 2005, and its corresponding Declarations of Real Property for real property tax purposes, which clearly establish intent to reside permanently in the Philippines.

[42] Petitioner's Memorandum, pp. 249-250.

[43] Approved on November 3, 1989.

[44] Approved on November 7, 2002.

[45] The relevant portion of Section l of Republic Act No. 9174 states:

SEC. 1. Section 1 of Republic Act No. 6768 is hereby amended to read as follows:

"Section 1. *Balikbayan Program.* — A *Balikbayan* Program is hereby instituted under the administration of the Department of Tourism to attract and encourage overseas Filipinos to come and visit their motherland.

This is in recognition of their contribution to the economy of the country through the foreign exchange inflow and revenues that they generate."

[46] Section 3 of Republic Act No. 9174 states:

SEC. 3. Section 3 of the [Republic Act No. 6768] is hereby amended to read as follows:

certainly not for an indefinite period of time.[47] This only proves that petitioner Poe's stay was not impressed with *animus manendi, i.e.,* the intent to remain in or at the domicile of choice for an indefinite period of time.

In *Coquilla v. Commission on Elections,*[48] We disregarded the period of a candidate's physical presence in the Philippines at the time when he was still a non-resident alien. In this case, Teodulo M. Coquilla lost his domicile of origin in Oras, Eastern Samar when he joined the U.S. Navy in 1965 and he was subsequently naturalized as a U.S. citizen. On October 15, 1998, he came to the Philippines and took out a resident certificate. Afterwards, he still made several trips to the U.S. Coquilla later applied for repatriation and took his oath as a citizen of the Philippines on November 10, 2000. Coquilla thereafter filed his COC for the mayorship of Oras, Eastern Samar. A rival candidate sought the cancellation of Coquilla's COC as the latter had been a resident of Oras for only six months after he took his oath as a Filipino citizen.

The Court ruled that Coquilla indeed lacked the requisite period of residency. While he entered the Philippines in 1998 and took out a residence certificate, he did so as a visa-free *balikbayan* visitor whose stay as such was valid for only one year. He then entered the country at least four more times using the same visa-free *balikbayan* entry. From 1965 until his reacquisition of Philippine citizenship on November 10, 2000, Coquilla's status was held to be that of "an alien without any right to reside in the Philippines save as our immigration laws

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"Sec. 3 *Benefits and Privileges of the Balikbayan.* — The *balikbayan* and his or her family shall be entitled to the following benefits and privileges:

x x x x x x x x x

(c) Visa-free entry to the Philippines for a period of one (1) year for foreign passport holders, with the exception of restricted nationals[.]"

[47] The one year period may be extended for another one (1), two (2) or six (6) months, subject to specific requirements. [http://www.immigration.gov.ph/faqs/visa-inquiry/balikbayan-previlege. Last accessed: February 27, 2016.]

[48] *Supra* note 33.

may have allowed him to stay as a visitor or as a resident alien." The Court also explained that:

> The status of being an alien and a non-resident can be waived either separately, when one acquires the status of a resident alien before acquiring Philippine citizenship, or at the same time when one acquires Philippine citizenship. As an alien, an individual may obtain an immigrant visa under §13[49] of the Philippine Immigration Act of 1948 and an Immigrant Certificate of Residence (ICR) and thus waive his status as a non-resident. On the other hand, he may acquire Philippine citizenship by naturalization under C.A. No. 473, as amended, or, if he is a former Philippine national, he may reacquire Philippine citizenship by repatriation or by an act of Congress, in which case he waives not only his status as an alien but also his status as a non-resident alien.[50] (Citations omitted.)

The Court, thus, found that Coquilla can only be held to have waived his status as an alien and as a non-resident only on November 10, 2000 upon taking his oath as a citizen of the Philippines. The Court arrived at the same ruling in the earlier case of *Ujano v. Republic*[51] and *Caasi v. Court of Appeals.*[52]

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[49] The pertinent portions of this provision states:

"Under the conditions set forth in this Act, there may be admitted in the Philippines immigrants, termed "quota immigrants" not in excess of fifty (50) of any one nationality or without nationality for any one calendar year, except that the following immigrants, termed "nonquota immigrants," may be admitted without regard to such numerical limitations.

The corresponding Philippine Consular representative abroad shall investigate and certify the eligibility of a quota immigrant previous to his admission into the Philippines. Qualified and desirable aliens who are in the Philippines under temporary stay may be admitted within the quota, subject to the provisions of the last paragraph of Section 9 of this Act.

x x x x x x x x x

(g) A natural-born citizen of the Philippines, who has been naturalized in a foreign country, and is returning to the Philippines for permanent residence, including the spouse and minor children, shall be considered a non-quota immigrant for purposes of entering the Philippines (As amended by Rep. Act No. 4376, approved June 19, 1965)."

[50] *Coquilla v. Commission on Elections, supra* note 33 at 873-875.

[51] 17 SCRA 147.

[52] 191 SCRA 229.

In the cases at bar, petitioner Poe similarly failed to prove that she waived her status as a non-resident alien when she entered the Philippines on May 24, 2005 as a visa-free *balikbayan* visitor. Her status only changed when she ostensibly took her oath of allegiance to the Republic under Republic Act No. 9225 on July 7, 2006.

Under Section 5 of Republic Act No. 9225,[53] the entitlement to the full civil and political rights concomitant with the reacquired citizenship shall commence only when the requirements in the said law have been completed and the Philippine citizenship has been acquired. It is only then that Filipinos who have reacquired their citizenship can be said to gain the right to exercise their right of suffrage or to seek elective public office, subject to the compliance with the requirements laid down in the Constitution and existing laws.

Thus, it is the taking of the oath of allegiance to the Republic on July 7, 2006 presumably conferred upon petitioner Poe not only Philippine citizenship but also the right to stay in the Philippines for an unlimited period of time. It was only then that she can claim subject to proof, that her physical presence in the Philippines was coupled with *animus manendi.* Any temporary stay in the Philippines prior to the aforesaid date

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[53] Section 5 of Republic Act No. 9225 states:

SECTION 5. *Civil and Political Rights and Liabilities.* Those who retain or reacquire 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:

(1) Those intending to exercise their right of suffrage must meet the requirements under Section 1, Article V of the Constitution, Republic Act No. 9189, otherwise known as "The Overseas Absentee Voting Act of 2003" and other existing laws;

(2) Those seeking elective public office in the Philippines shall meet the qualifications 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;

cannot fall under the concept of residence for purposes of elections. The *animus manendi* must be proven by clear and unmistakable evidence since a dual citizen can still freely enjoy permanent resident status in her/his domicile of choice if said status is not given up or officially waived.

Anent the pieces of evidence[54] that petitioner Poe submitted to prove her *animus non revertendi* to her domicile in the U.S., I

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(3) Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: *Provided,* That they renounce their oath of allegiance to the country where they took that oath;

(4) Those intending to practice their profession in the Philippines shall apply with the proper authority for a license or permit to engage in such practice; and

(5) That right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who:

(a) are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or

(b) are in active service as commissioned or noncommissioned officers in the armed forces ofthe country which they are naturalized citizens.

[54] In petitioner's Memorandum, she cited the following pieces of evidence to prove her *animus non revertendi,* or intent to abandon her U.S.A. domicile, among others:

(a) Affidavit of Ms. Jesusa Sonora Poe, attesting to, among others, the reasons which prompted the petitioner to leave the U.S.A. and return permanently to the Philippines;

(b) Affidavit of petitioner's husband, Mr. Teodoro V. Llamanzares, corroborating the petitioner's statement and explaining how he and the petitioner had been actively attending to the logistics of their permanent relocation to the Philippines since March 2005;

(c) The petitioner and her husband's documented conversations with property movers regarding the relocation of their household goods, furniture, and cars, then in Virginia, U.S.A., to the Philippines, which show that they intended to leave the U.S.A. for good as early as March 2005;

(d) Relocation of their household goods, furniture, cars, and other personal property then in Virginia, U.S.A., to the Philippines, which were packed and collected for storage and transport to the Philippines on February and April 2006;

agree with the dissent of Justice Del Castillo that little weight can likewise be properly ascribed to the same, given that they referred to acts or events that took place after May 24, 2005. As such, they were also insufficient to establish petitioner's claim that she changed her domicile as of May 24, 2005. Petitioner Poe's evidence was insufficient to prove *animus non revertendi* prior to her renunciation of her U.S. citizenship on October 20, 2010. Before the renunciation, it cannot be said that there was a clear and unmistakable intent on the part of petitioner Poe to abandon her U.S. domicile. To be clear, one cannot have two domiciles at any given time. It was thus incumbent upon the petitioner Poe to prove by positive acts that her physical presence in the Philippines was coupled with the intent to relinquish her domicile in the U.S.

As pointed out by Justice Del Castillo, the continued use of her American passport in her travels to the U.S., as well as her ownership and maintenance of two residential houses in the said country until the present time, only served to weaken her stance that she actually and deliberately abandoned her domicile in the U.S. when she came here on May 24, 2005. This is because she continued to represent herself as an American citizen who was free to return to the said country whenever she wished. Moreover, although petitioner Poe supposedly reacquired her Philippine citizenship on July 7, 2006, she was issued a Philippine passport only three years thereafter on October 13, 2009. Thus, I concur with the finding of the *Ponencia* that petitioner Poe's affidavit of renunciation of U.S. citizenship was the only clear and positive proof of her abandonment of her U.S. domicile.

Given the above findings, the petitioner's evidence fails to substantiate her claim that she had established her domicile of choice in the Philippines starting on May 24, 2005.

(e) Petitioner's husband's act of informing the U.S.A. Postal Service of their abandonment of their former U.S.A. address on March 2006;

(f) Petitioner and her husband's act of selling their family home in the U.S.A. on April 27, 2006;

(g) Petitioner's husband's resignation from his work in the U.S.A. in April 2006; and

(h) The return to the Philippine's of petitioner's husband on May 4, 2006.

By stating in her COC that she had complied with the required ten-year residency when she actually did not, petitioner made a false material representation that justified the COMELEC's cancellation of her COC.

The majority opinion, however, reached a dissimilar conclusion and ruled that *Coquilla, Japzon, Caballero* and *Reyes* are inapplicable to the case at bar. The majority posited that, unlike in the aforesaid cases where the evidence presented on residency was sparse, petitioner Poe's evidence is overwhelming and unprecedented. The majority furthermore asserted that there is no indication in the said cases that the Court intended to have its ruling therein apply to a situation where the facts are different.

I strongly beg to differ.

But of course, the factual milieu of these cases is different from those of *Coquilla, Japzon, Caballero* and *Reyes.* No two cases are exactly the same. However, there are no substantial differences that would prevent the application here of the principles enunciated in the said decided cases. Moreover, absolutely nowhere in the said cases did the Court expressly say that the rulings therein only apply ***pro hac vice*** (meaning, "for this one particular occasion").[55] On the contrary, the doctrines laid down in said cases are cited in a catena of election cases, which similarly involve the residency requirement for elective positions. Simply put, the jurisprudential doctrines and guidelines set out in said cases, along with other cases dealing with the same subject matter, serve as the standards by which the pieces of evidence of a party in a specific case are to be measured. Even petitioner Poe herself adverts to our ruling in *Japzon, Coquilla* and *Caballero,* albeit in a manner that tends to suit her cause.[56]

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[55] *Partido Ng Manggagawa v. Commission on Elections,* 519 Phil. 644, 671 (2006).

[56] See Petitioner's Memorandum, pp. 268, 271, 272.

In relation to the application of *Coquilla* to these cases relative to petitioner Poe's utilization of the visa-free *balikbayan* entry, the majority opines that under Republic Act No. 6768, as amended, *balikbayans* are not ordinary transients in view of the law's aim of "providing the opportunity to avail of the necessary training to enable the *balikbayan* to become economically self-reliant members of society upon their return to the country" in line with the government's "reintegration program." The majority, thus, concluded that the visa-free period is obviously granted to allow a *balikbayan* to re-establish his life and reintegrate himself into the community before he attends to the necessary formal and legal requirements of repatriation.

On this point, the majority apparently lost sight of the fact that the training program envisioned in Republic Act No. 6768, as amended, that is to be pursued in line with the government's reintegration program does not apply to petitioner Poe. It applies to another set of *balikbayans* who are Filipino overseas workers. Section 6 of the law expressly states that:

> SEC. 6. *Training Programs.* – The **Department of Labor and Employment (DOLE)** through the **OWWA,** in coordination with the Technology and Livelihood Resource Center (TLRC), Technical Education and Skills Development Authority (TESDA), livelihood corporation and other concerned government agencies, shall provide the **necessary entrepreneurial training and livelihood skills programs and marketing assistance** to a *balikbayan,* including his or her immediate family members, who shall avail of the *kabuhayan* program **in accordance with the existing rules on the government's reintegration program.**
>
> In the case of non-OFW *balikbayan,* the Department of Tourism shall make the necessary arrangement with the TLRC and other training institutions for possible livelihood training. (Emphasis supplied.)

Indeed, the Overseas Workers Welfare Administration (OWWA) is a government agency that is primarily tasked to protect the interest and promote the welfare of overseas Filipino workers (OFWs).[57]

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[57] *Overseas Workers Welfare Administration v. Chavez,* 551 Phil. 890, 896 (2007).

Among the benefits and services it renders is a Reintegration Program, which defines reintegration as "a way of preparing for the return of OFWs into the Philippine society."[58] Not being an OFW, petitioner Poe is not the *balikbayan* that is envisioned to be the recipient of the above reintegration program.

If she indeed wanted to reestablish her life here, petitioner Poe should have applied for a Returning Former Filipino Visa, instead availing herself of a visa-free *balikbayan* entry. This visa may be applied for by a natural born citizen of the Philippines, who has been naturalized in a foreign country, and is returning to the Philippines for permanent residence, including his/her spouse and minor children. By this visa, she would be allowed, *inter alia,* to stay in the Philippines indefinitely, establish a business, and allowed to work without securing an alien employment permit. This would have definitely established her intent to remain in the Philippines permanently. Unfortunately for petitioner Poe, she did not apply for this visa.

The majority opinion also ascribes grave abuse of discretion on the part of the COMELEC for giving more weight to the 2013 COC of petitioner Poe instead of looking into the many pieces of evidence she presented in order to see if she was telling the truth that she already established her domicile in the Philippines from May 24, 2005. The majority points out that when petitioner Poe made the declaration in her 2013 COC that she has been a resident for a period of six (6) years and six (6) months counted up to the May 13, 2013 elections, she naturally had as reference the residency requirements for election as Senator, which was satisfied by her declared years of residence. The majority even belabors the obvious fact that the length of residence required of a presidential candidate is different from that of a senatorial candidate.

To this I likewise take exception.

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[58] http://www.owwa.gov.ph/?q=node/23/#reintegration. Last accessed on March 11, 2016 at 1:52 p.m.

It bears pointing out that the COMELEC did not turn a blind eye and deliberately refused to look at the evidence of petitioner Poe. A reading of the assailed COMELEC resolutions reveals that the pieces of evidence of the petitioner were indeed considered, piece by piece, but the same were adjudged insufficient to prove the purpose for which they were offered. To repeat, the emphasis must be on the weight of the pieces of evidence, not the number thereof. The COMELEC, perforce, arrived at an unfavorable conclusion. In other words, petitioner Poe's evidence had actually been weighed and measured by the COMELEC, but same was found wanting.

Moreover, I do not find significant the distinction made on the residency requirement for a presidential candidate and that of a senatorial candidate for purposes of these cases. The truth of a candidate's statement on the fact of her residency must be **consistent** and **unwavering**. Changes in a candidate's assertion of the period of residency in the Philippines shall not inspire belief or will not be credible.

Deceit

As to the view that the material representation that is false should be *"made with an intention to deceive the electorate as to one's qualifications for public office,"*[59] I cannot but deviate therefrom.

Again, Section 78 of the OEC, provides that –

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

In *Tagolino v. House of Representatives Electoral Tribunal*[60] the Court had the occasion to enlighten that ***"the deliberateness***

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[59] *Salcedo v. Commission on Elections,* 371 Phil. 377, 390 (1999).

[60] G.R. No. 202202, March 19, 2013.

of the misrepresentation, much less one's intent to defraud, is of bare significance in a Section 78 petition as it is enough that the person's declaration of a material qualification in the CoC be false." The Court therein further acknowledged that *"an express finding that the person committed any deliberate* ***misrepresentation*** *is of little consequence in the determination of whether one's CoC should be deemed cancelled or not"*[61]; and concluded that ***"[W]hat remains material is that the petition essentially seeks to deny due course to and/or cancel the CoC on the basis one's ineligibility and that the same be granted without any qualification."***[62]

The above standard is in keeping with the tenor of Section 78 of the OEC. The said law used the phrase **material representation** qualified by the term **false;** and not misrepresentation *per se.* This distinction, I believe, is quite significant.

A deeper analysis and research on the import and meaning of the language of Section 78, led to the conclusion that as opposed to the use of the term *"**misrepresentation**"* which, colloquially is understood to mean a statement **made to deceive or mislead,**[63] the qualifying term ***"false"*** referring to the phrase ***"material representation"*** is said to have **"two distinct and well-recognized meanings.** It signifies (1) intentionally or knowingly, or negligently untrue, and (2) untrue by mistake, accident, or honestly after the exercise of reasonable care."[64] Thus, the word "*false*" does not necessarily imply an intention to deceive. What is important is that an untrue material representation is made.

Relating to the disqualification under Section 78 of the OEC, the requirement of the said law (that a cancellation of a candidate's COC be exclusively grounded on the presence of any **material representation** contained therein that is required

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[61] *Tagolino v. House of Representatives Electoral Tribunal,* citing *Miranda v. Abaya,* 370 Phil. 642.

[62] *Id.*

[63] *Black's Law Dictionary*, 6th Ed.

[64] *Metropolitan Life Ins. Co. v. Adams,* D.C. Mun. App., 37 A.2d 345, 350.

under Section 74 of the same **is false**) should only pivot on the candidate's declaration of a material qualification that is false, and not on the deliberate intent to defraud. With this, good faith on the part of the candidate would be inconsequential.

In these present cases, there is no need to go into the matter of questioning petitioner Poe's *intent* in making a material representation that is false. It is enough that she signified that she is eligible to run for the Presidency notwithstanding the fact that she appeared to know the legal impediment to her claim of natural-born Filipino citizenship, as borne out by her concealment of her true personal circumstances, and that she is likewise aware of the fact that she has not fulfilled the ten-year residency requirement as shown by her inconsistent and ambivalent stand as to the start of her domicile in the Philippines. Apparently, she is cognizant of the fact that she is actually ineligible for the position.

However, that while an intent to deceive in petitioner Poe's actions is not an indispensable element under a Section 78 Petition, the COMELEC's affirmative finding on the existence of deceit is not without basis. The COMELEC observed, and I quote:

> The simplicity and clarity of the terms used in our Constitution and laws on citizenship, the fact that [petitioner Poe] is a highly educated woman and all other circumstances found by the Honorable Second Division to be present in this case, would leave little doubt as to the intention of [petitioner Poe] when she made the false representations in the Certificates x x x that is, to mislead [the] people into thinking that she was then a Filipino.
>
> The Commission is especially bothered by [petitioner Poe's] representation in the Petition for Retention and/or Reacquisition of Philippine Citizenship **that she was BORN TO her adoptive parents.** To recall, it was this Petition, granted by the BID, that led to [petitioner Poe] supposed acquisition of Filipino citizenship in July 2006 under RA 9225—a law which limits its application only to natural-born Filipinos who lost their citizenships. The design to mislead in order to satisfy the requirements of the law is evident, reminiscent of the intent to mislead in the 2016 COC, put in issue in the present case.

All told, the foregoing misrepresentations may be for different purposes, but all seems to have been deliberately done. It is, therefore, hard to think, given the aforementioned pattern of behavior, that the representation in [petitioner Poe's] 2016 COC for President that she was a natural-born citizen was not a deliberate attempt to mislead, misinform, or hide a fact that would otherwise render her ineligible for the office that she seeks to be elected to.[65]

On the matter of her residency requirement, petitioner Poe concedes that she indicated in her 2013 COC that her "period of residence in the Philippines before May 13, 2013" was "6 years and 6 months." Consequently, her residence in the Philippines could have only begun on November 2006, such that by May 9, 2016, her aggregate period of residence in the Philippines was approximately only 9 years and 6 months, which is short of the period of residence required for presidential candidates.

Petitioner Poe explains, however, that she made the above statement as an "honest misunderstanding" of what was being asked of her.[66] She contends that she did not fully comprehend that the phrase "Period of Residence in the Philippines before May 13, 2013" in her 2013 COC actually referred to the period of residence on the day right before the May 13, 2013 elections. She allegedly construed it to mean her "period of residence in the Philippines as of the submission of COCs in October 2012 (which is technically also a period 'before May 13, 2013')."[67] Thus, she counted backwards from October 2012, instead from May 13, 2013 and in so doing she brought herself back to **"March-April 2006,"** which was the period when her house in the U.S. was sold and when her husband resigned from his job in the U.S.[68] She argues that that was the period she indicated, albeit it was a mistake again on her part as it should have been **May 24, 2005.**

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[65] COMELEC Decision in SPA No. 15-001 (DC), pp. 30-31.

[66] Petitioner's Memorandum, p. 285.

[67] Petitioner's Memorandum, p. 285.

[68] Petitoner's Memorandum, pp. 286-287.

Petitioner Poe's ambivalent or varying accounts do not inspire beliefs of the truthfulness of her latest allegation of the period of her residence in the Philippines.

It is indeed incredible of someone of her stature to gravely misinterpret the phrase "Period of Residence in the Philippines before the May 13, 2013" in the 2012 COC. At any rate, having been informed as early as June 2015 of this supposedly honest mistake, it is quite perplexing that the same was not immediately rectified. As it were, the above-mentioned explanations that were belatedly given even muddled the issue further. Petitioner Poe can hardly blame the COMELEC for casting a suspicious and skeptic eye on her contentions regarding her residency.

Petitioner Poe's claim of good faith, thus, stands on very shaky grounds. As found by the COMELEC *En banc*:

> x x x worthy of note are certain arguments raised such as [petitioner Poe's] claim that she never hid from the public her supposed mistake in the 2013 COC, as evinced by the following: 1.) she publicly acknowledged the same in an interview in June 2015, after the issue of compliance with the residency requirement for President was raised by Navotas City Representative and then United Nationalist Alliance Secretary General Tobias Tiangco; and 2.) that as early as September 1, 2015, in her Verified Answer filed before the Senate Electoral Tribunal (hereinafter "SET") in SET Case No. 001-15, she already made it of record that as of May 13, 2013, she had been residing in the Philippines "for more than six (6) years and six (6) months."
>
> While the two statements were indeed made before respondent filed her 2016 COC, it was nonetheless delivered at a time when, at the very least, the possibility of [petitioner Poe] running for President of the country in 2016, was already a matter of public knowledge. By then, [petitioner Poe could have already been aware that she cannot maintain her declaration in the 2013 COC as it would be insufficient to meet the 10-year residency requirement for President.
>
> Indeed, the Commission finds it hard to believe that a woman as educated as [petitioner Poe], who was then already a high-ranking public official with, no doubt, a competent staff and a band of legal advisers, and who is not herself entirely unacquainted with Philippine politics being the daughter of a former high-profile presidential aspirant, would not know how to correctly fill-up a pro-forma COC in

2013. **We are not convinced that the subject entry therein was an honest mistake.**

Conclusion

The foregoing discussion points to the failure of petitioner Poe to prove her cases. Therefore, I submit that the two assailed COMELEC *En banc* Resolutions dated December 23, 2015, separately affirming the December 1, 2015 Resolution of the Second Division and the December 11, 2015 Resolution of the First Division are not tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner Poe implores this Court not to allow the supposed disenfranchisement of the sovereign people by depriving them of *"of something rightfully theirs: the consideration of petitioner as a* ***viable and valid choice for President*** *in the next elections.* "[69]

But the Constitution itself is the true embodiment of the supreme will of the people. It was the people's decision to require in the Constitution, which they approved in a plebiscite, that their President be a natural-born Filipino citizen. The people did not choose to disenfranchise themselves but rather to disqualify those persons, who did not descend by blood from Filipino parents, from running in an election for the Presidency.

The will of the electorate will never cure the vice of ineligibility. As so eloquently reminded by then Justice Isagani A. Cruz in *Frivaldo v. Commission on Elections*[70]:

> The qualifications prescribed for elective office cannot be erased by the electorate alone. The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this case, that the candidate was qualified. Obviously, this rule requires strict application when the deficiency is lack of citizenship.

WHEREFORE, I vote to *(i)* **DISMISS** the four petitions for *certiorari* filed by petitioner Mary Grace Natividad S.

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[69] Petition in G.R. No. 221697, p. l; *rollo,* p. 1.

[70] G.R. No. 87193, [June 23, 1989], 255 Phil. 934-947.

Poe-Llamanzares; and *(ii)* **LIFT** the temporary restraining order issued by this Court on December 28, 2015.

DISSENTING OPINION

BRION, *J*.:

I write this DISSENTING OPINION to express my disagreements with the *ponencia* of my esteemed colleague, Mr. Justice JOSE P. PEREZ, who wrote the majority opinion of this Court.

The *ponencia* is based on the exclusive ground that the COMELEC committed **"grave abuse of discretion"** in **"denying due course to and/or cancelling her Certificate of Candidacy for the President for the May 9, 2016 elections for false material representation as to her citizenship and residency."**

I write as well to offer help to the general public so that they may be enlightened on the issues already darkened by political and self-interested claims and counterclaims, all aired by the media, paid and unpaid, that only resulted in confusing what would otherwise be fairly simple and clearcut issues.

I respond most especially to the appeal of our President Benigno C. Aquino for this Court to rule with clarity for the sake of the voting public. Even a Dissent can contribute to this endeavour. Thus, I write **with utmost frankness** so that every one may know what really transpired within the Court's veiled chambers.

For a systematic and orderly approach in presenting my Dissent, I shall:

- first summarize the *ponencia* and the votes of the ruling majority (**Part A**);
- then proceed to my more specific objections to the *ponencia's* egregious claims; (**Part B**) and
- quote the portions of my original Separate Concurring Opinion that specifically dispute the majority's ruling (**Part C**).

In this manner, I can show how mistaken and misplaced the majority's ruling had been, and how it dishonored our Constitution through its slanted reading that allows one who does not qualify to serve as President, to be a candidate for this office.

Shorn of the glamor and puffery that paid advertising and media can provide, this case is about an expatriate — a popular one — who now wants to run for the presidency after her return to the country. Her situation is not new as our jurisprudence is replete with rulings on similar situations. As early as 1995, a great jurist — Justice Isagani Cruz[1] — (now deceased but whose reputation for the energetic defense of and respect and love for the Constitution still lives on) gave his "take" on this situation in his article **Return of the Renegade.** He wrote:

"...Several years ago a permanent resident of the United States came back to the Philippines and was elected to a local office. A protest was lodged against him on the ground of lack of residence. The evidence submitted was his green card, and it was irrefutable. The Supreme Court ruled that his permanent and exclusive residence was in the United States and not in the municipality where he had run and won. His election was annulled.

Where a former Filipino citizen repents his naturalization and decides to resume his old nationality, he must manifest a becoming contrition. He cannot simply abandon his adopted country and come back to this country as if he were bestowing a gift of himself upon the nation. It is not as easy as that. He is not a donor but a supplicant.

In a sense, he is an apostate. He has renounced Philippine citizenship by a knowing and affirmative get. When he pledged allegiance to the adopted country, he also flatly disavowed all allegiance to the Philippines. He cannot erase that infidelity by simply establishing his residence here claiming the status he has lost.

The remorseful Filipino turned alien by his own choice cannot say that he sought naturalization in another country only for reasons of convenience. That pretext is itself a badge of bad faith

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[1] Philippine Daily Inquirer, "Return of the Renegade" Mar. 4, 1995.

and insincerity. It reflects on his moral character and suggests that he is not an honest person. By his own admission, he deceived his adopted country when he pretended under oath to embrace its way of life." [emphases and underscoring supplied]

Of course, this is only one side of the story and cannot represent the total truth of the returning citizen situation. Still, it would be best to remember the renegade, lest we forget this hidden facet of this case as we hear many impassioned pleas for justice and fairness, among them for foundlings, within and outside the Court. What should be before us should be ***one whole story*** with all the pieces woven together, both for and against the parties' respective sides. Part of this story should be the general public whose interests should be foremost in our minds. In considering them, we should consider most of all ***the Constitution that that they approved in the exercise of their sovereign power.***

PART A

SUMMARY OF THE PONENCIA'S VOTES & POSITIONS

Of the nine (*9*) members of the Court supporting the *ponencia,* four (*4*)– among them, Justices Benjamin Caguioa, Francis Jardeleza, and Mario Victor M.V.F. Leonen, as well as Chief Justice Maria Lourdes P.A. Sereno herself – submitted their respective opinions to explain their own votes as reasons for supporting the *ponencia's* conclusions.

While they offered their respective views (particularly on Poe's claimed natural-born citizen status, ten-year residency, and the COMELEC's conclusion of false representations), they fully concurred (by not qualifying their respective concurrences) with the *ponencia's* basic reason in concluding that grave abuse of discretion attended the COMELEC's challenged rulings.

On the other hand, the other four (*4*) members who voted with the majority fully concurred without qualification with the *ponencia,* thus fully joined it.

In granting Poe's *certiorari* petitions, the *ponencia* ruled that –

"*...[t]he **procedure** and the conclusions from which the questioned Resolutions emanated are tainted with grave abuse of discretion amounting to lack of jurisdiction. [Poe] is a QUALIFIED CANDIDATE for President in the May 9, 2016 National Elections*."[2] [emphasis and underscoring supplied]

Under the terms of this grant, the *ponencia* confirmed its position that the COMELEC ruling was attended by grave abuse of discretion and this was the sole basis for the Court decision that COMELEC ruling should be nullified and set aside.

The *ponencia* gave the following explanations, which I quote for specific reference (as I do not wish to be accused of maliciously misreading the *ponencia):*

"The issue before the COMELEC is whether or not the COC of [Poe] should be denied due course or cancelled 'on the exclusive ground' that she made in the certificate a false material representation. The exclusivity of the ground should hedge in the discretion of the COMELEC and restrain it from going into the issue of the qualifications of the candidate for the position, if, as in this case, such issue is yet undecided or undetermined by the proper authority. The COMELEC cannot itself, in the same cancellation case, decide the qualification or lack thereof of the candidate.

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x x x as presently required, to disqualify a candidate there must be a declaration by a final judgment of a competent court that the candidate sought to be disqualified 'is guilty of or found by the Commission to be suffering from any disqualification provided by law or the Constitution.[3]

x x x The facts of qualification must beforehand be established in a prior proceeding before an authority properly vested with jurisdiction. The prior determination of qualification may be by statute, by executive order or by judgment of a competent court or tribunal."[4]

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[2] See p. 16, par. 1 of the *ponencia.*

[3] See p. 20, last paragraph of the *ponencia.*

[4] See p. 21, par. 1 of the *ponencia.*

If a candidate cannot be disqualified without prior finding that he or she is suffering from a disqualification 'provided by law or the Constitution,' neither can the [CoC] be cancelled or denied due course on grounds of false material representations regarding his or her qualifications, such prior authority being the necessary measure by which falsity of representation can be found. The only exception that can be made conceded are self-evident facts of unquestioned or unquestionable veracity and judicial confessions x x x [which] are equivalent to prior decisions against which the falsity of representation can be determined".[5]

To summarize all these in a more straight-forward format, the *ponencia* concluded that the COMELEC gravely abused its discretion in cancelling Poe's CoC because:

(1) the COMELEC did not have the authority to rule on Poe's citizenship and residency qualifications as these qualifications have not yet been determined by the proper authority;

(2) since there is no such prior determination as to Poe's qualifications, there is no basis for a finding that Poe's representations are false;

(3) while a candidate's CoC may be cancelled without prior disqualification finding from the proper authority, the issues involving Poe's citizenship and residency do not involve self-evident facts of unquestioned or unquestionable veracity from which the falsity of representation could have been determined; and

(4) the COMELEC's determinations on Poe's citizenship and residency are acts of grave abuse of discretion because:

(a) Poe's natural-born citizenship is founded on the intent of the framers of the 1935 Constitution, domestically recognized presumptions, generally accepted principles of international law, and executive and legislative actions; and

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[5] See p. 21, par. 2 of the *ponencia.*

(b) Poe's residency claims were backed up not only by jurisprudence, but more importantly by overwhelming evidence.

Justice Caguioa additionally offered the view that the requirement of "deliberate intent to deceive" cannot be disposed of by a simple finding that there was false representation of a material fact. Rather, there must also be a showing of the candidate's intent to deceive animated the false material representation.[6]

J. Caguioa also pointed out that the COMELEC shifted the burden to Poe to prove that she had the qualifications to run for President instead of requiring the private respondents (as the original petitioners in the petitions before the COMELEC) to prove the three (3) elements required in a Section 78 proceeding. It failed to appreciate that the evidence of both parties rested, at the least, at equipoise, and should have been resolved in favor of Poe.

A.I. The ponencia on Poe's citizenship

First, **on Poe's citizenship, *i.e,* that Poe was not a natural-born Philippine citizen, the *ponencia* essentially ruled that although she is a foundling, her blood relationship with a Filipino citizen is demonstrable.**[7]

J. Leonen agreed with this point and added[8] that all foundlings in the Philippines are natural-born being presumptively born to either a Filipino biological father or mother, unless substantial proof to the contrary is shown. There is no requirement that the father or mother should be identified. There can be proof of a reasonable belief that evidence presented in a relevant proceeding substantially shows that either the father or the mother is a Filipino citizen.

For his part, J. Caguioa submitted that if indeed a mistake had been made regarding her real status, this could be considered a

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[6] See p. 4 of *J*. Caguioa's Separate Concurring Opinion.

[7] See p. 22, par. 1 of the *ponencia.*

[8] See p. 2 of the first circulated version of *J*. Leonen's Opinion.

mistake on a difficult question of law that could be the basis of good faith.[9]

Second, more than sufficient evidence exists showing that Poe had Filipino parents since Philippine law provides for presumptions regarding paternity.[10] Poe's admission that she is a foundling did not shift the burden of proof to her because her status did not exclude the possibility that her parents are Filipinos.[11]

The factual issue is not who the parents of Poe are, as their identities are unknown, but whether such parents were Filipinos.[12] The following *circumstantial evidence* show that Poe was a natural-born Filipino: (1) statistical probability that any child born in the Philippines at the time of Poe's birth is natural-born Filipino; (2) the place of Poe's abandonment; and (3) Poe's Filipino physical features.[13]

Third, the framers of the 1935 Constitution and the people who adopted this Constitution intended foundlings to be covered by the list of Filipino citizens.[14] While the 1935 Constitution's enumeration is silent as to foundlings, there is no restrictive language that would definitely exclude foundlings.[15]

Thus viewed, the *ponencia* believes that Poe is a natural-born citizen of the Philippines **by circumstantial evidence, by presumption, and by implication from the silent terms of the Constitution.**

The *ponencia* also clarified that the *Rafols* amendment pointed out by Poe was not carried in the 1935 Constitution not because there was any objection to their inclusion, but because the number of foundlings at the time was not enough to merit specific mention.[16]

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[9] See p. 10 of *J.* Caguioa's Separate Concurring Opinion.
[10] See p. 22, par. 2 of the *ponencia.*
[11] See p. 22, par. 2 of the *ponencia.*
[12] See p. 22, par. 3 of the *ponencia.*
[13] See pp. 22-23 of the *ponencia.*
[14] See pp. 24-28 of the *ponencia.*
[15] See p. 24, par. 1 of the *ponencia.*
[16] See p. 26, par. 1 of the *ponencia.*

More than these reasons, the inclusion of foundlings in the list of Philippine citizens is also consistent with the guarantee of equal protection of the laws and the social justice provisions in the Constitution.[17]

J. Jardeleza particularly agreed with these reasons and added that in placing foundlings at a disadvantaged evidentiary position at the start of the hearing and imposing upon them a higher quantum of evidence, the COMELEC effectively created two classes of children: (1) those with known biological parents; and (2) those whose biological parents are unknown. This classification is objectionable on equal protection grounds because it is not warranted by the text of the Constitution. In doing so, the COMELEC effectively subjected her to a higher standard of proof, that of absolute certainty.[18]

Fourth, the domestic laws on adoption and the Rule on Adoption support the principle that foundlings are Filipinos as these include foundlings among the Filipino children who may be adopted.[19]

In support of this position, J. Leonen additionally pointed out that the legislature has provided statutes essentially based on a premise that foundlings are Philippine citizens at birth, citing the Juvenile Justice and Welfare Act of 2006; and that the Philippines also ratified the UN Convention on the Rights of the Child and the 1966 International Convention on Civil and Political Rights, which are legally effective and binding by transformation.

J. Leonen further argued that the executive department had, in fact, also assumed Poe's natural-born status when she reacquired citizenship pursuant to Republic Act No. 9225 (Citizenship Retention and Reacquisition Act of 2003, hereinafter RA 9225) and when she was appointed as the Chairperson

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[17] See pp. 27-28 par. 2 of the *ponencia.*

[18] See p. 25 of the first circulated version of *J*. Jardeleza's Opinion. See p. 28, pars. 1 and 2 of the *ponencia.*

[19] See p. 28, pars. 1 and 2 of the *ponencia*.

of the Movie and Television Review and Classification Board *(MTRCB).*[20] Her natural-born status was recognized, too, by the people when she was elected Senator and by the Senate Electoral Tribunal *(SET)* when it affirmed her qualifications to run for Senator.[21]

The Chief Justice added, on this point, that the SET decision is another document that shows that she was not lying when she considered herself a natural-born Filipino. At the very least, it is a *prima facie* evidence finding of natural-born citizenship that Poe can rely on. The SET ruling negated the element of deliberate attempt to mislead.[22]

Fifth, the issuance of a foundling certificate is not an act to acquire or perfect Philippine citizenship that makes a foundling a naturalized Filipino at best. "Having to perform an act" means that the act must be personally done by the citizen. In the case of foundlings, the determination of his/her foundling status is not done by himself, but by the authorities.[23]

Sixth, foundlings are Philippine citizens under international law, *i.e.,* the Universal Declaration on Human Rights (*UDHR),* United Nations Convention on the Rights of the Child *(UNCRC),* and the International Convention on Civil and Political Rights *(ICCPR),* all obligate the Philippines to grant them nationality from birth and to ensure that no child is stateless. This grant of nationality must be at the time of birth which cannot be accomplished by the application of our present Naturalization Laws.[24]

The principle – *that the foundlings are presumed to have the nationality of the country of birth, under the 1930 Hague Convention on Certain Questions Relating to the Conflict of*

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[20] See p. 66 of the first circulated version of *J*. Leonen's Opinion.

[21] See p. 1 and p. 66 of the first circulated version of *J*. Leonen's Opinion.

[22] **See page 68 of the originally circulated opinion.**

[23] See pp. 28-29 of the *ponencia.*

[24] See pp. 29-30 of the *ponencia.*

Nationality Laws and the 1961 United Nations Convention on the Reduction of Statelessness – is a generally accepted principle of international law. "Generally accepted principles of international law" are based not only on international custom, but also on"general principles of law recognized by civilized nations."[25]

The requirement of *opinio juris sive necessitates* in establishing the presumption of the founding State's nationality in favor of foundlings under the 1930 Hague Convention and the 1961 Convention on Statelessness as generally accepted principle of international law was, in fact, established by the various executive and legislative acts recognizing foundlings as Philippine citizens, *i.e.,* by the executive through the Department of Foreign Affairs in authorizing the issuance of passports to foundlings, and by the Legislature, *via* the Domestic Adoption Act. Adopting these legal principles in the 1930 Hague Convention and the 1961 Convention on Statelessness is rational and reasonable and consistent with the *jus sanguinis* regime in our Constitution.[26]

Lastly, the COMELEC disregarded settled jurisprudence that repatriation results in the reacquisition of natural-born Philippine citizenship.[27] Poe's repatriation under RA No. 9225 did not result in her becoming a naturalized Filipino, but restored her status as a natural-born Philippine citizen. Repatriation is not an act to "acquire or perfect one's citizenship" nor does the Constitution require the natural-born status to be continuous from birth.[28]

A.2. The ponencia on Poe's residency

The *ponencia* ruled that the COMELEC gravely erred on the residency issue when it ***blindly applied the ruling in Coquilla,***

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[25] See pp. 30-32 of the *ponencia.*

[26] See p. 33, pars. 2 and 3 of the *ponencia.*

[27] See pp. 34-36 of the *ponencia.*

[28] See p. 35, par. 2 of the *ponencia.*

Japzon, and *Caballero* reckoning the period of residence of former natural-born Philippine citizens only from the date of reacquisition of Philippine citizenship, and relied solely in her statement in her 2012 CoC as to the period of her residence in the Philippines. The COMELEC reached these conclusions by disregarding the import of the various pieces of evidence Poe presented establishing her *animus manendi* and *animus non-revertendi.*[29]

Poe, in fact, had shown more than sufficient evidence that she established her ***Philippine residence even before repatriation.*** The cases of *Coquilla, Japzon, Caballero,* and *Reyes* are not applicable to Poe's case because in these cases, the candidate whose residency qualification was questioned presented "sparse evidence"[30] on residence which gave the Court no choice but to hold that residence could only be counted from the acquisition of a permanent resident visa or from reacquisition of Philippine citizenship. Under this reasoning, Poe showed overwhelming evidence that she decided to permanently relocate to the Philippines on May 24, 2005, or before repatriation.[31]

J. Leonen, on this point, added that the COMELEC's dogmatic reliance on formal preconceived indicators has been repeatedly decried by the Court as grave abuse of discretion. Worse, the COMELEC relied on the wrong formal indicators of residence.[32]

As the *ponencia* did, J. Leonen stressed that the COMELEC disregarded Poe's evidence of re-establishment of Philippine residence prior to July 2006 when it merely invoked Poe's status as one who had not reacquired Philippine citizenship. To him, the COMELEC relied on a manifestly faulty premise to justify the position that all of Poe's evidence before July 2006 deserved no consideration.[33]

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[29] See pp. 36-39 of the *ponencia.*

[30] See p. 39. Par. 2 of the *ponencia.*

[31] See discussions on pp. 38-39 of the *ponencia* on these points.

[32] See p. 86 of the first circulated version of *J*. Leonen's Opinion.

[33] See discussion on pp. 84 to 87 of the first circulated version of *J*. Leonen's Opinion.

Second, **Poe may re-establish her residence notwithstanding that she carried a *balikbayan* visa in entering the Philippines.** The one year visa-free period allows a *balikbayan* to re-establish his or her life and to reintegrate himself or herself into the community before attending to the formal and legal requirements of repatriation. There is no overriding intent under the *balikbayan* program to treat *balikbayans* as temporary visitors who must leave after one year.[34]

Third, **Poe committed an honest mistake in her 2012 CoC declaration on her residence period**.[35] Following jurisprudence, it is the fact of residence and not the statement in a CoC which is decisive in determining whether the residency requirement has been satisfied. The COMELEC, in fact, acknowledged that the query on the period of residence in the CoC form for the May 2013 elections was vague; thus, it changed the phrasing of this query in the current CoC form for the May 9, 2016 elections. It was grave abuse of discretion for the COMELEC to treat the 2012 CoC as binding and conclusive admission against Poe.

Fourth, assuming that Poe's residency statement in her 2015 CoC is erroneous, **Poe had no deliberate intent to mislead or to hide a fact** as shown by her immediate disclosure in public of her mistake in the stated period of residence in her 2012 CoC for Senator.[36]

PART B

SPECIFIC REFUTATION OF THE PONENCIA'S OUTSTANDING ERRORS

My original Separate Concurring Opinion (to the original *ponencia* of Justice Mariano del Castillo) deals with most, if not all, of the positions that the majority has taken. My Separate

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[34] See pp. 39-40 of the *ponencia*.

[35] See discussion on pp. 41-44 of the *ponencia* on these points.

[36] See discussion on pp. 41-44 of the *ponencia* on these points.

Concurring Opinion is quoted almost in full below (with some edits for completeness) as my detailed refutation of the *ponencia.*

Nevertheless, I have incorporated **Part B** in this Opinion to address the *ponencia's* more egregious claims that, unless refuted, would drastically change the constitutional and jurisprudential landscape in this country, in order only to justify the candidacy of one popular candidate. As I repeated often enough in my Separate Concurring Opinion, the Court operates outside of its depth and could possibly succeed in drowning this nation if it adds to, detracts from, negates, enlarges or modifies the terms of the Constitution as approved by the sovereign people of the Philippines.

B.l. *The Ponencia* on the Comelec's lack of jurisdiction

The *ponencia* presented two arguments in concluding that the COMELEC lacked the jurisdiction to determine Poe's eligibility to become President in the course of a section 78 proceeding against her:

First, Article IX-C of the 1987 Constitution on the COMELEC's jurisdiction had no specific provision regarding the qualification of the President, Vice President, Senators and Members of the House of Representatives, while Article VI, Section 17 and Article VII, Section 4 of the 1987 Constitution specifically included contest involving the qualifications of Senators and Members of the House of Representatives, and of the President and Vice-President, to the jurisdiction of the Senate Electoral Tribunal *(SET),* the House of Representatives Electoral Tribunal *(HRET)* and the Presidential Electoral Tribunal *(PET)* respectively.[37]

Second, *Fermin v. Comelec,*[38] citing the Separate Opinion of Justice Vicente V. Mendoza in *Romualdez-Marcos v. Comelec,*[39] noted that "the lack of provision for declaring the ineligibility of candidates, however, cannot be supplied by a

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[37] See pp. 17-18 *of the ponencia.*

[38] 595 Phil. 449 (2008).

[39] G.R. No. 119976, September 18, 1995, 248 SCRA 300.

mere rule."[40] This view was adopted in the revision of the COMELEC Rules of Procedure in 2012, as reflected in the changes made in the 2012 Rules from the 1993 Rules of Procedure,[41] as follows:

1993 Rules of Procedure:

> Section 1. Grounds for Disqualification. - Any candidate who does not possess all the qualifications of a candidate as provided for by the Constitution or by existing law or who commits any act declared by law to be grounds for disqualification may be disqualified from continuing as a candidate.

2012 Rules of Procedure:

> Rule 25, Section 1. Grounds, - Any candidate who, in an action or protest in which he is a party, is declared by final decision of a competent court, guilty of, or found by the Commission to be suffering from any disqualification provided by law or the Constitution.
>
> A Petition to Disqualify a Candidate invoking grounds for a Petition to Deny or to Cancel a Certificate of Candidacy or Petition to Declare a Candidate as a Nuisance Candidate, or a combination thereof, shall be summarily dismissed.

The *ponencia* read *Fermin* and the 2012 Rules of Procedure to mean that there is no authorized proceeding to determine the qualifications of a candidate before the candidate is elected. To disqualify a candidate, there must be a declaration by a final judgment of a competent court that the candidate sought to be disqualified "is guilty of or found by the Commission to be suffering from any disqualification provided by law or the Constitution."[42]

Thus, the *ponencia* held that a certificate of candidacy "cannot be cancelled or denied due course on grounds of false representations regarding his or her qualifications without a

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[40] See p. 19 of the *ponencia.*

[41] See p. 20 of the *ponencia.*

[42] See pp. 20-21 of the *ponencia.*

prior authoritative finding that he or she is not qualified, such prior authority being the necessary measure by which the falsity of the representation can be found. The only exception that can be conceded are self-evident facts of unquestioned or unquestionable veracity and judicial confessions."[43]

The arguments in my original Separate Concurring Opinion regarding the COMELEC's jurisdiction to rule on Section 78 cases address the *ponencia's* arguments, as follows:

a) **The COMELEC's quasi-judicial power in resolving a Section 78 proceeding includes the determination of whether a candidate has made a false material representation in his CoC, and the determination of whether the eligibility he represented in his CoC is true.**

b) **In *<u>Tecson v. COMELEC</u>*[44] the Court has recognized the COMELEC's jurisdiction in a Section 78 proceeding over a presidential candidate.**

c) ***Fermin's* quotation of Justice Mendoza's Separate Opinion in *Romualdez-Marcos* should be taken in context, as *Fermin* itself clarified:**

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is ***not based on the lack of qualifications but on a finding that the candidate made a material representation that is false,*** which may relate to the qualifications required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. ***Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office.*** If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a quo warranto proceeding

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[43] *Ibid*.

[44] G.R. No. 161434, March 3, 2004, 424 SCRA 277.

under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for quo warranto is filed after proclamation of the wining candidate.[45] [underscoring supplied]

Aside from these arguments, I point out that:

d) **The *ponente's* conclusion contradicts his own recent affirmation of the COMELEC's jurisdiction to determine the eligibility of a candidate through a Section 78 proceeding in *Ongsiako Reyes v. COMELEC* (G.R. No. 207264, June 25, 2013) and in *Cerafica v. COMELEC* (G.R. No. 205136 December 2, 2014).**

In ***Ongsiako-Reyes v. COMELEC,*** the Court, speaking ***through J. Perez,*** affirmed the COMELEC's cancellation of Ongsiako-Reyes' CoC and affirmed its determination that Ongsiako-Reyes is neither a Philippine citizen nor a resident of Marinduque.

The Court even affirmed the COMELEC's capability to liberally construe its own rules of procedure in response to Ongsiako-Reyes' allegation that the COMELEC gravely abused its discretion in admitting newly-discovered evidence that had not been testified on, offered and admitted in evidence. The Court held:

All in all, *considering that the petition for denial and cancellation of the CoC is summary in nature, the COMELEC is given much discretion in the evaluation and admission of evidence* pursuant to its principal objective of determining of whether or not the CoC should be cancelled. We held in *Mastura v. COMELEC*:

The rule that factual findings of administrative bodies will not be disturbed by courts of justice except when there is absolutely no evidence or no substantial evidence in support of such findings should be applied with greater force when it concerns the COMELEC, as

[45] 595 Phil. 449, 465-67 (2008).

the framers of the Constitution intended to place the COMELEC — created and explicitly made independent by the Constitution itself — on a level higher than statutory administrative organs. The COMELEC has broad powers to ascertain the true results of the election by means available to it. For the attainment of that end, it is not strictly bound by the rules of evidence.[46] **[emphasis, italics and underscoring supplied)**

In ***Cerafica***, the Court, ***again speaking through J. Perez,*** held that the COMELEC gravely abused its discretion in holding that Kimberly Cerafica (a candidate for councilor) did not file a valid CoC and subsequently cannot be substituted by Olivia Cerafica. Kimberly's CoC is considered valid unless the contents therein (including her eligibility) is impugned through a Section 78 proceeding. As Kimberly's CoC had not undergone a Section 78 proceeding, then her CoC remained valid and she could be properly substituted by Olivia. In so doing, the Court quoted and reaffirmed its previous ruling in ***Luna v. COMELEC:***[47]

"If Hans Roger made a material misrepresentation as to his date of birth or age in his certificate of candidacy, *his eligibility may only be impugned through a verified petition to deny due course* to or cancel such certificate of candidacy under Section 78 of the Election Code."[48] [italics supplied]

e) The *ponencia's* conclusion would wreak havoc on existing jurisprudence recognizing the COMELEC's jurisdiction to determine a candidate's eligibility in the course of deciding a Section 78 proceeding before it.

The *ponencia* disregarded the following cases where it recognized the COMELEC's jurisdiction to determine eligibility as part of determining false material representation in a candidate's CoC. Cases involving Section 78 since the year 2012 (the year the COMELEC amended its Rules of Procedure) are shown in the table below:

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[46] *Ongsiako Reyes v. Comelec,* G.R. No. 207264, June 25, 2013, 699 SCRA 522, 543-544.

[47] G.R. No. 165983, April 24, 2007.

[48] *Cerafica v. Comelec,* G.R. No. 205136, December 2, 2014.

Case	*Ponente,* Division	Ruling
Aratea v. Comelec, G.R. No.195229 October 9, 2012	Carpio, J. En banc	The Court affirmed the Comelec's determination that Lonzanida has served for three terms already and therefore misrepresented his ligibility to run for office; this, according to the Court, is a ground for cancelling Lonzanida's CoC under Section 78.
Maquiling v. Comelec, G.R. No. 195649, April 16, 2013	Sereno, CJ, En banc	The Court reversed the Comelec's determination of the Arnado's qualification to run for office because of a recanted oath of allegiance, and thus cancelled his CoC and proclaimed Maquiling as the winner. The Court, in reviewing the Comelec's determination, did not dispute its capacity to determine Arnado's qualifications.
Ongsiako Reyes v. Comelec, G.R. No. 207264, June 25, 2013	Perez, J., En Banc	The Court affirmed the Comelec's evaluation and determination that Ongsiako-Reyes is not a Philippine citizen and a resident of the Philippines. It even upheld the Comelec's cognizance of "newly-discovered evidence" and held that the Comelec an liberally construe its own rules of procedure for the speedy disposition of cases before it.
Ceraflca v. Comelec, G.R. No. 205136 December 2, 2014	Perez, J. En Banc Decision	The Court held that the Comelec gravely abused its discretion in holding that Kimberly did not file a valid CoC and subsequently cannot be substituted by Olivia; in so doing, the Court quoted and reaffirmed its previous ruling in *Luna v Comelec,* thus: "If Hans Roger made a material misrepresentation as to his date of birth or age in his certificate of candidacy, his eligibility may only be impugned through a verified petition to deny due course to or cancel such certificate of candidacy under Section 78 of the Election Code."
Luna v. Comelec, G.R. No. 165983 April 24, 2007 (cited as reference to its affirmation in *Cerafica)*	Carpio, J. En Banc	Since Hans Roger withdrew his certificate of candidacy and the COMELEC found that Luna complied with all the procedural requirements for a valid substitution, Luna can validly substitute for Hans Roger. x x x If Hans Roger made a material misrepresentation as to his date of birth or age in his certificate of candidacy, his eligibility may only be impugned

		through a verified petition to deny due course to or cancel such certificate of candidacy under Section 78 of the Election Code. **In this case, there was no petition to deny due course to or cancel the certificate of candidacy of Hans Roger. The COMELEC only declared that Hans Roger did not file a valid certificate of candidacy and, thus, was not a valid candidate in the petition to deny due course to or cancel Luna's certificate of candidacy. In effect, the COMELEC, without the proper proceedings, cancelled Hans Roger's certificate of candidacy and declared the substitution by Luna invalid.**

f) Rules 23 of the 2012 COMELEC Rules of Procedure does not limit the COMELEC's jurisdiction in determining the eligibility of a candidate in the course of ruling on a Section 78 proceeding.

The second paragraph in Rule 23 delineates the distinction between a Section 78 cancellation proceeding and a Section 68 disqualification proceeding; to avoid the muddling or mixing of the grounds for each remedy, the COMELEC opted to provide that petitions that combine or substitute one remedy for the other shall be dismissed summarily.

Naturally, the text of this second paragraph also appears in Rule 25, which provides for the grounds for a petition for disqualification.

Rule 23 provides:

Section 1. Ground for Denial or Cancellation of Certificate of Candidacy. –

A verified Petition to Deny Due Course to or Cancel a Certificate of Candidacy for any elective office may be filed by any registered voter or a duly registered political party, organization, or coalition of political parties on the exclusive ground that any material representation contained therein as required by law is false.

A Petition to Deny Due Course to or Cancel Certificate of Candidacy invoking grounds other than those stated above or

grounds for disqualification, or combining grounds for a separate remedy, shall be summarily dismissed;

Thus, Rule 23 recognizes material misrepresentation in the CoC as the sole ground for Section 78 without amending the definition of false material representation that jurisprudence has provided as early as 1999 in ***Salcedo II v. COMELEC:***[49]

The only difference between the two proceedings is that, under section 78, the qualifications for elective office are misrepresented in the certificate of candidacy and the proceedings must be initiated before the elections, whereas a petition for quo warranto under section 253 may be brought on the basis of two grounds - (1) ineligibility or (2) disloyalty to the Republic of the Philippines, and must be initiated within ten days after the proclamation of the election results. Under section 253, a candidate is ineligible if he is disqualified to be elected to office,[21] and he is disqualified if he lacks any of the qualifications for elective office.

x x x x x x x x x

Therefore, it may be concluded that the material misrepresentation contemplated by section 78 of the Code refer to qualifications for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws.[23] It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake:

x x x x x x x x x

Aside from the requirement of materiality, a false representation under section 78 must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.[25] In other words, it must be made with an intention to deceive the electorate as to ones qualifications for public office. xxx

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[49] G.R. No. 135886, August 16, 1999, 312 SCRA 447, 459.

B.1.a. *Effect of the ponencia's misinterpretation of Section 78 proceedings to the Court's certiorari jurisdiction over the present case*

If we were to follow the *ponencia's* limitation on the COMELEC's function to determine Poe's eligibility to become President in a Section 78 proceeding, the logical result would be that ***even this Court itself cannot rule on Poe's citizenship and residence eligibilities in the course of reviewing a Section 78 COMELEC ruling; any declaration regarding these issues would be obiter dictum.***

In practical terms, the Court's ruling only assured Poe the chance to run; conceivably, if she wins, the Court, through the Presidential Electoral Tribunal, will then rule that the people have spoken and that they cannot be denied their voice after the elections. Based on the present circumstances, this is a scenario that cannot be entirely ruled out.

To reiterate, the *ponencia* declared that the COMELEC has no jurisdiction to determine, *even preliminarily,* the eligibility of candidates prior to an election under a Section 78 proceeding, except for disqualifications already or previously acted upon by the proper authorities or where the facts are self-evident or of unquestioned or unquestionable veracity from which the falsity of representation could readily be determined.

Since the COMELEC lacks jurisdiction to rule and cannot even preliminarily determine questions of eligibility, then the issues involving the COMELEC's alleged grave abuse of discretion in ruling on Poe's eligibilities cannot effectively be resolved except through a ruling that, given the lack of authority, it was grave abuse of discretion for COMELEC to rule as it did. And given the same lack of authority, the reversal of the cancellation of her CoC must follow as a consequence. Thus, her CoC effectively remains valid.

The consequence of ruling that the COMELEC is without jurisdiction to determine eligibility as part of a Section 78 proceeding is that any other subsequent discussions by this Court upholding Poe's eligibilities would be *obiter dicta,* or

pronouncements that are not essential to the resolution of a case. With the COMELEC stripped of the jurisdiction to determine, *even preliminarily,* Poe's citizenship and residence, then its determinations are null and void, leading to the further conclusion that this Court no longer has any issue left to review and to decide upon as neither would it be necessary to determine Poe's eligibilities.

In other words, any pronouncements outside the COMELEC's limited jurisdiction in Section 78 would only be expressions of the COMELEC's opinion and would have no effect in the determination of the merits of the Section 78 case before it. Findings of ineligibility outside of the limits do not need to be resolved or even be touched by this Court. Thus, in the present case, Poe can simply be a candidate for the presidency, with her eligibilities open to post-election questions, if still necessary at that point.

B.1.b. Aruego's account of the deliberations, as cited in the ponencia

Ironically, the *ponencia's* citation of Jose M. Aruego's recounting of the deliberations even reinforces my position that the framers never intended to include foundlings within the terms of the 1935 Constitution's parentage provisions. Aruego allegedly said:

> **During the debates on this provision, Delegate Rafols presented an amendment to include as Filipino citizens the illegitimate children with a foreign father of a mother who was a citizen of the Philippines, and also foundlings; but this amendment was defeated primarily because the Convention believed that the cases, being too few to warrant the inclusion of a provision in the Constitution to apply to them, should be governed by statutory legislation. Moreover, it was believed that the rules of international law were already clear to the effect that illegitimate children followed the citizenship of the mother, and that foundlings followed the nationality of the place where they were found, thereby making unnecessary the inclusion in the Constitution of the proposed amendment.**[50]

[50] See p. 26 of the *ponencia* , citing 1 Jose M. Aruego, *The Framing of the Philippine Constitution* 209 (1949).

Aruego's account of the deliberations reinforces my position for the following reasons:

First, Aruego said that "this amendment was defeated *primarily* because the Convention believed that the cases, being too few to warrant the inclusion of a provision in the Constitution to apply to them, *should be governed by statutory legislation.*"

In saying this, Aruego also recounted that many, if not most, of the majority of those who voted against the inclusion of foundlings in the 1935 Constitution believed that the matter of their citizenship should be governed by statutory legislation because the cases of foundlings are too few to be included in the Constitution.

Thus, the principle of international law on foundlings is merely supportive of the primary reason that the matter should be governed by statute, or is a secondary reason to the majority's decision not to include foundlings in Article IV, Section 1 of the 1935 Constitution.

Notably, both the text of the deliberations of the 1934 Constitutional Convention and the account of its member Jose Aruego **do not disclose** that the intent behind the non-inclusion of foundlings in Article IV, Section 1 of the 1935 Constitution was **because they are deemed already included.**

What deliberations show is that a member of the Convention thought that it would be better for a statute to govern the citizenship of foundlings, which Aruego, in his subsequent retelling of what happened in the deliberations, described as the ***primary* belief** of the majority. At the very least, there was no clear agreement that foundlings were intended to be part of Article IV, Section 1.

The *ponencia's* ruling thus does not only disregard the distinction of citizenship based on the father or the mother under the 1935 Constitution; it also misreads what the records signify and thereby unfairly treats the children of Filipino mothers under the 1935 Constitution who, although able to trace their Filipino parentage, must yield to the higher categorization accorded to foundlings who do not enjoy similar roots.

Another drastic change appears to be coming for no clear and convincing legal reason in the present case: Section 78 would now be emasculated despite established rulings by this very Court on what the COMELEC can undertake within its Section 78 jurisdiction.

A close reading of *Ongsiako-Reyes v. COMELEC,* also penned by J. Perez as above noted, will show that the issues the COMELEC decided there were practically the same issues in this cited case. Yet, the Court's majority in the present case holds that the COMELEC has no jurisdiction to rule on the issues of a candidate's citizenship and residence requirements in the course of a Section 78 proceeding, despite its previous affirmation of the same COMELEC power in *Ongsiako-Reyes* also in a Section 78 proceeding. Have established precedents been sacrificed to achieve desired results?

But the worst impact yet on the Constitution is the discovery that ***this Court can play around <u>even with the express wordings of the Constitution.</u>*** While this may already be known to those in the legal profession, the reality becomes glaring and may be a new discovery for the general public because of the recent EDCA case; the present case and ruling may very well be considered another instance of judicial tinkering with the express terms of the Constitution.

B.1.c. *<u>Burden of Proof.</u>*

A contested issue that surfaced early on in these cases is the question: who carries the burden of proving that the petitioner is a natural-born Philippine citizen?

Lest we be distracted by the substance of this question, let me clarify at the outset that the cases before us are petitions for *certiorari* under Rule 64 (in relation to Rule 65) of the Rules of Court. In these types of petitions, the petitioner challenges the ruling/s made by the respondent pursuant to Article VIII, Section 1 of the Constitution. Thus, it is the petitioner who carries the burden of showing that the respondent, the COMELEC in this case, committed grave abuse of discretion.

Of course, in making the challenged ruling, the COMELEC had a wider view and had to consider the parties' respective situations at the outset. The present private respondents were the petitioners who sought the cancellation of Poe's CoC and who thereby procedurally carried the burden of proving the claim that Poe falsely represented her citizenship and residency qualifications in her CoC.

I would refer to this as the procedural aspect of the burden of proof issue. The original petitioners before the COMELEC (the respondents in the present petitions) – *from the perspective of procedure* – carried the burden under its Section 78 cancellation of CoC petition, to prove that Poe made false material representations; she claimed in her CoC that she is a natural-born Filipino citizen when she is not; she also claimed that she has resided in the Philippines for ten years immediately preceding the May 9, 2016 elections, when she had not. The original petitioners had to prove what they claimed to be false representations.

Thus viewed, the main issue in the case below was the false material representation, which essentially rested on the premises of citizenship and residence – is Poe a natural-born citizen as she claimed and had she observed the requisite qualifying period of residence?

The original petitioners undertook the task on the citizenship issue by alleging that Poe is a foundling; as such, her parents are unknown, so that she is not a Philippine citizen under the terms of the 1935 Constitution.

Poe responded by admitting that indeed she is a foundling, but claimed that the burden is on the original petitioners to prove that she is in fact a foreigner through proof that her parents are foreigners.

Since Poe indeed could not factually show that either of her parents is a Philippine citizen, the COMELEC concluded that the original petitioners are correct in their position that they have discharged their original burden to prove that Poe is not a natural-born citizen of the Philippines. To arrive at its conclusion, the COMELEC considered and relied on the terms of the 1935 Constitution.

With this original burden discharged, the burden of evidence then shifted to Poe to prove that despite her admission that she is a foundling, she is in fact a natural-born Filipino, either by evidence (not necessarily or solely DNA in character) and by legal arguments supporting the view that a foundling found in the Philippines is a natural-born citizen.

The same process was repeated with respect to the residency issue, after which, the COMELEC ruled that Poe committed false representations as, indeed, she is not a natural-born Philippine citizen and had not resided in the country, both as required by the Constitution.

These were the processes and developments at the COMELEC level, based on which the present Court majority now say that the COMELEC committed grave abuse of discretion for not observing the rules on the burden of proof on the citizenship and the residency issues.

Separately from the strictly procedural aspects of the cancellation of CoC proceedings, it must be considered that the petitioner, by filing a CoC, ***actively represents that she possesses all the qualifications and none of the disqualifications for the office she is running for.***

When this representation is questioned, particularly through proof of being a foundling as in the present case, the burden should rest on the present petitioner to prove that she is a natural-born Philippine citizen, a resident of the Philippines for at least ten years immediately prior to the election, able to read and write, at least forty years of age on the day of the election, and a registered voter. This is the opportunity that the COMELEC gave Poe to the fullest, and I see no question of grave abuse of discretion on this basis.

From the substantive perspective, too, a sovereign State has the right to determine who its citizens are.[51] By conferring citizenship

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[51] Alexander Marie Stuyt, *The General Principles of Law as Applied by International Tribunals to Disputes on Attribution and Exercise of State Jurisdiction* (2013), p. 101.

on a person, the State obligates itself to grant and protect the person's rights. In this light and as discussed more fully below, the list of Filipino citizens under the Constitution must be read as *exclusive* and *exhaustive.*

Thus, this Court has held that any doubt regarding citizenship must be resolved in favor of the State.[52] ***In other words, citizenship cannot be presumed; the person who claims Filipino citizenship must prove that he or she is in fact a Filipino.***[53] It is only upon proper proof that a claimant can be entitled to the rights granted by the State.[54]

This was the Court's ruling in *Paa v. Chan*[55] where this Court categorically ruled that it is incumbent upon the person who claims Philippine citizenship, to prove to the satisfaction of the court that he is really a Filipino. This should be true particularly after proof that the claimant has not proven (and even admits the lack of proven) Filipino parentage. ***No presumption can be indulged in favor of the claimant of Philippine citizenship, and any doubt regarding citizenship must be resolved in favor of the State.***

The Court further explained that the exercise by a person of the rights and/or privileges that are granted to Philippine citizens is not conclusive proof that he or she is a Philippine citizen. A person, otherwise disqualified by reason of citizenship, may exercise and enjoy the right or privilege of a Philippine citizen by representing himself to be one.[56]

Based on these considerations, the Court majority's ruling on burden of proof at the COMELEC level appears to be misplaced. On both counts, procedural and substantive (based

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[52] *Go v. Ramos,* 614 Phil. 451 (2009).

[53] *Ibid.*

[54] *J.* Bernas SJ, *The Constitution of the Republic of the Philippines A Commentary,* 1st edition (1987), p. 500, *citing* Justice Warren's dissenting opinion in *Perez v. Brownell,* 356 U.S. 44 (1958).

[55] *Paa v. Chan,* 128 Phil. 815 (1967).

[56] *Ibid.*

on settled jurisprudence), the COMELEC closely hewed to the legal requirements. Thus, the Court majority's positions on where and how the COMELEC committed grave abuse of discretion are truly puzzling. With no grave abuse at the COMELEC level, the present petitioner's own burden of proof in the present *certiorari* proceedings before this Court must necessarily fail.

PART C

MY ORIGINAL "SEPARATE CONCURRING OPINION" TO THE PONENCIA OF JUSTICE MARIANO DEL CASTILLO

I am submitting this original Separate Concurring Opinion to refute in detail the *ponencia's* main points that I disagree with. For convenience, the original numbering system of the original has been retained and I have introduced edits and supplied the footnotes that were missing when this Opinion was circulated on Monday, March 7, 2016.

The deadline for submission of Opinions was on March 8, 2016. The deliberation and the vote were originally scheduled for Wednesday, March 9, 2016 to allow the individual Justices to read through all the submitted Opinions. Unfortunately, for reasons not fully disclosed to me, the actual deliberation and voting took place on March 8, 2016 (when I was on leave for medical reasons).

Thus, while my Separate Concurring Opinion was circulated, made available on time to all the Justices and accounted for in the Court's count of votes, I did not have the full opportunity to orally expound on them. In this light, this Dissenting Opinion is my opportunity to cover the views I have not orally aired.

I.

The Relevant Facts and their Legal Significance.

I.A. The Petitions for Cancellation of CoC and the COMELEC ruling

Four (4) petitions were filed with the COMELEC to cancel Poe's CoC for the Presidency under Section 78 of the Omnibus Election Code *(OEC).*

The first petition before the COMELEC was the petition for cancellation filed by **Estrella C. Elamparo,** which was docketed as **G.R. No. 221697.**

The other three (3) petitions were similarly for the cancellation of Poe's CoC filed by separate parties – by **Francisco S. Tatad, Amado D. Valdez,** and **Antonio P. Contreras** – and are before this Court under **G.R. Nos. 221298-700.**

The petitions before this Court – all of them for the nullification of the COMELEC *en banc* rulings through a writ of *certiorari* – were consolidated for hearing and handling because they all dealt with the cancellation of Poe's CoC.

These petitions essentially raised **two grounds** as basis for the cancellation prayed for:

First, she falsely represented her **citizenship** in her CoC because she is not a natural-born Filipino citizen; and

Second, she falsely represented the period of her **residency** prior to the May 9, 2016 elections as she has not resided in the Philippines for at least ten (10) years before the day of the election.

These issues were raised based on the constitutional command that:

> SECTION 2. No person may be elected President unless he is a **natural-born citizen** of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a **resident of the Philippines for at least ten years** immediately preceding such election. [Article VII, 1987 Constitution, *emphasis and underscoring supplied*]

The COMELEC *en banc* – in the appeal that Poe filed from the COMELEC Divisions' decisions – ruled that Poe's CoC should be cancelled for the false representations she made regarding her citizenship and residency. In the petitions before us, Poe claims that the COMELEC *en banc* acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it made this ruling.

Thus, the issue before this Court is not *per se* about the COMELEC's legal authority to rule on the cancellation of Poe's CoC, but about the manner the COMELEC exercised its jurisdiction, its allegedly abusive acts that caused it to exceed its jurisdiction.

I say this under the view that the COMELEC's ***primary authority*** in this case is ***to pass upon the candidates' certificates of candidacy and to order their cancellation if warranted, for false representation on material points.*** But the COMELEC can, in the exercise of this authority, ***preliminarily (and as a necessarily included power)*** pass on the correctness of the ***claims made on the material points of citizenship, residency, and other qualifications.*** I explain this point more extensively below.

I.B. The Citizenship Table

The citizenship issues relate to Poe's status as a citizen of the Philippines and to the character of this citizenship: ***whether or not she is a Philippine citizen; if so, whether or not she is a natural-born citizen as the Constitution requires.***

The issues started because of the undisputed evidence that Poe is a foundling, which raised the question:

(a) what is the status of a foundling under the 1935 Constitution given that this is the governing law when Poe was found in September of 1968.

Poe was likewise naturalized as an American citizen and thereafter applied for the reacquisition of Filipino citizenship under RA No. 9225. This circumstance gave rise to the questions:

(a) was she qualified to apply under RA No. 9225 given that the law specifically applies only to former natural-born citizens;

(b) even granting *arguendo* that she can be considered natural-born, did she – under RA 9225 – reacquire

her natural-born status or is she now a naturalized citizen in light of the constitutional definition of who is a natural-born citizen?

The COMELEC, after considering the evidence and the surrounding circumstances, noted that Poe's citizenship claim was based on the material representation that she is a natural-born citizen of the Philippines when in fact, she is not; thus her representation on a material point was false. On this basis, the COMELEC resolved to cancel Poe's CoC based on her citizenship statements.

The false material representation started in Poe's application for re-acquisition of citizenship under RA No. 9225 which became the foundation for the exercise of critical citizenship rights (such as the appointment to the Movie and Television Review and Classification Board *[MTRCB],* her candidacy and election to the Senate, and her present candidacy for the presidency).

Had Poe early on identified herself as a foundling *(i.e.,* one who cannot claim descent from a Filipino parent), then the Bureau of Immigration and Deportation *(BID)* would have at least inquired further because this undisclosed aspect of her personal circumstances touches on her ***former natural-born citizenship status*** – the basic irreplaceable requirement for the application of RA No. 9225.

Notably, the BID approval led the career of Poe to her appointment to the MTRCB and her subsequent election to the Senate. Both positions require the natural-born citizenship status that the BID previously recognized in approving Poe's RA No. 9225 application.

For easy and convenient reference and understanding of the essential facts and issues, separate tables of the major incidents in the life of Poe, relevant to the issues raised and based on the duly footnoted parties' evidence, are hereby presented.

Table I

CITIZENSHIP TABLE

Date	Particulars (with *legal significance*)
September 3, 1968	The date Poe was found; her parentage as well as the *exact date* and actual *place of birth* are unknown. Poe claims that she was born on this date when Edgardo Militar found her at the Jaro Iloilo Cathedral Cathedral.[57] • *Legal significance: Our Constitution requires a President to be a natural-born citizen. Poe admitted that she is a foundling (i.e.,. one born of unknown parents)*[58] *and later claimed that she is a natural-born-citizen.*[59]

[57] See petition in G.R. No. 221697, pp. 12, 14; and petition in G.R. Nos. 221698-700, pp. 15, I7. See also Foundling Certificate, Annex "M-series", Exhibit "1" (both of Tatad, and Contreras/Valdez case) in G.R. Nos. 221698-700; and Annex "1-series", Exhibit "1" (of Elamparo case) in G.R. No. 221697.

[58] See petition in G.R. No. 221697, pp. 10, 12 (pars. 12 and 13), 109-120 (subsection B.3), 112 (par. 148), and 120 (par. 156); and petition in G.R. Nos. 221698-700, pp. 6, 7, 15 (par. 17), 79-89 (subsection B.3), 84 (pars. 122 and 122.1), and 87 (par. 125).

[59] See petition in G.R. No. 221697, pp. 9, 10, 94 (subsection B), 97-109 (subsection B.2), 109-120 (subsection B.3), 153 (par. 202), 156 (par. 204.8), and 157 (par. 205); and petition in G.R. Nos. 221698-700, pp. 5, 24 (par. 47), 55-59 (subsection B and B.l), 69-76, 79-89, and 141-146 (subsection B.11).

	• *She made her representation on the basis of a claimed presumption of Filipino citizenship (apparently stemming from the circumstances under which she was found [on September 3, 1968 in Jaro, Iloilo]),*[60] *and on the basis of international law which allegedly gave her natural-born citizenship status.* • *Poe never formally claimed that she is presumed a Filipino citizen under Philippine adoption laws, although adoption was mentioned* <u>*in passing*</u> *in her Memorandum.*[61]

[60] See petition in G.R. No. 221697, pp. 104-108 (pars. 136-138); and petition in G.R. Nos. 221698-700, pp. 72-76 (pars. 106-108).

[61] See Paragraph 4.23.8 of Poe's Memorandum with Formal Offer of Evidence and Motion for Reconsideration, both in the Tatad case, Annexes "N" and "U" of G.R. Nos. 221698-700.

Paragraph 4.23.8 stated:

ii. Official acts in recognition of Respondent's[Poe's] Philippine citizenship

4.23.8. On 13 May 1974, the San Juan Court issued a Decision granting the Spouses Poe's petition to adopt Respondent. Article 15 of the Civil Code states that "<u>(l)aws</u> relating to family rights and duties, or to the <u>status</u>, condition and legal capacity of persons are binding upon <u>citizens</u> of the Philippines, even though living abroad." Respondent does not argue, and has never argued, that her adoption by the Poe spouses conferred citizenship on her. However, the adoption affirms that Respodent was a a Filipino *in the first place.* The San Juan Court could not have applied Philippine adoption law (which relates to "family rights and duties" and to "status" of persons), if it did not in the first place, consider Respondent to be a Filipino who would be "bound" by such laws.

September 6, 1968	Emiliano reported Poe as a foundling with the Office of the Civil Registrar *(OCR)* in Jaro, Iloilo for registration.[62] • *Legal significance: official record that Poe is a foundling. No legal question has been raised about this document.*
November 27, 1968	The OCR issued the foundling certificate under the name "Mary Grace Natividad Contreras Militar."[63] • *The original Certificate of Live Birth dated November 27, 1968 contains the notation " foundling" and now appears to have erasures, to reflect apparently the subsequent adoption of Poe by Ronald Allan Poe and Jesusa Sonora Poe.*

Page 24 of Poe's Motion for Reconsideration, on the other hand, read:

30.6. On 13 May 1974, the San Juan Court issued a Decision granting the Spouses Poe's petition to adopt Respondent. Respondent does not argue that her citizenship is derived from her Filipino adoptive parents; rather it is her position that the adoption affirms that she was a Filipino *in the first place.* The San Juan Court could not have applied Philippine adoption law (which relates to "family righs and duties" and to "status" of persons), if it did not in the first place, consider Respondent to be a Filipino who would be "bound " by such laws.

[62] See petition in G.R. No. 221697, pp. 12,14; and petition in G.R. Nos. 221698-700, pp. 15,17. See also Foundling Certificate, Annex "M-series", Exhibit "1" (both of Tatad, and Contreras/Valdez case) in G.R. Nos. 221698-700; and Annex "I"-series", Exhibit "1" (of Elamparo case) in G.R. No. 221697.

[63] Foundling Cerificate (LRC 4175), Annex "M-series", Exhibit "1" (both of Tatad, and Contreras/Valdez case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "1" (of Elamparo case) in G.R. No. 221697.

1973	When Poe was five years old, Ronald Allan Poe and Jesusa Sonora Poe filed a petition for Poe's adoption.[64]
May 13, 1974 In 2006	The court approved the Spouses Poe's petitionfor adoption. Poe's name was changed to "Mary Grace Sonora Poe.[65] • *Legal Significance: She officially assumed the* ***<u>status</u>*** *<u>of a legitimate child by adoption</u> of the Spouses Poe, but the adoption did not affect her citizenship status; under P.D. 603 (The Child and Youth Welfare Code), the dopted child does not follow the citizenship of the adopting parents.*[66] • *Significantly, no question arose regarding Poe's legal capacity to be adopted as the law likewise does not bar the adoption of an alien.*[67]

[64] See petition in G.R. No. 221697, par. 14; and petition in G.R. Nos. 221698-700, par. 19.

[65] MTC Decision, Annex "M-series", Exhibit "2" (of Tatad case) in G.R. Nos. 221698-700; and Annex "1-series", Exhibit "2" (of Elamparo case) in G.R. No. 221697.

See also Certificate of Finality dated October 27, 2005, Annex "M-series", Exhibit "2-A" (of Tatad case) in G.R. Nos. 221698-700; and Annex "1-series", Exhibit "2-A" (of Elamparo case) in G.R. No. 221697.

[66] Art. 39(1) of PD 603.

[67] See Articles 337 and 339 of the Civil Code and Section 2, Rule 99 of the Rules of Court.– the governing laws and rules on adoption at the time Grace Poe

	• *Jesusa Sonora Poe registered Poe's birth and secured a birth certificate from the National Statistics Office on May 4, 2006. The certificate did not reflect that she was a foundling who had been adopted by the spouses Poe.*[68] *The changes were in accordance with Adm. Order No. 1, Series of 1993, the Implementing Rules on the Civil Registry law, and P.D. 603 (The Child and Youth Welfare Code) which specifically allows the confidential treatment of the adoption.*
December 13, 1986	The Comelec issued a voter's identification card to Poe for Precinct No. 196, Greenhills, San Juan, Metro Manila.[69]

was adopted by the spouses Poe. Articles 337 and 339 provide who may be adopted; impliedly, they allow adoption of aliens, save those aliens whose government the Republic of the Philippines has broken diplomatic relations. Section 2 of Rule 99, on the other hand, enumerates the contents of a petition for adoption; the petition does not require allegation that the child is a Philippine citizen.

[68] See NSO Birth Certificate, Annex "M-series", Exhibit "10" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "10" (of Elamparo case) in G.R. No. 221697.

[69] See petition in G.R. No. 221697, par. 15; and petition in G.R. Nos. 221698-700, par. 20. Annex "M-series", Exhibit "3" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "3" (of Elamparo case) in G.R. No. 221697.

	• *Legal Significance: The records of the case do not disclose the documents Poe used to support her voter registration, but she must have surely claimed to be a Filipino citizen; otherwise, the voter's ID would not have been issued.*[70]
April 4, 1988	Poe obtained her Philippine Passport No. F927287[71] from the Ministry of Foreign Affairs. She renewed her passport on April 5, 1993 (Passport No. L881511) and on May 19, 1998 (Passport No. DD155616).[72] • *Legal Significance: She could have been granted a passport only if she had applied as, and claimed that she is, a Filipino citizen.*[73]

[70] See Article V, Section 1 of the Constitution. It reads:

SECTION l. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage. (emphasis supplied]

[71] See petition in G.R. No. 221697, p. 13; and petition in G.R. Nos. 221698-700, 17. Annex "M- series", Exhibit "4" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "4" (of Elamparo case) in G.R. No. 221697.

[72] Annex "M-series", Exhibits "4-A" and "4-B" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibits "4-A" and "4-B" (of Elamparo case) in G.R. No. 221697.

[73] Section 5 of RA No. 8239 (Philippine Passport Act of 1996) pertinently states:

	Filipino citizenship is expressely stated on the faces of the passports.[74] • The exercise of the rights of a Filipino citizen does not ripen to nor can it be the basis for claim of Filipino citizenship.[75]
July 29 , 1991	Poe left for the U.S. after she married Daniel Llamazares) in the Philippines on July 27, 1991.[76]

SECTION 5. Requirements for the Issuance of Passport. — No passport shall be issued to an applicant unless the Secretary or his duly authorized representative is satisfied that the applicant is a Filipino citizen who has complied with the following requirements:

a) A duly accomplished application form and photographs of such number, size and style as may be prescribed by the Department;

x x x x x x x x x

g) If the applicant is an adopted person, the duly certified copy of court order of adoption, together with the original and amended birth certificates duly issued and authenticated by the Office of the Civil Registrar General shall be presented: Provided, That in case the adopted person is an infant or a minor or the applicant is for adoption by foreign parents, an authority from the Department of Social Welfare and Development shall be required: Provided, further, That the adopting foreign parents shall also submit a certificate from their embassy or consulate that they are qualified to adopt such infant or minor child x x x. [emphases supplied]

[74] Section 3(d) of RA No. 8239 states: "x x x (d) Passport means a document issued by the Philippine Government to its citizens and requesting other governments to allow its citizens to pass safely and freely, and in case of need to give him/her all lawful aid and protection.

See Poe's Philippine passport issued on May 19, 1998, October 2009, and March 18, 2014: and her Diplomatic passport issued on December 19, 2013, Annex "M-series" in GR Nos. 221698-700; and Annex "I-series" in G.R. No. 221697.

[75] *Paa v. Chan,* 128 Phil. 815, 824 (1967).

[76] See petition in G.R. No. 221697, p. 14; and petition in G.R. Nos. 221698-700, p. 18.

	• *Legal Significance: Her U.S. residency status did not affect the Philippine citizenship status reflected in her passport and voter's ID, but affected her Philippine residency status as soon as she applied for and was granted U.S. residency status. Specifically, she abandoned the Philippine domicile that she had from the time she was found.*[77]
October 18, 2001	Poe became a naturalized United States *(U.S.)* citizen.[78] • *Legal significance: Poe* ***lost whatever claim she had to Philippine citizenship*** *t through "express renunciation" of this citizenship.*[79]

[77] See *Coquilla vs. COMELEC,* 434 Phil. 861, 872-873 (2002); *Romualdez v. Comelec,* G.R. No. 119976, 248 SCRA 300, 328-329 (1995), citing *Faypon v. Quirino,* 96 Phil. 294 (1954); *Nuval v. Guray,* 52 Phil. 645 (1928); *Koh v. Court of Appeals,* 160-A Phil. 1034, 1042 (1975); *Caraballo v. Republic,* 114 Phil. 991 (1962); *Fule v. Court of Appeals,* 165 Phil. 785, 797-798 (1976).

[78] See petition in G.R. No. 221697, p. 15; and petition in G.R. Nos. 221698-700, p. 18.

[79] *"I hereby declare, on oath, that 1 absolutely and entirely renounce and abjure all allegiance and fidelity to foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same, that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national*

	U.S.citizenship confirmed her abandonment of the Philippine citizenship whose rights she had been exercising, as well as her Philippine residence.[80] • *Note that in her oath to the U.S., she* ***<u>"absolutely and entirely renounce[d] and abjure[d] all allegiance and fidelity . . . to any state. . . of whom or which I have heretofore been a subject or citizen."</u>*** *(This was the "infidelity" that the* ***Return of the Renegade*** *quotation, above, referred to.)* • She turned her back on the Philippines under these terms.
December 19, 2001	Poe obtained U.S. Passport No. 017037793, expiring on December 18, 2011.[81]

importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God."

Source: The Immigration and Nationality Act of the U.S. https://www.uscis.gov/us-citizenship/citizenship-through-naturalization (last accessed on February 15, 2016).

[80] See the Immigration and Nationality Act of the U.S. https://www.uscis.gov/us- citizenship/citizenship-through-naturalization (last accessed on February 7, 2016).

[81] Poe's U.S. passport, Annex "M-series", Exhibit "5" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "5" (of Elamparo case) in G.R. No. 221697.

<table>
<tr><td></td><td>• *Legal Significance: Part of her right as a U.S. citizen.*</td></tr>
<tr><td>October 18, 2001 to July 18, 2006</td><td>Various travels of Poe to the Philippines before she applied for Philippine citizenship under RA No. 9225. She used her U.S. Passport and entered the Philippines through Philippine *Balikbayan* visas.[82]
<table>
<tr><th>Dates of Arrival</th><th>Visa</th><th>Passport</th></tr>
<tr><td>December 27, 2001</td><td>Balikbayan</td><td>US Passport</td></tr>
<tr><td>January 13, 2002</td><td>Balikbayan</td><td>US Passport</td></tr>
<tr><td>November 9, 2003</td><td>Balikbayan</td><td>US Passport</td></tr>
<tr><td>April 8, 2004</td><td>Balikbayan</td><td>US Passport</td></tr>
<tr><td>December 13, 2004</td><td>Balikbayan</td><td>US Passport</td></tr>
<tr><td>May 24, 2005</td><td>Balikbayan</td><td>US Passport</td></tr>
<tr><td>September 14, 2005</td><td>Balikbayan</td><td>US Passport</td></tr>
<tr><td>January 7, 2006</td><td>Balikbayan</td><td>US Passport</td></tr>
<tr><td>March 11, 2006</td><td>Balikbayan</td><td>US Passport</td></tr>
<tr><td>July 5, 2006</td><td>Balikbayan</td><td>US Passport</td></tr>
</table>

• *Legal Significance: During this period, Poe – an American citizen – was a* ***visitor who had abjured all allegiance and fidelity to the Philippines;*** *she was not a Filipino citizen or a legal resident of the country.*</td></tr>
</table>

[82] See petition in G.R. No. 221697, p. 23; and petition in G.R. Nos. 221698-700, pp. 28-29. Annex "M-series", Exhibit "5" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "5" (of Elamparo case) in G.R. No. 221697.

July 7, 2006	She took her of oath allegiance to the Philippines.[83] • *Legal Significance: The start of the process of reacquiring Filipino citizenship by an alien under RA No. 9225.* ***The process assumes that the applicant was a NATURAL-BORN Philippine citizenship before she lost this citizenship.***
July 10, 2006	Poe filed with the Bureau of Immigration and Deportation *(BID)* applications for: (a) reacquisition of Philippine citizenship under Republic Act *(RA)* No. 9225; and (b) derivative citizenship for her three minor children.[84] • *Legal Significance: RA No. 9225 is avallable* ***only to former natural-born Filipino citizens.***[85] *Thus,*

[83] See petition in G.R. No. 221697, p. 20; and petition in G.R. Nos. 221698-700, p. 24. Annex "M-series", Exhibit "19" (of Tatad case), Exhibit "13" (of Contreras /Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "19" (of Elamparo case) in G.R. No. 221697.

[84] See petition in G.R. No. 221697, p. 20; and petition in G.R. Nos. 221698-700, p. 25. Annex "M-series", Exhibits "20" and "21" to "21-B" (of Tatad case), Exhibits "14" and "15" to "15-B" (of Contreras/Valdez cases) in G.R. No. 221698-700; and Annex "I-series", Exhibits "20" and "21" to "21-B" (of Elamparo case) in G.R. No. 221697.

[85] See Section 3 of RA No. 9225. It pertinently reads:

Section 3. *Retention of Philippine Citizenship* — Any provision of law to the contrary notwithstanding, natural-born citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed

	the validity of her RA No. 9225 reacquired Philippine citizenship depended on the validity of her natural born citizenship claim. • *She falsely represented **under oath** in her RA No. 9225 application that **she was a former natural-born citizen of the Philippines** and was the daughter of Ronald and Susan Poe, thereby also **concealing that she had been a foundling who was adopted by the Spouses Poe,** not their natural-born child. As an adopted child, she could not have been a natural-born citizen who followed the citizenship of the Spouses Poe under the rule of **jus sanguinis.*** • *This false material representation became the basis for her subsequent*

to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

x x x x x x x x x

Natural born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath. [emphases supplied]

	claim to be a natural-born citizen, notably in her MTRCB appointment, her election to the Senate and her present candidacy for V President. The COMELEC's ruling on Poe's CoC for President is now the subject of the present petitions. • *Despite the privilege under the adoption laws an rules*[86] *to keep the fact of adoption confidential, she still had the duty to disclose her foundling status under RA No. 9225 because this is material information that the law mandatorily requires to be made under oath as a condition for the application of the law.*[87]
July 18, 2006	The BID approved Poe's application for Philippine citizenship and the applications for derivative citizenship for her three children.[88]

[86] Art. 38 of PD 603.

[87] M.C. No. Aff-04-01, Secs. 2-5 and 8.

[88] See petition in G.R. No. 221697, p. 20; and petition in G.R. Nos. 221698-700, p. 25. Annex "M-series", Exhibit "22" (of Tatad case), Exhibit "16" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "22" (of Elamparo case) in G.R. No. 221697.

	• *Legal Significance: The approval of Poe's RA No. 9225 application, on its face, entitled her to claim dual citizenship status—Philippine and American.*[89] • To quote the BID Order approving Poe's application *the "petitioner was a former natural-born citizen of the Philippines,* ***<u>having been born</u>*** *<u>to Filipino parents</u> ...."* This Order immeasurably facilitated Poe's subsequent claim to natural-born status. • *The present case is not the medium to question validity of the BID approval, but still lays open the question of whether Poe committed false material representations in the application process—a question of fact that the*

[89] The full title of RA No. 9225 reads: "AN ACT MAKING THE CITIZENSHIP OF PHILIPPINE CITIZENS WHO ACQUIRE FOREIGN CITIZENSHIP PERMANENT. AMENDING FOR THE PURPOSE COMMONWEALTH ACT. NO. 63, AS AMENDED AND FOR OTHER PURPOSES".

See also Section 2 of RA 9225. It states:

Section 2. *Declaration of Policy* - It is hereby declared the policy of the State that all Philippine citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act.

See also excerpts of Congress deliberations on RA 9225 in *AASJS v. Hon. Datumanong,* 51 Phil. 110, 116-117 (2007).

	COMELEC ruled upon,[90] *i.e., that she falsely represented that she had been a natural-born citizen.*
July 31, 2006	The BID issued to Poe her Identification Certificate No. 06-10918[91] pursuant to RA No. 9225 in relation with Administrative Order No. 91, series of 2004 and Memorandum Circular No. AFF-2-005.
August 31, 2006	Poe registered again as voter in Barangay Santa Lucia, San Juan City.[92] • *Legal Significance: Under RA No. 9225, a dual citizen can vote but cannot be*

[90] See December 23, 2015 Comelec *en banc* resolution in the Elamparo case, Annex "B" of G.R. No. 221697; and December 23, 2015 Comelec *en banc* resolution in the Tatad, Contreras, and Valdez cases, Annex "B" of G.R. Nos. 221698-700.

[91] See petition in G.R. No. 221697, p. 21; and petition in G.R. Nos. 221698-700, p. 26. Poe's Identification Card was signed by Commission Alipio Fernandez: Annex "M-series", Exhibit "23" (of Tatad case), Exhibit "17" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "23" (of Elamparo case) in G.R. No. 221697.

See also the Identification Certificates of her children: Annex "M-series", Exhibits "23-A" to "23- C" (of Tatad case), Exhibits "17-A" to "17-C" (of Contreras/Valdez cases) in G.R. Nos. 221698- 700; and Annex "I-series", Exhibits "23-A" to "23-C" (of Elamparo case) in G.R. No. 221697.

[92] See petition in G.R. No. 221697, p. 21; and petition in G.R. Nos. 221698-700, p. 26. Annex "M- series", Exhibit "24" (of Tatad case), Exhibit "18" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "24" (of Elamparo case) in G.R. No. 221697.

<table>
<tr><td></td><td>voted upon to elective position unless a renunciation of the other citizenship is made.[93]</td></tr>
<tr><td>October 13, 2009</td><td>Poe obtained Philippine Passport No. XX473199.[94]
• Legal Significance: The passport was issued after the approval of Poe's RA No. 9225 citizenship and was therefore on the strength of the approval made.</td></tr>
<tr><td>July 18, 2006 – Otober 13, 2009

(The date of the BID's approval, to the date of the issuance of Poe's Philippine passport</td><td>Poe travelled abroad <u>using her U.S. passport;</u> the BID stamped the entry "RC" and/or "IC No. 06-10918" for her travels to and from the Philippines on these dates;[95]
<table>
<tr><td>Dates of Arrival</td><td>Visa</td><td>Passport</td></tr>
<tr><td>July 21, 2007</td><td>RC</td><td>US Passport</td></tr>
<tr><td>March 28, 2008</td><td>RC</td><td>US Passport</td></tr>
<tr><td>May 8, 2008</td><td>RC</td><td>US Passport</td></tr>
<tr><td>October 2, 2008</td><td>RC</td><td>US Passport</td></tr>
<tr><td>October 5, 2008</td><td>RC</td><td>US Passport</td></tr>
</table></td></tr>
</table>

[93] RA No. 9225, Sec. 5(1) and (2).

[94] See petition in G.R. No. 221697, p. 21; petition in G.R. Nos. 221698-700, p. 26. Annex "I-series", Exhibit "25" (of Elamparo case) in G.R. No. 221697; and Annex "M-series", Exhibit "25" (of Tatad case) in G.R. Nos. 221698-700.

[95] See petition in G.R. No. 221697, p. 23; and petition in G.R. Nos. 221698-700, pp. 28-29. Annex "M-series", Exhibit "5" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "5" (of Elamparo case) in G.R. No. 221697.

<table>
<tr><td></td><td><table><tr><td>April 20, 2009</td><td>RC</td><td>US Passport</td></tr><tr><td>May 21, 2009</td><td>RC</td><td>US Passport</td></tr><tr><td>July 31, 2009</td><td>RC</td><td>US Passport</td></tr></table>
• Legal Significance: The BID allowed Poe to enter and leave the country as “RC”. Atty. Poblador mentioned that “RC” means resident citizen” to claim the marking as evidence of continuing residency.</td></tr>
<tr><td>October 6, 2010</td><td>Poe was appointed Chair of the MTRCB.[96]
• Legal significance:Poe could have been appointed as MTRCB Chairperson <u>only if she had been a natural-born Filipino citizen.</u>[97]</td></tr>
</table>

[96] See petition in G.R. No. 221697, p. 23; and petition in G.R. Nos. 221698-700, pp. 28-29. Annex “M-series”, Exhibit “26” (of Tatad case), Exhibit “19” (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex “I-series”, Exhibit “26” (of Elamparo case) in G.R. No. 221697.

[97] See Sections 2 of Presidential Decree *(PD)* No. 1986, enacted on October 5, 1985.

Section 2 pertinently provides:

Section 2. Composition; Qualifications; Benefits - The BOARD shall be composed of a Chairman, a Vice-Chairman and thirty (30) members, who shall all be appointed by the President of the Philippines. The Chairman, the Vice-Chairman, and the members of the BOARD, shall hold office for a term of one (1) year, unless sooner removed by the President for any cause. x x x.

No person shall be appointed to the BOARD, unless he is a natural-born citizen of the Philippines, not less than twenty-one (21) years of age, and of good moral character and standing in the community x x x. [emphasis supplied]

October 20, 2010	Poe renounced her U.S. allegiance and citizenship to comply with RA No. 9225's requirements.[98] • *Legal Significance: Her renunciation of U.S. citizenship complied with the requirements of RA No. 9225 and would have made her a "pure" Filipino citizen if she had validly reacquired Philippine citizenship under this law.*[99] • *A seldom noticed aspect of this renunciation is that <u>Poe only renounced her US. citizenship because it was required by her appointment and subsequent assumption to office at the MTRCB</u>.*[100]
October 21, 2010	Poe took her Oath of Office for the position of MTRCB Chairperson.[101]

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[98] See petition in G.R. No. 221697, p. 22; and petition in G.R. Nos. 221698-700, p. 29. Annex "M- series", Exhibit "27" (of Tatad case), Exhibit "21" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "27" (of Elamparo case) in G.R. No. 221697.

[99] See *Japzon v. Comelec,* 596 Phil. 354 (2009).

[100] See petition in G.R. No. 221697, p. 21, par. 49; and petition in G.R. Nos. 221698-700, pp. 26-27, par. 54.

Under Sec. 5(3) of RA No. 9225, "[t]hose appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: Provided, that they <u>renounce their oath of allegiance to the country</u> <u>where they took that oath.</u>" [Emphases and underscoring supplied]

[101] See Annex "M-series", Exhibit "29" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I- series", Exhibit "29" (of Elamparo case) in G.R. No. 221697.

October 26, 2010	Poe assumed the duties and responsibilities of the Office of the MTRCB Chairperson.[102] • *Legal significance: Poe could have been appointed as MTCRB Chairperson* ***<u>only if she had been a natural-born Filipino citizen</u>***.[103] U.S. government actions on the renunciation of U.S. citizenship that Poe made. The U.S. immigration noted in Poe's passport that she repatriated herself on this date.[104]
July 12, 2011	Poe executed the Oath/Affirmation of Renunciation of U.S. Nationality at the U.S. Embassy in Manila.[105]

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[102] See Annex "M-series", Exhibit "26-A" (of Tatad case), Exhibit "20" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "26-A" (of Elamparo case) in G.R. No. 221697.

[103] See Section 2 of Presidential Decree *(PD)* No. 1986, enacted on October 5, 1985. Section 2 pertinently provides:

Section 2. Composition; Qualifications; Benefits - The BOARD shall be composed of a Chairman, a Vice-Chairman and thirty (30) members, who shall all be appointed by the President of the Philippines. The Chairman, the Vice-Chairman, and the members of the BOARD, shall hold office for a term of one (1) year, unless sooner removed by the President for any cause. x x x.

No person shall be appointed to the BOARD, unless he is a natural-born citizen of the Philippines, not less than twenty-one (21) years of age, and of good moral character and standing in the community x x x. [emphasis supplied]

[104] Annex "M-series", Exhibit "5" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "5" (of Elamparo case) in G.R. No. 221697.

[105] See petition in G.R. No. 221697, p. 24; petition in G.R. No. 221697, p. 30. Annex "M-series", Exhibit "30" (of Tatad case), Exhibit "22" (of Contreras/

December 9, 2011	She also executed a Statement of Voluntary Relinquishment of U.S. Citizenship.[106]
February 3, 2012	The U.S. Vice Consul signed a Certificate of Loss of Nationality of the U.S.[107] The U.S. Department of State approved the Certificate of Loss of U.S. Nationality.[108] • *Legal significance: Confirmatory renunciation, before U.S. authorities, of her previous renunciation under RA No. 9225. Up until these series of acts, Poe was a dual citizen.* • *Legally, this was the* ***conclusive evidence*** *that she had abandoned her U.S. domicile; as a traveler carrying a purely Philippine passport, she could no longer*

Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "30" (of Elamparo case) in G.R. No. 221697.

[106] Annex "M-series", Exhibit "30-A" (of Tatad case), Exhibit "23" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "30-A'' (of Elamparo case) in G.R. No. 221697.

[107] Annex "M-series", Exhibit "31" (of Tatad case), Exhibit "24" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "31" (of Elamparo case) in G.R. No. 2216971.

[108] Annex "M-series", Exhibit "31" (of Tatad case), Exhibit "24" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "31" (of Elamparo case) in G.R. No. 221697.

	<u>*travel at will to and from the U.S. nor reside in that country.*</u>
October 2, 2012	Poe filed her *CoC* for Senator for the May 13, 2013 Elections; she stated that she is a natural-born Filipino citizen.[109] • *Legal Significance:* <u>*This is another case involving the material representation of being a natural-born Filipino. having been born to Ronald Allan Poe and Jesusa Sonora Poe.*</u> • ***She was elected Senator without any question about her citizenship being raised.***
November 18, 2015	The Senate Electoral Tribunal *(SET)* (voting 5 to 4) issued its Decision[110] dismissing the *Quo Warranto* petition of Rizalito David which was based on the claim that Poe is not a natural-born citizen of the Philippines.

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[109] Annex "M-series, Exhibit "32" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I", Exhibit "32" (of Elamparo case) G.R. No. 221697.

See also Comelc *en banc* December 11, 2015 resolution in SPA No. 15-200 (DC), SPA No. 15-007 (DC), and SPA No. 15-139 (DC), pp. 43 and 47, Annexes "A" and "B" in G.R. Nos. 221698-700.

[110] Annex"M-series", Exhibit "43" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "43" (of Elamparo case) in G.R. No. 221697.

	• *Legal Significance – The SET ruling does not bind nor bar the COMELEC from ruling on the cancellation of CoC petitions because these tribunals are different, the cause of actions before them are different, and the parties are likewise different.* • *Significantly, the dissents at the SET were wholly based on legal considerations– on the Constitution, on international law, and Philippine statutes. The SET majority ruling relied more on political considerations.*
October 15, 2015	Poe filed her **CoC**[111] **for PRESIDENT** for the May 9, 2016 Elections; **she signed the statement under oath that she is a NATURAL-BORN CITIZEN.** • *Legal Significance: This is the citizenship issue in the present case which posed to the Comelec 2 sub-issues:* ***First.*** *Is Poe a natural-born Filipino citizen after considering*

[111] See petition in G.R. Nos. 221698-700, p. 16; and petition in G.R. No. 221697, pp. 62-63 and 70-72. Annex "C" both in G.R. No. 221697 and G.R. Nos. 221698-700.

	her foundling status, her acquisition of U.S. citizenship and the consequent loss of her claimed natural-born Philippine citizenship, and her alleged reacquisition under RA No. 9225? ***<u>Second.</u>*** *Since she claimed she was a natural-born citizen, did she commit false material representations in her CoC and in the official documents supporting her claim? If she did, should this false material representation lead to the cancellation of her CoC?* *Given the succession of falsities that Poe made on her natural-born status, may the COMELEC be faulted with GAD for ruling as it did?* • *Ironically, she claims in the present CoC cancellation case that the grant by the Philippines of her right to vote, her passport, and her appointment to the MTRCB should be considered evidence of government recognitions of her natural-born Philippine citizen*

	status.[112] ***She thus wants her very own misdeeds to be the evidence of her natural-born status.*** • *The previous false claims open the question: could they count as evidence of natural-born status if they have all been rooted on documents that were based on misrepresentations?* • *More importantly, could her election or appointment to public office have worked to automatically grant or restore her Philippine citizenship?* • *While the fact of adoption is confidential information in the Amended Certificate of Live Birth (but must appear in the Registry of Birth), the grant of confidentiality is not an absolute shield against the disclosure of being a foundling nor a defense against false representation. While in RA No. 9225, the natural-born requirement is a statutory one that arguably stands at the same level and footing as the confidential*

[112] See petition in G.R. No. 221697, pp. 102-104; and petition in G.R. Nos. 221698-700, pp. 69-72.

	privilege on the law on adoption, ***in the present case, the natural-born requirement is a constitutional one that stands on a very much higher plane than the confidentiality privilege.*** *In the latter case , national interest is already plainly involved in electing the highest official of the land.* • *Note, too, that in* ***Frivaldo v. COMELEC,***[113] *the Court ruled that the election of a former Filipino to office does not automatically restore Philippine citizenship, the possession of which is an indispensable requirement for holding public office. "The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this case, that the candidate was qualified."*[114]

I.C. RESIDENCY TABLE

The residency issues mainly stemmed from two events – **(1) the naturalization of Poe as a U.S. citizen;** and **(2)**

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[113] 255 Phil. 934 (1989).

[114] *Frivaldo v. Comelec,* 255 Phil. 934 (1989).

her application for reacquisition of Philippine citizenship under RA No. 9225.

The **first** made her a domiciliary of the U.S.,[115] while the **second** (assuming the claimed reacquisition to be valid) gave her the right to reside in the Philippines and to be considered a domiciliary of the Philippines for the exercise of her political rights, ***i.e.*, for election purposes,** based on her compliance with the requisites for change of residence. Still assuming that she complied with the RA 9225 requisites, the consolidated petitions still pose the following questions to the COMELEC and to this Court:

(a) whether she became a resident of the Philippines for election purposes; and

(b) if so, when did she become a resident.

The COMELEC, after considering the evidence and the surrounding circumstances, ruled that she engaged in false material representations in claiming her residency status in her CoC for the Presidency; ***she tailor-fitted her claim to the requirements of the position by deviating from the claim she made when she ran for the Senate.***

While she claimed that a mistake intervened in her Senate CoC, she failed to adduce evidence on the details and circumstances of the mistake, thus making her claim a self-serving one. Her claim, too, went against established jurisprudence which holds that the counting of the period of residency for election purposes starts – ***at the earliest*** **–** from the approval of the RA No. 9225 application.

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[115] US citizenship acquires requires a prior period of permanent residence in that country.

Table 2

THE RESIDENCY TABLE

Date	Particulars *(with legal significance)*
Days prior to September 3, 1968– the date Poe found in Jaro, Iloilo	When Poe's parentage unknown, her residence from the time of her birth until she was found is likewise unknown. • *Legal Significance: Poe's circumstances of birth have been a big cipher from the very beginning.*
September 3, 1968[116]	This is Poe's declared birthday, which is really the date Poe was found by Edgardo Militar at the Jaro Iloilo Cathedral. She was subsequently given to the care of Emiliano Militar and his wife, residents of Jaro, Iloilo. • *Legal Significance: The spouses Militar became Poe's de facto guardians; hence, Poe technically became a resident of Jaro, Iloilo.*
1973	Ronald Allan Poe and Jesusa Sonora Poe filed a petition for Poe's adoption.[117]

[116] See petition in G.R. No. 221697, pp. 12, 14; and petition in G.R. Nos. 221698-700, pp. 15, 17. See also Foundling Certificate (LCR 4175), Annex "M-series", Exhibit "1" (both of Tatad and Contreras/Valdez case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "1" (of Elamparo case) in G.R. No. 221697.

[117] See petition in G.R. No. 221697, par. 14, and petition in G.R. Nos. 221698-700, par. 19.

May 13, 1974	The court approved the Spouses Poe's petition for adoption. Poe's name was changed to "Mary Grace Sonora Poe.[118]
	• *Legal Significance: She officially assumed the status of a legitimate child after the Spouses Poe adopted her. She then followed her adoptive parents' residence as her domicile of origin.* • *Under the Civil Code, the general effect o f a decree of adoption is to transfer to the adoptive parents parental authority over the adopted child ...they must have the same residence.*[119]
December 13, 1986	The COMELEC issued a voter's identification card to Poe for Precinct No. 196, Greenhills, San Juan, Metro Manila.[120]

[118] MTC Decision, Annex "M-series", Exhibit "2" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "2" (of Elamparo case) in G.R. No. 221697.

See also Certificate of Finality dated October 27, 2005, Annex "M-series", Exhibit "2-A" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "2-A" (of Elamparo case) in G.R. No. 221697.

See also OCR Certification of receipt of MTC Decision, Annex "M-series", Exhibit "2-B" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "2-B" (of Elamparo case) in G.R. No. 221697.

[119] See Tolentino, A. (1960), *Civil Code of the Philippines,* Vol. I, pp. 651-652, in relation to p. 624.

[120] See petition in G.R. No. 221697, par. 15; and petition in G.R. Nos. 221698-700, par. 20. Annex "M-series", Exhibit "3" (of Tatad case) in

	• *Legal Significance: She could have been registered as a voter* ***<u>only if she had represented that she was a Filipino citizen</u> and <u>a resident of the Philippines</u>*** *for at least one year and of Greenhills, San Juan, MetroManila for at least six months immediately preceding the elections.*[121]
1988	Poe went to the U.S. to continue her tertiary studies at the Boston College in Chestnut Hill, Massachusetts.[122] • *Legal Significance: Poe remained a Philippine resident while studying in the US. Absence from Philippine domicile to pursue studies overseas does not constitute loss of domicile or residence.*
1991	Poe graduated from Boston College.[123] • *Legal significance. Absence from the domicile of origin to pursue studies does not constitute loss of domicile or residence.*

G.R. Nos. 221698-700; and Annex "I-series", Exhibit "3" (of Elamparo case) in G.R. No. 221697.

[121] See Article V, Section 1 of the Constitution.

[122] See petition in G.R. No. 221697, p. 14; and petition in G.R. Nos. 221698-700, p. 17.

[123] See petition in G.R. No. 221697, p. 12, 14; and petition in G.R. Nos. 221698-700, pp. 15, 17.

	• *While a student in the U.S., Poe's permanent residence remained in the Philippines; there was intent to return to the Philippines or* ***animus revertendi.***[124] *There is no evidence or prove intent to make Boston her fixed and permanent home.*[125] • *Thus, Poe was a permanent Philippine resident for 23 years (1968 to 1991).*
July 29, 1991	Poe left for the U.S. after she married Daniel Llamanzares (an American citizen of Filipino extraction) in the Philippines on July 27, 1991.[126] • *Legal Significance: Her initial US stay was presumably preparatory to being a* ***permanent resident of the U.S.*** *for purposes of the US. citizenship that she eventually claimed.* • *Significantly, Poe admits that she willingly chose to live with her husband in the U.S., and thus left on July 29,*

[124] *Faypon v. Quirino,* 96 Phil. 294 (1954); *Nuval v. Guray,* 52 Phil. 645 (1928); *Koh v. Court of Appeals,* 160-A Phil. 1034, 1042 (1975); *Caraballo v. Republic,* 114 Phil. 991, 995 (1962); *Fule v. Court of Appeals,* 165 Phil. 785, 797-798 (1976).

[125] *Ibid.*

[126] See petition in G.R. No. 221697, p. 14; and petition in G.R. Nos. 221698-700, p. 18.

	1991. Very clearly, ***<u>Poe intended to abandon her Philippine residence</u>*** *for a new residence in the U.S. when she went with her husband to the U.S.*[127]
1991-2001	Poe lived with her husband and children in the U.S.[128] They travelled frequently to the Philippines but only to visit family and friends. • *Legal Significance: Poe remained a U.S. resident from the time she secured permanent U.S. visa status. The permanent resident stautus confirmed her intent to establish family life, and thus, residence, in the U.S.*[129]
October 18, 2001	Poe became a naturalized American Citizen[130] • *Legal significance: U.S. citizenship erased all doubts that Poe had completely abandoned her Philippine residence.*[131] *It confirmed*

[127] See petition in G.R. No. 221697, p. 14, par. 19; and petition in G.R. Nos. 221698-700, p. 17, par. 24.

[128] See petition in G.R. No. 221697, p. 14; and petition in G.R. Nos. 221698-700, p. 18.

[129] See petition in G.R. No. 221697, p. 14; and petition in G.R. Nos. 221698-700, p. 17.

[130] See petition in G.R. No. 221697, p. 15; and petition in G.R. Nos. 221698-700, p. 18.

[131] See *Coquilla vs. COMELEC,* 434 Phil. 861 (2002).

	as well that she had been a permanent resident of the U.S. before her application for U.S. citizenship. • *The Philippine domicile she abandoned was the domicile she had from the time she was adopted by the spouses Poe.*[132] • *To qualify for citizenship under U.S. naturalization laws, it is required that one must have been a permanent resident for 3 (three) years or more if one is filing for naturalization as the spouse of a U.S. citizen.*[133] • *Her subsequent acts of living and remaining in the U.S. for ten years until her naturalization in 2001 point to the conclusion that at some point during this time (after arrival in 1991), she was already a U.S. and could no longer be considered a Philippine resident.*

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[132] *Romualdez v. Comelec,* G.R. No. 119976, 248 SCRA 300, 328-329 (1995), citing *Faypon v. Quirino,* 96 Phil. 294 (1954); *Nuval v. Guray,* 52 Phil. 645, 651-652 (1928); *Koh v. Court of Appeals,* 160-A Phil. 1034 (1975); *Caraballo v. Republic,* 114 Phil. 991, 995 (1962); *Fule v. Court of Appeals,* 165 Phil. 785, 797-798 (1976).

[133] See US Immigration and Nationality Act. https://www.uscis.gov/us-citizenship/citizenship- through-naturalization (last accessed on February 7, 2016).

2004	Poe resigned from her work in the U.S. and *allegedly* never sought re-employment.[134] • *Legal Significance: Resignation from work had no immediate legal effect on residence and is thus immaterial to Poe's claimed Philippine residency status. Poe remained a U.S. resident and was in fact a U.S. citizen domiciled in that country.* • *Resignation from one's employment per se does not amount to abandonment of residence.*[135]
April 8, 2004 up to July 7, 2004	Poe travelled to the Philippines with her daughter, Hanna. Poe also wanted to give birth to Anika in the Philippines and to give moral support to her parents during her father's campaign for the presidency.[136] • *Legal significance: Poe remained a U.S. resident.*

[134] See petition in G.R. No. 221697, p. 16; and petition in G.R. Nos. 221698-700, p. 20.

[135] Jurisprudence tells us that absence from one's residence to pursue study or profession someplace else does not amount to abandonment of that residence (*Supra* note 7). Analogously, it can be argued that resignation from one's employment does not *ipso facto* translate to abandonment of residence (in cases where the place of employment is the same as the place of residence).

[136] See petition in G.R. No. 221697, p. 15; and petition in G.R. Nos. 221698-700, pp. 18-19. See also Poe's U.S. passport, Annex "M-series", Exhibit "5" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "5" (of E1amparo case) in G.R. No. 221697.

	• *Poe's travels (to and from the U.S and the Philippines) between April 2004 and February 2005 did not affect her U.S. residency status.* • *The admitted purposes for these travels had nothing to do with any intent to re-establish Philippine residence.*
July 8, 2004	Poe returned to the U.S. with her two daughters.[137] • *Legal significance: This return trip further proves that Poe remained a U.S. resident.*
December 13, 2004 up to February 3, 2005	Poe was in the Philippines when Fernando Poe, Jr. was hospitalized. She eventually took care of settling his affairs after he died.[138] • *Legal significance: Poe remained a U.S. resident.* • *The admitted purposes of her stay in the Philippines during this period had nothing to do with the re-establishment of her residence in the Philippines.*

[137] See petition in G.R. No. 221697, p. 15; and petition in G.R. Nos. 221698-700, p. 19.

[138] See petition in G.R. No. 221697, p.15; and petition in G.R. Nos. 221698-700, p. 19.

First Quarter of 2005	Poe and her husband allegedly decided to return to the Philippines for good.[139] • *Legal Significance: Poe did not abandon her U.S. residence. Their (Poe and her husband's) alleged intent are internal subjective acts that are meaningless without external supporting action under the legal conditions that would allow a change of domicile. Notably, Poe was in the Philippines during the year as a **Visitor under a Balikbayan visa.***[140] • *Mere change of residence in the **exercise of the civil right** to change residence is likewise different from a change of domicile for the **exercise of the political right** to be voted into public office. For the exercise of this political right, the candidate must be a Philippine citizen.* • *US. residency– which started in 1991 and which was later confirmed by Poe's acquisition*

[139] See petition in G.R. No. 221697, p. 16; and petition in G.R. Nos. 221698-700, pp. 19-20.

[140] See petition in G.R. No. 221697, p. 23; and petition in G.R. Nos. 221698-700, pp. 28-29. See Poe's U.S. passport, Annex "M-series", Exhibit "5" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "5" (of Elamparo case) in G.R. No. 221697.

	of U.S. citizenship- ***remained until specifically given up, for as long as the right to reside in the U.S. subsisted.*** Note: Poe argues that her travels to and initial stay in the Philippines were preparatory acts in the goal to establish residence in the Philippines. *Even assuming that they were preparatory acts, they are not material to the* **issue of** ***when Poe became a Philippine resident*** *(as contemplated by the Constitution and or election laws). They are* ***not also conclusive on when she abandoned her U.S. residence.***
In early 2005	Poe and her husband informed their children's schools that the children would be transferring to Philippine schools in the next semester.[141] • *Legal Significance: Poe remained a U.S. resident. This act establishes the intent to transfer schools, but does not, by itself, conclusively prove the intent to change*

[141] See petition in G.R. No. 221697, p. 16; and petition in G.R. Nos. 221698-700, p. 20. Annex "M-series", Exhibits "7" and "7-A" to "7-F" (of Tatad case), and Exhibits "3" and "3-A" to "3-F" (of Contreras and Valdez cases) in G.R. Nos. 221698-700; Annex "I-series", Exhibits "7" and "7-A" to "7-F" (of Elamparo case) in G.R. No. 221697.

	or to abandon her U.S. residence. • *Absence from her U.S. residence (and presence in the Philippines) to pursue studies does not constitute loss of U.S. domicile and acquisition of a new domicile in the Philippines.*
May 24, 2005	Poe returned to the Philippines and allegedly decided to resettle here for good.[142] Note that Poe ***<u>was still under a Balikbayan visa and was thus a visitor</u>*** to the Philippines.[143] *Poe argues that she re-established permanent Philippine residence at this point. Can a U.S. citizen, on a Balikbayan visit to the Philippines, thereby establish residence for purposes of the exercise of political rights in the Philippines?* • *Legal Significance: The evidence speak for themselves. Poe's Balikbayan visa does not point to or confirm any intent to permanently settle in the Philippines.*[144]

[142] See petition in G.R. Nos. 221697, p. 16; and petition in G.R. Nos. 221698-700, p. 20.

[143] Oral Arguments, January 19, 2016.

[144] See *Coquilla v. Comelec,* 434 Phil. 861, 875 (2002).

"Under §2 of R.A. No. 6768 (An Act Instituting a *Balikbayan* Program), the term *balikbayan* includes a former Filipino citizen who had been naturalized in a foreign country and comes or returns to the Philippines and, if so, he is entitled, among others, to a "visa-free entry to the Philippines for a period

	• *Since she entered the Philippines under a Balikbayan visa and was thus a temporary visitor to the country under Section 13 of CA 613 (as amended by RA No. 4376), her alleged intent was not supported by her contemporaneous act.* • Consider too from here on that from the perspective of ***change of domicile,*** although Poe's acts may collectively show her ***intent to settle in the Philippines,*** they do not conclusively ***the intent to abandon her U.S. domicile.*** *She was at this point still a U.S. citizen who had been a permanent resident since 1991 and who could return at will to the U.S. as a resident.*
March 2005 to November 2006	Poe and her husband transacted with shipping agents for the transport of their personal belongings and other personal property from the U.S. to the Philippines in view of their decision to resettle in the Philippines.[145]

of one (1) year" (§3(c)). It would appear then that when petitioner entered the country on the dates in question, he did so as a visa-free *balikbayan* visitor whose stay as such was valid for one year only." [emphasis supplied]

[145] See Annex "M-series", Exhibit "6-series" (of Tatad case), Exhibit "2-series" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "2-series" (of Elamparo case) in G.R. No. 221697.

	• *Legal Significance: Poe remained a U.S. resident temporarily in the Philippines, her visa status did not point to residence that could be credited as legal residence for election purposes. She might have been* ***physically present*** *in the Philippines but what was the nature of her stay in the Philippines? She was legally in the country* ***for purposes only of a temporary stay*** *and had no legally established basis to stay beyond this.*[146] • *An important point to note is that she was not exercising any political right to reside in the Philippines at this point.* • *Again, an obvious missing element was her clear intent to abandon her U.S. domicile. Her claimed acts do not clearly show Poe's intent to abandon her U.S. domicile.*
August 2005	Poe and her husband inquired with the Philippine authorities on

[146] See *Romualdez v. RTC,* G.R. No. 104960, 14 September 1993, 226 SCRA 408, 415-416.

	the procedure to bring their pet dog from the U.S.A. to the Philippines.[147] • *Legal Significance: Poe's inquiry did not affect her residency at all; she remained a U.S. resident, and is totally worthless as she did not even show by subsequent evidence that she actually brought the dog to the Philippines. This act, too, does not prove abandonment of their U.S. residence.*
June 2005	Poe enrolled her children in different schools in the Philippines.[148] • *Legal Significance: This act does not prove Poe's intent to abandon their U.S. domicile; Poe's children entered the Philippines for a temporary period under the Balikbayan program. Note too, that the enrollment in schools is only for a period of one school year. <u>At most, this shows that Poe and her</u>*

[147] See petition in G.R. No. 221697, p. 16; and petition in G.R. Nos. 221698-700, p. 20.

[148] See petition in G.R. No. 221697, p. 17; and petition in G.R. Nos. 221698-700, p. 21. See also Annex "M-series", Exhibits "7" to "7-F" (of Tatad case) and Exhibits "3" to "3-F" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibits "7" to "7-F" (of Elamparo case), in G.R. No. 221697.

	children were physically present in the Philippines at this time. Note that under certain conditions, aliens like Poe, can enroll their children in the Philippines.[149] • *Absence from her U.S. residence (and presence in the Philippines) to pursue studies does not conclusively point to the loss of U.S. domicile and acquisition of a new Philippine domicile. Note that Poe herself previously studied in the U.S. without losing her Philippine residence.*
July 22, 2005	Poe registered with and secured Tax Identification No. *(TIN)*[150] from

[149] See Section 9(f) of the Philippine Immigration Act of 1940, Executive Orders No. 423 (signed in June 1997) and Executive Order No. 285 (signed in September 4, 2000).

In 2011, the Bureau of Immigration records show that the Philippines had more than 26,000 foreign students enrolled in various Philippine schools; more than 7,000 of these are college enrollees while the rest were either in elementary and high school or taking short-term language courses (see http://globalnation.inquirer.net/978l/philippines-has-26k-foreign-students last accessed on February 12, 2016).

See also The International Mobility of Students in Asia and the Pacific, published in 2013 by the United Nations Educational, Scientific and Cultural Organization http://www.uis.unesco.org/Library/Documents/international-student-mobility-asia-pacific-education-2013-en.pdf(last accessed on February 12, 2016); and Immigration Policies on Visiting and Returning Overseas Filipinos http://www.cfo.gov.ph/pdf/handbook/Immigration Policies on Visiting and Returning Overseas Filipinos-chapterIV.pdf (last accessed on February 15, 2016).

[150] See petition in G.R. No. 221697, p. 17; and petition in G.R. Nos. 221698-700, p. 22. Annex "M- series", Exhibit "8" (of Tatad case), Exhibit "4" (of Contreras/Valdez cases) in G.R. Nos. 221698- 700; and Annex "I-series", Exhibit "8" (of Elamparo case) in G.R. No. 221697.

	the Bureau of Internal Revenue *(BIR)*. • *Legal Significance: This act was undertaken as an alien and does not prove Poe's intent to remain in the Philippines or the intent to abandon U.S. domicile (animus non-revertendi); hence, it is not legally significant for the residency issue before the Court. She was then on a temporary visitor who was simply physically present in the Philippines. A Taxpayer Identification No. could have been necessary for the purposes indicated below as Poe was a forced heir of Ronald Poe who recently died.* • "Any person, whether natural or juridical, required under the authority of the Internal Revenue Code to make, render or file a return, statement or other documents, shall be supplied with or assigned a Taxpayer Identification Number (TIN) to be indicated in the return, statement or document to be filed with the Bureau of Internal Revenue, for his proper identification for tax

	purposes." (Sec. 236 (i) of the Tax Code). • *The absence of definitive abandonment of U.S. residency status and lack of legal capacity to establish Philippine residence for election purposes can only point to the conclusion that Poe remained a U.S. resident until July 18, 2006,*[151] *the date she acquired the right to reside in the Philippines.*
February 20, 2006	The Register of Deeds *(RD)* of San Juan City issued to Poe and her husband CCT No. 11985-R covering Unit 7F of One Wilson Place, and CCT No. 11986-R covering the parking slot for Unit 7F.[152] • *Legal Significance: This act does not prove Poe's intent to abandon U.S. domicile (animus non-revertendi). It is, at best, evidence of an investment in Philippine real estate – a move that aliens can make.*

[151] *Romualdez v. RTC,* G.R. No. 104960, 14 September 1993, 226 SCRA 408, 415-416.

[152] See petition in G.R. No. 221697, p. 18; and petition in G.R. Nos. 221698-700, p. 22. Annex "M-series", Exhibits "11" and "12" in G.R. Nos. 221698-700; and Annex "I-series", Exhibits "5" and "6" (of Elamparo case) in G.R. No. 221697.

	• *Aliens or foreign nationals, whether former natural-born Filipino citizens or not, can acquire condominium units and shares in condominium corporations up to 40% of the total and outstanding capital stock of a Filipino owned or controlled condominium Corporation, per RA No. 4726, as amended by RA No. 7899, (or An Act to Define Condominium, Establish Requirements For Its Creation, And Govern Its Incidents).*[153]
February 14, 2006 to March 11, 2006	Poe travelled to the U.S. to supervise the disposal of some

[153] Section 5 of RA No. 4726 reads:

Sec. 5. Any transfer or conveyance of a unit or an apartment, office or store or other space therein, shall include the transfer or conveyance of the undivided interests in the common areas or, in a proper case, the membership or shareholdings in the condominium corporation: Provided, however, That where the common areas in the condominium project are owned by the owners of separate units as co-owners thereof, no condominium unit therein shall be conveyed or transferred to persons other than Filipino citizens, or corporations at least sixty percent of the capital stock of which belong to Filipino citizens, except in cases of hereditary succession. Where the common areas in a condominium project are held by a corporation, no transfer or conveyance of a unit shall be valid if the concomitant transfer of the appurtenant membership or stockholding in the corporation will cause the alien interest in such corporation to exceed the limits imposed by existing laws.

See also *Hulst v. PR Builders, Inc.,* 558 Phil. 683, 698-699 (2008).

	of her family's remaining household belongings.[154] She returned to the Philippines on March 11, 2006.[155] • *Legal Significance: Poe remained a U.S. resident. This is an unequivocal act that does not prove Poe's intent to abandon her U.S. domicile (animus non-revertendi).*
Late March 2006	Poe's husband officially informed the U.S. Postal Service of their change of their U.S. address.[156] • *Legal Significance: Poe and her husband may have merely complied with the U.S. laws, for convenience and for mail forwarding purposes while on extended but temporary absence.* • *This act, by itself, does not prove the establishment of domicile in the Philippines. Poe did not have at that*

[154] See petition in G.R. No. 221697, p. 18; and petition in G.R. Nos. 221698-700, p. 2. Annex "I- series", Exhibits "6-series", "15", and "15-A" (of Elamparo case) in G.R. No. 221697; Annex "M-series", Exhibits "6-series", "15", and "15-A" (of Tatad case), Exhibits "2-series", "9" and "9-A" (of Contreras/Valdez cases) in G.R. Nos. 221698-700.

[155] See petition in G.R. No. 221697, p. 19; and petition in G.R. Nos. 221698-700, p. 23.

[156] See petition in G.R. No. 221697, p. 18; and petition in G.R. Nos. 221698-700, p. 23. Annex "M- series", Exhibit "16" (of Tatad case), Exhibit "10" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "16" (of Elamparo case) in G.R. No. 221697.

	point the legal capacity or right to establish domicile or residence in the country. The act does not conclusively signify abandonment of U.S. domicile.
April 25, 2006	Unit 7F of One Wilson Place and its parking slot were declared for taxation purposes under Poe and her husband's names.[157] • *Legal Significance: It does not establish permanent residence in the Philippines. It is merely in compliance with an obligation that arises from ownership of real property in the Philippines – an obligation that even alien owners of real property must fulfill.*
April 27, 2006	Poe's U.S. family home was sold.[158] • *Legal Significance: Poe remained a U.S. resident. The sale of their family home may indicate intent to transfer residence (within or without the U.S.) but it does not*

[157] See petition in G.R. No. 221697, p. 18; and petition in G.R. Nos. 221698-700, p. 23. Annex "M-series", Exhibits "13 and 14" (of Tatad case), Exhibits "7" and "8" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibits "13" and "14" (of Elamparo case) in G.R. No. 221697.

[158] See petition in G.R. No. 221697, p. 19; and petition in G.R. Nos. 221698-700, p. 23. Annex "M- series", Exhibit "17" (of Tatad case), Exhibit "11" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "17" (of Elamparo case) in G.R. No. 221697.

	automatically result in reacquiring domicile in the Philippines. Sale of the family home is a practical recourse for one who may be on extended absence; or who may be relocating for employment purposes; or who is simply engaged in profit-taking. • *What is important for the exercise of political right at issue is the legal capacity to establish residence in the Philippines. Notably, too, in terms of the legal status of her Philippine stay, she was still under a Balikbayan Visitor's Visa at this time.*
June 1, 2006	The RD for Quezon City issued to Poe and her husband TCT No. 290260 covering a 509-square meter lot located at No. 106 Rodeo Drive, Corinthian Hills, Barangay Ugong Norte, Quezon City to be used as their new family home.[159] • *Legal Significance: Poe still remained a U.S. resident for lack of legal capacity and the right to establish*

[159] See petition in G.R. No. 221697, p. 19; and petition in G.R. Nos. 221698-700, p. 24. Annex "M-series", Exhibit "18" (of Tatad case); Exhibit "12" (of Contreras/Va1dez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "18" (of Elamparo case) in G.R. No. 221697.

	residence in the Philippines. She was also still a U.S. citizen who had not conclusively abandoned her U.S. domicile. • *Even alien non-residents who were former Filipino citizens can be transferees of up to 5,000 sqm. of urban land or 3 has. of rural land for business or other purposes under RA No. 7042, as amende d by RA No. 8179,*[160] *in relation with Article XII, Section 8 of the Constitution,*[161] *without the need to reacquire Philippine*

[160] "AN ACT TO PROMOTE FOREIGN INVESTMENTS, PRESCRIBE THE PROCEDURES FOR REGISTERING ENTERPRISES DOING BUSINESS IN THE PHILIPPINES, AND FOR OTHER PURPOSES", enacted on March 28, 1996.

Section l0 of RA No. 7042, as amended by R.A. 8179, states:

SEC. l0. Other Rights of Natural Born Citizen Pursuant to the Provisions of Article XII, Section 8 of the Constitution. - Any natural born citizen who has lost his Philippine citizenship and who has the legal capacity to enter into a contract under Philippine laws may be a transferee of a private land up to a maximum area of five thousand (5,000) square meters in the case of urban land or three (3) hectares in the case of rural land to be used by him for business or other purposes. In the case of married couples, one of them may avail of the privilege herein granted: Provided, That if both shall avail of the same, the total area acquired shall not exceed the maximum herein fixed. [emphasis supplied]

[161] Article XII, Section 8 of the Constitution reads:

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

	citizenship or to re-establish Philippine residence, provided they were former natural-born Filipinos. Acquisition of Philippine real estate is not evidence of the citizenship of former Filipino citizens, much less of their natural-born status. • *The original ponencia of Justice Mariano C. del Castillo noted that after this sale, Poe and her husband still owned and retained two (2) other residential properties in the U.S.*[162] The retained properties negate whatever evidentiary worth the sale of the "family home" provided, Poe could s till return to a residence the couple already own.
July 7, 2006	Poe took her oath of allegiance to the Philippines.[163] • *Legal Significance: Poe's oath of allegiance to the Philippines started the legal process under RA No. 9225 but had no immediate legal effect on her change of*

[162] See Petitioner's Memorandum, pp. 278-279; *ponencia,* pp. 45-47.

[163] See petition in G.R. No. 221697, p. 20; and petition in G.R. Nos. 221698-700, p. 24. Annex "M-series", Exhibit "19" (of Tatad case), Exhibit "13" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "19" (of Elamparo case) in G.R. No. 221697.

	domicile; she was still a U.S. resident at this point and would remain to be so even after her RA No. 9225 is approved. • *Dual citizens do not become Philippine domiciliaries upon the approval of their RA No. 9225 petitions; note that former natural-born Filipino citizens who are U.S. residents can apply under RA No. 9225 even without need of establishing actual Philippine residence.*[164] *All they have after approval is the* ***civil and political right to establish residence in the Philippines,*** *but this they must do by complying with the rules on change of domicile.*
July 10, 2006	Poe filed with the Bureau of Immigration and Deportation *(BID)* an application for reacquisition of Philippine citizenship under RA No. 9225 or the "Citizenship Retention and Reacquisition Act of 2003"; she also filed for derivative citizenship on behalf of her three children, who

[164] See Section 3 of Memorandum Circular No. MCL-08-006 or the "2008 Revised Rules Governing Philippine Citizenship Under Republic Act (R.A.) No. 9225 and Administrative Order (A.O.) No. 91, Series of 2004.

	were all below eighteen years of age at that time.[165] • *Legal Significance: RA No. 9225 is available only to former natural-born citizens.*[166] *Thus,* ***the validity of Poe's RA No. 9225 reacquired Philippine citizenship depends on the validity of her natural-born citizenship claim.*** • *Poe's application for reacquisition of Philippine citiczenship (RA No. 9225) did not, by that act alone, conclusively prove abandonment of he U.S. domcile. As noted below, Poe, at that point to established residence in both the Philippines and the U.S.*

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[165] See petition in G.R. No. 221697, p. 20; and petition in G.R. Nos. 221698-700, p. 25. Annex "M-series", Exhibits "20" and "21" to "21-B" (of Tatad case), Exhibits "14" and "15" to "15-B" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibits "20" and "21" to "21-B" (of Elamparo case) in G.R. No. 221697.

[166] See Section 3 of RA 9225. It pertinently reads:

Section 3. *Retention of Philippine Citizenship* — Any provision of law to the contrary notwithstanding, natural-born citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

x x x x x x x x x

Natural born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath. [emphases supplied]

July 18, 2006	The BID approved Poe's application for reacquisition of Philippine citizenship under RA No. 9225, and the applications for derivative citizenship for her three children.[167] • *Legal Significance: Subject to the reservation made above, the approval entitled her to recognition as a dual citizen – Philippine and American.*[168] • *<u>Assuming</u> Poe to be a former natural-born citizen,* ***<u>July 18, 2006 would be the earliest possible reckoning point for Poe to establish Philippine residency for purposes of the exercise of political rights as it was only then that she was granted civil and political rights.</u>*** *To vote and be voted for are both political rights.*

[167] See petition in G.R. No. 221697, p. 20; and petition in G.R. Nos. 221698-700, p. 25. Annex "M-series", Exhibit "22" (of Tatad case), Exhibit "16" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "22" (of Elamparo case) in G.R. No. 221697.

[168] The full title of RA No. 9225 reads: "AN ACT MAKING THE CITIZENSHIP OF PHILIPPINE CITIZENS WHO ACQUIRE FOREIGN CITIZENSHIP PERMANENT. AMENDING FOR THE PURPOSE COMMONWEALTH ACT. NO. 63, AS AMENDED AND FOR OTHER PURPOSES".

See also Section 2 of RA 9225. It states:

Section 2. *Declaration of Policy* — It is hereby declared the policy of the State that all Philippine citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act.

See also excerpts of Congress deliberations on RA 9225 in *AASJS v. Hon. Datumanong,* 51 Phil. 110, 116-117 (2007).

	• *But note that actual residence is still necessary as an RA No. 9225 Filipino citizen is a dual citizen who can reside either in the Philippines or in the other country of dual citizenship.*[169] *As already mentioned, the reacquisition of Philippine citizenship only gives the RA No. 9225 dual citizen an option to re-establish residence in the Philippines and to exercise the limited right of suffrage in national elections but not the right to run for public office.* • *At this exact point, the resolution of the ssue of residence is still unclear as Poe was a dual Philippine-US citizen who could be a resident – physical as opposed to legal or juridical resident–of both the U.S. and the Philippines.* ***<u>Note that Poe started as a U.S. domiciliary. This characterization stays until she could carry a change of domicile into effect.</u>*** *This change admits of evidence*

[169] See the cases of *Japzon v. Comelec,* G.R. No. 180088, January 19, 2009, 576 SCRA 331; and *Caballero v. Comelec,* G.R. No. 209835, September 22, 2015.

	showing compliance with the required elements, and becomes ***conclusive*** *only* ***when dual citizenship is given up in favor of one of the citizenships; upon this surrender, the right to reside in the other country is likewise given up.*** • *In the case of Poe, she secured her civil and political rights as a RA No. 9225 dual citizen on July 18, 2006. This is the earliest date she could exercise her right to reside in the Philippines for the exercise of her political rights, particularly of her right to vote. But she enjoys the right to be voted upon as a candidate upon the renunciation of her other citizenship. It was only then that she conclusively gave up the U.S. domiciliary tag that she started with. Of course, hanging above and beclouding these issues is the* ***natural-born citizenship question*** *– was she in the first a former natural-born Filipino who could avail of RA No. 9225?*[170]

[170] R.A. No. 9225 allows the retention and re-acquisition of Filipino citizenship for natural-born citizens who have lost their Philippine citizenship by taking an oath of allegiance to the Republic. See *Sobejana-Condon v. COMELEC,* G.R. No. 198742, August 10, 2012, 678 SCRA 267.

July 31, 2006	The BID issued Poe Identification Certificate No. 06-10918 pursuant to RA No. 9225 in relation with Administrative Order No. 91, Series of 2004 and Memorandum Circular No. AFF-2-005.[171] Her children were likewise issued their respective Identification Certificate Nos.[172] • *Legal Significance: These are the effects of the approval of Poe's application for Philippine citizenship under RA No. 9225, and relate primarily to the citizenship, not to the residency issue. The right to reside in the Philippines of course came when the RA No. 9225 application was approved. The exercise of this right is another matter.*
August 31, 2006	Poe registered as voter in Brgy. Santa Lucia, San Juan City.[173]

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[171] See petition in G.R. No. 221697, p. 21; and petition in G.R. Nos. 221698-700, p. 26. Annex "M- series", Exhibit "23" (of Tatad case), Exhibit "17" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "23" (of Elamparo case) in G.R. No. 221697.

[172] See Annex "M-series", Exhibits "23-A" to "23-C" (of Tatad case), Exhibits "17-A" to "17-C" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibits "23-A" to "23- C" (of Elamparo case) in G.R. No. 221697.

[173] See petition in G.R. No. 221697, p. 21; and petition in G.R. Nos. 221698-700, p. 26. Annex "M-series", Exhibit "24" (of Tatad case), Exhibit "18" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "24" (of Elamparo case) in G.R. No. 221697.

	• *Legal Significance: Registration as a voter could serve as proof of the start of Poe's stay in the Philippines after she acquired the legal capacity to do so through RA No. 9225, but does not conclusively establish her intent to remain in the Philippines or the intent to abandon her U.S. citizenship and domicile.* • *She could have been registered as a voter only if she had represented that she was a resident of the Philippines for at least one year and of Brgy. Santa Lucia, San Juan City for at least six months immediately preceding the elections.*[174] • *In Japzon v. COMELEC,*[175] *the Court considered Ty's registration as a voter as evidence of his intent to establish a new domicile of choice in General Macarthur, Eastern Samar.*
October 18, 2001 to July 18, 2006	On these dates, Poe *returned* to the Philippines using her U.S. Passport under the *Balikbayan*

[174] See Article V, Section 1 of the Constitution.

[175] G.R. No. 180088, January 19, 2002, 576 SCRA 331.

program[176] per the entry "BB" or "1YR" and stamped dates in her U.S. Passport:[177]

Dates of Arrival	*Visa*	*Passport*
December 27, 2001	Balikbayan	US Passport
January 13, 2002	Balikbayan	US Passport
November 9, 2003	Balikbayan	US Passport
April 8, 2004	Balikbayan	US Passport
December 13, 2004	Balikbayan	US Passport
May 24, 2005	Balikbayan	US Passport
September 14, 2005	Balikbayan	US Passport
January 7, 2006	Balikbayan	US Passport
March 11, 2006	Balikbayan	US Passport
July 5, 2006	Balikbayan	US Passport
November 4, 2006	Balikbayan	US Passport

- *Legal Significance: These notations are evidence of the character of Poe's stay in the Philippines from May 24, 2005 up to the time her RA No. 9225 application was approved.*

- *During this period, Poe – an American citizen–was a*

[176] *Under Section 3 of R.A. 6768, as amended, a balikbayan, who is a foreign passport holder, is entitled to a visa-free entry to the Philippines for a period of one (1) year, with the exception of restricted nationals.*

[177] See petition in G.R. No. 221697, p. 23; and petition in G.R. Nos. 221698-700, pp. 28-29. Annex "M-series", Exhibit "5" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "5" (of Elamparo case) in G.R. No. 221697.

<table>
<tr><td></td><td><u>visitor to the Philippines,</u> not a Filipino citizen nor a legal resident of this country.</td></tr>
<tr><td>July 18, 2006 to October 13, 2009</td><td>On these dates,[178] Poe travelled to and from the Philippines using her U.S. Passport, but the BID stamp on her U.S. Passport changed from “BB” or “1YR” to “RC” and/or “IC No. 06 10918:”[179]

<table>
<tr><th>Dates of Arrival</th><th>Visa</th><th>Passport</th></tr>
<tr><td>July 21, 2007</td><td>RC</td><td>US Passport</td></tr>
<tr><td>March 28, 2008</td><td>RC</td><td>US Passport</td></tr>
<tr><td>May 8, 2008</td><td>RC</td><td>US Passport</td></tr>
<tr><td>October 2, 2008</td><td>RC</td><td>US Passport</td></tr>
<tr><td>October 5, 2008</td><td>RC</td><td>US Passport</td></tr>
<tr><td>April 20, 2009</td><td>RC</td><td>US Passport</td></tr>
<tr><td>May 21, 2009</td><td>RC</td><td>US Passport</td></tr>
<tr><td>July 31, 2009</td><td>RC</td><td>US Passport</td></tr>
</table>

• Legal Significance – The continued use of Poe’s U.S. passport could be explained by Poe’s lack of a Philippine passport. The delay of three years between the RA No. 9225 approval and the issuance of the passport on</td></tr>
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[178] See petition in G.R. No. 221697, p. 23; and petition in G.R. Nos. 221698-700, pp. 28-29. Annex “M-series”, Exhibit “5” (of Tatad case) in G.R. Nos. 221698-700; and Annex “I-series”, Exhibit “5” (of Elamparo case) in G.R. No. 221697.

[179] Grace Poe’s Identification Certificate Number.

	October 13, 2009 raises questions about her intents, both the intent to remain in the Philippines and the intent to abandon her U.S. domicile. During this period at least, any claimed residence for the exercise of the right to be voted upon as a candidate cannot and should not be recognized; her abandonment of her US domicile was incomplete and uncertain.
October 13, 2009	Poe obtained Philippine Passport No. XX473199.[180] • *Legal Significance: The issuance of a Philippine passport, per se, has no legal effect on Poe's Philippine residency status. A Philippine citizen on dual citizenship status is entitled to a Philippine passport.* • *The BID allowed Poe to enter and leave the country as "RC." Atty. Poblador mentioned that "RC" means resident citizen."*

[180] See petition in G.R. No. 221697, p. 21; and petition in G.R. Nos. 221698-700, p. 26. Annex "M-series", Exhibit "25" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "25" (of Elamparo case) in G.R. No. 221697.

October 6, 2010	Poe was appointed as the Chairperson of the Movie and Television Review and Classification Board *(MTRCB).*[181] • *Legal Significance: Poe could have been appointed as MTRCB Chairperson only* ***if <u>she had been a natural-born Filipino citizen,</u> and <u>a resident of the Philippines</u>*** *for purposes of the exercise of political rights.*[182] *The natural-born citizenship status is a direct legal requirement. Residency, on the other hand, is a consequence of the need to make a renunciation of*

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[181] See petition in G.R. No. 221697, p. 23; and petition in G.R. Nos. 221698-700, pp. 28-29. Annex "M-series", Exhibit "26" (of Tatad case), Exhibit "19" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "26" (of Elamparo case) in G.R. No. 221697.

[182] See Sections 2, 3, and 5 of Presidential Decree *(PD)* No. 1986, enacted on October 5, 1985.

Section 2 pertinently provides:

Section 2. Composition; Qualifications; Benefits - The BOARD shall be composed of a Chairman, a Vice-Chairman and thirty (30) members, who shall all be appointed by the President of the Philippines. The Chairman, the Vice-Chairman, and the members of the BOARD, shall hold office for a term of one (1) year, unless sooner removed by the President for any cause. x x x

No person shall be appointed to the BOARD, unless he is a natural-born citizen of the Philippines, not less than twenty-one (21) years of age, and of good moral character and standing in the community x x x

Section 3 of PD No. 1986, on the other hand, enumerates the powers, functions, and duties of the MTRCB Board, while Section *5* enumerates the powers of the Chairman of the Board who shall likewise act as the Chief Executive Officer of the Board.

	the other citizenship (pursuant to RA No. 9225), as renunciation would leave the appointee with no other residence other than the Philippines.
October 20, 2010	Poe renounced her U.S. allegiance and citizenship.[183] • *Legal Significance:* ***This is a requirement under RA No. 9225 and served to complete the necessary requirements before she could assume appointive public office.*** • ***The event should be very significant for a Presidential candidate who had been previously naturalized in a foreign country, and who now claims residency status for the period required by the Philippine Constitution. This should serve as the conclusive proof that the candidate has undertaken a change of domicile through proof of abandonment of her old domicile.*** • *The strictest rule of interpretation and appreciation of evidence should be used*

[183] See petition in G.R. No. 221697, p. 22; and petition in G.R. Nos. 221698-700, pp. 29. Annex "M-series", Exhibit "27" (of Tatad case), Exhibit "21" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "27" (of Elamparo case) in G.R. No. 221697.

	given the previous loss of both Philippine citizenship and residency status. She is not the usual candidate as she is vying for the highest office in the ***land whose citizenship she previously renounced.*** • *Her renunciation of her foreign citizenship should be the lowest acceptable level of proof of Poe's intent to abandon her U.S. domicile (animus non-revertendi), as pointed out by Justice Del Castillo during the third round of oral arguments.)* • *Note that by her own admission, Poe renounced her U.S. citizenship and thereby likewise abandoned her U.S. domiciliary status only to comply with the requirements of RA No. 9225 and the MTRCB appointment extended to her.*[184]
October 21, 2010	Poe took her Oath of Office for the position of MTRCB Chairperson.[185]

[184] See petition in G.R. No. 221697, p. 21, par. 49; and petition in G.R. Nos. 221698-700, pp. 26-27, par. 54.

[185] See Annex "M-series", Exhibit "29" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "29" (of Elamparo case) in G.R. No. 221697.

October 26, 2010	Poe assumed the duties and responsibilities of the Office ofthe MTRCB Chairperson.[186] • *Legal significance: Poe could have been appointed as MTRCB Chairperson* ***only if she had been a natural-born Filipino citizen,*** *and* ***a resident of the Philippines*** *for purposes of exercising political rights.*[187]
October 2, 2012	Poe filed her CoC for Senator for the May 13, 2013 Elections; she stated in Item No. 7 of her CoC that her "PERIOD OF RESIDENCE BEFORE MAY 13, 2013" was '**6**

[186] See Annex "M-series", Exhibit "26-A" (of Tatad case), Exhibit "20" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "26-A" (of Elamparo case) in G.R. No. 221697.

[187] See Sections 2, 3, and 5 of Presidential Decree *(PD)* No. 1986, enacted on October 5, 1985.

Section 2 pertinently provides:

Section 2. Composition; Qualifications, Benefits - The BOARD shall be composed of a Chairman, a Vice-Chairman and thirty (30) members, who shall all be appointed by the President of the Philippines. The Chairman, the Vice-Chairman, and the members of the BOARD, shall hold office for a term of one (1) year, unless sooner removed by the President for any cause. x x x

No person shall be appointed to the BOARD, unless he is a natural-born citizen cif the Philippines, not less than twenty-one (21) years of age, and of good moral character and standing in the community x x x

Section 3 of PD 1986, on the other hand, enumerates the powers, functions, and duties of the MTRCB Board, while Section 5 enumerates the powers of the Chairman of the Board .who shall likewise act as the Chief Executive Officer of the Board.

	years and 6 months."[188] This statement was made on October 2, 2012. • *Legal Significance: The residency statement in the CoC for the Senate was a* ***material representation*** *that Poe now claims to be a mistake.* • *Ironically for Poe,* ***the period she claimed in her Senate CoC dovetailed with her Philippine residency computed from the time her RA No. 9225 application was approved.*** • ***Poe never introduced any evidence relating to her claimed "mistake,"*** *thus leaving this claim a self-serving one that allows her this time to qualify for the residency requirement for the Office of the President of the Philippines.*
December 19, 2013	The Department of Foreign Affairs *(DFA)* issued to Poe Diplomatic Passport No. DE0004530.[189] • *No effect on Poe's residency status.*

[188] See Comelec *en banc* December 11, 2015 resolution in SPA No. 15-002 (DC), SPA No. 15-007 (DC), and SPA No. 15-139 (DC), pp. 43 and 47, Annexes "A" and "B" in G.R. Nos. 221698-700. See also petition in G.R. Nos. 221698-700, p. 168.

[189] See Annex "M-series", Exhibit "33" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "33" (of Elamparo case) in G.R. No. 221697.

March 14, 2014	The DFA issued to Poe, Philippine Passport No. EC0588861.[190] • *No effect on Poe's residency status.*
October 15, 2015	Poe filed her CoC for the Presidency for the May 9, 2016 Elections; she stated in Item No. 7 of her CoC that her "PERIOD OF RESIDENCE IN THE PHILIPPINES UP TO THE DAY BEFORE MAY 09, 2016 is '**10 YEARS, 11 MONTHS**,"[191] which the petitions before us now claim to be a false material representation. • *Legal significance: The residency claim, under the given facts and in light of the Senate CoC statement, gives rise to the question: did Poe commit a false material representation regarding her compliance with the residency requirement?* • *Poe claims that she made a **mistake** in the Senate CoC declaration, but the claim remained self-serving with **no evidence to support it.***

[190] See Annex "M-series", Exhibit "34" (of Tatad case) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "34" (of Elamparo case) in G.R. No. 221697.

[191] See petition in G.R. Nos. 221698-700, p. 16; and petition in G.R. No. 221697, pp. 62-63 and 70-72. Annex "C" both in G.R. No. 221697 and G.R. Nos. 221698-700.

	• ***An unavoidable observation is that Poe's belated claim of mistake in her Senate CoC now allows her to claim the longer period of residency that her candidacy for the Presidency now requires.*** • *Should the COMELEC be now faulted for arriving at this obvious conclusion?*

II.

Preliminary / Threshold Issues and Concerns

II.A. *Nature of the Present Petition and the Court's Responses.*

As the ultimate interpreter of the Constitution and of our laws, this Court will have the final say in the case now before us. Our collective actions and decisions are not subject to review by any other institution of government; we are the ultimate Guardians with no other guardians to check, correct, and chastise us. Beyond the dictates of the established standards of legal interpretation and application, only our individual conscience guides us; as unelected officials, only history can judge us. Thus, for the sake of the country and for the maintenance of the integrity of this Court, we must render our ruling ***with the utmost circumspection.***

As defined, 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 petitioner Poe's CoC for its invalidity, based on the false material representations the COMELEC found in her statements of citizenship and residency qualifications for the position of President of the Philippines. From the perspective of the Court, the present case calls for the exercise of the Court's **power of judicial review**.

The main issues in this case – *the conformity of the COMELEC's ruling with legal*[192] *and constitutional standards*[193] – are directly governed by the Constitution. Thus, the dispute before us is a **constitutional law case, not simply an election nor a social justice case,** and one that should be dealt with according to the ***terms of the Constitution,*** following the norms of the ***rule of law***.

To be sure, the applicable measuring standards **cannot simply be** the **individual Justices' notions of the fairness of the constitutional terms** involved (which are matters of policy that the Court cannot touch), **nor their *pet social and human rights advocacies*** that are not justified by the clear terms of the Constitution.

If these constitutional terms are clear, the only option for the Court is to apply them; if they lack clarity, the Court may interpret them using the established canons of constitutional interpretation but without touching on matters of policy that an authority higher than the Court's – that of the sovereign Filipino people – has put in place.[194]

If indeed the Court deems the constitutional terms to be **clear but tainted with unfairness,** the Court's remedy is to note the tainted terms and observe that they should be raised with the people and their representatives for constitutional amendment; the Court cannot act on its own to remedy the unfairness as such step is a political one that the Court cannot

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[192] Sections 78 and 52, in relation with Sections 74 and 63 of the Omnibus Election Code.

[193] See Article IX-C, Section 2 in relation with Article VIII, Section 1 of the Constitution. Article VIII, Section 1 provides in no categorical terms:

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. [emphases supplied]

[194] See *Francisco, Jr. v. House of Representatives,* 460 Phil. 830, 885 (2003).

directly undertake. **Definitely, the remedy is not to engage in interpretation in order *to read into the Constitution what is not written there*.** This is judicial legislation of the highest order that I do not want to be a party to.

II.B. ***The Parameters of the Court's Exercise of Judicial Power in acting on the case.***

II.B.1. The Exercise of the Power of Judicial Review.

The Supreme Court in entertaining the present petitions acts pursuant to Article VIII, Section 1 of the 1987 Constitution which provides that:

> 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. [underscoring supplied)

In the seminal case of *Angara v. Electoral Tribunal*[195] the Court mandated in no uncertain terms that judicial review is *"limited to the constitutional question raised or the very lis mota presented," and without passing upon "questions of wisdom, justice or expediency of legislation.*" With the scope of the justiciable issue so delimited, the Court in resolving the constitutional issues likewise ***cannot add to, detract from, or negate what the Constitution commands;*** it cannot simply follow its sense of justice based on how things out to be, nor lay down its own policy, nor slant its ruling towards the individual Justices' pet advocacies. *The individual Justices themselves cannot simply raise issues that the parties did not raise at the COMELEC level, nor explore constitutional issues for the first time at this stage of the case.*

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[195] 63 Phil. 139, 158-59 (1936).

Procedurally, the present case comes to this Court under Rule 64, in relation with Rule 65, of the Rules of Court – a petition for *certiorari* that calls for the judicial review of the COMELEC decision to ensure that the COMELEC acts within its jurisdiction.

The Court's review is limited by the grave abuse of discretion standard that the Constitution itself provides – to determine the propriety of the COMELEC action based on the *question of whether it acted with* **grave abuse of discretion** in cancelling Poe'S CoC.

"Grave abuse of discretion" as mentioned in the Constitution and as implemented by the Court under Rule 65 and in its established rulings, carries a specific meaning. It is 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."[196]

Thus, for this Court to strike down and nullify the challenged COMELEC rulings, the COMELEC must be considered to have acted without jurisdiction because it **did not simply err,** either in the appreciation of the facts or the laws involved, but because it **acted in a patent and gross manner, thereby acting outside the contemplation of the law.**[197]

II.C. ***The Separation of Powers Principle.***

The same cited *Angara ruling,* in expounding on what "judicial power" encompasses, likewise fully provided a constitutional standard to ensure that the judiciary and its exercise of the power

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[196] *Beluso v. Comelec,* G.R. No. 180711, 22 June 2010, 621 SCRA 450, 456; *Fajardo v. Court of Appeals,* G.R. No. 157707, October 29, 2008, 570 SCRA 156, 163; *People v. Sandiganbayan,* G.R. Nos. 158780-82, October 12, 2004, 440 SCRA 206, 212.

[197] *Varias v. Commission on Elections,* G.R. No. 189078, February 11, 2010, 612 SCRA 386.

of judicial review do not exceed defined parameters. The standard is the separation of powers principle that underlies the Constitution.

Separation of powers is a fundamental principle in our system of government[198] that divides the powers of government into the legislative, the executive, and judicial.[199] The power to enact laws lies with the legislature; the power to execute is with the executive; and, the power to interpret laws rests with the judiciary.[200] Each branch is supreme within its own sphere.

Thus, the judiciary can only interpret and apply the Constitution and the laws as they are written; ***it cannot, under the guise of interpretation in the course of adjudication, add to, detract from or negate what these laws provide except to the extent that they run counter to the Constitution.*** With respect to the Constitution and as already mentioned above, ***the judiciary cannot interpret the Constitution to read into it what is not written there.***

The separation of powers can be very material in resolving the present case as petitioner Poe essentially relies on two positions in claiming natural- born Philippine citizenship as a foundling. The first of these positions is the claim that foundlings fall within the listing of "citizens of the Philippines" under the 1935 Constitution, under the view that this was the intent of the framers of the Constitution.

As I reason out below, foundlings are simply not included in the wordings of the Constitution and cannot be read into its clear and express terms. Nor can any intent to include

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[198] *Justice Puno's Concurring and Dissenting Opinion in Macalintal v. Comelec,* 453 Phil: 586, 740 (2003) citing *Angara v. Electoral Commission,* 63 Phil. 139 (1936).

[199] *Justice Puno's Concurring and Dissenting Opinion in Macalintal v. Comelec,* 453 Phil. 586 (2003).

[200] *Anak Mindanao Party-List Group v. Executive Secretary,* 558 Phil. 338 (2007).

foundlings be discerned. Thus, foundlings are not within the 1935 constitutional listing, except to the extent that the application of its general terms would allow their coverage.

II.D. *The Equal Protection Clause.*

II.D.l. *In General.*

The equal protection clause is a specific constitutional guaranty of the equal application of the laws to all persons. The equality guaranteed does not deny the State the power to recognize and act upon factual differences between individuals and classes. It recognizes that inherent in the right to legislate is the right to classify.[201]

The well-settled principle is that the equal protection of the laws guaranty is not violated by a legislation based on ***reasonable classification***.[202]

Thus, the problem in equal protection cases is primarily in the determination of the validity of the classification made by law,[203] if resort to classification is justified. For this reason, three *(3)* different standards of scrutiny in testing the constitutionality of classifications have been developed over time[204] – the rational basis test; the intermediate scrutiny test; and strict scrutiny test.

II.D.2. *The Applicable Tests.*

Under the *rational basis test,* courts will uphold a classification if it bears a rational relationship to an accepted or established governmental end.[205] This is a relatively relaxed standard reflecting

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[201] Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary,* (2003), pp. 136-137.

[202] *People v. Cayat,* 68 Phil. 12, 18 (1939).

[203] *Bernas, id.* note 1, at 137.

[204] See *J.* Leonardo-De Castro, Concurring Opinion in *Garcia v. Drilon,* G.R. No. 179267, June 25, 2013, 699 SCRA 352, 435.

[205] *J.* Panganiban, Dissenting Opinion, *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas,* G.R. No. 148208, December 15, 2004, 446 SCRA 299, 392.

the Court's awareness that classification is an unavoidable legislative task. The presumption is in favor of the classification's validity.[206]

If the classification, while not facially invidious, nonetheless gives rise to recurring constitutional difficulties, or if a classification disadvantages a "quasi-suspect class"[207] it will be treated under a heightened review called the *intermediate scrutiny test.*[208]

Intermediate scrutiny requires that the classification serve an important governmental end or objective and is substantially related to the achievement of this objective.[209] The classification is presumed unconstitutional and the burden of justification for the classification rests entirely with the govemment.[210]

Finally, the *strict scrutiny test* is used when suspect classifications or fundamental rights are involved. This test requires that the classification serve a compelling state interest and is necessary to achieve such interest.[211]

A suspect classification is one where distinctions are made based on the most invidious bases for classification that violate the most basic human rights, *i.e.* on the basis of race, national

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[206] Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary,* (2009), p. 139.

[207] *J*. Carpio Morales, Dissenting Opinion, *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas,* G.R. No. 148208, December 15, 2004, 699 SCRA 352, 435.

Examples of these so-called "quasi-suspect" classifications are those based on gender, legitimacy under certain circumstances, legal residency with regard to availment of free public education, civil service employment preference for armed forces veterans who are state residents upon entry to military service, and the right to practice for compensation the profession for which certain persons have been qualified and licensed.

[208] *Ibid.*

[209] *Ibid.*

[210] *Ibid*

[211] *J*. Leonardo-De Castro, Concurring Opinion in *Garcia v. Drilon,* G.R. No. 179267, June 25, 2013, 699 SCRA 352, 435. Emphasis supplied.

origin, alien status, religious affiliation, and to a certain extent, sex and sexual orientation.[212]

The Court has found the strict scrutiny standard useful in determining the constitutionality of laws that tend to target a class of things or persons. By this standard, the legislative classification is presumed unconstitutional and the burden rests on the government to prove that the classification is necessary to achieve a compelling state interest and that it is the least restrictive means to protect such interest. The strict scrutiny standard was eventually used to assess the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights, as the earlier applications had been expanded to encompass the coverage of these other rights.[213]

II.D.3. <u>The Application of the Equal Protection Clause to a constitutional provision.</u>

The argument that the equal protection clause should be applied to the constitutional provisions on citizenship is patently misplaced. The Constitution is supreme; as the highest law of the land, it serves as the gauge or standard for all laws and for the exercise of all powers of government. The Supreme Court itself is a creation of, and cannot rise higher than, the Constitution.

Hence, this Court cannot invalidate a constitutional provision; it can only act on an ***unconstitutional governmental action*** trampling on the equal protection clause, such as when a constitutional provision is interpreted in a way that fosters the illegal classification that the Constitution prohibits. This is the question now before this Court.

II.D.4. *<u>The Citizenship of a Foundling.</u>*

The citizenship provisions of the Constitution authorize the State's exercise of its sovereign power to determine who its

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[212] *J.* Brion, Concurring and Dissenting Opinion, *Sameer Overseas Placement Agency, Inc. v. Cabiles,* G.R. No. 170139, August 5, 2014.

[213] *Disini v. Secretary of Justice,* G.R. No. 203335, February 18, 2014, 716 SCRA 237.

citizens are. These citizens constitute one of the pillars in the State's exercise of its sovereignty.[214] Based on this exercise, the State accordingly grants rights and imposes obligations to its citizens. This granted authority and its exercise assume primary and material importance, not only because of the rights and obligations involved, but because the State's grants involve the exercise of its sovereignty.

Aside from the above discussions on the application of the equal protection clause to the terms of the Constitution itself, it must further be considered in appreciating the equal protection clause *in relation with foundlings* that:

First, foundlings do not fall under any suspect class.

A "suspect class" is identified as a class saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process. Examples of suspect classifications are based on race or national origin, alienage, or religion.[215]

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[214] Article II, Section 1 states that "sovereignty resides in the people and all government authority emanates from them."

Following the definition of the concept of "state" provided under Article I of the Montevideo Convention of 1933, the elements of a state: people, territory, sovereignty, and government.

Bernas defines "people" as "a community of persons sufficient in number and capable of maintaining continued existence of the community and held together by a common bond of law." On the other hand, he defines "sovereignty" as "the competence, within its own constitutional system, to conduct international relations with other states, as well as the political, technical and financial capabilities to do so." (See Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary,* (2009), pp. 40 and 54, respectively).

Cruz, citing Malcolm, defines it as "a people bound together by common attractions and repulsions into a living organism possessed of a common pulse, common intelligence and inspiration, and destined apparently to have a common history and a common fate." While he defines "sovereignty" as "the supreme and uncontrollable power inherent in a State by which that state is governed." (Cruz, *Constitutional Law,* (2007), pp. 16 and 26, respectively).

[215] *J.* Carpio Morales, Dissenting Opinion, *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas,* G.R. No. 148208, December 15, 2004, 699 SCRA 352, 435.

Foundlings are not being treated differently on the basis of their race, national origin, alienage, or religion. It is the ***lack of information on the circumstances of their birth*** because of their ***unknown parentage*** and the ***jus sanguinis standard of the Constitution itself,*** that exclude them from being considered as natural-born citizens. They are not purposely treated unequally nor are they purposely rendered politically powerless; they are in fact recognized under binding treaties to have the right to be naturalized as Philippine citizens. ***All these take place because of distinctions that the Constitution itself made.***

Second, there is likewise no denial of a fundamental right that does not emanate from the Constitution. As explained elsewhere in this Opinion, it is the Constitution itself that requires that the President of the Philippines be a natural-born citizen and must have resided in the country for 10 years before the day of the election.

Thus, naturalized citizens and those who do not fall under the definition of a natural-born citizen, again as defined in the Constitution itself, have no actionable cause for complaint for unfair treatment based on the equal protection clause. This consideration rules out the application of the strict scrutiny test as the COMELEC recognized distinctions the Constitution itself made.

On the test of intermediate scrutiny, the test has been generally used for legislative classifications based on gender or illegitimacy. Foundlings, however, *may arguably be subject to intermediate scrutiny* since their classification may give rise to recurring constitutional difficulties, *i.e.* qualification questions for other foundlings who are public officials or are seeking positions requiring Philippine citizenship.

To pass an intermediate scrutiny, it must be shown that the legislative purpose is important and the classification is substantially related to the legislative purpose; otherwise, the classification should be invalidated.

The classification of foundlings *vis-a-vis* Philippine citizens is undeniably important as already explained and the purpose

of the classification is the State exercise of sovereignty: it has the inherent power to determine who are included and excluded as its own nationals. On these considerations, I rule out the use of the intermediate scrutiny test.

<u>*Third,*</u> under the circumstances, the most direct answer can be provided by the rational basis test in considering the petitioner's charge that the COMELEC denied her equal protection *by applying the constitutional provisions on citizenship* the way it did.

It is a well-settled principle that the equal protection guaranty of the laws is not violated by a legislation (or governmental action) based on reasonable classification. A classification, to be reasonable must: 1) rely on substantial distinctions; 2) be germane to the purpose of the law; 3) not be limited to existing conditions only; and 4) apply equally to all members of the same class.[216]

To restate and refine the question posed to us in the context of the present petition: ***did the COMELEC commit grave abuse of discretion when it did not include Poe in the natural-born classification****?*

This question practically brings us back to the main issues these consolidated cases pose to us.

To start from square one, I start with the admitted fact that Poe is a foundling, *i.e.,* one whose parents are not known. With no known parents, the COMELEC could not have abused the exercise of its discretion when it concluded that Poe did not fall under the ***express*** listing of citizens under the 1935 Constitution and, hence, *cannot even be a citizen* under the express terms of the Constitution.

In the context of classification, the COMELEC effectively recognized that Poe, whose parents are unknown, cannot be the same, and cannot be similarly treated, as *other persons born*

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[216] *People v. Cayat,* 68 Phil. 12, 18 (1939).

in the Philippines of Filipino parents as provided under Article IV, Section 1, paragraphs 3 and 4 of the 1935 Constitution.

The COMELEC did not also favorably entertain Poe's view that the 1935 Constitution ***impliedly*** recognized a foundling to be included in its listing. Based on the reasons on the merits that are more lengthily discussed elsewhere in this Opinion, the COMELEC – at the most – could have erred in its conclusions, but its reasoned approach, even assuming it to be erroneous, cannot amount to grave abuse of discretion as I have above specifically defined.

Lastly, the COMELEC did not recognize that the Philippines is bound under international law to recognize Poe as a natural-born citizen; these treaties merely grant Poe the right to acquire a nationality. This COMELEC conclusion is largely *a conclusion of law and is not baseless;* in fact, it is based on the clear terms of the cited treaties to which the Philippines is a signatory and on the principles of international law. Thus, again, the COMELEC committed no grave abuse of discretion in its ruling on this point.

This same conclusion necessarily results in considering Poe's argument that she should be treated like other foundlings favorably affected by treaties binding on the Philippines. *All foundlings* found in the Philippines and covered by these treaties have the right to acquire Philippine nationality; it is a question of availing of the opportunity that is already there. Thus, I can see no cause for complaint in this regard. In fact, Poe has not pointed to any foundling or to any specific treaty provision under which she would be treated the way she wants to – as a natural-born citizen.

In these lights, the COMELEC's exercise in classification could not but be **reasonable,** based as it **were on the standards provided by the Constitution**. This classification was made **to give effect to the Constitution** and **to protect the integrity of our elections.** It holds **true, not only for Poe, but for all foundlings** who may be in the same situation as she is in.

II.E. *Jurisdictional Issues*

The petitioner questions the COMELEC's decision to cancel her CoC on the ground that she falsely represented her Philippine citizenship because it allegedly:

a. ignored the Senate Electoral Tribunal's *(SET)* Decision dated November 17, 2015, as well as relevant law and jurisprudence bestowing on foundlings the status of Philippine citizenship;

b. disregarded the primary jurisdiction of the Department of Justice *(DOJ)* and Bureau of Immigration and Deportation *(BID)* in its application of RA No. 9225; and

c. prematurely raised eligibility challenges that is properly the jurisdiction of the Presidential Electoral Tribunal *(PET)*.

In particular, the petitioner Poe argues that the COMELEC does not have the ***primary jurisdiction*** to resolve attacks against her citizenship. The DOJ, as the administrative agency with administrative control and supervision over the BID, has the authority to revoke the latter's Order approving her reacquisition of natural-born citizenship. Petitions for cancellation of CoCs are thus, by their nature, prohibited collateral attacks against the petitioner's claimed Philippine citizenship.

Additionally, since the allegations in the petitions for cancellation of CoC seek to establish Poe's ineligibilities to become President, the issue lies within the exclusive jurisdiction of the PET, and should be filed only after she has been proclaimed President.

At the core of these challenges lie two main inquiries, from which all other issues raised by the petitioner spring:

First, **what is the scope and extent of the COMELEC's jurisdiction in a Section 78 proceeding?**

Second, **given the scope and extent of the COMELEC's jurisdiction in a Section 78 proceeding, did it gravely abuse its discretion in its interpretation and application of the law and jurisprudence to the evidence presented before it?**

To my mind, the COMELEC has ample jurisdiction to interpret and apply the relevant laws and applicable jurisprudence in the Section 78 proceeding against the petitioner, and did not commit any grave abuse of discretion in doing so.

II.E.1. *The COMELEC's authority to act on petitions for cancellation of CoCs of presidential candidates.*

As the constitutional authority tasked to ensure clean, honest and orderly elections, the COMELEC exercises administrative, quasi-legislative, and quasi-judicial powers granted under Article IX of the 1987 Constitution.

These constitutional powers are refined and implemented by legislation, among others, through the powers expressly provided in the Omnibus Election Code *(OEC).* These statutory powers include the **authority to cancel a certificate of candidacy under Section 78** of the OEC, which provides:

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

The petitioner injects her desired color to Section 78 with the **argument** that *the COMELEC's jurisdiction in these proceedings is limited to determining deliberate false representation in her CoC, and should not include the substantive aspect of her eligibility.* On this view, Poe asserts that she had not deliberately misrepresented her citizenship and residence.

II.E.2. *The COMELEC's power under Section 78 is Quasi-Judicial in Character.*

In *Cipriano v. COMELEC,*[217] this Court recognized that this authority is **quasi-judicial in nature.** The decision to cancel a candidate's CoC, based on grounds provided in Section 78, involves an exercise of judgment or discretion that qualifies as a quasi-judicial function by the COMELEC.

Quasi-judicial power has been defined as:

> x x x the power of the administrative agency to adjudicate the rights of persons before it. It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.[218]

In Section 78 proceedings, the COMELEC determines whether the allegations in a petition to cancel a CoC are supported by sufficient evidence. In the process, the COMELEC allows both the petitioner and the respondent-candidate the opportunity to present their evidence and arguments before it. Based on these submissions, the COMELEC then determines whether the candidate's CoC should be cancelled.

To arrive at its decision in a cancellation case, the COMELEC must determine whether the candidate committed a ***material representation*** that is ***false*** the statutory basis for the

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[217] G.R. No. 158830, August 10, 2004, 436 SCRA 45.

[218] *Bedol v. Commission on Elections,* G.R. No. 179830, December 3, 2009, 606 SCRA 554, 570-71.

cancellation – in his or her CoC statements. While Section 78 itself does not expressly define what representation is "material," jurisprudence has defined "**materiality**" to be a false representation related to the candidate's eligibility to run for office.[219] The representation is "**false**" if it is shown that the candidate manifested that he or she is eligible for an elective office that he or she filed a CoC for, when in fact he or she is not.

Thus, we have affirmed the cancellation of CoCs based on a candidate's false representations on citizenship, residence, and lack of a prior criminal record. These cases also refer to the need to establish a candidate's deliberate intent to deceive and defraud the electorate that he or she is eligible to run for office.

The linkage between the qualification the elective office carries and the representation the candidate made, directly shows that **Section 78 proceedings must necessarily involve:**

(i) **an inquiry into the *standards for eligibility (which are found in the law and in jurisprudence);***

(ii) ***the application of these standards to the candidate; and***

(iii) ***the representations he or she made as well as the facts surrounding these representations.***

Only in this manner can the COMELEC determine if the candidate falsely represented his or her qualification for the elective office he or she aspires for.

Aside from inquiring into the applicable laws bearing on the issues raised, the COMELEC can interpret these laws within the bounds allowed by the principles of constitutional and statutory interpretation. It can then apply these laws to the evidence presented after they are previously weighed.

The capacity to interpret and apply the relevant laws extends to situations where there exists no jurisprudence squarely

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[219] *Salcedo II v. Comelec,* G.R. No. 135886, August 16, 1999, 312 SCRA 447; *Lluz and Adeloesa v. Comelec,* G.R. No. 172840, June 7, 2007, 523 SCRA 456.

applicable to the facts established by evidence. The exercise of a function that is essentially judicial in character includes not just the application by way of *stare decisis* of judicial precedent; it includes the application and interpretation of the text of the law through established principles of construction. To say otherwise would be to unduly cripple the COMELEC in the exercise of its quasi-judicial functions every time a case before it finds no specific precedent.

II.E.2(a). ***Poe and the Section 78 Proceedings.***

II.E.2(a)(i) ***Intent to Deceive as an Element.***

In the present case, the private respondents sought the cancellation of Poe's CoC based on the false representations she allegedly made regarding her Philippine citizenship, her natural-born status, and her period of residence. These are all material qualifications as they are required by the Constitution itself.

To determine under Section 78 whether the representations made were false, the COMELEC must necessarily determine **the eligibility standards, the application of these standards to Poe,** and **the claims she made** *i.e.,* whether she is indeed a natural-born Philippine citizen who has resided in the Philippines for at least ten years preceding the election, as she represented in her CoC, as well as **the circumstances surrounding these representations.** In relation to Poe's defense, **these circumstances** relate to her claim that ***she did not deliberately falsely represent her citizenship and residence, nor did she act with intent to deceive.***

The element of **"deliberate intent to deceive"** first appeared in Philippine jurisprudence in ***Salcedo III v. COMELEC***[220] under the following ruling:

Aside from the requirement of materiality, *a false representation under section 78 must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate*

[220] G.R. No. 135886, August 16, 1999, 312 SCRA 447, 459.

ineligible. In other words, it must be made with an intention to deceive the electorate as to one's qualifications for public office. The use of a surname, when not intended to mislead or deceive the public as to ones identity, is not within the scope of the provision. [italics supplied]

Salcedo III cited ***Romualdez-Marcos v. COMELEC,***[221] which provided that:

It is the fact of residence, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not and individual has satisfied the constitution's residency qualification requirement. *The said statement becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.* It would be plainly ridiculous for a candidate to deliberately and knowingly make a statement in a certificate of candidacy which would lead to his or her disqualification. [italics supplied]

From *Salcedo* and with the exception of ***Tagolino v. HRET,***[222] the "deliberate intent to deceive" element had been consistently included as a requirement for a Section 78 proceeding.

The Court in *Tagolino v. HRET*[223] ruled:

Corollary thereto, it must be noted that *the deliberateness of the misrepresentation, much less one's intent to defraud, is of bare significance in a Section 78 petition as* ***it is enough that the person's declaration of a material qualification in the CoC be false.*** In this relation, jurisprudence holds that an express finding that the person committed any deliberate misrepresentation is of little consequence in the determination of whether one's CoC should be deemed cancelled or not. What remains material is that the petition essentially seeks to deny due course to and/or cancel the CoC on the basis of one's ineligibility and that the same be granted without any qualification. [emphasis, italics, and underscoring supplied]

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[221] G.R. No. 119976, September 18, 1995, 248 SCRA 300, 326.

[222] 706 Phil. 534 (2013).

[223] *Id.* at 551.

This statement in *Tagolino* assumes ***validity and merit*** when we consider that ***Romualdez-Marcos*, the case that *Salcedo III* used as basis, is not a Section 78 proceeding, but a disqualification case.**

Justice Vicente V. Mendoza's Separate Opinion[224] in *Romualdez-Marcos* pointed out that the allegations in the pleadings in *Romualdez-Marcos* referred to **Imelda Romualdez-Marcos' *disqualification, and not to an allegation for the cancellation of her CoC.*** This was allowable at the time, as Rule 25 of the COMELEC Rules of Procedure, prior to its nullification in *Fermin v. Comelec,*[225] had allowed the institution of disqualification cases based on the lack of residence.

The quoted portion in *Romualdez-Marcos* thus pertains to the challenge to Romualdez-Marcos' residence *in a disqualification proceeding, and not in a CoC cancellation proceeding.*

The Court held that the statement in Romualdez-Marcos's CoC does not necessarily disqualify her because it did not reflect the necessary residence period, as the actual period of residence shows her compliance with the legal requirements. *The statement "[t]he said statement becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible"* **should thus be understood in the context of a disqualification proceeding looking at the fact of a candidate's residence, and not at a CoC cancellation proceeding determining whether a candidate falsely represented her eligibility.**

Arguably, the element of "deliberate intent to deceive," has been entrenched in our jurisprudence since it was first mentioned in *Salcedo III.* Given the history of this requirement, and the lack of clear reference of "deliberate intent to deceive" in Section 78, ***this deliberate intention could be anchored from the textual***

[224] G.R. No. 119976, September 18, 1995, 248 SCRA 300, 392-400.

[225] 595 Phil. 449 (2008).

requirement in Section 78 that the representation made must have been false, such that the representation was made with the knowledge that it had not been true.

Viewed from this perspective, the element of "deliberate intent to deceive" should be considered complied with **upon proof of the *candidate's knowledge that the representation he or she made in the CoC was false.***

Note, at this point, that the CoC must contain the candidate's representation, **under oath,** that he or she is eligible for the office aspired for, *i.e.,* that he or she possesses the necessary eligibilities at the time he or she filed the CoC. This statement must have also been considered to be true by the candidate to the best of his or her knowledge.

Section 74 of the OEC, which lists the information required to be provided in a CoC, states:

> 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. [italics and underscoring supplied]

More specifically, COMELEC Resolution No. 9984 requires the following to be contained in the 2015 CoC:

> Section 4. Contents and Form of Certificate of Candidacy. - The *COC shall be under oath* and shall state:
>
> a. office aspired for;

x x x x x x x x x

g. *citizenship, whether natural-born or naturalized;*

x x x x x x x x x

k. *legal residence, giving the exact address and the number of years residing in the Philippines* x x x;

x x x x x x x x x

n. *that the aspirant is eligible for said office;*

x x x x x x x x x

t. that *the facts stated in the certificate are true and correct to the best of the aspirant's knowledge;*

x x x x x x x x x

The COC shall be **sworn to before a Notary Public** or any official authorized to administer oath. COMELEC employees are not authorized to administer oath, even in their capacities as notary public. [emphasis and underscoring supplied]

The oath, the representation of eligibility, and the representation that the statements in the CoC are true to the best of the candidate's knowledge all ***operate as a guarantee from a candidate that he or she has knowingly provided information regarding his or her eligibility.*** The information he or she provided in the CoC should accordingly be considered a ***deliberate representation on his or her part,*** and ***any falsehood regarding such eligibility would thus be considered deliberate.***

In other words, once the status of a candidate's ineligibility has been determined, I do not find it necessary to establish a candidate's deliberate intent to deceive the electorate, **as *he or she had already vouched for its veracity and is found to have committed falsehood.*** The representations he or she has made in his or her CoC regarding the truth about his or her eligibility comply with the requirement that he or she deliberately and knowingly falsely represented such information.

II.E.2(a)(ii) *Poe had the "Intent to Deceive"*

But even if we were to consider deliberate intent to deceive as a separate element that needs to be established in a Section 78 proceeding, I find that the COMELEC did not gravely abuse its discretion in concluding that Poe deliberately falsely represented her residence and citizenship qualifications.

The COMELEC, in concluding that Poe had known of her ineligibilities to run for President, noted that she is a highly-educated woman with a competent legal team at the time she filled up her 2012 and 2015 CoCs. ***As a highly educated woman, she had the necessary acumen to read and understand the plain meaning of the law.*** *I add that she is now after the highest post in the land where the understanding of the plain meaning of the law is extremely basic.*

The COMELEC thus found it unconvincing that Poe would not have known how to fill up a pro-forma CoC, much less commit an "honest mistake" in filling it up. (Interestingly, Poe never introduced any evidence explaining her "mistake" on the residency issue, thus rendering it highly suspect.)

A plain reading of Article IV, Section 1 of the 1935 Constitution could have sufficiently appraised Poe regarding her citizenship. Article IV, Section 1 does not provide for the situation where the identities of both an individual's parents from whom citizenship may be traced are unknown. The ordinary meaning of this non-inclusion necessarily means that she cannot be a Philippine citizen under the 1935 Constitution's terms.

The COMELEC also found that ***Poe's Petition for Reacquisition of Philippine citizenship before the BID deliberately misrepresented her status as a former natural-born Philippine citizen, as it lists her adoptive parents to be her parents without qualifications.*** The COMELEC also noted that Poe had been ***falsely representing her status as a Philippine citizen in various public documents.*** All these involve ***a succession of falsities.***

With respect to the required **period of residency,** Poe deliberately falsely represented that she had been a resident of

the Philippines for at least ten years prior to the May 9, 2016 elections. Poe's CoC when she ran for the Senate in the May 2013 national elections, however, shows that ***she then admitted that she had been residing in the Philippines for only six years and six months.*** Had she continued counting the period of her residence based on the information she provided in her 2012 CoC, she would have been three months short of the required Philippine residence of ten years. ***Instead of adopting the same representation, her 2015 CoC shows that she has been residing in the Philippines from May 24, 2005, and has thus been residing in the Philippines for more than ten years.***

To the COMELEC, Poe's subsequent change in counting the period of her residence, along with the circumstances behind this change, strongly indicates her ***intent to mislead the electorate regarding eligibility.***

First, at the time Poe executed her 2012 CoC, she was already a high-ranking public official who could not feign ignorance regarding the requirement of establishing legal domicile. She also presumably had a team of legal advisers at the time she executed this CoC as she was then the Chair of the MTRCB. She also had experience in dealing with the qualifications for the presidency, considering that she is the adoptive daughter of a former presidential candidate (who himself had to go to the Supreme Court because of his own qualifications).

Second, Poe's 2012 CoC had been taken ***under oath*** and can thus be considered an admission against interest that ***cannot easily be brushed off or be set aside through the simplistic claim of "honest mistake."***

Third, the evidence Poe submitted to prove that she established her residence (or domicile) in the Philippines as she now claims, mostly refer to ***events prior to her reacquisition of Philippine citizenship,*** contrary to the established jurisprudence requiring Philippine citizenship in establishing legal domicile in the Philippines for election purposes.

Fourth, that Poe allegedly had no life-changing event on November 2006 (the starting point for counting her residence

in her 2012 CoC) does not prove that she did not establish legal domicile in the Philippines at that time.

Lastly**, Poe announced the change in the starting point of her residency period when she was already publicly known to be considering a run for the presidency; thus, ***it appears likely that the change was made to comply with the residence period requirement for the presidency.

These COMELEC considerations, to my mind, do not indicate grave abuse of discretion. I note particularly that Poe's false representation regarding her Philippine citizenship did ***not merely involve a single and isolated statement,*** but a series of acts – ***a series of falsities*** – that started from her RA No. 9225 application, as can be seen from the presented public documents recognizing her citizenship.

I note in this regard that Poe's original certificate of live birth (foundling certificate) does not indicate her Philippine citizenship, as she had no known parents from whom her citizenship could be traced. Despite this, she had been issued various government documents, such as a Voter's Identification Card and Philippine passport recognizing her Philippine citizenship. ***The issuance of these subsequent documents alone should be grounds for heightened suspicions given that Poe's original birth certificate provided no information regarding her Philippine citizenship, and could not have been used as reference for this citizenship.***

Another basis for heightened suspicion is the timing of Poe's amended birth certificate, which was issued on May 4, 2006 (applied for in November 2005), shortly before she applied for reacquisition of Philippine citizenship with the BID. This amended certificate, where reference to being an adoptee has all been erased as allowed by law, was not used in Poe's RA No. 9225 BID application.

The timing of the application for this amended birth certificate strongly suggest that it was used purposely as a reserve document in case questions are raised about Poe's birth; they became unnecessary and were not used when the BID accepted Poe's

statement under oath that she was a former natural-born citizen of the Philippines as required by RA No. 9225.

That government documents that touched on Poe's birth origins had been tainted with irregularities and were issued *before* Poe ran for elective office strongly indicate that ***at the time she executed her CoC, she knew that her claimed Philippine citizenship is tainted with discrepancies, and that she is not a Philippine citizen under Article IV, Section 1 of the 1935 Constitution.***

II.E.2(a)(iii) ***Poe and her Residency Claim***

On Poe's residence, I find it worthy to add that the information in her **2012 CoC (for the Senate)** complies with the requirement that a person must first be a Philippine citizen to establish legal domicile in the Philippines. Based on Poe's 2012 COC, her legal domicile in the Philippines began in November 2006, shortly after the BID issued the Order granting her reacquisition of Philippine citizenship on July 18, 2006.

That her 2012 CoC complies with the ruling in *Japzon v. Comelec,*[226] a 2009 case requiring Philippine citizenship prior to establishing legal domicile in the Philippines, indicates Poe's knowledge of this requirement. It also indicates her present deliberate intent to deceive the electorate by changing the starting point of her claimed residency in the Philippines to May 24, 2005. This, she did despite being in the Philippines at that time as an alien under a *balikbayan* visa.

II.E.3. ***The COMELEC's interpretation of the law despite the Senate Electoral Tribunal's (SET) decision in the Quo Warranto case against the petitioner.***

I cannot agree with the petitioner's position that the COMELEC gravely abused its discretion when it did not consider the SET's decision dated November 17, 2005.

[226] G.R. No. 180088, January 19, 2002, 576 SCRA 331.

By way of background, the petitioner's Philippine citizenship was earlier challenged in a ***quo warranto*** **proceeding** before the SET. ***A quo warranto proceeding involves a direct, not a preliminary challenge (unlike in a cancellation proceeding), to a public officer's qualification for office.*** The SET, **voting 5 to 4,** dismissed the petition and effectively held that she was fit to hold office as Senator.

The SET's dismissal of the *quo warranto* petition against Poe, however, is not binding on the COMELEC, nor does it have any effect on the COMELEC's authority to render its own decision over the Section 78 proceedings filed against her.

A ***first important point*** to consider in looking at the SET decision, is that until now it is still the subject of judicial review petition before this Court but does not serve as a prejudicial question that must be resolved before the COMELEC can rule on the separate and distinct petition before it. Rizalito Y. David, the petitioner who initiated the *quo warranto* proceeding, timely invoked the expanded jurisdiction of the Court in G.R. No. 221538. While the decision's implementation has not been prohibited by the Court, its legal conclusions and reasoning are still under question. Thus, the decision has not yet been affirmed by the Court and cannot be applied, by way of judicial precedent, to the COMELEC's decision-making.

Note in this regard that only rulings of the Supreme Court are considered as part of the laws of the land and can serve as judicial precedent.[227] Cases decided by the lower courts, once they have attained finality, may only bar the institution of another case for *res adjudicata, i.e.,* by prior judgment (claim preclusion) or the preclusion of the re-litigation of the same issues (issue

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[227] See Civil Code, Art. 8. See also *Ting v. Velez-Ting,* G.R. No. 166562, March 31, 2009, 582 SCRA 694, 704-705; *Cabigon v. Pepsi-Cola Products Philippines, Inc.,* G.R. No. 168030, December 19, 2007, 541 SCRA 149, 156-157; *Hacienda Bino/Hortencia Starke, Inc. vs. Cuenca,* G.R. No. 150478, April 15, 2005, 456 SCRA 300, 309.

preclusion).[228] For *res judicata* to take. effect, however, the petitioner should have raised it as part of her defense and properly established that the elements for its application are present. The petitioner has done neither.

Likewise note that a court's ruling on citizenship, as a general rule, does not have the effect of *res judicata,* especially when the citizenship ruling is only ***antecedent to the determination of rights of a person in a controversy.***[229] This point is further discussed below.

Second, the COMELEC can conduct its own inquiry regarding the petitioner's citizenship, separate from and independently of the SET.

The COMELEC, in order to determine the petitioner's eligibility and decide on whether her CoC should be cancelled, can inquire into her citizenship. Courts, including quasi-judicial agencies such as the COMELEC, may make pronouncements on the status of Philippine citizenship as an incident in the adjudication of the rights of the parties to a controversy.

In making this determination (and separately from the reasons discussed above), ***the COMELEC is not bound by the SET's decision since these constitutional bodies are separate and independent from one another, each with its own specific jurisdiction and different issues to resolve.*** The COMELEC, as the independent constitutional body tasked to implement election laws, has the authority to determine citizenship to determine whether the candidate committed false material

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[228] See *Apo Fruits Corporation v. Land Bank of the Phlippines,* G.R. No. 164195, October 12, 2010, 632 SCRA 727, 760; *Filipinas Palmoil Processing, Inc. v. Dejapa,* G.R. No. 167332, February 7, 2011, 641 SCRA 572, 581. See also *Pasiona v. Court of Appeals,* G.R. No. 165471, July 21, 2008, 559 SCRA 137.

[229] See *Go, Sr. v. Ramos,* 614 Phil. 451, 473 (2009). See also *Moy Ya Lim Yao v. Commissioner of Immigration,* No. L-21289, October 4, 1971, 41 SCRA 292, 367; *Lee v. Commissioner of Immigration,* No. L-23446, December 20, 1971, 42 SCRA 561, 565; *Board of Commissioners (CID) v. Dela Rosa,* G.R. Nos. 95612-13, May 31, 1991, 197 SCRA 854, 877-878.

representation in her CoC. The SET, on the other hand, is a constitutional body tasked to resolve all contests involving the eligibility of Senators to hold office.

That these two bodies have separate, distinct, and different jurisdictions mean that ***neither has the authority nor the ascendancy over the other, with each body supreme in its own sphere of authority.*** Conversely, these bodies have no ascendancy to rule upon issues outside their respective specific authority, much less bind other bodies with matters outside their respective jurisdictions. The decision of the SET, with its specific jurisdiction to resolve contests involving the qualifications of Senators, does not have the authority to bind the COMELEC, another constitutional body with a specific jurisdiction of its own.

Consider, too, that the actual ruling and reasoning behind the SET's decision are suspect and ambiguous. All the members of the SET, except for Senator Nancy Binay (who voted with the minority), issued his or her own separate opinion to explain his or her vote: aside from the three members of the SET who dissented and issued their own separate opinions, the five members of the majority also wrote their own separate opinions explaining their votes.

Notably, one member of the SET majority opined that the SET's decision is a political one since the majority of SET membership comes from the political legislative branch of government.

While I do not subscribe to this view, the fact that this was said by one of the members in the majority could reasonably affect the COMELEC's (and even the public's) opinion on the SET's grounds for its conclusion.

Another member of the SET majority in fact pointedly said:

> **The** ***composition of the Senate Electoral Tribunal is predominantly political, six Senators and three Justices of the Supreme Court. The Philippine Constitution <u>did not strictly demand</u> <u>a strictly legal viewpoint</u> in deciding disqualification cases against Senators.*** Had the intention been different, the Constitution should have made the

Supreme Court also sit as the Senate Electoral Tribunal. The fact that six Senators, elected by the whole country, form part of the Senate Electoral Tribunal would suggest that the judgment of the whole Filipino nation must be taken into consideration. [emphases, italics, and underscoring supplied]

Still another member of the SET majority openly explained that his vote stems from the belief that the SET is ***"predominantly a political body"*** that must take into consideration the will of the Filipino people, while another expressly stated that her opinion should not be extended to the issues raised in the COMELEC:

Finally, it is important for the public to understand that the main decision of the SET and my separate opinion are limited to the issues raised before it. This does not cover other issues raised in the Commission on Elections in connection with the Respondent's candidacy as President or issues raised in the public fora.

These opinions reasonably cast doubt on the applicability – whether as precedent or as persuasive legal points of view – to the present COMELEC case which necessarily has to apply the law and jurisprudence in resolving a Section 78 proceeding.

Given the structure and specific jurisdictions of the COMELEC and the SET, as well as the opinions of some of the latter's members regarding the nature of their decision, the COMELEC could not have acted beyond its legitimate jurisdiction nor with grave abuse of discretion when it inquired into the petitioner's citizenship.

II.E.4. ***The COMELEC's authority under Section 78 and the BID's Order under RA No. 9225.***

Neither do I agree that the COMELEC's decision amounted to a collateral attack on the BID Order, nor that the COMELEC usurped the DOJ's primary jurisdiction over the BID Order.

In the present case, the private respondents sought the cancellation of the petitioner's CoC based on her false material representations regarding her Philippine citizenship, natural-born status, and period of residence. The BID, on the other

hand, passed upon petitioner Poe's compliance with RA No. 9225 when she applied for the "reacquisition" of Philippine citizenship. The BID approved the application and thus certified Poe as a dual Philippine-U.S. citizen.

Whether the COMELEC's Section 78 decision is a collateral attack on the BID Order depends on the COMELEC's purpose, authority to make the inquiry, and the effect of its decision on the BID Order.

As I pointed out earlier, the COMELEC can make pronouncements on the status of Philippine citizenship as an incident in the adjudication of the rights of the parties to a controversy that is within its jurisdiction to rule on.[230]

A significant point to understand on citizenship is that RA No. 9225 – the law authorizing the BID to facilitate the reacquisition of Philippine citizenship and pursuant to which Poe now claims Filipino citizenship – does not *ipso facto* authorize a former natural-born Philippine citizen to run for elective office.

An RA No. 9225 proceeding simply makes a finding on the applicant's compliance with the requirements of this law. Upon approval of the application, the applicant's political and civil rights as a Philippine citizen are restored, **with the *subsequent* enjoyment of the restored civil and political rights *"subject to all attendant liabilities and responsibilities* under existing laws of the Philippines** x x x."

In other words, the BID handles ***the approval process*** **and the restoration of the applicant's civil and political rights, but *how* and *whether the applicant can enjoy or exercise these political 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 point is finished.

Thus, the BID Order approving petitioner Poe's reacquisition of her Philippine citizenship allowed her the political right to

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[230] *Palaran v. Republic,* 4 Phil. 79 (1962).

file a CoC, but like other candidates, she may be the subject of processes contesting her right to run for elective office based on the qualifications she represented in her CoC.

In the petitioner's case, her CoC has been challenged under Section 78 of the OEC for her false material representation of her status as a natural- born Philippine citizen and as a Philippine resident for at least ten years before the May 9, 2016 elections. Thus, as Section 78 provides, the COMELEC conducted its own investigation and reached its conclusions based on its investigation of the claimed false material representations. As this is part of its authority under Section 78, the COMELEC cannot be faulted for lack of authority to act; it possesses the required constitutional and statutory authority for its actions.

More importantly in this case, the COMELEC's action does not amount to a collateral attack against the BID Order, as ***the consequences of the BID Order allows the petitioner to enjoy political rights but does not exempt her from the liabilities and challenges that the exercise of these rights gave rise to.***

In more precise terms, the COMELEC did not directly hold the Order to be defective for purposes of nullifying it; **it simply declared** – pursuant to its own constitutional and statutory power – **that petitioner Poe cannot enjoy the political right to run for the Presidency because she falsely represented her natural-born citizenship and residency status.** These facts are material because they are constitutional qualifications for the Presidency.

It is not without significance that the COMELEC's determination under Section 78 of the OEC of a candidate's Philippine citizenship status despite having reacquired it through RA No. 9225 has been affirmed by the Court several times – notably, in *Japzon v. Comelec,*[231] *Condon v. Comelec,*[232] and *Lopez v. Comelec.*[233]

[231] 596 Phil. 354 (2009).

[232] G.R. No. 198742, August 10, 2012, 678 SCRA 267.

[233] 581 Phil. 657 (2008).

II.E.5. *The claimed COMELEC encroachment on the powers of the Presidential Electoral Tribunal (PET).*

The petitioner posits on this point that the COMELEC, by ruling on her qualifications for the Presidency, encroached on the power of the PET to rule on election contests involving the Presidency. In short, she claims that the COMELEC, without any legal basis, prematurely determined the eligibility of a presidential candidate.

To properly consider this position, it must be appreciated that the COMELEC is not an ordinary court or quasi-judicial body that falls within the judicial supervision of this Court. It is an independent constitutional body that enjoys both **decisional AND institutional independence** from the three branches of the government. Its decisions are not subject to appeal but only to the *certiorari* jurisdiction of this Court for the correction of grave abuses in the exercise of its discretion – a very high threshold of review as discussed above.

If this Court holds that the COMELEC did indeed encroach on the PET's jurisdiction determining the qualifications of Poe in the course of the exercise of its jurisdiction under Section 78 of the OEC, the ruling vastly delimits the COMELEC's authority, while the Court will itself unconstitutionally expand its own jurisdiction.

For easy reference, tabulated below is a comparison of the history of the grant of power, with respect to elections, to the Commission and to the PET (now transferred to the Supreme Court):

The Supreme Court	COMELEC
Republic Act No. 1793 (1957): Sec. 1. There shall be an independent Presidential Electoral Tribunal to be composed of eleven members which shall be the sole judge of all contests relating to the election, returns, and qualifications of the president-elect and the vice-president-elect of the Philippines. x x x	Commonwealth Act No. 607 (1940), Sec. 2: The Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections. It shall decide save those involving the right to vote, all administrative questions affecting elections x x x

|	1935 Constitution (as amended in 1940), Art. X, Sec. 2: The Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. It shall decide, save those involving the right to vote, all <u>administrative</u> questions affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials. All law enforcement agencies and instrumentalities of the Government, when so required by the Commission, shall act as its deputies for the purpose of insuring free, orderly, and honest election. The decisions, orders, and rulings of the Commission shall be subject to review by the Supreme Court. xxx
Batas Pambansa Big. 884 (1985), Sec. 1: There shall be an independent Presidential Electoral Tribunal, hereinafter referred to as the Tribunal, to be composed of the nine members: which shall be the sole judge of all <u>*contests*</u> relating to the election returns, and qualifications of the President and the Vice-President of the Philippines. x x x	1973 Constitution, Art. XII-C, Sec. 2: The Commission on Elections shall have the following powers and functions: l. Enforce and administer all laws relative to the conduct of elections. xxx 3. Decide, save those involving the right to vote, <u>administrative</u> questions affecting elections, including the determination of the number and location of polling places, the appointment of election officials and inspectors, and the registration of votes.
1987 Constitution, Art. VII, Sec. 4: x x x The Supreme Court, sitting en banc, shall be the sole judge of all *contests* relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.	1987 Constitution, Art. IX-C, Sec. 2: The Commission on Elections shall exercise the following powers and functions:

	(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall. xxxx (3) Decide, except those involving the right to vote, <u>*all* questions affecting elections,</u> including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.
1987 Constitution, Art. IX, Sec. 7: x x x Unless otherwise provided by Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.	1987 Constitution, Art. IX, Sec. 1: The Constitutional Commissions, this which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.
	Executive Order 292 (1987), Book V, Title I, Subtitle C, Chapter 1, Sec. 2: Powers and functions. – In addition to the powers and functions conferred upon it by the constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative t o the conduct of elections f or the purpose of insuring free, orderly, honest, peaceful, and credible elections, and shall: (20) Have exclusive jurisdiction over *all* pre-proclamation controversies. It may motu proprio or upon written petition, and after due notice and hearing, order the partial or total suspension of the proclamation of any candidate-elect or annul partially or totally any proclamation, if one has been made, as the evidence shall warrant. Notwithstanding the pendency of any pre-proclamation controversy, the Commission may, motu proprio or upon filing of a verified petition and after due notice and hearing, oder the proclamation of other winning candidates whose

	election will not be affected by the outcome of the controversy.

II.E.5(a). ***History of the PET.***

An examination of the 1935 Constitution shows that it did not provide for a mechanism for the resolution of election contests involving the office of the President or Vice-President. This void was only filled in 1957 when Congress enacted RA No. 1793,[234] creating the Presidential Electoral Tribunal. Until then, controversies or disputes involving election contests, returns, and qualifications of the President-elect and Vice-President-elect were *not justiciable.*[235]

RA No. 1793 gave the Supreme Court, acting as the PET, the sole jurisdiction to decide all contests relating to the elections, returns, and qualifications of the President-elect and the Vice-President elect.

The PET became irrelevant under the 1973 Constitution since the 1973 President was no longer chosen by the electorate but by the members of the National Assembly; the office of the Vice-President in turn ceased to exist.[236]

The PET was only revived in 1985 through Batas Pambansa Blg. *(B.P.)* 884[237] after the 1981 amendments to the 1973 Constitution restored to the people the power to directly elect the President and reinstalled the office of the Vice-President.

The PET under B.P. 884 exercised the same jurisdiction as the sole judge of all *contests* relating to the election, returns, and

[234] An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Protests Contesting the Election of the President-Elect and the Vice-President-Elect of the Philippines and Providing for the Manner of Hearing the Same (21 June 1957).

[235] *Lopez v. Roxas,* 124 Phil. 168 (1966).

[236] 1973 Constitution, Art. VII, Sec. 2.

[237] An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Election Contests in the Office of the President and Vice-President of the Philippines, Appropriating Funds Therefor and For Other Purposes (1985).

qualifications of the President and the Vice-President, *albeit it omitted the suffix "-elect."* It was also an entirely distinct entity from the Supreme Court with membership composed of both Supreme Court Justices and members of the Batasang Pambansa.[238]

The PET's jurisdiction was restored under the 1987 Constitution with the Justices of the Supreme Court as the only members. Presently, this Court, sitting *en banc,* is the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President.

The grant of jurisdiction to the PET is **exclusive** but at the same time, **limited.** The constitutional phraseology limits the PET's jurisdiction to **election contests** which can only contemplate a post-election and post-proclamation controversy[239] since no *"contest"* can exist before a winner is proclaimed. Understood in this sense, the jurisdiction of the members of the Court, sitting as PET, does *not* pertain to Presidential or Vice-Presidential *candidates* but to the President (elect) and Vice-President (elect).

II.E.5(b). ***The COMELEC's History.***

The PET's history should be compared to the history of the grant of jurisdiction to the COMELEC which was created in 1940, initially by statute whose terms were later incorporated as an amendment to the 1935 Constitution. The COMELEC was given the power to decide, save those involving the right to vote, all *administrative* questions affecting elections.

When the 1973 Constitution was adopted, this COMELEC power was retained with the same limitations.

The 1987 Constitution deleted the adjective "administrative" in the description of the COMELEC's powers and expanded its jurisdiction to decide ***all questions affecting elections, except those involving the right to vote.*** Thus, unlike the very limited jurisdiction of election contests granted to the Supreme Court/

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[238] B.P. 883, Sec. 1.

[239] *Tecson v. Commission on Elections,* G.R. No. 161434, March 3, 2004, 424 SCRA 277; *Macalintal v. Presidential Electoral Tribunal,* G.R. No. 191618, November 23, 2010, 635 SCRA 783.

PET, the COMELEC's jurisdiction, with its catch-all provision, is all encompassing; it covers all questions/issues not specifically reserved for other tribunals.

The Administrative Code of 1987 further explicitly granted the COMELEC exclusive jurisdiction over *all* pre-proclamation controversies.

Section 78 of the OEC still further refines the COMELEC's power by expressly granting it the power **to deny due course or to cancel a Certificate of Candidacy on the ground of false material representation.** *Ex necessitate legis.* Express grants of power are deemed to include those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto. This power under Section 78, therefore, necessarily includes the power to make a determination of the truth or falsity of the representation made in the CoC.

The bottom line from this brief comparison is that the power granted to the PET is limited to election contests while the powers of the COMELEC are broad and extensive. Except for election contests involving the President or Vice-President *(and members of Congress)*[240] and controversies involving the right to vote, the COMELEC has the jurisdiction to decide ALL questions affecting the elections. Logically, this includes pre-proclamation controversies such as the determination of the qualifications of candidates for purpose of resolving whether a candidate committed false material representation.

Thus, if this Court would deny the COMELEC the power to pass upon the qualifications of a Presidential *candidate* ***– to stress, not a President or a President-elect*** – on the ground that this power belongs to the PET composed of the members of this Court, we shall be self-servingly expanding the limited power granted to this Court by Article VII, Section 4, at the expense of limiting the powers explicitly granted to an independent constitutional commission. The Court would thus commit an unconstitutional encroachment on the COMELEC's powers.

[240] Art. VI, Sec. 17.

II.E.5(c). ***Jurisprudence on COMELEC-PET Jurisdiction.***

In *Tecson v. COMELEC,*[241] the Court indirectly affirmed the COMELEC's jurisdiction over a presidential candidate's eligibility in a cancellation proceeding. The case involved two consolidated petitions assailing the eligibility of presidential candidate Fernando Poe Jr. *(FPJ)*: one petition, G.R. No. 161824, invoked the Court's *certiorari* jurisdiction under Rule 64 of the Rules of Court over a COMELEC decision in a CoC cancellation proceeding, while the other, G.R. No. 161434, invoked the Court's jurisdiction as a Presidential Electoral Tribunal.

The G.R. No. 161824 petition, in invoking the Court's jurisdiction over the COMELEC's decision to uphold FPJ's candidacy, argued that the COMELEC's decision was within its power to render but its conclusion is subject to the Court's review under Rule 64 of the Rules of Court and Article IX, Section 7 of the 1987 Constitution.

In contrast, the G.R. No. 161434 petition argued that the COMELEC had no jurisdiction to decide a presidential candidate's eligibility, as this could only be decided by the PET. It then invoked the Court's jurisdiction as the PET to rule upon the challenge to FPJ's eligibility.

The Court eventually dismissed both petitions, but for different reasons. The Court dismissed G.R. No. 161824 for failure to show grave abuse of discretion on the part of the COMELEC. G.R. No. 161434 was dismissed for want of jurisdiction.

The difference in the reasons for the dismissal of the two petitions in effect affirmed the COMELEC's jurisdiction to determine a presidential candidate's eligibility in a pre-election proceeding. It also clarified that while the PET also has jurisdiction over the questions of eligibility, its jurisdiction begins only *after* a President has been proclaimed.

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[241] G.R. No. 161434, March 3, 2004, 424 SCRA 277.

Thus, the two *Tecson* petitions, read in relation with one another, stand for the proposition that the PET has jurisdiction over challenges to a proclaimed President's eligibility, while the COMELEC has jurisdiction over the eligibilities and disqualifications of presidential candidates filed prior to the proclamation of a President.

This is the precise point of my discussions above.

As against the *Tecson* ruling, the case of *Fermin v. COMELEC*[242] that petitioner Poe relies on, does not divest the COMELEC of its authority to determine a candidate's eligibility in the course of resolving Section 78 petitions.

Fermin held that a candidate's ineligibility is not a ground for a ***Section 68 proceeding*** involving ***disqualification cases,*** despite a COMELEC rule including the lack of residence (which is an ineligibility) in the list of grounds for a petition for disqualification. It then characterized the disputed petition as a petition for the cancellation of a CoC and not a petition for disqualification, and held that it had been filed out of time.

The Court's citation in *Fermin* of Justice Vicente V. Mendoza's Separate Opinion in ***Romualdez-Marcos v. COMELEC***[243] thus refers to the ***COMELEC's lack of authority to add to the grounds for a petition for disqualification as provided in the law, even if these grounds involve an ineligibility to hold office. It cannot be construed to divest the COMELEC of its authority to determine the veracity of representations in a candidate's CoC, which, to be considered material, must pertain to a candidate's eligibility to hold elective office.*** *Fermin* itself clarified this point when it said that:

> Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is ***not based on the lack of qualifications but on a finding that the candidate made a material representation that is false,*** which may relate to the qualifications required of the

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[242] 595 Phil. 449 (2008).

[243] 318 Phil. 329 (1995).

public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. ***Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office.*** If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a quo warranto proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for quo warranto is filed after proclamation of the winning candidate.[244] [emphases and italics supplied]

III.

The Claim of Grave Abuse of Discretion with respect to the CITIZENSHIP ISSUE

Aside from committing acts outside its jurisdiction, petitioner Poe claims that the COMELEC also committed acts of grave abuse of discretion when it misapplied the law and related jurisprudence in holding that Article IV, Section 1 of the 1935 Constitution does not grant her natural-born Philippine citizenship and in disregarding the country's obligations under treaties and the generally-accepted principles of international law that require the Philippines to recognize the Philippine citizenship of foundlings in the country.

Petitioner Poe also questions the COMELEC's evaluation of the evidence, and alleges that it disregarded the evidence she presented proving that she is a natural-born Philippine citizen.

Poe lastly raises the COMELEC's violation of her right to equal protection, as it has the right to be treated in the same manner as other foundlings born *after* the Philippines' ratification of several instruments favorable to the rights of the child.

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[244] 595 Phil. 449, 465-67 (2008).

III.A. *The COMELEC did not gravely abuse its discretion in interpreting Article IV, Section 1 of he 1935 Constitution.*

III.A.l. *Article IV, Section 1 of the 1935 Constitution does not, on its face, include foundlings in listing the "citizens of the Philippines."*

Jurisprudence has established three principles of constitutional construction: **first,** *verba legis non est recedendum* – from the words of the statute there should be no departure; **second,** when there is ambiguity, *ratio legis est anima* – the words of the Constitution should be interpreted based on the intent of the framers; and **third,** *ut magis valeat quam pereat* – the Constitution must be interpreted as a whole.[245]

I hold the view that none of these modes support the inclusion of foundlings among the Filipino citizens listed in the 1935 Constitution. The 1935 Constitution does not expressly list foundlings among Filipino citizens.[246] Using *verba legis,* the Constitution limits citizens of the Philippines to the listing expressly in its text. Absent any ambiguity, the second level of constitutional construction should not also apply.

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[245] *Francisco v. House of Representatives,* 460 Phil. 830 (2003); *Chavez v. Judicial and Bar Council,* 691 Phil. 173 (2012).

[246] 1935 CONSTITUTION, ARTICLE IV, SECTION 1:

"Section 1. The following are citizens of the Philippines:

(l) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

(2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

(3) Those whose fathers are citizens of the Philippines.

(4) Those whose mothers are citizens of the Philippines, and upon reaching the age of majority, elect Philippine citizenship.

(5) Those who are naturalized in accordance with law."

Even if we apply *ratio legis,* the records of the 1934 Constitutional Convention do not reveal an intention to consider foundlings to be citizens, much less natural-born ones. On the contrary ***the Constitutional Convention rejected the inclusion of foundlings in the Constitution.*** If they were now to be deemed included, the result would be an anomalous situation of monstrous proportions – foundlings, **with unknown parents,** would have **greater rights than those whose mothers are citizens of the Philippines** and who had to elect Philippine citizenship upon reaching the age of majority.

In interpreting the Constitution from the perspective of what it **<u>expressly</u>** contains *(verba legis),* only the terms of the Constitution itself require to be considered. Article IV, Section 1 of the 1935 Constitution on Citizenship provides:

ARTICLE IV
CITIZENSHIP

Section 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

(2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

(3) Those whose fathers are citizens of the Philippines.

(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

(5) Those who are naturalized in accordance with law.

Section 2. Philippine citizenship may be lost or reacquired in the manner provided by law.

To reiterate, the list of persons who may be considered Philippine citizens is an ***<u>exclusive</u>*** list. According to the

principle of *expressio unius est exclusio alterius,* items not provided in a list are presumed not to be included in it.[247]

In this list, **Paragraphs (1) and (2)** need not obviously be considered as they refer to persons who were *already born* at the time of the adoption of the 1935 Constitution. Petitioner Poe was born only in 1968. **Paragraph (5)**, on the other hand and except under the terms mentioned below, does not also need to be included for being immaterial to the facts and the issues posed in the present case.

Thus, we are left with **paragraphs (3) and (4)** which respectively refer to a person's father and mother. *Either or both parents of a child must be Philippine citizens at the time of the child's birth so that the child can claim Philippine citizenship under these paragraphs.*[248]

This is the rule of ***jus sanguinis*** or citizenship by blood, *i.e.,* as traced from one or both parents and as confirmed by the established rulings of this Court.[249] Significantly, none of the 1935 constitutional provisions contemplate the situation where both parents' identities (and consequently, their citizenships) are unknown, which is the case for foundlings.

As the list of Philippine citizens under Article IV, Section 1 does not include foundlings, then they are not included among those constitutionally-granted or recognized to be Philippine citizens *except to the extent that they fall under the coverage of paragraph 5, i.e., if they choose to avail of the opportunity to be naturalized.* Established rules of legal interpretation tell us that ***nothing is to be added to what the text states or***

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[247] *Initiatives for Dialogue and Empowerment Through Alternative Legal Services, Inc. v. Power Sector Assets and Liabilities Management Corporation,* G.R. No. 192088, October 9, 2012, 682 SCRA 602, 649.

[248] This is also the prevailing rule under Section 1(2), Article IV of the 1987 Constitution.

[249] *Tan Chong v. Secretary of Labor,* 73 Phil. 307 (1941); *Talaroc v. Uy,* 92 Phil. 52 (1952); *Tecson v. Commission on Elections,* 468 Phil. 421 (2004).

reasonably implies; a matter that is not covered is to be treated as not covered.[250]

The silence of Article IV, Section 1, of the 1935 Constitution, in particular of paragraphs (3) and (4) parentage provisions, on the citizenship of foundlings in the Philippines, in fact speaks loudly and directly about their legal situation. Such silence can only mean that ***the 1935 Constitution did not address the situation of foundlings via paragraphs** (3) **and (4), but left the matter to other provisions that may be applicable*** *as discussed below.*

Specifically, foundlings can fully avail of Paragraph (5) of the above list, which speaks of those who are naturalized as citizens in accordance with law. Aside from the general law on naturalization,[251] Congress can pass a law specific to foundlings or ratify other treaties recognizing the right of foundlings to acquire Filipino citizenship. The foundling himself or herself, of course, must choose to avail of the opportunity under the law or the treaty.

To address the position that petitioner Poe raised in this case, the fact that the 1935 Constitution did not provide for a situation where both parents are unknown (as also the case in the current 1987 Constitution) does not mean that the provision on citizenship is ambiguous with respect to foundlings; it simply means that the constitutional provision on citizenship based on blood or parentage has not been made available under the Constitution but the provision must be read in its totality so that we must look to other applicable provision that are available, which in this case is paragraph (5) as explained above.

In negative terms, even if Poe's suggested interpretation *via* the parentage provision did not expressly apply and thus left a gap, the omission does not mean that we can take liberties with the Constitution through stretched interpretation, and

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[250] A. Scalia and B. Garner, *Reading Law: The Interpretation of Legal Texts* (2012 ed.), p. 93.

[251] CA No. 473.

forcibly read the situation so as to place foundlings within the terms of the Constitution's parentage provisions. We cannot and should not do this as we would thereby cross the forbidden path of judicial legislation.

The appropriate remedy for the petitioner and other foundlings, as already adverted to, is *via* naturalization, a process that the Constitution itself already provides for. Naturalization can be by specific law that the Congress can pass for foundlings, or on the strength of international law *via* the treaties that binds the Philippines to recognize the right of foundlings to acquire a nationality. (***Petitioner Poe obviously does not want to make this admission as, thereby, she would not qualify for the Presidency that she now aspires for.***) There, too, is the possible amendment of the Constitution so that the situation of foundlings can be directly addressed in the Constitution ***(of course, this may also be an unwanted suggestion as it is a course of action that is too late for the 2016 elections.)***

Notably, the government operating under the 1935 Constitution has recognized that foundlings who wish to become full-fledged Philippine citizens must undergo naturalization under Commonwealth Act No. 473. DOJ Opinion No. 377 **Series of 1940**, in allowing the issuance of Philippine passports to foundlings found in the Philippines, said:

> However under the principles of International Law, a foundling has the nationality of the place where he is found or born (See chapter on the Conflict of Law, footnote, p. 57 citing Bluntschli in an article in the Revue de Troit int. for 1870, p. 107; Mr. Hay, Secretary of State, to Mr. Leishman, Minister to Switzerland, July 12, 1899, For. Rel. 1899, 760; Moore, International Law Digest, Vol. III, p. 281; Garcia's Quizzer on Private International Law, p. 270) which in this case, is the Philippines. Consequently, Eddy Howard ***may be regarded as a citizen of the Philippines for passport purposes only. If he desires to be a full-fledged Filipino, he may apply for naturalization under the provisions of Commonwealth Act No. 473 as amended by Commonwealth Act No. 535.*** [emphasis, italics, and underscoring supplied]

A subsequent DOJ Opinion, DOJ Opinion No. 189, **series of 1951**, stated:

> However under the principles of International Law, a foundling has the nationality of the place where he is found or born (See chapter on the Conflict of Law, footnote, p. 57 citing Bluntschli in an article in the Revue de Troit int. for 1870, p. 107; Mr. Hay, Secretary of State, to Mr. Leishman, Minister to Switzerland, July 12,1899, For. Rel. 1899, 760; Moore, International Law Digest, Vol. III, p. 281) which in this case, is the Philippines. Consequently, Anthony Saton Hale *may be regarded as a citizen of the Philippines, and entitled to a passport as such.*

The two DOJ opinions both say that a foundling is considered a Philippine citizen ***for passport purposes***. That the second DOJ Opinion does not categorically require naturalization for a foundling to become a Philippine citizen does not mean it amended the government's stance on the citizenship of foundlings, ***as these opinions were issued to grant them a Philippine passport and facilitate their right to travel***. International law is cited as reference because they would be travelling abroad, and it is possible that other countries they will travel to recognize that principle. ***But for purposes of application in the Philippines, the domestic law on citizenship prevails, that is, Article IV, Section 1 of the 1935 Constitution***. This is why DOJ Opinion No. 377, Series of 1940 clarified that if a foundling wants to become a full-fledged Philippine citizen, then he should apply for naturalization under CA No. 473.

In any case, *DOJ Opinion No. 189, Series of 1950 should not be interpreted in such a way as to contravene the 1935 Constitution; and it most certainly cannot amend or alter Article IV, Section 1, of the 1935 Constitution.*

III.A.2. *The Constitution did not intend to include foundlings within its express terms but did not totally leave them without any remedy.*

Poe, in arguing this point, effectively imputes grave abuse of discretion on the COMELEC for not recognizing that an ambiguity exists under paragraphs (3) and (4) of Section

1, of Article IV of the 1935 Constitution, and for not recognizing that the framers of the 1935 Constitution intended to include foundlings in the constitutional listing.

I see no ambiguity as explained above, but I shall continue to dwell on this point under the present topic to the extent of petitioner Poe's argument that the *exclusio unios* principle is not an absolute rule and that "unfairness" would result if foundlings are not deemed included within the constitutional listing.

I shall discuss these points though in relation with the petitioner's second point – the alleged intent of the framers of the 1935 Constitution to include foundlings within the terms of the 1935 Constitution. The link between the first and the second points of discussion lies in the claim that ambiguity and fairness render the discussion of the framers' intent necessary.

Poe bases her ambiguity and unfairness argument on the Court's ruling in *People v. Manantan*[252] which provided an exception to the *exclusio unius est exclusio alterius* principle under the ruling that:

> Where a statute appears on its face to limit the operation of its provisions to particular persons or things by enumerating them, but no reason exists why other persons or things not so enumerated should not have been included, and manifest injustice will follow by not so including them, the maxim expressio unius est exclusio alterius, should not be invoked.[253]

The petitioner appears to forget that, as discussed above, the terms of the Constitution are clear – ***they simply did not provide for the situation of foundlings based on parentage*** **–** but left the door open for the use of another measure, their naturalization. *There is thus that backdoor opening in the Constitution to provide for foundlings using a way other than parentage.*

The 1935 Constitution did not also have the effect of fostering unfairness by not expressly including foundlings as citizens *via* the parentage route as foundlings could not rise any higher than children whose mothers are citizens of the Philippines.

[252] 115 Phil. 657 (1962).

[253] *People v. Manantan,* 115 Phil. 657, 668-69 (1962).

Like them, they fell under the naturalized classification under the terms of the 1935 Constitution. That under the terms of the ***subsequent Constitutions*** the children of Filipino mothers were *deemed natural-born citizens of the Philippines* does not also unfairly treat foundlings as there is a reasonable distinction between their situations – the former have established Filipino parentage while the latter's parents are unknown.

From these perspectives, the Constitution did not leave out the situation of foundlings altogether so that there could be a gap that would call for interpretation. ***Apparently, the petitioner simply objects because she wants the case of foundlings to be addressed via the parentage route which is a matter of policy that is not for this Court to take***. In the absence of a gap that would call for interpretation, the use of interpretative principles is uncalled for.

III.A.3. *Neither did the framers of the 1935 Constitution intend to include foundlings within the parentage provisions of this Constitution.*

The full transcript of the deliberations shows that the express inclusion of foundlings within the terms of the 1935 Constitution was taken up during its deliberations. These records show that the proposal to include them was rejected. Other than this rejection, no definitive decision was reached, not even in terms of a *concrete* proposal *to deem them included,* within the meaning of the parentage provisions of Article IV, Section 1 of the 1935 Constitution; there were only vague and inconclusive discussions from which we cannot and should not infer the intent of the framers of the Constitution to consider and then to include them within its terms.

In this regard, the Court should not forget the fine distinction between the evidentiary value of constitutional and congressional deliberations: constitutional deliberation discussions that are not reflected in the wording of the Constitution are not as material as the congressional deliberations where the intents expressed by the discussants come from the very legislators who would

reject or approve the law under consideration. In constitutional deliberations, ***what the framers express do not necessarily reflect the intent of the people*** who by their sovereign act approve the Constitution on the basis of its express wording.[254]

To refer to the specifics of the deliberations, Mr. Rafols, a Constitutional Convention member, proposed the inclusion of foundlings among those who should be expressly listed as Philippine citizens. ***The proposal was framed as an amendment to the agreed provision that children born of Filipina mother and foreign fathers shall be considered Philippine citizens.***

As petitioner Poe pointed out, Mr. Roxas raised the point (as an observation, not as an amendment to the proposal on the table) that the express inclusion of foundlings was no longer needed as their cases were rare and international law at that time already recognized them as citizens of the country where they are born in.

Mr. Buslon, another member, voiced out another point – that the matter should be left to the discretion of the legislature.

The present dispute essentially arose from these statements which preceded the vote on the Rafols proposal (which did not reflect either of the observations made). For clarity, the exchanges among the Convention members went as follows:

Table 3

Español	English
SR. RAFOLS: Para una enmienda, Senor Presidente.Propongo que despues del inciso 2 se inserte lo siguiente: "Los hijos naturales de un padre extranjero y de una madre filipina no reconocidos por aquel,"	MR. RAFOLS: For an amendment, Mr. Chairman. I propose that after the paragraph 2, the following be nserted: "The natural children of a foreign father and a Filipino mother recognized that"
xxx	xxx
EL PRES!DENTE: La Mesa desea pedir una aclara. cion del proponente de Ia enmienda. ;, Se refiere Su Senoria a hijos naturales o a toda clase de hijos ilegitimos?	THE PRESIDENT: The Board wishes to request a clarification to the proponent of the amendment. Does His Honor refer to natural children or any kind of illegitimate children.

[254] See *Francisco, Jr. v. House of Representatives,* 460 Phil. 830, 887 (2003).

SR. RAFOLS: A toda clase de hijos ilegitimos. Tambien se incluye a los hijos naturales de padres conocidos, y los hijos naturales o ilegitimos de padres desconocidos.	MR. RAFOLS: To all kinds of illegitimate children. *It also includes the natural children of unknown parentage,* and natural or illegitimate children of unknown parentage.
SR. MONTINOLA: Para una aclaracion. Alli se dice "de padres desconocidos. "Los Codigos actuates considera como filipino, es decir, me refiero al Codigo espanol que considera como espanoles a todos los hijos da padrea desconcidos nacidos en terrilorio espanol, porque Ia presuncion es que el hijo de padres desconocidos es hijo de un espanol, y de igual manera se podra aplicar eso en Filipinas, de que un hijo de padre desconocido y nacido en Filipinas se considera a que es filipino, de modo que *no hay necesidad ...*	MR. Montinola: for clarification. They are called "of unknown parents." The Codes actually consider them Filipino, that is, I mean the Spanish Code considers all children of unknown parents born in Spanish territory as Spaniards because the presumption is that the child of unknown parentage is the son of a Spaniard; this treatment can likewise be applied in the Philippines so that a child of unknown father born in the Philippines is Filipino, so there is no need ...
SR. RAFOLS: Hay necesidad, porque estamos relatando las condiciones de los que van a ser filipinos.	MR. RAFOLS: There is a need, because we are relating those conditions to those who are going to be Filipinos.
SR. MONTINOLA: Pero esa es Ia interpretacion de la ley ahora, de manera de que no hay necesidad de la enmienda.	MR. Montinola: But that's the lay interpretation of law now, so there is no need for the amendment.
SR. RAFOLS: La enmienda debe leerse de esta manera: "Los hijos naturales o ilegitimos de un padre extranjero y de una madre filipina, no reconocidos por aquel, o los hijos de padres desconocidos."	MR. RAFOLS: The amendment should be read this way: *"The natural or illegitimate children of a foreign father and a Filipino mother, not recognized by either one, or the children of unknown parents."*
x x x	x x x
SR. BUSLON: Mr. President, don't you think it would be better to leave this matter 'to the hands of the Legislature? (original in English)	MR. BUSLON: *Mr. President, don't you think it would be better to leave this matter to the hands of the Legislature?*
SR. ROXAS: Senor Presidente, mi opinion humilde es que estos son casas muy insignificantes y contados, para que la Constitucion necesite referirse a ellos. Por las leyes internacionales se reconoce el principio de que los hijos o las personas nacidas en un pais y de padres desconocidos son ciudadanos de esa nacion, y no es necesario incluir en la Constitucion una disposicion taxativa sobre el particular.	MR. ROXAS: Mr. President, my humble opinion is that these are very insignificant and rare cases for the Constitution to refer to them. *Under international law the principle that children or people born in a country and of unknown parents are citizens of that nation is recognized,* and it is not necessary to include in the Constitution an exhaustive provision on the matter.
x x x	x x x
EL PRESIDENTE: La Mesa sometera a votacion dicha enmienda. Los que esten conformes con fa misma, que digan Si.	THE PRESIDENT: The Chair places the amendment to a vote. Those who agree with the amendment, say Yes. (A minority:

(Una minoria: Si.) Los que no lo esten, que digan No. (Una mayoria: No.) Queda rechazada Ia enmienda.	Yes.) Those who do not, say No. (the majority: No.) The amendment is rejected.

Mr. Roxas, a known and leading lawyer of his time who eventually became the fifth President of the Philippines, was clearly giving his personal "opinion humilde" *(humble opinion)* following Mr. Buslon's alternative view that the matter should be referred to the legislature. He did not propose to amend or change the original Rafols proposal which was the approval or the rejection of the inclusion to the provision *"[t]he natural or illegitimate children of a foreign father and a Filipino mother, not recognized by either one,* ***or the children of unknown parents.****"*

The Convention rejected the Rafols proposal. As approved, paragraph 3 of Section 1 of Article IV of the 1935 Constitution finally read: *"Those whose mothers are citizens of the Philippines and upon reaching the age of majority, elect Philippine citizenship."*

Under these *simple unadorned terms,* nothing was thus clear except the Rafols proposal to include "children of unknown parents," after which a vote followed. As the transcripts show, the assemblage rejected the proposal. To be sure, the rejection was not because foundlings were already Philippine citizens under international law; the Rafols proposal was not amended to reflect this reasoning and was simply rejected after an exchange of views.

To say under these circumstances that foundlings were in fact intended to be included in the Filipino parentage provision is clearly already a modification of the records to reflect what they do not say.

The most that can perhaps be claimed under these records is that the framers were inconclusive on the reason for the rejection. It should not be lost on the Court that the deemed inclusion that Poe now claims does not logically arise from the main provision that Mr. Rafols wanted to amend; his proposal had

a premise different from the Filipino parentage that was sought to be modified.

In clearer terms, **the main provision sought to be amended was based on the existence of a Filipino mother; what Rafols wanted was to include a situation of completely unknown parentage**. This Rafols proposal was rejected. ***Nothing was decided on why the rejection resulted. Anything beyond this simple reading is conjectural.***

To my mind, these considerations should caution us against bowing to petitioner Poe's self-serving interpretation of Mr. Roxas's statement – in effect, ***an interpretation****, not of an express constitutional provision, but of* ***an observation made in the course of the constitutional debate.***

To summarize my reasons for disagreeing with this proposition are as follows:

(1) another member of the 1934 Constitutional Convention provided for a different reason for not including foundlings in the enumeration of citizens under Article IV, *i.e.,* that the· matter should be left to the discretion of the legislature;

(2) Mr. Roxas' statement could in fact reasonably be construed to be in support as well of this alternative reason; what is certain is that Mr. Roxas did not support the Rafols proposal;

(3) Mr. Roxas's view is only one view that was not supported by any of the members of the Constitutional Convention, and cannot be considered to have been representative of the views of the other 201 delegates, 102 of whom were also lawyers like Mr. Roxas and might be presumed to know the basics of statutory construction;

(4) references to international law by members of the Constitutional Convention cannot, without its corresponding text in the Constitution, be considered as appended to or included in the Constitution;

(5) Poe's position is based on an interpretation of a lone observation made in the course of the constitutional debate; it is not even an interpretation of a constitutional provision;

(6) the deemed inclusion would have rendered paragraph 3 of Section 1 absurdly unfair as foundlings would be considered Filipino citizens while those born of Filipina mothers and foreign fathers would have to undertake an election; and lastly,

(7) the sovereign Filipino people could not be considered to have known and ratified the observation of one member of the Constitutional Convention, especially when the provisions which supposedly reflect this observation do not indicate even a hint of this intent.

These reasons collectively provide the justification under the circumstances that lead us to the first and primordial rule in constitutional construction, that is, ***the text of the constitutional provision applies and is controlling. Intent of the Constitution's drafters may only be resorted to in case of ambiguity, and after examining the entire text of the Constitution. Even then, the opinion of a member of the Constitutional Convention is merely instructive, it cannot be considered conclusive of the people's intent.***

III.A.4. ***The application of Article IV, Section 1 of the 1935 Constitution does not violate social justice principles or the equal protection clause.***

In light of the clarity of the text of Article IV, Section 1 of the 1935 Constitution regarding the exclusion of foundlings and the unreliability of the alleged intent of the 1934 Constitutional Convention to include foundlings in the list of Philippine citizens, I do not think the 1987 Constitution's provisions on social justice and the right of a child to assistance, as well as equal access to public office should be interpreted to provide Philippine citizenship to foundlings born under the 1935 Constitution.

As I earlier pointed out, there is no doubt in the provision of Article IV, Section 1 ofthe 1935 Constitution. Foundlings had been contemplated at one point to be included in the provision, but this proposition was rejected, and the ultimate provision of the text did not provide for the inclusion of persons with both parents' identities unknown.

Additionally, ***I do not agree that the Court should interpret the provisions of a new Constitution (the 1987 Constitution) to add meaning to the provisions of the previous 1935 Constitution.*** Indeed, we have cited past Constitutions to look at the history and development of our constitutional provisions as a tool for constitutional construction. How our past governments had been governed, and the changes or uniformity since then, are instructive in determining the provisions of the current 1987 Constitution.

I do not think that a reverse comparison can be done, i.e., that what the 1935 Constitution provides can be amended and applied at present because of what the 1987 Constitution now provides. It would amount to the Court amending what had been agreed upon by the sovereign Filipino nation that ratified the 1935 Constitution, and push the Court to the forbidden road of judicial legislation.

Moreover, determining the *parameters of citizenship* is a sovereign decision that *inherently discriminates* by providing who may and may not be considered Philippine citizens, and how Philippine citizenship may be acquired. These distinctions had been ratified by the Filipino nation acting as its own sovereign through the 1935 Constitution and should not be disturbed.

In these lights, I also cannot give credence to Poe's assertion that interpreting the 1935 Constitution to not provide Philippine citizenship to foundlings is "baseless, unjust, discriminatory, contrary to common sense", and violative of the equal protection clause.

Note, at this point, that the 1935 Constitution creates a distinction of citizenship based on parentage; a person born to a Filipino father is automatically considered a Philippine citizen from birth, while a person born to a Filipino mother has the inchoate right to elect

Philippine citizenship upon reaching the age of majority. Distinguishing the kind of citizenship based on who of the two parents is Filipino is a hallmark (justly or unjustly) of the 1935 Constitution, and allowing persons with whom no parent can be identified for purposes of tracing citizenship would contravene this distinction.

Lastly, as earlier pointed out, adhering to the clear text of the 1935 Constitution *would not necessarily deprive foundlings the right to become Philippine citizens, as they can undergo naturalization under our current laws.*

III.A.5. *The Philippines has no treaty obligation to automatically bestow Philippine citizenship to foundlings under the 1935 Constitution.*

Treaties are entered into by the President and must be ratified by a two-thirds vote of the Philippine Senate in order to have legal effect in the country.[255] Upon ratification, a treaty is transformed into a domestic law and becomes effective in the Philippines. Depending on the terms and character of the treaty obligation, some treaties need additional legislation in order to be implemented in the Philippines. This process takes place pursuant to the ***doctrine of transformation.***[256]

The Philippines has a ***dualist*** approach in its treatment of international law.[257] Under this approach, the Philippines sees international law and its international obligations from two perspectives: *first,* from the ***international plane,*** where international law reigns supreme over national laws; and *second,* from the ***domestic plane,*** where the international obligations and international customary laws are considered in the same footing as national laws, and do not necessarily prevail over the latter.[258]

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[255] CONSTITUTION, Article VII, Section 21.

[256] *Pharmaceutical and Health Care Association of the Philippines v. Duque III,* 561 Phil. 386, 399 (2003).

[257] M. Magallona. "The Supreme Court and International Law: Problems and Approaches in Philippine Practice" 85 *Philippine Law Journal* 1, 2 (2010).

[258] See: *Secretary of Justice v. Hon. Lantion,* 379 Phil. 165, 212-213 (2000).

The first approach springs from the international customary law of *pacta sunt servanda* that recognizes that obligations entered into by states are binding on them and requires them to perform their obligations in good faith.[259] This principle finds expression under Article 27 of the Vienna Convention on the Law of Treaties,[260] which provides that *"[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."*[261]

Thus, in the international plane, the Philippines cannot use its domestic laws to evade compliance with its international obligations; non-compliance would result in repercussions in its dealings with other States.

On the other hand, under Article VIII of the 1987 Constitution, a treaty may be the subject of judicial review,[262] and is thus characterized as an instrument with the same force and effect as a domestic law.[263] From this perspective, treaty provisions cannot

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[259] *Ibid.*

[260] Signed by the Philippines on May 23, 1969 and ratified on November 15, 1972. See Vienna Convention on the Law of Treaties, March 23, 1969, 1115 U.N.T.S. 331, 512. Available at https://treaties.un.org/doc/Publication/UNTSVolume%201155/volume-1155-1-18232-English.pdf

[261] *Id.* at 339.

[262] Section 5, (2)(a), Article VIII provides:

> SECTION 5. The Supreme Court shall have the following powers:
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> x x x
>
> (2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
>
> (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
>
> x x x x x x x x x

[263] See: I. Cortes and R. Lotilla. "Nationality and International Law From the Philippine Perspective" 60(1) *Philippine Law Journal* 1, 1-2 (1990); and, M. Magallona. 'The Supreme Court and International Law: Problems and Approaches in Philippine Practice" 85 *Philippine Law Journal* 1, 2-3 (2010).

prevail over, or contradict, *constitutional provisions;*[264] they can also be amended by *domestic laws,* as they exist and operate at the same level as these laws.[265]

As a last point, treaties are – in the same manner as the determination of a State's determination of who its citizens are – an act made in the exercise of sovereign rights. The Philippines now has every right to enter into treaties as it is independent and sovereign. Such sovereignty only came with the full grant of Philippine independence on July 4, 1946.

Thus, the Philippines could not have entered into any binding treaty before this date, except with the consent of the U.S. which exercised foreign affairs powers for itself and all colonies and territories under its jurisdiction. No such consent was ever granted by the U.S. so that any claim of the Philippines being bound by any treaty regarding its citizens and of foundlings cannot but be empty claims that do not even deserve to be read, much less seriously considered.

III.A.5(a). *The Philippines' treaty obligations under the ICCPR and UNCRC do not require the immediate and automatic grant of Philippine citizenship to foundlings.*

While the **International Covenant for Civil and Political Rights** *(ICCPR)* and **United Nations' Convention on the Rights of the Child** (*UNCRC)* are valid and binding on the Philippines as they have been signed by the President and concurred in by our Senate, our obligations under these treaties do not require the *immediate and automatic grant* of Philippine citizenship, much less of natural-born status, to foundlings.

Treaties are enforceable according to the terms of the obligations they impose. The terms and character of the

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[264] CONSTITUTION, Article VIII, Section 4(2) on the power of the Supreme Court to nullify a treaty on the ground of unconstitutionality. See also: M. Magallona, *supra* note 111, at 6-7.

[265] M. Magallona, *supra* note 111, at 4, citing *Ichong v. Hernandez,* 101 Phil. 1156 (1957).

provisions of the ICCPR and UNCRC merely require the grant to every child of the *right to* ***acquire*** a nationality.

Section 3, Article 24 of the ICCPR on this point provides:

3. Every child has the right to ***acquire*** a nationality. [emphasis supplied]

while Article 7, Section 1 of the UNCRC provides:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to ***acquire*** a nationality and, as far as possible, the right to know and be cared for by his or her parents. [emphasis supplied]

The right to acquire a nationality is different from the grant of an outright Filipino nationality. Under the cited treaties, ***States are merely required to recognize and facilitate the child's right to acquire a nationality.***

The method through which the State complies with this obligation varies and depends on its discretion. Of course, the automatic and outright grant of citizenship to children in danger of being stateless is one of the means by which this treaty obligation may be complied with. But the treaties allow other means of compliance with their obligations short of the immediate and automatic grant of citizenship to stateless children found in their territory.

These treaties recognize, too, that the obligations should be complied with within the framework of a State's national laws. This view is reinforced by the provisions that implement these treaties.

Article 2 of the ICCPR on this point provides:

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

On the other hand, Article 4 of the UNCRC states:

States Parties shall ***undertake all appropriate legislative, administrative, and other measures for the implementation of the rights*** recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation. [emphasis and italics supplied]

These terms should be cross-referenced with Section 2, Article 7 of the UNCRC, which provides:

States Parties shall ***ensure the implementation of these rights in accordance with their national law*** and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless. [emphasis, italics, and underscoring supplied]

Taken together, these ICCPR and UNCRC implementation provisions reveal the measure of flexibility mentioned above.[266] This flexibility runs from the absolute obligation to recognize every child's right to acquire a nationality, all the way to the *allowable and varying* measures that may be taken to ensure this right. These measures may range from an immediate and outright grant of nationality, to the passage of naturalization measures that the child may avail of to exercise his or her rights, all in accordance with the State's national law.

This view finds support from the history of the provision *"right to acquire nationality"* in the ICCPR. During the debates that led to the formulation of this provision, *the word "acquire" was inserted in the draft, and the words "from his birth" were deleted.* This change shows the intent of its drafters to, at the very least, vest discretion on the State with respect to the means of facilitating the acquisition of citizenship.

Marc Bussoyt, in his Guide to the *"Travaux Preparatoires"* of the International Covenant on Civil and Political Rights,"[267]

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[266] See: M. Dellinger. "Something is Rotten in the State of Denmark: The Deprivation of Democratic Rights by Nation States Not Recognizing Dual Citizenship" 20 *Journal of Transnational Law & Policy* 41, 61 (2010-2011).

[267] See: M. Bussuyt. "Guide to the"Travaux Preparatoires" of the International Covenant on Civil and Political Rights" *Martinus Nijhoff Publishers* (1987).

even concluded that "the word 'acquire' would infer that naturalization was not to be considered as a right of the individual but was accorded by the State at its discretion."

III.A. 5(b). ***The right to a nationality under the UDHR does not require its signatories to automatically grant citizenship to foundlings in its respective territories.***

Neither does the Philippines' participation as signatory to the United Nation Declaration on Human Rights (*UDHR)*[268] obligate it to automatically grant Filipino citizenship to foundlings in its territory.

Allow me to point out at the outset that the ***UDHR is not a treaty*** that directly creates legally-binding obligations for its signatories.[269] It is an international document recognizing inalienable human rights, which eventually led to the creation of several legally-binding treaties, such as the ICCPR and the International Covenant on Economic, Social and Cultural Rights *(ICESCR).*[270] Thus, the Philippines is not legally-obligated to comply with the provisions of the UDHR *per se.* It signed the UDHR because it recognizes the rights and values enumerated in the UDHR; this recognition led it to sign both the ICCPR and the ICESCR.[271]

To be sure, international scholars have been increasingly using the provisions of the UDHR to argue that the rights provided in

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[268] Adopted by the United Nations General Assembly on December 10, 1948. Available from http://www.un.org/en/universal-declaration-human-rights/index.html.

[269] See: Separate Opinion of *CJ* Puno in *Republic v. Sandiganbayan, supra* note 104, at 577.

[270] See: J. von Bernstorff. "The Changing Fortunes of the Universal Declaration of Human Rights: Genesis and Symbolic Dimensions of the Turn to Rights in International Law" 19(5) *European Journal of International Law* 903, 913-914 (2008).

[271] See: *Secretary of National Defense v. Manalo,* 589 Phil. 1, 50-51 (2008) and Separate Opinion of *CJ* Puno in *Republic v. Sandiganbayan, supra* Note 104 at 577.

the document have reached the status of customary international law. Assuming, however, that we were to accord the right to nationality under the UDHR the status of a treaty obligation or of a generally-accepted principle of international law, it still does not require the Philippine government to automatically grant Philippine citizenship to foundlings in its territory.

Article 15 of the UDHR provides:

> Article 15.
>
> (1) Everyone has the right to a nationality.
> (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Thus, the language of the UDHR itself recognizes the right of everyone to a nationality, without imposing on the signatory States how they would recognize this right.

Interestingly, Benigno Aquino, the then Philippine delegate to the United Nations, even opposed the declaration of the right to nationality under the UDHR, and opined that the UDHR should be confined to principles whose implementation should be left to the proposed covenant.

III.A.5(c). *The Philippines' compliance with its international obligations does not include the grant of natural-born Philippine citizenship to foundlings.*

In legal terms, a State is obliged to ensure every child's right to acquire a nationality through laws in the State's legal system that do not contradict the treaty.

In the Philippines, the Constitution defines the overall configuration of how Filipino citizenship should be granted and acquired. Treaties such as the ICCPR and UNCRC should be complied with, in so far as they touch on citizenship, within the terms of the Constitution's Article on Citizenship.

In the context of the present case, compliance with our treaty obligations to recognize the right of foundlings to acquire a

nationality must be undertaken under the terms of, and must not contradict, the citizenship provisions of our Constitution.

The 1935 Constitution defined who the citizens of the Philippines then were and the means of acquiring Philippine citizenship at the time the respondent was found (and born). ***This constitutional definition must necessarily govern the petitioner's case.***

As repeatedly mentioned above, Article IV of the 1935 Constitution generally follows the ***jus sanguinis* rule:** Philippine citizenship is determined **by blood,** *i.e.,* by the citizenship of one's parents. The Constitution itself provides the instances when *jus sanguinis* is not followed: for inhabitants who had been granted Philippine citizenship at the time the Constitution was adopted; those who were holding public office at the time of its adoption; and those who are naturalized as Filipinos in accordance with law.

As earlier explained, the constitutional listing is exclusive. It neither provided nor allowed for the citizenship of foundlings except through naturalization. Since the obligation under the treaties can be complied with by facilitating a child's right to acquire a nationality, the presence of naturalization laws that allow persons to acquire Philippine citizenship already constitutes compliance.

Petitioner Poe argues against naturalization as a mode of compliance on the view that this mode requires a person to be 18 years old before he or she can apply for a Philippine citizenship. The sufficiency of this mode, *in light particularly of the petitioner's needs,* however, is not a concern that neither the COMELEC nor this Court can address given that the country already has in place measures that the treaties require – our naturalization laws.

As likewise previously mentioned, the ICCPR and the UNCRC allow the States a significant measure of flexibility in complying with their obligations. How the Philippines will comply within the range of the flexibility the treaties allow is a ***policy question***

that is fully and wholly within the competence of the Congress and of the Filipino people to address.

To recall an earlier discussion and apply this to the petitioner's argument, the country has adopted a dualist approach in conducting its international affairs. In the domestic plane where no foreign element is involved, we cannot interpret and implement a treaty provision in a manner that contradicts the Constitution; a treaty obligation that contravenes the Constitution is null and void.

For the same reason, it is legally incorrect for the petitioner to argue that the ICCPR, as a curative treaty, should be given retroactive application. A null and void treaty provision can never, over time, be accorded constitutional validity, except when the Constitution itself subsequently so provides.

The rule in the domestic plane is, of course, separate and different from our rule in the international plane where treaty obligations prevail. If the country fails to comply with its treaty obligations because they contradict our national laws, there could be repercussions in our dealings with other States. This consequence springs from the rule that our domestic laws cannot be used to evade compliance with treaties in the international plane. *Repercussions in the international plane, however, do not make an unconstitutional treaty constitutional and valid. These repercussions also cannot serve as an excuse to enforce a treaty provision that is constitutionally void in the domestic plane.*

III.A.6. *The alleged generally accepted principles of international law presuming the parentage of foundlings is contrary to the 1935 Constitution.*

III.A.6(a). *Generally accepted principles of international law.*

Unlike treaty obligations that are ratified by the State and clearly reflect its consent to an obligation, the obligations under generally accepted principles of international law are recognized to bind States because ***state practice shows that the States themselves consider these principles to be binding.***

Generally accepted principles of international law are legal norms that are recognized as customary in the international plane. ***States follow them on the belief that these norms embody obligations that these States, on their own, are bound to perform.*** Also referred to as customary international law, generally accepted principles of international law pertain to the collection of international behavioral regularities that nations, over time, come to view as binding on them as a matter of law.[272]

In the same manner that treaty obligations partake of the character of domestic laws in the domestic plane, so do *generally accepted principles of international law.* Article II, Section 2 of the 1987 Constitution provides that these legal norms "*form part of the law of the land.*" This constitutional declaration situates in clear and definite terms the role of generally accepted principles of international law in the hierarchy of Philippine laws and in the Philippine legal system.

Generally accepted principles of international law usually gain recognition in the Philippines through decisions rendered by the Supreme Court, pursuant to the *doctrine of incorporation.*[273] The Supreme Court, in its decisions, applies these principles as rules or as canons of statutory construction, or recognizes them as meritorious positions of the parties in the cases the Court decides.[274]

Separately from Court decisions, international law principles may gain recognition through actions by the executive and legislative branches of government when these branches use them as bases for their actions (such as when Congress enacts

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[272] *J.* Leonen, Concurring Opinion in *Arigo v. Swift,* G.R. No. 206510, September 16, 2014, 735 SCRA 208, 209; citing E. Posner and J. L Goldsmith, "*A Theory of Customary International Law*" (l998). See also *Razon, Jr. v. Tagitis,* 621 Phil. 536, 600-605 (2009).

[273] See CONSTITUTION, Article II, Section 2.

[274] See *Pharmaceutical and Health Care Association of the Philippines v. Duque III,* 561 Phil. 386, 399 (2003).

a law that incorporates what it perceives to be a generally accepted principle of international law).

But until the Court declares a legal norm to be a generally accepted principle of international law, no other means exists in the Philippine legal system to determine *with certainty* that a legal norm is indeed a generally accepted principle of international law that forms part of the law of the land.

The main reason for the need for a judicial recognition lies in the nature of international legal principles. Unlike treaty obligations that involve the *express promises of States* to other States, generally accepted principles of international law do *not require any categorical expression from States* for these principles to be binding on them.[275]

A legal norm requires the concurrence of two elements before it may be considered as a generally accepted principle of international law: the ***established, widespread, and consistent practice on the part of States;*** and a ***psychological element known as the*** **opinio juris sive necessitates** ***(opinion as to law or necessity)***.[276] Implicit in the latter element is the belief that the practice is rendered obligatory by the existence of a rule of law requiring it.

The most widely accepted statement of sources of international law today is Article 38(1) of the Statute of the International Court of Justice *(ICJ),* which provides that the ICJ shall apply international custom, as evidence of a general practice accepted as law.[277] The material sources of custom include state practices, state legislation, international and national judicial decisions, recitals in treaties and other international instruments, a pattern of treaties in the same form, the practice of international organs,

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[275] See: M. Magallona, *supra* note 111, at 2-3.

[276] *Razon v. Tagitis, supra* note 119, at 601.

[277] Statute of the International Court of Justice, Article 38(1)(b). Available at http://www.icj-cij.org/documents/?p/=4&p2=2

and resolutions relating to legal questions in the United Nations General Assembly.[278]

Sometimes referred to as evidence of international law, these sources identify the substance and content of the obligations of States and are indicative of the state practice and the *opinio juris* requirements of international law.

In the usual course, this process passes through the courts as they render their decisions in cases. As part of a court's function of determining the applicable law in cases before it (including the manner a law should be read and applied), the court has to determine the existence of a generally applied principle of international law in the cases confronting it, as well as the question of whether and how it applies to the facts of the case.

To my mind, the process by which courts recognize the effectivity of general principles of international law in the Philippines is akin or closely similar to the process by which the Supreme Court creates jurisprudence. Under the principle of *stare decisis,* courts apply the doctrines in the cases the Supreme Court decides as judicial precedents in subsequent cases with similar factual situations.[279]

In a similar manner, the Supreme Court's pronouncements on the application of generally accepted principles of international law to the cases it decides are not only binding on the immediately resolved case, but also serve as judicial precedents in subsequent cases with similar sets of facts. That both jurisprudence and generally accepted principles of international law form ***"part of the law of the land"*** (but are not laws *per se)* is, therefore, not pure coincidence.[280]

To be sure, the executive and legislative departments may recognize and use customary international law as basis when

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[278] *Pharmaceutical and Health Care Association of the Philippines v. Duque Ill, supra* note 115, at 399.

[279] *Ting v. Velez-Ting,* 601 Phil. 676, 687 (2009).

[280] CONSTITUTION, Article II, Section 2 in relation to CIVIL CODE, Article 8.

they perform their functions. But while such use is not without legal weight, the continued efficacy and even the validity of their use as such *cannot be certain.* While their basis may be principles of international law, their inapplicability or even invalidity in the Philippine legal setting may still result if the applied principles are inconsistent with the Constitution – a matter that is for the Supreme Court to decide.

Thus viewed, the authoritative use of general principles of international law can only come from the Supreme Court whose decisions incorporate these principles into the legal system as part of jurisprudence.

III.A.6.(b). ***The concept and nature of generally-accepted principles of international law is inconsistent with the State's sovereign prerogative to determine who may or may not be its citizens.***

Petitioner Poe argues that the presumption of the parentage of foundlings is a legal norm that has reached widespread practice and is indicative of the *opinio juris* of States so that the presumption is binding. Thus, it is a generally-accepted principle of international law that should be recognized and applied by the Court.

I cannot agree with this reasoning as *the very nature of generally accepted principles of international law is inconsistent with and thus inapplicable to, the State's sole and sovereign prerogative to choose who may or may not be its citizens, and how the choice is carried out.*

A generally accepted principle of international law is considered binding on a State because evidence shows that it considers this legal norm to be obligatory. No express consent from the State in agreeing to the obligation; its binding authority over a State lies from the inference that most, if not all States consider the norm to be an obligation.

In contrast, States have the inherent right to decide who may or may not be its citizens, including the process through which

citizenship may be acquired. The application of presumptions, or inferences of the existence of a fact based on the existence of other facts, is part of this process of determining citizenship.

This right is strongly associated with and attendant to state sovereignty. Traditionally, nationality has been associated with a State's "right to exclude others", and to defend the territory of the nation from external aggression has been a predominant element of nationality.[281]

Sovereignty in its modern conception is described as the confluence of independence and territorial and personal supremacy, expressed as "the supreme and independent authority of States over all persons in their territory."[282]

Indeed, a State exercises personal supremacy over its nationals wherever they may be. The right to determine who these nationals are is a pre-requisite of a State's personal supremacy, and therefore of sovereignty.[283]

It is in this context that Oppenheimer said that:

> It is not for International Law, but for Municipal Law to determine who is, and who is not considered a subject.[284]

Given that the State's right to determine who may be its nationals (as well as how this determination is exercised) is inextricably linked to its sovereignty, I cannot see how it can properly be the subject of state consensus or norm dictated by the practice of other States. In other words, the norm pertaining to the determination of who may or may not be a citizen of a State cannot be the subject of an implied obligation that came

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[281] See: K. Hailbronner. "Nationality in Public International Law and European Law," *EUDO Citizenship Observatory,* (2006). Available at http://eudo-citizenship.eu/docs/chapter1_Hailbronner.pdf

[282] See: P. Weiss. "*Nationality and Statelessness in International Law"* Sijthoff & Noordhoff International Publishers B.V, (1979).

[283] *Ibid.*

[284] I. Oppenheim, *International Law* 643 (8th ed. 1955).

to existence because other States impliedly consider it to be their obligation.

In the first place, a State cannot be obligated to adopt a means of determining who may be its nationals as this is an unalterable and basic aspect of its sovereignty and of its existence as a State. Additionally, the imposition of an implied obligation on a State simply because other States recognize the same obligation contradicts and impinges on a State's sovereignty.

Note at this point, that treaty obligations that a State enters into involving the determination of its citizens has the express consent of the State; under Philippine law, this obligation is transformed into a municipal law once it is ratified by the Executive and concurred in by the Senate.

The evidence presented by petitioner Poe to establish the existence of generally-accepted principles of international law actually reflects the *inherent inconsistency between the State's sovereign power to determine its nationals and the nature of generally-accepted principles of international law as a consensus-based, implied obligation.* Poe cites various laws and international treaties that provide for the presumption of parentage for foundlings. These laws and international treaties, however, have the expressed imprimatur of the States adopting the presumption.

In contrast, the Philippines had not entered into any international treaty recognizing and applying the presumption of parentage of foundlings; neither is it so provided in the 1935 Constitution. References to international law in the deliberations of the 1934 Constitutional Convention – without an actual ratified treaty or a provision expressing this principle – cannot be considered binding upon the sovereign Filipino people who ratified the 1935 Constitution. The ratification of the provisions of the 1935 Constitution is a sovereign act of the Filipino people; **to reiterate for emphasis, this act cannot be amended by widespread practice of other States, even if these other States believe this practice to be an obligation.**

III.A.6(c). ***The presumption of parentage contradicts the distinction set out in the 1935 Constitution.***

Further, even if this presumption were to be considered a generally-accepted principle of international law, it cannot be applied in the Philippines as it contradicts the *jus sanguinis* principle of the 1935 Constitution, as well as the distinction the 1935 Constitution made between children born of Filipino fathers and of Filipina mothers.

As earlier discussed, a presumption is an *established inference* from facts that are proven by evidence.[285] The undisputed fact in the present case is that the petitioner was *found in a church in Jaro, Iloilo;* because of her age at that time, she may conceivably have been born in the area so that Jaro was her birth place.

This line of thought, if it is to lead to Poe's presumption, signifies a presumption based on ***jus soli*** **or place of birth** because this is the inference that is nearest the *established fact of location of birth. Jus sanguinis* (blood relationship) cannot be the resulting presumption as there is absolutely no established fact leading to the inference that the petitioner's biological parents are Filipino citizens.

Jus soli, of course, is a theory on which citizenship may be based and **is a principle that has been pointedly rejected in the country,** at the same time that *jus sanguinis* has been accepted. From this perspective, the petitioner's advocated presumption runs counter to the 1935 Constitution.

The same result obtains in the line of reasoning that starts from the consideration that a principle of international law, even if it is widely observed, cannot form part of the law of the land if it contravenes the Constitution.

Petitioner Poe's desired presumption works at the same level and can be compared with existing presumptions in determining

[285] *Metropolitan Bank Corporation v. Tobias, supra* note 63, at 188-189.

the parentage of children and their citizenship, which are based on the Civil Code as interpreted by jurisprudence.[286] These are the presumptions formulated and applied in applying our citizenship laws, particularly when the parentage of a child is doubtful or disputed.

For instance, a child born during his or her parent's marriage is presumed to be the child of both parents.[287] Thus, the child follows the citizenship of his or her father. A child born out of wedlock, on the other hand, can only be presumed to have been born of his or her mother, and thus follows the citizenship of his or her mother until he or she proves paternal filiations. *These Civil Code presumptions are fully in accord with the constitutional citizenship rules.*

A *presumption* that a child with no known parents will be considered to have Filipino parents, on the other hand, runs *counter to the most basic rules on citizenship under the 1935 Constitution.*

Other than through naturalization or through outright constitutional grant, the 1935 Constitution requires that the father or the mother be known to be Filipino for a person to acquire Filipino citizenship. This is a consequence of the clear and categorical *jus sanguinis* rule that the 1935 Constitution established for the country.

Under its terms, should a child's father be Filipino, then he or she acquires Philippine citizenship. On the other hand, should his or her father be a foreigner but the mother is a Filipina, the 1935 constitutional Rule is to give the child the right to elect Philippine citizenship when he or she reaches 18 years of age.

Without the identity of either or both parents being known in the case of foundlings, no determination of the foundling's citizenship can be made under *jus sanguinis.* Specifically, ***whose citizenship shall the foundling follow:*** the citizenship of the father, or the option to elect the citizenship of the mother?

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[286] CIVIL CODE, Title VIII, Chapter l.

[287] *Id.,* Article 255.

Applying Poe's desired presumption would obviously erase the distinction that the 1935 Constitution placed in acquiring Philippine citizenship, and only strengthens the lack of intent (aside from a lack of textual provision) to grant Philippine citizenship to foundlings.

This inherent irreconcilability of Poe's desired presumption with the 1935 Constitution renders futile any discussion of whether this desired presumption has reached the status of a generally accepted principle of international law applicable in the Philippines. We cannot (and should not) adopt a presumption that contradicts the fundamental law of the land, regardless of the status of observance it has reached in the international plane.

I recognize of course that in the future, Congress may, by law, adopt the petitioner's desired presumption *under the 1987 Constitution.* A ***presumption of Filipino parentage*** necessarily means a **presumption of *jus sanguinis* for foundlings.**

But even if made, the presumption remains what it is – a presumption that must yield to the reality of actual parentage when such parentage becomes known *unless the child presumed to be Filipino by descent undertakes a confirmatory act independent of the presumption, such as naturalization.*

Note that the 1987 Constitution does not significantly change the *jus sanguinis* rule under the 1935 Constitution. Currently, a natural-born Filipino is one whose father or mother is a Filipino at the time of the child's birth. As in 1935, the current 1987 Constitution speaks of parents who are *actually* Philippine citizens at the time of the child's birth; how the parents acquired their own Philippine citizenship is beside the point and is not a consideration for as long as this citizenship status is there *at the time of the child's birth.*

A presumption of Filipino parentage cannot similarly apply or extend to the character of being natural-born, as this character of citizenship can only be based on reality; when the Constitution speaks of "natural-born," it cannot but refer to ***actual or natural, not presumed,*** birth. A presumption of being

natural-born is effectively a ***legal fiction*** that **the *definition* of the term "natural-born" under the Constitution and the *purposes this definition serves* cannot accommodate.**

To sum up, the petitioner's argument based on a foundling's presumed Filipino parentage under a claimed generally accepted principle of international law is legally objectionable under the 1935 Constitution and cannot be used to recognize or grant natural-born Philippine citizenship.

III.B. *Grave Abuse of Discretion in Resolving the Citizenship Issues: Conclusions.*

Based on all these considerations, I conclude that the COMELEC laid the correct premises on the issue of citizenship in cancelling Poe's CoC.

To recapitulate, Poe anchors her arguments mostly on two basic points: ***first,*** that the framers of the 1935 Constitution agreed to include foundlings in the enumeration of citizens in Article IV, Section 1 of the 1935 Constitution although they did not expressly so provide it in its express provisions; and ***second,*** that the Philippines' international obligations include the right to automatically vest Philippine citizenship to foundlings in its territory.

With her failure on these two points, the rest of Poe's arguments on her natural-born citizenship status based on the 1935 Constitution and under international law, and the grave abuse of discretion the COMELEC allegedly committed in cancelling her CoC, must also necessarily fail. The unavoidable bottom line is that the petitioner did indeed ***actively, knowingly, and falsely represent her citizenship and natural-born status*** when she filed her CoC.

IV.
The Claim of Grave Abuse of Discretion in relation with the RESIDENCY Issues.

I likewise object to the majority's ruling that the COMELEC gravely abused its discretion in cancelling Poe's CoC for falsely

representing that she has complied with the ten-year residence period required of Presidential candidates.

The COMELEC correctly applied prevailing jurisprudence in holding that Poe has not established her legal residence in the Philippines for at least ten years immediately prior to the May 9, 2016 elections.

In addition, I offer my own views regarding the political character of the right to establish domicile, which necessarily requires Philippine citizenship before domicile may be established in the Philippines.

In my view, aliens who reacquire Philippine citizenship under RA No. 9225 may only begin establishing legal residence in the Philippines from the time they reacquire Philippine citizenship. **This is the clear import from the Court's rulings in *Japzon v. COMELEC,*[288] and *Caballero v. COMELEC,*[289]** cases involving candidates who reacquired Philippine citizenship under RA No. 9225; ***their legal residence in the Philippines only began after their reacquisition of Philippine citizenship.***

I find it necessary to elaborate on this legal reality in light of Poe's insistence that the Court's conclusions in *Coquilla,*[290] *Japzon,* and *Caballero* do not apply to her. To emphasize, these cases – *Coquilla, Japzon* and *Caballero* - are one in counting the period of legal residence in the Philippines from the time the candidate reacquired Philippine citizenship.

Poe resists these rulings and insists that she established her legal residence in the Philippines beginning May 24, 2005, *i.e.,* even before the BID Order, declaring her reacquisition of Philippine citizenship, was issued on July 18, 2006.

She distinguishes her situation from *Coquilla, Japzon,* and *Caballero,* on the position that the candidates in these cases

[288] 596 Phil. 354 (2009).

[289] G.R. No. 209835, September 22, 2015.

[290] 434 Phil. 861 (2002).

did not prove their legal residence in the Philippines ***before*** acquiring their Philippine citizenship. In contrast, Poe claims to have sufficiently proven that she established her domicile in the Philippines as early as May 24, 2005, or ten years and eleven months prior to the May 9, 2016 elections. That the COMELEC ignored the evidence she presented on this point constitutes grave abuse of discretion.

To my mind, the conclusion in *Japzon* and *Caballero* is not just based on the evidence that the candidates therein presented. The conclusion that candidates who reacquired Philippine citizenship under RA No. 9225 may only establish residence in the Philippines after becoming Philippine citizens **reflects the character of the right to establish a new domicile for purposes of participating in electoral exercises as a political right that only Philippine citizens can exercise.** Thus, Poe could only begin establishing her domicile in the Philippines on July 18, 2006, the date the BID granted her petition for reacquisition of Philippine citizenship.

Furthermore, **an exhaustive review of the evidence Poe presented to support her view shows that as of May 24, 2005, Poe had not complied with the requirements for establishing a new domicile of choice.**

IV.A. ***Domicile for purposes of determining political rights and civil rights.***

The term "residence" is an elastic concept that should be understood and construed according to the object or purpose of the statute in which it is employed. Thus, we have case law distinguishing residence to mean *actual residence,* in contrast to *domicile,* which pertains to a permanent abode. Note, however, that both terms imply a relation between a person and a place.[291] Determining which connotation of the term residence applies depends on the statute in which it is found.

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[291] See *Romualdez-Marcos v. Commission on Elections,* 318 Phil. 329 (1995).

Generally, we have used the term "residence" to mean actual residence when pertaining to the exercise of civil rights and fulfilment of civil obligations.

Residence, in this sense pertains to a place of abode, whether permanent or temporary, or as the Civil Code aptly describes it, a place of habitual residence. Thus, the Civil Code provides:

> Art. 50. For the exercise of **civil rights** and the fulfillment of **civil obligations,** the domicile of natural persons is the place of their habitual residence. (40a)
>
> Art. 51. When the law creating or recognizing them, or any other provision does not fix the domicile of juridical persons, the same shall be understood to be the place where their legal representation is established or where they exercise their principal functions. (41a) [emphases supplied]

Still, the actual residence for purposes of civil rights and obligations may be further delineated to residence in the Philippines, or residence in a municipality in the Philippines, depending on the purpose of the law in which they are employed.[292]

On the other hand, we generally reserve the use of the term residence as domicile for purposes of ***exercising political rights***. Jurisprudence has long established that the term "residence" in election laws is *synonymous with domicile.* ***When the Constitution or the election laws speak of residence, it refers to the legal or juridical relation between a person and a place – the individual's permanent home irrespective of physical presence.***

To be sure, physical presence is a major indicator when determining the person's legal or juridical relation with the

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[292] Thus, for purposes of detenning venue for filing personal actions, we look to the actual address of the person or the place where he inhabits, and noted that a person can have more than one residence. We said this in light of the purpose behind fixing the situs for bringing real and personal civil actions, which is to provide rules meant to attain the greatest possible convenience to the party litigants by taking into consideration the maximum accessibility to them *i.e.,* to both plaintiff and defendant, not only to one or the other of the courts of justice.

place he or she intends to be voted for. But, as residence and domicile is synonymous under our election laws, *residence is a legal concept that has to be determined by and in connection with our laws, independent of or in conjunction with physical presence.*

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.

Domicile of origin is the domicile of a person's parents at the time of his or her birth. It is not easily lost and continues until, upon reaching the majority age, he or she abandons it and acquires a new domicile, which new domicile is the domicile of choice.

The concept of domicile is further distinguished between residence in a particular municipality, city, province, or the Philippines, depending on the political right to be exercised. Philippine citizens must be residents of the Philippines to be eligible to vote, but to be able to vote for elective officials of particular local government units, he must be a resident of the geographical coverage of the particular local government unit.

To effect a change of domicile, a person must comply with the following requirements: (1) an actual removal or an actual change of domicile; (2) a *bona fide* intention of abandoning the former place of residence and establishing a new one; and (3) acts which correspond with such purpose.

In other words, a change of residence requires *animus manendi* coupled with *animus non revertendi.* 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***.[293]

[293] *Limbona v. Comelec,* 578 Phil. 364 (2008).

In *Limbona v. COMELEC,*[294] the Court enumerated the following requirements to effect a change of domicile or to acquire a domicile by choice:

(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.

The latter two are the *animus manendi* and the *animus non revertendi* that those considering a change of domicile must take into account.

Under these requirements, no specific unbending rule exists in the appreciation of compliance because of the element of intent[295] – 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,** ***to be considered in the light 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***.[296]

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

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[294] 619 Phil. 226 (2009). See also *Macalintal v. Comelec,* 453 Phil. 586 (2003).

[295] 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).

[296] See *Pundaodaya v. Comelec,* 616 Phil. 167 (2009) and *Jalosjos v. Comelec,* 686 Phil. 563 (2012).

IV.A.l. *The right to establish domicile is imbued with the character of a political right that only citizens may exercise.*

Domicile is necessary to be able to participate in governance, *i.e.,* to vote and/or be voted for, one must consider a locality in the Philippines as his or her permanent home, a place in which he intends to remain in for an indefinite period of time *(animus manendi)* and to return to should he leave *(animus revertendi).*

In this sense, the establishment of a domicile not only assumes the color of, but becomes one with a political right because it allows a person, not otherwise able, to participate in the electoral process of that place. To logically carry this line of thought a step further, a person seeking to establish domicile in a country must first posses the necessary citizenship to exercise this political right.

Note, at this point, that Philippine citizenship is necessary to participate in governance and exercise political rights in the Philippines. The preamble of our 1987 Constitution cannot be clearer on this point:

> We, ***the sovereign Filipino people,*** imploring the aid of Almighty God, in order to build a just and humane society, and ***establish a Government*** that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity, the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, ***do ordain and promulgate this Constitution.*** [emphases, italics, and underscoring supplied]

It is the **sovereign Filipino people** *(i.e., the citizens through whom the State exercises sovereignty, and who can vote and participate in governance)* who shall **establish the Government of the country** *(i.e. one of the purposes why citizens get together and collectively act),* and they **themselves ordain and promulgate** the Constitution *(i.e., the citizens themselves directly act, not anybody else).*

Corollarily, a person who does not possess Philippine citizenship, *i.e.,* an alien, cannot participate in the country's political processes. An alien does not have the right to vote and be voted for, the right to donate to campaign funds, the right to campaign for or aid any candidate or political party, and to directly, or indirectly, take part in or influence in any manner any election.

The character of the right to establish domicile as a political right becomes even more evident under our election laws that require that a person's domicile and citizenship coincide to enable him to vote and be voted for elective office. In more concrete terms (subject only to a few specific exceptions), a Philippine citizen must have his domicile in the Philippines in order to participate in our electoral processes.

Thus, a Philippine citizen who has chosen to reside permanently abroad may be allowed the limited opportunity to vote (under the conditions laid down under the Overseas Absentee Voting Act)[297] but he or she cannot be voted for; he or she is disqualified from running for elective office under Section 68 of the Omnibus Election Code (*OEC*).[298]

In the same light, an alien who has been granted a permanent resident visa in the Philippines does not have the right of suffrage in the Philippines, and this should include the right to establish legal domicile for purposes of election laws. An alien can reside in the Philippines for a long time, but his stay, no matter how lengthy, will not allow him to participate in our political processes.

Thus, **<u>an inextricable link exists among citizenship, domicile, and sovereignty; citizenship and domicile must coincide in order to participate as a component of the</u>**

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[297] See: Sections 4, 5, 6 & 8 of R.A. No. 9189.

[298] Sec. 68. *Disqualifications.* - x x x Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

sovereign Filipino people. In plainer terms, domicile for election law purposes cannot be established without first becoming a Philippine citizen; **they must coincide from the time domicile in the Philippines is established.**

IV.A.2. ***The right to RE-ESTABLISH domicile in the Philippines may be exercised only after reacquiring Philippine citizenship.***

Unless a change of domicile is validly effected, one with reacquired Filipino citizenship acquires the right to reside in the country, but must have a change of domicile; otherwise, he is a Filipino physically in the Philippines but is domiciled elsewhere.

Once a Philippine citizen permanently resides in another country, or becomes a naturalized citizen thereof, he loses his domicile of birth (the Philippines) and establishes a new domicile of choice in that country.

If a former Filipino reacquires his or her Philippine citizenship, he reacquires as well the political right to reside in the Philippines, but he does not become a Philippine domiciliary unless he validly effects a change of domicile; otherwise, he remains a Filipino ***physically in the Philippines but is domiciled elsewhere. The reason is simple: an individual can have only one domicile which remains until it is validly changed.***

In *Coquilla,*[299] the Court pointed out that "immigration to the [U.S.] by virtue of a greencard, which entitles one to reside permanently in that country, constitutes abandonment of domicile in the Philippines. With more reason then does naturalization in a foreign country result in an abandonment of domicile in the Philippines."

Thus, Philippine citizens who are *naturalized as citizens of another country not only abandon their Philippine citizenship; they also abandon their domicile in the Philippines.*

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[299] 434 Phil. 861 (2002)

To re-establish the Philippines as his or her new domicile of choice, a returning former Philippine citizen must thus comply with the requirements of ***physical presence for the required period (when exercising his political right), animus manendi,*** and ***animus non-revertendi.***

Several laws govern the reacquisition of Philippine citizenship by former Philippine citizens-aliens each providing for a different mode of, and different requirements for, Philippine citizenship reacquisition. These laws are **Commonwealth Act *(CA)* No. 473; RA No. 8171;** and **RA No. 9225.**

All these laws are meant to facilitate an alien's reacquisition of Philippine citizenship by law. **CA No. 473**[300] as amended,[301] governs reacquisition of Philippine citizenship by naturalization; it is also a mode for original acquisition of Philippine citizenship. **RA No. 8171**,[302] on the other hand, governs repatriation of Filipino

[300] Entitled "An Act To Provide For The Acquisition Of Philippine Citizenship By Naturalization, And To Repeal Acts Numbered Twenty-Nine Hundred And Twenty-Seven And Thirty-Four Hundred and Forty-Eight", enacted on June 17, 1939.

CA No. 63, as worded, provides that the procedure for re-acquisition of Philippine citizenship by naturalization shall be in accordance with the procedure for naturalization under Act No. 2927 (or The Naturalization Law, enacted on March 26, 1920), as amended. CA No. 473, however, repealed Act No. 2927 and 3448, amending 2927.

[301] Entitled "An Act Making Additional Provisions for Naturalization", enacted on June 16, 1950.

[302] AN ACT PROVIDING FOR THE REPATRIATION OF FILIPINO WOMEN WHO HAVE LOST THEIR PHILIPPINE CITIZENSHIP BY MARRIAGE TO ALIENS AND OF NATURAL BORN FILIPINOS. Approved on October 23, 1995.

Prior to RA No. 8171, repatriation was governed by Presidential Decree No. 725, enacted on June 5, 1975. Paragraph 5 of PD No. 725 provides that: *"1) Filipino women who lost their Philippine citizenship by marriage to aliens; and (2) natural born Filipinos who have lost their Philippine citizenship may require Philippine citizenship through repatriation by applying with the Special Committee on Naturalization created by Letter of Instruction No. 270, and, if their applications are approved, taking the necessary oath of allegiance to the Republic of the Philippines, after which they shall be deemed*

women who lost Philippine citizenship by marriage to aliens and Filipinos who lost Philippine citizenship by political or economic necessity; while **RA No. 9225**[303] governs repatriation of former natural-born Filipinos in general.

Whether termed as naturalization, reacquisition, or repatriation, all these modes fall under the constitutional term "naturalized in accordance with law" as provided under the 1935, the 1973, and the 1935 Constitutions.

Note that CA No. 473[304] provides a more stringent procedure for acquiring Philippine citizenship than RA Nos. 9225 and 8171

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to have reacquired Philippine citizenship. The Commission on Immigration and Deportation shall thereupon cancel their certificate of registration." Note that the repatriation procedure under PD No. 725 is similar to the repatriation procedure under Section 4 of CA No. 63.

[303] See Section 3 of RA 9225. It pertinently reads:

Section 3. *Retention of Philippine Citizenship* - Any provision of law to the contrary notwithstanding, natural-born citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

x x x x x x x x x

Natural born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath. [emphases supplied]

[304] CA No. 473 provides the following exceptions: (1) the qualifications and special qualifications prescribed under CA No. 473 shall not be required; and (2) the applicant be, among others, at least twenty-one years of age and shall have resided in the Philippines at least six months before he applies for naturalization. Per Section 3 of CA No. 63:

> "The applicant must also: have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines, in his relations with the constituted government as well as with the community in which he is living; and subscribe to an oath declaring his intention to renounce absolutely and perpetually all faith and allegiance to the foreign authority, state or sovereignty of which he was a citizen or subject.

Section 7 of CA No. 473. It states in full:

> Sec. 7. *Petition for citizenship.* - Any person desiring to acquire Philippine citizenship shall file with the competent court, a petition in

both of which provide for a more expedited process. Note, too, that under our Constitution, there are only two kinds of Philippine

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> triplicate, accompanied by two photographs of the petitioner, setting forth his name and surname; his present and former places of residence; his occupation; the place and date of his birth; whether single or married and the father of children, the name, age, birthplace and residence of the wife and of each of the children; the approximate date of his or her arrival in the Philippines, the name of the port of debarkation, and, if he remembers it, the name of the ship on which he came; a declaration that he has the qualifications required by this Act, specifying the same, and that he is not disqualified for naturalization under the provisions of this Act; that he has complied with the requirements of section five of this Act; and that he will reside continuously in the Philippines from the date of the filing of the petition up to the time of his admission to Philippine citizenship. The petition must be signed by the applicant in his own handwriting and be supported by the affidavit of at least two credible persons, stating that they are citizens of the Philippine and personlly know the petitioner to be a resident of the Philippines for the period of time required by this Act and person of good repute and morally irreproachable, and that said petitioner has in their opinion all the qualifications necessary to become a citizen of the Philippines and, is not in any way disqualification under the provisions of Act. The petition shall also set forth the names and post-office addresses of such witnesses as the petitioner may desires to introduce at the hearing of the casee. The certificate of arrival. and the declaration of intention and must be made part of the petition.

See Section 9 of CA No. 473. It reads:

> Sec. 9. *Notification and appearance.* -Immediately upon the filing of a petition, it shall be the duty of the clerk of the court to publish the same at petitioner's expense, once a week for three consecutive weeks, in the Official Gazette, and in one of the newspapers of general circulation in the province where the petitioner resides, and to have copies of said public and conspicuous place in his office or in the building where said office is located, setting forth in such notice the name, birthplace and residence of the petitioner, the date and place of his arrival in the Philippines, the names of the witnesses whom the petitioner proposes to introduce support of his petition, and the date of the hearing of the petition, which hearing shall not be held within ninety days from the date of the last publication of the notice. The clerk shall, as soon as possible, forward copies of the petition, the sentence, the naturalization certificate, and other pertinent data to the Department of the interior, the Bureau of Justice, the provincial Inspector of the Philippine Constabulary of the province and the justice of the peace of the municipality wherein the petitioner resides.

citizens: natural-born and naturalized. As RA Nos. 8171 and 9225 apply only to former natural-born Filipinos (who lost their Philippine citizenship by foreign naturalization), CA No. 473 – which is both a mode for acquisition and reacquisition of Philippine citizenship – logically applies in general to all former Filipinos regardless of the character of their Philippine citizenship, *i.e.,* natural-born or naturalized.

The difference in the procedure provided by these modes of Philippine citizenship reacquisition presumably lies in the

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See also Sections 1and 2 of RA No. 530 amending Sections 9 and 10 of CA No. 473. They read:

> SECTION l. The provisions of existing laws notwithstanding, no petition for Philippine citizenship shall be heard by the courts until after six months from the publication of the application required by law, nor shall any decision granting the application become executory until after two years from its promulgation and after the court, on proper hearing, with the attendance of the Solicitor General on his representative, is satisfied, and so finds, that during the intervening time the applicant has (1) not left the Philippines, (2) has dedicated himself continuously to a lawful calling or profession, (3) has not been convicted of any offense or violation of Government promulgated rules, (4) or committed any act prejudicial to the interest of the nation or contrary to any Government announced policies.
>
> SEC. 2. After the finding mentioned in section one, the order of the court granting citizenship shall be registered and the oath provided by existing laws shall be taken by the applicant, whereupon, and not before, he will be entitled to all the privileges of a Filipino citizen.

And Section 4 of CA No. 473 which states:

> Sec. 4. Who are disqualified- The following cannot be naturalized as Philippine citizens:
>
> 1. Persons opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments;
>
> 2. Persons defending or teaching the necessity or propriety of violence, personal assault, or assassination for the success and predominance of their ideas;
>
> 3. Polygamists or believers in the practice of polygamy;
>
> 4. Persons convicted of crimes involving moral turpitude;
>
> 5. Persons suffering from mental alienation or incurable contagious diseases;

assumption that those who had previously been natural-born Philippine citizens already have had ties with the Philippines ***for having been directly descended from Filipino citizens or by virtue of their blood*** and are well-versed in its customs and traditions; on the other hand, the alien-former Filipino in general (and no matter how long they have resided in the Philippines) could not be presumed to have such ties.

In fact, CA No. 473 specifically requires that an applicant for Philippine citizenship must have resided in the Philippines for at least six months before his application for reacquisition by naturalization.

Ujano v. Republic[305] interpreted this residence requirement to mean domicile, that is, prior to applying for naturalization, the applicant must have maintained a permanent residence in the Philippines. In this sense, *Ujano* held that an alien staying in the Philippines under a temporary visa does not comply with the residence requirement, and to become a qualified applicant, an alien must have secured a permanent resident visa to stay in the Philippines. Obtaining a permanent resident visa was, thus, viewed as the act that establishes domicile in the Philippines for purposes of complying with CA No. 473.

The ruling in *Ujano* is presumably the reason for the Court's reference that residence may be waived separately from citizenship in *Coquilla.* In *Coquilla,* the Court observed that:

The status of being an alien and a non-resident can be waived either separately, when one acquires the status of a resident alien

6. Persons who, during the period of their residence in the Philippines, have not mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos;

7. Citizens or subjects of nations with whom the United States and the Philippines are at war, during the period of such war;

8. Citizens or subjects of a foreign country other than the United States whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof.

[305] G.R. No. L-22041, May 19, 1966, 17 SCRA 147.

before acquiring Philippine citizenship, or at the same time when one acquires Philippine citizenship. As an alien, an individual may obtain an immigrant visa under 13[28] of the Philippine Immigration Act of 1948 and an Immigrant Certificate of Residence (ICR)[29] and thus waive his status as a non-resident. On the other hand, he may acquire Philippine citizenship by naturalization under C.A. No. 473, as amended, or, if he is a former Philippine national, he may reacquire Philippine citizenship by repatriation or by an act of Congress, in which case he waives not only his status as an alien but also his status as a non-resident alien.[306] [underscoring supplied]

The separate waiver refers to the application for Philippine citizenship under CA No. 437, which requires that the applicant alien be domiciled in the Philippines as evidenced by a permanent resident visa. An alien intending to become a Philippine citizen may avail of CA No. 473 and must first waive his domicile in his country of origin to be considered a permanent resident alien in the Philippines, or he may establish domicile in the Philippines after becoming a Philippine citizen through direct act of Congress.

Note, at this point, that the permanent residence requirement under CA No. 473 ***does not provide the applicant alien with the right to participate in the country's political process and should thus be distinguished from domicile in election laws.***

In other words, an alien may be considered a permanent resident of the Philippines, but without Philippine citizenship, his stay cannot be considered in establishing domicile in the Philippines for purposes of exercising political rights. Neither could this period be retroactively counted upon gaining Philippine citizenship, as his stay in the Philippines at that time was as an alien with no political rights.

In these lights, I do not believe that a person reacquiring Philippine citizenship under RA No. 9225 could separately establish domicile in the Philippines prior to becoming a Philippine citizen, as the right to establish domicile has, as earlier pointed out, the character of a political right.

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[306] 434 Phil. 861, 873-875 (2002).

RA No. 9225 restores Philippine citizenship upon the applicant's submission of the oath of allegiance to the Philippines and other pertinent documents to the BID (or the Philippine consul should the applicant avail of RA No. 9225 while they remain in their country of foreign naturalization). The BID (or the Philippine consul) then reviews these documents, and issues the corresponding order recognizing the applicant's reacquisition of Philippine citizenship.

Upon reacquisition of Philippine citizenship under RA No. 9225, a person becomes entitled to full political and civil rights, subject to its attendant liabilities and responsibilities. These include the right to re-establish domicile in the Philippines for purposes of participating in the country's electoral processes. Thus, ***a person who has reacquired Philippine citizenship under RA No. 9225 does not automatically become domiciled in the Philippines, but is given the option to establish domicile in the Philippines to participate in the country's electoral process.***

This, to my mind, is the underlying reason behind the Court's consistent ruling in *Coquilla, Japzon,* and *Caballero* that domicile in the Philippines can be considered established only upon, or after, the reacquisition of Philippine citizenship under the expedited processes of RA No. 8171 or RA No. 9225. More than the insufficiency of evidence establishing domicile prior to the reacquisition of Philippine citizenship, this legal reality simply *disallows* the establishment of domicile in the Philippines prior to becoming a Philippine citizen.

To reiterate, the Court in these three cases held that the candidates therein could have established their domicile in the Philippines only after reacquiring their Philippine citizenship.

Thus, the Court in *Coquilla* said:

> In any event, the fact is that, by having been naturalized abroad, he lost his Philippine citizenship and with it his residence in the Philippines. Until his reacquisition of Philippine citizenship on November 10, 2000, petitioner did not reacquire his legal residence in this country.[307] [underscoring supplied]

[307] 434 Phil. 861, 873 (2002).

In *Japzon,* the Court noted:

"[Ty's] reacquisition of his Philippine citizenship under [RA] No. 9225 had no automatic impact or effect on his residence /domicile. He could still retain his domicile in the USA, and he did not necessarily regain his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines. Ty merely had the option to again establish his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines, said place becoming his new domicile of choice. The length of his residence therein shall be determined from the time he made it his domicile of choice, and it shall not retroact to the time of his birth.[308]

Caballero, after quoting *Japzon,* held:

Hence, petitioner's retention of his Philippine citizenship under RA No. 9225 did not automatically make him regain his residence in Uyugan, Batanes. He must still prove that after becoming a Philippine citizen on September 13, 2012, he had reestablished Uyugan, Batanes as his new domicile of choice which is reckoned from the time he made it as such.[309]

In these lights, **the COMELEC correctly applied the doctrine laid out in *Coquilla, Japzon,* and *Caballero* in Poe's case,** *i.e.,* ***that her physical presence allegedly coupled with intent should be counted, for election purposes, only from her reacquisition of Philippine citizenship or surrender of her immigrant status.*** Any period of residence prior to such reacquisition of Philippine citizenship or surrender of immigrant status cannot simply be counted as Poe, at such time, was an alien non-resident who had no right to permanently reside anywhere in the Philippines.

Significantly **these are the established Court rulings on residency of former natural-born Filipinos seeking elective public office that would be disturbed if the Court would allow Poe to run for the Presidency in the May 9, 2016 elections.** Application of the social justice and equity principles that some sectors (within and outside the Court) urge this Court

[308] 596 Phil. 354, 369-370 (2009).

[309] G.R. No. 209835, September 22, 2015.

to do and their persistent appeal to fairness must not be allowed to weigh in and override what the clear terms laws and these jurisprudence provide.

IV.B. ***Poe's representation as to her residence: Poe has not been a Philippine resident for the period required by Article VII, Section 2 of the Constitution.***

Based on the foregoing laws, principles, and relevant jurisprudence, I find the COMELEC correct in ruling that Poe does not meet the Constitution's ten-year residence requirement for the Presidency.

IV.B.l. ***Poe was not a natural-born citizen who could validlv reacquire Philippine citizenship under RA No. 9225; hence, she could not have re-established residence in the Philippines under the laws' terms even with the BID's grant of her RA No. 9225 application.***

The simplified repatriation procedure under RA No. 9225 applies only to former natural-born Filipino citizens who became naturalized foreign citizens. Thus, ***persons who were not natural-born citizens prior to their foreign naturalization cannot reacquire Philippine citizenship through the simplified RA No. 9225 procedure, but may do so only through the other modes CA No. 63***[310] ***provides, i.e., by naturalization under CA No. 473, as amended by RA No. 530, or by direct act of Congress.***

Prior to a valid reacquisition under RA No. 9225, a former Philippine citizen does not have political rights in the Philippines, as he or she is considered an alien. His political rights begin only

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[310] Sec. 2. *How citizenship may be reacquired.* – Citizenship may be reacquired: (l) By naturalization: *Provided,* That the applicant possess none of the disqualifications prescribed in section two of Act Numbered Twenty-nine hundred and twenty-seven; (2) By repatriation of deserters of the Army, Navy or Air Corp: *Provided,* That a woman who lost her citizenship by reason of her marriage to an alien may be repatriated in accordance with the provisions of this Act after the termination of the marital status; and (3) By direct act of the National Assembly.

upon reacquisition of Philippine citizenship: ***the right to establish domicile as an aspect in the exercise of these political rights begin only upon becoming a Philippine citizen.***

In Poe's case, she was not a natural-born citizen who could have validly repatriated under RA No. 9225. As she did not reacquire Philippine citizenship under the appropriate mode, she likewise did not reacquire the right to reside in the Philippines save only as our immigration laws may have allowed her to stay as visitor. ***But regardless of its length, any such period of stay cannot be counted as residence in the Philippines under the election laws' terms.***

IV.B.2. ***Assuming, arguendo, that Poe reacquired Philippine hip, she still has not been a Philippine resident for "10 years and 11 months" on the ay before the election.***

Even assuming, *arguendo,* that Poe reacquired Philippine citizenship with the BID's grant of her RA No. 9225 application, she still fails to meet the Constitution's ten-year residence requirement, as explained below.

IV.B.2(a). ***Poe arrived in the Philippines using her U.S. passport as an American citizen and under a "Balikbayan" visa; hence, she could not have re-established Philippine residence beginning May 24, 2005.***

When Poe returned to the Philippines on May 24, 2005, she was a non-resident alien – a naturalized American citizen. She used her U.S. passport in her travel to and arrival in the Philippines under a "Balikbayan" visa, as the parties' evidence show and as even Poe admits. These dates stamped in her U.S. passport, in particular, bear the mark "BB" (which stands for Balikbayan) or "1YR" (which stands for 1-Year stay in the Philippines): September 14, 2005, January 7, 2006

(arrival), March 11, 2006 (arrival), July 5, 2006 (arrival), and November 4, 2006 (arrival).[311]

The term *"balikbayan"* refers to a Filipino citizen who has been continuously out of the Philippines for a period of at least one (1) year, a Filipino overseas worker, or *former Filipino citizen and his or her family* who had been naturalized in a foreign country and *comes or returns* to the Philippines.[312]

In other words, a *balikbayan* may be a Filipino citizen or a former Filipino who has been naturalized in a foreign country. Notably, the law itself provides that a former Filipino citizen may "come or return" to the Philippines – this means that he/she may be returning to permanently reside in the country or may just visit for a temporary stay.

RA No. 6768, as amended, further provides for the privilege of a visa-free entry to the Philippines for a period of one (1) year for foreign passport holders, with the exception of restricted nationals.[313] I stress in this regard that not all *balikbayans* enter

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[311] See petition in G.R. No. 221697, p. 23; and petition in G.R. No. 221698-700, pp. 28-29. See Poe's U.S. passport , Annex "M-series, Exhibit 5 (of Tatad case) in G.R. No. 221698-700; and Annex "1-series", Exhibit "5" (of Elamparo case) in G.R. No. 221697.

[312] R.A. 6768, as amended by R.A. 9174, Section 2(a).

[313] *Id.* at Section 3(c).

This visa is issued under the government's "Balikbayan" program instituted under the administration of the Department of Tourism to attract and encourage overseas Filipinos to come and visit their motherland. ln addition to the one-year visa-free stay, the program also provides for a kabuhayan shopping privilege allowing tax-exempt purchase of livelihood tools and providing the opportunity to avail of the necessary training to enable the balikbayan to become economically self-reliant members of society upon their return to the country. The program also intends to showcase competitive and outstanding Filipino-made products.

The program also provides tax-exempt maximum purchases in the amount of USD 1,500, or the equivalent in Philippine and other currency, at Philippine Government-operated duty free shops, and exemption from Travel Tax, provided that their stay in the Philippines is one year or less. If their stay in the Philippines exceeds one year, Travel tax will apply to them.

the Philippines *via* a visa-free entry, as the privilege applies only to foreign passport holders and not to Filipino citizens bearing Philippine passports upon entry.

The distinction is significant because a Filipino *balikbayan,* by virtue of his Philippine citizenship, has the right to permanently reside in any part of the Philippines. Conversely, ***a foreigner-balikbayan, though a former Philippine citizen, may only acquire this right by applying for an immigrant visa and an immigrant certificate of residence or by reacquisition of Philippine citizenship.***[314] Evidently, the nature of the stay of a foreigner-*balikbayan* who avails of the visa-free entry privilege is only temporary, unless he acquires an immigrant visa or until he reacquires Philippine citizenship.

The BID itself designates a *balikbayan* visa-free entry under the temporary visitor's visa category for non-visa required nationals.[315] In addition, the visa-free entry privilege is limited to a period of one (1) year subject to extensions for another one (1), two (2) or six (6) months, provided that the *balikbayan* presents his/her valid passport and fills out a visa extension form and submits it to the Visa Extension Section in the BID Main Office or any BID Offices nationwide. After thirty-six (36) months of stay, an additional requirement will be asked from a *balikbayan* who wishes to further extend his/her stay.[316]

From her arrival on May 24, 2005 until the BID Order recognized her Philippine citizenship on July 18, 2006, Poe was an alien under a balikbayan visa 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. This period of stay under a temporary visa should thus not be considered for purposes of Article VII, Section

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[314] *Coquilla v. Comelec,* 434 Phil. 861 (2002).

[315] Bureau of Immigration, *Visa Inquiry – Temporary Visitor's Visa.* Available at http://www.immigration.gov.ph/faqs/visa-inquiry/temporary-visitor-s-visa.

[316] *Ibid.*

2 of the Constitution as it does not fall within the concept of "residence."

IV.B.2(b). ***Poe reacquired Philippine citizenship only on July 18, 2006 when the BID granted her RA No. 9225 application; hence, July 18, 2006 should be the earliest possible reckoning point for her Philippine residence.***

To recall, Poe reacquired Philippine citizenship only on July 18, 2006 when the BID granted her RA No. 9225 application.[317] Under Section 5(2) of RA No. 9225, the right to enjoy full civil and political rights that attach to Philippine citizenship begins only upon its reacquisition. Thus, under RA No. 9225, a person acquires the right to establish domicile in the Philippines upon reacquiring Philippine citizenship. Prior to this, a former Philippine citizen has no right to reside in the Philippines save only temporarily as our Immigration laws allow.

In this light, the COMELEC correctly ruled that July 18, 2006 is the earliest possible date for Poe to establish her domicile in the Philippines, as it is only then that Poe acquired the right to establish domicile in the Philippines. Counting the period of her residence in the Philippines to begin on July 18, 2006, however, renders Poe still ineligible to run for President, as the period between July 18, 2006 to May 9, 2016 is 9 years, 9 months, and 20 days, or **2 months and 10 days short** of the Constitution's ten-year requirement.

IV.B.2(c). ***Poe's moves to resettle in the Philippines prior to July 18, 2006 may have supported her intent which intent became truly concrete beginning only on July 18, 2006.***

I do not deny that Poe had taken several moves to re-establish her residence in the Philippines prior to July 18, 2006. As the

[317] See petition in G.R. No. 221697, p. 20; and petition in G.R. Nos. 221698-700, p. 25. Annex "M-series", Exhibit "22" (of Tatad case), Exhibit "16" (of Contreras /Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "22" (of Elamparo case) in G.R. No. 221697.

evidence showed, *which the COMELEC considered and reviewed,* Poe had taken several actions that may arguably be read as moves to relocate and resettle in the Philippines beginning May 24, 2005, namely: (1) enrolling her children in Philippine schools in July 2005 as shown by their school records;[318] (2) purchasing real property in the Philippines as evidenced by the February 20, 2006 condominium unit and parking lot titles,[319] the June 1, 2006 land title,[320] and the tax declarations for these;[321] (3) selling their U.S. home as shown by the April 27, 2006 final settlement;[322] (4) arranging for the shipment of their U.S. properties from the U.S. to the Philippines;[323] (5) notifying

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[318] See petition in G.R. No. 221697, p. 17; and petition in G.R. Nos. 221698-700, p. 21. See also Annex "M-series", Exhibits "7" to "7-F" (of Tatad case) and Exhibits "3" to "3-F" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibits "7" to "7-F" (of Elamparo case), in G.R. No. 221697.

[319] See petition in G.R. No. 221697, p. 18; and petition in G.R. Nos. 221698-700, p. 22. Annex "M-series", Exhibits "11" and "12" in G.R. Nos. 221698-700; and Annex "I-series", Exhibits "5" and "6" (of Elamparo case) in G.R. No. 221697.

[320] See petition in G.R. No. 221697, p. 19; and petition in G.R. Nos. 221698-700, p. 24. Annex "M- series", Exhibit "18" (of Tatad case); Exhibit "12" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "18" (of Elamparo case) in G.R. No. 221697.

[321] See petition in G.R. No. 221697, p. 18; and petition in G.R. Nos. 221698-700, p. 23. Annex "M-series", Exhibits "13 and 14" (of Tatad case), Exhibits "7" and "8" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibits "13" and "14" (of Elamparo case) in G.R. No. 221697.

[322] See petition in G.R. No. 221697, p. 19; and petition in G.R. Nos. 221698-700, p. 23. Annex "M- series", Exhibit "17" (of Tatad case), Exhibit "11" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "17" (of Elamparo case) in G.R. No. 221697.

[323] See Annex "M-series", Exhibit "6-series" (of Tatad case), Exhibit "2-series" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "2-series" (of Elamparo case) in G.R. No. 221697. See also petition in G.R. No. 221697, p. 16; and petition in G.R. Nos. 221698-700, p. 20. Also, see petition in G.R. No. 221697, p. 18; and petition in G.R. Nos. 221698-700, p. 2. Annex "I-series", Exhibits "6-series", "15", and "15-A" (of Elamparo case) in G.R. No. 221697; Annex "M-series", Exhibits "6-series", "15", and "15-A" (of Tatad case), Exhibits "2-series", "9" and "9-A" (of Contreras/Valdez cases) in G.R. Nos. 221698-700.

the U.S. Postal Servic e of their change of their U.S. address;[324] and (6) securing a Tax Identification Number *(TIN)* from the BIR on July 22, 2005.[325]

I clarify, however, that *any overt resettlement moves Poe made beginning May 24, 2005 up to and before July 18, 2006 may be considered* *merely for the purpose of determining* ***the existence of the subjective intent to re-establish Philippine residence (animus revertendi), but should not be considered for the purpose of establishing the fact of residence that the Constitution contemplates.***

As earlier explained, entitlement to the enjoyment of the civil and political rights that come with the reacquired citizenship that RA No. 9225 grants attaches when the requirements have been completed and Philippine citizenship has been reacquired. ***Only then can reacquiring Filipino citizens secure the right to reside in the country as Filipinos with the right to vote and be voted for public office under the requirements of the Constitution and applicable existing laws.*** Prior to reacquisition of Philippine citizenship, they are entitled only to such rights as the Constitution and the laws recognize as inherent in any person.

Significantly, these pieces of evidence do not prove Poe's intent to abandon U.S. domicile *(animus non-revertendi)* as she was, between May 24, 2005 and July 18, 2006, a temporary visitor physically present in the Philippines. I submit the following specific reasons.

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[324] See petition in G.R. No. 221697, p. 18; and petition in G.R. Nos. 221698-700, p. 23. Annex "M-series", Exhibit "16" (of Tatad case), Exhibit "10" (of Contreras/Valdez cases) in G.R. Nos. 221698-700; and Annex "I-series", Exhibit "16" (of Elamparo case) in G.R. No. 221697.

[325] See petition in G.R. No. 221697, p. 17; and petition in G.R. Nos. 221698-700, p. 22. Annex "M- series", Exhibit "8" (of Tatad case), Exhibit "4" (of Contreras/Valdez cases) in G.R. Nos. 221698- 700; and Annex "I-series", Exhibit "8" (of Elamparo case) in G.R. No. 221697.

Poe's purchase of real property in the Philippines. Aliens, former natural-born Filipinos or not, can own condominium units in the Philippines; while aliens who were former natural-born Filipinos can purchase Philippine urban or rural land even without acquiring or reacquiring Philippine citizenship with the right to permanently reside herein.

Under RA No. 4726[326] as amended by RA No. 7899,[327] aliens or foreign nationals, whether former natural-born Filipino citizens or not, can acquire condominium units and shares in condominium corporations up to 40% of the total and outstanding capital stock of a Filipino owned or controlled condominium Corporation.

On the other hand, under RA No. 7042,[328] as amended by RA No. 8179, former natural-born Filipinos who lost their

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326 "An Act to Define Condominium, Establish Requirements For Its Creation, And Govern Its Incidents", enacted on June 18, 1966.

Section 5 of RA No. 4726 reads:

> Sec. 5. Any transfer or conveyance of a unit or an apartment, office or store or other space therein, shall include the transfer or conveyance of the undivided interests in the common areas or, in a proper case, the membership or shareholdings in the condominium corporation: Provided, however, That where the common areas in the condominium project are owned by the owners of separate units as co-owners thereof, no condominium unit therein shall be conveyed or transferred to persons other than Filipino citizens, or corporations at least sixty percent of the capital stock of which belong to Filipino citizens, except in cases of hereditary succession. Where the common areas in a condominium project are held by a corporation, no transfer or conveyance of a unit shall be valid if the concomitant transfer of the appurtenant membership or stockholding in the corporation will cause the alien interest in such corporation to exceed the limits imposed by existing laws.

See also *Hulst v. PR Builders, Inc.,* 588 Phil. 23 (2008).

327 "An Act Amending Section Four And Section Sixteen of Republic Act Numbered Four Thousand Seven Hundred Twenty-Six, Otherwise Known As The Condominium Act", approved on February 23, 1995.

328 "AN ACT TO PROMOTE FOREIGN INVESTMENTS, PRESCRIBE THE PROCEDURES FOR REGISTERING ENTERPRISES DOING BUSINESS IN THE PHILIPPINES, AND FOR OTHER PURPOSES", enacted on March 28, 1996.

Philippine citizenship and who has the legal capacity to contract *"may be a transferee of a private land up to a maximum area of five thousand (5,000) square meters in the case of urban land or three (3) hectares in the case of rural land x x x for business or other purposes."*[329]

In short, Poe's purchase of a condominium unit and an urban land, as well as her declaration of these for tax purposes, do not sufficiently prove that she re-established residence in the Philippines. At most, they show that she acquired real property in the Philippines for purposes which may not necessarily be for residence, *i.e.,* business or other purposes; and that she complied with the law's requirements for owning real property in the Philippines.

The sale of U.S. home and notice to the U.S. Postal service. The sale of their U.S. home on April 27, 2006 establishes only the fact of its sale. At most, it may indicate intent to transfer residence (within or without the U.S.) but it does not automatically result in the change of domicile from the U.S. to the Philippines.

The notice to the U.S. Postal Service in late March of 2006, on the other hand, merely shows that they may have complied with the U.S. laws when transferring residence, for convenience and for mail forwarding purposes while on extended but temporary absence. This act, however, does not conclusively signify abandonment of U.S. residence, more so re-establishment of Philippine domicile.

Note that at both these times, Poe did not have the established legal capacity or the right to establish residence in the Philippines. Besides, the winding up of a would-be candidate's property affairs in another country is not a qualification requirement under the law for reacquisition of Philippine citizenship nor is it a condition to the residency requirement for holding public office.

The enrollment of her children in Philippine schools. The enrollment of Poe's children in Philippine schools in June

[329] See Section 10 of RA No. 7042, as Amended by R.A. 8179.

2005 establishes their physical presence in the Philippines during this time, but not her intent to abandon U.S. domicile. Note that her children entered the Philippines for a temporary period under their *balikbayan* visas. Enrollment, too, in schools is only for a period of one school year, or about ten months.

Moreover, aliens or foreign national students can, in fact, enroll and study in the Philippines without having to acquire Philippine citizenship or without securing immigrant visas (and ICRs). Foreigners or aliens at least 18 years of age may apply for non-immigrant student visa, while those below 18 years of age elementary and high school students may apply for Special Study Permits.[330]

Poe's BIR TIN number. Poe's act of securing a TIN from the BIR on July 22, 2005 is a requirement for taxation purposes that has nothing to do with residence in the Philippines. Under Section 236(i) of the National Internal Revenue Code *(NIRC),* "[a]ny person, whether natural or juridical, required under the authority of the Internal Revenue Code to make, render or file a return, statement or other documents, shall be supplied with or assigned a Taxpayer Identification Number (TIN) to be indicated in the return, statement or document to be filed with

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[330] See Section 9(f) of the Philippine Immigration Act of 1940, Executive Order No. 423 (signed in June 1997) and Executive Order No. 285 (signed in September 4, 2000).

In 2011, the Bureau of Immigration records show that the Philippines had more than 26,000 foreign students enrolled in various Philippine schools; more than 7,000 of these are college enrollees while the rest were either in elementary and high school or taking short-term language courses (see http://globalnation.inquirer.net/9781/philippines-has-26k-foreign-students last accessed on February 12, 2016).

See also The International Mobility of Students in Asia and the Pacific, published in 2013 by the United Nations Educational, Scientific and Cultural Organization http://www.uis.unesco.org/Library/Documents/international-student-mobility-asia-pacific-education-2013-en.pdf (last accessed on February 12, 2016); and Immigration Policies on Visiting and Returning Overseas Filipinos http://www.cfo.gov.ph/pdf handbook/Immigration Policies on Visiting and Returning Overseas Filipinos-chapterIV.pdf (last accessed on February 12, 2016).

the Bureau of Internal Revenue, for his proper identification for tax purposes." Under the same Tax Code, nonresident aliens are subject to Philippine taxation under certain circumstances,[331] thus likewise requiring the procurement of a TIN number.

Over and above all these reasons, it should be pointed out, too, that the nature and duration of an alien's stay or residence in the Philippines is a matter determined and granted by the Constitution and by the law. As the COMELEC correctly noted, a foreigner's capacity to establish Philippine residence is limited by and is subject to regulations and prior authority of the BID.[332] Indeed, the State has the right to deny entry to and/or impose conditions on the entry of aliens in the Philippines, as I have elsewhere discussed in this Opinion; and, in the exercise of this right, the State can determine who and for how long an alien can stay in its territory. ***An alien's intent regarding the nature and duration of his or her stay in the Philippines cannot override or supersede the laws and the State's right, even though the alien is a former natural-born Filipino citizen who intends to reacquire Philippine citizenship under RA No. 9225.***

In short, these pieces of evidence Poe presented may be deemed material only for the purpose of determining the existence of the subjective intent to effect a change of residence (from the U.S. to the Philippines) prior to reacquiring Philippine citizenship (with the concomitant right to re-establish Philippine domicile). For the purpose of counting the period of her actual legal residence to determine compliance with the Constitution's residency qualification requirement, these ***antecedent actions*** are immaterial as such residence should be counted only from her reacquisition of Philippine citizenship.

To summarize all these: Poe may have hinted her intention to resettle in the Philippines on May 24, 2005, which intention

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[331] See Sections 25 and 28(B) of the NIRC.

[332] See Comelec's *en banc's* December 23, 2015 resolution in SPA Nos. 15-002(DC), 15-007(DC) and 15-139(DC), Annex "B" of G.R. Nos. 221698-700 (Tatad case).

she supported with several overt actions. The legal significance of these overt actions, however, is at best equivocal and does not fully support her claimed *animus non-revertendi* to the U.S. She can be considered to have acted on this intention under the election laws' terms only on July 18, 2006 when she reacquired Philippine citizenship legally securing to herself the option and the right to re-establish legal residence in the Philippines. (But even then, as discussed below, when she became a dual RP-U.S. citizen, she could at anytime return to the U.S.; thus her abandonment of her U.S. domicile is, at best, an arguable matter.)

IV.C. *Poe was still an American citizen with residence in the United States between May 24, 2005 to July 18, 2006.*

Conversely, Poe's incapacity to establish domicile in the Philippines because she lacks the requisite Philippine citizenship reflects her status as an American with residence in the United States.

As a requirement to establish domicile, a person must show that he or she has *animus non-revertendi,* or intent to abandon his or her old domicile. This requirement reflects two key characteristics of a domicile: ***first,*** that a person can have only one residence at any time, and ***second,*** that a person is considered to have an *animus revertendi* (intent to return) to his current domicile.

Thus, for a person to demonstrate his or her *animus non revertendi* to the old domicile, he or she must have *abandoned it completely,* such that he or she can no longer entertain any *animus revertendi* with respect to such old domicile. This complete abandonment is necessary in light of the ***one-domicile*** rule.

In more concrete terms, a person seeking to demonstrate his or her *animus non-revertendi* must not only leave the old domicile and is no longer physically present there, he or she must have also shown *acts cancelling his or her animus revertendi to that place.*

Note, at this point, that a person who has left his or her domicile is considered not to have abandoned it so long as he or she has *animus revertendi* or intent to return to it. We have allowed the defense of *animus revertendi* for challenges to a person's domicile on the ground that he or she has left it for a period of time, and held that a person's domicile, once established, does not automatically change simply because he or she has not stayed in that place for a period of time.

Applying these principles to Poe's case, ***as of May 24, 2005, her overt acts may have established an intent to remain in the Philippines, but do not comply with the required animus non-revertendi with respect to the U.S., the domicile that she was abandoning.***

On May 24, 2005, Poe and **her family's home was still in the U.S. as they sold their U.S. family home only on April 27, 2006.** They also officially **informed the U.S. Postal Service of their change of their U.S. address only in late March 2006.** Lastly, as of this date (May 24, 2005), **Poe's husband was still in the U.S. and a legal resident thereof.**

Taken together, these facts show that as of May 24, 2005, Poe had not completely abandoned her domicile in the U.S.; thus, she had not complied with the necessary *animus non-revertendi* at that date.

Note, too, that **Poe's travel documents between May 24, 2005 and July 18, 2006 strongly support this conclusion.** In this period, she travelled to and from the Philippines under a *balikbayan* visa that, as earlier pointed out, has a fixed period of validity and is an indication that her stay in the Philippines during this period was temporary.

While it is not impossible that she could have entered the Philippines under a *balikbayan* visa with the intent to eventually establish domicile in the Philippines, **her return to the U.S. several times while she was staying in the Philippines under a temporary visa prevents me from agreeing to this possibility.**

On the contrary, Poe's acts of leaving the Philippines for the U.S. as an American citizen who had previously stayed in the Philippines under a temporary visa is an indication of her *animus revertendi* to the U.S., her old domicile.

Worthy of note, too, is that in between Poe's arrival on May 24, 2005 and her acquisition of Philippine citizenship, Poe made four trips to and from the U.S. in a span of one year and two months; this frequency over a short period of time indicates and supports the conclusion that she has not fully abandoned her domicile in the U.S. during this period.

Additionally, too, during this time, Poe continued to own two houses in the U.S., one purchased in 1992 and another in 2008 or after her reacquisition of the Philippine citizenship.[333] The ownership of these houses, when taken together with her temporary visa in travelling to the Philippines from May 24, 2005 to July 18, 2006, manifest the existence of an *animus revertendi* to the U.S., which means that as of May 24, 2005, she had not yet completely abandoned the U.S. as her domicile.

In her Memorandum, Poe admitted to owning two (2) houses in the U.S. up to this day, one purchased in 1992 and the other in 2008. She, however, claims to no longer reside in them. Petitioner's Memorandum, pp. 278-279.

IV.D. *Poe made several inconsistent claims regarding her period of residence in the Philippines that shows a pattern of deliberate attempt to mislead and to qualify her for the Presidency.*

Lest we forget, I reiterate that Poe declared in her 2012 CoC for Senator that she has been a resident of the Philippines for at least "6 years and 6 months" before the May 13, 2013. This was a **personal declaration made under oath, certified to be true and correct,** and which she **announced to the public to prove that she was eligible for the Senatorial post.**

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[333] In her Memorandum, Poe admiited to owning two (2) houses in the U.S. up to this day, one purchased in 1992 and the other in 2008. She, however, claims to no longer reside in them. Petitioner's Memorandum, pp. 278-279.

Six (6) years and six (6) months counted back from the day before the May 13, 2013 elections point to November 2006 as the beginning of her Philippine residence – which period of residence before the May 9, 2016 elections leads to only 9 years and 6 months, short of the ten-year requirement for the Presidency.

When she realized this potential disqualifying ground sometime in June of 2015, she told a different story to the public by claiming that she counted the "6-year 6-month" period as of the day she filed her CoC for Senator on October 2, 2012.[334] Effectively, she claimed that she had been a resident of the Philippines since April 2006 thereby removing her ineligibility.

Subsequently, she claimed that she has been a resident of the Philippines since May 24, 2005 when she arrived in the Philippines and has allegedly decided to re-settle here for good. Thus, in her 2015 CoC for President, she declared the "10-year and 11-month" period as her Philippine residence.

As with her 2012 CoC, this was a **personal declaration** which she made **under oath** and which she **announced to the public** to prove that she was eligible, this time for the Presidency. This declaration, however, is **contrary to** the declaration she **made in her 2012 CoC** as well as to the declarations she **made to the public in 2015** when she tried to explain away her potential disqualifying circumstance.

I clarify that these declarations, particularly the declaration Poe made in the 2012 CoC, are not–and the COMELEC did not consider them to be–evidence of the actual number of years she had been legally residing in the Philippines from which I draw the conclusion that she has not been a Philippine resident for ten years and thus committed false material representation. As the COMELEC did, I do not conclude that Poe has only

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[334] See page 19 of the Comelec *en banc's* December 23, 2015 resolution in SPA No. 15-001(DC) (Elamparo case), Annex "B" of G.R. No. 221697.

been a Philippine resident for 9 years and 6 months following her 2012 CoC declaration.

Rather, I consider these declarations to be evidence of falsehoods and inconsistent representations with respect to her residency claim: she made a representation in her 2015 CoC that is completely different from her representation in her 2012 CoC as well as from her public declarations. Poe's **public declarations under oath** considered as a whole reveal ***a pattern that confirms her deliberate attempt to mislead and to falsely represent to the electorate that she was eligible for the Presidency.*** **This evidence fully justified the COMELEC decision to cancel her CoC.**

V.

CONCLUSION

In light of all these considerations, I vote for the reversal of the majority's ruling granting the petitions based on the COMELEC's grave abuse of discretion. In lieu thereof, the Court should enter a Revised Ruling dismissing the petitions and ordering the COMELEC to proceed with the cancellation of the Certificate of Candidacy of petitioner Grace Poe.

DISSENTING OPINION

DEL CASTILLO, *J.*:

A person who aspires to occupy the highest position in the land must obey the highest law of the land.[1]

Since the second Monday of May of 1992 and every six years thereafter,[2] the Filipino people have been exercising their sacred right to choose the leader who would steer the country towards a future that is in accordance with the aspirations of

[1] See December 1, 2015 Resolution of the Comelec's Second Division in SPA No. 15-001 (DC); *rollo* (G.R. No. 221697), Vol. I, p. 222.

[2] CONSTITUTION, Article XVIII, Section 5.

the majority as expressed in the fundamental law of the land. At stake is the Presidency, the highest position in the land.

The President wields a vast array of powers which includes "control of all the executive departments, bureaus and offices."[3] He/she is also the Commander-in-Chief of all armed forces of the Philippines[4] and can "grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment,"[5] as well as amnesty, subject to the concurrence of Congress.[6] For the rest of the world, he/she is the representation and the representative of the Filipino people.

Petitioner Mary Grace Natividad Poe-Llamanzares (petitioner) aspires to occupy the exalted position of the President of the Republic of the Philippines so that on October 15, 2015, she filed her Certificate of Candidacy (2015 CoC) attesting that she is a natural-born Filipino citizen and a resident of this country for 10 years and 11 months immediately preceding the May 9, 2016 elections. However, several sectors were not convinced of petitioner's representations, prompting them to file petitions to deny due course to and cancel her 2015 CoC and for disqualification.

The cases

Before us are petitioner's consolidated Petitions for *Certiorari* assailing the Commission on Elections' (Comelec) Resolutions which cancelled her 2015 CoC. In G.R. No. 221697, the Petition for *Certiorari*[7] assails the Second Division's December 1, 2015 Resolution[8] and the *En Banc's* December 23, 2015

[3] CONSTITUTION, Article VII, Section l7.

[4] CONSTITUTION, Article VII, Section 18.

[5] CONSTITUTION, Article VII, Section 19.

[6] CONSTITUTION, Article VII, Section 19.

[7] *Rollo* (G.R. No. 221697), Vol. I, pp. 3-189.

[8] *Id*. at 190-223; signed by Presiding Commissioner Al A. Parreño and Commissioners Arthur D. Lim and Sheriff M. Abas.

Resolution[9] in SPA No. 15-001 (DC) which granted private respondent Estrella C. Elamparo's (Elamparo) Petition and cancelled petitioner's 2015 CoC for President. In G.R. Nos. 221698-700, the Petition for *Certiorari*[10] assails the First Division's December 11, 2015 Resolution[11] and the *En Banc's* December 23, 2015 Resolution[12] which granted private respondents Francisco S. Tatad (Tatad), Antonio P. Contreras (Contreras) and Amado D. Valdez's (Valdez) petitions in SPA No. 15-002 (DC), SPA No. 15-007 (DC), and SPA No. 15-139 (DC), respectively, and likewise cancelled petitioner's 2015 CoC for President.

Factual Antecedents

On September 3, 1968, petitioner, who was then still an infant, was found abandoned in Jaro, Iloilo City.[13] Her biological parents were unknown. Five years later, petitioner was adopted by

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[9] *Id*. at 224-259; signed by Chairman *J*. Andres D. Bautista (with Separate Concurring and Dissenting Opinion), Commissioner Christian Robert S. Lim (inhibited), Commissioner Al A. Parreño (concurred in the result but maintained that there is no material misrepresentation as to citizenship), Commissioner Luie Tito F. Guia (with Separate Opinion), Commissioner Arthur D. Lim, Commissioner Ma. Rowena Amelia V. Guanzon (concurred in the result), and Commissioner Sheriff M. Abas.

[10] *Rollo* (G.R. Nos. 221698-700), Vol. I, pp. 3-213.

[11] *Id*. at 214-264; signed by Presiding Commissioner Christian Robert S. Lim (with Dissenting Opinion), Commissioner Luie Tito F. Guia (with Separate Concurring Opinion), and Commissioner Ma. Rowena Amelia V. Guanzon.

[12] *Id*. at 352-381, signed by Chairman J. Andres D. Bautista (with Separate Concurring and Dissenting Opinion), Commissioner Christian Robert S. Lim (dissented), Commissioner Al A. Parreño (concurred with the result but maintained that there is no material misrepresentation as to citizenship), Commissioner Luie Tito F. Guia (with Separate Opinion), Commissioner Arthur D. Lim (opined that the earliest reckoning date as to residency should be July 2006, still short of the 10-year residency requirement), Commissioner Ma. Rowena Amelia V. Guanzon and Commissioner Sheriff M. Abas (joined the opinion of Commissioner Arthur D. Lim that the earliest possible reckoning period for residency is July 2006).

[13] See Foundling Certificate, *rollo* (G.R. Nos. 221698-700), Vol. II, p. 1138.

spouses Ronald Allan Kelley Poe and Jesusa Sonora Poe. In 1991, petitioner graduated from Boston College in Massachusetts, with a degree of Bachelor of Arts in Political Studies.

On July 27, 1991, petitioner married Teodoro Misael Daniel V. Llamanzares, a citizen of both the Philippines and the United States of America (U.S.A. or U.S.) from birth, at the Santuario de San Jose Parish in San Juan.[14] On July 29, 1991, the couple left the Philippines, settled in the U.S., and started a family there. On October 18 2001, petitioner became a naturalized U.S. citizen.[15]

On July 7, 2006, petitioner took her Oath of Allegiance[16] to the Republic of the Philippines pursuant to Republic Act No. 9225[17] (RA 9225). On July 18, 2006, the Bureau of Immigration and Deportation (BID) issued an Order[18] granting her petition for reacquisition of Filipino citizenship under the said law.

On August 31, 2006, petitioner registered as a voter in *Barangay* Sta. Lucia, San Juan.[19] After more than three years, petitioner secured a Philippine passport valid until October 12, 2014.[20]

On October 6, 2010, petitioner was appointed as Chairperson of the Movie and Television Review and Classification Board (MTRCB).

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[14] *Rollo* (G.R. No. 221697), Vol. I, p. 16.

[15] *Id.* at 17.

[16] *Id.* at 22.

[17] AN ACT MAKING THE CITIZENSHIP OF PHILIPPINE CITIZENS WHO ACQUIRED FOREIGN CITIZENSHIP PERMANENT AMENDING FOR THE PURPOSE COMMONWEALTH ACT NO. 63, AS AMENDED AND FOR OTHER PURPOSES OR THE CITIZENSHIP RETENTION AND REACQUISITION ACT OF 2003.

[18] *Rollo* (G.R. Nos. 221698-700), Vol. II, p. 1269.

[19] *Id.* at 1279.

[20] *Id.* at 1280-1302.

On October 20, 2010, petitioner executed an Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship (Affidavit of Renunciation).[21] The following day, October 21, 2010, petitioner took her Oath of Office as MTRCB Chairperson before President Benigno S. Aquino III.[22]

On July 12, 2011, petitioner executed a document entitled Oath/Affirmation of Renunciation of Nationality of the United States[23] before the U.S. Vice-Consul. Thus, on December 9, 2011, the latter issued her a Certificate of Loss of Nationality of the United States.[24]

In a bid for a Senate seat, petitioner secured and accomplished a CoC for Senator[25] on September 27, 2012 (2012 CoC). To the question "PERIOD OF RESIDENCE IN THE PHILIPPINES BEFORE MAY 13, 2013," she answered six years and six months. Then on October 2, 2012, petitioner filed said CoC with the Comelec.

Petitioner won and was proclaimed Senator of the Philippines on May 16, 2013.

In June 2015, Navotas Rep. Tobias M. Tiangco pointed out through the media that based on petitioner's entry in her 2012 CoC, she does not meet the 10-year residency requirement for purposes of the 2016 presidential election.

Desirous of furthering her political career in the Philippines, and notwithstanding the looming issue on her period of residency in the Philippines, petitioner next focused on the Presidency and filed her CoC therefor on October 15, 2015.

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[21] *Id*. at 1305.

[22] *Id*. at l308.

[23] *Id*. at 1309.

[24] *Id.* at 1315.

[25] *Id*. at 1316.

The Petitions before the Comelec:

1) SPA No.15-001 (DC)–(Elamparo Petition, now G.R. No. 221697)

On October 21, 2015, Elamparo filed before the Comelec a Petition to Deny Due Course to or Cancel Certificate of Candidacy.[26] Elamparo asserted that petitioner falsely represented to the Filipino people that she had been a resident of the Philippines for a period of 10 years and 11 months immediately prior to the May 9, 2016 elections and that she is a natural-born Filipino citizen. Elamparo advanced the following arguments in support of her position that petitioner is not a natural-born Filipino:

a) Under the 1935 Constitution which was in force at the time of petitioner's birth, "the status of natural-born citizen could be determined only by descent from a known Filipino father or mother."[27] Since petitioner's biological parents were unknown, she could not categorically declare that she descended from Filipino parents.

b) Petitioner's subsequent adoption by Filipino citizens did not vest upon her a natural-born status. Adoption merely "established a juridical relationship between her and her adoptive parents"[28] but did not confer upon her the citizenship of her adoptive parents.[29] Moreover, adoption laws are civil in nature; they do not determine citizenship which is a political matter.[30]

c) No international agreement or treaty supports petitioner's claim of natural-born citizenship.

c-1) The 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws provides that State laws determine who are its nationals.[31]

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[26] *Rollo* (G.R. No. 221697), Vol. I, pp. 326-397.

[27] *Id*. at 340.

[28] *Id*. at 341.

[29] *Id*. at 344.

[30] *Id*. at 339.

[31] *Id*.

c-2) Petitioner could not rely on the presumption provided in Article 2 of the 1961 Convention on the Reduction of Statelessness that a "foundling found in the territory of a Contracting State" is born to "parents possessing the nationality of that State" for the following reasons: One, the Philippines could not be considered as a "Contracting State" since it did not ratify or accede to the 1961 Convention on the Reduction of Statelessness.[32] Two, even on the assumption that the Philippines will ratify the 1961 Convention on the Reduction of Statelessness, it will not have any retroactive application on the case of petitioner pursuant to Section 2, Article 28 of the Vienna Convention on the Law on Treaties[33] and Section 12(3) of the 1961 Convention on the Reduction of Statelessness. Three, while admittedly, non-signatories to international agreements may be bound by such agreements if such agreements are transformed into customary laws,[34] the presumption under Article 2 of the 1961 Convention on the Reduction of Statelessness has not yet ripened into customary international law as to bind the Philippines.[35]

c-3) The 1959 United Nations Declaration on the Rights of the Child and the 1989 Convention on the Rights of the Child have no binding force.[36] The principle stated therein that a child is entitled to a nationality is merely "an authoritative statement" with no corresponding "demandable right."[37] In any case, what is conferred by these declarations is nationality, not natural-born status. Moreover, municipal law governs matters of nationality.[38]

d) Mere *presumption* of natural-born citizenship does not comply with the strict constitutional requirement.[39] No

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[32] *Id*. at 346.
[33] *Id*. at 342.
[34] *Id*. at 347.
[35] *Id*. at 348, 350.
[36] *Id*. at 354.
[37] *Id*.
[38] *Id*.
[39] *Id*.

uncertainty on the qualification of the President must be entertained.[40]

e) "Place of birth is not a recognized means of acquiring such citizenship, much less a reason to claim that one is a natural-born Filipino."[41] Petitioner has the burden of proving her natural-born status.[42]

f) RA 9225 applies only to former natural-born Filipinos. Since petitioner is not a natural-born Filipino, then she is not qualified to apply for reacquisition or retention of citizenship under RA 9225.[43]

g) Even assuming that petitioner is a natural-born Filipino, she lost such status by becoming a naturalized U.S. citizen.[44] And assuming that she could avail herself of the benefits of RA 9225, her status as Filipino citizen is considered "not from birth" but from July 18, 2006 when the BID approved her application for reacquisition of Philippine citizenship.[45]

h) "When she applied for reacquisition of her Philippine citizenship and took her oath of allegiance, she had to perform an act to acquire her Philippine citizenship"[46] which is anathema or antithetical to the concept of natural-born citizenship.

i) The use by the petitioner of her U.S. passport even after she renounced her American citizenship is tantamount to recantation of the renunciation of her U.S. citizenship[47] pursuant to the rulings in *Maquiling v. Commission on Elections*[48]

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[40] *Id*. at 359.

[41] *Id*. at 363.

[42] *Id*. at 364.

[43] *Id*. at 365.

[44] *Id*. at 366.

[45] *Id*. at 368.

[46] *Id*. at 370.

[47] *Id*. at 372.

[48] G.R. No. 195649, April 16, 2013, 696 SCRA 420.

and *Arnado v. Commission on Elections.*[49] During oral arguments before the Senate Electoral Tribunal (SET), Atty. Manuelito Luna argued that the records of the U.S. Department of State Bureau of Consular Affairs showed that petitioner still used her U.S. passport in September 2011 or after her renunciation of U.S. citizenship.

As regards residency, Elamparo put forth that, at most, petitioner's residency in the Philippines is only nine years and 10 months, or short of two months to comply with the residency requirement for Presidency. In support of her contention, she argued that:

a) Petitioner abandoned her domicile of origin in the Philippines when she became a naturalized U.S. citizen and established her new domicile of choice in the U.S.[50]

b) Petitioner "did not go to the U.S. and be naturalized as a U.S. citizen to pursue any calling, profession or business" but with the intention of starting a family there.[51] Thus, her trips back/ visits to the Philippines prior to July 2006 (when she took the oath of allegiance to the Philippines and applied to reacquire her Philippine citizenship with the BID) should be considered temporary in nature and for a specific purpose only;"[52] *i.e.,* to visit family and friends and not to establish a new domicile or residence.

c) Having established her domicile of choice in the U.S., the burden of proof rests upon petitioner to prove that she is abandoning her domicile in the U.S. and establishing a new domicile in the Philippines.[53]

d) Petitioner's status as a naturalized U.S. citizen and her continued use of her U.S. passport from 2006 to 2011 are indicative of her intention to retain her domicile in the U.S.[54]

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[49] G.R. No. 210164, August 18, 2015.

[50] *Rollo* (G.R. No. 221697), Vol. I, p. 379.

[51] *Id.* at 384.

[52] *Id.*

[53] *Id.*

[54] *Id.* at 385.

e) Not being a natural-born Filipino, petitioner is not eligible to apply for reacquisition of Philippine citizenship under RA 9225. Consequently, she could not have established her domicile of choice in the Philippines.[55]

f) Even on the argument that petitioner reacquired her Philippine citizenship upon taking the oath of allegiance, it cannot be said that she automatically regained or reestablished her new domicile, At most, what she had was the option to choose or establish a new domicile.[56] Thus, the earliest date that she could have reestablished her legal residence in the Philippines was on July 18, 2006 when she reacquired her status as a Filipino citizen.[57] Reckoned from July 18, 2006, petitioner's residence in the country by May 2016 would only be nine years and 10 months, or two-months shy of the 10-year residency requirement for presidential candidates.[58]

g) Petitioner is estopped from denying that her residency in the Philippines prior to the May 13, 2013 elections is six years and six months as stated in her 2012 senatorial CoC.[59]

h) The period of residency stated in petitioner's 2012 CoC cannot be considered as an honest mistake.[60]

2) SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC)-(the Tatad Petition, Contreras Petition, and Valdez Petition, now G.R. Nos. 221698-700)

Valdez and Contreras also filed petitions seeking to cancel or deny due course to petitioner's 2015 CoC while Tatad filed a petition for disqualification.

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[55] *Id.* at 386.

[56] *Id.* at 387.

[57] *Id.* at 388.

[58] *Id.*

[59] *Id.*

[60] *Id.* at 389.

Invoking Section 25 of the Comelec Rules of Procedure,[61] Tatad, in his Petition, echoed most of Elamparo's arguments that petitioner miserably lacked the residency and citizenship requirements. In addition, he contended that in case of conflict between international conventions and treaties on one hand, and the Constitution on the other, the latter prevails. Moreover, since petitioner has no *jus sanguinis* citizenship she could not be considered a natural-born Filipino and would not be permitted to run for President.[62] Citing the Hague Convention of 1930 on the Conflict of Nationality Laws, he argued that any question relating to nationality must be resolved in accordance with the law of the state.[63] He also pointed out that the 1930 Protocol in Relation to Certain Case of Statelessness, the 1930 Hague Special Protocol Concerning Statelessness, the 1948 Universal Declaration of Human Rights, and the 1961 United Nations Convention on the Reduction of Statelessness, do not have binding effect.[64] He explained that international rules are at *par* only with congressional acts and could not in any manner supplant or prevail over the Constitution.[65]

Anent the issue of residency, Tatad noted that in the 2012 senatorial CoC, petitioner's period of residence in the country immediately before the May 13, 2013 elections is six years and six months. Adding the period from May 13, 2013 up to May 9, 2016, petitioner's period of residence in the Philippines would only be nine years and five months, which is short of the 10-year requirement.[66] Tatad likewise alleged that petitioner's intention to abandon the U.S. domicile and establish a new domicile in the country could not be inferred from her acts. At most, petitioner's visits here were only for

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[61] *Rollo* (G.R. Nos. 221698-700), Vol. I, pp. 397-399.

[62] *Id*. at 408.

[63] *Id*. at 412.

[64] *Id*. at 412-413.

[65] *Id*. at 413.

[66] *Id*. at 415.

the purpose of consoling her adoptive mother and participating in the settlement of the estate of her adoptive father since her husband remained in the U.S. during this period. In fact, petitioner renounced her U.S. citizenship only on October 20, 2010,[67] or long after the death of her adoptive father.

Tatad maintained that petitioner is not qualified to avail herself of RA 9225 because she is not a natural-born Filipino. There is no showing that she descended from parents who are Filipino citizens.[68] He further posited that the Order of the BID granting petitioner's application for reacquisition of Philippine citizenship was not signed by Immigration Commissioner Alipio F. Fernandez, Jr.; hence, it is null and void.[69] Finally, Tatad asserted that petitioner's travels to the U.S. after renouncing her U.S. citizenship are equivalent to a repudiation of her earlier renunciation.[70]

The Petition[71] filed by Contreras focused only on the failure of petitioner to comply with the residency requirement and her false representation – that by May 9, 2016 she would have resided in the country for 10 years and 11 months.[72] For Contreras, it "is a blatant attempt to undermine the rule of law and the Constitution when one submits a certificate of candidacy falsely claiming the possession of a qualification that is specified in the Constitution as a requirement to run for President of the Republic of the Philippines."[73] According to Contreras, petitioner is deemed to have abandoned her domicile in the Philippines when she became a naturalized U.S. citizen. And, in order for her to have at least 10 years of residency in the country, she

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[67] *Id.*

[68] *Id.* at 417.

[69] *Id.*

[70] *Id.*

[71] *Rollo* (G.R. Nos. 221698-700), Vol. II, pp. 783-796.

[72] *Id.* at 784.

[73] *Id.* at 785.

should have reacquired her Philippine domicile at the latest by May 9, 2006. However, since she reacquired her Philippine citizenship only on July 18, 2006, petitioner failed to comply with the 10-year residency requirement. Her visits in the country before July 18, 2006 should not inure to her benefit since at that time she was traveling not as a Filipino but as a U.S. citizen.[74] By his reckoning, petitioner's residency in the country by May 9, 2016 would only be nine years, nine months and 22 days.[75]

Contreras postulated that had petitioner really intended to establish a new domicile in the Philippines and to abandon her U.S. domicile, she should have applied for an immigrant status before the BID which will in turn issue an Immigrant Certificate of Residence (ICR).[76] Contreras noted that in her application to reacquire Philippine citizenship under RA 9225, petitioner did not indicate an ICR or an Alien Certificate of Registration, unlike on the part of her three children, which "would have been relevant information x x x on the issue of her residence."[77]

For his part, Valdez, in his Petition[78] to cancel or deny due course to petitioner's CoC, argued that since petitioner had to perform an overt act to reacquire her citizenship, then she is not a natural-born Filipino citizen as defined in Article IV, Section 2 of the 1987 Constitution.[79] Valdez asserted that it is not possible for petitioner to reacquire a natural born status on July 18, 2006 since at that time she had dual allegiance to the Philippines and the U.S. which is prohibited under Article IV, Section 5 of the Constitution.[80] Neither did RA 9225 bestow a natural-born status upon her; at most, she was "only 'deemed' not to have lost her Philippine citizenship."[81]

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[74] *Id*. at 785-786, 789.
[75] *Id*. at 786.
[76] *Id*. at 791.
[77] *Id*.
[78] *Id*. at 882-923.
[79] *Id*. at 884.
[80] *Id*. at 897-898.
[81] *Id*. at 898.

Valdez also contended that petitioner lacked the residency requirement or misrepresented her period of residency. He pointed out that petitioner cited varying dates regarding the establishment of her residency in the Philippines.[82] In her 2015 CoC, petitioner claimed that by May 9, 2016 she would have resided in the country for a period of 10 years and 11 months. By simple mathematical computation, petitioner was claiming that she started residing in the Philippines in June 2005. In stark contrast, petitioner stated in her 2012 CoC that her residency in the country prior to May 13, 2013 is six years and six months, which means that she has been a resident of the Philippines only since November 13, 2006.[83] For Valdez, the "conflicting admissions x x x [petitioner] voluntarily, willingly, and knowingly executed as to when she established her residency in the Philippines [demonstrate] a deliberate attempt on her part to mislead, misinform, or hide a fact that would render her ineligible for the position of President of the Philippines."[84]

Valdez reckoned that July 18, 2006 would be the earliest date that petitioner could have established her new domicile of choice as this was the time she reacquired her Philippine citizenship. Valdez insisted that her stay in the Philippines prior to reacquiring Philippine citizenship could not be favorably considered for purposes of the residency requirement.[85] He emphasized that at that time, petitioner did not even secure a permanent resident visa; consequently, she could only be considered as a foreigner temporarily residing in the country.[86] He elaborated that petitioner's reacquisition of Philippine citizenship did not affect her domicile; what petitioner had at the time was only an option to change or establish a new domicile of choice.[87]

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[82] *Id*. at 913.

[83] *Id*. at 891.

[84] *Id*. at 914.

[85] *Id*. at 903-904.

[86] *Id*. at 904.

[87] *Id*. at 910.

Valdez averred that petitioner could not claim "honest mistake made in good faith"[88] especially "when one runs for public office and for a national post x x x [as] natural human experience and logic dictate that one should be very well aware of the qualifications required for that position and whether x x x one possesses those qualifications. x x x More importantly, one is highly expected to give accurate information as regards his/her qualifications."[89]

Finally, Valdez opined that petitioner failed to prove that she intended to permanently reside in the Philippines for a period of 10 years prior to the May 9, 2016 elections. Having already abandoned her domicile in the Philippines upon her naturalization as a U.S. citizen, it can only be construed that her subsequent trips to the Philippines were temporary in nature. More importantly, petitioner's 2014 Statement of Assets, Liabilities and Net Worth (SALN) showed that she still maintains two houses in the U.S.[90] which she bought in 1992 and in 2008.

The Answers of Petitioner before the Comelec:

1) SPA No. l5-001 (DC) (Elamparo Petition)

Petitioner claimed that Elamparo's Petition failed to state a cause of action for it did not aver that there was a false representation in her 2015 CoC amounting to a deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible or that it was intended to deceive the electorate as regards the candidate's qualifications.[91] She also posited that the burden of proof rests upon Elamparo to show that her representations in the CoC are false.[92] She alleged that the pronouncement in the 1967 case of *Paa v. Chan*[93] to the

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[88] *Id*. at 915.

[89] *Id*. at 915-916.

[90] *Id.* at 917.

[91] *Rollo* (G.R. No. 221697), Vol. II, p. 528.

[92] *Id*. at 529.

[93] 128 Phil. 815 (1967).

effect that there is no presumption of Philippine citizenship had already been superseded by later rulings.[94]

Petitioner also assailed the jurisdiction of the Comelec. She claimed that it is the Department of Justice (DOJ) which has the primacy jurisdiction to rule on the validity of the June 18, 2006 Order of the BID granting her natural-born status;[95] and pending this determination, the Comelec must refrain from ruling on whether she could avail herself of the benefits of RA 9225.[96] In addition, she averred that the Elamparo Petition is essentially one for *quo warranto* since it seeks a ruling on her eligibility or lack of qualifications and therefore must be lodged with the Presidential Electoral Tribunal (PET). However, since there is no election yet and no winner had been proclaimed, the Petition is premature.[97]

Petitioner asserted that she is a natural-born Filipino based on the intent of the framers of the 1935 Constitution[98] and treaties such as the United Nations Convention on the Rights of the Child[99] and the 1966 International Covenant on Civil and Political Rights.[100] She averred that although these treaties were not yet in force at the time of her birth, they could be given retroactive application.[101] In addition, generally accepted principles of international law and customary international law support her thesis that she is a natural-born Filipino. She also cited the 1930 Hague Convention on Certain Questions Relating to Conflict of Nationality Laws[102] and the 1961 Convention on the Reduction of Statelessness.[103]

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[94] *Rollo* (G.R. No. 221697), Vol. II, pp. 533-534.

[95] *ld*. at 552.

[96] *Id*. at 554.

[97] *Id*. at 558.

[98] *Id*. at 561-567.

[99] *Id*. at 572.

[100] *Id*. at 573.

[101] *Id*. at 577-580.

[102] *Id*. at 594.

[103] *Id*. at 592.

Petitioner insisted that "the natural-born citizenship of a person may be established using presumptions."[104] She maintained that "there is nothing unconstitutional about presuming that [she] was born of Filipinos or that she is a natural-born Filipino, even though she cannot, as yet, prove that she is related by blood to citizens of the Philippines."[105] Petitioner claimed that by the official acts of the Philippine Government, she had been repeatedly and consistently recognized as a natural-born Filipino thereby giving rise to the presumption that she is a natural-born Filipino.[106] Moreover, she surmised that since she was not naturalized, then she is natural-born.[107]

Petitioner conceded that she abandoned her Philippine citizenship by becoming a naturalized U.S. citizen on October 18, 2001. However, she claimed that she reacquired her natural-born Filipino status by virtue of RA 9225[108] particularly when she took her oath of allegiance[109] on July 7, 2006. Thereafter, she renounced her U.S. citizenship. She insisted that she never repudiated the renunciation of her U.S. citizenship.[110]

As regards the issue of residency, petitioner maintained that by May 9, 2016, she would have resided in the Philippines for 10 years and 11 months. She asserted that since May 24, 2005[111] she had been bodily present in the Philippines and that her subsequent acts, which "must be viewed 'collectively' and not 'separately' or in isolation,"[112] were indicative of her intention

[104] *Id*. at 606.

[105] *Id*. at 607.

[106] *Id*. at 535.

[107] *Id*. at 607, 611.

[108] *Id*. at 622.

[109] *Id*. at 623, 627.

[110] *Id*. at 627-631.

[111] *Id.* at 636.

[112] *Id.* at 645.

to permanently stay in the country.[113] Otherwise stated, on May 24, 2005, she left the U.S. for good[114] without intention of returning there.[115] She opined that her occasional trips to the U.S. did not negate her intent to reside permanently in the Philippines.[116] Neither would possession of a U.S. passport be considered indicative of her intent to return to the U.S. She explained that she kept her U.S. passport "in the meantime because it was plainly convenient for travel purposes."[117]

Petitioner also contended that she could legally establish her domicile in the Philippines even before reacquiring her Philippine citizenship.[118] She surmised that domicile or residence required only physical presence and intent, and not necessarily Filipino citizenship.[119] She posited that "residency is independent of, or not dependent on, citizenship."[120] In fact, RA 9225 by which she reacquired her Filipino citizenship "treats citizenship independently of residence."[121] She argued that if only Filipinos could establish residence in the Philippines, "then no alien would ever qualify to be naturalized as a Filipino, for aliens must be residents before they can be naturalized."[122]

Finally, petitioner admitted that she committed a mistake, albeit an honest one and in good faith, when she claimed in her 2012 senatorial CoC that her period of residence was six years and six months.[123] She insisted that despite said mistake, she

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[113] *Id*. at 637.

[114] *Id*. at 642.

[115] *Id*. at 642-645.

[116] *Id.* at 645, 647.

[117] *Id*. at 648.

[118] *Id*.

[119] *Id*. at 649.

[120] *Id*. at 650.

[121] *Id*.

[122] *Id*. at 651.

[123] *Id*. at 657.

still complied with the two-year residency requirement for senatorial candidates; that she misinterpreted the phrase "period of residence in the Philippines before May 13, 2013;" and that she reckoned her period of residence in the Philippines from March-April 2006 as this was the time that her family had substantially wrapped up their affairs in the U.S.[124] She claimed that her period of residence should be reckoned from May 24, 2005, as stated in her 2015 presidential CoC.[125] She asserted that she is not estopped from correcting her mistake, which in fact she did when she executed her 2015 CoC.[126]

2) SPA No. 15-002 (DC) - (Tatad Petition)

Petitioner's Answer[127] to Tatad's Petition is almost a restatement of the arguments she raised in her Answer to the Elamparo Petition. In addition, she averred that although Tatad's Petition was filed under Section 68 of the Omnibus Election Code[128] (OEC) in relation to Section 1, Rule 25 of the Comelec Rules, it failed to allege grounds for disqualification as enumerated thereunder.[129] Instead, it cited lack of citizenship and residency requirements which are not grounds for a petition filed under Section 68 of the OEC. According to petitioner, if Tatad's Petition were to be considered a *quo warranto* petition, it should be filed with the PET and only if petitioner "is elected and proclaimed President, and not before then."[130] As such, the Tatad Petition must be dismissed for failure to state a cause of action.[131] Moreover, the Tatad Petition could not be considered as a petition to deny due course to or cancel a CoC as it did not allege as ground material misrepresentation in the CoC;

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[124] *Id.* at 658.

[125] *Id.* at 659.

[126] *Id.* at 660.

[127] *Rollo* (GR. Nos. 221698-700), Vol. II, pp. 613-782.

[128] *Batas Pambansa Big.* 881 (1985).

[129] *Rollo* (G.R. Nos. 221698-700), Vol. II, p. 640.

[130] *Id.*

[131] *Id.* at 645.

neither did it pray for the cancellation of or denial of due course to petitioner's CoC.[132]

3) SPA No. 15-139 (DC)–Valdez Petition

Likewise, petitioner's Answer[133] to the Petition of Valdez repleads the arguments in her Answer to the Elamparo Petition. At the same time, she stressed that considering that her "representation in her [CoC] on her citizenship is based on prevailing law and jurisprudence on the effects of repatriation and [RA 9225] x x x said representation in her [CoC] cannot be considered 'false."'[134] As regards the issue of residency, particularly on Valdez's postulation that petitioner's period of residence must be counted only from October 20, 2010 or upon renunciation of her U.S. citizenship, petitioner countered that such argument "would be tantamount to adding a fourth requisite"[135] in establishing a new domicile of choice, that is, possession of permanent resident visa/possession of Philippine citizenship and/or prior renunciation of U.S. citizenship.[136] Petitioner reiterated that she could legally reestablish her Philippine domicile even before renouncing her U.S. citizenship in 2010.[137] As regards Valdez's allegation that petitioner still maintains two houses in the U.S. (after she took her oath of allegiance to the Philippines, and even purchased one of the houses in 2008 after she took her oath in 2006, and after they supposedly sold their family home in the U.S. in 2006), petitioner couched her denial as follows:

2.13. The allegation in paragraph 98 of the *Petition* is DENIED insofar as it is made to appear that Respondent "resides" in the 2 houses mentioned in said paragraph. The truth is that Respondent does not

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[132] *Id.* at 646.

[133] *Id.* at 1044-1102.

[134] *Id.* at 1062.

[135] *Id.* at 1080.

[136] *Id.*

[137] *Id.* at 1088.

"reside" in these houses, but in her family home in Corinthian Hills, Quezon City (where she has lived with her family for aimost a decade).[138]

4) SPA No.15-007 (DC)–(Contreras Petition)

Petitioner's Answer[139] to the Petition filed by Contreras is likewise a reiteration of her contentions in the Answer she filed to the Elamparo Petition. She maintained that she did not commit any material misrepresentation in her 2015 CoC when she stated that by May 9, 2016, she would have resided in the Philippines for 10 years and 11 months.[140] She also averred that she could legally reestablish her domicile in the Philippines even before she reacquired her natural-born citizenship.[141]

Rulings of the Commission on Elections

A. SPA No. 15-001 (DC)–Elamparo Petition

On December 1, 2015, the Second Division of the Comelec issued its Resolution[142] granting Elamparo's Petition and cancelling petitioner's 2015 CoC. It held that petitioner's representations in her CoC with regard to her citizenship and residency are material because they pertain to qualifications for an elective office.[143] Next, it ruled that petitioner's representation that she would have resided in the Philippines for 10 years and 11 months immediately preceding the May 9, 2016 elections is false *vis-a-vis* the admission she made in the 2012 CoC that her residence in the Philippines prior to May 13, 2013 was only six years and six months. It characterized petitioner's claim of honest mistake as self-serving. Besides, there was no showing of any attempt to correct the alleged honest mistake. The Second

[138] *Id*. at 1055.

[139] *Id*. at 823-871.

[140] *Id*. at 835.

[141] *Id*. at 857, 860.

[142] *Rollo* (G.R. No. 221697), Vol, pp. 190-223.

[143] *Id*. at 204-206.

Division also noted that the earliest point from which to reckon petitioner's residency would be on July 18, 2006 when the BID granted her application for reacquisition of Philippine citizenship under RA 9225. Thus, her period of residence prior to May 2016 would only be nine years and 10 months, or two months short of the required period of residence. The Second Division opined that prior to July 2006, petitioner was an alien without any right to reside in the Philippines save as our immigration laws may have allowed her to stay as a visitor or as a resident alien.[144]

The Comelec's Second Division rejected petitioner's claim that she is a natural-born Filipino citizen. It held that the provisions of the 1935 Constitution on citizenship clearly showed that only children born of Filipino fathers are considered natural-born. As such, the representation in the 2015 CoC that she is a natural- born Filipino is false.[145] The Second Division also ruled that as a well-educated Senator, petitioner ought to know that she is not a natural-born Filipino citizen since our country has consistently adhered to the *jus sanguinis* principle.[146] It likewise rejected petitioner's argument that the members of the 1934 Constitutional Convention intended to include children of unknown parents as natural-born citizens, reasoning out that a critical reading of the entire records of the 1934 Constitutional Convention discloses no such intent.[147] It also gave short shrift to petitioner's invocation of international law, particularly the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, the 1948 Universal Declaration of Human Rights, the 1961 Convention on the Reduction of Statelessness, and the 1966 International Covenant on Civil and Political Rights, because the Philippines is not a signatory thereto; besides, these international laws/conventions do not categorically state that children of unknown parents must be

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[144] *Id.* at 207-211.

[145] *Id.* at 211-212.

[146] *Id.* at 213.

[147] *Id.* at 214-216.

categorized as natural-born. Furthermore, even assuming that these conventions or treaties classified these children as natural-born, the same could not supplant or alter the provisions of the 1935 Constitution on citizenship.[148]

The Comelec's Second Division found that petitioner deliberately attempted to mislead, misinform, or hide a fact, when she declared in her 2015 CoC that her period of residency immediately prior to May 9, 2016 would be 10 years and 11 months.[149] However, as regards her citizenship, it ruled that there was no conclusive evidence of any deliberate attempt to mislead, misinform or hide a fact from the electorate. It ratiocinated that the citizenship issue regarding foundlings is one of first impression and thus petitioner could be presumed to have acted in good faith in making such a declaration.[150]

Both petitioner and Elamparo moved for reconsideration. While petitioner prayed for a complete reversal of the Comelec's Second Division ruling, Elamparo prayed for partial reconsideration,[151] that is, for the Comelec to pronounce petitioner as likewise guilty of misrepresenting her citizenship status. She pointed out that there is a pattern of misrepresentation on the part of petitioner regarding her citizenship. She claimed that in three certificates of title[152] issued prior to July 2006, petitioner declared that she was a Filipino when in fact she was not; and, that in her Petition for Retention and/or Reacquisition of Philippine Citizenship Under RA 9225, petitioner also falsely represented that she "is a former natural-born Philippine citizen <u>born</u> x x x <u>to</u> Ronald Allan Kelley Poe, a Filipino citizen and Jesusa Sonora Poe, a Filipino citizen."

On December 23, 2015, the Comelec *En Banc* issued its Resolution[153] denying petitioner's motion for reconsideration

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[148] *Id.* at 216-219.

[149] *Id.* at 219-221.

[150] *Id.* at 219-223.

[151] *Rollo* (G.R. No. 221697), Vol. III, pp. 1945-1958.

[152] *Rollo* (G.R. No. 221697), Vol. II, pp. 807-810, 819-822.

[153] *Rollo* (G.R. No. 221697), Vol. I, pp. 224-259.

and granting Elamparo's motion for partial reconsideration. Accordingly, it declared that petitioner is likewise guilty of misrepresenting her citizenship in her 2015 CoC, *viz.*:

> WHEREFORE, premises considered, the Verified Motion for Reconsideration of [petitioner] is hereby DENIED and the Motion for Partial Reconsideration of[Elamparo] is hereby GRANTED.
>
> ACCORDINGLY, the Resolution dated 1 December 2015 of the COMELEC Second Division is hereby AFFIRMED WITH MODIFICATION. [Petitioner's] Certificate of Candidacy for President in the 9 May 2016 National, Local and ARMM Elections contains material misrepresentations as to both her citizenship and residency.
>
> THEREFORE, the Certificate of Candidacy for President in the 9 May 2016 National, Local and ARMM elections filed by [petitioner] Mary Grace Natividad Sonora Poe Llamanzares is hereby CANCELLED.
>
> FURTHER, the Urgent Motion to Exclude of [Elamparo] is hereby DENIED.
>
> SO ORDERED.[154]

The Comelec *En Banc* debunked petitioner's allegation in her motion for reconsideration that the Second Division based its Resolution on the 2012 CoC alone. It clarified that the Second Division, much like trial courts, is not obliged to itemize all the evidence presented by the parties, but only that it should duly evaluate such evidence.[155] In any event, the Comelec *En Banc* again scrutinized the evidence presented by the petitioner and concluded that they all pertained to events that transpired before July 2006,[156] or prior to her reacquisition of her Philippine citizenship. Thus, the same had no probative value in light of settled jurisprudence that "the earliest possible date that petitioner could reestablish her residence in the Philippines is when she reacquired her Filipino citizenship [in] July 2006."[157] The

[154] *Id*. at 258.

[155] *Id*. at 236.

[156] *Id*.

[157] *Id*.

Comelec *En Banc* held that petitioner's statement in her 2012 CoC was properly considered as an admission against interest and being a notarial document is presumed to be regular.[158] It also held that the burden rests upon petitioner to prove that the 2015 CoC contained true statements and that the declarations made in the 2012 CoC were not done in bad faith.[159]

The Comelec *En Banc* was not convinced that petitioner 'stated truthfully her period of residence in the [2015] CoC" and that "such false statement was made without a deliberate attempt to mislead."[160] It considered petitioner'so-called public acknowledgment of her mistakes as contrived since they were delivered at the time when the possibility of her running for President was already a matter of public knowledge.[161] The Comelec *En Banc* held that:

> Indeed, this Commission finds it hard to believe that a woman as well-educated as [petitioner], who was then already a high-ranking public official with, no doubt, a competent staff and a band of legal advisers, and who is not herself entirely unacquainted with Philippine politics being the daughter of a former high-profile presidential aspirant, would not know how to correctly fill-up [sic] a pro-forma COC in 2013. We are not convinced that the subject entry therein was [an] honest mistake.[162]

On the issue of citizenship, the Comelec *En Banc* ruled that petitioner cannot rely on presumptions to prove her status as natura1-born citizen.[163] It concurred with the Second Division that the cited international laws/conventions have no binding force.[164] It also held that it is not bound by the November 17, 2015 Decision of the SET in a *quo warranto* proceeding

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[158] *Id*. at 241.

[159] *Id*.

[160] *Id*. at 242.

[161] *Id*.

[162] *Id*. at 243.

[163] *Id*. at 249-250.

[164] *Id*. at 250.

questioning petitioner's qualification as a Senator where she was declared as a natural-born Filipino. The Comelec *En Banc* ratiocinated that it is an independent constitutional body which does not take its bearings from the SET or any other agency of the government; and that in any case, the SET's Decision has been elevated to and is still pending with this Court.[165]

In addition, the Comelec *En Banc* lent credence to Elamparo's claim that there is substantial evidence, borne out by public documents, showing petitioner's pattern of misrepresentation as regards her citizenship.[166] The Comelec *En Banc* opined that petitioner's educational attainment and other prevailing circumstances, coupled with the simplicity and clarity of the terms of the Constitution, lead to no other conclusion than that she made the false material representation in her 2015 CoC to mislead the electorate into thinking that she is a Filipino and eligible to run for President.[167] Thus, the Comelec *En Banc* modified the Resolution of the Second Division by holding that petitioner committed material false representation in her citizenship as well.

B. On the Tatad, Contreras, and Valdez Petitions

The Comelec's First Division, in its December 11, 2015 Resolution,[168] arrived at the same conclusion that petitioner falsely represented her citizenship and period of residency. Hence it ordered the cancellation of petitioner's 2015 CoC. Apart from the ratiocinations similar to those made in the resolution of Elamparo's Petition, the Comelec's First Division made some additional points.

On the procedural aspect, the Comelec's First Division held that although the Petition of Tatad was denominated as a petition for disqualification, it is not barred from taking cognizance of

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[165] *Id.* at 251.

[166] *Id.* at 252-253.

[167] *Id.* at 253.

[168] *Rollo* (G.R. Nos. 221698-700), Vol. I, pp. 216-264.

the same since it "impugns the citizenship and residency of [petitioner], and therefore generally questions the truthfulness of her CoC stating that she has the qualification and eligibility to run for and be elected President x x x."[169] And since the said Petition raised proper grounds for cancellation of a CoC under Section 1,[170] Rule 23 of the Comelec Rules of Procedure, it falls within the Comelec's jurisdiction pursuant to Section 78 of the OEC.

As to the Comelec's jurisdiction over the questioned citizenship, the Comelec's First Division held that it is not bound by the BID Order; otherwise, it would be deprived of its constitutionally-granted power to inquire into the aspiring candidate's qualifications and to determine whether there is commission of material misrepresentation.[171]

Lastly, the Comelec's First Division thumbed down petitioner's claims that the petitions are premature and that the issues raised therein are appropriate in a *quo warranto* proceeding. The Comelec's First Division pointed out that the petitions raised the issue of material misrepresentation;[172] it also declared that petitioner's CoC is riddled with inconsistencies with regard to her period of residency, which is indicative of her deliberate attempt to mislead; and that the Comelec has jurisdiction over the petitions since they were filed before proclamation.[173]

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[169] *Id.* at 229.

[170] Section 1. Ground for Denial or Cancellation of Certificate of Candidacy. – A verified Petition to Deny Due Course to or Cancel a Certificate of Candidacy for any elective office may be filed by any registered voter or a duly registered political party, organization, or coalition of political parties on the exclusive ground that any material representation contained therein as required by law is false.

[171] *Rollo* (G.R. Nos. 221698-700), Vol. I, pp. 231-232.

[172] Although the same was not explicitly stated in the Tatad Petition.

[173] *Rollo* (G.R. Nos. 221698-700), Vol. I, pp. 233-234 citing *Jalosjos, Jr. v. Commission on Elections,* 696 Phil. 601 (2012), which likewise cited *Fermin v. Commission on Elections,* 595 Phil. 449 (2008).

On the substantive aspect, the Comelec's First Division, with regard to petitioner's citizenship status, held that those persons who are not included in the enumeration of Filipino citizens in the 1935 Constitution, such as petitioner, should not be considered as Filipino citizens.[174] It opined that "[e]xtending its application to those who are not expressly included in the enumeration and definition of natural-born citizens is a disservice to the rule of law and an affront to the Constitution."[175] It ruled that one's citizenship must not be anchored on mere presumptions and that any doubt thereon must be resolved against the claimant who bears the burden of proof.[176]

The Comelec's First Division also held that no international law supports petitioner's claim of natural-born citizenship.[177] In any event, the status of international laws is equivalent to or at *par* with legislative enactments only and could not in any manner supplant or prevail over the Constitution.[178] Neither can petitioner find solace in generally accepted principles of international law and customary international law as there is no showing that recognition of persons with unknown parentage as natural-born citizens of the country where they are found has become established, widespread and consistently practiced among states.[179] The Comelec's First Division posited that, if at all, persons with no known parents may be considered Filipino citizens, but not natural-born Filipino citizens.[180] Ergo, petitioner could not have validly availed of the benefits of repatriation under RA 9225. Even on the assumption that she is a natural-born Filipino citizen, it could not be said that she reacquired

[174] *Id*. at 238.

[175] *Id*. at 240.

[176] *Id*.

[177] *Id*. at 241.

[178] *Id*.

[179] *Id*. at 244.

[180] *Id*. at 247.

such status by virtue of RA 9225; what she reacquired was merely Philippine citizenship, not her purported natural-born status.[181]

As regards petitioner's residency, the Comelec's First Division pointed out that petitioner can only start counting her residency, at the earliest, from July 2006 when she reacquired her Philippine citizenship; and that from that point, her intent to permanently reside here became manifest only when she registered as a voter of *Barangay* Sta. Lucia, San Juan City on August 31, 2006. Hence, she is deemed to have reestablished her Philippine domicile only from said date.[182]

The Comelec *En Banc* denied petitioner's Motion for Reconsideration[183] and affirmed the First Division in a Resolution[184] dated December 23, 2015.

Aside from upholding the reasons underlying the Comelec's First Division's Resolution, the Comelec *En Banc* stressed that assuming, for the sake of argument, that petitioner may invoke the presumption that she is a natural-born citizen, establishing this presumption by solid, incontrovertible evidence is a burden that shifted to her when she admitted that she does not know who her biological parents are.[185]

The dispositive portion of the Comelec *En Banc* Resolution in the Tatad, Contreras and Valdez Petitions reads as follows:

> WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to DENY the Verified Motion for Reconsideration of SENATOR MARY GRACE NATIVIDAD SONORA POE-LLAMANZARES. The Resolution dated 11 December 2015 of the Commission First Division is affirmed.

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[181] *Id*. at 247-248.

[182] *Id*. at 257-258.

[183] *Rollo* (G.R. Nos. 221698-700), Vol. IV, pp. 2250-2341.

[184] *Rollo* (G.R. Nos. 221698-700), Vol. I, pp. 352-381.

[185] *Id*. at 368.

SO ORDERED.[186]

Hence, these Petitions for *Certiorari* brought via Rule 64 in relation to Rule 65 of the Rules of Court.[187] In both Petitions, petitioner "seeks to nullify, for having been issued without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction"[188] the assailed Comele Resolutions.

On December 28, 2015, this Court issued Temporary Restraining Orders[189] enjoining the Comelec from cancelling petitioner's 2015 CoC due to time constraints before these petitions could be resolved and so as not to render the same moot and academic should this Court rule in petitioner's favor. Then, in a Resolution[190] dated January 12, 2016, the petitions were consolidated.

I find that the Comelec did not gravely abuse its discretion or exercise its judgment in a whimsical or capricious manner as to amount to lack or excess of jurisdiction in ordering the cancellation of and denying due course to petitioner's 2015 CoC.

The power of this Court to review the assailed Resolutions is limited to the determination of whether the Comelec committed grave abuse of discretion; the burden lies on the petitioner to indubitably show that the Comelec whimsically or capriciously exercised its judgment or was "so grossly

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[186] *Id.* at 381.

[187] *Rollo* (G.R. No. 221697), Vol. I, pp. 3-189; *Rollo* (G. R. Nos. 221698-700), Vol. I, pp. 3-213.

[188] *Id.* at 8; *Id.* at 12-13.

[189] *Rollo* (G.R. No. 221697), Vol. III, pp. 2011-2013; *Rollo* (G.R. Nos. 221698-700), Vol. IV, pp. (unpaginated).

[190] *Rollo* (G.R. No. 221697), Vol. V, pp. 3084-A – 3084-C; *Rollo* (G.R. Nos. 221698-700), Vol. VI, pp. 3930-A-3930-D.

unreasonable" as to exceed the limits of its jurisdiction in the appreciation and evaluation of the evidence.

It bears stressing at the outset that these petitions were brought before this Court *via* Rule 64 in relation to Rule 65 of the Rules of Court. Therefore, as held in *Mitra v. Commission on Elections,*[191] this Court's review power is based on a very limited ground – the jurisdictional issue of whether the Comelec acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

We explained in *Mitra* that:

As a concept, 'grave abuse of discretion' defies exact definition; generally, it refers to 'capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction'; the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough; it must be grave. We have held, too, that the use of *wrong or irrelevant considerations* in deciding an issue is sufficient to taint a decision-maker's action with grave abuse of discretion.

Closely related with the limited focus of the present petition is the condition, under Section 5, Rule 64 of the Rules of Court, that *findings of fact of the COMELEC, supported by substantial evidence, shall be final and non-reviewable.* Substantial evidence is that degree of evidence that *a reasonable mind* might accept to support a conclusion.

In the light of our limited authority to review findings of fact, we do not *ordinarily* review in a *certiorari* case the COMELEC's appreciation and evaluation of evidence. Any misstep by the COMELEC in this regard generally involves an error of judgment, not of jurisdiction.

In exceptional cases, however, when the COMELEC's action on the appreciation and evaluation of evidence oversteps the limits of its jurisdiction to the point of being grossly unreasonable, the Court

[191] 636 Phil. 753 (2010).

is not only obliged, but has the constitutional duty to intervene. When grave abuse of discretion is present, resulting errors arising from the grave abuse *mutate* from error of judgment to one of jurisdiction.[192]

In fine, there is grave abuse of discretion when the exercise of judgment is capricious, whimsical, despotic or arbitrary, engendered by reason of passion and hostility. Also, the abuse of discretion must be so gross and so patent as to amount to an evasion of positive duty or virtual refusal to perform a duty enjoined by law.

In *Sabili v. Commission on Elections,*[193] this Court spoke, through Chief Justice Maria Lourdes P. A. Sereno, that there is an error of jurisdiction when the Comelec's appreciation and evaluation of evidence is *so grossly unreasonable.*[194] Pursuant thereto, it is incumbent upon petitioner to clearly demonstrate via these petitions that the Comelec was so grossly unreasonable in the appreciation and evaluation of the pieces of evidence submitted that it overstepped the limits of its jurisdiction.

In short, petitioner must satisfactorily hurdle this high bar set in *Sabili* and companion cases in order for the petitions to be granted.

In these petitions, the Comelec found that petitioner committed material misrepresentation when she stated in her 2015 CoC that her period of residence in the Philippines up to the day before May 9, 2016 is 10 years, 11 months and that she is a natural-born Filipino citizen. Petitioner, on the other hand, insists that her evidence, which the Comelec allegedly disregarded, negates any false material representation on her part.

But first off, the procedural questions.

I. PROCEDURAL ISSUES

[192] *Id*. at 777-778.

[193] 686 Phil. 649 (2012).

[194] *Id*. at 668.

The respective petitions filed by respondents with the Comelec were properly characterized as petitions for cancellation and/or denial of due course to petitioner's 2015 CoC

Section 2(1), Article IX(C) of the 1987 Constitution vests upon the Comelec the power and function to "[e]nforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall." This constitutional grant of power is echoed in Section 52 of the OEC which emphasizes that the Comelec has "exclusive charge of the enforcement and administration of all laws relative to the conduct of elections." Also, in *Bedol v. Commission on Elections,*[195] this Court explained that the Comelec's *quasi-judicial* functions opertain to its power "to resolve controversies arising from the enforcement of election laws, and to be the sole judge of all pre-proclamation controversies x x x."[196]

In line with this power, Section 78[197] of the OEC, in relation to Section 74[198] thereof, provides for a mechanism for the

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[195] 621 Phil. 498 (2009).

[196] *Id.* at 510.

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

[198] Section 74. *Contents of certificate of candidacy.* —The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the [House of Representatives], 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 officc 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.

cancellation or denial of due course to a CoC based on the exclusive ground of material misrepresentation. The misrepresentation must refer to a material fact, such as one's citizenship or residence.[199]

To be sufficient, a Section 78 petition must contain the following ultimate facts: "(1) the candidate made a representation in his certificate; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate (the right to run for the elective position for which he filed his certificate); and (3) the candidate made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform or hide a fact which would otherwise render him ineligible."[200]

I find that the Petitions filed by Elamparo, Contreras, and Valdez with the Comelec distinctly and sufficiently alleged the ultimate facts constituting the cause/s of action for a Section 78 petition.[201] The Petitions of Elamparo and Valdez both alleged that petitioner made material misrepresentations in her CoC in stating that she is a natural-born Filipino citizen and that she is a resident of the Philippines for at least 10 years. The Petition of Contreras alleged the same commission by petitioner of material misrepresentation with respect to her period of residency. All three petitions sought the cancellation or denial of due course to petitioner's 2015 CoC based on the said material misrepresentations which were allegedly made with the intention to deceive the electorate as to her qualifications for President.

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[199] *Ugdoracion, Jr. v. Commission on Elections,* 575 Phil. 253, 261 (2008).

[200] *Fermin v. Commission on Elections, supra* note 173 at 165.

[201] Section 1, Rule 6 of the COMELEC Rules of Procedure provides:

Sec. 1. Commencement of Action or Proceedings by Parties. – Any natural or juridical person authorized by these rules to initiate any action or proceeding shall file with the Commission a protest or petition alleging therein his personal circumstances as well as those of the protestee or respondent, the jurisdictional facts, and a concise statement of the ultimate facts constituting his cause or causes of action and specifying the relief sought. He may add a general prayer for such further or other relief as may be deemed just or equitable.

With respect to Tatad's Petition, petitioner points out that the same was fatally infirm because while captioned as a "Petition for Disqualification" under Section 68 of the OEC in relation to Rule 25 of the Comelec Rules, the allegations therein did not make out a case for disqualification. Petitioner posits that Tatad clearly resorted to a wrong remedy, hence, the Comelec should have dismissed his petition outright and should not have taken cognizance of it as a petition for cancellation or denial of due course to a CoC.

Contrary to petitioner's argument, I believe that the Comelec acted correctly in not outrightly dismissing Tatad's Petition. In *Spouses Munsalud v. National Housing Authority,*[202] this Court held that the dismissal of a complaint "should not be based on the title or caption, especially when the allegations of the pleading support an action."[203] "The caption of the pleading should not be the governing factor, but rather the allegations in it should determine the nature of the action, because even without the prayer for a specific remedy, the courts [or tribunal] may nevertheless grant the proper relief as may be warranted by the facts alleged in the complaint and the evidence introduced."[204] Here, I agree with the Comelec that the essential facts alleged by Tatad in his Petition do really establish a clear case for the cancellation of or denial of due course to petitioner's 2015 COC. Hence, the Comelec properly treated the same as a Section 78 petition.

In *Fermin v. Commission on Elections,*[205] this Court declared a petition for disqualification filed with the Comelec as one for cancellation of or denial of due course to therein petitioner Mike A. Fermin's CoC. This was after it found that although captioned as a petition for disqualification, the allegations contained therein made out a case for cancellation and/or denial of due course to a CoC under Section 78 of the OEC.

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[202] 595 Phil. 750 (2008).

[203] *Id.* at 754.

[204] *Id.* at 765.

[205] *Supra* note 173.

Anent the contention that the Comelec lacks jurisdiction over candidates for national positions, suffice it to state that Section 78 of the OEC does not distinguish between CoCs of candidates running for local and those running for national positions. It simply mentions "certificate of candidacy." *Ubi lex non distinguit nec nos distinguere debemus* – when the law does not distinguish, we must not distinguish. This is a basic rule in statutory construction that is applicable in these cases. Hence, the Comelec has the power to determine if the CoC of candidates, whether running for a local or for a national position, contains false material representation. In other words, any person may avail himself/herself of Section 78 of the OEC to assail the CoC of candidates regardless of the position for which they are aspiring.

Petitioner further argues that the issues raised by respondents in their petitions properly pertain to a *quo warranto* proceeding which can only be initiated after she should have won the election for and proclaimed as President.

This Court in *Fermin* had already explained,*viz.*:

> Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is *not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications* required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility or public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. **Indeed, the Court has already likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the winning candidate**.[206] (Emphasis supplied. Italics in the original.)

[206] *Supra* note 173 at 465-467.

While it is admitted that there is a similarity between a petition under Section 78 of the OEC and a *quo warranto* proceeding in that they both deal with the eligibility or qualification of a candidate, what sets them apart is the time when the action is filed, that is, *before* or *after* an election and proclamation. As the election subject of these petitions is yet to be held, there can be no doubt that the issues raised by respondents were properly set forth in their respective petitions for cancellation and/or denial of due course to petitioner's CoC.

Therefore, the Comelec was not so grossly unreasonable that it exceeded the limits of its jurisdiction when it duly characterized the petitions as ones for cancellation and/or denial of due course to petitioner's 2015 CoC. Indeed, in these cases the Comelec did not exercise its judgment in a whimsical, capricious, arbitrary, or despotic manner. Otherwise stated, petitioner failed to show that the Comelec committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that the petitions before it are for cancellation and/or denial of due course to petitioner's 2015 CoC.

The Comelec did not usurp the jurisdiction of the Presidential Electoral Tribunal.

Apropos to the above discussion is petitioner's argument that the Comelec usurped the PET's jurisdiction.

As heretofore stated, a petition under Section 78 seeks to cancel a candidate's CoC before there has been an election and proclamation. Such a petition is within the Comelec's jurisdiction as it is "the sole judge of all pre-proclamation controversies." [207]

On the other hand, the PET is "the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President of the Philippines."[208] Particularly, the PET

[207] *Bedol v. Commission on Elections, supra* note 195 at 510.

[208] 2010 PET Rules, Rule 13. *Jurisdiction.*— The Tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President of the Philippines.

has jurisdiction over an election contest initiated through an election protest or a petition for *quo warranto* against the President or Vice-President. [209] The PET's adjudicative powers come into play after the President or the Vice-President concerned had been elected and proclaimed. Under the PET Rules an election protest may be filed only within 30 days after proclamation of the winner,[210] while a *quo warranto* petition may be initiated within 10 days after the proclamation of the winner.[211] In other words, it is the date of proclamation of the candidate concerned that is determinative of the time when the PET's jurisdiction attaches.

Pertinently, in *Tecson v. Commission on Elections,*[212] this Court held that ordinarily, the term "contest" refers to "post-election scenario" and that election contests have one objective, which is to unseat the winning candidate. Hence it stressed that the PET's jurisdiction covers contests relating to the election, returns and qualifications of the "President" or "Vice-President," and not of "candidates" for President or Vice-President.

Against this backdrop, it is beyond cavil that the Comelec has the power and jurisdiction to rule on a petition to deny

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[209] 2010 PET Rules, Rule 14. *How Initiated.*— An election contest is initiated by the filing of an election protest or a petition for *quo warranto* against the President or Vice-President. An election protest shall not include a petition for *quo warranto.* A petition for *quo warranto* shall not include an election protest.

[210] 2010 PET Rules, Rule 15. *Election Protest.*— The registered candidate for President or Vice-President of the Philippines who received the second or third highest number of votes may contest the election of the President or Vice-President, as the case may be, by filing a verified election protest with the Clerk of the Presidential Electoral Tribunal within thirty days after the proclamation of the winner.

[211] 2010 PET Rules, Rule 16. *Quo Warranto.* — A verified petition for *quo warranto* contesting the election of the President or VicePresident on the ground of ineligibility or disloyalty to the Republic of the Philippines may be filed by any registered voter who has voted in the election concerned within ten days after the proclamation of the winner.

[212] 468 Phil. 421, 461-462 (2004).

due course to or to cancel the CoC of a candidate, whether for a local or national position, who may have committed material misrepresentation in his/her CoC.

Verily, the Comelec did not usurp, as indeed it could not have usurped, the PET's jurisdiction if only because the herein petitioner remains a mere candidate for President and has not yet been elected and proclaimed President. Therefore, the petitioner failed to prove that the Comelec acted with grave abuse of discretion equivalent to lack or excess of jurisdiction when it took cognizance of these cases.

The validity of Section 8, Rule 23 of the Comelec Rules is upheld.

Petitioner challenges the validity of Section 8, Rule 23 of the Comelec Rules which reads as follows:

> Section 8. *Effect if Petition Unresolved.* – If a Petition to Deny Due Course to or Cancel a Certificate of Candidacy is unresolved by final judgment on the day of elections, the petitioner may file a motion with the Division or Commission *En Banc* as may be applicable, to suspend the proclamation of the candidate concerned, provided that the evidence for the grounds for denial to or cancel certificate of candidacy is strong. For this purpose, at least three (3) days prior to any election, the Clerk of the Commission shall prepare a list of pending cases and furnish all Commissioners copies of the said list.
>
> A Decision or Resolution is deemed final and executory if, in case of a Division ruling, no motion for reconsideration is filed within the reglementary period, or in cases of rulings of the Commission *En Banc,* no restraining order is issued by the Supreme Court within **five (5) days from receipt of the decision or resolution.** (Emphasis supplied)

Petitioner argues that paragraph 2 of Section 8 above, which declares that rulings of the Comelec *En Banc* shall be final within five days from receipt of the resolution or decision *sans* any temporary restraining order from this Court, is invalid because it violates Section 7, Article IX-A of the 1987 Constitution which gives the aggrieved party 30 days from receipt

of the assailed Comelec Resolution within which to challenge it before the Supreme Court. Section 7 reads:

> Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within *sixty days* from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof. (Emphasis supplied)

I am, however, unable to perceive any conflict between the two provisions.

Paragraph 2, Section 8 of Rule 23 emanates from the Comelec's rule-making power under Section 3 of Article IX-C of the 1987 Constitution, to wit:

> Section 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc.*

At the risk of belaboring a point, the 1987 Constitution explicitly grants the Comelec rule-making powers in deciding election cases. Thus, in fulfilment of its Constitutional mandate of deciding election cases with reasonable dispatch, the Comelec promulgated rules of procedure to provide for an orderly means, ways or process of deciding election cases. The insertion in the above-quoted Section 7, Article IX of the 1987 Constitution of the qualifying phrase "unless otherwise provided by this Constitution or law," makes it abundantly clear that the Constitution itself recognizes the rule-making power of the Comelec and, as a necessary corollary, invests it with authority to determine the reasonable period within which its decision or resolution shall be considered final and executory.

Thus, far from invalidating paragraph 2, Section 8 of Ru1e 23 of the Comelec Rules for being contrary to Section 7, Article IX-A of the 1987 Constitution, the two provisions in fact do work in harmony. Under the principle of *interpretare et concordare leges legibus est optimus interpretandi modus,* every statute must be so construed in harmony with other statutes as to form a uniform system of jurisprudence.[213]

There being no conflict between Section 8, Ru1e 23 of the Comelec Ru1es and Section 7, Article IX-A of the 1987 Constitution and given that this Section 8, Rule 23 recognizes the Comelec's rule-making power, the validity of the subject Comelec rule must be sustained.

The Comelec is not precluded by the SET's Decision from determining petitioner's citizenship.

Despite the November 17, 2015 Decision of the SET declaring petitioner a natural-born Filipino citizen, the Comelec is not precluded from ruling on petitioner's citizenship.

As earlier explained, the Comelec, under Section 78 of the OEC, has the power to determine whether a candidate committed any material misrepresentation in his or her CoC. In view thereof, the Comelec can also properly determine the candidate's citizenship or residency as an adjunct to or as a necessary consequence of its assessment on whether the CoC contains material misrepresentation. To my mind, this does not amount to a usurpation of the SET's power to determine the qualifications or eligibility of a candidate; neither does it amount to a usurpation of this Court's prerogative to resolve constitutional issues. Rather, I view it as part of the Comelec's duty to examine a candidate's representations in his/her CoC pursuant to the aforementioned Section 78. Clearly, for the Comelec to shirk or evade from, or to refuse to perform, or abandon this positive duty would amount to grave abuse of discretion.

Furthermore, the Comelec is an independent constitutional body separate and distinct from the SET. While the SET is the

sole judge of all contests relating to the election, returns, and qualifications of Members of the Senate,[214] its decisions do not have any doctrinal or binding effect on the Comelec. It is settled that there is "only one Supreme Court from whose decisions all other courts [or tribunals] should take their bearings."[215] Here, the November 17, 2015 SET Decision is the subject of a Petition for *Certiorari* entitled *David v. Senate Electoral Tribunal,* and docketed as G.R. No. 221538, that is still pending before this Court. Until said petition is decided with finality by this Court, any ruling on petitioner's citizenship does not, subject to the conditions that will be discussed later, constitute *res judicata.*

Consequently, the Comelec correctly held that it is not precluded from determining petitioner's citizenship insofar as it impacts on its determination of whether the petitioner's CoC contains material false representation. Conversely stated, petitioner failed to prove that the Comelec acted with grave abuse of discretion amounting to lack or excess of jurisdiction in taking cognizance of these cases.

The July 18, 2006 Order of the Bureau of Immigration and Deportation is not binding on the Comelec

Petitioner argues that it is only the DOJ which can revoke the BID's Order presumptively finding her a natural-born Filipino citizen and approving her petition for reacquisition of Filipino citizenship.[216]

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[213] *Dreamwork Construction, Inc. v. Janiola,* 609 Phil. 245, 254 (2009); *Spouses Algura v. Local Government Unit of the City of Naga,* 536 Phil. 819, 835 (2006), citing *Agpalo's Legal Words and Phrases* (1997), 480.

[214] 1987 CONSTITUTION, Article VI, Section 17.

Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members.

[215] *Commissioner of Internal Revenue v. Michel J. Lhuiller Pawnshop, Inc.,* 453 Phil. 1043, 1059 (2003).

[216] *Rollo* (G.R. No. 221697), Vol. I, pp. 42-43; *rollo* (G.R. Nos. 221698-700), Vol. I, p. 43.

The argument is specious. It is settled that whenever the citizenship of a person is material or indispensable in a judicial or administrative case, the decision of the court or tribunal on the issue of citizenship is generally not considered as *res judicata.* This is so because the issue on citizenship may be "threshed out again and again as the occasion may demand."[217] To accept petitioner's contention that it is the DOJ that has jurisdiction to revoke the grant of her petition for reacquisition of Filipino citizenship would be to veer away from the said settled rule because this implies that no subsequent contrary findings may be arrived at by other bodies or tribunals.

In *Go, Sr. v. Ramos,*[218] this Court held that *res judicata* may apply in citizenship cases only if the following conditions or circumstances concur:

l. a person's citizenship must be raised as a material issue in a controversy where said person is a party;

2. the Solicitor General or his authorized representative took active part in the resolution thereof; and
3. the finding o[f] citizenship is affirmed by this Court.

Since the foregoing conditions or circumstances are not present in these cases, the BID's previous finding on petitioner's citizenship cannot be binding on the Comelec.

Moreover, while the BID stated in its July 18, 2006 Order that "petitioner was a former citizen of the Republic of the Philippines being born to Filipino parents,"[219] this is contrary to petitioner's own assertion that she had no known blood relatives – the very reason why her citizenship is now being questioned. Notably, too, the BID did not categorically declare that petitioner is a natural-born Filipino, but merely presumed

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[217] *Moy Ya Lim Yao v. Commissioner of Immigration,* 148-B Phil. 773, 855 (1971).

[218] 614 Phil. 451, 473 (2009).

[219] *Rollo* (G.R. No. 221697), Vol. II, p. 828.

her to be one.[220] Being merely presumed, that presumption can be overturned at any time by evidence to the contrary. Most importantly and as correctly held by the Comelec, it cannot be bound by the BID Order because a contrary view will deprive it of its constitutional mandate to inquire into and examine the qualifications of candidates, and determine whether they committed material misrepresentation in their CoC.[221] Clearly, thus, petitioner's purported natural-born Filipino citizenship may be correctly determined by the Comelec, as it in fact already did, despite the aforesaid BID Order.

In sum, petitioner failed to prove that the Comelec capriciously and whimsically exercised its judgment, or that it acted in an arbitrary or despotic manner by reason of passion and hostility, or was so grossly unreasonable when it took cognizance of the cases; indeed, in these cases, the Comelec committed no error of jurisdiction.

II. SUBSTANTIVE ISSUE

Material misrepresentation

Under Section 74[222] of the OEC, a person running for public office is required to state in his CoC the following details:

(1) if running for Member of the [House of Representatives], the province, including its component cities, highly urbanized city or district or sector which he seeks to represent;

(2) the political party to which he belongs;

(3) civil status;

(4) his date of birth;

(5) residence;

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[220] *Id*.

[221] *Rollo* (G.R. Nos. 221698-700), Vol. I, pp. 231-232.

[222] *Supra* note 198.

(6) his post office address for all election purposes; and

(7) his profession or occupation.

In addition, the aspirant is required to state under oath that:

(1) he/she is announcing his/her candidacy for the office stated therein and that he/she is eligible for the said office;

(2) he/she will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto;

(3) he/she will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities;

(4) he/she is not a permanent resident or immigrant to a foreign country;

(5) the obligation imposed by his/her oath is assumed voluntarily, without mental reservation or purpose of evasion; and

(6) the facts stated in the certificate of candidacy are true to the best of his/her knowledge.

As previously discussed, Section 78 of the OEC provides that within 25 days from the time of filing of the CoC, any person may file a petition to deny due course to and/or to cancel it on the exclusive ground that any material representation stated therein as required by Section 74 of the OEC, is false. In the same vein, Section 1, Rule 23 of the Comelec Rules of Procedure states that a CoC may be denied due course or cancelled "on the exclusive ground that any material representation contained therein as required by law is false."

In *Marcos v. Commission on Elections,*[223] this Court declared that there is material misrepresentation when a statement in a CoC is made with the intent to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.

In *Salcedo II v. Commission on Elections,*[224] it was explained that to constitute a material misrepresentation, the false

[223] 318 Phil. 329 (1995).
[224] 371 Phil. 377 (1999).

representation must not only pertain to a material fact which would affect the substantive right of a candidate to run for the position stated in the CoC, but must also consist of a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible."[225] Simply put, the false representation must have been done "with an intention to deceive the electorate as to one's qualifications for public office."[226]

Gonzalez v. Commission on Elections[227] reiterated the pronouncement that a material misrepresentation is not just the falsity of the information declared in the CoC but also consists in the very materiality of the said information, and the deliberate attempt by the candidate to mislead or deceive the electorate as to that candidate's qualification for public office.

Stated differently, before the Comelec may deny due course to and/or cancel a CoC, it must be shown: (a) that the representation pertains to a material fact; (b) that it is in fact false; and (c) that there was a deliberate attempt to deceive, mislead, misinform, or hide a fact, which would otherwise render the candidate ineligible to run for the position. Under the third element, the deception must be such as to lead the electorate to believe that the candidate possesses the qualifications for the position he/she is running for, when in truth the candidate does not possess such qualifications, thus making him/her ineligible to run.

Here, petitioner wants to run for the Presidency in the 2016 elections and claims in her 2015 CoC that she possesses the five qualifications set forth in Section 2, Article VII of the 1987 Constitution which states:

> Section 2. No person may be elected President unless he is a **natural-born citizen of the Philippines,** a registered voter, able to read and write, at least forty years of age on the day of the election, and **a resident of the Philippines for at least ten years immediately preceding such election.** (Emphases supplied)

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[225] *Id*. at 390.

[226] *Id*.

[227] 660 Phil. 225 (2011).

Respondents, however, insist that petitioner committed false material representation when she declared in her 2015 CoC that she is a natural-born Filipino and that she is a resident of this country for more than 10 years prior to the May 9, 2016 elections.

In its assailed Resolutions, the Comelec found petitioner to have falsely represented material facts in her 2015 CoC.

Residency

The controversy with respect to petitioner's residency qualification arose when it was observed that she made the following entry in Item 11 of her 2012 CoC for Senator:

PERIOD OF RESIDENCE IN THE PHILIPPINES BEFORE MAY 13, 2013:

06 No. of Years *06* No. of Months

Based on the said entry, it could be deduced that by her own reckoning, petitioner started residing in the Philippines in November 2006. Thus by May 8, 2016, or the day immediately preceding the elections on May 9, 2016, her period of residency in the Philippines would only be nine years and six months, or short of the mandatory 10-year residency requirement for the presidential post. In contrast, petitioner attested in her 2015 CoC that her period of residency in the Philippines on the day before the May 9, 2016 elections is "10 years and 11 months." Clearly, these are contrasting declarations which give the impression that petitioner adjusted the period of her residency in her 2015 CoC to show that she is eligible to run for the Presidency. This rendered her vulnerable to the charge that she committed material misrepresentations in her 2015 CoC.

Section 2 of Article VII of the 1987 Constitution, as reproduced above, requires, among others, that a person aspiring to become a President must be a resident of the Philippines for at least 10 years immediately preceding the election. This requirement is mandatory and must be complied with strictly. For one, no less than our Constitution itself imposes it. For another, Section 2

was couched in a negative form – an indication of the intention of the framers of our Constitution to make it mandatory. "A statute or provision which contains words of positive prohibition, such as 'shall not,' 'cannot,' or 'ought not,' or which is couched in negative terms importing that the act shall not be done otherwise than designated, is mandatory."[228] Moreover, Section 63[229] of Article IX of the OEC imposes the same 10-year residency requirement.

For purposes of election laws, this Court, as early as 1928,[230] held that the term residence is synonymous with domicile.[231] Domicile denotes the place '"where a party actually or constructively has his permanent home,' where he, no matter where he may be found at any given time, eventually intends to return and remain"[232] *(animus manendi).*

In deviating from the usual concepts of residency, the framers of our Constitutions intended "'to exclude strangers or newcomers unfamiliar with the conditions and needs of the community' from taking advantage of favorable circumstances existing in that community for electoral gain."[233] Their decision to adopt the concept of domicile "is rooted in the recognition that [elective] officials x x x should not only be acquainted with the metes and bounds of their constituencies; more importantly, they should know their constituencies and the unique circumstances of their constituents – their needs, difficulties,

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[228] See Ruben Agpalo, *Statutory Construction,* 4th ed., 1998, p. 338, as cited in *Office of the Ombudsman v. Andutan, Jr.,* 670 Phil. 169, 178 (2011).

[229] SECTION 63. *Qualifications for President and Vice-President of the Philippines.* — No person may be elected President or Vice-President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of election, and a resident of the Philippines for at least ten years immediately preceding such election.

[230] See *Nuval v. Guray,* 52 Phil. 645 (1928).

[231] *Id.* at 651.

[232] *Aquino v. Commission on Elections,* 318 Phil. 467 (1995).

[233] *Id.* at 499, citing *Gallego v. Verra,* 73 Phil. 453 (1941).

aspirations, potentials for growth and development, and all matters vital to their common welfare. Familiarity, or the opportunity to be familiar, with these circumstances can only come with residency x x x."[234] At the same time, the residency requirement gives the electorate sufficient time to know, familiarize themselves with, and assess the true character of the candidates.

Domicile is classified into three types according on its source, namely: (1) domicile of origin, which an individual acquires at birth or his first domicile; (2) domicile of choice, which the individual freely chooses after abandoning the old domicile; and (3) domicile by operation of law, which the law assigns to an individual independently of his or her intention.[235] A person can only have a single domicile at any given time.[236]

To acquire a new domicile of choice, one must demonstrate:

1. Residence or bodily presence in the new locality;
2. An intention to remain there *(animus manendi);* and
3. An intention to abandon the old domicile *(animus non revertendi).*[237]

"To successfully effect a change of domicile, one must demonstrate an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one and definite acts which correspond with the purpose."[238] In the absence of clear and positive proof of the above mentioned requisites, the current domicile should

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[234] *Mitra v. Commission on Elections, supra* note 191 at 764.

[235] 25 Am Jur 2d Domicil § 12-15, pp. 12-13.

[236] *Marcos v. Commission on Elections, supra* note 223 at 386.

[237] *Romualdez v. RTC, Branch 7, Tacloban City,* G.R. No. 104960, September 14, 1993, 226 SCRA 408, 415; *Mitra v. Commission on Elections, supra* note 191 at 781; *Japzon v. Commission on Elections,* 596 Phil. 354, 372 (2009); *Papandayan Jr. v. Commission on Elections,* 430 Phil. 754, 770.

[238] *Domino v. Commission on Elections,* 369 Phil. 798, 819 (1999).

be deemed to continue. Only with clear evidence showing concurrence of *all three requirements* can the presumption of continuity of residence be rebutted, for a change of legal residence requires an actual and deliberate abandonment of the old domicile.[239] Elsewise put, if any of the above requisites is absent, no change of domicile will result.[240]

Having dispensed with the above preliminaries, I shall now discuss whether petitioner satisfactorily proved that the Comelec acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in ruling that there was material misrepresentation when she declared in her 2015 CoC that on the day immediately preceding the May 9, 2016 elections, she would have been a resident of this country for 10 years and 11 months. Otherwise stated, was there substantial evidence showing that petitioner committed material misrepresentation as regards her period of residency?

Elements of material misrepresentation in relation to petitioner's claimed period of residence in the Philippines; a) materiality; b) falsity; and c) deliberate attempt to deceive, mislead, misinform, or hide a fact which would otherwise render her ineligible to run for the position of President.

A. Residency as a material fact.

As to the first element, it is jurisprudentially settled that residence is a material fact because it involves the candidate's eligibility or qualification to run for public office.[241] In view

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[239] *Marcos v. Commission on Elections, supra* note 223 at 386-387.

[240] *Domino v. Commission on Elections, supra* at 820.

[241] *Villafuerte v. Commission on Elections,* G.R. No. 206698, February 25, 2014,717 SCRA 312, 323.

of this and considering that the parties do not dispute that the matter of a candidate's residency in the Philippines is a material fact, there is no need to dwell further upon this element.

B. Falsity of petitioner's declaration as to the period of her residency in her 2015 CoC

At this juncture, it must be stressed that on October 18, 2001, petitioner not only formally abandoned the Philippines as her domicile, but she also renounced her Philippine citizenship by becoming a naturalized American citizen. She preferred and chose to be domiciled in the U.S. than in the Philippines. And she did so not out of necessity or for temporary leisure or exercise of profession but to permanently live there with her family. Fifteen years later, petitioner is before this Court claiming that she had decided to abandon and had in fact abandoned her U.S. domicile and that she had decided to establish and had in fact established a new domicile of choice in the Philippines. She would want us to believe that she had complied with all the requirements in establishing a new domicile of choice.

The question now is: As a U.S. citizen who was domiciled in the U.S., how can petitioner reestablish her domicile in the Philippines? Obviously, petitioner must abandon or lose her domicile in the U.S. Also, she has to satisfactorily prove intent to permanently stay in the country and make the Philippines her new domicile of choice.

For easy reference, I hereby reiterate the requirements in establishing a new domicile of choice, to wit: a) residence or bodily presence in the new locality; b) an intention to remain there *(animus manendi);* and c) an intention to abandon the old domicile *(animus non revertendi).*

Petitioner's evidence of animus manendi; earliest possible date that her physical presence in the Philippines can

be characterized as coupled with animus manendi.

In support of her claim that from the time she arrived in the Philippines on May 24, 2005 her physical presence here was imbued with *animus manendi,* petitioner offered the following evidence:

a. travel records which show that she would consistently return to the Philippines from her trips abroad;

b. the affidavit of her adoptive mother attesting to the fact that after petitioner and her children's arrival in the Philippines in early 2005, they first lived with her in Greenhills, San Juan;

c. school records which show that her children had been attending Philippine schools continuously since June 2005;

d. TIN which shows that shortly after her return to the Philippines in May 2005, she considered herself a taxable resident and a subject of the country's tax jurisdiction;

e. Condominium Certificate of Title for Unit 7F and a parking lot at One Wilson Place purchased in early 2005 and its corresponding Declarations of Real Property for real property tax purposes;

f. reacquisition of her natural-born Filipino citizenship and applications for derivative citizenship for her minor children;

g. registration as a voter on August 31, 2006;

h. renunciation of her U.S. citizenship on October 20, 2010;

i. acceptance of her appointment as MTRCB Chairperson on October 21, 2010;

j. Questionnaire – Information for Determining Possible Loss of U.S. Citizenship wherein petitioner indicated

> that she considered herself a resident of the Philippines starting May 2005.

Petitioner claims that had the Comelec considered her evidence in its totality and not in isolation, it would have concluded that she intended to remain in the Philippines since May 24, 2005.

I do not agree.

What must not be overlooked is that these pieces of evidence fly in the face of the fact that from May 24, 2005 to July 18, 2006 petitioner was an alien on temporary sojourn here. It should be emphasized that after petitioner abandoned the Philippines as her domicile and became a naturalized U.S. citizen on October 18, 2001, the U.S. became her domicile of choice. In *Coquilla v. Commission on Elections*[242] and reiterated in *Japzon v. Commission on Elections,*[243] this Court held that a Filipino who applies for naturalization as an American citizen has to establish legal residence in the U.S. which would consequently result in the abandonment of Philippine domicile as no person can have two domiciles at any given time. Hence, beginning October 18, 2001, petitioner was domiciled in the U.S.[244]

When petitioner arrived in the Philippines on May 24, 2005, she in fact did so as a foreigner *balikbayan* as she was then still a U.S. citizen. Normally, foreign nationals are required to obtain a visa before they can visit the Philippines. But under RA 6768,[245] as amended by RA 9174,[246] foreigner *balikbayans*[247] are accorded

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[242] 434 Phil. 861 (2002).

[243] *Supra* note 237.

[244] See *Coquilla v. Comelec, supra* at 872.

[245] AN ACT INSTITUTING A BALIKBAYAN PROGRAM.

[246] AN ACT AMENDING REPUBLIC ACT NUMBERED 6768, ENTITLED, "AN ACT INSTITUTING A BALIKBAYAN PROGRAM" BY PROVIDING ADDITIONAL BENEFITS AND PRIVILEGES TO *BALIKBAYAN* AND FOR OTHER PURPOSES.

[247] A *balikbayan* is a Filipino citizen who has been continuously out of the Philippines for a period of at least one (1) year, a Filipino overseas worker, or a former Filipino citizen and his or her family x x x who had been naturalized in a foreign country and comes or returns to the Philippines. (Section 2 of RA 6768.)

the privilege of visa-free entry to the Philippines. This visa-free privilege is, however, not without conditions for it allows such *balikbayans* to stay in the Philippines for a limited period of one year only. Thus:

> SEC. 3. *Benefits and Privileges of the Balikbayan.–* The *balikbayan* and his or her family shall be entitled to the following benefits and privileges:
>
> x x x x x x x x x
>
> (c) Visa-free entry to the Philippines for a period of one (1) year for foreign passport holders, with the exception of restricted nationals.

Since petitioner availed herself of RA 6768, her stay in the Philippines from the time she arrived here as a foreigner *balikbayan* on May 24, 2005 was not permanent in character or for an indefinite period of time. It was merely temporary. At most, her stay in the Philippines would only be for one year. This only proves that her stay was not impressed with *animus manendi, i.e.,* the intent to remain in or at the domicile of choice for an indefinite period of time.[248] Thus in *Coquilla,* we did not include the period of the candidate's physical presence in the Philippines while he was still an alien. In that case, Teodulo M. Coquilla (Coquilla) was naturalized as U.S. citizen in 1965. He returned to the Philippines in 1998 and was repatriated under RA 8171 on November 7, 2000. He took his oath as a citizen of the Philippines on November 10, 2000. Subsequently, he filed his CoC for Mayor of Oras, Eastern Samar. A petition to cancel Coquilla's CoC was filed on the ground of material misrepresentation based on his representation that he met the one-year residency requirement. This Court affirmed the Comelec finding that Coquilla lacked the required residency. While Coquilla arrived in the Philippines as early as 1998, his presence here from that point until his naturalization on November 10, 2000 was excluded in counting the length of his residency in the Philippines because during that time he had

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[248] *Romualdez v. RTC, Branch 7*, *Tacloban City, supra* note 237 at 415.

no right to reside permanently here. Thus:

> In the case at bar, petitioner lost his domicile of origin in Oras by becoming a U.S. citizen after enlisting in the U.S. Navy in 1965. From then on and until November 10, 2000, when he reacquired Philippine citizenship, petitioner was an alien without any right to reside in the Philippines save as our immigration laws may have allowed him to stay as a visitor or as a resident alien.[249]

Also, in the 1966 case of *Ujano v. Republic,*[250] the trial court denied Melecio Clarinio Ujano's (Ujano) petition to reacquire citizenship for failure to meet the six months residency requirement. In so ruling, it reasoned out that Ujano, "who is presently a citizen of the United States of America, was admitted into this country as a temporary visitor, a status he has maintained at the time of the filing of the present petition for reacquisition of Philippine citizenship and which continues up to the present."[251] This Court adopted and sustained the trial court's ratiocination and added that "[t]he only way by which [Ujano] can reacquire his lost Philippine citizenship is by securing a quota for permanent residence so that he may come within the purview of the residence requirement of Commonwealth Act No. 63."[252] Clearly, as early as 1966, jurisprudence has unrelentingly and consistently applied the rule that the law does not include temporary visits in the determination of the length of legal residency or domicile in this country. Indeed, it is illogical and absurd to consider a foreign national to have complied with the requirements of *animus manendi,* or intent to permanently stay in this country, if he/she was only on a temporary sojourn here.

Petitioner's claim that she had established *animus manendi* upon setting foot in this country on May 24, 2005 has, therefore, no leg to stand on. The pieces of evidence she presented in support of this proposition are irrelevant, and are negated by

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[249] *Coquilla v. Commission on Elections, supra* note 242 at 872.

[250] 123 Phil. 1017 (1966).

[251] *Id*. at 1019.

[252] *Id*. at 1020.

the undisputed fact that she was then a foreigner temporarily staying here as a *balikbayan.* In tins context, petitioner's imputation of grave abuse of discretion falls flat on its face.

I also subjected petitioner's evidence of *animus manendi* to utmost judicial scrutiny, particularly in relation to her claim that such intent concurs with her physical presence in the Philippines beginning May 24, 2005. However, I find them wanting and insufficient.

I start off with the fundamental precept that if a person alleges that he/she has abandoned her domicile, it is incumbent upon that person to prove that he/she was able to reestablish a new domicile of choice.[253] Applied to this case, this means that it is upon the intrinsic merits of petitioner's own evidence that her claim of reestablishment of domicile in the Philippines on May 24, 2005 must rise or fall.

After a critical review, I am satisfied that the Comelec correctly found petitioner's evidence relative to her claim of *animus manendi* beginning May 24, 2005 both wanting and insufficient. For instance, securing a TIN is not conclusive proof of intent to remain in the Philippines considering that under the country's tax laws, any person, whether a citizen, non-citizen, resident or non-resident of the Philippines, is required to secure a TIN for purposes of tax payment. If at all, procurement of a TIN merely suggests or indicates an intention to comply with the obligation to pay taxes which may be imposed upon any person, whether a citizen or an alien. In fact, by her own admission, petitioner secured a TIN precisely for the purpose of "settling her late father's estate."[254] At any rate, a TIN was issued to petitioner on July 22, 2005,[255] or almost two months after her claimed starting point of residency in the Philippines.

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[253] *Caballero v. Commission on Elections,* G.R. No. 209835, September 22, 2015.

[254] *Rollo* (G.R. No. 221697), Vol. II, p. 511; *rollo* (G.R. Nos. 221698-700), Vol. II, p. 618; *id*. at 826; *id*. at 1048.

[255] *Rollo* (G.R. No. 221697), Vol. II, p. 804.

Under the same parity of reasoning, petitioner's acquisition of a condominium unit and parking lot at One Wilson Place in San Juan City, as well as her acquisition of a parcel of land in Corinthian Hills, Quezon City and the subsequent construction of a house thereon, do not evince an intent to remain in the Philippines for good. Speaking for the Court in *Svetlana Jalosjos v. Commission on E1ections,*[256] Chief Justice Maria Lourdes P.A. Sereno declared that "ownership of a house or some other property does not establish domicile."[257] After all, acquisition of properties may also very well be for investment purposes only. Besides, it bears emphasis that by petitioner's own allegation, the condominium unit and parking lot were acquired in the second half of 2005, the lot in Corinthian Hills was bought in 2006, and the house standing thereon was constructed that same year (2006) – all after May 24, 2005.

The claimed intent also becomes shrouded in doubt in light of petitioner's maintaining a house in the U.S. which she bought in 1992 and the subsequent acquisition of a residential house in the U.S. in 2008.

It must be stressed that in the Petition of Valdez before the Comelec, particularly par. 98 thereof, he pointed out that: "per respondent's [herein petitioner] own Statement of Assets, Liabilities and Net Worth for 2014, she still maintains two (2) residential houses in the U.S., one purchased in 1992, and the other in 2008."[258] Petitioner had the opportunity to categorically deny, refute or discuss head on this contention of Valdez in her Verified Answer. Unfortunately, she did not seize the chance. Instead, in paragraph 2.13 of her Verified Answer, petitioner couched her "denial" that she still owns two houses in the U.S. as follows:

> 2.13. The allegation in paragraph 98 of the *Petition* is DENIED insofar as it is made to appear that [Petitioner] "resides" in the 2

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[256] G.R. No. 193314, February 26, 2013, 691 SCRA 646.

[257] *Id.* at 659, citing *Fernandez v. House of Representatives Electoral Tribunal,* 623 Phil. 628, 655 (2009).

[258] *Rollo* (G.R. Nos. 221698-700), Vol. II, pp. 917.

houses mentioned in said paragraph. The truth is that [Petitioner] does not "reside" in these houses, but in her family home in Corinthian Hills, Quezon City (where she has lived with her family for almost a decade).[259]

From the foregoing, petitioner in effect admitted the veracity and truthfulness of Valdez's assertion regarding the acquisition of the two residential houses; her denial pertained only to the fact that she was residing thereat. Thereafter, no further mention of this matter was made.

The care by which petitioner crafted her Answer regarding the sale of her family's real property in the U.S. is also obvious. In her four Verified Answers, she averred thus:

x x x The family home in the U.S.A. was eventually sold on 27 April 2006.[260]

By adverting solely and exclusively to the "family home" as the real property that had been sold in April 2006, petitioner effectively avoided, and withheld, mentioning and discussing her family's other remaining real properties in the U.S., such as the two other residential houses.

Also, in Valdez's Comment/Opposition to the Petition for *Certiorari,*[261] particularly in paragraphs 11.14 and 174, he manifested that the existence of these two houses in the U.S. was in fact admitted, not at all denied, by petitioner. Thus:

11.14. x x x In 2014, petitioner indicated in her Statement of Assets and Liabilities that she has two (2) residential properties in the U.S.A., a fact that she also confirmed during the clarificatory hearing on 25 November 2015 as herein provided.[262]

174. Her counsel also admitted in the clarificatory hearing that PETITIONER still own[s] two properties inthe US, one purchased

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[259] *Id*. at 1055.

[260] *Id*. at 1049; *Id*. at 1075; *Id*. at 827, 850; *Id*. at 620, 761.

[261] *Rollo* (G.R. Nos. 221698-700), Vol. IV, pp. 3852-3930.

[262] *Id*. at 3859.

in 1992, and the other in 2008, up to the present time. This is inconsistent with *animus non revertendi.* In fact, the properties remain as a physical link with the US which is her domicile of choice for many years, which is inconsistent with her claim that she completely abandoned.[263]

Furthermore, during the oral argument on January 19, 2016, the undersigned inquired if petitioner's family still owns properties of whatever kind in the U.S. Her counsel denied any knowledge.[264] When it was the turn of Valdez to be

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[263] *Id*. at 3902.

[264] JUSTICE DEL CASTILLO:

What was she doing in the States, x x x was [she] already planning to come back here x x x for good [?] X x x [H]ow come she kept on returning to the States?

ATTY. POBLADOR:

They were still trying to sell their house, they were disposing of their assets, in fact they had to donate most of these assets. They were able to sell their house only in Aptil 2006 and ... (interrupted).

JUSTICE DEL CASTILLO:

And what other properties do they have there in the States?

ATTY. POBLADOR:

As far as I know... (interrupted)

JUSTICE DEL CASTILLO:

Remember they stayed there for more than ten years, so they must have acquired tremendous amount of property there.

ATTY. POBLADOR:

I'm not aware of any other assets, Your Honor, but what I'm aware of is... (interrupted)

JUSTICE DEL CASTILLO:

No bank accounts?

ATTY.POBLADOR:

I'm not aware of the bank accounts.

JUSTICE DEL CASTILLO:

Did she vote there in the States when she was staying there? Did she vote for any public, for any official running for public office?

interpellated and the undersigned again brought up the alleged ownership of petitioner's family of two or more properties in the U.S., Valdez affirmed the allegation.[265] Constrained

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ATTY. POBLADOR:

Did she vote, I'm not aware, Your Honor.

JUSTICE DEL CASTILLO:

Did she acquire, for instance, a burial lot? This may sound funny but all of us would do this, burial lot?

AlTY. POBLADOR:

I'm not aware... (interrupted)

JUSTICE DEL CASTILLO:

X x x [Y]ou're not aware of that. Has she disposed of all her properties in the States?

ATTY. POBLADOR:

To our knowledge, Your Honor, in that period as part of her relocation process here, they disposed of all their assets, or most of their assets. (TSN, January 19, 2016, pp. 23-25).

[265] JUSTICE DEL CASTILLO:

Good evening, Counsel. Among the four respondents, you are the only one who mentioned about the 2014 assets and liabilities of the petitioner.

two residential houses in the U.S.; one which she purchased in 1992 and the other one in 2008, is that correct, Counsel?

ATTY. VALDEZ:

Yes, Your Honor. I did some internet research.

JUSTICE DEL CASTILLO:

And what was....

ATTY. VALDEZ:

And this was confirmed by her own Statement of Assets and Liabilities.

JUSTICE DEL CASTILLO:

What was your purpose in bringing that to light?

ATTY. VALDEZ:

Well, we thought, Your Honor, please, that because there were two competing domiciles. We are looking at it from the stand point of private international law. When she reacquired Filipino citizenship

to discuss the matter, petitioner now admits in her

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without renouncing her American citizenship, during that very critical period, where she was [is] a status that is inimical to the interest of the country, as per the Constitution. There was a competing interest on the part of the U.S. claiming her as a domiciliary of the U.S. and the Philippines claiming her as a domiciliary of the Philippines, that's why it's very critical that your Decisions in *Coqui/la,* in *Caballero,* in *Japzon,* and [in] the previous case [of] *Jalosjos* that the most relevant date when a person will be considered to be domicile[d] in this country is when he renounces his Americ n citizenship because with that ...

JUSTICE DEL CASTILLO:

What was....

ATTY. VALDEZ:

Because with that....

JUSTICE DEL CASTILLO:

Yes, I understand now what you are driving at. What I'm trying to clarity from you is, what is the relevance of your mentioning there that the Petitioner still maintains two residential houses in the States, one which was purchased in 1992 and the other one in 2008? Does it have something to do with the Petitioner?

ATTY. VALDEZ:

The animus...

JUSTICE DEL CASTILLO:

... selling her family home in April of 2006. In other won:js, are you saying that, okay, so she sold her family home in the states in April of 2006 to show that her reacquisition of domicile in the Philippines is imbued with *animus revertendi.* Is that what you....

ATTY. VALDEZ:

There is still the presence of *animus non n'Vertendi* by the fact that she still maintain[s] substantial asset and these are residences in the United States plus the fact that she used her passpott for five times and....

JUSTICE DEL CASTILLO:

Yes, we know the other matters. Ijust want to focus on the real property that a ... because she sold, that's what she's s&ying, that she sold the family home in April of 2006, fine. It would really, it would seem that you are abandoning already tor good your intention to remain in the states but then you still buy, you still bought a residential house in 2008.

Memorandum[266] that she and her family indeed do own two houses in the U.S.

Arty. Valdez:

Precisely.

JUSTICE DEL CASTILLO:

Now , she maintaining tyhese two...it is your position, are you trying to tell that she is still maintaining these two real properties in the states?

ATTY. VALDEZ:

Precisely, Your Honor, because she has been a resident of the US in fact for about 19 years so it could not be easily understandable that x x x selling her properties and establishing a residence here yet leaving some properties that could be better signs of wanting to still remain in the US would negated whatever manifestations or acts on her part that has chosen to stay in the Philippines. (TSN, February 16, 2016, pp. 230-233).

[266] 5.264.18. In par. 98 of his petition in the proceedings *a quo,* Private Respondent Valdez alleged that Sen. Poe "still maintains two (2) residential houses in the US, one purchased in 1992, and the other in 2008." In her Verified Asnwer, Sen. Poe "DENIED" par. 98 "insofar as it is made to appear that (she) resides' in the 2 houses mentioned in said paragraph ." Sen Poe further explained that she "does *not* 'reside' in these houses, but in her family home in Corinthian Hills. Quezon City (where she has lived with her family for almost a decade). Private Respondent Valdez did *not* present any proof to controvert Sen. Poe's response to par. 98 of this petition.

5.264.19. The net result of this exchange is that Sen. Poe owns two houses in the U.S.A. which she does *not* reside in.

x x x x x x x x x

5.264.21. If a candidate for public office is jurisprudentially allowed to simultaneously maintain several residences in different places without abandoning her domicile of choice, it follows that Sen. Poe could successfully establish her domicile in the Philippines despite the fact that she continues to own or acquires a house/s in the U.S.A. (which she does *not* even reside in). Contrary to Private Respondent Valdez's stance, the mere ownership of these houses in the U.S.A. cannot, by itself, prove that Sen. Poe does not possess *animus non revertendi* to the U.S.A. The totality of the evidence and circumstances showing Sen. Poe's reestablishment of domicile in the Philippines since 24 May 2005 certainly ought to *outweigh* the singular fact that she also owns houses in the U.S.A.

These houses are obviously not considered by petitioner as their family home; nonetheless, considering the circumstances prevailing in the case, their acquisition and maintenance are relevant to the determination of whether petitioner had indeed abandoned her U.S. domicile and whether she had effectively reestablished her domicile in the Philippines.

Thus, to follow petitioner's proposition that acquisition of residential properties is an *indicia* of *animus manendi* is actually detrimental to her cause considering that subsequent to her purchase of a condominium unit and a residential lot in the Philippines in 2006, she later on acquired a residential property in the U.S. in 2008. In addition, she maintained one other residential property in the U.S. which was bought in 1992.

I also agree with the observation of respondent Contreras regarding the failure of petitioner to secure an ICR for herself as she did with her children. For Contreras, this not only shows that petitioner was fully cognizant of the nature of her residency status and the applicable laws/rules regarding the same; more significantly, it was clear and positive evidence of her intention or ambivalence not to become a permanent resident of the Philippines at that time. Thus:

x x x For foreign nationals, of which petitioner was one prior to her reacquisition of her Filipino citizenship, intent to remain for good could not just rest on being physically present, and performing acts such as buying a condominium unit and enrolling her chi1dren here, for such are also the acts of expatriates who are working in the country. As foreign nationals, to be even considered as resident aliens, these expats and their dependents have to obtain the appropriate visas for their stay to be legal. Petitioner fully knew this well, when she registered her children, who were also foreign nationals like her, with the BI to obtain an ACR for each of them, as such would have been a requirement for enrolment in schools. It is for this that she could

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5.264.22. Lastly, the rule is that a person could have *only one domicile* at any given time. Considering that Sen. Poe has been domiciled in the Philippines since 24 May 2005, it is a legal impossibility for her to simultaneously have any other domicile elsewhere. *Rollo* (G.R. No. 221697), Vol. VI, pp. 4039-4041.

not feign ignorance of the real nature of her residency status in the country from 24 May 2005 until July 2006, when she did not possess an ACR since she failed to register with the BI, and hence did not acquire the status of a permanent resident in the country. As such, she did not lose her domicile in the US during that period and could therefore not rightfully claim to have re-established her domicile in the Philippines.[267]

x x x [T]he fact that she obtained immigration documents for her three (3) children in the form of Alien Certificate of Registration (ACR), even if she failed to obtain one for herself, is an incontrovertible proof that she could not claim total ignorance about the limitations imposed on a non-resident alien in the country.[268]

Finally, it is my opinion that the Comelec correctly considered petitioner's declarations in her 2012 CoC as an admission against interest. An admission is any statement of fact made by a party against his/her interest or is inconsistent with the facts alleged by him/her.[269] It is governed by Section 26 of Rule 130 of the Rules of Court, which states:

Sec. 26. *Admissions of a party.* – The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

"To be admissible, an admission must: (a) involve matters of fact, and not of law; (b) be categorical and definite; (c) be knowingly and voluntarily made; and (d) be adverse to the admitter's interests, otherwise it would be self-serving and inadmissible."[270]

All these requisites are present in these cases. The entry in petitioner's 2012 CoC, *i.e.,* six years and six months, refers to her period of residence in the Philippines before May 13, 2013– a matter which without a doubt involves a question of fact. The same is categorical and definite, and was made under oath.

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[267] *Rollo* (G.R. Nos. 221698-700), Vol. VI, p. 3717.

[268] *Rollo* (G.R. No. 221697), Vol. VI, p. 3654.

[269] *Lacbayan v. Samoy,* 661 Phil. 306, 318 (2011).

[270] *Id.*

The entry is adverse to petitioner's interest, specifically in respect to her present claim in her 2015 CoC that she has been a resident of the Philippines for 10 years and 11 months up to the day before the May 9, 2016 elections. Clearly, the questioned entry in petitioner's 2012 CoC is admissible as an admission against her interest.

"Admissibility, however, is one thing, weight is another."[271] Indeed, when the admission is contained in a document as in this case, the document is the best evidence which affords the greatest certainty of the facts in dispute. The rationale for the rule is based on the presumption that no man would declare anything against himself herself unless such declaration was true. Thus, it is fair to presume that the declaration corresponds with the truth, and it is his/her fault if it does not.[272] It bears emphasizing, though, that this does not preclude a declarant from refuting his/her admission.[273] In this case, petitioner must show clear, convincing, and more than preponderant evidence in order to refute the facts stated in her 2012 CoC considering that it is a sworn document which the Rules of Court presumes had been executed in the regular course of law.[274]

Petitioner thus asserts that the statement in the 2012 CoC about her period of residence was a result of an honest mistake and not binding on her. She invokes *Marcos v. Commission on Elections* where we held that "it is the fact of residence, not a statement in a certificate of candidacy, which ought to be decisive in determining whether or not an individual has satisfied the Constitution's residency qualification requirement."

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[271] *Ormoc Sugar Company, Inc. v. Osco Workers Fraternity Union (OWFLU),* 110 Phil. 627, 632 (1961).

[272] *Manila Electric Company v. Heirs of Spouses Deloy,* 710 Phil. 427, 441 (2013), citing *Heirs of Bernardo Ulep v. Sps. Ducat and Kiong,* 597 Phil. 5, 16 (2009).

[273] *Rufina Patis Factory v. Alusitain,* 478 Phil. 544, 558 (2004).

[274] *Id.* at 559.

However, I am not convinced with petitioner's invocation of honest mistake. Among other reasons, the defense of honest mistake interposed in *Marcos* was found tenable because therein petitioner Imelda Romualdez-Marcos (Imelda) wrote in her CoC "seven" months as her period of residence – an entry which was obviously short of the one-year residency requirement for the position for which she filed her CoC. Hence, the Court stated that it would be plainly ridiculous for a candidate to deliberately and knowingly make a statement in a CoC which would lead to her disqualification. It can be concluded, therefore, that the defense of honest mistake is available only if the mistake in the CoC would make a qualified candidate ineligible for the position. It cannot be invoked when the mistake would make an ineligible candidate qualified for the position. For in the first case, no candidate in his/her right mind would prevaricate or make the electorate believe that he/she is not qualified for the position he/she is aspiring for. Hence, there could be no other conclusion than that the mistake was committed honestly. Whereas in the second case, the intention to mislead can be deduced from the fact that an aspirant, although not qualified, makes it appear in his/her CoC that he/she is eligible to run for public office when in truth he/she is not. Here, petitioner made it appear that she did meet the 10-year residency requirement when in fact, she did not.

And even assuming that she committed an honest mistake, still, the same cannot outweigh her categorical, definite, voluntary, and sworn declaration in her 2012 CoC, which is favored by the *prima facie* presumption of regularity.[275] Said entry in petitioner's 2012 CoC which, as previously discussed is an admission against interest, tends to prove that she intended to stay permanently in the Philippines starting only in November 2006 (or in April 2006 assuming her claim of honest mistake is true, but still far from her claim of May 24, 2005). In other words, petitioner has miserably failed to present evidence sufficient to overthrow the facts she herself supplied

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[275] *Id.*

in her 2012 CoC. She cannot now, therefore, adjust or readjust the dates from which to reckon her reestablishment of domicile in the Philippines in order to meet the 10-year constitutional residency requirement. As correctly observed by the Comelec, petitioner's actions only highlight her ambivalence in reestablishing domicile, *viz.*:

4.149. Petitioner claims to have re-established her domicile in the Philippines on 24 May 2005. x x x

4.150. It is incorrect based on petitioner's own submissions which are conflicting.

4.151. In her COC for Senator in the May 2013 election filed in October 2012, [petitioner] stated;

"PERIOD OF RESIDENCE IN THE PHILIPPINES BEFORE MAY 13, 2013–6 YEARS AND 6 MONTHS".

The above sworn entry in her COC for Senator meant that [petitioner] had been a Philippine resident **only since November 2006.**

4.152. She later claimed that the Comelec form confused her, that actually that entry of "6 years and 6 months" was meant to be up to the date of filing said COC in October 2012. Assuming this to be correct, and applying the "6 years and 6 months" as up to October 2012, this means that [petitioner] had been a Philippine resident **only since April 2006.**

4.153. In her present COC for President in the May 2016 elections, her sworn entry on residency is "10 years and 11 months" up to the day before May 9, 2016 which would be a residency since **June 2005.**

4.154. So which is which?

May 24, 2005 as the date she claims to have re-established her Philippine domicile?

Or is it **April 2006** as she also claims relative to her 2012 senatorial COC reckoned up to the date of its filing in October 2012?

Or is it **November 2006** which is the plain import of her sworn entry in her senatorial COC?

Or is it **June 2005** which would be the reckoning date per her 2015 COC for President in the May 2016 elections.[276]

In fine, even if it be conceded that petitioner's evidence *(i.e.,* TIN, acquisition of residential properties, enrollment of her children in Philippine schools), taken singly or collectively, somehow evinces her claimed intent to remain in the Philippines, the same cannot outweigh the evidence on record that her presence in the country as of May 24, 2005 was temporary in nature. "Evidence is assessed in terms of quality, not quantity. It is to be weighed, not counted."[277]

At this point, I wish to make it abundantly clear that it is not my position that petitioner could not reestablish her domicile in the country prior to taking the oath of allegiance to the country. In retrospect, petitioner could have made her stay in the Philippines permanent in character beginning May 24, 2005 or thereabouts had she applied for an immigrant status as provided in Commonwealth Act No. 613 or The Philippine Immigration Act of 1940, as amended by RA 4376,[278] which allows a natural-born Filipino citizen (assuming that she is) who was naturalized abroad to return as a non-quota immigrant entitled to permanent residence. As correctly argued by respondent Contreras, "[t]he possession of a permanent resident visa is not an added element, but is simply evidence that sufficiently proves the presence of an act that would indicate the element of *animus manendi* that applies to foreign nationals who would like to make the Philippines as their new domicile of choice."[279] But for some

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[276] *Rollo* (G.R. No. 221697), Vol. VI, p. 3775.

[277] *People v. Alberto,* 625 Phil. 545, 556 (2010).

[278] AN ACT AMENDING SECTION THIRTEEN OF COMMONWEALTH ACT NUMBERED SIX HUNDRED THIRTEEN, OTHERWISE KNOWN AS "THE PHILIPPINE IMMIGRATION ACT OF 1940" SO AS TO INCLUDE AS NON-QUOTA IMMIGRANTS WHO MAY BE ADMITTED INTO THE PHILIPPINES, NATURAL BORN CITIZENS WHO HAVE BEEN NATURALIZED IN A FOREIGN COUNTRY AND DESIRE TO RETURN FOR PERMANENT RESIDENCE.

[279] *Rollo* (G.R. Nos. 221698-700), Vol. VI, p. 3721.

reason petitioner did not apply for an immigrant status, and there is no indication that she was subsequently granted an immigrant visa, or a permanent resident status.

As a U.S. citizen, petitioner failed to perform an act necessary to show that as of May 24, 2005 she intended to permanently remain in the Philippines. Such intention may be inferred from her waiver of non-resident status by obtaining a permanent resident visa or an ACR or by taking an oath of allegiance to the Philippines, which petitioner neither availed of on or before May 24, 2005.

Nevertheless, while petitioner entered the Philippines on May 24, 2005 as a foreigner *balikbayan* with a limited period of stay, her status changed when she took her Oath of Allegiance to the Republic under RA 9225 on July 18, 2006. This conferred upon her not only Philippine citizenship but also the right to stay in the Philippines for an unlimited period of time. Section 5 of the said law provides:

SEC. 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 x x x.

Thus, it is from this date, July 18, 2006, that petitioner can rightfully claim that her physical presence in the Philippines was with *animus manendi.* Her becoming a Filipino, albeit still a dual citizen, on said date, allowed her to thenceforth stay permanently here.

However, it must be emphasized that petitioner's reacquisition of Philippine citizenship neither automatically resulted in the reestablishment of her Philippine domicile nor in the abandonment of her U.S. domicile. It is settled that RA 9225 treats citizenship independently of residence.[280] It does not provide for a mode of reestablishing domicile and has no effect

[280] *Japzon v. Commission on Elections, supra* note 237 at 367; *Caballero v. Commission on Elections, supra* note 253.

on the legal residence of those availing of it. "This is only logical and consistent with the general intent of the law for dual citizenship. Since a natural-born Filipino may hold, at the same time, both Philippine and foreign citizenships, he[/she] may establish residence either in the Philippines or in the foreign country of which he[/she] is also a citizen."[281]

A case in point is *Caballero v. Commission on Elections.*[282] In that case, Rogelio Batin Caballero (Caballero) ran for Mayor of Uyugan, Batanes in the May 13, 2013 elections. His rival candidate, however, filed a petition to cancel his CoC on the ground of false representation as Caballero declared in his CoC that he was eligible to run for Mayor despite being a Canadian citizen and not a resident of Uyugan, Batanes for at least one year immediately before the elections. Caballero argued that Uyugan has always been his domicile because he was born and baptized there; that he studied, worked, and built his house in Uyugan; that he was a registered voter of said municipality and used to vote there; and, that he availed herself of RA 9225 on September 13, 2012 and renounced his Canadian citizenship on October 1, 2012.

In denying Caballero's petition, the Court *En Banc* speaking through Justice Diosdado P. Peralta and with no member dissenting, ruled that Caballero's reacquisition of Philippine citizenship under RA 9225 did not enable him to automatically regain his domicile in Uyugan. He must still prove that after reacquiring his Philippine citizenship, he had reestablished his domicile in Uyugan, Batanes for at least one year immediately preceding the May 13, 2013 elections. Thus:

> Petitioner was a natural-born Filipino who was born and raised in Uyugan, Batanes. Thus, it could be said that he had his domicile of origin in Uyugan, Batanes. However, he later worked in Canada and became a Canadian citizen. In *Coquilla v. Comelec,* we ruled that naturalization in a foreign country may result in an abandonment of domicile in the Philippines. This holds true in petitioner's case as

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[281] *Japzon v. Commission on Elections, id.*

[282] *Supra* note 253.

permanent residence status in Canada is required for the acquisition of Canadian citizenship. Hence, petitioner had effectively abandoned his domicile in the Philippines and transferred his domicile of choice in Canada. His frequent visits to Uyugan, Batanes during his vacation from work in Canada cannot be considered as waiver of such abandonment.

The next question is what is the effect of petitioner's retention of his Philippine citizenship under RA No. 9225 on his residence or domicile?

In *Japzon v. Comelec,* wherein respondent [Jaime S.] Ty reacquired his Philippine citizenship under RA No. 9225 and [ran] for Mayor of General Macarthur, Eastern Samar and whose residency in the said place was put in issue, we had the occasion to state, thus:

> **[Petitioner's] reacquisition of his Philippine citizenship under Republic Act No. 9225 had no automatic impact or effect on his residence/domicile.** He could still retain his domicile in the USA, and he did not necessarily regain his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines. Ty merely had the option to again establish his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines, said place becoming his new domicile of choice. <u>The length of his residence therein shall be determined from the time he made it his domicile of choice, and it shall not retroact to the time of his birth.</u>

Hence, petitioner's retention of his Philippine citizenship under RA No. 9225 did not automatically make him regain his residence in Uyugan, Batanes. <u>He must still prove that after becoming a Philippine citizen on September 13, 2012, he had reestablished Uyugan, Batanes as his new domicile of choice which is reckoned from the time he made it as such.</u>

The COMELEC found that petitioner failed to present competent evidence to prove that he was able to reestablish his residence in Uyugan within a period of one year immediately preceding the May 13, 2013 elections. It found that it was only after reacquiring his Filipino citizenship by virtue of RA No. 9225 on September 13, 2012 that petitioner can rightfully claim that he re-established his domicile in Uyugan, Batanes, if such was accompanied by physical presence thereat, coupled with an actual intent to re-establish his domicile

there. However, the period from September 13, 2012 to May 12, 2013 was even less than the one year residency required by law.

x x x x x x x x x

Records indeed showed that petitioner failed to prove that he had been a resident of Uyugan, Batanes for at least one year immediately preceding the day of elections as required under Section 39 of the Local Government Code.[283] (Underlining ours)

Contrary to petitioner's interpretation, we did not reckon the period of residency in *Caballero* from the time Caballero reacquired Philippine citizenship under RA 9225. We there held that since Caballero abandoned his Philippine domicile when he was naturalized abroad, he has to prove that he had reestablished his domicile in Uyugan. He likewise had to prove the date when he reestablished his domicile there for purposes of determining whether he met the one-year residency requirement. However, there being no other evidence showing his intent to reestablish his domicile in the Philippines and abandon his former domicile abroad, and since Caballero took his oath of allegiance under RA 9225 only on September 13, 2012 or less than one year prior to the May 13, 2013 elections, he could no longer possibly prove compliance with the one-year residency requirement.

Similarly, I find no sufficient evidence showing that petitioner intended to reestablish a new domicile in the Philippines prior to taking her Oath of Allegiance on July 7, 2006; as such petitioner still has to prove that after taking said oath she has reestablished the Philippines as her new domicile by demonstrating that her physical presence here is coupled with *animus manendi* and an undeniable and definite intention to abandon her old domicile. However, since petitioner took her Oath of Allegiance in July 2006 and renounced her U.S. citizenship in October 2010, both events having occurred less than 10 years prior to the May 9, 2016 elections, the conclusion

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[283] *Caballero v. Commission on Elections, supra* note 253.

becomes inexorable that she could no longer possibly prove compliance with the 10-year residency requirement.

Petitioner's evidence of animus non revertendi; earliest possible date that petitioner's physical presence in the Philippines can be said to be coupled with animus non revertendi.

The element of intention to abandon an old domicile is as important as in the case of acquisition of new domicile.[284] Thus, if a person establishes a new dwelling place, but never abandons the intention of returning to the old dwelling place, the domicile remains at the old dwelling place.[285]

Upon this score, petitioner offered the following pieces of evidence:

a. the affidavit of her adoptive mother attesting to the reasons which prompted petitioner to leave the U.S. and return permanently to the Philippines;

b. the affidavit of Teodoro Misael Daniel V. Llamanzares, corroborating her adoptive mother's statement and narrating how he and petitioner were actively attending to the logistics of their permanent relocation to the Philippines;

c. the documented communication between petitioner or her husband with the property movers regarding the

[284] Kossuth Kent Kennan, LL.D., *A Treatise on Residence and Domicile,* The Lawyers Co-operative Publishing Company, Rochester, N.Y., 1934, § 95 pp. 200-201.

[285] 25Am Jur 2d § 24, p. l9.

relocation of their household goods, furniture, and cars from Virginia, U.S.A. to the Philippines;

d. relocation of their household goods, furniture, cars and other personal property from Virginia, U.S.A. to the Philippines which were packed, collected for storage, and transported in February and April 2006;

e. her husband's act of informing the U.S. Postal Service of the abandonment of their former U.S. address on March 2006;

f. their act of selling their family home in the U.S. on April 27, 2006;

g. her husband's resignation from his work in the U.S. in April 2006 and his return to the Philippines on May 4, 2006;

h. Questionnaire – Information for Determining Possible Loss of U.S. Citizenship wherein petitioner indicated that she no longer considered herself a resident of the U.S. since May 2005 until the present.

At first blush, it would seem that petitioner's evidence did tend to prove her claimed intent to abandon her old domicile in the U.S. However, what prevents me from lending unqualified support to this posture is that all these pieces of evidence refer to dates *after* May 24, 2005. Such evidence could not, therefore, be of much help in establishing her claim that she changed domicile as of May 24, 2005.

Furthermore, petitioner's evidence cannot prove *animus non revertendi* prior to her renunciation of her U.S. citizenship on October 20, 2010. This is so because prior thereto, petitioner could return anytime to the U.S., stay there as its citizen and enjoy all the rights, privileges and protection the U.S. government extends to its nationals, including the right to a legal residence. In fact, from May 24, 2005 to October 20, 2010, petitioner did go back to the U.S. no less than five times: February 14, 2006, April 20, 2009, October 19, 2009, December 27, 2009 and March

27, 2010.[286] And when she went to the U.S. on those dates, she used her U.S. passport and stayed there not as an alien but as its citizen. It should also be recalled that petitioner and her family still own and maintain two residential houses in the U.S. which they purchased in 1992 and in 2008, or two years after petitioner had taken her oath of allegiance to the Philippines. Hence the only clear and positive proof that petitioner abandoned her U.S. domicile was when she executed her *Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship*[287] on October 20, 2010 because that was the point when she concretized and exteriorized her intention to abandon her U.S. domicile. It is this act that unequivocally and irremissibly sealed off any intent of her retaining her U.S. domicile. Prior to that, it cannot be said that she has complied with the third requirement.

This is not to say that I am adding a fourth requirement for relinquishing foreign citizenship as a condition to reestablishing domicile. My discussion is still premised on compliance with the third requirement of *bona fide* intent to abandon the former domicile. To be sure, petitioner could have established her *animus non revertendi* to the U.S. had she applied for a Philippine resident visa on May 24, 2005 or thereabouts, as earlier discussed. But since she did not, the only fact or circumstance that can be considered as indicative of her clear and positive act of abandoning U.S. domicile was when she renounced her U.S. citizenship. This conclusion is consistent with our ruling in the 2013 case of *Reyes v. Commission on Elections*[288] where this Court, speaking through Justice Jose P. Perez, said:

> As to the issue of residency, proceeding from the finding that petitioner has lost her natural-born status, we quote with approval the ruling of the COMELEC First Division that petitioner cannot be considered a resident of Marinduque:

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[286] *Rollo* (G.R. No. 221697), Vol. VI, p. 3830.

[287] *Rollo* (G.R. No. 221697), Vol. I, p, 489.

[288] G.R. No. 207264, June 25, 2013, 699 SCRA 522.

> "Thus, a Filipino citizen who becomes naturalized elsewhere effectively abandons his domicile of origin. **Upon re-acquisition of Filipino citizenship pursuant to RA 9225, he must still show that he chose to establish his domicile in the Philippines through positive acts, and the period of his residency shall be counted from the time he made it his domicile of choice.**
>
> In this case, there is no showing whatsoever that [petitioner] had already re-acquired her Filipino citizenship pursuant to RA 9225 so as to conclude that she has regained her domicile in the Philippines. There being no proof that [petitioner] had renounced her American citizenship, it follows that she has not abandoned her domicile of choice in the USA.
>
> The only proof presented by [petitioner] to show that she has met the one-year residency requirement of the law and never abandoned her domicile of origin in Boac, Marinduque claim that she served as Provincial Administrator of the province from January 18, 2011 to July 13, 2011. **But such fact alone is not sufficient to prove her one-year residency. For, [petitioner] has never regained her domicile in Marinduque as she remains to be an American citizen. No amount of her stay in the said locality can substitute the fact that she has not abandoned her domicile of choice in the USA."**[289] (Underlining ours)

Against this backdrop, petitioner's evidence relative to *animus non revertendi* becomes irrelevant for such evidence does not at all prove that she had in fact abandoned her U.S. domicile on May 24, 2005. Nonetheless, I still tried to evaluate the pieces of evidence that petitioner had submitted. However, I still find them wanting and insufficient.

As part of the evidence to prove her intent to abandon her old domicile, petitioner puts forward her husband's act of informing the U.S. Postal Service in March 2006 of the abandonment of their former U.S. address. I carefully studied the copy of the online acknowledgement from the U.S. Postal Service regarding this[290] and deduced therefrom that what

[289] *Id.* at 543.

[290] *Rollo* (G.R. No. 221697), Vol. II, pp. 815-816.

petitioner's husband did was actually to request the U.S. Postal Service for a change of address and not to notify it of their abandonment of their U.S. address *per se.* At any rate, there was no showing that the change of address was from their old U.S. address to their new Philippine address. And, again, it must be mentioned that this was done only in March 2006.

Likewise submitted to prove *animus non revertendi* was the series of electronic correspondence between petitioner/her husband on one hand, and the Victory Van Corporation (Victory)/ National Veterinary Quarantine Service of the Bureau of Animal Industry of the Philippines, on the other, regarding the logistics for the transport of their personal properties and pet dog, respectively, from the U.S. to the Philippines. The first in the series of electronic mails (e-mails) from Victory was dated March 18, 2005.[291] Apparently, the communication was a reply to petitioner's *inquiry* about the rates for the packing, loading and transport of their household goods and two vehicles to Manila. Petitioner's *animus non revertendi* to the U.S. at least as of date of the said e-mail (March 18, 2005) cannot, however, be deduced from her mere act of making such inquiry. It must be stressed that the intent to abandon an old domicile must be established by clear and positive proof.[292] While making such an inquiry may be construed as the initial step to the actual transport or transportation of the goods, that by itself, is short of the clear and positive proof required to establish *animus non revertendi.* At the most, all that can be inferred from the said e-mail is petitioner's mere "interest" at that point but not yet the "intent'' or the resolve to have her family's personal properties shipped to the Philippines for purposes of relocation. It is true that petitioner's inquiry led to negotiations between her and/or her husband and Victory until the goods and effects were finally transported to the Philippines starting February 2006 as shown by the succeeding exchange of communication; however, these negotiations, based on the other e-mails submitted,

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[291] *Id.* at 771.

[292] *Jalosjos v. Commission on Elections, supra* note 256 at 657.

did not start immediately after March 18, 2005 or on or before May 24, 2005. The negotiations only actually started the following year, or in January 2006, months after May 24, 2005. The same is true with respect to the e-mail relative to the transport of their pet dog which bears the date August 3, 2005.

Notably, even petitioner did not reckon this date, March 18, 2005, as the starting point of her *animus non revertendi.* Hence, it could be said that even petitioner herself could not categorically state that by March 18, 2005, she already had the intention to abandon her U.S. domicile.

Petitioner's conduct tending to show animus manendi and animus non revertendi cannot be taken as part of an incremental process of/for changing domicile.

Petitioner invokes the cases of *Mitra* and of *Sabili* where this Court held that relocation to a new domicile is basically an incremental process. Thus, petitioner's counsel maintained during the oral arguments that their evidence consisted of documents that were executed, events that took place, and acts done, after May 24, 2005 precisely because they all form part of a process which began on May 24, 2005 and continued to be in progress thereafter.

Petitioner's case is nowhere nearly congruent to *Mitra* and *Sabili* because in those cases, the evidence of therein petitioners were plainly viewed by the Court as positive acts that formed part of the incremental process of changing domicile. That same perspective cannot, however, be applied to petitioner's case because, unlike in *Mitra* and *Sabili,* her change of domicile, as previously discussed, was inevitably and inextricably intertwined with her citizenship. It bears reiterating that as a naturalized U.S. citizen, petitioner is duty-bound to comply with our

immigration laws before her stay in this country could be considered for purposes of the elections. Just because she thought of permanently staying in the Philippines does not mean that upon setting foot on this country she has instantly reestablished domicile here. As an alien wanting to reestablish a domicile here, petitioner must first reacquire Philippine citizenship (or at least ought to have secured a permanent resident visa) before the totality of her acts or actions tending to show *animus manendi* can be regarded part of an incremental process of establishing domicile. The same is true with respect to *animus non revertendi:* she must have first renounced her U.S. citizenship (or applied for a Philippine immigrant visa).

The records also show that petitioner has not only procrastinated in renouncing her U.S. citizenship; in fact she also did it unwittingly. It should be recalled that the President appointed her Chairperson of the MTRCB on October 6, 2010. At that time, petitioner was still a dual citizen owing allegiance both to the Philippines and to the U.S. Hence she could not accept the said appointment without renouncing her U.S. citizenship first, conformably with Section 5(3) of RA 9225, which reads:

> SEC. 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
>
> (3) Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: *Provided,* That they renounce their oath of allegiance to the country where they took that oath.

When petitioner thus executed her Affidavit of Renunciation of Allegiance on October 20, 2010, there could be no two opinions about the fact that her primary purpose was to meet the requirement for her appointment as MTRCB Chairperson.

This is buttressed by the fact that she assumed office the following day and by the answers she wrote in the Questionnaire/ Information for Determining Possible Loss of U.S. Citizenship that she submitted with the Bureau of Consular Affairs of the U.S. Department of State. There she explicitly stated that she was relinquishing her U.S. citizenship because she was appointed Chairperson of the MTRCB and she wanted to comply with both U.S. and Philippine laws. Even then, it bears notice that in that document she made no categorical declaration at all that she was relinquishing her U.S. citizenship to transfer domicile here. In other words, petitioner did not renounce her U.S. citizenship upon her own volition with the deliberate intent or intention of reestablishing legal residence here. It only incidentally arose as an inevitable consequence of her having to comply with the requirements of Section 5(3) of RA 9225. Be that as it may, I consider her act of renouncing her foreign allegiance on October 20, 2010 as amounting to sufficient compliance with the third requirement in reestablishing domicile for it carried with it a waiver of her right to permanently reside in the U.S. Regrettably, this date does not jibe with what petitioner declared in her 2015 CoC for President.

Stronger proof is required in reestablishment of national domicile.

Petitioner protests that in *Perez v. Commission on Elections*[293] and *Jalover v. Osmeña*[294] the candidates were deemed to have transferred their domiciles based on significantly less evidence compared to what she has presented.

But there is a marked distinction between the present case and the cases cited. *Perez* and *Jalover* involved transfer of domicile within the same province or within the confines of our country. In *Perez,* a petition to disqualify Rodolfo E.

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[293] 375 Phil. 1106 (1999).

[294] G.R. No. 209286, September 23, 2014, 736 SCRA 267.

Aguinaldo (Aguinaldo) as candidate for Congressman of the third district of Cagayan in the May 11, 1998 elections was filed on the ground that he, allegedly, is a resident of Gattaran which is in the first (not third) district of Cagayan. What was in question was Aguinaldo's residence in the third district of Cagayan, his residency in said province having been established beyond doubt. *Jalover,* on the other hand, emanated from a petition to deny due course and/or to cancel John Henry R. Osmeña's (Osmeña) CoC for Mayor of Toledo City on the ground that he made a false declaration in his CoC when he stated that he had been a resident of said city for 15 years prior to the May 13, 2013 elections. Notably, Osmeña previously served as Congressman of the third district of Cebu which includes Toledo City.

The present case, however, involves a personality who formerly abandoned the Philippines as her domicile, and renounced her Philippine citizenship by becoming a naturalized U.S. citizen. Thus, what is involved here is a transfer of domicile from one country to another by a naturalized U.S. citizen. Petitioner now tries to convince this Court that she had abandoned her U.S. domicile and had successfully reestablished her new domicile of choice in this country. To stress, this case involves relocation by an alien of the national domicile from the U.S. to the Philippines, which requires much stronger proof, both as to fact and intent, than in the case of a change of domicile from one municipality, or subordinate subdivision of a country, to another, by a Filipino citizen who never renounced such citizenship.[295] "[I]t requires stronger and more conclusive evidence to justify the court in deciding that a man has acquired a new domicile in a foreign country, than would suffice to warrant the conclusion that he has acquired a new domicile in a country where he is not a foreigner."[296] In *Perez* and *Jalover,* for instance, it was no longer necessary for this Court to determine whether

[295] Kossuth Kent Kennan, L.L.D., *A Treatise on Residence and Domicile,* 1934, The Lawyers Co-operative Publishing Company, Rochester, N.Y.,§ 92, p. 195.

[296] *Id*.

the candidates had the legal right to permanently reside in their chosen domicile because, being Filipinos, they can reside anywhere in the Philippines. In the case of the herein petitioner, however, it is not only the length of her stay in the Philippines that must be determined, but also the legality and nature thereof for, as heretofore discussed, the period of her physical presence here, as an alien, should not be included in the computation of the length of her residency as the same was temporary in character or not permitted by our immigration laws. Also, while citizenship and residency are different from and independent of each other, one may invariably affect the other. For instance, petitioner had to abandon her Philippine domicile when she applied for U.S. naturalization in 2001. Corollarily, she cannot reestablish domicile here unless she first reacquires her Philippine citizenship (or enter the Philippines as an immigrant). Thus, unlike in *Perez* and *Jalover,* the petitioner in this case has the added burden of proving, among others, the character and legitimacy of her presence here since she earlier abandoned her Filipino citizenship and Philippine domicile to become a U.S. citizen and its domiciliary.

Another important reason for the distinction is that demanded by the purpose of the residency requirement of election laws. Those living in the same province *albeit* in another district as in *Perez* and *Jalover,* can still maintain familiarity with the conditions and needs of nearby communities. They and the people there are exposed to the same environment, speak the same language, are similarly affected by the growth or fluctuation of local economy, and must brave and suffer the same natural calamities. These are beyond the immediate and direct senses and perceptions of foreigners or aliens living abroad.

Likewise misplaced is petitioner's reliance on the cases of *Japzon* and *Rommel Apolinario Jalosjos v. Commission on Elections,*[297] considering that said cases are not on all fours with her case. In said cases, the candidates who were

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[297] 686 Phil. 563 (2012).

charged with making false material representation in their CoC took their oath of allegiance more than one year before the elections, thereby making it possible for them to prove compliance with the one-year residency requirement of the Local Government Code. Thus, in *Japzon,* Jaime S. Ty reacquired his Philippine citizenship under RA 9225 on October 2, 2005 and ran for Mayor of General Macarthur, Eastern Samar in the May 14, 2007 election. While Rommel Apolinario Jalosjos reacquired his Philippine citizenship under RA 9225 on November 26, 2008, or four days after arrival in the Philippines, and ran for Governor of Zamboanga Sibugay in the May 10, 2010 elections.

In the case of petitioner, however, she took her oath of allegiance only on July 7, 2006. Therefore, she could not possibly prove that she has been residing in the Philippines for at least 10 years immediately preceding the May 9, 2016 elections. July 7, 2006 to May 9, 2016 is about two months short of 10 years.

Under these circumstances, the entry in petitioner's 2015 CoC for President that her period of residency in the Philippines as of May 9, 2016 is 10 years and 11 months is, false, as indeed it is.

C. *Petitioner's deliberate attempt to deceive, mislead, misinform, or hide a fact which would otherwise render her ineligible to run for the position of President*

It was pointed out to petitioner as early as June 2015 that the period of residence she entered in her 2012 CoC was six years and six months before May 13, 2013. Notwithstanding that her attention was called to such fact, petitioner never bothered to correct her 2012 CoC. Instead, she filed her 2015 CoC for President declaring therein a period of residency that is markedly different from and does not jibe with what she declared under oath in her 2012 CoC.

Petitioner then proceeded to make the point that the declaration about her period of residence in her 2015 CoC is correct.

Explaining the discrepancy between her 2012 and 2015 CoCs, she asserts that her entry of six years and six months in her 2012 CoC was the result of an honest mistake. She claims that she accomplished her 2012 CoC without the assistance of counsel and that she did not know that what was required by the phrase "Period of Residence in the Philippines before May 13, 2013" is the period of her residence on the day right before the May 13, 2013 elections; that instead, she interpreted it to mean as her period of residence in the Philippines as of her filing of the 2012 CoC on October 2, 2012, which technically is also a period "before May 13, 2013." To convince the Court that the aforementioned phrase is susceptible of causing confusion, petitioner calls attention to the fact that the Comelec, after apparently realizing the same, had revised the CoC forms for the May 9, 2016 elections. The amended phrase which can now be found under Item No. 7 of the latest CoC form reads as follows:

> PERIOD OF RESIDENCE IN THE PHILIPPINES *UP TO THE DAY BEFORE* MAY 09, 2016:

I am not persuaded.

The import of the phrase "Period of Residence in the Philippines before May 13, 2013" as found in petitioner's 2012 CoC is too plain to be mistaken and too categorical to be misinterpreted. As can be observed, a fixed date was given as a reference point, *i.e.,* May 13, 2013. Indeed, even an average person would be able to tell that what comes before May 13, 2013 is May 12, 2013. From a plain reading of the said phrase, therefore, it can readily be discerned or understood that what was being required by Item No. 11 is a candidate's period of residence in the Philippines until May 12, 2013.

To argue that any period which is not until May 12, 2013 but prior to May 13, 2013 is technically still a period "before May 13, 2013" is like clutching at straws. To an astute political aspirant like petitioner, filing a CoC necessarily presupposes knowledge on her part of the qualifications required by the office where she seeks to be elected. After all, it is presumed

that a person takes ordinary care of his or her concerns.[298] For a senatorial candidate, the required qualifications are found under Section 3, Article VI of the Constitution which provides, *viz.*:

> *Section 3.* No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and **a resident of the Philippines for not less than two years immediately preceding the day of the election.** (Emphasis supplied)

Thus, read in the light of the other material entries required in the 2012 CoC for Senator such as Age (Item No. 14), the fact of being a Natural-born Filipino Citizen (Item No. 8) and, of being a Registered Voter (Item No. 19), it is obvious that what the form was trying to elicit were a senatorial candidate's qualifications in accordance with the above-quoted constitutional provision. And assuming that the phrase "Period of Residence in the Philippines before May 13, 2013" is indeed susceptible of causing confusion as to until what period before May 13, 2013 was being asked, such confusion can easily be dispelled by a quick reference to the constitutional provision which states in no uncertain terms that a Senator must be a resident of the Philippines for not less than two years **immediately preceding the day of the election.** Under this premise, the only logical interpretation that should have been available to petitioner at the time she was filling out her 2012 CoC is that what was required by Item No. 11 – the period of her residence in the Philippines as of the day immediately preceding May 13, 2013, which is May 12, 2013.

Totally unacceptable is the assertion that the change in the wording of the item respecting the period of residence as found in the latest CoC form is an acknowledgment by the Comelec that the previous version is indeed unclear. The change is a mere semantic exercise devoid of any serious significance.

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[298] RULES OF COURT, Rule 131, Section 3(d).

Petitioner's personal circumstances and those surrounding the filing of her 2012 CoC provide little solace to her claim of honest mistake. As petitioner alleges, she pursued a college degree in Development Studies in one of the country's premiere universities – the University of the Philippines in Manila. In 1988, she went to Boston College in the U.S. where, as can reasonably be expected, she learned concepts on politics after graduating with a degree of Bachelor of Arts in Political Studies. When she filed her 2012 CoC, she was not technically a neophyte in the Philippine political arena, she having been on her adoptive father's side during the campaign for his presidential bid in 2004. At that time, she was, for two years, at the helm of MTRCB where her duties impacted not only media and entertainment culture but also society at large. Being the educated woman that she is, coupled by her brief but memorable stint in politics and relevant government experience, I find it hard to believe that she misinterpreted the clear and simple import of the phrase "Period of Residence in the Philippines before May 13, 2013" as pertaining to her period of residence in the Philippines as of the submission of her 2012 CoC on October 2, 2012. To repeat, the phrase is too plain to be mistaken and too categorical to be misinterpreted, more especially by one of her educational and professional stature.

That petitioner was not assisted by counsel when she accomplished her 2012 CoC is of no moment. For one, the plain and simple language used in the subject CoC form does not require a legal mind to be understood. For another, it was not as if petitioner had no choice but to accomplish the subject CoC without the assistance of counsel. Her own allegations revealed that she accomplished her 2012 CoC on September 27, 2012 and that she only filed the same five days thereafter or on October 2, 2012.[299] This shows that petitioner had had ample time not only to reflect on the declarations she made in her 2012 CoC, but also to consult a lawyer regarding the entries that she provided therein should there be matters which were

[299] *Rollo* (G.R. No. 221697), Vol. I, p. 27.

indeed unclear to her. After all, she is not expected to have simply taken the filling out of her CoC lightly since aside from its being a sworn document, a CoC is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack thereof.[300] It is a statement by a person seeking to run for a public office certifying that he/she announces his/her candidacy for the office mentioned and that he/she is eligible for that office.[301] Indeed, a valid CoC, much like the sacred ballot that a voter casts in a free and honest elections, is the bedrock of the electoral process. Its execution or accomplishment cannot be taken lightly, because it mirrors the character and integrity of the candidate who executes or accomplishes it – that candidate's uncompromising fidelity to truth and rectitude. Yes, indeed, especially if that candidate is aspiring to be elected to the highest office in the land: the Presidency, from whom only the best and finest attributes of the truly Filipino character, intellect, patriotism, allegiance and loyalty are sought after and expected. Verily, this explains why the law provides for grounds for the cancellation and denial of due course to CoC.[302] Here it appears, however, petitioner's actions evinced unusual regrettable tendency to becloud plain and simple truth concerning such commonplace things as the real time-stretch of her residence in this country. Petitioner chose not to secure a resident visa. She therefore knew that prior to her taking her oath of allegiance to the Republic and her abandoning her U.S. domicile, her stay here was merely temporary. This presumed knowledge is imposed upon every individual by Article 3 of the Civil Code which states that "[i]gnorance of the law excuses no one from compliance therewith."

Notably, when one runs for an elective public office, it is imperative to first know the qualifications required of the office and then to assess whether such qualifications have been met. Hence, petitioner is reasonably expected to know the

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[300] *Sinaca v. Mula,* 373 Phil. 896, 908 (1999).

[301] *Id*.

[302] *Miranda v. Abaya,* 370 Phil. 642, 658 (1999).

requirements of the office she is running for, and to determine whether she satisfactorily meets those requirements. One cannot just aspire to occupy a position without making some self-examination whether he/she is qualified. In petitioner's case, precisely because her adoptive father's qualifications were then under question when he ran for President in 2004, then there is more reason for petitioner to carefully evaluate and assess her eligibility and qualifications so that she would not be trapped into the same quagmire her adoptive father fell into.

Petitioner invokes the case of *Marcos.* There, petitioner Imelda, in her CoC for Representative of the First District of Leyte for the May 8, 1995 elections, initially answered *"seven"* months on the space requiring information on her "residence in the constituency where she seeks to be elected immediately preceding the election." A couple of weeks after her filing of the said CoC and also following the initiation by her then would-be opponent Cirilo Roy Montejo (Montejo) of a Petition for Cancellation and Disqualification before the Comelec, Imelda sought to correct the said entry by changing it from *"seven"* to *"since childhood"* through an Amended/Corrected CoC. During the proceedings relative to the said petition, Imelda averred that the entry of the word *"seven"* in her original CoC was the result of an "honest misinterpretation" which she sought to rectify by adding the words "since childhood" in her Amended/Corrected CoC. Although debunked by the Comelec, Imelda's claim of honest representation was upheld when the case eventually reached the Court.

To be sure, petitioner cannot rely on *Marcos* to support her claim of honest mistake. There, what prompted Imelda to jot down the questioned entry in her CoC was the confusion caused by the attendant circumstances, *viz.*:

> [W]hen herein petitioner announced that she would be registering in Tacloban City to make her eligible to run in the First District, private respondent Montejo opposed the same, claiming that petitioner was a resident of Tolosa, not Tacloban City. Petitioner then registered in her place of actual residence in the First District, which was Tolosa, Leyte, a fact which she subsequently noted down in her Certificate

of Candidacy. A close look at said certificate would reveal the possible source of the confusion: the entry for residence (Item No. 7) is followed immediately by the entry for residence in the constituency where a candidate seeks election thus:

7. RESIDENCE (complete Address): *Brgy. Olot, Tolosa, Leyte*

   POST OFFICE ADDRESS FOR ELECTION PURPOSES: *Brgy. Olot, Tolosa, Leyte*

8. RESIDENCE IN THE CONSTITUENCY WHERE I SEEK TO BE ELECTED IMMEDIATELY PRECEDING THE ELECTION;______ Years and *Seven* Months

Having been forced by private respondent [Montejo] to register in her place of actual residence in Leyte instead of petitioner's claimed domicile, it appears that petitioner had jotted down her period of stay in her actual residence in a space which required her period of stay in her legal residence or domicile. The juxtaposition of entries in Item 7 and Item 8 – the first requiring actual residence and the second requiring domicile – coupled with the circumstances surrounding petitioner's registration as a voter in Tolosa obviously led to her writing down an unintended entry for which she could be disqualified.[303]

It was under the said factual milieu that this Court held that Imelda committed an honest mistake when she entered the word *"seven"* in the space for residence in the constituency where she seeks to be elected immediately preceding the election. In the case of petitioner, no analogous circumstance exists as to justify giving similar credit to her defense of honest mistake. No seemingly related item was juxtaposed to Item No. 11 of the 2012 COC as to cause confusion to petitioner. And as earlier discussed, Item No. 11 is clear and simple as to its meaning and import. More important, the question raised in *Marcos* was Imelda's lack of eligibility to run because she failed to comply with residency requirement. In contrast, the question raised in petitioner's case is her false material representations in the entries she made in her 2015 CoC. We also hasten to add that as

[303] *Id.* at 381.

correctly discerned by respondent Contreras:

> And unlike the petitioner in *Romualdez Marcos* whose false entry in her COC would disqualify her even as the correct period satisfies the requirement by law and would therefore render her qualified to become a member of the House of Representatives, the false entry in herein petitioner's COC would allow her to be qualified even as the true period of legal residence is deficient according to law and would render her unqualified for the position of President.[304]

It is in this context that l cannot accept petitioner's claim of honest mistake.

True, petitioner did try to correct her alleged mistakes through her public statements. But since her defense of honest mistake is now debunked, this becomes irrelevant. Besides, I cannot help but conclude that these public statements were for the purpose of representing to the general public that petitioner is eligible to run for President since they were made at a time when she was already contemplating on running for the position. They were not made at the earliest opportunity before the proper forum. These statements could even be interpreted as part of petitioner's continuing misrepresentation regarding her qualification and eligibility to run as President.

Based on the foregoing, it is my conclusion that petitioner knowingly made a false material representation in her 2015 CoC sufficient to mislead the electorate into believing that she is eligible and qualified to become a President.

No grave abuse of discretion on the part of the Comelec in denying due course to and/or cancelling petitioners 2015 CoC based on petitioner's material misrepresentation as to her period of residence in the Philippines.

In sum, I find that the Comelec committed no grave abuse of discretion, amounting to lack or excess of jurisdiction, in

[304] *Rollo* (G.R. Nos. 221698-700), Vol. VI, p. 3726.

taking cognizance of the petitions and in denying due course to and cancelling petitioner's 2015 CoC. To my mind, it properly exercised its power to determine whether a candidate's CoC contains false material representation; its resolution was anchored on settled jurisprudence and fair appreciation of facts; and it accorded the parties ample opportunity to be heard and to present evidence. Conversely stated, it is my opinion that the Comelec did not usurp the jurisdiction of the SET, or the PET, or the DOJ or any other tribunal; it did not disregard or contravene settled jurisprudence; and it did not violate the parties' right to due process. Thus, I find that petitioner miserably failed to hurdle the bar set by this Court in *Sabili,* that is, to prove that the Comelec was *so grossly unreasonable* in its appreciation and evaluation of evidence as to amount to an error of jurisdiction. Petitioner miserably fell short of portraying that the Comelec had whimsically, arbitrarily, capriciously and despotically exercised its judgment as to amount to grave abuse of discretion.

Citizenship

Considering the conclusion I have reached relative to petitioner's material misrepresentation regarding her period of residence in the Philippines, and considering further that based even only thereon, her 2015 CoC should be cancelled and denied due course, I deem it wise and prudent to withhold passing judgment at this time regarding petitioner's citizenship. Indeed, it is tempting to seize this opportunity to sit in judgment on the issue of citizenship, which has generated so much attention, invited heated and vigorous discussion, and evoked heightened emotions; not only that, the issue at hand is novel and of first impression. However, a loftier interest dictates that we take pause and exhaust all possible avenues and opportunities to study the issue more dispassionately. After all, any judgment at this time upon this issue might directly impact on G.R. No. 221538 *(Rizalito Y. David v. Senate Electoral Tribunal),* which is a *Quo Warranto* case seeking the removal of petitioner as a Senator of the Philippines wherein her natural-born citizenship status is directly assailed.

I believe that the resolution of the issue on petitioner's citizenship must be carefully studied and deliberated upon. I venture to say that we may not only be dealing with foundlings *per se.* Any hasty or ill-considered ruling on this issue could open the floodgates to abuse by certain groups and individuals looking only after their own interest to the prejudice and undoing of our motherland. Non-Filipinos might use the ruling to advance their vested interests by simply posing as foundlings so that they would be presumed or cloaked with natural-born citizenship. They could use this as an avenue to obtain Filipino citizenship or natural-born status which they could not ordinarily gain through ordinary naturalization proceedings. I am not pretending to be a doomsayer, far from it, but I prefer to tread carefully. After all, it is no less than the supremely precious interest of our country that we wish both to defend and to protect. Our country must not only be defended and protected against outside invasion, it must also be secured and safeguarded from any internal threat against its sovereignty and security. I do not want to wake up someday and see my beloved country teeming with foreigners and aliens posing as natural-born Filipinos while the real natives are thrown into oblivion or relegated second or third class citizens who have become strangers in their own homeland. My objective is only to secure, protect and defend the Philippines from being ruled by non-Filipinos. This Court should stand firm on its own bearing and not allow itself to be swept by the tides of sentimentality and emotion. The Filipino people expect no less from us but to carefully, deliberately, objectively and dispassionately resolve the issue with national interest utmost in our heart and mind.

But there is more. For no less consequential is the Doctrine of Constitutional Avoidance, under which this Court may choose to ignore or side-step a constitutional question if there is some other ground upon which the case can be disposed of.[305] Such is the situation in this case.

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[305] Dissenting Opinion of former Chief Justice Panganiban in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas,* 487 Phil. 531, 630 (2004), reads:

It is not improbable, of course, that petitioner was born to Filipino parents; yet the fact remains that their identities are unknown. In short, petitioner's citizenship is uncertain. Thus, I feel that we should not overlook altogether her much publicized efforts to obtain deoxyribonucleic acid (DNA) evidence to prove her genealogy. She could use this breather to gather such evidence. Petitioner surely has biological parents. It is indeed surprising that these parents, or any close relatives, have not come forward to claim their ties to someone so highly respected and so well recognized as one of the worthy leaders of the country. While it defies human nature to resist the natural impulse to claim one's own child, the sad reality is that there are still many parents who abandon their child, depriving said child not only of parental love and care, but also identity and pedigree. Every opportunity should thus be given to the innocent child to trace his/her parentage and determine compliance with the Constitution. This opportunity and this privilege should not be time-bound, and should be afforded to every foundling at any stage of his/her life. Thus, even if the Court rules on her citizenship now, that ruling can be changed or altered any time when there is certainty or definiteness about her biological lineage because there is generally no *res judicata* in matters of citizenship. As the Court has declared in *Moy Ya Lim Yao v. Commissioner of Immigration,*[306] whenever the citizenship of a person is material or indispensable in a judicial or administrative case, the ruling therein as to the person's citizenship is generally not considered as *res judicata.* Thus, it may be threshed out again and again as the occasion demands,[307] stock being taken of the fact that the requisites enumerated in *In re Petition for Naturalization of Zita Ngo Burca v. Republic,*[308] reiterated

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[306] *Supra* note 217 at 855.

[307] *Id.*

[308] 151-A Phil. 720. It was held that:

[W]here the citizenship of a party in a case is definitely resolved by a court or by an administrative agency, as a material issue in the controversy,

in *Go, Sr. v. Ramos,*[309] are all present.

According unto petitioner ample opportunity to trace her genealogy is also better than a) creating a presumption that she is a natural-born citizen or fashioning a new specie/category of citizenship based on statistical probabilities; or b) denying her claim of citizenship outright. Aliens with known parents may just take advantage of such presumption by representing themselves as foundlings if only to be entitled to purchase real property, engage in nationalized business, or even run for public office where a natural-born status is required. On the other hand, we might unwittingly deny petitioner her rightful citizenship which she could very well establish via the exertion or employment of more deliberate, vigorous, and sustained efforts.

Indeed, it is imperative for the Court to carefully tread on the issue of citizenship. As petitioner postulates in her Petitions, "[w]hat is at stake in this case is not only a foundling's right to run for high public offices, but the enjoyment of a host of even seemingly ordinary rights or positions which our laws reserve only for natural-born citizens."[310] After all, the issue of citizenship impacts not solely on petitioner but also on those similarly situated like her; it also involves the sovereignty and security of our country. We must not lose sight of the fact that the citizens of the country are the living soul and spirit of the nation, and the very reason and justification for its existence and its preservation. Our rights, prerogatives and privileges as Filipino citizens are the bedrock of our Constitution.

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after a full blown hearing, with the active participation of the Solicitor General or his authorized representative, and this finding on the citizenship of the party is affrrmed by this Court, the decision on the matter shall constitute conclusive proof of such person's citizenship, in any other case or proceeding. But it is made clear that in no instance will a decision on the question of citizenship in such cases be considered conclusive or binding in any other case or proceeding, unless obtained in accordance with the procedure herein stated. (*ld*. at, 730-731.)

[309] *Supra* note 218.

[310] *Rollo* (G.R. No. 221697), Vol. I, p. 7.

In ending, I wish to reiterate the very precept and principle that is at once the capstone and the polestar that had guided the undersigned in drafting his opinion in this landmark case: this statement from the December 1, 2015 Resolution of the Comelec's Second Division in SPA No. 15-001 (DC): "A person who aspires to occupy the highest position in the land must obey the highest law of the land."

This is as it should be.

For the foregoing reasons, I vote to **DISMISS** the petitions.

DISSENTING OPINION

PERLAS-BERNABE, *J*.:

I dissent.

Amid the complexity of the legal issues and political implications involved, this Court, in ruling on this matter – as in every other similar matter before it – must always harken back to its parameters of review over rulings of the Commission on Elections (COMELEC). It is on this basic but resolute premise that I submit this dissent.

I.

In *Mitra v. COMELEC*[1] *(Mitra),* it was explained that "[t]he basis for the Court's review of COMELEC rulings under the standards of Rule 65 of the Rules of Court is Section 7, Article IX-A of the [1987] Constitution which provides that '[u]nless otherwise provided by the Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court **on *certiorari*** by the aggrieved party within thirty [(30)] days from receipt of a copy thereof.' For this reason, the Rules of Court provide for a separate rule (Rule 64) specifically applicable only to decisions of the COMELEC and the Commission on Audit. This Rule expressly refers to the application of Rule 65 in the filing of a petition for *certiorari,* subject to the exception clause- 'except as hereinafter provided.'"[2]

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[1] 648 Phil. 165 (2010).

[2] *Id*. at 182, citing *Pates v. COMELEC,* 609 Phil. 260, 265 (2009); emphasis and underscoring supplied.

"The purpose of a petition for *certiorari* is to determine whether the challenged tribunal has acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. Thus, any resort to a petition for *certiorari* under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure is **limited to the resolution of jurisdictional issues.**"[3]

In *Miranda v. Abaya,*[4] this Court held that "an act of a court or tribunal may only be considered to have been done in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. **The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law,** as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility x x x. **An error of judgment committed in the exercise of its legitimate jurisdiction is not the same as 'grave abuse of discretion.' An abuse of discretion is not sufficient by itself to justify the issuance of a writ of *certiorari.* The abuse must be grave and patent, and it must be shown that the discretion was exercised arbitrarily and despotically** x x x."[5]

In this case, the COMELEC held that petitioner Mary Grace Natividad S. Poe-Llamanzares (petitioner) made false representations in her certificate of candidacy (CoC) for President filed on October 15, 2015[6] (2015 CoC) when she declared under oath that she is a natural-born citizen of this

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[3] *Ocate v. COMELEC,* 537 Phil. 584, 594-595 (2006); emphasis and underscoring supplied.

[4] *Miranda v. Abaya,* 370 Phil. 642 (1999).

[5] *Id*. at 663; emphases and underscoring supplied, citations omitted.

[6] See COMELEC *En Banc's* Resolutions dated December 23, 2015 in SPA No. 15-001 (DC), *rollo* (G.R. No. 221697), Vol. I, p. 229; and in SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC), *rollo* (G.R. Nos. 221698-700), Vol. I, p. 356.

country and would be a resident thereof for ten (10) years and eleven (11) months on the day immediately preceding the May 9, 2016 Elections.[7] Accordingly, the COMELEC cancelled petitioner's CoC.[8]

Finding the verdict to be "deadly diseased with grave abuse of discretion from root to fruits,"[9] the *ponencia* nullifies the COMELEC's assailed rulings,[10] and even goes to the extent of declaring petitioner as an eligible candidate.[11]

As to its first reason, the *ponencia* posits that the COMELEC, in ruling on a petition to deny due course to or cancel a CoC, is restrained "from going into the issue of the qualifications of the candidate for the position, if, as in this case, such issue is yet undecided or undetermined by the proper authority."[12]

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[7] See discussions in COMELEC Second Division's Resolution dated December 1, 2015 in SPA No. 15-001 (DC), *rollo* (G.R. No. 221697), Vol. I, pp.296-2011; and in COMELEC First Division's Resolution dated December 11, 2015 in SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC), *rollo* (G.R. Nos. 221698-700, Vol. I, pp. 251-258.

[8] See COMELEC En Banc's Resolutions dated December 23, 2015 in SPA No. 15-001 (DC), *rollo* (G.R. No. 221697), Vol. I, p. 258; and in SPA Nos. 15-2002 (DC), 15-007 (DC), and 15-139 (DC), *rollo* (G.R. Nos. 221698-700), Vol. I, p. 381.

[9] *Ponencia,* p. 44..

[10] The assailed rulings are as follows: (*a*) COMELEC Second Division's Resolution dated December 1, 2015 in SPA No. 15-001 (DC), *rollo* (G.R. No. 221697), Vol. I, pp. 190-223; (*b*) COMELEC *En Banc's* Resolution dated December 23, 2015 in SPA No. 15-001 (DC), *rollo* (G.R. No. 221697), Vol. I, pp. 224-259; (*c*) COMELEC First Division's Resolution dated December 11, 2015 in SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC), *rollo* (G.R. Nos. 221698-700), Vol. I, pp. 216-264; and (*d*) COMELEC *En Banc's* Resolution dated December 23, 2015 in SPA Nos. 15-002 (DC), 15-007 (DC), and 15-139 (DC), *rollo* (G.R. Nos. 221698-700), Vol. I, pp. 352-381.

[11] See *ponencia,* p. 45.

[12] *Id*. at 16.

Consequently, "[t]he COMELEC cannot itself, in the same cancellation case, decide the qualification or lack thereof of the candidate."[13]

I disagree.

The COMELEC's power to deny due course to or cancel a candidate's CoC stems from Section 2, Article IX-C of the 1987 Constitution which grants it the authority to **"[e]nforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall"** and to **"[d]ecide, except those involving the right to vote, all questions affecting elections** x x x." In *Loong v. COMELEC,*[14] it was elucidated that:

> Section 2(1) of Article IX(C) of the Constitution gives the COMELEC the broad power "to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum[,] and recall." **Undoubtedly, the text and intent of this provision is to give COMELEC all the necessary and incidental powers for it to achieve the objective of holding** free, orderly, honest, peaceful, and credible elections. Congruent to this intent, this Court has not been niggardly in defining the parameters of powers of COMELEC in the conduct of our elections.[15] (Emphasis and underscoring supplied)

Likewise, in *Bedol v. COMELEC (Bedol)*:[16]

> The quasi-judicial power of the COMELEC embraces the power to resolve controversies arising from the enforcement of election laws, **and to be the sole judge of all pre-proclamation controversies;** x x x.[17] (Emphasis and underscoring supplied)

Based on the text of the Constitution, and bearing in mind the import of cases on the matter, there is no perceivable

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[13] *Id.*

[14] 365 Phil. 386 (1999).

[15] *Id.* at 419-420.

[16] 621 Phil. 498 (2009).

[17] *Id.* at 510.

restriction which qualifies the exercise of the COMELEC's adjudicatory power to declare a candidate ineligible and thus, cancel his/her CoC with the need of a prior determination coming from a "proper authority."

Contrary to the *ponencia's* interpretation, the COMELEC, under Rule 25 of its Resolution No. 9523[18] dated September 25, 2012, may disqualify any candidate **found by the Commission to be suffering from any disqualification provided by law or the Constitution:**

Rule 25 - Disqualification of Candidates

Section 1. *Grounds.* – Any candidate who, in an action or protest in which he is a party, is declared by final decision of a competent court, guilty of, **or found by the Commission to be suffering from any disqualification provided by law or the Constitution.**

x x x x x x x x x (Emphasis supplied)

It is confounding that the *ponencia* ignores the second prong of the provision and myopically zeroes-in on the first which but procedurally reflects the COMELEC's power to disqualify a candidate already declared by final decision of a competent court guilty of any disqualification, such as those accessory to a criminal conviction.[19]

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[18] Entitled "IN THE MATTER OF THE AMENDMENT TO RULES 23, 24 AND 25 OF THE COMELEC RULES OF PROCEDURE FOR PURPOSES OF THE 13 MAY 2013 NATIONAL, LOCAL AND ARMM ELECTIONS AND SUBSEQUENT ELECTIONS."

[19] "Even without a petition under either Section 12 or Section 78 of the Omnibus Election Code, or under Section 40 of the Local Government Code, the COMELEC is under a legal duty to cancel the certificate of candidacy of anyone suffering from the accessory penalty of perpetual special disqualification to run for public office by virtue of a final judgment of conviction. The final judgment of conviction is notice to the COMELEC of the disqualification of the convict from running for public office. The law itself bars the convict from running for public office, and the disqualification is part of the final judgment of conviction. The final judgment of the court is addressed not only to the Executive branch, but also to other government agencies tasked to implement the final judgment under the law.

As edified in *Bedol,* it is the COMELEC which is the "sole judge of all pre-proclamation controversies."[20] Thus, it would greatly emasculate the COMELEC's constitutionally-conferred powers by treating it as a mere administrative organ relegated to the task of conducting perfunctory reviews only to spot falsities on the face of CoCs or ministerially enforce declarations from a prior authority.

As in this case, a "pre-proclamation controversy" may arise from a petition to deny due course to or cancel a CoC. This remedy - which is filed before and falls under the adjudicatory jurisdiction of the COMELEC is governed by Section 78, Article IX of *Batas Pambansa Bilang* 881, otherwise known as the "Omnibus Election Code of the Philippines"[21] (OEC):

Section 78. Petition to deny due course to or cancel a certificate of candidacy. – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively **on the ground that any material representation contained therein asrequired under Section 74[22] hereof is false.** The

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Whether or not the COMELEC is expressly mentioned in the judgment to implement the disqualification, it is assumed that the portion of the final judgment on disqualification to run for elective public office is addressed to the COMELEC because under the Constitution the COMELEC is duty bound to '[e]nforce and administer all laws and regulations relative to the conduct of an election.'24 The disqualification of a convict to run for public office under the Revised Penal Code, as affirmed by final judgment of a competent court, is part of the enforcement and administration of 'all laws' relating to the conduct of elections." *(Jalosjos, Jr. v. COMELEC,* 696 Phil. 601, 634 [2012].)

[20] *Bedol v. COMELEC, supra* note 16, at 510.

[21] (December 3, 1985).

[22] Section 74. Contents of certificate of candidacy.– The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the *Batasang Pambansa*, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he

petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. (Emphasis and underscoring supplied)

As worded, **a Section 78 petition is <u>based exclusively on the ground</u> that a CoC contains a material representation that is false.** "The false representation contemplated by Section 78 of the [OEC] pertains to [a] material fact, and is not simply an innocuous mistake. A material fact refers to a candidate's qualification for elective office such as one's citizenship and residence."[23]

While there are decided cases wherein this Court has stated that "a false representation under Section 78 must consist of 'a deliberate attempt to mislead, misinform, or hide a fact, which would otherwise render a candidate ineligible,'"[24] nowhere

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will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware or *(sic)* such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

[23] *Ugdoracion, Jr. v. COMELEC,* 575 Phil. 258, 261 (2008).

[24] *Jalover v. Osmeña,* G.R. No. 209286, September 23, 2014, 736 SCRA 267, 282, citing *Velasco v. COMELEC,* 595 Phil. 1172, 1185 (2008).

does the provision mention this requirement. In *Tagolino v. House of Representatives Electoral Tribunal* (*Tagolino*),[25] this Court enunciated that:

> **[T]he deliberateness of the misrepresentation, much less one's intent to defraud, is of bare significance in a Section 78 petition as it is enough that the person's declaration of a material qualification in the CoC be false.** In this relation, jurisprudence holds that an express finding that the person committed any deliberate misrepresentation is of little consequence in the determination of whether one's CoC should be deemed cancelled or not. What remains material is that the petition essentially seeks to deny due course to and/or cancel the CoC on the basis of one's ineligibility and that the same be granted without any qualification.[26] (Emphasis and underscoring supplied)

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

For instance, in *Villafuerte v. COMELEC,*[27] this Court echoed precedent, when it stated that "a false representation under Section 78" must be made "with an intention to deceive the electorate as to one's qualifications for public office."[28] However, this Court never looked into the circumstances that surrounded the candidate's representation. Instead, it equated deliberateness of representation with the materiality of the fact being represented in the CoC. Thus, it held therein that "respondent's nickname nickname 'LRAY JR. MIGZ' written in his COC is [not] a material misrepresentation," reasoning that the nickname "cannot be considered a material fact which pertains to his eligibility and thus qualification to run for public office."[29]

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[25] G.R. No. 202202, March 19, 2013, 693 SCRA 574.

[26] *Id*. at 592.

[27] See G.R. No. 206698, February 25, 2014, 717 SCRA 312.

[28] *Id*. at 320-321, citing *Salcedo II v. COMELEC,* 371 Phil. 390,389-390 (1999).

[29] See *id*. at 323.

In *Hayudini v. COMELEC,*[30] this Court, while dealing with a case that involved material representations pertaining to residency and voter registration, did not discuss the circumstances which would demonstrate the intent of the candidate behind his CoC representations. It again parroted precedent without any devoted discussion on the matter of intent.[31]

Similarly, in *Jalover v. Osmeña*[32] *(Jalover)* this Court just repeated precedent when it said that "[s]eparate from the requirement of materiality, a false representation under Section 78 must consist of a 'deliberate attempt to mislead, misinform, or hide a fact, which would otherwise render a candidate ineligible,"[33] but did not apply the same. In fact, a closer scrutiny of *Jalover,* which cited *Mitra,* would lead to the reasonable conclusion that jurisprudence has all the while presumed deliberateness of intent from the materiality of the falsity. The quoted passage from *Mitra* reads: "[t]he deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity x x x."[34] The "separateness" of the requirement of intent from the requisite of materiality is hence, more apparent than real. The bottom line according to *Jalover,* citing *Mitra,* is that "a candidate who falsifies a material fact cannot run."[35] This statement therefore demonstrates that the intent requirement is but a fictional superfluity, if not anomaly, which is actually devoid of its own conceptual relevance. As such, its existence in jurisprudence only serves as a perplexing, if not, hazardous, mirage.

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[30] G.R. No. 207900, April 22, 2014, 723 SCRA 223.

[31] See *id*. at 246, citing *Velasco v. COMELEC* (*supra* note 24, at 1185), which, in turn cited, among others, *Salcedo II v. COMELEC* (*supra* note 28, at 390).

[32] *Supra* note 24.

[32] *Supra* note 24.

[33] *Id.* at 282, citing *Ugdoracion, Jr. v. COMELEC* (*supra* note 23, at 261-262), further citing, among others, *Salcedo II v. COMELEC* (*supra* note 28, 385-390).

[34] *Id.*, citing *Mitra v. COMELEC,* 636 Phil. 753, 780 (2010).

[35] *Id.*

In the more recent case of *Agustin v. COMELEC,*[36] this Court, while again quoting the same passages from *Mitra,* upheld "the declaration by the COMELEC *En Banc"* – which was, by the way, acting on a Section 78 petition – "that [therein] petitioner was ineligible to run and be voted for as Mayor of the Municipality of Marcos, Ilocos Norte" on the ground that he "effectively repudiated his oath of renunciation" by the use of his US passport and, thus, "reverted him to his earlier status as a dual citizen."[37] Interestingly, this Court, consistent with the above-cited passage from *Tagolino,* stated that "[e]ven if it made no finding that the petitioner deliberately attempted to mislead or misinform as to warrant the cancellation of his CoC, the COMELEC could still declare him disqualified for not meeting the required eligibility under the Local Government Code."[38]

Again, the plain text of Section 78 reads that the remedy is based "on the ground that any material representation contained therein as required under Section 74 hereof is false." It pertains to a material representation that is false and not a "material misrepresentation." In my view, the latter is a semantic but impactful misnomer which tends to obfuscate the sense of the provision as it suggests- by employing the word "misrepresent," ordinarily understood to mean as "to give a false or misleading representation of usually with an intent to deceive or be unfair"[39] - that intent is crucial in a Section 78 petition, when, in fact, it is not.

Notably, the Dissenting Opinion of former Supreme Court Associate Justice Dante O. Tinga (Justice Tinga) in *Tecson v. COMELE*[40] *(Tecson)* explains the irrelevance of the candidate's intention or belief in ruling on a Section 78 petition. There, he even pointed out the jurisprudential missteps in the cases of *Romualdez-Marcos v. COMELEC*[41] *(Romualdez-Marcos)* and

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[36] See G.R. No. 207105, November 10,2015.

[37] *Id*.

[38] *Id*.

[39] <http.:/www.meriam-webster.com/dictionary/misrepresent> (last visited March 5, 2016).

[40] 468 Phil. 421 (2004).

[41] G.R. No. 119976, September 18, 1995, 248 SCRA 300, 326.

Salcedo II v. COMELEC[42] *(Salcedo II)* wherein the phantom requirement of "deliberate intention to mislead" was first foisted:

[I]n accordance with Section 78, *supra,* the petitioner in a petition to deny due course (to or] cancel a certificate of candidacy need only prove three elements. *First,* there is a representation contained in the certificate of candidacy. *Second,* the representation is required under Section 74. *Third,* the representation must be "material," which, according to jurisprudence, means that it pertains to the eligibility of the candidate to the office. *Fourth,* the representation is false.

Asserting that proof of intent to conceal is also necessary for a petition under Section 78 to prosper, Mr. Justice Kapunan wrote in *Romualdez-Marcos v. [COMELEC],* thus:

> It is the fact of residence, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the [C]onstitution's residency qualification requirement. *The said statement becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide afact which would otherwise render a candidate ineligible.* It would be plainly ridiculous for a candidate to deliberately and knowingly make a statement in a certificate of candidacy which would lead to his or her disqualification. [Italics in the original]

The Court, reiterated the Kapunan pronouncement in *Salcedo II v. [COMELEC].*

Adverting to *Romualdez-Marcos* and *Salcedo II,* the COMELEC *En Bane* ruled that while the element of materiality was not in question the intent to deceive was not established, not even the knowledge of falsity, thus:

> Undeniably, the question on the citizenship [of] respondent falls within the requirement of materiality under Section 78. However, *proof of misrepresentation with a deliberate attempt to mislead must still be established.* In other words, direct and substantial evidence showing that the person whose certificate of candidacy is being sought to be cancelled or denied

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[42] *Supra* note 28.

due course, *must have known or have been aware of the falsehood as appearing on his certificate.* [Italics in the original]

The pronouncements in *Romualdez-Marcos* and *Salcedo II,* however, are clearly not supported by a plain reading of the law. **Nowhere in Section** 78 is **it stated or implied that there be an intention to deceive for a certificate of candidacy to be denied due course or be cancelled.** All the law requires is that the "material representation contained [in the certificate of candidacy] as required under Section 74 x x x is false." Be it noted that a hearing under Section 78 and Rule 23 is a quasi-judicial proceeding where the intent of the respondent is irrelevant. Also drawing on the principles of criminal law for analogy, the "offense" of material representation is *malum prohibitum* not *malum in se.* Intent is irrelevant. When the law speaks in clear and categorical language, there is no reason for interpretation or construction, but only for application.

The reason for the irrelevance of intent or belief is not difficult to divine. Even if a candidate believes that he is eligible and purports to be so in his certificate of candidacy, but is subsequently proven in a Rule 23 proceeding to be, in fact or in law, not eligible, it would be utterly foolish to allow him to proceed with his candidacy. The electorate would be merely squandering its votes for –– and the COMELEC, its resources in counting the ballots cast in favor of –– a candidate who is not, in any case, qualified to hold public office.

The Kapunan pronouncement in the Romualdez-Marcos case did not establish a doctrine. It is not supported bv law, and it smacks of judicial legislation. Moreover, such judicial legislation becomes even more egregious[,] considering that it arises out of the pronouncement of only one Justice, or 6% of a Supreme Court. While several other Justices joined Justice Kapunan in upholding the residence qualification of Rep. Imelda Romualdez-Marcos, they did not share his dictum. It was his by his lonesome. Justice Puno had a separate opinion, concurred in by Justices Bellosillo and Melo. Justice Mendoza filed a separate opinion too, in which Chief Justice Narvasa concurred. Justices Romero and Francisco each had separate opinions. Except for Chief Justice Narvasa and Justice Mendoza, the Justices in the majority voted to grant Rep. [Marcos's] petition on the ground that she reestablished her domicile in Leyte upon being widowed by the death of former President Marcos.

On the other hand, the reiteration of the *Kapunan* pronouncement in *Salcedo* is a *mere obiter dictum.* The Court dismissed the disqualification case on the ground that the respondent's use of the surname *"Salcedo"* in her certificate of candidacy is not a material representation since the entry does not refer to her qualification for elective office. Being what it is, the *Salcedo* obiter cannot elevate the *Kapunan* pronouncement to the level of a doctrine regardless of how many Justices voted for *Salcedo.* Significantly, Justice Puno concurred in the result only.

Thus, in this case, it does not matter that respondent knows that he was not a natural-born Filipino citizen and, knowing such fact, proceeded to state otherwise in his certificate of candidacy, with an intent to deceive the electorate. A candidate's citizenship eligibility in particular is determined by law, not by his good faith. It was, therefore, improper for the COMELEC to dismiss the petition on the ground that petitioner failed to prove intent to mislead on the part of respondent.[43] (Emphases and underscoring supplied)

I could not agree more with Justice Tinga's exposition. Truly, "[n]owhere in Section 78 is it stated or implied that there be an intention to deceive for a certificate of candidacy to be denied due course or be cancelled."[44] At the risk of belaboring the point, the candidate's intent to mislead or misinform on a material fact stated in his/her CoC is of no consequence in ruling on a Section 78 petition. To premise a Section 78 petition on a finding of intent or belief would create a legal vacuum wherein the COMELEC becomes powerless under the OEC to enjoin the candidacy of ineligible presidential candidates upon a mere showing that the material representations in his/her CoC were all made in good faith. It should be emphasized that "[**a**) **candidate's citizenship eligibility in particular is determined by law, not by his good faith."**[45] With this, the *Romualdez-Marcos* and *Salcedo II* rulings which "judicially legislated" this requirement should, therefore, be abandoned as legal aberrations.

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[43] *Tecson v. COMELEC, supra*, note 40, at 606-609; citations omitted.

[44] *Id.* at 607.

[45] *Id.* at 608-609.

Neither is it acceptable to think that the matter of eligibility particularly, that of a candidate for President - can only be taken up before the Presidential Electoral Tribunal (PET) after a candidate has already been voted for. The COMELEC's constitutional mandate cannot be any clearer: it is empowered to "(e]nforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall" and to "(d]ecide, except those involving the right to vote, all questions affecting elections x x x."[46] As observed by Senior Associate Justice Antonio T. Carpio in his own opinion in *Tecson:*

> This broad constitutional power and function vested in the COMELEC is designed precisely to avoid any situation where a dispute affecting elections is left without any legal remedy. If one who is obviously not a natural-born Philippine citizen, like Arnold [Schwarzenegger], runs for President, the COMELEC is certainly not powerless to cancel the certificate of candidacy of such candidate. There is no need to wait until after the elections before such candidate may be disqualified.[47]

Verily, we cannot tolerate an absurd situation wherein a presidential candidate, who has already been determined by the COMELEC to have missed a particular eligibility requirement and, thus, had made a false representation in his/her CoC by declaring that he/she is eligible, is still allowed to continue his/her candidacy, and eventually be voted for. The proposition[48] that the matter of eligibility should be left to the PET to decide only after the elections is a dangerous one for not only does it debase the COMELEC's constitutional powers, it also effectively results in a mockery of the electoral process, not to mention the disenfranchisement of the voters. Clearly, the votes of the Filipino people would be put to waste if we imprudently take away from the COMELEC its capability to

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[46] See paragraphs (1) and (2), Section 2, Article IX-C of the 1987 Constitution.

[47] Tecson v. COMELEC, supra note 40, at 626.

[48] See separate Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa, joined by Associate Justice Diosdado M. Peralta, p. 3.

avert the fielding of ineligible candidates whose votes therefor shall be only considered stray. The Filipino people deserve to know prior to the elections if the person they intend to vote for is ineligible. In all reasonable likelihood, they would not have cast their votes for a particular candidate who would just be ousted from office later on.

At any rate, the jurisdictional boundaries have already been set: the COMELEC's jurisdiction ends, and that of the PET begins, only when a candidate therefor has already been elected, and thereafter, proclaimed. [49] In *Tecson,* this Court explained that the PET's jurisdiction under Section 4, Article VII of the 1987 Constitution is limited only to a post-election scenario:

> The Supreme Court, sitting *en banc,* shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.
>
> x x x x x x x x x
>
> Ordinary usage would characterize a "contest" in reference to a **post-election scenario.** Election contests consist of either an election protest or a *quo warranto* which, although two distinct remedies, would have one objective in view, *i.e.,* to dislodge the winning candidate from office. A perusal of the phraseology in Rule 12, Rule 13, and Rule 14 of the *"Rules of the Presidential Electoral Tribunal,"* promulgated by the Supreme Court *en banc* on 18 April 1992, would support this premise -
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> Rule 12. *Jurisdiction.* —The Tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of the *President* or *Vice-President* of the Philippines.
>
> Rule 13. *How Initiated.* — An election contest is initiated by the filing of an election protest or a petition for *quo warranto* against the President or Vice-President. An election protest shall

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[49] See Rules 15 and 16 of the 2010 RULES OF THE PRESIDENTIAL ELECTORAL TRIBUNAL, A.M. No. 10-4-29-SC dated May 4, 2010. See also Dissenting Opinion of Associate Justice Mariano C. Del Castillo (Justice Del Castillo), p. 28.

not include a petition for *quo warranto.* A petition for *quo warranto* shall not include an election protest.

Rule 14. *Election Protest.* — Only the registered candidate for President or for Vice-President of the Philippines who received *the second or third highest number of votes* may contest the election of the President or the Vice-President, as the case may be, by filing a verified petition with the Clerk of the Presidential Electoral Tribunal within thirty (30) days after the *proclamation of the winner.*

The rules categorically speak of the jurisdiction of the tribunal over contests relating to the election, returns and qualifications of the "President" or "Vice-President," of the Philippines, **and not of "candidates" for President or Vice-President.** A *quo warranto* proceeding is generally defined as being an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office. In such context, **the election contest can only contemplate a post-election scenario.** In Rule 14, only a registered candidate who would have received either the second or third highest number of votes could file an election protest. This rule again presupposes a **post-election scenario.**

It is fair to conclude that the jurisdiction of the Supreme Court, defined by Section 4, paragraph 7, [Article VII] of the 1987 Constitution, **would not include cases directly brought before it, questioning the qualifications of a candidate for the presidency or vice-presidency before the elections are held.**[50] (Emphases supplied)

Thus, I respectfully object to the *ponencia's* enfeebling take on the COMELEC's power to determine the eligibility of a candidate prior to the elections.

In fact, the *ponencia's* view is also inconsistent with its declaration that petitioner is "QUALIFIED to be a candidate for President in the National and Local Elections of 9 May 2016."[51] If the COMELEC had no power to determine the eligibility of petitioner, then this Court – which is only tasked to exercise its power of review under the parameters of a petition for *certiorari* and, thus, should have either nullified or affirmed the assailed rulings – could not proceed and assume jurisdiction

[50] *Tecson v. COMELEC, supra* note 40, at 460-462.

[51] *Ponencia,* p. 45.

outside of the context of the case before it and make this *ad hoc* pronouncement. The declaration not only serves to confuse the true powers of the COMELEC, it also distorts the manner of our review.

II.

The central question in this case, to which the analysis of grave abuse of discretion is applied, is whether or not the representations of petitioner regarding her residency – particularly, that she would be a resident of this country for ten (10) years and eleven (11) months on the day immediately preceding the May 9, 2016 Elections – and her citizenship – particularly, that she is a natural-born citizen of the Philippines– in her 2015 CoC are false. Notably, a finding of falsity even as to one representation would already be enough for the COMELEC to deny due course to or cancel her 2015 CoC. To recount, Section 74 – to which the false representation ground under Section 78 of the OEC relates to – provides that "[t]he 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** x x x." A candidate is eligible to run for the post of President for as long as he or she is a natural-born citizen of the Philippines and a resident thereof for at least ten (10) years immediately preceding the elections, among other requirements. These citizenship and residency requirements are delineated in Section 2, Article VII of the 1987 Constitution:

> Section 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

All of the requirements must concur. Otherwise, the candidate is ineligible to run for President; and, hence, a contrary declaration therefor, already amounts to a false material representation within the ambit of Section 78 of the OEC.

On the issue of residency, the *ponencia* claims that the COMELEC gravely abused its discretion in concluding that

petitioner falsely represented in her 2015 CoC that she is a resident of the Philippines for at least ten (10) years and eleven (11) months immediately preceding the May 9, 2016 Elections as, in fact, it found her representation to be true.[52] In so finding, the *ponencia* gave credence to the voluminous and undisputed evidence which petitioner presented showing that she and her family abandoned their US domicile and relocated to the Philippines for good, which began on her arrival on May 24, 2005.[53] It also pointed out that petitioner's entry in the Philippines visa-free as a *balikbayan* should not be taken against her since, consistent with the purpose of the law, she actually reestablished life here. [54] Finally, the *ponencia* disregarded petitioner's prior statement in her 2012 CoC for Senator wherein she declared to be a resident of the Philippines for six years (6) years and six (6) months before May 13, 2013, thus implying that she started being a Philippines resident only in November 2006.[55]

I beg to differ.

"To successfully effect a change of domicile[,] one must demonstrate an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one and definite acts which correspond with the purpose. **In other words, there must basically be *animus manendi* coupled with *animus non revertendi.*** The purpose 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."[56]

In ruling that petitioner failed to reestablish her domicile in the Philippines on May 24, 2005 as she claimed, the COMELEC primarily observed that all of the evidence presented by petitioner were executed before July 2006, which is the date of reacquisition

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[52] *Ponencia,* pp. 37-38.

[53] *Id*.

[54] See *id*. at 39-40.

[55] See *id*. at 40-41.

[56] *Domino v. COMELEC,* 369 Phil. 798, 819 (1999).

of her Filipino citizenship. Citing the cases of *Coquilla v. COMELEC (Coquilla),*[57] *Japzon v. COMELEC (Japzon),*[58] and *Caballero v. COMELEC (Caballero),*[59] the COMELEC pronounced that the earliest possible date that she could have reestablished her residence in the Philippines was when she reacquired her Filipino citizenship in July 2006.

In *Coquilla,* the Court ruled that an alien, such as petitioner, may waive his/her status as a non-resident and thus, become a resident alien by obtaining an immigrant visa under the Philippine Immigration Act of 1948 and an Immigrant Certificate of Residence. Prior to this waiver, he/she is a visitor, a non-resident alien.[60] Hence, without this waiver, petitioner remained to be a visitor or a non-resident alien until July 2006.

On the other hand, in *Japzon,* the Court declared that reacquisition under Republic Act No. (RA) 9225,[61] otherwise known as the "Citizenship Retention and Reacquisition Act of 2003," has no automatic impact on a candidate's domicile as he/she only had the option to again establish his/her domicile.[62]

Meanwhile, in *Caballero,* this Court held that a candidate must still prove that after becoming a Philippine citizen, he/she had reestablished his new domicile of choice.[63]

To my mind, the COMELEC's reliance on *Coquilla* is apt. As the records disclose, petitioner returned to the

[57] 434 Phil. 861 (2002).

[58] 596 Phil. 354 (2009).

[59] See G.R. No. 209835, September 22, 2015.

[60] See *Coquilla v. COMELEC, supra* note 57, at 873-874.

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

[62] *Japzon v. COMELEC, supra* note 58, at 369.

[63] See *Caballero v. COMELEC, supra* note 59.

Philippines on May 24, 2005 under the *Balikbayan* Program,[64] and therefore, only obtained the status of a temporary resident. Specifically, Section 3 of RA 6768,[65] as amended by RA 9174,[66] merely accorded her the benefit of visa-free entry to the Philippines for a period of one (1) year:

Section 3. Benefits and Privileges of the *Balikbayan.* - The *balikbayan* and his or her family shall be entitled to the following benefits and privileges:

x x x x x x x x x

(c) Visa-free entry to the Philippines for **a period of one (1) year** for foreign passport holders, with the exception of restricted nationals[.] (Emphasis and underscoring supplied)

As such, since she did not waive her status of being a non-resident alien, her stay here upon her return on May 24, 2005 up until she reacquired Philippine citizenship in July 2006 should only be considered as temporary.

While it is not entirely indispensable that one first acquires the status of a permanent resident in order to reestablish his/her domicile in the Philippines, it is, nonetheless, highly indicative of his/her *animus manendi* and *animus non revertendi.* While it is undisputed that petitioner resigned from her work in the US in 2004; acquired, together with her husband, quotations and estimates from property movers regarding the relocation of all their goods, furniture, and cars from the US to the Philippines as early as March 2005; enrolled two (2) of her children in Philippine Schools for the school year 2005 to 2006; and purchased a condominium unit in the Philippines in the

[64] See *ponencia,* pp. 39-40. See also Associate Justice Arturo D. Brion's Dissenting Opinion, p. 5.

[65] Entitled "AN ACT INSTITUTING A BALIKBAYAN PROGRAM," approved on November 3, 1989.

[66] Entitled "AN ACT AMENDING REPUBLIC ACT NUMBERED 6768, ENTITLED, 'AN ACT INSTITUTING A BALIKBAYAN PROGRAM, BY PROVIDING ADDITIONAL BENEFITS AND PRIVILEGES TO BALIKBAYAN AND FOR OTHER PURPOSES." approved on November 7, 2002.

second half of 2005,[67] petitioner never bothered applying for permanent residency up until July 2006,[68] which is the date when she reacquired Filipino citizenship under RA 9225, and consequently, waived her status as a non-resident alien. This means that from her return on May 24, 2005 up until July 2006, she, despite the above-mentioned overt acts, stayed in the Philippines only as a temporary resident. If at all, her inattention to legitimize her so-called "permanent residence" in the Philippines in accordance with our Immigration Laws stamps a significant question mark on her *animus manendi* and *animus non revertendi* on May 24, 2005. Thus, the COMELEC can hardly be blamed from reaching its ruling as petitioner's intention to permanently reside in the Philippines and to abandon the US as her domicile on May 24, 2005 were, based on reasonable premises, shrouded in doubt.

At any rate, the overt acts on which petitioner premises her claims are insufficient to prove her *animus manendi* and *animus non-revertendi.* In fact, same as her failure to promptly address her permanent residency status, some of these overt acts might even exhibit her ambivalence to reestablish her domicile in the Philippines on May 24, 2005. For instance, while she purchased a condominium unit in the Philippines in the second half of 2005 (which period is even past May 24, 2005), records unveil that petitioner had other real properties in the US, one of which was purchased in 1992 and another in 2008.[69] Relevantly, these dates are before and after May 24, 2005. Likewise, petitioner's correspondence with the property movers in the US in the first half of 2005 falters, in light of the fact that she and her husband commenced actual negotiations for their transfer only in the following year, or in January 2006, months after May 24, 2005.[70]

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[67] See Petitions in G.R. No. 221697, *rollo* (G.R. No. 221697), Vol. I, pp. 18-20; and in G.R. Nos. 221698-700, *rollo* (G.R. Nos. 221698-700), Vol. I, pp. 22-24.

[68] See Petitions in G.R. No. 221697, *rollo* (G.R. No. 221697), Vol. I, p. 22; and in G.R. Nos. 221698-700, *rollo* (G.R. Nos. 221698-700), Vol. I, p. 27.

[69] See *rollo* (G.R. No. 221698-700), Vol. II, p. 917.

[70] See *rollo* (G.R. No. 221697), Vol. II, pp. 778-794.

Similarly, after this date, it was only in March 2006 when petitioner's husband informed the US Postal Service of a change of address, without even specifying their new address in the Philippines.[71] While it is true that the visa-free entry of petitioner under the *Balikbayan* Program should not automatically hinder her ability to – as the *ponencia* would say – "reestablish her life here," it remains that the parameters of domicile reestablishment under the auspices of political law have not been clearly proven. Hence, because all the overt acts prior to that time had no impact in establishing her *animus manendi* and *animus non-revertendi,* the earliest date that petitioner could have reestablished her residence was in July 2006. The overall conclusion of the COMELEC was therefore correct.

At this juncture, let me express my assent to the view that "[s]tronger proof is required in the reestablishment of national domicile."[72] This is because a person who has been domiciled in another country has already established effective legal ties with that country that are substantially distinct and separate from ours. Such a situation hardly obtains when what is involved is the change of domicile between localities within the same country.

I further observe that the need for stronger proof becomes more apparent when the person involved is one who has been domiciled in another country as part of his/her naturalization as a citizen therein. As such, while citizenship and residency are different from and independent of each other – this, being the key premise in the Court's rulings in *Japzon* and *Caballero* – I do believe that "one may invariably affect the other."[73] Being still a citizen of the US at the time of her return to the Philippines on May 24, 2005, petitioner remained entitled to the rights, privileges, and the protection the US government extends to its nationals, including the right to residence. In fact, from May 24, 2005 to October 20, 2010, petitioner availed of this privilege when she returned to the US, on separate dates, significantly,

for no less than five times.[74] To my mind, the ability to enjoy the privileges of foreign citizenship at any time, while remaining under that status, conjures a reasonable presumption that the latter continues to avail of these privileges, which, among others, include the privilege to reside in that foreign country. Hence, absent compelling evidence to show that he/she had reestablished domicile in another country, it should therefore be presumed that he/she continues to be domiciled in the country he/she is a citizen of.

Moreover, the necessity of presenting stronger proof as herein discussed is impelled by the very reason underlying the residency requirement.[75] The discernment of pervading realities in the place where one seeks to be elected is objectively farther from a person who has been domiciled in a foreign country. Thus, a higher standard of proof should be applied to a candidate previously domiciled in a foreign country for he/she has been out of touch with the needs of the electoral constituency he/she seeks to represent.

For another, the COMELEC cannot be faulted for relying on petitioner's admission in her 2012 CoC for Senator that her period of residence from May 13, 2013 is "6 years and 6 months," which, hence, implies that she started being a Philippine resident only in November 2006. While it is true that "[i]t is the fact of residence, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the [C]onstitution's residency qualification requirement,"[76] the COMELEC cannot be said to gravely abuse its discretion when it

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[71] *Id*. at 815-816.

[72] See Dissenting Opinion of Justice Del Castillo, p. 59.

[73] *Id*. at 60.

[74] "In fact, from May 24, 2005 to October 20, 2010, petitioner did go back to the US no less than five times: February 14, 2006, April 20, 2009, October 19, 2009, December 27, 2009, and March 27, 2010." See *id*. at 55. See also *rollo* (G.R. Nos. 221698-700), Vol. I, pp. 30-31.

[75] The purpose is "to ensure that the person elected is familiar with the needs and problems of his constituency x x x ."(See *Perez v. COMELEC,* 375 Phil. 1106, 1119 [1999].)

[76] *Romualdez-Marcos v. COMELEC, supra* note 41, at 326.

considered petitioner's admission against interest as another circumstance which militates against her claim's legitimacy. It is certainly not patent and grave error for the COMELEC to regard a CoC as a notarized document and accord it the presumption of regularity.[77] Also, while petitioner may later impugn an admission against interest, the COMELEC found that her residency declaration in her 2012 CoC could not be borne out of an "honest mistake," in light of the following considerations: *(a)* the bulk, if not all, of the evidence she presented were executed before she reacquired her Philippine citizenship, which cannot be done in light of *Coquilla,* among others; *(b)* while she made statements acknowledging that there was a mistake in her 2015 CoC, they were nonetheless delivered at a time when, at the very least, the possibility of her running for President was already a matter of public knowledge; and *(c)* petitioner was a well-educated woman and a high-ranking official with a competent staff and a band of legal advisers and is not entirely unacquainted with Philippine politics, and thus, would know how to fill-up a *pro-forma* CoC in 2012. As I see it, these reasons are not barren of any considerable merit. At the very least, they are plausible enough to negate the finding that the conclusion amounted to grave abuse of discretion. Besides, I believe that the falsity of the material representation already justifies the cancellation of petitioner's CoC. As above-intimated, a candidate's intent is immaterial to a Section 78 analysis.

III.

Neither did the COMELEC gravely abuse its discretion in ruling that petitioner made a false material representation in her 2015 CoC when she declared that she was a natural-born citizen of the Philippines.

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[77] [G]enerally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity. In other words, absent any clear and convincing proof to the contrary, a notarized document enjoys the presumption of regularity and is conclusive as to the truthfulness of its contents. (See *Vda. de Rojales v. Dime,* G.R. No. 194548, February 10, 2016.)

I depart from the *ponencia's* stand that petitioner's blood relationship with a Filipino citizen is demonstrable on account of statistical probability, and other circumstantial evidence, namely, her abandonment as an infant in a Roman Catholic Church in Iloilo City, as well as her typical Filipino features.[78]

A run-through of the basic tenets on citizenship is *apropros.*

"There are two ways of acquiring citizenship: (1) by birth, and (2) by naturalization. These ways of acquiring citizenship correspond to the two kinds of citizens: the natural-born citizen, and the naturalized citizen."[79]

"A person who at the time of his birth is a citizen of a particular country, is a natural-born citizen thereof."[80] As defined under the present Constitution, **"<u>[n]atural-born citizens are those who are citizens of the Philippines from birth without havin to perform any act to acquire or perfect their Philippine citizenship.</u>"**[81] "On the other hand, naturalized citizens are those who have become Filipino citizens through naturalization x x x."[82]

"[I]t is the inherent right of every independent nation to determine for itself and according to its own constitution and laws what classes of persons shall be entitled to its citizenship x x x."[83] With respect to citizenship by birth, a particular jurisdiction generally subscribes to either the principle of *jus sanguinis* or the principle of *jus soli,* although it may adopt a mixed system with features of both.

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[78] See *ponencia,* pp. 22-23.

[79] *Bengson III v. House of Representatives Electoral Tribunal,* 409 Phil. 633, 646 (2001).

[80] *Id.*

[81] See Section 2, Article IV of the 1987 Constitution; emphases and underscoring supplied.

[82] *Bengson III v. House of Representatives Electoral Tribunal, supra* note 79, at 646.

[83] *Roa v. Collector of Customs,* 23 Phil. 315, 320-321 (1912).

"The Philippine law on citizenship adheres to the principle of *jus sanguinis.* Thereunder, a child follows the nationality or citizenship of the parents regardless of the place of his/her birth, as opposed to the doctrine of *jus soli* which determines nationality or citizenship on the basis of place of birth."[84] In *Valles v. COMELEC,* this Court held that **"[t]he signing into law of the 1935 Philippine Constitution has established the principle *of jus sanguinis* as basis for the acquisition of Philippine citizenship** x x x. So also, **the principle of *jus sanguinis*, which confers citizenship by virtue of blood relationship,** was subsequently **retained under the 1973 and 1987 Constitutions."**[85] Following this principle, proof of blood relation to a Filipino parent is therefore necessary to show that one is a Filipino citizen by birth.

In this case, petitioner has shown no evidence of blood relation to a Filipino parent to prove that she acquired Filipino citizenship by birth under the *jus sanguinis* principle. While petitioner did not bear the initial burden of proving that she made a false material representation on her citizenship in her 2015 CoC, as that burden belonged to those who filed the petitions to deny due course to or cancel her CoC before the COMELEC,[86] the burden of evidence shifted to her[87] when she voluntarily admitted her status as a foundling. Under Section 1, Article IV of the

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[84] *Valles v. COMELEC,* 392 Phil. 327, 335 (2000); emphasis and underscoring supplied.

[85] *Id*. at 336-337; emphases and underscoring supplied.

[86] "[T]he burden of proof is, in the first instance, with the plaintiff who initiated the action." *(Republic v. Vda. de Neri,* 468 Phil. 842, 862 [2004].)

[87] "[H]e who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his [favour], the duty or the burden of evidence shifts to defendant to controvert plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of plaintiff." (*Vitarich Corporation v. Locsin,* 649 PhiL 164, 173 (20I0], citing *Jison v. Court of Appeals,* 350 Phil. 138, 173 [1998].)

1935 Constitution, which governs petitioner's case,[88] foundlings are not included in the enumeration of who are considered as Filipino citizens:

Section 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

(2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

(3) Those whose fathers are citizens of the Philippines.

(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

(5) Those who are naturalized in accordance with law.

A "'foundling' refers to a deserted or abandoned infant or child whose parents, guardian or relatives are unknown; or a child committed to an orphanage or charitable or similar institution **with unknown facts of birth and parentage** and registered in the Civil Register as a 'foundling.'"[89] The fact that a candidate's parents are unknown directly puts into question his/her Filipino citizenship because the candidate has no *prima facie* link to a Filipino parent from which he/she could have traced her Filipino citizenship. This is why the burden of evidence shifted to petitioner.

Without any proof of blood relation to a Filipino parent, and without any mention in the 1935 Constitution that foundlings are considered or are even presumed to be Filipino citizens by birth, the COMELEC's finding that petitioner was not a natural-born citizen cannot be taken as patently unreasonable and grossly baseless so as to amount to grave abuse of discretion. As it is apparent, the COMELEC, with good reason, relied on the plain

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[88] Petitioner was born on September 3, 1968. See Petitions in G.R. No. 221697, *rollo* (G.R. No. 221697), Vol. I, p. 14; and in G.R. Nos. 221698-700, *rollo* (G.R. Nos. 221698-700), Vol. I, p. 17.

[89] See Section 3 (e) of "RULE ON ADOPTION," A.M. No. 02-6-02-SC (August 22, 2002); emphasis supplied.

text of the 1935 Constitution based on the statutory construction axioms of *expressio unius est exclusio alterius*[90] and *verba legis non est recedendum,*[91] as well as firmly abided by the *jus sanguinis* principle which, as repeatedly stated, necessitates proof of blood relation, of which petitioner presented none. Accordingly, its analysis was grounded on sound legal basis and therefore unreflective of grave abuse of discretion.

Further, while petitioner argues that foundlings should be considered as natural-born Filipinos based on the intent of the framers of the 1935 Constitution,[92] it should be pointed out that the 1935 Constitution, as it was adopted in its final form, never carried over any proposed provision on foundlings being considered or presumed to be Filipino citizens. Its final exclusion is therefore indicative of the framers' prevailing intent. Besides, in *Civil Liberties Union v. The Executive Secretary,*[93] this Court remarked that:

> Debates in the constitutional convention "are of value **as showing the views of the individual members, and as indicating the reasons for their votes,** but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. **We think it [is] safer to construe the constitution from what appears upon its face.**"[94] (Emphases and underscoring supplied)

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[90] See COMELEC Second Division's December 1, 2015 Resolution in SPA No. 15-001 (DC), *rollo* (G.R. No. 221697), Vol. I, pp. 213-214.

[91] See COMELEC Second Division's December 1, 2015 Resolution in SPA No. 15-001 (DC), *rollo* (G.R. No. 221697), Vol. I, p. 393. See also COMELEC *En Banc's* December 23, 2015 Resolution in SPA No. 15-001 (DC), *id*. at 254.

[92] See Petitions in G.R. No. 221697, *rollo* (G.R. No. 221697), Vol. I, pp. 114-116; and in G.R. Nos. 221698-700, *rollo* (G.R. Nos. 221698-700), Vol. I, pp. 84-86.

[93] 272 Phil. 147 (1991).

[94] *Id*. at 169-170.

I also find no merit in petitioner's invocation of international covenants[95] which purportedly evince a generally accepted principle in international law that foundlings are presumed to be citizens of the country where they are found. Since the 1935 Constitution, and the 1973 and 1987 Constitutions thereafter, consistently subscribe to the *jus sanguinis* principle, it is axiomatic that no international agreement or generally-accepted principle of international law – even assuming that there is a binding one which supports petitioner's averred presumption – could contravene the same. "Under the 1987 Constitution, international law can become part of the sphere of **domestic law** either by transformation or incorporation."[96] Thus, in our legal hierarchy, treaties and international principles belong to the same plane as domestic laws and, hence, cannot prevail over the Constitution.

Finally, I oppose petitioner's resort to statistical probability as basis to presume natural-born citizenship in this case. Allow me to point out that these statistics surfaced only in the proceedings before this Court and hence, could not have been weighed and assessed by the COMELEC *En Banc* at the time it rendered its ruling. Be that as it may, the constitutional requirements for office, especially for the highest office in the land, cannot be based on mere probability. "[M]atters dealing with qualifications for public elective office must be strictly complied with."[97] The proof to hurdle a substantial challenge against a candidate's qualifications must

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[95] Particularly, the 1989 United Nations Convention on the Rights of the Child (UNCRC), the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1948 Universal Declaration of Human Rights (UDHR), the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Law (1930 Hague Convention), and the 1961 United Nations Convention on the Reduction of Statelessness (UNCRS), among others, positing that it is a generally accepted principle in international law. (See discussions in the Petitions in G.R. No. 221697, *rollo* (G.R. No. 221697), Vol. I, pp. 137-144 and 151-152; and in G.R. Nos. 221698-700, *rollo* (G.R. Nos. 221698-700), Vol. I, pp. I09-117 and 124-125.

[96] *Pharmaceutical and Health Care Association of the Philippines v. Health Secretary Duque III,* 561 Phil. 386, 397-398 (2007).

[97] See *Armado v. COMELEC,* G.R. No. 210164, August 18, 2015.

therefore be solid. We cannot make a definitive pronouncement on a candidate's citizenship when there is a looming possibility that he/she is not Filipino. Also, the circumstances surrounding petitioner's abandonment, as well as her physical characteristics, hardly assuage this possibility. By parity of reasoning, they do not prove that she was born to a Filipino: her abandonment in the Philippines is just a restatement of her foundling status, while her physical features only tend to prove that her parents likely had Filipino features and yet it remains uncertain if their citizenship was Filipino.

For all of these reasons, I dissent to the majority's ruling that the COMELEC gravely abused its discretion. In the final analysis, my conscience reminds me that the high duty demanded of me – to apply the law according to the parameters set by our previous rulings – transcends politics or controversy, popularity or personality. It is a public trust which values nothing higher than fidelity to the Constitution. I, therefore, vote to **DISMISS** the petitions.

EN BANC

[G.R. No. 222731. March 8, 2016]

BAGUMBAYAN-VNP MOVEMENT, INC., and RICHARD J. GORDON, as Chairman of BAGUMBAYAN-VNP MOVEMENT, INC., *petitioners, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; WRIT OF *MANDAMUS* TO COMPEL PERFORMANCE OF A LEGAL DUTY.— Mandamus is the relief sought "[w]hen any tribunal corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a

duty resulting from an office, trust, or station," and "there is no other plain, speedy and adequate remedy in the ordinary course of law." Through a writ of mandamus, the courts "compel the performance of a clear legal duty or a ministerial duty imposed by law upon the defendant or respondent" by operation of his or her office, trust, or station. The petitioner must show the legal basis for the duty, and that the defendant or respondent failed to perform the duty.

2. **POLITICAL LAW; ELECTION LAWS; RA 8436 AS AMENDED BY RA 9369 REQUIRING THE AUTOMATED ELECTION SYSTEM TO HAVE THE CAPABILITY OF PROVIDING A VOTER-VERIFIED PAPER AUDIT TRAIL (VVPAT); IMPLEMENTATION THEREOF IS MANDATORY.—** One of the laws that the Commission on Elections must implement is Republic Act No. 8436, as amended by Republic Act No. 9369, which requires the automated election system to have the capability of providing a voter-verified paper audit trail. Based on the technical specifications during the bidding, the current vote-counting machines should meet the minimum system capability of generating a VVPAT. However, the Commission on Elections' act of rendering inoperative this feature runs contrary to why the law required this feature in the first place. Under Republic Act No. 8436, as amended, it is considered a policy of the state that the votes reflect the genuine will of the People. x x x The voter must know that his or her sovereign will, with respect to the national and local leadership, was properly recorded by the vote-counting machines. The minimum functional capabilities enumerated under Section 6 of Republic Act 8436, as amended, are mandatory. x x x The law is clear. A "voter verified paper audit trail" requires the following: (a) individual voters can verify whether the machines have been able to count their votes; and (b) that the verification at minimum should be paper based. x x x The required system capabilities under Republic Act No. 8436, as amended, are the ***minimum*** safeguards provided by law.

APPEARANCES OF COUNSEL

Gordon Dario Reyes Buted Hocson Viado & Blanco Law Offices for petitioners.

The Solicitor General for respondent.

RESOLUTION

LEONEN, *J.*:

A petition for mandamus may be granted and a writ issued when an agency "unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office."[1]

Petitioners Bagumbayan Volunteers for a New Philippines Movement, Inc. (Bagumbayan-VNP, Inc.) and Former Senator Richard J. Gordon (Gordon) filed this Petition[2] for mandamus before this court to compel respondent Commission on Elections to implement the Voter Verified Paper Audit Trail security feature.

Bagumbayan-VNP, Inc. is a non-stock and non-profit corporation.[3] It operates through Bagumbayan Volunteers for a New Philippines,[4] a national political party duly registered with the Commission on Elections.[5]

Former Senator Gordon is a registered voter and taxpayer.[6] He is an official candidate for the Senate of the Philippines[7] and is the Chairperson of Bagumbayan-VNP, Inc. Gordon authored Republic Act No. 9369, the law that amended Republic

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[1] RULES OF COURT, Rule 67, Sec. 3.

[2] *Rollo*, pp. 3-27.

[3] *Id.* at 7.

[4] *Id.*

[5] COMELEC's List of Registered/Accredited Political Parties <http://www.comelec.gov.ph/?r=Archives/RegularElections/2016NLE/PoliticalParties> (visited March 8, 2016).

[6] *Rollo*, p. 7.

[7] Filing of Certificates of Candidacy in Connection with the 2016 National and Local Elections (Senator) <http://www.comelec.gov.ph/uploads/Archives/RegularElections/2016NLE/Candidates/COCFiled2016NLE/Senator_Filed_2016NLE.pdf> (visited March 8, 2016).

Act No. 8436, otherwise known as the Automated Election System Law.[8]

The Commission on Elections is a government entity[9] "vested by law to enforce and administer all laws relative to the conduct of elections in the country."[10]

On December 22, 1997, Republic Act No. 8436[11] authorized the Commission on Elections to use an automated election system for electoral exercises.[12] After almost a decade, Republic Act No. 9369[13] amended Republic Act No. 8436. Republic Act No. 9369 introduced significant changes to Republic Act No. 8436, Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code, and other election-related statutes.[14]

Automation is hailed as a key "towards clean and credible elections," reducing the long wait and discouraging cheating.[15] In 2010 and 2013, the Commission on Elections enforced a

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[8] *Rollo*, p. 7.

[9] CONST., Art. IX-C, Sec. 1(1).

[10] *Rollo*, p. 7.

[11] Rep. Act No. 8436, An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, Providing Funds Therefor and for Other Purposes (1997).

[12] Rep. Act No. 8436, Sec. 5, as amended.

[13] Rep. Act No. 9369, An Act Amending Republic Act No. 8436, Entitled "An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, to Encourage Transparency, Credibility, Fairness and Accuracy of Elections, Amending for the Purpose Batas Pambansa Blg. 881, as amended, Republic Act No. 7166 and Other Related Election Laws, Providing Funds Therefor and for Other Purposes" (2007).

[14] Rep. Act No. 7166 (1991); Rep. Act No. 8045 (1995); Rep. Act No. 8436 (1997); Rep. Act No. 8173 (1995).

[15] *Roque, et al. v. COMELEC, et al.*, 615 Phil. 149, 190 (2009) [Per *J.* Velasco, Jr., *En Banc*].

nationwide automated election system using the Precinct Count Optical Scan (PCOS) machines. For the 2016 National and Local Elections, the Commission on Elections has opted to use the Vote-Counting Machine.[16] The vote-counting machine is a "paper-based automated election system,"[17] which is reported to be "seven times faster and more powerful than the PCOS because of its updated processor."[18] Likewise, it is reported to have more memory and security features,[19] and is "capable of producing the Voter Verification Paper Audit Trail (VVPAT)."[20] This VVPAT functionality is in the form of a printed receipt and a touch screen reflecting the votes in the vote-counting machine.[21]

Petitioners allege that under Republic Act No. 8436, as amended by Republic Act No. 9369, there are several safeguards or Minimum System Capabilities to ensure the sanctity of the ballot. Among these is the implementation of the VVPAT security feature, as found in Section 6(e), (f), and (n).

The full text of Section 6 is as follows:

SEC. 6. *Minimum System Capabilities*. - The automated election system must at least have the following functional capabilities:

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[16] Paterno Esmaquel II, *Bad labels prompt Comelec to rename voting machines*, Rappler, September 17, 2015 <http://www.rappler.com/nation/politics/elections/2016/106232-comelec-rename-vote-counting-machines> (visited March 8, 2016). During a congressional hearing on September 17, 2016, COMELEC Chairperson Andres Bautista supposedly explained the reason for renaming: "'*Yung PCOS, tinatawag, Hocus-PCOS. Tapos po itong OMR naman, may narinig po kami, 'O-Mar' daw. Kaya sabi ko, para ano, VCM na lang*." ("The PCOS was called Hocus-PCOS. Then on the OMR, we heard something like, 'O-Mar.' So I said, let's just call it VCM.")

[17] COMELEC Resolution No. 10057 dated February 11, 2016.

[18] Pia Gutierrez, *What new poll machines can do which PCOS cannot*, ABS-CBN News, December 11, 2015<http://devnews.abs-cbn.com/focus/12/11/15/what-new-poll-machines-can-do-which-pcos-cannot> (visited March 8, 2016).

[19] *Id*.

[20] *Id*.

[21] JC Gotinga, *Comelec holds demo of vote counting machines*, CNN Philippines <http://cnnphilippines.com/news/2016/01/25/comelec-demo-vote-counting-machines.html> (visited March 8, 2016).

(a) Adequate security against unauthorized access;

(b) Accuracy in recording and reading of votes as well as in the tabulation, consolidation/canvassing, electronic transmission, and storage of results;

(c) Error recovery in case of non-catastrophic failure of device;

(d) System integrity which ensures physical stability and functioning of the vote recording and counting process;

(e) Provision for voter verified paper audit trail;

(f) System auditability which provides supporting documentation for verifying the correctness of reported election results;

(g) An election management system for preparing ballots and programs for use in the casting and counting of votes and to consolidate, report and display election result in the shortest time possible;

(h) Accessibility to illiterates and disable voters;

(i) Vote tabulating program for election, referendum or plebiscite;

(j) Accurate ballot counters;

(k) Data retention provision;

(l) Provide for the safekeeping, storing and archiving of physical or paper resource used in the election process;

(m) Utilize or generate official ballots as herein defined;

(n) Provide the voter a system of verification to find out whether or not the machine has registered his choice; and

(o) Configure access control for sensitive system data and function. (Emphasis supplied).

Petitioners claim that VVPAT "consists of physical paper records of voter ballots as voters have cast them on an electronic voting system."[22] Through it, the voter can verify if the choices on the paper record match the choices that he or she actually made in the ballot.[23] The voter can confirm whether the machine had actually

[22] *Rollo*, p. 5.

[23] *Id*.

read the ballot correctly. Petitioners seek to compel the Commission on Elections to have the vote-counting machine issue receipts once a person has voted.

According to petitioners, the VVPAT "will ensure transparency and reduce any attempt to alter the results of the elections."[24] There will be "an electronic tally of the votes cast" or the vote stored in the vote-counting machine, as well as "a paper record of the individual votes" cast or the VVPAT receipt.[25] Should there be any doubt, "the electronically generated results . . . can then be audited and verified through a comparison . . . with these paper records."[26]

In the Terms of Reference for the 2016 National and Local Elections Automation Project, the Commission on Elections lists the Minimum Technical Specifications of the Optical Mark Reader or Optical Scan System, precinct-based technologies that the poll body shall accept.[27]

Component 1 (B), subparagraphs (5) and (19) states as follows:

> 5. The system's hardware shall have a display panel that is capable to display customizable messages or prompts of each stage of the process execution, including prompts and messages for user interaction purposes.
>
> x x x x x x x x x
>
> 19. The system shall have a *vote verification feature* which *shall display* ***and print the voter's choices***, which can be enabled or disabled in the configuration using the [Election Management System]. (Emphasis supplied)

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[24] *Id*. at 8-9.

[25] *Id*. at 5, citing *Capalla, et al. v. COMELEC*, 687 Phil. 617 (2012) [Per *J*. Peralta, *En Banc*].

[26] *Id*.

[27] 2016 National and Local Elections Automation Project, Terms of Reference, pp. 4-7<http://www.comelec.gov.ph/uploads/AboutCOMELEC/BidsandAwards/ProcurementProjects/BAC012014AESOMR/BAC012014AESOMARITB_TermsOfReference.pdf>(visited March 8, 2016).

Petitioners claim that the Commission on Elections refuses to implement the VVPAT function based on fears that the security feature may aid in vote-buying, and that the voting period may take longer.[28] On February 9, 2016, petitioners read from ABS-CBN News Online that with a vote of 7-0, the Commission on Elections En Banc decided not to implement the VVPAT for the 2016 Elections.[29] Petitioners attached a copy of the article.[30] Other news reports state that the Commission on Elections ruled similarly against the voting receipts in 2010 and 2013.[31]

At the Joint Congressional Oversight Committee on the Automated Election System on February 16, 2016,[32] the Commission on Elections, through its Chairperson Andres D. Bautista (Chairperson Bautista), supposedly gave its reasons for refusing to issue paper receipts. First, "politicians can use the receipts in vote buying[;]" second, it may increase voting time to five to seven hours in election precincts:[33]

> [T]he poll body has decided against printing the receipt because it might be used for vote buying and that it would result in the vote-counting process being extended from six to seven hours since it takes about 13 seconds to print a receipt, meaning each machine would have to run for that long for the receipts.

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[28] *Rollo*, p. 9.

[29] *Id*.

[30] *Id*. at 38-39.

[31] Paterno Esmaquel II, *Comelec defends decision vs. voting receipts*, Rappler, February 17, 2016 <http://www.rappler.com/nation/politics/elections/2016/122683-comelec-decision-voting-receipts; Joel R. San Juan, *Court asked to order COMELEC to obey law, issue vote receipts*, Business Mirror, February 22, 2016 <http://www.businessmirror.com.ph/court-asked-to-order-comelec-to-obey-law-issue-vote-receipts> (visited March 8, 2016).

[32] Joint Congressional Oversight Committee on the Automated Election System – Notice of Public Hearing <https://www.senate.gov.ph/16th_congress/ctte_notice/JCOC-AES_Feb3.pdf>.

[33] Paterno Esmaquel II, *Comelec defends decision vs. voting receipts*, Rappler, February 17, 2016 <http://www.rappler.com/nation/politics/elections/2016/122683-comelec-decision-voting-receipts> (visited March 8, 2016).

Bautista said another "big concern" is that "there might be losing candidates who might question the results, basically instructing their supporters that when the machine prints out the receipt, regardless of what the receipt says, they will say that it's not correct."[34]

On February 11, 2016, the Commission on Elections issued Resolution No. 10057[35] providing for "rules and general instructions on the process of testing and sealing, [as well as] voting, counting, and transmission of election results."[36] Adopting Resolution No. 10057 by a vote of 7-0, the Commission on Elections *En Banc* made no mention using VVPAT receipts for the 2016 national elections.

Petitioners argue that the Commission on Elections' fears are "baseless and speculative."[37] In assailing the Commission on Elections' reasons, petitioners cite the Position Paper[38] of alleged automated elections expert, Atty. Glenn Ang Chong (Atty. Chong). Atty. Chong recommended that the old yellow ballot boxes be used alongside the voting machine. The VVPAT receipts can be immediately placed inside the old ballot boxes.[39]

After the voter casts his or her vote, he or she gets off the queue and walks to where the old ballot box is. There, the voter may verify if the machine accurately recorded the vote; if so, the voter drops the VVPAT receipt into the old ballot box.[40] Should there be any discrepancy, the voter may have it

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[34] Joel R. San Juan, *Court asked to order COMELEC to obey law, issue vote receipts*, Business Mirror, February 22, 2016 <http://www.businessmirror.com.ph/court-asked-to-order-comelec-to-obey-law-issue-vote-receipts> (visited March 8, 2016).

[35] General Instructions for the Boards of Election Inspectors (BEI) on the Testing and Sealing of Vote Counting Machines (VCMs), and Voting, Counting and Transmission of Election Results in connection with the May 09, 2016 National and Local Elections.

[36] COMELEC Resolution No. 10057 dated February 11, 2016.

[37] *Rollo*, p. 5.

[38] *Id.* at 40-45, Position Paper of Atty. Glenn Ang Chong.

[39] *Id.* at 9.

[40] *Id.* at 14.

duly recorded with the poll watchers for analysis and appropriate action.[41] The poll watchers must ensure that all receipts are deposited into the old ballot box.[42] This will guarantee that no voter can sell his or her vote using the receipt.[43]

At the end of the polling, the old ballot boxes shall be turned over to the accredited citizens' arm or representatives of the public for the manual verification count of the votes cast. A member of the Board of Election Inspectors may supervise the count. The result of the manual verification count (using the old ballot boxes) shall be compared with that of the automated count (saved in the vote-counting machine).[44]

Petitioners add that during Senate deliberations,[45] the main proponent of the amendatory law, Former Senator Gordon, highlighted the importance of "an audit trail usually supported by paper[.]"[46]

On November 10, 2015, Bagumbayan-VNP, Inc. sent Commission on Elections Chairperson Bautista a letter demanding the implementation of the VVPAT feature for the May 9, 2016 Elections.[47] However, the Commission on Elections never answered the letter.[48]

According to petitioners, the inclusion of VVPAT, a "mandatory requirement under the automated election laws, [has been] flagrantly violated by [COMELEC] during the 2010 and 2013 Elections." They claim that the previous demands made on the Commission on Elections to reactivate the VVPAT security feature "fell on deaf ears."[49] In the 2010 and 2013 Elections, all a voter received

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[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.* at 15.

[46] *Id.*

[47] *Id.* at 8.

[48] *Id.* at 9.

[49] *Id.* at 5.

from the voting machines were the words, "Congratulations! Your vote has been counted," or an otherwise similar phrase.[50]

Petitioners claim that under Section 28 of Republic Act No. 9369, amending Section 35 of Republic Act No. 8436, anyone "interfering with and impeding . . . the use of computer counting devices and the processing, storage, generation and transmission of election results, data or information" commits a felonious act.[51] The Commission on Elections allegedly did so when it refused to implement VVPAT.[52]

In view of the foregoing, petitioners filed a Special Civil Action for Mandamus under Rule 65, Section 3 of the Rules of Court. They ask this court to compel the Commission on Elections to comply with the provisions of Section 6(e), (f), and (n) of Republic Act No. 8436, as amended.

Petitioners argue that mandamus is proper to "enforce a public right" and "compel the performance of a public duty."[53] Under Article VIII, Section 5(1) of the Constitution, this court has original jurisdiction over petitions for mandamus. In addition, Rule 65, Section 4 of the Rules of Court allows for a civil action for mandamus to be directly filed before this court.[54] There is no reglementary period in a special civil action for mandamus.[55]

According to petitioners, the law prescribes the "minimum" criteria of adopting VVPAT as one of the security features. The use of the word "must"[56] makes it mandatory to have a paper audit "separate and distinct from the ballot."[57] The

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[50] *Id*. at 8.

[51] *Id*. at 19-20.

[52] *Id*. at 20.

[53] *Id*. at 7.

[54] *Id*. at 6-7.

[55] *Id*. at 7.

[56] *Id*. at 5. The phrasing in the law states: "The automated election system *must* have at least the following functional capabilities. . . ."

[57] *Id*. at 12.

Commission on Elections allegedly has neither leeway "nor right to claim that the ballot itself is the paper audit trail."[58] Likewise, the words, "voter verified" in VVPAT means the voter, not the Commission on Elections, must be the one verifying the accuracy of the vote cast.[59]

Petitioners conclude that the Commission on Elections' "baseless fear of vote buying" is no excuse to violate the law. "There is greater risk of cheating on a mass scale if the VVPAT were not implemented because digital cheating" is even more "difficult to detect . . . than cheating by isolated cases of vote buying."[60]

In the Resolution dated February 23, 2016, this court required the Commission on Elections to comment on the petition within a non-extendible period of five (5) days after receiving the notice.

Instead of submitting its Comment, the Commission on Elections filed a Motion for Additional Time to File Comment through the Office of the Solicitor General.[61] The Office of the Solicitor General alleged that it "has not yet received a copy of the Petition and has yet to obtain from COMELEC the documents relevant to this case."[62]

It is not often that this court requires the filing of a comment within a non-extendible period. This is resorted to when the issues raised by a party is fundamental and the ambient circumstances indicate extreme urgency. The right of voters to verify whether vote-counting machines properly recorded their vote is not only a statutory right; it is one that enables their individual participation in governance as sovereign. Among all government bodies, the Commission on Elections is the entity that should appreciate how important it is to respond to cases

[58] *Id*. at 16.

[59] *Id*.

[60] *Id*. at 13.

[61] *Id*. at 79-84, Motion for Additional Time to File Comment.

[62] *Id*. at 79.

filed by the public to enable these rights. It perplexes this court that the Commission on Elections failed to immediately transmit relevant documents to the Office of the Solicitor General to allow them to respond within the time granted.

The Office of the Clerk of Court En Banc noted that both the Commission on Elections and the Office of the Solicitor General were already furnished with a copy of the Petition when this court ordered them to file a comment.[63] Due to the urgency to resolve this case, this court denied the Commission on Elections' Motion. This court cannot fail to act on an urgent matter simply because of the non-compliance of the Commission on Elections and the Office of the Solicitor General with its orders. This court cannot accept the lackadaisical attitude of the Commission on Elections and its counsel in addressing this case. This court has been firm that as a general rule, motions for extension are not granted, and if granted, only for good and sufficient cause.[64] Counsels, even those from government, should not assume that this court will act favorably on a motion for extension of time to file a pleading.[65]

For this court's resolution is whether the Commission on Elections may be compelled, through a writ of mandamus, to enable the Voter Verified Paper Audit Trail system capability feature for the 2016 Elections.

We grant the Petition.

Mandamus is the relief sought "[w]hen any tribunal corporation, board, officer or person unlawfully neglects the performance

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[63] *Id*. at 71.

[64] *Yabut v. Ventura,* 77 Phil. 493, 495 (1946) [Per *J*. Tuason, *En Banc*].

[65] *Daisug v. Court of Appeals,* 148-B Phil. 467, 473 (1971) [Per *J*. Barredo, *En Banc*]: "No party should assume that his motion for extension will be granted, for, to start with, . . . the granting of any extension of time to parties for compliance with any rule or order is not a matter of right but of sound judicial discretion. The Court notes that inspite of its abovecited repeated pronouncements, there are still parties who would regard them lightly. Naturally, such attitude can only be condemned and such parties must suffer the consequences of their indifference."

of an act which the law specifically enjoins as a duty resulting from an office, trust, or station," and "there is no other plain, speedy and adequate remedy in the ordinary course of law."[66]

Through a writ of mandamus, the courts "compel the performance of a clear legal duty or a ministerial duty imposed by law upon the defendant or respondent"[67] by operation of his or her office, trust, or station. The petitioner must show the legal basis for the duty, and that the defendant or respondent failed to perform the duty.

Petitioners argue that the Commission on Elections unlawfully neglected to perform its legal duty of fully implementing our election laws, specifically Republic Act No. 8436, Section 6(e), (f), and (n), as amended by Republic Act No. 9369:[68]

SEC. 6. Minimum System Capabilities. — The automated election system must at least have the following functional capabilities:

xxx xxx xxx

(e) Provision for voter verified paper audit trail;

(f) System auditability which provides supporting documentation for verifying the correctness of reported election results;

xxx xxx xxx

(n) Provide the voter a system of verification to find out whether or not the machine has registered his choice;

Commission on Elections Resolution No. 10057 promulgated on February 11, 2016 did not include mechanisms for VVPAT. Under Part III of the Resolution, it merely stated:

SEC. 40. Manner of voting. –

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[66] RULES OF COURT, Rule 65, Sec. 3.

[67] *Pacheco v. Court of Appeals*, 389 Phil. 200, 203 (2000) [Per *J*. Pardo, First Division].

[68] Rep. Act No. 9369, in amending Rep. Act No. 8436, removed Section 4 of the latter law, which is why the numbering of the Sections moved up. Hence, Section 7 in Rep. Act No. 8436, which was amended by Section 7 in Republic Act No. 9369, became the new Section 6 in Rep. Act No. 8436.

a. The voter shall:

1. Using a ballot secrecy folder and the marking pen provided by the Commission, fill his/her ballot by fully shading the circle beside the names of the candidates and the party, organization or coalition participating in the party-list system of representation, of his/her choice; and

2. After accomplishing his/her ballot, approach the VCM, insert his/her ballot in the ballot entry slot;

   i. The VCM will display "PROCESSING.../ PAKIHINTAY... KASALUKUYANG PINOPROSESO";

   ii. The ballot shall automatically be dropped inside the ballot box. The VCM will then display the message "YOUR VOTE HAS BEEN CAST/ANG IYONG BOTO AY NAISAMA NA."

   iii. The VCM will display the message "AMBIGUOUS MARK DETECTED" if the ovals are not properly shaded or an unintentional mark is made. It will display the message "AMBIGUOUS MARKS DETECTED/MAY MALABONG MARKA SA BALOTA." The following options shall be provided "TO CAST BALLOT PRESS/PARA IPASOK ANG BALOTA, PINDUTIN" or "TO RETURN BALLOT, PRESS/PARA IBALIK ANG BALOTA, PINDUTIN." Press the "TO RETURN BALLOT, PRESS/PARA IBALIK ANG BALOTA, PINDUTIN" to return the ballot to the voter. Let the voter review the ballot and ensure that the ovals opposite the names of the candidate voted for are fully shaded.

   iv. In case of illiterate voters, PWD voters who are visually-impaired, and senior citizens (SCs) who may need the use of headphones, the BEI shall insert the headphones so they can follow the instructions of the VCM.

b. The poll clerk/support staff shall:

   1. Monitor, from afar, the VCM screen to ensure that the ballot was successfully accepted;

   2. Thereafter, whether or not the voter's ballot was successfully accepted, apply indelible ink to the

voter's right forefinger nail or any other nail if there be no forefinger nail; and

3. Instruct the voter to return the ballot secrecy folder and marking pen, and then leave the polling place.

In a press conference last March 4, 2016, Commission on Elections Chairperson Andres Bautista manifested that the Commission on Elections decided "to err on the side of transparency" and resolved to allow voters to have 15-second on-screen verification of the votes they have casted through the vote-counting machine.[69] Allowing on-screen verification is estimated to add two (2) hours to the voting period on May 9, 2016. As reported, the meeting of the Commission on Elections En Banc to pass this Resolution was on March 3, 2016, three (3) days after they were required to file a comment before this court.

Nonetheless, the inaction of the Commission on Elections in utilizing the VVPAT feature of the vote-counting machines fails to fulfill the duty required under Republic Act No. 8436, as amended.

Article XI(C), Section 2 of the 1987 Constitution empowered the Commission on Elections to "[e]nforce and administer all laws and regulations relative to the conduct of an election." One of the laws that the Commission on Elections must implement is Republic Act No. 8436, as amended by Republic Act No. 9369, which requires the automated election system to have the capability of providing a voter-verified paper audit trail.

Based on the technical specifications during the bidding, the current vote-counting machines should meet the minimum system capability of generating a VVPAT. However, the Commission on Elections' act of rendering inoperative this feature runs contrary to why the law required this feature in the first place. Under Republic Act No. 8436, as amended, it is considered a policy of the state that the votes reflect the genuine will of the People.[70] The full text

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[69] Tina G. Santos *Comelec OKs on-screen vote confirmation, but not receipt,* Philippine Daily Inquirer, March 5, 2016, <http://neswsinfo.inquirer.net/770987/comelec-oks-on-screen-vote confirmation-but-not-receipt> (visited March 8, 2016).

[70] Rep. Act No. 8436, as amended by Rep. Act No. 9369, Sec. 1 (2007).

of the declaration of policy behind the law authorizing the use of an automated election system states:

> SECTION 1. *Declaration of Policy.* — It is the policy of the State to ensure free, orderly, honest, peaceful, credible and informed elections, plebiscites, referenda, recall and other similar electoral exercises by improving on the election process and adopting systems, which shall involve the use of an automated election system that will ensure the secrecy and sanctity of the ballot and all election, consolidation and transmission documents in order that the process shall be transparent and credible and that the results shall be fast, accurate and reflective of the genuine will of the people.
>
> The State recognizes the mandate and authority of the Commission to prescribe the adoption and use of the most suitable technology of demonstrated capability taking into account the situation prevailing in the area and the funds available for the purpose.

By setting the minimum system capabilities of our automated election system, the law intends to achieve the purposes set out in this declaration. A mechanism that allows the voter to verify his or her choice of candidates will ensure a free, orderly, honest, peaceful, credible, and informed election. The voter is not left to wonder if the machine correctly appreciated his or her ballot. The voter must know that his or her sovereign will, with respect to the national and local leadership, was properly recorded by the vote-counting machines.

The minimum functional capabilities enumerated under Section 6 of Republic Act 8436, as amended, are mandatory. These functions constitute the most basic safeguards to ensure the transparency, credibility, fairness and accuracy of the upcoming elections.

The law is clear. A "voter verified paper audit trail" requires the following: (a) individual voters can verify whether the machines have been able to count their votes; and (b) that the verification at minimum should be paper based.

There appears to be no room for further interpretation of a "voter verified paper audit trail." The paper audit trail cannot be considered the physical ballot, because there may be instances

where the machine may translate the ballot differently, or the voter inadvertently spoils his or her ballot.

In *Maliksi v. Commission on Elections,*[71] the losing mayoralty candidate questioned the result of the elections. Upon inspection of the physical ballots, several votes were invalidated due to the presence of double-shading. However, when the digital printouts of the ballots were checked, the questioned ballots only had single shade. The physical ballots were tampered to invalidate several votes.

The situation in *Maliksi* could have been avoided if the Commission on Elections utilized the paper audit trail feature of the voting machines. The VVPAT ensures that the candidates selected by the voter in his or her ballot are the candidates voted upon and recorded by the vote-counting machine. The voter himself or herself verifies the accuracy of the vote. In instances of Random Manual Audit[72] and election protests, the VVPAT becomes the best source of raw data for votes.

The required system capabilities under Republic Act No. 8436, as amended, are the ***minimum*** safeguards provided by law. Compliance with the minimum system capabilities entails costs on the state and its taxpayers. If minimum system capabilities are met but not utilized, these will be a waste of resources and an affront to the citizens who paid for these capabilities.

It is true that the Commission on Elections is given ample discretion to administer the elections, but certainly, its constitutional duty is to "enforce the law." The Commission is not given the constitutional competence to amend or modify the law it is sworn to uphold. Section 6(e), (f), and (n) of Republic Act No. 8436, as amended, is law. Should there be policy objections to it, the remedy is to have Congress amend it.

The Commission on Elections cannot opt to breach the requirements of the law to assuage its fears regarding the VVPAT.

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[71] 706 Phil. 214 (2013) [Per *J*. Carpio, *En Banc* Decision]; G.R. No. 203302, April 11, 2013 (Resolution), 693 SCRA 272 [Per *J*. Bersamin, *En Banc*].

[72] Rep. Act No. 8436, as amended by Rep. Act No. 9369, Sec. 29 (2007).

Vote-buying can be averted by placing proper procedures. The Commission on Elections has the power to choose the appropriate procedure in order to enforce the VVPAT requirement under the law, and balance it with the constitutional mandate to secure the secrecy and sanctity of the ballot.[73]

We see no reason why voters should be denied the opportunity to read the voter's receipt after casting his or her ballot. There is no legal prohibition for the Commission on Elections to require that after the voter reads and verifies the receipt, he or she is to leave it in a separate box, not take it out of the precinct. Definitely, the availability of all the voters' receipts will make random manual audits more accurate.

The credibility of the results of any election depends, to a large extent, on the confidence of each voter that his or her individual choices have actually been counted. It is in that local precinct after the voter casts his or her ballot that this confidence starts. It is there where it will be possible for the voter to believe that his or her participation as sovereign truly counts.

WHEREFORE, the Petition for Mandamus is **GRANTED**. The Commission on Elections is **ORDERED** to enable the vote verification feature of the vote-counting machines, which prints the voter's choices without prejudice to the issuance of guidelines to regulate the release and disposal of the issued receipts in order to ensure clean, honest, and orderly elections such as, but not limited to, ensuring that after voter verification, receipts should be deposited in a separate ballot box and not taken out of the precinct.

SO ORDERED.

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

Brion, J., on leave.

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[73] CONST., Art. 5, Sec. 2.

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Causes of — Only for a just cause or when authorized by law that must be proven by the employer with substantial evidence; purpose. (Industrial Personnel & Mgm't. Services, Inc. (IPAMS) *vs.* De Vera, G.R. No. 205703, March 7, 2016) p. 230

Illegal dismissal — Dismissal of employee in a corporation who is also a stockholder and director therein, where the complaint does not involve his capacity as such, is not an intra-corporate controversy. (Guillermo *vs.* Uson, G.R. No. 198967, March 7, 2016) p. 215

ESTOPPEL

Principle of — Cannot give validity to an act that is prohibited by law or one that is against public policy. (Peña *vs.* Delos Santos, G.R. No. 202223, March 2, 2016) p. 123

EVIDENCE

Judicial notice — The court can take judicial notice when a document which is a public record was attached to the complaint, as the same document is already considered as on file with the court. (Bangko Sentral ng Pilipinas *vs.* Legaspi, G.R. No. 205966, March 2, 2016) p. 147

Weight of — The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. (Zaldivar *vs.* People, G.R. No. 197056, March 2, 2016) p. 113

EXEMPTING CIRCUMSTANCES

Insanity — Accused must be completely deprived of intelligence because of his mental condition at the time or immediately before the commission of the offense. (Verdadero *y* Galera *vs*. People, G.R. No. 216021, March 2, 2016) p. 168

— Exoneration on the ground of insanity warrants confinement in a mental institution instead of incarceration. (*Id.*)

— How insanity may be established. (*Id.*)

— In appreciating insanity, accused is absolved from criminal liability but liable for damages. (*Id.*)

HOMICIDE

Penalty — Penalty when the privileged mitigating circumstance of incomplete self-defense is appreciated. (Nadyahan *vs*. People, G.R. No. 193134, March 2, 2016) p. 102

HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL

Jurisdiction — Has no jurisdiction to entertain a petition questioning the COMELEC *En Banc's* resolution which

has become final and executory. (Tañada, Jr. *vs*. House of Representatives Electoral Tribunal, G.R. No. 217012, March 1, 2016) p. 12

INTERNATIONAL LAW

Generally accepted principles — Current legislation reveals the adherence of the Philippines to the generally accepted principle of international law; the presumption of natural-born citizenship of foundlings is a virtual certainty. (Poe-Llamanzares *vs*. COMELEC, G.R. No. 221697, March 8, 2016) p. 292

JUDGES

Conduct of — Allegation of being biased based on suspicion was untenable. (Sps. Sustento *vs*. Judge Lilagan, A.M. No. RTJ-11-2275, March 8, 2016) p. 270

— 90-day period to render decision; delay in the disposition of any case or matter beyond the prescribed period without the court's express clearance is gross inefficiency. (*Id*.)

Gross ignorance of the law — For administrative liability to attach, the decision or order of the judge in the performance of his official duties must be contrary to existing law and jurisprudence and it must be proven that he was moved by bad faith, fraud, dishonesty, or corruption. (Miano *vs*. Aguilar, A.M. No. RTJ-15-2408 [Formerly OCA IPI No. 13-4134-RTJ], March 2, 2016) p.33

Gross inefficiency — Failure to decide cases and other matters within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate. (Miano *vs*. Aguilar, A.M. No. RTJ-15-2408 [Formerly OCA IPI No. 13-4134-RTJ], March 2, 2016) p. 33

Undue delay in issuing orders and undue delay in transmitting the records of a case — Classified as less serious charges; penalty. (Miano *vs*. Aguilar, A.M. No. RTJ-15-2408 [Formerly OCA IPI No. 13-4134-RTJ], March 2, 2016) p. 33

Undue delay in rendering a decision — Penalty. (Sps. Sustento *vs.* Judge Lilagan, A.M. No. RTJ-11-2275, March 8, 2016) p. 270

JUDGMENTS

Doctrine of immutability of judgment — Defined; the Court has the power and prerogative to relax the rule in order to serve the demands of substantial justice. (Bigler *vs.* People, G.R. No. 210972, March 2, 2016) p. 158

— The Court may correct the penalties imposed, notwithstanding the finality of the decisions when they are outside the range of penalty prescribed by law. (*Id.*)

Judicial Precedent — A new rule reversing a standing doctrine cannot be retroactively applied. (Poe-Llamanzares *vs.* COMELEC, G.R. No. 221697, March 8, 2016) p. 292

MANDAMUS

Function — To compel performance of a legal duty. (Bagumbayan-VNP Movement, Inc. *vs.* COMELEC, G.R. No. 222731, March 8, 2016) p. 1306

NEW CENTRAL BANK ACT (R.A. NO. 7653)

Bangko Sentral ng Pilipinas (BSP) — In cases involving the BSP, the Monetary Board may authorize the BSP Governor to represent it personally or through a counsel, even a private counsel, and the authority to represent the BSP may be delegated to any of its officers. (Bangko Sentral ng Pilipinas *vs.* Legaspi, G.R. No. 205966, March 2, 2016) p. 147

NOTARIES PUBLIC

Nature of — Only those who are qualified or authorized may act as notaries public; penalty for unauthorized notarization due to expired notarial commission. (Sps. Gacuya *vs.* Atty. Solbita, A.C. No. 8840[Formerly CBD Case No. 11-3121], March 8, 2016) p. 253

OVERSEAS EMPLOYMENT CONTRACT

Application of the Philippine laws — As an exception, the parties may agree that a foreign law shall govern the employment contract; requisites. (Industrial Personnel & Mgm't. Services, Inc. (IPAMS) *vs.* De Vera, G.R. No. 205703, March 7, 2016) p. 230

— Lacking any one of the four requisites would invalidate the application of the foreign law and the Philippine law shall govern the overseas employment contract. (*Id.*)

OWNERSHIP

Tax declarations or realty tax payment of property — Tax declarations or realty tax payment of property are not conclusive evidence of ownership, but they are good *indicia* of possession in the concept of an owner. (Sps. De Guzman, Jr. *vs.* CA, G.R. No. 185757, March 2, 2016) p. 71

PARTIES TO CIVIL ACTIONS

Rule on substitution — A formal substitution of the heirs in place of the deceased is no longer necessary if the heirs continued to appear and participated in the proceedings of the case. (Cardenas *vs.* Heirs of the Late Sps. Aguilar, G.R. No. 191079, March 2, 2016) p. 91

— Non-compliance therewith would render the proceedings and the judgment of the trial court infirm because the court acquires no jurisdiction over the persons of the legal representatives or of the heirs on whom the trial and the judgment would be binding. (*Id.*)

PATERNITY AND FILIATION

Proof of — Filipino parentage may be proved by evidence on collateral matters pursuant to Sec. 4, Rule 128 of the Rules of Court. (Poe-Llamanzares *vs.* COMELEC, G.R. No. 221697, March 8, 2016) p. 292

PLEADINGS AND PRACTICE

Complaint — Annexes to a complaint are deemed part of, and should be considered together with the complaint in determining the court's exclusive original jurisdiction. (Bangko Sentral ng Pilipinas *vs.* Legaspi, G.R. No. 205966, March 2, 2016) p. 147

PRELIMINARY INJUNCTION

Nature and purpose — A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order requiring a party or a court, an agency, or a person to refrain from a particular act or acts; its essential role is preservative of the rights of the parties in order to protect the ability of the court to render a meaningful decision, or in order to guard against a change of circumstances that will hamper or prevent the granting of the proper relief after the trial on the merits. (Sps. Espiritu *vs.* Sps. Sazon, G.R. No. 204965, March 2, 2016) p. 135

— Not granted for the purpose of taking the property, the legal title to which is in dispute, out of the possession of one person and putting it into the hands of another before the right of ownership is determined. (*Id.*)

Writ of — The grant or denial of a writ of preliminary injunction is discretionary upon the trial court because the assessment and evaluation of evidence towards that end involve the findings of fact left to the said court for its conclusive determination. (Sps. Espiritu *vs.* Sps. Sazon, G.R. No. 204965, March 2, 2016) p. 135

PRESCRIPTION OF ACTIONS

Action for reconveyance — An action for reconveyance based on an implied trust prescribes in ten years, reckoned from the date of registration of the deed or the date of issuance of the certificate of title over the property; exception. (Sps. De Guzman, Jr. *vs.* CA, G.R. No. 185757, March 2, 2016) p. 71

PRESENTATION OF EVIDENCE

Recalling witnesses — Procedural lapses committed during the presentation of the prosecution's evidence may be corrected by recalling the prosecution's witnesses and have them identify the exhibits mentioned in their respective affidavits. (Zaldivar *vs.* People, G.R. No. 197056, March 2, 2016) p. 113

PRE-TRIAL

Purpose — The Pre-trial order cannot be nullified when there was due compliance with the rules relative to the conduct of pre-trial. (Zaldivar *vs.* People, G.R. No. 197056, March 2, 2016) p. 113

PUBLIC LAND ACT (C.A. NO. 141)

Free patent or homestead — The alienation or encumbrance of lands acquired under free patent or homestead within the prohibited period of five years from the date of issuance of the patent is null and void and produces no effect. (Sps. De Guzman, Jr. *vs.* CA, G.R. No. 185757, March 2, 2016) p. 71

QUALIFIED RAPE AND QUALIFIED ATTEMPTED RAPE

Elements — Enumerated. (People *vs.* Comboy *y* Cronico, G.R. No. 218399, March 2, 2016) p. 187

Penalties and damages — Discussed. (People *vs.* Comboy *y* Cronico, G.R. No. 218399, March 2, 2016) p. 187

SALARY STANDARDIZATION LAW (SSL)

Consolidation of allowances and compensation — All allowances, including the Cost of Living Allowance (COLA) were generally deemed integrated in the standardized salary received by government employees; COLA back payments not proper but disallowed COLA already paid need not be returned on the basis of good faith. (Metropolitan Naga Water District *vs.* COA, G.R. No. 218072, March 8, 2016) p. 281

SALES

Capacity to buy or sell — Lawyers are prohibited from acquiring property or rights that may be the object of any litigation in which they may take part by virtue of their profession. (Peña *vs.* Delos Santos, G.R. No. 202223, March 2, 2016) p. 123

SELF-DEFENSE

Elements — In invoking self-defense, whether complete or incomplete, the *onus probandi* is shifted to the accused to prove by clear and convincing evidence all the elements. (Nadyahan *vs.* People, G.R. No. 193134, March 2, 2016) p. 102

— Reasonable necessity of the means employed to prevent or repel the unlawful aggression; the means employed by the person invoking self-defense contemplates a rational equivalence between the means of attack and the defense. (*Id.*)

SHERIFFS

Duties — Have the duty to remit immediately to the branch clerk of court any payments in satisfaction of money judgments. (Mahusay *vs.* Gareza, A.M. No. P-16-3430[Formerly OCA IPI No. 12-3905-P], March 1, 2016) p. 1

— High standards of conduct are expected of sheriffs who play an important role in the administration of justice. (*Id.*)

Simple misconduct — Failure to faithfully implement the writ of execution; a case of. (Marsada *vs.* Monteroso, A.M. No. P-10-2793[Formerly A.M. OCA IPI No. 06-2406-P], March 8, 2016) p. 260

Simple neglect of duty — Failure to make a return and to submit a return within the required period, a case of. (Mahusay *vs.* Gareza, A.M. No. P-16-3430[Formerly OCA IPI No. 12-3905-P], March 1, 2016) p. 1

VALUE ADDED TAX

Zero-rated or effectively zero-rated sales — Any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the Court of Appeals. (Silicon Phils., Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 182737, March 2, 2016) p. 44

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