G.R. No. 221697 – MARY GRACE NATIVIDAD S. POE-LLAMANZARES, *petitioner v.* COMMISSION ON ELECTIONS and ESTRELLA C. ELAMPARO, *respondents.*

G.R. Nos. 221698-700 – MARY GRACE NATIVIDAD S. POE-LLAMANZARES, *petitioner v.* COMMISSION ON ELECTIONS, FRANCISCO S. TATAD, ANTONIO P. CONTRERAS, and AMADO D. VALDEZ, *respondents.*

Promulgated:

March 8, 2016

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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.**
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> **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.**
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> **In a sense, he is an apostate. He has renounced Philippine citizenship by a knowing and affirmative act. 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 and claiming the status he has lost.**
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> **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 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**

[1] Philippine Daily Inquirer, "Return of the Renegade" Mar. 4, 1995.

> **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]

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[2] See p. 16, par. 1 of the *ponencia.*

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 x
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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]
>
> *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]*

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3 See p. 20, last paragraph of the *ponencia*.

4 See p. 21, par. 1 of the *ponencia*.

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;**
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> **(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;**
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> **(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**
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> **(4) the COMELEC's determinations on Poe's citizenship and residency are acts of grave abuse of discretion because:**
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> > **(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**
> >
> > **(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

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5 See p. 21, par. 2 of the *ponencia.*

6 See p. 4 of J. Caguioa's Separate Concurring Opinion.

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.1. 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 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

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7 See p. 22, par. 1 of the *ponencia.*
8 See p. 2 of the first circulated version of J. Leonen's Opinion.
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 p. 22-23 of the *ponencia*
14 See p. 24-28 of the *ponencia.*

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]

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

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15 See p. 24, par. 1 of the *ponencia.*
16 See p. 26, par. 1 of the *ponencia.*
17 See pp. 27-28 par. 2 of the *ponencia.*
18 See p.25 of the first circulated version of J. Jardeleza's Opinion.
19 See p. 28, pars. 1 and 2 of the *ponencia.*

Chairperson 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 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

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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*
25 See pp. 30-32 of the *ponencia*

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,* 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

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26 See pp. 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.*
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.

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]

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 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

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33 See discussions on pp. 84 to 87 of the first circulated version of J. Leonen's Opinion.
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.

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.1. *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 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:**
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> 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.
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> **2012 Rules of Procedure:**
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> 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

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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.
40 See p. 19 of the *ponencia*.
41 See p. 20 of the *ponencia*.

> 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 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 *Tecson v. COMELEC*[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,***

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42 See pp. 20 – 21 of the *ponencia*.
43 Ibid.
44 G.R. No. 161434, March 3, 2004, 424 SCRA 277.

> which may relate to the qualifications required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. ***Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office.*** If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a quo warranto proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for quo warranto is filed after proclamation of the 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*:**
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> **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 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**

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45 595 Phil. 449, 465-67 (2008).

> **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:

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 eligibility 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**

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.

		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 can liberally construe its own rules of procedure for the speedy disposition of cases before it.**
***Cerafica 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 *Cerafrica*)**	**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.** **xxx** **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 Certifcate 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

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49 G.R. No. 135886, August 16, 1999, 312 SCRA 447, 459.

> 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.
>
> xxxx
>
> 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:
>
> xxxx
>
> 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

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]

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

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[50] See p. 26 of the *ponencia*, citing 1 Jose M. Aruego, The Framing of the Philippine Constitution 209 (1949).

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 even with the express wordings of the Constitution***. 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. *Burden of Proof.*

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 rulings/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 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 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

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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.

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.*

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.[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] • *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*

57 See petition in G.R. No. 221697, pp. 12, 14; and petition in G.R. No. 221698-700, pp. 15, 17. See also Foundling Certificate, Annex "M-series", Exhibit "1" (both of Tatad, and Contreras/Valdez case) in G.R. No. 221698-700; and Annex "I-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. No. 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. No. 221698-700, pp. 5, 24 (par. 47), 55-59 (subsection B and B.1), 69-76, 79-89, and 141-146 (subsection B.11).

60 See petition in G.R. No. 221697, pp. 104-108 (pars. 136-138); and petition in G.R. No. 221698-700, pp. 72-76 (pars. 106-108).

	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 in passing in her Memorandum.*[61]
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*

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. No. 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 "(l)aws 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." Respondent does not argue, and has never argued, that her adoption by the Poe spouses conferred citizenship on her. However, the adoption affirms that Respondent was 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.

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 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.

62 See petition in G.R. No. 221697, pp. 12, 14; and petition in G.R. No. 221698-700, pp. 15, 17. See also Foundling Certificate, Annex "M-series", Exhibit "1" (both of Tatad, and Contreras/Valdez case) in G.R. No. 221698-700; and Annex "I-series", Exhibit "1" (of Elamparo case) in G.R. No. 221697.

63 Foundling Certificate (LCR 4175), Annex "M-series", Exhibit "1" (both of Tatad, and Contreras/Valdez case) in G.R. No. 221698-700; and Annex "I-series", Exhibit "1" (of Elamparo case) in G.R. No. 221697.

	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.
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	The court approved the Spouses Poe's petition for adoption. Poe's name was changed to "Mary Grace Sonora Poe.[65] • *Legal Significance: She officially assumed the **status** of a legitimate child by adoption of the Spouses Poe, but the adoption did not affect her citizenship status; under P.D. 603 (The Child and Youth Welfare Code), the adopted child does not follow the citizenship of the adopting parents.*[66]
In 2006	• *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] • *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,*

64 See petition in G.R. No. 221697, par. 14; and petition in G.R. No. 221698-700, par. 19.

65 MTC Decision, Annex "M-series", Exhibit "2" (of Tatad case) in G.R. No. 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. No. 221698-700; and Annex "I-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 was adopted by the spouses Poe. Articles 337 and 339 provides 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 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. No. 221698-700; and Annex "I-series", Exhibit "10" (of Elamparo case) in G.R. No. 221697.

	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] • *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]

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69 See petition in G.R. No. 221697, par. 15; and petition in G.R. No. 221698-700, par. 20. Annex "M-series", Exhibit "3" (of Tatad case) in G.R. No. 221698-700; and Annex "I-series", Exhibit "3" (of Elamparo case) in G.R. No. 221697.

70 See Article V, Section 1 of the Constitution. It reads:

> SECTION 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. 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. No. 221698-700, 17. Annex "M-series", Exhibit "4" (of Tatad case) in G.R. No. 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. No. 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:

> 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

	Filipino citizenship is expressly 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 Llamanzares (an American citizen of Filipino extraction) in the Philippines on July 27, 1991.[76] • *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*** *through "express renunciation" of this citizenship.*[79]

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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. G.R. No. 221698-700; and Annex "I-series in GR No. 221697.

75 *Paa v. Chan*, 128 Phil. 815, 824 (1967).

76 See petition in G.R. No. 221697, pp. 14; and petition in G.R. No. 221698-700, p. 18.

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. No. 221698-700, p. 18.

79 "*I hereby declare, on oath, that I 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*

	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 "**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.**" (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] • *Legal Significance: Part of her right as a U.S. citizen.*
October 18, 2001 to July 18, 2006	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]

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

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."
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. No. 221698-700; and Annex "I-series", Exhibit "5" (of Elamparo case) in G.R. No. 221697.

82 See petition in G.R. No. 221697, p. 23; and petition in G.R. No. 221698-700, pp. 28-29. Annex "M-series", Exhibit "5" (of Tatad case) in G.R. No. 221698-700; and Annex "I-series", Exhibit "5" (of Elamparo case) in G.R. No. 221697.

	March 11, 2006	Balikbayan	US Passport
	July 5, 2006	Balikbayan	US Passport
	• *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.*		
July 7, 2006	She took her oath of 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 available **only to former natural-born Filipino citizens**.[85] Thus, the validity of her RA No. 9225 reacquired Philippine citizenship depended on the validity of her natural-born citizenship claim.*		

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83 See petition in G.R. No. 221697, p. 20; and petition in G.R. No. 221698-700, p. 24. Annex "M-series", Exhibit "19" (of Tatad case), Exhibit "13" (of Contreras/Valdez cases) in G.R. No. 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. No. 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 to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:
>
> 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]

	• *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 claim to be a natural-born citizen, notably in her MTRCB appointment, her election to the Senate and her present candidacy for 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 and 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] • *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]

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. No. 221698-700, p. 25. Annex "M-series", Exhibit "22" (of Tatad case), Exhibit "16" (of Contreras/Valdez cases) in G.R. No. 221698-700; and Annex "I-series", Exhibit "22" (of Elamparo case) in G.R. No. 221697.

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:

	• To quote the BID Order approving Poe's application – *"the petitioner was a former natural-born citizen of the Philippines, **having been born** to Filipino parents...."* 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 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 voted upon to elective position unless a renunciation of the other citizenship is made.*[93]

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).

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. No. 221698-700.

91 See petition in G.R. No. 221697, p. 21; and petition in G.R. No. 221698-700, p. 26. Poe's Identification Card was signed by signed by Commission Alipio Fernandez: Annex "M-series", Exhibit "23" (of Tatad case), Exhibit "17" (of Contreras/Valdez cases) in G.R. No. 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. No. 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. No. 221698-700, p. 26. Annex "M-series", Exhibit "24" (of Tatad case), Exhibit "18" (of Contreras/Valdez cases) in G.R. No. 221698-700; and Annex "I-series", Exhibit "24" (of Elamparo case) in G.R. No. 221697.

93 RA No. 9225, Sec. 5(1) and (2).

<table>
<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 – October 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><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 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>

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94 See petition in G.R. No. 221697, p. 21; petition in G.R. No. 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. No. 221698-700.

95 See petition in G.R. No. 221697, p. 23; and petition in G.R. No. 221698-700, pp. 28-29. Annex "M-series", Exhibit "5" (of Tatad case) in G.R. No. 221698-700; and Annex "I-series", Exhibit "5" (of Elamparo case) in G.R. No. 221697.

96 See petition in G.R. No. 221697, p. 23; and petition in G.R. No. 221698-700, pp. 28-29. Annex "M-series", Exhibit "26" (of Tatad case), Exhibit "19" (of Contreras/Valdez cases) in G.R. No. 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.

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 Poe only renounced her U.S. citizenship because it was required by her appointment and subsequent assumption to office at the MTRCB.*[100]
October 21, 2010 October 26, 2010	Poe took her Oath of Office for the position of MTRCB Chairperson.[101] Poe assumed the duties and responsibilities of the Office of the MTRCB Chairperson.[102] • *Legal significance: Poe could have been appointed as MTRCB Chairperson **only if she had been a natural-born Filipino citizen**.*[103]

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 x. [emphasis supplied]

98 See petition in G.R. No. 221697, p. 22; and petition in G.R. No. 221698-700, pp. 29. Annex "M-series", Exhibit "27" (of Tatad case), Exhibit "21" (of Contreras/Valdez cases) in G.R. No. 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. No. 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 renounce their oath of allegiance to the country where they took that oath." 'Emphases and underscoring supplied]

101 See Annex "M-series", Exhibit "29" (of Tatad case) in G.R. No. 221698-700; and Annex "I-series", Exhibit "29" (of Elamparo case) in G.R. No. 221697.

102 See Annex "M-series", Exhibit "26-A" (of Tatad case), Exhibit "20" (of Contreras/Valdez cases) in G.R. No. 221698-700; and Annex "I-series", Exhibit "26-A" (of Elamparo case) in G.R. No. 221697.

103 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.

	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]
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 travel at will to and from the U.S., nor reside in that country.*
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]

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. No. 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/Valdez cases) in G.R. No. 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. No. 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. No. 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. No. 221698-700; and Annex "I-series", Exhibit "31" (of Elamparo case) in G.R. No. 221697.

	• *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. • *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; **<u>she signed the statement under oath that she is a NATURAL-BORN FILIPINO CITIZEN</u>**. • *Legal Significance: This is the citizenship issue in the present case which posed to the Comelec 2 sub-issues:* ***<u>First</u>**. Is Poe a natural-born Filipino citizen after considering her foundling status, her*

109 Annex "M-series", Exhibit "32" (of Tatad case) in G.R. No. 221698-700; and Annex "I-series", Exhibit "32" (of Elamparo case) in G.R. No. 221697.

See also 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. No. 221698-700.

110 Annex "M-series", Exhibit "43" (of Tatad case) in G.R. No. 221698-700; and Annex "I-series", Exhibit "43" (of Elamparo case) in G.R. No. 221697.

111 See petition in G.R. No. 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. No. 221698-700.

acquisition of U.S. citizenship and the consequent loss of her claimed natural-born Philippine citizenship, and her alleged reacquisition under RA No. 9225?

***Second**. 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*

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112 See petition in G.R. No. 221697, pp. 102-104; and petition in G.R. No. 221698-700, pp. 69-72.

	that arguably stands at the same level and footing as the confidential 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) 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***

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113 255 Phil. 934 (1989).

114 *Frivaldo v. Comelec,* 255 Phil. 934 (1989).

115 US citizenship acquires requires a prior period of permanent residence in that country.

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.

Table 2

THE RESIDENCY TABLE

Date	Particulars (*with legal significance*)
Days prior to September 3, 1968 – the date Poe was found in Jaro, Iloilo	With 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 Cathderal. 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]
May 13, 1974	The court approved the Spouses Poe's petition for adoption. Poe's name was changed to "Mary Grace Sonora Poe.[118]

116 See petition in G.R. No. 221697, pp. 12, 14; and petition in G.R. No. 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. No. 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. No. 221698-700, par. 19.

118 MTC Decision, Annex "M-series", Exhibit "2" (of Tatad case) in G.R. No. 221698-700; and Annex "I-series", Exhibit "2" (of Elamparo case) in G.R. No. 221697.

	• *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 of 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] • *Legal Significance: She could have been registered as a voter **only if she had represented that she was a Filipino citizen and a resident of the Philippines** for at least one year and of Greenhills, San Juan, Metro Manila 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 U.S. Absence from Philippine domicile to pursue studies overseas does not constitute loss of domicile or residence.*
1991	Poe graduated from Boston College.[123]

See also Certificate of Finality dated October 27, 2005, Annex "M-series", Exhibit "2-A" (of Tatad case) in G.R. No. 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. No. 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. No. 221698-700, par. 20. Annex "M-series", Exhibit "3" (of Tatad case) in G.R. No. 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. No. 221698-700, p. 17.

123 See petition in G.R. No. 221697, p. 12, 14; and petition in G.R. No. 221698-700, pp. 15, 17.

	• *Legal significance. Absence from the domicile of origin to pursue studies does not constitute loss of domicile or residence.* • *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 proven 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 U.S. 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, 1991. Very clearly,* ***Poe intended to abandon her Philippine residence*** *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 status confirmed her intent to establish family life, and thus, residence, in the U.S.*[129]

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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. No. 221698-700, p. 18.

127 See petition in G.R. No. 221697, p. 14, par. 19; and petition in G.R. No. 221698-700, p. 17, par. 24.

128 See petition in G.R. No. 221697, pp. 14; and petition in G.R. No. 221698-700, p. 18.

129 See petition in G.R. No. 221697, p. 14; and petition in G.R. No. 221698-700, p. 17.

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 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.*
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]

130 See petition in G.R. No. 221697, p. 15; and petition in G.R. No. 221698-700, p. 18.

131 See *Coquilla vs. COMELEC,* 434 Phil. 861 (2002).

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).

134 See petition G.R. No. 221697, p. 16; and petition in G.R. No. 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

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.* • *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.*

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 G.R. No. 221697, p. 15; and petition in G.R. No. 221698-700, p. 18-19. See also Poe's U.S. passport, Annex "M-series", Exhibit "5" (of Tatad case) in G.R. No. 221698-700; and Annex "I-series", Exhibit "5" (of Elamparo case) in G.R. No. 221697.

137 See petition G.R. No. 221697, p. 15; and petition in G.R. No. 221698-700, p. 19.

138 See petition in G.R. No. 221697, p. 15; and petition in G.R. No. 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.* • *U.S. residency – which started in 1991 and which was later confirmed by Poe's acquisition 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.*

139 See petition in G.R. No. 221697, p. 16; and petition in G.R. No. 221698-700, p. 19-20.

140 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 "I-series", Exhibit "5" (of Elamparo case) in G.R. No. 221697.

141 See petition in G.R. No. 221697, p. 16; and petition in G.R. No. 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. No. 221698-700; Annex "I-series", Exhibits "7" and "7-A" to "7-F" (of Elamparo case) in G.R. No. 221697.

	resident. This act establishes the intent to transfer schools, but does not, by itself, conclusively prove the intent to change 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 ***was still under a Balikbayan visa and was thus a visitor*** 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] • *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.*

142 See petition in G.R. No. 221697, p. 16; and petition in G.R. No. 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 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]

	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] • *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 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.*

145 See Annex "M-series", Exhibit "6-series" (of Tatad case), Exhibit "2-series" (of Contreras/Valdez cases) in G.R. No. 221698-700; and Annex "I-series", Exhibit "2-series" (of Elamparo case) in G.R. No. 221697.

146 See *Romualdez v. RTC*, G.R. No. 104960, 14 September 1993, 226 SCRA 408, 415-416.

147 See petition in G.R. No. 221697, p. 16; and petition in G.R. No. 221698-700, p. 20.

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. At most, this shows that Poe and her 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 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*

148 See petition in G.R. No. 221697, p. 17; and petition in G.R. No. 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. No. 221698-700; and Annex "I-series", Exhibits "7" to "7-F" (of Elamparo case), in G.R. No. 221697.

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/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 15, 2016).

150 See petition in G.R. No. 221697, p. 17; and petition in G.R. No. 221698-700, p. 22. Annex "M-series", Exhibit "8" (of Tatad case), Exhibit "4" (of Contreras/Valdez cases) in G.R. No. 221698-700; and Annex "I-series", Exhibit "8" (of Elamparo case) in G.R. No. 221697.

	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.* • *Aliens or foreign nationals, whether former natural-born Filipino citizens or not, can acquire condominium units and shares in*

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. No. 221698-700, p. 22. Annex "M-series", Exhibits "11" and "12" in G.R. No. 221698-700; and Annex "I-series", Exhibits "5" and "6" (of Elamparo case) in G.R. No. 221697.

	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 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 point the legal*

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).

154 See petition in G.R. No. 221697, p. 18; and petition in G.R. No. 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. No. 221698-700.

155 See petition in G.R. No. 221697, p. 19; and petition in G.R. No. 221698-700, p. 23.

156 See petition in G.R. No. 221697, p. 18; and petition in G.R. No. 221698-700, p. 23. Annex "M-series", Exhibit "16" (of Tatad case), Exhibit "10" (of Contreras/Valdez cases) in G.R. No. 221698-700; and Annex "I-series", Exhibit "16" (of Elamparo case) in G.R. No. 221697.

	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 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

157 See petition in G.R. No. 221697, p. 18; and petition in G.R. No. 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. No. 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. No. 221698-700, p. 23. Annex "M-series", Exhibit "17" (of Tatad case), Exhibit "11" (of Contreras/Valdez cases) in G.R. No. 221698-700; and Annex "I-series", Exhibit "17" (of Elamparo case) in G.R. No. 221697.

	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 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 amended by RA No. 8179,[160] in relation with Article XII, Section 8 of the Constitution,[161] without the need to reacquire Philippine 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*

159 See petition in G.R. No. 221697, p. 19; and petition in G.R. No. 221698-700, p. 24. Annex "M-series", Exhibit "18" (of Tatad case); Exhibit "12" (of Contreras/Valdez cases) in G.R. No. 221698-700; and Annex "I-series", Exhibit "18" (of Elamparo case) in G.R. No. 221697.

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 10 of RA No. 7042, as amended by R.A. 8179, states:

> SEC. 10. 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]

	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 still 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 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 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,*

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. No. 221698-700, p. 24. Annex "M-series", Exhibit "19" (of Tatad case), Exhibit "13" (of Contreras/Valdez cases) in G.R. No. 221698-700; and Annex "I-series", Exhibit "19" (of Elamparo case) in G.R. No. 221697.

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.

165 See petition in G.R. No. 221697, p. 20; and petition in G.R. No. 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.

166 See Section 3 of RA 9225. It pertinently reads:

	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 citizenship (RA No. 9225) did not, by that act alone, conclusively prove abandonment of her U.S. domicile. As noted below, Poe, at that point, had the option to establish residence in both the Philippines and the U.S.*
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] • *Assuming Poe to be a former natural-born citizen,* ***July 18, 2006 would be the earliest possible reckoning point for Poe to establish Philippine residency for purposes of the***

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

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]

167 See petition in G.R. No. 221697, p. 20; and petition in G.R. No. 221698-700, p. 25. Annex "M-series", Exhibit "22" (of Tatad case), Exhibit "16" (of Contreras/Valdez cases) in G.R. No. 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).

	exercise of political rights as it was only then that she was granted civil and political rights. *To vote and be voted for are both political rights.* • *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 issue 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.* ***Note that Poe started as a U.S. domiciliary. This characterization stays until she could carry a change of domicile into effect.*** *This change admits of evidence 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 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 place a former*

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.

	natural-born Filipino who could avail of RA No. 9225?[170]
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] • *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]

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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.

171 See petition in G.R. No. 221697, p. 21; and petition in G.R. No. 221698-700, p. 26. Annex "M-series", Exhibit "23" (of Tatad case), Exhibit "17" (of Contreras/Valdez cases) in G.R. No. 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. No. 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. No. 221698-700, p. 26. Annex "M-series", Exhibit "24" (of Tatad case), Exhibit "18" (of Contreras/Valdez cases) in G.R. No. 221698-700; and Annex "I-series", Exhibit "24" (of Elamparo case) in G.R. No. 221697.

174 See Article V, Section 1 of the Constitution.

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- *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.*

</td></tr>
<tr><td>October 18, 2001 to July 18, 2006</td><td>On these dates, Poe returned to the Philippines using her U.S. Passport under the Balikbayan program[176] per the entry "BB" or "1YR" and stamped dates in her U.S. Passport:[177]

<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>
<tr><td>November 4, 2006</td><td>Balikbayan</td><td>US Passport</td></tr>
</table>

- *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 visitor to the Philippines, 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]</td></tr>
</table>

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175 G.R. No. 180088, January 19, 2002, 576 SCRA 331.

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. No. 221698-700, pp. 28-29. Annex "M-series", Exhibit "5" (of Tatad case) in G.R. No. 221698-700; and Annex "I-series", Exhibit "5" (of Elamparo case) in G.R. No. 221697.

178 See petition in G.R. No. 221697, p. 23; and petition in G.R. No. 221698-700, pp. 28-29. Annex "M-series", Exhibit "5" (of Tatad case) in G.R. No. 221698-700; and Annex "I-series", Exhibit "5" (of Elamparo case) in G.R. No. 221697.

179 Grace Poe's Identification Certificate Number.

<table>
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<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 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.
</td></tr>
<tr><td>October 13, 2009</td><td>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."
</td></tr>
<tr><td>October 6, 2010</td><td>Poe was appointed as the Chairperson of the Movie and Television Review and Classification Board (MTRCB).[181]
Legal significance: Poe could have been
</td></tr>
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180 See petition in G.R. No. 221697, p. 21; and petition in G.R. No. 221698-700, p. 26. Annex "M-series", Exhibit "25" (of Tatad case) in G.R. No. 221698-700; and Annex "I-series", Exhibit "25" (of Elamparo case) in G.R. No. 221697.

181 See petition in G.R. No. 221697, p. 23; and petition in G.R. No. 221698-700, pp. 28-29. Annex "M-series", Exhibit "26" (of Tatad case), Exhibit "19" (of Contreras/Valdez cases) in G.R. No. 221698-700; and Annex "I-series", Exhibit "26" (of Elamparo case) in G.R. No. 221697.

	appointed as MTRCB Chairperson only ***if she had been a natural-born Filipino citizen, and a resident of the Philippines*** *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 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 given the previous loss of both Philippine citizenship*

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.

183 See petition in G.R. No. 221697, p. 22; and petition in G.R. No. 221698-700, pp. 29. Annex "M-series", Exhibit "27" (of Tatad case), Exhibit "21" (of Contreras/Valdez cases) in G.R. No. 221698-700; and Annex "I-series", Exhibit "27" (of Elamparo case) in G.R. No. 221697.

	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]
October 26, 2010	Poe assumed the duties and responsibilities of the Office of the 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]

184 See petition in G.R. No. 221697, p. 21, par. 49; and petition in G.R. No. 221698-700, pp. 26-27, par. 54.

185 See Annex "M-series", Exhibit "29" (of Tatad case) in G.R. No. 221698-700; and Annex "I-series", Exhibit "29" (of Elamparo case) in G.R. No. 221697.

186 See Annex "M-series", Exhibit "26-A" (of Tatad case), Exhibit "20" (of Contreras/Valdez cases) in G.R. No. 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 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

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 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.*
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

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.

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. No. 221698-700. See also petition in G.R. No. 221698-700, p. 168.

189 See Annex "M-series", Exhibit "33" (of Tatad case) in G.R. No. 221698-700; and Annex "I-series", Exhibit "33" (of Elamparo case) in G.R. No. 221697.

190 See Annex "M-series", Exhibit "34" (of Tatad case) in G.R. No. 221698-700; and Annex "I-series", Exhibit "34" (of Elamparo case) in G.R. No. 221697.

	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**.* • ***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.

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[191] See petition in G.R. No. 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. No. 221698-700.

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 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.

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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).

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.*

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,

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[195] 63 Phil. 139, 158-59 (1936).

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 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

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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.

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).

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 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.1. *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 the Court's awareness that classification is an unavoidable legislative task. The presumption is in favor of the classification's validity.[206]

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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.

206 Bernas, S.J. *The 1987 Constitution of the Republic of the Philippines: A Commentary*, (2009), p. 139.

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 government.[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 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]

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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.

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.

II.D.3. *The Application of the Equal Protection Clause to a constitutional provision.*

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. *The Citizenship of a Foundling.*

The citizenship provisions of the Constitution authorize the State's exercise of its sovereign power to determine who its 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.

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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).

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]

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.

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[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.

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.

Third, 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* they 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 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

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216 *People v. Cayat*, 68 Phil. 12, 18 (1939).

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 cancellation – in his or her CoC statements. While Section 78 itself does not expressly define what representation is

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217 G.R. No. 158830, August 10, 2004, 436 SCRA 45.

218 *Bedol v. Commission on Elections*, G.R. 179830, December 3, 2009, 606 SCRA 554, 570-71.

"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 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.

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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.

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 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]

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220 G.R. No. 135886, August 16, 1999, 312 SCRA 447, 459.

221 G.R. No. 119976, September 18, 1995, 248 SCRA 300, 326.

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]

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**.

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222 706 Phil. 534 (2013).
223 *Id.* at 551.
224 G.R. No. 119976, September 18, 1995, 248 SCRA 300, 392-400.
225 595 Phil. 449 (2008).

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 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;
>
> xxxx
>
> g. *citizenship, whether natural-born or naturalized*;
>
> xxxx

> k. *legal residence, giving the exact address and the number of years residing in the Philippines* x x x;
>
> xxxx
>
> n. *that the aspirant is eligible for said office*;
>
> xxxx
>
> t. that *the facts stated in the certificate are true and correct to the best of the aspirant's knowledge*;
>
> xxxx
>
> 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 her 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 Philippine 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.

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.

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226 G.R. No. 180088, January 19, 2002, 576 SCRA 331.

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 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

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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.*, G.R. No. 150478, April 15, 2005, 456 SCRA 300, 309.

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.

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 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 did not strictly demand a strictly legal viewpoint 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 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***

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230 *Palaran v. Republic*, 4 Phil. 79 (1962).

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]

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.

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231 596 Phil. 354 (2009).

232 G.R. No. 198742, August 10, 2012, 678 SCRA 267.

233 581 Phil. 657 (2008).

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 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 administrative 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 Blg. 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 *contests* 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: 1. Enforce and administer all laws relative to the conduct of elections. xxxx 3. Decide, save those involving the right to vote, administrative 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 x The Supreme Court, sitting en banc, shall be the sole judge of all *contests* relating to the	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

<table>
<tr><td>election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.</td><td>regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

x x x x

(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.</td></tr>
<tr><td rowspan="2">1987 Constitution, Art. IX, Sec. 7:

x x x 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.</td><td>1987 Constitution, Art. IX, Sec. 1:

The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.</td></tr>
<tr><td>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 to the conduct of elections for 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.</td></tr>
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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

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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).

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 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).

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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)..

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.

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/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

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240 Art. VI, Sec. 17.

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.

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 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.

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.

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241 G.R. No. 161434, March 3, 2004, 424 SCRA 277.

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 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]

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242 595 Phil. 449 (2008).
243 318 Phil. 329 (1995).
244 595 Phil. 449, 465-67 (2008).

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.

III.A. *The COMELEC did not gravely abuse its discretion in interpreting Article IV, Section 1 of the 1935 Constitution.*

III.A.1. *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

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245 *Francisco v. House of Representatives*, 460 Phil. 830 (2003); *Chavez v. Judicial and Bar Council*, 691 Phil. 173 (2012).

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.

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 **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*

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246 1935 CONSTITUTION, ARTICLE IV, SECTION 1:
"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."

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 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

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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).

250 A. Scalia and B. Garner. *Reading Law: The Interpretation of Legal Texts* (2012 ed.), p. 93.

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 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

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251 CA No. 473.

> 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. 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

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252 115 Phil. 657 (1962).

253 *People v. Manantan*, 115 Phil. 657, 668-69 (1962).

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***.

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254 See *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 887 (2003).

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 inserted: "The natural children of a foreign father and a Filipino mother recognized that"
xxxx *EL PRESIDENTE: La Mesa desea pedir una aclara. cion del proponente de la enmienda. ¿Se refiere Su Senoria a hijos naturales o a toda clase de hijos ilegitimos?*	xxxx 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.
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 territorio espanol, porque la 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	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

considerara que es filipino, de modo que no hay necesidad . . .	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 la 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."*
xxxx	xxxx
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 casos 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.
xxxx	xxxx
EL PRESIDENTE: La Mesa sometera a votacion dicha enmienda. Los que esten conformes con la misma, que digan Si. (Una minoria: Si.) Los que no lo esten, que digan No. (Una mayoria: No.) Queda rechazada la enmienda.	THE PRESIDENT: The Chair places the amendment to a vote. Those who agree with the amendment, say Yes. (A minority: 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 of the 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]

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

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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).

259 *Ibid.*

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 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.

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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/UNTS/Volume%201155/volume-1155-I-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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> xxxx
>
> (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.
>
> xxxx

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).

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).

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 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,*

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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).

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 Préparatoires"* of the International Covenant on Civil and Political Rights,"[267] 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 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:

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267 See: M. Bussuyt. "Guide to the"Travaux Préparatoires" of the International Covenant on Civil and Political Rights" *Martinus Nijhoff Publishers* (1987).

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.

> 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]

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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" (1998). 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).

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 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, 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.

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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/?p1=4&p2=2

278 *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, *supra* note 115, at 399.

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 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

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279 *Ting v. Velez-Ting*, 601 Phil. 676, 687 (2009).

280 CONSTITUTION, Article II, Section 2 in relation to CIVIL CODE, Article 8.

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]

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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).

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 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 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.*

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285 *Metropolitan Bank Corporation v. Tobias*, *supra* note 63, at 188-189.

286 CIVIL CODE, Title VIII, Chapter 1.

287 *Id.*, Article 255.

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?

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 did not prove their legal residence in the Philippines ***before*** acquiring their Philippine citizenship. In

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288 596 Phil. 354 (2009).

289 G.R. No. 209835, September 22, 2015.

290 434 Phil. 861 (2002).

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.

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]

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291 See *Romualdez-Marcos v. Commission on Elections*, 318 Phil. 329 (1995).

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 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

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[292] Thus, for purposes of determining 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.

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]

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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293 *Limbona v. Comelec*, 578 Phil. 364 (2008).

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.1. ***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, **an inextricable link exists among citizenship, domicile, and sovereignty; citizenship and domicile must coincide in order to participate as a component of the 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

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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.

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.*

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 women who lost Philippine citizenship

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299 434 Phil. 861 (2002).

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 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.

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 both of which

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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
>
> 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 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 Philippines and personally know the petitioner to be a resident of die 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.

provide for a more expedited process. Note, too, that under our Constitution, there are only two kinds of Philippine 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

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> The certificate of arrival, and the declaration of intention 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 die justice of the peace of the municipality wherein the petitioner resides.

See also Sections 1 and 2 of RA No. 530 amending Sections 9 and 10 of CA No. 473. They read:

> SECTION 1. 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;
> 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.

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 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 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]

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305 G.R. No. L-22041, May 19, 1966, 17 SCRA 147.

306 434 Phil. 861, 873-875 (2002).

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.

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]

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.

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307 434 Phil. 861, 873 (2002).

308 596 Phil. 354, 369-370 (2009).

309 G.R. No. 209835, September 22, 2015.

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 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.1. *Poe was not a natural-born citizen who could validly 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 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

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310 Sec. 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.

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 citizenship, she still has not been a Philippine resident for "10 years and 11 months" on the day 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.

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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 "I-series", Exhibit "5" (of Elamparo case) in G.R. No. 221697.

312 R.A. 6768, as amended by R.A. 9174, Section 2(a).

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 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

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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. In 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.

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.*

thus not be considered for purposes of Article VII, Section 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 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,

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317 See petition in G.R. No. 221697, p. 20; and petition in G.R. No. 221698-700, p. 25. Annex "M-series", Exhibit "22" (of Tatad case), Exhibit "16" (of Contreras/Valdez cases) in G.R. No. 221698-700; and Annex "I-series", Exhibit "22" (of Elamparo case) in G.R. No. 221697.

318 See petition in G.R. No. 221697, p. 17; and petition in G.R. No. 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. No. 221698-700; and Annex "I-series", Exhibits "7" to "7-F" (of Elamparo case), in G.R. No. 221697.

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 the U.S. Postal Service 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

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319 See petition in G.R. No. 221697, p. 18; and petition in G.R. No. 221698-700, p. 22. Annex "M-series", Exhibits "11" and "12" in G.R. No. 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. No. 221698-700, p. 24. Annex "M-series", Exhibit "18" (of Tatad case); Exhibit "12" (of Contreras/Valdez cases) in G.R. No. 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. No. 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. No. 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. No. 221698-700, p. 23. Annex "M-series", Exhibit "17" (of Tatad case), Exhibit "11" (of Contreras/Valdez cases) in G.R. No. 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. No. 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. No. 221698-700, p. 20. Also, see petition in G.R. No. 221697, p. 18; and petition in G.R. No. 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. No. 221698-700.

324 See petition in G.R. No. 221697, p. 18; and petition in G.R. No. 221698-700, p. 23. Annex "M-series", Exhibit "16" (of Tatad case), Exhibit "10" (of Contreras/Valdez cases) in G.R. No. 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. No. 221698-700, p. 22. Annex "M-series", Exhibit "8" (of Tatad case), Exhibit "4" (of Contreras/Valdez cases) in G.R. No. 221698-700; and Annex "I-series", Exhibit "8" (of Elamparo case) in G.R. No. 221697.

24, 2005 and July 18, 2006, a temporary visitor physically present in the Philippines. I submit the following specific reasons.

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 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

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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.

329 See Section 10 of RA No. 7042, as amended by R.A. 8179.

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 2005 establishes their physical presence in the Philippine 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]

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330 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/9781/philippines-has-26k-foreign-students las 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

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 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 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

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http://www.cfo.gov.ph/pdf/handbook/Immigration_Policies_on_Visiting_and_Returning_Overseas_Filipinos-chapterIV.pdf (last accessed on February 12, 2016).

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 GR Nos. 221698-700 (Tatad case).

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.

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[333] 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**.

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.

ARTURO D. BRION
Associate Justice