EN BANC

G.R. No. 221697 ***(Mary Grace Natividad S. Poe-Llamanzares v. Commission on Elections and Estrella C. Elamparo)***

G.R. Nos. 221698-700 ***(Mary Grace Natividad S. Poe-Llamanzares v. Commission on Elections, Francisco S. Tatad, Antonio P. Contreras and Amado D. Valdez)***

Promulgated:
March 8, 2016

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SEPARATE DISSENTING OPINION

LEONARDO-DE CASTRO, *J.*:

I begin this Dissenting Opinion by outrightly expressing my view that the opinion of Honorable Justice Jose P. Perez on the issue of natural-born citizenship which was joined by six (6) other Justices including the Honorable Chief Justice Ma. Lourdes P.A. Sereno, if not overturned, will wreak havoc on our constitutional system of government.

By their opinion, the seven (7) Justices would amend the 1935 Constitution which was in effect when petitioner was born, to add "foundlings found in the Philippines whose parents are unknown" in the enumeration of natural-born citizen, as follows:

ARTICLE IV
CITIZENSHIP
(1935 Constitution)

Section 1. The following are citizens of the Philippines

(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

(2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

(3) Those whose fathers are citizens of the Philippines **[and foundlings found in the Philippines whose parents are unknown]**.

(4) Those whose mothers are citizens of the Philippines and upon reaching the age of majority, elect Philippine citizenship.

(5) Those who are naturalized in accordance with the law. (Emphases supplied.)

This amendment of the Constitution by the judicial opinion put forth by the seven (7) Justices is based mainly on extralegal grounds and a misreading of existing laws, which will have unimaginable grave and far-reaching dire consequences in our constitutional and legal system and national interest which this Dissenting Opinion will explain below.

For the above reason and other reasons, I dissent to the *Ponencia* of Mr. Justice Jose P. Perez that the four consolidated petitions seeking the annulment and setting aside of the Commission on Elections (COMELEC) December 1, 2015 and December 23, 2015 Resolutions in SPA Nos. 15-001 (DC); and, the December 11, 2015 and December 23, 2015 Resolutions in 15-002 (DC), 15-007 (DC), and 15-139 (DC) should be granted.

It is my humble submission that petitioner Senator Mary Grace Natividad S. Poe-Llamanzares (Poe for brevity) failed to show that the COMELEC *En banc* gravely abused its discretion in affirming its Second Division's December 1, 2015 and its First Division's December 11, 2015 Resolutions, both denying due course to and/or cancelling her Certificate of Candidacy (COC) for the position of President of the Republic of the Philippines, particularly with respect to the finding that she made therein material representations that were false relating to her natural-born citizenship and ten-year period of residence in the Philippines that warrant the cancellation of her COC.

In gist, the bases for my dissent in the disposition of the cases, which will be discussed *in seriatim,* are as follows – contrary to the findings in the *Ponencia:*

On the Procedural/Technical Issues

I. The review power of this Court relative to the present petitions filed under Rule 64 *vis-à-vis* Rule 65 both of the Rules of Court, as amended, is limited to the jurisdictional issue of whether or not the COMELEC acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction;

II. Petitioner Poe failed to satisfactorily show that the COMELEC was so grossly unreasonable in its appreciation and evaluation of the pieces of evidence submitted by the parties as to transgress the limits of its jurisdiction;

III. All the four petitions filed, inclusive of the Tatad Petition, subject of the assailed resolutions of the COMELEC, adduced ultimate facts establishing the cause of action for a petition based on Section 78 of the Omnibus Election Code (OEC);

IV. The COMELEC correctly considered the allegations contained in the Tatad Petition as one filed under Section 78 of the OEC;

V. The COMELEC did not encroach upon the jurisdiction of the Presidential Electoral Tribunal when it took cognizance of the petitions to deny due course to or cancel the COC of petitioner Poe; the distinction between jurisdictions of the two tribunals has already been settled in *Tecson v. COMELEC,* the jurisdiction of the PET can only be invoked after the election and proclamation of a President or Vice President and the question of qualifications of candidates for President or Vice-President properly belongs to the COMELEC;

VI. Section 8, Rule 23 of the COMELEC Rules of Procedure is a valid exercise of the rule-making powers of the COMELEC, which is not inconsistent and can be harmonized with its constitutional mandate to promulgate rules of procedure to expedite the dispositions of election cases;

VII. The COMELEC has the power to determine petitioner Poe's citizenship notwithstanding the decision of the Senate Electoral Tribunal which is still pending appeal and which deals with different issues; and

On the Substantive/Focal Issues

I. Sections 1 and 2, Article IV of the 1987 Constitution clearly and categorically define who are natural-born citizens: they are citizens from birth with blood relationship to a Filipino father or mother, following the "*jus sanguinis*" principle;

II. Salient Rules of Interpretation and/or Construction of the Constitution dictate that the clear and unambiguous letter of the Constitution must be obeyed;

III. Statutes, Treaties and International Covenants or Instruments must conform to the provisions of the Constitution;

IV. Pursuant to the Constitution, natural-born citizenship is an indispensable requirement for eligibility to constitutionally identified elective positions like the Presidency;

V. Republic Act No. 9225, otherwise known as the "*Citizenship Retention and Re-acquisition Act of 2003*," makes natural-born citizenship an indispensable requirement for the retention and/or re-acquisition of Philippine citizenship; in other words, the right to avail of dual citizenship is only available to natural-born citizens who have earlier lost their Philippine citizenship by reason of acquisition of foreign citizenship;

VI. Petitioner Poe obtained dual citizenship under Republic Act No. 9225 by misrepresenting to the Bureau of Immigration that she is the biological child of a Filipino father and Filipino mother such that the Bureau was misled into believing that "*[petitioner Poe] was a former citizen of the Republic of the Philippines being born to Filipino parents,*" which is a false factual averment not an erroneous legal conclusion; and (*ii*) the said order was not signed by the Commissioner of the BI as required by Department of Justice (DOJ) Regulation;

VII. As a consequence of petitioner Poe's above-stated misrepresentations, the July 18, 2006 Order of the Bureau of Immigration granting petitioner Poe's application for dual citizenship or the re-acquisition of Philippine citizenship was clearly invalid and her taking of an oath of allegiance to the Republic did not result in her re-acquisition of Philippine citizenship; and

VIII. Not having validly reacquired natural-born citizenship, she is not eligible to run for the Presidency pursuant to Section 2, Article VII of the 1987 Constitution; and even assuming *arguendo* that she has re-acquired natural-born citizenship under Republic Act No. 9225, petitioner Poe has failed to establish her change of domicile from the United States, her domicile of choice to the Philippines through clear and unmistakable evidence.

The Procedural Issues

Petitioner Poe seeks the annulment of the December 1, 2015 Resolution of the COMELEC Second Division and December 23, 2015 Resolution of the COMELEC *En banc,* in SPA Nos. 15-001 (DC); and the December 11, 2015 Resolution of the COMELEC First Division and December 23, 2015 Resolution of the COMELEC *En banc,* in SPA Nos. 15-002 (DC), 15-007 (DC) and 15-139 (DC) *via* the instant consolidated petitions for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court.[1] This mode of review is based on the limited ground of **whether the**

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[1] Section 2, Rule 64 of the Rules of Court states:

COMELEC acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. The Court held in *Jalover v. Osmeña*[2] that:

> "Grave abuse of discretion" defies exact definition; generally, it refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction;" the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough; it must be grave. We have held, too, that the use of *wrong or irrelevant considerations* in deciding an issue is sufficient to taint a decision-maker's action with grave abuse of discretion.
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> Closely related with the limited focus of the present petition is the condition, under Section 5, Rule 64 of the Rules of Court, that *findings of fact of the COMELEC, supported by substantial evidence, shall be final and non-reviewable*. Substantial evidence is that degree of evidence that *a reasonable mind* might accept to support a conclusion. In light of our limited authority to review findings of fact, we do not *ordinarily* review in a *certiorari* case the COMELEC's appreciation and evaluation of evidence. Any misstep by the COMELEC in this regard generally involves an error of judgment, not of jurisdiction.
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> In exceptional cases, however, when the COMELEC's action on the appreciation and evaluation of evidence oversteps the limits of its discretion to the point of being grossly unreasonable, the Court is not only obliged, but has the constitutional duty to intervene. When grave abuse of discretion is present, resulting errors arising from the grave abuse *mutate* from error of judgment to one of jurisdiction. (Citations omitted.)

The COMELEC's appreciation and evaluation of the evidence adduced by petitioner Poe is said to be tainted with grave abuse of discretion.

Petitioner Poe failed to hurdle the bar set by this Court in *Mitra v. Commission on Elections*[3] and *Sabili v. Commission on Elections*,[4] which is to prove that the COMELEC was so grossly unreasonable in its appreciation and evaluation of evidence as to amount to an error of jurisdiction. Petitioner Poe's insistence that the COMELEC utterly disregarded her "*overwhelming and unrefuted evidence*" is baseless. As stated in *Mitra*, substantial evidence is not a simple question of number. The emphasis must be on what the pieces of evidence are able to substantiate and what they cannot. I find that the COMELEC's assessment of the evidence is logical and well-founded. The conclusions it reached are adequately supported by evidence and are

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SEC. 2. *Mode of review.* — A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided.

2 G.R. No. 209286, September 23, 2014, 736 SCRA 267, 279-280.

3 636 Phil. 753 (2010).

4 686 Phil. 649 (2012).

well in accord with the applicable laws and settled jurisprudence on the matter.

The petitions filed by respondents Elamparo, Contreras, and Valdez sufficiently alleged the ultimate facts constituting the cause(s) of action for a petition under Section 78 of the OEC, that petitioner Poe falsely represented in her COC that she is a natural-born Filipino citizen and that she complied with the ten-year residency requirement. Also, they averred that such false representations were made with intent to deceive the electorate.

With respect to the petition of private respondent Tatad, the COMELEC properly relied on the allegation of said petition instead of its caption as a petition for disqualification under Rule 25 of the COMELEC Rules of Procedure. Clearly, private respondent Tatad squarely put in issue the truthfulness of the declarations of petitioner Poe in her COC. Specifically, he alleged that petitioner Poe lacked natural-born citizenship and failed to meet the ten-year residency requirement, which are grounds for the cancellation of her COC under Section 78.

As to the jurisdiction of the COMELEC *vis-à-vis* that of the Presidential Electoral Tribunal's (PET), I strongly disagree in the conclusion that the COMELEC, in ruling on the four Section 78-petitions, usurped the jurisdiction of the PET. Petitioner Poe espouses that due to the absence of a false material misrepresentation in her COC, the COMELEC should have dismissed the petitions outright for being premature as they are in the nature of petitions for *quo warranto*, which is within the sole and exclusive jurisdiction of the PET. This is plain error. The jurisdiction of the PET over election contests attaches only after the President or the Vice-President concerned had been elected and proclaimed. *Tecson v. Commission on Elections*[5] clearly laid out that:

> Ordinary usage would characterize a "contest" in reference to a **post-election *scenario***. Election contests consist of either an election protest or a *quo warranto* which, although two distinct remedies, would have one objective in view, *i.e.*, to dislodge the winning candidate from office. x x x.
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> x x x x
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> The rules [Rules of the Presidential Electoral Tribunal] categorically speak of the jurisdiction of the tribunal over contests relating to the election, returns and qualifications of the **"President" or "Vice-President,"** of the Philippines, and **not of "candidates" for President or Vice-President**. A *quo warranto* proceeding is generally defined as being an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office. In such context, the election contest can only contemplate a post-election *scenario*. In Rule 14, only a registered candidate who would have received either the second or third highest

5 468 Phil. 421, 461-462 (2004).

number of votes could file an election protest. This rule again presupposes a post-election *scenario*.

It is fair to conclude that the jurisdiction of the Supreme Court, defined by Section 4, paragraph 7, of the 1987 Constitution, would **not** include cases directly brought before it, questioning the qualifications of a candidate for the presidency or vice-presidency **before the elections are held**. (Emphases supplied, citation omitted.)

Section 4, Article VII of the 1987 Constitution sustains this above-quoted ruling. The grant of jurisdiction to the PET **follows** the provisions on the preparations of the returns and certificates of canvass for every election for President and Vice-President and the proclamation of the person who obtained the highest number of votes.

SECTION 4. The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date six years thereafter. The President shall not be eligible for any reelection. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

No Vice-President shall serve for more than two successive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected.

Unless otherwise provided by law, the regular election for President and Vice-President shall be held on the second Monday of May.

The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all the certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.

The Congress shall promulgate its rules for the canvassing of the certificates.

The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose. (Emphasis, supplied.)

In his separate opinion in *Tecson,* retired Chief Justice Reynato S. Puno was uncompromising about the jurisdiction of the PET, to wit:

> The word "contest" in the provision means that the jurisdiction of this Court **can only be invoked after the election and proclamation of a President or Vice President. There can be no "contest" before a winner is proclaimed.**[6] (Emphasis supplied.)

And likewise in a separate opinion in the same case, retired Justice Alicia Austria-Martinez emphasized that –

> The Supreme Court, as a Presidential Electoral Tribunal (PET), the Senate Electoral Tribunal (SET) and House of Representatives Electoral Tribunal (HRET) are electoral tribunals, each specifically and exclusively clothed with jurisdiction by the Constitution to act respectively as "sole judge of all contests relating to the election, returns, and qualifications" of the President and Vice-President, Senators, and, Representatives. **In a litany of cases, this Court has long recognized that these electoral tribunals exercise jurisdiction over election contests only after a candidate has already been proclaimed winner in an election.** Rules 14 and 15 of the Rules of the Presidential Electoral Tribunal provide that, for President or Vice-President, election protest or *quo warranto* may be filed *after the proclamation of the winner.*[7] (Emphasis supplied, citations omitted.)

Section 2(2), Article IX of the 1987 Constitution which expressly vests upon the COMELEC exclusive original jurisdiction and appellate jurisdiction over election "contests" involving local officials is consistent with this doctrine. Election "contests" has a definite meaning under the Constitution, which involve the qualification of proclaimed winning candidates in an election.

On the other hand, Section 2, Article IX(C) of the 1987 Constitution providing that the COMELEC shall have the power to:

> (1) **Enforce and administer all laws and regulations relative to the conduct of an election**, plebiscite, initiative, referendum, and recall. (Emphasis supplied.)

is sufficient basis to entrust to the COMELEC all issues relative to the qualifications of all "candidates" to run in National or Local Elections. Implementing the aforementioned provision is *Batas Pambansa Bilang* 881, or the "*Omnibus Election Code of the Philippines*" (OEC), which provides for the cancellation of a candidate's Certificate of Candidacy on grounds stated in Section 78 thereof. A contrary construction of the Constitution will result in emasculating the Constitutional mandate of the COMELEC to ensure fair, honest and credible elections. The overbroad interpretation of

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6 Id. at 518.
7 Id. at 562-563.

the power of the PET under the Constitution will prohibit the COMELEC from even disqualifying nuisance candidates for President.

Hence, it is beyond cavil that it is the COMELEC, not the PET, which has jurisdiction over the petitions for the cancellation of the COC of petitioner Poe who is still a candidate at this time.

With the foregoing, I cannot but register my strong dissent to the opinion in the *Ponencia* that "*[t]he exclusivity of the ground (that petitioner Poe made in the certificate a false material representation) should hedge in the discretion of the COMELEC and restrain it from going into the issues of the qualifications of the candidate for the position, if, as in this case, such issue is yet undecided or undetermined by the proper authority. The COMELEC cannot itself, in the same cancellation case, decide the qualification of lack thereof of the candidate.*" This opinion is contrary to the ruling penned by Justice Perez himself in *Reyes v. COMELEC*.[8]

According to the *Ponencia,* the COMELEC cannot, in a Section 78-petition, look into the qualification of the candidate (for Representative, Senator, Vice-President and President) simply because per its perusal of the 1987 Constitution, the latter failed to categorically state that the COMELEC was granted the power to look into the qualifications of candidates for President, Vice-President, Senator and Representatives. It is insisted that the specific provisions of the same giving the PET, SET and HRET jurisdiction over the "*election, returns, and qualifications*" of the President, Vice-President, Senator and Representatives are sure fire evidence that the COMELEC does not have the authority to look into the qualification of said candidates prior to a determination in a prior proceeding by an authority with proper jurisdiction to look in to the same. Simply put, the *Ponencia* would have the fact of a Presidential, Vice-Presidential, Senatorial or Congressional candidate's qualification established in a prior proceeding that may be by statute, executive order, or judgment by a competent court or tribunal, before her/his COC can be cancelled or denied due course on grounds of false material representations as to her/his qualifications.

The *Ponencia's* analysis is utterly incorrect. As shown above, such analysis disregards existing jurisprudence stating that these electoral tribunals exercise jurisdiction over election contests only after a candidate has already been proclaimed winner in an election.

If the *Ponencia's* analysis is allowed to become the leading jurisprudence on the matter, the Court is as good as amending the OEC by deleting the Section 78 thereof – there can no longer be a petition for denial of due course to or cancellation of COC because the COMELEC has now been disallowed to look into the whether or not a candidate has made a false claim as to her/his material qualifications for the elective office that she/he

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[8] G.R. No. 20724, June 25, 2013.

aspires for. That a Section 78-petition would naturally look into the candidate's qualification is expected of the nature of such petition. As elucidated in *Fermin v. COMELEC*,[9] to wit:

> After studying the said petition in detail, the Court finds that the same is in the nature of a petition to deny due course to or cancel a CoC under Section 78 of the OEC. The petition contains the essential allegations of a "Section 78" petition, namely: (1) the candidate made a representation in his certificate; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate (the right to run for the election for which he filed his certificate); and (3) the candidate made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact which would otherwise render him ineligible. **It likewise appropriately raises a question on a candidate's eligibility for public office, in this case, his possession of the one-year residency requirement under the law**.
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> 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.**
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> At this point, we must stress that a "Section 78" petition ought not to be interchanged or confused with a "Section 68" petition. **They are different remedies, based on different grounds, and resulting in different eventualities**. Private respondent's insistence, therefore, that the petition it filed before the COMELEC in SPA No. 07-372 is in the nature of a disqualification case under Section 68, as it is in fact captioned a "Petition for Disqualification," does not persuade the Court.

But the *Ponencia* misconstrues the above clear import of *Fermin.* It uses the latter case as its authority to push its erroneous view that the COMELEC has no jurisdiction or power to look into the eligibility of candidates in the absence of a specific law to that effect.

Further, with all due respect to the *Ponente,* I submit that his position that it is only the PET/SET/HRET that has jurisdiction over the qualifications of candidates for President, Vice-President, Senator, or Representative runs counter to this Court's pronouncement in its Resolution in G.R. No. 20724, *Reyes v. Commission on Elections and Joseph Socorro B. Tan*[10], **of which he was also the *Ponente***, that –

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9 595 Phil. 449 (2008).

10 June 25, 2013.

Contrary to petitioner's claim, however, the COMELEC retains jurisdiction for the following reasons:

First, the HRET does not acquire jurisdiction over the issue of petitioner's qualifications, as well as over the assailed COMELEC Resolutions, unless a petition is duly filed with said tribunal. Petitioner has not averred that she has filed such action.

Second, the jurisdiction of the HRET begins only after the candidate is considered a Member of the House of Representatives, as stated in Section 17, Article VI of the 1987 Constitution:

> Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective **Members** x x x.

As held in *Marcos v. COMELEC,* the HRET does not have jurisdiction over a candidate who is not a member of the House of Representatives, *to wit*:

> As to the House of Representatives Electoral Tribunal's supposed assumption of jurisdiction over the issue of petitioner's qualifications after the May 8, 1995 elections, suffice it to say that HRET's jurisdiction as the sole judge of all contests relating to the elections, returns and qualifications of members of Congress begins **only after a candidate has become a member of the House of Representatives. Petitioner not being a member of the House of Representatives, it is obvious that the HRET at this point has no jurisdiction over the question.** (Emphasis supplied.)

And, interestingly, it was held that –

> **As to the issue of whether petitioner failed to prove her Filipino citizenship, as well as her one-year residency in Marinduque, suffice it to say that the COMELEC committed no grave abuse of discretion in finding her ineligible for the position of Member of the House of Representatives.**

With the indulgence of my colleagues, to emphasize the incongruity of the position taken by the majority in this case led by the *Ponente,* allow me to quote verbatim the relevant facts and findings of the Court in *Reyes* as **written by the *Ponente* of this case**, to wit:

> Let us look into the events that led to this petition: In moving for the cancellation of petitioner's COC, respondent submitted records of the Bureau of Immigration showing that petitioner is a holder of a US passport, and that her status is that of a "*balikbayan.*" At this point, the burden of proof shifted to petitioner, imposing upon her the duty to prove that she is a natural-born Filipino citizen and has not lost the same, or that she has re-acquired such status in accordance with the provisions of R.A. No. 9225. Aside from the bare allegation that she is a natural-born citizen,

> however, petitioner submitted no proof to support such contention. Neither did she submit any proof as to the inapplicability of R.A. No. 9225 to her.
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> x x x x
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> These circumstances, taken together, show that a doubt was clearly cast on petitioner's citizenship. Petitioner, however, failed to clear such doubt.
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> x x x x
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> **All in all, considering that the petition for denial and cancellation of the COC is summary in nature, the COMELEC is given much discretion in the evaluation and admission of evidence pursuant to its principal objective of determining of whether or not the COC should be cancelled** x x x.
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> Here, this Court finds that petitioner failed to adequately and substantially show that grave abuse of discretion exists.

With the above, I am at a loss how the Court, through the majority, could rule the way it did in this case when not so long ago it took the opposite position and dismissed the petition of Reyes.

Section 8, Rule 23 of the COMELEC Rules of Procedure, as amended, which reads:

> SEC. 8. Effect if Petition Unresolved. – If a Petition to Deny Due Course to or Cancel a Certificate of Candidacy is unresolved by final judgment on the day of elections, the petitioner may file a motion with the Division or Commission *En Banc*, as may be applicable, to suspend the proclamation of the candidate concerned, provided that the evidence for the grounds for denial to or cancel certificate of candidacy is strong. For this purpose, at least three (3) days prior to any election, the Clerk of the Commission shall prepare a list of pending cases and furnish all Commissioners copies of the said list.
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> A Decision or Resolution is deemed final and executory if, in case of a Division ruling, no motion for reconsideration is filed within the reglementary period, or in cases of rulings of the Commission *En Banc*, no restraining order is issued by the Supreme Court **within five (5) days from receipt** of the decision or resolution. (Emphasis supplied.)

does not violate Section 7, Article IX-A of the 1987 Constitution, which states that –

> SEC. 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. **Unless otherwise provided by this Constitution or by law**, any decision, order, or ruling of each

> Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party **within thirty days from receipt** of a copy thereof. (Emphasis supplied.)

Section 8, Rule 23 of the COMELEC Rules is a valid exercise of the rule-making powers of the COMELEC notwithstanding Section 7, Article IX of the 1987 Constitution. The condition "*[u]nless otherwise provided by this Constitution or by law*" that is mentioned in the latter provision gives the COMELEC the flexibility to fix a shorter period for the finality of its decision and its immediate execution in consonance with the necessity to speedily dispose of election cases, but without prejudice to the continuation of the review proceedings before this Court. Certainly, this is not inconsistent with Commission's constitutional mandate to promulgate its own rules of procedure to expedite the dispositions of election cases, *viz.*:

> ARTICLE IX
> CONSTITUTIONAL COMMISSION
> C. THE COMMISSION ON ELECTIONS
> SEC. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.

The Substantive Issues

The issue is whether or not the COMELEC *En banc* acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it cancelled the COC for Presidency of Petitioner Poe on the substantive grounds of lack of citizenship and residency qualifications.

I hold that it did not.

Ground for Petition for Cancellation of COC under Section 78 of the OEC

Section 78 of the OEC provides that –

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

In relation thereto, Section 74 also of the OEC requires:

> SECTION 74. *Contents of certificate of candidacy.* — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the *Batasang Pambansa*, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.
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> Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: *Provided*, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.
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> The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

In her 2016 COC for President, much like in her 2013 COC for Senator, petitioner Poe made the following verified representations, *viz.*:

> 7. PERIOD OF RESIDENCE IN THE PHILIPPINES UP TO THE DAY BEFORE MAY 09, 2016:
>
> 10 No. of Years 11 No. of Months
>
> 8. I AM A NATURAL-BORN FILIPINO CITIZEN.
>
> x x x x
>
> 9. I AM ELIGIBLE FOR THE OFFICE I SEEK TO BE ELECTED TO.[11]

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[11] Annex "B" of the Petition in G.R. No. 221697.

Materiality of the Representation

With respect to the issue of materiality of the representation, as above discussed, *Mitra* has settled that "*critical material facts are those that refer to a candidate's qualifications for elective office, such as his or her citizenship and residence*"; thus, the materiality of the representations on citizenship, residence and/or eligibility is no longer in issue.

Falsity of the Representation

But the truthfulness of the material representation remains an issue to be resolved.

Citizenship Requirement

In the present case, I submit that petitioner Poe's representation that she is a natural-born Filipino citizen, hence, eligible to run for and hold the position of President, is false. My position is anchored on the following reasons:

Under the Constitution, natural-born Filipino citizenship is based on blood relationship to a Filipino father or mother following the "*jus sanguinis*" principle

Petitioner Poe being a foundling, does not come within the purview of this constitutionally ordained principle.

During the effectivity of the Spanish Civil Code in the Philippines on December 8, 1889, the doctrines of *jus soli* and *jus sanguinis* were adopted as the principles of attribution of nationality at birth.[12]

Upon approval of the Tydings-McDuffie Act (Public Act No. 127), a Constitutional Convention was organized in 1934. The Constitution proposed for adoption by the said Convention was ratified by the Philippine electorate in 1935 after its approval by the President of the United States.[13]

It was in the 1935 Constitution that the Philippines adopted the doctrine of *jus sanguinis*, literally translated to *right by blood*, or the acquisition of citizenship by birth to parents who are citizens of the Philippines. The doctrine of *jus sanguinis* considers blood relationship to

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12 Irene R. Cortes and Raphael Perpetuo M. Lotilla, Nationality and International Law from the Philippine Perspective, published in the Philippine Law Journal, Volume LX, March 1985, University of the Philippines (UP) College of Law, p. 7.; citing Art. 17 (1 and 2) Spanish Civil Code.

13 Id. at 10.

one's parents as a sounder guarantee of loyalty to the country than the doctrine of *jus soli*, or the attainment of a citizenship by the place of one's birth.[14] The case of *Tecson v. Commission on Elections* traced the history, significance, and evolution of the doctrine of *jus sanguinis* in our jurisdiction as follows:

> While there was, at one brief time, divergent views on whether or not *jus soli* was a mode of acquiring citizenship, the 1935 Constitution brought to an end to any such link with common law, by adopting, once and for all, *jus sanguinis* or blood relationship as being the basis of Filipino citizenship —
>
> "Section 1, Article III, 1935 Constitution. The following are citizens of the Philippines —
>
> (1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution
>
> (2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.
>
> (3) Those whose fathers [or mothers] are citizens 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."
>
> Subsection (4), Article III, of the 1935 Constitution, taken together with existing civil law provisions at the time, which provided that women would automatically lose their Filipino citizenship and acquire that of their foreign husbands, resulted in discriminatory situations that effectively incapacitated the women from transmitting their Filipino citizenship to their legitimate children and required illegitimate children of Filipino mothers to still elect Filipino citizenship upon reaching the age of majority. Seeking to correct this anomaly, as well as fully cognizant of the newly found status of Filipino women as equals to men, the framers of the 1973 Constitution crafted the provisions of the new Constitution on citizenship to reflect such concerns —
>
> "Section 1, Article III, 1973 Constitution — The following are citizens of the Philippines:
>
> (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution.

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14 Id.

> (2) *Those whose fathers or mothers are citizens of the Philippines.*
>
> (3) Those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five.
>
> (4) Those who are naturalized in accordance with law."

For good measure, Section 2 of the same article also further provided that —

> "A female citizen of the Philippines who marries an alien retains her Philippine citizenship, unless by her act or omission she is deemed, under the law to have renounced her citizenship."

The 1987 Constitution generally adopted the provisions of the 1973 Constitution, except for subsection (3) thereof that aimed to correct the irregular situation generated by the questionable *proviso* in the 1935 Constitution.

> "Section 1, Article IV, 1987 Constitution now provides:
>
> The following are citizens of the Philippines:
>
> (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution.
>
> (2) *Those whose fathers or mothers are citizens of the Philippines.*
>
> (3) *Those born before January 17, 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority*; and
>
> (4) Those who are naturalized in accordance with law."

The Case Of FPJ

> Section 2, Article VII, of the 1987 Constitution expresses:
>
> No person may be elected President unless he is a *natural-born citizen of the Philippines*, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

The term "natural-born citizens," is defined to include 'those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship.'

The date, month and year of birth of FPJ appeared to be 20 August 1939 during the regime of the 1935 Constitution. Through its history, four

> modes of acquiring citizenship — naturalization, *jus soli, res judicata and jus sanguinis* — had been in vogue. Only two, *i.e.*, *jus soli and jus sanguinis,* could qualify a person to being a "natural-born" citizen of the Philippines. *Jus soli*, per *Roa vs. Collector of Customs* (1912), did not last long. With the adoption of the 1935 Constitution and the reversal of *Roa* in *Tan Chong vs. Secretary of Labor* (1947), ***jus sanguinis* or blood relationship would now become the primary basis of citizenship by birth.**[15] (Emphasis supplied.)

The changes in the provisions on citizenship was done to harmonize the Article on Citizenship with the State policy of ensuring the fundamental equality before the law of women and men under Section 14, Article II of the 1987 Constitution.

Thus, contrary to the insistence of petitioner Poe that there is nothing in our Constitutions that enjoin our adherence to the principle of "*jus sanguinis*" or "by right of blood," said principle is, in reality, well-entrenched in our constitutional system. One needs only to read the 1935, 1973 and 1987 Constitutions and the jurisprudence detailing the history of the well deliberated adoption of the *jus sanguinis* principle as the basis for natural-born Filipino citizenship, to understand that its significance cannot be lightly ignored, misconstrued, and trivialized.

Natural-born Citizenship by Legal Fiction or Presumption of Law is Contrary to the Constitution under Salient Rules of Interpretation of the Constitution

In this case, petitioner Poe's original birth certificate stated that she was a foundling, or a child of unknown father or mother, found in Jaro, Iloilo, on September 3, 1968. The Constitution in effect then was the 1935 Constitution. To reiterate, it enumerated the "citizens of the Philippines" in Section 1, Article IV, which included the following:

> **(3) Those whose fathers are citizens of the Philippines.**
>
> **(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.**

Petitioner Poe would want this Court to look beyond the above-quoted enumeration and apply the disputable or rebuttable presumption brought about by the principles of international law and/or customary international law. However, the above-quoted paragraphs (3) and (4) of Article IV are clear, unequivocal and leave no room for any exception.

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[15] *Tecson v. Commission on Elections,* supra note 5 at 469-471.

Rule of *Verba Legis*

Basic in statutory construction is the principle that when words and phrases of a statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says. This plain-meaning or *verba legis rule*, expressed in the Latin maxim "*verba legis non est recedendum*," dictates that "from the words of a statute there should be no departure."[16]

Undeniably, petitioner Poe does not come within the scope of Filipino citizens covered by paragraphs (3) and (4). From a literal meaning of the said provisions, she cannot be considered a natural-born citizen. Paragraphs 3 and 4, Section 1, Article IV of the 1935 Constitution, the organic law in effect during the birth of petitioner Poe, were clear and unambiguous, it did not provide for any exception to the application of the principle of "*jus sanguinis*" or blood relationship between parents and child, such that natural-born citizenship cannot be presumed by law nor even be legislated by Congress where no blood ties exist.

Function of Extrinsic Aid Such as the Deliberations of the 1934 Constitutional Convention

Petitioner Poe claims that "foundlings" were intended by the delegates of the 1934 Constitutional Commission to be considered natural-born citizens. Specifically, she maintains that during the debates on this provision, Delegate Rafols proposed an amendment to include foundlings as among those who are to be considered natural-born citizens; that the only reason that there was no specific reference to foundlings in the 1935 Philippine Constitution was because a delegate mentioned that foundlings were too few to warrant inclusion in a provision of the Constitution and their citizenship is dealt with by international law.

The above inference or conclusion drawn from the debates adverted to is not accurate.

Firstly, the deliberations did not evince the collective intent of the members of the 1934 Constitutional Convention to include "*foundlings*" in the list of Filipino citizens in the Article on Citizenship. Moreover, there was no mention at all of granting them natural-born citizenship.

A review of the transcript of the deliberations of the 1934 Constitutional Convention actually proved prejudicial to petitioner Poe's cause. The suggestion of Delegate Rafols to include in the list of Filipino citizens children of unknown parentage was **voted down** by the delegates

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16 *Garcia v. Commission on Elections*, G.R. No. 216691, July 21, 2015.

when the amendment and/or suggestion was put to a vote. In other words, the majority thereof voted not to approve Delegate Rafol's amendment.

Secondly. Petitioner Poe's use of the deliberations of the 1934 Constitutional Convention to expand or amend the provision of the Constitution is unwarranted.

The Constitution is the basis of government. It is established by the people, in their original sovereign capacity, to promote their own happiness, and permanently to secure their rights, property, independence, and common welfare. When the people associate, and enter into a compact, for the purpose of establishing government, that compact, whatever may be its provisions, or in whatever language it may be written, is the Constitution of the state, revocable only by people, or in the manner they prescribe. It is by this instrument that government is instituted, its departments created, and the powers to be exercised by it conferred.[17]

Thus, in the construction of the Constitution, the Court is guided by the principle that it (constitution) is the fundamental and paramount law of the nation, and it is supreme, imperious, absolute, and unalterable except by the authority from which it emanates.[18]

In *Civil Liberties Union v. Executive Secretary*,[19] this Court enunciated that –

> While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, **resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear**. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, **but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law.** We think it safer to construe the constitution **from what appears upon its face**." The proper interpretation therefore depends more on **how it was understood by the people adopting it** than in the framer's understanding thereof. (Emphases supplied, citations omitted.)

And as eloquently observed by Charles P. Curtis, Jr. –

> **The intention of the framers** of the Constitution, even assuming we could discover what it was, **when it is not adequately expressed in the Constitution**, that is to say, what they meant when they did not say it,

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17 *Words and Phrases*, Vol. 2, p. 1462; Citing *McKoan vs. Devries*, 3 Barb., 196, 198 [quoting 1 Story, Const., Secs. 338, 339];*Church vs. Kelsey*, 7 Sup. Ct., 897, 898; 121 U. S., 282; 30 L. ed., 960, and *Bates vs. Kimball* [Vt.], 2 D. Chip., 77, 84.

18 *Manila Prince Hotel v. Government Service Insurance System*, 335 Phil. 82, 101 (1997).

19 272 Phil. 147, 169-170 (1991).

> surely that has **no binding force upon us**. If we look behind or beyond what they set down in the document, prying into what else they wrote and what they said, anything we may find is only advisory. They may sit in at our councils. There is no reason why we should eavesdrop on theirs.[20]

Synthesized from the aforequoted, it is apparent that debates and proceedings of constitutional conventions lack binding force. Hence –

> If at all, they only have persuasive value as they may throw a useful light upon the purpose sought to be accomplished or upon the meaning attached to the words employed, or they may not. And the courts are at liberty to avail themselves of any light derivable from such sources, but are **not bound to adopt it** as the sole ground of their decision.[21]

Moreover, while the opinions of the members of the constitutional convention on the article on citizenship of the 1935 Philippine Constitution may have a persuasive value, it is, to repeat, **not expressive of the people's intent.** To recap:

> The proceedings of the Convention are less conclusive on the proper construction of the fundamental law than are legislative proceedings of the proper construction of a statute, for in the latter case it is the intent of the legislature the courts seek, while in the former, courts seek to arrive at the intent of the people through the discussions and deliberations of their representatives. **The conventional wisdom is that the Constitution does not derive its force from the convention which framed it, but from the people who ratified it, the intent to be arrived at is that of the people.**[22]

In the present case, given that the language of the third and fourth paragraphs of the article on citizenship of the 1935 Philippine Constitution clearly follow only the doctrine of *jus sanguinis*, it is, therefore, neither necessary nor permissible to resort to extrinsic aids, like the records of the constitutional convention. A foundling, whose parentage and/or place of birth is obviously unknown, does not come within the letter or scope of the said paragraphs of the Constitution. Considering the silence of the Constitution on foundlings, the people who approved the Constitution in the plebiscite had absolutely no idea about the debate on the citizenship of foundlings and therefore, they could not be bound by it.

Rule that Specific Provisions of Law Prevails Over General Provisions

The specific provision of Article IV of the Constitution prevails over the general provisions of Section 21, Article III of the Constitution. General

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20 Charles P. Curtis, *LIONS UNDER THE THRONE 2*, Houghton Mifflin, 1947.

21 Dennis B. Funa , *Cannons of Statutory Construction* (2012 Edition); Citing Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws*, p. 30, quoting *City of Springfield v. Edwards*, 84 Ill. 626.

22 Retired Chief Justice Reynato S. Puno's Separate Opinion in *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 668-669 (2000).

international law principles cannot overturn specifically ordained principles in the Constitution.

Section 2, Article II of the 1987 Constitution provides:

> SECTION 2. The Philippines renounces war as an instrument of national policy, **adopts the generally accepted principles of international law as part of the law of the land** and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations. (Emphasis supplied.)

Generally accepted principles of international law "may refer to rules of customary law, to general principles of law x x x, or to logical propositions resulting from *judicial reasoning* on the basis of existing international law and municipal analogies."[23] And it has been observed that, certainly, it is this *judicial reasoning* that has been the anchor of Philippine jurisprudence on the determination of generally accepted principles of international law and consequent application of the incorporation clause.[24]

Petitioner Poe would like to apply to her situation several international law conventions that supposedly point to her entitlement to a natural-born Filipino citizenship, notwithstanding her lack of biological ties to a Filipino father or mother. In effect, she wants to carve an exception to the "*jus sanguinis*" principle through that generally accepted principles of international law which, under the theory of incorporation, is considered by the Constitution as part of the law of the land.[25]

Basic is the principle in statutory construction that specific provisions must prevail over general ones, to wit:

> A special and specific provision prevails over a general provision irrespective of their relative positions in the statute. *Generalia specialibus non derogant*. Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.

Hence, the general provision of Section 2, Article II of the Constitution on "Declaration of Principles and State Policies" cannot supersede, amend or supplement the clear provisions of Article IV on "Citizenship."

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23 Separate Opinion of J. Carpio-Morales in *Rubrico v. Macapagal-Arroyo*, 627 Phil. 37, 80 (2010); citing IAN BROWNLIE, *Principles of Public International Law*, Sixth Ed., 18 (2003).

24 Id.

25 1987 Constitution, Article II, Section 2.

International Law Instruments/ Conventions are not self-executing

Petitioner Poe cannot find succor in the provisions of the *1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws* and the *1961 Convention on the Reduction of Statelessness*, in claiming natural-born Filipino citizenship primarily for the following reasons: firstly, the Philippines has not ratified said International Conventions; secondly, they espouse a presumption by fiction of law which is disputable and not based on the physical fact of biological ties to a Filipino parent; thirdly, said conventions are not self-executing as the Contracting State is granted the discretion to determine by enacting a domestic or national law the conditions and manner by which citizenship is to be granted; and fourthly, the citizenship, if acquired by virtue of such conventions will be akin to a citizenship falling under Section 1(4), Article IV of the 1987 Constitution, recognizing citizenship by naturalization in accordance with law or by a special act of Congress.

The cited international conventions are as follows:

(a) 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws;

(b) 1961 Convention on the Reduction of Statelessness;

(c) 1989 UN Convention on the Rights of the Child;

(d) 1966 International Covenant on Civil and Political Rights; and

(e) 1947 UN Declaration on Human Rights

Notice must be made of the fact that the treaties, conventions, covenants, or declarations invoked by petitioner Poe are not self-executing, *i.e.*, the international instruments invoked must comply with the "***transformation method***" whereby "an international law [must first] be transformed into a domestic law through a constitutional mechanism such as local legislation."[26]

Each of the aforementioned recognizes the need for its respective provisions to be transformed or embodied through an enactment of Congress before it forms part of the domestic or municipal law, *viz.*:

(a) The 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, which provides:

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26 *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, 561 Phil. 386, 398 (2007).

Article 14.

A child whose parents are both unknown **shall have the nationality of the country of birth.** If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known.
A foundling is, until the contrary is proved, **presumed to have been born on the territory of the State in which it was found.**

Article 15.

Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State. **The law of that State shall determine the conditions governing the acquisition of its nationality in such cases.**

(b) The 1961 Convention on the Reduction of Statelessness, provides:

Article 1

1. **A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.** Such nationality shall be granted:

(a) At birth, by operation of law, or

(b) **Upon an application** being lodged with the appropriate authority, by or on behalf of the person concerned, **in the manner prescribed by the national law.** Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with subparagraph (b) of this paragraph **may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.**

x x x x

Article 2

A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, **be considered to have been born within that territory of parents possessing the nationality of that State.**

Conspicuously, the Philippines has neither acceded nor ratified any of the above conventions.

The other international instruments to which the Philippines has acceded, require initially conversion to domestic law *via* the transformation method of implementing international instruments. They are:

(a) The 1989 UN Convention on the Rights of the Child, ratified by the Philippines on August 21, 1990, providing that:

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, **the right to acquire a nationality** and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the **implementation of these rights in accordance with their national law** and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

(b) The 1966 International Covenant on Civil and Political Rights, which the Philippines ratified on October 23, 1986 providing that:

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. **Every child has the right to acquire a nationality**.

(c) The 1947 Universal Declaration on Human Rights.

Article 15

(1) **Everyone has the right to a nationality.**

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The foregoing international conventions or instruments, requiring implementing national laws to comply with their terms, adhere to the concept of statehood and sovereignty of the State, which are inviolable principles observed in the community of independent States. The primary objective of said conventions or instruments is to avoid statelessness without impairing State sovereignty. Hence, the Contracting State has the discretion to determine the conditions and manner by which the nationality or citizenship of a stateless person, like a foundling, may be acquired. Neither do they impose a particular type of citizenship or nationality. The child of unknown parentage may acquire the status of a mere "national." Nowhere in the identified international rules or principles is there an obligation to accord the stateless child a citizenship that is of a "natural-born" character. Moreover, even if it so provided, it cannot be enforced in our jurisdiction because it would go against the provisions of the Constitution.

Statutes and Treaties or International Agreements or Conventions are accorded the Same Status in Relation to the Constitution

In case of conflict between the Constitution and a statute, the former always prevails because the Constitution is the basic law to which all other laws, whether domestic or international, must conform to. The duty of the Court under Section 4(2), Article VIII is to uphold the Constitution and to declare void all laws, and by express provisions of said Section treaties or international agreements that do not conform to it.[27] In a catena of cases, the Supreme Court further instructed that:

> In *Social Justice Society v. Dangerous Drugs Board*, the Court held that, **"It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution.**" In *Sabio v. Gordon*, the Court held that, "**the Constitution is the highest law of the land. It is the 'basic and paramount law to which all other laws must conform.**" In *Atty. Macalintal v. Commission on Elections*, the Court held that, "The Constitution is the fundamental and paramount law of the nation to which all other laws must conform and in accordance with which all private rights must be determined and all public authority administered. **Laws that do not conform to the Constitution shall be stricken down for being unconstitutional.**" In *Manila Prince Hotel v. Government Service Insurance System*, the Court held that:
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> > Under the doctrine of constitutional supremacy, **if a law** or contract **violates any norm of the constitution that law** or contract **whether promulgated by the legislative or by the executive branch** or entered into by private

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27 *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, 661 Phil. 390 (2011).

> persons for private purposes **is null and void and without any force and effect**. Thus, **since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute** and contract.[28] (Emphases supplied; citations omitted.)

Citizenship by "Naturalization" under International Law

Citizenship is not automatically conferred under the international conventions cited but will entail an affirmative action of the State, by a national law or legislative enactment, so that the nature of citizenship, if ever acquired pursuant thereto, is citizenship by naturalization. There must be a law by which citizenship can be acquired by a foundling. By no means will this citizenship can be considered that of a natural-born under the principle of *jus sanguinis,* which is based on the physical existence of blood ties to a Filipino father or Filipino mother. It will be akin to citizenship by naturalization if conferred by fiction created by an international convention, which is of legal status equal to a statute or law enacted by Congress.

Probabilities/Possibilities Based on Statistics

The Solicitor General argues for Petitioner Poe citing the ratio of children born in the Philippines of Filipino parents to children born in the Philippines of foreign parents during specific periods. He claims that based on statistics, the statistical probability that any child **born in the Philippines** would be a natural-born Filipino is either 99.93% or 99.83%, respectively, during the period between 2010 to 2014 and 1965 to 1975. This argument, to say the least, is fallacious.

Firstly, we are determining blood ties between a child and her/his parents. **Statistics have never been used to prove paternity or filiation.** With more reason, it should not be used to determine natural-born citizenship, as a qualification to hold public office, which is of paramount importance to national interest. The issue here is the biological ties between a specific or named foundling and her parents, which must be supported by credible and competent evidence. We are not dealing with the entire population of our country that will justify a generalized approach that fails to take into account that the circumstances under which a foundling is found may vary in each case.

Secondly, the place of birth of the foundling is unknown but the argument is based on the wrong premise that a foundling was born in the place where he/she was found. The age of the foundling may indicate if its place of birth is the place where he or she is found. If the foundling is a

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[28] Id. at 402-403.

newly born baby, the assumption may have solid basis. But this may not always be the case. It does not appear from the documents on record that petitioner Poe was a newborn baby when she was found. There is no evidence as to her place of birth. The Solicitor General cannot, therefore, use his statistics of the number of children born to Filipino parents and to alien parents in the Philippines since the places of birth of foundlings are unknown.

Natural-born citizenship, as a qualification for public office, must be an established fact in view of the *jus sanguinis* principle enshrined in the Constitution, which should not be subjected to uncertainty nor be based in statistical probabilities. A disputable presumption can be overcome anytime by evidence to the contrary during the tenure of an elective official. Resort to this interpretation has a great potential to prejudice the electorate who may vote a candidate in danger of being disqualified in the future and to cause instability in public service.

A Foundling does not Meet the Definition of a Natural-born Filipino Citizen under Section 2, Article IV of the 1987 Constitution

Other than those whose fathers or mothers are Filipinos, Section 2, Article IV of the Constitution further defines "*natural-born citizens*" to cover **"those who are citizens of the Philippines from birth without having to perform an act to acquire or perfect their Philippine citizenship."**

A foundling is one who must first go through a legal process to obtain an official or formal declaration proclaiming him/her to be a foundling in order to be granted certain rights reserved to Filipino citizens. This will somehow prevent opening the floodgates to the danger foreseen by Justice del Castillo that non-Filipinos may misuse a favorable ruling on foundlings to the detriment of national interest and security. Stated otherwise, the fact of being a foundling must first be officially established before a foundling can claim the rights of a Filipino citizen. This being the case, a foundling does not meet the above-quoted definition of a natural-born citizen who is such "from birth".

To illustrate, Republic Act Nos. 8552 and 9523, provide, respectively:

Section 5 of Republic Act No. 8552:

> SECTION 5. *Location of Unknown Parent(s).* – It shall be the duty of the Department or the child-placing or child-caring agency which has custody of the child to exert all efforts to locate his/her unknown biological parent(s). If such efforts fail, the child shall be **registered as a**

foundling and subsequently be the **subject of legal proceedings** where he/she shall be declared abandoned.

Section 2 of Republic Act No. 9523:

SECTION 2. Definition of Terms. – As used in this Act, the following terms shall mean:

x x x x

(3) Abandoned Child refers to a child who has no proper parental care or guardianship, or whose parent(s) have deserted him/her for a period of at least three (3) continuous months, which includes a foundling.

x x x x

SECTION 4. Procedure for the Filing of the Petition. – The petition shall be filed in the regional office of the DSWD where the child was found or abandoned.

The Regional Director shall examine the petition and its supporting documents, if sufficient in form and substance and shall authorize the posting of the notice of the petition in conspicuous places for five (5) consecutive days in the locality where the child was found.

The Regional Director shall act on the same and shall render a recommendation not later than five (5) working days after the completion of its posting. He/she shall transmit a copy of his/her recommendation and records to the Office of the Secretary within forty-eight (48) hours from the date of the recommendation.

SECTION 5. Declaration of Availability for Adoption. — Upon finding merit in the petition, the Secretary shall **issue a certification** declaring the child legally available for adoption within seven (7) working days from receipt of the recommendation.

Said certification, by itself, shall be the sole basis for the immediate issuance by the local civil registrar of a foundling certificate. Within seven (7) working days, the local civil registrar shall transmit the foundling certificate to the National Statistics Office (NSO).

SECTION 8. – The certification that a child is legally available for adoption shall be issued by the DSWD in lieu of a judicial order, thus, making the entire process **administrative in nature.**

The certification, shall be, for all intents and purposes, the primary evidence that the child is legally available in domestic adoption proceeding, as provided in Republic Act No. 8552 and in an inter-country adoption proceeding, as provided in Republic Act No. 8043.

The above laws, though pertaining to adoption of a Filipino child, clearly demonstrate that a *foundling* first undergoes a legal process to be considered as one before he/she is accorded rights to be adopted available only to Filipino citizens. When the foundling is a minor, it is the State under

the concept of "*parens patriae*" which acts for or on behalf of the minor, but when the latter reaches majority age, she/he must, by herself/himself, take the necessary step to be officially recognized as a foundling. Prior to this, the error of out-rightly invoking the "disputable presumption" of alleged "natural-born citizenship" is evident as there can be no presumption of citizenship before there is an official determination of the fact that a child or person is a foundling. It is only after this factual premise is established that the inference or presumption can arise.[29]

That being so, a foundling will not come within the definition of a natural-born citizen who by birth right, being the biological child of a Filipino father or mother, does not need to perform any act to acquire or perfect his/her citizenship.

It should also be emphasized that our adoption laws do not confer "natural-born citizenship" to foundlings who are allowed to be adopted. To read that qualification into the adoption laws would amount to **judicial legislation**. The said laws of limited application which allows the adoption of a foundling, cannot also be used as a basis to justify the natural-born citizenship of a foundling who has reached majority age like petitioner Poe who applied to reacquire her citizenship under R.A. No. 9225. The opinion of the seven (7) Justices if pursued, there will be no need for a foundling to **misrepresent** himself or herself as a biological child of her adoptive parents like what petitioner Poe did, and instead, a foundling can be truthful and just submit a Foundling Certificate to be entitled to the benefits of R.A. No. 9225. Since from their point of view a foundling need not perform any act to be considered a natural-born citizen, said foundling need not prove the veracity of the Foundling Certificate. This will include a Foundling Certificate in the Bureau of Immigration (BI) prepared list of evidence of natural-born citizenship. This is pure and simple judicial legislation. Foundlings are not even mentioned at all in R.A. No. 9225.

Pursuing this logic further, will one who wish to take the Bar Examinations or to be appointed to the Judiciary need to submit only a Foundling Certificate to the Supreme Court and the Judicial Bar Council to prove his/her qualification as a natural-born citizen? The same question can be raised in other situations where natural-born citizenship is required, not only by law, but most especially by the Constitution. Do the seven (7) Justices intend that the question be answered in the affirmative? If so, my humble submission is that, apart from violating the Constitution, it will be a reckless position to take as a Foundling Certificate should not automatically confer natural-born citizenship as it can easily be obtained by impostors who pretend to have found a child of unknown parents.

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29 *Martin v. Court of Appeals*, supra.

The July 18, 2006 Order of the Bureau of Immigration approving petitioner Poe's application for dual citizenship was not valid.

First, petitioner Poe's claim to a dual citizenship by virtue of R.A. No. 9225 is invalid for the simple reason that the said law limits its application to natural-born Filipino citizens only. In other words, the right to avail of dual citizenship is only available to natural-born citizens who have earlier lost their Philippine citizenship by reason of acquisition of foreign citizenship. Second, petitioner Poe obtained dual citizenship under Republic Act No. 9225 by misrepresenting to the BI that she is the biological child of a Filipino father and Filipino mother such that the Bureau was misled in to believing that "*[petitioner Poe] was a former citizen of the Republic of the Philippines being born to Filipino parents.* Third, the said order was not signed by the Commissioner of the BI as required by implementing regulations. And her re-acquisition of Philippine citizenship being clearly invalid, petitioner Poe's acceptance and assumption to public office requiring natural-born citizenship as condition *sine qua non* is likewise invalid.

Republic Act No. 9225 (the Citizenship Retention and Reacquisition Act of 2003)[30] governs the reacquisition or retention of Philippine citizenship by a natural-born Filipino who acquired citizenship in a foreign country. Under Section 3 thereof, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are deemed to have re-acquired Philippine citizenship upon taking the oath of allegiance to the Republic of the Philippines specifically stated therein.[31] The foregoing point is reiterated under the Bureau of Immigration's Memorandum Circular No. AFF. 05-002 (Revised Rules Governing Philippine Citizenship under Republic Act No. 9225 and Administrative Order No. 91, Series of 2004), particularly Section 1 thereof, it is categorically provided that –

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30 Approved on August 29, 2003.

31 Section 3 of Republic Act No. 9225 states:

SEC. 3. *Retention of Philippine Citizenship.* — Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

> "I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion."

Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

> Section 1. Coverage. – These rules shall apply to **natural-born citizens** of the Philippines as defined by Philippine law and jurisprudence, who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country.

Hence, given my preceding discussion on the citizenship of petitioner Poe, I submit that she could not have validly repatriated herself under the provisions of Republic Act No. 9225 for purposes of "reacquiring" natural-born Filipino citizenship.

Another point that I wish to emphasize is the fact that in her Petition for Retention and/or Re-acquisition of Philippine Citizenship filed before the BI on July 10, 2006, petitioner Poe knowingly committed a false representation when she declared under oath that she was "**a former natural-born Philippine citizen, born** on Sept. 3, 1968 at Iloilo City **to** Ronald Allan Kelly Poe, a Filipino citizen and Jesusa Sonora Poe, a Filipino citizen[.]" [Emphasis supplied.]

In so answering the blank form of the petition, petitioner Poe plainly represented that she is the biological child of the spouses Ronald Allan Kelly Poe and Jesusa Sonora Poe; thereby effectively concealing the fact that she was a foundling who was subsequently adopted by the said spouses.

This false representation paved the way for the issuance by the BI of the Order dated July 18, 2006 that granted Poe's petition, which declared that she "was a former citizen of the Republic of the Philippines, being born to Filipino parents and is presumed to be a natural-born Philippine citizen[.]"

Another point worthy of note is the fact that the said Order was not signed by the Commissioner of the BI as required under the aforementioned Memorandum Circular No. AFF. 05-002, to wit:

> Section 10. Compliance and approval procedures. – All petitions must strictly comply with the preceding requirements prior to filing at the Office of the Commissioner or at nearest Philippine Foreign Post, as the case may be x x x.
>
> If the petition is found to be sufficient in form and in substance, the evaluating officer shall submit the findings and recommendation to the Commissioner of Immigration or Consul General, as the case may be x x x.
>
> **[T]he Commissioner of Immigration**, x x x, or the Consul General, x x x, **shall issue,** within five (5) days from receipt thereof, **an Order of Approval** indicating that the petition complies with the provisions of R.A. 9225 and its IRR, and the corresponding IC, as the case may be. (Emphasis supplied.)

A perusal of the said order will show that an indecipherable signature or autograph is written above the type written name of then Commissioner Alipio F. Fernandez, Jr. (Fernandez). The said writing was not made by Commissioner Fernandez as the word "*for*" was similarly written beside the name of the latter indicating that the said signature/autograph was made in lieu of the named person's own signature/autograph. Whose signature/autograph it was, and under whose authority it was made, are not evident from the document.

On the basis of the above undisputed facts, I submit that the July 18, 2006 Order of the BI granting petitioner Poe's application for the reacquisition of her supposedly lost natural-born citizenship was not only improvidently issued, but more importantly, it was null and void. The nullity stemmed from her concealment or misrepresentation of a material fact, not an error of law, regarding the identity of her biological parents. **The unlawful product of this concealment was carried over in her pursuit of high government positions requiring natural-born citizenship as a qualification**. Therefore, the same could not be the source of her reacquisition of all the attendant civil and political rights, including the rights and responsibilities under existing laws of the Philippines, granted to natural-born Filipino citizens.

Petitioner Poe's re-acquisition of Philippine citizenship was not validly approved as it was based on an erroneous finding of fact based on the false representation by petitioner Poe as to her parentage.

The Residency Requirement

The assailed COMELEC resolutions uniformly held that petitioner Poe falsely claimed in her COC that she had been a resident of the Philippines for ten years and eleven months up to the day before the May 9, 2016 elections. Assuming petitioner Poe may be validly repatriated under Republic Act No. 9225, the COMELEC ruled that it was only when she reacquired her Filipino citizenship on July 18, 2006 that she could have re-established her domicile in the Philippines.

Before this Court, petitioner Poe primarily argues that the COMELEC "acted whimsically and capriciously, ignored settled jurisprudence and disregarded the evidence on record in ruling that she made a false material representation in her COC for President when she stated therein that her 'period of residence in the Philippines up to the day before May 09, 2016' would be '10' years and '11' months."[32] Petitioner Poe contends that she re-established her domicile of choice in the Philippines as early as May 24, 2005, even before she reacquired her Filipino citizenship under Republic Act No. 9225.

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32 Petitioner's Memorandum, p. 241.

Section 2, Article VII of the 1987 Constitution provides for the qualifications for the position of President, to wit:

ARTICLE VII
EXECUTIVE DEPARTMENT

> SECTION 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and **a resident of the Philippines for at least ten years immediately preceding such election**. (Emphasis supplied.)

For election purposes, the term residence is to be understood not in its common acceptation as referring to dwelling or habitation.[33] In contemplation of election laws, residence is synonymous with domicile. Domicile is the place where a person actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain. It consists not only in the intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention.[34]

In *Domino v. Commission on Elections*,[35] the Court stressed that domicile denotes a fixed permanent residence to which, whenever absent for business, pleasure, or some other reasons, one intends to return. It is a question of intention and circumstances. In the consideration of circumstances, three rules must be borne in mind, namely: (1) that a man must have a residence or domicile somewhere; (2) when once established it remains until a new one is acquired; and (3) a man can have but one residence or domicile at a time.

Domicile is classified into: (1) domicile of origin, which is acquired by every person at birth; (2) domicile of choice, which is acquired upon abandonment of the domicile of origin; and (3) domicile by operation of law, which the law attributes to a person independently of his residence or intention.[36] To acquire a new domicile of choice, the following requirements must concur: (1) residence or bodily presence in the new locality; (2) an intention to remain there; and (3) an intention to abandon the old domicile. There must be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.[37]

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33 *Coquilla v. Commission on Elections*, 434 Phil. 861, 871 (2002).
34 *Ugdoracion, Jr. v. Commission on Elections*, 575 Phil. 253, 263 (2008).
35 369 Phil. 798, 818 (1999).
36 *Ugdoracion, Jr. v. Commission on Elections*, supra. at 263.
37 *Papandayan, Jr. v. Commission on Elections*, 430 Phil. 754, 770 (2002).

In *Coquilla v. Commission on Elections*,[38] the Court held in no uncertain terms that naturalization in a foreign country results in the abandonment of domicile in the Philippines.

Thereafter, in *Japzon v. Commission on Elections*,[39] the Court construed the requirement of residence under election laws *vis-a-vis* the provisions of Republic Act No. 9225. The respondent in said case, Jaime S. Ty, was a natural-born Filipino who became an American citizen. He later reacquired his Philippine citizenship under Republic Act No. 9225 and ran for Mayor of the Municipality of General Macarthur, Eastern Samar. Manuel B. Japzon, a rival candidate, questioned Ty's residency in said place. The Court ruled that –

> It bears to point out that Republic Act No. 9225 governs the manner in which a natural-born Filipino may reacquire or retain his Philippine citizenship despite acquiring a foreign citizenship, and provides for his rights and liabilities under such circumstances. A close scrutiny of said statute would reveal that it does not at all touch on the matter of residence of the natural-born Filipino taking advantage of its provisions. **Republic Act No. 9225 imposes no residency requirement for the reacquisition or retention of Philippine citizenship; nor does it mention any effect of such reacquisition or retention of Philippine citizenship on the current residence of the concerned natural-born Filipino. Clearly, Republic Act No. 9225 treats citizenship independently of residence.** This is only logical and consistent with the general intent of the law to allow for dual citizenship. Since a natural-born Filipino may hold, at the same time, both Philippine and foreign citizenships, he may establish residence either in the Philippines or in the foreign country of which he is also a citizen.
>
> Residency in the Philippines only becomes relevant when the natural-born Filipino with dual citizenship decides to run for public office.
>
> Section 5(2) of Republic Act No. 9225 reads:
>
> > SEC. 5. *Civil and Political Rights and Liabilities.* — Those who retain or reacquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:
> >
> > x x x x
> >
> > (2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any

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38 Supra. at 872.

39 596 Phil. 354 (2009).

> and all foreign citizenship before any public officer authorized to administer an oath.
>
> Breaking down the aforequoted provision, for a natural-born Filipino, who reacquired or retained his Philippine citizenship under Republic Act No. 9225, to run for public office, he must: (1) **meet the qualifications for holding such public office as required by the Constitution and existing laws**; and (2) **make a personal and sworn renunciation of any and all foreign citizenships before any public officer authorized to administer an oath.**
>
> x x x x
>
> As has already been previously discussed by this Court herein, Ty's reacquisition of his Philippine citizenship under Republic Act No. 9225 had no automatic impact or effect on his residence/domicile. He could still retain his domicile in the USA, and he did not necessarily regain his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines. **Ty merely had the option to again establish his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines, said place becoming his new domicile of choice. The length of his residence therein shall be determined from the time he made it his domicile of choice**, and it shall not retroact to the time of his birth.[40] (Citations omitted; emphasis supplied.)

Applying the foregoing disquisition to the instant cases, it is beyond question that petitioner Poe lost her domicile in the Philippines when she became a naturalized American citizen on **October 18, 2001**. From then on, she established her new domicile of choice in the U.S. Thereafter, on **July 7, 2006**, petitioner Poe took her oath of allegiance to the Republic of the Philippines under Republic Act No. 9225. Again, on the *assumption* that petitioner Poe can validly avail herself of the provisions of said law, she was deemed to have reacquired her Philippine citizenship under the latter date. Subsequently, on **October 20, 2010**, petitioner Poe executed an Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship (Affidavit of Renunciation).

Following *Japzon*, petitioner Poe's reacquisition of her Philippine citizenship did not automatically make her regain her residence in the Philippines. She merely had the option to again establish her domicile here. The length of petitioner Poe's residence herein shall be determined from the time she made the Philippines her domicile of choice. Whether petitioner Poe complied with the ten-year residency requirement for running for the position of the President of the Philippines is essentially a question of fact that indeed requires the review and evaluation of the probative value of the evidence presented by the parties before the COMELEC.

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40 Id. at 367-370.

On this note, I concur with the ruling in Justice Del Castillo's Dissenting Opinion that the evidence[41] submitted by petitioner Poe was insufficient to establish her claim that when she arrived in the Philippines on May 24, 2005, her physical presence was imbued with *animus manendi*. At that point in time, petitioner Poe's status was merely that of a non-resident alien.

Notably, when petitioner arrived in the Philippines on May 24, 2005, the same was through a visa-free entry under the *Balikbayan* Program.[42] Under Republic Act No. 6768 (An Act Instituting a *Balikbayan* Program),[43] as amended by Republic Act No. 9174,[44] the said program was instituted "to attract and encourage overseas Filipinos to come and **visit** their motherland."[45]

Under Section 3 of the above-mentioned law, petitioner Poe was merely entitled to a visa-free entry to the Philippines for a period of one (1) year.[46] Thus, her stay then in the Philippines was certainly not for an indefinite period of time.[47] This only proves that petitioner Poe's stay was not impressed with *animus manendi*, *i.e.*, the intent to remain in or at the domicile of choice for an indefinite period of time.

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41 In petitioner's Memorandum, she cited the following pieces of evidence to prove her *animus manendi*, or intent to stay permanently in the Philippines, among others:

(a) Petitioner's travel records, which show that whenever she was absent for a trip abroad, she would consistently return to the Philippines;

(b) Affidavit of Ms. Jesusa Sonora Poe, attesting to, inter alia, the fact that after their arrival in the Philippines in early 2005, petitioner and her children first lived with her at 23 Lincoln St., Greenhills West, San Juan City, which even necessitated a modification of the living arrangements at her house to accommodate petitioner's family;

(c) School records of petitioner's children, which show that they had been attending Philippine schools continuously since June 2005;

(d) Petitioner's TIN I.D., which shows that shortly after her return in May 2005, she considered herself a taxable resident and submitted herself to the Philippines' tax jurisdiction; and

(e) CCT for Unit 7F and a parking slot at One Wilson Place, purchased in early 2005, and its corresponding Declarations of Real Property for real property tax purposes, which clearly establish intent to reside permanently in the Philippines.

42 Petitioner's Memorandum, pp. 249-250.

43 Approved on November 3, 1989.

44 Approved on November 7, 2002.

45 The relevant portion of Section 1 of Republic Act No. 9174 states:

SEC. 1. Section 1 of Republic Act No. 6768 is hereby amended to read as follows:

"Section 1. *Balikbayan Program.* - A *Balikbayan* Program is hereby instituted under the administration of the Department of Tourism to attract and encourage overseas Filipinos to come and visit their motherland. This is in recognition of their contribution to the economy of the country through the foreign exchange inflow and revenues that they generate."

46 Section 3 of Republic Act No. 9174 states:

SEC. 3. Section 3 of the [Republic Act No. 6768] is hereby amended to read as follows:

"Sec. 3 *Benefits and Privileges of the Balikbayan.* - The *balikbayan* and his or her family shall be entitled to the following benefits and privileges:

x x x x

(c) Visa-free entry to the Philippines for a period of one (1) year for foreign passport holders, with the exception of restricted nationals[.]"

47 The one year period may be extended for another one (1), two (2) or six (6) months, subject to specific requirements. [http://www.immigration.gov.ph/faqs/visa-inquiry/balikbayan-previlege. Last accessed: February 27, 2016.]

In *Coquilla v. Commission on Elections*,[48] We disregarded the period of a candidate's physical presence in the Philippines at the time when he was still a non-resident alien. In this case, Teodulo M. Coquilla lost his domicile of origin in Oras, Eastern Samar when he joined the U.S. Navy in 1965 and he was subsequently naturalized as a U.S. citizen. On October 15, 1998, he came to the Philippines and took out a resident certificate. Afterwards, he still made several trips to the U.S. Coquilla later applied for repatriation and took his oath as a citizen of the Philippines on November 10, 2000. Coquilla thereafter filed his COC for the mayorship of Oras, Eastern Samar. A rival candidate sought the cancellation of Coquilla's COC as the latter had been a resident of Oras for only six months after he took his oath as a Filipino citizen.

The Court ruled that Coquilla indeed lacked the requisite period of residency. While he entered the Philippines in 1998 and took out a residence certificate, he did so as a visa-free *balikbayan* visitor whose stay as such was valid for only one year. He then entered the country at least four more times using the same visa-free *balikbayan* entry. From 1965 until his reacquisition of Philippine citizenship on November 10, 2000, Coquilla's status was held to be that of "an alien without any right to reside in the Philippines save as our immigration laws may have allowed him to stay as a visitor or as a resident alien." The Court also explained that:

> The status of being an alien and a non-resident can be waived either separately, when one acquires the status of a resident alien before acquiring Philippine citizenship, or at the same time when one acquires Philippine citizenship. As an alien, an individual may obtain an immigrant visa under §13[49] of the Philippine Immigration Act of 1948 and an Immigrant Certificate of Residence (ICR) and thus waive his status as a non-resident. On the other hand, he may acquire Philippine citizenship by naturalization under C.A. No. 473, as amended, or, if he is a former Philippine national, he may reacquire Philippine citizenship by repatriation or by an act of Congress, in which case he waives not only his status as an alien but also his status as a non-resident alien.[50] (Citations omitted.)

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48 Supra note 33.

49 The pertinent portions of this provision states:

"Under the conditions set forth in this Act, there may be admitted in the Philippines immigrants, termed "quota immigrants" not in excess of fifty (50) of any one nationality or without nationality for any one calendar year, except that the following immigrants, termed "nonquota immigrants," may be admitted without regard to such numerical limitations.

The corresponding Philippine Consular representative abroad shall investigate and certify the eligibility of a quota immigrant previous to his admission into the Philippines. Qualified and desirable aliens who are in the Philippines under temporary stay may be admitted within the quota, subject to the provisions of the last paragraph of Section 9 of this Act.

x x x x

(g) A natural-born citizen of the Philippines, who has been naturalized in a foreign country, and is returning to the Philippines for permanent residence, including the spouse and minor children, shall be considered a non-quota immigrant for purposes of entering the Philippines (As amended by Rep. Act No. 4376, approved June 19, 1965)."

50 *Coquilla v. Commission on Elections*, supra note 33 at 873-875.

The Court, thus, found that Coquilla can only be held to have waived his status as an alien and as a non-resident only on November 10, 2000 upon taking his oath as a citizen of the Philippines. The Court arrived at the same ruling in the earlier case of *Ujano v. Republic*[51] and *Caasi v. Court of Appeals*.[52]

In the cases at bar, petitioner Poe similarly failed to prove that she waived her status as a non-resident alien when she entered the Philippines on May 24, 2005 as a visa-free *balikbayan* visitor. Her status only changed when she ostensibly took her oath of allegiance to the Republic under Republic Act No. 9225 on July 7, 2006.

Under Section 5 of Republic Act No. 9225,[53] the entitlement to the full civil and political rights concomitant with the reacquired citizenship shall commence only when the requirements in the said law have been completed and the Philippine citizenship has been acquired. It is only then that that Filipinos who have reacquired their citizenship can be said to gain the right to exercise their right of suffrage or to seek elective public office, subject to the compliance with the requirements laid down in the Constitution and existing laws.

Thus, it is the taking of the oath of allegiance to the Republic on July 7, 2006 presumably conferred upon petitioner Poe not only Philippine citizenship but also the right to stay in the Philippines for an unlimited period of time. It was only then that she can claim subject to proof, that her physical presence in the Philippines was coupled with *animus manendi*. Any temporary stay in the Philippines prior to the aforesaid date cannot fall under the concept of residence for purposes of elections. The *animus*

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51 17 SCRA 147.

52 191 SCRA 229.

53 Section 5 of Republic Act No. 9225 states:

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

(1) Those intending to exercise their right of suffrage must meet the requirements under Section 1, Article V of the Constitution, Republic Act No. 9189, otherwise known as "The Overseas Absentee Voting Act of 2003" and other existing laws;

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

(3) Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: *Provided*, That they renounce their oath of allegiance to the country where they took that oath;

(4) Those intending to practice their profession in the Philippines shall apply with the proper authority for a license or permit to engage in such practice; and

(5) That right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who:

(a) are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or

(b) are in active service as commissioned or noncommissioned officers in the armed forces of the country which they are naturalized citizens.

manendi must be proven by clear and unmistakable evidence since a dual citizen can still freely enjoy permanent resident status in her/his domicile of choice if said status is not given up or officially waived.

Anent the pieces of evidence[54] that petitioner Poe submitted to prove her *animus non revertendi* to her domicile in the U.S., I agree with the dissent of Justice Del Castillo that little weight can likewise be properly ascribed to the same, given that they referred to acts or events that took place after May 24, 2005. As such, they were also insufficient to establish petitioner's claim that she changed her domicile as of May 24, 2005. Petitioner Poe's evidence was insufficient to prove *animus non revertendi* prior to her renunciation of her U.S. citizenship on October 20, 2010. Before the renunciation, it cannot be said that there was a clear and unmistakable intent on the part of petitioner Poe to abandon her U.S. domicile. To be clear, one cannot have two domiciles at any given time. It was thus incumbent upon the petitioner Poe to prove by positive acts that her physical presence in the Philippines was coupled with the intent to relinquish her domicile in the U.S.

As pointed out by Justice Del Castillo, the continued use of her American passport in her travels to the U.S., as well as her ownership and maintenance of two residential houses in the said country until the present time, only served to weaken her stance that she actually and deliberately abandoned her domicile in the U.S. when she came here on May 24, 2005. This is because she continued to represent herself as an American citizen who was free to return to the said country whenever she wished. Moreover, although petitioner Poe supposedly reacquired her Philippine citizenship on July 7, 2006, she was issued a Philippine passport only three years thereafter on October 13, 2009. Thus, I concur with the finding of the *Ponencia* that petitioner Poe's affidavit of renunciation of U.S. citizenship was the only clear and positive proof of her abandonment of her U.S. domicile.

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[54] In petitioner's Memorandum, she cited the following pieces of evidence to prove her *animus non revertendi*, or intent to abandon her U.S.A. domicile, among others:

(a) Affidavit of Ms. Jesusa Sonora Poe, attesting to, among others, the reasons which prompted the petitioner to leave the U.S.A. and return permanently to the Philippines;

(b) Affidavit of petitioner's husband, Mr. Teodoro V. Llamanzares, corroborating the petitioner's statement and explaining how he and the petitioner had been actively attending to the logistics of their permanent relocation to the Philippines since March 2005;

(c) The petitioner and her husband's documented conversations with property movers regarding the relocation of their household goods, furniture, and cars, then in Virginia, U.S.A., to the Philippines, which show that they intended to leave the U.S.A. for good as early as March 2005;

(d) Relocation of their household goods, furniture, cars, and other personal property then in Virginia, U.S.A., to the Philippines, which were packed and collected for storage and transport to the Philippines on February and April 2006;

(e) Petitioner's husband's act of informing the U.S.A. Postal Service of their abandonment of their former U.S.A. address on March 2006;

(f) Petitioner and her husband's act of selling their family home in the U.S.A. on April 27, 2006;

(g) Petitioner's husband's resignation from his work in the U.S.A. in April 2006; and

(h) The return to the Philippine's of petitioner's husband on May 4, 2006.

Given the above findings, the petitioner's evidence fails to substantiate her claim that she had established her domicile of choice in the Philippines starting on May 24, 2005.

By stating in her COC that she had complied with the required ten-year residency when she actually did not, petitioner made a false material representation that justified the COMELEC's cancellation of her COC.

The majority opinion, however, reached a dissimilar conclusion and ruled that *Coquilla*, *Japzon*, *Caballero* and *Reyes* are inapplicable to the case at bar. The majority posited that, unlike in the aforesaid cases where the evidence presented on residency was sparse, petitioner Poe's evidence is overwhelming and unprecedented. The majority furthermore asserted that there is no indication in the said cases that the Court intended to have its ruling therein apply to a situation where the facts are different.

I strongly beg to differ.

But of course, the factual milieu of these cases is different from those of *Coquilla*, *Japzon*, *Caballero* and *Reyes*. No two cases are exactly the same. However, there are no substantial differences that would prevent the application here of the principles enunciated in the said decided cases. Moreover, absolutely nowhere in the said cases did the Court expressly say that the rulings therein only apply ***pro hac vice*** (meaning, "for this one particular occasion").[55] On the contrary, the doctrines laid down in said cases are cited in a catena of election cases, which similarly involve the residency requirement for elective positions. Simply put, the jurisprudential doctrines and guidelines set out in said cases, along with other cases dealing with the same subject matter, serve as the standards by which the pieces of evidence of a party in a specific case are to be measured. Even petitioner Poe herself adverts to our ruling in *Japzon*, *Coquilla* and *Caballero*, albeit in a manner that tends to suit her cause.[56]

In relation to the application of *Coquilla* to these cases relative to petitioner Poe's utilisation of the visa-free *balikbayan* entry, the majority opines that under Republic Act No. 6768, as amended, *balikbayans* are not ordinary transients in view of the law's aim of "providing the opportunity to avail of the necessary training enable the *balikbayan* to become economically self-reliant members of society upon their return to the country" in line with the government's "reintegration program." The majority, thus, concluded that the visa-free period is obviously granted to allow a *balikbayan* to re-establish his life and reintegrate himself into the community before he attends to the necessary formal and legal requirements of repatriation.

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55 *Partido Ng Manggagawa v. Commission on Elections*, 519 Phil. 644, 671 (2006).

56 See Petitioner's Memorandum, pp. 268, 271, 272.

On this point, the majority apparently lost sight of the fact that the training program envisioned in Republic Act No. 6768, as amended, that is to be pursued in line with the government's reintegration program does not apply to petitioner Poe. It applies to another set of *balikbayans* who are Filipino overseas workers. Section 6 of the law expressly states that:

> SEC. 6. *Training Programs.* - The **Department of Labor and Employment (DOLE)** through the **OWWA**, in coordination with the Technology and Livelihood Resource Center (TLRC), Technical Education and Skills Development Authority (TESDA), livelihood corporation and other concerned government agencies, shall provide the **necessary entrepreneurial training and livelihood skills programs and marketing assistance** to a *balikbayan*, including his or her immediate family members, who shall avail of the *kabuhayan* program **in accordance with the existing rules on the government's reintegration program.**
>
> In the case of non-OFW *balikbayan,* the Department of Tourism shall make the necessary arrangement with the TLRC and other training institutions for possible livelihood training. (Emphasis supplied.)

Indeed, the Overseas Workers Welfare Administration (OWWA) is a government agency that is primarily tasked to protect the interest and promote the welfare of overseas Filipino workers (OFWs).[57] Among the benefits and services it renders is a Reintegration Program, which defines reintegration as "a way of preparing for the return of OFWs into the Philippine society."[58] Not being an OFW, petitioner Poe is not the *balikbayan* that is envisioned to be the recipient of the above reintegration program.

If she indeed wanted to reestablish her life here, petitioner Poe should have applied for a Returning Former Filipino Visa, instead availing herself of a visa-free *balikbayan* entry. This visa may be applied for by a natural born citizen of the Philippines, who has been naturalized in a foreign country, and is returning to the Philippines for permanent residence, including his/her spouse and minor children. By this visa, she would be allowed, *inter alia*, to stay in the Philippines indefinitely, establish a business, and allowed to work without securing an alien employment permit. This would have definitely established her intent to remain in the Philippines permanently. Unfortunately for petitioner Poe, she did not apply for this visa.

The majority opinion also ascribes grave abuse of discretion on the part of the COMELEC for giving more weight to the 2013 COC of petitioner Poe instead of looking into the many pieces of evidence she presented in order to see if she was telling the truth that she already established her

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57 *Overseas Workers Welfare Administration v. Chavez*, 551 Phil. 890, 896 (2007).

58 http://www.owwa.gov.ph/?q=node/23/#reintegration. Last accessed on March 11, 2016 at 1:52 p.m.

domicile in the Philippines from May 24, 2005. The majority points out that when petitioner Poe made the declaration in her 2013 COC that she has been a resident for a period of six (6) years and six (6) months counted up to the May 13, 2013 elections, she naturally had as reference the residency requirements for election as Senator, which was satisfied by her declared years of residence. The majority even belabors the obvious fact that the length of residence required of a presidential candidate is different from that of a senatorial candidate.

To this I likewise take exception.

It bears pointing out that the COMELEC did not turn a blind eye and deliberately refused to look at the evidence of petitioner Poe. A reading of the assailed COMELEC resolutions reveals that the pieces of evidence of the petitioner were indeed considered, piece by piece, but the same were adjudged insufficient to prove the purpose for which they were offered. To repeat, the emphasis must be on the weight of the pieces of evidence, not the number thereof. The COMELEC, perforce, arrived at an unfavorable conclusion. In other words, petitioner Poe's evidence had actually been weighed and measured by the COMELEC, but same was found wanting.

Moreover, I do not find significant the distinction made on the residency requirement for a presidential candidate and that of a senatorial candidate for purposes of these cases. The truth of a candidate's statement on the fact of her residency must be **consistent** and **unwavering**. Changes in a candidate's assertion of the period of residency in the Philippines shall not inspire belief or will not be credible.

Deceit

As to the view that the material representation that is false should be "*made with an intention to deceive the electorate as to one's qualifications for public office,*"[59] I cannot but deviate therefrom.

Again, Section 78 of the OEC, provides that –

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

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[59] *Salcedo v. Commission on Elections*. 371 Phil. 377, 390 (1999).

In *Tagolino v. House of Representatives Electoral Tribunal*,[60] the Court had the occasion to enlighten 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.***" The Court therein further acknowledged that "*an express finding that the person committed any deliberate* ***misrepresentation*** *is of little consequence in the determination of whether one's CoC should be deemed cancelled or not*"[61]; and concluded that ***"[w]hat remains material is that the petition essentially seeks to deny due course to and/or cancel the CoC on the basis of one's ineligibility and that the same be granted without any qualification.***"[62]

The above standard is in keeping with the tenor of Section 78 of the OEC. The said law used the phrase **material representation** qualified by the term **false**; and not misrepresentation *per se.* This distinction, I believe, is quite significant.

A deeper analysis and research on the import and meaning of the language of Section 78, led to the conclusion that as opposed to the use of the term "***misrepresentation***" which, colloquially is understood to mean a statement **made to deceive or mislead,**[63] the qualifying term "***false***" referring to the phrase "***material representation***" is said to have "**two distinct and well-recognized meanings.** It signifies (1) intentionally or knowingly, or negligently untrue, and (2) untrue by mistake, accident, or honestly after the exercise of reasonable care."[64] Thus, the word "*false*" does not necessarily imply an intention to deceive. What is important is that an untrue material representation is made.

Relating to the disqualification under Section 78 of the OEC, the requirement of the said law (that a cancellation of a candidate's COC be exclusively grounded on the presence of any **material representation** contained therein that is required under Section 74 of the same **is false**) should only pivot on the candidate's declaration of a material qualification that is false, and not on the deliberate intent to defraud. With this, good faith on the part of the candidate would be inconsequential.

In these present cases, there is no need to go into the matter of questioning petitioner Poe's *intent* in making a material representation that is false. It is enough that she signified that she is eligible to run for the Presidency notwithstanding the fact that she appeared to know the legal impediment to her claim of natural-born Filipino citizenship, as borne out by her concealment of her true personal circumstances, and that she is likewise aware of the fact that she has not fulfilled the ten-year residency requirement

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60 G.R. No. 202202, March 19, 2013.
61 *Tagolino v. House of Representatives Electoral Tribunal*, citing *Miranda v. Abaya,* 370 Phil. 642.
62 Id.
63 Black's Law Dictionary, 6th Ed.
64 Metropolitan Life Ins. Co. v. Adams, D.C. Mun. App., 37 A.2d 345, 350.

as shown by her inconsistent and ambivalent stand as to the start of her domicile in the Philippines. Apparently, she is cognizant of the fact that she is actually ineligible for the position.

However, that while an intent to deceive in petitioner Poe's actions is not an indispensable element under a Section 78 Petition, the COMELEC's affirmative finding on the existence of deceit is not without basis. The COMELEC observed, and I quote:

> The simplicity and clarity of the terms used in our Constitution and laws on citizenship, the fact that [petitioner Poe] is a highly educated woman and all other circumstances found by the Honorable Second Division to be present in this case, would leave little doubt as to the intention of [petitioner Poe] when she made the false representations in the Certificates x x x that is, to mislead [the] people into thinking that she was then a Filipino.
>
> The Commission is especially bothered by [petitioner Poe's] representation in the Petition for Retention and/or Reacquisition of Philippine Citizenship **that she was BORN TO her adoptive parents.** To recall, it was this Petition, granted by the BID, that led to [petitioner Poe] supposed acquisition of Filipino citizenship in July 2006 under RA 9225 – a law which limits its application only to natural-born Filipinos who lost their citizenships. The design to mislead in order to satisfy the requirements of the law is evident, reminiscent of the intent to mislead in the 2016 COC, put in issue in the present case.
>
> All told, the foregoing misrepresentations may be for different purposes, but all seems to have been deliberately done. It is, therefore, hard to think, given the aforementioned pattern of behavior, that the representation in [petitioner Poe's] 2016 COC for President that she was a natural-born citizen was not a deliberate attempt to mislead, misinform, or hide a fact that would otherwise render her ineligible for the office that she seeks to be elected to.[65]

On the matter of her residency requirement, petitioner Poe concedes that she indicated in her 2013 COC that her "period of residence in the Philippines before May 13, 2013" was "6 years and 6 months." Consequently, her residence in the Philippines could have only begun on November 2006, such that by May 9, 2016, her aggregate period of residence in the Philippines was approximately only 9 years and 6 months, which is short of the period of residence required for presidential candidates.

Petitioner Poe explains, however, that she made the above statement as an "honest misunderstanding" of what was being asked of her.[66] She contends that she did not fully comprehend that the phrase "Period of Residence in the Philippines before May 13, 2013" in her 2013 COC actually referred to the period of residence on the day right before the May 13, 2013 elections. She allegedly construed it to mean her "period of

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65 COMELEC Decision in SPA No. 15-001 (DC), pp. 30-31.

66 Petitioner's Memorandum, p. 285.

residence in the Philippines as of the submission of COCs in October 2012 (which is technically also a period 'before May 13, 2013')."[67] Thus, she counted backwards from October 2012, instead from May 13, 2013, and in so doing she brought herself back to "**March-April 2006**," which was the period when her house in the U.S. was sold and when her husband resigned from his job in the U.S.[68] She argues that that was the period she indicated, albeit it was a mistake again on her part as it should have been **May 24, 2005**.

Petitioner Poe's ambivalent or varying accounts do not inspire beliefs of the truthfulness of her latest allegation of the period of her residence in the Philippines.

It is indeed incredible of someone of her stature to gravely misinterpret the phrase "Period of Residence in the Philippines before the May 13, 2013" in the 2012 COC. At any rate, having been informed as early as June 2015 of this supposedly honest mistake, it is quite perplexing that the same was not immediately rectified. As it were, the above-mentioned explanations that were belatedly given even muddled the issue further. Petitioner Poe can hardly blame the COMELEC for casting a suspicious and skeptic eye on her contentions regarding her residency.

Petitioner Poe's claim of good faith, thus, stands on very shaky grounds. As found by the COMELEC *En banc*:

> x x x worthy of note are certain arguments raised such as [petitioner Poe's] claim that she never hid from the public her supposed mistake in the 2013 COC, as evinced by the following: 1.) she publicly acknowledged the same in an interview in June 2015, after the issue of compliance with the residency requirement for President was raised by Navotas City Representative and then United Nationalist Alliance Secretary General Tobias Tiangco; and 2.) that as early as September 1, 2015, in her Verified Answer filed before the Senate Electoral Tribunal (hereinafter "SET") in SET Case No. 001-15, she already made it of record that as of May 13, 2013, she had been residing in the Philippines "for more than six (6) years and six (6) months."
>
> While the two statements were indeed made before respondent filed her 2016 COC, it was nonetheless delivered at a time when, at the very least, the possibility of [petitioner Poe] running for President of the country in 2016, was already a matter of public knowledge. By then, [petitioner Poe could have already been aware that she cannot maintain her declaration in the 2013 COC as it would be insufficient to meet the 10-year residency requirement for President.
>
> Indeed, the Commission finds it hard to believe that a woman as educated as [petitioner Poe], who was then already a high-ranking public official with, no doubt, a competent staff and a band of legal advisers, and

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67 Petitioner's Memorandum, p. 285.

68 Petitioner's Memorandum, pp. 286-287.

> who is not herself entirely unacquainted with Philippine politics being the daughter of a former high-profile presidential aspirant, would not know how to correctly fill-up a pro-forma COC in 2013. **We are not convinced that the subject entry therein was an honest mistake.**

Conclusion

The foregoing discussion points to the failure of petitioner Poe to prove her cases. Therefore, I submit that the two assailed COMELEC *En banc* Resolutions dated December 23, 2015, separately affirming the December 1, 2015 Resolution of the Second Division and the December 11, 2015 Resolution of the First Division are not tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner Poe implores this Court not to allow the supposed disenfranchisement of the sovereign people by depriving them of "*of something rightfully theirs: the consideration of petitioner as a* ***viable and valid choice for President*** *in the next elections.*"[69]

But the Constitution itself is the true embodiment of the supreme will of the people. It was the people's decision to require in the Constitution, which they approved in a plebiscite, that their President be a natural-born Filipino citizen. The people did not choose to disenfranchise themselves but rather to disqualify those persons, who did not descend by blood from Filipino parents, from running in an election for the Presidency.

The will of the electorate will never cure the vice of ineligibility. As so eloquently reminded by then Justice Isagani A. Cruz in *Frivaldo v. Commission on Elections*[70]:

> The qualifications prescribed for elective office cannot be erased by the electorate alone. The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this case, that the candidate was qualified. Obviously, this rule requires strict application when the deficiency is lack of citizenship.

WHEREFORE, I vote to (*i*) **DISMISS** the four petitions for *certiorari* filed by petitioner Mary Grace Natividad S. Poe-Llamanzares; and (*ii*) **LIFT** the temporary restraining order issued by this Court on December 28, 2015.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

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69 Petition in G.R. No. 221697, p.1; *rollo,* p. 1.
70 G.R. No. 87193, [June 23, 1989], 255 PHIL 934-947.