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

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

Promulgated: March 8, 2016

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Dissenting Opinion

DEL CASTILLO, *J.*:

A person who aspires to occupy the highest position in the land must obey the highest law of the land.[1]

Since the second Monday of May of 1992 and every six years thereafter,[2] the Filipino people have been exercising their sacred right to choose the leader who would steer the country towards a future that is in accordance with the aspirations of the majority as expressed in the fundamental law of the land. At stake is the Presidency, the highest position in the land.

The President wields a vast array of powers which includes "control of all the executive departments, bureaus and offices."[3] He/she is also the Commander-in-Chief of all armed forces of the Philippines[4] and can "grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment,"[5] as well as amnesty, subject to the concurrence of Congress.[6] For the rest of the world, he/she is the representation and the representative of the Filipino people.

Petitioner Mary Grace Natividad Poe-Llamanzares (petitioner) aspires to occupy the exalted position of the President of the Republic of the Philippines so

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1 See December 1, 2015 Resolution of the Comelec's Second Division in SPA No. 15-001 (DC); *rollo* (G.R. No. 221697), Vol. I, p. 222.

2 CONSTITUTION, Article XVIII, Section 5.

3 CONSTITUTION, Article VII, Section 17.

4 CONSTITUTION, Article VII, Section 18.

5 CONSTITUTION, Article VII, Section 19.

6 CONSTITUTION, Article VII, Section 19.

that on October 15, 2015, she filed her Certificate of Candidacy (2015 CoC) attesting that she is a natural-born Filipino citizen and a resident of this country for 10 years and 11 months immediately preceding the May 9, 2016 elections. However, several sectors were not convinced of petitioner's representations, prompting them to file petitions to deny due course to and cancel her 2015 CoC and for disqualification.

The cases

Before us are petitioner's consolidated Petitions for *Certiorari* assailing the Commission on Elections' (Comelec) Resolutions which cancelled her 2015 CoC. In G.R. No. 221697, the Petition for *Certiorari*[7] assails the Second Division's December 1, 2015 Resolution[8] and the *En Banc*'s December 23, 2015 Resolution[9] in SPA No. 15-001 (DC) which granted private respondent Estrella C. Elamparo's (Elamparo) Petition and cancelled petitioner's 2015 CoC for President. In G.R. Nos. 221698-700, the Petition for *Certiorari*[10] assails the First Division's December 11, 2015 Resolution[11] and the *En Banc*'s December 23, 2015 Resolution[12] which granted private respondents Francisco S. Tatad (Tatad), Antonio P. Contreras (Contreras) and Amado D. Valdez's (Valdez) petitions in SPA No. 15-002 (DC), SPA No. 15-007 (DC), and SPA No. 15-139 (DC), respectively, and likewise cancelled petitioner's 2015 CoC for President.

Factual Antecedents

On September 3, 1968, petitioner, who was then still an infant, was found abandoned in Jaro, Iloilo City.[13] Her biological parents were unknown. Five years later, petitioner was adopted by spouses Ronald Allan Kelley Poe and Jesusa Sonora Poe. In 1991, petitioner graduated from Boston College in Massachusetts, with a degree of Bachelor of Arts in Political Studies.

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7 *Rollo* (G.R. No. 221697), Vol. I, pp. 3-189.

8 Id. at 190-223; signed by Presiding Commissioner Al A. Parreño and Commissioners Arthur D. Lim and Sheriff M. Abas.

9 Id. at 224-259; signed by Chairman J. Andres D. Bautista (with Separate Concurring and Dissenting Opinion), Commissioner Christian Robert S. Lim (inhibited), Commissioner Al A. Parreño (concurred in the result but maintained that there is no material misrepresentation as to citizenship), Commissioner Luie Tito F. Guia (with Separate Opinion), Commissioner Arthur D. Lim, Commissioner Ma. Rowena Amelia V. Guanzon (concurred in the result), and Commissioner Sheriff M. Abas.

10 *Rollo* (G.R. Nos. 221698-700), Vol. I, pp. 3-213.

11 Id. at 214-264; signed by Presiding Commissioner Christian Robert S. Lim (with Dissenting Opinion), Commissioner Luie Tito F. Guia (with Separate Concurring Opinion), and Commissioner Ma. Rowena Amelia V. Guanzon.

12 Id. at 352-381, signed by Chairman J. Andres D. Bautista (with Separate Concurring and Dissenting Opinion), Commissioner Christian Robert S. Lim (dissented), Commissioner Al A. Parreño (concurred with the result but maintained that there is no material misrepresentation as to citizenship), Commissioner Luie Tito F. Guia (with Separate Opinion), Commissioner Arthur D. Lim (opined that the earliest reckoning date as to residency should be July 2006, still short of the 10-year residency requirement), Commissioner Ma. Rowena Amelia V. Guanzon and Commissioner Sheriff M. Abas (joined the opinion of Commissioner Arthur D. Lim that the earliest possible reckoning period for residency is July 2006).

13 See Foundling Certificate, *rollo* (G.R. Nos. 221698-700), Vol. II, p. 1138.

On July 27, 1991, petitioner married Teodoro Misael Daniel V. Llamanzares, a citizen of both the Philippines and the United States of America (U.S.A. or U.S.) from birth, at the Santuario de San Jose Parish in San Juan.[14] On July 29, 1991, the couple left the Philippines, settled in the U.S., and started a family there. On October 18, 2001, petitioner became a naturalized U.S. citizen.[15]

On July 7, 2006, petitioner took her Oath of Allegiance[16] to the Republic of the Philippines pursuant to Republic Act No. 9225[17] (RA 9225). On July 18, 2006, the Bureau of Immigration and Deportation (BID) issued an Order[18] granting her petition for reacquisition of Filipino citizenship under the said law.

On August 31, 2006, petitioner registered as a voter in *Barangay* Sta. Lucia, San Juan.[19] After more than three years, petitioner secured a Philippine passport valid until October 12, 2014.[20]

On October 6, 2010, petitioner was appointed as Chairperson of the Movie and Television Review and Classification Board (MTRCB).

On October 20, 2010, petitioner executed an Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship (Affidavit of Renunciation).[21] The following day, October 21, 2010, petitioner took her Oath of Office as MTRCB Chairperson before President Benigno S. Aquino III.[22]

On July 12, 2011, petitioner executed a document entitled Oath/Affirmation of Renunciation of Nationality of the United States[23] before the U.S. Vice-Consul. Thus, on December 9, 2011, the latter issued her a Certificate of Loss of Nationality of the United States.[24]

In a bid for a Senate seat, petitioner secured and accomplished a CoC for Senator[25] on September 27, 2012 (2012 CoC). To the question "PERIOD OF RESIDENCE IN THE PHILIPPINES BEFORE MAY 13, 2013," she answered

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14 *Rollo* (G.R. No. 221697), Vol. I, p. 16.
15 Id. at 17.
16 Id. at 22.
17 AN ACT MAKING THE CITIZENSHIP OF PHILIPPINE CITIZENS WHO ACQUIRED FOREIGN CITIZENSHIP PERMANENT AMENDING FOR THE PURPOSE COMMONWEALTH ACT NO. 63, AS AMENDED AND FOR OTHER PURPOSES OR THE CITIZENSHIP RETENTION AND REACQUISITION ACT OF 2003.
18 *Rollo* (G.R. Nos. 221698-700), Vol. II, p. 1269.
19 Id. at 1279.
20 Id. at 1280-1302.
21 Id. at 1305.
22 Id. at 1308.
23 Id. at 1309.
24 Id. at 1315.
25 Id. at 1316.

six years and six months. Then on October 2, 2012, petitioner filed said CoC with the Comelec.

Petitioner won and was proclaimed Senator of the Philippines on May 16, 2013.

In June 2015, Navotas Rep. Tobias M. Tiangco pointed out through the media that based on petitioner's entry in her 2012 CoC, she does not meet the 10-year residency requirement for purposes of the 2016 presidential election.

Desirous of furthering her political career in the Philippines, and notwithstanding the looming issue on her period of residency in the Philippines, petitioner next focused on the Presidency and filed her CoC therefor on October 15, 2015.

The Petitions before the Comelec:

1) SPA No. 15-001 (DC) – (Elamparo Petition, now G.R. No. 221697)

On October 21, 2015, Elamparo filed before the Comelec a Petition to Deny Due Course to or Cancel Certificate of Candidacy.[26] Elamparo asserted that petitioner falsely represented to the Filipino people that she had been a resident of the Philippines for a period of 10 years and 11 months immediately prior to the May 9, 2016 elections and that she is a natural-born Filipino citizen. Elamparo advanced the following arguments in support of her position that petitioner is not a natural-born Filipino:

a) Under the 1935 Constitution which was in force at the time of petitioner's birth, "the status of natural-born citizen could be determined only by descent from a known Filipino father or mother."[27] Since petitioner's biological parents were unknown, she could not categorically declare that she descended from Filipino parents.

b) Petitioner's subsequent adoption by Filipino citizens did not vest upon her a natural-born status. Adoption merely "established a juridical relationship between her and her adoptive parents"[28] but did not confer upon her the citizenship of her adoptive parents.[29] Moreover, adoption laws are civil in nature; they do not determine citizenship which is a political matter.[30]

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26 *Rollo* (G.R. No. 221697), Vol. I, pp. 326-397.
27 Id. at 340.
28 Id. at 341.
29 Id. at 344.
30 Id. at 339.

c) No international agreement or treaty supports petitioner's claim of natural-born citizenship.

c-1) The 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws provides that State laws determine who are its nationals.[31]

c-2) Petitioner could not rely on the presumption provided in Article 2 of the 1961 Convention on the Reduction of Statelessness that a "foundling found in the territory of a Contracting State" is born to "parents possessing the nationality of that State" for the following reasons: One, the Philippines could not be considered as a "Contracting State" since it did not ratify or accede to the 1961 Convention on the Reduction of Statelessness.[32] Two, even on the assumption that the Philippines will ratify the 1961 Convention on the Reduction of Statelessness, it will not have any retroactive application on the case of petitioner pursuant to Section 2, Article 28 of the Vienna Convention on the Law on Treaties[33] and Section 12(3) of the 1961 Convention on the Reduction of Statelessness. Three, while admittedly, non-signatories to international agreements may be bound by such agreements if such agreements are transformed into customary laws,[34] the presumption under Article 2 of the 1961 Convention on the Reduction of Statelessness has not yet ripened into customary international law as to bind the Philippines.[35]

c-3) The 1959 United Nations Declaration on the Rights of the Child and the 1989 Convention on the Rights of the Child have no binding force.[36] The principle stated therein that a child is entitled to a nationality is merely "an authoritative statement" with no corresponding "demandable right."[37] In any case, what is conferred by these declarations is nationality, not natural-born status. Moreover, municipal law governs matters of nationality.[38]

d) Mere *presumption* of natural-born citizenship does not comply with the strict constitutional requirement.[39] No uncertainty on the qualification of the President must be entertained.[40]

e) "Place of birth is not a recognized means of acquiring such

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31 Id.
32 Id. at 346.
33 Id. at 342.
34 Id. at 347.
35 Id. at 348, 350.
36 Id. at 354.
37 Id.
38 Id.
39 Id.
40 Id. at 359.

citizenship, much less a reason to claim that one is a natural-born Filipino."[41] Petitioner has the burden of proving her natural-born status.[42]

f) RA 9225 applies only to former natural-born Filipinos. Since petitioner is not a natural-born Filipino, then she is not qualified to apply for reacquisition or retention of citizenship under RA 9225.[43]

g) Even assuming that petitioner is a natural-born Filipino, she lost such status by becoming a naturalized U.S. citizen.[44] And assuming that she could avail herself of the benefits of RA 9225, her status as Filipino citizen is considered "not from birth" but from July 18, 2006 when the BID approved her application for reacquisition of Philippine citizenship.[45]

h) "When she applied for reacquisition of her Philippine citizenship and took her oath of allegiance, she had to perform an act to acquire her Philippine citizenship"[46] which is anathema or antithetical to the concept of natural-born citizenship.

i) The use by the petitioner of her U.S. passport even after she renounced her American citizenship is tantamount to recantation of the renunciation of her U.S. citizenship[47] pursuant to the rulings in *Maquiling v. Commission on Elections*[48] and *Arnado v. Commission on Elections*.[49] During oral arguments before the Senate Electoral Tribunal (SET), Atty. Manuelito Luna argued that the records of the U.S. Department of State Bureau of Consular Affairs showed that petitioner still used her U.S. passport in September 2011 or after her renunciation of U.S. citizenship.

As regards residency, Elamparo put forth that, at most, petitioner's residency in the Philippines is only nine years and 10 months, or short of two months to comply with the residency requirement for Presidency. In support of her contention, she argued that:

a) Petitioner abandoned her domicile of origin in the Philippines when she became a naturalized U.S. citizen and established her new domicile of choice in the U.S.[50]

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41 Id. at 363.
42 Id. at 364.
43 Id. at 365.
44 Id. at 366.
45 Id. at 368.
46 Id. at 370.
47 Id. at 372.
48 G.R. No. 195649, April 16, 2013, 696 SCRA 420.
49 G.R. No. 210164, August 18, 2015.
50 *Rollo* (G.R. No. 221697), Vol. I, p. 379.

b) Petitioner "did not go to the U.S. and be naturalized as a U.S. citizen to pursue any calling, profession or business" but with the intention of starting a family there.[51] Thus, her trips back/visits to the Philippines prior to July 2006 (when she took the oath of allegiance to the Philippines and applied to reacquire her Philippine citizenship with the BID) should be considered temporary in nature and for a specific purpose only;"[52] *i.e.,* to visit family and friends and not to establish a new domicile or residence.

c) Having established her domicile of choice in the U.S., the burden of proof rests upon petitioner to prove that she is abandoning her domicile in the U.S. and establishing a new domicile in the Philippines.[53]

d) Petitioner's status as a naturalized U.S. citizen and her continued use of her U.S. passport from 2006 to 2011 are indicative of her intention to retain her domicile in the U.S.[54]

e) Not being a natural-born Filipino, petitioner is not eligible to apply for reacquisition of Philippine citizenship under RA 9225. Consequently, she could not have established her domicile of choice in the Philippines.[55]

f) Even on the argument that petitioner reacquired her Philippine citizenship upon taking the oath of allegiance, it cannot be said that she automatically regained or reestablished her new domicile. At most, what she had was the option to choose or establish a new domicile.[56] Thus, the earliest date that she could have reestablished her legal residence in the Philippines was on July 18, 2006 when she reacquired her status as a Filipino citizen.[57] Reckoned from July 18, 2006, petitioner's residence in the country by May 2016 would only be nine years and 10 months, or two-months shy of the 10-year residency requirement for presidential candidates.[58]

g) Petitioner is estopped from denying that her residency in the Philippines prior to the May 13, 2013 elections is six years and six months as stated in her 2012 senatorial CoC.[59]

h) The period of residency stated in petitioner's 2012 CoC cannot be considered as an honest mistake.[60]

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51 Id. at 384.
52 Id.
53 Id.
54 Id. at 385.
55 Id. at 386.
56 Id. at 387.
57 Id. at 388.
58 Id.
59 Id.
60 Id. at 389.

2) SPA Nos. 15-002 (DC), 15-007 (DC) and 15-139 (DC) - (the Tatad Petition, Contreras Petition, and Valdez Petition, now G.R. Nos. 221698-700)

Valdez and Contreras also filed petitions seeking to cancel or deny due course to petitioner's 2015 CoC while Tatad filed a petition for disqualification.

Invoking Section 25 of the Comelec Rules of Procedure,[61] Tatad, in his Petition, echoed most of Elamparo's arguments that petitioner miserably lacked the residency and citizenship requirements. In addition, he contended that in case of conflict between international conventions and treaties on one hand, and the Constitution on the other, the latter prevails. Moreover, since petitioner has no *jus sanguinis* citizenship she could not be considered a natural-born Filipino and would not be permitted to run for President.[62] Citing the Hague Convention of 1930 on the Conflict of Nationality Laws, he argued that any question relating to nationality must be resolved in accordance with the law of the state.[63] He also pointed out that the 1930 Protocol in Relation to Certain Case of Statelessness, the 1930 Hague Special Protocol Concerning Statelessness, the 1948 Universal Declaration of Human Rights, and the 1961 United Nations Convention on the Reduction of Statelessness, do not have binding effect.[64] He explained that international rules are at *par* only with congressional acts and could not in any manner supplant or prevail over the Constitution.[65]

Anent the issue of residency, Tatad noted that in the 2012 senatorial CoC, petitioner's period of residence in the country immediately before the May 13, 2013 elections is six years and six months. Adding the period from May 13, 2013 up to May 9, 2016, petitioner's period of residence in the Philippines would only be nine years and five months, which is short of the 10-year requirement.[66] Tatad likewise alleged that petitioner's intention to abandon the U.S. domicile and establish a new domicile in the country could not be inferred from her acts. At most, petitioner's visits here were only for the purpose of consoling her adoptive mother and participating in the settlement of the estate of her adoptive father since her husband remained in the U.S. during this period. In fact, petitioner renounced her U.S. citizenship only on October 20, 2010,[67] or long after the death of her adoptive father.

Tatad maintained that petitioner is not qualified to avail herself of RA 9225 because she is not a natural-born Filipino. There is no showing that she descended from parents who are Filipino citizens.[68] He further posited that the Order of the

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61 *Rollo* (G.R. Nos. 221698-700), Vol. I, pp. 397-399.
62 Id. at 408.
63 Id. at 412.
64 Id. at 412-413.
65 Id. at 413.
66 Id. at 415.
67 Id.
68 Id. at 417.

BID granting petitioner's application for reacquisition of Philippine citizenship was not signed by Immigration Commissioner Alipio F. Fernandez, Jr.; hence, it is null and void.[69] Finally, Tatad asserted that petitioner's travels to the U.S. after renouncing her U.S. citizenship are equivalent to a repudiation of her earlier renunciation.[70]

The Petition[71] filed by Contreras focused only on the failure of petitioner to comply with the residency requirement and her false representation – that by May 9, 2016 she would have resided in the country for 10 years and 11 months.[72] For Contreras, it "is a blatant attempt to undermine the rule of law and the Constitution when one submits a certificate of candidacy falsely claiming the possession of a qualification that is specified in the Constitution as a requirement to run for President of the Republic of the Philippines."[73] According to Contreras, petitioner is deemed to have abandoned her domicile in the Philippines when she became a naturalized U.S. citizen. And, in order for her to have at least 10 years of residency in the country, she should have reacquired her Philippine domicile at the latest by May 9, 2006. However, since she reacquired her Philippine citizenship only on July 18, 2006, petitioner failed to comply with the 10-year residency requirement. Her visits in the country before July 18, 2006 should not inure to her benefit since at that time she was traveling not as a Filipino but as a U.S. citizen.[74] By his reckoning, petitioner's residency in the country by May 9, 2016 would only be nine years, nine months and 22 days.[75]

Contreras postulated that had petitioner really intended to establish a new domicile in the Philippines and to abandon her U.S. domicile, she should have applied for an immigrant status before the BID which will in turn issue an Immigrant Certificate of Residence (ICR).[76] Contreras noted that in her application to reacquire Philippine citizenship under RA 9225, petitioner did not indicate an ICR or an Alien Certificate of Registration, unlike on the part of her three children, which "would have been relevant information x x x on the issue of her residence."[77]

For his part, Valdez, in his Petition[78] to cancel or deny due course to petitioner's CoC, argued that since petitioner had to perform an overt act to reacquire her citizenship, then she is not a natural-born Filipino citizen as defined in Article IV, Section 2 of the 1987 Constitution.[79] Valdez asserted that it is not

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69 Id.
70 Id.
71 *Rollo* (G.R. Nos. 221698-700), Vol. II, pp. 783-796.
72 Id. at 784.
73 Id. at 785.
74 Id. at 785-786, 789.
75 Id. at 786.
76 Id. at 791.
77 Id.
78 Id. at 882-923.
79 Id. at 884.

possible for petitioner to reacquire a natural-born status on July 18, 2006 since at that time she had dual allegiance to the Philippines and the U.S. which is prohibited under Article IV, Section 5 of the Constitution.[80] Neither did RA 9225 bestow a natural-born status upon her; at most, she was "only 'deemed' not to have lost her Philippine citizenship."[81]

Valdez also contended that petitioner lacked the residency requirement or misrepresented her period of residency. He pointed out that petitioner cited varying dates regarding the establishment of her residency in the Philippines.[82] In her 2015 CoC, petitioner claimed that by May 9, 2016 she would have resided in the country for a period of 10 years and 11 months. By simple mathematical computation, petitioner was claiming that she started residing in the Philippines in June 2005. In stark contrast, petitioner stated in her 2012 CoC that her residency in the country prior to May 13, 2013 is six years and six months, which means that she has been a resident of the Philippines only since November 13, 2006.[83] For Valdez, the "conflicting admissions x x x [petitioner] voluntarily, willingly, and knowingly executed as to when she established her residency in the Philippines [demonstrate] a deliberate attempt on her part to mislead, misinform, or hide a fact that would render her ineligible for the position of President of the Philippines."[84]

Valdez reckoned that July 18, 2006 would be the earliest date that petitioner could have established her new domicile of choice as this was the time she reacquired her Philippine citizenship. Valdez insisted that her stay in the Philippines prior to reacquiring Philippine citizenship could not be favorably considered for purposes of the residency requirement.[85] He emphasized that at that time, petitioner did not even secure a permanent resident visa; consequently, she could only be considered as a foreigner temporarily residing in the country.[86] He elaborated that petitioner's reacquisition of Philippine citizenship did not affect her domicile; what petitioner had at the time was only an option to change or establish a new domicile of choice.[87]

Valdez averred that petitioner could not claim "honest mistake made in good faith"[88] especially "when one runs for public office and for a national post x x x [as] natural human experience and logic dictate that one should be very well aware of the qualifications required for that position and whether x x x one possesses those qualifications. x x x More importantly, one is highly expected to give accurate information as regards his/her qualifications."[89]

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80 Id. at 897-898.
81 Id. at 898.
82 Id. at 913.
83 Id. at 891.
84 Id. at 914.
85 Id. at 903-904.
86 Id. at 904.
87 Id. at 910.
88 Id. at 915.
89 Id. at 915-916.

Finally, Valdez opined that petitioner failed to prove that she intended to permanently reside in the Philippines for a period of 10 years prior to the May 9, 2016 elections. Having already abandoned her domicile in the Philippines upon her naturalization as a U.S. citizen, it can only be construed that her subsequent trips to the Philippines were temporary in nature. More importantly, petitioner's 2014 Statement of Assets, Liabilities and Net Worth (SALN) showed that she still maintains two houses in the U.S.[90] which she bought in 1992 and in 2008.

The Answers of Petitioner before the Comelec:

1) SPA No. 15-001 (DC) (Elamparo Petition)

Petitioner claimed that Elamparo's Petition failed to state a cause of action for it did not aver that there was a false representation in her 2015 CoC amounting to a deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible or that it was intended to deceive the electorate as regards the candidate's qualifications.[91] She also posited that the burden of proof rests upon Elamparo to show that her representations in the CoC are false.[92] She alleged that the pronouncement in the 1967 case of *Paa v. Chan*[93] to the effect that there is no presumption of Philippine citizenship had already been superseded by later rulings.[94]

Petitioner also assailed the jurisdiction of the Comelec. She claimed that it is the Department of Justice (DOJ) which has the primary jurisdiction to rule on the validity of the June 18, 2006 Order of the BID granting her natural-born status;[95] and pending this determination, the Comelec must refrain from ruling on whether she could avail herself of the benefits of RA 9225.[96] In addition, she averred that the Elamparo Petition is essentially one for *quo warranto* since it seeks a ruling on her eligibility or lack of qualifications and therefore must be lodged with the Presidential Electoral Tribunal (PET). However, since there is no election yet and no winner had been proclaimed, the Petition is premature.[97]

Petitioner asserted that she is a natural-born Filipino based on the intent of the framers of the 1935 Constitution[98] and treaties such as the United Nations Convention on the Rights of the Child[99] and the 1966 International Covenant on

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90 Id. at 917.
91 *Rollo* (G.R. No. 221697), Vol. II, p. 528.
92 Id. at 529.
93 128 Phil. 815 (1967).
94 *Rollo* (G.R. No. 221697), Vol. II, pp. 533-534.
95 Id. at 552.
96 Id. at 554.
97 Id. at 558.
98 Id. at 561-567.
99 Id. at 572.

Civil and Political Rights.[100] She averred that although these treaties were not yet in force at the time of her birth, they could be given retroactive application.[101] In addition, generally accepted principles of international law and customary international law support her thesis that she is a natural-born Filipino. She also cited the 1930 Hague Convention on Certain Questions Relating to Conflict of Nationality Laws[102] and the 1961 Convention on the Reduction of Statelessness.[103]

Petitioner insisted that "the natural-born citizenship of a person may be established using presumptions."[104] She maintained that "there is nothing unconstitutional about presuming that [she] was born of Filipinos or that she is a natural-born Filipino, even though she cannot, as yet, prove that she is related by blood to citizens of the Philippines."[105] Petitioner claimed that by the official acts of the Philippine Government, she had been repeatedly and consistently recognized as a natural-born Filipino thereby giving rise to the presumption that she is a natural-born Filipino.[106] Moreover, she surmised that since she was not naturalized, then she is natural-born.[107]

Petitioner conceded that she abandoned her Philippine citizenship by becoming a naturalized U.S. citizen on October 18, 2001. However, she claimed that she reacquired her natural-born Filipino status by virtue of RA 9225[108] particularly when she took her oath of allegiance[109] on July 7, 2006. Thereafter, she renounced her U.S. citizenship. She insisted that she never repudiated the renunciation of her U.S. citizenship.[110]

As regards the issue of residency, petitioner maintained that by May 9, 2016, she would have resided in the Philippines for 10 years and 11 months. She asserted that since May 24, 2005[111] she had been bodily present in the Philippines and that her subsequent acts, which "must be viewed 'collectively' and not 'separately' or in isolation,"[112] were indicative of her intention to permanently stay in the country.[113] Otherwise stated, on May 24, 2005, she left the U.S. for good[114] without intention of returning there.[115] She opined that her occasional trips to the

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100 Id. at 573.
101 Id. at 577-580.
102 Id. at 594.
103 Id. at 592.
104 Id. at 606.
105 Id. at 607.
106 Id. at 535.
107 Id. at 607, 611.
108 Id. at 622.
109 Id. at 623, 627.
110 Id. at 627-631.
111 Id. at 636.
112 Id. at 645.
113 Id. at 637.
114 Id. at 642.
115 Id. at 642-645.

U.S. did not negate her intent to reside permanently in the Philippines.[116] Neither would possession of a U.S. passport be considered indicative of her intent to return to the U.S. She explained that she kept her U.S. passport "in the meantime because it was plainly convenient for travel purposes."[117]

Petitioner also contended that she could legally establish her domicile in the Philippines even before reacquiring her Philippine citizenship.[118] She surmised that domicile or residence required only physical presence and intent, and not necessarily Filipino citizenship.[119] She posited that "residency is independent of, or not dependent on, citizenship."[120] In fact, RA 9225 by which she reacquired her Filipino citizenship "treats citizenship independently of residence."[121] She argued that if only Filipinos could establish residence in the Philippines, "then no alien would ever qualify to be naturalized as a Filipino, for aliens must be residents before they can be naturalized."[122]

Finally, petitioner admitted that she committed a mistake, albeit an honest one and in good faith, when she claimed in her 2012 senatorial CoC that her period of residence was six years and six months.[123] She insisted that despite said mistake, she still complied with the two-year residency requirement for senatorial candidates; that she misinterpreted the phrase "period of residence in the Philippines before May 13, 2013;" and that she reckoned her period of residence in the Philippines from March-April 2006 as this was the time that her family had substantially wrapped up their affairs in the U.S.[124] She claimed that her period of residence should be reckoned from May 24, 2005, as stated in her 2015 presidential CoC.[125] She asserted that she is not estopped from correcting her mistake, which in fact she did when she executed her 2015 CoC.[126]

2) SPA No. 15-002 (DC) – (Tatad Petition)

Petitioner's Answer[127] to Tatad's Petition is almost a restatement of the arguments she raised in her Answer to the Elamparo Petition. In addition, she averred that although Tatad's Petition was filed under Section 68 of the Omnibus Election Code[128] (OEC) in relation to Section 1, Rule 25 of the Comelec Rules, it

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116 Id. at 645, 647.
117 Id. at 648.
118 Id.
119 Id. at 649.
120 Id. at 650.
121 Id.
122 Id. at 651.
123 Id. at 657.
124 Id. at 658.
125 Id. at 659.
126 Id. at 660.
127 *Rollo* (G.R. Nos. 221698-700), Vol. II, pp. 613-782.
128 *Batas Pambansa Blg.* 881 (1985).

failed to allege grounds for disqualification as enumerated thereunder.[129] Instead, it cited lack of citizenship and residency requirements which are not grounds for a petition filed under Section 68 of the OEC. According to petitioner, if Tatad's Petition were to be considered a *quo warranto* petition, it should be filed with the PET and only if petitioner "is elected and proclaimed President, and not before then."[130] As such, the Tatad Petition must be dismissed for failure to state a cause of action.[131] Moreover, the Tatad Petition could not be considered as a petition to deny due course to or cancel a CoC as it did not allege as ground material misrepresentation in the CoC; neither did it pray for the cancellation of or denial of due course to petitioner's CoC.[132]

3) SPA No. 15-139 (DC) – Valdez Petition

Likewise, petitioner's Answer[133] to the Petition of Valdez repleads the arguments in her Answer to the Elamparo Petition. At the same time, she stressed that considering that her "representation in her [CoC] on her citizenship is based on prevailing law and jurisprudence on the effects of repatriation and [RA 9225] x x x said representation in her [CoC] cannot be considered 'false.'"[134] As regards the issue of residency, particularly on Valdez's postulation that petitioner's period of residence must be counted only from October 20, 2010 or upon renunciation of her U.S. citizenship, petitioner countered that such argument "would be tantamount to adding a fourth requisite"[135] in establishing a new domicile of choice, that is, possession of permanent resident visa/possession of Philippine citizenship and/or prior renunciation of U.S. citizenship.[136] Petitioner reiterated that she could legally reestablish her Philippine domicile even before renouncing her U.S. citizenship in 2010.[137] As regards Valdez's allegation that petitioner still maintains two houses in the U.S. (after she took her oath of allegiance to the Philippines, and even purchased one of the houses in 2008 after she took her oath in 2006, and after they supposedly sold their family home in the U.S. in 2006), petitioner couched her denial as follows:

> 2.13. The allegation in paragraph 98 of the *Petition* is DENIED insofar as it is made to appear that Respondent "resides" in the 2 houses mentioned in said paragraph. The truth is that Respondent does not "reside" in these houses, but in her family home in Corinthian Hills, Quezon City (where she has lived with her family for almost a decade).[138]

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129 *Rollo* (G.R. Nos. 221698-700), Vol. II, p. 640.
130 Id.
131 Id. at 645.
132 Id. at 646.
133 Id. at 1044-1102.
134 Id. at 1062.
135 Id. at 1080.
136 Id.
137 Id. at 1088.
138 Id. at 1055.

4) SPA No. 15-007 (DC) – (Contreras Petition)

Petitioner's Answer[139] to the Petition filed by Contreras is likewise a reiteration of her contentions in the Answer she filed to the Elamparo Petition. She maintained that she did not commit any material misrepresentation in her 2015 CoC when she stated that by May 9, 2016, she would have resided in the Philippines for 10 years and 11 months.[140] She also averred that she could legally reestablish her domicile in the Philippines even before she reacquired her natural-born citizenship.[141]

Rulings of the Commission on Elections

A. SPA No. 15-001 (DC) - Elamparo Petition

On December 1, 2015, the Second Division of the Comelec issued its Resolution[142] granting Elamparo's Petition and cancelling petitioner's 2015 CoC. It held that petitioner's representations in her CoC with regard to her citizenship and residency are material because they pertain to qualifications for an elective office.[143] Next, it ruled that petitioner's representation that she would have resided in the Philippines for 10 years and 11 months immediately preceding the May 9, 2016 elections is false *vis-a-vis* the admission she made in the 2012 CoC that her residence in the Philippines prior to May 13, 2013 was only six years and six months. It characterized petitioner's claim of honest mistake as self-serving. Besides, there was no showing of any attempt to correct the alleged honest mistake. The Second Division also noted that the earliest point from which to reckon petitioner's residency would be on July 18, 2006 when the BID granted her application for reacquisition of Philippine citizenship under RA 9225. Thus, her period of residence prior to May 2016 would only be nine years and 10 months, or two months short of the required period of residence. The Second Division opined that prior to July 2006, petitioner was an alien without any right to reside in the Philippines save as our immigration laws may have allowed her to stay as a visitor or as a resident alien.[144]

The Comelec's Second Division rejected petitioner's claim that she is a natural-born Filipino citizen. It held that the provisions of the 1935 Constitution on citizenship clearly showed that only children born of Filipino fathers are considered natural-born. As such, the representation in the 2015 CoC that she is a natural-born Filipino is false.[145] The Second Division also ruled that as a well-

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139 Id. at 823-871.
140 Id. at 835.
141 Id. at 857, 860.
142 *Rollo* (G.R. No. 221697), Vol. I, pp. 190-223.
143 Id. at 204-206.
144 Id. at 207-211.
145 Id. at 211-212.

educated Senator, petitioner ought to know that she is not a natural-born Filipino citizen since our country has consistently adhered to the *jus sanguinis* principle.[146] It likewise rejected petitioner's argument that the members of the 1934 Constitutional Convention intended to include children of unknown parents as natural-born citizens, reasoning out that a critical reading of the entire records of the 1934 Constitutional Convention discloses no such intent.[147] It also gave short shrift to petitioner's invocation of international law, particularly the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, the 1948 Universal Declaration of Human Rights, the 1961 Convention on the Reduction of Statelessness, and the 1966 International Covenant on Civil and Political Rights, because the Philippines is not a signatory thereto; besides, these international laws/conventions do not categorically state that children of unknown parents must be categorized as natural-born. Furthermore, even assuming that these conventions or treaties classified these children as natural-born, the same could not supplant or alter the provisions of the 1935 Constitution on citizenship.[148]

The Comelec's Second Division found that petitioner deliberately attempted to mislead, misinform, or hide a fact, when she declared in her 2015 CoC that her period of residency immediately prior to May 9, 2016 would be 10 years and 11 months.[149] However, as regards her citizenship, it ruled that there was no conclusive evidence of any deliberate attempt to mislead, misinform or hide a fact from the electorate. It ratiocinated that the citizenship issue regarding foundlings is one of first impression and thus petitioner could be presumed to have acted in good faith in making such a declaration.[150]

Both petitioner and Elamparo moved for reconsideration. While petitioner prayed for a complete reversal of the Comelec's Second Division ruling, Elamparo prayed for partial reconsideration,[151] that is, for the Comelec to pronounce petitioner as likewise guilty of misrepresenting her citizenship status. She pointed out that there is a pattern of misrepresentation on the part of petitioner regarding her citizenship. She claimed that in three certificates of title[152] issued prior to July 2006, petitioner declared that she was a Filipino when in fact she was not; and, that in her Petition for Retention and/or Reacquisition of Philippine Citizenship Under RA 9225, petitioner also falsely represented that she "is a former natural-born Philippine citizen born x x x to Ronald Allan Kelley Poe, a Filipino citizen and Jesusa Sonora Poe, a Filipino citizen."

On December 23, 2015, the Comelec *En Banc* issued its Resolution[153] denying petitioner's motion for reconsideration and granting Elamparo's motion

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146 Id. at 213.
147 Id. at 214-216.
148 Id. at 216-219.
149 Id. at 219-221.
150 Id. at 219-223.
151 *Rollo* (G.R. No. 221697), Vol. III, pp. 1945-1958.
152 *Rollo* (G.R. No. 221697), Vol. II, pp. 807-810, 819-822.
153 *Rollo* (G.R. No. 221697), Vol. I, pp. 224-259.

for partial reconsideration. Accordingly, it declared that petitioner is likewise guilty of misrepresenting her citizenship in her 2015 CoC, *viz.*:

> WHEREFORE, premises considered, the Verified Motion for Reconsideration of [petitioner] is hereby DENIED and the Motion for Partial Reconsideration of [Elamparo] is hereby GRANTED.
>
> ACCORDINGLY, the Resolution dated 1 December 2015 of the COMELEC Second Division is hereby AFFIRMED WITH MODIFICATION. [Petitioner's] Certificate of Candidacy for President in the 9 May 2016 National, Local and ARMM Elections contains material misrepresentations as to both her citizenship and residency.
>
> THEREFORE, the Certificate of Candidacy for President in the 9 May 2016 National, Local and ARMM elections filed by [petitioner] Mary Grace Natividad Sonora Poe Llamanzares is hereby CANCELLED.
>
> FURTHER, the Urgent Motion to Exclude of [Elamparo] is hereby DENIED.
>
> SO ORDERED.[154]

The Comelec *En Banc* debunked petitioner's allegation in her motion for reconsideration that the Second Division based its Resolution on the 2012 CoC alone. It clarified that the Second Division, much like trial courts, is not obliged to itemize all the evidence presented by the parties, but only that it should duly evaluate such evidence.[155] In any event, the Comelec *En Banc* again scrutinized the evidence presented by the petitioner and concluded that they all pertained to events that transpired before July 2006,[156] or prior to her reacquisition of her Philippine citizenship. Thus, the same had no probative value in light of settled jurisprudence that "the earliest possible date that petitioner could reestablish her residence in the Philippines is when she reacquired her Filipino citizenship [in] July 2006."[157] The Comelec *En Banc* held that petitioner's statement in her 2012 CoC was properly considered as an admission against interest and being a notarial document is presumed to be regular.[158] It also held that the burden rests upon petitioner to prove that the 2015 CoC contained true statements and that the declarations made in the 2012 CoC were not done in bad faith.[159]

The Comelec *En Banc* was not convinced that petitioner "stated truthfully her period of residence in the [2015] CoC" and that "such false statement was made without a deliberate attempt to mislead."[160] It considered petitioner's so-

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154 Id. at 258.
155 Id. at 236.
156 Id.
157 Id.
158 Id. at 241.
159 Id.
160 Id. at 242.

called public acknowledgment of her mistakes as contrived since they were delivered at the time when the possibility of her running for President was already a matter of public knowledge.[161] The Comelec *En Banc* held that:

> Indeed, this Commission finds it hard to believe that a woman as well-educated as [petitioner], who was then already a high-ranking public official with, no doubt, a competent staff and a band of legal advisers, and who is not herself entirely unacquainted with Philippine politics being the daughter of a former high-profile presidential aspirant, would not know how to correctly fill-up [sic] a pro-forma COC in 2013. We are not convinced that the subject entry therein was [an] honest mistake.[162]

On the issue of citizenship, the Comelec *En Banc* ruled that petitioner cannot rely on presumptions to prove her status as natural-born citizen.[163] It concurred with the Second Division that the cited international laws/conventions have no binding force.[164] It also held that it is not bound by the November 17, 2015 Decision of the SET in a *quo warranto* proceeding questioning petitioner's qualification as a Senator where she was declared as a natural-born Filipino. The Comelec *En Banc* ratiocinated that it is an independent constitutional body which does not take its bearings from the SET or any other agency of the government; and that in any case, the SET's Decision has been elevated to and is still pending with this Court.[165]

In addition, the Comelec *En Banc* lent credence to Elamparo's claim that there is substantial evidence, borne out by public documents, showing petitioner's pattern of misrepresentation as regards her citizenship.[166] The Comelec *En Banc* opined that petitioner's educational attainment and other prevailing circumstances, coupled with the simplicity and clarity of the terms of the Constitution, lead to no other conclusion than that she made the false material representation in her 2015 CoC to mislead the electorate into thinking that she is a Filipino and eligible to run for President.[167] Thus, the Comelec *En Banc* modified the Resolution of the Second Division by holding that petitioner committed material false representation in her citizenship as well.

B. On the Tatad, Contreras, and Valdez Petitions

The Comelec's First Division, in its December 11, 2015 Resolution,[168] arrived at the same conclusion that petitioner falsely represented her citizenship

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161 Id.
162 Id. at 243.
163 Id. at 249-250.
164 Id. at 250.
165 Id. at 251.
166 Id. at 252-253.
167 Id. at 253.
168 *Rollo* (G.R. Nos. 221698-700), Vol. I, pp. 216-264.

and period of residency. Hence it ordered the cancellation of petitioner's 2015 CoC. Apart from the ratiocinations similar to those made in the resolution of Elamparo's Petition, the Comelec's First Division made some additional points.

On the procedural aspect, the Comelec's First Division held that although the Petition of Tatad was denominated as a petition for disqualification, it is not barred from taking cognizance of the same since it "impugns the citizenship and residency of [petitioner], and therefore generally questions the truthfulness of her CoC stating that she has the qualification and eligibility to run for and be elected President x x x."[169] And since the said Petition raised proper grounds for cancellation of a CoC under Section 1,[170] Rule 23 of the Comelec Rules of Procedure, it falls within the Comelec's jurisdiction pursuant to Section 78 of the OEC.

As to the Comelec's jurisdiction over the questioned citizenship, the Comelec's First Division held that it is not bound by the BID Order; otherwise, it would be deprived of its constitutionally-granted power to inquire into the aspiring candidate's qualifications and to determine whether there is commission of material misrepresentation.[171]

Lastly, the Comelec's First Division thumbed down petitioner's claims that the petitions are premature and that the issues raised therein are appropriate in a *quo warranto* proceeding. The Comelec's First Division pointed out that the petitions raised the issue of material misrepresentation;[172] it also declared that petitioner's CoC is riddled with inconsistencies with regard to her period of residency, which is indicative of her deliberate attempt to mislead; and that the Comelec has jurisdiction over the petitions since they were filed before proclamation.[173]

On the substantive aspect, the Comelec's First Division, with regard to petitioner's citizenship status, held that those persons who are not included in the enumeration of Filipino citizens in the 1935 Constitution, such as petitioner, should not be considered as Filipino citizens.[174] It opined that "[e]xtending its application to those who are not expressly included in the enumeration and definition of natural-born citizens is a disservice to the rule of law and an affront to

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169 Id. at 229.

170 Section 1. Ground for Denial or Cancellation of Certificate of Candidacy. – A verified Petition to Deny Due Course to or Cancel a Certificate of Candidacy for any elective office may be filed by any registered voter or a duly registered political party, organization, or coalition of political parties on the exclusive ground that any material representation contained therein as required by law is false.

171 *Rollo* (G.R. Nos. 221698-700), Vol. I, pp. 231-232.

172 Although the same was not explicitly stated in the Tatad Petition.

173 *Rollo* (G.R. Nos. 221698-700), Vol. I, pp. 233-234 citing *Jalosjos, Jr. v. Commission on Elections*, 696 Phil. 601 (2012), which likewise cited *Fermin v. Commission on Elections*, 595 Phil. 449 (2008).

174 Id. at 238.

the Constitution."[175] It ruled that one's citizenship must not be anchored on mere presumptions and that any doubt thereon must be resolved against the claimant who bears the burden of proof.[176]

The Comelec's First Division also held that no international law supports petitioner's claim of natural-born citizenship.[177] In any event, the status of international laws is equivalent to or at *par* with legislative enactments only and could not in any manner supplant or prevail over the Constitution.[178] Neither can petitioner find solace in generally accepted principles of international law and customary international law as there is no showing that recognition of persons with unknown parentage as natural-born citizens of the country where they are found has become established, widespread and consistently practiced among states.[179] The Comelec's First Division posited that, if at all, persons with no known parents may be considered Filipino citizens, but not natural-born Filipino citizens.[180] Ergo, petitioner could not have validly availed of the benefits of repatriation under RA 9225. Even on the assumption that she is a natural-born Filipino citizen, it could not be said that she reacquired such status by virtue of RA 9225; what she reacquired was merely Philippine citizenship, not her purported natural-born status.[181]

As regards petitioner's residency, the Comelec's First Division pointed out that petitioner can only start counting her residency, at the earliest, from July 2006 when she reacquired her Philippine citizenship; and that from that point, her intent to permanently reside here became manifest only when she registered as a voter of *Barangay* Sta. Lucia, San Juan City on August 31, 2006. Hence, she is deemed to have reestablished her Philippine domicile only from said date.[182]

The Comelec *En Banc* denied petitioner's Motion for Reconsideration[183] and affirmed the First Division in a Resolution[184] dated December 23, 2015.

Aside from upholding the reasons underlying the Comelec's First Division's Resolution, the Comelec *En Banc* stressed that assuming, for the sake of argument, that petitioner may invoke the presumption that she is a natural-born citizen, establishing this presumption by solid, incontrovertible evidence is a burden that shifted to her when she admitted that she does not know who her biological parents are.[185]

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175 Id. at 240.
176 Id.
177 Id. at 241.
178 Id.
179 Id. at 244.
180 Id. at 247.
181 Id. at 247-248.
182 Id. at 257-258.
183 *Rollo* (G.R. Nos. 221698-700), Vol. IV, pp. 2250-2341.
184 *Rollo* (G.R. Nos. 221698-700), Vol. I, pp. 352-381.
185 Id. at 368.

The dispositive portion of the Comelec *En Banc* Resolution in the Tatad, Contreras and Valdez Petitions reads as follows:

> WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to DENY the Verified Motion for Reconsideration of SENATOR MARY GRACE NATIVIDAD SONORA POE-LLAMANZARES. The Resolution dated 11 December 2015 of the Commission First Division is affirmed.
>
> SO ORDERED.[186]

Hence, these Petitions for *Certiorari* brought via Rule 64 in relation to Rule 65 of the Rules of Court.[187] In both Petitions, petitioner "seeks to nullify, for having been issued without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction"[188] the assailed Comelec Resolutions.

On December 28, 2015, this Court issued Temporary Restraining Orders[189] enjoining the Comelec from cancelling petitioner's 2015 CoC due to time constraints before these petitions could be resolved and so as not to render the same moot and academic should this Court rule in petitioner's favor. Then, in a Resolution[190] dated January 12, 2016, the petitions were consolidated.

I find that the Comelec did not gravely abuse its discretion or exercise its judgment in a whimsical or capricious manner as to amount to lack or excess of jurisdiction in ordering the cancellation of and denying due course to petitioner's 2015 CoC.

The power of this Court to review the assailed Resolutions is limited to the determination of whether the Comelec committed grave abuse of discretion; the burden lies on the petitioner to indubitably show that the Comelec whimsically or capriciously exercised its judgment or was "so grossly unreasonable" as to exceed the limits of its jurisdiction in the appreciation and evaluation of the evidence.

It bears stressing at the outset that these petitions were brought before this

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186 Id. at 381.
187 *Rollo* (G.R. No. 221697), Vol. I, pp. 3-189; *Rollo* (G.R. Nos. 221698-700), Vol. I, pp. 3-213.
188 Id. at 8; Id. at 12-13.
189 *Rollo* (G.R. No. 221697), Vol. III, pp. 2011-2013; *Rollo* (G.R. Nos. 221698-700), Vol. IV, pp. (unpaginated).
190 *Rollo* (G.R. No. 221697), Vol. V, pp. 3084-A – 3084-C; *Rollo* (G.R. Nos. 221698-700), Vol. VI, pp. 3930-A – 3930-D.

Court *via* Rule 64 in relation to Rule 65 of the Rules of Court. Therefore, as held in *Mitra v. Commission on Elections,*[191] this Court's review power is based on a very limited ground – the jurisdictional issue of whether the Comelec acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

We explained in *Mitra* that:

> As a concept, 'grave abuse of discretion' defies exact definition; generally, it refers to 'capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction'; the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough; it must be grave. We have held, too, that the use of *wrong or irrelevant considerations* in deciding an issue is sufficient to taint a decision-maker's action with grave abuse of discretion.
>
> Closely related with the limited focus of the present petition is the condition, under Section 5, Rule 64 of the Rules of Court, that *findings of fact of the COMELEC, supported by substantial evidence, shall be final and non-reviewable*. Substantial evidence is that degree of evidence that *a reasonable mind* might accept to support a conclusion.
>
> In the light of our limited authority to review findings of fact, we do not *ordinarily* review in a *certiorari* case the COMELEC's appreciation and evaluation of evidence. Any misstep by the COMELEC in this regard generally involves an error of judgment, not of jurisdiction.
>
> In exceptional cases, however, when the COMELEC's action on the appreciation and evaluation of evidence oversteps the limits of its jurisdiction to the point of being grossly unreasonable, the Court is not only obliged, but has the constitutional duty to intervene. When grave abuse of discretion is present, resulting errors arising from the grave abuse *mutate* from error of judgment to one of jurisdiction.[192]

In fine, there is grave abuse of discretion when the exercise of judgment is capricious, whimsical, despotic or arbitrary, engendered by reason of passion and hostility. Also, the abuse of discretion must be so gross and so patent as to amount to an evasion of positive duty or virtual refusal to perform a duty enjoined by law.

In *Sabili v. Commission on Elections*,[193] this Court spoke, through Chief Justice Maria Lourdes P. A. Sereno, that there is an error of jurisdiction when the Comelec's appreciation and evaluation of evidence is *so grossly unreasonable.*[194]

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191 636 Phil. 753 (2010).
192 Id. at 777-778.
193 686 Phil. 649 (2012).
194 Id. at 668.

Pursuant thereto, it is incumbent upon petitioner to clearly demonstrate via these petitions that the Comelec was so grossly unreasonable in the appreciation and evaluation of the pieces of evidence submitted that it overstepped the limits of its jurisdiction.

In short, petitioner must satisfactorily hurdle this high bar set in *Sabili* and companion cases in order for the petitions to be granted.

In these petitions, the Comelec found that petitioner committed material misrepresentation when she stated in her 2015 CoC that her period of residence in the Philippines up to the day before May 9, 2016 is 10 years, 11 months and that she is a natural-born Filipino citizen. Petitioner, on the other hand, insists that her evidence, which the Comelec allegedly disregarded, negates any false material representation on her part.

But first off, the procedural questions.

I. PROCEDURAL ISSUES

The respective petitions filed by respondents with the Comelec were properly characterized as petitions for cancellation and/or denial of due course to petitioner's 2015 CoC

Section 2(1), Article IX(C) of the 1987 Constitution vests upon the Comelec the power and function to "[e]nforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall." This constitutional grant of power is echoed in Section 52 of the OEC which emphasizes that the Comelec has "exclusive charge of the enforcement and administration of all laws relative to the conduct of elections." Also, in *Bedol v. Commission on Elections,*[195] this Court explained that the Comelec's *quasi-judicial* functions pertain to its power "to resolve controversies arising from the enforcement of election laws, and to be the sole judge of all pre-proclamation controversies x x x."[196]

In line with this power, Section 78[197] of the OEC, in relation to Section

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[195] 621 Phil. 498 (2009).

[196] Id. at 510.

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

74[198] thereof, provides for a mechanism for the cancellation or denial of due course to a CoC based on the exclusive ground of material misrepresentation. The misrepresentation must refer to a material fact, such as one's citizenship or residence.[199]

To be sufficient, a Section 78 petition must contain the following ultimate facts: "(1) the candidate made a representation in his certificate; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate (the right to run for the elective position for which he filed his certificate); and (3) the candidate made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform or hide a fact which would otherwise render him ineligible."[200]

I find that the Petitions filed by Elamparo, Contreras, and Valdez with the Comelec distinctly and sufficiently alleged the ultimate facts constituting the cause/s of action for a Section 78 petition.[201] The Petitions of Elamparo and Valdez both alleged that petitioner made material misrepresentations in her CoC in stating that she is a natural-born Filipino citizen and that she is a resident of the Philippines for at least 10 years. The Petition of Contreras alleged the same commission by petitioner of material misrepresentation with respect to her period of residency. All three petitions sought the cancellation or denial of due course to petitioner's 2015 CoC based on the said material misrepresentations which were allegedly made with the intention to deceive the electorate as to her qualifications for President.

With respect to Tatad's Petition, petitioner points out that the same was fatally infirm because while captioned as a "Petition for Disqualification" under Section 68 of the OEC in relation to Rule 25 of the Comelec Rules, the allegations therein did not make out a case for disqualification. Petitioner posits that Tatad

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198 Section 74. *Contents of certificate of candidacy.* — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the [House of Representatives], the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post 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.

199 *Ugdoracion, Jr. v. Commission on Elections*, 575 Phil. 253, 261 (2008).

200 *Fermin v. Commission on Elections*, supra note 173 at 165.

201 Section 1, Rule 6 of the COMELEC Rules of Procedure provides:

Sec. 1. Commencement of Action or Proceedings by Parties. - Any natural or juridical person authorized by these rules to initiate any action or proceeding shall file with the Commission a protest or petition alleging therein his personal circumstances as well as those of the protestee or respondent, the jurisdictional facts, and a concise statement of the ultimate facts constituting his cause or causes of action and specifying the relief sought. He may add a general prayer for such further or other relief as may be deemed just or equitable.

clearly resorted to a wrong remedy, hence, the Comelec should have dismissed his petition outright and should not have taken cognizance of it as a petition for cancellation or denial of due course to a CoC.

Contrary to petitioner's argument, I believe that the Comelec acted correctly in not outrightly dismissing Tatad's Petition. In *Spouses Munsalud v. National Housing Authority,*[202] this Court held that the dismissal of a complaint "should not be based on the title or caption, especially when the allegations of the pleading support an action."[203] "The caption of the pleading should not be the governing factor, but rather the allegations in it should determine the nature of the action, because even without the prayer for a specific remedy, the courts [or tribunal] may nevertheless grant the proper relief as may be warranted by the facts alleged in the complaint and the evidence introduced."[204] Here, I agree with the Comelec that the essential facts alleged by Tatad in his Petition do really establish a clear case for the cancellation of or denial of due course to petitioner's 2015 COC. Hence, the Comelec properly treated the same as a Section 78 petition.

In *Fermin v. Commission on Elections*,[205] this Court declared a petition for disqualification filed with the Comelec as one for cancellation of or denial of due course to therein petitioner Mike A. Fermin's CoC. This was after it found that although captioned as a petition for disqualification, the allegations contained therein made out a case for cancellation and/or denial of due course to a CoC under Section 78 of the OEC.

Anent the contention that the Comelec lacks jurisdiction over candidates for national positions, suffice it to state that Section 78 of the OEC does not distinguish between CoCs of candidates running for local and those running for national positions. It simply mentions "certificate of candidacy." *Ubi lex non distinguit nec nos distinguere debemus* – when the law does not distinguish, we must not distinguish. This is a basic rule in statutory construction that is applicable in these cases. Hence, the Comelec has the power to determine if the CoC of candidates, whether running for a local or for a national position, contains false material representation. In other words, any person may avail himself/herself of Section 78 of the OEC to assail the CoC of candidates regardless of the position for which they are aspiring.

Petitioner further argues that the issues raised by respondents in their petitions properly pertain to a *quo warranto* proceeding which can only be initiated after she should have won the election for and proclaimed as President.

This Court in *Fermin* had already explained, *viz.*:

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202 595 Phil. 750 (2008).
203 Id. at 754.
204 Id. at 765.
205 Supra note 173.

> 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.**[206] (Emphasis supplied. Italics in the original.)

While it is admitted that there is a similarity between a petition under Section 78 of the OEC and a *quo warranto* proceeding in that they both deal with the eligibility or qualification of a candidate, what sets them apart is the time when the action is filed, that is, *before* or *after* an election and proclamation. As the election subject of these petitions is yet to be held, there can be no doubt that the issues raised by respondents were properly set forth in their respective petitions for cancellation and/or denial of due course to petitioner's CoC.

Therefore, the Comelec was not so grossly unreasonable that it exceeded the limits of its jurisdiction when it duly characterized the petitions as ones for cancellation and/or denial of due course to petitioner's 2015 CoC. Indeed, in these cases the Comelec did not exercise its judgment in a whimsical, capricious, arbitrary, or despotic manner. Otherwise stated, petitioner failed to show that the Comelec committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that the petitions before it are for cancellation and/or denial of due course to petitioner's 2015 CoC.

The Comelec did not usurp the jurisdiction of the Presidential Electoral Tribunal.

Apropos to the above discussion is petitioner's argument that the Comelec usurped the PET's jurisdiction.

As heretofore stated, a petition under Section 78 seeks to cancel a candidate's CoC before there has been an election and proclamation. Such a petition is within the Comelec's jurisdiction as it is "the sole judge of all pre-proclamation controversies."[207]

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[206] Supra note 173 at 465-467.

[207] *Bedol v. Commission on Elections*, supra note 195 at 510.

On the other hand, the PET is "the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President of the Philippines."[208] Particularly, the PET has jurisdiction over an election contest initiated through an election protest or a petition for *quo warranto* against the President or Vice-President.[209] The PET's adjudicative powers come into play after the President or the Vice-President concerned had been elected and proclaimed. Under the PET Rules an election protest may be filed only within 30 days after proclamation of the winner,[210] while a *quo warranto* petition may be initiated within 10 days after the proclamation of the winner.[211] In other words, it is the date of proclamation of the candidate concerned that is determinative of the time when the PET's jurisdiction attaches.

Pertinently, in *Tecson v. Commission on Elections*,[212] this Court held that ordinarily, the term "contest" refers to "post-election scenario" and that election contests have one objective, which is to unseat the winning candidate. Hence it stressed that the PET's jurisdiction covers contests relating to the election, returns and qualifications of the "President" or "Vice-President," and not of "candidates" for President or Vice-President.

Against this backdrop, it is beyond cavil that the Comelec has the power and jurisdiction to rule on a petition to deny due course to or to cancel the CoC of a candidate, whether for a local or national position, who may have committed material misrepresentation in his/her CoC.

Verily, the Comelec did not usurp, as indeed it could not have usurped, the PET's jurisdiction if only because the herein petitioner remains a mere candidate for President and has not yet been elected and proclaimed President. Therefore, the petitioner failed to prove that the Comelec acted with grave abuse of discretion equivalent to lack or excess of jurisdiction when it took cognizance of these cases.

The validity of Section 8, Rule 23 of the Comelec Rules is upheld.

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208 2010 PET Rules, Rule 13. *Jurisdiction.* — The Tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President of the Philippines.

209 2010 PET Rules, Rule 14. *How Initiated.* — An election contest is initiated by the filing of an election protest or a petition for *quo warranto* against the President or Vice-President. An election protest shall not include a petition for *quo warranto*. A petition for *quo warranto* shall not include an election protest.

210 2010 PET Rules, Rule 15. *Election Protest.* — The registered candidate for President or Vice-President of the Philippines who received the second or third highest number of votes may contest the election of the President or Vice-President, as the case may be, by filing a verified election protest with the Clerk of the Presidential Electoral Tribunal within thirty days after the proclamation of the winner.

211 2010 PET Rules, Rule 16. *Quo Warranto.* — A verified petition for *quo warranto* contesting the election of the President or Vice-President on the ground of ineligibility or disloyalty to the Republic of the Philippines may be filed by any registered voter who has voted in the election concerned within ten days after the proclamation of the winner.

212 468 Phil. 421, 461-462 (2004).

Petitioner challenges the validity of Section 8, Rule 23 of the Comelec Rules which reads as follows:

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

Petitioner argues that paragraph 2 of Section 8 above, which declares that rulings of the Comelec *En Banc* shall be final within five days from receipt of the resolution or decision *sans* any temporary restraining order from this Court, is invalid because it violates Section 7, Article IX-A of the 1987 Constitution which gives the aggrieved party 30 days from receipt of the assailed Comelec Resolution within which to challenge it before the Supreme Court. Section 7 reads:

> Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within *sixty days* from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. **Unless otherwise provided by this Constitution or by law,** any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof. (Emphasis supplied)

I am, however, unable to perceive any conflict between the two provisions.

Paragraph 2, Section 8 of Rule 23 emanates from the Comelec's rule-making power under Section 3 of Article IX-C of the 1987 Constitution, to wit:

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

At the risk of belaboring a point, the 1987 Constitution explicitly grants the Comelec rule-making powers in deciding election cases. Thus, in fulfilment of its Constitutional mandate of deciding election cases with reasonable dispatch, the Comelec promulgated rules of procedure to provide for an orderly means, ways or process of deciding election cases. The insertion in the above-quoted Section 7, Article IX of the 1987 Constitution of the qualifying phrase "unless otherwise provided by this Constitution or law," makes it abundantly clear that the Constitution itself recognizes the rule-making power of the Comelec and, as a necessary corollary, invests it with authority to determine the reasonable period within which its decision or resolution shall be considered final and executory.

Thus, far from invalidating paragraph 2, Section 8 of Rule 23 of the Comelec Rules for being contrary to Section 7, Article IX-A of the 1987 Constitution, the two provisions in fact do work in harmony. Under the principle of *interpretare et concordare leges legibus est optimus interpretandi modus,* every statute must be so construed in harmony with other statutes as to form a uniform system of jurisprudence.[213]

There being no conflict between Section 8, Rule 23 of the Comelec Rules and Section 7, Article IX-A of the 1987 Constitution and given that this Section 8, Rule 23 recognizes the Comelec's rule-making power, the validity of the subject Comelec rule must be sustained.

The Comelec is not precluded by the SET's Decision from determining petitioner's citizenship.

Despite the November 17, 2015 Decision of the SET declaring petitioner a natural-born Filipino citizen, the Comelec is not precluded from ruling on petitioner's citizenship.

As earlier explained, the Comelec, under Section 78 of the OEC, has the power to determine whether a candidate committed any material misrepresentation in his or her CoC. In view thereof, the Comelec can also properly determine the candidate's citizenship or residency as an adjunct to or as a necessary consequence of its assessment on whether the CoC contains material misrepresentation. To my mind, this does not amount to a usurpation of the SET's power to determine the qualifications or eligibility of a candidate; neither does it amount to a usurpation of this Court's prerogative to resolve constitutional issues. Rather, I view it as part of the Comelec's duty to examine a candidate's representations in his/her CoC pursuant to the aforementioned Section 78. Clearly, for the Comelec to shirk or

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[213] *Dreamwork Construction, Inc. v. Janiola*, 609 Phil. 245, 254 (2009); *Spouses Algura v. Local Government Unit of the City of Naga*, 536 Phil. 819, 835 (2006), citing Agpalo's Legal Words and Phrases (1997), 480.

evade from, or to refuse to perform, or abandon this positive duty would amount to grave abuse of discretion.

Furthermore, the Comelec is an independent constitutional body separate and distinct from the SET. While the SET is the sole judge of all contests relating to the election, returns, and qualifications of Members of the Senate,[214] its decisions do not have any doctrinal or binding effect on the Comelec. It is settled that there is "only one Supreme Court from whose decisions all other courts [or tribunals] should take their bearings."[215] Here, the November 17, 2015 SET Decision is the subject of a Petition for *Certiorari* entitled *David v. Senate Electoral Tribunal,* and docketed as G.R. No. 221538, that is still pending before this Court. Until said petition is decided with finality by this Court, any ruling on petitioner's citizenship does not, subject to the conditions that will be discussed later, constitute *res judicata.*

Consequently, the Comelec correctly held that it is not precluded from determining petitioner's citizenship insofar as it impacts on its determination of whether the petitioner's CoC contains material false representation. Conversely stated, petitioner failed to prove that the Comelec acted with grave abuse of discretion amounting to lack or excess of jurisdiction in taking cognizance of these cases.

The July 18, 2006 Order of the Bureau of Immigration and Deportation is not binding on the Comelec

Petitioner argues that it is only the DOJ which can revoke the BID's Order presumptively finding her a natural-born Filipino citizen and approving her petition for reacquisition of Filipino citizenship.[216]

The argument is specious. It is settled that whenever the citizenship of a person is material or indispensable in a judicial or administrative case, the decision of the court or tribunal on the issue of citizenship is generally not considered as *res judicata*. This is so because the issue on citizenship may be "threshed out again and again as the occasion may demand."[217] To accept petitioner's contention that it is the DOJ that has jurisdiction to revoke the grant of her petition for reacquisition of Filipino citizenship would be to veer away from the said settled

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214 1987 CONSTITUTION, Article VI, Section 17.
Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members.

215 *Commissioner of Internal Revenue v. Michel J. Lhuiller Pawnshop, Inc.*, 453 Phil. 1043, 1059 (2003).

216 *Rollo* (G.R. No. 221697), Vol. I, p. 42-43; *rollo* (G.R. Nos. 221698-700), Vol. I, p. 43.

217 *Moy Ya Lim Yao v. Commissioner of Immigration*, 148-B Phil. 773, 855 (1971).

rule because this implies that no subsequent contrary findings may be arrived at by other bodies or tribunals.

In *Go, Sr. v. Ramos*,[218] this Court held that *res judicata* may apply in citizenship cases only if the following conditions or circumstances concur:

> 1. a person's citizenship must be raised as a material issue in a controversy where said person is a party;
>
> 2. the Solicitor General or his authorized representative took active part in the resolution thereof; and
>
> 3. the finding o[f] citizenship is affirmed by this Court.

Since the foregoing conditions or circumstances are not present in these cases, the BID's previous finding on petitioner's citizenship cannot be binding on the Comelec.

Moreover, while the BID stated in its July 18, 2006 Order that "petitioner was a former citizen of the Republic of the Philippines being born to Filipino parents,"[219] this is contrary to petitioner's own assertion that she had no known blood relatives – the very reason why her citizenship is now being questioned. Notably, too, the BID did not categorically declare that petitioner is a natural-born Filipino, but merely presumed her to be one.[220] Being merely presumed, that presumption can be overturned at any time by evidence to the contrary. Most importantly and as correctly held by the Comelec, it cannot be bound by the BID Order because a contrary view will deprive it of its constitutional mandate to inquire into and examine the qualifications of candidates, and determine whether they committed material misrepresentation in their CoC.[221] Clearly, thus, petitioner's purported natural-born Filipino citizenship may be correctly determined by the Comelec, as it in fact already did, despite the aforesaid BID Order.

In sum, petitioner failed to prove that the Comelec capriciously and whimsically exercised its judgment, or that it acted in an arbitrary or despotic manner by reason of passion and hostility, or was so grossly unreasonable when it took cognizance of the cases; indeed, in these cases, the Comelec committed no error of jurisdiction.

II. SUBSTANTIVE ISSUES

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[218] 614 Phil. 451, 473 (2009).
[219] *Rollo* (G.R. No. 221697), Vol. II, p. 828.
[220] Id.
[221] *Rollo* (G.R. Nos. 221698-700), Vol. I, pp. 231-232.

Material misrepresentation

Under Section 74[222] of the OEC, a person running for public office is required to state in his CoC the following details:

> (1) if running for Member of the [House of Representatives], the province, including its component cities, highly urbanized city or district or sector which he seeks to represent;
>
> (2) the political party to which he belongs;
>
> (3) civil status;
>
> (4) his date of birth;
>
> (5) residence;
>
> (6) his post office address for all election purposes; and
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> (7) his profession or occupation.

In addition, the aspirant is required to state under oath that:

> (1) he/she is announcing his/her candidacy for the office stated therein and that he/she is eligible for the said office;
>
> (2) he/she will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto;
>
> (3) he/she will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities;
>
> (4) he/she is not a permanent resident or immigrant to a foreign country;
>
> (5) the obligation imposed by his/her oath is assumed voluntarily, without mental reservation or purpose of evasion; and
>
> (6) the facts stated in the certificate of candidacy are true to the best of his/her knowledge.

As previously discussed, Section 78 of the OEC provides that within 25 days from the time of filing of the CoC, any person may file a petition to deny due course to and/or to cancel it on the exclusive ground that any material representation stated therein as required by Section 74 of the OEC, is false. In the same vein, Section 1, Rule 23 of the Comelec Rules of Procedure states that a

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[222] Supra note 198.

CoC may be denied due course or cancelled "on the exclusive ground that any material representation contained therein as required by law is false."

In *Marcos v. Commission on Elections,*[223] this Court declared that there is material misrepresentation when a statement in a CoC is made with the intent to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.

In *Salcedo II v. Commission on Elections*,[224] it was explained that to constitute a material misrepresentation, the false representation must not only pertain to a material fact which would affect the substantive right of a candidate to run for the position stated in the CoC, but must also consist of a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible."[225] Simply put, the false representation must have been done "with an intention to deceive the electorate as to one's qualifications for public office."[226]

Gonzalez v. Commission on Elections[227] reiterated the pronouncement that a material misrepresentation is not just the falsity of the information declared in the CoC but also consists in the very materiality of the said information, and the deliberate attempt by the candidate to mislead or deceive the electorate as to that candidate's qualification for public office.

Stated differently, before the Comelec may deny due course to and/or cancel a CoC, it must be shown: (a) that the representation pertains to a material fact; (b) that it is in fact false; and (c) that there was a deliberate attempt to deceive, mislead, misinform, or hide a fact, which would otherwise render the candidate ineligible to run for the position. Under the third element, the deception must be such as to lead the electorate to believe that the candidate possesses the qualifications for the position he/she is running for, when in truth the candidate does not possess such qualifications, thus making him/her ineligible to run.

Here, petitioner wants to run for the Presidency in the 2016 elections and claims in her 2015 CoC that she possesses the five qualifications set forth in Section 2, Article VII of the 1987 Constitution which states:

> Section 2. No person may be elected President unless he is a **natural-born citizen of the Philippines**, a registered voter, able to read and write, at least forty years of age on the day of the election, and **a resident of the Philippines**

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223 318 Phil. 329 (1995).
224 371 Phil. 377 (1999).
225 Id. at 390.
226 Id.
227 660 Phil. 225 (2011).

> **for at least ten years immediately preceding such election.** (Emphases supplied)

Respondents, however, insist that petitioner committed false material representation when she declared in her 2015 CoC that she is a natural-born Filipino and that she is a resident of this country for more than 10 years prior to the May 9, 2016 elections.

In its assailed Resolutions, the Comelec found petitioner to have falsely represented material facts in her 2015 CoC.

Residency

The controversy with respect to petitioner's residency qualification arose when it was observed that she made the following entry in Item 11 of her 2012 CoC for Senator:

> PERIOD OF RESIDENCE IN THE PHILIPPINES BEFORE MAY 13, 2013:
>
> *06* No. of Years *06* No. of Months

Based on the said entry, it could be deduced that by her own reckoning, petitioner started residing in the Philippines in November 2006. Thus by May 8, 2016, or the day immediately preceding the elections on May 9, 2016, her period of residency in the Philippines would only be nine years and six months, or short of the mandatory 10-year residency requirement for the presidential post. In contrast, petitioner attested in her 2015 CoC that her period of residency in the Philippines on the day before the May 9, 2016 elections is "10 years and 11 months." Clearly, these are contrasting declarations which give the impression that petitioner adjusted the period of her residency in her 2015 CoC to show that she is eligible to run for the Presidency. This rendered her vulnerable to the charge that she committed material misrepresentations in her 2015 CoC.

Section 2 of Article VII of the 1987 Constitution, as reproduced above, requires, among others, that a person aspiring to become a President must be a resident of the Philippines for at least 10 years immediately preceding the election. This requirement is mandatory and must be complied with strictly. For one, no less than our Constitution itself imposes it. For another, Section 2 was couched in a negative form – an indication of the intention of the framers of our Constitution to make it mandatory. "A statute or provision which contains words of positive prohibition, such as 'shall not,' 'cannot,' or 'ought not,' or which is couched in negative terms importing that the act shall not be done otherwise than

designated, is mandatory."[228] Moreover, Section 63[229] of Article IX of the OEC imposes the same 10-year residency requirement.

For purposes of election laws, this Court, as early as 1928,[230] held that the term residence is synonymous with domicile.[231] Domicile denotes the place "'where a party actually or constructively has his permanent home,' where he, no matter where he may be found at any given time, eventually intends to return and remain"[232] (*animus manendi*).

In deviating from the usual concepts of residency, the framers of our Constitutions intended "'to exclude strangers or newcomers unfamiliar with the conditions and needs of the community' from taking advantage of favorable circumstances existing in that community for electoral gain."[233] Their decision to adopt the concept of domicile "is rooted in the recognition that [elective] officials x x x should not only be acquainted with the metes and bounds of their constituencies; more importantly, they should know their constituencies and the unique circumstances of their constituents — their needs, difficulties, aspirations, potentials for growth and development, and all matters vital to their common welfare. Familiarity, or the opportunity to be familiar, with these circumstances can only come with residency x x x."[234] At the same time, the residency requirement gives the electorate sufficient time to know, familiarize themselves with, and assess the true character of the candidates.

Domicile is classified into three types according on its source, namely: (1) domicile of origin, which an individual acquires at birth or his first domicile; (2) domicile of choice, which the individual freely chooses after abandoning the old domicile; and (3) domicile by operation of law, which the law assigns to an individual independently of his or her intention.[235] A person can only have a single domicile at any given time.[236]

To acquire a new domicile of choice, one must demonstrate:

1. Residence or bodily presence in the new locality;

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228 See Ruben Agpalo, Statutory Construction, 4th ed., 1998, p. 338, as cited in *Office of the Ombudsman v. Andutan, Jr.*, 670 Phil. 169, 178 (2011).

229 SECTION 63. *Qualifications for President and Vice-President of the Philippines.* — No person may be elected President or Vice-President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of election, and a resident of the Philippines for at least ten years immediately preceding such election.

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

231 Id. at 651.

232 *Aquino v. Commission on Elections*, 318 Phil. 467 (1995).

233 Id. at 499, citing *Gallego v. Verra*, 73 Phil. 453 (1941).

234 *Mitra v. Commission on Elections*, supra note 191 at 764.

235 25 Am Jur 2d Domicil § 12-15, pp. 12-13.

236 *Marcos v. Commission on Elections*, supra note 223 at 386.

2. An intention to remain there (*animus manendi*); and

3. An intention to abandon the old domicile (*animus non revertendi*).[237]

"To successfully effect a change of domicile, one must demonstrate an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one and definite acts which correspond with the purpose."[238] In the absence of clear and positive proof of the above mentioned requisites, the current domicile should be deemed to continue. Only with clear evidence showing concurrence of *all three requirements* can the presumption of continuity of residence be rebutted, for a change of legal residence requires an actual and deliberate abandonment of the old domicile.[239] Elsewise put, if any of the above requisites is absent, no change of domicile will result.[240]

Having dispensed with the above preliminaries, I shall now discuss whether petitioner satisfactorily proved that the Comelec acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in ruling that there was material misrepresentation when she declared in her 2015 CoC that on the day immediately preceding the May 9, 2016 elections, she would have been a resident of this country for 10 years and 11 months. Otherwise stated, was there substantial evidence showing that petitioner committed material misrepresentation as regards her period of residency?

Elements of material misrepresentation in relation to petitioner's claimed period of residence in the Philippines: a) materiality; b) falsity; and c) deliberate attempt to deceive, mislead, misinform, or hide a fact which would otherwise render her ineligible to run for the position of President.

A. Residency as a material fact.

As to the first element, it is jurisprudentially settled that residence is a

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237 *Romualdez v. RTC, Branch 7, Tacloban City*, G.R. No. 104960, September 14, 1993, 226 SCRA 408, 415; *Mitra v. Commission on Elections*, supra note 191 at 781; *Japzon v. Commission on Elections*, 596 Phil. 354, 372 (2009); *Papandayan Jr. v. Commission on Elections*, 430 Phil. 754, 770.

238 *Domino v. Commission on Elections*, 369 Phil. 798, 819 (1999).

239 *Marcos v. Commission on Elections*, supra note 223 at 386-387.

240 *Domino v. Commission on Elections*, supra at 820.

material fact because it involves the candidate's eligibility or qualification to run for public office.[241] In view of this and considering that the parties do not dispute that the matter of a candidate's residency in the Philippines is a material fact, there is no need to dwell further upon this element.

B. Falsity of petitioner's declaration as to the period of her residency in her 2015 CoC

At this juncture, it must be stressed that on October 18, 2001, petitioner not only formally abandoned the Philippines as her domicile, but she also renounced her Philippine citizenship by becoming a naturalized American citizen. She preferred and chose to be domiciled in the U.S. than in the Philippines. And she did so not out of necessity or for temporary leisure or exercise of profession but to permanently live there with her family. Fifteen years later, petitioner is before this Court claiming that she had decided to abandon and had in fact abandoned her U.S. domicile and that she had decided to establish and had in fact established a new domicile of choice in the Philippines. She would want us to believe that she had complied with all the requirements in establishing a new domicile of choice.

The question now is: As a U.S. citizen who was domiciled in the U.S., how can petitioner reestablish her domicile in the Philippines? Obviously, petitioner must abandon or lose her domicile in the U.S. Also, she has to satisfactorily prove intent to permanently stay in the country and make the Philippines her new domicile of choice.

For easy reference, I hereby reiterate the requirements in establishing a new domicile of choice, to wit: a) residence or bodily presence in the new locality; b) an intention to remain there (*animus manendi*); and c) an intention to abandon the old domicile (*animus non revertendi*).

Petitioner's evidence of animus manendi; earliest possible date that her physical presence in the Philippines can be characterized as coupled with animus manendi.

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[241] *Villafuerte v. Commission on Elections*, G.R. No. 206698, February 25, 2014, 717 SCRA 312, 323.

In support of her claim that from the time she arrived in the Philippines on May 24, 2005 her physical presence here was imbued with *animus manendi*, petitioner offered the following evidence:

a. travel records which show that she would consistently return to the Philippines from her trips abroad;

b. the affidavit of her adoptive mother attesting to the fact that after petitioner and her children's arrival in the Philippines in early 2005, they first lived with her in Greenhills, San Juan;

c. school records which show that her children had been attending Philippine schools continuously since June 2005;

d. TIN which shows that shortly after her return to the Philippines in May 2005, she considered herself a taxable resident and a subject of the country's tax jurisdiction;

e. Condominium Certificate of Title for Unit 7F and a parking lot at One Wilson Place purchased in early 2005 and its corresponding Declarations of Real Property for real property tax purposes;

f. reacquisition of her natural-born Filipino citizenship and applications for derivative citizenship for her minor children;

g. registration as a voter on August 31, 2006;

h. renunciation of her U.S. citizenship on October 20, 2010;

i. acceptance of her appointment as MTRCB Chairperson on October 21, 2010;

j. Questionnaire – Information for Determining Possible Loss of U.S. Citizenship wherein petitioner indicated that she considered herself a resident of the Philippines starting May 2005.

Petitioner claims that had the Comelec considered her evidence in its totality and not in isolation, it would have concluded that she intended to remain in the Philippines since May 24, 2005.

I do not agree.

What must not be overlooked is that these pieces of evidence fly in the face of the fact that from May 24, 2005 to July 18, 2006 petitioner was an alien on temporary sojourn here. It should be emphasized that after petitioner abandoned the Philippines as her domicile and became a naturalized U.S. citizen on October 18, 2001, the U.S. became her domicile of choice. In *Coquilla v. Commission on Elections*[242] and reiterated in *Japzon v. Commission on Elections*,[243] this Court held that a Filipino who applies for naturalization as an American citizen has to establish legal residence in the U.S. which would consequently result in the abandonment of Philippine domicile as no person can have two domiciles at any given time. Hence, beginning October 18, 2001, petitioner was domiciled in the U.S.[244]

When petitioner arrived in the Philippines on May 24, 2005, she in fact did so as a foreigner *balikbayan* as she was then still a U.S. citizen. Normally, foreign nationals are required to obtain a visa before they can visit the Philippines. But under RA 6768,[245] as amended by RA 9174,[246] foreigner *balikbayans*[247] are accorded the privilege of visa-free entry to the Philippines. This visa-free privilege is, however, not without conditions for it allows such *balikbayans* to stay in the Philippines for a limited period of one year only. Thus:

> SEC. 3. *Benefits and Privileges of the Balikbayan.*- The *balikbayan* and his or her family shall be entitled to the following benefits and privileges:
>
> x x x x
>
> (c) Visa-free entry to the Philippines for a period of one (1) year for foreign passport holders, with the exception of restricted nationals.

Since petitioner availed herself of RA 6768, her stay in the Philippines from the time she arrived here as a foreigner *balikbayan* on May 24, 2005 was not permanent in character or for an indefinite period of time. It was merely temporary. At most, her stay in the Philippines would only be for one year. This only proves that her stay was not impressed with *animus manendi, i.e.,* the intent to remain in or at the domicile of choice for an indefinite period of time.[248] Thus in *Coquilla*, we did not include the period of the candidate's physical presence in the Philippines while he was still an alien. In that case, Teodulo M. Coquilla (Coquilla) was naturalized as U.S. citizen in 1965. He returned to the Philippines

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242 434 Phil. 861 (2002)

243 Supra note 237.

244 See *Coquilla v. Comelec*, supra at 872.

245 AN ACT INSTITUTING A BALIKBAYAN PROGRAM.

246 AN ACT AMENDING REPUBLIC ACT NUMBERED 6768, ENTITLED, "AN ACT INSTITUTING A BALIKBAYAN PROGRAM" BY PROVIDING ADDITIONAL BENEFITS AND PRIVILEGES TO *BALIKBAYAN* AND FOR OTHER PURPOSES.

247 A *balikbayan* is a Filipino citizen who has been continuously out of the Philippines for a period of at least one (1) year, a Filipino overseas worker, or a former Filipino citizen and his or her family x x x who had been naturalized in a foreign country and comes or returns to the Philippines. (Section 2 of RA 6768.)

248 *Romualdez v. RTC, Branch 7, Tacloban City*, supra note 237 at 415.

in 1998 and was repatriated under RA 8171 on November 7, 2000. He took his oath as a citizen of the Philippines on November 10, 2000. Subsequently, he filed his CoC for Mayor of Oras, Eastern Samar. A petition to cancel Coquilla's CoC was filed on the ground of material misrepresentation based on his representation that he met the one-year residency requirement. This Court affirmed the Comelec finding that Coquilla lacked the required residency. While Coquilla arrived in the Philippines as early as 1998, his presence here from that point until his naturalization on November 10, 2000 was excluded in counting the length of his residency in the Philippines because during that time he had no right to reside permanently here. Thus:

> In the case at bar, petitioner lost his domicile of origin in Oras by becoming a U.S. citizen after enlisting in the U.S. Navy in 1965. From then on and until November 10, 2000, when he reacquired Philippine citizenship, petitioner was an alien without any right to reside in the Philippines save as our immigration laws may have allowed him to stay as a visitor or as a resident alien.[249]

Also, in the 1966 case of *Ujano v. Republic*,[250] the trial court denied Melecio Clarinio Ujano's (Ujano) petition to reacquire citizenship for failure to meet the six months residency requirement. In so ruling, it reasoned out that Ujano, "who is presently a citizen of the United States of America, was admitted into this country as a temporary visitor, a status he has maintained at the time of the filing of the present petition for reacquisition of Philippine citizenship and which continues up to the present."[251] This Court adopted and sustained the trial court's ratiocination and added that "[t]he only way by which [Ujano] can reacquire his lost Philippine citizenship is by securing a quota for permanent residence so that he may come within the purview of the residence requirement of Commonwealth Act No. 63."[252] Clearly, as early as 1966, jurisprudence has unrelentingly and consistently applied the rule that the law does not include temporary visits in the determination of the length of legal residency or domicile in this country. Indeed, it is illogical and absurd to consider a foreign national to have complied with the requirements of *animus manendi*, or intent to permanently stay in this country, if he/she was only on a temporary sojourn here.

Petitioner's claim that she had established *animus manendi* upon setting foot in this country on May 24, 2005 has, therefore, no leg to stand on. The pieces of evidence she presented in support of this proposition are irrelevant, and are negated by the undisputed fact that she was then a foreigner temporarily staying here as a *balikbayan*. In this context, petitioner's imputation of grave abuse of discretion falls flat on its face.

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249 *Coquilla v. Commission on Elections*, supra note 242 at 872.
250 123 Phil. 1017 (1966).
251 Id. at 1019.
252 Id. at 1020.

I also subjected petitioner's evidence of *animus manendi* to utmost judicial scrutiny, particularly in relation to her claim that such intent concurs with her physical presence in the Philippines beginning May 24, 2005. However, I find them wanting and insufficient.

I start off with the fundamental precept that if a person alleges that he/she has abandoned her domicile, it is incumbent upon that person to prove that he/she was able to reestablish a new domicile of choice.[253] Applied to this case, this means that it is upon the intrinsic merits of petitioner's own evidence that her claim of reestablishment of domicile in the Philippines on May 24, 2005 must rise or fall.

After a critical review, I am satisfied that the Comelec correctly found petitioner's evidence relative to her claim of *animus manendi* beginning May 24, 2005 both wanting and insufficient. For instance, securing a TIN is not conclusive proof of intent to remain in the Philippines considering that under the country's tax laws, any person, whether a citizen, non-citizen, resident or non-resident of the Philippines, is required to secure a TIN for purposes of tax payment. If at all, procurement of a TIN merely suggests or indicates an intention to comply with the obligation to pay taxes which may be imposed upon any person, whether a citizen or an alien. In fact, by her own admission, petitioner secured a TIN precisely for the purpose of "settling her late father's estate."[254] At any rate, a TIN was issued to petitioner on July 22, 2005,[255] or almost two months after her claimed starting point of residency in the Philippines.

Under the same parity of reasoning, petitioner's acquisition of a condominium unit and parking lot at One Wilson Place in San Juan City, as well as her acquisition of a parcel of land in Corinthian Hills, Quezon City and the subsequent construction of a house thereon, do not evince an intent to remain in the Philippines for good. Speaking for the Court in *Svetlana Jalosjos v. Commission on Elections*,[256] Chief Justice Maria Lourdes P.A. Sereno declared that "ownership of a house or some other property does not establish domicile."[257] After all, acquisition of properties may also very well be for investment purposes only. Besides, it bears emphasis that by petitioner's own allegation, the condominium unit and parking lot were acquired in the second half of 2005, the lot in Corinthian Hills was bought in 2006, and the house standing thereon was constructed that same year (2006) – all after May 24, 2005.

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253 *Caballero v. Commission on Elections*, G.R. No. 209835, September 22, 2015.

254 *Rollo* (G.R. No. 221697), Vol. II, p. 511; *rollo* (G.R. Nos. 221698-700), Vol. II, p. 618; id. at 826; id. at 1048.

255 *Rollo* (G.R. No. 221697), Vol. II, p. 804.

256 G.R. No. 193314, February 26, 2013, 691 SCRA 646.

257 Id. at 659, citing *Fernandez v. House of Representatives Electoral Tribunal*, 623 Phil. 628, 655 (2009).

The claimed intent also becomes shrouded in doubt in light of petitioner's maintaining a house in the U.S. which she bought in 1992 and the subsequent acquisition of a residential house in the U.S. in 2008.

It must be stressed that in the Petition of Valdez before the Comelec, particularly par. 98 thereof, he pointed out that: "per respondent's [herein petitioner] own Statement of Assets, Liabilities and Net Worth for 2014, she still maintains two (2) residential houses in the U.S., one purchased in 1992, and the other in 2008."[258] Petitioner had the opportunity to categorically deny, refute or discuss head on this contention of Valdez in her Verified Answer. Unfortunately, she did not seize the chance. Instead, in paragraph 2.13 of her Verified Answer, petitioner couched her "denial" that she still owns two houses in the U.S. as follows:

> 2.13. The allegation in paragraph 98 of the *Petition* is DENIED insofar as it is made to appear that [Petitioner] "resides" in the 2 houses mentioned in said paragraph. The truth is that [Petitioner] does not "reside" in these houses, but in her family home in Corinthian Hills, Quezon City (where she has lived with her family for almost a decade).[259]

From the foregoing, petitioner in effect admitted the veracity and truthfulness of Valdez's assertion regarding the acquisition of the two residential houses; her denial pertained only to the fact that she was residing thereat. Thereafter, no further mention of this matter was made.

The care by which petitioner crafted her Answer regarding the sale of her family's real property in the U.S. is also obvious. In her four Verified Answers, she averred thus:

> x x x The family home in the U.S.A. was eventually sold on 27 April 2006.[260]

By adverting solely and exclusively to the "family home" as the real property that had been sold in April 2006, petitioner effectively avoided, and withheld, mentioning and discussing her family's other remaining real properties in the U.S., such as the two other residential houses.

Also, in Valdez's Comment/Opposition to the Petition for *Certiorari*,[261] particularly in paragraphs 11.14 and 174, he manifested that the existence of these two houses in the U.S. was in fact admitted, not at all denied, by petitioner. Thus:

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258 *Rollo* (G.R. Nos. 221698-700), Vol. II, pp. 917.
259 Id. at 1055.
260 Id. at 1049; Id. at 1075; Id. at 827, 850; Id. at 620, 761.
261 *Rollo* (G.R. Nos. 221698-700), Vol. IV, pp. 3852-3930.

> 11.14. x x x In 2014, petitioner indicated in her Statement of Assets and Liabilities that she has two (2) residential properties in the U.S.A., a fact that she also confirmed during the clarificatory hearing on 25 November 2015 as herein provided.[262]
>
> 174. Her counsel also admitted in the clarificatory hearing that PETITIONER still own[s] two properties in the US, one purchased in 1992, and the other in 2008, up to the present time. This is inconsistent with *animus non revertendi*. In fact, the properties remain as a physical link with the US which is her domicile of choice for many years, which is inconsistent with her claim that she completely abandoned.[263]

Furthermore, during the oral argument on January 19, 2016, the undersigned inquired if petitioner's family still owns properties of whatever kind in the U.S. Her counsel denied any knowledge.[264] When it was the turn of Valdez to be interpellated and the undersigned again brought up the alleged ownership of petitioner's family of two or more properties in the U.S., Valdez affirmed the

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[262] Id. at 3859.

[263] Id. at 3902.

[264] JUSTICE DEL CASTILLO:
> What was she doing in the States, x x x was [she] already planning to come back here x x x for good[?] X x x [H]ow come she kept on returning to the States?

ATTY. POBLADOR:
> They were still trying to sell their house, they were disposing of their assets, in fact they had to donate most of these assets. They were able to sell their house only in April 2006 and ... (interrupted).

JUSTICE DEL CASTILLO:
> And what other properties do they have there in the States?

ATTY. POBLADOR:
> As far as I know... (interrupted)

JUSTICE DEL CASTILLO:
> Remember they stayed there for more than ten years, so they must have acquired tremendous amount of property there.

ATTY. POBLADOR:
> I'm not aware of any other assets, Your Honor, but what I'm aware of is... (interrupted)

JUSTICE DEL CASTILLO:
> No bank accounts?

ATTY. POBLADOR:
> I'm not aware of the bank accounts.

JUSTICE DEL CASTILLO:
> Did she vote there in the States when she was staying there? Did she vote for any public, for any official running for public office?

ATTY. POBLADOR:
> Did she vote, I'm not aware, Your Honor.

JUSTICE DEL CASTILLO:
> Did she acquire, for instance, a burial lot? This may sound funny but all of us would do this, burial lot?

ATTY. POBLADOR:
> I'm not aware... (interrupted)

JUSTICE DEL CASTILLO:
> X x x [Y]ou're not aware of that. Has she disposed of all her properties in the States?

ATTY. POBLADOR:
> To our knowledge, Your Honor, in that period as part of her relocation process here, they disposed of all their assets, or most of their assets. (TSN, January 19, 2016, pp. 23-25).

allegation.[265] Constrained to discuss the matter, petitioner now admits in her Memorandum[266] that she and her family indeed do own two houses in the U.S.

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[265] JUSTICE DEL CASTILLO:

Good evening, Counsel. Among the four respondents, you are the only one who mentioned about the 2014 assets and liabilities of the petitioner. X x x [Y]ou mentioned that the petitioner x x x maintains two residential houses in the U.S.; one which she purchased in 1992 and the other one in 2008, is that correct, Counsel?

ATTY. VALDEZ:

Yes, Your Honor. I did some internet research.

JUSTICE DEL CASTILLO:

And what was....

ATTY. VALDEZ:

And this was confirmed by her own Statement of Assets and Liabilities.

JUSTICE DEL CASTILLO:

What was your purpose in bringing that to light?

ATTY. VALDEZ:

Well, we thought, Your Honor, please, that because there were two competing domiciles. We are looking at it from the stand point of private international law. When she reacquired Filipino citizenship without renouncing her American citizenship, during that very critical period, where she was [is] a status that is inimical to the interest of the country, as per the Constitution. There was a competing interest on the part of the U.S. claiming her as a domiciliary of the U.S. and the Philippines claiming her as a domiciliary of the Philippines, that's why it's very critical that your Decisions in *Coquilla*, in *Caballero*, in *Japzon*, and [in] the previous case [of] *Jalosjos* that the most relevant date when a person will be considered to be domicile[d] in this country is when he renounces his American citizenship because with that ...

JUSTICE DEL CASTILLO:

What was....

ATTY. VALDEZ:

Because with that....

JUSTICE DEL CASTILLO:

Yes, I understand now what you are driving at. What I'm trying to clarify from you is, what is the relevance of your mentioning there that the Petitioner still maintains two residential houses in the States, one which was purchased in 1992 and the other one in 2008? Does it have something to do with the Petitioner?

ATTY. VALDEZ:

The animus...

JUSTICE DEL CASTILLO:

... selling her family home in April of 2006. In other words, are you saying that, okay, so she sold her family home in the states in April of 2006 to show that her reacquisition of domicile in the Philippines is imbued with *animus revertendi*. Is that what you....

ATTY. VALDEZ:

There is still the presence of *animus non revertendi* by the fact that she still maintain[s] substantial asset and these are residences in the United States plus the fact that she used her passport for five times and....

JUSTICE DEL CASTILLO:

Yes, we know the other matters. I just want to focus on the real property that a ... because she sold, that's what she's saying, that she sold the family home in April of 2006, fine. It would really, it would seem that you are abandoning already for good your intention to remain in the states but then you still buy, you still bought a residential house in 2008.

Atty. Valdez:

Precisely.

JUSTICE DEL CASTILLO:

Now, she is maintaining these two... is it your position, are you trying to tell that she is still maintaining these two real properties in the States?

ATTY. VALDEZ:

Precisely, Your Honor, because she has been a resident of the US in fact for about 19 years so it could not be easily understandable that x x x selling her properties and establishing a residence here yet leaving some properties that could be better signs of wanting to still remain in the US would negate whatever manifestations or acts on her part that she has chosen to stay in the Philippines. (TSN, February 16, 2016, pp. 230-233).

[266] 5.264.18. In par. 98 of his petition in the proceedings *a quo*, Private Respondent Valdez alleged that Sen. Poe "still maintains two (2) residential houses in the US, one purchased in 1992, and the other in 2008." In

These houses are obviously not considered by petitioner as their family home; nonetheless, considering the circumstances prevailing in the case, their acquisition and maintenance are relevant to the determination of whether petitioner had indeed abandoned her U.S. domicile and whether she had effectively reestablished her domicile in the Philippines.

Thus, to follow petitioner's proposition that acquisition of residential properties is an *indicia* of *aminus manendi* is actually detrimental to her cause considering that subsequent to her purchase of a condominium unit and a residential lot in the Philippines in 2006, she later on acquired a residential property in the U.S. in 2008. In addition, she maintained one other residential property in the U.S. which was bought in 1992.

I also agree with the observation of respondent Contreras regarding the failure of petitioner to secure an ICR for herself as she did with her children. For Contreras, this not only shows that petitioner was fully cognizant of the nature of her residency status and the applicable laws/rules regarding the same; more significantly, it was clear and positive evidence of her intention or ambivalence not to become a permanent resident of the Philippines at that time. Thus:

> x x x For foreign nationals, of which petitioner was one prior to her reacquisition of her Filipino citizenship, intent to remain for good could not just rest on being physically present, and performing acts such as buying a condominium unit and enrolling her children here, for such are also the acts of expatriates who are working in the country. As foreign nationals, to be even considered as resident aliens, these expats and their dependents have to obtain the appropriate visas for their stay to be legal. Petitioner fully knew this well, when she registered her children, who were also foreign nationals like her, with the BI to obtain an ACR for each of them, as such would have been a requirement for enrolment in schools. It is for this that she could not feign ignorance of the real nature of her residency status in the country from 24 May 2005 until July 2006, when she did not possess an ACR since she failed to register with the BI, and hence did not

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her Verified Answer, Sen. Poe "DENIED" par. 98 "insofar as it is made to appear that (she) resides' in the 2 houses mentioned in said paragraph." Sen. Poe further explained that she "does *not* 'reside' in these houses, but in her family home in Corinthian Hills, Quezon City (where she has lived with her family for almost a decade). Private Respondent Valdez did *not* present any proof to controvert Sen. Poe's response to par. 98 of this petition.

5.264.19. The net result of this exchange is that Sen. Poe owns two houses in the U.S.A. which she does *not* reside in.

x x x x

5.264.21. If a candidate for public office is jurisprudentially allowed to simultaneously maintain several residences in different places without abandoning her domicile of choice, it follows that Sen. Poe could successfully establish her domicile in the Philippines despite the fact that she continues to own or acquires a house/s in the U.S.A. (which she does *not* even reside in). Contrary to Private Respondent Valdez's stance, the mere ownership of these houses in the U.S.A. cannot, by itself, prove that Sen. Poe does not possess *animus non-revertendi* to the U.S.A. The totality of the evidence and circumstances showing Sen. Poe's reestablishment of domicile in the Philippines since 24 May 2005 certainly ought to *outweigh* the singular fact that she also owns houses in the U.S.A.

5.264.22. Lastly, the rule is that a person could have *only one domicile* at any given time. Considering that Sen. Poe has been domiciled in the Philippines since 24 May 2005, it is a legal impossibility for her to simultaneously have any other domicile elsewhere. *Rollo* (G.R. No. 221697), Vol. VI, pp. 4039-4041.

> acquire the status of a permanent resident in the country. As such, she did not lose her domicile in the US during that period, and could therefore not rightfully claim to have re-established her domicile in the Philippines.[267]
>
> x x x [T]he fact that she obtained immigration documents for her three (3) children in the form of Alien Certificate of Registration (ACR), even if she failed to obtain one for herself, is an incontrovertible proof that she could not claim total ignorance about the limitations imposed on a non-resident alien in the country.[268]

Finally, it is my opinion that the Comelec correctly considered petitioner's declarations in her 2012 CoC as an admission against interest. An admission is any statement of fact made by a party against his/her interest or is inconsistent with the facts alleged by him/her.[269] It is governed by Section 26 of Rule 130 of the Rules of Court, which states:

> Sec. 26. *Admissions of a party.* – The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

"To be admissible, an admission must: (a) involve matters of fact, and not of law; (b) be categorical and definite; (c) be knowingly and voluntarily made; and (d) be adverse to the admitter's interests, otherwise it would be self-serving and inadmissible."[270]

All these requisites are present in these cases. The entry in petitioner's 2012 CoC, *i.e.*, six years and six months, refers to her period of residence in the Philippines before May 13, 2013 – a matter which without a doubt involves a question of fact. The same is categorical and definite, and was made under oath. The entry is adverse to petitioner's interest, specifically in respect to her present claim in her 2015 CoC that she has been a resident of the Philippines for 10 years and 11 months up to the day before the May 9, 2016 elections. Clearly, the questioned entry in petitioner's 2012 CoC is admissible as an admission against her interest.

"Admissibility, however, is one thing, weight is another."[271] Indeed, when the admission is contained in a document as in this case, the document is the best evidence which affords the greatest certainty of the facts in dispute. The rationale for the rule is based on the presumption that no man would declare anything against himself/herself unless such declaration was true. Thus, it is fair to presume that the declaration corresponds with the truth, and it is his/her fault if it does

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267 *Rollo* (G.R. Nos. 221698-700), Vol. VI, p. 3717.
268 *Rollo* (G.R. No. 221697), Vol. VI, p. 3654.
269 *Lachayan v. Samoy,* 661 Phil. 306, 318 (2011).
270 Id.
271 *Ormoc Sugar Company, Inc. v. Osco Workers Fraternity Labor Union (OWFLU),* 110 Phil. 627, 632 (1961).

not.[272] It bears emphasizing, though, that this does not preclude a declarant from refuting his/her admission.[273] In this case, petitioner must show clear, convincing, and more than preponderant evidence in order to refute the facts stated in her 2012 CoC considering that it is a sworn document which the Rules of Court presumes had been executed in the regular course of law.[274]

Petitioner thus asserts that the statement in the 2012 CoC about her period of residence was a result of an honest mistake and not binding on her. She invokes *Marcos v. Commission on Elections* where we held that "it is the fact of residence, not a statement in a certificate of candidacy, which ought to be decisive in determining whether or not an individual has satisfied the Constitution's residency qualification requirement."

However, I am not convinced with petitioner's invocation of honest mistake. Among other reasons, the defense of honest mistake interposed in *Marcos* was found tenable because therein petitioner Imelda Romualdez-Marcos (Imelda) wrote in her CoC "seven" months as her period of residence – an entry which was obviously short of the one-year residency requirement for the position for which she filed her CoC. Hence, the Court stated that it would be plainly ridiculous for a candidate to deliberately and knowingly make a statement in a CoC which would lead to her disqualification. It can be concluded, therefore, that the defense of honest mistake is available only if the mistake in the CoC would make a qualified candidate ineligible for the position. It cannot be invoked when the mistake would make an ineligible candidate qualified for the position. For in the first case, no candidate in his/her right mind would prevaricate or make the electorate believe that he/she is not qualified for the position he/she is aspiring for. Hence, there could be no other conclusion than that the mistake was committed honestly. Whereas in the second case, the intention to mislead can be deduced from the fact that an aspirant, although not qualified, makes it appear in his/her CoC that he/she is eligible to run for public office when in truth he/she is not. Here, petitioner made it appear that she did meet the 10-year residency requirement when in fact, she did not.

And even assuming that she committed an honest mistake, still, the same cannot outweigh her categorical, definite, voluntary, and sworn declaration in her 2012 CoC, which is favored by the *prima facie* presumption of regularity.[275] Said entry in petitioner's 2012 CoC which, as previously discussed is an admission against interest, tends to prove that she intended to stay permanently in the Philippines starting only in November 2006 (or in April 2006 assuming her claim of honest mistake is true, but still far from her claim of May 24, 2005). In other

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[272] *Manila Electric Company v. Heirs of Spouses Deloy*, 710 Phil. 427, 441 (2013), citing *Heirs of Bernardo Ulep v. Sps. Ducat and Kiong*, 597 Phil. 5, 16 (2009).

[273] *Rufina Patis Factory v. Alusitain*, 478 Phil. 544, 558 (2004).

[274] Id. at 559.

[275] Id.

words, petitioner has miserably failed to present evidence sufficient to overthrow the facts she herself supplied in her 2012 CoC. She cannot now, therefore, adjust or readjust the dates from which to reckon her reestablishment of domicile in the Philippines in order to meet the 10-year constitutional residency requirement. As correctly observed by the Comelec, petitioner's actions only highlight her ambivalence in reestablishing domicile, *viz.*:

> 4.149. Petitioner claims to have re-established her domicile in the Philippines on 24 May 2005. x x x
>
> 4.150. It is incorrect based on petitioner's own submissions which are conflicting.
>
> 4.151. In her COC for Senator in the May 2013 election filed in October 2012, [petitioner] stated:
>
> "PERIOD OF RESIDENCE IN THE PHILIPPINES BEFORE MAY 13, 2013 – 6 YEARS AND 6 MONTHS".
>
> The above sworn entry in her COC for Senator meant that [petitioner] had been a Philippine resident **only since November 2006.**
>
> 4.152. She later claimed that the Comelec form confused her, that actually that entry of "6 years and 6 months" was meant to be up to the date of filing said COC in October 2012. Assuming this to be correct, and applying the "6 years and 6 months" as up to October 2012, this means that [petitioner] had been a Philippine resident **only since April 2006.**
>
> 4.153. In her present COC for President in the May 2016 elections, her sworn entry on residency is "10 years and 11 months" up to the day before May 9, 2016 which would be a residency **since June 2005.**
>
> 4.154. So which is which?
>
> **May 24, 2005** as the date she claims to have re-established her Philippine domicile?
>
> Or is it **April 2006** as she also claims relative to her 2012 senatorial COC reckoned up to the date of its filing in October 2012?
>
> Or is it **November 2006** which is the plain import of her sworn entry in her senatorial COC?
>
> Or is it **June 2005** which would be the reckoning date per her 2015 COC for President in the May 2016 elections?[276]

In fine, even if it be conceded that petitioner's evidence (*i.e.*, TIN, acquisition of residential properties, enrollment of her children in Philippine schools), taken singly or collectively, somehow evinces her claimed intent to

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[276] *Rollo* (G.R. No. 221697), Vol. VI, p. 3775.

remain in the Philippines, the same cannot outweigh the evidence on record that her presence in the country as of May 24, 2005 was temporary in nature. "Evidence is assessed in terms of quality, not quantity. It is to be weighed, not counted."[277]

At this point, I wish to make it abundantly clear that it is not my position that petitioner could not reestablish her domicile in the country prior to taking the oath of allegiance to the country. In retrospect, petitioner could have made her stay in the Philippines permanent in character beginning May 24, 2005 or thereabouts had she applied for an immigrant status as provided in Commonwealth Act No. 613 or The Philippine Immigration Act of 1940, as amended by RA 4376,[278] which allows a natural-born Filipino citizen (assuming that she is) who was naturalized abroad to return as a non-quota immigrant entitled to permanent residence. As correctly argued by respondent Contreras, "[t]he possession of a permanent resident visa is not an added element, but is simply evidence that sufficiently proves the presence of an act that would indicate the element of *animus manendi* that applies to foreign nationals who would like to make the Philippines as their new domicile of choice."[279] But for some reason petitioner did not apply for an immigrant status, and there is no indication that she was subsequently granted an immigrant visa, or a permanent resident status.

As a U.S. citizen, petitioner failed to perform an act necessary to show that as of May 24, 2005 she intended to permanently remain in the Philippines. Such intention may be inferred from her waiver of non-resident status by obtaining a permanent resident visa or an ACR or by taking an oath of allegiance to the Philippines, which petitioner neither availed of on or before May 24, 2005.

Nevertheless, while petitioner entered the Philippines on May 24, 2005 as a foreigner *balikbayan* with a limited period of stay, her status changed when she took her Oath of Allegiance to the Republic under RA 9225 on July 18, 2006. This conferred upon her not only Philippine citizenship but also the right to stay in the Philippines for an unlimited period of time. Section 5 of the said law provides:

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

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[277] *People v. Alberto*, 625 Phil. 545, 556 (2010).

[278] AN ACT AMENDING SECTION THIRTEEN OF COMMONWEALTH ACT NUMBERED SIX HUNDRED THIRTEEN, OTHERWISE KNOWN AS "THE PHILIPPINE IMMIGRATION ACT OF 1940" SO AS TO INCLUDE AS NON-QUOTA IMMIGRANTS WHO MAY BE ADMITTED INTO THE PHILIPPINES, NATURAL BORN CITIZENS WHO HAVE BEEN NATURALIZED IN A FOREIGN COUNTRY AND DESIRE TO RETURN FOR PERMANENT RESIDENCE.

[279] *Rollo* (G.R. Nos. 221698-700), Vol. VI, p. 3721.

Thus, it is from this date, July 18, 2006, that petitioner can rightfully claim that her physical presence in the Philippines was with *animus manendi.* Her becoming a Filipino, albeit still a dual citizen, on said date, allowed her to thenceforth stay permanently here.

However, it must be emphasized that petitioner's reacquisition of Philippine citizenship neither automatically resulted in the reestablishment of her Philippine domicile nor in the abandonment of her U.S. domicile. It is settled that RA 9225 treats citizenship independently of residence.[280] It does not provide for a mode of reestablishing domicile and has no effect on the legal residence of those availing of it. "This is only logical and consistent with the general intent of the law for dual citizenship. Since a natural-born Filipino may hold, at the same time, both Philippine and foreign citizenships, he[/she] may establish residence either in the Philippines or in the foreign country of which he[/she] is also a citizen."[281]

A case in point is *Caballero v. Commission on Elections.*[282] In that case, Rogelio Batin Caballero (Caballero) ran for Mayor of Uyugan, Batanes in the May 13, 2013 elections. His rival candidate, however, filed a petition to cancel his CoC on the ground of false representation as Caballero declared in his CoC that he was eligible to run for Mayor despite being a Canadian citizen and not a resident of Uyugan, Batanes for at least one year immediately before the elections. Caballero argued that Uyugan has always been his domicile because he was born and baptized there; that he studied, worked, and built his house in Uyugan; that he was a registered voter of said municipality and used to vote there; and, that he availed herself of RA 9225 on September 13, 2012 and renounced his Canadian citizenship on October 1, 2012.

In denying Caballero's petition, the Court *En Banc* speaking through Justice Diosdado P. Peralta and with no member dissenting, ruled that Caballero's reacquisition of Philippine citizenship under RA 9225 did not enable him to automatically regain his domicile in Uyugan. He must still prove that after reacquiring his Philippine citizenship, he had reestablished his domicile in Uyugan, Batanes for at least one year immediately preceding the May 13, 2013 elections. Thus:

> Petitioner was a natural-born Filipino who was born and raised in Uyugan, Batanes. Thus, it could be said that he had his domicile of origin in Uyugan, Batanes. However, he later worked in Canada and became a Canadian citizen. In *Coquilla v. Comelec*, we ruled that naturalization in a foreign country may result in an abandonment of domicile in the Philippines. This holds true in petitioner's case as permanent residence status in Canada is required for the

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280 *Japzon v. Commission on Elections*, supra note 237 at 367; *Caballero v. Commission on Elections,* supra note 253.

281 *Japzon v. Commission on Elections*, id.

282 Supra note 253.

acquisition of Canadian citizenship. Hence, petitioner had effectively abandoned his domicile in the Philippines and transferred his domicile of choice in Canada. His frequent visits to Uyugan, Batanes during his vacation from work in Canada cannot be considered as waiver of such abandonment.

The next question is what is the effect of petitioner's retention of his Philippine citizenship under RA No. 9225 on his residence or domicile?

In *Japzon v. Comelec*, wherein respondent [Jaime S.] Ty reacquired his Philippine citizenship under RA No. 9225 and [ran] for Mayor of General Macarthur, Eastern Samar and whose residency in the said place was put in issue, we had the occasion to state, thus:

> **[Petitioner's] reacquisition of his Philippine citizenship under Republic Act No. 9225 had no automatic impact or effect on his residence/domicile.** He could still retain his domicile in the USA, and he did not necessarily regain his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines. Ty merely had the option to again establish his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines, said place becoming his new domicile of choice. 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.

Hence, petitioner's retention of his Philippine citizenship under RA No. 9225 did not automatically make him regain his residence in Uyugan, Batanes. He must still prove that after becoming a Philippine citizen on September 13, 2012, he had reestablished Uyugan, Batanes as his new domicile of choice which is reckoned from the time he made it as such.

The COMELEC found that petitioner failed to present competent evidence to prove that he was able to reestablish his residence in Uyugan within a period of one year immediately preceding the May 13, 2013 elections. It found that it was only after reacquiring his Filipino citizenship by virtue of RA No. 9225 on September 13, 2012 that petitioner can rightfully claim that he re-established his domicile in Uyugan, Batanes, if such was accompanied by physical presence thereat, coupled with an actual intent to re-establish his domicile there. However, the period from September 13, 2012 to May 12, 2013 was even less than the one year residency required by law.

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Records indeed showed that petitioner failed to prove that he had been a resident of Uyugan, Batanes for at least one year immediately preceding the day of elections as required under Section 39 of the Local Government Code.[283] (Underlining ours)

Contrary to petitioner's interpretation, we did not reckon the period of residency in *Caballero* from the time Caballero reacquired Philippine citizenship under RA 9225. We there held that since Caballero abandoned his Philippine

[283] *Caballero v. Commission on Elections*, supra note 253.

domicile when he was naturalized abroad, he has to prove that he had reestablished his domicile in Uyugan. He likewise had to prove the date when he reestablished his domicile there for purposes of determining whether he met the one-year residency requirement. However, there being no other evidence showing his intent to reestablish his domicile in the Philippines and abandon his former domicile abroad, and since Caballero took his oath of allegiance under RA 9225 only on September 13, 2012 or less than one year prior to the May 13, 2013 elections, he could no longer possibly prove compliance with the one-year residency requirement.

Similarly, I find no sufficient evidence showing that petitioner intended to reestablish a new domicile in the Philippines prior to taking her Oath of Allegiance on July 7, 2006; as such petitioner still has to prove that after taking said oath she has reestablished the Philippines as her new domicile by demonstrating that her physical presence here is coupled with *animus manendi* and an undeniable and definite intention to abandon her old domicile. However, since petitioner took her Oath of Allegiance in July 2006 and renounced her U.S. citizenship in October 2010, both events having occurred less than 10 years prior to the May 9, 2016 elections, the conclusion becomes inexorable that she could no longer possibly prove compliance with the 10-year residency requirement.

Petitioner's evidence of animus non revertendi; earliest possible date that petitioner's physical presence in the Philippines can be said to be coupled with animus non revertendi.

The element of intention to abandon an old domicile is as important as in the case of acquisition of new domicile.[284] Thus, if a person establishes a new dwelling place, but never abandons the intention of returning to the old dwelling place, the domicile remains at the old dwelling place.[285]

Upon this score, petitioner offered the following pieces of evidence:

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[284] Kossuth Kent Kennan, LL.D., A Treatise on Residence and Domicile, The Lawyers Co-operative Publishing Company, Rochester, N.Y., 1934, § 95 pp. 200-201.

[285] 25 Am Jur 2d § 24, p. 19.

a. the affidavit of her adoptive mother attesting to the reasons which prompted petitioner to leave the U.S. and return permanently to the Philippines;

b. the affidavit of Teodoro Misael Daniel V. Llamanzares, corroborating her adoptive mother's statement and narrating how he and petitioner were actively attending to the logistics of their permanent relocation to the Philippines;

c. the documented communication between petitioner or her husband with the property movers regarding the relocation of their household goods, furniture, and cars from Virginia, U.S.A. to the Philippines;

d. relocation of their household goods, furniture, cars and other personal property from Virginia, U.S.A. to the Philippines which were packed, collected for storage, and transported in February and April 2006;

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

f. their act of selling their family home in the U.S. on April 27, 2006;

g. her husband's resignation from his work in the U.S. in April 2006 and his return to the Philippines on May 4, 2006;

h. Questionnaire – Information for Determining Possible Loss of U.S. Citizenship wherein petitioner indicated that she no longer considered herself a resident of the U.S. since May 2005 until the present.

At first blush, it would seem that petitioner's evidence did tend to prove her claimed intent to abandon her old domicile in the U.S. However, what prevents me from lending unqualified support to this posture is that all these pieces of evidence refer to dates *after* May 24, 2005. Such evidence could not, therefore, be of much help in establishing her claim that she changed domicile as of May 24, 2005.

Furthermore, petitioner's evidence cannot prove *animus non revertendi* prior to her renunciation of her U.S. citizenship on October 20, 2010. This is so because prior thereto, petitioner could return anytime to the U.S., stay there as its citizen and enjoy all the rights, privileges and protection the U.S. government extends to its nationals, including the right to a legal residence. In fact, from May 24, 2005 to October 20, 2010, petitioner did go back to the U.S. no less than five times: February 14, 2006, April 20, 2009, October 19, 2009, December 27, 2009 and March 27, 2010.[286] And when she went to the U.S. on those dates, she used

[286] *Rollo* (G.R. No. 221697), Vol. VI, p. 3830.

her U.S. passport and stayed there not as an alien but as its citizen. It should also be recalled that petitioner and her family still own and maintain two residential houses in the U.S. which they purchased in 1992 and in 2008, or two years after petitioner had taken her oath of allegiance to the Philippines. Hence the only clear and positive proof that petitioner abandoned her U.S. domicile was when she executed her *Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship*[287] on October 20, 2010 because that was the point when she concretized and exteriorized her intention to abandon her U.S. domicile. It is this act that unequivocally and irremissibly sealed off any intent of her retaining her U.S. domicile. Prior to that, it cannot be said that she has complied with the third requirement.

This is not to say that I am adding a fourth requirement for relinquishing foreign citizenship as a condition to reestablishing domicile. My discussion is still premised on compliance with the third requirement of *bona fide* intent to abandon the former domicile. To be sure, petitioner could have established her *animus non revertendi* to the U.S. had she applied for a Philippine resident visa on May 24, 2005 or thereabouts, as earlier discussed. But since she did not, the only fact or circumstance that can be considered as indicative of her clear and positive act of abandoning U.S. domicile was when she renounced her U.S. citizenship. This conclusion is consistent with our ruling in the 2013 case of *Reyes v. Commission on Elections*[288] where this Court, speaking through Justice Jose P. Perez, said:

> As to the issue of residency, proceeding from the finding that petitioner has lost her natural-born status, we quote with approval the ruling of the COMELEC First Division that petitioner cannot be considered a resident of Marinduque:
>
> > "Thus, a Filipino citizen who becomes naturalized elsewhere effectively abandons his domicile of origin. **Upon re-acquisition of Filipino citizenship pursuant to RA 9225, he must still show that he chose to establish his domicile in the Philippines through positive acts, and the period of his residency shall be counted from the time he made it his domicile of choice.**
> >
> > In this case, there is no showing whatsoever that [petitioner] had already re-acquired her Filipino citizenship pursuant to RA 9225 so as to conclude that she has regained her domicile in the Philippines. <u>There being no proof that [petitioner] had renounced her American citizenship, it follows that she has not abandoned her domicile of choice in the USA.</u>
> >
> > The only proof presented by [petitioner] to show that she has met the one-year residency requirement of the law and never abandoned her domicile of origin in Boac, Marinduque is her

[287] *Rollo* (G.R. No. 221697), Vol. I, p. 489.
[288] G.R. No. 207264, June 25, 2013, 699 SCRA 522.

> claim that she served as Provincial Administrator of the province from January 18, 2011 to July 13, 2011. **But such fact alone is not sufficient to prove her one-year residency. For, [petitioner] has never regained her domicile in Marinduque as she remains to be an American citizen. No amount of her stay in the said locality can substitute the fact that she has not abandoned her domicile of choice in the USA."**[289] (Underlining ours)

Against this backdrop, petitioner's evidence relative to *animus non revertendi* becomes irrelevant for such evidence does not at all prove that she had in fact abandoned her U.S. domicile on May 24, 2005. Nonetheless, I still tried to evaluate the pieces of evidence that petitioner had submitted. However, I still find them wanting and insufficient.

As part of the evidence to prove her intent to abandon her old domicile, petitioner puts forward her husband's act of informing the U.S. Postal Service in March 2006 of the abandonment of their former U.S. address. I carefully studied the copy of the online acknowledgement from the U.S. Postal Service regarding this[290] and deduced therefrom that what petitioner's husband did was actually to request the U.S. Postal Service for a change of address and not to notify it of their abandonment of their U.S. address *per se*. At any rate, there was no showing that the change of address was from their old U.S. address to their new Philippine address. And, again, it must be mentioned that this was done only in March 2006.

Likewise submitted to prove *animus non revertendi* was the series of electronic correspondence between petitioner/her husband on one hand, and the Victory Van Corporation (Victory)/National Veterinary Quarantine Service of the Bureau of Animal Industry of the Philippines, on the other, regarding the logistics for the transport of their personal properties and pet dog, respectively, from the U.S. to the Philippines. The first in the series of electronic mails (e-mails) from Victory was dated March 18, 2005.[291] Apparently, the communication was a reply to petitioner's *inquiry* about the rates for the packing, loading and transport of their household goods and two vehicles to Manila. Petitioner's *animus non revertendi* to the U.S. at least as of date of the said e-mail (March 18, 2005) cannot, however, be deduced from her mere act of making such inquiry. It must be stressed that the intent to abandon an old domicile must be established by clear and positive proof.[292] While making such an inquiry may be construed as the initial step to the actual transport or transportation of the goods, that by itself, is short of the clear and positive proof required to establish *animus non revertendi*. At the most, all that can be inferred from the said e-mail is petitioner's mere "interest" at that point but not yet the "intent" or the resolve to have her family's personal properties

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289 Id. at 543.
290 *Rollo* (G.R. No. 221697), Vol. II, pp. 815-816.
291 Id. at 771.
292 *Jalosjos v. Commission on Elections*, supra note 256 at 657.

shipped to the Philippines for purposes of relocation. It is true that petitioner's inquiry led to negotiations between her and/or her husband and Victory until the goods and effects were finally transported to the Philippines starting February 2006 as shown by the succeeding exchange of communication; however, these negotiations, based on the other e-mails submitted, did not start immediately after March 18, 2005 or on or before May 24, 2005. The negotiations only actually started the following year, or in January 2006, months after May 24, 2005. The same is true with respect to the e-mail relative to the transport of their pet dog which bears the date August 3, 2005.

Notably, even petitioner did not reckon this date, March 18, 2005, as the starting point of her *animus non revertendi*. Hence, it could be said that even petitioner herself could not categorically state that by March 18, 2005, she already had the intention to abandon her U.S. domicile.

Petitioner's conduct tending to show animus manendi and animus non revertendi cannot be taken as part of an incremental process of/for changing domicile.

Petitioner invokes the cases of *Mitra* and of *Sabili* where this Court held that relocation to a new domicile is basically an incremental process. Thus, petitioner's counsel maintained during the oral arguments that their evidence consisted of documents that were executed, events that took place, and acts done, after May 24, 2005 precisely because they all form part of a process which began on May 24, 2005 and continued to be in progress thereafter.

Petitioner's case is nowhere nearly congruent to *Mitra* and *Sabili* because in those cases, the evidence of therein petitioners were plainly viewed by the Court as positive acts that formed part of the incremental process of changing domicile. That same perspective cannot, however, be applied to petitioner's case because, unlike in *Mitra* and *Sabili*, her change of domicile, as previously discussed, was inevitably and inextricably intertwined with her citizenship. It bears reiterating that as a naturalized U.S. citizen, petitioner is duty-bound to comply with our immigration laws before her stay in this country could be considered for purposes of the elections. Just because she thought of permanently staying in the Philippines does not mean that upon setting foot on this country she has instantly reestablished domicile here. As an alien wanting to reestablish a domicile here, petitioner must first reacquire Philippine citizenship (or at least ought to have

secured a permanent resident visa) before the totality of her acts or actions tending to show *animus manendi* can be regarded part of an incremental process of establishing domicile. The same is true with respect to *animus non revertendi*: she must have first renounced her U.S. citizenship (or applied for a Philippine immigrant visa).

The records also show that petitioner has not only procrastinated in renouncing her U.S. citizenship; in fact she also did it unwittingly. It should be recalled that the President appointed her Chairperson of the MTRCB on October 6, 2010. At that time, petitioner was still a dual citizen owing allegiance both to the Philippines and to the U.S. Hence she could not accept the said appointment without renouncing her U.S. citizenship first, conformably with Section 5(3) of RA 9225, which reads:

> SEC. 5. *Civil and Political Rights and Liabilities.* – Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:
>
> x x x x
>
> (3) Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: *Provided*, That they renounce their oath of allegiance to the country where they took that oath.

When petitioner thus executed her Affidavit of Renunciation of Allegiance on October 20, 2010, there could be no two opinions about the fact that her primary purpose was to meet the requirement for her appointment as MTRCB Chairperson. This is buttressed by the fact that she assumed office the following day and by the answers she wrote in the Questionnaire/Information for Determining Possible Loss of U.S. Citizenship that she submitted with the Bureau of Consular Affairs of the U.S. Department of State. There she explicitly stated that she was relinquishing her U.S. citizenship because she was appointed Chairperson of the MTRCB and she wanted to comply with both U.S. and Philippine laws. Even then, it bears notice that in that document she made no categorical declaration at all that she was relinquishing her U.S. citizenship to transfer domicile here. In other words, petitioner did not renounce her U.S. citizenship upon her own volition with the deliberate intent or intention of reestablishing legal residence here. It only incidentally arose as an inevitable consequence of her having to comply with the requirements of Section 5(3) of RA 9225. Be that as it may, I consider her act of renouncing her foreign allegiance on October 20, 2010 as amounting to sufficient compliance with the third requirement in reestablishing domicile for it carried with it a waiver of her right to permanently reside in the U.S. Regrettably, this date does not jibe with what petitioner declared in her 2015 CoC for President.

Stronger proof is required in reestablishment of national domicile.

Petitioner protests that in *Perez v. Commission on Elections*[293] and *Jalover v. Osmeña*[294] the candidates were deemed to have transferred their domiciles based on significantly less evidence compared to what she has presented.

But there is a marked distinction between the present case and the cases cited. *Perez* and *Jalover* involved transfer of domicile within the same province or within the confines of our country. In *Perez,* a petition to disqualify Rodolfo E. Aguinaldo (Aguinaldo) as candidate for Congressman of the third district of Cagayan in the May 11, 1998 elections was filed on the ground that he, allegedly, is a resident of Gattaran which is in the first (not third) district of Cagayan. What was in question was Aguinaldo's residence in the third district of Cagayan, his residency in said province having been established beyond doubt. *Jalover*, on the other hand, emanated from a petition to deny due course and/or to cancel John Henry R. Osmeña's (Osmeña) CoC for Mayor of Toledo City on the ground that he made a false declaration in his CoC when he stated that he had been a resident of said city for 15 years prior to the May 13, 2013 elections. Notably, Osmeña previously served as Congressman of the third district of Cebu which includes Toledo City.

The present case, however, involves a personality who formerly abandoned the Philippines as her domicile, and renounced her Philippine citizenship by becoming a naturalized U.S. citizen. Thus, what is involved here is a transfer of domicile from one country to another by a naturalized U.S. citizen. Petitioner now tries to convince this Court that she had abandoned her U.S. domicile and had successfully reestablished her new domicile of choice in this country. To stress, this case involves relocation by an alien of the national domicile from the U.S. to the Philippines, which requires much stronger proof, both as to fact and intent, than in the case of a change of domicile from one municipality, or subordinate subdivision of a country, to another, by a Filipino citizen who never renounced such citizenship.[295] "[I]t requires stronger and more conclusive evidence to justify the court in deciding that a man has acquired a new domicile in a foreign country, than would suffice to warrant the conclusion that he has acquired a new domicile in a country where he is not a foreigner."[296] In *Perez* and *Jalover*, for instance, it was no longer necessary for this Court to determine whether the candidates had

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293 375 Phil. 1106 (1999).

294 G.R. No. 209286, September 23, 2014, 736 SCRA 267.

295 Kossuth Kent Kennan, LL.D., A Treatise on Residence and Domicile, 1934, The Lawyers Co-operative Publishing Company, Rochester, N. Y., § 92, p. 195.

296 Id.

the legal right to permanently reside in their chosen domicile because, being Filipinos, they can reside anywhere in the Philippines. In the case of the herein petitioner, however, it is not only the length of her stay in the Philippines that must be determined, but also the legality and nature thereof for, as heretofore discussed, the period of her physical presence here, as an alien, should not be included in the computation of the length of her residency as the same was temporary in character or not permitted by our immigration laws. Also, while citizenship and residency are different from and independent of each other, one may invariably affect the other. For instance, petitioner had to abandon her Philippine domicile when she applied for U.S. naturalization in 2001. Corollarily, she cannot reestablish domicile here unless she first reacquires her Philippine citizenship (or enter the Philippines as an immigrant). Thus, unlike in *Perez* and *Jalover*, the petitioner in this case has the added burden of proving, among others, the character and legitimacy of her presence here since she earlier abandoned her Filipino citizenship and Philippine domicile to become a U.S. citizen and its domiciliary.

Another important reason for the distinction is that demanded by the purpose of the residency requirement of election laws. Those living in the same province *albeit* in another district as in *Perez* and *Jalover,* can still maintain familiarity with the conditions and needs of nearby communities. They and the people there are exposed to the same environment, speak the same language, are similarly affected by the growth or fluctuation of local economy, and must brave and suffer the same natural calamities. These are beyond the immediate and direct senses and perceptions of foreigners or aliens living abroad.

Likewise misplaced is petitioner's reliance on the cases of *Japzon* and *Rommel Apolinario Jalosjos v. Commission on Elections,*[297] considering that said cases are not on all fours with her case. In said cases, the candidates who were charged with making false material representation in their CoC took their oath of allegiance more than one year before the elections, thereby making it possible for them to prove compliance with the one-year residency requirement of the Local Government Code. Thus, in *Japzon*, Jaime S. Ty reacquired his Philippine citizenship under RA 9225 on October 2, 2005 and ran for Mayor of General Macarthur, Eastern Samar in the May 14, 2007 election. While Rommel Apolinario Jalosjos reacquired his Philippine citizenship under RA 9225 on November 26, 2008, or four days after arrival in the Philippines, and ran for Governor of Zamboanga Sibugay in the May 10, 2010 elections.

In the case of petitioner, however, she took her oath of allegiance only on July 7, 2006. Therefore, she could not possibly prove that she has been residing in the Philippines for at least 10 years immediately preceding the May 9, 2016 elections. July 7, 2006 to May 9, 2016 is about two months short of 10 years.

[297] 686 Phil. 563 (2012).

Under these circumstances, the entry in petitioner's 2015 CoC for President that her period of residency in the Philippines as of May 9, 2016 is 10 years and 11 months is, false, as indeed it is.

C. Petitioner's deliberate attempt to deceive, mislead, misinform, or hide a fact which would otherwise render her ineligible to run for the position of President

It was pointed out to petitioner as early as June 2015 that the period of residence she entered in her 2012 CoC was six years and six months before May 13, 2013. Notwithstanding that her attention was called to such fact, petitioner never bothered to correct her 2012 CoC. Instead, she filed her 2015 CoC for President declaring therein a period of residency that is markedly different from and does not jibe with what she declared under oath in her 2012 CoC.

Petitioner then proceeded to make the point that the declaration about her period of residence in her 2015 CoC is correct. Explaining the discrepancy between her 2012 and 2015 CoCs, she asserts that her entry of six years and six months in her 2012 CoC was the result of an honest mistake. She claims that she accomplished her 2012 CoC without the assistance of counsel and that she did not know that what was required by the phrase "Period of Residence in the Philippines before May 13, 2013" is the period of her residence on the day right before the May 13, 2013 elections; that instead, she interpreted it to mean as her period of residence in the Philippines as of her filing of the 2012 CoC on October 2, 2012, which technically is also a period "before May 13, 2013." To convince the Court that the aforementioned phrase is susceptible of causing confusion, petitioner calls attention to the fact that the Comelec, after apparently realizing the same, had revised the CoC forms for the May 9, 2016 elections. The amended phrase which can now be found under Item No. 7 of the latest CoC form reads as follows:

> PERIOD OF RESIDENCE IN THE PHILIPPINES <u>*UP TO THE DAY*</u> BEFORE MAY 09, 2016:

I am not persuaded.

The import of the phrase "Period of Residence in the Philippines before May 13, 2013" as found in petitioner's 2012 CoC is too plain to be mistaken and too categorical to be misinterpreted. As can be observed, a fixed date was given as a reference point, *i.e.*, May 13, 2013. Indeed, even an average person would be able to tell that what comes before May 13, 2013 is May 12, 2013. From a plain

reading of the said phrase, therefore, it can readily be discerned or understood that what was being required by Item No. 11 is a candidate's period of residence in the Philippines until May 12, 2013.

To argue that any period which is not until May 12, 2013 but prior to May 13, 2013 is technically still a period "before May 13, 2013" is like clutching at straws. To an astute political aspirant like petitioner, filing a CoC necessarily presupposes knowledge on her part of the qualifications required by the office where she seeks to be elected. After all, it is presumed that a person takes ordinary care of his or her concerns.[298] For a senatorial candidate, the required qualifications are found under Section 3, Article VI of the Constitution which provides, *viz.*:

> *Section 3.* No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and **a resident of the Philippines for not less than two years immediately preceding the day of the election.** (Emphasis supplied)

Thus, read in the light of the other material entries required in the 2012 CoC for Senator such as Age (Item No. 14), the fact of being a Natural-born Filipino Citizen (Item No. 8) and, of being a Registered Voter (Item No. 19), it is obvious that what the form was trying to elicit were a senatorial candidate's qualifications in accordance with the above-quoted constitutional provision. And assuming that the phrase "Period of Residence in the Philippines before May 13, 2013" is indeed susceptible of causing confusion as to until what period before May 13, 2013 was being asked, such confusion can easily be dispelled by a quick reference to the constitutional provision which states in no uncertain terms that a Senator must be a resident of the Philippines for not less than two years **immediately preceding the day of the election.** Under this premise, the only logical interpretation that should have been available to petitioner at the time she was filling out her 2012 CoC is that what was required by Item No. 11 – the period of her residence in the Philippines as of the day immediately preceding May 13, 2013, which is May 12, 2013.

Totally unacceptable is the assertion that the change in the wording of the item respecting the period of residence as found in the latest CoC form is an acknowledgment by the Comelec that the previous version is indeed unclear. The change is a mere semantic exercise devoid of any serious significance.

Petitioner's personal circumstances and those surrounding the filing of her 2012 CoC provide little solace to her claim of honest mistake. As petitioner alleges, she pursued a college degree in Development Studies in one of the

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[298] RULES OF COURT, Rule 131, Section 3(d).

country's premiere universities – the University of the Philippines in Manila. In 1988, she went to Boston College in the U.S. where, as can reasonably be expected, she learned concepts on politics after graduating with a degree of Bachelor of Arts in Political Studies. When she filed her 2012 CoC, she was not technically a neophyte in the Philippine political arena, she having been on her adoptive father's side during the campaign for his presidential bid in 2004. At that time, she was, for two years, at the helm of MTRCB where her duties impacted not only media and entertainment culture but also society at large. Being the educated woman that she is, coupled by her brief but memorable stint in politics and relevant government experience, I find it hard to believe that she misinterpreted the clear and simple import of the phrase "Period of Residence in the Philippines before May 13, 2013" as pertaining to her period of residence in the Philippines as of the submission of her 2012 CoC on October 2, 2012. To repeat, the phrase is too plain to be mistaken and too categorical to be misinterpreted, more especially by one of her educational and professional stature.

That petitioner was not assisted by counsel when she accomplished her 2012 CoC is of no moment. For one, the plain and simple language used in the subject CoC form does not require a legal mind to be understood. For another, it was not as if petitioner had no choice but to accomplish the subject CoC without the assistance of counsel. Her own allegations revealed that she accomplished her 2012 CoC on September 27, 2012 and that she only filed the same five days thereafter or on October 2, 2012.[299] This shows that petitioner had had ample time not only to reflect on the declarations she made in her 2012 CoC, but also to consult a lawyer regarding the entries that she provided therein should there be matters which were indeed unclear to her. After all, she is not expected to have simply taken the filling out of her CoC lightly since aside from its being a sworn document, a CoC is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack thereof.[300] It is a statement by a person seeking to run for a public office certifying that he/she announces his/her candidacy for the office mentioned and that he/she is eligible for that office.[301] Indeed, a valid CoC, much like the sacred ballot that a voter casts in a free and honest elections, is the bedrock of the electoral process. Its execution or accomplishment cannot be taken lightly, because it mirrors the character and integrity of the candidate who executes or accomplishes it – that candidate's uncompromising fidelity to truth and rectitude. Yes, indeed, especially if that candidate is aspiring to be elected to the highest office in the land: the Presidency, from whom only the best and finest attributes of the truly Filipino character, intellect, patriotism, allegiance and loyalty are sought after and expected. Verily, this explains why the law provides for grounds for the cancellation and denial of due course to CoC.[302] Here it appears, however, petitioner's actions evinced unusual regrettable tendency to becloud plain and simple truth concerning such

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299 *Rollo* (G.R. No. 221697), Vol. I, p. 27.
300 *Sinaca v. Mula*, 373 Phil. 896, 908 (1999).
301 Id.
302 *Miranda v. Abaya*, 370 Phil. 642, 658 (1999).

commonplace things as the real time-stretch of her residence in this country. Petitioner chose not to secure a resident visa. She therefore knew that prior to her taking her oath of allegiance to the Republic and her abandoning her U.S. domicile, her stay here was merely temporary. This presumed knowledge is imposed upon every individual by Article 3 of the Civil Code which states that "[i]gnorance of the law excuses no one from compliance therewith."

Notably, when one runs for an elective public office, it is imperative to first know the qualifications required of the office and then to assess whether such qualifications have been met. Hence, petitioner is reasonably expected to know the requirements of the office she is running for, and to determine whether she satisfactorily meets those requirements. One cannot just aspire to occupy a position without making some self-examination whether he/she is qualified. In petitioner's case, precisely because her adoptive father's qualifications were then under question when he ran for President in 2004, then there is more reason for petitioner to carefully evaluate and assess her eligibility and qualifications so that she would not be trapped into the same quagmire her adoptive father fell into.

Petitioner invokes the case of *Marcos*. There, petitioner Imelda, in her CoC for Representative of the First District of Leyte for the May 8, 1995 elections, initially answered "*seven*" months on the space requiring information on her "residence in the constituency where she seeks to be elected immediately preceding the election." A couple of weeks after her filing of the said CoC and also following the initiation by her then would-be opponent Cirilo Roy Montejo (Montejo) of a Petition for Cancellation and Disqualification before the Comelec, Imelda sought to correct the said entry by changing it from "*seven*" to "*since childhood*" through an Amended/Corrected CoC. During the proceedings relative to the said petition, Imelda averred that the entry of the word "*seven*" in her original CoC was the result of an "honest misinterpretation" which she sought to rectify by adding the words "since childhood" in her Amended/Corrected CoC. Although debunked by the Comelec, Imelda's claim of honest representation was upheld when the case eventually reached the Court.

To be sure, petitioner cannot rely on *Marcos* to support her claim of honest mistake. There, what prompted Imelda to jot down the questioned entry in her CoC was the confusion caused by the attendant circumstances, *viz.*:

> [W]hen herein petitioner announced that she would be registering in Tacloban City to make her eligible to run in the First District, private respondent Montejo opposed the same, claiming that petitioner was a resident of Tolosa, not Tacloban City. Petitioner then registered in her place of actual residence in the First District, which was Tolosa, Leyte, a fact which she subsequently noted down in her Certificate of Candidacy. A close look at said certificate would reveal the possible source of the confusion: the entry for residence (Item No. 7) is followed immediately by the entry for residence in the constituency where a candidate seeks election thus:

> 7. RESIDENCE (complete Address): *Brgy. Olot, Tolosa, Leyte*
>
> POST OFFICE ADDRESS FOR ELECTION PURPOSES: *Brgy. Olot, Tolosa, Leyte*
>
> 8. RESIDENCE IN THE CONSTITUENCY WHERE I SEEK TO BE ELECTED IMMEDIATELY PRECEDING THE ELECTION: _____ Years and *Seven* Months
>
> Having been forced by private respondent [Montejo] to register in her place of actual residence in Leyte instead of petitioner's claimed domicile, it appears that petitioner had jotted down her period of stay in her actual residence in a space which required her period of stay in her legal residence or domicile. The juxtaposition of entries in Item 7 and Item 8 – the first requiring actual residence and the second requiring domicile – coupled with the circumstances surrounding petitioner's registration as a voter in Tolosa obviously led to her writing down an unintended entry for which she could be disqualified.[303]

It was under the said factual milieu that this Court held that Imelda committed an honest mistake when she entered the word "*seven*" in the space for residence in the constituency where she seeks to be elected immediately preceding the election. In the case of petitioner, no analogous circumstance exists as to justify giving similar credit to her defense of honest mistake. No seemingly related item was juxtaposed to Item No. 11 of the 2012 COC as to cause confusion to petitioner. And as earlier discussed, Item No. 11 is clear and simple as to its meaning and import. More important, the question raised in *Marcos* was Imelda's lack of eligibility to run because she failed to comply with residency requirement. In contrast, the question raised in petitioner's case is her false material representations in the entries she made in her 2015 CoC. We also hasten to add that as correctly discerned by respondent Contreras:

> And unlike the petitioner in *Romualdez Marcos* whose false entry in her COC would disqualify her even as the correct period satisfies the requirement by law and would therefore render her qualified to become a member of the House of Representatives, the false entry in herein petitioner's COC would allow her to be qualified even as the true period of legal residence is deficient according to law and would render her unqualified for the position of President.[304]

It is in this context that I cannot accept petitioner's claim of honest mistake.

True, petitioner did try to correct her alleged mistakes through her public statements. But since her defense of honest mistake is now debunked, this becomes irrelevant. Besides, I cannot help but conclude that these public statements were for the purpose of representing to the general public that petitioner is eligible to run for President since they were made at a time when she was

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303 Id. at 381.

304 *Rollo* (G.R. Nos. 221698-700), Vol. VI, p. 3726.

already contemplating on running for the position. They were not made at the earliest opportunity before the proper forum. These statements could even be interpreted as part of petitioner's continuing misrepresentation regarding her qualification and eligibility to run as President.

Based on the foregoing, it is my conclusion that petitioner knowingly made a false material representation in her 2015 CoC sufficient to mislead the electorate into believing that she is eligible and qualified to become a President.

No grave abuse of discretion on the part of the Comelec in denying due course to and/or cancelling petitioner's 2015 CoC based on petitioner's material misrepresentation as to her period of residence in the Philippines.

In sum, I find that the Comelec committed no grave abuse of discretion, amounting to lack or excess of jurisdiction, in taking cognizance of the petitions and in denying due course to and cancelling petitioner's 2015 CoC. To my mind, it properly exercised its power to determine whether a candidate's CoC contains false material representation; its resolution was anchored on settled jurisprudence and fair appreciation of facts; and it accorded the parties ample opportunity to be heard and to present evidence. Conversely stated, it is my opinion that the Comelec did not usurp the jurisdiction of the SET, or the PET, or the DOJ or any other tribunal; it did not disregard or contravene settled jurisprudence; and it did not violate the parties' right to due process. Thus, I find that petitioner miserably failed to hurdle the bar set by this Court in *Sabili*, that is, to prove that the Comelec was *so grossly unreasonable* in its appreciation and evaluation of evidence as to amount to an error of jurisdiction. Petitioner miserably fell short of portraying that the Comelec had whimsically, arbitrarily, capriciously and despotically exercised its judgment as to amount to grave abuse of discretion.

Citizenship

Considering the conclusion I have reached relative to petitioner's material misrepresentation regarding her period of residence in the Philippines, and considering further that based even only thereon, her 2015 CoC should be cancelled and denied due course, I deem it wise and prudent to withhold passing judgment at this time regarding petitioner's citizenship. Indeed, it is tempting to seize this opportunity to sit in judgment on the issue of citizenship, which has generated so much attention, invited heated and vigorous discussion, and evoked heightened emotions; not only that, the issue at hand is novel and of first impression. However, a loftier interest dictates that we take pause and exhaust all possible avenues and opportunities to study the issue more dispassionately. After

all, any judgment at this time upon this issue might directly impact on G.R. No. 221538 *(Rizalito Y. David v. Senate Electoral Tribunal)*, which is a *Quo Warranto* case seeking the removal of petitioner as a Senator of the Philippines wherein her natural-born citizenship status is directly assailed.

I believe that the resolution of the issue on petitioner's citizenship must be carefully studied and deliberated upon. I venture to say that we may not only be dealing with foundlings *per se*. Any hasty or ill-considered ruling on this issue could open the floodgates to abuse by certain groups and individuals looking only after their own interest to the prejudice and undoing of our motherland. Non-Filipinos might use the ruling to advance their vested interests by simply posing as foundlings so that they would be presumed or cloaked with natural-born citizenship. They could use this as an avenue to obtain Filipino citizenship or natural-born status which they could not ordinarily gain through ordinary naturalization proceedings. I am not pretending to be a doomsayer, far from it, but I prefer to tread carefully. After all, it is no less than the supremely precious interest of our country that we wish both to defend and to protect. Our country must not only be defended and protected against outside invasion, it must also be secured and safeguarded from any internal threat against its sovereignty and security. I do not want to wake up someday and see my beloved country teeming with foreigners and aliens posing as natural-born Filipinos while the real natives are thrown into oblivion or relegated second or third class citizens who have become strangers in their own homeland. My objective is only to secure, protect and defend the Philippines from being ruled by non-Filipinos. This Court should stand firm on its own bearing and not allow itself to be swept by the tides of sentimentality and emotion. The Filipino people expect no less from us but to carefully, deliberately, objectively and dispassionately resolve the issue with national interest utmost in our heart and mind.

But there is more. For no less consequential is the Doctrine of Constitutional Avoidance, under which this Court may choose to ignore or side-step a constitutional question if there is some other ground upon which the case can be disposed of.[305] Such is the situation in this case.

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[305] Dissenting Opinion of former Chief Justice Panganiban in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 630 (2004), reads:

> In the United States more than sixty years ago, Justice Brandeis delineated the famous canons of avoidance under which their Supreme Court had refrained from passing upon constitutional questions. One such canon is that the Court must "*not anticipate a question of constitutional law in advance of the necessity of deciding it x x x. It is not the habit of the Court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case.*" In addition, the Court must not "*pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.*"
>
> Applying to this case the contours of constitutional avoidance Brandeis brilliantly summarized, this Court may choose to ignore the constitutional question presented by petitioner, since there is indeed some other ground upon which this case can be disposed of -- *its clear lack of urgency, by reason of which Congress should be allowed to do its primary task of reviewing and possibly amending the law.*

It is not improbable, of course, that petitioner was born to Filipino parents; yet the fact remains that their identities are unknown. In short, petitioner's citizenship is uncertain. Thus, I feel that we should not overlook altogether her much publicized efforts to obtain deoxyribonucleic acid (DNA) evidence to prove her genealogy. She could use this breather to gather such evidence. Petitioner surely has biological parents. It is indeed surprising that these parents, or any close relatives, have not come forward to claim their ties to someone so highly respected and so well recognized as one of the worthy leaders of the country. While it defies human nature to resist the natural impulse to claim one's own child, the sad reality is that there are still many parents who abandon their child, depriving said child not only of parental love and care, but also identity and pedigree. Every opportunity should thus be given to the innocent child to trace his/her parentage and determine compliance with the Constitution. This opportunity and this privilege should not be time-bound, and should be afforded to every foundling at any stage of his/her life. Thus, even if the Court rules on her citizenship now, that ruling can be changed or altered any time when there is certainty or definiteness about her biological lineage because there is generally no *res judicata* in matters of citizenship. As the Court has declared in *Moy Ya Lim Yao v. Commissioner of Immigration*,[306] whenever the citizenship of a person is material or indispensable in a judicial or administrative case, the ruling therein as to the person's citizenship is generally not considered as *res judicata*. Thus, it may be threshed out again and again as the occasion demands,[307] stock being taken of the fact that the requisites enumerated in *In re Petition for Naturalization of Zita Ngo Burca v. Republic*,[308] reiterated in *Go, Sr. v. Ramos*,[309] are all present.

According unto petitioner ample opportunity to trace her genealogy is also better than a) creating a presumption that she is a natural-born citizen or fashioning a new specie/category of citizenship based on statistical probabilities; or b) denying her claim of citizenship outright. Aliens with known parents may just take advantage of such presumption by representing themselves as foundlings if only to be entitled to purchase real property, engage in nationalized business, or even run for public office where a natural-born status is required. On the other hand, we might unwittingly deny petitioner her rightful citizenship which she could very well establish via the exertion or employment of more deliberate, vigorous, and sustained efforts.

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306 Supra note 217 at 855.

307 Id.

308 151-A Phil. 720. It was held that:
[W]here the citizenship of a party in a case is definitely resolved by a court or by an administrative agency, as a material issue in the controversy, after a full-blown hearing, with the active participation of the Solicitor General or his authorized representative, and this finding on the citizenship of the party is affirmed by this Court, the decision on the matter shall constitute conclusive proof of such person's citizenship, in any other case or proceeding. But it is made clear that in no instance will a decision on the question of citizenship in such cases be considered conclusive or binding in any other case or proceeding, unless obtained in accordance with the procedure herein stated. (Id. at , 730-731.)

309 Supra note 218.

Indeed, it is imperative for the Court to carefully tread on the issue of citizenship. As petitioner postulates in her Petitions, "[w]hat is at stake in this case is not only a foundling's right to run for high public offices, but the enjoyment of a host of even seemingly ordinary rights or positions which our laws reserve only for natural-born citizens."[310] After all, the issue of citizenship impacts not solely on petitioner but also on those similarly situated like her; it also involves the sovereignty and security of our country. We must not lose sight of the fact that the citizens of the country are the living soul and spirit of the nation, and the very reason and justification for its existence and its preservation. Our rights, prerogatives and privileges as Filipino citizens are the bedrock of our Constitution.

In ending, I wish to reiterate the very precept and principle that is at once the capstone and the polestar that had guided the undersigned in drafting his opinion in this landmark case: this statement from the December 1, 2015 Resolution of the Comelec's Second Division in SPA No. 15-001 (DC): "A person who aspires to occupy the highest position in the land must obey the highest law of the land."

This is as it should be.

For the foregoing reasons, I vote to **DISMISS** the petitions.

MARIANO C. DEL CASTILLO
Associate Justice

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[310] *Rollo* (G.R. No. 221697), Vol. I, p. 7.