G.R. No. 221697 - ***Mary Grace Natividad S. Poe-Llamanzares v. Commission on Elections (COMELEC) and Estrella C. Elamparo;***
G.R. Nos. 221698-700 - ***Mary Grace Natividad S. Poe-Llamanzares v. Commission on Elections, Francisco S. Tatad, Antonio P. Contreras and Amado D. Valdez***

Promulgated:

March 8, 2016

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CONCURRING OPINION

SERENO, ***CJ:***

It is important for every Member of this Court to be and to remain professionally indifferent to the outcome of the 2016 presidential election. Whether it turns out to be for a candidate who best represents one's personal aspirations for the country or who raises one's fears, is a future event we must be blind to while we sit as magistrates. We are not the electorate, and at this particular juncture of history, our only role is to adjudicate as our unfettered conscience dictates. We have no master but the law, no drumbeater but reason, and in our hearts must lie only the love for truth and for justice. This is what the Constitution requires of us.

It is *apropos* at this point to recall the principles that Justice Angelina Sandoval-Gutierrez evoked in her concurring opinion in *Tecson v. COMELEC*,[1] the landmark case involving as respondent a presidential candidate for 2014, the late Ronald Allan Kelly-Poe:

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> **Let it not be forgotten that the historic core of our democratic system is political liberty, which is the right and opportunity to choose those who will lead the governed with their consent. This right to choose cannot be subtly interfered with through the elimination of the electoral choice.** The present bid to disqualify respondent Poe from the presidential race is a clear attempt to eliminate him as one of the choices. This Court should resist such attempt. **The right to choose is the single factor that controls the ambitions of those who would impose through force or stealth their will on the majority of citizens.** We should not only welcome electoral competition, we should cherish it. Disqualifying a candidate, particularly the popular one, on the basis of doubtful claims does not result to a genuine, free and fair election. It results to violence. x x x. We have seen Edsa I and Edsa II, thus, we know that when democracy operates as intended, an aroused public can replace those who govern in a manner beyond the parameters established by public consent.[2]

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[1] 468 Phil. 421 (2004).
[2] Id. at 490.

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> When the people vote on May 10 and cast their ballots for President, they will be exercising a sovereign right. They may vote for respondent Poe, or they may not. When they vote, they will consider a myriad of issues, some relevant, others trivial, including the eligibility of the candidates, their qualities of leadership, their honesty and sincerity, perhaps including their legitimacy. That is their prerogative. After the election, and only after, and that is what the Constitution mandates, the election of whoever is proclaimed winner may be challenged in an election contest or a petition for *quo warranto*. Where the challenge is because of ineligibility, he will be ousted only if this Court exerts utmost effort to resolve the issue in a manner that would give effect to the will of the majority, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority.[3]

That is what the COMELEC rulings in these cases would have precisely accomplished had they been affirmed: the illegitimate elimination of an electoral choice, a choice who appears to be one of the frontrunners in all the relevant surveys. For the reasons set forth below, I concur with Justice Jose Portugal Perez, and am herein expounding in detail the reasons for such concurrence.

With the majority of the Members of the Court declaring, by a vote of 9 as against 6, that petitioner Mary Grace Poe-Llamanzares has no legal impediment to run for the presidency, it is most unfortunate that one of the Dissenting Opinions opens with a statement that tries to cast uncertainty on an already tense situation. The dissent gives excessive weight to the fact that there are 5 Justices in the minority who believe that petitioner does not have the qualifications for presidency, while ignoring the reality that there at least 7 Justices who believe that petitioner possesses these qualifications.

Note that the *fallo* needed only to dispose of the grant or denial of the petitions and nothing more. Ideally, no further interpretation of the votes should have been made. Unfortunately, there are attempts to make such an interpretation. We therefore need to look to our internal rules for clarification on the matter to avoid exacerbating matters.

If we were to apply the rules on voting in the Internal Rules of the Supreme Court, it is clear that the Court decided on the matter of petitioner's intrinsic qualifications in accordance with Rule 12, Section 1 of these rules:

> **Section 1.***Voting requirements.* – (a) All decisions and actions in Court *en banc* cases shall be made up upon the concurrence of the majority of the Members of the Court who actually took part in the deliberation on the issues or issues involved and voted on them.

Out of the 12 Members who voted on the substantive question on citizenship, a clear majority of 7 voted in favor of petitioner. As to residency, 7 out of 13 voted that petitioner complied with the 10-year

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[3] Id. at 494.

residency requirement. These votes, as explained in the extended opinions submitted by the members of the majority, must be respected. Granting therefore that we need to address the question of substantive qualifications of petitioner, she clearly possesses the qualifications for presidency on the matter of residency and citizenship.

I.
The Proceedings Before the Court

On 28 December 2015, petitioner filed two separate Petitions for Certiorari before this Court assailing the Resolutions dated 23 December 2015 of the COMELEC En Banc, which ordered the cancellation of her Certificate of Candidacy (CoC) for the 2016 presidential elections.[4] Both petitions included a prayer for the issuance of Temporary Restraining Orders (TRO) against the COMELEC.

In the afternoon of 28 December 2015, by my authority as Chief Justice and upon the written recommendation of the Members-in-Charge, the Court issued two separate orders enjoining COMELEC and its representatives from implementing the assailed Resolutions, pursuant to Section 6(g), Rule 7 of the Supreme Court Internal Rules.[5]

The issuance of the TROs was confirmed by the Court En Banc, voting 12-3, in Resolutions dated 12 January 2016. In the same resolutions, the Court ordered the consolidation of the two petitions.

Oral arguments were then held on the following dates: January 19 and 26; February 2, 9 and 16, 2016. During these proceedings, the parties were ordered in open court to submit their Memoranda within five days from the conclusion of the oral arguments, after which the consolidated petitions would be deemed submitted for resolution.

On 29 February 2016, the draft report of the Member-in-Charge was circulated to the Members of the Court. The Court then decided to schedule the deliberations on the case on 8 March 2016. A reserved date – 9 March 2016 – was also agreed upon, in the event that a decision is not reached during the 8 March 2016 session.

In keeping with the above schedule, the Members of the Court deliberated and voted on the case on 8 March 2016.

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[4] The petition docketed as G.R. No. 221697 assailed the COMELEC En Banc Resolution dated 23 December 2015 in SPA No. 15-001 (DC) denying petitioner's motion for reconsideration of the COMELEC Second Division Resolution dated 1 December 2015. On the other hand, the petition docketed as G.R. No. 221698-700 assails the COMELEC En Banc Resolution dated 23 December 2015 in the consolidated cases docketed as SPA Nos. 15-002 (DC), 15-007 (DC) and 15-139 (DC). The COMELEC En Banc denied petitioner's motion for reconsideration of the COMELEC First Division Resolution dated 11 December 2015.

[5] This provision states: "When the Court in recess and the urgency of the case requires immediate action, the Clerk of Court or the Division Clerk of Court shall personally transmit the *rollo* to the Chief Justice or the Division Chairperson for his or her action."

II.

COMELEC exceeded its jurisdiction when it ruled on petitioner's qualifications under Section 78 of the Omnibus Election Code.

The brief reasons why the COMELEC exceeded its jurisdiction when it ruled on petitioner's qualifications are as follows.

First, Section 78 of *Batas Pambansa Bilang* 118, or the Omnibus Election Code (OEC), does not allow the COMELEC to rule on the qualifications of candidates. Its power to cancel a Certificate of Candidacy (CoC) is circumscribed within the confines of Section 78 of the OEC that provides for a summary proceeding to determine the existence of the exclusive ground that any representation made by the candidate regarding a Section 74 matter was false. Section 74 requires, among others a statement by the candidate on his eligibility for office. To authorize the COMELEC to go beyond its mandate and rule on the intrinsic qualification of petitioner, and henceforth, of every candidate, is an outcome clearly prohibited by the Constitution and by the OEC.

Second, even assuming that the COMELEC may go beyond the determination of patent falsity of the CoC, its decision to cancel petitioner's CoC must still be reversed. The factual circumstances surrounding petitioner's claims of residency and citizenship show that there was neither intent to deceive nor false representation on her part. Worse, the COMELEC's unmerited use of this Court's dissenting opinions as if they were pronouncements of the Court itself[6] misleads both the Court and the public, as it evinces a refusal to acknowledge a dissent's proper place – not as law, but as the personal views of an individual member of this Court. Most egregiously, the COMELEC blatantly disregarded a long line of decisions by this Court to come up with its conclusions.

The Power of the COMELEC Prior to Section 78 of the Omnibus Election Code

Prior to the OEC, the power of the COMELEC in relation to the filing of CoCs had been described as ministerial and administrative.[7] In 1985, the OEC was passed, empowering the COMELEC to grant or deny due course to a petition to cancel a CoC. The right to file a verified petition under Section 78 was given to any person on the ground of material representation of the contents of the CoC as provided for under Section 74. Among the statements a candidate is required to make in the CoC, is that he or she is eligible for the office the candidate seeks.

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[6] For instance, see the COMELEC's use of a dissent in *Tecson v. COMELEC*, Omnibus Resolution dated 11 December 2015, pp. 24, 46.

[7] *Sanchez v. Rosario,* 111 Phil. 733 (1961), *citing Abcede v. Imperial* 103 Phil. 136-145 (1958).

The fundamental requirements for electoral office are found in the Constitution. With respect to the petitions at hand, these are the natural-born Filipino citizenship and the 10-year residency requirements for President found under Section 2, Article VII in relation to Section 1, Article IV of the Constitution.

In the deliberations of the *Batasang Pambansa* on what would turn out to be Section 78 of the Omnibus Election Code or *Batas Pambansa Bilang* (BP) 881, the lawmakers emphasized that **the fear of partisanship on the part of the COMELEC makes it imperative that it must only be for the strongest of reasons, i.e., material misrepresentation on the face of the CoC, that the COMELEC can reject any such certificates. Otherwise, to allow greater power than the quasi-ministerial duty of accepting facially compliant CoCs would open the door for COMELEC to engage in partisanship; the COMELEC may target any candidate at will.** The fear was so real to the lawmakers that they characterized the power to receive CoCs not only as summary, but initially as, "ministerial." Allow me to quote:

> HON. ADAZA. Why should we give the Comelec power to deny or to give due course when the acceptance of the certificate of candidacy is ministerial?
>
> HON. FERNAN. *Iyon na nga ang sinasabi ko eh.*
>
> THE CHAIRMAN. *Baka iyong* residences, this must be summary. He is not a resident of the *ano*, why will you wait? Automatically disqualified *siya*. Suppose he is not a natural born citizen.
>
> HON. ADAZA. No, but we can specify the grounds here. *Kasi*, they can use this power to expand.
>
> THE CHAIRMAN. Yeah, that is under this article *nga*.
>
> HON. ADAZA. *Iyon na nga*, but let's make particular reference. Remember, Nonoy, this is a new provision which gives authority to the Comelec. This was never there before. *Ikansel na natin yan.*
>
> HON. GONZALES. *At saka* the Constitution says, *di ba*? "The Commission on Election is the sole judge of all the contest." This merely refers to contest e. Petition *lang* to give due course e. You will only be declared disqualified.
>
> THE CHAIRMAN. No, no, because, clearly, he is a non-resident. Oh, why can we not file a petition? Supposing he is not a natural born citizen? Why?
>
> HON. GONZALES. This is a very very serious question. This should be declared only in proper election contest, properly litigated but never in a summary proceedings.

THE CHAIRMAN. We will not use the word, the phrase "due course", "seeking the cancellation of the Certificate of Candidacy". For example, *si* Ading, is a resident of Cebu and he runs in Davao City.

HON. ADAZA. He is a resident of Cebu but he runs in Lapu-Lapu? *Ikaw*, you are already threatening him *ah*.

THE CHAIRMAN. These are the cases I am sure, that are …

HON. ADAZA. I see. No, no, but let us get rid of the provision. This is dangerous.

THE CHAIRMAN. No but, if you know that your opponent is not elected or suppose…

HON. ADAZA. File the proper petition like before without providing this.

THE CHAIRMAN. But in the mean time, why…

HON. SITOY. My proposal is to delete the phrase "to deny due course", go direct to "seeking the cancellation of the Certificate of Candidacy."

HON. ASOK. Every Certificate of Candidacy should be presumed accepted. It should be presumed accepted.

THE CHAIRMAN. Suppose on the basis of…

HON. SITOY. That's why, my proposal is, "any person seeking the cancellation of a Certificate of Candidacy".

HON. FERNAN. But where are the grounds here?

HON. ADAZA. Noy, let's hold this. Hold *muna ito*. This is dangerous e.

THE CHAIRMAN. Okay, okay.

HON. GONZALES. Ginagamit lamang ng Comelec ang "before" if it is claimed that a candidate is an official or that his Certificate of Candidacy has been filed in bad faith, *iyon lang. Pero* you cannot go to the intrinsic qualifications and disqualifications of candidates.

HON. DELOS REYES. Which are taken up in an ordinary protest.

HON. GONZALES. *Dito ba, kasama iyong* proceedings *sa*…? What I'm saying is: *Kagaya iyong nabanggit kay* Nonoy, natural course of margin, imagine, it will eventually reach the Supreme Court. The moment that the disqualification is pending, *lalong lalo na kung may* decision *ng* Comelec and yet pending *pa* before the Supreme Court, that already adversely affect a candidate, *mabigat na iyan*. So, what I'm saying is, on this disqualification sub-judice, *alisin ito* except if on the ground that he is a nuisance candidate or that his Certificate of Candidacy has been filed in bad faith. But if his Certificate of Candidacy appears to be regular and valid on the basis that his certificate has been filed on time, then it should be given due couse.[8]

[8] Deliberations of the Committee: *Ad Hoc*, Revision of Laws, 20 May 1985, pp. 65-68.

The same concerns were raised when the provision was taken up again:

> THE PRESIDING OFFICER. No. 10, the power of the Commission to deny due course to or cancel a certificate of candidacy. What is the specific *ano*, Tessie?
>
> HON. ADAZA. Page 45.
>
> THE PRESIDING OFFICER. Section 71.
>
> HON. ADAZA. *Kasi kay* Neptali *ito* and it is also contained in our previous proposal, "Any person seeking to deny due course to or cancel…" our proposal here is that it should not be made to appear that the Commission on Elections has the authority to deny due course to or cancel the certificate of candidacy. I mean their duty should be ministerial, the acceptance, except in cases where they are nuisance candidates.
>
> THE PRESIDING OFFICER. In case of nuisance, who will determine, *hindi ba* Comelec *iyan*?
>
> HON. ADAZA. *Iyon na nga*, except in those cases, *eh. Ito*, this covers a provision not only in reference to nuisance candidates.
>
> HON. CUENCO. Will you read the provision?
>
> HON. ADAZA. "Any person seeking due course to or the cancellation…" because our position here is that these are matters that should be contained in an election protest or in a *quo warranto* proceedings, eh. You know, you can be given a lot of problems in the course of the campaign.
>
> HON. ASOK. But we already have a specific provision on this.
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> HON. ADAZA. (MP Adaza reading the provision.) You know, we should not have this as a provision anymore because whatever matters will be raised respecting this certificate of candidacy, these are normal issues for protest or *quo warranto*, *eh.*
>
> HON. CUENCO. So you now want to remove this power from the Comelec?
>
> HON. ADAZA. This power from the Comelec. This is the new provision, *eh.* They should not have this. All of us can be bothered, *eh.*
>
> HON. CUENCO. So in that case how can the Comelec cancel the certificate of candidacy when you said…
>
> HON. ADAZA. Only with respect to the nuisance candidates. There is no specific provision.
>
> HON. ASOK. There is already a specific provision for nuisance candidates.
>
> HON. ADAZA. This one refers to other candidates who are not nuisance candidates, but most particularly refers to matters that are involved in protest and *quo warranto* proceedings. Why should we expand their

powers? This is a new provision by the way. This was not contained in other provisions before. You know, you can get bothered.

HON. CUENCO. Everybody will be vulnerable?

HON. ADAZA. Yeah, everybody will be vulnerable, *eh.*

HON. CUENCO. Even if you are a serious candidate?

HON. ADAZA. Even if you are a serious candidate because, for instance, they will file a petition for *quo warranto*, they can file a petition to the Comelec to cancel your certificate of candidacy. These are actually grounds for protest or for *quo warranto* proceedings.

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HON. CUENCO. By merely alleging, for example, that you are a subversive.

HON. ADAZA. *Oo, iyon na nga, eh.*

x x x x

THE PRESIDING OFFICER. Suppose you are disqualified, you do not have the necessary qualifications, the Comelec can *motu propio* cancel it.

HON. CUENCO. On what ground, Mr. Chairman?

THE PRESIDING OFFICER. You are disqualified. Let's say, *wala kang* residence or *kuwan*...

HON. ADAZA. Ah, that's the problem.

THE PRESIDING OFFICER. That's why.

HON. ADAZA. We should not allow that thing to crop up within the powers of the Comelec because anyone can create problem for everybody. You know, that's a proper subject for protest or *quo warranto*. But not to empower the Comelec to cancel. That's a very dangerous provision. It can reach all of us.

THE PRESIDING OFFICER. *Hindi*, if you are a resident *pero iyong*, let's say a new comer comes to Misamis Oriental, 3 months before and file his Certificate of Candidacy.

HON. ADAZA. Never mind, file the necessary petition.

THE PRESIDING OFFICER. These are the cases they say, that will be involved.

HON. ADAZA. I think we should *kuwan* that *e*.

THE PRESIDING OFFICER. *Iyon talagang* non-resident and then he goes there and file his certificate, You can, how can anybody stop him, *di ba*?

HON. ADAZA. No, let me cite to you cases, most people running for instance in the last Batasan, especially in the highly urbanized city, they

were residence in one particular city but actually running in the province. You see, how you can be bothered if you empower the Comelec with this authority to cancel, there would have been many that would have been cancelled.

THE PRESIDING OFFICER. There were many who tried to beat the deadline.

HON. ADAZA. No, there are many who did not beat the deadline, I know.

HON. LOOD. The matter of point is the word Article 8, Article 8, provides full responsibility for...

HON. ADAZA. Which one? That's right.

HON. LOOD. That's why it includes full... (Unintelligible).

HON. ADAZA. No, it's very dangerous. We will be all in serious trouble. Besides, that covered already by specific provisions. So, can we agree. Anyway it is this new provision which is dangerous.

HON CUENCO. So, you want the entire provision?

HON. LOOD. Unless we make exception.[9]

The Summary Nature of Proceedings under Section 78 Only Allow the COMELEC to Rule on Patent Material Misrepresentation of Facts on Residency and Citizenship, not of Conclusions of Law, and especially, not in the Absence of Established Legal Doctrines on the Matter

The original intent of the legislature was clear: to make the denial of due course or cancellation of certificate of candidacy before the COMELEC a summary proceeding that would not go into the intrinsic validity of the qualifications of the candidate, even to the point of making the power merely ministerial in the absence of patent defects. There was concern among some other members about giving the COMELEC the power to deny due course to or cancel outright the certificate of candidacy. As such, the proposal was to remove Section 78 entirely or to lay down specific parameters in order to limit the power of the COMELEC under the provision. Thus, in interpreting the language of Section 78 as presently crafted, those intended limitations must be kept in mind. This includes retaining the summary nature of Section 78 proceedings.

Reyes v. Commission on Elections[10] provides an insight into the summary nature of a Section 78 proceeding:

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[9] Deliberations of the Committee: Revision of Laws, 30 May 1985.
[10] G.R. No. 207264, 22 October 2013.

> The special action before the COMELEC which was a Petition to Cancel Certificate of Candidacy was a SUMMARY PROCEEDING or one "heard summarily." The nature of the proceedings is best indicated by the COMELEC Rule on Special Actions, **Rule 23, Section 4 of which states that the Commission may designate any of its officials who are members of the Philippine Bar to hear the case and to receive evidence. COMELEC Rule 17 further provides in Section 3 that when the proceedings are authorized to be summary, in lieu of oral testimonies, the parties may, after due notice, be required to submit their position paper together with affidavits, counter-affidavits and other documentary evidence;** . . . and that "[t]his provision shall likewise apply to cases where the hearing and reception of evidence are delegated by the Commission or the Division to any of its officials . . . ."
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> x x x x
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> In fact, in summary proceedings like the special action of filing a petition to deny due course or to cancel a certificate of candidacy, **oral testimony is dispensed with and, instead, parties are required to submit their position paper together with affidavits, counter affidavits and other pieces of documentary evidence**.

The Summary nature of Section 78 proceeding implies the simplicity of subject-matter[11] as it does away with long drawn and complicated trial-type litigation. Considering its nature, the implication therefore, is that Section 78 cases contemplate simple issues only. Any issue that is complex would entail the use of discretion, the exercise of which is reserved to the appropriate election tribunal. **With greater reason then, claims of candidate on a matter of opinion on unsettled questions of law, cannot be the basis for the denial of a CoC.**

Section 78 Proceedings Cannot Take the Place of a Quo Warranto Proceeding or an Electoral Protest

The danger of the COMELEC effectively thwarting the voter's will was clearly articulated by Justice Vicente V. Mendoza in his separate opinion in the case involving Mrs. Imelda Romualdez Marcos.[12] The Court voted to grant the Rule 64 Petition of Mrs. Marcos to invalidate the COMELEC's Resolution denying her Amended CoC. Justice Mendoza wanted the Court to do so on the prior threshold issue of jurisdiction, *i.e.*, that the COMELEC did not have even the power to assume jurisdiction over the petition of Cirilo Montejo because it was in effect a petition for disqualification. Thus, the COMELEC resolution was utterly void. Justice Mendoza explains Section 78 in relation to petitions for disqualification under the Constitution and relevant laws. The allegations in the Montejo's petition were characterized, thus:

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[11] Black's Law Dictionary defines "summary proceeding" as "a nonjury proceeding that settles a controversy or disposes of a case in a relatively prompt and simple manner." (Black's Law Dictionary 1242 [8th ed. 2004]).

[12] 318 Phil. 329 (1995).

> The petition filed by private respondent Cirilo Roy Montejo in the COMELEC, while entitled "For Cancellation and Disqualification," contained no allegation that private respondent Imelda Romualdez-Marcos made material representations in her certificate of candidacy which were false, it sought her disqualification on the ground that "on the basis of her Voter Registration Record and Certificate of Candidacy, [she] is disqualified from running for the position of Representative, considering that on election day, May 8, 1995, [she] would have resided less than ten (10) months in the district where she is seeking to be elected." For its part, the COMELEC's Second Division, in its resolution of April 24, 1995, cancelled her certificate of candidacy and corrected certificate of candidacy on the basis of its finding that petitioner is "not qualified to run for the position of Member of the House of Representatives for the First Legislative District of Leyte" and not because of any finding that she had made false representations as to material matters in her certificate of candidacy.
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> Montejo's petition before the COMELEC was therefore not a petition for cancellation of certificate of candidacy under § 78 of the Omnibus Election Code, but essentially a petition to declare private respondent ineligible. It is important to note this, because, as will presently be explained, proceedings under § 78 have for their purpose to disqualify a person from being a *candidate*, whereas *quo warranto* proceedings have for their purpose to disqualify a person from holding *public office*. Jurisdiction over *quo warranto* proceedings involving members of the House of Representatives is vested in the Electoral Tribunal of that body.[13]

Justice Mendoza opined that the COMELEC has no power to disqualify candidates on the ground of ineligibility, elaborating thus:

> In my view the issue in this case is whether the Commission on Elections has the power to disqualify candidates on the ground that they lack eligibility for the office to which they seek to be elected. I think that it has none and that the qualifications of candidates may be questioned only in the event they are elected, by filing a petition for quo warranto or an election protest in the appropriate forum, not necessarily in the COMELEC but, as in this case, in the House of Representatives Electoral Tribunal. That the parties in this case took part in the proceedings in the COMELEC is of no moment. Such proceedings were unauthorized and were not rendered valid by their agreement to submit their dispute to that body.
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> The various election laws will be searched in vain for authorized proceedings for determining a candidate's qualifications for an office before his election. There are none in the Omnibus Election Code (B.P. Blg. 881), in the Electoral Reforms Law of 1987 (R.A. No. 6646), or in the law providing for synchronized elections (R.A. No. 7166). There are, in other words, no provisions for pre-proclamation contests but only election protests or *quo warranto* proceedings against winning candidates.
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> To be sure, there are provisions denominated for "disqualification," but they are not concerned with a declaration of the ineligibility of a candidate. These provisions are concerned with the incapacity (due to insanity, incompetence or conviction of an offense) of a person either *to be a candidate* or *to continue as a candidate* for public office. There is

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[13] Id. at 460-461.

> also a provision for the denial or cancellation of certificates of candidacy, but it applies only to cases involving false representations as to certain matters required by law to be stated in the certificates. [14]

He then proceeded to cite the three reasons explaining the absence of an authorized proceeding for determining *before election* the qualifications of a candidate:

> First is the fact that unless a candidate wins and is proclaimed elected, there is no necessity for determining his eligibility for the office. In contrast, whether an individual should be disqualified as a candidate for acts constituting election offenses (e.g., vote buying, over spending, commission of prohibited acts) is a prejudicial question which should be determined lest he wins because of the very acts for which his disqualification is being sought. That is why it is provided that if the grounds for disqualification are established, a candidate will not be voted for; if he has been voted for, the votes in his favor will not be counted; and if for some reason he has been voted for and he has won, either he will not be proclaimed or his proclamation will be set aside.
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> Second is the fact that the determination of a candidate's eligibility, e.g., his citizenship or, as in this case, his domicile, may take a long time to make, extending beyond the beginning of the term of the office. This is amply demonstrated in the companion case (G.R. No. 120265, *Agapito A. Aquino v. COMELEC*) where the determination of Aquino's residence was still pending in the COMELEC even after the elections of May 8, 1995. **This is contrary to the summary character of proceedings relating to certificates of candidacy. That is why the law makes the receipt of certificates of candidacy a ministerial duty of the COMELEC and its officers. The law is satisfied if candidates state in their certificates of candidacy that they are eligible for the position which they seek to fill, leaving the determination of their qualifications to be made after the election and only in the event they are elected. Only in cases involving charges of false representations made in certificates of candidacy is the COMELEC given jurisdiction.**
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> Third is the policy underlying the prohibition against pre-proclamation cases in elections for President, Vice President, Senators and members of the House of Representatives. (R.A. No. 7166, § 15) The purpose is to preserve the prerogatives of the House of Representatives Electoral Tribunal and the other Tribunals as "sole judges" under the Constitution of the *election*, *returns* and *qualifications* of members of Congress or of the President and Vice President, as the case may be. [15]

The legal differentiation between Section 78 *vis-a-vis* quo warranto proceedings and electoral protests made by Justice Mendoza in the Romualdez Marcos case was completely adopted, and affirmed by a unanimous Court in *Fermin v. COMELEC.*[16] *Fermin v. COMELEC* has been affirmed in *Munder v. Commission on Elections,*[17] *Agustin v.*

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[14] Id. at 457-458. Justice Mendoza then quote Section 12, 68 and 78 of the Omnibus Election Code, Sections 6 and 7 of the Electoral Reforms Law, R.A. 6646, and Section 40 of the Local Government Code, R.A. 7160).

[15] Id. at 462-463.

[16] *Fermin v. COMELEC*, 595 Phil. 449 (2008).

[17] G.R. No. 194076, G.R. No. 194160, [October 18, 2011])

Commission on Elections[18] *Talaga v. Commission on Elections,*[19] *Mitra v. Commission on Elections,*[20] *Hayundini v. Commission on Elections,*[21] *Aratea v. Commission on Elections,*[22] *Gonzalez v. Commission on Elections,*[23] *Jalosjos, Jr. v. Commission on Elections,*[24] *Dela Cruz v. Commission on Elections,*[25] and *Maruhom v. COMELEC.*[26], thus the Mendoza formulation has become settled doctrine.

It is clear that what the minority herein is attempting to accomplish is to authorize the COMELEC to rule on the intrinsic qualifications of petitioner, and henceforth, of every candidate – an outcome clearly prohibited by the Constitution and by the Omnibus Election Code. That this was also the objective of the minority justices in *Tecson v. COMELEC* should warn us that the proposal of the minority herein will result in the direct reversal of the said case.

In *Tecson*, the COMELEC contended it did not have the jurisdiction to rule on the qualification of Ronald Allan Kelley Poe. The COMELEC stated that it could only rule that FPJ did not commit material misrepresentation in claiming that he was a natural-born Filipino citizen, there being substantial basis to support his belief that he was the son of a Filipino. The Court upheld this conclusion of the COMELEC, and in the dispositive conclusions portion of the Decision held:

> (4) But while the totality of the evidence may not establish conclusively that respondent FPJ is a natural-born citizen of the Philippines, the evidence on hand still would preponderate in his favor enough to hold that he cannot be held guilty of having made a material misrepresentation in his certificate of candidacy in violation of Section 78, in relation to Section 74, of the Omnibus Election Code. Petitioner has utterly failed to substantiate his case before the Court, notwithstanding the ample opportunity given to the parties to present their position and evidence, and to prove whether or not there has been material misrepresentation, which, as so ruled in *Romualdez-Marcos vs. COMELEC,* must not only be material, but also deliberate and willful.

The Court made two important rulings on this particular point. First, that Mr. Fornier, the petitioner in the COMELEC case to deny Mr. Poe's CoC, had the burden to prove that Mr. Poe committed material misrepresentation. Second, even assuming that the petitioner therein was able to make out a prima facie case of material misrepresentation, the evidence on Mister Poe's side preponderated in favor of the conclusion that he did not make any material misrepresentation. Thus, the COMELEC was correct in saying that there was no basis to grant Fornier's Section 78

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[18], G.R. No. 207105, [November 10, 2015])
[19] G.R. No. 196804, 197015, [October 9, 2012], 696 PHIL 786-918)
[20] G.R. No. 191938, [July 2, 2010], 636 PHIL 753-815)
[21] G.R. No. 207900, [April 22, 2014])
[22] G.R. No. 195229, [October 9, 2012], 696 PHIL 700-785)
[23] G.R. No. 192856, [March 8, 2011])
[24] G.R. No. 193237, 193536, [October 9, 2012], 696 PHIL 601-700)
[25] *G.R. No. 192221, [November 13, 2012])*
[26] *G.R. No. 179430, [July 27, 2009], 611 PHIL 501-517)*

petition. **Mr. Poe, We said, did not have to conclusively establish his natural-born citizenship; preponderance of evidence was sufficient to prove his right to be a candidate for President.**

It is absolutely offensive to Our concept of due process for the COMELEC to insist on its own interpretation of an area of the Constitution that this Court has yet to squarely rule upon, such as the citizenship of a foundling. It was also most unfair of COMELEC to suddenly impose a previously non-existing formal requirement on candidates–such as a permanent resident visa or citizenship itself–to begin the tolling of the required duration of residency. Neither statutes nor jurisprudence require those matters. COMELEC grossly acted beyond its jurisdiction by usurping the powers of the legislature and the judiciary.

Section 78 and Material Misrepresentation

It must be emphasized that all the decisions of the COMELEC where the Court upheld its denial of a CoC on the basis of an alleged misrepresentation pertaining to citizenship and residency, were all denials on matters of fact that were either uncontroverted, or factual matters that were proven to be false. None of them had to do with any question of law.

In the following cases, we upheld the COMELEC'S denial of the CoCs: *Labo, Jr. v. COMELEC*[27], (Labo's statement that he was a natural-born citizen was disproved on the ground that he failed to submit any evidence proving his reacquisition of Philippine citizenship); *Abella v. COMELEC*[28] (Abella, a candidate for governor of Leyte, and undisputedly a resident of Ormoc City, an independent component city, failed to establish a new domicile in Kananga, Leyte); *Domino v. Commission on Elections,*[29] (the lease contract over a residence in Sarangani Province failed to produce the kind of permanency necessary to establish abandonment of one's original domicile); *Caballero v. Commission on Elections,*[30] (petitioner, who had effectively transferred his domicile of choice in Canada, failed to present competent evidence to prove that he was able to re-establish his residence in Uyugan); *Jalosjos v. Commission on Elections,*[31] (Svetlana Jalosjos, whose domicile of origin was San Juan, Metro Manila, failed to acquire a domicile of choice in Baliangao, Misamis Occidental, prior to the May 2010 elections); *Aquino v. Commission on Elections,*[32] (Aquino, whose domicile of origin was San Jose, Concepcion, Tarlac, failed to established a new domicile in the Second District of Makati City on the mere basis of a lease agreement of a condominium unit); *Reyes v. Commission on Elections*[33] (where petitioner, who previously admitted that she was a holder of a U.S. passport, failed to submit proof that she reacquired her Filipino citizenship under RA 9225 or that she maintained her domicile of origin in Boac,

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[27] G.R. No. 105111, 105384, July 3, 1992.
[28] G.R. No. 100710, 100739, September 3, 1991, 278 PHIL 275-302.
[29] G.R. No. 134015, July 19, 1999, 369 PHIL 798-829.
[30] G.R. No. 209835, September 22, 2015.
[31] G.R. No. 193314, February 26, 2013.
[32] G.R. No. 120265, September 18, 1995, 318 PHIL 467-539.
[33] G.R. No. 207264, 25 June 2013.

Marinduque); *Dumpit-Michelena v. Boado*[34] (candidate Dumpit-Michelena was not a resident of Agoo, La Union – voter's registration at Naguilian, La Union and joint affidavit of all *barangay* officials of San Julian West, Agoo taken as proof that she was not a resident of the *barangay*); *Hayudini v. Commission on Elections*[35] (candidate Hayudini was not a resident of South Ubian, Tawi-Tawi – based on a final RTC Decision ordering the deletion of Hayudini's name in *Barangay* Bintawlan's permanent list of voters); *Velasco v. Commission on Elections*[36] (court ruling that he was not a registered voter of Sasmuan, Pampanga); *Bautista v. Commission on Elections*[37] (admission that he was not a registered voter of Lumbangan, Nasugbu, Batangas where he was running as *punong barangay*); *Ugdoracion, Jr. v. Commission on Elections*[38] (admission that he was at the time of the filing of the CoC still a holder of a then valid green card); and *Jalosjos v. Commission on Elections*[39] (temporary and intermittent stay in a stranger's house does not amount to residence).

In fact, in the only case of material misrepresentation on citizenship where the Supreme Court agreed to a Section 78 denial by the COMELEC, was in the case of Mr. Ramon L. Labo, Jr. of Baguio City[40] who had previously been declared by the Supreme Court itself as not a Filipino citizen.[41] In the *Labo* case, there was a prior binding conclusion of law that justified the action of the COMELEC in denying the CoC. It is important to emphasize this considering the dangers of an overly broad reading of the COMELEC's power under Section 78.

A candidate commences the process of being voted into office by filing a certificate of candidacy (CoC). A candidate states in his CoC, among others, that he is eligible to run for public office, as provided under Section 74 of the Omnibus Election Code. Thus:

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

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[34] 511 Phil. 720 (2005).
[35] G.R. No. 207900, 22 April 2014.
[36] 595 Phil. 1172 (2008).
[37] 460 Phil. 459 (2003).
[38] 575 Phil. 253 (2008).
[39] G.R. No. 193314 (Resolution), 25 June 2013.
[40] *Labo, Jr. v. Commission on Elections*, G.R. No. 105111, 105384, 3 July 1992.
[41] *Labo, Jr. v. Commission on Elections*, 257 Phil. 1-23 (1989).

As used in Section 74, the word "eligible" means having the right to run for elective public office; that is, having all the qualifications and none of the ineligibilities.[42] The remedy to remove from the electoral ballot, the names of candidates who are not actually eligible, but who still state under oath in their CoCs that they are eligible to run for public office, is for any person to file a petition under Section 78, which provides:

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

How Legally Significant is the Intent to Deceive for a Section 78 OEC Petition to Prosper?

It was proposed by Justice Dante O. Tinga in his Dissenting Opinion in *Tecson v. COMELEC* that the intent to deceive was never contemplated as an essential element to prove a Section 78 petition.[43] The problem with this opinion is that it remains a proposed reversal of a doctrine that remains firmly entrenched in our jurisprudence. In a long line of cases, starting with *Romualdez-Marcos v. COMELEC*[44] in 1995, this Court has invariably held that intent to deceive the electorate is an essential element for a Section 78 petition to prosper.

In *Romualdez-Marcos,* the Court ruled that it is the fact of the qualification, not a statement in a certificate of candidacy, which ought to be decisive in determining whether or not an individual has satisfied the constitution's qualification requirements. The statement in the certificate of candidacy becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.[45]

This ruling was adopted by the Court in a long line of cases, in which it was ruled that aside from the requirement of materiality, a petition under Section 78 must also show that there was malicious intent to deceive the electorate as to the candidate's qualifications for public office.

In *Salcedo II v. COMELEC,*[46] the Court affirmed the decision of the COMELEC denying the petition to cancel the CoC filed by Ermelita Cacao Salcedo, a candidate for mayor of Sara, Iloilo. Apart from finding that the use of the surname "Salcedo" was not a material qualification covered by Section 78, the Court also declared that there was no intention on the part of

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[42] *Aratea v. COMELEC*, G.R. No. 195229, 9 October 2012.
[43] *See* Dissenting Opinion of Justice Dante O. Tinga in *Tecson v. COMELEC*, 468 Phil. 421-755 (2004).
[44] G.R. No. 119976, 18 September 1995.
[45] Id.
[46] 371 Phil. 377-393 (1999).

the candidate to mislead or deceive the public as to her identity. We concluded that, in fact, there was no showing that the voters of the municipality were deceived by Salcedo's use of such surname; consequently, the COMELEC correctly refused to cancel her CoC.

On the other hand, in *Velasco v. COMELEC*,[47] We upheld the cancellation of the CoC filed by Nardo Velasco because he made a material misrepresentation as to his registration as a voter. In Our discussion, We emphasized that Velasco knew that his registration as a voter had already been denied by the RTC, but he still stated under oath in his CoC that he was a voter of Sasmuan.[48] This was considered sufficient basis for the COMELEC to grant the Section 78 petition.[49]

In *Justimbaste v. Commission on Elections,*[50] this Court sustained the COMELEC's dismissal of the petition of cancellation filed against Rustico B. Balderian because there was no showing that he had the intent to deceive the voting public as to his identity when he used his Filipino name, instead of his Chinese name, in his CoC.

On the other hand, in *Maruhom v. COMELEC,*[51] We upheld the cancellation of the CoC of Jamela Salic Maruhom because she had subsisting voter registrations in both the municipalities of Marawi and Marantao in Lanao del Sur. We emphasized that Maruhom deliberately attempted to conceal this fact from the electorate as it would have rendered her ineligible to run as mayor of Marantao.

The element of intent was again required by this Court in *Mitra v COMELEC.*[52] In that case, We reversed the ruling of the COMELEC, which cancelled the CoC filed by Abraham Kahlil B. Mitra because the commission "failed to critically consider whether Mitra deliberately attempted to mislead, misinform or hide a fact that would otherwise render him ineligible for the position of Governor of Palawan." Upon an examination of the evidence in that case, We concluded that there was no basis for the COMELEC's conclusion that Mitra deliberately attempted to mislead the Palawan electorate.

The presence of intent to deceive the electorate was also a controlling factor in the decision of the Court in *Panlaqui v. COMELEC.*[53] We ruled that the decision of the Regional Trial Court to exclude Nardo Velasco as a voter did not result in the cancellation of his CoC for mayor of Sasmuan, Pampanga. Said this Court:

> It is not within the province of the RTC in a voter's inclusion/exclusion proceedings to take cognizance of and determine the presence of a false representation of a material fact. It has no jurisdiction

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[47] G.R. No. 180051, 24 December 2008.
[48] Id.
[49] Id.
[50] 593 Phil. 383-397(2008).
[51] G.R. No. 179430, 27 July 2009.
[52] 636 Phil. 753-815 (2010).
[53] G.R. No. 188671, 24 February 2010.

> to try the issues of whether the misrepresentation relates to material fact and whether there was an intention to deceive the electorate in terms of one's qualifications for public office. The finding that Velasco was not qualified to vote due to lack of residency requirement does not translate into a finding of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render him ineligible.

In *Gonzales v COMELEC*,[54] the Court distinguished between a petition for cancellation under Section 78 and a petition for cancellation under Section 68 of the OEC, in order to determine whether the petition filed against Ramon Gonzales was filed on time. We declared that a Section 78 petition must pertain to a false representation on a material matter that is made with the deliberate intent to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. Upon finding these elements in the petition filed against Fernando V. Gonzales, We ruled that the applicable period for filing the petition is that prescribed under Section 78 *i.e.* within twenty-five days from the filing of the COC. Since the petition was filed beyond this period, this Court declared that the COMELEC erred in giving due course to the same.

The requirement of intent was likewise reiterated in *Tecson v. COMELEC*,[55] *Ugdoracion, Jr. v. Commission on Elections*,[56] *Fermin v. Commission on Elections*,[57] *Aratea v. Commission on Elections*[58] and *Talaga v. Commission on Elections*.[59]

It has been claimed, however, that this Court in *Tagolino v. HRET*,[60] abandoned this requisite when it stated that "deliberateness of the misrepresentation, much less one's intent to defraud, is of bare significance in a Section 78 petition as it is enough that the person's declaration of a material qualification in the [certificate of candidacy] be false." In that case, the Court, using *Miranda v. Abaya*[61] as basis, stated that:

> In this relation, jurisprudence holds that an express finding that the person committed any deliberate misrepresentation is of little consequence in the determination of whether one's CoC should be deemed cancelled or not. What remains material is that the petition essentially seeks to deny due course to and/or cancel the CoC on the basis of one's ineligibility and that the same be granted without any qualification.[62]

It is important to note that the statement regarding intent to deceive was only an obiter dictum. The primary issue in both *Tagolino* and *Miranda* is whether a candidate whose certificate of candidacy had been denied due course or cancelled may be validly substituted in the electoral process. In other words, the cases dealt with the *effect* of the denial of due course or

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[54] G.R. No. 192856, 8 March 2011
[55] 468 Phil. 421-755 (2004).
[56] 575 Phil. 253-266(2008).
[57] 595 Phil. 449-479 (2008).
[58] 696 Phil. 700-785 (2012).
[59] 696 Phil. 786-918 (2012).
[60] G.R. No. 202202, 19 March 2013.
[61] G.R. No. 136351, 28 July 1999.
[62] *Tagolino v. HRET*, G.R. No. 202202, 19 March 2013.

cancellation of a certificate of candidacy, and not on the validity or soundness of the denial or cancellation itself.

Furthermore, in *Miranda*, We clarified the COMELEC's use of the word "disqualified" when granting a petition that prays for the denial of due course or cancellation of a certificate of candidacy. This Court said:

> From a plain reading of the dispositive portion of the Comelec resolution of May 5, 1998 in SPA No. 98-019, it is sufficiently clear that the prayer specifically and particularly sought in the petition was GRANTED, there being no qualification on the matter whatsoever. The disqualification was simply ruled over and above the granting of the specific prayer for denial of due course and cancellation of the certificate of candidacy.[63]

Clearly, the phrase "no qualification" in *Miranda*, which was essentially echoed in *Tagolino*, referred to the ruling of the COMELEC to grant the petition to deny due course to or cancel the certificate of candidacy. It did not refer to the false representation made by the candidate in his certificate of candidacy.

At any rate, after *Tagolino,* We reiterated the requirement of deceit for a Section 78 petition to prosper in four more cases.[64] Our most recent pronouncements in *Jalover v. Osmeña,*[65] reiterated that a petition under **Section 78 cannot prosper in a situation where the intent to deceive or defraud is patently absent, or where no deception of the electorate results. Furthermore, the misrepresentation cannot be the result of a mere innocuous mistake, but must pertain to a material fact**.

Said Justice Arturo D. Brion in the 2014 unanimous *Jalover v. Osmeña* decision:

> **Separate from the requirement of materiality, a false representation under Section 78 must consist of a deliberate attempt to mislead, misinform, or hide a fact, which would otherwise render a candidate ineligible."** (citing *Ugdoracion, Jr. v. Commission on Elections*) In other words, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. In *Mitra v. COMELEC*, we held that the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception of the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run.

Thus, a petition to deny due course to or cancel a certificate of candidacy according to the prevailing decisions of this Court still requires the following essential allegations: (1) the candidate made a representation

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[63] *Miranda v. Abaya*, G.R. No. 136351, 28 July 1999.
[64] *Villafuerte v. Commission on Elections*, G.R. No. 206698, 25 February 2014; *Hayudini v. Commission on Elections*, G.R. No. 207900, 22April 2014; *Agustin v. Commission on Elections*, G.R. No. 207105, 10 November 2015.
[65] G.R. No. 209286, 23 September 2014.

in the certificate; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate (the right to run for the election); and (3) the candidate made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact which would otherwise render him ineligible.[66]

Romualdez- Marcos v. COMELEC is again worth recalling.[67] We ruled therein that it is the fact of the disqualification, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the constitution's qualification requirements. The statement in the certificate of candidacy becomes material only when there is or appears to be a deliberate attempt to mislead, misinform or hide a fact which would otherwise render a candidate ineligible.[68]

In *Mitra v. COMELEC*,[69] We gave importance to the character of a representation made by a candidate in the certificate of candidacy. This Court found grave abuse of discretion on the part of the COMELEC when it failed to take into account whether there had been a deliberate misrepresentation in *Mitra*'s certificate of candidacy.[70] The COMELEC cannot simply assume that an error in the certificate of candidacy was necessarily a deliberate falsity in a material representation.[71]

It must be emphasized that under Section 78, it is not enough that a person lacks the relevant qualification; he must have also made a false representation of the lack of qualification in the certificate of candidacy.[72] The denial of due course to, or the cancellation of the certificate of candidacy, is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which relates to the qualifications required of the public office the candidate is running for.[73]

Considering that intent to deceive is a material element for a successful petition under Section 78, a claim of good faith is a valid defense.

Misrepresentation means the act of making a false or misleading assertion about something, usually with the intent to deceive.[74] It is not just written or spoken words, but also any other conduct that amounts to a false assertion.[75] A material misrepresentation is a false statement to which a reasonable person would attach importance in deciding how to act in the

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[66] *Fermin v. COMELEC*, G.R. No. 179695 & 182369, 18 December 2008.
[67] G.R. No. 119976, 18 September 1995.
[68] Id.
[69] G.R. No. 191938, 2 July 2010.
[70] Id.
[71] Id.
[72] *Tagolino v. HRET*, supra.
[73] *Fermin v. COMELEC*, supra.
[74] *Almagro v. Spouses Amaya, Sr.*, G.R. No. 179685, 19 June 2013.
[75] Id.

transaction in question or to which the maker knows or has reason to know that the recipient attaches some importance.[76]

In the sphere of election laws, a material misrepresentation pertains to a candidate's act with the intention to gain an advantage by deceitfully claiming possession of all the qualifications and none of the disqualifications when the contrary is true.

A material misrepresentation is incompatible with a claim of good faith. Good faith encompasses, among other things, an honest belief, the absence of malice and the absence of a design to defraud or to seek an unconscionable advantage.[77] It implies honesty of intention and honest belief in the validity of one's right, ignorance of a contrary claim, and absence of intention to deceive another.[78]

Burden of Proof in Section 78 Proceedings

Section 1, Rule 131 of the Revised Rules on Evidence defines burden of proof as "the duty of a party to present evidence on the facts in issue necessary to establish his claim" "by the amount of evidence required by law." When it comes to a Section 78 proceeding, it is the petitioner who has the burden of establishing material misrepresentation in a CoC.[79]

Since the COMELEC is a quasi-judicial body, the petitioner must establish his case of material misrepresentation by substantial evidence.[80] Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

Burden of proof never shifts.[81] It is the burden of evidence that shifts.[82] Hence, in a Section 78 proceeding, if the petitioner comes up with a prima facie case of material misrepresentation, the burden of evidence shifts to the respondent.

In this case, respondents had the burden to establish the following: (1) falsity of the representations made by petitioner with regard to her citizenship and residence; and (2) intent to deceive or mislead the electorate.

On residence

As will be further discussed below, respondents mainly relied on the representation that petitioner previously made in her 2012 CoC for the position of Senator to establish the requirements of falsity and intent to deceive. Petitioner, however, has shown by an abundance of substantial

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[76] Id.
[77] *Heirs of Limense v. Vda. de Ramos*, G.R. No. 152319, 28 October 2009.
[78] Id.
[79] See *Tecson v. COMELEC,* G.R. No. 161434, 161634, 161824, March 3, 2004, 468 PHIL 421-755; and *Salcedo II v. COMELEC,* 371 Phil ____(1999).
[80] Rules of Court, Rule 133, Section 5.
[81] See Jison v. Court of Appeals, GR No. 124853, 24 February 1998..
[82] Id.

evidence that her residence in the Philippines commenced on 24 May 2005 and that the statement she made in the 2012 CoC was due to honest mistake. But respondents failed to meet head on this evidence. Hence, they failed to discharge their burden of proving material misrepresentation with respect to residency.

Furthermore, the COMELEC unreasonably shifted the burden of proof to petitioner, declaring that she had the burden to show that she possessed the qualifications to run for President. As previously discussed, respondents had the burden to establish the key elements for a Section 78 petition to prosper.

On citizenship

With respect to the issue of citizenship, respondents leaned heavily on petitioner's admission that she was a foundling. Nevertheless, this did not establish the falsity of petitioner's claim that she was a natural-born citizen. Presumptions operated profoundly in her favor to the effect that a foundling is a natural-born citizen. Further, she had a right to rely on these legal presumptions, thus negating the notion of deception on her part. Thus, respondents failed to discharge their burden of proving material misrepresentation with respect to residency.

Yet, the COMELEC unfairly placed the burden of proof on petitioner when, for reasons already discussed, the onus properly fell on respondents. This point will be more comprehensively discussed below.

III.

The COMELEC acted with grave abuse of discretion when it cancelled petitioner's 2016 Certificate of Candidacy in the absence of any material misrepresentation on residency or citizenship.

In my view, the fact that the COMELEC went beyond an examination of the patent falsity of the representations in the CoC is enough to demonstrate its grave abuse of discretion. I maintain that a Section 78 proceeding must deal solely with "patent defects in the certificates" and not the question of eligibility or ineligibility. The commission clearly exceeded the limited authority granted to it under Section 78 of the OEC when it determined petitioner's intrinsic qualifications, not on the basis of any uncontroverted fact, but on questions of law.

With this conclusion, the Court already has sufficient justification to reverse and set aside the assailed COMELEC Resolutions. Consequently, I believe that it is no longer necessary for us to decide questions pertaining to petitioner's qualifications.

However, given the factual milieu of this case and its significance to the upcoming electoral exercise, I am likewise mindful of the duty of the Court to allay the doubts created by the COMELEC ruling in the minds of

the voting public. Furthermore, the dissents have already gone to the intrinsic qualification of petitioner as to cast doubt on her viability as a candidate. These positions must be squarely addressed; hence this extended opinion is inevitable.

Grave Abuse of Discretion

In *Mitra v. COMELEC*,[83] this Court held that COMELEC's use of wrong or irrelevant considerations in the resolution of an issue constitutes grave abuse of discretion:

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

For reasons discussed below, I find that the COMELEC committed a grossly unreasonable appreciation of both the evidence presented by petitioner to prove her residency, as well the legal standards applicable to her as a foundling. For purposes of clarity, I will discuss residency and citizenship separately.

In *Sabili*,[84] we noted that the Court does not ordinarily review the COMELEC's appreciation and evaluation of evidence. However, when the appreciation and evaluation of evidence is so grossly unreasonable as to turn into an error of jurisdiction, the Court is duty-bound to intervene. In that case, petitioner was able to show that the COMELEC relied on wrong or irrelevant considerations – like property ownership in another municipality – in deciding the issue of whether petitioner made a material misrepresentation regarding his residence.

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[83] G.R. No. 191938, 2 July 2010.
[84] 686 Phil. 649 (2012).

IV.
A. ON RESIDENCY

The COMELEC made two findings as far as petitioner's compliance with the 10-year residency requirement is concerned. First, petitioner committed a false material representation regarding her residency in her 2016 CoC for President, as shown by her declaration in her 2013 CoC for senator. Second, petitioner's alien citizenship at the time she allegedly abandoned her domicile in the US was a legal impediment which prevented her from re-establishing her domicile in the Philippines, considering her failure to obtain an authorization from the Bureau of Immigration as permanent resident in the country early enough to start the count of the 10-year residency requirement.

These conclusions reveal the failure of the COMELEC to properly appreciate and evaluate evidence, so much so that it overstepped the limits of its discretion to the point of being grossly unreasonable.

There was no deliberate intent on the part of petitioner to make a material misrepresentation as to her residency.

In the assailed Resolutions, the COMELEC had concluded that petitioner committed a false material representation about her residency in her 2016 CoC for president on the basis of her declaration in her 2013 CoC for senator. According to the Commission, this 2012 declaration showed a deliberate intent to mislead the electorate and the public at large.

Public respondent's conclusions are unjustified. In the first place, the COMELEC misapplied the concepts of admissions and honest mistake in weighing the evidence presented by petitioner. As will be discussed below, declarations against interest are *not* conclusive evidence and must still be evaluated to determine their probative value. Neither does the declaration in her 2013 CoC foreclose the presentation of evidence of petitioner's good faith and honest belief that she has complied with the 10-year residency requirement for presidential candidates.

Admissions against Interest

Admissions against interest are governed by Section 26, Rule 130 of the Rules of Court, which provides:

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

It is well to emphasize that admissions against interest fall under the rules of admissibility.[85] Admissions against interest pass the test of relevance and competence. They, however, do not guarantee their own probative value

[85] Rule 130 of the Rules of Court.

and conclusiveness. Like all evidence, they must be weighed and calibrated by the court against all other pieces at hand. **Also, a party against whom an admission against interest is offered may properly refute such declaration by adducing contrary evidence.**[86]

To be admissible, an admission must (1) involve matters of fact, and not of law; (2) be categorical and definite; (3) be knowingly and voluntarily made; and (4) be adverse to the admitter's interests, otherwise it would be self-serving and inadmissible.[87] An admission against interest must consist of a categorical statement or document pertaining to a matter of fact. **If the statement or document pertains to a conclusion of law or necessitates prior settlement of questions of law, it cannot be regarded as an admission against interest.**[88]

Even a judicial admission, which does not require proof, for judicial admissions under Section 4, Rule 129 of the Rules of Court[89] But even then, contrary evidence may be admitted to show that the admission was made through palpable mistake. In *Bitong v. CA*,[90] the Court ruled that although acts or facts admitted in a pleading do not require proof and can no longer be contradicted, evidence *aliunde* can be presented to show that the admission was made through palpable mistake. Said the Court:

> A party whose pleading is admitted as an admission against interest is entitled to overcome by evidence the apparent inconsistency, and it is competent for the party against whom the pleading is offered to show that the statements were inadvertently made or were made under a mistake of fact. In addition, a party against whom a single clause or paragraph of a pleading is offered may have the right to introduce other paragraphs which tend to destroy the admission in the paragraph offered by the adversary.
>
> Every alleged admission is taken as an entirety of the fact which makes for the one side with the qualifications which limit, modify or destroy its effect on the other side. The reason for this is, where part of a statement of a party is used against him as an admission, the court should weigh any other portion connected with the statement, which tends to neutralize or explain the portion which is against interest.
>
> In other words, while the admission is admissible in evidence, its probative value is to be determined from the whole statement and others intimately related or connected therewith as an integrated unit.[91]

COMELEC Conclusions on Admission against Interest

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[86] *Rufina Patis Factory v. Alusitain*, supra.
[87] *Lacbayan v. Samoy, Jr.*, supra.
[88] Id.
[89] Sec. 4. Judicial admissions. –An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.
[90] G.R. No. 123553, 13 July 1998.
[91] Id.

In the Resolution dated 1 December 2015 of the Second Division in SPA No. 15-001 (*Elamparo v. Llamanzares*), the COMELEC ruled as follows:

> Respondent ran for Senator in the May 13, 2013 Senatorial Elections. In her COC for Senator, she answered "6 years and 6 months" in the space provided for the candidate's period of residence in the Philippines. Based on her own declaration, respondent admitted under oath that she has been a resident of the country only since **November 2006.**
>
> Undeniably, this falls short by 6 months of the required May 2006 commencement of the residence in the Philippines in order for respondent to qualify as a candidate for President of the Philippines in the May 9, 2016 elections. If we reckon her period of residency from November 2006, as she herself declared, she will be a resident of the Philippines by May 9, 2016 only for a period of **9 years and 6 months.**
>
> As correctly pointed out by petitioner, this sworn statement by respondent is an admission against her interest.
>
> Section 26, Rule 130, Rules of Court (which is of suppletory application) expressly states:
>
> > Section 26. Admission of a party. — The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.
>
> The rationale for the rule was explained by the Supreme Court in *Manila Electric Company v. Heirs of Spouses Dionisio Deloy*:
>
> > Being an admission against interest, the documents are the best evidence which affords the greatest certainty of the facts in dispute. The rationale for the rule is based on the presumption that no man would declare anything against himself **UNLESS SUCH DECLARATION WAS TRUE**. Thus, it is fair to presume that the declaration corresponds to the truth, and it is his fault if it does not.
>
> Respondent's representation in her COC for Senator that she had been a resident of the Philippines for a period of 6 years and 6 months by May 2013 is an admission that is binding on her. After all, she should not have declared it under oath if *such declaration was not true*.
>
> Respondent's convenient defense that she committed an honest mistake on a difficult question of law, when she stated in her COC for Senator that her period of residence in the Philippines before May 13, 2013 was 6 years and 6 months, is at best self-serving. It cannot overturn the weight given to the admission against interest voluntarily made by respondent.
>
> Assuming *arguendo* that as now belatedly claimed the same was due to an honest mistake, no evidence has been shown that there was an attempt to rectify the so-called honest mistake. The attempt to correct it in her present COC filed only on October 15, 2015 cannot serve to outweigh the probative weight that has to be accorded to the admission against interest in her 2013 COC for Senator.

> Certainly, it is beyond question that her declaration in her 2013 COC for Senator, under oath at that, that she has been a resident of the Philippines since **November 2006** still stands in the record of this Commission as an official document, which *may be given in evidence against her*, and the probative weight and binding effect of which is neither obliterated by the passing of time nor by the belated attempt to correct it in her present COC for President of the Philippines.
>
> Respondent cannot now declare an earlier period of residence. Respondent is already stopped from doing so. If allowed to repudiate at this late stage her prior sworn declaration, We will be opening the floodgates for candidates to commit material misrepresentations in their COCs and escape responsibility for the same through the mere expedient of conveniently changing their story in a subsequent COC. Worse, We will be allowing a candidate to run for President when the COC for Senator earlier submitted to the Commission contains a material fact or data barring her from running for the position she now seeks to be elected to. Surely, to rule otherwise would be to tolerate a cavalier attitude to the requirement of putting in the correct data in a COC. In fact, the COC filer, in that same COC, certifies under oath that the data given are indeed "true and correct".

As shown by the above-cited Resolution, the COMELEC Second Division regarded the declaration of petitioner in her 2013 certificate of candidacy for senator – that she had been a resident of the Philippines only since November 2006 – as a binding and conclusive statement that she can no longer refute. It appeared to confuse admissions against interest with judicial admissions.

However, in the Resolution dated 23 December 2015 of the En Banc, COMELEC conceded that such statement may indeed be overcome by petitioner through the presentation of competent evidence of greater weight. According to the COMELEC En Banc:

> On the allegation that the Second Division chose to rely **solely** on the declarations of respondent in her 2013 COC: we are not persuaded. Again, the Second Division was not constrained to mention every bit of evidence it considered in arriving at the assailed Resolution. Concededly, however, it did put ample attention on Respondent's 2013 COC, but not without good reason.
>
> To recall, Respondent, in her 2013 COC for Senator, indicated, under oath, that her period of residence in the Philippines from May 13, 2013 is "6 years and 6 months." Following this, she became a resident on November 2006. This is entirely inconsistent with her declaration in the present 2016 COC for president that immediately before the May 9, 2016 elections, she will be a resident of the country for "10 years and 11 months," following which she was a resident since May, 2005. -The Second Division struck respondent's arguments mainly on the basis of this contradiction.
>
> Respondent cannot fault the Second Division for using her statements in the 2013 COC against her. Indeed, the Second Division correctly found that this is an admission against her interest. Being such, it is "the best evidence which affords the greatest certainty of the facts in

> dispute. The rationale for the rule is based on the presumption that no man would declare anything against himself unless such declaration was true. Thus, it is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not."
>
> Moreover, a COC, being a notarial document, has in its favor the presumption of regularity. To contradict the facts stated therein, there must be evidence that is clear, convincing and more than merely preponderant. In order for a declarant to impugn a notarial document which he himself executed, it is not enough for him to merely execute a subsequent notarial document. After executing an affidavit voluntarily wherein admissions and declarations against the affiant's own interest are made under the solemnity of an oath, the affiant cannot just be allowed to spurn them and undo what he has done.
>
> Yes, the statement in the 2013 COC, albeit an admission against interest, may later be impugned by respondent. However, she cannot do this by the mere expedient of filing her 2016 COC and claiming that the declarations in the previous one were "honest mistakes". The burden is upon her to show, by clear, convincing and more than preponderant evidence, that, indeed, it is the latter COC that is correct and that the statements made in the 2013 COC were done without bad faith. Unfortunately for respondent, she failed to discharge this heavy burden.

As shown by the foregoing, the COMELEC *en banc* had a proper understanding of an admission against interest – that it is one piece of evidence that should be evaluated against all other pieces presented before it.

The COMELEC was wrong, however, in ruling that petitioner attempted to overcome the alleged admission against interest merely by filing her 2016 CoC for president. Petitioner submitted severed various many and varied pieces of evidence to prove her declaration in her 2016 certificate of candidacy for president that as of May 2005, she had definitely abandoned her residence in the US and intended to reside permanently in the Philippines. They are the following:

1. Petitioner's US passport showing that she returned to the Philippines on 24 May 2005 and from then would always return to the Philippines after every trip to a foreign country.
2. Email exchanges showing that as early as March 2005, petitioner had begun the process of relocating and reestablishing her residence in the Philippines and had all of the family's valuable movable properties packed and stored for shipping to the Philippines.
3. School records of petitioner's school-aged children showing that they began attending Philippine schools starting June 2005.
4. Identification card issued by the BIR to petitioner on 22 July 2005.
5. Condominium Certificate of Title covering a unit with parking slot acquired in the second half of 2005 which petitioner's family used as residence pending the completion of their intended permanent family home.

6. Receipts dated 23 February 2006 showing that petitioner had supervised the packing and disposal of some of the family's household belongings.
7. Confirmation of receipt of the request for change of address sent by the US Postal Service on 28 March 2006;
8. Final settlement of the selling of the family home in the US as of 27 April 2006.
9. Transfer Certificate of Title dated 1 June 2006 showing the acquisition of a vacant lot where the family built their family home.
10. Questionnaire issued by the US Department of State – Bureau of Consular Affairs regarding the possible loss of US citizenship, in which petitioner answered that she had been a resident of the Philippines since May 2005.
11. Affidavits of petitioner's mother and husband attesting to the decision of the family to move to the Philippines in early 2005 shortly after the death of petitioner's father.

Unfortunately, the COMELEC En Banc found that these pieces of evidence failed to overcome the probative weight of the alleged admission against interest. According to the COMELEC, the discrepancy between petitioner's 2013 and 2016 certificates of candidacy only goes to show that she suits her declarations regarding her period of residency in the Philippines when it would be to her advantage. Hence, her deliberate attempt to mislead, misinform, or hide the fact of her ineligibility insofar as residency is concerned.

The statement that she would be a resident of the Philippines for six years and six months as of May 2013 (reckoned from November 2006) in her 2013 certificate of candidacy was admittedly made under oath. However, **while notarized documents fall under the category of public documents,**[92] **they are not deemed *prima facie* evidence of the facts therein stated.**[93] Section 23, Rule 132 of the Rules of Court states:

> Sec. 23. *Public documents as evidence.* — Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

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[92] Rules of Court, Rule 132, Section 19 provides:
Sec. 19. *Classes of Documents.* — For the purpose of their presentation in evidence, documents are either public or private.
Public documents are:
(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
(b) **Documents acknowledged before a notary public** except last wills and testaments; and
(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.
All other writings are private. (Emphasis supplied)

[93] *Philippine Trust Co. v. CA*, G.R. No. 150318, 22 November 2010.

Clearly, notarized documents are merely proof of the fact which gave rise to their execution and of the date stated therein.[94] They require no further proof to be admissible, because the certificate of acknowledgement serves as the *prima facie* evidence of its execution.[95]

Thus while petitioner's 2013 certificate of candidacy may be presented as proof of its regularity and due execution, it is not *prima facie* evidence of the facts stated therein, i.e. the declaration that she essentially became a resident of the Philippines only in November 2006. Furthermore, while a notarized document carries the evidentiary weight conferred upon it with respect to its due execution and regularity, even such presumption is not absolute as it may be rebutted by clear and convincing evidence to the contrary.[96]

Thus, where the document or its contents are in question, the person who executed the same may submit contrary evidence to establish the truth of the matter. In this case, petitioner submitted the above-cited pieces of evidence to prove that her 2016 certificate of candidacy declared the truth about her residence in the Philippines, and that her declaration in her 2013 certificate of candidacy was the result of an honest mistake.

Honest Mistake

The COMELEC gave scant consideration to petitioner's assertion that she made an honest mistake in her 2013 certificate of candidacy for senator. The Commission hypothesized that if petitioner truly believed that the period of residency would be counted backwards from the day of filing the CoC for Senator in October 2012, she should always reckon her residency from April 2006. The COMELEC observed that the period of residency indicated in the 2015 CoC for President was reckoned from May 2005. The COMELEC took the alleged unexplained inconsistency as a badge of intent to deceive the electorate.

To a malicious mind, the assertions of petitioner are nothing but sinister. Considering the contradicting and inconsistent dates alleged before the COMELEC, an indiscriminate observer may be tempted to think the worst and disbelieve a claim to the common experience of human mistake.

United States v. Ah Chong,[97] has taught generations of lawyers that **the question as to whether one honestly, in good faith, and without fault or negligence fell into the mistake, is to be determined by the circumstances as they appeared to him at the time when the mistake was made, and the effect which the surrounding circumstances might reasonably be expected to have on his mind, in forming the intent upon which he acted.**

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[94] Id.
[95] *Chua v. CA*, G.R. No. 88383, 19 February 1992.
[96] *China Banking Corp., Inc. v. CA*, G.R. No. 155299, 24 July 2007.
[97] G.R. No. 5272, 19 March 1910.

In the petitions before us, petitioner explained her mistake in the following manner:

> 5.268. [Petitioner] committed an honest mistake when she stated in her COC for Senator that her "PERIOD OF RESIDENCE BEFORE MAY 13, 2013" is "6" years and "6" months.
>
> 5.268.1. Only a two-year period of residence in the Philippines is required to qualify as a member of the Senate of the Republic of the Philippines. [Petitioner] sincerely had *no doubt* that she had satisfied this residence requirement. She even accomplished her COC for Senator *without the assistance of a lawyer*. x x x
>
> 5.268.2. It is no wonder that [petitioner] *did not know* that the use of the phrase "Period of Residence in the Philippines before May 13, 2013" in her COC for Senator, actually referred to the period *immediately preceding* 13 May 2013, or to her period of residence *on the day right before* the 13 May 2013 elections. **[Petitioner] therefore interpreted this phrase to mean her period of residence in the Philippines as of the submission of COCs in October 2012 (which is technically also a period "before May 13, 2013").**
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> 5.268.3. In terms of abandoning her domicile in the U.S.A. and permanently relocating to the Philippines, nothing significant happened in "*November 2006*." Moreover, private respondent was *not* able to present any evidence which would show that [petitioner] returned to the Philippines with the intention to reside here permanently *only in November 2006*. Thus, there would have been *no* logical reason for [petitioner] to reckon the start of her residence in the Philippines *from this month*. Even the COMELEC considered a date *other than* **November 2006** as the reckoning point of [petitioner's] residence (i.e., August 2006). **This date is, of course, not the day [petitioner] established her domicile in the Philippines. Nonetheless, that even the COMELEC had another date in mind bolsters the fact that [petitioner]'s representation in her COC for Senator regarding her period of residence was based on her *honest misunderstanding* of what was asked of her in Item No. 7 of her COC for Senator, and that she indeed counted backward from October 2012 (instead of from 13 May 2013).**
>
> x x x x
>
> When [petitioner] accomplished her COC for Senator, she reckoned her residence in the Philippines from March-April 2006, which is when (to her recollection at the time she signed this COC) she and her family had substantially wound up their affairs in the U.S.A. in connection with their relocation to the Philippines. Specifically, March 2006 was when [petitioner] arrived in the Philippines after her last lengthy stay in the U.S.A., and April 2006 was when she and her husband were finally able to sell their house in the U.S.A. The month of April 2006 is also when [petitioner's] husband had resigned from his job in the U.S.A. The period between **March-April 2006 to September 2012 is around six (6) years and six (6) months. Therefore, this is the period [petitioner] indicated (albeit, mistakenly) in her COC for Senator as her "Period of Residence in the Philippines before May 13, 2013."**

> 5.268.7. **This erroneous understanding of the commencement of her residence in the Philippines, together with the confusing question in Item No. 7 of her COC for Senator, explains why [petitioner] mistakenly indicated in that COC that her "Period of Residence in the Philippines before May 13, 2013" would be "6" years and "6" months.**
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> 5.268.8. [Petitioner] was later advised (*only last year, 2015*) by legal counsel that the concept of "residence," for purposes of election law, takes into account the period when she was physically present in the Philippines starting from 24 May 2005, (after having already abandoned her residence in the U.S.A., coupled with the intent to reside in the Philippines) and not just the period after her U.S.A. residence was sold and when her family was already complete in the country, after her husband's return. [Petitioner]'s period of residence in her COC for Senator should, therefore, have been counted *from 24 May 2005*, and extended all the way "up to the day before" the *13 May 2013 elections*. [Petitioner] realized *only last year, 2015,* that she should have stated "7" years and "11" months (instead of "6" years and "6" months) as her period of residence in her COC for Senator.[98] (Emphases supplied)

To an open mind, the foregoing explanation proffered by petitioner does not appear to be concocted, implausible, or the product of mere afterthought. The circumstances as they appeared to her at the time she accomplished her 2013 certificate of candidacy for senator, without the assistance of counsel, may indeed reasonably cause her to fill up the residency item with the answer "6 years and 6 months." It does not necessarily mean, however, that she had not been residing in the Philippines on a permanent basis for a period longer than that.

The fact that it was the first time that petitioner ran for public office; that only a two-year period of residence in the country is required for those running as senator; and that the item in the certificate of candidacy providing "Period of Residence in the Philippines before May 13, 2013" could be open to an interpretation different from that required, should have been taken into consideration in appreciating whether petitioner made the subject entry honestly, in good faith, and without fault or negligence.

The surrounding circumstances in this case do not exclude the possibility that petitioner made an honest mistake, both in reckoning her period of residence in the Philippines as well as determining the proper end period of such residence at the time. That petitioner is running for the highest public office in the country should not be the only standard by which we weigh her actions and ultimately her mistakes. Not all mistakes are made with evil motives, in much the same way that not all good deeds are done with pure intentions. Good faith is always presumed, and in the face of tangible evidence presented to prove the truth of the matter, which is independent of the circumstances that caused petitioner to make that fateful

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[98] Memorandum of petitioner, pp. 284-287.

statement of "6 years and 6 months," it would be difficult to dismiss her contention that such is the result of an honest mistake.

To reiterate, the COMELEC incorrectly applied the rule on admissions in order to conclude that petitioner deliberately misrepresented her qualifications—notwithstanding a reasonable explanation as to her honest mistake, and despite the numerous pieces of evidence submitted to prove her claims.

If petitioner honestly believed that she can reckon her residency in the Philippines from May 2005 because she had already relocated to the country with the intent to reside here permanently, then her statement in her 2016 certificate of candidacy for president cannot be deemed to have been made with intent to deceive the voting public. The COMELEC has clearly failed to prove the element of deliberate intent to deceive, which is necessary to cancel certificates of candidacy under Section 78.

In any case, the single declaration of petitioner in her 2013 certificate of candidacy for senator cannot be deemed to overthrow the entirety of evidence showing that her residence in the Philippines commenced in May 2005.

Petitioner was able to prove the fact of the reestablishment of her domicile in the Philippines since May 2005.

Section 2, Article VII of the Constitution requires that a candidate for president be "a resident of the Philippines for at least ten years immediately preceding such election." The term residence, as it is used in the 1987 Constitution and previous Constitutions, has been understood to be synonymous with domicile.[99] Domicile means not only the intention to reside in one place, but also personal presence therein coupled with conduct indicative of such intention.[100] It is the permanent home and the place to which one intends to return whenever absent for business or pleasure as shown by facts and circumstances that disclose such intent.[101]

Domicile is classified into three: (1) domicile of origin, which is acquired at birth by every person; and (2) domicile of choice, which is acquired upon abandonment of the domicile of origin; and (3) domicile by operation of law, which the law attributes to a person independently of his residence or intention.[102]

Domicile by operation of law applies to infants, incompetents, and other persons under disabilities that prevent them from acquiring a domicile

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[99] *Co v. HRET*, G.R. Nos. 92191-92 & 92202-03, 30 July 1991.
[100] *Nuval v. Guray*, G.R. No. 30241, 29 December 1928.
[101] *Corre v. Corre*, G.R. No. L-10128, 13 November 1956.
[102] *Ugdoracion, Jr. v. COMELEC*, G.R. No. 179851, 18 April 2008.

of choice.[103] It also accrues by virtue of marriage when the husband and wife fix the family domicile.[104]

A person's domicile of origin is the domicile of his parents.[105] It is not easily lost and continues even if one has lived and maintained residences in different places.[106] Absence from the domicile to pursue a profession or business, to study or to do other things of a temporary or semi-permanent nature, and even travels abroad,[107] does not constitute loss of residence.[108]

In contrast, immigration to a foreign country with the intention to live there permanently constitutes an abandonment of domicile in the Philippines.[109] In order to qualify to run for public office in the Philippines, an immigrant to a foreign country must waive such status as manifested by some act or acts independent of and done prior to the filing of the certificate of candidacy.[110]

A person can have but one domicile at a time.[111] Once established, the domicile remains until a new one is acquired.[112] In order to acquire a domicile by choice, there must concur: (a) physical presence in the new place, (b) an intention to remain there (*animus manendi*), and (c) an intention to abandon the former domicile (*animus non revertendi*).[113]

Without clear and positive proof of the concurrence of these requirements, the domicile of origin continues.[114] In *Gallego v. Verra*,[115] we emphasized what must be shown by the person alleging a change of domicile:

> The purpose to remain in or at the domicile of choice must be for an indefinite period of time. The acts of the person must conform with his purpose. The change of residence must be voluntary; the residence at the place chosen for the domicile must be actual; and to the fact of residence there must be added the *animus manendi*.[116]

The question of whether COMELEC committed grave abuse of discretion in its conclusion that petitioner failed to meet the durational

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[103] 25 Am Jur 2d, Domicil § 13, cited in the Concurring and Dissenting Opinion of J. Puno, *Macalintal v. COMELEC*, G.R. No. 157013, 10 July 2003.
[104] *Limbona v. COMELEC*, G.R. No. 181097, 25 June 2008.
[105] *Romualdez-Marcos v. COMELEC*, G.R. No. 119976, 18 September 1995.
[106] *Romualdez-Marcos v. COMELEC*, G.R. No. 119976, 18 September 1995.
[107] *Japzon v. COMELEC*, G.R. No. 180088, 19 January 2009; *Gayo v. Verceles*, G.R. No. 150477, 28 February 2005.
[108] *Sabili v. COMELEC*, G.R. No. 193261, 24 April 2012; *Papandayan, Jr. v. COMELEC*, G.R. No. 147909, 16 April 2002; *Romualdez-Marcos v. COMELEC*, G.R. No. 119976, 18 September 1995; *Co v. HRET*, G.R. Nos. 92191-92 & 92202-03, 30 July 1991; *Faypon v. Quirino*, G.R. No. L-7068, 22 December 1954.
[109] *Caasi v. CA*, G.R. Nos. 88831 & 84508, 8 November 1990.
[110] *Caasi v. CA*, G.R. Nos. 88831 & 84508, 8 November 1990.
[111] *Jalosjos v. COMELEC*, G.R. No. 191970, 24 April 2012.
[112] *Jalosjos v. COMELEC*, G.R. No. 191970, 24 April 2012.
[113] *Gallego v. Verra*, G.R. No. 48641, 24 November 1941.
[114] *Dumpit-Michelena v. Boado*, G.R. Nos. 163619-20, 17 November 2005.
[115] *Gallego v. Verra*, G.R. No. 48641, 24 November 1941.
[116] *Gallego v. Verra*, G.R. No. 48641, 24 November 1941, p. 456.

residency requirement of 10 years goes into the COMELEC's appreciation of evidence. In *Sabili v. COMELEC*,[117] we held that:

> As a general rule, the Court does not ordinarily review the COMELEC's appreciation and evaluation of evidence. However, exceptions thereto have been established, including when the COMELEC's appreciation and evaluation of evidence become so grossly unreasonable as to turn into an error of jurisdiction. In these instances, the Court is compelled by its bounden constitutional duty to intervene and correct the COMELEC's error.[118]

Sabili was an instance of grossly unreasonable appreciation in evaluation of evidence, very much like the lopsided evaluation of evidence of the COMELEC in the present case.

Further, in *Mitra v. COMELEC*,[119] we held that COMELEC's use of wrong or irrelevant considerations in the resolution of an issue constitutes grave abuse of discretion:

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

However, before going into a discussion of the evidence submitted by petitioner, a threshold issue must first be resolved: whether petitioner's status as a visa-free *balikbayan* affected her ability to establish her residence in the country. I believe that it did not.

The Philippines' Balikbayan Program

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[117] Id.
[118] Id. at 668.
[119] G.R. No. 191938, 2 July 2010.

On 31 July 1973, President Marcos issued Letter of Instructions No. (LOI) 105[120] designating the period from 1 September 1973 to 28 February 1974 as a "Homecoming Season" for Filipinos – and/or their families and descendants – who are now residents or citizens of other countries (referred to as overseas Filipinos). Due to its overwhelming success,[121] the *Balikbayan* Program was extended. This was further enhanced in 1974 under LOI 163.[122]

In 1975, professionals and scientists were targeted in the program by encouraging their return under LOI 210, and then by PD 819. Overseas Filipino scientists and technicians were being encouraged to come home and apply their knowledge to the development programs of the country, and to take advantage of the *Balikbayan* Program. It was also decreed that any overseas Filipino arriving in the Philippines under the *Balikbayan* Program shall be authorized to remain in the country for a period of one year from the date of arrival within the extended period.

Pursuant to the stated purpose of LOI 210, P.D. 819[123] was issued on 24 October 1975 in recognition of the "need of attracting foreign-based scientists, professionals, or persons with special skill or expertise who are of Filipino descent or origin."[124] It was decreed that these persons, who are licensed to practice their profession, special skill or expertise in their host, adopted or native countries, may practice their profession, special skill or expertise while staying in the Philippines either on a temporary or permanent basis, together with their families upon approval by the Secretary of Health. They are only required to register with the Professional Regulation Commission, regardless of whether or not their special skill or expertise falls

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[120] Designating 1 September 1973 to 28 February 1974 as a Homecoming Season for Overseas Filipinos. Pursuant to the program, the executive departments were mobilized to welcome and extend privileges to overseas Filipinos who are coming home to the Philippines. It called for the preparation of a hospitality program for overseas Filipinos, as well as the offering of promotional round-trip airline fares for foreign and domestic flights. A temporary "tax holiday" was also declared for the Homecoming Season in which all tax clearance requirements involved in the travel of overseas Filipinos to and from the Philippines shall be suspended and waived. A program of rewards was initiated for local governments which are able to invite the most number of overseas Filipinos. The presidential issuance also constituted a National Hospitality Committee for Overseas Filipinos, which shall organize and supervise the operations of local hospitality committees, especially in regard to sharing with overseas Filipinos a traditional Filipino Christmas.

[121] The introductory statement of LOI No. 163 dated 7 February 1974 provides:

> While projected arrivals by February 28 was 30,000, the 35,000th *Balikbayan* participant has already actually arrived as of this date.
>
> Numerous requests and petitions for the extension of the *Balikbayan* program have been received by the Office of the President and the Department of Tourism from individual Overseas Filipinos, from associations thereof, and from officials of the Philippine foreign service. They cite as reasons the non-coincidence of the original Homecoming season (1 September 1973 to 28 February 1974) with the school vacation period overseas, and the lack of time of Overseas Filipinos to arrange for their vacations and leave of absences from their occupations due to the suddenness of the launching of the *Balikbayan* program.
>
> A common reason, moreover, is that, with the stories about the new Philippines related by *Balikbayan* participants who have returned to their overseas residences, our countrymen who were unable to participate in *Balikbayan* are now more eager than ever to observe for themselves the New Society in action and to share the pride of the new Filipino in himself and in his reborn nation.

[122] Six-month Extension of the *Balikbayan* Program.

[123] Declaring A Balik-Scientist Program, Allowing any Foreign-Based Scientists, Professional, Technician, or any Person with Special Skill or Expertise who is of Filipino Origin or Descent to Practice His/Her Profession or Expertise in the Philippines and Aligning Incentives for Him/Her and for Other Purposes.

[124] 5th "Whereas " clause of P.D. 819.

within any of the regulated professions and vocations in the Philippines, and pay the required license fee. They are entitled to all incentives, benefits and privileges granted to or being enjoyed by overseas Filipinos (*balikbayan*s).

As a means of attracting more "returnees,"[125] LOI 1044 provided for additional incentives such as attendance in international scientific conferences, seminars, meetings along the field of expertise with the **travel of the returnees funded by the program at least once per year**. Also, they shall **have priority to obtain housing loans** from GSIS, SSS and Development Bank of the Philippines to assure their continued stay in the country.

By virtue of LOI 272-A[126], the *Balikbayan* Program was extended to another period beginning 1 March 1976 to 28 February 1977 featuring the same incentives and benefits provided by LOI 210. It was again extended to 28 February 1978,[127] to 28 February 1979,[128] to 29 February 1980,[129] and to 28 February 1981.[130]

On 28 February 1981, President Marcos issued Executive Order No. (EO) 657 extending the *Balikbayan* Program for overseas Filipinos for a period of five years beginning 1 March 1981 to 28 February 1986.

Executive Order No. (E.O.) 130[131] issued on 25 October 1993 by President Ramos institutionalized the *Balik* Scientist Program under the Department of Science and Technology (DOST) but with different features. It defined a *Balik* Scientist as a science or technology expert who is a Filipino citizen or a foreigner of Filipino descent, residing abroad and contracted by the national government to return and work in the Philippines along his/her field of expertise for a short term with a duration of at least one month (Short-Term Program) or long term with a duration of at least two years (Long-Term Program).

A *Balik* Scientist under the Short-Term Program may be entitled to free round-trip economy airfare originating from a foreign country to the Philippines by direct route, and grants-in-aid for research and development projects approved by the Secretary of Science and Technology.

A *Balik* Scientist under the Long-Term Program and returning new graduates from DOST-recognized science and technology foreign institutions may be entitled to the following incentives:

1. Free one-way economy airfare from a foreign country to the Philippines, including airfare for the spouse and two minor

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[125] "Now, therefore" clause of LOI 1044.
[126] Extension of the "BALIKBAYAN" Program dated 9 February 1976.
[127] LOI 493 entitled Extension of Effectivity of the Balikbayan Program dated 30 December 1976.
[128] LOI 652 entitled Extension of the Balikbayan Program dated 6 January 1978.
[129] LOI 811 entitled Extension of Period for Operation of the Balikbayan Program dated 14 February 1979.
[130] LOI 985 entitled Extension of the Balikbayan Program dated 21 January 1980.
[131] Instituting the Balik Scientist Program under the Department of Science and Technology.

dependents; and free return trip economy airfare after completion of two years in the case of *Balik* Scientists, and three years in the case of new graduates;

2. Duty-free importation of professional instruments and implements, tools of trade, occupation or employment, wearing apparel, domestic animals, and personal and household effects in quantities and of the class suitable to the profession, rank or position of the persons importing them, for their own use and not for barter or sale, in accordance with Section 105 of the Tariff and Customs Code;
3. No-dollar importation of motor vehicles;
4. Exemption from payment of travel tax for Filipino permanent residents abroad;
5. Reimbursement of freight expenses for the shipment of a car and personal effects;
6. Reimbursement of the freight expenses for 2-1/2 tons volume weight for surface shipment of a car and personal effects, as well as excess baggage not exceeding 20 kilograms per adult and 10 kilograms per minor dependent when travelling by air;
7. Housing, which may be arranged through predetermined institutions;
8. Assistance in securing a certificate of registration without examination or an exemption from the licensure requirement of the Professional Regulation Commission to practice profession, expertise or skill in the Philippines;
9. Grants-in-aid for research and development projects approved by the Secretary of Science and Technology; and
10. Grant of special non-immigrant visas[132] under Section 47 (a) (2) of the Philippine Immigration Act of 1940, as amended, after compliance with the requirements therefor.

R.A. 6768,[133] enacted on 3 November 1989, instituted a *Balikbayan* Program under the administration of the Department of Tourism to attract and encourage overseas Filipinos to come and visit their motherland. Under R.A. 6768, the term *balikbayan* covers Filipino citizens who have been continuously out of the Philippines for a period of at least one year; Filipino

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[132] Special non-immigrant visas are issued in accordance with Section 47 of The Philippine Immigration Act of 1940, as amended. It states:

Section 47. Notwithstanding the provisions of this Act, the President is authorized —

(a) When the public interest so warrants —

(1) To waive the documentary requirements for any class of nonimmigrants, under such conditions as he may impose;

(2) To admit, as nonimmigrants, aliens not otherwise provided for by this Act, who are coming for temporary period only, under such conditions as he may prescribe;

(3) To waive the passport requirements for immigrants, under such conditions as he may prescribe;

(4) To reduce or to abolish the passport visa fees in the case of any class of nonimmigrants who are nationals of countries which grant similar concessions to Philippine citizens of a similar class visiting such countries;

(5) To suspend the entry of aliens into the Philippines from any country in which cholera or other infectious or contagious disease is prevalent;

(b) For humanitarian reasons, and when not opposed to the public interest, to admit aliens who are refugees for religious, political, or racial reasons, in such classes of cases and under such conditions as he may prescribe.

[133] An Act Instituting a *Balikbayan* Program.

overseas workers; and former Filipino citizens and their family who had been naturalized in a foreign country and comes or returns to the Philippines.

The law provided various privileges to the *balikbayan*:

1. Tax-free maximum purchase in the amount of US$1,000 or its equivalent in other acceptable foreign currencies at Philippine duty-free shops;
2. Access to a special promotional/incentive program provided by the national flag air carrier;
3. Visa-free entry to the Philippines for a period of one year for foreign passport holders, with the exception of restricted nationals;
4. Travel tax exemption;[134] and
5. Access to especially designated reception areas at the authorized ports of entry for the expeditious processing of documents.

It is emphasized in the law that the privileges granted thereunder shall be in addition to the benefits enjoyed by the *balikbayan* under existing laws, rules and regulations.

R.A. 9174[135] dated 7 November 2002 amended R.A. 6768 by extending further the privileges of a *balikbayan* to include:

1. *Kabuhayan* shopping privilege through an additional tax-exempt purchase in the maximum amount of US$2,000 or its equivalent in Philippine peso and other acceptable foreign currencies, exclusively for the purchase of livelihood tools at all government-owned and – controlled/operated duty-free shops;
2. **Access to necessary entrepreneurial training and livelihood skills programs and marketing assistance, including the *balikbayan*'s immediate family members, under the government's reintegration program;** and
3. Access to accredited transportation facilities that will ensure their safe and convenient trips +upon arrival.

It was again emphasized that the privileges granted shall be in addition to the benefits enjoyed by the *balikbayan* under existing laws, rules and regulations.

Balikbayans are not Mere Visitors

As shown by the foregoing discussion, the *Balikbayan* Program, as conceptualized from the very beginning, envisioned a system not just of

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[134] Presidential Decree No. 1183 (Amending and Consolidating the Provisions on Travel Tax of Republic Act No. 1478 as Amended and Republic Act No. 6141, Prescribing the Manner of Collection Thereof, Providing Penalties for Violations Thereof, and for Other Purposes, dated 21 August 1977) and Executive Order No. 283 (Restructuring the Travel Tax Exemptions and Restoring the Reduced Rates on Certain Individuals, Amending for this Purpose, Presidential Decree No. 1183, as Amended, dated July 25, 1987) exempted only Filipino overseas contract workers from the payment of the travel tax.

[135] An Act Amending Republic Act Numbered 6768, Entitled, "An Act Instituting A "Balikbayan Program," by Providing Additional Benefits and Privileges to Balikbayan and for Other Purposes.

welcoming overseas Filipinos (Filipinos and/or their families and descendants who have become permanent residents or naturalized citizens of other countries) as short-term visitors of the country, but more importantly, one that will encourage them to come home and once again become permanent residents of the Philippines.

Notably, the program has no regard at all for the citizenship of these overseas Filipinos. To qualify for the benefits, particularly the exemptions from the payment of customs duties and taxes on personal effects brought home and tax exemptions for local purchases, all they have to do is prove their desire to become permanent residents of the Philippines. This is done through the simple expedient of the presentation of the official approval of change of residence by the authorities concerned in their respective foreign host countries.

As originally intended in the case of the *balik* scientists, they are also welcome to practice their profession, special skill or expertise while staying in the Philippines either on temporary or permanent bases. Again, there was no regard for their citizenship considering that the program is open to both foreign-based Filipinos and those of Filipino origin or descent, as long as they were licensed to practice their profession, special skill or expertise in their host, adopted or native countries.

Therefore, as far as our immigration laws are concerned with regard to *balikbayan*s, they and their families may reside in the Philippines either on temporary or permanent bases even though they remain nationals of their host, adopted or native countries. The special treatment accorded to *balikbayan*s finds its roots in recognition of their status as former Filipinos and not as mere aliens.

Further militating against the notion of *balikbayan*s as mere visitors of the country are the privileges accorded to them under R.A. 9174, the current *balikbayan* law. It specifically provides for a *Kabuhayan* shopping privilege for the purchase of livelihood tools as well as access to the necessary entrepreneurial training and livelihood skills programs and marketing assistance in accordance with the existing rules on the government's reintegration program.

Livelihood tools have been defined as "instruments used by hand or by machine necessary to a person in the practice of his or her trade, vocation or profession, such as hand tools, power tools, precision tools, farm tools, tools for dressmaking, shoe repair, beauty parlor, barber shop and the like,"[136] as well as a computer unit and its accessories.

Access to the reintegration program is one of the social services and family welfare assistance benefits (aside from insurance and health care benefits, loan guarantee fund, education and training benefits and workers assistance and on-site services) that are available to Overseas Workers

[136] Republic Act No. 6768, as emended by Republic Act No. 9174, Section 2(c).

Welfare Administration (OWWA) members.[137] It incorporates community organizing, capability-building, livelihood loans and other social preparations subject to the policies formulated by the OWWA Board.[138]

The reintegration program aims to prepare the OFW in his/her return to Philippine society.[139] It has two aspects. The first is reintegration preparedness (On-Site) which includes interventions on value formation, financial literacy, entrepreneurial development training (EDT), technological skills and capacity building.[140] The second is reintegration proper (In-Country) which consists of job referrals for local and overseas employment, business counselling, community organizing, financial literacy seminar, networking with support institutions and social preparation programs.[141]

As the Philippine government's reintegration manager,[142] the Department of Labor and Employment National Reintegration Center for OFWs (NRCO) provides the following services:

1. Develop and support programs and projects for livelihood, entrepreneurship, savings, investments and financial literacy for returning Filipino migrant workers and their families in coordination with relevant stakeholders, service providers and international organizations;
2. Coordinate with appropriate stakeholders, service providers and relevant international organizations for the promotion, development and the full utilization of overseas Filipino worker returnees and their potentials;
3. Institute, in cooperation with other government agencies concerned, a computer-based information system on returning Filipino migrant workers which shall be accessible to all local recruitment agencies and employers, both public and private;
4. Provide a periodic study and assessment of job opportunities for returning Filipino migrant workers;
5. Develop and implement other appropriate programs to promote the welfare of returning Filipino migrant workers;
6. Maintain an internet-based communication system for on-line registration and interaction with clients, and maintain and upgrade computer-based service capabilities of the NRCO;
7. Develop capacity-building programs for returning overseas Filipino workers and their families, implementers, service providers, and stakeholders; and
8. Conduct research for policy recommendations and program development.[143]

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[137] OWWA Board Resolution No. 038-03 dated 19 September 2003 entitled Guidelines on OWWA Membership, Article VIII, Section 2(4)(b).
[138] Id. at Section 6(b).
[139] < http://www.owwa.gov.ph/?q=content/programs-services>, (last visited 9 March 2016).
[140] Id.
[141] Id.
[142] < http://nrco.dole.gov.ph/index.php/about-us/who-we-are>, (last visited 9 March 2016)
[143] Republic Act No. 8042 (Migrant Workers and Overseas Filipinos Act of 1995), as amended by Republic Act No. 10022 dated 8 March 2010, Section 17.

While the reintegration program covers only OFWs,[144] non-OFW *balikbayan*s can also avail of possible livelihood training in coordination with the Department of Tourism, the Technology and Livelihood Resource Center and other training institutions.[145]

R.A. 9174 is the government's latest thrust in its consistent efforts in attracting *balikbayan*s to come home to the Philippines and build a new life here. Notwithstanding our immigration laws, *balikbayan*s may continue to stay in the Philippines for the long-term even under a visa-free entry, which is extendible upon request.[146]

It must be emphasized that none of the Court's previous decisions has ever looked at the very extensive privileges granted to Balikbayan entrants.

Coquilla, Japzon, Caballero, Jalosjos and the Balikbayan Program

In ruling that petitioner can only be said to have validly re-established her residency in the Philippines when she reacquired her Philippine citizenship, the COMELEC invoked the ruling in *Coquilla v. COMELEC*.[147]

In *Coquilla*, petitioner was a former natural-born citizen and who reacquired Philippine citizenship on November 10, 2000. He was not able to show by any evidence that he had been a one-year resident of Oras, Eastern Samar prior to the May 14, 2001 local elections. His argument was that he had been a resident of the said town for two years, but was not able to show actual residence one year from before the said election. Evidence shows on the contrary that his last trip to the United States, of which he was a former citizen was from July 6 to August 5, 2000. The only evidence he was able to show was a residence certificate and his bare assertion to his townmates that he intended to have himself repatriated. He did not make much of a claim, except to advert to the fulfillment of the required residence by cumulating his visits and actual residence. We Court said:

> Second, it is not true, as petitioner contends, that he reestablished residence in this country in 1998 when he came back to prepare for the mayoralty elections of Oras by securing a Community Tax Certificate in that year and by constantly declaring to his townmates of his intention to seek repatriation and run for mayor in the May 14, 2001 elections. The

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[144] An OFW is a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a citizen or on board a vessel navigating the foreign seas other than a government ship used for military or non-commercial purposes or on an installation located offshore or on the high seas [Republic Act No. 8042, Section 3(a)]

[145] Republic Act No. 6768, as amended by Republic Act No. 9174, Section 6, par. 2.

[146] <http://www.immigration.gov.ph/faqs/visa-inquiry/balikbayan-previlege> The website of the Bureau of Immigration states:

> Those who are admitted as Balikbayans are given an initial stay of one (1) year. They may extend their stay for another one (1), two (2) or six (6) months provided that they present their valid passport and filled out the visa extension form and submit it to the Visa Extension Section in the BI Main Office or any BI Offices nationwide. An additional requirement will be ask (sic) for (sic) Balikbayans who have stayed in the Philippines after thirty six (36) months.

[147] G.R. No. 151914, 31 July 2002.

> status of being an alien and a non-resident can be waived either separately, when one acquires the status of a resident alien before acquiring Philippine citizenship, or at the same time when one acquires Philippine citizenship. As an alien, an individual may obtain an immigrant visa under 13 of the Philippine Immigration Act of 1948 and an Immigrant Certificate of Residence (ICR) and thus waive his status as a non-resident. On the other hand, he may acquire Philippine citizenship by naturalization under C.A. No. 473, as amended, or, if he is a former Philippine national, he may reacquire Philippine citizenship by repatriation or by an act of Congress, in which case he waives not only his status as an alien but also his status as a non-resident alien.
>
> In the case at bar, the only evidence of petitioners status when he entered the country on October 15, 1998, December 20, 1998, October 16, 1999, and June 23, 2000 is the statement Philippine Immigration Balikbayan in his 1998-2008 U.S. passport. As for his entry on August 5, 2000, the stamp bore the added inscription good for one year stay. Under 2 of R.A. No. 6768 (An Act Instituting a *Balikbayan* Program), the term *balikbayan* includes a former Filipino citizen who had been naturalized in a foreign country and comes or returns to the Philippines and, if so, he is entitled, among others, to a visa-free entry to the Philippines for a period of one (1) year (3(c)). It would appear then that when petitioner entered the country on the dates in question, he did so as a visa-free *balikbayan* visitor whose stay as such was valid for one year only. Hence, petitioner can only be held to have waived his status as an alien and as a non-resident only on November 10, 2000 upon taking his oath as a citizen of the Philippines under R.A. No. 8171. He lacked the requisite residency to qualify him for the mayorship of Oras, Eastern, Samar.

Note that the record is bare of any assertion, unlike in the case before Us, that Coquilla had bought a residence, relocated all his effects, established all the necessities of daily living to operationalize the concept of actual residence to show residence for the minimum period of one year. Even if in fact the period of reckoning for Coquilla were to start from his entry into the country on 5 August 2000, it would still be only nine months; thus there was not even any necessity to discuss the effect of his having been classified as a *Balikbayan* when he entered the country in 1998, 1999 and 2000.

The COMELEC tries to assert that its interpretation of the ruling in *Coquilla* was carried over in *Japzon v. COMELEC*[148] and *Caballero v. COMELEC*[149] as to bar petitioner's claims on residency. The COMELEC is dead wrong.

In *Japzon*, private respondent Ty was a natural-born Filipino who left to work in the US and eventually became an American citizen. On 2 October 2005, Ty reacquired his Filipino citizenship by taking his Oath of Allegiance to the Republic of the Philippines in accordance with the provisions of Republic Act No. (R.A.) 9225.[150] Immediately after reacquiring his

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[148] G.R. No. 180088, 19 January 2009.
[149] G.R. No. 209835, 22 September 2015.
[150] Citizenship Retention and Re-acquisition Act of 2003.

Philippine citizenship, he performed acts (i.e. applied for a Philippine passport, paid community tax and secured Community Tax Certificates (CTC) and registered as a voter) wherein he declared that his residence was at General Macarthur, Eastern Samar. On 19 March 2007, **Ty renounced his American citizenship before a notary public. Prior to this, however, Ty had been bodily present in General Macarthur, Eastern Samar for a more than a year before the May 2007 elections. As such, the Court brushed aside the contention that Ty was ineligible to run for mayor on the ground that he did not meet the one-year residency requirement. If anything,** *Japzon* reinforces petitioner's position.

In *Caballero*, petitioner was a natural-born Filipino who was naturalized as a Canadian citizen. On 13 September 2012, petitioner took his Oath of Allegiance to the Republic of the Philippines in accordance with the provisions of Republic Act No. 9225. On 1 October 2012, he renounced his Canadian citizenship. He filed his certificate of candidacy for mayor of Uyugan, Batanes on 3 October 2012.

We ruled that it was incumbent upon petitioner to prove that he made Uyugan, Batanes his domicile of choice upon reacquisition of his Philippine citizenship. Aside from his failure to discharge this burden, the period reckoned from 13 September 2012 to the May 2013 elections is only nine months – clearly short of the required one-year residency requirement for mayoralty candidates. Caballero is thus clearly not applicable. Indeed, it is to be noted that it is only Justice Brion in his Separate Concurring Opinion who opines that a permanent resident visa is required for reestablishment of domicile to take place, a view not shared by the majority.

Justice Brion needed to state in his Separate Concurring Opinion that a permanent residency visa is necessary for the start of residency for election purposes is precisely because such view is not found in the Ponencia, hence, contraries to be legally inapplicable.

There are categorical rulings in U.S. state courts that are squarely as all fours with the petition before us. In *Elkins v. Moreno*,[151] **aliens with a non-immigrant visa were considered as having the legal capacity to change their domiciles**. In reaching this conclusion, the US Supreme Court took into account the intention of Congress when it enacted the terms and restrictions for specific classes of non-immigrants entering the United States:

> Although nonimmigrant aliens can generally be viewed as temporary visitors to the United States, the nonimmigrant classification is by no means homogeneous with respect to the terms on which a nonimmigrant enters the United States. For example, Congress expressly conditioned admission for some purposes on an intent not to abandon a foreign residence or, by implication, on an intent not to seek domicile in the United States. Thus, the 1952 Act defines a visitor to the United States as "an alien . . . having a residence in a foreign country which he has no intention of abandoning" and who is coming to the United States for

[151] 435 U.S. 647 (1978).

> business or pleasure. Similarly, a nonimmigrant student is defined as "an alien having a residence in a foreign country which he has no intention of abandoning . . . and who seeks to enter the United States temporarily and solely for the purpose of pursuing . . . a course of study . . .." See also (aliens in "immediate and continuous transit"); (vessel crewman "who intends to land temporarily"); (temporary worker having residence in foreign country "which he has no intention of abandoning").
> By including restrictions on intent in the definition of some nonimmigrant classes, Congress must have meant aliens to be barred from these classes if their real purpose in coming to the United States was to immigrate permanently. x x x.
>
> **But Congress did *not* restrict every nonimmigrant class. In particular, no restrictions on a nonimmigrant's intent were placed on aliens admitted under §101(a)(15)(G)(iv). Since the 1952 Act was intended to be a comprehensive and complete code, the conclusion is therefore inescapable that, where as with the G–4 class Congress did not impose restrictions on intent, this was deliberate. Congress' silence is therefore pregnant, and we read it to mean that Congress, while anticipating that permanent immigration would normally occur through immigrant channels, was willing to allow nonrestricted nonimmigrant aliens to adopt the United States as their domicile.**
> **Under present law, therefore, were a G–4 alien to develop a subjective intent to stay indefinitely in the United States he would be able to do so without violating either the 1952 Act, the Service's regulations, or the terms of his visa. Of course, should a G–4 alien terminate his employment with an international treaty organization, both he and his family would lose their G–4 status. Nonetheless, such an alien would not necessarily be subject to deportation nor would he have to leave and re-enter the country in order to become an immigrant.**[152] **(Citations omitted) (Emphasis supplied)**

In *Toll v. Moreno*,[153] the Supreme Court of Maryland applied the ruling in *Elkins* and held that the ordinary legal standard for the establishment of domicile may be used even for non-immigrants:

> If under federal law a particular individual must leave this country at a certain date, or cannot remain here indefinitely, then he could not become domiciled in Maryland. Any purported intent to live here indefinitely would be inconsistent with law. It would at most be an unrealistic subjective intent, which is insufficient under Maryland law to establish domicile.
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> x x x x
>
> In light of the Supreme Court's interpretation of federal law, **it is obvious that nothing inherent in the nature of a G-4 visa would render the holder of such visa absolutely incapable of establishing a Maryland domicile. Assuming the correctness of the defendant's assertion that most G-4 visa holders will leave this country, if in a particular case one of these individuals is in a minority and, as shown by objective factors, intends for Maryland to be his fixed place of abode and intends to remain here indefinitely, he will have satisfied the Maryland standard for establishing domicile in this State.**

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[152] Id.
[153] 284 Md. 425 (1979).

The fact that an alien holds a non-immigrant visa is thus not controlling. What is crucial in determining whether an alien may lawfully adopt a domicile in the country is the restriction placed by Congress on a specific type of non-immigrant visa. **So long as the intended stay of a non-immigrant does not violate any of the legal restriction, sufficient *animus manendi* may be appreciated and domicile may be established.**

In the case of *balikbayan*s, the true intent of Congress to treat these overseas Filipinos not as mere visitors but as prospective permanent residents is evident from the letter of the law. While they are authorized to remain in the country for a period of only one year from their date of arrival, the laws, rules and regulations under the *Balikbayan* Program do not foreclose their options should they decide to actually settle down in the country. In fact, the *Balikbayan* Program envisions a situation where former Filipinos would have been legally staying in the Philippines visa-free for more than 36 months.[154] In the case of petitioner Poe, she entered the Philippines visa-free under the *Balikbayan* program, left for a short while and legally re-entered under the same program. This is not a case where she abused any *Balikbayan* privilege because shortly after reentering the country on 11 March 2006,[155] she applied for dual citizenship under R.A. 9225.

Based on the foregoing, it was most unfair for COMELEC to declare that petitioner could not have acquired domicile in the Philippines in 2005 merely because of her status as a *balikbayan*. Her visa (or lack thereof) should not be the sole determinant of her intention to reacquire her domicile in the Philippines.

Congress itself welcomes the return of overseas Filipinos without requiring any type of visa. Although visa-free entry is for a limited time, the period is extendible and is not conditioned upon the acquisition of a permanent resident visa. Considering that the law allows a *balikbayan* to stay in the Philippines for a certain period even without a visa and to settle in the country during that period, there is no reason to reject petitioner's intent to re-establish a residence from the date she entered the country. In fact, petitioner's permanent resettlement, as one millions of Filipino who had gone abroad, is an end-goal of the *Balikbayan* Program.

If we were to apply the standard for determining the effect of a visa on the ability of petitioner to re-establish her domicile in the Philippines, the U.S. cases of *Elkins v. Moreno* and *Toll v. Moreno*, beg the question: Does her entry as a *Balikbayan* restrict her from re-establishing her domicile in the

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[154] The website of the Bureau of Immigration states:

> Those who are admitted as Balikbayans are given an initial stay of one (1) year. They may extend their stay for another one (1), two (2) or six (6) months provided that they present their valid passport and filled out the visa extension form and submit it to the Visa Extension Section in the BI Main Office or any BI Offices nationwide. An additional requirement will be ask (sic) for (sic) Balikbayans who have stayed in the Philippines after thirty six (36 months).
>
> This is available at http://www.immigration.gov.ph/faqs/visa-inquiry/balikbayan-privilege, (last visited 8 March 2016).

[155] Petition to Deny Due Course, dated 21 Oct. 2015 (Elamparo), Annex E.

Philippines? The answer would be a resounding NO, for precisely the legislative policy of the *Balikbayan* Program is to assist in the reintegration of former Filipino citizen back into the country. The Court must also note that the visa-free entry is good for one year and renewable, even to the extent of authorizing the *Balikbayan* to stay much longer. The *Balikbayan* program is fully compatible and supportive of the re-establishment by a *Balikbayan of her* residence in her native land, her domicile of origin.

And this is not a case when petitioner abused the privileges of visa-free entry considering that, a year after her relocation, she immediately took steps to reacquire her Philippine citizenship

Petitioner was able to prove that she reacquired her domicile in the Philippines beginning May 2005.

As discussed, there are only three requisites for a person to acquire a new domicile by choice: (1) residence or bodily presence in the new domicile; (2) an intention to remain there; and (3) an intention to abandon the old domicile.[156] In my view, the pieces of evidence submitted by petitioner sufficiently prove that she re-established her domicile in the Philippines as early as May 2005.

I shall discuss the fulfillment of the requirements in the following order: (1) intention to remain in the new domicile; (2) intention to abandon the old domicile; and (3) bodily residence in the new domicile.

Intent to Establish a New Domicile

To prove her intent to establish a new domicile in the Philippines on 24 May 2005, petitioner presented the following evidence: (1) *school records* indicating that her children attended Philippine schools starting June 2005;[157] (2) *Taxpayer's Identification Number (TIN) Card*,[158] showing that

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[156] *Jalosjos v. COMELEC*, G.R. No. 193314, 26 February 2013; *Mitra v. COMELEC*, G.R. No. 191938, 2 July 2010; *Gayo v. Verceles*, G.R. No. 150477, 28 February 2005.

[157] Petitioner submitted as evidence Exhibit "7," which is Brian's official transcript of records from the Beacon School in Taguig City. It states that Brian was enrolled in Grade 8 at the Beacon School for the academic year 2005-2006. Exhibit 7-A, a Certification from Sandra Bernadette Firmalino, Registrar of the De La Salle High School Department, indicates that in 2006, Brian transferred to La Salle Greenhills, and that he studied there until he graduated from high school in 2009. Exhibits "7-B" and "7-C" are Hanna's permanent records at the Assumption College as an elementary and secondary student, respectively. They show that Hanna was enrolled in Grade 2 at Assumption College in Makati City for academic year 2005-2006.

As for Anika, petitioner alleged that Anika was just under a year old when the former and her family relocated to the Philippines in May 2005 and therefore Anika was not enrolled in any school in 2005. Petitioner presented Exhibit "7-D," which is a Certificate of Attendance dated 8 April 2015 issued by the Directress of the Learning Connection, Ms. Julie Pascual Penaloza. It states that Anika attended pre-school at the Learning Connection in San Juan City from January to March 2007. Petitioner likewise offered as evidence Exhibit "7-E," a Certification dated 14 April 2015 issued by the Directress of the Greenmeadows Learning Center, Ms. Anna Villaluna-Reyes, Anika studied at the Greenmeadows Learning Center in Quezon City for academic year 2007-2008. Exhibit "7-F" is the Elementary Pupil's Permanent Record showing that Anika spent her kindergarten and grade school years at the Assumption College. The record covers the years 2007 to 2013. The same Exhibit "7-F" indicates that Anika was born on 5 June 2004.

[158] Marked as Exhibit "8."

she registered with and secured the TIN from the BIR on 22 July 2005; (3) *Condominium Certificates of Title (CCTs)*[159] *and Tax Declarations* covering Unit 7F and a parking slot at One Wilson Place Condominium, 194 Wilson Street, San Juan, Metro Manila, purchased in early 2005 and served as the family's temporary residence; (4) *Transfer Certificate of Title (TCT)*[160] in the name of petitioner and her husband issued on 1 June 2006, covering a residential lot in Corinthian Hills, Quezon City in 2006; and (5) registration as a voter on 31 August 2006.

Enrollment of Children in Local Schools

Whether children are enrolled in local schools is a factor considered by courts when it comes to establishing a new domicile. In *Fernandez v. HRET*,[161] we used this *indicium*:

> In the case at bar, there are real and substantial reasons for petitioner to establish Sta. Rosa as his domicile of choice and abandon his domicile of origin and/or any other previous domicile. To begin with, petitioner and his wife have owned and operated businesses in Sta. Rosa since 2003. Their **children have attended schools in Sta. Rosa** at least since 2005. x x x (Emphasis supplied)

In *Blount v. Boston*,[162] the Supreme Court of Maryland identified location of the school attended by a person's children as one of the factors in determining a change of domicile. The discourse is reproduced here:

> Where actual residence and/or place of voting are not so clear or there are special circumstances explaining particular place of abode or place of voting, court will look to myriad of other factors in deciding person's domicile, such as paying of taxes and statements on tax returns, ownership of property, **where person's children attend school,** address at which person receives mail, statements as to residency in contracts, statements on licenses or governmental documents, where personal belongings are kept, which jurisdiction's banks are utilized, and any other facts revealing contact with one or the other jurisdiction.[163] (Emphasis supplied)

The fact that petitioner's children began their schooling in the Philippines shortly after their arrival in the country in May 2005 is no longer in dispute. In its Comment, the COMELEC noted this as one of the facts "duly proven" by petitioner.[164] By "duly proven," the COMELEC explained during the oral arguments that the term meant that documentary proof substantiated the pertinent allegation:

> CHIEF JUSTICE SERENO:
>
> All right. Let me turn your attention to page 56 of the COMELEC Comment. It says, "the COMELEC noted the following facts as duly proven by the petitioner. Petitioner's children arrived in the Philippines

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[159] Marked as Exhibits "11" and "12."
[160] TCT No. 290260, issued by the Register of Deeds of Quezon City.
[161] G.R. No. 187478 (2009).
[162] 718 A.2d 1111 (1984).
[163] Id.
[164] COMELEC Comment dated 7 January 2016, p. 56.

> during the latter half of 2005. Shortly after their arrival, petitioner's children began their schooling in the country. Petitioner purchased a condominium unit in San Juan City during the second half of 2005. Petitioner and husband started the construction of their house in 2006. Petitioner and her husband informed the U.S. Postal Service in 2006 of their abandonment of their U. S. Address." What does the commission mean when it says that these facts are duly proven?
>
> COMMISSIONER LIM:
>
> Your Honor please, the proceeding before the commission was summary. There was a preliminary conference, submission of exhibits, stipulations, comparison between the originals and the photocopies, and offer of evidence. **We considered these facts as non-controverted in the sense that they are covered by documentary proof, Your Honor.** (Emphasis supplied)

Acquisition of a New Residence

The COMELEC, in its Comment, found the following facts to be duly proven: that petitioner purchased a condominium unit in San Juan City during the second half of 2005, and that petitioner and her husband started the construction of their house in Corinthian Hills in 2006.[165] That petitioner purchased the residential lot in Corinthian Hills is not up for debate. Taken together, these facts establish another *indicium* of petitioner's establishment of a new domicile in the Philippines.

Our very own jurisdiction treats acquisition of residential property as a factor indicating establishment of a new domicile. Take the 2012 case of *Jalosjos v. COMELEC*,[166] in which we held that Rommel Jalosjos acquired a new domicile in Zamboanga Sibugay:

> Jalosjos presented the affidavits of next-door neighbors, attesting to his physical presence at his residence in Ipil. These adjoining neighbors are no doubt more credible since they have a better chance of noting his presence or absence than his other neighbors, whose affidavits Erasmo presented, who just sporadically passed by the subject residence. **Further, it is not disputed that Jalosjos bought a residential lot in the same village where he lived and a fish pond in San Isidro, Naga, Zamboanga Sibugay.** He showed correspondences with political leaders, including local and national party-mates, from where he lived. Moreover, Jalosjos is a registered voter of Ipil by final judgment of the Regional Trial Court of Zamboanga Sibugay. (Emphasis supplied)

It has been argued that the acquisition of a temporary dwelling in Greenhills, the purchase of a residential lot in Corinthian Hills, and the eventual construction of a house in the latter place do not indicate an intent on the part of petitioner to stay in the country for good. The 2013 case of *Jalosjos v. COMELEC*[167] has been cited to support this conclusion, as we purportedly held in that case that ownership of a house "does not establish domicile."

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[165] COMELEC Comment, page 56.
[166] G.R. No. 191970, 24 April 2012.
[167] *Jalosjos v. Commission on Elections*, G.R. No. 193314, 26 February 2013.

This reading of *Jalosjos* is not accurate. By no means did *Jalosjos* rule out ownership of a house or some other property as a factor for establishing a new domicile. To appreciate the statement in its proper context, the relevant discussion in *Jalosjos* is quoted below:

> Assuming that the claim of property ownership of petitioner is true, *Fernandez v. COMELEC* has established that the ownership of a house or some other property does not establish domicile. This principle is especially true in this case as petitioner has failed to establish her bodily presence in the locality and her intent to stay there at least a year before the elections, to wit:
>
> To use ownership of property in the district as the **determinative** indicium of permanence of domicile or residence implies that the landed can establish compliance with the residency requirement. This Court would be, in effect, imposing a property requirement to the right to hold public office, which property requirement would be unconstitutional. (Emphasis supplied)

As can be seen from the quoted discourse, the case did not throw out ownership of a house as a factor for determining establishment of a new domicile. Rather, it discarded ownership of a house as a controlling factor for determining establishment of a new domicile.

Even US courts consider acquisition of property as a badge of fixing a new domicile.[168] In *Hale v. State of Mississippi Democratic EC*,[169] the Supreme Court of Mississippi used acquisition of a new residence as a factor for determining transfer of domicile. In that case, William Stone sought the Democratic Party nomination for Senate District 10, a district covering parts of Marshall County, including Stone's home in Holly Springs. Hale argued that Stone was not eligible to run for that office because he did not meet the two-year residency requirement. Specifically, Hale argued that Stone could not be a resident of Marshall County because Stone had not abandoned his domicile in Benton County. He had moved to Holly Springs in October 2013.

The Mississippi Supreme Court ruled that Stone had proven that he established his domicile in Marshall County. It relied, among others, on acquisition of a home in the new domicile as a factor:

> To prove his position that he had changed his domicile from Benton County to Marshall County, Stone provided an abundance of evidence. In October 2013, Stone rented a house at 305 Peel Lane in Holly Springs, the county seat of Marshall County, and he obtained utility service for the home. **In July 2014, he bought a home at 200 Johnson Park in Holly Springs.** Furthermore, he notified the Senate comptroller about his change of address, and the comptroller sent an e-mail to every member of the Senate informing them of the change.

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[168] *Oglesby State Election Bd. v. Bayh* 521 N.E. 2d 1313 (1988); *Farnsworth v. Jones,* 114 N.C. App. 182 (1994); *Hale v. State of Mississippi Democratic Executive Committee* (168 So. 3d 946 (2015).

[169] No. 2015–EC–00965–SCT(2015).

x x x x

> We have held that **'[t]he exercise of political rights, admissions, declarations, the acts of purchasing a home and long-continued residency are circumstances indicative of his intention to abandon his domicile of origin and to establish a new domicile.'** Taking into consideration all of these factors, the circuit court did not err in determining that Stone's domicile has existed in Marshall County since October of 2013. (Emphases supplied and citations omitted)

Securing a Taxpayer's Identification Number (TIN) Card

In his Comment-Opposition to the Petition for Certiorari in G.R. No. 221698-700, private respondent Valdez posited that securing a TIN does not conclusively establish petitioner's *animus manendi* in the Philippines.[170] He reasons that any person, even a non-resident, can secure a TIN. On this matter, I must agree with him.

Indeed, the 1997 Tax Code mandates all persons required under our tax laws to render or file a return to secure a TIN.[171] This would include a non-resident so long as he or she is mandated by our tax laws to file a return, statement or some other document.[172] It is thus correct to say that a TIN Card does not conclusively evince the notion that petitioner is a resident of the Philippines.

Nevertheless, the significance of the TIN Card lies in the fact that it lists down the address of petitioner as No. 23 Lincoln St. West Greenhills, the very same address of her mother, Jesusa Sonora Poe, as reflected in the latter's affidavit.[173] Therefore, the TIN Card, which was issued on 22 July 2005, corroborates the assertion that petitioner, upon her arrival in 2005, was then staying at her mother's home.

Registration as Voter

Petitioner registered as a voter on 31 August 2006. This speaks loudly of the intent to establish a domicile in the country. In *Hale v. State of Mississippi Democratic EC*,[174] the Supreme Court of Mississippi considered registering to vote as a factor indicative of the intent to acquire a new domicile. More importantly, *Oglesby v. Williams* treats voter registration as one of the two most significant indicia of acquisition of a new domicile. The *Oglesby* discussion is informative:

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[170] *See* p. 47, par. 157.

[171] Section 236 (J) of the Tax Reform Act of 1997, R.A. No. 8424, 11 December 1997 provides:
(J) *Supplying of Taxpayer Identification Number* (TIN). — Any person required under the authority of this Code to make, render or file a return, statement or other document shall be supplied with or assigned a Taxpayer Identification Number (TIN) which he shall indicate in such return, statement or document filed with the Bureau of Internal Revenue for his proper identification for tax purposes, and which he shall indicate in certain documents, such as, but not limited to the following:

[172] Id.

[173] Affidavit, p. 1.

[174] No. 2015–EC–00965–SCT(2015).

This Court's longstanding view on determining a person's domicile was stated in Roberts, where the Court wrote:

> The words reside or resident mean domicile unless a contrary intent is shown. A person may have several places of abode or dwelling, but he can have only one domicile at a time. Domicile has been defined as the place with which an individual has a settled connection for legal purposes and the place where a person has his true, fixed, permanent home, habitation and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning. The controlling factor in determining a person's domicile is his intent. One's domicile, generally, is that place where he intends to be. The determination of his intent, however, is not dependent upon what he says at a particular time, since his intent may be more satisfactorily shown by what is done than by what is said. Once a domicile is determined or established a person retains his domicile at such place unless the evidence affirmatively shows an abandonment of that domicile. In deciding whether a person has abandoned a previously established domicile and acquired a new one, courts will examine and weigh the factors relating to each place. This Court has never deemed any single circumstance conclusive. **However, it has viewed certain factors as more important than others, the two most important being where a person actually lives and where he votes. Where a person lives and votes at the same place such place probably will be determined to constitute his domicile.** Where these factors are not so clear, however, or where there are special circumstances explaining a particular place of abode or place of voting, the Court will look to and weigh a number of other factors in deciding a person's domicile.
>
> **Furthermore, this Court has stated that the place of voting is the "highest evidence of domicile."** ("the two most important elements in determining domicile are where a person actually lives and where he votes"); ("Evidence that a person registered or voted is ordinarily persuasive when the question of domicile is at issue," quoting Comptroller v. Lenderking). **Furthermore, actual residence, coupled with voter registration, "clearly create[s] a presumption that [the person] was domiciled"** there. ("[w]here the evidence relating to voting and the evidence concerning where a person actually lives both clearly point to the same jurisdiction, it is likely that such place will be deemed to constitute the individual's domicile"). In other words, the law presumes that where a person actually lives and votes is that person's domicile, unless special circumstances explain and rebut the presumption. (Citations omitted) (Emphases supplied)

This Court, too, shares this reverence for the place of voting as an evidence of domicile. In *Templeton v. Babcock,*[175] we held as follows:

> The finding of the trial court to the effect that the deceased had acquired a domicile in the State of California is in our opinion based upon facts which sufficiently support said finding. In particular, we are of the opinion that the trial court committed no error in attaching importance to the circumstance that the deceased had voted in California elections.

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[175] G.R. No. 28328, 2 October 1928, 52 PHIL 130-138)

> **Though not of course conclusive of acquisition of domicile, voting in a place is an important circumstance and, where the evidence is scanty, may have decisive weight.** The exercise of the franchise is one of the highest prerogatives of citizenship, and in no other act of his life does the citizen identify his interests with the state in which he lives more than in the act of voting. (Emphasis supplied)

In sum, the evidence of petitioner substantiates her claim of the intent to establish a new domicile in the country. The enrollment of her children in local schools since 2005, the family's temporary stay in her mother's home followed by the purchase of the Greenhills condominium unit and the subsequent establishment of the Corinthian Hills family home, the registration of petitioner as a voter and the issuance of a TIN Card in her favor, collectively demonstrate the conclusion that she has established an incremental transfer of domicile in the country.

Respondent Valdez, however, points out that petitioner currently maintains two residential properties in the US, one purchased in 1992 and the other in 2008.[176] According to him, this is inconsistent with *animus manendi*.

This argument disregards overwhelming evidence showing that petitioner intended to establish a new domicile in the country. Petitioner has uprooted her family from Virginia, US to Manila, enrolled her children soon after her arrival in the Philippines, acquired residential properties in the new domicile – one of which now serves as the current family home – and registered as a voter. These factors all point to one direction: petitioner is in the country and is here to stay. We cannot disregard these factors, all of which establish a nexus to the new domicile, because of a solitary fact: the retention of two residential houses in the US. To be sure, it is difficult to justify a conclusion which considers only one contact in the old domicile and ignores many significant contacts established by the removing person in the new domicile.

Moreover, petitioner only admitted[177] that she owns the two houses. She never admitted that she resides in any of them. At best, what can only be established is that petitioner owns properties classified as residential properties. Undoubtedly, we cannot make a conclusion that petitioner failed to meet the *animus manendi* requirement in the absence of proof that petitioner uses one of the properties as a place of abode. In fact, all the evidence points to the fact that she leaves the Philippines only for brief periods of time; obviously with no intention to reside elsewhere.

It is important to always remember that domicile is in the main a question of intent.[178] It requires fact-intensive analysis. Not a single factor is conclusive. It is the totality of the evidence that must be considered.

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[176] Comment-Opposition to the Petition for Certiorari (G.R. No. 221698-700) dated 8 January 2015, p. 51, par. 174.
[177] Petitioner's Memorandum p. 279.
[178] 372 Md. 360 (2002).

Even the US Supreme Court admitted that domicile is a difficult question of fact that its resolution commands a pragmatic and careful approach. In *The District of Columbia v. Murphy*,[179] the US High Court remarked:

> [T]he question of domicile is a difficult one of fact to be settled only by a **realistic and conscientious review** of the many relevant (and frequently conflicting) indicia of where a man's home is and according to the established modes of proof.[180]

It is interesting to note that the US Supreme Court appended a footnote on the term home in the above quoted statement. Footnote 10 states:

> Of course, this term does not have the magic qualities of a divining rod in locating domicile. **In fact, the search for the domicile of any person capable of acquiring a domicile of choice is but a search for his "home."** *See* Beale, Social Justice and Business Costs, 49 Harv.L.Rev. 593, 596; 1 Beale, Conflict of Laws, § 19.1.[181]

Now, if we are to adopt the view that petitioner failed to meet the *animus manendi* requirement on the ground that she maintains two houses in the US, I pose this question: in our search for petitioner's home, are we making a realistic and conscientious review of all the facts?

Additionally, it is not required for purposes of establishing a new domicile that a person must sever all contacts with the old domicile."[182] I therefore find nothing wrong with petitioner maintaining residential properties in the old domicile.

It has been further suggested that petitioner's invocation of acquisition of residential property as a factor showing *animus manendi* does not benefit her considering that she purchased in 2008 a residential property in the US, which was subsequent to her purchase of the condominium unit and the residential lot in the Philippines, and that she maintained the one she acquired in 1992. But what is considered for *animus manendi* purposes as a factor is acquisition of a house in the new domicile. Acquisition of a house in the old domicile is not a factor for determining *animus manendi.*

That petitioner still maintains two houses in the US does not negate her abandonment of her US domicile. First, it has not been shown that petitioner actually lived in the residential house acquired in 1992. What is clear is that there was only one family home in Virginia, US, and petitioner

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[179] 314 U.S. 441 (1941).
[180] 314 U. S. 456
[181] Id.
[182] Superior Court of North Carolina. *Wake County. Business Court. Steve W. Fowler and Elizabeth P. Fowler v. North Carolina Department of Revenue.* No. 13 CVS 10989. 6 August 2014, citing *Hall v. Wake Cnty. Bd. of Elections,* 280 N.C. 600, 187 S .E.2d 52 (1972). See also *Robin Cates v. Olga Mescherskaya and Progressive Casualty Insurance Company.* Civil Action No. 14–00729. | Signed 1 July 2014. United States District Court, E.D. Louisiana, citing Cox, Cox, Filo, Camel & Wilson, LLC v. Sasol North Am., Inc., No. 11–856, 2012 WL 262613, at *5 (W.D.La. Jan. 30, 2012).

had already reestablished her residence in the Philippines before it was even sold.

Second, the residential house acquired in 2008 has no bearing in the cases before us with regard to determining the validity of petitioner's abandonment of her US domicile, particularly because it was purchased after she had already reacquired her Filipino citizenship. In this regard, even respondent Valdez claims that "it is only upon her reacquisition of Filipino citizenship on 18 July 2006, that she can be considered to have established her domicile in the Philippines."[183] This concession already leaves no question as to petitioner's abandonment of her US domicile and intent to reside permanently in the Philippines at the time that the residential house in the US was purchased in 2008.

1. Intent to Abandon the Old Domicile

To prove her intent to abandon her old domicile in the US, petitioner presented the following evidence: (1) email exchanges between petitioner or her husband and the property movers regarding relocation of their household goods, furniture and vehicles from the US to the Philippines; (2) invoice document showing delivery from the US and to the Philippines of the personal properties of petitioner and her family; (3) acknowledgment of change of address by the US Postal Service; (4) sale of the family home on 27 April 2006.

Plans to Relocate

In *Oglesby v. Williams*,[184] the Court of Appeals of Maryland noted that plans for removal show intent to abandon the old domicile. The Court said:

> [T]here are many citizens of Maryland who intend to change their domicile upon retirement and may make quite **elaborate plans** toward fulfilling that intent by building a retirement home in the place where they intend to retire. **Such plans, by themselves, do not prove the abandonment of an existing domicile, although it is evidence of the intention to do so.** Were such planning to be sufficient, the intent requirement would swallow the requirement of an actual removal to another habitation with the intent to reside there indefinitely. (Emphasis supplied)

In this case, petitioner submitted email exchanges showing that the family began planning to move back to the Philippines as early as March 2005. Exhibit "6-series" includes an email letter dated 17 March 2005 and sent to petitioner by Karla Murphy on 18 March 2005. Based on the email, Karla worked at Victory Van, a company engaged in moving personal belongings. Apparently, petitioner had asked for an estimate of moving personal properties from the US to the Philippines. The email reply reads:

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[183] Memorandum for respondent Amado D. Valdez, p. 25.
[184] 372 Md. 360 (2002).

From: Karla Murphy MURPHY@VictoryVan.com
To: gllamanzares gllamanzares@aol.com
Subject: Relocation to Manila Estimate
Date: **Fri, 18 Mar 2005**
3.17.05

Hi Grace:
Sorry for the delay in getting this to you. I know you are eager to get some rates for budgetary purposes.

I estimate that you have approximately **28,000 lbs of household goods plus your two vehicles. This will necessitate using THREE 40' containers. You not only have a lot of furniture but many of your pieces plus the toys are very voluminous.** We will load the containers from bottom to top not to waste any space but I sincerely believe you will need two containers just for your household goods.

To provide you with door to door service which would include packing, export wrapping, custom crating for chandeliers, marble top and glass tops, loading of containers at your residence, US customs export inspection for the vehicles, transportation to Baltimore, ocean freight and documentation to **arrival Manila,** customs clearance, delivery, with collection of vehicles from agent in Manila unwrapping and placement of furniture, assisted unpacking, normal assembly **(beds, tables, two piece dressers and china closets),** container return to port and same day debris removal based on three 40' containers, with 28,000 lbs of HHG and two autos will be USD 19,295.

Grace, I predict you will have some questions. I will be out of the office tomorrow and will be in the office all day on Monday. If your questions can't wait please call me on my cell number at 703 297 27 88.
I'll talk to you soon.
Kind regards and again, thanks for your patience.
Karla (Emphases Supplied)

The email indicates that petitioner was planning to move an estimated 28,000 pounds of household goods plus two vehicles from Virginia, US to Manila. The email further shows that three forty-foot containers were estimated to be used in the movement of these items.

Twenty-eight thousand pounds of personal properties, including two vehicles, is not difficult to visualize. The exchanges during the oral arguments held by this Court for this case shows that three forty-foot containers is about the size of a three-storey house. The exchange is quoted below:

CHIEF JUSTICE SERENO:
Okay. Alright. Now when you come, you see you have thrown out the fact of relocation, continuous schooling, you have thrown that out. May I now ask you what you did in looking at the e-mail that they submitted dated 18 March 2005. Have you [looked] closely at that e-mail?

COMMISSIONER LIM:
Yes, Your Honor.

CHIEF JUSTICE SERENO:

Okay. Can you tell us what that e-mail said?

COMMISSIONER LIM:

These correspondences, e-mail correspondences evinced a strong desire to bring your belongings here to seemingly on the surface, Your Honor, to transfer residence here and to inquire about the cost of moving to the Philippines, Your Honor…

CHIEF JUSTICE SERENO:

Did you look at the, how much they were planning to move back to the Philippines?

COMMISSIONER LIM:

Well they said they sold their house there already, Your Honor…

CHIEF JUSTICE SERENO:

Twenty eight thousand pounds.

COMMISSIONER LIM:

Yes, Your Honor.

CHIEF JUSTICE SERENO:

And the estimate of the forwarding company is that they need three forty foot containers, correct?

COMMISSIONER LIM:

No question as to, no question as to that, Your Honor.

CHIEF JUSTICE SERENO:

Okay. Alright. Including can you look at what a forty foot container looks like. This. (image flashed on the screen) Please look at this Commissioner Lim.

COMMISSIONER LIM:

I'm quite familiar having been a maritime lawyer in the past…

CHIEF JUSTICE SERENO:

Alright. Thank you very much. You see one forty foot container already contains an office, and an entire residence. And then if you put three on top of the other, okay, … (image flashed on the screen)

COMMISSIONER LIM:

Yes, Your Honor.

CHIEF JUSTICE SERENO:

That's already the content of an entire house. And they're talking about glass tops, marble tops, chandeliers, in addition to that two cars and pets. Of course, it's not in the e-mail.

In other words, even this there is no intention, Commissioner Lim?[185]

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[185] Transcript of Stenographic Notes taken during the Oral Arguments on 16 February 2016, pp. 85-86.

Definitely, the email shows that as early as 18 March 2005, petitioner already had plans to relocate to Manila. It must be stressed that not only household goods would be moved to Manila, but two vehicles as well. Petitioner was certainly not planning for a short trip. The letter, therefore, shows the intent of petitioner to abandon her old domicile in the US as early as March of 2005.

Change of Postal Address

Petitioner also adduced as evidence the email of the US Postal Service acknowledging the notice of change of address made by petitioner's husband. It has been argued that the online acknowledgment merely establishes that petitioner's husband only requested a change of address and did not notify the US Postal service of the abandonment of the old US address. This reasoning fails to appreciate that a notice of change of address is already considered an *indicium* sufficient to establish the intent to abandon a domicile.

The already discussed *Hale v. State of Mississippi Democratic EC*[186] utilized change of postal address as a factor for determining the intent to abandon a domicile. In the case of *Farnsworth v. Jones,*[187] the Court of Appeals of North Carolina noted, among others, the failure of the candidate to change his address. It ruled out the possibility that defendant had actually abandoned his previous residence.

> To the contrary, defendant maintained the condominium at Cramer Mountain, ate dinner weekly at the Country Club there, exercised there, and spent approximately 50% of his time there. **He additionally did not change his address to Ashley Arms for postal purposes, or for any other purposes. He executed a month-to-month lease for a furnished apartment because he wanted to "see what would happen" in the election. Although defendant acquired a new residence at the Ashley Arms address and expressed his intention to remain there permanently, there is little evidence in the record to indicate that he was actually residing there.** x x x. (Emphasis supplied)

I do agree with the observation that the online acknowledgement never showed that the change of address was from the old US address to the new Philippine address. To my mind, however, the deficiency is not crucial considering that there are other factors (discussed elsewhere in this opinion) showing that petitioner's intent was to relocate to the Philippines. What matters as far as the online acknowledgement is concerned is that it indicates an intent to abandon the old domicile of petitioner.

Sale of Old Residence

Another factor present in this case is the sale of petitioner's family home in the US.

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[186] No. 2015–EC–00965–SCT (2015).
[187] 114 N.C. App. 182 (1994).

In *Imbraguglio v. Bernadas*[188] decided by the Court of Appeals of Louisiana, Fourth Circuit, Bernard Bernadas filed a "Notice of Candidacy" for the office of Sheriff of St. Bernard Parish. Petrina Imbraguglio filed a petition objecting to the candidacy of Bernadas on the ground of failure to establish residence in the parish. It was found that Bernardas sold his home on Etienne Drive on 23 February 2006. Since 31 August 2006, Bernadas has lived with his family at a home he purchased at 7011 General Haig Street in New Orleans. The Louisiana appellate court ruled that Bernardas had abandoned his domicile in the parish by selling his home therein and had not reestablished the same. The Louisiana appellate court held that:

> We also find no error in the trial court's finding that the defendant established a new domicile for purposes of La. R.S. 18:451.3 (which took effect on June 8, 2006) **by voluntarily selling his home,** the only property owned in St. Bernard Parish, and moving to New Orleans without residing anywhere in St. Bernard Parish for two years preceding the date he filed his notice of candidacy to run for sheriff. (Emphasis supplied)

Location of personal belongings

Another vital piece of evidence is the invoice issued by Victory Van to petitioner indicating the actual delivery of personal property to Manila in September 2006 and the cost of shipping of the household goods. Pertinent portions of the Invoice dated 13 September 2006 are quoted below:

> Hello! As you may have heard from your agent in the Philippines, there was an overflow. Every effort was made to make it fit in the two 40's and all went except for about 1900 lbs, which will be sent in lift vans. An invoice is attached. Thank you.
>
> x x x x
>
> | | | | |
> |---|---|---|---|
> | CUSTOMER: | Grace Llamanzares | DATE: | 9/13/2006 |
> | ORIGIN: | Sterling, VA | REFERENCE #: | EXP06020 |
> | DESTINATION: | Manila, Philippines | | |
> | **WEIGHT:** | **25,241 lbs** | | |
> | VOLUME: | 2-40' S-SC | | |
> | VOLUME | 2 – Lift Vans Overflow LCI, Shipment (293 Cu Ft.) | | |

The invoice proves that 25,241 pounds of personal property owned by petitioner and her family were moved from Sterling, Virginia, US to Manila, Philippines. This proves another factor: the consummation of the previously discussed plan to relocate to Manila. The location of the majority of the personal belongings matters in the determination of a change in domicile. This factor was used in the already discussed *Oglesby* and in *Bell v. Bell.*[189]

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[188] 968 So. 2d 745 (2007).
[189] Pa. Superior Ct. 237 (1984) 473 A.2d 1069.

It must be noted that *Bell* held that unimportant belongings are not considered in that determination. In that case, the wife sought before a Pennsylvania court the issuance of an injunction restraining the husband from obtaining a divorce in Nevada. She filed the suit on the ground that the husband failed to establish a domicile in Nevada as he once lived in Pennsylvania. Also, he was away from Nevada most of the time since he worked in Nigeria.

The Pennsylvania Superior Court, in holding that the husband succeeded in establishing a domicile in Nevada, disregarded the fact that the husband left behind a crate of his clothing at the home in Pennsylvania.

> As for the relevancy of the clothing left behind at the Pennsylvania location by Mr. Bell after his departure, we, as did the trial court, find this element to be "of little moment. That [Mr. Bell] has done without them for so long shows that they **are not of particular importance to him.**" (Emphasis supplied)

It is worthy to note that the case did not reject movement/ non-movement of personal belongings as a factor for determining domicile. Rather, what it rejected was unimportant personal properties. Thus, this case, combined with the *Oglesby* case, provides that movement of properties that are valuable/important indicates intent to abandon the previous domicile. Another take-away from this case is that when only unimportant belongings remain in the old domicile, the intent to abandon the old domicile is not diminished.

What is more, it must be emphasized that petitioner donated to the Salvation Army, as shown by Exhibit "15" and Exhibit "15-A," which are receipts showing donations to the Salvation Army of clothes, books and miscellaneous items. The receipts are dated 23 February 2006. The value of the personal effects donated was placed by petitioner's husband at USD300.00 and USD575.00,[190] certainly little personal items that were even then, fully disposed.

What can be gleaned from the above facts is that petitioner intended to bring along with her in the Philippines only those items she deemed important to her, and that those that were left behind were unimportant. It should be stressed that the items donated to charity included books and clothes, which presumably are not valuable to petitioner; hence, the donations to the Salvation Army. Accordingly, petitioner was able to establish another factor indicating the intent of petitioner to abandon her old domicile and establish a new domicile in the Philippines.

In sum, there is more than sufficient evidence indicating petitioner's intent to abandon her domicile in the US. Several factors have been established: plans to transfer to the Philippines, sale of the residence in the old domicile, change of postal address, and relocation of valuable personal belongings to the new domicile.

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[190] Receipt Nos. 827172 and 8220421, dated 23 February 2006.

2. Actual removal from old domicile and relocation to new domicile

The third requirement for establishment of a new domicile is bodily presence in or the actual removal to the new domicile.

In *Oglesby v. Williams*,[191] the Court of Appeals of Maryland faced the issue of whether Beau H. Oglesby met the two-year residency requirement to run for State's Attorney for Worcester County in the November 2002 general election. Oglesby admitted that he had been domiciled in Wicomico County for a period of time beginning in December 1995. He argued, however, that his purchase of real property in Worcester County on 5 September 2000, more than two years before the election, coupled with his intention to be domiciled there, effectively established that he had changed his domicile to Worcester County.

> We do not question, to be sure, that the appellant intended to make Worcester County his residence, his fixed, permanent home and habitation and, thus, to abandon his Wicomico County residence. **We simply do not believe that the intent was perfected before the appellant moved into the Worcester County home; the appellant's intent was not actualized until then.**
>
> [T]here are many citizens of Maryland who intend to change their domicile upon retirement and may make quite elaborate plans toward fulfilling that intent by building a retirement home in the place where they intend to retire. Such plans, by themselves, do not prove the abandonment of an existing domicile, although it is evidence of the intention to do so. Were such planning to be sufficient, the intent requirement would swallow the requirement of an actual removal to another habitation with the intent to reside there indefinitely.
>
> x x x x
>
> The evidence shows that the appellant established a domicile in Wicomico County in December, 1995 and remained domiciled in that county until, at the earliest, December, 2000. He voted in the November 7, 2000 election in Wicomico County **and he did not move into a residence in Worcester County until December, 2000. We hold that the appellant did not become a domiciliary of Worcester County until, at the earliest, he actually moved into his new home on December 20, 2000.**

Oglesby makes the date of actual transfer as the reckoning point for the change of domicile. Had the actual removal happened prior to the two-year period, Oglesby would have satisfied the residency requirement in that case.

Applying the rule to this case, it appears that the intent was actualized in 24 May 2005, the date when petitioner arrived in the Philippines, as

[191] 372 Md. 360 (2002).

revealed by her US passport bearing a stamp showing her entry in the Philippines. The fact that she arrived here for the purpose of moving back to the Philippines was not denied by COMELEC during the oral arguments, although it did not recognize the legal implications of such fact.

We must not lose sight of the fact that petitioner registered as a voter in this country on 31 August 2006. Thus, the implication of petitioner having registered on 31 August 2006 is that she had already been a resident in the country for at least one year as of the day of her registration. The reason is that the Voter's Registration Act of 1996[192] requires among other things that the citizen must have resided in the Philippines for at least one year.

That being said, the registration of petitioner as voter bolsters petitioner's claim that she concretized her intent to establish a domicile in the country on 24 May 2005. Take note that if we use 24 May 2005 as the reckoning date for her establishment of domicile in the Philippines, she would have indeed been a resident for roughly one year and three months as of 31 August 2006, the date she registered as a voter in the Philippines.

Besides, when we consider the other factors previously mentioned in this discussion – the enrolment of petitioner's children shortly after their arrival in the Philippines, the purchase of the condominium unit during the second half of 2005, the construction of their house in Corinthian Hills in 2006, the notification of the US Postal Service of petitioner's change of address – there can only be one conclusion: petitioner was here to stay in the Philippines for good when she arrived in May 2005.

Let me highlight the fact of enrolment of petitioner's children in 2005. This happened shortly after their arrival in the Philippines, which was in May 2005. Taking together the two facts – the arrival of the family in May and the subsequent attendance of the children in local schools the following month – the logical conclusion that we can derive from them is that petitioner arrived early in May so as to prepare her children's schooling in the Philippines. Now, given that in May, she already had in mind the attendance of her children in local schools, this indicates that petitioner, at the time of her arrival already had the intent to be in the country for the long haul.

Lastly, we must not overlook the proximity of her date of arrival in the Philippines in 24 May 2005 to the death of her father in 14 December 2004. The closeness of the dates confirms the claim of petitioner that the untimely death of her father and the need to give her mother moral support and comfort. The return to the country, it must be emphasized, happened within one year of the death of petitioner's father. It reflects the motive of petitioner for her return to the Philippines: the only child had to return to the Philippines as soon as possible so that she could be with her grieving mother. More important, this very same motive justifies the acts of

[192] Republic Act No. 8189, 11 June 1996.

relocation she executed, several of which occurred within a year of the death of her father.

As a result, petitioner's arrival in the Philippines on 24 May 2005 was definitely coupled with both *animus manendi* and *animus non revertendi.*

True, petitioner's transfer in this case was incremental. But this Court has already recognized the validity of incremental transfers. In *Mitra v. COMELEC*,[193] We stated:

> Mitra's feed mill dwelling cannot be considered in isolation and separately from the circumstances of his transfer of residence, specifically, his expressed intent to transfer to a residence outside of Puerto Princesa City to make him eligible to run for a provincial position; his preparatory moves starting in early 2008; his initial transfer through a leased dwelling; the purchase of a lot for his permanent home; and the construction of a house in this lot that, parenthetically, is adjacent to the premises he leased pending the completion of his house. **These incremental moves do not offend reason at all, in the way that the COMELEC's highly subjective non-legal standards do.** (Emphasis supplied)

Even the Superior Court of Pennsylvania in *Bell v. Bell*[194] recognized the notion of incremental transfers in a change of domicile:

> Intent, being purely subjective, must to a large extent be determined by the acts which are manifestations of that intent. **However, it does not follow from that that the acts must all occur simultaneously with the formation of the intent.** Such a conclusion would be contrary to human nature. One does not move to a new domicile and immediately change church membership, bank account, operator's license, and club memberships. Nor does he immediately select a neighborhood, purchase a home and buy furniture. **All of those acts require varying degrees of consideration and as a consequence cannot be done hastily nor simultaneously.** (Emphases supplied)

The foregoing considered, the COMELEC used a wrong consideration in reaching the conclusion that petitioner failed to meet the durational residency requirement of 10 years. There is no falsity to speak of in the representation made by petitioner with regard to her residence in the country. For using wrong or irrelevant considerations in deciding the issue, COMELEC tainted its cancellation of petitioner's 2016 certificate of candidacy for president with grave abuse of discretion.

Long Residence in the Philippines

We must remember that petitioner and her children would have stayed in the Philippines for 10 years and 11 months by 9 May 2016. For nearly 11 years, her children have studied and spent a substantial part of their formative years here. On this, the case of *Hale* is again instructive:

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[193] G.R. No. 191938, 19 October 2010.
[194] 473 A.2d 1069 (1984).

> We have held that **'[t]he exercise of political rights, admissions, declarations, the acts of purchasing a home and long-continued residency are circumstances indicative of his intention to abandon his domicile of origin and to establish a new domicile.'** Taking into consideration all of these factors, the circuit court did not err in determining that Stone's domicile has existed in Marshall County since October of 2013. (Emphasis supplied and citations omitted)

Petitioner's intention to abandon US domicile was not negated

The COMELEC First Division and the COMELEC En Banc in SPA Nos. 15-002 (DC), 15-007 (DC) and 15-139 (DC) ruled that the fact that petitioner's husband remained and retained his employment in the US in May 2005 negated her intent to reside permanently in the Philippines. Furthermore, petitioner travelled frequently to the US using her US passport even after she reacquired her Philippine citizenship. According to the COMELEC, these show that she has not abandoned her domicile in the US. Respondent Valdez also points to two houses in the US that petitioner maintains up to the present, and alleges that this fact also negates her alleged intent to reside permanently in the Philippines.

The fact that petitioner's husband was left in the US and retained his employment there should be viewed based on the totality of the circumstances and the reason for such separation. There is no question that the impetus for petitioner to move back to the Philippines was the death of her father in December 2004 and the desire to be back in the Philippines and comfort her grieving mother. There is also no question that by May 2005, petitioner and her children were already living in the Philippines and the children already enrolled in Philippine schools.

Petitioner and her family could not have been expected to uproot their lives completely from the US and finish all arrangements in the span of six months. One of the spouses had to remain in the US to wind up all logistical affairs. There is also no showing that petitioner is able to readily find a job in the Philippines upon their return. Again, one of the spouses has to continue earning a living for the family's upkeep and to finance the heavy cost of relocation. The conjugal decision became clear when it was the husband who kept his employment in the US and came to join his family in the Philippines only after the sale of the house in the US.

To my mind, that petitioner's husband remained in the US until April 2006 only showed that the family endured a period of separation in order to rebuild their family life together in the Philippines. The fact that the husband stayed behind should not have been considered in isolation but contemplated in light of the realities of the situation.

The COMELEC also faults petitioner for travelling to the US "frequently" using her US passport. A closer examination of the factual

circumstances at the time, however, reveals that petitioner had a justifiable reason for doing so.

When petitioner came back to the Philippines in May 2005, she was admittedly still a US citizen. She reacquired her Philippine citizenship on 7 July 2006 under the auspices of Republic Act No. 9225 and became a dual citizen of the Philippines and the US. It was only on 20 October 2010 that petitioner renounced her US citizenship and became a pure Filipino citizen. Thus, petitioner was a US citizen from May 2005 to 20 October 2010.

Section 215(b) of the US Immigration and Nationality Act provides that "it shall be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid United States passport." This provision is echoed in Section 53.1 of the US Code of Federal Regulations, unless the US citizen falls under any of the exceptions provided therein.[195]

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[195] §53.2 Exceptions.
(a) U.S. citizens, as defined in §41.0 of this chapter, are not required to bear U.S. passports when traveling directly between parts of the United States as defined in §51.1 of this chapter.
(b) A U.S. citizen is not required to bear a valid U.S. passport to enter or depart the United States:
(1) When traveling as a member of the Armed Forces of the United States on active duty and when he or she is in the uniform of, or bears documents identifying him or her as a member of, such Armed Forces, when under official orders or permit of such Armed Forces, and when carrying a military identification card; or
(2) When traveling entirely within the Western Hemisphere on a cruise ship, and when the U.S. citizen boards the cruise ship at a port or place within the United States and returns on the return voyage of the same cruise ship to the same United States port or place from where he or she originally departed. That U.S. citizen may present a government-issued photo identification document in combination with either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services before entering the United States; if the U.S. citizen is under the age of 16, he or she may present either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services; or
(3) When traveling as a U.S. citizen seaman, carrying an unexpired Merchant Marine Document (MMD) in conjunction with maritime business. The MMD is not sufficient to establish citizenship for purposes of issuance of a United States passport under part 51 of this chapter; or
(4) *Trusted traveler programs*—(i) *NEXUS Program.* When traveling as a participant in the NEXUS program, he or she may present a valid NEXUS program card when using a NEXUS Air kiosk or when entering the United States from contiguous territory or adjacent islands at a land or sea port-of-entry. A U.S. citizen who enters the United States by pleasure vessel from Canada under the remote inspection system may also present a NEXUS program card;
(ii) *FAST program.* A U.S. citizen who is traveling as a participant in the FAST program may present a valid FAST card when entering the United States from contiguous territory or adjacent islands at a land or sea port-of-entry;
(iii) *SENTRI program.* A U.S. citizen who is traveling as a participant in the SENTRI program may present a valid SENTRI card when entering the United States from contiguous territory or adjacent islands at a land or sea port-of-entry; The NEXUS, FAST, and SENTRI cards are not sufficient to establish citizenship for purposes of issuance of a U.S. passport under part 51 of this chapter; or
(5) When arriving at land ports of entry and sea ports of entry from contiguous territory or adjacent islands, Native American holders of American Indian Cards (Form I-872) issued by U.S. Citizenship and Immigration Services (USCIS) may present those cards; or
(6) When arriving at land or sea ports of entry from contiguous territory or adjacent islands, U.S. citizen holders of a tribal document issued by a United States qualifying tribal entity or group of United States qualifying tribal entities as provided in 8 CFR 235.1(e) may present that document. Tribal documents are not sufficient to establish citizenship for purposes of issuance of a United States passport under part 51 of this chapter; or
(7) When bearing documents or combinations of documents the Secretary of Homeland Security has determined under Section 7209(b) of Public Law 108-458 (8 U.S.C. 1185 note) are sufficient to denote identity and citizenship. Such documents are not sufficient to establish citizenship for purposes of issuance of a U.S. passport under part 51 of this chapter; or
(8) When the U.S. citizen is employed directly or indirectly on the construction, operation, or maintenance of works undertaken in accordance with the treaty concluded on February 3, 1944, between

Petitioner, as a US citizen, was required by law to use her US passport when travelling to and from the US. Notwithstanding her dual citizenship and the abandonment of her US domicile, she could not have entered or departed from the US if she did not use her US passport.

In *Maquiling v. COMELEC*,[196] which I penned for the Court, while we ruled that the use of a foreign passport negates the earlier renunciation of such foreign citizenship, **did not say, however, that the use of a foreign passport after reacquisition of Philippine citizenship and before the renunciation of the foreign citizenship adversely affects the residency of a candidate for purposes of running in the elections. This case cannot, therefore, be used as basis to negate petitioner's residency**. This *Maquiling* decision involved Rommel Arnado who was elected Mayor of Kauswagan, Lanao del Norte in the 2010 elections. He ran also for the 2013 elections for the same post and won again. The Court affirmed the *Maquiling* doctrine in the case of *Arnado v. COMELEC*.[197] The doctrine was not expanded in any manner as to affect petitioner's citizenship claim. The *Maquiling* doctrine solely has to do with the effect of the continued use of a US passport **after** the renunciation of US citizenship. In the case of petitioner, there is absolutely no evidence, which even COMELEC admits, that she used a US passport **after** she renounced her US citizenship on

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cont.

the United States and Mexico regarding the functions of the International Boundary and Water Commission (IBWC), TS 994, 9 Bevans 1166, 59 Stat. 1219, or other related agreements, provided that the U.S. citizen bears an official identification card issued by the IBWC and is traveling in connection with such employment; or

(9) When the Department of State waives, pursuant to EO 13323 of December 30, 2003, Section 2, the requirement with respect to the U.S. citizen because there is an unforeseen emergency; or

(10) When the Department of State waives, pursuant to EO 13323 of December 30, 2003, Sec 2, the requirement with respect to the U.S. citizen for humanitarian or national interest reasons; or

(11) When the U.S. citizen is a child under the age of 19 arriving from contiguous territory in the following circumstances:

(i) *Children under age 16.* A United States citizen who is under the age of 16 is permitted to present either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when entering the United States from contiguous territory at land or sea ports-of-entry; or

(ii) *Groups of children under age 19.* A U.S. citizen who is under age 19 and who is traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization may present either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when arriving in the United States from contiguous territory at all land or sea ports of entry, when the group, organization or team is under the supervision of an adult affiliated with the organization and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person who is age 19 or older. The following requirements will apply:

(A) The group, organization, or team must provide to CBP upon crossing the border on organizational letterhead:

(*1*) The name of the group, organization or team, and the name of the supervising adult;

(*2*) A list of the children on the trip; and

(*3*) For each child, the primary address, primary phone number, date of birth, place of birth, and the name of at least one parent or legal guardian.

(B) The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by certifying in the writing submitted in paragraph (b)(11)(ii)(A) of this section that he or she has obtained for each child the consent of at least one parent or legal guardian.

(C) The procedure described in this paragraph is limited to members of the group, organization, or team who are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in 8 CFR parts 211, 212, or 235.

[196] G.R. No. 195649, 16 April 2013.

[197]

20 October 2010. Clearly, **Maquiling and Arnado are not relevant to the petitioner's case until new proof can be adduced contradicting the present state of the evidence on record that petitioner never used her US passport after she renounced her US citizenship.**

Taking into account all these pieces of evidence, it cannot be said that petitioner made a false material representation in her 2016 certificate of candidacy for president as far as her residency is concerned. The totality of these circumstances shows that indeed, she had re-established her residence in the Philippines for 10 years and 11 months until the day before the elections in May 2016, which is sufficient to qualify her to run for president in the country. At the very least, it negates a finding of deliberate intention on her part to mislead the electorate with regard to her residency. Evidently, a single statement in her 2013 certificate of candidacy for senator cannot be deemed to overthrow the entirety of the evidence on record, which shows that her residence in the Philippines commenced in May 2005.

IV.
B. ON CITIZENSHIP

In the assailed Resolutions, the COMELEC also declared that petitioner made a false material representation when she declared that she was a natural-born citizen of the Philippines. According to the commission, petitioner's inability to prove her blood relationship to a Filipino parent precluded her from ever claiming natural-born status under the 1935 Constitution. COMELEC argues, therefore, that her declaration as to her citizenship must necessarily be considered false.

I find no support whatsoever for these legal conclusions.

Petitioner did not make a false material representation regarding her citizenship in her 2016 Certificate of Candidacy for president.

Considering that there has been no definitive ruling on the citizenship of foundlings, it would be unreasonable and unfair for the COMELEC to declare that petitioner deliberately misrepresented her status as a natural-born citizen of the Philippines. In fact, the evidence she submitted in support of her claim of citizenship gives us every reason to accept her assertion of good faith.

In any event, I believe that there is sufficient legal basis to sustain a presumption of citizenship in favor of petitioner notwithstanding the absence of any physical proof of her filiation. Her natural-born status can be founded from solid interpretation of the provisions of the Constitution.

There was no deliberate attempt to mislead, misinform, or hide a fact

that would otherwise render her ineligible.

Contrary to claims that petitioner committed deliberate misrepresentation when she declared that she is a natural-born Filipino citizen, the following documents support a finding of good faith on her part:

1. Adoption Decree

The adoption decree issued in favor of petitioner in 1974 allows her to legally claim to be the daughter of Ronald Allan Poe and Jesusa Sonora Poe. This proposition finds support in statutes and jurisprudence.

In *Republic v. Court of Appeals,* We held that upon entry of an adoption decree, **the law creates a relationship in which adopted children were declared "born of" their adoptive parents.**[198]

Congress confirmed this interpretation when it enacted R.A. 8552, which provides that the "adoptee shall be considered the legitimate son/daughter of the adopter for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughter born to them without discrimination of any kind."[199]

Apart from obtaining the status of legitimate children, adoptees are likewise entitled to maintain the strict confidentiality of their adoption proceedings. The provisions of P.D. 603,[200] R.A. 8552[201] and the Rule on Adoption[202] stipulate that all records, books, and papers relating to the adoption cases in the files of the court, the Department of Social Welfare and Development, or any other agency or institution participating in the adoption proceedings shall be kept strictly confidential. The records are permanently sealed and may be opened only upon the court's determination that the disclosure of information to third parties if "necessary" and "for the best interest of the adoptee."[203] This grant of confidentiality would mean very little if an adoptee is required to go beyond this decree to prove her parentage.

2. Certificate of Live Birth

Upon the issuance of an adoption decree, an amended certificate of birth is issued by the civil registrar attesting to the fact that the adoptee is

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[198] *Republic v. Court of Appeals* G.R. No. 97906, 21 May 1992.
[199] Section 17.
[200] Child and Youth Welfare Code (1974), Article 38.
[201] Domestic Adoption Act of 1998, Sec. 15.
[202] A.M. No. 02-6-02-SC, Sec. 18.
[203] It must be noted that in the US, adoption statutes prohibit adoption files from being inspected by birth parents, the general public, and even the adult adoptees themselves, with most states providing that sealed adopted records could be opened only by court order.[203] In the case of *In Re: Roger B* 418 N.E.2d 751 (Ill.1981), the Court eventually held that the adoptee has no fundamental right to view his adoption records since the status of an adoptee does not result at birth. It is derived from legal proceedings the purpose of which is to protect the best interests of the child.

the child of the adopters by being registered with their surname.[204] Like all persons, petitioner has the right to rely on this birth certificate for information about her identity, status and filiation.

Article 410 of the Civil Code states that the books making up the civil register and all documents relating thereto are considered public documents and shall be *prima facie* evidence of the facts therein contained.[205] As a public document, a registered certificate of live birth enjoys the presumption of validity.[206]

Petitioner's birth certificate also has the imprimatur of no less than the Municipal Court of San Juan, Rizal Province.[207] In the absence of a categorical pronouncement in an appropriate proceeding that the decree of adoption is void, the birth certificate and the facts stated therein are deemed legitimate, genuine and real.[208]

Petitioner thus cannot be faulted for relying on the contents of a public document which enjoys strong presumptions of validity under the law. She is actually obliged to do so because the law does not provide her with any other reference for information regarding her parentage. It must be noted that records evidencing her former foundling status have been sealed after the issuance of the decree of adoption. In *Baldos v. Court of Appeals and Pillazar,*[209] We held that it is not for a person to prove the facts stated in his certificate of live birth, but for those who are assailing the certificate to prove its alleged falsity.

The issuance of an amended certificate without any notation that it is new or amended or issued pursuant to an adoption decree, should not be taken against petitioner, because it merely complies with the confidentiality provisions found in adoption laws.[210] Under Section 16 of the Rule on Adoption (A.M. No. 02-6-02-SC, 31 July 2002), it shall be the responsibility of the civil registrar where the foundling was registered to annotate the adoption decree on the foundling certificate, and to prepare and a new birth certificate without any notation that it is a new or amended certificate.

3. Voter's ID

The Voter's ID issued to petitioner likewise prove that she acted in good faith when she asserted that she was a natural-born citizen of the

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[204] Republic Act No. 8552 entitled "Domestic Adoption Act of 1998," Section 14.
[205] CIVIL CODE, Art. 410.
[206] *Baldos v. Court of Appeals and Pillazar,* 638 Phil. 601 (2010).
[207] Marked as Exhibit "2."
[208] *Reyes v. Sotero*, 517 Phil. 708 (2006).
[209] Id.
[210] The original certificate of birth shall be stamped "cancelled," annotated with the issuance of an amended birth certificate in its place, and shall be sealed in the civil registry records. With due regard to the confidential nature of the proceedings and records of adoption, the civil registrar where the foundling was registered is charged with the duty to seal the foundling certificate in the civil registry records, which can be opened only upon order of the court which issued the decree of adoption (Section 16(B)(3)(c), A.M. No. 02-6-02-SC, 31 July 2002).

Philippines. Precisely because of the entries in these documents, Poe could not be expected to claim any citizenship other than that of the Philippines. Hence, she could not have committed a material misrepresentation in making this declaration.

4. Philippine Passport

In 1996, R.A. 8239 (Philippine Passport Act of 1996) was passed. The law imposes upon the government the duty to issue passport or any travel document to any citizen of the Philippines or individual who complies with the requirements of the Act.[211] "Passport" has been defined as a document issued by the Philippine government *to its citizens* and requesting other governments to allow its citizens to pass safely and freely, and in case of need to give him/her all lawful aid and protection.[212]

Section 5 of R.A. 8239 states that no passport shall be issued to an applicant unless the Secretary or his duly authorized representative is satisfied that the applicant is a Filipino citizen who has complied with the requirements. Conversely, a Philippine passport holder like petitioner is presumed to be a Filipino citizen, considering the presumption of regularity accorded to acts of public officials in the course of their duties.

When the claim to Philippine citizenship is doubtful, only a "travel document" is issued.[213] A travel document, in lieu of a passport, is issued to stateless persons who are likewise permanent residents, or refugees granted such status or asylum in the Philippines.[214] If the State considers foundlings to be anything else but its citizens (stateless persons, for example), it would not have given them passports. However, since the 1950s, the Department of Foreign Affairs (DFA) has been issuing passports to foundlings.[215] A quick look at the official website[216] of the DFA would show an enumeration of supporting documents required of foundlings for the issuance of a Philippine passport; to wit, certificate of foundling authenticated by the Philippine Statistics Authority, clearance from the Department of Social Work and Development (DSWD), passport of the person who found the applicant, and letter of authority or endorsement from DSWD for the issuance of passport. The only conclusion that can be made is that foundlings are considered by the State, or at least by the executive, to be Philippine citizens.

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[211] Section 2, Statement of Policy.
[212] Section 3(d).
[213] Section 3(e).
[214] Section 13(e).
[215] In 1950, an application for a Philippine passport was filed for a boy, who had been found by Sps. Hale in an air raid shelter. The boy was only three years old when he was found. His parents, sister and grandmother were among the dead. The DFA asked for a DOJ opinion with the regard to the status of foundlings. In 1951, the Secretary of Justice released DOJ Opinion No. 189, series of 1951 which stated that, following international conventions, a foundling is presumed to have assumed the citizenship of the place where he or she is found. Since then, the DFA has been issuing passports to foundlings.
[216] < http://www.dfa.gov.ph/index.php/consular-services/passport-information> (last accessed 8 March 2016).

Rule 130, Section 44[217] of the Rules of Court has been cited by the Court to support the finding that entries in the passport are presumed true.[218] On its face, the Philippine passport issued to Poe on 16 March 2014 indicates her citizenship to be "Filipino." Hence, the COMELEC committed grave abuse of discretion in not even considering this as evidence in determining whether Poe intended to deceive the electorate when she indicated that she was a natural-born Filipino.

5. Bureau of Immigration Order

While findings made by Bureau of Immigration (BI) on the citizenship of petitioner is not conclusive on the COMELEC,[219] such negate any notion of bad faith or malice on the part of petitioner when she made the representation in her CoC that she was a natural-born citizen. At the time, the presumption created by the Order was in operation. In effect, petitioner had color of authority to state that she was a natural-born citizen of the Philippines.

It has been argued that petitioner had obtained the BI order only because she misrepresented herself to have been "born...to Ronald Allan Kelley Poe and Jesusa Sonora Poe."[220] However, as previously discussed, the potent policy interests[221] embedded in the confidentiality of adoption

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[217] Section 44. *Entries in official records.* — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated. (38)

[218] *Lejano v. People, 652 Phil. 512 (2010).*

[219] In *Go, Sr. v. Ramos,* G.R. Nos. 167569, 167570, 171946, 4 September 2009, 614 PHIL 451-484, the Court explained that *res judicata* applies only when the following concur: (a) a person's citizenship is raised as a material issue in a controversy where that person is a party; (b) the Solicitor General or an authorized representative took active part in the resolution of the issue; and (c) the finding of citizenship is affirmed by this Court. These conditions do not obtain in this case.

[220] Petition for Certiorari (G.R. No. 221697) dated 28 December 2015, Annex I-series, Exhibit 20.

[221] In *In Re: Roger B,* the Supreme Court of Illinois explained the potent policy interests which are promoted by the sealing of adoption records. Included in those interests are the facilitation of the adoption process by maintaining the anonymity and the right to privacy of the natural parents, and the integrity of the new adoptive family:

> Confidentiality is needed to protect the right to privacy of the natural parent. The natural parents, having determined it is in the best interest of themselves and the child, have placed the child for adoption. This process is not done merely with the expectation of anonymity, but also with the statutory assurance that his or her identity will be shielded from public disclosure. Quite conceivably, the natural parents have established a new family unit with the expectation of confidentiality concerning the adoption that occurred several years earlier.
>
> x x x x
>
> Confidentiality also must be promoted to protect the right of the adopting parents. The adopting parents have taken into their home a child whom they will regard as their own and whom they will love, support, and raise as an integral part of the family unit. They should be given the opportunity to create a stable family relationship free from unnecessary intrusion. The Section creates a situation in which the emotional attachments are directed toward the relationship with the new parents. The adoptive parents need and deserve the child's loyalty as they grow older, and particularly in their later years.
>
> x x x x
>
> The State's concern of promoting confidentiality to protect the integrity of the adoption process is well expressed by the following excerpt from Klibanoff, *Genealogical Information in Adoption: The Adoptees Quest and the Law*:
>
> > "The primary interest of the public is to preserve the integrity of the adoptive process. That is, the continued existence of adoption as a humane solution to the serious social problem of children who are or may become unwanted, abused or neglected. In order to maintain it,

records fully justifies her decision to write the names of her adoptive parents as indicated in her birth certificate.

6. The Decision of the Senate Electoral Tribunal in SET Case No. 001-05

The SET Decision is a *prima facie* finding of natural-born citizenship that petitioner can rely on. The fact that the SET Decision was issued later than the filing by petitioner of her CoC for president does not take away from its validity as another tangible basis of petitioner to validly claim that she was a natural-born Filipino. It should be borne in mind that the SET Decision is a determination of petitioner's natural-born status as of the time she was elected and assumed her duties as senator of the Philippines. While the Decision was later in issuance, the application of this ruling by the SET significantly predates the filing of her 2016 certificate of candidacy for president.

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cont.

> the public has an interest in assuring that changes in law, policy or practice will not be made which negatively affect the supply of capable adoptive parents or the willingness of biological parents to make decisions which are best for them and their children. We should not increase the risk of neglect to any child, nor should we force parents to resort to the black market in order to surrender children they can't care for.
>
> x x x x
>
> No one has yet shown that decades of policy protecting the anonymity of the biological parents and the security from intrusion of the parent-child relationship after adoption have been misguided. Quite the contrary. The overwhelming success of adoption as an institution which has provided millions of children with families, and vice-versa, cannot be easily attacked.
>
> The public has a strong interest, too, in preserving the confidential non-public nature of the process. Public attitudes toward illegitimacy and parents who neglect or abuse children have not changed sufficiently to warrant careless disclosure of the circumstances leading to adoption.
>
> But the public also has an interest in the mental health of children who have been adopted-in order that they not become burdens to society. Some provision for the relatively small group of adoptees whose psychological needs are compelling would appear necessary."
>
> x x x x
>
> The State certainly must protect the interest of the adoptee, as well as the rights of the natural and adopting parents. When the adoptee is a minor, there is no dispute that the sealed-record provisions serve this end. The child, in his new family environment, is insulated from intrusion from the natural parents. The child is protected from any stigma resulting from illegitimacy, neglect, or abuse. The preclusion of outside interference allows the adopted child to develop a relationship of love and cohesiveness with the new family unit. Prior to adulthood, the adoptee's interest is consistent with that of the adopting and natural parents.
>
> Upon reaching majority, the adoptee often develops a countervailing interest that is in direct conflict with the other parties, particularly the natural parents. The adoptee wishes to determine his natural identity, while the privacy interest of the natural parents remain, perhaps stronger than ever. The Section recognizes that the right of privacy is not absolute. It allows the court to evaluate the needs of the adoptee as well as the nature of the relationships and choices made by all parties concerned. The statute, by providing for release of adoption records only upon issuance of a court order, does no more than allow the court to balance the interests of all the parties and make a determination based on the facts and circumstances of each individual case.[221] (Citations omitted)

Taken together, the enumerated documents provide petitioner with sufficient basis for her claim of citizenship. She cannot be faulted for relying upon these pieces of evidence, particularly considering that at the time she made her declaration that she was a natural-born citizen, the presumption created by these documents has not been overturned.

At any rate, it would be absurd for petitioner to answer "foundling" in every document where her filiation and citizenship is required when her birth certificate and other official documents provide otherwise. Not only would this defeat the purpose of the degree of confidentiality prescribed by the law, she would even run the risk of causing offense to her parents whom she would deprive of actual recognition.

Petitioner's honest belief that she was a natural-born citizen is further shown by her constant assertion of her status and is corroborated by official documents and acts of government issued in her favor. I believe that these documents, at the very least, negate any deliberate intent on her part to mislead the electorate as to her citizenship qualification.

Legal Significance of Confirmation of Renunciation

It had been posited that petitioner's repatriation as a citizen of the Philippines under R.A. 9225 had been rendered doubtful by her subsequent acts in 2011, in particular her execution of an Oath/Affirmation of Renunciation of Nationality of United States before a Vice Consul of the U.S. Embassy in the Philippines;[222] her completion of a Questionnaire on Information for Determining Possible Loss of U.S. Citizenship;[223] and the issuance of a Confirmation of Loss of Nationality of the United States.[224]

Suffice it to state that these documents were executed by petitioner only for the purpose of complying with the requirements of U.S. law. It had no relevance to petitioner's reacquisition of citizenship under Philippine law. The fact remains that she had already properly renounced her U.S. citizenship by executing the Affidavit of Renunciation required in Section 5 of R.A. 9225. Any act done thereafter served only to confirm this earlier renunciation of foreign citizenship.

Respondent validly presumed that she is a citizen of the Philippines.

The failure of the COMELEC to properly appreciate evidence showing good faith on the part of petitioner is compounded by its narrow-minded approach to the question of citizenship. There is sufficient basis to support the presumption that foundlings are citizens of the Philippines.

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[222] Exhibit 30, Annex I-series in G.R. No. 229697; Exhibit 30 (Tatad), Exhibit 20-22 (Contreras/Valdez), Annex M-series of Petition for Certiorari in G.R. Nos. 229688-700.

[223] Exhibit 30-A, Annex I-series in G.R. No. 229697; Exhibit 30-A (Tatad), Exhibit 23 (Contreras/Valdez), Annex M-series of Petition for Certiorari in G.R. Nos. 229688-700.

[224] Exhibit 31, Annex I-series in G.R. No. 229697; Exhibit 31 (Tatad), Exhibit 34 (Contreras/Valdez), Annex M-series of Petition for Certiorari in G.R. Nos. 229688-700.

Although the citizenship of foundlings is not expressly addressed by the language of Article IV of the Constitution, Philippine statutes, administrative regulations and jurisprudence support this conclusion, even in light of the absence of physical proof to establish foundlings filiation.

Moreover, a presumption of foundlings' their natural-born status can be established by the deliberations of the 1935 Constitution and the history of its provisions. These legal authorities and materials serve as sufficient justification for any foundlings good faith belief that she is a natural-born citizen.

The standard proposed by the COMELEC – physical proof of blood relation to a parent who is a citizen of the Philippines – is an impossible, oppressive and discriminatory condition. To allow the imposition of this unjust and unreasonable requirement is to sanction a violation of the Constitution and our obligations under existing international law.

In Philippine law, a foundling refers to a deserted or abandoned infant; or a child whose parents, guardian, or relatives are unknown; or a child committed to an orphanage or charitable or similar institution with unknown facts of birth and parentage, and registered as such in the Civil Register.[225]

The ruling of the COMELEC is premised solely on the admitted fact that petitioner is a foundling. As explained in the assailed Resolutions, petitioner was found abandoned in the parish church of Jaro, Iloilo, on 3 September 1968 by a certain Edgardo Militar. She was later on legally adopted by Ronald Allan Poe and Jesusa Sonora Poe. To date, however, her biological parents are unknown.

According to the COMELEC, these circumstances render the citizenship of petitioner questionable. It claims that since she is unable to establish the identities of her parents, she is likewise incapable of proving that she is related by blood to a Filipino parent. Accordingly, she cannot be considered a natural-born Filipino citizen. These arguments are unmeritorious.

Filiation as a matter of legal fiction

Under Philippine law, the parentage of a child is a matter of legal fiction. Its determination relies not on physical proof, but on legal presumptions and circumstantial evidence. For instance, a child is disputably or conclusively presumed legitimate, i.e. born of two married individuals depending on the period that elapsed between the birth of that child and the celebration[226] or termination[227] of the spouses' marriage. The presumption of

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[225] Section 3(h), Rules and Regulations to Implement the Domestic Adoption Act of 1998, IRR-R.A. 8552 (1998); *Also see* Rule 26, Implementing Rules and Regulations of Act No. 3753 and Other Laws on Civil Registration, NSO Administrative Order No. 1-93 (1992); Section 3(e), Rule on Adoption, A.M. No. 02-6-02-SC (2002).

[226] Articles 255 and 258 of the Civil Code state:

the fact of legitimacy is one of the strongest known to the law, and cannot be overthrown except by stronger evidence.[228] As the Court explained in *Rodolfo A. Aguilar v. Edna G. Siasat*:[229]

> **"There is perhaps no presumption of the law more firmly established and founded on sounder morality and more convincing reason than the presumption that children born in wedlock are legitimate.** This presumption indeed becomes conclusive in the absence of proof that there is physical impossibility of access between the spouses during the first 120 days of the 300 days which immediately precedes the birth of the child due to (a) the physical incapacity of the husband to have sexual intercourse with his wife; (b) the fact that the husband and wife are living separately in such a way that sexual intercourse is not possible; or (c) serious illness of the husband, which absolutely prevents

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> Article 255. Children born after one hundred and eighty days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses shall be presumed to be legitimate.
>
> Against this presumption no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred and twenty days of the three hundred which preceded the birth of the child.
>
> Article 258. A child born within one hundred eighty days following the celebration of the marriage is prima facie presumed to be legitimate. Such a child is conclusively presumed to be legitimate in any of these cases:
>
> (1) If the husband, before the marriage, knew of the pregnancy of the wife;
> (2) If he consented, being present, to the putting of his surname on the record of birth of the child;
> (3) If he expressly or tacitly recognized the child as his own.

A similar provision is found in the Family Code:

> Article 168. If the marriage is terminated and the mother contracted another marriage within three hundred days after such termination of the former marriage, these rules shall govern in the absence of proof to the contrary:
>
> (1) A child born before one hundred eighty days after the solemnization of the subsequent marriage is considered to have been conceived during the former marriage, provided it be born within three hundred days after the termination of the former marriage;
>
> (2) A child born after one hundred eighty days following the celebration of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within the three hundred days after the termination of the former marriage.

[227] Rule 131, Section 3 of the Rules of Court, states:
Section 3. Disputable presumptions. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence.
x x x x
(dd) That if the marriage is terminated and the mother contracted another marriage within three hundred days after such termination of the former marriage, these rides shall govern in the absence of proof to the contrary:
(1) A child born before one hundred eighty days after the solemnization of the subsequent marriage is considered to have been conceived during the former marriage, provided it be born within three hundred days after the termination of the former marriage;
(2) A child born after one hundred eighty days following the celebration of the subseq
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56uent marriage is considered to have been conceived during such marriage, even though it be born within the three hundred days after the termination of the former marriage.

[228] Alejandro E. Sebastian, *The Philippine Law on Legitimacy,* 11 PHIL. L.J. 35 (1931), p. 42.

[229] G.R. No. 200169, 28 January 2015.

> sexual intercourse. **Quite remarkably, upon the expiration of the periods set forth in Article 170, and in proper cases Article 171, of the Family Code (which took effect on 03 August 1988), the action to impugn the legitimacy of a child would no longer be legally feasible and the status conferred by the presumption becomes fixed and unassailable.** (Emphases supplied)

The Family Code also allows paternity and filiation to be established through any of the following methods: (1) record of birth; (2) written admission of filiation; (3) open and continuous possession of the status of a legitimate or an illegitimate child; (4) or other means allowed by the Rules or special laws.[230] Notably, **none** of these methods requires physical proof of parentage:

(a) The entries in a record of birth depend only on the statements of certain persons identified by law: in general, administrator of the hospital, or in absence thereof, either of the following: the physician/nurse/midwife/*hilot* who attended the birth. In default of both, either or both parents shall cause the registration of the birth; and if the birth occurs in a vessel/vehicle/airplane while in transit, registration shall be the joint responsibility of the driver/captain/pilot and the parents.[231]

(b) Filiation may also be proved by an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned. In *Aguilar,* the Court declared that such due recognition in any authentic writing is, in itself, a consummated act of acknowledgment of the child and requires no further court action.[232]

(c) With respect to open and continuous possession of the status of children and other means allowed by the Rules of Court, the relevant sections of Rule 130 provide:

> SEC. 39. Act or declaration about pedigree. — The act or declaration of a person deceased, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it

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[230] CIVIL CODE, Art. 172.

[231] Section 5, Act No. 3753 states:

> SECTION 5. *Registration and Certification of Births.* — The declaration of the physician or midwife in attendance at the birth or, in default thereof, the declaration of either parent of the newborn child, shall be sufficient for the registration of a birth in the civil register. Such declaration shall be exempt from the documentary stamp tax and shall be sent to the local civil registrar not later than thirty days after the birth, by the physician, or midwife in attendance at the birth or by either parent of the newly born child.
> In such declaration, the persons above mentioned shall certify to the following facts: (a) date and hour of birth; (b) sex and nationality of infant; (c) names, citizenship, and religion of parents or, in case the father is not known, of the mother alone; (d) civil status of parents; (e) place where the infant was born; (f) and such other data may be required in the regulation to be issued.
> In case of an illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only the mother if the father refuses. In the latter case, it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge the child, or to give therein any information by which such father could be identified.

[232] Supra note 229.

> occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree.
>
> SEC. 40. Family reputation or tradition regarding pedigree. — The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. Entries in family bibles or other family books or charts, engraving on rings, family portraits and the like, may be received as evidence of pedigree.

Evidently, there is no legal basis for the standard proposed by the COMELEC and private respondents. Physical or scientific proof of a blood relationship to a putative parent is not required by law to establish filiation or any status arising therefrom such as citizenship. In fact, this Court has repeatedly emphasized that DNA evidence is not absolutely essential so long as paternity or filiation may be established by other proof.[233] There is, therefore, no reason to impose this undue burden on petitioner, particularly in light of her situation as a foundling. Instead of requiring foundlings to produce evidence of their filiation – a nearly impossible condition – administrative agencies, the courts and even Congress have instead proceeded on the assumption that these children are citizens of the Philippines.

Contemporaneous and subsequent construction by the legislature, executive and judicial branches of government

Although the details of their births cannot be established, foundlings are provided legal protection by the state through statutes, rules, issuances and judicial decisions allowing their adoption. As early as 1901, the Code of Civil Procedure[234] recognized that children whose parents are unknown have

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[233] In *Lucas v. Lucas* (G.R. No. 190710, 665 Phil. 795-815 [2011]), the Court explained:

> Notwithstanding these, it should be stressed that the issuance of a DNA testing order remains discretionary upon the court. The court may, for example, consider whether there is absolute necessity for the DNA testing. If there is already preponderance of evidence to establish paternity and the DNA test result would only be corroborative, the court may, in its discretion, disallow a DNA testing.

This pronouncement was reiterated in *Tecson v. COMELEC* (G.R. Nos. 161434, 161634, 161824, 468 Phil. 421-75 [2004]), in which the Court stated: In case proof of filiation or paternity would be unlikely to satisfactorily establish or would be difficult to obtain, DNA testing, which examines genetic codes obtained from body cells of the illegitimate child and any physical residue of the long dead parent could be resorted to."

[234] Section 765 of Act 190 states:

> SECTION 765. How a Child May be Adopted. — **An inhabitant of the Philippine Islands**, not married, or a husband and wife jointly, **may petition the Court of First Instance of the province** in which they reside for **leave to adopt a minor child:** but a written consent must be given for such adoption by the child, if of the age of fourteen years, and by each of his or her living parents who is not hopelessly insane or intemperate, or has not abandoned such child, **or if there are no such parents, or if the parents are unknown, or have abandoned such child,** or if they are hopelessly insane or intemperate, then by the **legal guardian**, or if there is no such guardian, then by a discreet and suitable person appointed by the court to act in the proceedings as the next friend of such child; but **when such child is an inmate of an orphan asylum or**

a right to be adopted. Failure to identify the parents of the child was not made an obstacle to adoption; instead, the rules allowed a legal guardian, or the trustees/directors of an orphan asylum, to grant the required consent on behalf of the unknown parents. Similar provisions were included in the subsequent revisions of the Rules of Court in 1940[235] and 1964.[236]

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> **children's home, organized under the laws of the Philippine Islands, and has been previously abandoned by its parents or guardians,** or voluntarily surrendered by its parents or guardians to the trustees or directors of an asylum or children's home, then the **written consent of the president of the board of trustees or directors of such asylum** must be given: Provided, nevertheless, That nothing herein contained shall authorize a guardian to adopt his ward before the termination of the guardianship and the final settlement and approval of his accounts as guardian by the court. (Emphases supplied)

[235] Sections 3 and 7, Rule 100 (Adoption and Custody of Minors) of the 1940 Rules of Court, state:

> SECTION 3. Consent to Adoption. — There shall be filed with the petition a **written consent** to the **adoption** signed by the child, if over fourteen years of age and not incompetent, and by each of its known living parents who is not insane or hopelessly intemperate or has not abandoned such child, **or if there are no such parents by the general guardian or guardian ad litem of the child,** or if the child is in the custody of an orphan asylum, children's home, or benevolent society or person, by the proper officer or officers of such asylum, home, or society, or by such person; but if the child is illegitimate and has not been recognized, the consent of its father to the adoption shall not be required.
>
> SECTION 7. Proceedings as to Vagrant or Abused Child. — When the **parents of any minor child are dead, or by reason of long absence or legal or physical disability have abandoned it,** or cannot support it through vagrancy, negligence, or misconduct, or neglect or refuse to support it, or unlawfully beat or otherwise habitually maltreat it, or cause or allow it to engage in common begging, or to commit offenses against the law, the proper Court of First Instance, upon petition filed by some reputable resident of the province setting forth the facts, may issue **an order requiring such parents to show cause, or, if the parents are dead or cannot be found,requiring the fiscal of the province to show cause,** at a time and place fixed in the order, why the child should not be taken from its parents, if living; and if upon hearing it appears that the allegations of the petition are true, and that it is for the best interest of the child, **the court may make an order taking it from its parents,** if living, and **committing it to any suitable orphan asylum, children's home, or benevolent society or person, to be ultimately placed, by adoption** or otherwise, in a home found for it by such asylum, children's home, society, or person.

[236] Sections 3 and 7, Rule 99 of the 1964 Rules of Court, provide:

> SECTION 3. Consent to Adoption. — There shall be filed with the petition a written consent to the adoption signed by the child, if fourteen years of age or over and not incompetent, and by the child's spouse, if any, and by each of its known living parents who is not insane or hopelessly intemperate or has not abandoned such child, or **if there are no such parents by the general guardian or guardian ad litem of the child,** or if the child is in the custody of an orphan asylum, children's home, or benevolent society or person, by the proper officer or officers of such asylum, home, or society, or by such person; but if the child is illegitimate and has not been recognized, the consent of its father to the adoption shall not be required.
>
> If the person to be adopted is of age, only his or her consent and that of the spouse, if any, shall be required.
>
> SECTION 7. Proceedings as to Vagrant or Abused Child. — **When the parents of any minor child** are dead, or **by reason of long absence or legal or physical disability have abandoned it,** or cannot support it through vagrancy, negligence, or misconduct, or neglect or refuse to support it, or treat it with excessive harshness or give it corrupting orders, counsels, or examples, or cause or allow it to engage in begging, or to commit offenses against the law, the proper Court of First Instance, upon petition filed by some reputable resident of the province setting forth the facts, may issue an order requiring such parents to show cause, or, **if the parents are dead or cannot be found, requiring the fiscal of the province to show cause, at a time and place fixed in the order,** why

Early statutes also specifically allowed the adoption of foundlings. Act No. 1670 was enacted precisely to provide for the adoption of poor children who were in the custody of asylums and other institutions. These children included orphans or "any other child so maintained therein whose parents are unknown":[237]

> SECTION 548. Adoption of child from institution for poor children. — **Upon the application of any person to the competent authorities of any asylum or institution** where the poor children are maintained at public expense to **adopt any child so maintained therein**, it shall be the duty of such authorities, with the approval of the Secretary of the Interior, to report the fact to the provincial fiscal, or in the City of Manila to the fiscal of the city, and such official shall thereupon prepare the necessary adoption papers and present the matter to the proper court. The costs of such proceeding in court shall be de oficio.

The provisions of Act No. 1670 were substantially included in the Administrative Code of 1916[238] and in the Revised Administrative Code of 1917.[239]

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cont.

> the child should not be taken from its parents, if living; and if upon the hearing it appears that the allegations of the petition are true, and that it is for the best interest of the child, the court may make an order taking it from its parents, if living; and committing it to any suitable orphan asylum, children's home, or benevolent society or person to be ultimately placed, by adoption or otherwise, in a home found for it by such asylum, children's home, society or person.

[237] Sections 1 and 5 of Act No. 1670 provide:

> SECTION 1. The **board of trustees or directors of any asylum or institution in which poor children are cared for and maintained** at public expense are hereby authorized, with the consent of the Director of Health, to **place any orphan or other child so maintained therein whose parents are unknown**, or being known are unable or unwilling to support such child, **in charge of any suitable person** who may desire to take such child and shall furnish satisfactory evidence of his ability suitably to maintain, care for, and educate such child.
>
> SECTION 5. **Upon the application of any person** to the trustees or directors of any asylum or institution where poor children are maintained at public expense **to adopt any child so maintained therein**, it shall be the **duty of such trustees or directors,** with the approval of the Director of Health, to report the fact to the provincial fiscal, or in the city of Manila to the city attorney, and such **official shall hereupon prepare the necessary adoption papers** and present the matter to the proper court. The costs of such proceedings in court shall be de oficio.

[238] Administrative Code, Act No. 2657, 31 December 1916.

[239] Sections 545 and 548 of Act No. 2711provide:

> SECTION 545. Transfer of child from institution for poor children. — The **competent authorities of any asylum or institution in which poor children are cared for and maintained** at public expense are authorized, subject to regulations approved by the Secretary of the Interior, to **place any orphan or other child so maintained therein whose parents are unknown,** or being known are unable or unwilling to support such child, **in charge of any suitable person** who may desire to take such child and shall furnish satisfactory evidence of his ability suitably to maintain, care for, and educate such child.

In 1995, Congress enacted Republic Act No. 8043 to establish the rules governing the "Inter-country Adoption of Filipino Children." The adoption of a foundling was similarly recognized under Section 8 of the statute, which allowed the submission of a foundling certificate to facilitate the inter-country adoption of a child.[240] A few years later or in 1998, the law on "Domestic Adoption of Filipino Children" was amended through R.A. 8552. This time, a specific provision was included to govern the registration of foundlings for purposes of adoption:

> SECTION 5. Location of Unknown Parent(s). — It shall be the duty of the Department or the child-placing or child-caring agency which has custody of the child to exert all efforts to locate his/her unknown biological parent(s). **If such efforts fail, the child shall be registered as a foundling and subsequently be the subject of legal proceedings where he/she shall be declared abandoned.**

In 2009, Congress passed R.A. 9523,[241] which allowed the Department of Social Welfare and Development (DSWD) to declare a child "legally available for adoption" as a prerequisite for adoption proceedings. Under this statute, foundlings were included in the definition of abandoned children[242] and expressly allowed to be adopted, provided they were first declared by the DSWD as available for adoption.[243] Administrative Order

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cont.

> The intrusting of a child to any person as herein provided shall not constitute a legal adoption and shall not affect the civil status of such child or prejudice the right of any person entitled to its legal custody or guardianship.
>
> SECTION 548. Adoption of child from institution for poor children. — **Upon the application of any person to the competent authorities of any asylum or institution** where the poor children are maintained at public expense to **adopt any child so maintained therein**, it shall be the duty of such authorities, with the approval of the Secretary of the Interior, to report the fact to the provincial fiscal, or in the City of Manila to the fiscal of the city, and such official shall thereupon prepare the necessary adoption papers and present the matter to the proper court. The costs of such proceeding in court shall be de oficio.

[240] The law provides:

> SECTION 8. Who May Be Adopted. — Only a legally free child may be the subject of inter-country adoption. In order that such child may be considered for placement, the following documents must be submitted to the Board:
>
> a) Child study;
> b) Birth certificate/**foundling certificate;**
> c) Deed of voluntary commitment/decree of abandonment/death certificate of parents;
> d) Medical evaluation/history;
> e) Psychological evaluation, as necessary; and
> f) Recent photo of the child

[241] An Act Requiring the Certification of the Department of Social Welfare and Development (DSWD) to Declare a "Child Legally Available for Adoption" as a Prerequisite for Adoption Proceedings (2009).

[242] Pursuant to Section 2(3) of R.A. 9523, an "Abandoned Child" refers to a child who has no proper parental care or guardianship, or whose parent(s) have deserted him/her for a period of at least three (3) continuous months, and the term includes a founding.

[243] Sections 4 and 5 of R.A. 9523 state:

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

No. 011-09 was adopted by that department in 2009 to implement the statute.[244]

These enactments and issuances on adoption are significant, because they effectively recognize foundlings as citizens of the Philippines. It must be emphasized that jurisdiction over adoption cases is determined by the citizenship of the adopter and the adoptee. As explained by this Court in *Spouses Ellis v. Republic*,[245] the Philippine Civil Code adheres to the theory that jurisdiction over the status of a natural person is determined by the latter's nationality. This ruling cites Article 15 of the Civil Code:

> ARTICLE 15. Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.

The citizenship of a person is a "status" governed by this provision is clear, pursuant to our ruling in *Board of Immigration Commissioners v. Callano.*[246]In that case, We applied the nationality rule in Article 15 to determine whether some individuals had lost their Philippine citizenship:

> "The question, whether petitioners who are admittedly Filipino citizens at birth subsequently *acquired* Chinese citizenship under the Chinese Law of Nationality by reason of recognition or a prolonged stay in China, is a fit subject for the Chinese law and the Chinese court to determine, which cannot be resolved by a Philippine court without encroaching on the legal system of China. For, the settled rule of international law, affirmed by the Hague Convention on Conflict of Nationality Laws of April 12, 1930 and by the International Court of Justice, is that." Any question as to whether a person possesses the nationality of a particular state should be determined in accordance with the laws of that state." (quoted in Salonga,

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cont.

> The Regional Director shall examine the petition and its supporting documents, if sufficient in form and substance and shall authorize the posting of the notice of the petition conspicuous place for five (5) consecutive days in the locality where the child was found.
>
> The Regional Director shall act on the same and shall render a recommendation not later than five (5) working days after the completion of its posting. He/she shall transmit a copy of his/her recommendation and records to the Office of the Secretary within forty-eight (48) hours from the date of the recommendation.
>
> Section 5. Declaration of Availability for Adoption. – Upon finding merit in the petition, the Secretary shall issue a certification declaring the child legally available for adoption within seven (7) working days from receipt of the recommendation.
>
> Said certification, by itself shall be the sole basis for the immediate issuance by the local civil registrar of a foundling certificate. Within seven (7) working days, the local civil registrar shall transmit the founding certificate to the National Statistic Office (NSO).

[244] Guidelines on the Issuance of DSWD Certification Declaring a Child Legally Available for Adoption, DSWD Administrative Order No. 012-11 (2011).
[245] G.R. No. L-16922, 30 April 1963.
[246] 134 Phil. 901-912 (1968).

> Private International Law, 1957 Ed., p. 112.) There was no necessity of deciding that question because so far as concerns the petitioners' status, the only question in this proceeding is: **Did the petitioners lose their Philippine citizenship upon the performance of certain acts or the happening of certain events in China? In deciding this question no foreign law can be applied. The petitioners are admittedly Filipino citizens at birth, and their status must be governed by Philippine law wherever they may be, in conformity with Article 15 (formerly Article 9) of the Civil Code which provides as follows: "Laws relating to family rights and duties, or to the status, conditions and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad."** Under Article IV, Section 2, of the Philippine Constitution, "Philippine citizenship may be lost or reacquired in the manner provided by law," which implies that the question of whether a Filipino has lost his Philippine citizenship shall be determined by no other than the Philippine law. (Emphasis supplied)

***Ellis* also discredits the assertion that this Court has no power to determine the citizenship of a foundling based only on presumptions**. In that case, an infant named Baby Rose was abandoned at the Heart of Mary Villa, an institution for unwed mothers. When an American couple, the Spouses Ellis, later sought to adopt Baby Rose, the Supreme Court *presumed* the citizenship of the infant for purposes of adoption:

> "In this connection, it should be noted that this is a proceedings in rem, which no court may entertain unless it has jurisdiction, not only over the subject matter of the case and over the parties, but also over the res, which is the personal status of Baby Rose as well as that of petitioners herein. **Our Civil Code (Art. 15) adheres to the theory that jurisdiction over the status of a natural person is determined by the latters' nationality. Pursuant to this theory, we have jurisdiction over the status of Baby Rose, she being a citizen of the Philippines, but not over the status of the petitioners, who are foreigners.** Under our political law, which is patterned after the Anglo-American legal system, we have, likewise, adopted the latter's view to the effect that personal status, in general, is determined by and/or subject to the jurisdiction of the domiciliary law (Restatement of the Law of Conflict of Laws, p. 86; The Conflict of Laws by Beale, Vol. I, p. 305, Vol. II, pp. 713-714). This, perhaps, is the reason why our Civil Code does not permit adoption by non-resident aliens, and we have consistently refused to recognize the validity of foreign decrees of divorce — regardless of the grounds upon which the same are based — involving citizens of the Philippines who are not bona fide residents of the forum,

> even when our laws authorized absolute divorce in the Philippines. (citations omitted and emphasis supplied)

In the 1976 case *Duncan v. CFI of Rizal,*[247] the Court again presumed the Philippine citizenship of a foundling for purposes of adoption. Notwithstanding the refusal of the de facto guardian to reveal the identity of the child's mother, the adoption of the abandoned child was allowed in order to prevent a "cruel sanction on an innocent child":

> Having declared that the child was an abandoned one by an unknown parent, there appears to be no more legal need to require the written consent of such parent of the child to the adoption. xxx.
>
> The trial court in its decision had sought refuge in the ancient Roman legal maxim "Dura lexsedlex" to cleanse its hands of the hard and harsh decision it rendered. While this old adage generally finds apt application in many other legal cases, in adoption of children, however, this should be softened so as to apply the law with less severity and with compassion and humane understanding, for adoption is more for the benefit of unfortunate children, particularly those born out of wedlock, than for those born with a silver spoon in their mouths. All efforts or acts designed to provide homes, love, care and education for unfortunate children, who otherwise may grow from cynical street urchins to hardened criminal offenders and become serious social problems, should be given the widest latitude of sympathy, encouragement and assistance. **The law is not, and should not be made, an instrument to impede the achievement of a salutary humane policy. As often as is legally and lawfully possible, their texts and intendments should be construed so as to give all the chances for human life to exist — with a modicum promise of a useful and constructive existence.**
>
> ... **If we are now to sustain the decision of the court below, this Tribunal will be doing a graver injustice to all concerned particularly to said spouses, and worse, it will be imposing a cruel sanction on this innocent child and on all other children who might be similarly situated. We consider it to be justifiable and more humane to formalize a factual relation, that of parents and son, existing between the herein petitioning spouses and the minor child baptized by them as Colin Berry Christensen Duncan, than to sustain the hard, harsh and cruel interpretation of the law that was done by the private respondent court and Judge. It is Our view that it is in consonance with the true spirit and purpose of the law, and with the policy of the State, to**

[247] G.R. No. L-30576, 10 February 1976.

uphold, encourage and give life and meaning to the existence of family relations.

Although the citizenship of the child in *Duncan* was not elaborated upon, the Court proceeded to assume jurisdiction over the adoption proceedings. From this act, it may be inferred that the Court *presumed* that the child was a Philippine citizen whose status may be determined by a Philippine court pursuant to Article 15 of the Civil Code.

The foregoing enactments and decisions prove the contemporaneous and subsequent interpretation of the Constitution by the three branches of government. It is evident that Congress, certain administrative agencies and even the courts have always proceeded on the assumption that these children are Filipino citizens in the absence of evidence to the contrary.

The assertion that citizenship cannot be made to rest upon a presumption is contradicted by the previous pronouncements of this Court. In *Board of Commissioners et. al v. Dela Rosa,*[248] the Court utilized a presumption of citizenship in favor of respondent William Gatchalian on the basis of an Order of the Bureau of Immigration admitting him as a Filipino citizen.

> On March 15, 1973, then Acting Commissioner Nituda issued an Order (Annex "6", counter-petition) which affirmed the Board of Special Inquiry No. 1 decision dated July 6, 1961 admitting respondent Gatchalian and others as Filipino citizens; recalled the July 6, 1962 warrant of arrest and revalidated their Identification Certificates.
>
> The above order admitting respondent as a Filipino citizen is the last official act of the government on the basis of which respondent William Gatchalian continually exercised the rights of a Filipino citizen to the present. Consequently, the presumption of citizenship lies in favor of respondent William Gatchalian.

In 2004, **a presumption was likewise made by this Court to resolve issues involving the citizenship of presidential candidate Fernando Poe, Jr. in *Tecson v. COMELEC.***[249] In particular, the presumption that Poe's grandfather had been a resident of San Carlos, Pangasinan, from 1898 to 1902, entitled him to benefit from the *en masse* Filipinization effected by the Philippine Bill of 1902. We explained:

> The death certificate of Lorenzo Pou would indicate that he died on 11 September 1954, at the age of 84 years, in San Carlos, Pangasinan. It could thus be assumed that Lorenzo Pou was born sometime in the year 1870 when the Philippines was still a colony of Spain. Petitioner would argue that Lorenzo Pou was not in the Philippines during the crucial

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[248] 274 Phil. 1157-1249 (1991).
[249] G.R. Nos. 161434, 161634, 161824, 468 Phil. 421-75 (2004).

> period of from 1898 to 1902 considering that there was no existing record about such fact in the Records Management and Archives Office. Petitioner, however, likewise failed to show that Lorenzo Pou was at any other place during the same period. In his death certificate, the residence of Lorenzo Pou was stated to be San Carlos, Pangasinan. **In the absence of any evidence to the contrary, it should be sound to conclude, or at least to presume, that the place of residence of a person at the time of his death was also his residence before death.** It would be extremely doubtful if the Records Management and Archives Office would have had complete records of all residents of the Philippines from 1898 to 1902.
>
> x x x x
>
> (3) In ascertaining, in G.R. No. 161824, whether grave abuse of discretion has been committed by the COMELEC, it is necessary to take on the matter of whether or not private respondent FPJ is a natural-born citizen, which, in turn, depended on whether or not the father of private respondent, Allan F. Poe, would have himself been a Filipino citizen and, in the affirmative, whether or not the alleged illegitimacy of private respondent prevents him from taking after the Filipino citizenship of his putative father. **Any conclusion on the Filipino citizenship of Lorenzo Pou could only be drawn from the presumption that having died in 1954 at 84 years old, Lorenzo would have been born sometime in the year 1870, when the Philippines was under Spanish rule, and that San Carlos, Pangasinan, his place of residence upon his death in 1954, in the absence of any other evidence, could have well been his place of residence before death, such that Lorenzo Pou would have benefited from the *en masse* Filipinization that the Philippine Bill had effected in 1902.** That citizenship (of Lorenzo Pou), if acquired, would thereby extend to his son, Allan F. Poe, father of private respondent FPJ. The 1935 Constitution, during which regime private respondent FPJ has seen first light, confers citizenship to all persons whose fathers are Filipino citizens regardless of whether such children are legitimate or illegitimate. (Emphasis supplied)

It is reasonable to presume that petitioner is a Filipino citizen, considering that she was found abandoned in Iloilo at a time when the number of children born to foreigners in the country was but a small fraction of the total number of births in the Philippines.[250] Without evidence to the contrary, this presumption must stand in accordance with the rules on evidence.

The Place of Probability in the Rule of Law

Obedience to the rule of law is the bedrock of the Philippine justice system.[251] In order to expound and define the true meaning and operation of these laws, they must first be ascertained by judicial determination, and in order "**to produce uniformity in these determinations, they ought to be submitted, in the last resort, to one supreme tribunal xxx authorized to settle and declare in the last resort a uniform rule of civil justice.**"[252]

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[250] The Solicitor-General, during the oral arguments claimed that based on statistics obtained from the Philippine Statistics Authority, 10,558,278 children (99.03%) were born to Filipino parents while 15,986 (0.07%) were born to foreigners in the Philippines from 1965 to 1975.

[251] *People v. Veneracion*, 319 Phil. 364 (1995).

[252] Alexander Hamilton, Federalist Paper No. 22; emphasis supplied.

The rules of evidence, authorized by the Constitution, is a means by which uniformity is instituted in the judicial system—whether in courts of law or administrative agencies granted quasi-adjudicatory power. These rules govern the means of ascertaining the truth respecting a matter of fact.[253]

It must be emphasized that ascertaining evidence does not entail absolute certainty. Under Rule 128 of the Rules of Court, evidence must only induce belief in the existence of a fact in issue, thus:

> **Section 4.** *Relevancy; collateral matters.* — Evidence must have such **a relation to the fact in issue as to induce belief in its existence or non-existence.** Evidence on collateral matters shall not be allowed, except **when it tends in any reasonable degree to establish the probability or improbability of the fact in issue.** (Emphasis supplied)

Hence, judges are not precluded from drawing conclusions from inferences based on established facts. In the case of *Joaquin v. Navarro,*[254] the Court proceeded to discuss this process: [255]

> In speaking of inference the rule can not mean beyond doubt, for **"inference is never certainty, but it may be plain enough to justify a finding of fact."**
>
> x x x x
>
> **"Juries must often reason," says one author, "according to probabilities, drawing an inference that the main fact in issue existed from collateral facts not directly proving, but strongly tending to prove, its existence.** The vital question in such cases is the cogency of the proof afforded by the secondary facts. How likely, according to experience, is the existence of the primary fact if certain secondary facts exist?" The same author tells us of a case where "a jury was justified in drawing the inference that the person who was caught firing a shot at an animal trespassing on his land was the person who fired a shot about an hour before at the same animal also trespassing." That In fact, the circumstances in the illustration leave greater room for another possibility than do the facts of the case at hand.[256] (Emphasis supplied and citations omitted)

This is enshrined in established legal doctrines, including that of probable cause for preliminary investigation,[257] probable cause for issuance of a warrant of arrest,[258] substantial evidence,[259] preponderance of evidence,[260] and character evidence.[261]

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253 RULES OF COURT, Rule 128, Sec. 1.

254 93 Phil. 257 (1953).

255 Id. The passage cited *In re Bohenko's Estate,* 4 N.Y.S. 2nd. 427, which also cited *Tortora vs. State of New York,* 269 N.Y. 199 N.E. 44; Hart vs. Hudson River Bridge Co., 80 N.Y. 622.

256 Id. The passage cited 1 Moore on Facts, Sec. 596.

257 RULES OF COURT, Rule 112
Section 1. *Preliminary Investigation Defined; When Required* - Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

258 Section 6. *When warrant of arrest may issue.*— (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of

Jurisprudence is replete with cases decided on the basis of probability. For example, the Court affirmed an award of work-related compensation to an employee who contracted rectal cancer based on a probability, stating thus:

> The degree of proof required to establish work-connection between the disabling ailment and the working conditions is merely substantial evidence, or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" *Probability not certainty is the touchstone in testing evidence of work-connection.*[262] (Emphasis in the original and citations omitted).

In criminal cases, it has also been ruled that "extrajudicial confessions, independently made without collusion, which are identical with each other in their essential details and are corroborated by other evidence on record, are admissible as circumstantial evidence against the person implicated to **show the probability of the latter's actual participation in the commission of the crime.**"[263]

Note that the two cases cited pertain to different quantum of evidence (substantial for administrative and beyond reasonable doubt for criminal), but both have relied upon probabilities to rule upon an issue. In that sense, it can be concluded that probabilities are considered as essential elements of the judicial determination of relevant evidence.

While it is true that administrative or quasi-judicial bodies are not bound by the technical rules of procedure in the adjudication of cases, this

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cont.

arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

259 RULES OF COURT, Rule 133
Section 5. *Substantial evidence.* — In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

260 RULES OF COURT, Rule 133
Section 1. *Preponderance of evidence, how determined.* — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

261 RULES OF COURT, Rule 130
Section 51. *Character evidence not generally admissible; exceptions:* —
(a) In Criminal Cases:
(1) The accused may prove his good moral character which is pertinent to the moral trait involved in the offense charged.
(2) Unless in rebuttal, the prosecution may not prove his bad moral character which is pertinent to the moral trait involved in the offense charged.
(3) The good or bad moral character of the offended party may be **proved if it tends to establish in any reasonable degree the probability or improbability of the offense charged.**

262 *Mercado, Jr. v. Employees' Compensation Commission*, 223 Phil. 483-493 (1985).

263 *People vs. Condemena*, L-22426, May 29, 1968, 23 SCRA 910, 919.

procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules.[264] In the instant case, COMELEC refused to consider evidence that tends to "establish the probability of a fact in issue," which in this case pertains to petitioner's citizenship, claiming that it "did not and could not show bloodline to a Filipino parent as required under jus sanguinis."[265] This, to my mind, constitutes gross misappreciation of the facts.

First and foremost, it is admitted that petitioner has typical Filipino features, with her brown eyes, low nasal bridge, black hair, oval-shaped face and height. This by itself, does not evince belief that as to her definite citizenship, but coupled with other circumstantial evidence—that she was abandoned as an infant, that the population of Iloilo in 1968 was Filipino[266], and there were not international airports in Iloilo at that time—establishes the probability the she was born of Filipino parents.

Such probability is further enhanced by the statistics obtained from the Philippine Statistics Authority, showing that 10,558,278 children (99.03%) were born to Filipino parents while 15,986 (0.07%) were born to foreigners in the Philippines from 1965 to 1975.[267] Considering that the election cases require a mere preponderance of evidence,[268] then it can be reasonably concluded that petitioner has fulfilled the requirements of citizenship under the law. In the words of Justice Tuazon in *Joaquin,* this conclusion is not airtight but rational; never certain but plain enough to justify a fact.

The rationale for implementing this policy is simple – to require abandoned children to prove their parentage or status before they are granted protection would compound their already dire predicament. That requirement would render these unfortunate children even more vulnerable, in contravention of the declared policy of the State to "defend the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development."[269]

Respondent may be considered a natural-born citizen under the 1935 Constitution.

Having established that foundlings may be presumed citizens of the Philippines, the question now turns to whether they may be considered natural-born. I believe that this issue may be resolved by utilizing both an

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[264] *Lepanto Consolidated Mining Company v. Dumapis*, G.R. No. 163210, 13 August 2008, 562 SCRA 103, 113-114.
[265] Memorandum for public respondent COMELEC, p. 21
[266] Petition for Certiorari (G.R. 221697), p. 107.
[267] Oral Arguments, TSN, 16 August 2016.
[268] *Tecson v. COMELEC,* 468 Phil. 421 (2004).
[269] 1987 Constitution, Article XV, Section 3(2).

originalist and a functionalist approach to the interpretation of the Constitution.

Originalist v. Functionalist Interpretation

In its Memorandum, the COMELEC asserted that foundlings cannot be considered natural-born citizens in light of the principle of *inclusion unius est exclusion alterius*.[270] This line of reasoning stems from an originalist reading of the Constitution, which is anchored on the principle that constitutional issues are to be resolved by looking only at the text of the Constitution and at the clear intent of the framers.[271] Intentionalism is a species of originalism. Another species is textualism, which has been described as "that [which] looks to the Constitution's original public meaning,"[272] or "read[s] the language of the Constitution as the man on the street would understand it."[273]

> It is a fallacy, however, to assert that that there is only one – originalist/textualist – approach to interpret the Constitution. There are many approaches to constitutional interpretation, sub-classified into a) originalism v. non-originalism, and b) formalism v. functionalism, among others. In his commentary on the Philippine Constitution, Bernas enumerated and described at least five modes of constitutional interpretation, i.e. historical approach,[274] structural approach,[275] doctrinal approach,[276] ethical approach,[277] and prudential approach.[278]

In legal scholarship, the functionalist approach appears to be defined most clearly by what it is not — it is not formalism.[279] William Eskridge, a member of the Yale Law School faculty wrote a paper entitled "Relationships between Formalism and Functionalism in Separation of Powers Cases" in which he distinguished formalism from functionalism:

> There are no fewer than three different ways that constitutional formalism and functionalism can be contrasted. One is their apparently different approach to legal rules and standards. Formalism might be associated with bright-line rules that seek to place determinate, readily enforceable limits on public actors. Functionalism, at least as an antipode, might be associated with

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[270] See p. 55

[271] Erwin Chemerinsky, *Constitutional Law: Principles and Policies* 17-19 (3rd ed. 2006).

[272] William Michael Treanor, Against Textualism, 103 Nw. U.L. Rev. 983-1006 (2009). : http://scholarship.law.georgetown.edu/facpub, Last Accessed: 8 March 2016.

[273] Joaquin Bernas, SJ, The 1987 Constitution of the Republic of the Philippines; A Commentary, p. 997 (2009).

[274] In this approach, the justice analyzes the intention of the framers of the Constitution and the circumstances of its ratification.

[275] The justice draws inferences from the "three- cornered power relationships" found in the Constitution. He gives as example 'separation of powers." In other words, a justice relies, not on the text of the Constitution, but on structure.

[276] This relies on established precedents. For Bernas, the Supreme Court Decisions are, to a certain extent, a "second set of constitutional texts."

[277] This form of interpretation "seeks to interpret the Filipino moral commitments that are embedded in the constitutional document. The Constitution, after all, as the Preamble says, is meant to be an embodiment of 'our ideals and aspirations.' Among these may be our innate religiosity, respect for human dignity, and the celebration of cultural and ethnic diversity."

[278] The justice weighs and compares the costs to benefits that might be found in conflicting rules.

[279] *Madisonian Tectonics:How Form Follows Function in Constitutional and Architectural Interpretation*, Jonathan Turley, The George Washington Law Review, Vol. 83: 308.

> standards or balancing tests that seek to provide public actors with greater flexibility.
>
> Another way of contrasting formalism and functionalism focuses on the reasoning process by which we reach rules or standards. Formalism might be understood as deduction from authoritative constitutional text, structure, original intent, or all three working together. Functionalism might be understood as induction from constitutional policy and practice, with practice typically being examined over time. Formalist reasoning promises stability and continuity of analysis over time; functionalist reasoning promises adaptability and evolution.
>
> Finally and relatedly, formalism and functionalism could be contrasted as emphasizing different goals for law. Formalism might be understood as giving priority to rule of law values such as transparency, predictability, and continuity in law. Functionalism, in turn, might be understood as emphasizing pragmatic values like adaptability, efficacy, and justice in law.[280]

I emphasize that this Court has utilized different approaches to interpreting the Constitution. It is not mandated to take only an originalist view of the fundamental law. On the contrary: the Court, through Justice Jose P. Laurel, considered the 1935 Constitution to be a "living constitution."[281] This concept is said to have originated from *Missouri v. Holland*[282] penned by Justice Oliver Wendell Holmes:

> When we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation. (Emphasis supplied)

Chief Justice William H. Rehnquist, in his *Notion of Living Constitution,*[283] ventured to say that the framers purposely couched the United States Constitution in general terms:

> The framers of the Constitution wisely spoke in general language and left to succeeding generations the task of applying that language to the unceasingly changing environment in which they would live. Those who framed, adopted, and ratified the Civil War amendments to the Constitution likewise used what have been aptly described as "majestic generalities" in composing the fourteenth amendment. Merely because a particular activity may not have existed when the Constitution was adopted, or because the framers could not have conceived of a particular method of transacting affairs, cannot mean that general language in the Constitution may not be applied to such a course of conduct. Where the framers of the Constitution have used general language, they have given latitude to those who would later interpret the instrument to make that language applicable to cases that the framers might not have foreseen. (Emphasis supplied)

Theorists utilizing the functionalist approach have likened Constitutions to animate beings that can evolve to the extent that they become hardly recognizable by their framers. In other words, they believe

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[280] Eskridge, William N. Jr ., "*Relationships between Formalism and Functionalism in Separation of P owers Cases*" (1998). Faculty Scholarship Series.Available online at http://digitalcommons.law.yale.edu/fss_papers/3807. Last Accessed on: 8 March 2016.

[281] *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

[282] 252 U.S. 416 (1920).

[283] Harvard Journal of Law & Public Policy, Vol. 29, pp. 401-415.

that the Constitution may be interpreted in a manner that goes beyond the original intent of the persons who crafted the text.

In this case, the use of both the originalist and the functionalist approaches leads to the same result – that petitioner had sufficient reason to believe that she is a natural-born citizen despite the admitted fact that she was a foundling.

The Originalist Approach: Interpretation in accordance with the intent of the framers

Respondents urge the Court to resolve the citizenship issue in this case by using the originalist approach, i.e. to make an interpretation based primarily on an examination of the text and the original intent of the framers of the 1935 Constitution. They posit that there was no intent on the part of the delegates to the 1934 Constitutional Convention to consider foundlings as natural-born citizens, "for had it been so, the text of the provision would have explicitly stated it."[284] In my opinion, this is a simplistic reading of the Constitution that disregards the intent of the framers.

Where the terms of the Constitution itself do not reveal the intent of the framers and the rest of the people, extrinsic aids may be resorted to, even when using an originalist approach. The answer may be provided by the debates or proceedings in the Constitutional Convention, the contemporaneous legislative or executive construction, history, and the effects resulting from the construction contemplated.[285] Here, the records of the 1934 Constitutional Convention prove that the framers intended to accord natural-born citizenship to foundlings.

It has been argued that the non-inclusion of a provision on "natural children of a foreign father and a Filipino mother not recognized by the father" negates the intent to consider foundlings natural-born citizens (or even merely citizens). However, the Court cannot infer the absence of intent to include foundlings based on that fact alone. Indeed, the transcript of the deliberations during the 1934 Constitutional Convention shows why it was decided that foundlings were not to be expressly mentioned in Section 1, Article IV of the 1935 Constitution:

> Sr. Rafols: For an amendment, I propose that after subsection 2, the following is inserted: 'The natural children of a foreign father and a Filipino mother not recognized by the father.'
>
> El Presidente: We would like to request a clarification from the proponent of the amendment. The gentleman refers to natural children or to any kind of illegitimate children?

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[284] Petition, p. 12.

[285] Tañada and Fernando, Constitution of the Philippines, Vol. I, 4th Ed., pp. 23-24 (1952).

> Sr. Rafols: To all kinds of illegitimate children. It also includes natural children of unknown parentage, natural or illegitimate children of unknown parents.
>
> Sr. Montinola: For clarification. The gentleman said 'of unknown parents.' Current codes consider them Filipino, that is, I refer to the Spanish Code wherein all children of unknown parentage born in Spanish territory are considered Spaniards, because the presumption is that a child of unknown parentage is the son of a Spaniard. This may be applied in the Philippines in that a child of unknown parentage born in the Philippines is deemed to be Filipino, and there is no need...
>
> Sr. Rafols: There is a need, because we are relating the conditions that are [required] to be Filipino.
>
> Sr. Montinola: But that is the interpretation of the law, therefore, there is no need for the amendment.
>
> Sr. Rafols: The amendment should read thus: 'Natural or illegitimate of a foreign father and a Filipino mother recognized by one, or the children of unknown parentage.'
>
> Sr. Briones: The amendment [should] mean children born in the Philippines of unknown parentage.
>
> Sr. Rafols: The son of a Filipina to a foreigner, although this [person] does not recognize the child, is not unknown.
>
> El Presidente: Does the gentleman accept the amendment or not?
>
> Sr. Rafols: I do not accept the amendment because the amendment would exclude the children of a Filipina with a foreigner who does not recognize the child. Their parentage is not unknown and I think those children of overseas Filipino mother and father [whom the latter] does not recognize, should also be considered as Filipinos.
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> El Presidente: The question in order is the amendment to the amendment from the gentleman from Cebu, Mr. Briones.
>
> Mr. Bulson: Mr. President, don't you think it would be better to leave this matter in the hands of the Legislature?
>
> Sr. Roxas: Mr. President, my humble opinion is that these cases are few and far between, that the constitution need [not] refer to them. By international law the principle that children or people born in a country of unknown parents are citizens in this nation is recognized, and it is not necessary to include a provision on the subject exhaustively.

The delegates appeared to have been convinced that there was no need to include a binding provision on the subject for the following reasons: the Spanish Civil Code already recognizes foundlings were born of Spanish citizens, and were thus Spanish (Sr. Montinola); that the citizenship of foundlings could be determined by Congress (Sr. Buslon); that the cases were so few and far between that the Constitution did not need to refer to them (Sr. Roxas); or international law already recognized children or people born in a country of unknown parents as citizens of that country (Sr. Roxas).

For these reasons, they believed that it was no longer necessary to include foundlings among those to be expressly enumerated in the 1935 Constitution. **The record is bereft of any proposal by any delegate to deny foundlings Filipino citizenship. It would even appear that those delegates who spoke could not imagine any other interpretation than that foundlings are to be considered Filipinos.**

The textual silence on foundlings in Article IV, Section 1 is consistent with the principle that a good Constitution is brief, comprehensive, and definite.[286] The majority[287] of the delegates, being lawyers, must have subscribed to the accepted principle that the Constitution is unavoidably required to be couched in general language:

> It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers or to declare the means by which those powers should be carried into execution. It was foreseen that this would be a perilous and difficult, if not an impracticable, task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence. It could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter, and restrictions and specifications which at the present might seem salutary might in the end prove the overthrow of the system itself. Hence its powers are expressed in general terms, leaving to the legislature from time to time to adopt its own means to effectuate legitimate objects and to mould and model the exercise of its powers as its own wisdom and the public interests, should require.[288]

The understanding that the Constitution must be brief even as it is broad is evident in Sr. Roxas' statement during the deliberations that cases of children born of unknown parentage were so "few and far in between, that the constitution need not refer to them." Notably, no one raised a comment or an objection in response to Delegate Roxas' remark. The framers might have also accepted, regardless of its veracity, that international law regards foundlings as citizens of the country where they were found. They may have believed, as a matter of fact, that current codes already considered children of unknown parents as Filipinos.

What is clear from the deliberations is that the framers could not have intended to place foundlings in limbo, as the social justice principle embodied in Section 5, Article II of the 1935 Constitution indiscriminately covered "all of the people." Social justice has been defined as "the *humanization of laws* and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may

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[286] Tañada and Fernando, Constitution of the Philippines, Vol. I, 4th Ed. p. 13, (1952).

[287] A majority of the delegates elected – 142 out of 202 – were lawyers. Of these lawyers, 10 were law professors. Likewise there were 6 other educators who were elected as delegates, 2 of them political scientists. There were also a respectable number of farmers and businessmen. Fifty-five of them can be classified under this category. Almost a majority of the total number of delegates had previously served as public officials mostly in an elective capacity. Thus there were many former senators, and representatives and assemblymen in the ranks of the delegates (Id. at 6).

[288] *Martin* v. *Hunter's Lessee,* 14 U.S. 304 (1816).

at least be approximated."[289] It means the promotion of the welfare *of all the people*.[290] It is founded on the recognition of the necessity of interdependence among diverse units of a society and of the *protection that should be equally and evenly extended to all groups* as a combined force in our social and economic life. This recognition is consistent with the state's fundamental and paramount objective of promoting the health, comfort, and quiet of all persons and bringing about the greatest good to the greatest number.[291]

The Functionalist Approach: Interpretation consistent with natural justice

The issue of citizenship may also be resolved using the functional approach to constitutional interpretation. Under this method, the Court should adopt an interpretation that would allow the Constitution to fulfill its purpose.

Taking historical considerations into account, it is beyond cavil that the Constitution would not function as envisioned if we give judicial imprimatur to the COMELEC's argument. It claims that the 1935 Constitution, as well as the 1973 and 1987 Constitutions, excluded foundlings from being citizens merely on the ground that they could not establish a blood relationship with a Filipino father. This interpretation would likewise go against the fundamental principle of natural justice.

Mixture of jus soli and jus sanguinis

The history of citizenship laws in the Philippines shows that we have never adopted a purely *jus sanguinis* regime. Ours is a mixture of elements of *jus soli* and *jus sanguinis*, which we inherited from the Americans and the Spaniards, respectively. In fact, as will be elaborated in the succeeding section, the concept of "natural-born citizenship" originated from a *jus soli* jurisdiction.

The COMELEC however, opines that only those whose fathers are citizens of the Philippines are considered natural-born citizens under the 1935 Constitution.[292] Citing *Valles v. Comelec,*[293] it argues that natural-born Philippine citizenship is acquired at the moment of birth on the basis of blood relationship.[294]This is a gross misreading of the case. The Court in *Valles* did say that the principle of *jus sanguinis*, which confers citizenship by virtue of blood relationship, was subsequently retained under the 1973 and 1987 Constitutions; however, the Court never stated that *jus sanguinis* had ever been the exclusive regime in this jurisdiction. On the contrary, Rosalind Lopez's father, from whom she derived her Philippine citizenship,

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[289] *Calalang v. Williams,* 70 Phil. 726 (1940).
[290] Id.
[291] Id.
[292] Memorandum for public respondent COMELEC, p. 56.
[293] 392 Phil. 327 (2000).
[294] COMELEC Comment, p. 28.

was considered by the Court as a Philippine citizen based on his birth in Daet, Camarines Norte, in 1879, a *jus soli* application of citizenship rules.

Far from adhering to an exclusively *jus sanguinis* regime, at least four modes of acquiring citizenship have operated in the Philippine jurisdiction since the turn of the century: *jus soli, jus sanguinis, res judicata* and naturalization. *Jus soli* used to predominate but upon the effectivity of the 1935 Constitution, *jus sanguinis* became the *predominating* regime.[295]

Citizenship prior to the 1935 Constitution

The first Civil Code adopted in the Philippines was the Spanish Civil Code,[296] which became effective on 18 December 1889. It enumerated who were Spaniards:

> Article 17. The following are Spaniards:
> (a) **Persons born in Spanish territory**,
> (b) Children of a Spanish father or mother, even if they were born outside of Spain,
> (c) Foreigners who have obtained naturalization papers,
> (d) Those who, without such papers, may have become domiciled inhabitants of any town of the Monarchy. (Emphasis supplied)

On 21 January 1899, the Malolos Constitution, which was framed by the national assembly of the first Philippine Republic, was promulgated. All persons born in the Philippine territory were considered as Filipinos:

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[295] The following excerpts show that the Court characterized *jus sanguinis* as the predominating regime of citizenship:

a) *Roa v. Insular Collector of Customs* (1912)
"A reading of article 17 of the Civil Code, above copied, is sufficient to show that the first paragraph affirms and recognizes the principle of nationality by place of birth, *jus soli.* The second, that of *jus sanguinis*; and the last two that of free selection, with the first predominating."

b) *Torres v. Tan Chim* (1940)
"In abrogating the doctrine laid down in the Roa case and making jus sanguinis the predominating principle in the determination of Philippine citizenship, the Constitution did not intend to exclude those who were citizens of the Philippines by judicial declaration at the time of its adoption. If on the strength of the Roa decision a person was considered a full-pledged Philippine citizen (Art. IV, sec. 1, No. 1) on the date of the adoption of the Constitution when jus soli had been the prevailing doctrine, he cannot be divested of his Filipino citizenship."

c) *Villahermosa v. Commissioner of Immigration* (1948)
"After the Constitution, mere birth in the Philippines of a Chinese father and Filipino mother does not ipso facto confer Philippine citizenship, and jus sanguinis instead of jus soli is the predominating factoron questions of citizenship, thereby rendering obsolete the decision in Roa vs. Collector of Customs, 23 Phil., and U. S. vs. Lim Bin, 36 Phil., and similar cases on which petitioner's counsel relies."

d) *Talaroc v. Uy* (1952)
"In abrogating the doctrine laid down in the Roa case and making jus sanguinis the predominating principle in the determination of Philippine citizenship, the Constitution did not intend to exclude those who were citizens of the Philippines by judicial declaration at the time of its adoption. If on the strength of the Roa decision a person was considered a full-pledged Philippine citizen (Art. IV, sec. 1, No. 1) on the date of the adoption of the Constitution when jus soli had been the prevailing doctrine, he cannot be divested of his Filipino citizenship."

[296] Translated by Licenciados Clifford S. Walton and Nestor Ponce de Leon. Published under authority of Major-General William Ludlow Military Governor of Havana. Edited by Major Clifford S. Walton. Available online at https://archive.org/stream/spanishcivilcode00spairich/spanishcivilcode00spairich_djvu.txt. (last visited at 9 March 2016).

> Article 6. The following are Filipinos:
> 1. **All persons born in the Philippine territory**. A vessel of Philippine registry is considered, for this purpose, as part of Philippine territory.
> 2. Children of a Filipino father or mother, although born outside of the Philippines.
> 3. Foreigners who have obtained certification of naturalization.
> 4. Those who, without such certificate, have acquired a domicile in any town within Philippine territory.
>
> It is understood that domicile is acquired by uninterrupted residence for two years in any locality within Philippine territory, with an open abode and known occupation, and contributing to all the taxes imposed by the Nation.
>
> The condition of being a Filipino is lost in accordance with law. (Emphasis supplied)

The Malolos Constitution was short-lived and was in force only in the places were the first Philippine Republic had control. On 11 April 1899, the Treaty of Paris between Spain and America took effect. Justice Jose C. Vitug, in *Tecson v. Comelec*[297] implied that between 10 December 1898 when the parties entered into the treaty and 11 April 1899, when it took effect, Spanish civil law remained intact.[298]

The term "citizens of the Philippine Islands" was introduced a few years later through Section 4 of the Philippine Bill of 1902:

> Section 4. That all **inhabitants** of the Philippine Islands continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Philippine Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain signed at Paris December tenth, eighteen hundred and ninety-eight.

Under the Philippine Bill, a citizen of the Philippines was one who was an inhabitant of the Philippines and a Spanish subject on 11 April 1899. The term inhabitant was taken to include 1) a native-born inhabitant; 2) an inhabitant who was a native of Peninsular Spain; or 3) an inhabitant who obtained Spanish papers on or before 11 April 1899.[299]

Controversy arose on the status of children born in the Philippines from 11 April 1899 to 1 July 1902, during which period no citizenship law was extant in the Philippines. Weight was given to the view, articulated in jurisprudential writing at the time that the common law principle of *jus soli* governed those born in the Philippine Archipelago within that period.[300] *Jus*

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[297] Supra note 1.

[298] Justice Vitug wrote: "The year 1898 was another turning point in Philippine history. Already in the state of decline as a superpower, Spain was forced to so cede her sole colony in the East to an upcoming world power, the United States. An accepted principle of international law dictated that a change in sovereignty, while resulting in an abrogation of all political laws then in force, would have no effect on civil laws, which would remain virtually intact."

[299] *Tecson v. Comelec* citing Leon T. Garcia, The Problems of Citizenship in the Philippines, Rex Bookstore, 1949, at pp. 31-32, supra note 1.

[300] Id at. 23-26, cited in *Tecson v. Comelec*, supra note 1.

soli was also known as the principle of territoriality, which was operative in the United States and England.

In 1916, the Philippine Autonomy Act, also known as the Jones Law, restated virtually the provisions of the Philippine Bill of 1902 as amended by the Act of Congress in 1912:[301]

> Section 2. That all **inhabitants** of the Philippine Islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Islands, and their children born subsequently thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December tenth, eighteen hundred and ninety-eight and except such others as have since become citizens of some other country; Provided, That the Philippine Legislature, herein provided for, is hereby authorized to provide for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States, if residing therein."

Under the Jones Law, native-born inhabitants of the Philippines were deemed to be citizens of the Philippines as of 11 April 1899 if they were (1) subjects of Spain on 11 April 1899; (2) residing in the Philippines on that date; and (3) since that date, not citizens of some other country.[302]

Citizenship under the 1935, 1973 and 1987 Constitutions

Article IV, Section 1 of the 1935 Constitution provides:

> Section 1. The following are citizens of the Philippines:
>
> 1. Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.
> 2. Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.
> 3. Those whose fathers are citizens of the Philippines.
> 4. Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.
> 5. Those who are naturalized in accordance with law.

Items 1 and 4 of the foregoing section show that the 1935 Constitution was not based purely on the *jus sanguinis* principle. Taking into account the history of our citizenship provisions, the phrase "those who were citizens of the Philippine Islands at the time of the adoption of this Constitution" clearly included those who did not have a single drop of Filipino blood in them. Moreover, "those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office" were also automatically considered citizens despite the fact that they were of foreign blood.

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[301] *Tecson v. Comelec,* supra note 1.
[302] *Tecson v. Comelec, supra* note ___.

Significantly, the provisions of Section 1(1) of Article IV of the 1935 Constitution were carried over to the 1973 and 1987 Constitutions.[303] The only difference was the reference to the country as "Philippines" instead of "Philippine Islands."

Considering the mixture of citizenship regimes currently in force, it is not correct to say that there is an exclusive *jus sanguinis* principle in place, and because of that principle, that petitioner is thereby required, regardless of the fact that she is a foundling, to submit proof of her blood relationship to a Filipino father. To rule otherwise would be to implement a purely *jus sanguinis* regime contrary to the history of the Constitution.

Functionality in accord with natural justice

As previously explained, the Constitution is meant to advance the fundamental values of the Filipino people, in particular, those articulated in the Preamble: the promotion of general welfare;[304] the creation of a just and humane society;[305] and the protection of the blessings of independence and democracy under a regime of truth, justice, freedom, love, equality, and peace in accordance with the rule of law.[306] The Constitution must be interpreted to allow it to function in accordance with these ideals. Thus, the Court should not construe the citizenship provisions of the 1935 Constitution in a manner that would unjustly deprive foundlings of citizenship and render them stateless.

To emphasize, from the time that the Supreme Court was vested with the power to interpret the law, We have exercised this power in accordance with what is right and just. Citizenship cases are no exception. In previous cases, the Court has in fact interpreted the law on citizenship in accordance with natural justice.

In *Roa v. Collector*,[307] We have assumed that the principle of *jus soli* was applicable. This assumption was affirmed in *Torres v. Tan Chim*[308]and *Gallofin v. Ordonez*,[309] in which this Court held that the principle of *jus soli*

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[303] Article III, Section 1 of the 1973 Constitution states:

> Section 1. The following are citizens of the Philippines:
>
> 1. Those who are citizens of the Philippines at the time of the adoption of this Constitution.
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> xxxx

Article IV, Section 1 of the 1987 Constitution, states:

> Section 1. The following are citizens of the Philippines:
>
> 1. Those who are citizens of the Philippines at the time of the adoption of this Constitution;
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> xxxx

[304] 1987 Constitution, Preamble.

[305] Id.

[306] Id.

[307] 23 Phil 315 (1912).

[308] 69 Phil. 518 (1940).

[309] 70 Phil. 287 (1940).

was followed with reference to individuals who were born of Chinese fathers and Filipino mothers.[310]

In *Talaroc v. Uy,*[311] We held that in making *jus sanguinis* the predominating principle in the determination of Philippine citizenship, the Constitution did not intend to exclude those who were citizens of the Philippines by judicial declaration at the time of its adoption. We ruled that if, on the strength of *Roa*, a person was considered a full-fledged Philippine citizen on the date of the adoption of the Constitution when jus soli was the prevailing doctrine, that person cannot be divested of Filipino citizenship.[312] The Court also stated that "it would be neither fair nor good policy to hold Uy an alien after he had exercised the privileges of citizenship in the face of legal principles that have the force of law."[313]

The principles of natural justice were also utilized in other cases to avoid an unfair outcome. In *Sale de Porkan v. Yatco,*[314] We upheld the validity of a contract over a parcel of land in favor of a "non-Christian inhabitant of the Department of Mindanao and Sulu." The contract was considered valid despite the lack of approval by the provincial governor of the province where the contract was executed as mandated by the Administrative Code of Mindanao and Sulu. The Court held:

> But if the contract, Exhibit B, is avoided, the result would be just the contrary, for the non-Christian plaintiff-appellant here would be divested of ownership over the houses which were ceded to him by C de S and which he now possesses. This would defeat the legislative aim and purpose, destroy substantial equities, and thwart the postulates of natural justice.

In *Van Dorn v. Romillo,*[315] We also prevented injustice by freeing a Filipino woman from her marital obligations after she had been divorced by her foreigner husband:

> To maintain, as private respondent does, that, under our laws, petitioner has to be considered still married to private respondent and still subject to a wife's obligations under Article 109, et. seq. of the Civil Code cannot be just. Petitioner should not be obliged to live together with, observe respect and fidelity, and render support to private respondent. The latter should not continue to be one of her heirs with possible rights to

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[310] Tañada and Fernando, Constitution of the Philippines, Vol. II, 4th Ed. (1952), p. 649.

[311] *Talaroc v. Uy,* 92 Phil. 52 (1952).

Facts: This is an action to contest the election of Uy to the office of Municipal Mayor on the ground that he is Chinese, therefore, ineligible. He was born in the Philippines in 1912 of a Filipino mother and a Chinese father. His parents did not get married until 1914. His father died in 1917, while his mother died in 1949. Uy had voted in previous elections and held various positions in the government. He never went to China.

Held: On the strength of the Roa doctrine, Uy can be considered a Filipino citizen on the date of the adoption of the Constitution when *jus soli* has been the prevailing doctrine. The status of those persons who were considered Filipino citizens under the prevailing doctrine of jus soli would not be affected by the change of doctrine upon the effectivity of the Philippine Constitution.

[312] Id.

[313] 92 Phil. 61 (1952).

[314] 70 Phil. 161-166 (1940).

[315] 223 Phil. 357-363 (1985).

> conjugal property. She should not be discriminated against in her own country if the ends of justice are to be served.

Concept of "natural-born" citizenship

The requirement of natural-born citizenship should serve only to deny certain privileges to those who have gone through the process of naturalization in order to acquire and perfect their citizenship. The concept, originally meant to distinguish those who are "natural-born" from those who are "foreign-born" in *jus soli* jurisdictions, cannot be used to justify the denial of citizenship status to foundlings because of their inability to prove a certain blood relationship.

"Natural-born" citizenship and jus soli

An examination of the origin of the term "natural-born" reveals that it was lifted by the Philippines from the United States (U.S.) Constitution, which states:

> No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of the President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.[316] (Capitalization in the original)

The U.S. Constitution itself does not define the term. However, numerous holdings and references in federal and state cases have clearly indicated that those born in the United States and subject to its jurisdiction (i.e., not born to foreign diplomats or to occupying military forces), even if they were born to alien parents, are citizens "at birth" or "by birth," and are "natural born," as opposed to "naturalized," U.S. citizens.[317]

As a matter of inclusion, it has been held that it is beyond dispute that anyone born on American soil with an American parent is a "natural born citizen."[318] As a matter of exclusion, anyone whose citizenship is acquired after birth as a result of "naturalization" is not a "natural born citizen."[319]The meaning of the natural-born citizen clause became politically salient in the U.S. when John McCain became the Republican nominee for President in September of 2008. He was born in the Panama Canal Zone to parents who were American citizens.[320]

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[316]U.S. Constitution, Art. II, Sec. 1.

[317] Jack Maskell, "Qualifications for President and the 'Natural Born' Citizenship Eligibility Requirement", Congressional Research Service, 14 November 2011 <https://fas.org/sgp/crs/misc/R42097.pdf> (last visited 8 March 2016).

[318]Lawrence B. Solum, Commentary, "Originalism and the Natural Born Citizen Clause," 107 Mich. L. Rev First Impressions 22, 22 (2010).

[319]Id.

[320] Id.

The phrase "natural-born citizen" found its way to America from England. While there had been no extensive usage of the phrase during the founding era of the US (1774–1797), it seems clear that it was derived from "natural born subject," which had a technical meaning in English law and constitutional theory.[321] The framers of the US Constitution would have been familiar with *Blackstone's Commentaries* – which James Madison (hailed as the "Father of the Constitution") described as "a book which is in every man's hand" – and would have understood that the fundamental premise of natural-born citizenship was a concept of allegiance to the sovereign at birth.[322]

Indeed, the English lexicographer Samuel Johnson defined "natural" as "native," which may mean either an "inhabitant" or an "offspring."[323] The conception of natural- born subjects under British law is tied to that of natural allegiance to a sovereign. This conception is based primarily on being born within the territory subject to the sovereign's rule, but with the addition of others (such as the children of ambassadors or of the sovereigns themselves) who have a "natural allegiance" to the sovereign.

Blackstone writes:

> The first and most obvious division of the people is into aliens and natural-born subjects. Natural-born subjects are such as are born within the dominions of the crown of England, that is, within the ligeance, or as it is generally called, the allegiance of the king; and aliens, such as are born out of it. Allegiance is the tie, or ligamen, which binds the subject to the king, in return for that protection which the king affords the subject. The thing itself, or substantial part of it, is founded in reason and the nature of government; the name and the form are derived to us from our Gothic ancestors.
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> x x x x
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> Allegiance, both express and implied, is however distinguished by the law into two sorts or species, the one natural, the other local; the former being also perpetual, the latter temporary. Natural allegiance is such as is due from all men born within the king's dominions immediately upon their birth. For, immediately upon their birth, they are under the king's protection; at a time too, when (during their infancy) they are incapable of protecting themselves.
>
> x x x x
>
> When I say, that an alien is one who is born out of the king's dominions, or allegiance, this also must be understood with some restrictions. The common law indeed stood absolutely so; with only a very few exceptions: so that a particular act of parliament became necessary after the restoration, for the naturalization of children of his majesty's English subjects, born in foreign countries during the late troubles. And this maxim of the law proceeded upon a general principle, that every man owes natural allegiance where he is born, and cannot owe two such allegiances, or serve two masters, at once. Yet the children of the king's ambassadors born abroad were always held to be natural subjects:

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[321] Id. at 26

[322] *See* id; F.E. Edwards, Natural Born British Subjects at Common Law, 14 Journal of the Society of Comparative Legislation 314, 315 (1914) <http://www.jstor.org/stable/752349> (last visited 8 March 2016).

[323] A Dictionary Of The English Language: In Which The Words are Deduced from Their Originals, And Illustrated in Their Different Significations By Examples from the Best Writers, To Which Are Prefixed, A History of the Language, And An English Grammar (2nd ed. 1756).

> for as the father, though in a foreign country, owes not even a local allegiance to the prince to whom he is sent; so, with regard to the son also, he was held (by a kind of postliminium) to be born under the king of England's allegiance, represented by his father, the ambassador.[324] (Emphasis supplied)

Based on the foregoing, **it appears that the original opposite of the term "natural-born" is not "naturalized," but "foreign-born."** The term was meant to distinguish between those born within a certain territory and those born outside it. Blood or descent was irrelevant. However, because of the mixture of common law and civil law in our jurisdiction, the original concept of natural-born citizenship seems to have been diluted.

Citizens by Birth v. Citizens by Naturalization

Irrespective of the origin of the concept, the term "natural-born" was used by the framers of the 1935, 1973 and 1987 Constitutions to delineate the privileges of those who are citizens at birth, from those enjoyed by citizens who are naturalized.

The word "natural-born" appeared thrice in the 1935 Constitution as a qualification for the presidency and vice-presidency, as well as membership in the Senate and House of Representatives.[325] The framers of the 1935 Constitution, however, did not define the term.

In their commentary on the 1935 Constitution, Tañada and Fernando opined that the requirement that a person be a natural-born citizen may be interpreted to mean that at the time of birth, the candidate was a Filipino citizen; naturalized citizens are excluded.[326] Proceeding from this logic, **citizens who did not acquire their Philippine citizenship through naturalization have the citizenship qualification to run for the presidency.**

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[324] The Founders' Constitution, Volume 2, Article 1, Section 8, Clause 4 (Citizenship), Document 1, The University of Chicago Press http://press-pubs.uchicago.edu/founders/documents/a1_8_4_citizenships1.html (last visited 8 March 2016).

[325] Sections 4 and 7, Article VI of the 1935 Constitution state:

> Section 4. No person shall be a Senator unless he be a **natural born** citizen of the Philippines and, at the time of his election, is at least thirty-five years of age, a qualified elector, and a resident of the Philippines for not less than two years immediately prior to his election.
>
> Section 7. No person shall be a Member of the House of Representatives unless he be a **natural born** citizen of the Philippines, and, at the time of his election, is at least twenty-five years of age, a qualified elector, and a resident of the province in which he is chosen for not less than one year immediately prior to his election.

Section 3, Art. VII of the 1935 Constitution, states:

> Section 3. No person may be elected to the office of President or Vice-President, unless he be a **natural born** citizen of the Philippines, a qualified voter, forty years of age or over, and has been a resident of the Philippines for at least ten years immediately preceding the election.

[326] Tañada and Fernando, Constitution of the Philippines, Vol. II, 4th Ed. (1952), pp. 974-975.

The statements in these commentaries are supported by the deliberations of the framers of the 1935 Constitution. During the 1934 Constitutional Convention, Delegate Alejandrino proposed to limit eligibility for the presidency and vice-presidency only to Filipino citizens born in the Philippines of parents who were not naturalized.[327] This proposal was shot down. It must be noted, though, that he referred to parents who were "not naturalized," instead of those who were "natural-born." It may be inferred that the framers of the 1935 Constitution only intended to exclude those citizens who had been naturalized from occupying certain positions. Another section of the deliberations proceeded in this manner:

> Delegate Artadi. – I am going to ask a reconsideration with respect to the matter appearing on page 22-A which treats of the interpretation of the words, 'natural-born,' because I would like to inform the Assembly that I have had a conversation with some members of the committee...and they explained to me that the words, 'natural-born,' do not necessarily mean 'born in the Philippines;' that is to say, translated into Spanish, they mean that one who possesses all the qualifications to be President of the republic, as it is written, is not necessarily born in the Philippines. So that for purposes of the record, I would like one of the members of the committee to explain the true interpretation of the words, 'natural-born,' for the information of the Assembly.
>
> The President. – The delegate from Capiz, Mr. Roxas, may please tell what is the exact equivalent of those words.
>
> Delegate Roxas. – Mr. President, the phrase, 'natural-born citizen' appears in the Constitution of the United States; but the authors say that this phrase has never been authoritatively interpreted by the Supreme Court of the United States in view of the fact that there has never been raised the question of whether or not an elected President fulfilled this condition. The authors are uniform in the fact that **the words, 'natural-born' citizen,' means a citizen by birth, a person who is a citizen by reason of his birth, and not by naturalization or by a further declaration required by law for citizenship.** In the Philippines, for example, under the provisions of the article on citizenship which we have approved, all those born of a father who is a Filipino citizen, be they persons born in the Philippines or outside, would be citizens by birth or 'natural-born.'
>
> And with respect to one born of a Filipino mother but of a foreign father, the article which we approved about citizenship requires that, upon reaching the age of majority, this child needs to indicate the citizenship which he prefers, and if he elects Philippine citizenship upon reaching the age of majority, then he shall be considered a Filipino citizen. According to this interpretation, the child of a Filipino mother with a foreign father would not be a citizen by birth, because the law or the Constitution requires that he make a further declaration after his birth. Consequently, **the phrase, 'natural-born citizen,' as it is used in the English text means a Filipino citizen by birth, regardless of where he was born**.[328] (Emphasis supplied)

The requirement of "natural-born" citizenship was carried over to the 1973 Constitution[329] and then to the present Constitution.[330] Confirming the

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[327]Tañada and Fernando, Constitution of the Philippines, Vol. II, 4th Ed. (1952), p. 975.
[328]Id. at 404-405.
[329]Sections 4 and 2, Art. VII of the 1973 Constitution, state:

> Section 4. No person may be elected President unless he is a **natural-born** citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election and a resident of the Philippines for at least ten years immediately preceding such election. (as amended in the January 27, 1984 Plebiscite)

original vision of the framers of the 1935 Constitution, the 1973 Constitution defined the term as "one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship."[331] The 1973 definition was adopted in the present Constitution, with the added proviso that those who elect Philippine citizenship in accordance with paragraph (3),[332] Section 1 of Article IV, shall be deemed natural-born citizens:

> Art. IV, Section 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

Since the term was defined in the negative, it is evident that the term "natural-born citizens" refers to those who do not have to perform any act to acquire or perfect their Philippine citizenship. The definition *excludes* only those who are naturalized. From this interpretation, it may be inferred that a Filipino citizen who did not undergo the naturalization process is natural-born. As We explained in *Bengson III v. House of Representatives Electoral Tribunal*:[333]

> A citizen who is not a naturalized Filipino, i.e., did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is a natural-born Filipino. Noteworthy is the absence in said enumeration of a separate category for persons who, after losing Philippine citizenship, subsequently reacquire it. The reason therefor is clear: as to such persons, they would either be natural-born or naturalized depending on the reasons for the loss of their citizenship and the mode prescribed by the applicable law for the reacquisition thereof.

In *Bengson,* We also ruled that private respondent regained his status as a natural-born citizen the moment he reacquired his Filipino citizenship

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cont.

> Section 2. There shall be a Vice-President who shall have the same qualifications and term of office as the President and may be removed from office in the same manner as the President as provided in Article XIII, Section 2 of this Constitution.

[330]Sections 2 and 3, Art. VII of the 1987 Constitution, read:

> Section 2. No person may be elected President unless he is a **natural-born** citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.
>
> Section 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. He may be removed from office in the same manner as the President.

[331]Section 4, Article III.

[332] This section states:

> Section 1. The following are citizens of the Philippines:
> xxxx
> (3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
> xxxx

[333]409 Phil. 633 (2001).

through repatriation. That part of the Decision will be discussed in further detail in the succeeding sections.

Not Purity of Blood

Naturalized citizens are former aliens or foreigners who had to undergo a rigid procedure, in which they had to adduce sufficient evidence to prove that they possessed all the qualifications and none of the disqualifications to become Filipino citizens as provided by law.[334] In contrast, as stated in the early case *Roa v. Collector of Customs,*[335] a natural-born citizen is a one who has become such at the moment of birth.

It may be observed from the exchanges during the deliberations on the qualifications of members of the Supreme Court that the concern about the natural-born requirement was not all about the questionable allegiance of those without Filipino blood, but of those born abroad of Filipino parents. Delegate Lim expressed his understanding that the requirement was for the President to be "native-born," and his reservations about installing as magistrates those who are not familiar with the "idiosyncrasies of the people:"

> How can we figure out that naturalized citizens could really interpret the purposes of this Constitution including the idiosyncrasies of the people? We have as a matter of policy adopted the principle that the President of the Commonwealth should be a native born. Our Supreme Court in some instances has the power much bigger than that of the President by declaring our laws passed by the National Assembly as unconstitutional. That power makes the Supreme Court the supreme interpreter of our laws of the land, and who else but native born persons, individuals who have been born in the country, can interpret, as I said, the customs and habits of our people?[336]

It must be emphasized that natural-born status was never intended to be a measure of the purity of blood. This Court, on reconsideration in *Tan Chong,*[337] explained why birth alone may not be sufficient basis for the acquisition of citizenship. Some of the important elements that would make a person living in a country its citizen: youth spent in the country; intimate and endearing association with the citizens among whom they live; knowledge and pride of the country's past; belief in the greatness and security of its institutions, in the loftiness of its ideas, and in the ability of the country's government to protect them, their children and their earthy possessions against perils from within and from without; and their readiness to defend the country against those perils.[338]

In the same manner, blood relationship alone is not controlling.[339] The following groups of people, who technically have no "Filipino blood," were

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[334] Chief Justice (then Associate Justice) Panganiban's Concurring Opinion in *Bengson III,* id.
[335] 23 Phil 315, 338 (1912).
[336] Laurel, Proceedings of the Philippine Constitutional Convention, Vol. V, p. 1032.
[337] 79 Phil. 249, 256 (1947).
[338] Id.
[339] Tañada and Fernando, supra.

effectively considered citizens by virtue of Commonwealth Act No. 473 or the "Revised Naturalization Law":

> Section 15. Effect of the Naturalization on Wife and Children. — Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines.
>
> Minor children of persons naturalized under this law who have been born in the Philippines shall be considered citizens thereof.
>
> A foreign-born minor child, if dwelling in the Philippines at the time of the naturalization of the parent, shall automatically become a Philippine citizen, and a foreign-born minor child, who is not in the Philippines at the time the parent is naturalized, shall be deemed a Philippine citizen only during his minority, unless he begins to reside permanently in the Philippines when still a minor, in which case, he will continue to be a Philippine citizen even after becoming of age.
>
> A child born outside of the Philippines after the naturalization of his parent, shall be considered a Philippine citizen, unless within one year after reaching the age of majority, he fails to register himself as a Philippine citizen at the American Consulate of the country where he resides, and to take the necessary oath of allegiance. (Emphasis supplied)

A necessary implication of the above provision is that children born *within* the Philippines after the naturalization of their parent are unqualifiedly citizens of the country. This implication holds true even if the naturalized parent is *purely* of foreign blood. Moreover, because they do not need to perform any act to acquire Philippine citizenship, they must be considered natural-born citizens by definition.

Like foundlings, these groups are not expressly mentioned in the Constitution. However, by implication of law, they are considered natural-born citizens despite the absence of a single drop of Filipino blood in them. From this fact, one can draw no other conclusion: that the natural-born classification has nothing to do with bloodline or birthright.

Foundling not "naturalized in accordance with law"

It has been argued that a foundling may obtain only naturalized citizenship, because an act is supposedly required to acquire this status, i.e., the registration of the child as a foundling after an administrative proceeding. In other words, it is contended that the process of registration effectively amounts to naturalization in accordance with law. This contention is unacceptable for three reasons.

First, the phrase "naturalized in accordance with law" must be understood with reference to the naturalization process provided under naturalization statutes. In several decisions, this Court has construed the meaning of the expression "in accordance with law" as an allusion to

enabling legislation.[340] Hence, naturalization in Article IV, Section 1 of the 1935 Constitution, does not refer to just any act, but to the specific procedure for naturalization prescribed by the legislature. The Court does not have the right to engage in judicial legislation on naturalization when the Constitution exclusively vests said power in -Congress.

Second, registration is not an act that can be attributed to a foundling. Pursuant to Section 5 of Act No. 3752,[341] the person who finds an abandoned child shall report the place, date and hour of finding and other attendant circumstances to the local civil registrar for purposes of registration. This prescribed act is in sharp contrast to the naturalization process provided under the Revised Naturalization Law,[342] which requires the applicants to themselves personally and voluntarily perform certain acts to avail of naturalized citizenship. In particular, applicants are required to (a) file a declaration under oath their *bona fide* intention to become a citizen of the Philippines;[343] (b) file a petition for citizenship with a competent court;[344]

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[340] See: *Ang Bagong Bayani-OFW v. Commission on Elections*, 412 Phil. 308-374 (2001).

[341] The provision states:

> SECTION 5. *Registration and Certification of Births.* — xxxx
> In the case of an exposed child, the person who found the same shall report to the local civil registrar the place, date and hour of finding and other attendant circumstances.

[342] Commonwealth Act No. 473 (1939).

[343] Section 5 of C.A. 473 states:

> SECTION 5. Declaration of Intention. — One year prior to the filing of his petition for admission to Philippine citizenship, the applicant for Philippine citizenship shall file with the Bureau of Justice a declaration under oath that it is bona fide his intention to become a citizen of the Philippines. Such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel or aircraft, if any, in which he came to the Philippines, and the place of residence in the Philippines at the time of making the declaration. No declaration shall be valid until lawful entry for permanent residence has been established and a certificate showing the date, place, and manner of his arrival has been issued. The declarant must also state that he has enrolled his minor children, if any, in any of the public schools or private schools recognized by the Office of Private Education of the Philippines, where Philippine history, government, and civics are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen. Each declarant must furnish two photographs of himself.

[344] Section 7 of C.A. 473 states:

> SECTION 7. Petition for Citizenship. — Any person desiring to acquire Philippine citizenship shall file with the competent court, a petition in triplicate, accompanied by two photographs of the petitioner, setting forth his name and surname; his present and former places of residence; his occupation; the place and date of his birth; whether single or married and if the father of children, the name, age, birthplace and residence of the wife and of the children; the approximate date of his or her arrival in the Philippines, the name of the port of debarkation, and, if he remembers it, the name of the ship on which he came; a declaration that he has the qualifications required by this Act, specifying the same, and that he is not disqualified for naturalization under the provisions of this Act; that he has complied with the requirements of section five of this Act; and that he will reside continuously in the Philippines from the date of the filing of the petition up to the time of his admission to Philippine citizenship. The petition must be signed by the applicant in his own handwriting and be supported by the affidavit of at least two credible persons, stating that they are citizens of the Philippines and personally know the petitioner to be a resident of the Philippines for the period of time required by this Act and a person of good repute and morally irreproachable, and that said petitioner has in their opinion all the qualifications necessary to become a citizen of the Philippines and is not in any way disqualified under the provisions of this Act. The petition shall also set forth the names and post-office addresses of such witnesses as the petitioner may desire

(c) participate in a hearing before a competent court;[345] and (d) take an oath of allegiance to the Philippines.[346] Needless to state, foundlings do not perform acts equivalent to any of these when they are registered. More often than not, they are not aware of their circumstances when they are being registered as foundlings.

Third, it is possible to register a foundling by reporting the circumstances of the discovery to the local civil registrar *without* any administrative proceeding, if the registration is done prior to the surrender of the custody of the child to the DSWD or an institution. [347] It is only when the child is turned over to the DSWD without having been registered with the local civil registrar that an administrative proceeding is required prior to the issuance of a Foundling Certificate.[348] If a child is already registered by the

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to introduce at the hearing of the case. The certificate of arrival, and the declaration of intention must be made part of the petition.

[345] Section 10 of C.A. 473 provides:

> SECTION 10. Hearing of the Petition. — No petition shall be heard within the thirty days preceding any election. The hearing shall be public, and the Solicitor-General, either himself or through his delegate or the provincial fiscal concerned, shall appear on behalf of the Commonwealth of the Philippines at all the proceedings and at the hearing. If, after the hearing, the court believes, in view of the evidence taken, that the petitioner has all the qualifications required by, and none of the disqualifications specified in, this Act and has complied with all requisites herein established, it shall order the proper naturalization certificate to be issued and the registration of the said naturalization certificate in the proper civil registry as required in section ten of Act Numbered Three thousand seven hundred and fifty-three.

[346] Pursuant to Section 12 of C.A. 473, the petitioner shall, in open court, take the following oath before the naturalization certificate is issued:

> "I, _____, solemnly swear that I renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state of sovereignty, and particularly to the _____ of which at this time I am a subject or citizen; that I will support and defend the Constitution of the Philippines and that I will obey the laws, legal orders and decrees promulgated by the duly constituted authorities of the Commonwealth of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the United States of America in the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.
>
> "So help me God."

[347] Rule 28 of the Implementing Rules and Regulations of Act No. 3753 and Other Laws on Civil Registration (NSO Administrative Order No. 1-93 [1992]) provides:

> Immediately after finding a foundling, the finder shall report the case to the barangay captain of the place where the foundling was found, or to the police headquarters, whichever is nearer or convenient to the finder. When the report is duly noted either by the barangay captain or by the police authority, the finder shall commit the child to the care of the Department of Social Welfare and Development or to a duly licensed orphanage or charitable or similar institution. **Upon commitment, the finder shall give to the charitable institution his copy of the Certificate of Foundling, if he had registered the foundling.** (emphasis supplied)

[348] Pursuant to R.A. 9523 (2009), the DSWD may declare a child legally available for adoption in accordance with the following procedure:

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

finder, the administrative proceeding under the Rules of the DSWD[349] is followed not for the purpose of allowing that registration, but only to determine whether the child may be declared legally available for adoption.

Petitioner did not lose her natural-born status when she reacquired Philippine citizenship under R.A. 9225.

Respondents also question the reacquisition by petitioner of her citizenship under R.A. 9225 or the Citizenship Retention and Re-acquisition Act of 2003. They claim that only natural-born citizens are allowed to reacquire citizenship under the law. Since petitioner is allegedly not a citizen of the Philippines, she is not entitled to this privilege.

The premise of petitioner's argument has already been extensively addressed above. For reasons previously explained, petitioner may be considered a natural-born citizen; hence, she may validly reacquire her citizenship under R.A. 9225. The other arguments raised by respondents are addressed below.

Adoption Decree and Amended Birth Certificate

In my view, petitioner was entitled to rely upon the adoption decree issued in her favor and the amended birth certificate issued pursuant thereto. These documents named Fernando Poe, Jr. and Susan Roces, and no other, as her parents for all intents and purposes. Her reliance on these documents justifies her belief that she is a natural-born citizen entitled to avail herself of the provisions of R.A. 9225.

It must be emphasized that adoption severs all legal ties between the biological parents and the adoptee and vests those rights in the adopter.[350] Section 17 of R.A. 8552, in particular, provides that the "adoptee shall be

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> The Regional Director shall examine the petition and its supporting documents, if sufficient in form and substance and shall authorize the posting of the notice of the petition in conspicuous places for five (5) consecutive days in the locality where the child was found.
>
> The Regional Director shall act on the same and shall render a recommendation not later than five (5) working days after the completion of its posting. He/she shall transmit a copy of his/her recommendation and records to the Office of the Secretary within forty-eight (48) hours from the date of the recommendation.
>
> SECTION 5. Declaration of Availability for Adoption. — Upon finding merit in the petition, the Secretary shall issue a certification declaring the child legally available for adoption within seven (7) working days from receipt of the recommendation.
> Said certification, by itself, shall be the sole basis for the immediate issuance by the local civil registrar of a foundling certificate. Within seven (7) working days, the local civil registrar shall transmit the foundling certificate to the National Statistics Office (NSO).

[349] Rules and Regulations to Implement the Domestic Adoption Act of 1998, IRR-R.A. 8552, Section 5 (1998).
[350] Section 16, R.A. 8552.

considered the legitimate son/daughter of the adopter for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughter born to them without discrimination of any kind." Hence, upon the entry of an adoption decree, the law creates a relationship in which adopted children are deemed "born of" their adoptive parents:

> ... **The act of adoption fixes a status, viz., that of parent and child. More technically, it is an act by which relations of paternity and affiliation are recognized as legally existing between persons not so related by nature. It has been defined as the taking into one's family of the child of another as son or daughter and heir and conferring on it a title to the rights and privileges of such.** The purpose of an adoption proceeding is to effect this new status of relationship between the child and its adoptive parents, the change of name which frequently accompanies adoption being more an incident than the object of the proceeding. The welfare of the child is the primary consideration in the determination of an application for adoption. On this part, there is unanimous agreement.
>
> It is the usual effect of a decree of adoption to transfer from the natural parents to the adoptive parents the custody of the child's person, the duty of obedience owing by the child, and **all other legal consequences and incidents of the natural relation, in the same manner as if the child had been born of such adoptive parents in lawful wedlock**, subject, however, to such limitations and restrictions as may be by statute imposed.[351] (Emphasis supplied)

As proof of this new relationship, an adoptee's original birth certificate is cancelled and sealed in the records of the Civil Registry. Thereafter, an amended birth certificate is issued in its place "attesting to the fact that the adoptee is the child of the adopter(s)."[352] This amended certificate is issued without any notation that it is new or amended.[353] Once issued, this document has the same legal effect as any other birth certificate, and is entitled to a presumption of validity as a public document.[354]

Evidently, to require adoptees to go beyond the parentage established in their birth certificates would defeat the purpose of R.A. 8552 in requiring courts and other institutions to seal adoption records, including the child's original birth certificate, and to maintain the confidentiality of those papers.[355]

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[351] *Republic v. Court of Appeals*, G.R. No. 97906, 21 May 1992.
[352] Section 14, R.A. 8552.
[353] Id.
[354] See *Baldos v. Court of Appeals and Pillazar*, 638 Phil. 601 (2010); *Heirs of Cabais v. Court of Appeals*, 374 Phil. 681-691 (1999).
[355] Sections 14 and 15 of R.A. 8552 state:

> **Section 14.** ***Civil Registry Record.*** – An amended certificate of birth shall be issued by the Civil Registry, as required by the Rules of Court, attesting to the fact that the adoptee is the child of the adopter(s) by being registered with his/her surname. The original certificate of birth shall be stamped *"cancelled"* with the annotation of the issuance of an amended birth certificate in its place and shall be sealed in the civil registry records. The new birth certificate to be issued to the adoptee shall not bear any notation that it is an amended issue.
>
> **Section 15.** ***Confidential Nature of Proceedings and Records.*** – All hearings in adoption cases shall be confidential and shall not be open to the public. All records, books, and papers relating to the adoption cases in the files of the court, the Department, or any other

By these provisions, the legislature clearly intended to protect the privacy of the parties to the adoption, thereby allowing them to avoid the stigma resulting from the proceedings. The rationale behind these confidentiality provisions was elucidated by the U.S. Court of Appeals, Second Circuit, in *Alma Society Incorporated v. Mellon.*[356] In that decision, which was later affirmed by the U.S. Supreme Court,[357] the U.S. Court of Appeals explained:

> Judged by these standards, the New York sealed record statutes do not want constitutional validity. The statutes, we think, serve important interests. New York Domestic Relations Law s 114 and its related statutes represent a considered legislative judgment that the confidentiality statutes promote the social policy underlying adoption laws. See In re Anonymous, 89 Misc.2d 132, 133, 390 N.Y.S.2d 779, 781 (Surr.Ct.1976). Originally, sealing adoption records was discretionary with the court, 1924 N.Y.Laws, ch. 323, s 113, but in 1938 confidentiality of adoption records became mandatory. 1938 N.Y.Laws, ch. 606 s 114. As late as 1968, the legislature enacted various amendments to increase the assurance of confidentiality. 1968 N.Y.Laws, ch. 1038. **Moreover, the purpose of a related statute, Section 4138 of the Public Health Laws, was to erase the stigma of illegitimacy from the adopted child's life by sealing his original birth certificate and issuing a new one under his new surname. And the major purpose of adoption legislation is to encourage natural parents to use the process when they are unwilling or unable to care for their offspring. New York has established a careful legislative scheme governing when adoption may occur and providing for judicial review, to encourage and facilitate the social policy of placing children in permanent loving homes when a natural family breaks up.** As the court of appeals stated in Scarpetta v. Spence-Chapin Adoption Service, 28 N.Y.2d 185, 195, 321 N.Y.S.2d 65, 73, Cert. denied, 404 U.S. 805, 321 N.Y.S.2d 65, 269 N.E.2d 787 (1971), "(i)t cannot be doubted that the public policy of our State is contrary to the disclosure of the names and identities of the natural parents and prospective adoptive parents to each other." (Footnote omitted.) Forty-two other states, according to the State of New York, require that birth and adoption records be kept confidential, indicating the importance of the matter of confidentiality. See also Uniform Adoption Act (U.L.A.) s 16(2) (rev. 1969) (adoption records "are subject to inspection only upon consent of the Court and all interested persons; or in exceptional cases, only upon an order of the Court for good cause shown"). These significant legislative goals clearly justify the State's decision to keep the natural parents' names secret from adopted persons but not from non-adopted persons. (Emphasis supplied)

Applicability of Bengson v HRET

As to whether petitioner also reacquired her natural-born status, the Court must apply the ruling in *Bengson III v. HRET*,[358] which allowed the

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> agency or institution participating in the adoption proceedings shall be kept strictly confidential.
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> If the court finds that the disclosure of the information to a third person is necessary for purposes connected with or arising out of the adoption and will be for the best interest of the adoptee, the court may merit the necessary information to be released, restricting the purposes for which it may be used.

[356] 601 F.2d 1225, 1235 (2d Cir. 1979).
[357] 444 U.S. 995, 100 S. Ct. 531, 62 L. Ed. 2d 426 (1979).
[358] 409 Phil. 633-672 (2001).

applicant to reacquire not only his citizenship, but also his original natural-born status. In that case, the Court noted that those who reacquire Philippine citizenship must be considered natural-born or naturalized citizens, since the Constitution does not provide a separate category for them. Between the two categories, the Court found it more appropriate to consider them natural-born citizens, since they were not required to go through the tedious naturalization procedure provided under the law:

> The present Constitution, however, now considers those born of Filipino mothers before the effectivity of the 1973 Constitution and who elected Philippine citizenship upon reaching the majority age as natural-born. After defining who are natural-born citizens, Section 2 of Article IV adds a sentence: "Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens." Consequently, only naturalized Filipinos are considered not natural-born citizens. It is apparent from the enumeration of who are citizens under the present Constitution that there are only two classes of citizens: (1) those who are natural-born and (2) those who are naturalized in accordance with law. A citizen who is not a naturalized Filipino, i.e., did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is a natural-born Filipino. Noteworthy is the absence in said enumeration of a separate category for persons who, after losing Philippine citizenship, subsequently reacquire it. The reason therefor is clear: as to such persons, they would either be natural-born or naturalized depending on the reasons for the loss of their citizenship and the mode prescribed by the applicable law for the reacquisition thereof. As private respondent Cruz was not required by law to go through naturalization proceedings in order to reacquire his citizenship, he is perforce a natural-born Filipino. As such, he possessed all the necessary qualifications to be elected as member of the House of Representatives.

Although *Bengson* referred to R.A. 2630 or the repatriation of persons who served in the U.S. Armed Forces,[359] a similar process is undergone by those who reacquire citizenship under R.A. 9225. In previous cases, this Court has also consistently characterized R.A. 9225 as a "repatriation" statute[360] that allows former Filipino citizens to recover their natural-born status.[361]

Accordingly, the logic used by this Court in *Bengson* also applies to this case – the procedure provided by R.A. 9225 does not amount to naturalization; consequently, a citizen who reacquires citizenship under this statute cannot be deemed naturalized.

Determination of natural-born status at birth

When R.A. 9225 provides for the loss, reacquisition and retention of citizenship, it refers only to the fact of citizenship, not natural-born status:

> Section 2. *Declaration of Policy.* — It is hereby declared the policy of the State that all Philippine citizens who become citizens of another country shall be deemed not to have **lost their Philippine citizenship** under the conditions of this Act.
>
> Section 3. Retention of Philippine Citizenship. — Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have

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[359] Reacquisition of Philippine Citizenship by Persons Who Served in US Armed Forces (1960).
[360] *See Sobejana-Condon v. COMELEC*, G.R. No. 198742, 692 Phil. 407-431 (2012).
[361] *See Parreño v. COA*, G.R. No. 162224, 551 Phil. 368-381 (2007).

> **lost their Philippine citizenship** by reason of their naturalization as citizens of a foreign country are hereby deemed to have **re-acquired Philippine citizenship** upon taking the following oath of allegiance to the Republic:
>
> "I _____, solemnly swear (or affirm) that I will support and defend the Constitution of theRepublic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines, and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion."
>
> Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall **retain their Philippine citizenship** upon taking the aforesaid oath. (Emphasis supplied)

These provisions are consistent with Article IV,[362] Section 2 of the 1935 Constitution, which indicates that what may be lost or reacquired is Philippine citizenship and not natural-born status. These terms were carried over into the 1973 and 1987 Constitutions.

The precise character of the citizenship reacquired under the law was no longer made an issue in these provisions, because natural-born status is determined at the time of birth.[363] This characteristic cannot be changed, unless an individual undergoes naturalization in any of the instances provided by law.[364] As will be explained below, the procedure for the reacquisition of citizenship under R.A. 9225 does not amount to naturalization.

Reacquisition is not naturalization

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[362] Article IV, Section 2, states:

> Section 2. **Philippine citizenship** may be lost or re-acquired in the manner provided by law.

[363] In *Bengson v. HRET* (409 PHIL 633-672 [2001]), the Court declared: "A person who **at the time of his birth** is a citizen of a particular country, is a **natural-born citizen** thereof." (Emphasis supplied)

[364] Sections 2 and 3 of Commonwealth Act 63 provides:

> **SECTION 2.** How citizenship may be reacquired. — Citizenship may be reacquired:
> (1) By naturalization: Provided, That the applicant possess none of the disqualifications prescribed in section two of Act Numbered Twenty-nine hundred and twenty-seven;
> (2) By repatriation of deserters of the Army, Navy or Air Corps Provided, That a woman who lost her citizenship by reason of her marriage to an alien may be repatriated in accordance with the provisions of this Act after the termination of the marital status; and
> (3) By direct act of the National Assembly.
>
> **SECTION 3.** *Procedure incident to reacquisition of Philippine citizenship.* – The procedure prescribed for naturalization under Act Numbered Twenty-nine hundred and twenty-seven, as amended, shall apply to the reacquisition of Philippine citizenship by naturalization provided for in the next preceding section: *Provided,* That the qualifications and special qualifications prescribed in section three and four of said Act shall not be required: *And provided, further,*
>
> (1) That the applicant be at least twenty-one years of age and shall have resided in the Philippines at least six months before he applies for naturalization;
> (2) That he shall have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines, in his relations with the constituted government as well as with the community in which he is living; and
> (3) That he subscribes to an oath declaring his intention to renounce absolutely and perpetually all faith and allegiance to the foreign authority, state or sovereignty of which he was a citizen or subject.

It has been argued that the taking of an oath under R.A. 9225, as petitioner has done, should be considered as an "act to acquire or perfect citizenship" under Section 2, Article IV of the present Constitution. As previously discussed, however, there are only two classes of citizens under the Constitution – those who are natural-born and those who are naturalized. The "act" adverted to in the Constitution must therefore be understood as pertaining only to the act of naturalization.

The 1935, 1973, and 1987 Constitutions conferred on Congress the power to determine who are naturalized citizens:

1935 CONSTITUTION
ARTICLE IV
Citizenship

Section 1. The following are citizens of the Philippines:
xxxx
(5) Those who are **naturalized in accordance with law**. (Emphasis supplied)

1973 CONSTITUTION
ARTICLE III
Citizenship

Section 1. The following are citizens of the Philippines:
xxxx
(4) Those who are **naturalized in accordance with law**. (Emphasis supplied)

1987 CONSTITUTION
ARTICLE IV
Citizenship

Section 1. The following are citizens of the Philippines:
x x x x
(4) Those who are **naturalized in accordance with law**. (Emphasis supplied)

In compliance with this constitutional mandate, Congress enacted the required enabling statute in 1939 when it passed Commonwealth Act No. 473 or the Revised Naturalization Law. This piece of legislation identifies those who are to be considered naturalized citizens of the country, and it is not the province of the Court to encroach upon this legislative prerogative. Accordingly, we cannot unilaterally declare those who have availed themselves of the benefits of R.A. 9225 and similar laws as naturalized citizens. To do so would violate the principle of separation of powers.

It must be emphasized that R.A. 9225 merely discusses the retention and reacquisition of citizenship, not naturalization. As early as 1936, Congress already treated naturalization as a different species apart from repatriation and other modes that may later be introduced by the national assembly:

Section. 2. How citizenship may be reacquired. – Citizenship may be reacquired:

> (1) By naturalization: Provided, That the applicant possess none of the disqualification's prescribed in section two of Act Numbered Twenty-nine hundred and twenty-seven,
>
> 2) By repatriation of deserters of the Army, Navy or Air Corp: Provided, That a woman who lost her citizenship by reason of her marriage to an alien may be repatriated in accordance with the provisions of this Act after the termination of the marital status; and
>
> (3) By direct act of the National Assembly.[365]

The reacquisition and retention of citizenship under R.A. 9225 or R.A. 2630[366] and repatriation under R.A. 8171[367] are different from naturalization under C.A. 473. Reacquisition, retention, and repatriation are effected by merely taking the necessary oath of allegiance and registering in the proper civil registry (and in the Bureau of Immigration in accordance with R.A. 8171). On the other hand, naturalization is a tedious process that begins with the filing of a declaration of intention one year prior to filing a petition for admission to Philippine citizenship and ends with the issuance of a certificate of naturalization.

Here, petitioner did not have to undergo the process of naturalization in order to reacquire her Philippine citizenship. She only had to follow the procedure specified in R.A. 9225. In this light, to declare her a naturalized citizen would thus be contrary to law.

To refuse to recognize foundlings as citizens of the Philippines is to contravene our obligations under existing international law.

The Philippines is obligated by existing customary and conventional international law to recognize the citizenship of foundlings.

Customary International Law

Petitioner asserts that international law in the 1930s granted a foundling the right to acquire a nationality "from birth." In my opinion, she has not presented sufficient evidence to prove that in 1935, the Philippines was bound by customary international law to recognize foundlings as Philippine citizens.

It must be remembered that norms of customary international law become binding on the Philippines as part of the law of the land by virtue of the Incorporation Clause in the Constitution.[368] For incorporation to occur,

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[365]Commonwealth Act No. 63, Ways in Which Philippine Citizenship May be Lost or Reacquired (1936).
[366]An Act Providing for Reacquisition of Philippine Citizenship by Persons Who Lost Such Citizenship by Rendering Service To, or Accepting Commission In, the Armed Forces of the United States (1960).
[367]Repatriation of Filipino Women and of Natural-Born Filipinos Who Lost Their Philippine Citizenship (1995).
[368] Article II, Section 2 of the 1987 Constitution, provides:

however, two elements[369] must be established: (a) widespread and consistent practice on the part of states; and (b) a psychological element known as the *opinio juris sive necessitatis* or a belief on the part of states that the practice in question is rendered obligatory by the existence of a rule of law requiring it.[370] For evident reasons, a statement made by one of the framers of the 1935 Constitution and the Hague Convention cannot, by themselves, prove widespread state practice or *opinio juris*. Without more, We cannot declare the existence of a binding norm of customary international law granting citizenship to foundlings in 1935.

I believe, however, that **this customary norm exists in international law at present. Although matters of citizenship were traditionally considered to be within the exclusive jurisdiction of states, contemporary developments indicate that their powers in this area are now "circumscribed by their obligations to ensure the full protection of human rights."**[371] In particular, the right of children to acquire a nationality is enshrined in a number of international[372] and regional[373] conventions. The presumption of citizenship accorded to foundlings in a state's territory is specifically mentioned in three conventions: the 1930 Hague Convention,[374] the 1961 Convention on the Reduction of Statelessness[375] and the European Convention on Nationality.[376] These treaties, concurred in by various state

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cont.

> The Philippines xxx **adopts the generally accepted principles of international law as part of the law of the land** and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

[369] Article 38(1)(b) of the Statute of the International Court of Justice states:

> 1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
> xxx
> a. international custom, as evidence of a general practice accepted as law;

[370] *Razon, Jr. v. Tagitis*, 621 Phil. 536-635 (2009)

[371] Inter-American Court of Human Rights, Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 35.

[372] International Covenant on Civil and Political Rights, Article 24; United Nations Convention on the Rights of the Child, Article 7.

[373] *See* the 1997 European Convention on Nationality, Article 6; 1969 American Convention on Human Rights (Pact of San Jose, Costa Rica), Article 20; 1999 African Charter on the Rights and Welfare of the Child, Article 6; 2008 Revised Arab Charter on Human Rights, Article 29.

[374] Article 14 of the Convention states:

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

[375] Article 2 of the Convention provides:

> Article 2
> A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.

[376] Article 6(1)(b) of the Convention states:

> Article 6 – Acquisition of nationality
> 1. Each State Party shall provide in its internal law for its nationality to be acquired ex lege by the following persons:
> xxx
> (b) foundlings found in its territory who would otherwise be stateless.

parties,[377] show that on the part of the members of the international community, there is widespread recognition of the right to nationality of children in general and foundlings in particular.

As important as these international instruments are the actions of states in their own domestic spheres. The International Court of Justice itself has considered national legislation as sufficient evidence of state practice.[378] In this case, a survey of the citizenship laws of 189 countries all over the world reveals that 165 of these nations consider foundlings as citizens by operation of law. Twenty-three of these states[379] grant citizenship to foundlings in observance of the *jus soli* principle, or the general grant of citizenship to all individuals born within their territory. Meanwhile, one hundred forty-two countries[380] have enacted foundling statutes to grant

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[377] Based on the databases of the United Nations Treaty Collection (https://treaties.un.org), the number of state parties in the conventions mentioned are as follows: International Covenant on Civil and Political Rights – 168; Convention on the Rights of the Child – 196; Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws - 13; Convention on the Reduction of Statelessness - 65; European Convention on Nationality – 20.

[378] *See Jurisdictional Immunities of the State (Germany v. Italy)*, Judgment, I.C.J. Reports 2012, p. 99; Arrest Warrant of 11 April 2000 (*Democratic Republic of Congo v. Belgium*), I.C.J. Reports 2002, p. 3.

[379] Argentina (See Database of European Union Democracy Observatory on Citizenship); Bolivia (Article 141, New Constitution of Bolivia); Brazil (Article 12[1], Constitution of the Federative Republic of Brazil); Chile (Article 10, Constitution); Cuba (Article 29, The Constitution of the Republic of Cuba as amended); Dominica (Article 98, Constitution of the Commonwealth of Dominica, 1978); Dominican Republic (Article 18, Constitution), Ecuador (Article 7, Ecuador Constitution); El Salvador (Article 90, Constitution of the Republic of El Salvador as amended), Equatorial Guinea (Article 10, Fundamental Law of Equatorial Guinea, 1982); Grenada (Item 96, 97, Grenada Constitution, 7 February 1974); Guatemala (Article 144, Guatemalan Constitution), Jamaica (Item 3B, Jamaican Constitution August 1962); Kiribati (Kiribati Independence Order dated July 12,1979); Niger (Directory of Citizenship Laws compiled by the United States Office of Personnel Management Investigations Service); Pakistan (Sections 4 and 5, Pakistan Citizenship Act 1951, as amended); Palau (The Citizenship Act, 13 PNCA, 1 January 1995); Panama (Article 9, Constitution of Panama); Saint Vincent and the Grenadines (Items 90-91, Constitution of 1979); Tanzania (Sections 5 and 6, Tanzania Citizenship Act No. 6 of 1995, 10 October 1995); Thailand (Section 7, Nationality Act B.E.2508); Venezuela (Article 32, Constitution of the Bolivarian Republic of Venezuela) and Zimbabwe (Section 5, Constitution of Zimbabwe).

[380] Afghanistan (Article 3, Law of Citizenship in Afghanistan, 6 November 1936); Albania (Article 8[1], Law on Albanian Citizenship, Law No. 8389, 6 September 1998); Algeria (Article 7, Ordonnance No. 70-86 du 15 décembre 1970 portant code de la nationalité algérienne, 18 December 1970); Andorra (Nationality Act, 5 October 1997); Angola (Article 9, Constituiçao da Republica de Angola aos, 21 Janeiro de 2010); Antigua and Barbuda (Article 3[1], Constitution of Antigua and Barbuda) Armenia (Article 12, Law of the Republic of Armenia on the Citizenship of the Republic of Armenia as amended, 27 November 2005); Australia (Section 14, Australian Citizenship Act 2007); Austria (Article 8[1], Federal Law Concerning the Austrian Nationality [Nationality Act of 1985]); Azerbaijan (Article 13, Law of the Azerbaijan Republic on Citizenship of the Azerbaijan Republic, 15 March 1994); Bahrain (Item No. 5[B], Bahraini Citizenship Act for 1963, 16 September 1963); Barbados (Cap. 186, Section 4[1], Barbados Citizenship Act); Belgium (Code of Belgian Nationality, 28 June 1984), Belize (Part III, 7, Belizean Nationality Act, Cap. 161); Benin (Article 10, Code de la nationalitédahoméenn, Loi No. 65-17, 23 June 1965); Bosnia and Herzegovina (Section 7, Bosnia and Herzegovina Nationality Law, 7 October 1992); Bulgaria (Article 11, Law on Bulgarian Citizenship, November 1998); Burkina Faso (Zatu No. An VIA 0013/FP/PRES du 16 Novembre 1989); Burundi (Article 3, Loi No 1/013 du 18 juillet 2000 portantréforme du code de la nationalité, 18 July 2000), Cambodia (Article 4 [2] [b], Law on Nationality, 9 October 1996); Cameroon (Section 9, Law No. 1968-LF-3 of the 11th June 1968 to set up the Cameroon Nationality Code); Canada (Section 4[1], Canadian Citizenship Act); Cape Verde (Nationality law, Law No. 80/III/90, from 29th of June); Central African Republic (Article 10, RépubliqueCentrafricaine: Loi No. 1961.212 du 1961 portant code de la nationalitécentrafricaine, 21 April 1961); Chad (Ordonnance 33/PG.-INT. du 14 août 1962 code de la nationalitétchadienne as cited in the Directory of Citizenship Laws compiled by the United States Office of Personnel Management Investigations Service); China (Article 6, Nationality Law of the People's Republic of China, 10 September 1980); Comoros (Article 13, Code of Nationality, Law No. 79-12); Costa Rica (Article 13[4], Political Constitution of the Republic of Costa Rica), Croatia (Law of Croatian Citizenship, June 1991); Czech Republic, Denmark, Djibouti (Article 6, Code de la NationalitéDjiboutienne [Djibouti], Loi n°79/AN/04/5ème L, 24 October 2004); Democratic Republic of Congo (Article 2[3], LOI No. 87.010 Du 1er AOUT 1987, Portant Code de la Famille); Egypt

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(Article 2[4], Law No. 26 of 1975 Concerning Egyptian Nationality, Official Journal No. 22, 29 May 1975), Eritrea (Item 2[3], Eritrean Nationality Proclamation No. 21/1992, 6 April 1992); Estonia (Section 5[2], Citizenship Act of Estonia); Ethiopia (Article 3[2], Proclamation No. 378/2003, A Proclamation on Ethiopian Nationality, 23 December 2003); Fiji (Section 7, Citizenship of Fiji Decree 2009); Finland (Section 12, Finnish Nationality Act 359/2003 as amended); France (Article 19, Title 1, French Civil Code), G. Bissau, Gabon (Article 11[2], Code de la Nationalité Loi No. 37-1998); Georgia (Article 15, Organic Law of Georgia on Georgian Citizenship); Germany (Section 4[2], Nationality Act of 22 July 1913 as amended); Ghana (Citizenship Act, Act 591, 5 January 2001); Greece (Article 1[2][b], Greek Citizenship Code); Guinea (Directory of Citizenship Laws compiled by the United States Office of Personnel Management Investigations Service); Guinea Bissau (Article 5[2], Lei da Cidadania Lei n.o 2/92 De 6 de Abril); Guyana (Item 8[2], Guyana Citizenship Act, Cap. 14:01); Haiti (Article 4, Haiti Citizenship Act); Honduras (Article 23, Constitution of the Republic of Honduras); Hungary (Section 3[3][b], Act LV of 1993 as amended); Iceland (Article 1[1], Icelandic Nationality Act No. 100/1952, 1 January 1953); Indonesia (Article 4[9], 4[10], 4[11], Law of the Republic of Indonesia No. 12 on Citizenship of the Republic of Indonesia, 1 August 2006); Iran (Article 976[3], Iran Nationality Law); Iraq (Article 4[6], Law No. 46 of 1963); Ireland (Item 10, Irish Nationality and Citizenship Act 1956 as amended), Israel (Article 4[A], Nationality Law 5712-1952, 14 July 1953); Italy (Article 1[2], Law no. 91/1992); Jamaica, Japan (Article 2[3], Nationality Law - Law No.147 of 1950, as amended); Jordan (Article 3[4], Jordanian Nationality Law 1954, Law No. 6 of 1954 on Nationality, 1 January 1954); Kazakhstan (Article 13, Law on Citizenship of the Republic of Kazakhstan, 1 March 1992); Kenya (Article 9, Kenya Citizenship and Immigration Act No. 12 of 2011, 30 August 2011); Korea (Article 2[1][3], 2[2] Law No. 16 of 1948, Nationality Act as amended, 20 December 1948); Kosovo (Article 7, Law Nr. 03/L-034 on Citizenship of Kosovo); Kuwait (Article 3, Nationality Law of 1959); Kyrgyz Republic (Article 2[5], The Law of the Kyrgyz Republic on citizenship of the Kyrgyz Republic as amended, 21 March 2007); Lao PDR (Law on Lao Nationality, 29 November 1990); Latvia (Section 2(1)(3) and 2(1)(5), Law of Citizenship 1994 [as amended]); Lebanon (Article 1[3], Decree No.15 on Lebanese Nationality including Amendments, 19 January 1925); Lesotho (Item 38, Lesotho Constitution of 1993, 2 April 1993); Liberia (Constitution of the Republic of Liberia); Libya (Section 3, Item 3, Law Number (24) for 2010/1378 On Libyan Nationality, 24 May 2010); Liechtenstein (Section 4[a], Act of 4 January 1934 on the Acquisition and Loss of Citizenship); Lithuania (Article 16, Republic of Lithuania Law on Citizenship No. XI-1196, 2 December 2010); Luxembourg (Article 1[2], Luxembourg Nationality Law of 23 October 2008); Macedonia (Article 6, Law on Citizenship of the Republic of Macedonia); Madagascar (Directory of Citizenship Laws compiled by the United States Office of Personnel Management Investigations Service); Malawi (Item 2[5], Malawi Citizenship Act 1966); Malaysia (Second Schedule [Article 39], Part I: Citizenship by Operation of Law of Persons Born before Malaysia Day [Article 14 [1][a] – Section 1, Federal Constitution of Malaysia, 31 August 1957); Mali (Article 11, Loi No. 6218 AN-RM du 3 février 1962 portant Code de la nationalitémalienne); Malta (Item 17[3], Maltese Citizenship Act); Marshall Islands (Directory of Citizenship Laws compiled by the United States Office of Personnel Management Investigations Service); Mauritania (Article 11, Loi N° 1961-112, Loiportant code de la nationalitémauritanienne); Mexico (Article 7, Law of Nationality as cited in the database of European Union Democracy Observatory on Citizenship); Moldova (Article 11[2], Law on Citizenship of the Republic of Moldova); Mongolia (Article 7[4], Law of Mongolia on Citizenship, 5 June 1995); Montenegro (Article 7, Montenegrin Citizenship Act); Morocco (Article 11, Code de la nationalitémarocaine (2011), Dahir n. 1-58-250 du 21 safar 1378, 6 September 1958); Mozambique (Article 10[b], Nationality Act, 25 June 1975); Nepal (Item 3[3], Nepal Citizenship Act 2063, 2006), Netherlands (Article 3 (2), Netherlands Nationality Act as in force on 8 February 2015); New Zealand (Section 6, Citizenship Act 1977 061); Nicaragua (Article 16[4], Constitution of Nicaragua); Norway (Section 4, Act on Norwegian Nationality); Oman (Article 1[3], Royal Decree No. 3/83 – Law on the Organization of the Omani Nationality); Papua New Guinea (Section 77, Constitution); Paraguay (Article 146[1], Constitution of Paraguay); Peru (Article 2[2], Constitution); Poland (Article 15, Law of 2 April 2009 on Polish Citizenship); Portugal (Article 1[2] Portuguese Nationality Act, Law 37/81 of 3 October as amended); Qatar (Article 1[3], Law No. 38 of 2005 on the Acquisition of Qatari nationality 38 / 2005); Romania (Article 3(1), Law No. 21 of 1 March 1991), Russia (Article 12[2], Federal Law on the Citizenship of the Russian Federation, 15 May 2002); Rwanda (Article 9, Organic Law N° 30/2008 of 25/07/2008 relating to Rwandan Nationality 25 July 2008); Saint Kitts and Nevis (Items 95[5][c], 1983 Constitution); Saint Lucia (Article 7[2] of the Law of Nationality, Constitution of 1978 as cited in the database of European Union Democracy Observatory on Citizenship); Samoa (Part II, Item 6(3),Citizenship Act of 2004); San Marino (See Council of Europe bulletin: http://www.coe.int/t/dghl/standardsetting/nationality/Bulletin_en_files/San%20Marino%20E.pdf); Sao Tome & Principe (Article 5(1) (e) and 5(2), Law of Nationality dated September 13, 1990); Saudi Arabia (Item No. 7[2], Saudi Arabian Citizenship System (Regulation), Decision no. 4 of 25/1/1374 Hijra, 23 September 1954); Serbia (Article 13, Law on Citizenship of the Republic of Serbia); Singapore (Article 140[13], Third Schedule, Constitution of the Republic of Singapore, 9 August 1965); Slovakia (Section 5(2)(b), Act No. 40/1993 Coll. On nationality of the Slovak Republic of 19 January 1993); Slovenia (Article 9, Citizenship of the Republic of Slovenia Act); Somalia (Article 15, Law No. 28 of 22 December 1962 Somali Citizenship as amended); South Africa (Article 44, South

citizenship to a child found in their territories if the parents are unknown, unless there is proof to the contrary. Depending on the rule followed by the state, the foundling is presumed either to have been born in the territory[381] or to have been born to citizens of the state.[382]

That states have agreed to be bound by these obligations under various conventions and have even enacted domestic legislation to fulfill their responsibilities under the law of nations indicates their recognition of the binding character of this norm. These acts demonstrate the *opinio juris* of those states, i.e., their recognition that the grant of nationality to foundlings is obligatory under international law.[383]

In view of the concurrence of these two elements, it is evident that a rule requiring states to accord citizenship to foundlings has crystallized into a customary norm. The Philippines is therefore bound at present to act in compliance with these obligations.

The ICCPR and the CRC

As a state party to the ICCPR[384] and the CRC,[385] the Philippines is also obligated to respect the right of every child to acquire a nationality. While

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cont.

African Citizenship Act No. 88 of 1995); South Sudan (Item 8[4], Nationality Act of 2011, 7 July 2011); Spain (Spanish Civil Code, Book One Title I, Article 17[1][d]); Sri Lanka (Item No. 7, Citizenship Act of Sri Lanka); Sudan (Section 5, Sudanese Nationality Act 1994); Suriname (Article 4, State Ordinance of 24 November 1975 for the Regulation of the Surinamese Nationality and Residence in Suriname), Swaziland (Section 17, Swaziland Citizenship Act, 1992, Act 14/1992, 1 December 1992); Sweden (Section 2, Swedish Citizenship Act); Switzerland (Article 6, Federal Act on the Acquisition and Loss of Swiss Citizenship as amended); Taiwan (Article 2[3], Nationality Act as amended, 5 February 1929), Tajikistan (Article 19, 13 Constitutional Law of the Republic of Tajikistan on Nationality of the Republic of Tajikistan, 8 August 2015); Timor-Leste (Section 3[2][b], Constitution of the Democratic Republic of Timor Leste); Togo (Article 2, Nationality Act); Tunisia (Articles 9 and 10, Code of Tunisian Nationality Law No. 63-6); Turkey (Article 8, Turkish Citizenship Law of 2009); Turkmenistan (Article II [1][8], Law of 2013 on Citizenship, 22 June 2013) Uganda (Item 11, Constitution of the Republic of Uganda); Ukraine (Article 7, Law on Ukrainian Citizenship); United Arab Emirates (Article 2[5], Federal Law No. 17 for 1972 Concerning Nationality, Passports and Amendments Thereof, 18 November 1972); United Kingdom (Part I, Item 1(2), British Nationality Act of 1984); United States of America (Immigration and Nationality Act 301(a), 302, 306, 307); Uruguay (Article 74, Constitution of the Oriental Republic of Uruguay); Uzbekistan (Article 16, Law on Citizenship in the Republic of Uzbekistan, 28 July 1992); Vietnam (Article 18, Law on Vietnamese Nationality, Resolution No: 24/2008/QH12, 13 November 2008); and Yemen (Law No. 6 of 1990 on Yemeni Nationality, 26 August 1990).

[381] *See* for instance the Law of Nationality of Mexico, Law No. 63-6.

[382] *See* the Portuguese Nationality Act, Law 37/81, of 3 October as amended; Spanish Civil Code, Book One: Title II; Cameroon Law No. 1968-LF-3 of the 11th June 1968; Loi n° 1961.212 du 1961 portant code de la nationalitécentrafricaine of the Central African Republic; Code of Nationality, Law No. 79-12 of Comoros; Loi No. 6218 AN-RM du 3 février 1962 portant Code de la nationalitémalienne of Mali; Code de la nationalitémarocaine (2011), Dahir n. 1-58-250 du 21 safar 1378, 6 September 1958 of Morocco; Law of Nationality dated September 13, 1990 of Sao Tome and Principe; Law No. 28 of 22 December 1962 Somali Citizenship as amended; Code of Tunisian Nationality Law No. 63.

[383] *See Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America),* Judgment, ICJ Reports 1984, p. 299.

[384] Article 24 of the ICCPR states:

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

these treaties ostensibly pertain only to a "right to acquire" a nationality, this right has been interpreted as the duty of a state to "grant nationality," particularly where there is a link only with the state on whose territory the child was born. As the United Nations (UN) Human Rights Committee explained:

> 64. Regardless of the general rules which govern acquisition of nationality, States should ensure that safeguards are in place to ensure that nationality is not denied to persons with relevant links to that State who would otherwise be stateless. This is of particular relevance in two situations, at birth and upon State succession. As regards the right to acquire a nationality under article 24, paragraph 3, of the International Covenant on Civil and Political Rights, the Human Rights Committee stated that "States are required to adopt every appropriate measure ... to ensure that every child has a nationality when he is born". In this context, birth on the territory of a State and birth to a national are the most important criteria used to establish the legal bond of nationality. **Where there is only a link with the State on whose territory the child was born, this State must grant nationality as the person can rely on no other State to ensure his or her right to acquire a nationality and would otherwise be stateless. Indeed, if nationality is not granted in such circumstances then article 24, paragraph 3, of the International Covenant as well as article 7 of the Convention on the Rights of the Child would otherwise be meaningless.** In concrete terms, the circumstance referred to above may arise, for example, where a child is born on the territory of a State to stateless parents or with respect to foundlings. Given the consequences to the children concerned, denial of nationality in such instances must be deemed arbitrary.[386] (Emphasis supplied)

In its Concluding Observations on Fiji's compliance with the CRC, the UN Committee on the Rights of the Child likewise directed states to take all measures to avoid statelessness in compliance with their obligations under Article 7 of the CRC:

> The Committee takes note of article 7 of the Citizens Decree, which stipulates that any infant found abandoned in Fiji is deemed to have been born in Fiji unless there is evidence to the contrary. However, the Committee is concerned that this stipulation might carry a risk of statelessness for children of whom it can be proven that they have not been born in Fiji, but whose nationality can nevertheless not be established. [...] The Committee recommends that the State party take all the necessary measures to avoid a child found abandoned in Fiji being stateless.[387]

Considering these international norms, it is the obligation of the Philippines not only to grant nationality to foundlings, but also to ensure that none of them are arbitrarily deprived of their nationality. Needless to state,

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cont.

[385] Article 7 of the CRC states:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

[386] Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary General. Arbitrary deprivation of nationality: report of the Secretary-General, A/HRC/10/34, 26 January 2009

[387] Committee on the Rights of the Child, Concluding observations on the combined 2-4th Periodic Reports of Fiji, adopted by the committee at its sixty-seventh session (1-19 September 2014), CRC/C/FIJ/CO/2-4

the Court cannot interpret the Constitution in a manner contrary to these obligations. We cannot sanction a violation of international law.

A declaration that foundlings are stateless persons would have unconscionable consequences.

The duty of the Court to interpret the Constitution is impressed with the equally vital obligation to ensure that the fundamental law serves the ends of justice and promotes the common good. After all, the Constitution is meant to be the legal embodiment of these values, and to be the people's instrument for the protection of existing natural rights and basic human liberties. As Chief Justice Reynato Puno explained in his Separate Opinion in *Republic v. Sandiganbayan*:

> But while the constitution guarantees and protects the fundamental rights of the people, it should be stressed that it does not create them. As held by many of the American Revolution patriots, "liberties do not result from charters; charters rather are in the nature of declarations of pre-existing rights." John Adams, one of the patriots, claimed that natural rights are founded "in the frame of human nature, rooted in the constitution of the intellect and moral world." Thus, it is said of natural rights *vis-à-vis* the constitution:
>
> > . . . (t)hey exist before constitutions and independently of them. *Constitutions enumerate such rights and provide against their deprivation or infringement, but do not create them.* It is supposed that all power, all rights, and all authority are vested in the people before they form or adopt a constitution. By such an instrument, they create a government, and define and limit the powers which the constitution is to secure and the government respect. But they do not thereby invest the citizens of the commonwealth with any natural rights that they did not before possess. (Italics supplied)
>
> A constitution is described as follows:
>
> > A Constitution is not the beginning of a community, nor the origin of private rights; it is not the fountain of law, nor the incipient state of government; it is not the cause, but consequence, of personal and political freedom; it grants no rights to the people, but is the creature of their power, the instrument of their convenience. *Designed for their protection in the enjoyment of the rights and powers which they possessed before the Constitution was made*, it is but the framework of the political government, and necessarily based upon the preexisting condition of laws, rights, habits and modes of thought. There is nothing primitive in it; it is all derived from a known source. **It presupposes an organized society, law, order, propriety, personal freedom, a love of political liberty, and enough of cultivated intelligence to know how to guard against the encroachments of tyranny.**[388] (Citations omitted and emphasis supplied)

I believe that disputes involving the Constitution must be resolved with these precepts in mind. As the Constitution is no ordinary legal document, this Court should strive to give meaning to its provisions not only

[388] 454 Phil. 504-642 (2003).

with reference to its text or the original intention of its framers. Behind the text are the ideals and aspirations of the Filipino people – their intent to "promote the general welfare;"[389] to "build a just and humane society;"[390] and to "secure the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace."[391] Any construction that would derogate from these fundamental values cannot be countenanced.

In this case, a declaration that foundlings are natural-born citizens are unconscionable. First, such a declaration would effectively render all children of unknown parentage stateless and would place them in a condition of extreme vulnerability.[392] As citizenship is "nothing less than the right to have rights,"[393] its deprivation would leave foundlings without any right or measure of protection. During the proceedings of the 1st European Conference on Nationality, the Senior Legal Adviser of the United Nations High Commissioner for Refugees explained the nature of the right to citizenship:

> The Right to a Given Nationality in the Avoidance of Statelessness
>
> Citizenship, or nationality, has been described as man's basic right, as, in fact, the right to have rights. Nationality is not only a right of itself, it is a necessary precursor to the exercise of other rights. Nationality provides the legal connection between an individual and a State, which serves as a basis for certain rights for both the individual and the State, including the State's entitlement to grant diplomatic protection.[394]

In the Philippines, a stateless individual is deprived of countless rights and opportunities under the Constitution, statutes and administrative regulations. These include the rights to suffrage;[395] education and training;[396] candidacy and occupation of public office and other positions in government;[397] use and enjoyment of natural resources;[398] investment;[399]

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[389] The Preamble of the 1935 Constitution states:

> The Filipino people, imploring the aid of Divine Providence, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a régime of justice, liberty, and democracy, do ordain and promulgate this Constitution.

[390] The Preamble of the 1987 Constitution provides:

> We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society, and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity, the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.

[391] Id.

[392] Inter-American Court of Human Rights, Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 35.

[393] *See* Dissenting Opinion of Chief Justice Warren in *Perez v. Brownwell*, 356 U.S. 44, 64-65, 78 S. Ct. 568, 579-80, 2 L. Ed. 2d 603 (1958).

[394] Batchelor, Carol A. *Developments in International Law: the Avoidance of Statelessness through Positive Application of the Right to a Nationality.* 1st European Convention on Nationality.(Strasbourg, 18 and 19 October 1999).

[395] 1987 Constitution , Article V, Section 1.

[396] Id., Article XIV, Section 1 (right to quality education at all levels); Article XIV, Section 2(5) (right to be provided training in civics, vocational efficiency and other skills

[397] Id., Section 18, Article XI.

ownership and control of certain types of businesses; [400] practice of rofessions; [401] engagement in certain occupations; [402] and even participation in legal proceedings involving status, condition and legal capacity. [403]

Second, a declaration that petitioner is a citizen but is not natural-born is no less odious to foundlings considering the privileges that would be deemed unavailable to them. These include certain state scholarships[404] and a number of government positions requiring natural-born citizenship as a

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398 The following economic rights are restricted to Philippine citizens under the Constitution: right to the exclusive use and enjoyment of the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone (Article XII, Section 2); right to engage in small-scale utilization of natural resources (Article XII, Section 2); right to lease not more than five hundred hectares, or acquire not more than twelve hectares of public alienable land, by purchase, homestead, or grant (Article XII, Section 3); right to be a transferee of public land (Article XII, Section 7);

399 These include the right to participate in certain areas of investments (Article XII, Section 10); right to be granted a franchise certificate, or any other form of authorization for the operation of a public utility (Article XII, Section 11);

400 The Constitution allows only citizens to exercise the following rights: the right to be the executive and managing officers of a corporation or association engaged in any public utility enterprise (Article XII, Section 11); Right to practice a profession (Article XII, Section 14); right to own, control and administer educational institutions (Article XIV, Section [2]); Right to own and manage mass media (Article XVI, Section 11[1]); Right to become an executive and managing officer of an entity engaged in the advertising industry (Article XVI, Section 11[2]); Right to engage in the advertising industry (Article XVI, Section 11[2]).

The ownership of the following businesses are also reserved for Philippine citizens: Retail trade enterprises with paid-up capital of less than US $2,500,000 (Section 5, R.A. 8762); cooperatives (Chapter III, Article 26, R.A. 6938); private security agencies (Section 4, R.A. 5487); small-scale mining (Section 3[C], R.A. 7076); ownership, operation and management of cockpits (Section 5[a], PD 449); Manufacture of firecrackers and other pyrotechnic devices (Section 5, R.A. 7183).

401 Article XII, Section 14; The following professions are also restricted by statute: Aeronautical engineering (Section 14[b], R.A. 1570); Agricultural engineering (Section 13[a], R.A. 8559); Chemical engineering (Section 2, R.A. 9297); Civil engineering (Section 12[b], R.A. 544); Electrical engineering (Section 16[a], R.A. 7920); Electronics and communication engineering (Section 14[a], R.A. 9292); Geodetic engineering (Section 12[a], R.A. 8560); Mechanical engineering (Section 14[a], R.A. 8495); Metallurgical engineering (Section 17[a], R.A. 10688); Mining engineering (Section 19[a], R.A. 4274); Naval architecture and marine engineering (Section 11[b], R.A. 4565); Sanitary engineering (Section 17[b], R.A. 1364); Medicine (Section 9[1], R.A. 2382 as amended); Medical technology (Section 8[1], R.A. 5527 as amended); Dentistry (Section 14[a], R.A. 9484); Midwifery (Section 13, R.A. 7392); Nursing (Section 13[a], R.A. 9173); Nutrition and dietetics (Section 18[a], P.D. 1286); Optometry (Section 19[a], R.A. 8050); Pharmacy (Section 18[a], R.A. 5921); Physical and occupational therapy (Section 15[a], R.A. 5680); Radiologic and x-ray technology (Section 19[a], R.A. 7431); Veterinary medicine (Section 15[a], R.A. 9268); Accountancy (Section 14[a], R.A. 9298); Architecture (Section 13[a], R.A. 9266); Criminology (Section 12[a], R.A. 6506); Chemistry (Section 13[a], R.A. 754); Customs brokerage (Section 16[a], R.A. 9280); Environmental planning (Section 13[b], P.D. 1308); Forestry (Section 14[b], R.A. 6239); Geology (Section 15, R.A. 4209); Interior design (Section 13[a], R.A. 8534); Law (Art. VIII, Section 5[5], 1987 Constitution; Rule 138[2], Rules of Court); Librarianship (Section 15[a], R.A. 9246); Marine deck officers (Section 14[a], R.A. 8544); Marine engine officers (Section 14[a], R.A. 8544); Master plumbing (Section 12[b], R.A. 1378); Sugar technology (Section 14[a], R.A. 5197); Social work (Section 12[a], R.A. 4373); Teaching (Section 15[a], R.A. 7836); Agriculture (R.A. 8435); Fisheries (Section 2[b], R.A. 8550); Guidance counseling (Section 13[a], R.A. 9258); Real estate service (Section 14[a], R.A. 9646); Respiratory therapy (R.A. 10024); and Psychology (Section 12[a], R.A. 10029).

402 Right to manufacture, repair, stockpile and/or distribute biological, chemical and radiological weapons and anti-personnel mines; and the right to manufacture, repair, stockpile and/or distribute nuclear weapons (10th Foreign Negative Investment List, Executive Order 184, 29 May 2015, citing Article II, Section 8 of the 1987 Constitution and Conventions and Treaties to which the Philippines is a signatory); and right to become members of local police agencies (Section 9[1]R.A. 4864).

403 *See* Civil Code, Article 15. The next section includes a more detailed discussion of adoption and foundlings.

404 *See* Section 2, R.A. 4090: Providing for State Scholarships for Poor But Deserving Students (1964); Part V(A)(1)(1.3), Amended Implementing Rules and Regulations for Republic Act No. 7687, DOST-DepED Joint Circular (2005); Section 5 (a) (i), Administrative Order No. 57, Educational Reform Assistance Package for Mindanaoan Muslims (1999).

qualification, i.e. a range of national[405] and local[406] offices, various posts in government commissions,[407] corporations,[408] banks,[409] educational institutions,[410] professional regulatory boards[411] and the military.[412]

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[405] The following positions in the Executive branch must be occupied by natural-born Philippine citizens: President (Article VII, Section 2, 1987 Constitution); Vice-President (Article VII, Section 3, 1987 Constitution); Director or Assistant Director of the Bureau of Mines and Geo-Sciences (Section 2, PD 1281 as amended by PD 1654 [1979]; Undersecretary of Defense for Munitions (Section 2, R.A. 1884, Establishment of a Government Arsenal [1957]); Assistant Director of the Forest Research Institute (Section 7[a], PD 607, Creating the Forest Research Institute in the Department of Natural Resources [1974]); Officers of the Philippine Coast Guard (Section 12, R.A. 9993, Philippine Coast Guard Law of 2009 [2010]); Commissioner or Deputy Commissioners of Immigration (Section 4[b], C.A. 613, The Philippine Immigration Act of 1940 [1940]); Secretary and Undersecretary of the Department of Agrarian Reform (Section 50, R.A. 3844 as amended by R.A. 6389 [1971]); Directors, Assistant Directors of Bureaus in the Department of Agrarian Reform (Section 50-G, R.A. 3844 as amended by R.A. 6389, Agricultural Land Reform Code [1971]); Chairman and Commissioners of the Tariff Commission (Section 502, PD 1464 as amended, Harmonized Commodity Description and Coding System 2002 Tariff and Customs Code of the Philippines [2002]); Director or Assistant Directors of the Bureau of Forest Development (Section 6, PD 705, Revised Forestry Code of the Philippines [1975]); City Fiscal and Assistant City Fiscals of Manila (Section 38, R.A. 409 as amended by R.A. 4631, Revised Charter of City of Manila [1965]); and Prosecutors in the National Prosecution Service (Section 603, DOJ Department Circular No. 050-10, [2010]).

In the legislative branch, the occupants of the following posts are required to be natural-born citizens: Senator (Article VI, Section 6, 1987 Constitution); Members of the House of Representatives (Article VI, Section 3, 1987 Constitution); nominees for party-list representatives (Section 9, Party-List System Act, R.A. 7941 [1995]).

The following members of the judicial branch are required to be natural-born citizens: Members of the Supreme Court and lower collegiate courts (Article VIII, Section 7, 1987 Constitution); Regional Trial Court Judges (Section 15, BP 129 as amended by R.A. 8369, the Family Courts Act of 1997 [1997]); Judges of a Metropolitan Trial Court, Municipal Trial Court, or Municipal Circuit Trial Court (Section 26, BP 129 as amended); Presiding Judge and Associate Justices of the Sandiganbayan (Section 1, PD 1486 as amended by PD 1606, Creating the Sandiganbayan [1978]); Judges of the Shari'a Circuit Court (Art. 152, PD 1083, Code of Muslim Personal Laws of the Philippines [1977]).

Other constitutional offices are reserved to natural-born citizens: Ombudsman and his Deputies (Article XI, Section 8, 1987 Constitution); BSP Board of Governors (Article XII, Section 20, 1987 Constitution); Chairman and Commissioners of the Civil Service Commission (Article IX [B], Section 1, 1987 Constitution; Book V, Title I, Subtitle A, Chapter 3, Section 10; Executive Order No. 292, Administrative Code of 1987; Article V, Section 8 (b); PD 807, Civil Service Decree of the Philippines or Civil Service Law of 1975 [1975]); Chairman and Commissioners of the Commission on Elections (Article IX[C], Section 1, 1987 Constitution; Book V, Title II, Subtitle C, Chapter 2, Section 4, EO 292, Administrative Code of 1987 [1987]); Chairman and Commissioners of the Commission on Audit (Article IX [D], Section 1, 1987 Constitution); Chairman and Members of the Commission on Human Rights (Article XIII, Section 17[2], 1987 Constitution; Book V, Title II, Subtitle A, Section 1, EO 292, Administrative Code of 1987 [1987]).

[406] The following positions in the local government are included: Regional Governor and Vice Governor of the ARMM (Article VII, Section 3, R.A. 9054, Strengthening and Expanding the ARMM Organic Act [2001]); Members of the Regional Assembly of the ARMM (Article VI, Section 6 [1], R.A. 9054, Strengthening and Expanding the ARMM Organic Act [2001]); Regional Secretary, Regional Undersecretaries, Assistant Regional Secretary, Assistant Secretary for Madaris, Bureau Directors, and Assistant Bureau Directors of the ARMM Department of Education (Article II, Section 22, Muslim Mindanao Autonomy Act No. 279-10, ARMM Basic Education Act of 2010 [2010]; Regional Governor and Vice Governor of the Cordillera Autonomous Region (Article V, Sections 2 and 3, R.A. 8438, Organic Act of Cordillera Autonomous Region [1997]).

[407] Members of these government commissions, boards, administrations are required to be natural-born citizens: Chairman and Members of the Energy Regulatory Commission (Section 38, R.A. 9136, Electric Power Industry Reform Act of 2001 [2001]); Commissioners of the Commission on the Filipino Language (Section 6, R.A. 7104, Commission on the Filipino Language Act [1991]); Board of the National Historical Commission of the Philippines (Section 9 [a], R.A. 10086, Strengthening Peoples' Nationalism Through Philippine History Act [2010]); Executive Director and Deputy Executive Directors of the NHCP (Section 17, R.A. 10086, Strengthening Peoples' Nationalism Through Philippine History Act [2010]); Commissioners of National Commission on Indigenous Peoples (Section 3 [a] Rules and Regulations Implementing The Indigenous Peoples' Rights Act of 1997, NCIP Administrative Order No. 01-98, [1998]); Members of Provincial, Regional and National Consultative Bodies of the NCIP (Sections 22 [a] NCIP Administrative Order No. 1-03, Guidelines for the Constitution and Operationalization of the Consultative Body [2003]); Chairman and Members of the Board of Agriculture (Article III, Section 6 [a] PRC Board of Agriculture Resolution No. 02-02, Rules and Regulations implementing PRC Resolution No. 2000-663 [2002]); Members of the Board of the Movie and Television Review and Classification Board (Section 2, PD 1986, Creating the Movie

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and Television Review and Classification Board [1985]); Chairman and Members of the Board of Fisheries (Article III, Section 7 [a] PRC Board of Fisheries Resolution no. 01-02, Rules and Regulations Implementing PRC Resolution No. 2000-664); Representative of Consumers at the Price Control Council (Section 2, R.A. 6124, Fixing of the Maximum Selling Price of Essential Articles or Commodities [1970]); Members of the Anti-Dummy Board (Section 1, R.A. 1130 as amended by R.A. 6082 [1969]); Chairman, Members of the Board and General Manager of the Public Estates Authority/Philippine Reclamation Authority, (Section 6, PD 1084, Charter of the Public Estates Authority [1977]); Chairman and Members of the Land Tenure Administration (Section 4, R.A. 1400, Land Reform Act of 1955 [1955]); Board of Directors of the Panay Development Authority (Section 17, R.A. 3856, Creation of Panay Development Authority [1964]; Administrator of the Agricultural Credit Administration (Section 101, R.A. 3844 as amended by R.A. 6389, Agricultural Land Reform Code [1971]); Director-General, Deputy Director-General, and Executive Directors of the National Manpower Youth Council [absorbed by TESDA pursuant to PD 850] (Article 53, PD 442 as amended by PD 850 Amendments to P.D. No. 442, Labor Code of the Philippines [1975]); Governor and Deputy Governors of the Land Authority (Section 50, R.A. 3844, Agricultural Land Reform Code, [1963]).

[408] Project Director of the Mindoro Office of the Mindoro Integrated Rural Development Office (Section 6 [a], PD 805, Implementing the Mindoro Integrated Rural Development Program and Providing Funds therefore [1975]); Project Director of the Cagayan Integrated Agricultural Development Project (Section 6 [a], PD 1189, Implementing the Cagayan Integrated Agricultural Development Project [1977]); Project Director of the Samar Office of the Samar Integrated Rural Development Project (Section 4 [a], PD 1048, Implementation of the Samar Integrated Rural Development Project [1976]); Members of the Central Luzon-Cagayan Valley Authority (Section 2 [e], R.A. 3054, Creation of Central Luzon-Cagayan Valley Authority [1961]); Project Director of the Rural Infrastructure Project Office in the DOTC (Section 3, PD 1298, Implementing the Rural Infrastructure Project [1978]); Members of the Cooperative Development Authority (Section 5 [a], R.A. 6939, Cooperative Development Authority Law [1990]); Board of Directors of the Bases Conversion and Development Authority (Section 9 [b], Bases Conversion and Development Act of 1992, R.A. 7227 [1992]); Program Director at the Cotabato-Agusan River Basin Program Office (Section 3, PD 1556, Creation of the Cotabato-Agusan River Basin Program Office [1978]); Executive Director of the River Basin Council (Section 5, EO 412, Creation of Bicol River Basin Council [1973]); Board of Directors of the Philippine National Oil Company (Section 6, Presidential Decree 334 as amended by PD 405, Creating the Philippine National Oil Company); Board of Governors of the Ospital ng Bagong Lipunan (Section 3, PD 1411, Dissolving the GSIS Hospital, Inc. [1978]); Board of Directors of the Philippine Export Credit Insurance and Guarantee Corporation (Section 8, R.A. 6424, Philippine Export Credit Insurance and Guarantee Corporation Act [1972]); President of the Philippine Export and Foreign Loan Guarantee Corporation [later Trade and Investment Development Corporation, now Phil. Export-Import Credit Agency (Section 14, PD 1080 as amended by R.A. 8494).

[409] Members of the Board of Directors of the following banks are required to be natural-born citizens: Philippine National Bank (Section 10, EO 80, The 1986 Revised Charter of the Philippine National Bank [1986]); Land Bank of the Philippines (Section 86, Republic Act No. 3844 as amended by R.A. 7907, Code of Agrarian Reform in the Phil. [1995]); Development Bank of the Philippines (Section 8, R.A. 8523, Strengthening the Development Bank of the Philippines [1998]).

[410] Presidents of State Universities and Colleges (Section 5.1, CHED Memorandum Order 16 [2009]) and the College President of the Compostela Valley State College (Implementing Rules and Regulations of Republic Act No. 10598 [2014]).

[411] These include: Members of the Board of Examiners of Criminologists (Section 3 [1], R.A. 6506, Creation of Board of Examiners for Criminologists [1972]); Chairman and Members of the Professional Regulatory Board of Geology (Section 8 [a], R.A. 10166, Geology Profession Act of 2012 [2012]); Chairperson and Members of the Professional Regulatory Board of Psychology (Section 5 [a], R.A. 10029, Philippine Psychology Act of 2009 [2010]); Chairperson and Members of the Board of Respiratory Therapy (Section 5 [a], R.A. 10024, Philippine Respiratory Therapy Act of 2009 [2010]); Chairman and Members of the Professional Regulatory Board of Dentistry (Section 7 [a], R.A. 9484, The Philippine Dental Act of 2007 [2007]); Chairperson and Members of the Professional Regulatory Board for Librarians (Section 7 [a], R.A. 9246, The Philippine Librarianship Act of 2003 [2004]); Members of the Professional Regulatory Board of Accounting (Section 6 [a], R.A. 9298, Philippine Accountancy Act of 2004 [2004]); Chairman and Members of the Board of Chemical Engineering (Section 7[a], R.A. 9297, Chemical Engineering Law of 2004 [2004]); Members of the Philippine Landscape Architecture Board (Section 4 [a], R.A. 9053, Philippine Landscape Architecture Act of 2000 [2001]); Chairperson and Members of the Board of the Professional Regulatory Board of Nursing Section 4, R.A. 9173, Philippine Nursing Act of 2002 [2002]); Member of the Professional Regulatory Board of Accountancy (Section 6 [a], R.A. 9298, Philippine Accountancy Act of 2004 [2004]); Members of the Board of Agricultural Engineering (Section 5 [a], R.A. 8559, Philippine Agricultural Engineering Act of 1998 [1998]); Members of the Board of Geodetic Engineering (Section 4 [a], R.A. 8560, Philippine Geodetic Engineering Act of 1998 [1998]); Chairperson and members of the Professional Regulatory Board for Foresters (Section 7 [a], R.A. 10690, The Forestry Profession Act [2015]); Members of the Board of Examiners for Forester (Section

The repercussions of such a ruling for foundlings currently holding the enumerated positions are too compelling to ignore. A declaration that individuals of unknown parentage are not Filipinos, or at best naturalized citizens, may lead to their removal from government posts; a demand to return all emoluments and benefits granted in connection with their offices; and even the end of pension benefits presently being enjoyed by affected retirees. The proposal for Congress to remedy the unjust situation that would result from an affirmance by this Court of unjust COMELEC rulings is too odious a solution to even consider. It is not the function of Congress to correct any injustice that would result from this Court's proposed unhappy ruling on foundlings. Rather, it is this Court's first and foremost duty to render justice to them, as the Constitutions requires

WHEREFORE, I vote to GRANT the consolidated petitions.

MARIA LOURDES P. A. SERENO
Chief Justice

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6 [a], R.A. 6239, The Forestry Profession Law [1971]; Members of the Board of Pharmacy Section 7 [a], R.A. 5921, Pharmacy Law [1969]); Members of the Board of Medical Examiners (Section 14, R.A. 2382 as amended by R.A. 4224, The Medical Act of 1959 as amended [1965]); Members of the Board of Mechanical Engineering (Section 5 [a] R.A. 8495, Philippine Mechanical Engineering Act of 1998 [1998]); Members of the Board of Optometry, (Section 8 [a], R.A. 8050, Revised Optometry Law of 1995 [1995]); Members of the Board of Electrical Engineering (Section 5 [a], R.A. 7920, New Electrical Engineering Law [1995]).

412 In particular, all officers of the Regular Force of the Armed Forces of the Philippines (Section 4 [b], R.A. 291, Armed Forces Officer Personnel Act of 1948 [1948]); Officers of the Women's Auxiliary Corps (Section 2, R.A. 3835, An Act to Establish the Women's Auxiliary Corps in the Armed Forces of the Philippines, to provide the Procurement of its Officers and Enlisted personnel, and for Other Purposes [1963]).