

EN BANC

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

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

Promulgated:

April 5, 2016

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DISSENTING OPINION

REYES, J.:

I maintain my position that the Commission on Elections (COMELEC) did not abuse its discretion in issuing the assailed resolutions, which directed the cancellation of Grace Poe's Certificate of Candidacy (COC). Grace Poe committed material misrepresentation in her COC in two instances: *first*, when she stated that she is a natural-born Filipino citizen; and, *second*, when she indicated that she had been a resident of the Philippines for at least 10 years immediately preceding the May 9, 2016 elections.

I.

In order for a *certiorari* action under Rule 64, in relation to Rule 65 of the Rules of Court to prosper, it is imperative for the petitioner to show that the respondent committed grave abuse of discretion, which amounts to lack or excess of jurisdiction. "The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."¹

¹ *Spouses Aduan v. Chong*, 610 Phil. 178, 185 (2009).

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“A review under Rule 65 only asks the question of whether there has been a validly rendered decision, not the question of whether the decision is legally correct. In other words, the focus of the review is to determine whether the judgment is *per se* void on jurisdictional grounds.”² The writ of *certiorari* is available when the following indispensable elements concur: (1) that it is directed against a tribunal, board or officer exercising judicial or *quasi*-judicial functions; (2) that such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and (3) that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.³

Given the foregoing guideposts, it escapes me how the majority could have concluded that the COMELEC gravely abused its discretion in issuing the assailed resolutions. The COMELEC is constitutionally mandated to enforce and administer all laws and regulations relative to the conduct of an election; it has the authority to decide all questions affecting elections, save those involving the right to vote.⁴ One of the powers granted to the COMELEC, relative to the conduct of an election, is to deny due course to or cancel a COC under Section 78 of the Omnibus Election Code (OEC) on the ground of material misrepresentation:

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

“The material misrepresentation contemplated by Section 78 refers to qualifications for elective office.”⁵ The majority essentially posits that while the COMELEC has the power to rule on whether a candidate committed material misrepresentation on his qualifications indicated in the COC, it nevertheless has no authority to rule on the qualification *per se* absent any declaration by a final judgment of a competent court on the qualification of the candidate.

The majority’s reasoning is flawed. If COMELEC has the power to determine whether a candidate materially misrepresented his qualifications in the COC, it necessarily has the power to rule on the qualifications of the candidate. The express and broad constitutional grant of power to the

² *Ysidoro v. Justice Leonardo-De Castro, et al.*, 681 Phil. 1, 16 (2012).

³ *Pahila-Garrido v. Tortogo, et al.*, 671 Phil. 320, 336 (2011).

⁴ 1987 PHILIPPINE CONSTITUTION, Article IX-C, Section 2(1) and (3).

⁵ *Bautista v. COMELEC*, 460 Phil. 459, 488 (2003).

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COMELEC to enforce and administer election laws indubitably includes **all the necessary and incidental powers** for it to achieve the holding of free, orderly, honest, peaceful and credible elections.⁶

There exists no cogent and acceptable reason to deny the COMELEC the power to rule on the qualifications of the candidates. Indeed, it would be the height of absurdity to deny the COMELEC the power to rule on the qualifications of the candidate considering that it can, under Section 78 of the OEC, inquire into the qualifications of the candidate for purposes of determining whether there is material misrepresentation in the COC.

Thus, if a candidate for President indicates in his COC that he is an American citizen and that he had been a resident of the Philippines for only nine (9) years, following the majority's logic, the COMELEC would be powerless to prevent the candidate from participating in the elections; the candidate did not commit any material misrepresentation in his COC.

To stress, the power of the COMELEC to rule on the qualifications of a candidate prior to election stems from the Constitution's broad and general grant of power to the COMELEC to enforce and administer election laws, even in the absence of any declaration by a final judgment from a competent court.

II.

Contrary to the majority's ruling, even if Grace Poe adduced evidence to show that she honestly believed herself to have the requisite qualifications to run for President, such fact would still not absolve her from liability for misrepresentation in her COC. In cases of denial due course to or cancellation of COC, it is enough that the candidate indicated in his COC a false material representation.

Section 78 of the OEC is plainly worded, mandating that a COC may be denied due course or cancelled on the ground that a "material representation contained therein as required under Section 74 hereof is false." Section 74 of the OEC enumerates the contents of the COC. Nowhere in Section 78 of the OEC is it required that there be a deliberate attempt to mislead, misinform, or hide a fact from the electorate, which would otherwise render a candidate ineligible.

⁶ See *Maruhom v. COMELEC*, 387 Phil. 491, 513 (2000), citing *Loong v. COMELEC*, 365 Phil. 386, 420 (1999).

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In *Tagolino v. House of Representatives Electoral Tribunal, et al.*,⁷ the Court stressed that “the deliberateness of the misrepresentation, much less one’s intent to defraud, is of bare significance in a Section 78 petition as it is enough that the person’s declaration of a material qualification in the COC be false.”⁸

Indeed, the lack of deliberate attempt to mislead, misinform or hide a fact from the electorate should not be allowed as a defense in a proceeding for the denial of due course to or cancellation of a COC. Otherwise, it would be quite easy for the candidate to feign good faith and evade the consequence for material misrepresentation in the COC. It should be stressed that what is at stake here are the qualifications of candidates for elective government posts. The qualifications of candidates should not be easily bargained away by the mere expedient of claim of good faith.

III.

Section 2, Article VII of the 1987 Constitution mandates that “[n]o person may be elected President unless he is a natural-born citizen of the Philippines x x x.” On the other hand, Section 1, Article IV of the 1935 Constitution enumerates who are considered citizens of the Philippines:

SEC. 1. The following are citizens of the Philippines:

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

Further, Section 2, Article IV of the 1987 Constitution provides that “[n]atural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship.” Accordingly, natural-born Filipino citizens under the 1935 Constitution are limited to those whose fathers are citizens of the

⁷ 706 Phil. 534 (2013).

⁸ Id. at 551.

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Philippines since, among those enumerated, they are the only ones who do not need to perform any act to acquire or perfect their Philippine citizenship.

The aforementioned constitutional provisions are clear and unequivocal. It is a cardinal rule that constitutional provisions that are clear and free from ambiguity need no further construction, and will be enforced as written. In such cases, there is no room for the Court to interpret, liberally or otherwise, lest we be accused of supplanting our personal biases in lieu of the sovereign's will enshrined in the Constitution.

The relevant facts of this case are simple and unequivocal: Grace Poe is a foundling found in the Parish Church of Jaro, Iloilo on September 3, 1968; her biological parents, to date, are still unknown. Grace Poe has not established that she is a natural-born Filipino citizen since she failed to present proof of a blood relation to a Filipino father.

The 1935 Constitution did not include "foundlings found in the Philippines" among those who are considered citizens of the Philippines. There is, thus, no reason to consider them as such. It is a settled rule of construction that the express mention of one person, thing, or consequence implies the exclusion of all others. The rule is expressed in the familiar maxim, *expressio unius est exclusio alterius*, which can be formulated in a number of ways. One variation of the rule is the principle that what is expressed puts an end to that which is implied. *Expressum facit cessare tacitum.*⁹ Since the 1935 Constitution expressly limited those who are considered citizens of the Philippines, it may not, by interpretation or construction, be extended to include foundlings.

The majority's ruling points out that Grace Poe's natural-born Filipino citizenship is demonstrable, statistically probable, and, considering the circumstantial evidence presented, plausible.

With due respect, the Court has no business dealing with demonstrability, probability, and plausibility when the Constitution has already defined with exactitude who are considered natural-born Filipino citizens. It bears stressing, at the risk of being repetitive, that only those who can establish a direct blood relation to a Filipino father can be considered natural-born Filipino citizens under the 1935 Constitution.

No amount of abstractions or lengthy justifications can blur the fact that foundlings are not among those enumerated as citizens of the Philippines, much more natural-born Filipino citizens. Moreover, what is at

⁹ See *Lung Center of the Philippines v. Quezon City*, 477 Phil. 141, 156 (2004).

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stake here is the citizenship eligibility of a candidate seeking the highest position in the land. The Court cannot leave this matter to demonstrability, probability, and plausibility, especially when the Constitution demands certainty.

The majority's resort to international law to establish that Grace Poe is a natural-born Filipino citizen is likewise improper. The international conventions and the general principles of international law cited by the majority do not categorically state that foundlings found in the Philippines should be considered natural-born Filipino citizens or, at the very least, Filipino citizens. More importantly, international conventions and treaties are on the same plane as domestic statutes; they cannot supplant the clear edict of the Constitution.

Accordingly, the COMELEC did not abuse its discretion when it ruled that Grace Poe materially misrepresented that she is a natural-born Filipino citizen. The COMELEC correctly applied the provisions of the 1935 Constitution in resolving the issue.

IV.

It bears stressing that the conclusion that Grace Poe is a natural-born Filipino citizen in the Court's Decision dated March 8, 2016, penned by Justice Jose Portugal Perez, was concurred in by only six other Justices.¹⁰ The two other Justices' (Justices Diosdado M. Peralta and Alfredo Benjamin S. Caguioa) findings were confined to the jurisdictional issue of whether the COMELEC acted without or in excess of jurisdiction, or with grave abuse of discretion; thus, they did not categorically rule on the status of Grace Poe's citizenship.

On the other hand, out of the six Justices who dissented from the majority opinion, it is noticeable that Justice Mariano C. Del Castillo did not make a categorical ruling on the citizenship of Grace Poe.

Thus, as pointed out by Senior Associate Justice Antonio T. Carpio in his Dissenting Opinion, what is clear and undeniable is that there is no majority vote from this Court that holds that Grace Poe is a natural-born Filipino citizen. The issue of whether foundlings found in the Philippines are considered natural-born Filipino citizens has not been resolved by a majority vote from this Court.

¹⁰ Chief Justice Maria Lourdes P. A. Sereno, Associate Justices Presbitero J. Velasco, Jr., Lucas P. Bersamin, Jose Catral Mendoza, Marvic M.V.F. Leonen, and Francis H. Jardeleza.



V.

I also disagree with the majority's finding that Grace Poe met the required period of 10-year residence in the Philippines. Section 2, Article VII of the 1987 Constitution requires that a candidate for President must have been "a resident of the Philippines for at least ten years immediately preceding [the] election."

Grace Poe, in attesting in her COC that she had been a resident of the Philippines for 10 years and 11 months before the date of the May 9, 2013 election, seeks to tack her period of residence in the Philippines from May 24, 2005 – the date she went back to the Philippines supposedly to stay here for good. Grace Poe presented various pieces of evidence, such as school records of her children, purchase of real property, and registration as a voter, to show her intent to change her domicile from the United States to the Philippines as early as May 24, 2005.

It should be pointed out that Grace Poe lost her Philippine domicile when she was naturalized as an American citizen on October 18, 2001. In order to reacquire her Philippine domicile, she must show: (1) residence or bodily presence in the Philippines; (2) an intention to remain here; and (3) an intention to abandon the old domicile, *i.e.*, the United States. There must be *animus manendi* coupled with *animus non revertendi*.¹¹

When Grace Poe went back to the Philippines on May 24, 2005, she did so under a *Balikbayan* visa-free entry pursuant to Republic Act (R.A.) No. 6768,¹² which allows a *Balikbayan* a visa-free stay in the Philippines for a limited period of one year. As pointed out by Justice Mariano C. Del Castillo in his Dissenting Opinion, having availed of the benefits of R.A. No. 6768, Grace Poe's stay in the Philippines from May 24, 2005 was merely temporary; her stay was not impressed with *animus manendi*, *i.e.*, the intent to remain in or at the domicile of choice for an indefinite period of time.

To my mind, the earliest time from which Grace Poe could have tacked her period of residence in the Philippines is only on July 7, 2006 – the date when she took her Oath of Allegiance to the Republic of the Philippines pursuant to Section 3 of R.A. No. 9225 or the "Citizenship Retention and Re-acquisition Act of 2003." Taking an Oath of Allegiance pursuant to Section 3 of R.A. No. 9225 is indicative of *animus manendi* coupled with *animus non revertendi*.

¹¹ See *Japzon v. COMELEC*, G.R. No. 180088, January 19, 2009, 576 SCRA 331, 349, citing *Papandayan, Jr. v. COMELEC*, 430 Phil. 754, 770 (2002).

¹² AN ACT INSTITUTING A BALIKBAYAN PROGRAM. Approved on November 3, 1989.

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Thus, the COMELEC did not err, much less abuse its discretion, in ruling that Grace Poe committed material misrepresentation when she indicated in her COC that she had been a resident of the Philippines for 10 years and 11 months on the day before the May 9, 2016 elections.


VI.

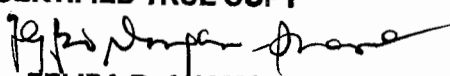
The Philippine Constitution is the embodiment of the will of the sovereign Filipino people; it symbolizes our hopes and aspirations. In mandating that no person may be elected as President unless he is a natural-born Filipino citizen, the Constitution demands that Filipinos be led by one of our own. The Constitution demands that the President be unquestionably a natural-born Filipino citizen. The determination of the status of the citizenship of a person seeking the highest position in the land cannot be left to statistical probability and circumstantial evidence.

The 10-year residency requirement, on the other hand, aims to ensure that the prospective President would have a deeper understanding of the plight of the Filipinos. The Constitution seeks to avoid a President who, after having observed the country's situation from afar, would lead the country without actually and personally experiencing the problems plaguing the country.

The majority's ruling ran roughshod over the mandatory and fundamental requirements prescribed by the Constitution for those seeking the Presidency. The requirements under Section 2, Article VII of the 1987 Constitution cannot and should not be supplanted by the magistrates' biases. The duty of this Court is to uphold the letter of the Constitution, not to interpret it according to our whims and caprices.

ACCORDINGLY, there being no grave abuse of discretion on the part of the Commission on Elections, I vote to **GRANT** the motions for reconsideration and **DISMISS** the petitions for *certiorari* filed by petitioner Mary Grace Natividad S. Poe-Llamanzares.


BIENVENIDO L. REYES
Associate Justice

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FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT