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:

April 5, 2016

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CONCURRING OPINION

SERENO, *CJ*:

Very rarely are concurring opinions and dissenting opinions attached to a minute resolution. In the instant petitions, the minute resolution that denies the Motions for Reconsideration accurately reflects the understanding of this Court – that the motions do not raise any new substantial argument, and that all the issues that the motions raise have already been passed upon in the 8 March 2016 Decision. Thus, the denial is final, and no new pleading will be entertained.

Rule 13, Section 6(d) of the Internal Rules of the Supreme Court provides that the denial of a motion for reconsideration may be made by minute resolution in **"the absence of a compelling or cogent reason to grant the motion, or the failure to raise any substantial argument to support such motion."** Rule 2, Section 15 of the same rules allows the resolution of motions for reconsideration through a minute resolution even when the opinion of the Court is divided.[1] *Agoy v. Araneta Center, Inc.*[2] has explained that minute resolutions **"constitute actual adjudications on the merits. They are the result of thorough deliberation among the members of the Court."** In these particular petitions, the entire Court has more than thoroughly deliberated on the issues.

It is helpful to remember the context when the Court issues minute resolutions. Indeed, the results of such deliberations, even when they are robust and the issues of great import, need not be in the form of full decisions, as *Joaquin-Agregado v. Yamat*[3] states:

> The Supreme Court is not compelled to adopt a definite and stringent rule on how its judgment shall be framed. **It has long been settled that this Court has the discretion to decide whether a "minute resolution" should be used in lieu of a full-blown decision in any**

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[1] Section 15. *Form of resolution on motion for reconsideration in cases where the vote of Members of the Court is divided.* – The resolution of motions for reconsideration, in case the opinion of the Court *en banc* or Division is divided, may be by minute resolution specifying the respective votes of the Members.

[2] G.R. No. 196358, 21 March 2012.

[3] G.R. No. 181107, 30 March 2009.

> **particular case.** A minute resolution dismissing a petition for review on certiorari is **an adjudication on the merits of the controversy, and is as valid and effective as a full-length decision.**[4]

Nevertheless, due to the strong feelings expressed by some of our dissenting colleagues, the Court decided to delay the release of the resolution dismissing with finality the Motions for Reconsideration and to await submission of their dissents. Some of them may believe that a minute resolution will not do justice to the motions, but that is their view, and that view remains a dissenting view. At the same time, I am constrained to issue this Concurring Opinion to balance what would be expected as vigorous attacks by the minority against the majority decision.

Had the Decision dated 8 March 2016 been reversed, this Court would have authorized the Commission on Elections (COMELEC) to continue to play politics. The Decision and the concurring opinions were strong indictments of the grave abuse of discretion that infested the COMELEC's assailed actions "from root to fruits."[5] The *ponente* characterized the acts of COMELEC as bordering on bigotry, and similarly strong language was used by the concurring opinions on the unfairness and prejudice displayed by the COMELEC towards petitioner. This Court thus rightly issued strong words of disapproval of the COMELEC's actions.

The essence of the Motions for Reconsideration and some of the dissents is the complaint that the majority should have, to a man or woman, decided on the intrinsic qualifications of petitioner to prevent that question from remaining hanging until the elections. By refusing to make a final decision disqualifying petitioner, one colleague warns that the Decision will lead to an "absurd result." It might be important to note that implied in such complaint is the premise that there are enough votes to support the disqualification of petitioner, should she win and a *quo warranto* petition is brought. At best, such thinking is speculative.

What the respondents and some of the dissenters actually rail against, however, is the Constitution itself. Their main thesis is that a candidate cannot be allowed to run if there is doubt expressed by a loud minority about her lack of qualifications. One of the dissenters has even characterized the Court itself as having committed grave abuse of discretion.[6] By their very words, they have arrogated to themselves a place above the Court. This is brazenly an attempt at tyranny by a noisy part of the minority. Nothing can be more destructive of the rule of law.

The Constitution in very clear language has instituted post-election remedies to question the qualification of an elected president, vice-president, senator, or member of the House of Representatives. Because this remedy has been designed by the Constitution itself, it is not the place of the

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[4] Id.
[5] *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016, p. 44.
[6] Dissenting Opinion (on the denial of the motions for reconsideration), J. Brion, pp. 4, 5, *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016.

COMELEC to question the wisdom of the Filipino people who ratified a Constitution that provides such remedies. This Court has no jurisdiction to render inutile a constitutional provision on the basis of COMELEC's "fear of instability."

Indeed, regardless of the number of justices who have opined that petitioner is a natural-born Filipino, even if it were a near unanimity, the post-election remedy of *quo warranto* – should petitioner indeed win the presidency – will be available to proper parties on proper grounds. It would thus be a complete academic exercise if We were to entertain the Motion for Reconsideration of the COMELEC on the ground that this Court must avoid the consequences of an adverse *quo warranto* decision against petitioner should she win the presidency by settling with permanency the issue of petitioner's citizenship. The Constitution precisely opens up this possibility, and this contingency, we all must respect.

There were 9 votes as against 6 on 8 March 2016 that nullified the COMELEC's assailed resolutions for having been issued with grave abuse of discretion. Unless these votes are reversed, petitioner remains a candidate for president; COMELEC must fully treat her as such and must stop assailing her candidacy. The words of the Decision are clear: "Petitioner x x x is **DECLARED QUALIFIED** to be a candidate for President."[7] This *fallo* of the Decision has been affirmed by the same 9 votes, while the 6 dissenting votes remain as dissenting votes.

It is thus misplaced for some in the minority to demand that all the members of this Court take a position on the intrinsic qualifications of petitioner. The 3 justices who opted not to take a position on whether petitioner is a natural-born Filipino were and continue to be free to do so. In the same manner, those who opted to reveal their positions on the matter were equally free to do so.[8] At the same time, it is not unimportant that 7 out of the 9 already believe that petitioner possesses the intrinsic qualifications for the presidency as against a lesser number of the contrary view.

Perhaps it is not foolish to think that the remaining 2 of the 9 – had they been convinced in their hearts that petitioner is not qualified – could have easily voted against the petitions, and spared themselves the future dilemma of weighing their position in a possible *quo warranto* action. Instead, they opted for the calibrated approach of first exclusively ruling on the issue of grave abuse of discretion, an approach as proper as that taken by the other 7.

Indeed, the claim made by some that the Court took no position on the citizenship of petitioner is squarely met by Article VIII, Section 4(2) of the

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[7] *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016, p. 45.

[8] I issued a Concurring Opinion, as well as Justices Velasco, Jr., Jardeleza and Caguioa. Justice Leonen issued a Separate Concurring Opinion. Justices Carpio, Brion, Del Castillo and Perlas-Bernabe issued Dissenting Opinions, while J. De Castro issued a Separate Dissenting Opinion.

Constitution[9] and Rule 12, Section 1[10] of the Internal Rules, i.e., that a decision is formed from the position of the majority of the justices who took part and voted on an issue. Since 12 justices took part – and 3 did not – on the matter of the citizenship of petitioner, it can be rightly said that a ruling has been made when a group of 7 emerged from the deliberations in favor of petitioner. It is offensive to the majority's pride of place that some in the minority are trying to belittle the Decision by saying that since only 7 and not 8 justices declared that petitioner is a natural-born Filipino, such position produces no legal effect. The reply to such position is simple: we are 7, you are 5. Seven is a majority in a group of 12. It is time that this reality be accepted. Whether such majority position will be reversed in a *quo warranto* petition is a future matter, but the odds against its happening are quite telling.

Some might say that this defense of the majority position is pre-emption of a future action. But consider what some are trying to do: nullify a constitutional provision for post-election contests on electoral qualifications, attack the majority Decision to the point of calling it a mere *ponencia*, and transform the dissents into rallying cries against the campaign and candidacy of petitioner. As I had called out earlier, let the Court stay out of politics.

Had this Court agreed to the proposition that a full resolution instead of a minute resolution be issued, its promulgation would have been delayed by 1 to 2 weeks. The majority believes that the nation's interest is best served if the legal controversy over the COMELEC's actions of preventing petitioner from running for office in May 2016 is immediately terminated. The candidates must be allowed to move on; the electorate must no longer be distracted by the skirmishes before this Court. It serves no good purpose for baseless howls of protest to amplify today's ambient noise. No one is benefited except those who want to "game" judicial processes for political ends.

The sovereign choice on who will be the next president of the Philippines must be respected by this Court. Only after this choice has been made may We **potentially** step in. Needless to say, the expression of this electoral choice would necessarily affect how this Court will decide the issues brought before it. That this is the reality designed by the Constitution itself should have been by now accepted by all mature lawyers and students of the Constitution. It is an express limitation to this Court's role, that We, its members, must humbly accept. For the implicit fundamental premise of the Constitution is that while this Court may err on who should be the rightful leader of this country, the people, on this matter, can never be in error. That is why this Court must not even indirectly attempt to substitute

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[9] (2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc, and all other cases which under the Rules of Court are required to be heard en banc, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

[10] 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.

its will for that of the electorate; it must remain politically neutral, and so should the COMELEC.

This extended opinion has been made necessary to clarify and summarize the views expressed by the majority, considering that the Court's ruling is by way of a minute resolution. This summary will cross-reference the Decision, the various opinions, and the Motions for Reconsideration in the discussion. This cross-referencing will demonstrate in part that all the substantial issues raised by the respondents are not new issues - they have been fully deliberated upon and resolved by the Court.

Why COMELEC's Jurisdiction Must be Limited

A reversal of the Decision dated 8 March 2016 would result in an unconstitutional amendment of the powers of the Presidential Electoral Tribunal (PET), the Senate Electoral Tribunal (SET), and the House of Representatives Electoral Tribunal (HRET).[11] This Court has consistently held that the power to rule on the intrinsic qualifications of candidates belong to courts, not to the COMELEC.[12] The COMELEC, at most, only has the power to rule on the absence or presence of material misrepresentation under Section 78 of the Omnibus Election Code. It is important to recall the three overarching reasons proffered by Justice Vicente V. Mendoza in his Separate Opinion in *Romualdez-Marcos v. COMELEC*[13] explaining why the powers of COMELEC need to be limited. His view was adopted by a unanimous Court in *Fermin v. COMELEC*.[14]

> 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

[11] *Macalintal v. PET*, G.R. No. 191618, 23 November 2010; *Pangilinan v. COMELEC*, G.R. No. 105278, 18 November 1993; *Lazatin v. HRET*, G.R. No. 84297, 8 December 1988.

[12] In the following cases, the Court upheld COMELEC's denial of due course to or cancellation of the certificate of candidacy on the basis of matters involving questions of fact that were either uncontroverted or factual matters that were proven to be false: *Labo, Jr. v. COMELEC*, G.R. No. 105111, 3 July 1992; *Abella v. COMELEC*, G.R. No. 100710 & 100739, 3 September 1991; *Domino v. COMELEC*, G.R. No. 134015, 19 July 1999; *Caballero v. COMELEC*, G.R. No. 209835, 22 September 2015; *Jalosjos v. COMELEC*, G.R. No. 193314, 26 February 2013; *Aquino v. COMELEC*, G.R. No. 120265, 18 September 1995; *Reyes v. COMELEC*, G.R. No. 207264, 25 June 2013; *Dumpit-Michelena v. Boado*, G.R. No. 511 Phil. 720 (2005); *Hayudini v. COMELEC*, G.R. No. 207900, 22 April 2014; *Velasco v. COMELEC*, 595 Phil. 1171 (2008); *Bautista v. COMELEC*, 460 Phil. 459 (2003); *Ugdoracion, Jr. v. COMELEC*, 575 Phil. 253 (2008); and *Jalosjos v. COMELEC*, G.R. No. 193314, 25 June 2013.

[13] 318 Phil. 329 (1995).

[14] 595 Phil. 449 (2008).

> 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]

There is a fourth reason I wish to add on why the powers of the COMELEC must be circumscribed, and one that had been adverted to by Justice Marvic Leonen: the need to prevent the COMELEC from engaging in politics by eliminating candidates arbitrarily on the pretext of exercising its powers of administration and enforcement of election laws. The COMELEC cannot be the judge of who can and cannot run, and at the same time, have the power to administer the elections and proclaim its winners; and in the case of the president, have the sole power to transmit the results of the election to Congress.

Anent the issue of jurisdiction, respondents repeatedly insist[16] that the COMELEC, in a Section 78 proceeding, has jurisdiction to declare any candidate ineligible and to cancel his/her certificate of candidacy without the need for a prior determination coming from a proper authority.[17] Every aspect of this argument has been explored during the oral arguments, and has been extensively pushed by several of my colleagues in their dissenting opinions.[18] In fact, the COMELEC lifted nine pages from our colleague's dissenting opinion[19] to reargue that the laws, rules, and jurisprudence (especially those penned by Justice Jose Perez, the *ponente* of our Decision) do not limit the jurisdiction in determining the eligibility of a candidate in the course of a Section 78 proceeding.

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[15] Separate Opinion of J. Mendoza, *Romualdez-Marcos v. COMELEC*, 318 Phil. 329 (1995).

[16] Urgent Plea for Reconsideration, pp. 7-13; Motion for Reconsideration, pp. 13-32.

[17] Respondents had already raised the same arguments in their memoranda; Memorandum (COMELEC), pp. 25-39; Memorandum (Contreras), pp. 4-8; Memorandum (Tatad), pp. 3, 25-33; Memorandum (Valdez), p. 18.

[18] Dissenting Opinion, J. De Castro, pp. 6-12; Dissenting Opinion, J. Brion, pp. 12-20, 75, 87, 91-94; Dissenting Opinion, J. Del Castillo, pp. 29-30; Dissenting Opinion, J. Perlas-Bernabe, pp. 3-12, *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016.

[19] Motion for Reconsideration, pp. 15-23; Dissenting Opinion, J. Brion, pp. 10-18, *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016.

It is necessary to point out that the pronouncement in the Decision dated 8 March 2016 – that a certificate of candidacy cannot be cancelled or denied due course without a prior authoritative finding that the candidate is not qualified[20] – is not a novel concoction by this Court. On this score, any claim of judicial legislation on the part of the Court must be set aside. The ruling is but a restatement of what is clearly set out by the Omnibus Election Code that a Section 78 proceeding is summary in nature and one that will not delve into the determination of a candidate's qualifications. As clearly pointed out in the Decision, "[t]he only exception that can be conceded are self-evident facts of unquestioned or unquestionable veracity and judicial confessions."[21]

The power of the COMELEC to cancel or deny due course to a certificate of candidacy in a Section 78 proceeding was granted to it by the legislature on the single ground of false material representation. It is the fear of partisanship on the part of the COMELEC that made our lawmakers empower it to reject certificates of candidacy only for the strongest of reasons, i.e., material misrepresentation on the face of the certificate of candidacy.[22] Any more than this would open the door for the COMELEC to engage in partisanship and target any candidate at will. The clear intent was to make the denial of due course or cancellation of a certificate of candidacy before the COMELEC a summary proceeding that would not go into the intrinsic validity of the qualifications of the candidate, in a sense, even to the point of making the power merely ministerial in the absence of patent defects.

The implication is that Section 78 cases contemplate simple issues only. Any issue that is complex would entail the use of discretion, which is reserved to the appropriate election tribunal.

Contrary to the claim that the recent pronouncement by the Court would wreak havoc on jurisprudence[23] recognizing COMELEC's jurisdiction to determine a candidate's eligibility in the course of deciding a Section 78 proceeding before it, a study of the cases cited would easily demonstrate the consistency of the Decision with prevailing jurisprudence.

Tagolino v. HRET[24] stemmed from a *quo warranto* petition before the HRET, not a Section 78 petition before COMELEC. The main issue in the

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[20] *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016, p. 21.
[21] *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016, p. 21.
[22] Concurring Opinion, CJ. Sereno, pp. 5-9, *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016.
[23] *Cerafica v. COMELEC*, G.R. No. 205136, 2 December 2014; *Maquiling v. COMELEC*, G.R. No. 195649, 16 April 2013; *Tagolino v. HRET*, G.R. No. 202202, 19 March 2013; *Talaga v. COMELEC*, G.R. No. 196804 & 197015, 9 October 2012; *Jalosjos v. COMELEC*, G.R. No. 193237 & 193536, 9 October 2012; *Aratea v. COMELEC*, G.R. No. 195229, 9 October 2012; *Sobejana-Condon v. COMELEC*, G.R. No. 198742, 10 August 2012, *Ugdoracion v. COMELEC*, G.R. No. 179851, 18 April 2008; *Lluz v. COMELEC*, G.R. No. 172840, 7 June 2007; *Luna v. COMELEC*, G.R. No. 165983, 24 April 2007; *Salcedo II v. COMELEC*, G.R. No. 135886, 16 August 1999; *Miranda v. Abaya*, G.R. No. 136351, 28 July 1999; *Domino v. COMELEC*, G.R. No. 134015, 19 July 1999; *Garvida v. Sales*, G.R. No. 124893, 18 April 1997; *Frivaldo v. COMELEC*, G.R. No. 120295, 28 June 1996; *Labo, Jr. v. COMELEC*, G.R. No. 105111, 3 July 1992; *Aznar v. COMELEC*, G.R. No. 83820, 25 May 1990; and *Abella v. Larrazabal*, G.R. No. 87721-30, 21 December 1989.
[24] G.R. No. 202202, 19 March 2013.

case was the propriety of Richard Gomez's substitution by Lucy Gomez, considering that his certificate of candidacy had been denied due course and/or cancelled under Section 78. Thus, he could not be substituted because he was not considered a candidate at all. In the case, the Court never made a pronouncement that the COMELEC had jurisdiction to look into the intrinsic validity of Richard's qualifications, mainly because the finding that he lacked the one-year residency requirement was no longer contested by him after the COMELEC En Banc affirmed the ruling of the COMELEC First Division in this regard. The Court made clear, however, that the HRET is not bound by previous COMELEC pronouncements relative to the qualifications of the Members of the House. As the sole judge of all contests relating to the election, returns, and qualifications of its respective members, the HRET cannot be tied down by COMELEC resolutions, else its constitutional mandate be circumvented and rendered nugatory. Obviously, this case is not in point on this contested issue.

Talaga v. COMELEC,[25] *Jalosjos v. COMELEC*[26] and *Aratea v. COMELEC*[27] actually involve proper examples of the recent Court pronouncement on the limits of COMELEC's jurisdiction, so they in fact contradict private respondents' position.

In *Talaga*, the cause of Ramon Talaga's ineligibility was the violation of the three-term limit clearly provided in the Constitution and statutory law. This may fall under the category of a self-evident fact of unquestioned or unquestionable veracity, and even a judicial admission especially because Ramon, in his manifestation before the COMELEC First Division, readily admitted that he was disqualified to run pursuant to the three-term limit rule.

As regards Dominador Jalosjos, his ineligibility was rooted in the fact that he was perpetually disqualified to run for any elective public office in view of his criminal conviction by final judgment. In fact, the Court enunciated that COMELEC will be grossly remiss in its constitutional duty to "enforce and administer all laws" relating to the conduct of elections if it does not *motu proprio* bar those suffering from perpetual special disqualification by virtue of a final judgment from running for public office. A perpetual special disqualification to run for public office may properly fall under the category of a self-evident fact of unquestioned or unquestionable veracity.

Aratea is basically a combination of the disqualifications in *Talaga* and *Jalosjos*, because Romeo Lonzanida was found by the COMELEC to suffer from perpetual special disqualification by virtue of a final judgment, and committed a violation of the three-term limit rule.

The private respondents in *Sobejana-Condon v. COMELEC*[28] actually failed to utilize Section 78. What they filed instead was a petition for *quo*

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[25] G.R. No. 196804 & 197015, 9 October 2012.
[26] G.R. No. 193237 & 193536, 9 October 2012.
[27] G.R. No. 195229, 9 October 2012.
[28] G.R. No. 198742, 10 August 2012.

warranto before the Regional Trial Court, and the COMELEC took cognizance only over the appeal filed by petitioner therein. Similarly, this case is not in point.

Ugdoracion v. COMELEC[29] involved the indubitable fact that petitioner therein was a holder of a green card, which evidences that one is a lawful permanent resident of the United States (US). Such status directly contradicted Jose Ugdoracion's declaration in his certificate of candidacy that he was "not a permanent resident or an immigrant to a foreign country." The Court also emphasized the applicability of Section 68[30] of the Omnibus Election Code and Section 40(f) of the Local Government Code, which disqualifies a permanent resident of, or an immigrant to, a foreign country, unless said person waives his status.

Lluz v. COMELEC[31] did not involve a Section 78 proceeding, but an election offense in connection with the alleged misrepresentation of therein private respondent about his profession.

In *Salcedo II v. COMELEC*,[32] the issue was whether the use of a surname constitutes a material misrepresentation under Section 78 so as to justify the cancellation of a candidate's certificate of candidacy. There was no pronouncement regarding the Section 78 jurisdiction of the COMELEC, which, notably, refused to make a legal conclusion on the validity of the marriage of private respondent therein and her entitlement to use the surname of her husband, because the controversy is judicial in nature.

Miranda v. Abaya[33] stemmed from a petition to annul the substitution of a candidate whose certificate of candidacy had been cancelled. There was no issue with regard to the earlier cancellation of Pempe Miranda's certificate of candidacy due to the violation of the three-term limit.

The issue in *Domino v. COMELEC*[34] was whether the decision of the Metropolitan Trial Court excluding petitioner therein from the list of voters of Quezon City and essentially supporting his contention that he is a voter of Sarangani may preclude COMELEC from making its own determination of his compliance with the one-year residence requirement to run for public office in Sarangani. In this context, the Court ruled that there is no *res*

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[29] G.R. No. 179851, 18 April 2008.

[30] Section 68. *Disqualifications.* — Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

[31] G.R. No. 172840, 7 June 2007.

[32] G.R. No. 135886, 16 August 1999.

[33] G.R. No. 136351, 28 July 1999.

[34] G.R. No. 134015, 19 July 1999.

judicata, and that it is within the competence of COMELEC to independently determine whether false representation as to material facts was made in the certificate of candidacy, including compliance with the residency requirement. Notably, COMELEC found that petitioner failed to comply with the one-year residence requirement on the basis of his own Voter's Registration Record dated 22 June 1997 stating that his address is in Quezon City. The document showed an irreconcilable difference with his statement in his certificate of candidacy that he was a resident of Sarangani since January 1997.

In *Garvida v. Sales*,[35] the Court actually found that the COMELEC En Banc committed grave abuse of discretion in (1) taking cognizance of the petition to deny due course to and/or cancel the certificate of candidacy, which should have been referred to the COMELEC sitting in Division; and (2) entertaining the petition despite its failure to comply with the formal requirements of pleadings. At any rate, it is well to emphasize that the COMELEC found that petitioner therein committed a material misrepresentation on her certificate of candidacy for the reason that she would have been more than 21 years of age on the day of the *Sangguniang Kabataan* elections. This conclusion was gleaned from her birth certificate, thereby qualifying as a self-evident fact of unquestioned veracity. In the case, while finding grave abuse of discretion on the part of the COMELEC En Banc, We eventually declared her ineligible to run for being over the age qualification.

Frivaldo v. COMELEC[36] did not deal with the jurisdiction of COMELEC under Section 78, but instead ruled upon COMELEC's authority to hear and decide petitions for annulment of proclamations. Furthermore, the ruling of the COMELEC Second Division disqualifying petitioner therein from running for the office of governor of Sorsogon was based on two final rulings of this Court[37] that he is disqualified for such office by virtue of his alien citizenship. In *Labo, Jr. v. COMELEC*,[38] the cancellation of Ramon Labo, Jr.'s certificate of candidacy by the COMELEC was likewise premised on a Decision[39] of this Court declaring him not a citizen of the Philippines and therefore disqualified from continuing to serve as mayor of Baguio City.

In *Aznar v. COMELEC*,[40] Section 78 was only mentioned in connection with the discussion on the instances where a petition questioning the qualifications of a candidate can be raised. The COMELEC First Division found that the petition was filed out of time because it was filed beyond the 25-day period from the filing of the certificate of candidacy required under Section 78. Moreover, it found that there was no sufficient

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[35] G.R. No. 124893, 18 April 1997.
[36] G.R. No. 120295, 28 June 1996.
[37] *Republic v. Dela Rosa*, G.R. Nos. 104654, 105715 & 105735, 6 June 6, 1994; *Frivaldo v. COMELEC*, G.R. No. 87193, 23 June 23, 1989.
[38] G.R. No. 105111, 3 July 1992.
[39] *Labo, Jr. v. COMELEC*, G.R. No. 86564, 1 August 1989.
[40] G.R. No. 83820, 25 May 1990.

proof to show that Emilio Osmeña is not a Filipino citizen. It is well to note that what was sought in the case was his disqualification based on citizenship. There was no allegation whatsoever about a material misrepresentation in the certificate of candidacy.

In *Abella v. Larrazabal*,[41] the charge was that Adelina Larrazabal was a resident of Ormoc City like her husband, who was disqualified precisely on that account from running for provincial governor of Leyte. The Court did not authorize the COMELEC to rule upon the intrinsic qualifications of Larrazabal on residence. In fact, the Court only ordered the COMELEC to hear the case under Section 78 as a more direct and speedy process available under the law.

It is misleading to claim that the Court did not dispute the COMELEC's capacity to determine a candidate's qualifications in *Maquiling v. COMELEC*.[42] In that case, while the petition filed was originally denominated as one for denial of due course to or cancellation of the certificate of candidacy, both the COMELEC First Division and the COMELEC En Banc treated the petition therein as one for disqualification, and We affirmed.

Luna v. COMELEC[43] is consistent with, and even bolsters the point that in resolving petitions under Section 78, the COMELEC may only address simple issues. In *Luna,* the Court did mention that the eligibility of Hans Roger Luna may have been impugned through a verified petition to deny due course to or cancel such certificate of candidacy under Section 78 of the Election Code, but the Court also qualified that the material misrepresentation be "as to his date of birth or age," which are simple matters not requiring an exercise of discretion on the part of COMELEC.

The factual scenario in *Cerafica v. COMELEC*[44] is similar to that in *Luna.* The Court ruled that the COMELEC gravely abused its discretion in holding that Kimberly Cerafica did not file a valid certificate of candidacy for failure to meet the age requirement; hence, she could not be substituted by Olivia Cerafica. It was pointed out that Kimberly's certificate of candidacy was considered valid unless the contents therein (including her eligibility) were impugned through a Section 78 proceeding. Absent such proceeding, Kimberly's certificate of candidacy remained valid and she could be properly substituted by Olivia.

On Statistical Probability and Presumptions

Respondents *again*[45] argue that it was erroneous for the Court to have "accepted hook, line, and sinker"[46] the statistics cited by the Solicitor

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[41] G.R. No. 87721-30, 21 December 1989.
[42] G.R. No. 195649, 16 April 2013.
[43] G.R. No. 165983, 24 April 2007.
[44] G.R. No. 205136, 2 December 2014.
[45] Urgent Plea for Reconsideration, pp. 13-16; Motion for Reconsideration, pp. 28-29, 32-34.
[46] Urgent Plea for Reconsideration, pp. 14.

General and to have inserted in jurisprudence a kind of profiling based on physical appearance.[47] They anchor their position on the dissenting opinions[48] of the members of this Court, which they fail to accept as personal views of the justices that have not been adopted by the majority.

Had respondents read the Decision more carefully, they would have realized that it was their failure to prove that petitioner's parents were aliens that led the Court to rule for petitioner on this aspect.[49] In focusing on the absence of the identity of petitioner's parents, respondents neglected to address the factual issue of whether such parents are Filipinos.

The reference to the statistical probability of 99.83% that any child born in the Philippines in the decade of 1965-1975 is natural-born Filipino – along with the circumstantial evidence that petitioner was abandoned in a Roman Catholic Church in Iloilo City and her typical Filipino features – only reinforces the proposition that petitioner was born to Filipino parents. The Court did not take the figures as gospel truth.

There is no merit in the allegation that respondents were not given the opportunity to impeach the statistics, or that they were raised for the first time on appeal. The figures were presented by the Solicitor General during the oral arguments on 16 February 2016. From that date, all parties were given a non-extendible period of five days within which to file their respective memoranda. The failure of private respondents to impeach the statistics even in their memoranda has resulted in the use by the Court of the same. Petitioner was not the one who raised such statistics for the first time on appeal. The Solicitor General could not have raised it earlier, as the Office had only been impleaded when the case reached this Court. There cannot be any charge of unfairness regarding this matter.

Respondents revive[50] their objection to the alleged reliance by the Court on presumptions to support the finding that foundlings are natural-born Filipino citizens.[51] They call our attention to the dissenting opinions[52] of our colleagues. However, it must be stressed that the points raised in these dissenting opinions have already been considered during our deliberations. The Decision took notice that presumptions regarding paternity are neither unknown nor unpracticed in Philippine law, as demonstrated by the devotion of an entire chapter on paternity and filiation in the Family Code.[53]

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[47] Respondents had already raised the same arguments in their memoranda; Memorandum (Contreras), pp. 6-8; Memorandum (Elamparo), p. 31.

[48] Dissenting Opinion, J. Carpio, pp. 38-42; Dissenting Opinion, J. De Castro, pp. 27-28; Dissenting Opinion, J. Del Castillo, p. 67; Dissenting Opinion, J. Perlas-Bernabe, p. 21, *Poe v. COMELEC,* G.R. Nos. 221697-700, 8 March 2016.

[49] *See Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016, p. 22.

[50] Urgent Plea for Reconsideration, pp. 17-18; Motion for Reconsideration, pp. 47-48.

[51] Respondents had already raised the same arguments in their memoranda; Memorandum (COMELEC), pp. 57, 75-80; Memorandum (Elamparo), pp. 32, 60-63; Memorandum (Tatad), pp. 36, 79-80, 89-90, 130-132, 168.

[52] Dissenting Opinion, J. Carpio, pp. 26, 42-49; Dissenting Opinion, J. De Castro, pp. 13-18, Dissenting Opinion, J. Brion, pp. 22, 117-120; Dissenting Opinion, J. Del Castillo, p. 67; Dissenting Opinion, J. Perlas-Bernabe, pp. 18-19, *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016.

[53] *Poe v. COMELEC,* G.R. Nos. 221697-700, 8 March 2016, p. 22.

In my Concurring Opinion, I pointed out that Philippine law treats the parentage of a child as a matter of legal fiction. Its determination relies not on physical proof, but on legal presumptions and circumstantial evidence. Notably, the Family Code allows paternity and filiation to be established through methods[54] that do not require physical proof of parentage. 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.

As early as 1901, the Code of Civil Procedure[55] recognized that children whose parents are unknown have a right to be adopted. Similar provisions were included in the subsequent revisions of the Rules of Court in 1940[56] and 1964.[57] 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."[58] The provisions of Act No. 1670 were substantially included in the Administrative Code of 1916[59] and in the Revised Administrative Code of 1917.[60]

In 1995, Congress enacted Republic Act No. (R.A.) 8043 to establish the rules governing the inter-country adoption of Filipino children, which recognized the adoption of a foundling under Section 8[61] of the statute. In 1998, the law on domestic adoption of Filipino children was amended through R.A. 8552, which specifically included the registration of foundlings for purposes of adoption.

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. In *Spouses Ellis v. Republic*,[62] the Court said that the Philippine Civil Code adheres to the theory that jurisdiction over the status of a natural person is determined by the latter's

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[54] CIVIL CODE, Article 172. These methods include: (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.

[55] Act 190, Section 765.

[56] Rule 100 (Adoption and Custody of Minors) of the 1940 Rules of Court, Sections 3 and 7.

[57] Rule 99 of the 1964 Rules of Court, Sections 3 and 7.

[58] Act No. 1670, Sections 1 and 5.

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

[60] Act No. 2711, Sections 545 and 548.

[61] 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

[62] G.R. No. L-16922, 30 April 1963.

nationality, citing Article 15[63] of the Civil Code. Citizenship is a status governed by this provision.[64]

Ellis also discredits the assertion that this Court has no power to determine the citizenship of a foundling based only on presumptions. When an American couple, the spouses Ellis, later sought to adopt Baby Rose, the Court presumed the citizenship of the infant for purposes of adoption. In the 1976 case *Duncan v. CFI of Rizal*,[65] We assumed jurisdiction over the adoption proceedings, and it may be inferred that the child was presumed a Philippine citizen whose status may be determined by a Philippine court pursuant to Article 15 of the Civil Code.

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 v. Dela Rosa*[66] and *Tecson v. COMELEC.*[67]

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. Hence, judges are not precluded from drawing conclusions from inferences based on established facts. In the case of *Joaquin v. Navarro*,[68] the Court stated that "[j]uries must often reason xxx 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." Clearly, the use of probabilities is enshrined in established legal precepts under our jurisdiction.

On the Non-inclusion of Foundlings in Section 1, Article IV of the 1935 Constitution

Respondents reassert[69] that the *verba legis* rule should prevail.[70] They echo the interpretation of our dissenting colleagues that the voting down of the Rafols proposal is tantamount to a denial of natural-born status, even Filipino citizenship, to foundlings.[71]

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[63] 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.

[64] *Board of Immigration Commissioners v. Callano,* 134 Phil. 901-912 (1968).

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

[66] 274 Phil. 1157-1249 (1991). In this case, 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.

[67] G.R. Nos. 161434, 161634, 161824, 468 Phil. 421-75 (2004). Here, a presumption was likewise made by this Court to resolve issues involving the citizenship of presidential candidate Fernando Poe, Jr. 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.

[68] 93 Phil. 257 (1953).

[69] Urgent Plea for Reconsideration, pp. 19-23; Motion for Reconsideration, pp. 43-50.

[70] Respondents had already raised the same arguments in their memoranda; Memorandum (COMELEC), pp. 53-63; Memorandum (Elamparo), pp. 32-40; Memorandum (Tatad), pp. 34-35, 75-78.

[71] Dissenting Opinion, J. Carpio, pp. 10-18, ; Dissenting Opinion, J. De Castro, pp. 19-21, Dissenting Opinion, J. Brion, pp. 18-20, 94-104; Dissenting Opinion, J. Perlas-Bernabe, p. 20, *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016.

In the Decision dated 8 March 2016, what impelled this Court to look into the intent of the framers of the 1935 Constitution was its belief that the non-inclusion of foundlings in the enumeration of citizens of the Philippines could not have been the result of inadvertence, patent discrimination against them on account of their unfortunate status, or deliberate intention to deny them Filipino citizenship.[72]

In the deliberations of the 1934 Constitutional Convention,[73] Delegate Roxas emphasized that international law recognizes the principle that children or people born in a country of unknown parents are citizens of the nation where they were found. As such, there is no need to make an express provision treating them separately.

The fact that the account of Delegate Aruego spoke of statutory action in dealing with the status of foundlings, rather than expressly including them in the enumeration of the 1935 Constitution, was not lost on the Court. The Decision specifically identified R.A. 8043[74] and 8552[75] as the statutory expression recognizing foundlings as among the Filipino children who may be adopted.

On Foundlings as Natural-born Citizens under International Law

Private respondents reiterate[76] their argument that petitioner cannot find support from international legal instruments and norms for a declaration that foundlings are natural-born citizens of the state where they were found.[77] They emphasize the discussions in the dissents[78] that the acquisition of citizenship by foundlings is not automatic from birth, as a proceeding is required for the declaration of their unknown parentage.

It is clear that the objection of private respondents on the application of international law to the status of petitioner springs not from the recognition of foundlings as citizens of the nation where they were found, but from their recognition as citizens from birth or being natural-born. However, as explained in our Decision, the grant of nationality as provided under the Universal Declaration of Human Rights (UDHR), United Nations Convention on the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR) is geared towards ensuring that no child, foundling or otherwise, would have to endure being stateless at any point in time.[79]

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[72] *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016, pp. 27-28.
[73] *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016, pp. 25-26.
[74] Inter-Country Adoption Act of 1995.
[75] Domestic Adoption Act of 1998.
[76] Urgent Plea for Reconsideration, pp. 24-27.
[77] Memorandum (Elamparo), pp. 49-60; Memorandum (Tatad), pp. 132-133.
[78] Dissenting Opinion, J. Carpio, pp. 18-38; Dissenting Opinion, J. De Castro, pp. 28-30; Dissenting, J. Brion, pp. 106-117; Dissenting Opinion, J. Perlas-Bernabe, pp. 20-21, *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016.
[79] *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016, p. 31.

Furthermore, following the same line of reasoning adopted in *Razon v. Tagitis*[80] that ratification of the International Convention for the Protection of All Persons from Enforced Disappearance is not required for the application of its provisions to the Philippines considering that enforced disappearance violates rights already recognized under the Constitution, We also went on to emphasize that the 1930 Hague Convention on Certain Questions Relating to Conflict of Nationality Laws and the 1961 Convention on the Reduction of Statelessness merely gives effect to Article 15(1) of the UDHR providing that "[e]veryone has the right to a nationality."[81] It bears stressing that the UDHR has already been interpreted by the Court as part of the generally accepted principles of international law binding the Philippines.[82] More important, it embodies the same core principles which underlie the Philippine Constitution itself.[83]

Again, there is no merit in the repetitive argument that registration of a child as a foundling, or the purported conduct of a proceeding, effectively amounts to naturalization in accordance with law. This contention is unacceptable because the term "in accordance with law" alludes to enabling legislation.[84] Hence, naturalization in Section 1, Article IV of the 1935 Constitution does not refer to just any act, but to the specific procedure for naturalization prescribed by the legislature. Furthermore, registration is not an act attributable to a foundling,[85] in contrast to the Revised Naturalization Law,[86] which requires applicants to personally and voluntarily perform acts to avail of naturalized citizenship. Lastly, it is possible to register a foundling without any administrative proceedings, if the registration is done prior to the surrender of the custody of the child to the Department of Social Welfare and Development or an institution.[87] If already registered, the administrative proceeding[88] is followed only for the purpose of adoption.

On Reacquisition of Natural-born Status

Repeating their previous arguments,[89] private respondents and Valdez allege that the instant case is not on all fours with *Bengson III v. HRET*,[90] which involved repatriation under R.A. 2630[91] of those who involuntarily

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[80] *Razon v. Tagitis*, 621 Phil. 536 (2009).
[81] *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016, p. 30.
[82] *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016, p. 30.
[83] *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016, p. 30.
[84] See *Ang Bagong Bayani-OFW v. Commission on Elections*, 412 Phil. 308-374 (2001).
[85] Act No. 3752, Section 5, 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.
[86] Commonwealth Act. No. 473 dated 17 June 1939.
[87] 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])
[88] Rules and Regulations to Implement the Domestic Adoption Act of 1998, IRR-R.A. 8552, Section 5 (1998).
[89] Memorandum (Elamparo), pp. 63-73; Memorandum (Valdez), pp. 20-22.
[90] G.R. No. 142840, 7 May 2001.
[91] Entitled "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."

lost their Filipino citizenship.[92] Furthermore, Valdez extensively reproduced the deliberations on the precursor bills of R.A. 9225 (Citizenship Retention and Reacquisition Act of 2003) and insists[93] that paragraphs 1 and 2 of Section 3[94] thereof make a clear distinction between those who lost their Filipino citizenship before the effectivity of R.A. 9225 (reacquisition) and those after (retention).[95] According to him, reacquisition means the loss of natural-born status while retention means that Filipinos remain natural-born citizens.[96] On the other hand, the dissents also gave their own interpretations of the law.[97]

Private respondents and Valdez basically reiterate COMELEC arguments that have already been sufficiently addressed by the Court in our Decision.[98] *Bengson III* never distinguished between those who voluntarily and involuntarily lost their Filipino citizenship. It provided, in general, that "repatriation results in the recovery of the original nationality,"[99] and that if a person was "originally a natural-born citizen before he lost his Philippine citizenship, he will be restored to his former status as a natural-born Filipino."[100] Thus, the strained differentiation made by private respondents and Valdez has no merit.

As regards the arguments that the deliberations of the legislators clearly show the intent to equate reacquisition of Filipino citizenship with loss of natural-born status, the same are without merit. The most that can be made out of the deliberations is that the thinking of the legislators on the matter was mixed. Thus, the Court pronouncement in *Bengson III*, involving the restoration of former status as natural-born Filipino when one is repatriated, remains good law.

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[92] Urgent Plea for Reconsideration, pp. 28-32; Motion for Reconsideration for Respondent Amado D. Valdez, pp. 38-61.

[93] Memorandum (Valdez), pp. 19-22, 29-36.

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

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

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

[95] Motion for Reconsideration for Respondent Amado D. Valdez, pp. 9-19, 31-37.

[96] Motion for Reconsideration for Respondent Amado D. Valdez, pp. 20-30.

[97] Dissenting Opinion, J. Carpio, p. 55; Dissenting Opinion, J. De Castro, pp. 49-60; Dissenting Opinion, J. Brion, pp. 121-134; Dissenting Opinion, J, Del Castillo, pp. 50-52, 54-55; Dissenting Opinion, J. Perlas-Bernabe, pp. 14-15, *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016.

[98] *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016, pp. 34-35.

[99] *Bengson III v. HRET*, 409 Phil. 633 (2001).

[100] *Bengson III v. HRET*, 409 Phil. 633 (2001).

On Petitioner's 10-year Residency in the Philippines

Once again,[101] private respondents and COMELEC allege that the earliest possible reckoning point for reestablishment of domicile in the Philippines by Filipinos who were naturalized as foreigners can only be upon their reacquisition of Filipino citizenship or by securing a permanent resident visa.[102] This position was also widely supported by the dissents.[103]

In *Coquilla v. COMELEC*,[104] *Ongsiako-Reyes v. COMELEC*,[105] and *Caballero v. COMELEC*[106] the Court had no other point from which to reckon petitioners' reestablishment of domicile in the Philippines other than the date they reacquired their Filipino citizenship.[107] In contrast, petitioner in this case presented overwhelming evidence proving the reestablishment of her domicile in the Philippines even before her reacquisition of Filipino citizenship.[108]

Entry in the Philippines by virtue of a *balikbayan* or a non-immigrant visa does not prevent a person from reestablishing domicile here. In *Elkins v. Moreno*,[109] aliens with a non-immigrant visa were considered as having the legal capacity to change their domiciles. In *Toll v. Moreno*,[110] 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. 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. We can consider these decisions as sufficiently enlightening and persuasive on this Court.

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. The Philippines' *Balikbayan* Program does not foreclose their options should they decide to actually settle in the country.

As stated in the Decision, there are only three requisites to acquire a new domicile: residence or bodily presence in the new locality, an intention

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[101] Memorandum (COMELEC), pp. 66-71, 73-74; Memorandum (Contreras), pp. 9-31; Memorandum (Elamparo), pp. 13-20; Memorandum (Tatad), pp. 143-147; Memorandum (Valdez), pp. 23-29.
[102] Urgent Plea for Reconsideration, pp. 33-41; Motion for Reconsideration, pp. 50-55.
[103] Dissenting Opinion, J. De Castro, pp. 31-65; Dissenting Opinion, J. Brion, pp. 40-41, 122-142; Dissenting Opinion, J. Del Castillo, pp. 34-60; Dissenting Opinion, J. Perlas-Bernabe, pp. 13-17, *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016.
[104] *Coquilla v. COMELEC*, 434 Phil. 861 (2002).
[105] *Ongsiako-Reyes v. COMELEC*, G.R. No. 207264, 25 June 2013, 699 SCRA 522.
[106] *Caballero v. COMELEC*, G.R. No. 209835, 22 September 2015.
[107] *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016, p. 39.
[108] *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016, pp. 37-40.
[109] 435 U.S. 647 (1978).
[110] 284 Md. 425 (1979).

to remain there and an intention to abandon the old domicile.[111] Petitioner's compliance with these requisites was extensively discussed in the concurring opinions, and summarized below.

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; (2) *Taxpayer's Identification Number (TIN) Card*, showing that she registered with and secured the TIN from the BIR on 22 July 2005; (3) *Condominium Certificates of Title (CCTs) 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 which served as the family's temporary residence; (4) *Transfer Certificate of Title (TCT)* 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.

The enrolment of children in local schools is a factor considered by courts when it comes to establishing a new domicile. In *Fernandez v. HRET*,[112] We used this *indicium* for the establishment of a new domicile. In *Blount v. Boston*,[113] 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. That petitioner's children began their schooling in the Philippines shortly after their arrival in the country in May 2005 is a fact "duly proven" by petitioner,[114] and considered non-controverted.[115]

The following facts are also 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.[116] 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, a criteria recognized by Philippine jurisprudence.[117]

Even US courts consider acquisition of property as a badge of fixing a new domicile.[118] In *Hale v. State of Mississippi Democratic EC*,[119] the Supreme Court of Mississippi used acquisition of a new residence as a factor for determining transfer of domicile.

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[111] *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016, p. 37.
[112] *Fernandez v. HRET,* G.R. No. 187478 (2009).
[113] 718 A.2d 1111 (1984).
[114] COMELEC Comment dated 7 January 2016, p. 56.
[115] Please see oral arguments cited in the Concurring Opinion, p. 48.
[116] COMELEC Comment, page 56.
[117] The 2012 case of *Jalosjos v. COMELEC* treats acquisition of residential property as a factor indicating establishment of a new domicile.
[118] *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).
[119] No. 2015–EC–00965–SCT(2015).

Securing a TIN Card does not conclusively prove that petitioner is a resident of the Philippines, because the 1997 Tax Code mandates all persons required under our tax laws to render or file a return to secure a TIN.[120] 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.[121] 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.

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*,[122] 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*[123] treats voter registration as one of the two most significant *indicia* of acquisition of a new domicile. In the Philippine case of *Templeton v. Babcock*,[124] we held that "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."[125]

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 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.

In *Oglesby v. Williams*,[126] the Court of Appeals of Maryland noted that plans for removal show intent to abandon the old domicile. In this case, petitioner submitted email exchanges showing that the family began planning to move back to the Philippines as early as March 2005. The email indicates 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—collectively weighing 28,000 pounds.

Petitioner also adduced as evidence the email of the US Postal Service acknowledging the notice of change of address made by petitioner's husband. *Hale v. State of Mississippi Democratic EC*[127] utilized change of postal address as a factor for determining the intent to abandon a domicile.

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[120] Section 236 (J) of R.A. No. 8424 (The Tax Reform Act of 1997) 11 December 1997.
[121] Affidavit, p. 1.
[122] No. 2015–EC–00965–SCT(2015).
[123] 372 Md. 360 (2002).
[124] G.R. No. 28328, 2 October 1928, 52 Phil. 130 (1928).
[125] G.R. No. 28328, 2 October 1928, 52 Phil. 130 (1928).
[126] 372 Md. 360 (2002).
[127] No. 2015–EC–00965–SCT (2015).

In *Farnsworth v. Jones,*[128] 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. The online acknowledgment presented by petitioner never showed that the address changed to the Philippine address, but it indicates intent to abandon her old domicile.

In *Imbraguglio v. Bernadas*[129] decided by the Court of Appeals of Louisiana, Fourth Circuit, the court ruled that a candidate established a new domicile by voluntarily selling his home.

The case of *Bell v. Bell,*[130] combined with the *Oglesby* case, provides that movement of properties that are valuable indicates intent to abandon the previous domicile. When only unimportant belongings remain in the old domicile, the intent to abandon the old domicile is not diminished. In this case, 25,241 pounds of personal property owned by petitioner and her family were actually moved from the US to Manila, while non-valuable items (books, clothes, miscellaneous items) were donated to the Salvation Army.[131]

In *Oglesby*, the date of actual transfer was made the reckoning point for the change of domicile. 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 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.

Petitioner's arrival in the Philippines on 24 May 2005 was definitely coupled with both *animus manendi* and *animus non revertendi.* When we consider all the other factors mentioned, there can only be one conclusion – petitioner was here to stay for good. Petitioner's transfer was incremental, but this Court has already recognized the validity of incremental transfers.[132] Even the Superior Court of Pennsylvania in *Bell v. Bell*[133] recognized the notion of incremental transfers in a change of domicile. 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.

The fact that petitioner's husband remained and retained employment abroad in May 2005 and that petitioner travelled to the US using her US passport even after reacquisition of Philippine citizenship did not negate petitioner's intent to reside permanently in the Philippines.

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[128] 114 N.C. App. 182 (1994).
[129] 968 So. 2d 745 (2007).
[130] Pa. Superior Ct. 237 (1984) 473 A.2d 1069.
[131] Receipt Nos. 827172 and 8220421, dated 23 February 2006.
[132] G.R. No. 191938, 19 October 2010.
[133] 473 A.2d 1069 (1984).

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. 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. As for her use of her US passport, petitioner, as a US citizen, was required by law to use her US passport when travelling to and from the US.[134] 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.

Private respondents claim that the Court's ruling renders Section 68 of the Omnibus Election Code "patently discriminatory," given that permanent residents in the US must perform an unequivocal act of waiver of their foreign domicile – such as the surrender of their green cards – in order to reacquire their domicile in the Philippines, while full-fledged US citizens would be able to reckon their reestablishment of domicile from the date of their arrival in the Philippines by mere show of intent.[135] They cite *Caasi v. CA*,[136] and argue that Section 68 provides a higher bar of establishing *animus manendi* and *animus non-revertendi* for Filipinos who are permanent residents in the US, compared to former Filipino citizens who do not have a permanent resident visa in the Philippines. In other words, they contend that possession of a permanent resident visa by former Filipino citizens should be made a requirement for reestablishing a domicile in the Philippines. Further, they argue that surrender of the US passport should at least be required, pursuant to *Japzon v. COMELEC*.[137]

The argument is flawed. To be clear, Section 68 provides for a ground for disqualification and a mode to overcome such disqualification. It does not provide for a mode for reestablishment of domicile in the Philippines by permanent residents or immigrants of a foreign country.

In *Caasi,* we treated the candidate's application for immigrant status and permanent residence in the US and his possession of a green card attesting to such status as "conclusive proof that he is a permanent resident of the U.S. despite his occasional visits to the Philippines."[138] This explains the so-called higher bar for Filipinos with green cards, that is, they must formally surrender their green cards so as to comply with Section 68. Rightly so, because a green card proves "a resident alien's status as a permanent U.S. resident."[139] Thus, in *Gayo v. Verceles*,[140] We declared that Verceles was no longer a permanent resident of the US because she had already surrendered her green card even prior to the filing of her certificate of candidacy when she first ran for mayor in the 1998 elections. Here, We

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[134] US Immigration and Nationality Act, Section 215(b). This provision is echoed in Section 53.1 of the US Code of Federal Regulations.
[135] Urgent Plea for Reconsideration, p. 36-37.
[136] G.R. No. 88831, 84508, 8 November 1990, 269 PHIL 237-247.
[137] *Japzon v. COMELEC*, G.R. No. 180088, 19 January 2009.
[138] *Japzon v. COMELEC*, G.R. No. 180088, 19 January 2009.
[139] Black's Law Dictionary, Eighth Edition, p. 721.
[140] 492 Phil. 592-604 (2005).

ruled that Section 68 and Section 40(f) of the Local Government Code "both provide that permanent residents or immigrants to a foreign country are disqualified from running for any local elective position."[141]

On the other hand, *Japzon* did not involve the surrender of a US passport. It involved the application for a Philippine passport, which we considered as a factor indicating the candidate's reestablishment of his domicile in the country. Besides, a passport by itself does not prove residence. A passport is a "formal document, certifying a person's identity and citizenship so that the person may travel to and from a foreign country."[142] It is "universally accepted evidence of a person's identity and nationality."[143] It therefore makes no sense why the surrender of a foreign passport should be made a requirement for reestablishment of domicile in the Philippines.

On Intent to Mislead

Reiterating their previous arguments[144] and finding support in two of the dissents,[145] respondents urge the Court to revisit its rulings requiring the element of deliberate intent to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible in a successful Section 78 petition.[146] Private respondents restate[147] their argument that any plea of honest mistake or absence of intent to deceive or mislead must have merit only if such leads to understated qualification, which in turn leads to outright disqualification, such as the case of *Romualdez-Marcos v. COMELEC*.[148] At any rate, it is again[149] pointed out that the existence of intent to mislead on the part of petitioner is established by her various overt acts, as shown by her pattern of misrepresentation.[150]

It appears ironic that private respondents referred to the element of deliberate attempt to mislead, misinform or hide a fact as a mere judicially crafted construct, yet would argue vigorously that petitioner should have secured a permanent resident visa in order to reestablish her domicile in the Philippines, another "judicial construct" that they mistakenly read as coming from *Coquilla v. COMELEC*.[151] Private respondents appear to neglect the fact that since *Romualdez-Marcos v. COMELEC*,[152] the Court has

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[141] 492 Phil. 592-604 (2005).
[142] Black's Law Dictionary, Eighth Edition, p. 1156.
[143] Id. citing Burdick H. Brittin, International Law for Deagoing Officers 183 (4th ed. 1981), p. 1156.
[144] Memorandum (Contreras), pp. 37-44; Memorandum (Valdez), p. 16.
[145] Dissenting Opinion, J. De Castro, pp. 43-45; Dissenting Opinion, J. Brion, pp. 77-79; Dissenting Opinion, J. Perlas-Bernabe, pp. 4-12, *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016.
[146] Urgent Plea for Reconsideration, pp. 41-47; Motion for Reconsideration, pp. 35-43.
[147] Memorandum (Contreras), p. 34.
[148] Urgent Plea for Reconsideration, p. 42.
[149] Memorandum (Elamparo), pp. 73-77.
[150] Urgent Plea for Reconsideration, p. 43-46.
[151] 434 Phil. 861 (2002).
[152] G.R. No. 119976, 18 September 1995.

consistently required[153] – save for *Tagolino v. HRET*[154] – the element of a deliberate attempt to mislead, misinform or hide a fact in a successful Section 78 petition.

There is no basis for private respondents' position that good faith can only be appreciated when the mistake leads to an understated qualification. If upheld, this proposition would render inutile the more important pronouncement in *Romualdez-Marcos v. COMELEC* that "[i]t is the fact of residence, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the Constitution's residency qualification requirement."[155]

The Court cannot take cognizance of the alleged pattern of misrepresentation on the part of petitioner. The focus of a Section 78 petition is the certificate of candidacy and the purported false material representation contained therein. Any allusion to the contents of other documents should only become material when it indubitably proves the falsity of the material contents of the certificate of candidacy.

On Reyes v. COMELEC

The *ponente*, Justice Perez, had been criticized for the alleged double standards utilized by him in the instant case and *Reyes v. COMELEC*,[156] which was also written by him. However, I do not see any inconsistency mainly because the two cases are not identical.

On citizenship, the two cases diverge on whether there was misrepresentation warranting the cancellation of the certificate of candidacy. In *Reyes,* the circumstances that petitioner was a holder of a US passport and that she had the status of a *balikbayan* shifted the burden of evidence on her. Reyes, however, failed to present any proof to show that she was a natural-born citizen. The Court explained:

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

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[153] *Agustin v. COMELEC*, G.R. No. 207105, 10 November 2015; *Jalover v. Osmeña*, G.R. No. 209286, 23 September 2014; *Hayudini v. COMELEC*, G.R. No. 207900, 22 April 2014; *Villafuerte v. COMELEC*, G.R. No. 206698, 25 February 2014; *Talaga v. COMELEC*, 696 Phil. 786-918 (2012); *Aratea v. COMELEC*, 696 Phil. 700-785 (2012); *Gonzales v. COMELEC*, G.R. No. 192856, 8 March 2011; *Panlaqui v. COMELEC*, G.R. No. 188671, 24 February 2010; *Mitra v COMELEC*, 636 Phil. 753-815 (2010); *Maruhom v. COMELEC*, G.R. No. 179430, 27 July 2009; *Velasco v. COMELEC*, G.R. No. 180051, 24 December 2008; *Ugdoracion, Jr. v. COMELEC*, 575 Phil. 253-266 (2008); *Fermin v. COMELEC*, 595 Phil. 449-479 (2008); *Justimbaste v. COMELEC*, 593 Phil. 383-397(2008); *Tecson v. COMELEC*, 468 Phil. 421-755 (2004); *Salcedo II v. COMELEC*, 371 Phil. 377-393 (1999).

[154] G.R. No. 202202, 19 March 2013.

[155] G.R. No. 119976, 18 September 1995.

[156] G.R. No. 207264, 25 June 2013.

> however, petitioner submitted no proof to support such contention. Neither did she submit any proof as to the inapplicability of R.A. No. 9225 to her.[157]

While Reyes attached to her Motion for Reconsideration before the COMELEC *En Banc* an Affidavit of Renunciation of Foreign Citizenship, the Court rejected the same:

> [P]etitioner admitted that she is a holder of a US passport, but she averred that she is only a dual Filipino-American citizen, thus the requirements of R.A. No. 9225 do not apply to her. Still, attached to the said motion is an Affidavit of Renunciation of Foreign Citizenship dated 24 September 2012. Petitioner explains that she attached said Affidavit "if only to show her desire and zeal to serve the people and to comply with rules, even as a superfluity." We cannot, however, subscribe to petitioner's explanation. If petitioner executed said Affidavit "if only to comply with the rules," then it is an admission that R.A. No. 9225 applies to her. Petitioner cannot claim that she executed it to address the observations by the COMELEC as the assailed Resolutions were promulgated only in 2013, while the Affidavit was executed in September 2012.[158]

In the present case, respondents relied mainly on petitioner Poe's admission that she was a foundling. The admission, however, did not establish the falsity of petitioner's claim that she was a natural-born citizen. Legal presumptions operated 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.

There is also a distinction with respect to the execution of an oath of allegiance. In this case, that petitioner executed an oath of allegiance is not up for debate. In *Reyes*, however, the Court found that there was no oath of allegiance executed by Reyes that would satisfy the requirements of R.A. 9225. We rejected the claim of Reyes that she was deemed to have reacquired her status as a natural-born Filipino citizen by her oath of allegiance in connection with her appointment as Provincial Administrator of Marinduque. The Court said:

> For one, this issue is being presented for the first time before this Court, **as it was never raised before the COMELEC.** For another, said oath of allegiance cannot be considered compliance with Sec. 3 of R.A. No. 9225 as certain requirements have to be met as prescribed by Memorandum Circular No. AFF-04-01, otherwise known as the Rules Governing Philippine Citizenship under R.A. No. 9225 and Memorandum Circular No. AFF-05-002 (Revised Rules) and Administrative Order No. 91, Series of 2004 issued by the Bureau of Immigration. Thus, petitioner's oath of office as Provincial Administrator cannot be considered as the oath of allegiance in compliance with R.A. No. 9225.

On residence, to establish the requirements of falsity and intent to deceive, private respondents in this case merely relied on the representation that petitioner previously made in her 2012 certificate of candidacy for

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[157] *Reyes v. COMELEC*, G.R. No. 207264, 25 June 2013.
[158] *Reyes v. COMELEC*, G.R. No. 207264, 25 June 2013.

senator. Petitioner, however, has shown by an abundance of substantial evidence that her residence in the Philippines commenced on 24 May 2005, and that the statement she made in her 2012 certificate of candidacy was due to honest mistake. Private respondents failed to meet these pieces of evidence head on. Hence, they failed to discharge their burden of proving material misrepresentation with respect to residency.

On the other hand, given the finding that Reyes lost her Filipino citizenship, she had effectively abandoned her domicile in the Philippines. Therefore, it was incumbent upon her to show that she reestablished her domicile in the Philippines, but the only evidence adduced by Reyes to show compliance with the one-year durational residency requirement in Boac, Marinduque was her claim that she served as Provincial Administrator of the province from 18 January 2011 to 13 July 2011, which the Court deemed insufficient to establish her one-year residency.

There are other points of distinction as well. In *Reyes*, the COMELEC En Banc Resolution cancelling her certificate of candidacy had become final and executory when she elevated the matter to this Court. It should be mentioned that when Reyes filed her petition with the Court, the COMELEC En Banc had, as early as 5 June 2013, already issued a Certificate of Finality over its 14 May 2013 Resolution disqualifying her. Hence, there was no longer any pending case to speak of. In the case of petitioner in this case, the question of whether her certificate of candidacy should be cancelled is a subsisting issue.

Moreover, in *Reyes*, We found that her recourse to this Court appeared to be an attempt to prevent the COMELEC from implementing a final and executory judgment. The Court reasoned that Reyes took "an inconsistent, if not confusing, stance" – while she sought remedy before the Court, she asserted that it was the House of Representatives Electoral Tribunal that had jurisdiction over her.

In sum, *Reyes* is substantially different from the instant case. *Reyes* involved a final and executory order of COMELEC cancelling her certificate of candidacy that was brought before this Court, apparently in an attempt to prevent enforcement of the judgment. The present case involved an order cancelling petitioner's certificate of candidacy, which was a genuine issue timely raised before the Court.

This case involved a candidate who was a foundling, carried a Philippine passport, took an oath of allegiance, and executed an affidavit of renunciation. Legal presumptions operated in her favor, making her a natural-born citizen at the time she filed her certificate of candidacy for president. *Reyes* involved a candidate who was a former natural-born citizen but carried a US passport and failed to show proof that she took the requisite oath of allegiance and affidavit of renunciation. The evidence operated against her, thus establishing false representation in her certificate of candidacy with intent to deceive.

In this case, petitioner submitted an abundance of evidence showing that she reestablished her domicile in the Philippines in May 2005, thus fulfilling the durational residence requirement of 10 years. In *Reyes*, the candidate submitted only one piece of evidence – her service as provincial administrator from 18 January 2011 to 13 July 2011, which the Court deemed insufficient to establish her one-year residency.

On Petitioner as a Nuisance Candidate

Private respondents theorize that a presidential candidate who is not a natural-born Filipino citizen is a nuisance candidate. According to the theory, allowing such person to run for president makes a complete mockery of the election process. The electorate is offered choices that include patently ineligible candidates and is misled to cast votes in their favor. They claim that the situation will lead to wastage of votes for an ineligible candidate.

It is worthy to note that prior to the various motions for reconsideration filed in this case, not one of the respondents raised this argument, either in their respective comments, memoranda, or in the oral arguments. Not even the COMELEC considered this notion. The "nuisance candidate" argument surfaced only for the first time in one dissenting opinion,[159] which the respondents borrowed and utilized in their motions for reconsideration.

One can easily make short shrift of the "nuisance candidate" argument. In the first place, the finding that petitioner is a nuisance candidate should have been made by the COMELEC. Disqualification on citizenship grounds does not make one a nuisance candidate. Nuisance candidates refer to "persons who file their certificates of candidacy 'to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.'"[160]

As can be gleaned from the definition, the issue is not whether one is qualified; rather, whether one is a *bona fide* candidate. In elections involving national positions, the determining factor is intent, which is manifested by the candidate's "financial capacity or serious intention to mount a nationwide campaign."[161] Petitioner is a leading contender with highly-publicized financial and other support.

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[159] Dissenting Opinion, J. Carpio, pp. 4-5, 54, *Poe v. COMELEC*, G.R. Nos. 221697-700, 8 March 2016.
[160] *Timbol v. Commission on Elections,* G.R. No. 206004 (Resolution), 24 February 2015. See also Section 69 of the Omnibus Election Code.
[161] *Martinez III v. House of Representatives Electoral Tribunal,* G.R. No. 189034, 12 January 2010, 624 PHIL 50-76.

CONCLUSION

"Among the ends to which a motion for reconsideration is addressed, one is precisely to convince the [C]ourt that its ruling is erroneous and improper, contrary to law or the evidence, and in so doing, the movant has to dwell of necessity upon the issues passed upon by the court."[162] Nonetheless, our Rules of Court require that a motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.[163] More important, the movant should be able to point out why the findings or conclusions in the judgment or final order are contrary to the evidence and the applicable law.[164]

These elements of a motion for reconsideration necessarily mean that movants cannot simply parrot the dissenting opinions of the minority. Not only does it show insufficiency of the motions, it clearly proves that the matters raised had already been exhaustively discussed, deliberated and ruled upon by the Court.

All the opinions of the Members of the Court were presented during the deliberations. When views become dissenting opinions, it is clear that they have failed to express the beliefs of the majority. The reproduction of these dissenting opinions in a motion for reconsideration does not produce an exchange of new ideas; consequentially, such does not persuade the Court to reconsider its position. On the contrary, the rehash of arguments only proves that the Court did not miss anything important and only reinforces its belief in the soundness of its conclusions.

WHEREFORE, I vote to deny with finality the motions for reconsideration for raising issues that have already been passed upon by the Court in its Decision dated 8 March 2016.

MARIA LOURDES P. A. SERENO
Chief Justice

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

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[162] *Dineros v. Roque*, G.R. No. L-38837, 27 February 1979.
[163] Rules of Court, Rule 37, Section 2, par. 3.
[164] *Dineros v. Roque*, G.R. No. L-38837, 27 February 1979.