Republic of the Philippines
Supreme Court
Manila

EN BANC

MARY GRACE NATIVIDAD S. POE-LLAMANZARES,
Petitioner,

- versus -

COMMISSION ON ELECTIONS AND ESTRELLA C. ELAMPARO,
Respondents,

x----------x

MARY GRACE NATIVIDAD S. POE-LLAMANZARES,
Petitioner,

- versus -

COMMISSION ON ELECTIONS, FRANCISCO S. TATAD, ANTONIO P. CONTRERAS AND AMADO D. VALDEZ,
Respondents,

x----------x

G.R. No. 221697

G.R. Nos. 221698-700

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA, *JJ.*

Promulgated:
March 8, 2016

DECISION

PEREZ, *J.*:

Before the Court are two consolidated petitions under Rule 64 in relation to Rule 65 of the Rules of Court with extremely urgent application for an *ex parte* issuance of temporary restraining order/*status quo ante* order and/or writ of preliminary injunction assailing the following: (1) 1 December 2015 Resolution of the Commission on Elections (COMELEC) Second Division; (2) 23 December 2015 Resolution of the COMELEC *En Banc*, in SPA No. 15-001 (DC); (3) 11 December 2015 Resolution of the COMELEC First Division; and (4) 23 December 2015 Resolution of the COMELEC *En Banc*, in SPA No. 15-002 (DC), SPA No. 15-007 (DC) and SPA No. 15-139 (DC) for having been issued without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Facts

Mary Grace Natividad S. Poe-Llamanzares (petitioner) was found abandoned as a newborn infant in the Parish Church of Jaro, Iloilo by a certain Edgardo Militar (Edgardo) on 3 September 1968. Parental care and custody over petitioner was passed on by Edgardo to his relatives, Emiliano Militar (Emiliano) and his wife. Three days after, 6 September 1968, Emiliano reported and registered petitioner as a foundling with the Office of the Civil Registrar of Iloilo City (OCR-Iloilo). In her Foundling Certificate and Certificate of Live Birth, the petitioner was given the name "Mary Grace Natividad Contreras Militar."[1]

When petitioner was five (5) years old, celebrity spouses Ronald Allan Kelley Poe (a.k.a. Fenando Poe, Jr.) and Jesusa Sonora Poe (a.k.a. Susan Roces) filed a petition for her adoption with the Municipal Trial Court (MTC) of San Juan City. On 13 May 1974, the trial court granted their petition and ordered that petitioner's name be changed from "Mary Grace Natividad Contreras Militar" to "Mary Grace Natividad Sonora Poe." Although necessary notations were made by OCR-Iloilo on petitioner's foundling certificate reflecting the court decreed adoption,[2] the petitioner's adoptive mother discovered only sometime in the second half of 2005 that the lawyer who handled petitioner's adoption failed to secure from the OCR-

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1 Petition for *Certiorari* in G.R. Nos. 221698-700, pp. 15-16; COMELEC First Division Resolution dated 11 December 2015 in SPA No. 15-002 (DC), SPA No. 15-007 (DC) and SPA No. 15-139 (DC), p. 2.

2 Petition for *Certiorari*, id. at 16-17;

Iloilo a new Certificate of Live Birth indicating petitioner's new name and the name of her adoptive parents.[3] Without delay, petitioner's mother executed an affidavit attesting to the lawyer's omission which she submitted to the OCR-Iloilo. On 4 May 2006, OCR-Iloilo issued a new Certificate of Live Birth in the name of Mary Grace Natividad Sonora Poe.[4]

Having reached the age of eighteen (18) years in 1986, petitioner registered as a voter with the local COMELEC Office in San Juan City. On 13 December 1986, she received her COMELEC Voter's Identification Card for Precinct No. 196 in Greenhills, San Juan, Metro Manila.[5]

On 4 April 1988, petitioner applied for and was issued Philippine Passport No. F927287[6] by the Department of Foreign Affairs (DFA). Subsequently, on 5 April 1993 and 19 May 1998, she renewed her Philippine passport and respectively secured Philippine Passport Nos. L881511 and DD156616.[7]

Initially, the petitioner enrolled and pursued a degree in Development Studies at the University of the Philippines[8] but she opted to continue her studies abroad and left for the United States of America (U.S.) in 1988. Petitioner graduated in 1991 from Boston College in Chestnuts Hill, Massachusetts where she earned her Bachelor of Arts degree in Political Studies.[9]

On 27 July 1991, petitioner married Teodoro Misael Daniel V. Llamanzares (Llamanzares), a citizen of both the Philippines and the U.S., at Sanctuario de San Jose Parish in San Juan City.[10] Desirous of being with her husband who was then based in the U.S., the couple flew back to the U.S. two days after the wedding ceremony or on 29 July 1991.[11]

While in the U.S., the petitioner gave birth to her eldest child Brian Daniel (Brian) on 16 April 1992.[12] Her two daughters Hanna MacKenzie (Hanna) and Jesusa Anika (Anika) were both born in the Philippines on 10

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3 COMELEC First Division Resolution, supra note 1 at 4.
4 Petition for *Certiorari,* supra note 1 at 22.
5 Id. at 17; Comment (on the Petition for *Certiorari* in G.R. No. 221697) filed by respondent COMELEC dated 11 January 2016, p. 6.
6 Petition for *Certiorari,* id.; id. at 7.
7 Id. at 18.
8 Supra note 6.
9 Id.
10 COMELEC First Division Resolution, supra note 1 at 3.
11 Petition for *Certiorari,* supra note 1 at 17.
12 Id. at 18.

July 1998 and 5 June 2004, respectively.[13]

On 18 October 2001, petitioner became a naturalized American citizen.[14] She obtained U.S. Passport No. 017037793 on 19 December 2001.[15]

On 8 April 2004, the petitioner came back to the Philippines together with Hanna to support her father's candidacy for President in the May 2004 elections. It was during this time that she gave birth to her youngest daughter Anika. She returned to the U.S. with her two daughters on 8 July 2004.[16]

After a few months, specifically on 13 December 2004, petitioner rushed back to the Philippines upon learning of her father's deteriorating medical condition.[17] Her father slipped into a coma and eventually expired. The petitioner stayed in the country until 3 February 2005 to take care of her father's funeral arrangements as well as to assist in the settlement of his estate.[18]

According to the petitioner, the untimely demise of her father was a severe blow to her entire family. In her earnest desire to be with her grieving mother, the petitioner and her husband decided to move and reside permanently in the Philippines sometime in the first quarter of 2005.[19] The couple began preparing for their resettlement including notification of their children's schools that they will be transferring to Philippine schools for the next semester;[20] coordination with property movers for the relocation of their household goods, furniture and cars from the U.S. to the Philippines;[21] and inquiry with Philippine authorities as to the proper procedure to be followed in bringing their pet dog into the country.[22] As early as 2004, the petitioner already quit her job in the U.S.[23]

Finally, petitioner came home to the Philippines on 24 May 2005[24] and without delay, secured a Tax Identification Number from the Bureau of

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13 Id.
14 COMELEC First Division Resolution, supra note 10.
15 Id.
16 Supra note 1 at 17-18.
17 COMELEC First Division Resolution, supra note 10.
18 Id.
19 Id.
20 Petition for *Certiorari,* supra note 1 at 20.
21 Id.
22 Supra note 3.
23 Supra note 20.
24 Supra note 3.

Internal Revenue. Her three (3) children immediately followed[25] while her husband was forced to stay in the U.S. to complete pending projects as well as to arrange the sale of their family home there.[26]

The petitioner and her children briefly stayed at her mother's place until she and her husband purchased a condominium unit with a parking slot at One Wilson Place Condominium in San Juan City in the second half of 2005.[27] The corresponding Condominium Certificates of Title covering the unit and parking slot were issued by the Register of Deeds of San Juan City to petitioner and her husband on 20 February 2006.[28] Meanwhile, her children of school age began attending Philippine private schools.

On 14 February 2006, the petitioner made a quick trip to the U.S. to supervise the disposal of some of the family's remaining household belongings.[29] She travelled back to the Philippines on 11 March 2006.[30]

In late March 2006, petitioner's husband officially informed the U.S. Postal Service of the family's change and abandonment of their address in the U.S.[31] The family home was eventually sold on 27 April 2006.[32] Petitioner's husband resigned from his job in the U.S. in April 2006, arrived in the country on 4 May 2006 and started working for a major Philippine company in July 2006.[33]

In early 2006, petitioner and her husband acquired a 509-square meter lot in Corinthian Hills, Quezon City where they built their family home[34] and to this day, is where the couple and their children have been residing.[35] A Transfer Certificate of Title covering said property was issued in the couple's name by the Register of Deeds of Quezon City on 1 June 2006.

On 7 July 2006, petitioner took her Oath of Allegiance to the Republic of the Philippines pursuant to Republic Act (R.A.) No. 9225 or the Citizenship Retention and Re-acquisition Act of 2003.[36] Under the same Act,

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25 Supra note 20.
26 Supra note 3.
27 Petition for *Certiorari,* supra note 4.
28 Id.
29 Id. at 23; COMELEC First Division Resolution, supra note 3.
30 Id.; id.
31 Id.; id.
32 Id.; id.
33 Id. at 23-24; COMELEC First Division Resolution, supra note 1 at 5.
34 Id. at 24; id.
35 Id.
36 Supra note 34.

she filed with the Bureau of Immigration (BI) a sworn petition to reacquire Philippine citizenship together with petitions for derivative citizenship on behalf of her three minor children on 10 July 2006.[37] As can be gathered from its 18 July 2006 Order, the BI acted favorably on petitioner's petitions and declared that she is deemed to have reacquired her Philippine citizenship while her children are considered as citizens of the Philippines.[38] Consequently, the BI issued Identification Certificates (ICs) in petitioner's name and in the names of her three (3) children.[39]

Again, petitioner registered as a voter of *Barangay* Santa Lucia, San Juan City on 31 August 2006.[40] She also secured from the DFA a new Philippine Passport bearing the No. XX4731999.[41] This passport was renewed on 18 March 2014 and she was issued Philippine Passport No. EC0588861 by the DFA.[42]

On 6 October 2010, President Benigno S. Aquino III appointed petitioner as Chairperson of the Movie and Television Review and Classification Board (MTRCB).[43] Before assuming her post, petitioner executed an "Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship" before a notary public in Pasig City on 20 October 2010,[44] in satisfaction of the legal requisites stated in Section 5 of R.A. No. 9225.[45] The following day, 21 October 2010 petitioner submitted the said affidavit to the BI[46] and took her oath of office as Chairperson of the MTRCB.[47] From then on, petitioner stopped using her American passport.[48]

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37 Petition for *Certiorari,* supra note 1 at 25; COMELEC First Division Resolution, supra note 1 at 5.
38 Id. at 25-26; id.
39 Id. at 26; id.
40 Id.; id.
41 Id.; id.
42 Id. at 32; id. at 6.
43 Supra note 39.
44 Petition for *Certiorari,* supra note 1 at 26-27; COMELEC First Division Resolution, supra note 1 at 5.
45 Section 5, R.A. No. 9225 states:
SEC. 5. *Civil and Political Rights and Liabilities.* – Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

x x x x

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

x x x x
46 Petition for *Certiorari*, supra note 1 at 27.
47 Id. at 29.
48 Supra note 46; supra note 1 at 6.

On 12 July 2011, the petitioner executed before the Vice Consul of the U.S. Embassy in Manila an "Oath/Affirmation of Renunciation of Nationality of the United States."[49] On that day, she accomplished a sworn questionnaire before the U.S. Vice Consul wherein she stated that she had taken her oath as MTRCB Chairperson on 21 October 2010 with the intent, among others, of relinquishing her American citizenship.[50] In the same questionnaire, the petitioner stated that she had resided outside of the U.S., specifically in the Philippines, from 3 September 1968 to 29 July 1991 and from May 2005 to present.[51]

On 9 December 2011, the U.S. Vice Consul issued to petitioner a "Certificate of Loss of Nationality of the United States" effective 21 October 2010.[52]

On 2 October 2012, the petitioner filed with the COMELEC her Certificate of Candidacy (COC) for Senator for the 2013 Elections wherein she answered "6 years and 6 months" to the question "Period of residence in the Philippines before May 13, 2013."[53] Petitioner obtained the highest number of votes and was proclaimed Senator on 16 May 2013.[54]

On 19 December 2013, petitioner obtained Philippine Diplomatic Passport No. DE0004530.[55]

On 15 October 2015, petitioner filed her COC for the Presidency for the May 2016 Elections.[56] In her COC, the petitioner declared that she is a natural-born citizen and that her residence in the Philippines up to the day before 9 May 2016 would be ten (10) years and eleven (11) months counted from 24 May 2005.[57] The petitioner attached to her COC an "Affidavit Affirming Renunciation of U.S.A. Citizenship" subscribed and sworn to before a notary public in Quezon City on 14 October 2015.[58]

Petitioner's filing of her COC for President in the upcoming elections triggered the filing of several COMELEC cases against her which were the subject of these consolidated cases.

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49 Petition for *Certiorari*, supra note 1 at 30; id.
50 Id.
51 Supra note 48.
52 Petition for *Certiorari,* supra note 1 at 31; COMELEC First Division Resolution, supra note 1 at 6.
53 Comment, supra note 5 at 9.
54 Petition for *Certiorari*, supra note 1 at 31.
55 Id. at 32; Comment, supra note 53 at 10.
56 Id.; COMELEC First Division Resolution, supra note 1 at 6.
57 Id.; id. at 7.
58 Id.; id.

Origin of Petition for *Certiorari* in G.R. No. 221697

A day after petitioner filed her COC for President, Estrella Elamparo (Elamparo) filed a petition to deny due course or cancel said COC which was docketed as SPA No. 15-001 (DC) and raffled to the COMELEC Second Division.[59] She is convinced that the COMELEC has jurisdiction over her petition.[60] Essentially, Elamparo's contention is that petitioner committed material misrepresentation when she stated in her COC that she is a natural-born Filipino citizen and that she is a resident of the Philippines for at least ten (10) years and eleven (11) months up to the day before the 9 May 2016 Elections.[61]

On the issue of citizenship, Elamparo argued that petitioner cannot be considered as a natural-born Filipino on account of the fact that she was a foundling.[62] Elamparo claimed that international law does not confer natural-born status and Filipino citizenship on foundlings.[63] Following this line of reasoning, petitioner is not qualified to apply for reacquisition of Filipino citizenship under R.A. No. 9225 for she is not a natural-born Filipino citizen to begin with.[64] Even assuming *arguendo* that petitioner was a natural-born Filipino, she is deemed to have lost that status when she became a naturalized American citizen.[65] According to Elamparo, natural-born citizenship must be continuous from birth.[66]

On the matter of petitioner's residency, Elamparo pointed out that petitioner was bound by the sworn declaration she made in her 2012 COC for Senator wherein she indicated that she had resided in the country for only six (6) years and six (6) months as of May 2013 Elections. Elamparo likewise insisted that assuming *arguendo* that petitioner is qualified to regain her natural-born status under R.A. No. 9225, she still fell short of the ten-year residency requirement of the Constitution as her residence could only be counted at the earliest from July 2006, when she reacquired Philippine citizenship under the said Act. Also on the assumption that petitioner is qualified to reacquire lost Philippine Citizenship, Elamparo is of the belief that she failed to reestablish her domicile in the Philippines.[67]

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59 Comment (on the Petition in G.R. No. 221697) filed by respondent Elamparo, dated January 6, 2016, p. 7.
60 COMELEC Second Division Resolution dated December 1, 2015 in SPA No. 15-001 (DC), p. 7.
61 Id. at 7-8.
62 Supra note 60.
63 Id.
64 Id. at 8.
65 Id.
66 Petition for *Certiorari* in G.R. No. 221697, p. 7.
67 Supra note 64.

Petitioner seasonably filed her Answer wherein she countered that:

(1) the COMELEC did not have jurisdiction over Elamparo's petition as it was actually a petition for *quo warranto* which could only be filed if Grace Poe wins in the Presidential elections, and that the Department of Justice (DOJ) has primary jurisdiction to revoke the BI's July 18, 2006 Order;

(2) the petition failed to state a cause of action because it did not contain allegations which, if hypothetically admitted, would make false the statement in her COC that she is a natural-born Filipino citizen nor was there any allegation that there was a willful or deliberate intent to misrepresent on her part;

(3) she did not make any material misrepresentation in the COC regarding her citizenship and residency qualifications for:

a. the 1934 Constitutional Convention deliberations show that foundlings were considered citizens;

b. foundlings are presumed under international law to have been born of citizens of the place where they are found;

c. she reacquired her natural-born Philippine citizenship under the provisions of R.A. No. 9225;

d. she executed a sworn renunciation of her American citizenship prior to the filing of her COC for President in the May 9, 2016 Elections and that the same is in full force and effect and has not been withdrawn or recanted;

e. the burden was on Elamparo in proving that she did not possess natural-born status;

f. residence is a matter of evidence and that she reestablished her domicile in the Philippines as early as May 24, 2005;

g. she could reestablish residence even before she reacquired natural-born citizenship under R.A. No. 9225;

h. statement regarding the period of residence in her 2012 COC for Senator was an honest mistake, not binding and should give way to evidence on her true date of reacquisition of domicile;

i. Elamparo's petition is merely an action to usurp the sovereign right of the Filipino people to decide a purely political question, that is, should she serve as the country's next leader.[68]

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[68] Petition for *Certiorari*, supra note 65 at 8; COMELEC Second Division Resolution, supra note 60

After the parties submitted their respective Memoranda, the petition was deemed submitted for resolution.

On 1 December 2015, the COMELEC Second Division promulgated a Resolution finding that petitioner's COC, filed for the purpose of running for the President of the Republic of the Philippines in the 9 May 2016 National and Local Elections, contained material representations which are false. The *fallo* of the aforesaid Resolution reads:

> **WHEREFORE**, in view of all the foregoing considerations, the instant Petition to Deny Due Course to or Cancel Certificate of Candidacy is hereby **GRANTED**. Accordingly, the Certificate of Candidacy for President of the Republic of the Philippines in the May 9, 2016 National and Local Elections filed by respondent Mary Grace Natividad Sonora Poe Llamanzares is hereby **CANCELLED**.[69]

Motion for Reconsideration of the 1 December 2015 Resolution was filed by petitioner which the COMELEC *En Banc* resolved in its 23 December 2015 Resolution by denying the same.[70]

Origin of Petition for *Certiorari* in G.R. Nos. 221698-700

This case stemmed from three (3) separate petitions filed by Francisco S. Tatad (Tatad), Antonio P. Contreras (Contreras) and Amado D. Valdez (Valdez) against petitioner before the COMELEC which were consolidated and raffled to its First Division.

In his petition to disqualify petitioner under Rule 25 of the COMELEC Rules of Procedure,[71] docketed as SPA No. 15-002 (DC), Tatad alleged that petitioner lacks the requisite residency and citizenship to qualify her for the Presidency.[72]

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at 8-11.

69 COMELEC Second Division Resolution, supra note 60 at 34.

70 Comment, supra note 59 at 10.

71 Section 1 of Rule 25 of the COMELEC Rules of Procedure, as amended, states:

> Rule 25 – Disqualification of Candidates
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> Section 1. *Grounds*. - 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 to be suffering from any disqualification provided by law or the Constitution.
>
> A Petition to Disqualify a Candidate invoking grounds for a Petition to Deny to or Cancel a Certificate of Candidacy or Petition to Declare a Candidate as a Nuisance Candidate, or a combination thereof, shall be summarily dismissed.

72 Petition to Disqualify dated 19 October 2015 filed by Tatad in SPA No. 15-002 (DC), p. 9.

Tatad theorized that since the Philippines adheres to the principle of *jus sanguinis*, persons of unknown parentage, particularly foundlings, cannot be considered natural-born Filipino citizens since blood relationship is determinative of natural-born status.[73] Tatad invoked the rule of statutory construction that what is not included is excluded. He averred that the fact that foundlings were not expressly included in the categories of citizens in the 1935 Constitution is indicative of the framers' intent to exclude them.[74] Therefore, the burden lies on petitioner to prove that she is a natural-born citizen.[75]

Neither can petitioner seek refuge under international conventions or treaties to support her claim that foundlings have a nationality.[76] According to Tatad, international conventions and treaties are not self-executory and that local legislations are necessary in order to give effect to treaty obligations assumed by the Philippines.[77] He also stressed that there is no standard state practice that automatically confers natural-born status to foundlings.[78]

Similar to Elamparo's argument, Tatad claimed that petitioner cannot avail of the option to reacquire Philippine citizenship under R.A. No. 9225 because it only applies to former natural-born citizens and petitioner was not as she was a foundling.[79]

Referring to petitioner's COC for Senator, Tatad concluded that she did not comply with the ten (10) year residency requirement.[80] Tatad opined that petitioner acquired her domicile in Quezon City only from the time she renounced her American citizenship which was sometime in 2010 or 2011.[81] Additionally, Tatad questioned petitioner's lack of intention to abandon her U.S. domicile as evinced by the fact that her husband stayed thereat and her frequent trips to the U.S.[82]

In support of his petition to deny due course or cancel the COC of petitioner, docketed as SPA No. 15-139 (DC), Valdez alleged that her repatriation under R.A. No. 9225 did not bestow upon her the status of a

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73 Id., at 9 and 14.
74 Id. at 10.
75 Id. at 12.
76 Id. at 11.
77 COMELEC First Division Resolution, supra note 1 at 8.
78 Id.
79 Petition to Disqualify, supra note 72 at 11.
80 Id. at 21.
81 Id.
82 Id.

natural-born citizen.[83] He advanced the view that former natural-born citizens who are repatriated under the said Act reacquires only their Philippine citizenship and will not revert to their original status as natural-born citizens.[84]

He further argued that petitioner's own admission in her COC for Senator that she had only been a resident of the Philippines for at least six (6) years and six (6) months prior to the 13 May 2013 Elections operates against her. Valdez rejected petitioner's claim that she could have validly reestablished her domicile in the Philippines prior to her reacquisition of Philippine citizenship. In effect, his position was that petitioner did not meet the ten (10) year residency requirement for President.

Unlike the previous COMELEC cases filed against petitioner, Contreras' petition,[85] docketed as SPA No. 15-007 (DC), limited the attack to the residency issue. He claimed that petitioner's 2015 COC for President should be cancelled on the ground that she did not possess the ten-year period of residency required for said candidacy and that she made false entry in her COC when she stated that she is a legal resident of the Philippines for ten (10) years and eleven (11) months by 9 May 2016.[86] Contreras contended that the reckoning period for computing petitioner's residency in the Philippines should be from 18 July 2006, the date when her petition to reacquire Philippine citizenship was approved by the BI.[87] He asserted that petitioner's physical presence in the country before 18 July 2006 could not be valid evidence of reacquisition of her Philippine domicile since she was then living here as an American citizen and as such, she was governed by the Philippine immigration laws.[88]

In her defense, petitioner raised the following arguments:

First, Tatad's petition should be dismissed outright for failure to state

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83 Supra note 1 at 8.

84 Id.

85 Contreras' petition is a petition for cancellation of Grace Poe's COC under Section 78 of the Omnibus Election Code which states that:

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.

86 Petition for Cancellation of Grace Poe's COC dated 17 October 2015 filed by Contreras in SPA No. 15-007 (DC), pp. 2-4.

87 Id. at 3; Petition for *Certiorari*, supra note 1 at 13.

88 Id. at 3-4.

a cause of action. His petition did not invoke grounds proper for a disqualification case as enumerated under Sections 12 and 68 of the Omnibus Election Code.[89] Instead, Tatad completely relied on the alleged lack of residency and natural-born status of petitioner which are not among the recognized grounds for the disqualification of a candidate to an elective office.[90]

Second, the petitions filed against her are basically petitions for *quo warranto* as they focus on establishing her ineligibility for the Presidency.[91] A petition for *quo warranto* falls within the exclusive jurisdiction of the Presidential Electoral Tribunal (PET) and not the COMELEC.[92]

Third, the burden to prove that she is not a natural-born Filipino citizen is on the respondents.[93] Otherwise stated, she has a presumption in her favor that she is a natural-born citizen of this country.

Fourth, customary international law dictates that foundlings are entitled to a nationality and are presumed to be citizens of the country where they are found.[94] Consequently, the petitioner is considered as a natural-born citizen of the Philippines.[95]

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89 Sections 12 and 68 of the Omnibus Election Code provide:

> Sec. 12. *Disqualifications.* – Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.
>
> This disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.
>
> Sec. 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.

90 COMELEC First Division Resolution, supra note 1 at 12.

91 Id. at 10.

92 Id.

93 Id. at 9.

94 Id.

95 Id.

Fifth, she claimed that as a natural-born citizen, she has every right to be repatriated under R.A. No. 9225 or the right to reacquire her natural-born status.[96] Moreover, the official acts of the Philippine Government enjoy the presumption of regularity, to wit: the issuance of the 18 July 2006 Order of the BI declaring her as natural-born citizen, her appointment as MTRCB Chair and the issuance of the decree of adoption of San Juan RTC.[97] She believed that all these acts reinforced her position that she is a natural-born citizen of the Philippines.[98]

Sixth, she maintained that as early as the first quarter of 2005, she started reestablishing her domicile of choice in the Philippines as demonstrated by her children's resettlement and schooling in the country, purchase of a condominium unit in San Juan City and the construction of their family home in Corinthian Hills.[99]

Seventh, she insisted that she could legally reestablish her domicile of choice in the Philippines even before she renounced her American citizenship as long as the three determinants for a change of domicile are complied with.[100] She reasoned out that there was no requirement that renunciation of foreign citizenship is a prerequisite for the acquisition of a new domicile of choice.[101]

Eighth, she reiterated that the period appearing in the residency portion of her COC for Senator was a mistake made in good faith.[102]

In a Resolution[103] promulgated on 11 December 2015, the COMELEC First Division ruled that petitioner is not a natural-born citizen, that she failed to complete the ten (10) year residency requirement, and that she committed material misrepresentation in her COC when she declared therein that she has been a resident of the Philippines for a period of ten (10) years and eleven (11) months as of the day of the elections on 9 May 2016. The COMELEC First Division concluded that she is not qualified for the elective position of President of the Republic of the Philippines. The dispositive portion of said Resolution reads:

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96 Id.
97 Id.
98 Id.
99 Id. at 9-10.
100 Id. at 10.
101 Id.
102 Id.
103 The 11 December 2015 Resolution of the COMELEC First Division was concurred in by Commissioners Louie Tito F. Guia and Ma. Rowena Amelia V. Guanzon. Presiding Commissioner Christian Robert S. Lim issued a Separate Dissenting Opinion.

> **WHEREFORE**, premises considered, the Commission **RESOLVED**, as it hereby **RESOLVES**, to **GRANT** the Petitions and cancel the Certificate of Candidacy of **MARY GRACE NATIVIDAD SONORA POE-LLAMANZARES** for the elective position of President of the Republic of the Philippines in connection with the 9 May 2016 Synchronized Local and National Elections.

Petitioner filed a motion for reconsideration seeking a reversal of the COMELEC First Division's Resolution. On 23 December 2015, the COMELEC *En Banc* issued a Resolution denying petitioner's motion for reconsideration.

Alarmed by the adverse rulings of the COMELEC, petitioner instituted the present petitions for *certiorari* with urgent prayer for the issuance of an *ex parte* temporary restraining order/*status quo ante* order and/or writ of preliminary injunction. On 28 December 2015, temporary restraining orders were issued by the Court enjoining the COMELEC and its representatives from implementing the assailed COMELEC Resolutions until further orders from the Court. The Court also ordered the consolidation of the two petitions filed by petitioner in its Resolution of 12 January 2016. Thereafter, oral arguments were held in these cases.

The Court GRANTS the petition of Mary Grace Natividad S. Poe-Llamanzares and to ANNUL and SET ASIDE the:

1. Resolution dated 1 December 2015 rendered through its Second Division, in SPA No. 15-001 (DC), entitled *Estrella C. Elamparo, petitioner, vs. Mary Grace Natividad Sonora Poe-Llamanzares*.

2. Resolution dated 11 December 2015, rendered through its First Division, in the consolidated cases SPA No. 15-002 (DC) entitled *Francisco S. Tatad, petitioner, vs. Mary Grace Natividad Sonora Poe-Llamanzares, respondent*; SPA No. 15-007 (DC) entitled *Antonio P. Contreras, petitioner, vs. Mary Grace Natividad Sonora Poe-Llamanzares, respondent*; and SPA No. 15-139 (DC) entitled *Amado D. Valdez, petitioner, v. Mary Grace Natividad Sonora Poe-Llamanzares, respondent*.

3. Resolution dated 23 December 2015 of the Commission En Banc, upholding the 1 December 2015 Resolution of the Second Division.

4. Resolution dated 23 December 2015 of the Commission En Banc, upholding the 11 December 2015 Resolution of the First Division.

The procedure and the conclusions from which the questioned Resolutions emanated are tainted with grave abuse of discretion amounting to lack of jurisdiction. The petitioner is a QUALIFIED CANDIDATE for President in the 9 May 2016 National Elections.

The issue before the COMELEC is whether or not the COC of petitioner should be denied due course or cancelled "on the exclusive ground" that she made in the certificate a false material representation. The exclusivity of the ground should hedge in the discretion of the COMELEC and restrain it from going into the issue of the qualifications of the candidate for the position, if, as in this case, such issue is yet undecided or undetermined by the proper authority. The COMELEC cannot itself, in the same cancellation case, decide the qualification or lack thereof of the candidate.

We rely, first of all, on the Constitution of our Republic, particularly its provisions in Article IX, C, Section 2:

> Section 2. *The Commission on Elections shall exercise the following powers and functions*:
>
> (1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.
>
> (2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.
>
> Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.
>
> (3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.
>
> (4) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest,

peaceful, and credible elections.

(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.

(6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

(7) Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.

(8) Recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision.

(9) Submit to the President and the Congress a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.

Not any one of the enumerated powers approximate the exactitude of the provisions of Article VI, Section 17 of the same basic law stating that:

> The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

or of the last paragraph of Article VII, Section 4 which provides that:

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

The tribunals which have jurisdiction over the question of the qualifications of the President, the Vice-President, Senators and the Members of the House of Representatives was made clear by the Constitution. There is no such provision for candidates for these positions.

Can the COMELEC be such judge?

The opinion of Justice Vicente V. Mendoza in *Romualdez-Marcos v. Commission on Elections*,[104] which was affirmatively cited in the *En Banc* decision in *Fermin v. COMELEC*[105] is our guide. The citation in *Fermin* reads:

> Apparently realizing the lack of an authorized proceeding for declaring the ineligibility of candidates, the COMELEC amended its rules on February 15, 1993 so as to provide in Rule 25 §1, the following:
>
> > *Grounds for disqualification.* - Any candidate who does not possess all the qualifications of a candidate as provided for by the Constitution or by existing law or who commits any act declared by law to be grounds for disqualification may be disqualified from continuing as a candidate.
>
> The lack of provision for declaring the ineligibility of candidates, however, cannot be supplied by a mere rule. Such an act is equivalent to the creation of a cause of action which is a substantive matter which the COMELEC, in the exercise of its rule-making power under Art. IX, A, §6 of the Constitution, cannot do it. It is noteworthy that the Constitution withholds from the COMELEC even the power to decide cases involving the right to vote, which essentially involves an inquiry into *qualifications* based on *age*, *residence* and *citizenship* of voters. [Art. IX, C, §2(3)]
>
> The assimilation in Rule 25 of the COMELEC rules of grounds for ineligibility into grounds for disqualification is contrary to the evident intention of the law. For not only in their grounds but also in their consequences are proceedings for "disqualification" different from those for a declaration of "ineligibility." "Disqualification" proceedings, as already stated, are based on grounds specified in §12 and §68 of the

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104 318 Phil. 329 (1995).
105 595 Phil. 449 (2008).

> Omnibus Election Code and in §40 of the Local Government Code and are for the purpose of barring an individual from *becoming a candidate or from continuing as a candidate* for public office. In a word, their purpose is to *eliminate a candidate from the race* either from the start or during its progress. "Ineligibility," on the other hand, refers to the lack of the qualifications prescribed in the Constitution or the statutes for *holding public office* and the purpose of the proceedings for declaration of ineligibility is to *remove the incumbent from office.*
>
> Consequently, that an individual possesses the qualifications for a public office does not imply that he is not disqualified from becoming a candidate or continuing as a candidate for a public office and vice versa. We have this sort of dichotomy in our Naturalization Law. (C.A. No. 473) That an alien has the qualifications prescribed in §2 of the Law does not imply that he does not suffer from any of [the] disqualifications provided in §4.

Before we get derailed by the distinction as to grounds and the consequences of the respective proceedings, the importance of the opinion is in its statement that "the lack of provision for declaring the ineligibility of candidates, however, cannot be supplied by a mere rule". Justice Mendoza lectured in *Romualdez-Marcos* that:

> Three reasons may be cited to explain the absence of an authorized proceeding for determining *before election* the qualifications of a candidate.
>
> First is the fact that unless a candidate wins and is proclaimed elected, there is no necessity for determining his eligibility for the office. In contrast, whether an individual should be disqualified as a candidate for acts constituting election offenses (*e.g.*, vote buying, over spending, commission of prohibited acts) is a prejudicial question which should be determined lest he wins because of the very acts for which his disqualification is being sought. That is why it is provided that if the grounds for disqualification are established, a candidate will not be voted for; if he has been voted for, the votes in his favor will not be counted; and if for some reason he has been voted for and he has won, either he will not be proclaimed or his proclamation will be set aside.
>
> Second is the fact that the determination of a candidates' eligibility, *e.g.*, his citizenship or, as in this case, his domicile, may take a long time to make, extending beyond the beginning of the term of the office. This is amply demonstrated in the companion case (G.R. No. 120265, *Agapito A. Aquino v. COMELEC*) *where the determination of Aquino's residence was still pending in the COMELEC even after the elections of May 8, 1995. This is contrary to the summary character 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.
>
> 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 of the President and Vice President, as the case may be.[106]

To be sure, the authoritativeness of the *Romualdez* pronouncements as reiterated in *Fermin*, led to the amendment through COMELEC Resolution No. 9523, on 25 September 2012 of its Rule 25. This, the 15 February1993 version of Rule 25, which states that:

> *Grounds for disqualification.* – Any candidate who does not possess all the qualifications of a candidate as provided for by the Constitution or by existing law or who commits any act declared by law to be grounds for disqualification may be disqualified from continuing as a candidate.[107]

was in the 2012 rendition, drastically changed to:

> *Grounds.* – Any candidate who, in 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 to be suffering from any disqualification provided by law or the Constitution.
>
> A Petition to Disqualify a Candidate invoking grounds for a Petition to Deny to or Cancel a Certificate of Candidacy or Petition to Declare a Candidate as a Nuisance Candidate, or a combination thereof, shall be summarily dismissed.

Clearly, the amendment done in 2012 is an acceptance of the reality of absence of an authorized proceeding for determining *before election* the qualifications of candidate. Such that, as presently required, to disqualify a candidate there must be a declaration by a final judgment of a competent court that the candidate sought to be disqualified "is guilty of or found by the Commission to be suffering from any disqualification provided by law or the Constitution."

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106 *Romualdez-Marcos v. COMELEC*, supra note 104 at 396-397.

107 Id. at 397-398; *Fermin v. COMELEC*, supra note 105 at 471-472.

Insofar as the qualification of a candidate is concerned, Rule 25 and Rule 23 are flipsides of one to the other. Both *do not allow*, are not authorizations, are not vestment of jurisdiction, for the COMELEC to determine the qualification of a candidate. The facts of qualification must beforehand be established in a prior proceeding before an authority properly vested with jurisdiction. The prior determination of qualification may be by statute, by executive order or by a judgment of a competent court or tribunal.

If a candidate cannot be disqualified without a prior finding that he or she is suffering from a disqualification "provided by law or the Constitution," neither can the certificate of candidacy be cancelled or denied due course on grounds of false representations regarding his or her qualifications, without a prior authoritative finding that he or she is not qualified, such prior authority being the necessary measure by which the falsity of the representation can be found. The only exception that can be conceded are self-evident facts of unquestioned or unquestionable veracity and judicial confessions. Such are, anyway, bases equivalent to prior decisions against which the falsity of representation can be determined.

The need for a predicate finding or final pronouncement in a proceeding under Rule 23 that deals with, as in this case, alleged false representations regarding the candidate's citizenship and residence, forced the COMELEC to rule essentially that since foundlings[108] are not mentioned in the enumeration of citizens under the 1935 Constitution,[109] they then cannot be citizens. As the COMELEC stated in oral arguments, when petitioner admitted that she is a foundling, she said it all. This borders on bigotry. Oddly, in an effort at tolerance, the COMELEC, after saying that it cannot rule that herein petitioner possesses blood relationship with a Filipino citizen when "it is certain that such relationship is indemonstrable,"

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108 In A.M. No. 02-6-02-SC, Resolution Approving The Proposed Rule on Adoption (Domestic and Inter-Country), effective 22 August 2002, "foundling" is defined as "a deserted or abandoned infant or child whose parents, guardian or relatives are unknown; or a child committed to an orphanage or charitable or similar institution with unknown facts of birth and parentage and registered in the Civil Register as a "foundling."

109 Article IV-*Citizenship*.

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.

Section 2. Philippine citizenship may be lost or reacquired in the manner provided by law.

proceeded to say that "she now has the burden to present evidence to prove her natural filiation with a Filipino parent."

The fact is that petitioner's blood relationship with a Filipino citizen is DEMONSTRABLE.

At the outset, it must be noted that presumptions regarding paternity is neither unknown nor unaccepted in Philippine Law. The Family Code of the Philippines has a whole chapter on Paternity and Filiation.[110] That said, there is more than sufficient evidence that petitioner has Filipino parents and is therefore a natural-born Filipino. Parenthetically, the burden of proof was on private respondents to show that petitioner is not a Filipino citizen. The private respondents should have shown that both of petitioner's parents were aliens. Her admission that she is a foundling did not shift the burden to her because such status did not exclude the possibility that her parents were Filipinos, especially as in this case where there is a high probability, if not certainty, that her parents are Filipinos.

The factual issue is not who the parents of petitioner are, as their identities are unknown, but whether such parents are Filipinos. Under Section 4, Rule 128:

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

The Solicitor General offered official statistics from the Philippine Statistics Authority (PSA)[111] that from 1965 to 1975, the total number of foreigners born in the Philippines was 15,986 while the total number of Filipinos born in the country was 10,558,278. The statistical probability that any child born in the Philippines in that decade is natural-born Filipino was **99.83%**. For her part, petitioner presented census statistics for Iloilo Province for 1960 and 1970, also from the PSA. In 1960, there were 962,532 Filipinos and 4,734 foreigners in the province; **99.62%** of the population were Filipinos. In 1970, the figures were 1,162,669 Filipinos and 5,304 foreigners, or **99.55%**. Also presented were figures for the child producing ages (15-49). In 1960, there were 230,528 female Filipinos as against 730

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[110] Article 163 to 182, Title VI of Executive Order No. 209, otherwise known as The Family Code of the Philippines, which took effect on 4 August 1988.

[111] Statistics from the PSA or its predecessor agencies are admissible evidence. See *Herrera v. COMELEC*, 376 Phil. 443 (1999) and *Bagabuyo v. COMELEC*, 593 Phil. 678 (2008). In the latter case, the Court even took judicial notice of the figures.

female foreigners or **99.68%**. In the same year, there were 210,349 Filipino males and 886 male aliens, or **99.58%**. In 1970, there were 270,299 Filipino females versus 1,190 female aliens, or **99.56%**. That same year, there were 245,740 Filipino males as against only 1,165 male aliens or **99.53%**. COMELEC did not dispute these figures. Notably, Commissioner Arthur Lim admitted, during the oral arguments, that at the time petitioner was found in 1968, the majority of the population in Iloilo was Filipino.[112]

Other circumstantial evidence of the nationality of petitioner's parents are the fact that she was abandoned as an infant in a Roman Catholic Church in Iloilo City. She also has typical Filipino features: height, flat nasal bridge, straight black hair, almond shaped eyes and an oval face.

There is a disputable presumption that things have happened according to the ordinary course of nature and the ordinary habits of life.[113] All of the foregoing evidence, that a person with typical Filipino features is abandoned in Catholic Church in a municipality where the population of the Philippines is overwhelmingly Filipinos such that there would be more than a 99% chance that a child born in the province would be a Filipino, would indicate more than ample probability if not statistical certainty, that petitioner's parents are Filipinos. That probability and the evidence on which it is based are admissible under Rule 128, Section 4 of the Revised Rules on Evidence.

To assume otherwise is to accept the absurd, if not the virtually impossible, as the norm. In the words of the Solicitor General:

> Second. It is contrary to common sense because foreigners do not come to the Philippines so they can get pregnant and leave their newborn babies behind. We do not face a situation where the probability is such that every foundling would have a 50% chance of being a Filipino and a 50% chance of being a foreigner. We need to frame our questions properly. What are the chances that the parents of anyone born in the Philippines would be foreigners? Almost zero. What are the chances that the parents of anyone born in the Philippines would be Filipinos? 99.9%.
>
> According to the Philippine Statistics Authority, from 2010 to 2014, on a yearly average, there were 1,766,046 children born in the Philippines to Filipino parents, as opposed to 1,301 children in the Philippines of foreign parents. Thus, for that sample period, the ratio of non-Filipino children to natural born Filipino children is 1:1357. This means that the statistical probability that any child born in the Philippines would be a natural born Filipino is 99.93%.

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112 Transcipt of Stenographic Notes, 9 February 2016, p. 40.

113 Section 3 (y), Rule 131.

> From 1965 to 1975, the total number of foreigners born in the Philippines is 15,986 while the total number of Filipinos born in the Philippines is 15,558,278. For this period, the ratio of non-Filipino children is 1:661. This means that the statistical probability that any child born in the Philippines on that decade would be a natural born Filipino is 99.83%.
>
> We can invite statisticians and social anthropologists to crunch the numbers for us, but I am confident that the statistical probability that a child born in the Philippines would be a natural born Filipino will not be affected by whether or not the parents are known. If at all, the likelihood that a foundling would have a Filipino parent might even be higher than 99.9%. Filipinos abandon their children out of poverty or perhaps, shame. We do not imagine foreigners abandoning their children here in the Philippines thinking those infants would have better economic opportunities or believing that this country is a tropical paradise suitable for raising abandoned children. I certainly doubt whether a foreign couple has ever considered their child excess baggage that is best left behind.
>
> To deny full Filipino citizenship to all foundlings and render them stateless just because there may be a theoretical chance that one among the thousands of these foundlings might be the child of not just one, but two, foreigners is downright discriminatory, irrational, and unjust. It just doesn't make any sense. Given the statistical certainty – 99.9% - that any child born in the Philippines would be a natural born citizen, a decision denying foundlings such status is effectively a denial of their birthright. There is no reason why this Honorable Court should use an improbable hypothetical to sacrifice the fundamental political rights of an entire class of human beings. Your Honor, constitutional interpretation and the use of common sense are not separate disciplines.

As a matter of law, foundlings are as a class, natural-born citizens. While the 1935 Constitution's enumeration is silent as to foundlings, there is no restrictive language which would definitely exclude foundlings either. Because of silence and ambiguity in the enumeration with respect to foundlings, there is a need to examine the intent of the framers. In *Nitafan v. Commissioner of Internal Revenue*,[114] this Court held that:

> The ascertainment of that intent is but in keeping with the fundamental principle of constitutional construction that the intent of the framers of the organic law and of the people adopting it should be given effect. The primary task in constitutional construction is to ascertain and thereafter assure the realization of the purpose of the framers and of the people in the adoption of the Constitution. It may also be safely assumed that the people in ratifying the Constitution were guided mainly by the explanation offered by the framers.[115]

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114 236 Phil. 307 (1987).

115 Id. at 314-315.

As pointed out by petitioner as well as the Solicitor General, the deliberations of the 1934 Constitutional Convention show that the framers intended foundlings to be covered by the enumeration. The following exchange is recorded:

Sr. Rafols: For an amendment. I propose that after subsection 2, the following is inserted: "The natural children of a foreign father and a Filipino mother not recognized by the father.

x x x x

President: [We] would like to request a clarification from the proponent of the amendment. The gentleman refers to natural children or to any kind of illegitimate children?

Sr. Rafols: To all kinds of illegitimate children. It also includes natural *children of unknown parentage*, natural or illegitimate children of unknown parents.

Sr. Montinola: For clarification. The gentleman said "of unknown parents." Current codes consider them Filipino, that is, I refer to the Spanish Code wherein all children of unknown parentage born in Spanish territory are considered Spaniards, because the presumption is that a child of unknown parentage is the son of a Spaniard. This may be applied in the Philippines in that a child of unknown parentage born in the Philippines is deemed to be Filipino, and there is no need. . .

Sr. Rafols: There is a need, because we are relating the conditions that are [required] to be Filipino.

Sr. Montinola: But that is the interpretation of the law, therefore, there is no [more] need for amendment.

Sr. Rafols: The amendment should read thus: "Natural or illegitimate of a foreign father and a Filipino mother recognized by one, or the children of unknown parentage."

Sr. Briones: The amendment [should] mean children born in the Philippines of unknown parentage.

Sr. Rafols: The son of a Filipina to a Foreigner, although this [person] does not recognize the child, is not unknown.

President: Does the gentleman accept the amendment or not?

Sr. Rafols: I do not accept the amendment because the amendment would exclude the children of a Filipina with a

> foreigner who does not recognize the child. Their parentage is not unknown and I think those of overseas Filipino mother and father [whom the latter] does not recognize, should also be considered as Filipinos.
>
> President: The question in order is the amendment to the amendment from the Gentleman from Cebu, Mr. Briones.
>
> Sr. Busion: Mr. President, don't you think it would be better to leave this matter in the hands of the Legislature?
>
> Sr. Roxas: Mr. President, my humble opinion is that these cases are *few and far in between, that the constitution need [not] refer to them.* By international law *the principle that children or people born in a country of unknown parents are citizens in this nation is recognized, and it is not necessary to include a provision on the subject exhaustively.*[116]

Though the Rafols amendment was not carried out, it was not because there was any objection to the notion that persons of "unknown parentage" are not citizens but only because their number was not enough to merit specific mention. Such was the account,[117] cited by petitioner, of delegate and constitution law author Jose Aruego who said:

> During the debates on this provision, Delegate Rafols presented an amendment to include as Filipino citizens the illegitimate children with a foreign father of a mother who was a citizen of the Philippines, and also foundlings; but this amendment was defeated primarily because the Convention believed that the cases, being too few to warrant the inclusion of a provision in the Constitution to apply to them, should be governed by statutory legislation. Moreover, it was believed that the rules of international law were already clear to the effect that illegitimate children followed the citizenship of the mother, and that foundlings followed the nationality of the place where they were found, thereby making unnecessary the inclusion in the Constitution of the proposed amendment.

This explanation was likewise the position of the Solicitor General during the 16 February 2016 Oral Arguments:

> We all know that the Rafols proposal was rejected. But note that what was declined was the proposal for a textual and explicit recognition of foundlings as Filipinos. And so, the way to explain the constitutional

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116 English translation of the Spanish original presented in the petitioner's pleadings before the COMELEC and this Court. The COMELEC and private respondents have not disputed the accuracy and correctness of the translation.

117 1 Jose M. Aruego, The Framing of the Philippine Constitution 209 (1949).

> silence is by saying that it was the view of Montinola and Roxas which prevailed that there is no more need to expressly declare foundlings as Filipinos.
>
> Obviously, it doesn't matter whether Montinola's or Roxas' views were legally correct. Framers of a constitution can constitutionalize rules based on assumptions that are imperfect or even wrong. They can even overturn existing rules. This is basic. What matters here is that Montinola and Roxas were able to convince their colleagues in the convention that there is no more need to expressly declare foundlings as Filipinos because they are already impliedly so recognized.
>
> In other words, the constitutional silence is fully explained in terms of linguistic efficiency and the avoidance of redundancy. The policy is clear: it is to recognize foundlings, as a class, as Filipinos under Art. IV, Section 1(3) of the 1935 Constitution. This inclusive policy is carried over into the 1973 and 1987 Constitution. It is appropriate to invoke a famous scholar as he was paraphrased by Chief Justice Fernando: the constitution is not silently silent, it is silently vocal.[118]

The Solicitor General makes the further point that the framers "worked to create a just and humane society," that "they were reasonable patriots and that it would be unfair to impute upon them a discriminatory intent against foundlings." He exhorts that, given the grave implications of the argument that foundlings are not natural-born Filipinos, the Court must search the records of the 1935, 1973 and 1987 Constitutions "for an express intention to deny foundlings the status of Filipinos. The burden is on those who wish to use the constitution to discriminate against foundlings to show that the constitution really intended to take this path to the dark side and inflict this across the board marginalization."

We find no such intent or language permitting discrimination against foundlings. On the contrary, all three Constitutions guarantee the basic right to equal protection of the laws. All exhort the State to render social justice. Of special consideration are several provisions in the present charter: Article II, Section 11 which provides that the "State values the dignity of every human person and guarantees full respect for human rights," Article XIII, Section 1 which mandates Congress to "give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities x x x" and Article XV, Section 3 which requires the State to defend the "right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development." Certainly, these provisions

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[118] TSN, 16 February 2016, pp. 20-21.

contradict an intent to discriminate against foundlings on account of their unfortunate status.

Domestic laws on adoption also support the principle that foundlings are Filipinos. These laws do not provide that adoption confers citizenship upon the adoptee. Rather, the adoptee must be a Filipino in the first place to be adopted. The most basic of such laws is Article 15 of the Civil Code which provides that "[l]aws relating to family rights, duties, status, conditions, legal capacity of persons are binding on citizens of the Philippines even though living abroad." Adoption deals with status, and a Philippine adoption court will have jurisdiction only if the adoptee is a Filipino. In *Ellis and Ellis v. Republic*,[119] a child left by an unidentified mother was sought to be adopted by aliens. This Court said:

> In this connection, it should be noted that this is a proceedings *in rem,* which no court may entertain unless it has jurisdiction, not only over the subject matter of the case and over the parties, *but also over the res*, which is the personal status of Baby Rose as well as that of petitioners herein. Our Civil Code (Art. 15) adheres to the theory that jurisdiction over the status of a natural person is determined by the latter's nationality. Pursuant to this theory, we have jurisdiction over the status of Baby Rose, she being a citizen of the Philippines, but not over the status of the petitioners, who are foreigners.[120] (Underlining supplied)

Recent legislation is more direct. R.A. No. 8043 entitled "An Act Establishing the Rules to Govern the Inter-Country Adoption of Filipino Children and For Other Purposes" (otherwise known as the "Inter-Country Adoption Act of 1995"), R.A. No. 8552, entitled "An Act Establishing the Rules and Policies on the Adoption of Filipino Children and For Other Purposes" (otherwise known as the Domestic Adoption Act of 1998) and this Court's A.M. No. 02-6-02-SC or the "Rule on Adoption," all expressly refer to "Filipino children" and include foundlings as among Filipino children who may be adopted.

It has been argued that the process to determine that the child is a foundling leading to the issuance of a foundling certificate under these laws and the issuance of said certificate are acts to acquire or perfect Philippine citizenship which make the foundling a naturalized Filipino at best. This is erroneous. Under Article IV, Section 2 "Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship." In the first place, "having

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119 117 Phil. 976 (1963).
120 Id. at 978-979.

to perform an act" means that the act must be personally done by the citizen. In this instance, the determination of foundling status is done not by the child but by the authorities.[121] Secondly, the object of the process is the determination of the whereabouts of the parents, not the citizenship of the child. Lastly, the process is certainly not analogous to naturalization proceedings to acquire Philippine citizenship, or the election of such citizenship by one born of an alien father and a Filipino mother under the 1935 Constitution, which is an act to perfect it.

In this instance, such issue is moot because there is no dispute that petitioner is a foundling, as evidenced by a Foundling Certificate issued in her favor.[122] The Decree of Adoption issued on 13 May 1974, which approved petitioner's adoption by Jesusa Sonora Poe and Ronald Allan Kelley Poe, expressly refers to Emiliano and his wife, Rosario Militar, as her "foundling parents," hence effectively affirming petitioner's status as a foundling.[123]

Foundlings are likewise citizens under international law. Under the 1987 Constitution, an international law can become part of the sphere of domestic law either by transformation or incorporation. The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as local legislation.[124] On the other hand, generally accepted principles of international law, by virtue of the incorporation clause of the Constitution, form part of the laws of the land even if they do not derive from treaty obligations. Generally accepted principles of international law include international custom as evidence of a general practice accepted as law, and general principles of law recognized by civilized nations.[125] International customary rules are accepted as binding as a result from the combination of two elements: the established, widespread, and consistent practice on the part of States; and a psychological element known as the opinion *juris sive necessitates* (opinion as to law or necessity). Implicit in the latter element is a belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it.[126] "General principles of law recognized by civilized nations" are principles "established by a process of reasoning" or judicial logic, based on principles

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121 See Section 5 of the RA No. 8552: "Location of Unknown Parent(s). - It shall be the duty of the Department or the child-caring agency which has custody of the child to exert all efforts to locate his/her unknown biological parent(s). If such efforts fail, the child shall be registered as a foundling and subsequently be the subject of legal proceedings where he/she shall be declared abandoned." (Underlining supplied)

122 See Exhibit "1" in SPA No. 15-001 (DC) and SPA No. 15-00 (DC).

123 See Exhibit "2" in SPA No. 15-001 (DC) and SPA No. 15-00 (DC).

124 *Razon, Jr. v. Tagitis*, 621 Phil. 536, 600 (2009) citing *Pharmaceutical and Health Care Assoc. of the Philippines v. Duque III*, 561 Phil. 386, 398 (2007).

125 Article 38.1, paragraphs (b) and (c) of the Statute of the International Court of Justice.

126 *Mijares v. Rañada*, 495 Phil. 372, 395 (2005).

which are "basic to legal systems generally,"[127] such as "general principles of equity, *i.e.*, the general principles of fairness and justice," and the "general principle against discrimination" which is embodied in the "Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Discrimination in Education, the Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation."[128] These are the same core principles which underlie the Philippine Constitution itself, as embodied in the due process and equal protection clauses of the Bill of Rights.[129]

Universal Declaration of Human Rights ("UDHR") has been interpreted by this Court as part of the generally accepted principles of international law and binding on the State.[130] Article 15 thereof states:

> 1. Everyone has the right to a nationality.
> 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The Philippines has also ratified the UN Convention on the Rights of the Child (UNCRC). Article 7 of the UNCRC imposes the following obligations on our country:

> Article 7
>
> 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.
>
> 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

In 1986, the country also ratified the 1966 International Covenant on Civil and Political Rights (ICCPR). Article 24 thereof provide for the right of *every child "to acquire a nationality:"*

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127 *Pharmaceutical and Health Care Assoc. of the Philippines v. Duque III*, 561 Phil. 386, 400 (2007).
128 *International School Alliance of Educators v. Quisumbing*, 388 Phil. 661, 672-673 (2000).
129 CONSTITUTION, Art. III, Sec. 1.
130 *Rep. of the Philippines v. Sandiganbayan*, 454 Phil. 504, 545 (2003).

Article 24

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

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

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

The common thread of the UDHR, UNCRC and ICCPR is to obligate the Philippines to grant nationality from birth and ensure that no child is stateless. This grant of nationality must be at the time of birth, and it cannot be accomplished by the application of our present naturalization laws, Commonwealth Act No. 473, as amended, and R.A. No. 9139, both of which require the applicant to be at least eighteen (18) years old.

The principles found in two conventions, while yet unratified by the Philippines, are generally accepted principles of international law. The first is Article 14 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws under which a foundling is presumed to have the "nationality of the country of birth," to wit:

Article 14

A child whose parents are both unknown shall have the nationality of the country of birth. If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known.

A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found. (Underlining supplied)

The second is the principle that a foundling is *presumed born of citizens* of the country where he is found, contained in Article 2 of the 1961 United Nations Convention on the Reduction of Statelessness:

Article 2

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

That the Philippines is not a party to the 1930 Hague Convention nor to the 1961 Convention on the Reduction of Statelessness does not mean that their principles are not binding. While the Philippines is not a party to the 1930 Hague Convention, it is a signatory to the Universal Declaration on Human Rights, Article 15(1) of which[131] effectively affirms Article 14 of the 1930 Hague Convention. Article 2 of the 1961 "United Nations Convention on the Reduction of Statelessness" merely "gives effect" to Article 15(1) of the UDHR.[132] In *Razon v. Tagitis*,[133] this Court noted that the Philippines had not signed or ratified the "International Convention for the Protection of All Persons from Enforced Disappearance." Yet, we ruled that the proscription against enforced disappearances in the said convention was nonetheless binding as a "generally accepted principle of international law." *Razon v. Tagitis* is likewise notable for declaring the ban as a generally accepted principle of international law although the convention had been ratified by only sixteen states and had not even come into force and which needed the ratification of a minimum of twenty states. Additionally, as petitioner points out, the Court was content with the practice of international and regional state organs, regional state practice in Latin America, and State Practice in the United States.

Another case where the number of ratifying countries was not determinative is *Mijares v. Rañada*,[134] where only four countries had "either ratified or acceded to"[135] the 1966 "Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters" when the case was decided in 2005. The Court also pointed out that that nine member countries of the European Common Market had acceded to the Judgments Convention. The Court also cited U.S. laws and jurisprudence on recognition of foreign judgments. In all, only the practices of fourteen countries were considered and yet, there was pronouncement that recognition of foreign judgments was widespread practice.

Our approach in *Razon* and *Mijares* effectively takes into account the fact that "generally accepted principles of international law" are based not only on international custom, but also on "general principles of law recognized by civilized nations," as the phrase is understood in Article 38.1 paragraph (c) of the ICJ Statute. Justice, fairness, equity and the policy against discrimination, which are fundamental principles underlying the Bill

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131 "Everyone has the right to a nationality."

132 See Introductory Note to the United Nations Convention on the Reduction of Statelessness issued by the United Nations High Commissioner on Refugees.

133 Supra note 124.

134 Supra note 126.

135 Id. at 392; See footnote No. 55 of said case.

of Rights and which are "basic to legal systems generally,"[136] support the notion that the right against enforced disappearances and the recognition of foreign judgments, were correctly considered as "generally accepted principles of international law" under the incorporation clause.

Petitioner's evidence[137] shows that at least sixty countries in Asia, North and South America, and Europe have passed legislation recognizing foundlings as its citizen. Forty-two (42) of those countries follow the *jus sanguinis* regime. Of the sixty, only thirty-three (33) are parties to the 1961 Convention on Statelessness; twenty-six (26) are not signatories to the Convention. Also, the Chief Justice, at the 2 February 2016 Oral Arguments pointed out that in 166 out of 189 countries surveyed (or 87.83%), foundlings are recognized as citizens. These circumstances, including the practice of *jus sanguinis* countries, show that it is a generally accepted principle of international law to presume foundlings as having been born of nationals of the country in which the foundling is found.

Current legislation reveals the adherence of the Philippines to this generally accepted principle of international law. In particular, R.A. No. 8552, R.A. No. 8042 and this Court's Rules on Adoption, expressly refer to "Filipino children." In all of them, foundlings are among the Filipino children who could be adopted. Likewise, it has been pointed that the DFA issues passports to foundlings. Passports are by law, issued only to citizens. This shows that even the executive department, acting through the DFA, considers foundlings as Philippine citizens.

Adopting these legal principles from the 1930 Hague Convention and the 1961 Convention on Statelessness is rational and reasonable and consistent with the *jus sanguinis* regime in our Constitution. The presumption of natural-born citizenship of foundlings stems from the presumption that their parents are nationals of the Philippines. As the empirical data provided by the PSA show, that presumption is at more than 99% and is a virtual certainty.

In sum, all of the international law conventions and instruments on the matter of nationality of foundlings were designed to address the plight of a defenseless class which suffers from a misfortune not of their own making. We cannot be restrictive as to their application if we are a country which calls itself civilized and a member of the community of nations. The Solicitor General's warning in his opening statement is relevant:

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136 *Pharmaceutical and Health Care Assoc. of the Philippines v. Duque III*, supra note 127.

137 See Exhibits 38 and 39-series.

> .... the total effect of those documents is to signify to this Honorable Court that those treaties and conventions were drafted because the world community is concerned that the situation of foundlings renders them legally invisible. It would be tragically ironic if this Honorable Court ended up using the international instruments which seek to protect and uplift foundlings a tool to deny them political status or to accord them second-class citizenship.[138]

The COMELEC also ruled[139] that petitioner's repatriation in July 2006 under the provisions of R.A. No. 9225 did not result in the reacquisition of natural-born citizenship. The COMELEC reasoned that since the applicant must perform an act, what is reacquired is not "natural-born" citizenship but only plain "Philippine citizenship."

The COMELEC's rule arrogantly disregards consistent jurisprudence on the matter of repatriation statutes in general and of R.A. No. 9225 in particular.

In the seminal case of *Bengson III v. HRET*,[140] repatriation was explained as follows:

> Moreover, repatriation results in the recovery of the original nationality. This means that a naturalized Filipino who lost his citizenship will be restored to his prior status as a naturalized Filipino citizen. On the other hand, if he 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.

R.A. No. 9225 is a repatriation statute and has been described as such in several cases. They include *Sobejana-Condon v. COMELEC*[141] where we described it as an "abbreviated *repatriation process that restores* one's Filipino citizenship x x x." Also included is *Parreño v. Commission on Audit*,[142] which cited *Tabasa v. Court of Appeals*,[143] where we said that "[t]he repatriation of the former Filipino will allow him to recover his natural-born citizenship. *Parreño v. Commission on Audit*[144] is categorical that "if petitioner reacquires his Filipino citizenship (under R.A. No. 9225), he will ... r*ecover his natural-born* citizenship."

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138 Opening Statement of the Solicitor General, p. 6.
139 First Division resolution dated 11 December 2015, upheld in *toto* by the COMELEC *En Banc*.
140 409 Phil. 633, 649 (2001).
141 692 Phil. 407, 420 (2012).
142 551 Phil. 368, 381 (2007).
143 531 Phil. 407, 417 (2006).
144 Supra note 142.

The COMELEC construed the phrase "from birth" in the definition of natural citizens as implying "that natural-born citizenship must begin at birth and remain uninterrupted and continuous from birth." R.A. No. 9225 was obviously passed in line with Congress' sole prerogative to determine how citizenship may be lost or reacquired. Congress saw it fit to decree that natural-born citizenship may be reacquired even if it had been once lost. It is not for the COMELEC to disagree with the Congress' determination.

More importantly, COMELEC's position that natural-born status must be continuous was already rejected in *Bengson III v. HRET*[145] where the phrase "from birth" was clarified to mean at the time of birth: "A person who at the time of his birth, is a citizen of a particular country, is a natural-born citizen thereof." Neither is "repatriation" an act to "acquire or perfect" one's citizenship. In *Bengson III v. HRET*, this Court pointed out that there are only two types of citizens under the 1987 Constitution: natural-born citizen and naturalized, and that there is no third category for repatriated citizens:

> It is apparent from the enumeration of who are citizens under the present Constitution that there are only two classes of citizens: (1) those who are natural-born and (2) those who are naturalized in accordance with law. A citizen who is not a naturalized Filipino, ie., did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is a natural-born Filipino. Noteworthy is the absence in said enumeration of a separate category for persons who, after losing Philippine citizenship, subsequently reacquire it. The reason therefor is clear: as to such persons, they would either be natural-born or naturalized depending on the reasons for the loss of their citizenship and the mode prescribed by the applicable law for the reacquisition thereof. As respondent Cruz was not required by law to go through naturalization proceedings in order to reacquire his citizenship, he is perforce a natural-born Filipino. As such, he possessed all the necessary qualifications to be elected as member of the House of Representatives.[146]

The COMELEC cannot reverse a judicial precedent. That is reserved to this Court. And while we may always revisit a doctrine, a new rule reversing standing doctrine cannot be retroactively applied. In *Morales v. Court of Appeals and Jejomar Erwin S. Binay, Jr.*,[147] where we decreed reversed the condonation doctrine, we cautioned that it "should be prospective in application for the reason that judicial decisions applying or interpreting the laws of the Constitution, until reversed, shall form part of the legal system of the Philippines." This Court also said that "while the

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145 Supra note 140 at 646.
146 Id. at 651.
147 G.R. No. 217126-27, 10 November 2015.

future may ultimately uncover a doctrine's error, it should be, as a general rule, recognized as good law prior to its abandonment. Consequently, the people's reliance thereupon should be respected."[148]

Lastly, it was repeatedly pointed out during the oral arguments that petitioner committed a falsehood when she put in the spaces for "born to" in her application for repatriation under R.A. No. 9225 the names of her adoptive parents, and this misled the BI to presume that she was a natural-born Filipino. It has been contended that the data required were the names of her biological parents which are precisely unknown.

This position disregards one important fact – petitioner was legally adopted. One of the effects of adoption is "to sever all legal ties between the biological parents and the adoptee, except when the biological parent is the spouse of the adoptee."[149] Under R.A. No. 8552, petitioner was also entitled to an amended birth certificate "attesting to the fact that the adoptee is the child of the adopter(s)" and which certificate "shall not bear any notation that it is an amended issue."[150] That law also requires that "[a]ll records, books, and papers relating to the adoption cases in the files of the court, the Department [of Social Welfare and Development], or any other agency or institution participating in the adoption proceedings shall be kept strictly confidential."[151] The law therefore allows petitioner to state that her adoptive parents were her birth parents as that was what would be stated in her birth certificate anyway. And given the policy of strict confidentiality of adoption records, petitioner was not obligated to disclose that she was an adoptee.

Clearly, to avoid a direct ruling on the qualifications of petitioner, which it cannot make in the same case for cancellation of COC, it resorted to opinionatedness which is, moreover, *erroneous*. The whole process undertaken by COMELEC is wrapped in grave abuse of discretion.

On Residence

The tainted process was repeated in disposing of the issue of whether or not petitioner committed false material representation when she stated in her COC that she has before and until 9 May 2016 been a resident of the Philippines for ten (10) years and eleven (11) months.

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148 Id.
149 Implementing Rules and Regulations of Republic Act No. 8552, Art. VI, Sec. 33.
150 Republic Act No. 8552 (1998), Sec. 14.
151 Republic Act No. 8552 (1998), Sec. 15.

Petitioner's claim that she will have been a resident for ten (10) years and eleven (11) months on the day before the *2016 elections*, is true.

The Constitution requires presidential candidates to have ten (10) years' residence in the Philippines before the day of the elections. Since the forthcoming elections will be held on 9 May 2016, petitioner must have been a resident of the Philippines prior to 9 May 2016 for ten (10) years. In answer to the requested information of "Period of Residence in the Philippines up to the day before May 09, 2016," she put in "10 years 11 months" which according to her pleadings in these cases corresponds to a beginning date of 25 May 2005 when she returned for good from the U.S.

When petitioner immigrated to the U.S. in 1991, she lost her original domicile, which is the Philippines. There are three requisites to acquire a new domicile: 1. Residence or bodily presence in a new locality; 2. an intention to remain there; and 3. an intention to abandon the old domicile.[152] To successfully effect a change of domicile, one must demonstrate an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one and definite acts which correspond with the purpose. In other words, there must basically be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.[153]

Petitioner presented voluminous evidence showing that she and her family abandoned their U.S. domicile and relocated to the Philippines for good. These evidence include petitioner's former U.S. passport showing her arrival on 24 May 2005 and her return to the Philippines every time she travelled abroad; e-mail correspondences starting in March 2005 to September 2006 with a freight company to arrange for the shipment of their household items weighing about 28,000 pounds to the Philippines; e-mail with the Philippine Bureau of Animal Industry inquiring how to ship their dog to the Philippines; school records of her children showing enrollment in Philippine schools starting June 2005 and for succeeding years; tax identification card for petitioner issued on July 2005; titles for condominium and parking slot issued in February 2006 and their corresponding tax declarations issued in April 2006; receipts dated 23 February 2005 from the

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152 *Fernandez v. House of Representatives Electoral Tribunal*, 623 Phil. 628, 660 (2009) citing *Japzon v. COMELEC*, 596 Phil. 354, 370-372 (2009) further citing *Papandayan, Jr. v. COMELEC*, 430 Phil. 754, 768-770 (2002) further further citing *Romualdez v. RTC, Br. 7, Tacloban City*, G.R. No. 104960, 14 September 1993, 226 SCRA 408, 415.

153 *Domino v. COMELEC*, 369 Phil. 798, 819 (1999).

Salvation Army in the U.S. acknowledging donation of items from petitioner's family; March 2006 e-mail to the U.S. Postal Service confirming request for change of address; final statement from the First American Title Insurance Company showing sale of their U.S. home on 27 April 2006; 12 July 2011 filled-up questionnaire submitted to the U.S. Embassy where petitioner indicated that she had been a Philippine resident since May 2005; affidavit from Jesusa Sonora Poe (attesting to the return of petitioner on 24 May 2005 and that she and her family stayed with affiant until the condominium was purchased); and Affidavit from petitioner's husband (confirming that the spouses jointly decided to relocate to the Philippines in 2005 and that he stayed behind in the U.S. only to finish some work and to sell the family home).

The foregoing evidence were undisputed and the facts were even listed by the COMELEC, particularly in its Resolution in the Tatad, Contreras and Valdez cases.

However, the COMELEC refused to consider that petitioner's domicile had been timely changed as of 24 May 2005. At the oral arguments, COMELEC Commissioner Arthur Lim conceded the presence of the first two requisites, namely, physical presence and *animus manendi*, but maintained there was no *animus non-revertendi*.[154] The COMELEC disregarded the import of all the evidence presented by petitioner on the basis of the position that the earliest date that petitioner could have started residence in the Philippines was in July 2006 when her application under R.A. No. 9225 was approved by the BI. In this regard, COMELEC relied on *Coquilla v. COMELEC*,[155] *Japzon v. COMELEC*[156] and *Caballero v. COMELEC*.[157] During the oral arguments, the private respondents also added *Reyes v. COMELEC*.[158] Respondents contend that these cases decree that the stay of an alien former Filipino cannot be counted until he/she obtains a permanent resident visa or reacquires Philippine citizenship, a visa-free entry under a *balikbayan* stamp being insufficient. Since petitioner was still an American (without any resident visa) until her reacquisition of citizenship under R.A. No. 9225, her stay from 24 May 2005 to 7 July 2006 cannot be counted.

But as the petitioner pointed out, the facts in these four cases are very different from her situation. In *Coquilla v. COMELEC*,[159] the only evidence

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154 TSN, 16 February 2016, p. 120.
155 434 Phil. 861 (2002).
156 596 Phil. 354 (2009).
157 G.R. No. 209835, 22 September 2015.
158 G.R. No. 207264, 25 June 2013, 699 SCRA 522.
159 Supra note 155.

presented was a community tax certificate secured by the candidate and his declaration that he would be running in the elections. *Japzon v. COMELEC*[160] did not involve a candidate who wanted to count residence prior to his reacquisition of Philippine citizenship. With the Court decreeing that residence is distinct from citizenship, the issue there was whether the candidate's acts after reacquisition sufficed to establish residence. In *Caballero v. COMELEC*,[161] the candidate admitted that his place of work was abroad and that he only visited during his frequent vacations. In *Reyes v. COMELEC*,[162] the candidate was found to be an American citizen who had not even reacquired Philippine citizenship under R.A. No. 9225 or had renounced her U.S. citizenship. She was disqualified on the citizenship issue. On residence, the only proof she offered was a seven-month stint as provincial officer. The COMELEC, quoted with approval by this Court, said that "such fact alone is not sufficient to prove her one-year residency."

It is obvious that because of the sparse evidence on residence in the four cases cited by the respondents, the Court had no choice but to hold that residence could be counted only from acquisition of a permanent resident visa or from reacquisition of Philippine citizenship. In contrast, the evidence of petitioner is overwhelming and taken together leads to no other conclusion that she decided to permanently abandon her U.S. residence (selling the house, taking the children from U.S. schools, getting quotes from the freight company, notifying the U.S. Post Office of the abandonment of their address in the U.S., donating excess items to the Salvation Army, her husband resigning from U.S. employment right after selling the U.S. house) and permanently relocate to the Philippines and actually re-established her residence here on 24 May 2005 (securing T.I.N, enrolling her children in Philippine schools, buying property here, constructing a residence here, returning to the Philippines after all trips abroad, her husband getting employed here). Indeed, coupled with her eventual application to reacquire Philippine citizenship and her family's actual continuous stay in the Philippines over the years, it is clear that when petitioner returned on 24 May 2005 it was for good.

In this connection, the COMELEC also took it against petitioner that she had entered the Philippines visa-free as a *balikbayan*. A closer look at R.A. No. 6768 as amended, otherwise known as the "An Act Instituting a Balikbayan Program," shows that there is no overriding intent to treat *balikbayans* as temporary visitors who must leave after one year. Included in the law is a former Filipino who has been naturalized abroad and "comes

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160 Supra note 156.
161 Supra note 157.
162 Supra note 158.

or returns to the Philippines."[163] The law institutes a *balikbayan* program "providing the opportunity to avail of the necessary training to enable the *balikbayan* to become economically self-reliant members of society upon their return to the country"[164] in line with the government's "reintegration program."[165] Obviously, *balikbayans* are not ordinary transients.

Given the law's express policy to facilitate the return of a *balikbayan* and help him reintegrate into society, it would be an unduly harsh conclusion to say in absolute terms that the *balikbayan* must leave after one year. That visa-free period is obviously granted him to allow him to re-establish his life and reintegrate himself into the community before he attends to the necessary formal and legal requirements of repatriation. And that is exactly what petitioner did - she reestablished life here by enrolling her children and buying property while awaiting the return of her husband and then applying for repatriation shortly thereafter.

No case similar to petitioner's, where the former Filipino's evidence of change in domicile is extensive and overwhelming, has as yet been decided by the Court. Petitioner's evidence of residence is unprecedented. There is no judicial precedent that comes close to the facts of residence of petitioner. There is no indication in *Coquilla v. COMELEC*,[166] and the other cases cited by the respondents that the Court intended to have its rulings there apply to a situation where the facts are different. Surely, the issue of residence has been decided particularly on the facts-of-the case basis.

To avoid the logical conclusion pointed out by the evidence of residence of petitioner, the COMELEC ruled that petitioner's claim of residence of ten (10) years and eleven (11) months by 9 May 2016 in her 2015 COC was false because she put six (6) years and six (6) months as "period of residence before May 13, 2013" in her 2012 COC for Senator. Thus, according to the COMELEC, she started being a Philippine resident only in November 2006. In doing so, the COMELEC automatically assumed as true the statement in the 2012 COC and the 2015 COC as false.

As explained by petitioner in her verified pleadings, she misunderstood the date required in the 2013 COC as the period of residence as of the day she submitted that COC in 2012. She said that she reckoned residency from April-May 2006 which was the period when the U.S. house was sold and her husband returned to the Philippines. In that regard, she

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163 Republic Act No. 6768 (1989), as amended, Sec. 2(a).
164 Republic Act No. 6768 (1989), as amended, Sec. 1.
165 Republic Act No. 6768 (1989), as amended, Sec. 6.
166 Supra note 155.

was advised by her lawyers in 2015 that residence could be counted from 25 May 2005.

Petitioner's explanation that she misunderstood the query in 2012 (period of residence before 13 May 2013) as inquiring about residence as of the time she submitted the COC, is bolstered by the change which the COMELEC itself introduced in the 2015 COC which is now "period of residence in the Philippines up to the day before May 09, 2016." The COMELEC would not have revised the query if it did not acknowledge that the first version was vague.

That petitioner could have reckoned residence from a date earlier than the sale of her U.S. house and the return of her husband is plausible given the evidence that she had returned a year before. Such evidence, to repeat, would include her passport and the school records of her children.

It was grave abuse of discretion for the COMELEC to treat the 2012 COC as a binding and conclusive admission against petitioner. It could be given in evidence against her, yes, but it was by no means conclusive. There is precedent after all where a candidate's mistake as to period of residence made in a COC *was overcome by evidence.* In *Romualdez-Marcos v. COMELEC*,[167] the candidate mistakenly put seven (7) months as her period of residence where the required period was a minimum of one year. We said 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.*" The COMELEC ought to have looked at the evidence presented and see if petitioner was telling the truth that she was in the Philippines from 24 May 2005. Had the COMELEC done its duty, it would have seen that the 2012 COC and the 2015 COC *both* correctly stated the *pertinent* period of residency.

The COMELEC, by its own admission, disregarded the evidence that petitioner actually and physically returned here on 24 May 2005 not because it was false, but only because COMELEC took the position that domicile could be established only from petitioner's repatriation under R.A. No. 9225 in July 2006. However, it does not take away the fact that in reality, petitioner had returned from the U.S. and was here to stay permanently, on 24 May 2005. When she claimed to have been a resident for ten (10) years and eleven (11) months, she could do so in good faith.

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[167] Supra note 104 at 326. (Emphasis supplied)

For another, it could not be said that petitioner was attempting to hide anything. As already stated, a petition for *quo warranto* had been filed against her with the SET as early as August 2015. The event from which the COMELEC pegged the commencement of residence, petitioner's repatriation in July 2006 under R.A. No. 9225, was an established fact to repeat, for purposes of her senatorial candidacy.

Notably, on the statement of residence of six (6) years and six (6) months in the 2012 COC, petitioner recounted that this was first brought up in the media on 2 June 2015 by Rep. Tobias Tiangco of the United Nationalist Alliance. Petitioner appears to have answered the issue immediately, also in the press. Respondents have not disputed petitioner's evidence on this point. From that time therefore when Rep. Tiangco discussed it in the media, the stated period of residence in the 2012 COC and the circumstances that surrounded the statement were already matters of public record and were not hidden.

Petitioner likewise proved that the 2012 COC was also brought up in the SET petition for *quo warranto*. Her Verified Answer, which was filed on 1 September 2015, admitted that she made a mistake in the 2012 COC when she put in six (6) years and six (6) months as she misunderstood the question and could have truthfully indicated a longer period. *Her answer in the SET case was a matter of public record. Therefore, when petitioner accomplished her COC for President on 15 October 2015, she could not be said to have been attempting to hide her erroneous statement in her 2012 COC for Senator* which was expressly mentioned in her Verified Answer.

The facts now, if not stretched to distortion, do not show or even hint at an intention to hide the 2012 statement and have it covered by the 2015 representation. Petitioner, moreover, has on her side this Court's pronouncement that:

> Concededly, a candidate's disqualification to run for public office does not necessarily constitute material misrepresentation which is the sole ground for denying due course to, and for the cancellation of, a COC. Further, as already discussed, the candidate's misrepresentation in his COC must not only refer to a material fact (eligibility and qualifications for elective office), but should evince a deliberate intent to mislead, misinform or hide a fact which would otherwise render a candidate ineligible. It must be made with an intention to deceive the electorate as to one's qualifications to run for public office.[168]

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168 *Ugdoracion, Jr. v. COMELEC*, 575 Phil. 253, 265-266 (2008).

In sum, the COMELEC, with the same posture of infallibilism, virtually ignored a good number of evidenced dates all of which can evince *animus manendi* to the Philippines and *animus non revertedi* to the United States of America. The veracity of the events of coming and staying home was as much as dismissed as inconsequential, the focus having been fixed at the petitioner's "sworn declaration in her COC for Senator" which the COMELEC said "amounts to a declaration and therefore an admission that her residence in the Philippines only commence sometime in November 2006"; such that "based on this declaration, [petitioner] fails to meet the residency requirement for President." This conclusion, as already shown, ignores the standing jurisprudence that it is the fact of residence, not the statement of the person that determines residence for purposes of compliance with the constitutional requirement of residency for election as President. It ignores the easily researched matter that cases on questions of residency have been decided favorably for the candidate on the basis of facts of residence far less in number, weight and substance than that presented by petitioner.[169] It ignores, above all else, what we consider as a primary reason why petitioner cannot be bound by her declaration in her COC for Senator which declaration was not even considered by the SET as an issue against her eligibility for Senator. When petitioner made the declaration in her COC for Senator that she has been a resident for a period of six (6) years and six (6) months counted up to the 13 May 2013 Elections, she naturally had as reference the residency requirements for election as Senator which was satisfied by her declared years of residence. It was uncontested during the oral arguments before us that at the time the declaration for Senator was made, petitioner did not have as yet any intention to vie for the Presidency in 2016 and that the general public was never made aware by petitioner, by word or action, that she would run for President in 2016. Presidential candidacy has a length-of-residence different from that of a senatorial candidacy. There are facts of residence other than that which was mentioned in the COC for Senator. Such other facts of residence have never been proven to be false, and these, to repeat include:

> [Petitioner] returned to the Philippines on 24 May 2005. [petitioner's] husband however stayed in the USA to finish pending projects and arrange the sale of their family home.
>
> Meanwhile [petitioner] and her children lived with her mother in San Juan City. [Petitioner] enrolled Brian in Beacon School in Taguig City in 2005 and Hanna in Assumption College in Makati City in 2005. Anika was enrolled in Learning Connection in San Juan in 2007, when she

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169 In *Mitra v. COMELEC*, et al., [636 Phil. 753 (2010)], It was ruled that the residence requirement can be complied with through an incremental process including acquisition of business interest in the pertinent place and lease of feedmill building as residence.

was already old enough to go to school.

In the second half of 2005, [petitioner] and her husband acquired Unit 7F of One Wilson Place Condominium in San Juan. [Petitioner] and her family lived in Unit 7F until the construction of their family home in Corinthian Hills was completed.

Sometime in the second half of 2005, [petitioner's] mother discovered that her former lawyer who handled [petitioner's] adoption in 1974 failed to secure from the Office of the Civil Registrar of Iloilo a new Certificate of Live Birth indicating [petitioner's] new name and stating that her parents are "Ronald Allan K. Poe" and "Jesusa L. Sonora ."

In February 2006, [petitioner] travelled briefly to the US in order to supervise the disposal of some of the family's remaining household belongings. [Petitioner] returned to the Philippines on 11 March 2006.

In late March 2006, [petitioner's] husband informed the United States Postal Service of the family's abandonment of their address in the US.

The family home in the US was sole on 27 April 2006.

In April 2006, [petitioner's] husband resigned from his work in the US. He returned to the Philippines on 4 May 2006 and began working for a Philippine company in July 2006.

In early 2006, [petitioner] and her husband acquired a vacant lot in Corinthian Hills, where they eventually built their family home.[170]

In light of all these, it was arbitrary for the COMELEC to satisfy its intention to let the case fall under the exclusive ground of false representation, to consider no other date than that mentioned by petitioner in her COC for Senator.

All put together, in the matter of the citizenship and residence of petitioner for her candidacy as President of the Republic, the questioned Resolutions of the COMELEC in Division and *En Banc* are, one and all, deadly diseased with grave abuse of discretion from root to fruits.

WHEREFORE, the petition is **GRANTED**. The Resolutions, to wit:

1. dated 1 December 2015 rendered through the COMELEC Second

[170] COMELEC Resolution dated 11 December 2015 in SPA No. 15-002 (DC), pp. 4-5.

Division, in SPA No. 15-001 (DC), entitled *Estrella C. Elamparo, petitioner, vs. Mary Grace Natividad Sonora Poe-Llamanzares, respondent*, stating that:

> [T]he Certificate of Candidacy for President of the Republic of the Philippines in the May 9, 2016 National and Local Elections filed by respondent Mary Grace Natividad Sonora Poe-Llamanzares is hereby GRANTED.

2. dated 11 December 2015, rendered through the COMELEC First Division, in the consolidated cases SPA No. 15-002 (DC) entitled *Francisco S. Tatad, petitioner, vs. Mary Grace Natividad Sonora Poe-Llamanzares, respondent*; SPA No. 15-007 (DC) entitled *Antonio P. Contreras, petitioner, vs. Mary Grace Natividad Sonora Poe-Llamanzares, respondent*; and SPA No. 15-139 (DC) entitled *Amado D. Valdez, petitioner, v. Mary Grace Natividad Sonora Poe-Llamanzares*, respondent; stating that:

> WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to GRANT the petitions and cancel the Certificate of Candidacy of MARY GRACE NATIVIDAD SONORA POE-LLAMANZARES for the elective position of President of the Republic of the Philippines in connection with the 9 May 2016 Synchronized Local and National Elections.

3. dated 23 December 2015 of the COMELEC *En Banc*, upholding the 1 December 2015 Resolution of the Second Division stating that:

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

4. dated 23 December 2015 of the COMELEC *En Banc*, upholding the 11 December 2015 Resolution of the First Division.

are hereby **ANNULED** and **SET ASIDE**. Petitioner MARY GRACE NATIVIDAD SONORA POE-LLAMANZARES is **DECLARED QUALIFIED** to be a candidate for President in the National and Local Elections of 9 May 2016.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

See Concurring Opinion

MARIA LOURDES P. A. SERENO
Chief Justice

See Dissenting Opinion

ANTONIO T. CARPIO
Associate Justice

Please see Concurring Opinion

PRESBITERO J. VELASCO, JR.
Associate Justice

Please see Separate Dissenting Opinion

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

See Dissenting Opinion

ARTURO D. BRION
Associate Justice

I join J. Carpio's opinion

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

pls see dissenting opinion

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

(I concur with the DISSENTING OPINION of Justice Perlas-Bernabe)

BIENVENIDO L. REYES
Associate Justice

See dissenting opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

See separate concurring opinion

MARVIC M.V.F. LEONEN
Associate Justice

See concurring opinion

FRANCIS H. JARDELEZA
Associate Justice

See concurring opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice