REPUBLIC OF THE PHILIPPINES
SENATE ELECTORAL TRIBUNAL
COA-NCR BUILDING, *BATASAN* ROAD, QUEZON CITY

RIZALITO Y. DAVID,
Petitioner,

-versus-

SET Case No. 001-15
For: *Quo Warranto*

MARY GRACE POE LLAMANZARES,
Respondent.
X----------X

VERIFIED ANSWER

-with-

(1) PRAYER FOR SUMMARY DISMISSAL

(2) MOTION FOR PRELIMINARY HEARING ON GROUNDS FOR IMMEDIATE DISMISSAL / AFFIRMATIVE DEFENSES

(3) MOTION TO CITE PETITIONER FOR DIRECT CONTEMPT OF COURT

(4) COUNTERCLAIM FOR INDIRECT CONTEMPT OF COURT

Respondent Senator Mary Grace Natividad Sonora Poe Llamanzares, by counsel, respectfully states:[1]

PREFATORY STATEMENT

On 13 May 2013, Respondent was elected Senator of the Republic of the Philippines. She garnered Twenty Million Three Hundred Thirty-Seven Thousand Three Hundred Twenty-Seven (20,337,327) votes—the highest among her fellow Senatorial candidates, and a record in Philippine election history. Since her proclamation on 16 May 2013, and to this

[1] Respondent received Summons and a copy of the *Petition* on 20 August 2015. The 10th day therefrom was on Sunday, 30 August 2015. Today, 31 August 2015, is a non-working holiday. This Answer will be filed seasonably tomorrow, 1 September 2015, which is the very next working day.

very day, Respondent has been faithfully serving the Filipino people as a member of the upper house of Congress.

For more than two (2) years, no one formally questioned Respondent's eligibility as Senator, and she carried out the mandate given to her by the Filipino people without any challenge. But the approach of the 2016 elections would soon change that.

Although she had never professed any desire to run for higher office, early this year, various surveys revealed Respondent as the clear-cut favorite among potential Presidential candidates for the 2016 elections.

From Respondent's point of view, these results were a welcome development as they were a measure of the Filipino people's satisfaction with her work as a Senator. However, the same poll results also revealed that Respondent would prove to be a serious threat to Presidential aspirants in the 2016 elections.

Since Respondent's reported popularity was beyond their control, those opposed to the prospect of Respondent running for President chose to focus on her purported lack of political experience and her supposed ineligibility for the Presidency. Some questioned her natural-born Philippine citizenship, simply because of her status as a foundling. Others raised concerns about her period of residence in the Philippines, as she had lived in the U.S.A. before she assumed public office and, for a time, was naturalized as a U.S.A. citizen. Their goal was (and is) simple: pull down her ratings quickly, and by all means possible. In the process, they would have this Tribunal reverse Respondent's overwhelming political mandate and undermine the sovereignty of the electorate which had adjudged her qualified for the Senate and elected her to that august body by the highest number of votes.

The instant Amended Petition for *Quo Warranto* dated 17 August 2015 (the "Petition") is, in essence, an offshoot (direct, it would seem) of what can best be described as a systematic political smear campaign against Respondent. At bottom, Petitioner ostensibly seeks to nullify the mandate of Respondent more than two years after the Filipino people overwhelmingly elected her to the Senate. However, Petitioner's true objective is not to unseat Respondent. Petitioner could not care less for the integrity of the Senate. His true objective

is to prevent Respondent, and by extension, all foundlings like her, from aspiring for a higher office, including the Presidency.

This is not mere conjecture. During Petitioner's recent interview for *Rappler*'s "Inside Track"[2] (an audio recording of which was posted on *Rappler*'s website on 23 August 2015), Petitioner openly declared that he filed this *Petition* only because he believes Respondent has plans to run for President. Petitioner admitted that this *Petition* has more to do with the Presidential elections in 2016, than it does with Respondent's seat in the Senate. The following excerpts from Petitioner's interview are quite revealing:

> Q: So, you were raising this issue (on Respondent's citizenship) as early as 2013?
>
> A: Oo.
>
> Q: Why pick on her?
>
> A: I'm not picking on her! (laughter)
>
> Q: I mean, some people might ask, will ask that…
>
> A: It's a valid ano, I think it's a valid issue. It's a valid question to ask because she's planning pa rin naman to run for President, di ba?[3]
>
> x x x
>
> A: Eh tapos ngayon, mage-election tayo next year, 2016, and she's planning to run. x x x. Kasi, importanteng ma-determine natin kung ano ang allegiance ng ating magiging pangulo. [4]
>
> x x x
>
> Q: Although some would say, yung iba sasabihin: Why pick on Grace? Why are you, di ba… It could have been another person. Bakit ikaw pa?
>
> A: Ah, bakit si Grace? Si Grace nga kasi, tatakbo nga daw siya Presidente!
>
> Q: Kung hindi siya tatakbong Presidente, would you have filed the case before the SET and the COMELEC?

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[2] Available at http://www.rappler.com/newsbreak/rich-media/103408-podcast-grace-poe-get-away-david.
[3] Id., at 9:46 to 10:02 (Underscoring supplied).
[4] Id., at 10:36 to 11:15 (Underscoring supplied).

> A: Not really, noh. Na.. na-amplify lang yun. But as to whether she should stay in the Senate or not, I would still pursue that. [5]

Obviously, this *Petition* is nothing but a frivolous action and a blatant abuse of process. It is a disgraceful attempt to reduce this Honorable Tribunal to a mere pawn in the larger political demolition game that Respondent is being forced to play against her enemies.

As a testament to its frivolity, Petitioner concealed from this Honorable Tribunal the fact that, just a few hours before he filed this *Petition,* he had already filed with the Commission on Elections ("COMELEC") an action involving issues identical to those raised in this *Petition*. Thus, the so-called "certification of non-forum shopping" attached to the *Petition* (which merely states that Petitioner had not filed a "similar petition for *quo warranto*") was deceptively crafted so that he could evade the consequences of his willful and deliberate forum shopping. Moreover, Petitioner has, as of this writing, not even deigned to inform this Honorable Tribunal of the existence of the proceedings before the COMELEC.

Aside from Petitioner's contumacious acts, it is clear that the *Petition* has prescribed, and whatever cause of action Petitioner might have had, irreversibly been lost through laches. For these reasons, the *Petition* ought to be summarily dismissed, and double or treble costs should be assessed against Petitioner.

On the substance of the case, the *Petition* is anchored on the proposition that a foundling is stateless and hence cannot be considered a natural-born Filipino. Its premise is that Respondent—a foundling not of her own choice—who has been recognized as a natural-born Filipino by a number of official acts of Government and by the overwhelming mandate of the sovereign Filipino people who elected her Senator in 2013—must herself prove that her parents were not aliens, and that therefore she is a natural-born Filipino.

The *Petition* is remarkable not only because it is insensitive to the plight of foundlings, but also because it is totally oblivious to Philippine law, treaties and the generally accepted principles of international law which it incorporates, under which Respondent *is* a natural-born Filipino. It eschews

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[5] Id., at 17:33 to 18:06 (Underscoring supplied).

the burden of proof that requires Petitioner to allege and show—not that the "circumstances of (Respondent's) birth yield no proof upon which to conclude that her father or mother is a Filipino citizen"—but that her parents were foreigners and that she is therefore not a natural-born Filipino citizen.

Because the *Petition* effectively alleges only that Respondent is not a natural-born Filipino in the absence of proof that her father or mother was Filipino, the *Petition* only alleges an unwarranted inference or conclusion (i.e., she is not a natural-born Filipino) from unproven and unprovable factual propositions (i.e., her parents were foreigners). It does not state a cause of action against Respondent.

As such, and for other reasons discussed below, it must be dismissed outright.

I.

AVERMENTS

1.1. Respondent was born on 3 September 1968 in Jaro, Iloilo. Being a foundling, Respondent's biological parents are unknown to her.

1.1.1. As stated in Respondent's Certificate of Live Birth,[6] she was found abandoned in the Parish of Jaro in Iloilo City, Philippines on 3 September 1968 by a certain Mr. Edgardo Militar.

1.1.2. On 6 September 1968, Mr. Emiliano Militar reported to the Office of the Civil Registrar of Iloilo City ("OCR Iloilo"), the fact that Respondent had been found.

1.1.3. The name "Mary Grace Natividad Contreras Militar" appears on Respondent's Original Certificate of Live Birth.

1.2. Respondent was subsequently adopted by the spouses Ronald Allan Kelly Poe (a.k.a. Fernando Poe, Jr.) and Jesusa Sonora Poe (a.k.a. Susan Roces). The Municipal Court of San Juan, Rizal granted their petition for adoption in a

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[6] A copy of the Certificate of Live Birth (hereinafter, "Original Certificate of Live Birth") is attached hereto as Annex "**1**".

Decision[7] dated 13 May 1974. The same Decision legally changed Respondent's name to "Mary Grace Natividad Sonora Poe."[8]

1.3. As a natural-born Filipino citizen, Respondent exercised rights and observed responsibilities appurtenant to such citizenship.

1.3.1. After Respondent turned eighteen (18) years old, she applied for registration as a voter. On 13 December 1986, the COMELEC issued in her favor a "Voter's Identification Card" for Precinct No. 196 in Greenhills, San Juan, Metro Manila.[9]

1.3.2. Likewise, on 4 April 1988, 5 April 1993, 19 May 1998, 13 October 2009, and on 18 March 2014, the Ministry/Department of Foreign Affairs of the Philippines issued Philippine passports in Respondent's favor, all uniformly stating that she is a citizen of the Philippines. A Philippine diplomatic passport was likewise issued in Respondent's favor on 19 December 2013.[10]

1.4. Respondent initially enrolled for college at the University of the Philippines (Manila campus). However, in 1988, Respondent transferred to the Boston College in Chestnut Hill, Massachusetts, U.S.A. She graduated in 1991 with a degree of Bachelor of Arts in Political Studies.

1.5. On 27 July 1991, Respondent was married to Teodoro Misael Daniel V. Llamanzares at Sanctuario de San Jose Parish at San Juan City, Metro Manila. Respondent's husband, who is a citizen of both the Philippines and the U.S.A. from birth, was at that time living in the U.S.A. Having been born and raised a Filipina and with Filipino values, Respondent chose to be with her husband and to raise their children together. Thus, Respondent followed her husband to the U.S.A. on 29 July 1991 and the spouses decided to start a family there.

1.6. Respondent and her husband have three children. Their eldest child, Brian Daniel ("Brian"), was born in the

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[7] A copy of this Decision is attached hereto as Annex "**2**".
[8] A copy of Respondent's New Certificate of Live Birth is attached hereto as Annex "**3**".
[9] A copy of respondent's 1986 voter's identification card is attached hereto as Annex "**4**".
[10] Copies of these passports are attached hereto as Annexes "**5-series**".

U.S.A. in 1992. Although they were living in the U.S.A. at that time, Respondent returned to the Philippines purposely to give birth to their second child, Hanna MacKenzie ("Hanna") in 1998, and to their third child Jesusa Anika ("Anika") in 2004.

1.7. Despite living in the U.S.A., Respondent and her husband kept their Filipino ties and had always intended to return to the Philippines. In fact, Respondent and her family frequently returned to the Philippines to visit relatives and friends.

1.8. On 18 October 2001, Respondent was naturalized as a citizen of the U.S.A.

1.9. In 2003, Respondent's father declared his candidacy for President of the Philippines in the May 2004 elections. At the time, Respondent was pregnant with Anika, and on 8 April 2004, she travelled to the Philippines with Hanna. Respondent came back to the Philippines to give birth to Anika, and to give moral support to her parents during her father's campaign. On 8 July 2004, Respondent returned to the U.S.A. with Anika and Hanna.

1.10. On 11 December 2004, Respondent's father was admitted at the St. Luke's Medical Center in Quezon City after he had complained of dizziness at a gathering in his production studio. He eventually slipped into a coma. As soon as she was informed of her father's condition, Respondent prepared to leave for the Philippines immediately. She arrived in the country on the evening of 13 December 2004. Unfortunately, her father died the following day.

1.11. The untimely death of Respondent's father was a severe emotional shock to the family. Respondent chose to be with, and comfort, her grieving mother. Respondent also wanted to assist in taking care of the funeral arrangements for her father and settling his estate. Respondent stayed in the Philippines until 3 February 2005.

1.12. As a result of the untimely demise of Respondent's father, and her need to continue giving moral support and comfort to her grieving mother, sometime in the first quarter of 2005, Respondent and her husband decided to return to the Philippines. They consulted their children, who likewise expressed their wish to relocate to the Philippines. The children wanted to support their grandmother and Respondent.

1.13. Respondent thus resigned from her work in the U.S.A. Brian and Hanna's schools in Virginia, U.S.A. were notified that they would be transferring to the Philippines for the following semester.

1.14. On 24 May 2005, Respondent returned to the Philippines. Respondent's husband, on the other hand, stayed in the U.S.A. to finish pending projects, and to arrange for the sale of the family home there.

1.15. Upon her return to the Philippines, Respondent took charge of settling her father's estate. In relation to this process, one of the first things she did was to immediately secure a Tax Identification Number ("TIN") from the Bureau of Internal Revenue ("BIR").[11]

1.16. Respondent enrolled her children in different schools in the Philippines shortly after they returned to the country. Since June 2005, Respondent's children have been attending Philippine schools.

1.17. The house of Respondent and her husband was eventually sold on 27 April 2006. In April 2006, Respondent's husband also resigned from his work in the U.S.A., and on 4 May 2006, he returned to the Philippines. Since July 2006, he has been working in the country for a major Filipino conglomerate.

1.18. On 10 July 2006, Respondent filed with the Bureau of Immigration ("B.I.") a sworn petition[12] to reacquire her natural-born Philippine citizenship pursuant to R.A. No. 9225, otherwise known as the "Citizenship Retention and Re-acquisition Act of 2003," and its implementing rules and regulations. On 7 July 2006, Respondent had taken her Oath of Allegiance to the Republic of the Philippines, as required under Section 3 of R.A. No. 9225, to wit:[13]

> I, Mary Grace Poe Llamanzares, solemnly swear that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the

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[11] A copy of Respondent's TIN Identification Card dated 22 July 2005 is attached hereto as Annex "**6**".
[12] A copy of Respondent's Petition is attached hereto as Annex "**7**".
[13] A copy of Respondent's Oath of Allegiance under R.A. 9225 is attached hereto as Annex "**8**".

> Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.

Upon advice, and simultaneous with her own petition, Respondent filed petitions for derivative citizenship[14] on behalf of her three children who were all below eighteen (18) years of age at that time.

1.19. On 18 July 2006, then B.I. Commissioner Alipio F. Fernandez, Jr. issued an Order of even date (through then Associate Commissioner Roy M. Almoro, who signed for him) granting Respondent's petitions.[15] The 18 July 2006 Order states in pertinent part:

> A careful review of the documents submitted in support of the instant petition indicate that the petitioner was a former citizen of the Republic of the Philippines being born to Filipino parents and is presumed to be a natural born Philippine citizen; thereafter, became an American citizen and is now a holder of an American passport; was issued an ACT and ICR and has taken her oath of allegiance to the Republic of the Philippines on July 7, 2006 and so is thereby deemed to have re-acquired her Philippine Citizenship.[16]

1.19.1. In the same 18 July 2006 Order, Respondent's three children, Brian, Hanna and Anika, were "deemed Citizens of the Philippines in accordance with Section 4 of R.A. 9225."

1.20. On 31 July 2006, the B.I. issued Identification Certificates in Respondent's name and in the names of her three children.[17] Respondent's Identification Certificate states, in part, that she is a "citizen of the Philippines … pursuant to the Citizenship Retention and Re-acquisition Act of 2003 (RA 9225) in relation to Administrative Order No. 91, Series of 2004 and Memorandum Circular No. AFF-2-005 per Office Order No. AFF-06-9133 signed by Associate Commissioner Roy M. Almoro dated July 18, 2006."

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[14] Copies of these Petitions are attached hereto as Annexes "**9-series**".
[15] A copy of Office Order No. AFF-06-9133 dated 18 July 2006 is attached hereto as Annex "**10**".
[16] Underscoring supplied.
[17] Copies of Identification Certificate Nos. 06-10918 (in Respondent's name), 06-10919 (in Brian's name), 06-10920 (in Hanna's name), and 06-10921 (in Anika's name), are attached hereto as Annex "**11-series**".

1.21. On 31 August 2006, Respondent registered as a voter at Barangay Santa Lucia, San Juan City.[18]

1.22. On 6 October 2010, President Benigno S. Aquino III, appointed Respondent as Chairperson of the Movie and Television Review and Classification Board ("MTRCB"),[19] a post which requires natural-born Filipino citizenship. Respondent did not accept the appointment immediately, because she was advised that, *before* assuming any appointive public office, Section 5(3), R.A. No. 9225 required her to: (a) take an Oath of Allegiance to the Republic of the Philippines; and (b) renounce her U.S.A. citizenship. She complied with both requirements before assuming her post as MTRCB Chairperson.

1.23. Thus, on 20 October 2010, Respondent first executed before a notary public in Pasig City an "Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship" of even date.[20] The affidavit states:

> I, MARY GRACE POE-LLAMANZARES, Filipino, of legal age, and presently residing at No. 107 Rodeo Drive, Corinthian Hills, Quezon City, Philippines, after having been duly sworn to in accordance with the law, do hereby depose and state that with this affidavit, I hereby <u>expressly and voluntarily renounce my United States nationality/ American citizenship</u>, together <u>with all rights and privileges and all duties and allegiance and fidelity thereunto pertaining</u>. I make this renunciation intentionally, voluntarily, and of my own free will, free of any duress or undue influence.
>
> IN WITNESS WHEREOF, I have hereunto affixed my signature this 20th day of October 2010 at Pasig City, Philippines.[21]

1.23.1. Respondent, through counsel, submitted the above affidavit to the B.I. on 21 October 2010.[22]

1.23.2. At no time after Respondent executed the above affidavit did she ever use her U.S.A. passport.

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[18] A copy of the stub of Respondent's application form, showing the date of such application, is attached hereto as Annex "**12**".
[19] A copy of Respondent's Appointment is attached hereto as Annex "**13**".
[20] A copy of Respondent's Affidavit of Renunciation is attached hereto as Annex "**14**".
[21] Underscoring supplied.
[22] A copy of this transmittal letter to the B.I. is attached hereto as Annex "**15**".

1.24. On 21 October 2010, in accordance with Presidential Decree No. 1986 and Section 5 (3) of R.A. No. 9225, Respondent took her oath of office as Chairperson of the MTRCB, before President Benigno S. Aquino III. Her oath of office[23] states:

PANUNUMA SA KATUNGKULAN

> Ako, si MARY GRACE POE LLAMANZARES, na itinalaga sa katungkulan bilang *Chairperson, Movie and Television Review and Classification Board*, ay taimtim na nanunumpa na tutuparin ko nang buong husay at katapatan, sa abot ng aking kakayahan, ang mga tungkulin ng aking kasalukuyang katungkulan at ng mga iba pang pagkaraan nito'y gagampanan ko sa ilalim ng Republika ng Pilipinas; na aking itataguyod at ipagtatanggol ang Saligang Batas ng Pilipinas; na tunay na mananalig at tatalima ako rito; na susundin ko ang mga batas, mga kautusang legal, at mga dekretong pinaiiral ng mga sadyang itinakdang may kapangyarihan ng Republika ng Pilipinas; at kusa kong babalikatin ang pananagutang ito, nang walang ano mang pasubali o hangaring umiwas.
>
> Kasihan nawa ako ng Diyos.
>
> NILAGDAAN AT PINANUMPAAN sa harap ko ngayong ika-21 ng Oktubre 2010, Lungsod ng Maynila, Pilipinas.

1.25. To ensure that even under the laws of the U.S.A., she would no longer be considered its citizen, Respondent likewise renounced her U.S.A. citizenship following the laws of that country. (Respondent was not required to do this under Philippine law, as her earlier renunciation of U.S.A. citizenship on 20 October 2010 was sufficient to qualify her for public office.)

1.25.1. On 12 July 2011, she executed before the Vice Consul at the U.S.A. Embassy in Manila, an Oath/Affirmation of Renunciation of Nationality of the United States.[24]

1.25.2. On the same day, Respondent also accomplished a sworn "Questionnaire"[25] before the U.S.

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[23] A copy Respondent's Oath of Office as MTRCB Chairperson is attached hereto as Annex "**16**".

[24] A copy of this Oath/Affirmation of Renunciation of Nationality of the United States is attached hereto as Annex "**17**".

[25] A copy of this Questionnaire is attached hereto as Annex "**18**".

Vice Consul, wherein she stated that she had resided "Outside of the United States," i.e., in the "Philippines," from 3 September 1968 to 29 July 1991 and from "05 2005" to "Present." On page 4 of the "Questionnaire," Respondent stated:

> I became a resident of the Philippines once again since 2005. My mother still resides in the Philippines. My husband and I are both employed and own properties in the Philippines. As a dual citizen (Filipino-American) since 2006, I've voted in two Philippine national elections. My three children study and reside in the Philippines at the time I performed the act as described in Part I item 6.[26]

1.26. On 9 December 2011, the U.S.A. Vice Consul issued to Respondent a Certificate of Loss of Nationality of the United States.[27] Said Certificate attests that under U.S.A. laws, Respondent lost her U.S.A. citizenship effective 21 October 2010, which is when she took her oath of office as Chairperson of the MTRCB. This fact is likewise reflected on the last page of Respondent's former U.S.A. passport.[28]

1.27. On 27 September 2012, Respondent accomplished her Certificate of Candidacy ("COC") for Senator.[29] Section 12 of the COC was, again, an affirmation of the Oath of Allegiance which Respondent had taken on 7 July 2006 (and which she had re-affirmed on 21 October 2010 when she took her oath of office as MRTCB Chairperson). Section 12 states:

> I WILL SUPPORT AND DEFEND THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES AND WILL MAINTAIN TRUE FAITH AND ALLEGIANCE THERETO. I WILL OBEY THE LAWS, LEGAL ORDERS, AND DECREES PROMULGATED BY THE DULY CONSTITUTED AUTHORITIES. I IMPOSE THIS OBLIGATION UPON MYSELF VOLUNTARILY, WITHOUT MENTAL RESERVATION OR PURPOSE OF EVASION.

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[26] Undescoring supplied.

[27] A copy of Respondent's Certificate of Loss of Nationality of the United States is attached hereto as Annex "**19**".

[28] A copy of the last page of Respondent's U.S.A. passport is attached hereto as Annex "**20**".

[29] A copy of Respondent's Certificate of Candidacy for Senator is attached hereto as Annex "**21**".

1.28. On 2 October 2012, Respondent filed her COC with the COMELEC.

1.29. During the 13 May 2013 national elections, Respondent ran for and was elected as Senator of the Republic of the Philippines. From her proclamation until 5 August 2015, no petition to disqualify, *quo warranto*, or any similar action questioning her eligibility or qualifications as Senator of the Philippines, had been filed against her.

1.30. Respondent has resided in the Philippines since her arrival on 24 May 2005 (save for a few minor travels abroad). She and her children initially resided with her mother at 23 Lincoln Street, Greenhills West, San Juan City. In November 2005, her family purchased and thereafter moved to a unit at the One Wilson Place in San Juan City, Metro Manila. Finally, sometime in May 2006 and after the sale of their house in the United States in April of the same year, they purchased a lot and built a house thereon at Corinthian Hills, Barangay Murphy, Ugong Norte, Quezon City, where they still reside today.

II.

DENIALS

In view of the foregoing averments, Respondent specifically denies the allegations in the *Petition*, as follows:

2.1. The allegations in paragraph 1 concerning Petitioner's personal circumstances and his address are DENIED for lack of knowledge or information sufficient to form a belief as to the truth thereof.

2.2. The allegation in paragraph 2 that Respondent is an "American" citizen is DENIED for being false. The truth is that Respondent is a natural-born citizen of the Philippines, as discussed in the "averments" and "defenses" in this Answer.

2.3. The allegations in paragraph 4 of the *Petition*, that Respondent is "not a natural-born citizen of the Philippines" and is "not qualified to sit (or continue to sit) as member of the Philippine Senate," and that "she materially misrepresented … that she has complied with the two-year residency requirement," are DENIED for being false legal conclusions. The truth is that Respondent is a natural-born citizen of the

Philippines qualified to sit as Senator, as discussed in the "averments" and "defenses" in this Answer.

2.4. The allegation in paragraph 5 that Respondent has the status of "non-citizenship and non-residence," is DENIED for being a false conclusion of law, and for the reasons discussed in the "averments" and "defenses" in this Answer.

2.5. The allegation in paragraph 5 that it was "false" for Respondent to state in her COC for Senator in the May 2013 elections that she is a "natural-born Filipino citizen, is DENIED for being a false conclusion of law, and for the reasons discussed in the "averments" and "defenses" in this Answer.

2.6. The allegations in paragraphs 5 and 55 of the *Petition* that Respondent "lied" and that it was "false" for Respondent to state in her COC[30] that she had resided in the Philippines "for a period of six (6) years and six (6) months before the May 13, 2013 elections" *for the reasons discussed in the Petition*, are DENIED for being false conclusions of law and for the reasons stated below.

2.6.1. The truth is that, as of 13 May 2013, Respondent had been residing in the Philippines for more than six (6) years and six (6) months. Respondent's statement in her COC that she had been residing in the Philippines "for a period of six (6) years and six (6) months before the May 13, 2013 elections" was therefore technically wrong. However, this mistake was an excusable error arising from complex legal principles that a layman is not expected to fully know, much less understand. It was an honest mistake made in good faith. In fact, Respondent was not assisted by counsel when she accomplished her COC.

2.6.2. Petitioner's good faith is made more manifest by the fact that she had nothing to gain by indicating a period shorter than her actual residency in the Philippines. On the contrary, it would have been to her advantage to indicate a longer period. The fact that she did not so indicate, clearly shows that she honestly misunderstood what was being asked of her in her COC, and that she did not intend to mislead or deceive anyone.

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[30] Annex "**21**" hereof.

2.6.3. This is not the first time a candidate committed an honest mistake in stating her period of residency in her COC. The Supreme Court was faced with precisely this problem in *Romualdez-Marcos vs. COMELEC.*[31] However, instead of making the candidate pay for her mistake by disqualifying her, the Supreme Court stressed that the "residency requirement" is ultimately a question of fact. The statement in the COC is not "decisive."

2.6.4. In any event, for purposes of this *Petition,* the legal correctness of Petitioner's statement in her COC as to her residency is immaterial, for even under such COC, she clearly met the two-year residence requirement. More importantly, under Petitioner's theory (however, erroneous and thus not conceded), that Respondent could have reestablished her residence in the Philippines *only* on the day she reacquired her natural-born Philippine citizenship, Respondent would also have complied with the two-year minimum residency requirement. As discussed, Respondent reacquired her natural-born Filipino citizenship on 7 July 2006. Therefore, following Petitioner's theory, as of 13 May 2013, Respondent had been a resident of the Philippines for almost 7 years. At any rate, as discussed below, any challenge to Respondent's residence qualification as Senator has long prescribed.

2.7. The allegations in paragraphs 8 and 9 of the *Petition*, that the *Petition* is not barred by the ten (10) day period provided in Section/Rule 18 of the 2013 SET Rules of Procedure because the issue being raised in the *Petition* is citizenship, are DENIED for being false conclusions of law. As discussed in the "defenses" in this Answer, the *Petition* (regardless of the grounds raised therein) is time-barred.

2.8. Paragraph 11 of the *Petition* is DENIED for being a false conclusion of law, and for the reasons discussed in the "averments" and "defenses" in this Answer. Respondent is a natural-born Filipino citizen.

2.9. The allegations in paragraphs 12, 31 and 34 of the *Petition* that it is "not clear," "not known," and "there is also no showing" that Respondent was legally adopted, are DENIED for being false. The truth is that the spouses Ronald Allan

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

Kelly Poe (a.k.a. Fernando Poe, Jr.) and Jesusa Sonora Poe (a.k.a. Susan Roces) legally adopted Respondent on 13 May 1974, which is when the Municipal Court of San Juan, Rizal, granted the spouses' petition to adopt Respondent.

2.10. The allegation in paragraph 13 of the *Petition* that "(i)t is not well-established how (Respondent) had become a Filipino," is DENIED for being false. The truth is that Respondent is a Filipino from birth, as discussed in the "averments" and "defenses" in this Answer.

2.11. The allegations in the third paragraph of paragraph 13 are DENIED for being false. The truth is that Respondent's husband and children are natural-born Filipinos, as they were each born of at least one Filipino parent. This matter is discussed further in the "averments" in this Answer.

2.12. The allegations in paragraphs 14 and 35 of the *Petition*, that Respondent "absolutely" and "entirely" "renounced and abjured" the Philippines as a country, is DENIED for being an erroneous legal conclusion. The truth is that Respondent took an oath of allegiance to the U.S.A. only as a necessary condition for her naturalization. After her naturalization, Respondent maintained her ties to the Philippines and visited the country frequently. She never foreclosed the possibility of one day returning to the Philippines, as indeed, she returned in 2005.

2.13. The allegation in paragraph 14 of the *Petition* that Respondent "came home to the Philippines in 2005 due to the untimely death of her adopting father," is DENIED for being false. The truth is that Respondent returned to the Philippines on 13 December 2004, shortly before the death of her father, and she stayed in the country until 3 February 2005. These matters are discussed further in the "averments" and "defenses" in this Answer.

2.14. The allegations in paragraph 15 of the *Petition*, that Respondent "failed" to renounce and that it "was not known" that she had renounced her "American citizenship" *before* she "accepted" her "employment as Chairman of the MTRCB," are DENIED for being false. The truth is that, on 20 October 2010, Respondent formally renounced her U.S.A. citizenship before a notary public. The following day, on 21 October 2010, Respondent took her oath of office as

Chairperson of the MTRCB, before President Benigno S. Aquino III. On the same day, Respondent, through counsel, submitted her sworn renunciation of U.S.A. citizenship to the B.I. Respondent assumed office as Chairperson of the MTRCB only on 26 October 2010. These matters are discussed further in the "averments" and "defenses" in this Answer.

2.15. The allegation in paragraph 15 of the *Petition* that Respondent's appointment as MTRCB Chairperson is "void," is DENIED for being a false conclusion of law. The truth is that stated in paragraph 2.14 and in the "averments" and "defenses" in this Answer.

2.16. The allegation in paragraph 16 of the *Petition* that, from her election as Senator in 2013 "up to the present" Respondent "is hounded by her disqualification to hold such office," is DENIED for being false and for containing a legal conclusion. The truth is that Respondent is not "disqualified" to sit as Senator, as discussed in the "averments" and "defenses" in this Answer. Except for Petitioner's belated *Petition* and his criminal complaint before the COMELEC, no action has been filed to question her election as Senator; certainly, no suit was ever filed to dispute her qualifications as Chairperson of the MTRCB. Moreover, to her knowledge, Respondent's citizenship and residency qualifications were questioned, for the first time, in 2015, when rumors started circulating that she has plans to run for President of the Republic of the Philippines in the 2016 elections.

2.17. The allegations in paragraph 17 of the *Petition* concerning Petitioner's supposed "realization," what he "should" have done, his "expectations" and how he "feels," are DENIED for being irrelevant, and for lack of knowledge or information sufficient to form a belief as to the truth thereof. Moreover, Petitioner has publicly claimed that, as early as 2013, he was already of the opinion that Respondent was not qualified to sit as Senator (yet, he made no attempt to challenge her qualifications, until now).

2.18. The allegations in paragraph 17 of the *Petition* that: (a) there are "infirmities" in Respondent's qualifications as Senator; (b) she "misrepresent(ed) herself to be qualified" to be Senator; and (c) she is "fooling and deceiving the people who voted for her," are DENIED for being false. The truth is that Respondent is, and has always been, qualified to sit as Senator of the Republic of the Philippines. Thus, she did not

"misrepresent," "fool" or "deceive" the public concerning her qualifications as Senator. These matters are discussed further in the "averments" and "defenses" in this Answer.

2.19. The allegations in the first paragraph of paragraph 18, paragraphs 21, 24, 25, 27, 28, 29, 30, 31, 38, 41, 42, 43, the second paragraph of paragraph 44, paragraphs 45, 46, 47, 48, 50, 51, 53, 55, 56, 57, 58, and 59 of the *Petition,* are DENIED for containing false conclusions of law, assumptions and/or opinions, and for the reasons discussed in the "averments" and "defenses" in this Answer.

2.19.1. The truth is that Respondent was never stateless. She was born a citizen of the Philippines, and she has never claimed that her adoption "conferred" natural-born Filipino citizenship on her. Petitioner's allegations and arguments on the matter of Respondent's adoption are, therefore, immaterial.

2.19.2. Department of Justice ("DOJ") Circular No. 058, s. of 2012, which Petitioner cites in his *Petition*, is irrelevant, as its declared purpose is to establish an administrative procedure for the determination of status of refugees and stateless persons, to determine their eligibility for protection under several international treaties.[32] Respondent is neither a "refugee" nor a "stateless person" as defined under this Circular. By its own terms, the Circular does not apply to Respondent, as she is one who is "already recognized by the competent authorities of the country in which [she has] taken residence as having the rights and obligations which are attached to the possession of the nationality of that country."[33]

2.19.3. As a former natural-born Filipino, Respondent was qualified to reacquire her natural-born Filipino citizenship under Republic Act No. 9225 and, thus, the oath of allegiance she took pursuant to the provisions of that law is <u>not</u> "*void ab initio*."

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[32] DOJ Department Circular No. 58, s. 2012, seeks to implement Philippine treaty obligations under the 1951 United Nations Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1954 United Nations Convention Relating to the Status of Stateless Persons. These two treaties address refugees and stateless persons in particular, not foundlings. (see whereas clauses, DOJ Department Circular No. 58, s. 2012).

[33] Sec. 19, DOJ Department Circular No. 58, s. 2012.

2.19.4. Finally, her oath of allegiance was not "forfeited" or rendered "meaningless" simply because she continued using her U.S.A. passport after she had reacquired her natural-born Philippine citizenship on 7 July 2006. Under Philippine law, Respondent continued to be a U.S.A. citizen until 20 October 2010 when she renounced her U.S.A. citizenship. Under the laws of the U.S.A., her act of taking her oath of office as MTRCB Chairperson was an expatriating act which caused her to lose her U.S.A. citizenship. Moreover, Petitioner misunderstands the import of *Maquiling vs. COMELEC*,[34] which he himself cites in the *Petition*. In this case, the Supreme Court categorically ruled that the mere use of a foreign passport after reacquisition of natural-born Filipino citizenship "does not divest Filipino citizenship regained by repatriation." At most, such use "recants the Oath of Renunciation required to qualify one to run for an elective position."[35]

2.20. The allegations in the last paragraph of paragraph 39 and paragraphs 40 and 41 of the *Petition* that: (a) the issuance of the Revised Implementing Rules and Regulations of R.A. No. 9225 (B.I. Memorandum Circular No. AFF-05-002) "open(ed) the door for applicants of doubtful status as natural-born Filipino(s) to apply for re-acquiring Filipino citizenship;" (b) Respondent is among those with such "doubtful status;" and (c) the B.I. "treated inadvertently" Respondent's petition to re-acquire her natural-born citizenship, are DENIED for being false and legally conclusory.

2.20.1. B.I. Memorandum Circular No. AFF-05-002 is for general application to all those qualified under its terms; it was certainly not promulgated for Respondent's benefit. The issuance of B.I. Memorandum Circular No. AFF-05-002 and the processing of Respondent's petition to reacquire her natural-born Filipino citizenship enjoy the presumption of regularity. Petitioner must prove, and not simply allege, the supposed "inadvertence" or "lack of due diligence" in the acts of the B.I. Moreover, B.I. Memorandum Circular No. AFF-05-002 enjoys the presumption of constitutionality, and it is incumbent upon Petitioner to show that the B.I. went beyond or exceeded its authority in issuing the implementing rules and regulations of R.A. No. 9225.

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[34] G.R. No. 195649, 2 July 2013 (Resolution on the *Motion for Reconsideration*).
[35] Maquiling v. Commission on Elections, G.R. No. 195649, 16 April 2013.

2.20.2. B.I. Memorandum Circular No. AFF-05-002 does not require an applicant for reacquisition of natural-born Filipino citizenship to prove that he/she used to be a "natural-born" Filipino. Under Section 6, in relation to the third "whereas" clause, of B.I. Memorandum Circular No. AFF-05-002, "natural-born" Philippine citizenship is presumed, provided "proof" is shown of prior "Philippine citizenship." The applicant's "Old Philippine Passport" (and not necessarily his/her birth certificate) is among the admissible "proof" of Philippine Citizenship enumerated in the circular, which Respondent merely followed. As Petitioner admits, Respondent presented her old Philippine passport to the B.I. Accordingly, the B.I. was mandated to "presume" that she is a former natural-born Philippine citizen and, thus, qualified to reacquire such citizenship under R.A. No. 9225. As discussed in Defense "A.6", Petitioner's objections to the B.I.'s approval of Respondent's petition to reacquire her natural-born Filipino citizenship should first be raised before the DOJ (which has primary jurisdiction), and not this Honorable Tribunal.

2.20.3. The assertion that Respondent was a former natural-born Filipino citizen at the time she applied with the B.I. to reacquire such citizenship on 7 July 2006, is not a mere presumption, but a fact, as explained in the "averments" and "defenses" in this Answer.

2.21. The allegations in paragraphs 41 and 42 of the *Petition* that Respondent had an intent to mislead or deceive the B.I. when she stated in her "Petition for Re-acquisition of Philippine citizenship" that she was "born … to" her adoptive parents, are DENIED for being false.

2.21.1. The truth is that Respondent's petition to reacquire natural-born citizenship was a standard boiler plate form from the B.I., with several blanks that she simply had to fill in. This is evident from an examination of the petition itself. Respondent had no hand in preparing the form, and she did not think that she could modify its structure.

2.21.2. By writing the names of her adoptive parents in the blanks in the form reserved for the names of the applicant's parents, Respondent was guided by the

phrase "Father's name" and "Mother's name" appearing noticeably underneath these blanks. She never intended to convey that she was, in fact, "born … to" her adoptive parents. The truth is that the act of filling in the names of her adoptive parents was instinctive for Respondent, as in fact she has known no other parents but them. Respondent simply wanted to inform the B.I. who she recognized as her parents; a recognition that is indeed reflected in her Certificate of Live Birth from the National Statistics Office ("NSO") itself. Indeed, among the effects of adoption are: (a) to sever all legal ties between the biological parent(s) and the adoptee; and (b) to deem the adoptee as a legitimate child of the adopters.[36]

2.21.3. Moreover, the word "to" does not immediately follow after the word "born" so as to leave no doubt in the mind of the applicant that she must indicate the names of her *biological* parents (and no other). The word "born" is followed by a space for the "date of birth," then by a space for the "place of birth," and then by the word "to" (which happens to appear on the next line immediately before the names of the applicant's parents).

2.21.4. To reiterate, under R.A. No. 9225 and B.I. Memorandum Circular No. AFF-05-002, Respondent was not required to prove that she used to be a natural-born citizen of the Philippines. Respondent did not have to prove that she was, in fact, "born … to" Filipino parents. Respondent's natural-born Filipino citizenship was presumed from her "proof" of Philippine citizenship, i.e., her "Old Philippine Passport."

2.21.5. At the end of the day, even if Respondent does not know who she was "born to," what was material to Respondent's application under R.A. No. 9225 and B.I. Memorandum Circular No. AFF-05-002 was that she was, in fact, a former natural-born Filipino. As discussed in the "averments" and "defenses" in this Answer, she was.

2.22. The allegation in paragraph 41 of the *Petition* that "the grant of reacquisition of Filipino citizenship by the Bureau of Immigration in favor of (Respondent) was null and void," is DENIED for being a false conclusion of law, and for

[36] In re Lim, G.R. Nos. 168992-93, 21 May 2009.

the reasons discussed in paragraphs 2.20 and 2.21 and in the "averments" and "defenses" in this Answer.

2.23. The allegation in paragraph 43 of the *Petition* that there is "nothing in the BID's record that showed respondent took a personal sworn renunciation of her country the United States of America," is DENIED for being false and conclusory. The truth is that: (a) renunciation of foreign citizenship is not required to reacquire natural-born Philippine citizenship under R.A. No. 9225; (b) renunciation of foreign citizenship is required only when the natural-born Filipino intends to run for elective office or accept appointive public office; and (c) on 21 October 2010, Respondent, through counsel, submitted to the B.I. her sworn renunciation of U.S.A. citizenship which she executed on 20 October 2010.[37] This matter is discussed further in the "averments" and "defenses" in this Answer.

2.24. The allegations in the second paragraph of paragraph 44 of the *Petition*, that Respondent's trips using her U.S.A. passport are "peculiar" or "establish a strange treatment," are DENIED for being false opinions. The truth is that Respondent had no participation in the encoding of the entries found in Annexes "C1" and "C2" of the *Petition*, these appearing to be entries inputted by immigration officers who processed Respondent's travel documents during the referenced dates. Moreover, the allegations in paragraph 45 are DENIED for being false statements of fact and opinion. Respondent did not, for the period from 1 November 2006 to 27 December 2009, make "13 trips to and from the U.S and the Philippines," which supposedly shows her "dual allegiance". During this period, Respondent was still a dual-citizen (she renounced her U.S.A. citizenship on 20 October 2010). Therefore, she was allowed to travel using her U.S.A. passport. Notably, her travels during this period consisted only of short trips to different countries, with only four of them involving the U.S.A. as her destination.

2.25. The allegations in paragraphs 49, 50, 53, 55, 56, and 58 of the *Petition* that: (a) Respondent "did not possess the residency requirement required for senatorial candidates;" (b) "Respondent could not have resided in the Philippines even for few months since she was an American citizen;" (c) Respondent's "domicile remained with the (U.S.A.) until she renounced her U.S. citizenship;" and (d) she "never acquired"

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[37] See Annex "**15**" hereof.

or "failed to acquire" "residence in the Philippine(s)," are DENIED for being false legal conclusions. *First*, any attack on residency is prescribed for not having been brought within the required 10-day period under Rule 18 of the 2013 Rules of Procedure of the Senate Electoral Tribunal ("SET Rules"); *Second*, the truth is that, as of 13 May 2013, Respondent possessed more than the 2-year minimum residence qualification to run for Senator of the Philippines.

2.26. The allegation in paragraph 50 of the *Petition* that Respondent "renounced her American citizenship as shown in a U.S. Government Publication that she was expatriated on 27 July 2012," is DENIED for being false and legally erroneous. The truth is that, on 20 October 2010, Respondent formally renounced her U.S.A. citizenship before a notary public, and this is all that is required under R.A. No. 9225. She renounced her U.S.A. citizenship again on 12 July 2011, before a U.S.A. Vice Consul. Under U.S.A. law, the act which "expatriated" Respondent was her oath of office as Chairperson of the MRTCB, which she took on 21 October 2010. Thus, Respondent lost her U.S.A. citizenship (under the laws of the U.S.A.) on 21 October 2010. This matter is discussed further in the "averments" and "defenses" in this Answer.

III.

AFFIRMATIVE DEFENSES

A.

THE *PETITION* SHOULD BE DISMISSED OUTRIGHT.

A.1.

The *Petition* lacks the required certificate of non-forum shopping.

A.2.

Petitioner is guilty of willful and deliberate forum shopping.

A.3.

The *Petition* has prescribed both as to alleged citizenship and residency disqualifications.

A.4.

The *Petition* is barred by laches.

A.5.

The *Petition* fails to state a cause of action, insofar as it assails Respondent's natural-born Philippine citizenship. The *Petition* does not allege, and the Petitioner does not intend to prove, the fact of Respondent's disqualification, i.e., that her biological parents are aliens.

A.6.

The DOJ, and not this Honorable Tribunal, has primary jurisdiction to revoke the B.I.'s 18 July 2006 Order which: (a) found Respondent presumptively a former natural-born Filipino; and (b) approved her petition for reacquisition of natural-born Filipino citizenship. Insofar as the *Petition* assails the B.I.'s Order, the same is a prohibited collateral attack on Respondent's natural-born Filipino citizenship.

A.7.

Considering that Petitioner is barred from questioning Respondent's eligibility as Senator, his *Petition* is relegated to nothing but an action to

overturn the Filipino people's answer to a purely political question, that is, whether Respondent is, indeed, the popular choice of the Philippine electorate.

B.

RESPONDENT IS ELIGIBLE TO SIT AS A SENATOR OF THE REPUBLIC OF THE PHILIPPINES.

B.1.

Respondent is a natural-born citizen of the Philippines.

B.2.

As of 13 May 2013, Respondent possessed more than the two-year minimum residency requirement for Senatorial candidates.

B.3.

Petitioner has failed to show that affirming Respondent's election as Senator would "thwart" the purposes of the law or would otherwise be "patently antagonistic to constitutional and legal principles." Therefore, the sovereign will of the people who elected Respondent must be upheld, and the *Petition* should be dismissed.

IV.

DISCUSSION

A.

THE *PETITION* SHOULD BE DISMISSED OUTRIGHT.

A.1. The *Petition* lacks the required certificate of non-forum shopping.

4.1. Under Rule 23 of the *SET Rules*, "a petition (for *quo warranto*) shall be summarily dismissed by the Tribunal if . . . (it) is insufficient in form and substance." Under Rule 19, of the *SET Rules*, a "certificate of non-forum shopping … must be annexed to the … petition for quo warranto." The *SET Rules* do not prescribe the form and contents of the certificate of non-forum shopping. Therefore, the Rules of Court apply "by analogy" or "suppletorily."[38] Section 5, Rule 7 of the Rules of Court states:

> Section 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.[39]

4.2. "The rule on certification against forum shopping is intended to prevent the actual filing of multiple petitions or complaints involving identical causes of action, subject matter and issues in other tribunals or agencies as a form of forum shopping. This is rooted in the principle that a party-litigant should not be allowed to pursue simultaneous remedies in

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[38] Rule 87, *SET Rules*.
[39] Underscoring supplied.

different forums, as this practice is detrimental to orderly judicial procedure."[40] The petitioner's statement that he has not commenced any other action "involving the same issues" is the most crucial allegation in a certification against shopping, as this is precisely how the petitioner assures the court or tribunal that he has not committed forum shopping.

4.3. In this case, the so-called "certification of non-forum shopping" ("Certification") attached to the *Petition* did not comply with the mandatory and standard contents of a certification against forum shopping. The *Certification* annexed to the *Petition* simply states the he did not file another petition for *quo warranto*. However, the *Certification* did not state the most critical statement in a certification against forum shopping, i.e., that Petitioner had "not commenced any action or filed any claim involving the same issues," thus:

> VERIFICATION AND CERTIFICATION
> OF NON-FORUM SHOPPING
>
> I, RIZALITO Y. DAVID, a Filipino citizen of legal age, with postal address at # 1 Calvary Drive, Calvary Hills Village East Rembo, Makati City, after having been sworn in accordance with law, do hereby depose and state:
>
> I am the petitioner in this PETITION for quo warranto; I caused the preparation of the same; I read the contents of (sic) thereof, which are true and correct based on my own personal knowledge and authentic documents.
>
> I hereby certify that I have not filed any similar PETITION for quo warranto before any court or tribunal, quasi-judicial body, or agency of the government, no such PETITION has been filed before any court, or tribunal, quasi-judicial body, or agency of the government; in the event that I learn of any such PETITION, I hereby undertake to inform this Honorable Tribunal of the same within five (5) days from my discovery thereof.
>
> (sgd.)
> RIZALITO Y. DAVID
> Affiant

4.4. Rule 19 of the *SET Rules* states that "(a)n unverified or insufficiently verified petition or one that lacks a certificate

[40] Republic vs. Carmel Development, Inc., G.R. No. 142572, 20 February 2002.

of non-forum shopping shall be dismissed outright …". Under Rule 23 of the *SET Rules*, a petition for *quo warranto* which "is insufficient in form" "shall be summarily dismissed." Finally, the second paragraph of Section 5, Rule 7 of the Rules of Court provides that an initiatory pleading, like the instant *Petition*, with a deficient certification against forum shopping "shall" be summarily dismissed, thus:

> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.[41]

4.5. Why would Petitioner not comply with an exceedingly simple formal requirement—i.e., stating in his *Certification* that "he has not theretofore commenced any action or filed any claim involving the same issues"? Obviously, Petitioner wanted to hide from this Honorable Tribunal the fact that he had earlier filed with the COMELEC Law Department, an *Affidavit-Complaint* against Respondent charging her with a purported election offense. This criminal complaint raised issues identical to those raised in this *Petition*. In plain terms, Petitioner could not truthfully make the typical allegations in a certification against forum-shopping, because he had already committed forum shopping. He could not certify "against" something he was guilty of.

A.2. Petitioner is guilty of willful and deliberate forum shopping.

4.6. On 17 August 2015, Petitioner filed before the COMELEC Law Department an *Affidavit-Complaint*[42] charging Respondent with an alleged election offense. Petitioner's

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[41] Underscoring supplied.

[42] A copy of this *Affidavit-Complaint*, showing stamp "received on 17 August 2015" "time: 10:05 AM" by the COMELEC Law Department, is attached hereto as Annex **"22"** After the filing of the *Affidavit-Complaint*, Petitioner distributed a copy/s thereof which was reproduced by members of the media.

Affidavit-Complaint raises exactly the same issues as those already raised in this *Petition*. The *Petition* and the *Affidavit-Complaint* share the following arguments:

(a) Respondent is a foundling and not a natural-born Filipino because her parents have not been shown to be Filipinos;

(b) The Philippines has not ratified the 1961 *Convention on the Reduction of Statelessness* and its provisions cannot apply retroactively;

(c) Article 2 of the Convention is a mere presumption and is contrary to the definition in the Constitution of what a natural-born Filipino is;

(d) Respondent is not a natural-born Filipino and could not have availed herself of the benefits of R.A. No. 9225;

(e) Respondent remained an American citizen who could not establish residence in the Philippines;

(f) Respondent committed a misrepresentation in her R.A. No. 9225 application;

(g) The B.I. was negligent in allowing Respondent to submit only a copy of her old Philippine passport; and

(h) Respondent used her U.S.A. passport after reacquiring Philippine citizenship.

4.7. Even if the case before the COMELEC is a criminal complaint, while the instant *Petition* is for *quo warranto*, there is still forum shopping because the very same issues have been lodged by Petitioner before two tribunals. He has therefore brooked the possibility of conflicting decisions. The determination of Respondent's alleged criminal liability is inextricably linked with the resolution of the same legal issues raised before this Honorable Tribunal. It must be remembered that "ultimately, what is truly important to consider in determining whether forum-shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue… ."[43]

[43] First Philippine International Bank v. Court of Appeals, 252 SCRA 259 (1996).

4.8. In *Wacnang vs. COMELEC*,[44] the petitioner filed a Petition for *Certiorari* with the Supreme Court assailing a COMELEC resolution directing the inclusion of the private respondent's name in the certified list of candidates. Subsequently, he also filed a petition for disqualification of private respondent with the COMELEC. Both petitions involved the same issues. The Supreme Court found that forum shopping had been committed:

> Thus, textually, forum shopping refers "to any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency." The Court has recognized that forum shopping may come in various permutations as they apply to varied situations. At its most basic, however, prohibited forum shopping refers to "actions involving the same issues". We stress this characterization since it describes the exact situation obtaining in the present case.
>
> x x x
>
> For greater specificity, in the disqualification case with the COMELEC, the petitioner sought the disqualification of the private respondent as a candidate for the gubernatorial position in Kalinga because her substitution for her deceased husband and her COC were defective. The petitioner asks us in the present petition to reverse and set aside the COMELEC resolution granting due course to the private respondent's COC on the argument that there was no valid substitution of candidate, leading to the private respondent's defective COC.
>
> If we grant the present petition, the result is the nullification of the private respondent's candidacy and of her election victory. The disqualification case, on the other hand, involves, as the remedy suggests, the disqualification of private respondent and the nullification and setting aside of all the votes she received in the elections on the similar argument that there was no proper case of substitution of candidate resulting in a defective COC. In other words, even the reliefs sought in the petition for disqualification and in the present petition are simply two sides of one and the same coin. The only difference between the two actions, if any, is in the venue, one being judicial (the present petition) while the other is administrative (the disqualification case).

[44] G.R. No. 178024, 17 October 2008.

> From another perspective, if we are to issue a ruling on the merits favorable to the petitioner, our decision will unavoidably and frontally clash with the COMELEC's decision in the disqualification case; it would effectively negate or reverse the COMELEC's disqualification decision without any need of elevating the decision to us for review. A ruling against the petitioner, on the other hand, would effectively affirm the COMELEC's decision, but not without bypassing the law and rules on the appeal of COMELEC decisions. We need not overemphasize that we can affirm or reverse the COMELEC's decision on the disqualification case only if the decision is elevated to us for review. If not appealed, the COMELEC's decision may give rise to complications inherent in forum shopping situations if, as in the present case, a petition on the same issues has been filed with us.
>
> Based on this comparative analysis, we hold that prohibited forum shopping has been committed. Inevitably, whatever merits the petition has are irretrievably lost, as forum shopping leads to the summary dismissal of the petition.[45]

4.9. For the aforementioned reasons, this *Petition* must be summarily dismissed with prejudice. Section 5, Rule 7 of the Rules of Court states that "(i)f the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions."[46]

A.3. The *Petition* has prescribed both as to alleged citizenship and residency disqualifications.

4.10. Rule 18 of the *SET Rules* states that a petition for *quo warranto* against a Senator must be brought within ten (10) days after her proclamation. This period is non-extendible.[47]

4.11. Respondent was proclaimed Senator on 16 May 2013. Petitioner should therefore have filed the instant *Petition* within 10 days after 16 May 2013, or by 26 May 2013. The *Petition* was filed on 17 August 2015, or over 2 years

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[45] Underscoring supplied, citations omitted.
[46] Underscoring supplied.
[47] Rule 20, *SET Rules.*

"beyond the period prescribed" in Rule 18 of the *SET Rules*. The *Petition* must therefore be summarily dismissed pursuant to Rule 23 of the *SET Rules*, which states, in part:

> Rule 23. Summary Dismissal.—An election protest or petition for quo warranto shall be summarily dismissed by the Tribunal if:
>
> x x x
>
> b. The protest or petition is filed beyond the period prescribed in Rule 16 or Rule 18, as the case may be.[48]

4.12. Petitioner claims that his *Petition* "is not barred by the ten (10)-day period provided in (Section 18 of the *SET Rule*s) because the issue being raised in this petition is citizenship."[49]

4.13. Petitioner cites *Limkaichong vs. Commission on Elections,*[50] wherein the Supreme Court held that "(b)eing a continuing requirement, one who assails a member's citizenship or lack of it may still question the same at any time, the ten-day prescriptive period notwithstanding." *Limkaichong,* however, involved disqualification cases filed against therein petitioner long before she was proclaimed, and is unlike the present case wherein Petitioner admittedly already "knew" or "believed" that Respondent was disqualified as early as 2013, but did nothing to timely challenge Respondent's eligbility before the appropriate tribunals.

4.14. Petitioner also underscored the following pronouncement in *Frivaldo vs. COMELEC*:[51] "(t)he will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this case, that the candidate was qualified. Obviously, this rule requires strict application when the deficiency is lack of citizenship."

> 4.14.1. The pronouncements in *Limkaichong* and *Frivaldo* should not be read as an unrestricted license for a registered voter to file, at any time during an elected public officer's term, a petition questioning her citizenship. Rather, these rulings should be read in

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[48] Underscoring supplied.
[49] Par. 8 of the *Petition*, underscoring supplied.
[50] G.R. Nos. 178831-32, 1 April 2009.
[51] G.R. No. 87193, 23 June 1989.

relation to the settled principle that election contests should be concluded as speedily as possible, to the end that any doubt as to the true expression of the will of the electorate will be dissipated without delay, and that the public faith, confidence and cooperation so essential to the success of government will not be undermined.[52] Thus, *Frivaldo* itself clarified that the citizenship of a member of Congress may be questioned beyond the 10-day period only if, during her term of office, the qualification is lost or the disqualification is discovered. The first paragraph of the excerpt from *Frivaldo* (which was invoked by Petitioner himself in paragraph 9 of the *Petition*) is quoted below:

> The argument that the petition filed with the Commission on Elections should be dismissed for tardiness is not well-taken. The herein private respondents are seeking to prevent Frivaldo from continuing to discharge his office of governor because he is disqualified from doing so as a foreigner. Qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. Once any of the required qualifications is lost, his title may be seasonably challenged. If, say, a female legislator were to marry a foreigner during her term and by her act or omission acquires his nationality, would she have a right to remain in office simply because the challenge to her title may no longer be made within ten days from her proclamation? It has been established, and not even denied, that the evidence of Frivaldo's naturalization was discovered only eight months after his proclamation and his title was challenged shortly thereafter.[53]

4.14.2. Accordingly, any exception to the 10-day period for filing petitions for *quo warranto* should be limited only to petitions where the basis for the attack on citizenship was unknown or concealed at the time of the Senator's proclamation. If the ground was already known at the time of proclamation, then the 10-day prescriptive period must be strictly followed.

4.14.3. A contrary interpretation of the 10-day time bar would give any political zealot or any

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[52] Ortega v. De Guzman, G.R. No. L-25758, 18 February 1967.
[53] Underscoring supplied.

> disgruntled losing candidate like Petitioner the unbridled power and discretion to decide *when* the will of the electorate can be fully and unquestionably realized. If the Petitioner is followed, the qualifications of all elected national and local public officials could be questioned up to the last day of their terms, leaving in serious doubt the validity of their numerous official acts. Surely, governmental stability should not be left hostage to such mischief.

4.15. Evidently, Petitioner cannot rely on *Limkaichong* and *Frivaldo.* Petitioner's basis for this petition for *quo warranto*, i.e., that Respondent was a foundling, is a fact that has not changed, and has long been publicly known. Her reacquisition of natural-born Philippine citizenship (which implies that she had once lost that citizenship) is also a matter of public knowledge, as it is reflected in the records of the B.I. which Petitioner himself was able to access. Nevertheless, Petitioner filed nothing to question Respondent's qualifications as Senator, or to cancel her COC after said COC was filed in October 2012. More importantly, within ten (10) days after Respondent's proclamation as Senator on 16 May 2013, Petitioner did not file any petition for *quo warranto* against her. In contrast, in *Limkaichong*, within weeks after the Congressional candidate had filed her COC, her natural-born citizenship was immediately questioned in two (2) petitions for cancellation of her COC.

4.16. Other than questioning Respondent's natural-born Philippine citizenship, Petitioner also claims that Respondent lacked the two-year minimum residence requirement for Senatorial candidates. Yet, unlike his objection to Respondent's citizenship, Petitioner did not even cite any legal basis ostensibly exempting petitions based on residency from the ten-day bar. This explains why the "prayer" of Petitioner's original petition for *quo warranto* was completely silent on Respondent's supposed failure to comply with the two-year residence requirement. The "prayer" of the original petition for *quo warranto* states:

> WHEREFORE, it is respectfully prayed that this PETITION for *quo warranto* be GRANTED and that the herein respondent Mary Grace Poe Llamanzares be ORDERED to immediately vacate her position as a Member of the Senate of the Congress of the Philippines on the ground that she is not qualified for the office being not a natural-born citizen of the Philippines.

> Other reliefs just and equitable under the premises are likewise prayed for.[54]

4.16.1. Petitioner is obviously aware that he can no longer question Respondent's compliance with the two-year residency requirement. Therefore, the issue of residence was raised in this *Petition* as a mere afterthought, or to start an illegal fishing expedition. Either way, the issue of residency is clearly barred by prescription.

4.17. All told, regardless of the ground raised in the *Petition*, it must be dismissed for being time-barred.

A.4. The *Petition* is barred by laches.

4.18. Assuming the *Petition* has not yet prescribed, it should nonetheless be barred by laches, as laches applies even to imprescriptible actions.[55] Laches can still bar an action even if it has not yet prescribed.[56]

4.19. The law aids the vigilant, not those who slumber on their rights. *Vigilantibus sed non dormientibus jura subveniunt.*[57] Thus, the principle of laches, which is applicable in election cases,[58] can operate to bar a petition for *quo warranto*:[59]

> Laches is the failure or neglect, for an unreasonable length of time to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time warranting a presumption that the party entitled to assert it has either abandoned it or has declined to assert it. It has also been defined as such neglect or omission to assert a right taken in conjunction with the lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity.

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[54] Underscoring supplied.
[55] Buenaventura v. Court of Appeals, G.R. No. 50837, 28 December 1992, 216 SCRA 818; Rafols vs. Barba, 119 SCRA 146 [1982].
[56] Miguel vs. Catalino, G.R. No. L-23072, 29 November 1968, citing Nielsen & Co., Inc. vs. Lepanto Consolidated Mining Co., G.R. No. L-21601, 17 December 1966, 18 SCRA 1040.
[57] Salandan vs. Court of Appeals, G.R. No. 127783, 5 June 1998.
[58] Divinagracia, Jr. vs. COMELEC, G.R. Nos. 186007 and 186016, 27 July 2009.
[59] *Id.*

We have ruled in *Catholic Bishop of Balanga vs Court of Appeals*, that:

'The principle of laches is a creation of equity which, as such, is applied not really to penalize neglect or sleeping upon one's right, but rather to avoid recognizing a right when to do so would result in a clearly inequitable situation. As an equitable defense, laches does not concern itself with the character of the defendant's title, but only with whether or not by reason of the plaintiff's long inaction or inexcusable neglect, he should be barred from asserting this claim at all, because to allow him to do so would be inequitable and unjust to the defendant.

'The doctrine of laches or stale demands is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and x x x is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.'

The time-honored rule anchored on public policy is that relief will be denied to a litigant whose claim or demand has become 'stale' or who has acquiesced for an unreasonable length of time, or who has not been vigilant or who has slept on his rights either by negligence, folly or inattention. In other words, public policy requires, for the peace of society, the discouragement of claims grown stale for non-assertion; thus laches is an impediment to the assertion or enforcement of a right which has become, under the circumstances, inequitable or unfair to permit.'[60]

4.19.1. The elements of laches are: "(1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation complained of; (2) delay in asserting complainant's right after he had knowledge of the defendants conduct and after he has an opportunity to sue; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant."[61]

4.20. In this case, laches has already set in.

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[60] Underscoring supplied, citations omitted.
[61] Catholic Bishop of Balanga vs. Court of Appeals, G.R. No. 112519, 14 November 1996.

4.21. *First*, Petitioner has publicly claimed that, as far back as 2013, he was already of the opinion that Respondent was supposedly not a natural-born Filipino. According to him, during his campaign for the May 2013 elections, he had repeatedly raised the issue of Respondent's "parentage," as this would determine whether she is a natural-born citizen of the Philippines.[62] Moreover, the documents attached to his *Petition* (i.e., Respondent's COC as a Senatorial candidate, her petition for reacquisition of natural-born Filipino citizenship, her B.I. travel records and the search result from the U.S. Government Publishing Office) were all readily available in 2013. On the other hand, Petitioner's objection to Respondent's residence qualification is anchored on his stance (albeit, erroneous) that she is stateless and/or not natural-born Philippine citizen.

4.22. *Second*, despite his publicly-declared position in 2013 against Respondent's eligibility as Senator, Petitioner inexplicably chose not to file with this Honorable Tribunal any petition for *quo warranto* against Respondent within ten (10) days after the latter's proclamation, on 16 May 2013, as Senator of the Philippines. It is only now, or two years into Respondent's term as Senator, that Petitioner suddenly decided to formally question the former's natural-born Philippine citizenship and her compliance with the two-year residence requirement.

4.23. *Third*, Respondent certainly did not know, until she found out about this *Petition*, that Petitioner supposedly had doubts about her citizenship and residence qualifications as Senator.

4.24. Finally, Respondent stands to be prejudiced if relief is accorded to Petitioner. As discussed at the outset, the timing of the *Petition* is highly suspect. Its sole, yet clandestine, purpose is to undermine and destroy any chance that Respondent might have of running for higher office. While Petitioner has taken pains to disguise his *Petition* as a shield to protect the sanctity of the upper house of Congress, the truth is that Petitioner could not care less about Respondent's seat in the Senate. Petitioner filed this case for one reason and one reason only: to ensure that Respondent cannot run for President in the upcoming 2016 elections. This is why the Petitioner waited until the height of Respondent's popularity

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[62] Available at http://www.rappler.com/newsbreak/rich-media/103408-podcast-grace-poe-get-away-david (at 8:37 to 8:50; 9:40 to 9:46; 10:02 to 10:37).

as a potential Presidential candidate to launch his successive attacks on her status as a natural-born Filipino. This is not speculation. Petitioner essentially admitted that these are his true motives during his recent 43-minute interview for *Rappler*'s "Inside Track."[63]

4.25. Giving due course or granting the instant *Petition* would inevitably result in the "inequitable," "unfair" and "unjust" situation that the principle of laches was precisely meant to guard against. Thus, Petitioner should be barred, by laches, from questioning Respondent's citizenship qualification as Senator. Dismissing the instant *Petition* outright would likewise uphold the basic principle that "title to public elective office be not left long under cloud."[64]

A.5. The *Petition* fails to state a cause of action, insofar as it assails Respondent's natural-born Philippine citizenship. The *Petition* does not allege, and the Petitioner does not intend to prove, the fact of Respondent's disqualification, i.e., that her biological parents are aliens.

4.26. Section 3, Article VI of the *1987 Constitution* states, in part, that "(n)o person shall be a Senator unless (s)he is a natural-born citizen of the Philippines." Section 2, Article IV of the *1987 Constitution* defines "natural-born citizens of the Philippines" as "those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship." To be considered a "natural-born" Philippine citizen under the *1987 Constitution*, Respondent must: (a) be a Philippine citizen from birth; and (b) possess said citizenship without having to perform any act to acquire or perfect her Philippine citizenship.[65]

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[63] Available at http://www.rappler.com/newsbreak/rich-media/103408-podcast-grace-poe-get-away-david.
[64] Panilio vs. COMELEC, G.R. No. 181478, 15 July 2009; Gementiza vs. Commission on Elections, G.R. No. 140884, March 6, 2001, 353 SCRA 724, 731, citing Estrada vs. Sto. Domingo, No. L-30570, 29 July 1969, 28 SCRA 890, 904.
[65] See Bengson III vs. HRET and Cruz, G.R. No. 142840, 7 May 2001 (Although this case dealt with Section 4, Article III of the *1973 Constitution*, this provision is identical to the first sentence of Section 2, Article IV of the *1987 Constitution).*

4.27. By definition under the *1987 Constitution*, "natural-born" Philippine citizenship is acquired "from birth." Accordingly, reference must be made to the law defining Philippine citizenship at the time of Respondent's birth.[66]

4.28. Respondent was found, as a new-born infant, in the Parish of Jaro in Iloilo City on 3 September 1968. She was born under the *1935 Constitution* and *before* the advent of the 1973 and the 1987 Constitutions. Section 1, Article IV of the *1935 Constitution* states:

> ARTICLE IV
>
> Citizenship
>
> SECTION 1. The following are citizens of the Philippines.
>
> (1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.
>
> (2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.
>
> (3) Those whose fathers are citizens of the Philippines.
>
> (4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.
>
> (5) Those who are naturalized in accordance with law.[67]

4.29. Jurisprudence is categorical: It is the burden of the petitioner in a *quo warranto* case to first prove the very fact of disqualification before the candidate should even be called upon to defend h(er)self with countervailing evidence.[68] Hence, the *Petition* must allege as its basis, and Petitioner must then prove, that Respondent was born to a foreign father and mother, and hence, is not a natural-born Filipino.

4.30. To be sufficient in form and substance, a *quo warranto* petition that would seek to unseat Respondent from her Senate seat because she is not a natural-born Filipino must expressly allege that she is disqualified because neither of her parents is a Filipino. Other than stating his legal conclusion that Respondent is disqualified, the *Petition* states

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[66] See Tecson vs. COMELEC, G.R. Nos. 161434, 161634 & 161824, 3 March 2004, where the Supreme Court decided the citizenship of Mr. Ronald Allan Poe under the *1935 Constitution*, because he was born on 20 August 1939.

[67] Underscoring supplied.

[68] Fernandez vs. HRET, G.R. No. 187478, 21 December 2009, 608 SCRA 733.

no more than that there is "no proof upon which to conclude that her father or mother is a Filipino citizen, so as to make her a Filipino citizen at birth." The *Petition* therefore does not only rest on a complete misconception on Petitioner's part as to who has the burden of proof in this case; more importantly, it does not state a cause of action against Respondent and should be dismissed outright.

4.31. Under the Rules of Court, which has suppletory application in proceedings before this Honorable Tribunal,[69] a special civil action for *quo warranto*, like other ordinary civil actions, must be based on a cause of action. In *General vs. Urro*,[70] the Supreme Court held that "while a *quo warranto* is a special civil action, the existence of a cause of action is not any less required since both special and ordinary civil actions are governed by the rules on ordinary civil actions subject only to the rules prescribed specifically for a particular special civil action."[71]

4.32. The failure of a petition to state a cause of action is a ground for its outright dismissal.[72] The elementary test for failure to state a cause of action is whether the pleading alleges facts which if true would justify the relief demanded. Only ultimate facts and not legal conclusions or evidentiary facts which in the first place should not have been alleged in the complaint are considered for purposes of applying the test.[73] Legal conclusions, conclusions or inferences of facts from facts not stated, or incorrect inferences or conclusions from facts stated do not constitute ultimate facts,[74] and hence should not be considered in determining whether a pleading sufficiently states a cause of action.

4.33. The *Petition* fails to state a cause of action, insofar as it questions Respondent's natural-born Philippine citizenship. Petitioner failed to allege the ultimate facts which would show that Respondent's parents are both foreigners and that she therefore is *not* a natural-born citizen of the Philippines. He alleged that Respondent is disqualified from sitting as a Senator of the Republic on the ground that she is

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[69] Rule 87, *SET Rules*.
[70] G.R. No. 191560, 29 March 2011.
[71] Underscoring supplied, citations omitted.
[72] Rule 23 (a), *SET Rules*; Velarde v. Social Justice Society, G.R. No. 159357, 28 April 2004; *see also* Rule 16, sec. 1 of the Rules of Court.
[73] G & S Transport Corporation v. Court of Appeals, G.R. No. 120287, 28 May 2002.
[74] I FERIA & NOCHE, CIVIL PROCEDURE ANNOTATED 317, citing Alzua and Arnalot v. Johnson, 21 Phil. 308 (1912).

an American citizen. However, Petitioner himself admitted that Respondent's petition for re-acquisition of Filipino citizenship under R.A. No. 9225 was granted by the B.I.[75] He likewise alleged that Respondent is "not a natural-born citizen of the Philippines,"[76] for, being a foundling, "her parents are not known and cannot be presumed as [sic] Filipino citizens".[77] Nowhere does Petitioner allege, however, the identity of Respondent's birth parents, much less their status as citizens of a foreign country. Lastly, his allegation that Respondent was "born stateless"[78] is a conclusion of law and hence should not be considered in determining whether the pleading establishes a cause of action against Respondent.

4.34. The reason why Petitioner's *quo warranto* petition must allege that Respondent's parents were foreigners, and Respondent is therefore not a natural-born Filipino, is that Respondent is at least presumed to be a natural-born Filipino. That presumption arises from official acts of the Government, no less. Respondent was recognized to have reacquired her natural born Philippine citizenship by the B.I., was voted for and was proclaimed as a Senator of the Republic, and occupied public office as Chairperson of the MTRCB—all acts which require not only presumptive possession of Philippine citizenship, but official recognition that Respondent is a natural-born Filipino. Against this backdrop, Petitioner presents a challenge that is anchored on a mere supposition, *i.e.*, that Respondent's birth parents being unknown, they cannot be Filipino citizens and must perforce be aliens. Petitioner's challenge is anchored not on facts but on a hypothesis, with him conveniently forgetting that the burden lies on him to allege the essential facts necessary to sustain this action, and to prove such allegations.

4.35. As mentioned, the Philippine Government's repeated recognition that Respondent is a natural-born Philippine citizen created a presumption that she is a natural-born Filipino. The burden rests on Petitioner, who claims otherwise.

4.35.1. In *Board of Commissioners, et al. vs. Hon. Dela Rosa,*[79] the Supreme Court applied a "presumption of citizenship" in favour of a certain Mr. William

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[75] Third paragraph of par. 38 of the *Petition.*
[76] First paragraph of par. 4 of the *Petition.*
[77] First paragraph of par. 24 of the *Petition.*
[78] Par. 31 of the *Petition.*
[79] G.R. Nos. 95122-23, 31 May 1991.

Gatchalian because the last official act of then Acting Commissioner of Immigration was the issuance of an order "admitting" Mr. Gatchalian as a "Filipino citizen" and "revalidating" his Identification Certificate. Conversely, in *Aznar vs. COMELEC*,[80] the Supreme Court held that "loss of citizenship" could not be presumed for a "holder of a valid and subsisting Philippine passport" who "ha(d) continuously participated in the electoral process in this country since 1963 up to the present, both as a voter and as a candidate."

4.35.2. Under Section 23, Rule 132 of the Rules of Court, "(d)ocuments consisting of entries in public records made in the performance of a duty by a public officer" "are *prima facie* evidence of the facts stated therein..."[81] Under Section 3 (m), Rule 131 of the Rules of Court, there is a disputable presumption that "official duty has been regularly performed." Further, under Section (l) and (ff), it is also presumed that "a person acting in a public office was regularly appointed or elected to it" and that "the law has been obeyed."

4.35.3. On 13 December 1986, the COMELEC issued to Respondent a Voter's Identification Card[82] for Precinct No. 196, Greenhills, San Juan, Metro Manila. Under the 1973[83] and 1987[84] Constitutions, the right of suffrage may be exercised only by those who are "citizens of the Philippines."

4.35.4. The Ministry/Department of Foreign Affairs of the Philippines issued passports to Respondent on 4 April 1988, 5 April 1993, 19 May 1998, 13 October 2009, and 18 March 2014. A diplomatic passport was even issued in Respondent's favor on 19 December 2013. Passports typically state that "(t)he Government of the

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[80] G.R. No. 83820, 25 May 1990.

[81] In Gonzles vs. Pennisi, G.R. No. 169958, 5 March 2010, this section was applied to a certificate of live birth which the Supreme Court held to be "valid unless declared invalid by competent authority." See also Cacho vs. Court of Appeals, G.R. No. 123361, 3 March 1997, where the Supreme Court held that: "The execution of public documents, as in the case of the Affidavit of Adjudication, is entitled to a presumption of regularity and proof is required to assail and controvert the same. Thus, the burden of proof rests upon him who alleges the contrary and respondents cannot shift the burden to petitioner by merely casting doubt as to his existence and his identity without presenting preponderant evidence to controvert such presumption. With more reason shall the same rule apply in the case of the Special Power of Attorney duly sworn before the Philippine Consulate General of the Republic of the Philippines in Chicago, the act of the administering oath being of itself a performance of duty by a public official."

[82] Annex "**4**" hereof.

[83] Section 1, Article VI of the 1973 Constitution.

[84] Section 1, Article V of the 1987 Constitution.

Republic of the Philippines[85] requests all concerned to permit the bearer, a citizen of the Philippines, to pass safely and freely and, in case of need, to give him/her all lawful aid and protection." Under R.A. No. 8239, the Philippine government issues passport only if it is "satisfied that the applicant is a Filipino citizen."[86]

4.35.5. R.A. No. 9225, the Citizenship Retention and Re-acquisition Act of 2003, applies only to natural-born Filipino citizens. Under its Implementing Rules and Regulations promulgated by the Bureau of Immigration[87], former Filipino citizens seeking to avail themselves of the benefits of R.A. No. 9225 are presumed to be natural-born Filipino citizens unless proven otherwise. On 18 July 2006, then B.I. Commissioner Alipio F. Fernandez, Jr. issued an Order of even date (through then Associate Commissioner Roy M. Almoro, who signed for him) granting Respondent's petition to reacquire her natural-born Philippine citizenship under this law.[88] The 18 July 2006 Order states that Respondent is "presumed to be a natural born Philippine citizen," thus:

> A careful review of the documents submitted in support of the instant petition indicate that the petitioner was a former citizen of the Republic of the Philippines being born to Filipino parents and is presumed to be a natural born Philippine citizen; thereafter, became an American citizen and is now a holder of American passport; was issued at ACT and ICR and has taken her oath of allegiance to the Republic of the Philippines on July 7, 2006 and so is thereby deemed to have re-acquired her Philippine Citizenship.[89]

4.35.6. On 31 July 2006, the BI, through then Commissioner, Alipio F. Fernandez, Jr., issued Identification Certificate No. 06-10918, which certifies that Respondent was "recognized as a citizen of the

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[85] The Secretary of Foreign Affairs of the Republic of the Philippines, in the case of Respondent's diplomatic passport no. DE0004530.

[86] See Sections 3(d) in relation to Section 5 of R.A. No. 8293 and Maquiling vs. Commission on Elections, G.R. No. 195649, 2 July 2013.

[87] B.I. Memorandum Circular No. AFF-05-002 (which were the implementing rules and regulations of R.A. No. 9225 in force when Respondent filed her petition for reacquisition of natural-born Philippine citizenship; See also B.I. Memorandum Circular No. MCL-08-006, the "2008 Revised Rules Governing Philippine Citizenship under Republic Act No. 9225 and Administrative Order No. 91, series of 2004".

[88] Annex "**10**" hereof.

[89] Underscoring supplied.

Philippines as per (sic) pursuant to the Citizenship Retention and Re-acquisition Act of 2003 (RA 9225) x x x." R.A. No. 9225 applies specifically to "natural-born citizens of the Philippines."[90]

4.35.7. On 6 October 2010, the President of the Philippines appointed Respondent the Chairperson of the MTRCB. This shows that the President himself recognized Respondent's qualifications for the position, among which, is that she is a "natural-born" Philippine citizen.[91]

4.35.8. Respondent's candidacy for the 2013 senatorial elections was accepted by the COMELEC and no disqualification case was filed against her. Thereafter, she was overwhelmingly elected by the Filipino people.

4.35.9. The presumptions that the COMELEC, the D.F.A., the B.I. and the President "regularly performed" their respective "official" duties in issuing the above-mentioned documents in Respondent's favour, that Respondent was regularly appointed to the MTRCB and was regularly elected to the Senate, and that the law was obeyed in all instances, logically carry with it the presumption that Respondent qualified for the issuance of those documents and to occupy those offices. In other words, the application of those presumptions necessarily entails the presumption that Respondent is a "natural-born" citizen of the Philippines.

4.35.10. Based on the foregoing, it is Petitioner's burden to prove that Respondent is not a natural-born Filipino, and he can discharge this burden only by proving that Respondent's parents were aliens.

4.36. Petitioner alleges in paragraph 21 of the *Petition* that Respondent "does not fall under any" of the five (5) categories of Philippine citizens under Section 1, Article IV of the *1935 Constitution.*

4.36.1. Admittedly, Respondent does not fall under paragraphs (1), (2) and (5) of Section 1, Article IV of the *1935 Constitution.*

4.36.2. Respondent does not fall under paragraph (1), because she was not yet born "at the time

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[90] Section 3, R.A. No. 9225.
[91] Section 2, Presidential Decree No. 1986.

of the adoption" of the *1935 Constitution.* Respondent does not claim that she was born of "foreign parents" who, before the adoption of the 1935 Constitution, "had been elected to public office in the Philippine Islands." Paragraph (2) is thus also not applicable. Finally, Respondent was not naturalized as a Filipino and Petitioner makes no claim that she was; thus, paragraph (5) also does not apply to her.

4.37. Therefore, Petitioner must establish by a "preponderance of the evidence"[92] that Respondent "does not fall" under paragraphs (4) and (5) of Section 1, Article IV of the *1935 Constitution*. Stated simply, Petitioner has the burden of proving that, at the time of Respondent's birth, both of her biological parents were aliens. Petitioner has to point to two specific foreigners and establish that they are Respondent's biological parents.

4.38. However, Petitioner did not even care to allege that Respondent was born of foreigners. In fact, he admits that he does not know (and based on his allegations, does not intend to prove) who Respondent's biological parents are.

4.38.1. In paragraphs 11 and 24 of the *Petition*, Petitioner asserts that "the reported circumstance of (Respondent's) birth yield no proof upon which to conclude that her father or mother is a Filipino citizen, so as to make her a Filipino citizen at birth."

4.38.2. In paragraph 24 of the *Petition*, Petitioner alleges that Respondent's "parents are not known."

4.38.3. In paragraph 32 of the *Petition*, Petitioner claims that Respondent "had no known biological parents."

4.39. The allegations of the *Petition* indicate that Petitioner clearly has no intention of proving "the very fact of (Respondent's) disqualification," i.e., that Respondent was born to foreigners. He does not intend to overcome the presumption that Respondent is a natural-born citizen of the Philippines. On the contrary, Petitioner concedes that there is, at least, a chance that either one of Respondent's biological parents were Filipinos at the time she was born. How then can the instant Petition for *Quo Warranto* prosper, when the

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[92] Rule 73, *SET Rules.*

Petitioner (who has the burden of proof) cannot even exclude the possibility that Respondent was born of Filipino parents?

4.40. Since doubt is *all* that Petitioner intends to cast, then Respondent should not be unseated as Senator, lest we frustrate the will of the people who elected her overwhelmingly in 2013.

4.40.1. In *Mitra vs. COMELEC,*[93] the Supreme Court held that, in case of doubt concerning the qualifications of a winning candidate for public office, the will of the people must be upheld:

> Mitra has been proclaimed winner in the electoral contest and has therefore the mandate of the electorate to serve.
>
> We have applied in past cases the principle that the manifest will of the people as expressed through the ballot must be given fullest effect; in case of doubt, political laws must be interpreted to give life and spirit to the popular mandate. Thus, we have held that while provisions relating to certificates of candidacy are in mandatory terms, it is an established rule of interpretation as regards election laws, that mandatory provisions, requiring certain steps before elections, will be construed as directory after the elections, to give effect to the will of the people.[94]

4.40.2. In *Sabili vs. COMELEC,*[95] the Supreme Court reaffirmed the principle that, in the face of weak or inconclusive evidence of a public officer's lack of qualifications, the popular mandate must be respected:

> As a final note, we do not lose sight of the fact that Lipa City voters manifested their own judgment regarding the qualifications of petitioner when they voted for him, notwithstanding that the issue of his residency qualification had been raised prior to the elections. Petitioner has garnered the highest number of votes (55,268 votes as opposed to the 48,825 votes in favor of his opponent, Oscar Gozos) legally cast for the position of Mayor of Lipa City and has consequently been

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[93] G.R. No.191938, 2 July 2010.
[94] Citing Velasco v. COMELEC, G.R. No. 180051, 24 December 2008.
[95] G.R. No. 193261, 24 April 2012, citing Enojas, Jr. v. Commission on Elections, 347 Phil. 510 (1997).

> proclaimed duly elected municipal Mayor of Lipa City during the last May 2010 elections
>
> In this regard, we reiterate our ruling in *Frivaldo v. Commission on Elections* that (t)o successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people, would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote.
>
> Similarly, in *Japzon v. Commission on Elections*, we concluded that when the evidence of the alleged lack of residence qualification of a candidate for an elective position is weak or inconclusive and it clearly appears that the purpose of the law would not be thwarted by upholding the victor's right to the office, the will of the electorate should be respected. For the purpose of election laws is to give effect to, rather than frustrate, the will of the voters.
>
> In sum, we grant the Petition not only because petitioner sufficiently established his compliance with the one-year residency requirement for local elective officials under the law. We also recognize that (a)bove and beyond all, the determination of the true will of the electorate should be paramount. It is their voice, not ours or of anyone else, that must prevail. This, in essence, is the democracy we continue to hold sacred.[96]

4.40.3. The above rulings apply with greater force in this case, as Respondent garnered over twenty (20) million votes during the 2013 elections, finishing first in the senatorial race. To hold that Respondent is disqualified, based on a mere hypothesis that cannot be proven, and which Petitioner does not intend to prove, would be to frustrate the sovereign will of over twenty million Filipinos who recognized Respondent's qualifications to sit as a member of the Senate. It is tantamount to telling these twenty million Filipinos that, because of one man's mere *doubt*, their votes should now be deemed "stray, void or meaningless."

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[96] Underscoring supplied, citations omitted.

4.40.4. As discussed in Defense "B.1", Respondent is not only presumed to be a natural-born Filipino, she is, in fact and in law, a natural-born Filipino.

A.6. The DOJ, and not this Honorable Tribunal, has primary jurisdiction to revoke the B.I.'s 18 July 2006 Order which: (a) found Respondent presumptively a former natural-born Filipino; and (b) approved her petition for reacquisition of natural-born Filipino citizenship. Insofar as the *Petition* assails the B.I.'s Order, the same is a prohibited collateral attack on Respondent's natural-born Filipino citizenship.

4.41. On 18 July 2006, then B.I. Commissioner Alipio F. Fernandez, Jr. issued an Order[97] of even date (through then Associate Commissioner Roy M. Almoro, who signed for him) which states in part:

> A careful review of the documents submitted in support of the instant petition indicate that the petitioner was a former citizen of the Republic of the Philippines being born to Filipino parents and is presumed to be a natural born Philippine citizen; thereafter, became an American citizen and is now a holder of an American passport; was issued an ACT and ICR and has taken her oath of allegiance to the Republic of the Philippines on July 7, 2006 and so is thereby deemed to have re-acquired her Philippine Citizenship.[98]

4.42. Petitioner alleges in his *Petition*, that Respondent was supposedly not qualified to apply for reacquisition of natural-born Filipino citizenship under R.A. No. 9225, because she was supposedly not a "former" natural-born Filipino. Petitioner cannot plead this argument in these proceedings without violating the principle of primary jurisdiction and the prohibition against collateral attacks on citizenship.

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[97] Annex "**10**" hereof.
[98] Underscoring supplied.

4.43. Under Section 18 of B.I. Memorandum Circular No. AFF. 05-002 (the "Revised Rules Governing Philippine Citizenship under R.A. No. 9225 and Administrative Order No. 91, Series of 2004," which were in effect at the time the 18 July 2006 Order was issued) said Order was exempted from affirmation by the Secretary of Justice, thus:

> Section 18. *Exemption from administrative review*.
>
> Retention/reacquisition of Philippine citizenship under these Rules shall not be subject to the affirmation by the Secretary of Justice pursuant to DOJ Policy Directive of 7 September 1970 and DOJ Opinion No. 108 (series of 1996).

4.43.1. A similar provision is found in Section 19 of the current implementing rules of R.A. No. 9225, i.e., B.I. Memorandum Circular No. MCL-08-006.[99]

4.43.2. Considering that B.I. Memorandum Circular No. AFF. 05-002 was "approved" by then Secretary of Justice, the Hon. Raul M. Gonzales, it would follow that the B.I.'s 18 July 2006 Order effectively carries with it the affirmation by the Secretary of Justice.

4.44. Pursuant to Section 18 of B.I. Memorandum Circular No. AFF. 05-002, the 18 July 2006 Order can be revoked only by the DOJ, thus:

> However, the Order of Approval issued under these Rules may be revoked by the Department of Justice upon a substantive finding of fraud, misrepresentation or concealment on the part of the applicant and after an administrative hearing initiated by an aggrieved party or by the Bureau of Immigration.[100]

4.44.1. The same rule is found in B.I. Memorandum Circular No. MCL-08-006.[101]

4.45. Evidently, the DOJ has the primary jurisdiction or the power to "make the initial decision" to rule

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[99] 2008 Revised Rules Governing Philippine Citizenship Under Republic Act No. 9225 and Administrative Order No. 91, series of 2004, the implementing rules of R.A. 9225 now in force.

[100] Undercoring supplied

[101] 2008 Revised Rules Governing Philippine Citizenship. Under Republic Act No. 9225 and Administrative Order No. 91, series of 2004, the implementing rules of R.A. 9225 now in force.

on whether reacquisition of natural-born Filipino citizenship evidenced by the 18 July 2006 Order, was valid. The ruling of the Supreme Court in *Quintos, Jr. vs. National Stud Farm*[102] is instructive in this regard:

> It is true that the doctrine of primary jurisdiction or prior resort goes no further than to determine whether it is the court or the agency that should make the initial decision. Parker, in his text, would put the matter thus: "The fact that a governmental authority is empowered to deal with a given type of matter gives rise to a presumption that it has exclusive jurisdiction over the matter. If the law delegates A to make decisions this means that in dubio B is not so delegated." Davis clarifies the point in this wise: "The precise function of the doctrine of primary jurisdiction is to guide a court in determining whether the court should refrain from exercising its jurisdiction until after, an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court." The important thing is that the dispute be determined according to the judgment, in the language of an American Supreme Court decision, "of a tribunal appointed by law and informed by experience." x x x. When, therefore, as was likewise adverted to by the Solicitor General, the judicial forum was sought by plaintiff, there was in effect an unwarranted disregard of the concept of primary jurisdiction. In the traditional language of administrative law, the stage of ripeness for judicial review had not been reached. As so well-put by another authoritative treatise writer, Jaffe, that would be to ignore factors not predetermined "by formula but by seasoned balancing [thereof] for and against the assumption of jurisdiction." All that had been said so far would seem to indicate that under such a test, the lower court's insistence on the observance of the fundamental requirement of exhausting administrative remedies is more than justified.[103]

4.45.1. *Blue Bar Coconut Philippines vs. Tantuico, Jr.*[104] is also *apropos:*

> In cases involving specialized disputes, the trend has been to refer the same to an administrative agency of special competence. As early as 1954, the Court in Pambujan Sur United Mine Workers v. Samar Mining

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[102] G.R. No. L-37052, 29 November 1973

[103] Underscoring supplied.

[104] G.R. No. L-47051, 29 July 1988; see Ros vs. DAR, G.R. No. 132477, 31 August 2005; Saavedra vs. Securities and Exchange Commission, G.R. No. 80879, 21 March 1988; Brett vs. Intermediate Appellate Court, G.R. Nos. 74222 & 77098, 27 November 1990.

> Co., Inc. (94 Phil. 932, 941), held that under the sense-making and expeditious doctrine of primary jurisdiction' .. the courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal prior to the decision of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered.' Recently, this Court speaking thru Mr. Chief Justice Claudio Teehankee said:
>
> 'In this era of clogged court dockets, the need for specialized administrative boards or commissions with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or essentially factual matters, subject to judicial review in case of grave abuse of discretion, has become well nigh indispensable.' (Abejo v. de la Cruz, 149 SCRA 654, 675)." (Saavedra, Jr., et al. v. Securities and Exchange Commission, et al., G.R. No. 80879, March 21, 1988).[105]

4.46. Applying the doctrine of primary jurisdiction, until the DOJ has been given the chance (in the appropriate administrative proceeding) to decide the issue, this Honorable Tribunal should "refrain" from deciding whether Respondent could validly avail herself of the benefits of R.A. No. 9225, i.e., whether she was, indeed, a former natural-born citizen of the Philippines qualified under the terms of that statute.

4.47. In the meantime, the 18 July 2006 Order which: (a) found Respondent presumptively a former natural-born Filipino; and (b) approved her petition for reacquisition of natural-born Filipino citizenship, cannot be impugned in this case. It must be presumed valid and regular.

4.48. It is well-settled that "[i]n our jurisdiction, an attack on a person's citizenship may only be done through a direct action for its nullity."[106] Before the 18 July 2006 Order can be assailed, the jurisdiction of the appropriate administrative agency (i.e., the DOJ) must first be properly

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[105] Underscoring supplied

[106] Vilando vs. House of Representatives Electoral Tribunal, G.R. Nos. 192147 & 192149, 23 August 2011; Co vs. House of Representatives Electoral Tribunal, G.R. Nos. 92191-92, 30 July 1991, citing Queto vs. Catolico, G.R. Nos. L-25204 & L-25219, 23 January 1970.

invoked. *Queto vs. Catolico*[107] is *apropos.* In this case, the respondent judge *motu proprio* reopened and reviewed thirty-five (35) naturalization proceedings, declaring null and void the grant of citizenship to petitioners after taking "judicial notice" of certain derogatory news reports, "thereby elevating rumors and gossip to the level of incontrovertible proof".[108] Said the Supreme Court:

> The issue is whether or not respondent Judge, *motu proprio*, had jurisdiction to reopen and review, or putting it more accurately in this case, to declare null and void the grant of citizenship to the petitioners pursuant to final judgments of competent courts and after the oaths of allegiance had been taken and the corresponding certificates of naturalization issued. It may be true, as alleged by said respondent, that the proceedings for naturalization were tainted with certain infirmities, fatal or otherwise, but that is beside the point in this case. The jurisdiction of the court to inquire into and rule upon such infirmities must be properly invoked in accordance with the procedure laid down by law. Such procedure is by cancellation of the naturalization certificate [Sec. 1(5), Commonwealth Act No. 63], in the manner fixed in Section 18 of Commonwealth Act No. 473, hereinbefore quoted, namely, "upon motion made in the proper proceedings by the Solicitor General or his representatives, or by the proper provincial fiscal." In other words, the initiative must come from these officers, presumably after previous investigation in each particular case.[109]

4.48.1. While *Queto* refers to naturalization proceedings, the principle is likewise applicable to administrative proceedings for re-acquisition of citizenship with the B.I. Under Rule 131, Section 2 (m) of the Rules of Court, such proceedings enjoy the presumption of regularity, and if Petitioner is convinced of any irregularity in the proceedings before the B.I., it is for him to prove his contentions before the proper forum, which is the DOJ.

4.49. This Honorable Tribunal, with due respect, is not a court of general jurisdiction which can pass upon the validity of an administrative proceeding that has long ago been terminated, and the decision in which has long ago attained finality. If Petitioner wishes to assail such proceedings, he

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[107] G.R. Nos. L-25204 & L-25219, 23 January 1970.
[108] *Id.*
[109] Underscoring supplied.

must invoke the jurisdiction of the competent agency, which is the DOJ. Thus, Petitioner's attempt in this *Petition* to lodge a collateral attack on the validity of the B.I. proceedings should not be allowed.

A.7. Considering that Petitioner is barred from questioning Respondent's eligibility as Senator, his *Petition* is relegated to nothing but an action to overturn the Filipino people's answer to a purely political question, i.e., whether Respondent is, indeed, the popular choice of the Philippine electorate.

4.50. A political question is defined as a question "which under the Constitution (is) to be decided by the people in their sovereign capacity."[110] The choice of elective public officials is granted exclusively to the Filipino people through the right of suffrage.[111] Under the Constitution, Senators are "elected at large by the qualified voters of the Philippines, as may be provided by law."[112] Therefore, the issue of who should (as opposed to who *may*) be elected Senator is a political question which is clearly beyond the jurisdiction of this Honorable Tribunal.

4.51. As discussed, Petitioner is barred from objecting to Respondent's eligibility as Senator due, among other reasons, to prescription, laches, willful and deliberate forum shopping, a formally defective certification of non-forum shopping, lack of jurisdiction and failure to state a cause of action. Nevertheless, Petitioner insists (ostensibly) in his *Petition* that Respondent be unseated.

4.52. Petitioner is therefore effectively asking this Honorable Tribunal to decide, in lieu of the Filipino people, *the* most critical question in any democracy—is the elected and proclaimed public official (in this case, the Respondent) truly the popular choice of the Philippine electorate?

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[110] Javellana vs. Executive Secretary, G.R. Nos. L-36142, etc., 31 March 1973.
[111] Article V, 1987 Constiution.
[112] Section 2, Article VI, 1987 Constitution.

4.53. This is obviously not a justiciable, but a purely political, question which is solely within the province of the Filipino people who, with over 20 million voices, have already answered with a resounding "YES." In the absence of any valid or timely challenge, this Honorable Tribunal has no power to overturn a popular mandate. As held in *Nolasco vs. COMELEC:*[113]

> (E)ach time the enfranchised citizen goes to the polls to assert this sovereign will, that abiding credo of republicanism is translated into living reality. If that will must remain undefiled at the starting level of its expression and application, every assumption must be indulged in and every guarantee adopted to assure the unmolested exercise of the citizen's free choice. For to impede, without authority valid in law, the free and orderly exercise of the right of suffrage, is to inflict the ultimate indignity on the democratic process.[114]

4.54. In the paragraphs that follow, Respondent will show that she is a natural-born Filipino and that, as of 13 May 2013, she possessed more than the two-year minimum residence qualification for Senators. Respondent's averments below are without prejudice to the grounds for immediate dismissal/ affirmative defenses discussed in paragraphs 4.1 to 4.53 above.

4.55. Respondent seeks the consideration of the discussion below only in the event that this Honorable Tribunal does not dismiss the *Petition* based on said grounds for immediate dismissal, as discussed in Parts V and VI of this Answer.

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[113] G.R. Nos. 122250 & 122258, 21 July 1997 (citing People vs. San Juan, 22 SCRA 505).

[114] Underscoring supplied.

B.

RESPONDENT IS ELIGIBLE TO SIT AS A SENATOR OF THE REPUBLIC OF THE PHILIPPINES.

B.1. Respondent is a natural-born citizen of the Philippines.

4.56. Petitioner's core thesis is that Respondent, as a foundling, was born stateless. The law does not support this theory.

4.57. Indeed, Section 1, Article IV of the *1935 Constitution* does not expressly mention foundlings whose parents, by definition, are unknown. However, the deliberations of the framers of the *1935 Constitution* may be resorted to in order to discern their intent in not including in the organic law, a specific provision governing the citizenship of foundlings and the reasons therefor.

4.57.1. In *Nitafan vs. Commissioner*,[115] the Supreme Court ruled:

> 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.[116]

4.57.2. In *In re Aquino, Jr. vs. Enrile*,[117] the Supreme Court stated that "it is generally held that, in

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[115] G.R. No. 7870, 23 July 1980.

[116] Underscoring supplied.

[117] G.R. No. L-35536, 17 September 1974, citing Pollock vs. Farmer's Loan & T. Co. (1895) 157 U.S. 429, 39 L. ed. 759; See also Legal Tender cases (1884) 110 U.S. 421, 28 L. ed. 204, 70 A.L.R. 30). The Supreme Court also examined the deliberations of the Constitutional Commission/Convention in construing applicable provisions of the Constitution in the following cases: Feliciano vs. Commission on Audit, G.R. No. 147402, 14 January 2004; Province of North Cotabato vs. Government of the Republic of the Philippines Peace Panel on Ancestral Domain, G.R. Nos. 183591, etc., 14 October 2008; Gamboa vs. Teves, G.R. No. 176579, 28 June 2011.

> construing constitutional provisions which are ambiguous or of doubtful meaning, the courts may consider the debates in the constitutional convention as throwing light on the intent of the framers of the Constitution."

4.58. The pertinent deliberations of the 1934 Constitutional Convention, on what eventually became Article IV of the *1935 Constitution,* show that the intent of the framers was not to exclude foundlings from the term "citizens of the Philippines." According to them, "(b)y international law the principle that children or people born in a country of unknown parents are citizens in this nation is recognized, and it was not necessary to include a provision on the subject exhaustively." Thus:

Spanish	*English Translation*
SR. RAFOLS: Para una enmienda. Propongo que despues del inciso 2 se inserte lo siguiente: "Los hijos naturales de un padre extranjero y de una madre filipina no reconocidos por aquel.	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 x x
El Presidente. La Mesa desea pedire una aclaracion del proponente de la enmienda. Se refiere Su Senoria a hijos naturales or a toda clase de hijos ilegitimos?	[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. A toda clase de hijos ilegitimos. Tambien se incluye a los hijos naturales de padres desconocidos, los hijos naturales or ilegitimos, de padres desconocidos.	To all kinds of illegitimate children. It also includes natural children of unknown parentage, natural or illegitimate children of unknown parents.
Sr. Montinola. Para una aclaracion. Alli se dice "de padres desconocidos." Los Codigos actuales consideran como filipino, es decir, me refiero al codigo espanol quien considera como espanoles a todos los hijos de padres desconocidos nacidos en territorio espanol, porque la presuncion es que el hijo de padres desconocidos es hijo de un espanol, y de esa manera se podra aplicar en Filipinas de que un hijo desconocido aqui y nacido en Filipinas se considerara que es hijo filipino y no hay necesidad...	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. Hay necesidad, porque estamos	There is a need, because we are relating the

relatando las condiciones de los que van a ser filipinos.	conditions that are [required] to be Filipino.
Sr. Montinola. Pero esa es la interpretacion de la ley, ahora, de manera que no hay necesidad de la enmienda.	But that is the interpretation of the law, therefore, there is no [more] need for the amendment.
Sr. Rafols. La enmienda debe leerse de esta manera: "Los hijos naturales o ilegitimos de un padre extranjero y de una madre filipina reconocidos por aquel o los hijos de padres desconocidos.	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. Para una enmienda con el fin de significar los hijos nacidos en Filipinas de padres desconocidos.	The amendment [should] mean children born in the Philippines of unknown parentage.
Sr. Rafols. Es que el hijo de una filipina con un extranjero, aunque este no reconozca al hijo, no es desconocido.	The son of a Filipina to a foreigner, although this [person] does not recognize the child, is not unknown.
El Presidente. Acepta Su Senoria o no la enmienda?	Does the gentleman accept the amendment or not?
Sr. Rafols. No acepto la enmienda, porque la enmienda excluiria a los hijos de una filipina con un extranjero que este no reconoce. No son desconocidos y yo creo que esos hijos de madre filipina con extranjero y el padre no reconoce, deben ser tambien considerados como filipinos.	I do not accept the amendment because the amendment would exclude the children of a Filipina with a foreigner who does not recognize the child. Their parentage is not unknown and I think those children of overseas Filipino mother and father [whom the latter] does not recognize, should also be considered as Filipinos.
El President. La cuestion en orden es la enmienda a la enmienda del Delegado por Cebu, Sr. Briones.	The question in order is the amendment to the amendment from the Gentlemen from Cebu, Mr. Briones.
Mr. Bulson. Mr. President, don't you think it would be better to leave this matter in the hands of the Legislature?	Mr. President, don't you think it would be better to leave this matter in the hands of the Legislature?
Sr. Roxas. Senor Presidente, mi opinion humilde es que estos son cases muy pequenos y contados, para que la constitucion necesite referirse a ellos. Por leyes internacionales se reconoce el principio de que los hijos o las personas nacidas en un pais de padres desconocidos son ciudadanos de esa nacion , y no es necesario incluir una disposicion taxativa sobre el particular.	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.[118]

[118] Underscoring supplied.

4.58.1. A noted authority on the *1935 Constitution,* Mr. Jose Aruego, recounted the debates on the section declaring as Filipinos "those whose mothers are citizens of the Philippines, and upon reaching the age of majority, elect Philippine citizenship," in this wise:

> 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.[119]

4.59. In other words, as early as the *1935 Constitution* (and consistent with treaties and generally accepted principles of international law that would develop in the years to come), it was always the intention of the framers to consider foundlings found in the Philippines as Filipino citizens. This intention was undisturbed and repeatedly carried over in succeeding Philippine Constitutions. Thus, like the *1935 Constitution*, the *1973* and *1987 Constitutions* also do not contain any specific provision on the citizenship of foundlings. The framers of later organic laws obviously also shared the view that no express provision on foundlings needs to be included in the text of the Constitutions, as they are adequately protected under international law and considered Filipino citizens.

4.60. Consistent with the intent of the framers of the *1935 Consitution*, and as discussed in detail below, under both conventional and customary international law, in relation to the definition of a natural-born Philippine citizen under Section 2, Article IV of the *1987 Constitution*, a child born in the Philippines in 1968, of unknown parents, is a natural-born Filipino, because:

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[119] I JOSE M. ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 209 (1949).

(a) She has a right to a nationality[120] from birth (which cannot be a nationality other than that of a Filipino);

(b) She has a right to protected against statelessness;

(c) She is presumed to be citizen of the country in which she is found (i.e., she is presumed Filipino);

(d) She "does not have to perform any act to acquire or perfect" her Filipino citizenship; and

(e) She is not a naturalized Filipino and is, perforce, a natural-born citizen of the Philippines.

B.1.1. Treaty or Conventional International Law

4.61. A treaty ratified by the Philippines is "transformed into municipal law that can be applied to domestic conflicts;"[121] a treaty "forms part of the law of the land."[122] A State must perform its obligations under a treaty, in good faith, pursuant to the principle of *pacta sunt servanda*.[123]

4.62. On 21 August 1990, the Philippines ratified the *UN Convention on the Rights of the Child* ("UNCRC"). Under Article 7 of the *UNCRC*, the Philippines undertook to protect

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[120] In Philippine law, the terms "nationality" and "citizenship" are used interchangeably. See, among others, Roa vs. Insular Collector of Customs, G.R. No. 7011, 30 October 1912; Board of Immigration Commissioners vs. Callano, G.R. No. L-24530, 31 October 1968; In re Oh Hek How vs. Republic, G.R. No. L-27429, 27 August 1969; and the majority decision, and the dissenting opinion of the Honorable Chairman of this Honorable Tribunal, in Tecson vs. COMELEC, G.R. Nos. 161434, 161634 & 161824, 3 March 2004.

[121] See Pharmaceutical and Health Care Association vs. Duque III, G.R. No. 173034, 9 October 2007, citing JOAQUIN G. BERNAS, S.J., AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW, 2002 ed., p. 57.

[122] See Section 21, Article VII of the 1987 Constitution, referred to as the transformation clause (as it 'transforms' treaties into municipal or domestic law), which states that "(n)o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate." See Pharmaceutical and Health Care Association vs. Duque III, G.R. No. 173034, 9 October 2007; Puma Sportschuhfabriken Rudolf Dassler, K.G. vs. Intermediate Appellate Court, G.R. No. 75067, 26 February 1988; dictum in Abbas vs. COMELEC, G.R. Nos. 89651 & 89965, 10 November 1989.

[123] See La Chemise Lacoste, S.A. vs. Fernandez, G.R. Nos. 63796-97, 21 May 1984; Tañada vs. Angara, G.R. No. 118295, 2 May 1997; Bayan vs. Zamora, G.R. Nos. 138570, 138572, 138587, 138680 & 138698, 10 October 2000; Republic vs. Sandiganbayan, G.R. No. 104768, 21 July 2003; Article 26, Vienna Convention on the Law of Treaties, which the Philippines ratified on 15 November 1972, states that "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

the right of a new-born to a nationality, and to ensure that every child is protected from statelessness "from birth." The provision reads:

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.[124]

4.62.1. A similar Article is found in the 1966 *International Covenant on Civil and Political Rights* ("ICCPR"), which the Philippines ratified on 23 October 1986. Article 24 of the *ICCPR* recognizes the right of every child "to acquire a nationality," thus:

> Article 24. 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social original, property or birth, the right, to such measure 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.[125]

4.62.2. In his dissenting opinion in *MVRS Publications, Inc. vs. Islamic Da'wah Council of the Philippines, Inc., et al.*,[126] the Hon. Chairman of this Honorable Tribunal stated that the *ICCPR*, "being an international treaty to which the Philippines is a signatory, is part of the country's municipal law." He further explained that the *ICCPR* "carries great weight in

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[124] Underscoring supplied.
[125] Underscoring supplied.
[126] G.R. No. 135306, 28 January 2003.

the interpretation of the scope and meaning of the term 'human rights' as used in the Constitution."

4.63. In sum, the *ICCPR* and the *UNCRC* create an obligation on the part of the Philippines to ensure that, "from birth," every child, "without discrimination," "acquires" a "nationality." Conversely, the Philippines has a duty not to leave any new-born stateless.

4.64. The only way the Philippines can perform these treaty obligations in the case of a foundling is to recognize him or her as *its own* citizen, that is—a Philippine citizen. The Philippines has no authority to consider a foundling a citizen of another county. In the words of the Supreme Court, "Philippine courts have no power to declare whether a person possesses citizenship other than that of the Philippines."[127]

4.64.1. The Philippines has the obligation not simply to recognize a foundling as its citizen, but to do so from the time of the foundling's birth. To reiterate, under the *UNCRC*, a child is guaranteed not only the right to acquire a nationality, but the right to acquire such nationality from birth, especially "where the child would otherwise be stateless."

4.64.2. Domestic laws on naturalization[128] are not sufficient to make the Philippines compliant with its treaty obligations to ensure that a foundling be considered Filipino from birth. Under Philippine law, an applicant for naturalization[129] must be not less than eighteen (18) years of age at the time she petitions for naturalization. Moreover, she must have "a known trade, business, profession or lawful occupation" to qualify for naturalization. Thus, if Petitioner's theory is accepted, a foundling would be left stateless from birth and for eighteen years until she can qualify for naturalization, in violation of the Philippines' obligations under the *UNCRC*

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[127] Maquiling v. Comelec, G.R. No. 195649, 16 April 2013, 696 SCRA 420.

[128] Commonwealth Act No. 473, as amended, and Republic Act No. 9139.

[129] Naturalization can either be judicial (governed by Commonwealth Act No. 473, as amended), or administrative (governed by Republic Act No. 9139). Both laws clearly refer to aliens and not to stateless persons. C.A. No. 473 prescribes, *inter alia,* a minimum age of twenty one (21) years on the day of the hearing of the petition, and a minimum residency in the Philippines of five (5) years, under special circumstances, and ten (10) years, in the absence of special qualifications. On the other hand, R.A. 9139, which applies to "aliens born and residing in the Philippines", requires that an applicant be at least eighteen (18) years of age at the time of filing of the petition and be a resident of the Philippines since birth.

and the *ICCPR*. This is another reason why a foundling must be recognized as citizen of the Philippines "from birth."

4.65. Is a foundling who is a Filipino pursuant to the provisions of the *UNCRC* and the *ICCPR*, a natural-born Filipino? The answer is yes.

4.65.1. As discussed, Section 2, Article IV of the *1987 Constitution* defines "natural-born citizens of the Philippines" as "those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship."

4.65.2. Therefore, under the *1987 Constitution*, a foundling who is a Filipino under the *UNCRC* and the *ICCPR* is "natural-born" because: (a) she is a Philippine citizen from birth; and (b) she possesses said citizenship without having to perform any act to acquire or perfect her Philippine citizenship.

4.65.3. As importantly, in *Bengson III vs. HRET and Cruz,*[130] the Supreme Court declared that there are only two types of citizens under the *1987 Constitution*: (a) the natural-born citizen; and (b) the naturalized citizen. A Filipino who is not naturalized is necessarily natural-born, thus:

> The present Constitution, however, now considers those born of Filipino mothers before the effectivity of the 1973 Constitution and who elected Philippine citizenship upon reaching the majority age as natural-born. After defining who are natural-born citizens, Section 2 of Article IV adds a sentence: "Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens." Consequently, only naturalized Filipinos are considered not natural-born citizens. It is apparent from the enumeration of who are citizens under the present Constitution that there are only two classes of citizens: (1) those who are natural-born and (2) those who are naturalized in accordance with law. A citizen who is not a naturalized Filipino, i.e., did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is a natural-born Filipino.[131]

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[130] G.R. No. 142840, 7 May 2001.
[131] Underscoring supplied.

4.65.4. Under the *UNCRC* and the *ICCPR*, a foundling does not have to go through the legal process of naturalization under Commonwealth Act No. 473[132] or Republic Act No. 9139[133] in order to "acquire" her Philippine citizenship.

4.65.5. Since a foundling is not "naturalized" as a Filipino, a foundling must perforce be a "natural-born" Filipino.

4.66. Although neither the *ICCPR* nor the *UNCRC* was in force when Respondent was born in 1968, each may apply retroactively to the date of her birth in determining her citizenship. The reasons are as follows:

4.67. *First*, the refusal to give retroactive application to the *ICCPR* and the *UNCRC* will discriminate against foundlings born before the Philippines' ratification[134] of these treaties. This would violate the equal protection clause of the Constitution.[135]

4.67.1. Differential treatment in law is justified only when it is based on a reasonable classification. To be reasonable, a classification: (a) must rest on substantial distinctions; (b) must be germane to the purposes of the law; (c) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class.[136]

4.67.2. There is no valid and substantial distinction between foundlings who were born before the *ICCPR* and the *UNCRC* came into force, and foundlings who were born after this date. For as long as the identities of their birth parents are not established, they share the same status—that of a foundling. A law made applicable to foundlings born after ratification should

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[132] Entitled "An Act to Provide for the Acquisition of Philippine Citizenship by Naturalization, and to Repeal Acts Numbered Twenty-Nine Hundred and Twenty-Seven and Thirty-Four Hundred and Forty-Eight" or the "Revised Naturalization Law".
[133] Entitled "An Act Providing for the Acquisition of Philippine Citizenship for Certain Aliens by Administrative Naturalization and for Other Purposes" or the "Administrative Naturalization Law of 2000".
[134] The Philippines ratified the ICCPR and the UNCRC on 23 October 1986 and on 21 August 1990 respectively.
[135] Sec. 1, Art. III of the 1987 Constitution provides: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." (Underscoring supplied)
[136] People v. Cayat, G.R. No. L-45987, 5 May 1939.

apply equally to foundlings born before, as they are all members of the same class.

4.68. *Second*, the *UNCRC* and the *ICCPR* are "curative" statutes which may apply retroactively.

4.68.1. As treaties which the Philippines ratified, the *UNCRC* and the *ICCPR* form part of the law of the land.[137] These treaties are, therefore, considered domestic statutes.

4.68.2. It is basic that "curative" laws apply retroactively.[138] Curative laws "are intended to supply defects, abridge superfluities and curb certain evils."[139] A law may be applied retroactively "when the statute is CURATIVE or REMEDIAL in nature or when it CREATES NEW RIGHTS."[140]

4.68.3. Insofar as the *ICCPR* and *UNCRC* supply deficiencies in Philippine law on the rights of a new-born to a nationality and to be protected against statelessness, they are curative in nature. Thus, they apply retrospectively to Respondent's birth in 1968.

4.69. *Third,* Article 28 of the *Vienna Convention on the Law of Treaties* states:

> Article 28 - Non-retroactivity of treaties
>
> Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.[141]

4.69.1. Under the foregoing Article, there is no prohibition against the retroactive application of treaties (unless a different intention appears). What is prohibited is the application of a treaty to a fact or status which ceased to exist before the treaty entered into force.

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[137] See note 122.
[138] Frivaldo vs. COMELEC, G.R. No. 120295, 28 June 1996; Tatad vs. Garcia, Jr., G.R. No. 114222, 6 April 1995; Briad Agro Development Corp. vs. Dela Serna, G.R. Nos. 82805 & 83225, 29 June 1989.
[139] Narzoles vs. NLRC, G.R. No. 141959, 29 September 2000.
[140] Frivaldo vs. COMELEC, G.R. No. 120295, 28 June 1996.
[141] Underscoring supplied.

4.69.2. In the first place, neither the *ICCPR* nor the *UNCRC* expressly or impliedly prohibits their retroactive application. There is likewise no indication in these treaties that their respective provisions should be applied only prospectively.

4.69.3. Secondly, foundlings in the Philippines who were born before the *ICCPR* and the *UNCRC* entered into force did not cease to be such after the treaties entered into force. They continue to be foundlings and foundlings continue to be "born" until today. Therefore, these two treaties bind the Philippines "in relation" to determining Respondent's rights at the time of her birth in 1968.

4.70. *Fourth,* considering that the Philippines was already a signatory to the *ICCPR* as early as 19 December 1966 (or almost two years before Respondent's birth), the Philippines was "obliged (as of that date) to refrain from acts which would defeat the object and purpose" of the *ICCPR*.[142] Article 18 of the *Vienna Convention on the Law of Treaties* states:

> Article 18. OBLIGATION NOT TO DEFEAT THE OBJECT AND PURPOSE OF A TREATY PRIOR TO ITS ENTRY INTO FORCE
>
> A State is obligated to refrain from acts which would defeat the object and purpose of a treaty when:
>
> (a) It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or
>
> (b) It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.[143]

4.70.1. To deny Respondent Philippine citizenship, or to leave her stateless at the time of her birth in 1968, as Petitioner argues, would have "defeated the object and purpose" of the *ICCPR*, among which is to

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[142] See Article 18 of the Vienna Convention on the Law of Treaties, in relation to Bayan Muna vs. Romulo, G.R. No. 159618, 1 February 2011.
[143] Underscoring supplied.

afford its subjects (like Respondent) a "right to a nationality."

4.71. *Finally*, a refusal (at present) to recognize Respondent's right to have "acquired a nationality" "from birth" and "to ensure the implementation of this right" where she "would otherwise be stateless," would be a violation of the obligations of the Philippines under the *UNCRC* and the *ICCPR.*

4.71.1. In his separate concurring opinion in *Tecson vs. COMELEC,*[144] former Justice (later, Chief Justice) Reynato S. Puno applied the *UNCRC* in determining whether Mr. Ronald Allan Poe was a natural-born Philippine citizen (despite the fact that Mr. Poe was born in 1939, or before the *UNCRC* entered into force). Justice Puno took the position that the *UNCRC* would be violated if the Court held that Mr. Poe was not a natural-born Philippine citizen simply because he was born illegitimate, to wit:

E.

TO DISQUALIFY RESPONDENT POE BECAUSE HE IS ILLEGITIMATE WILL VIOLATE OUR TREATY OBLIGATION.

The Convention on the Rights of the Child was adopted by the General Assembly of the United Nations on November 20, 1989. The Philippines was the 31st state to ratify the Convention in July 1990 by virtue of Senate Resolution 109. The Convention entered into force on September 2, 1990. A milestone treaty, it abolished all discriminations against children including discriminations on account of "birth or other status." Part 1, Article 2 (1) of the Convention explicitly provides:

Article 2

1. State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race colour, sex, language religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

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[144] G.R. Nos. 161434, 161634 & 161824, 3 March 2004.

> The Convention protects in the most comprehensive way all rights of children: political rights, civil rights, social rights, economic rights and cultural rights. It adopted the principle of interdependence and indivisibility of children's rights. A violation of one right is considered a violation of the other rights. It also embraced the rule that all actions of a State concerning the child should consider the "best interests" of the child.
>
> Pursuant to Article VII, Section 21 of the 1987 Constitution, this Convention on the Rights of the child became valid and effective on us in July 1990 upon concurrence by the Senate. We shall be violating the Convention if we disqualify respondent Poe just because he happened to be an illegitimate child. It is our bounden duty to comply with our treaty obligation pursuant to the principle of *pacta sunt servanda*. As we held in La Chemise Lacoste, S.A. vs. Fernandez, viz:
>
> x x x
>
> Indeed there is no reason to refuse compliance with the Convention for it is in perfect accord with our Constitution and with our laws.

4.71.2. In the same vein, the Philippines would violate the *ICCPR* and the *UNCRC* if it refuses to consider Respondent a natural-born Philippine citizen simply because she is a foundling.

4.72. Other than treaties, other sources of international law already in force at the time of Respondent's birth in 1968 likewise recognize Respondent's status as a natural-born Filipino citizen.

B.1.2. "Generally Accepted Principles of International Law"

4.73. Section 3, Article II of the *1935 Constitution* states:

> SECTION 3. The Philippines renounces war as an instrument of national policy, and adopts the generally

> accepted principles of international law as part of the law of the Nation.[145]

4.73.1. In *Secretary of Justice vs. Lantion,*[146] the Supreme Court held that under the doctrine of incorporation, "no further legislative action is needed" to make "generally accepted principles of international law" "applicable in the domestic sphere."

4.73.2. The Supreme Court has not laid down a concrete and consistent set of rules in evaluating precepts that would qualify as "generally accepted principles of international law." Jurisprudence applying this phrase employ varied levels and types of analyses. Some of these cases are discussed below.

a. Right to a Nationality

4.74. Article 15 (1) of the Universal Declaration of Human Rights ("UDHR") 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.[147]

4.75. The Supreme Court has repeatedly recognized the *UDHR* as part of "generally accepted principles of international law."[148] The following pronouncement in *Republic vs. Sandiganbayan*[149] is particularly instructive:

> Although the signatories to the Declaration did not intend it as a legally binding document, being only a declaration, the Court has interpreted the Declaration as part of the generally accepted principles of international law and binding on the State.[150]

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[145] The underscored phrase, otherwise known as the "incorporation" clause, was substantially reproduced in Sections 3 and 2, respectively, of Article II of the 1973 and 1987 Constitutions.
[146] Secretary of Justice v. Lantion, G.R. No. 139465, 18 January 2000.
[147] Underscoring supplied.
[148] See Reyes vs. Bagatsing,125 SCRA 553 (1983); Borovsky vs. Commissioner, 90 Phil. 107 (1951); PAFLU vs. Secretary of Labor, 27 SCRA 40, (1969); Boy Scouts of the Philippines vs. Araos, 102 Phil. 1080 (1958); Mejoff vs. Director, 90 Phil. 70 (1951); Chirskoff vs. Commissioner, 90 Phil. 256 (1951); and Andreu vs. Commissioner, 90 Phil. 347 (1951).
[149] G.R. No. 104768, 21 July 2003.
[150] Underscoring supplied.

4.75.1. Similarly, in the 2009 case of *Razon vs. Tagitis,*[151] the Supreme Court, citing the U.S.A. case of *Filartiga vs. Peña-Irala,*[152] ruled that the *UDHR* "has become, *in toto*, a part of binding, customary international law."[153]

4.76. When Respondent was born in 1968, Article 15 (1) of the *UDHR* already formed part of Philippine law, pursuant to Section 3, Article II of the *1935 Constitution.* Thus, Respondent had the "right to a nationality" from birth, and that could only be the nationality of a Filipino from birth, for the Philippines would *not* have the power to recognize Respondent as a citizen of any *other* country. On the other hand, the alternative response would be that Respondent was born, and continues to be,[154] stateless (or *without* a "nationality"). In Respondent's peculiar case as a foundling, adopting the latter position would violate the very terms of the *UDHR*, which is part and parcel of Philippine law. It would cause Respondent extreme prejudice through no fault of her own. The first paragraph of Article 2 of the *UDHR* states:

> Article 2
>
> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> x x x[155]

4.77. Respondent should not be deprived of her fundamental "right to a nationality," merely because she has the "status" of a foundling. To conclude that Respondent is not a Philippine citizen under paragraphs (3) and (4) of Section 1, Article IV of the *1935 Constitution*, simply because Respondent's biological parents are unknown, would violate the *UDHR*.

b. Avoidance of Statelessness and the Presumption that a Foundling is a Citizen of the State in which She is Found.

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[151] G.R. No. 182498, 3 December 2009.
[152] 630 F.2d 876 (2d Cir. 1980).
[153] Underscoring supplied.
[154] Respondent renounced and, thus, lost her U.S. citizenship in 2010.
[155] Underscoring supplied.

4.78. As discussed, a legal principle in a convention or treaty (as opposed to the entirety of the convention or treaty) to which the Philippines is not a signatory or a party, would still be binding on the Philippines if it is a "generally accepted principle of international law." In *Mijares vs. Ranada,*[156] the Supreme Court defined that phrase as follows:

> [G]enerally 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. The classical formulation in international law sees those customary rules accepted as binding result from the combination two elements: the established, widespread, and consistent practice on the part of States; and a psychological element known as the *opinio 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.[157]

4.79. In *Razon vs. Tagitis,*[158] the Supreme Court had to resolve issues on the use and application of the Rule on the Writ of *Amparo* in an enforced disappearance case. Since the concept of an "enforced disappearance" was neither defined nor penalized under Philippine law, the High Court sought guidance from international law. The Court noted that under the "International Convention for the Protection of All Persons from Enforced Disappearance," there is a "right not to be subject to enforced disappearance." However, the Court also pointed out that the Philippines had neither signed nor ratified said Convention. Still, the Supreme Court held that the ban on enforced disappearances is binding on the Philippines as a "generally accepted principle of international law."

4.80. The Supreme Court in *Razon* considered the ban on enforced disappearances as a "generally accepted principle of international law" and, thus, part of the law of the land, based on the following "material sources of custom:"

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[156] G.R. No. 139325, 12 April 2005; See also Kuroda v. Jalandoni, G.R. No. L-2662, 26 March 1949.

[157] Citing E. Scoles and P. Hay, Conflict of Laws (2nd ed., 1982), at 979, and H. Thirlway, "The Sources of International Law," International Law (ed. by M.Evans, 1st ed., 2003), at 124. The foregoing definition of "generally accepted principles of international law" was subsequently cited in Pharmaceutical and Healthcare Association of the Philippines vs. Duque III, G.R. No. 173034, 9 October 2007, which was in turn cited in Razon vs. Tagitis, G.R. No. 182498, 3 December 2009. However, the definition has not been applied consistently in jurisprudence.

[158] G.R. No. 182498, 3 December 2009.

(a) An international treaty (i.e., the 1998 Rome Statute establishing the International Criminal Court [*ICC*]);

(b) A regional treaty (i.e., Inter-American Convention on Enforced Disappearance of Persons);

(c) The practice of international and regional organs (i.e., the declarations of the UN and the UN Human Rights Committee, and the European Court of Human Rights [in its application of the European Convention on Human Rights]);

(d) Regional State Practice (i.e., legislation of Colombia, Guatemala, Paraguay, Peru and Venezuela, which implement the Inter-American Convention on Enforced Disappearance of Persons); and

(e) State Practice of the U.S.A. (i.e., the Third Restatement of Laws and a decision of the U.S. Court of Appeals).

4.81. Applying the Supreme Court's analysis in *Razon*, the rule against statelessness and the presumption that a foundling is a citizen of the State in which she is found, were "generally accepted principles of international law" at the time of Respondent's birth in 1968, and therefore formed part of the law of the land at that time. As discussed, this is essentially the position that the framers of the *1935 Constitution* took in their deliberations on Article IV thereof.[159]

4.82. On the international plane, as of 1966 (or two years before Respondent's birth), no less than *eight (8)* international agreements had already addressed the twin issues of nationality and statelessness, to wit:

(a) the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws ("1930 Hague Convention");

(b) the 1930 Hague Protocol Relating to a Certain Case of Statelessness;

(c) the 1930 Hague Special Protocol Concerning Statelessness;

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[159] See *infra* pp. 56-58.

(d) the 1948 Universal Declaration of Human Rights;

(e) the 1957 United Nations Convention on the Status of Married Women;

(f) the 1961 United Nations Convention on the Reduction of Statelessness;

(g) the 1966 International Covenant on Civil and Political Rights; and

(h) the 1966 International Convention on the Elimination of All Forms of Racial Discrimination.[160]

4.82.1. Several provisions of the *1930 Hague Convention* deal with the acquisition of nationality of several groups who traditionally face statelessness as a result of conflict of laws: married women, children, foundlings, and adopted persons. In 1968, when Respondent was born, the *Hague Convention* already had twenty-seven (27) State signatories and fifteen (15) State parties. The *Hague Convention* now has twenty-one (21) State parties. Article 14 thereof states:

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.[161]

4.82.2. In 1947, the UN Human Rights Commission urged consideration of nationality questions, a proposal which received concrete expression in Article 15 of the *UDHR* (to which the Philippines is a signatory and which the United Nations General Assembly adopted on 10 December 1948).[162] As discussed, Article 15(1) of

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[160] This list excludes regional and bilateral agreements.
[161] Underscoring supplied.
[162] See Myres S. McDougal, Harold D. Lasswell and Lung-chu Chen, Nationality and Human Rights: The Protection of the Individual and External Arenas, 83 Yale L.J. 900, 965 (1974).

the *UDHR*, which the Supreme Court has specifically declared to be binding on the Philippines and part of the law of the land, states that all people have a "right to a nationality."

4.82.3. The *1961 Convention on the Reduction of Statelessness* ("Convention on Statelessness") is the culmination of more than a decade of international negotiations,[163] and over thirty (30) years of international covenants on the right to a nationality and the avoidance of statelessness. The *Convention on Statelessness* provides for rules on the acquisition of nationality by stateless individuals. Under the *Convention on Statelessness*, States must ensure access to nationality for a person who would otherwise be stateless if the person is born in the State's territory or born abroad to a national of the State. It also protects individuals against the loss or deprivation of nationality if he or she will become stateless as a result. By setting out rules to limit the occurrence of statelessness, the Convention gives effect to Article 15 of the *UDHR*. At the time of Respondent's birth in 1968, the United Kingdom, France, the Netherlands, Israel and the Dominican Republic had already signed the *Convention on Statelessness*. There are Sixty-Three (63) State parties to the *Convention on Statelessness*.[164] Although the Philippines remains neither a signatory, nor a party to said treaty, it is reported by the United Nations High Commissioner for Refugees to have already "initiated the process for accession" to the *Convention on Statelessness*.[165] On the nationality of foundlings, Article 2 thereof states:

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[163] The *Convention on Statelessness* is the result of over a decade of international negotiations on how to avoid the incidence of statelessness. In 1949, the Secretary General, at the request of the Economic and Social Council, commissioned a study on statelessness which called for the universal acceptance of the following two principles: (1) nationality is to be conferred on every child at birth; (2) no person should lose his/her nationality during his lifetime unless and until he has acquired a new one. In August 1950, the Economic and Social Council urged the International Law Commission ("ILC"), the UN body tasked with definitively codifying international legal norms, to prepare at the earliest possible time the necessary draft international convention or conventions for the minimization of statelessness. The ILC responded by adopting the draft Conventions on the Elimination and Reduction of Future Statelessness. This provided the impetus for the convening of an international conference of plenipotentiaries in Geneva in 1959, which later reconvened in 1961. Significantly, since its inception in 1949, the ILC has included "nationality, including statelessness" in its list of topics to be considered for codification. Draft conventions by the ILC are often considered to be good evidence of the existence of customary international law on certain subjects.

[164] Data provided by the United Nations, available at https://treaties.un.org/doc/Treaties/2007/11/29/V-4.en.pdf.

[165] See "Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report;" "Universal

Article 2

> A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.[166]

Article 2 of the *Convention on Statelessness* provides for a rebuttable presumption of descent from a citizen (*praesumption iuris sanguinis*) in favor of a foundling. This is consistent with the doctrine of *jus sanguinis* which is the primary basis for determining citizenship under Article IV of the *1935 Constitution*.

4.82.4. Following the spirit of the *UDHR* and the *Convention on Statelessness*, the *ICCPR* (which has one hundred sixty-eight [168] State parties and to which the Philippines is a signatory[167]) and the 1966 *International Convention on the Elimination of All Forms of Racial Discrimination* contain provisions recognizing the fundamental right to a nationality of defined minority groups. The *ICCPR* applies the right specifically to children, thereby stressing that protection against statelessness should start from birth. To reiterate, Article 24 of the *ICCPR* states that "(e)very child has the right to acquire a nationality."[168]

4.82.5. In the domestic sphere in foreign jurisdictions, countries which follow the *jus sanguinis* principle in determining citizenship, such as Austria, Germany, Ireland and the United Kingdom, have passed legislation which specifically provide that foundlings are presumed to have descended from nationals or citizens of the country in which they are found. Other *jus sanguinis* countries such as Belgium, Bulgaria, Estonia, Germany, Greece, Hungary, Ireland, Italy, Poland and Ukraine enacted statutes which all prescribe that a person found

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Periodic Review: The Philippines" available at http://www.refworld.org/pdfid/4ee07aa22.pdf

See also the 21 June 2015 "With Due Respect" column in the Philippine Daily Inquirer of former Chief Justice Artemio Panganiban which reported the information from Mr. Bernard Kerblat, country representative of the United Nations High Commissioner for Refugees that at a ministerial meeting on 7 December 2011, the Philippine panel pledged to initiate accession to the *Convention on Statelessness*.

[166] Underscoring supplied.

[167] As of 1966.

[168] Underscoring supplied.

within its territory of unknown parentage would be considered *its* citizen.[169] Significantly, forty-one (41) member states[170] of the Council of Europe, with the exception of Cyprus, provide for automatic acquisition of citizenship by foundlings found within their respective territories, with some subject to certain conditions such as threat of statelessness or minority.[171] This is in conformity with the provisions of the European Convention, a regional treaty which prescribes that a foundling found in the territory of a state has to acquire the citizenship of that state if he would otherwise be stateless. The wording of this provision is in turn drawn from the *Convention on Statelessness.*[172] This shows that among *jus sanguinis* countries, it is a generally accepted principle of international law that foundlings are presumed born of parents who are citizens of the country in which they are found.

4.82.6. Petitioner's theory that the *Convention on Statelessness* came into effect only in 1975 and that Article 12 thereof provides that Article 2 thereof is not to be applied retroactively, is off-tangent. Petitioner's position may bear a semblance of legitimacy *if* Respondent were to argue that the Philippines has already ratified the convention and that it is now transformed into a municipal law. But Respondent does not so argue, and instead cites the principle in Article 2 of the *Convention on Statelessness* as a generally accepted principle of international law as shown by the number of *jus sanguinis* countries which have passed legislation decreeing that foundlings found in their respective territories are their citizens. Indeed, nothing prevents a sovereign state from adopting a principle from a convention which it has not yet expressly ratified, as *Razon vs. Tagitis* showed.

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169 *See* Comparing Citizenship Laws: Acquisition of Citizenship in case of foundlings, in EUDO Observatory on Citizenship, available at http://eudo-citizenship.eu/databases/modes-of-acquisition?p=&application=modesAcquisition&search=1&modeby=idmode&idmode=A03a.

170 These countries are Albania, Austria, Belgium, Bosnia & Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Kosovo, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, and the United Kingdom.

171 Maarten P. Vink and Gerard-Rene de Groot, Birthright Citizenship: Trends and Regulations in Europe, November 2010, available at http://eudo-citizenship.eu/docs/birthright_comparativepaper.pdf.

172 *Id.*

4.82.7. A concrete manifestation that the Philippines has long recognized the generally accepted principle of international law that foundlings are citizens of the country in which they are found is DOJ Opinion No. 189, series of 1951, which was rendered ten (10) years before that convention even came into being.

4.82.7.1. In that opinion, the DOJ recounted how, on 13 February 1945, a three-year old boy was found in an air raid shelter by a certain Mr. Henry Hale. When found, the boy pointed to his parents, sister and grandmother as among the dead in the shelter. It was impossible to ascertain the identity of the boy's parents and efforts to locate anyone in the vicinity who could identify the boy were futile. Mr. Hale brought the boy home and had him baptized as Anthony Saton Hale on 12 April 1945. Because the boy's parents and his date of birth were unknown, it was made to appear in his baptismal certificate that Mr. and Mrs. Hale were his parents and that he was born in the Philippines on 13 February 1942.

4.82.7.2. An application for the boy's Philippine passport was made in 1950. In granting the application, the Secretary of Justice recognized that foundlings are citizens of the country in which they are found:

> Upon the foregoing facts, the first question that arises is whether the mere fact of birth in the Philippines makes one a citizen thereof. To this question, a negative answer has been given by our Supreme Court in the case of Tan Chong vs. the Secretary of Labor, G.R. No. 47623, promulgated on September 14, 1947. Anthony Saton Hale cannot therefore be considered a citizen of the Philippines by the mere fact of his birth in this country.
>
> However, under the principles of International Law, a founding has the nationality of the place where he is found or born (See Wharon on the Conflict of Law, footnote, p. 47, citing Bluntechli in an article in the Revue de droit int. for 1870, p. 107; Mr. Hay, Secretary of State,

> to Mr. Leishman, Minister to Switzerland, July 12, 1899, For Rel. 1899, 760; Moore, International Law Digest, Vol. III, p. 281) which, in this case, is the Philippines. Consequently, Anthony Saton Hale may be regarded as a citizen of the Philippines, and entitled to a passport as such.[173]

4.82.8. Another instance showing the recognition of the said generally accepted principle of international law is the fact that the D.F.A. specifically allows passports to be issued to foundlings.[174] This means that the D.F.A. recognizes foundlings as Philippine citizens, as passports can be issued only to citizens of this country.

4.83. In sum, at the time of Respondent's birth in 1968, the fundamental right to a nationality, the avoidance of statelessness, and the recognition that a foundling is presumptively a citizen of the State in which she is found, were "generally accepted principles in international law." Thus, pursuant to the doctrine of incorporation, these principles automatically "form(ed) part of the law of the (Philippines)." It follows that at the time of Respondent's birth, *international* law considered her a *Philippine* citizen because she was found *in the Philippines* of unknown parentage.

4.84. It bears stressing that these developments in international law are consistent with the original intention of the framers of the *1935 Constitution* to consider foundlings found in the Philippines as Filipino citizens. This intention, as discussed, was undisturbed and repeatedly carried over in succeeding Philippine Constitutions.

4.85. To reiterate, since Respondent did not have to perform any "act to acquire or perfect" her Philippine citizenship, she is by definition under Section 2, Article IV of the 1987 Constitution, a "natural-born" Filipino. Also, since Respondent is not a "naturalized" Filipino (as Petitioner himself admits in paragraph 21 of his *Petition*), following the Supreme Court's ruling in *Bengson III vs. HRET and Cruz,*[175] Respondent is necessarily natural-born.

4.86. It is a basic principle in statutory construction that the law must be given a reasonable interpretation at all

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[173] Underscoring supplied.
[174] The DFA website even lists requirements for a foundling to obtain a Philippine passport. See http://www.dfa.gov.ph/consular-services/passport-information/passport-requirements.
[175] G.R. No. 142840, 7 May 2001.

times. The Court may, in some instances, consider the spirit and reason of a statute, where a literal meaning would lead to absurdity, contradiction, or injustice, or would defeat the clear purpose of the lawmakers. Applying a *verba legis* or strictly literal interpretation of Section 1, Article IV of the *1935 Constitution* (in the way that Petitioner suggests) may render its provisions meaningless and lead to inconvenience, an absurd situation, or an injustice. To obviate this aberration, and bearing in mind the principle that the intent or the spirit of the law is the law itself, resort should be made to the rule that the spirit of the law controls its letter.[176] With respect to children, Section 3(2), Article XV of the *1987 Constitution* provides that "[The State shall 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." This positive command on the State, together with its role as *parens patriae*, should result to a construction wherein citizenship provisions are not read in a manner that denies Philippine citizenship to a defenseless child who was abandoned by her biological parents.

B.1.3. Respondent re-acquired her natural-born Filipino citizenship upon taking her Oath of Allegiance to the Republic of the Philippines.

a. Respondent validly re-acquired her natural-born Philippine citizenship under the provisions of R.A. 9225.

4.87. On 18 October 2001, Respondent became a citizen of the U.S.A. through naturalization.[177] However, Respondent subsequently regained her natural-born Philippine citizenship under R.A. No. 9225.

4.87.1. On 10 July 2006, Respondent filed with the B.I. a sworn petition[178] to reacquire her natural-born Philippine citizenship pursuant to R.A. No. 9225. As discussed, Respondent was a former natural-born Filipino. Therefore, contrary to Petitioner's position, she

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[176] Chavez v. Judicial and Bar Council, G.R. No. 202242, 17 July 2012, 676 SCRA 579.
[177] See Oath/Affirmation of Renunciation of Nationality of United States dated 12 July 2011, attached hereto as Annex **"17".**
[178] A copy of which is attached hereto as Annex "**7**".

was qualified to apply for reacquisition of her natural-born Filipino citizenship under R.A. No. 9225.

4.87.2. On 7 July 2006, Respondent took her Oath of Allegiance to the Republic of the Philippines, as required under Section 3 of R.A. No. 9225, to wit:[179]

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

Under Section 11 of B.I. Memorandum Circular No. AFF. 05-002 (the revised rules implementing R.A. No.9225), the foregoing Oath of Allegiance is the "final act" to reacquire natural-born Philippine citizenship.

4.87.3. Thus, on 18 July 2006, then B.I. Commissioner Alipio F. Fernandez, Jr. issued an Order of even date (through then Associate Commissioner Roy M. Almoro, who signed for him) which states that upon taking her oath of allegiance on 7 July 2006, she thereby re-acquired her Philippine citizenship.[180]

> A careful review of the documents submitted in support of the instant petition indicate that the petitioner was a former citizen of the Republic of the Philippines being born to Filipino parents and is presumed to be a natural born Philippine citizen; thereafter, became an American citizen and is now a holder of American passport; was issued an ACT and ICR and has taken her oath of allegiance to the Republic of the Philippines on July 7, 2006 and so is thereby deemed to have re-acquired her Philippine Citizenship.[181]

4.87.4. On 31 July 2006, the B.I. issued an Identification Certificate in Respondent's name which states, in part, that she is a "citizen of the Philippines … pursuant to the Citizenship Retention and Re-acquisition

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[179] A copy of which is attached hereto as Annex "**8**".
[180] A certified true copy of Office Order No. AFF-06-9133 dated 18 July 2006 is attached as Annex "**10**" hereof.
[181] Underscoring supplied.

Act of 2003 (RA 9225) in relation to Administrative Order No. 91, Series of 2004 and Memorandum Circular No. AFF-2-005 per Office Order No. AFF-06-9133 signed by Associate Commissioner Roy M. Almoro dated July 18, 2006."

4.88. On at least two (2) occasions, essentially re-affirmed and reiterated the Oath of Allegiance which she had taken on 7 July 2006.

4.88.1. The oath of office[182] which Respondent took as Chairperson of the MTRCB on 21 October 2010 states:

> PANUNUMA SA KATUNGKULAN
>
> Ako, si MARY GRACE POE LLAMANZARES, na itinalaga sa katungkulan bilang *Chairperson, Movie and Television Review and Classification Board*, ay taimtim na nanunumpa na tutuparin ko nang buong husay at katapatan, sa abot ng aking kakayahan, ang mga tungkulin ng aking kasalukuyang katungkulan at ng mga iba pang pagkaraan nito'y gagampanan ko sa ilalim ng Republika ng Pilipinas; na aking itataguyod at ipagtatanggol ang Saligang Batas ng Pilipinas; na tunay na mananalig at tatalima ako rito; na susundin ko ang mga batas, mga kautusang legal, at mga dekretong pinaiiral ng mga sadyang itinakdang may kapangyarihan ng Republika ng Pilipinas; at kusa kong babalikatin ang pananagutang ito, nang walang ano mang pasubali o hangaring umiwas.
>
> Kasihan nawa ako ng Diyos.
>
> NILAGDAAN AT PINANUMPAAN sa harap ko ngayong ika-21 ng Oktubre 2010, Lungsod ng Maynila, Pilipinas.

4.88.2. Section 12 of Respondent's sworn Certificate of Candidacy for Senator[183] states:

> I WILL SUPPORT AND DEFEND THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES AND WILL MAINTAIN TRUE FAITH AND ALLEGIANCE THERETO. I WILL OBEY THE

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[182] Annex "**16**" hereof.
[183] Annex "**21**" hereof.

> LAWS, LEGAL ORDERS, AND DECREES PROMULGATED BY THE DULY CONSTITUTED AUTHORITIES. I IMPOSE THIS OBLIGATION UPON MYSELF VOLUNTARILY, WITHOUT MENTAL RESERVATION OR PURPOSE OF EVASION.

4.88.3. The foregoing oaths are significant because in *Maquiling vs. COMELEC*,[184] the Supreme Court noted that the candidate therein had taken the Oath of Allegiance required under Section 3 of R.A. No. 9225, not only once, but twice. The High Court essentially held that either oath resulted in his re-acquisition of Philippine citizenship, thus:

> Indeed, Arnado took the Oath of Allegiance not just only once but twice: first, on 10 July 2008 when he applied for repatriation before the Consulate General of the Philippines in San Francisco, USA, and again on 03 April 2009 simultaneous with the execution of his Affidavit of Renunciation. By taking the Oath of Allegiance to the Republic, Arnado re-acquired his Philippine citizenship.[185]

b. Re-acquisition resulted to the recovery of Respondent's former natural-born status.

4.89. What type of Philippine citizenship did Respondent re-acquire after she had complied with the provisions of R.A. No. 9225 and its governing rules? Respondent re-acquired her natural-born Philippine citizenship.

4.89.1. In *Parreo vs. Commission on Audit*,[186] the Supreme Court categorically stated that "(i)f petitioner reacquires his Filipino citizenship (under R.A. No. 9225), he will … recover his natural-born citizenship."[187]

4.89.2. The rationale for the *Parreo* ruling is that the procedure under R.A. No. 9225 for re-acquisition of Philippine citizenship is a form of repatriation. Notably, in *Sobejana-Condon vs. COMELEC*,[188] the oath required

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[184] G.R. No. 195649, 16 April 2013.
[185] Underscoring supplied.
[186] G.R. No. 162224, 7 June 2007.
[187] Underscoring supplied.
[188] G.R. No. 198742, 10 August 2012.

under R.A. No. 9225 was described as an "abbreviated repatriation process that restores one's Filipino citizenship and all civil and political rights and obligations concomitant therewith, subject to certain conditions imposed in Section 5..." Similarly, in *Maquiling vs. COMELEC*,[189] the Supreme Court repeatedly characterized R.A. No. 9225 as a procedure for "repatriation."

4.89.3. Thus, the Supreme Court in *Parreo* cited *Bengson III vs. HRET and Cruz*[190] which is a case involving repatriation:

> (R)epatriation results in the recovery of the original nationality.[191] 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.[192]

The Supreme Court in *Parreo* also cited *Tabasa vs. Court of Appeals*,[193] where the High Court had said that "(t)he repatriation of the former Filipino will allow him to recover his natural-born citizenship."

4.89.4. Logic and reason dictate that a person who "re-acquires" Philippine citizenship under said law necessarily re-acquires natural-born Filipino citizenship. The reason is plain: one can only re-acquire what was lost in the first place. Here, the law itself applies only to former "natural-born citizens of the Philippines as defined by Philippine Law and jurisprudence."[194] Thus, a former natural-born citizen can only "re-acquire" natural-born citizenship, because that is the only citizenship that she could conceivably have lost. "Re-acquisition" presupposes the existence of a prior status, not the creation of a new one. Indeed, the declared policy of R.A. No. 9225 is that "all Philippine citizens who become

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[189] G.R. No. 195649, 16 April 2013.
[190] G.R. No. 142840, 7 May 2001.
[191] Bold face in the original.
[192] Underscoring supplied.
[193] G.R. No. 125793, 29 August 2006.
[194] Section 1 of BI Memorandum Circular No. AFF. 05-002, otherwise known as the "Revised rules Governing Philippine Citizenship under Republic Act (R.A.) No. 9225 and Administrative Order (A.O.) No. 91, Series of 2004."

citizens of another country shall be deemed not to have lost their citizenship under the conditions of this Act."[195]

4.89.5. Finally, as discussed earlier, in *Bengson III vs. HRET and Cruz,*[196] the Supreme Court declared that there are only two (2) types of citizens under the *1987 Constitution*: (a) the natural-born citizen; and (b) the naturalized citizen. The Supreme Court noted that there is no separate category for those who lost their citizenship and then reacquired it. The Court explained that since the petitioner was not required to undergo naturalization proceedings to reacquire his citizenship, he is necessarily natural-born. The Court said:

> It is apparent from the enumeration of who are citizens under the present Constitution that there are only two classes of citizens: (1) those who are natural-born and (2) those who are naturalized in accordance with law. A citizen who is not a naturalized Filipino, i.e., did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is a natural-born Filipino. *Noteworthy is the absence in said enumeration of a separate category for persons who, after losing Philippine citizenship, subsequently reacquire it. The reason therefor is clear: as to such persons, they would either be natural-born or naturalized depending on the reasons for the loss of their citizenship and the mode prescribed by the applicable law for the reacquisition thereof.* As 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.[197]

Since Respondent was never "naturalized" as a Filipino, she must perforce be a "natural-born" Filipino.

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[195] Section 2, R.A. No. 9225
[196] G.R. No. 142840, 7 May 2001.
[197] Underscoring and emphasis supplied.

c. Respondent validly renounced her American citizenship before she accepted any public office.

4.90. Respondent re-acquired her "natural-born" Philippine citizenship when she took her Oath of Allegiance to the Republic of the Philippines on 7 July 2006. At that point, Respondent had become a dual-citizen. However, to qualify for public office, this Oath of Allegiance was not enough.

4.91. Sections 5 (2) and (3) of R.A. No. 9225 state that those who have re-acquired their natural-born Philippine citizenship under R.A. No. 9225 "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:"

> (2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;
>
> (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;[198]

4.92. In *Sobejana-Condon vs. COMELEC*,[199] the Supreme Court held that "(t)he renunciation must be contained in an affidavit duly executed before an officer of the law who is authorized to administer an oath stating in clear and unequivocal terms that affiant is renouncing all foreign citizenship."[200] "The foreign citizenship must be formally rejected through an affidavit duly sworn before an officer authorized to administer oath."

4.93. In compliance with R.A. No. 9225, on 20 October 2010, Respondent executed before a notary public an "Affidavit of Renunciation of Allegiance to the United States of

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[198] Underscoring supplied.
[199] G.R. No. 198742, 10 August 2012.
[200] Citing Lopez vs. COMELEC, G.R. No. 182701, 23 July 2008.

America and Renunciation of American Citizenship" of even date.[201] The affidavit states:

> I, MARY GRACE POE-LLAMANZARES, Filipino, of legal age, and presently residing at No. 107 Rodeo Drive, Corinthian Hills, Quezon City, Philippines, after having been duly sworn to in accordance with the law, do hereby depose and state that with this affidavit, I hereby expressly and voluntarily renounce my United States nationality/ American citizenship, together with all rights and privileges and all duties and allegiance and fidelity thereunto pertaining. I make this renunciation intentionally, voluntarily, and of my own free will, free of any duress or undue influence.
>
> IN WITNESS WHEREOF, I have hereunto affixed my signature this 20th day of October 2010 at Pasig City, Philippines.[202]

4.94. This renunciation was sufficient to qualify Respondent both for her appointive office at the MTRCB, and her elective office at the Senate. R.A. No. 9225 does not require prior U.S.A. approval of Respondent's renunciation of her U.S.A. citizenship in order to qualify her for public office. *Sobejana-Condon vs. COMELEC*[203] is again instructive*:*

> We have stressed in Advocates and Adherents of Social Justice for School Teachers and Allied Workers (AASJS) Member v. Datumanong that the framers of R.A. No. 9225 did not intend the law to concern itself with the actual status of the other citizenship.
>
> This Court as the government branch tasked to apply the enactments of the legislature must do so conformably with the wisdom of the latter sans the interference of any foreign law. If we were to read the Australian Citizen Act of 1948 into the application and operation of R.A. No. 9225, we would be applying not what our legislative department has deemed wise to require. To do so would be a brazen encroachment upon the sovereign will and power of the people of this Republic.[32]

4.94.1. In the same manner, the laws of the U.S.A. should not be "read into the application and operation of R.A. No. 9225;" otherwise, there would be a

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[201] Annex "**14**" hereof.
[202] Underscoring supplied.
[203] G.R. No. 198742, 10 August 2012.

"brazen encroachment" upon the political wisdom and discretion of Congress.

4.94.2. In *Maquiling vs. COMELEC*,[204] the Supreme Court held that "(b)y renouncing his foreign citizenship, (the candidate) was deemed to be solely a Filipino citizen, regardless of the effect of such renunciation under the laws of the foreign country."

4.95. At any rate, Respondent was, in fact, able to secure the U.S.A.'s approval of her renunciation of U.S.A. citizenship. Thus, as of 21 October 2010, she ceased to be a U.S.A. citizen even from the point of view of U.S.A. law.

4.95.1. On 12 July 2011, Respondent executed before the Vice Consul at the U.S.A. Embassy in Manila, an Oath/Affirmation of Renunciation of Nationality of the United States.[205]

4.95.2. On 9 December 2011, the U.S.A. Vice Consul issued to Respondent a Certificate of Loss of Nationality of the United States.[206] Said Certificate attests that under U.S.A. laws, Respondent lost her U.S.A. citizenship effective 21 October 2010, which is when she had taken her oath of office as Chairperson of the MTRCB.

4.95.3. Therefore, Respondent actually twice renounced her U.S.A. citizenship before she filed her COC for Senator on 2 October 2012.

4.96. Considering that Respondent's repatriation and sworn renunciation under R.A. No. 9225 are presumed regular and legal,[207] it is Petitioner's burden to prove that: (a) Respondent did not validly re-acquire her natural-born Philippine citizenship; and (b) Respondent did not qualify for her appointment as MTRCB Chairperson and/or Senator of the Philippines. So far, Petitioner has simply claimed that the B.I. acted with "inadvertence," which is clearly not enough to overcome the presumption of regularity.

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[204] G.R. No. 195649, 16 April 2013.
[205] Annex "**17**" hereof.
[206] Annex "**19**" hereof.
[207] See Frivaldo vs. COMELEC, G.R. No. 120295, 28 June 1996.

d. Respondent's use of her U.S.A. passport during the period in question did not affect the validity of her re-acquisition of Philippine citizenship or her renunciation of American citizenship.

4.97. Petitioner argues that Respondent's "oath of allegiance to the Philippine Republic" became "meaningless such that the oath must be forfeited for the reason that she still express (sic) allegiance to the US by using her America(n) passport."[208] Petitioner is gravely mistaken. Respondent's use of her U.S.A. passport before her renunciation in October 2010 did not affect her repatriation on 7 July 2006. For emphasis, she did not use her U.S.A. passport after she renounced her U.S.A. citizenship.

4.97.1. In *Maquiling vs. COMELEC*[209] (the very case which Petitioner mistakenly assumes supports his argument), the Supreme Court held that the use of a U.S.A. passport after taking one's oath of allegiance under R.A. No. 9225 does not affect the re-acquisition of natural-born Filipino citizenship under said law, thus:

> While the act of using a foreign passport is not one of the acts enumerated in Commonwealth Act No. 63 constituting renunciation and loss of Philippine citizenship,[35] it is nevertheless an act which repudiates the very oath of renunciation required for a former Filipino citizen who is also a citizen of another country to be qualified to run for a local elective position.
>
> When Arnado used his US passport on 14 April 2009, or just eleven days after he renounced his American citizenship, he recanted his Oath of Renunciation that he "absolutely and perpetually renounce(s) all allegiance and fidelity to the UNITED STATES OF AMERICA" and that he "divest(s) himself of full employment of all civil and political rights and privileges of the United States of America."
>
> We agree with the COMELEC En Banc that such act of using a foreign passport does not divest Arnado of his Filipino citizenship, which he acquired by repatriation. However, by representing himself as an American citizen, Arnado voluntarily and effectively

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[208] Par. 46 of the *Petition.*
[209] G.R. No. 195649, 16 April 2013.

> reverted to his earlier status as a dual citizen. Such reversion was not retroactive; it took place the instant Arnado represented himself as an American citizen by using his US passport.[210]

4.97.2. Applying *Maquiling*, Respondent's use of her U.S.A. passport before her renunciation in October 2010 did not "divest" her of her natural-born citizenship which she had re-acquired on 7 July 2006. The use of the U.S.A. passport would be material only if such use occurred after 20 October 2010, and even then, it would affect only the oath of renunciation but not the reacquisition of natural-born Filipino citizenship. As repeatedly stressed, Respondent did not use her U.S.A. passport after her renunciation of U.S.A. citizenship on 20 October 2010.

B.2. As of May 2013, Respondent possessed more than the two-year minimum residency requirement for Senatorial candidates.

4.98. To stress, any attack based on residency has prescribed and is barred by laches. And if domicle is purely a question of intent, then Respondent, who kept her Filipino ties and had always intended to return to the Philippines even while she was abroad, could be considered domiciled here. That said, and assuming physical presence is paramount, Respondent still complied with Section 3, Article VI of the *1987 Constitution* which states that a Senatorial candidate must be "a resident of the Philippines for not less than two years immediately preceding the day of the election." Respondent was elected on 13 May 2013. Therefore, to meet the two-year residency requirement, she ought to have started residing in the Philippines no later than 13 May 2011.

4.99. Petitioner's claim that Respondent lacks the two-year residence qualification is premised entirely on his hasty and uninformed supposition that Respondent became "stateless" when she renounced her U.S.A. citizenship supposedly "on 27 July 2012" (which is supposedly the date of publication of the U.S.A. Department of State's approval of her renunciation under U.S.A. law, an allegation which could not

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[210] Underscoring supplied.

even be verified based on Petitioner's Annex "D", which is an unauthenticated and unidentified print-out of what appears to be a computer search result). This is baseless.

4.99.1. In the first place, as discussed extensively above, under R.A. No. 9225, a sworn renunciation is all that is needed, and the procedure, approval and date of approval of a foreign state on the renunciation is irrelevant. As stated in *Sobejana-Condon vs. COMELEC*[211] "the framers of R.A. No. 9225 did not intend the law to concern itself with the actual status of the other citizenship," that the Court must apply the law "sans the interference of any foreign law" and that "(i)f we were to read the (foreign law) into the application and operation of R.A. No. 9225, we would be applying not what our legislative department has deemed wise to require. To do so would be a brazen encroachment upon the sovereign will and power of the people of this Republic." Thus, Respondent reacquired her natural-born Filipino citizenship on 7 July 2006 when she took her Oath of Allegiance to the Republic of the Philippines pursuant to R.A. No. 9225. She was qualified to reacquire her citizenship under this law because she was a former natural-born citizen of the Philippines. Her use of her U.S.A. passport after 7 July 2006 but before October 2010 did not affect her reacquisition of natural-born Filipino citizenship. Moreover, Respondent was a dual-citizen from 7 July 2006 up to 21 October 2010.

4.99.2. Secondly, Respondent renounced her U.S.A. citizenship twice: (a) on 20 October 2010, before a Philippine notary public (which, by itself, sufficed under Philippine law); and (b) on 12 July 2011, before a U.S.A. Vice Consul. However, even under U.S.A. laws, Respondent lost her U.S.A. citizenship when she performed the "expatriating" act of taking her oath of office as Chairperson of the MTRCB on 21 October 2010.

4.100. Petitioner likewise argues that if Respondent reacquired her natural-born Philippine citizenship under R.A. No. 9225, she could only have "commence(d) the establishment of residence in the Philippines" "after taking her oath of allegiance to the Philippines." But taking Petitioner's theory as is (without conceding it to be correct)—that Respondent's period of residency began when she reacquired

her Philippine citizenship—then her residency began in July 2006 and Respondent had more than the required two-year resdiecncy requirement for Senators. That said, Petitioner's stance is contrary to prevailing jurisprudence because residence can be established earlier than the reacquisition of citizenship.

4.100.1. In *Japzon vs. COMELEC*,[212] the Supreme Court *en banc* held that R.A. No. 9225 treats citizenship independently of residence. *Japzon* involved a respondent who reacquired his citizenship under R.A. No. 9225. Petitioner therein argued that since respondent lost his domicile of origin when he became a naturalized U.S.A. citizen, the burden fell upon him to prove that he established a new domicile of choice in Samar, and that he did not reacquire his previous domicile by merely taking the Oath of Allegiance under R.A. No. 9225. Said the Court:

> It bears to point out that Republic Act No. 9225 governs the manner in which a natural-born Filipino may reacquire or retain his Philippine citizenship despite acquiring a foreign citizenship, and provides for his rights and liabilities under such circumstances. A close scrutiny of said statute would reveal that it does not at all touch on the matter of residence of the natural-born Filipino taking advantage of its provisions. Republic Act No. 9225 imposes no residency requirement for the reacquisition or retention of Philippine citizenship; nor does it mention any effect of such reacquisition or retention of Philippine citizenship on the current residence of the concerned natural-born Filipino. Clearly, Republic Act No. 9225 treats citizenship independently of residence. This is only logical and consistent with the general intent of the law to allow for dual citizenship. Since a natural-born Filipino may hold, at the same time, both Philippine and foreign citizenships, he may establish residence either in the Philippines or in the foreign country of which he is also a citizen.
>
> x x x
>
> As has already been previously discussed by this Court herein, Ty's reacquisition of his Philippine citizenship under Republic Act No. 9225 had no automatic impact or effect on his residence/domicile. He could still retain his domicile in the USA, and he did not

[212] G.R. No. 180088, 19 January 2009.

> necessarily regain his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines. Ty merely had the option to again establish his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines, said place becoming his new domicile of choice. The length of his residence therein shall be determined from the time he made it his domicile of choice, and it shall not retroact to the time of his birth.[213]

4.100.2. The Supreme Court's *en banc* ruling in *Jalosjos vs. COMELEC*[214] is also instructive. The issue in *Jalosjos* was whether a candidate who reacquired his citizenship pursuant to R.A. No. 9225, thereby effectively established a new domicile in the Philippines. The High Court held as follows:

> There is no hard and fast rule to determine a candidate's compliance with residency requirement since the question of residence is a question of intention. Still, jurisprudence has laid down the following guidelines: (a) every person has a domicile or residence somewhere; (b) where once established, that domicile remains until he acquires a new one; and (c) a person can have but one domicile at a time.
>
> x x x
>
> But it is clear from the facts that Quezon City was Jalosjos' domicile of origin, the place of his birth. It may be taken for granted that he effectively changed his domicile from Quezon City to Australia when he migrated there at the age of eight, acquired Australian citizenship, and lived in that country for 26 years. Australia became his domicile by operation of law and by choice.
>
> On the other hand, when he came to the Philippines in November 2008 to live with his brother in Zamboanga Sibugay, it is evident that Jalosjos did so with intent to change his domicile for good. He left Australia, gave up his Australian citizenship, and renounced his allegiance to that country. In addition, he reacquired his old citizenship by taking an oath of allegiance to the Republic of the Philippines, resulting in his being issued a Certificate of Reacquisition of

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[213] Underscoring supplied.
[214] G.R. No. 191970, 24 April 2012.

> Philippine Citizenship by the Bureau of Immigration. By his acts, Jalosjos forfeited his legal right to live in Australia, clearly proving that he gave up his domicile there. And he has since lived nowhere else except in Ipil, Zamboanga Sibugay.
>
> To hold that Jalosjos has not established a new domicile in Zamboanga Sibugay despite the loss of his domicile of origin (Quezon City) and his domicile of choice and by operation of law (Australia) would violate the settled maxim that a man must have a domicile or residence somewhere.[215]

4.100.3. In *Cordora vs. COMELEC*[216] and *Frivaldo vs. COMELEC*,[217] both decided *en banc*, the Supreme Court similarly ruled that residency is "separate," "distinct" and not dependent upon citizenship.

4.100.4. Given the foregoing precedents, a former natural-born Filipino who is naturalized abroad may establish her domicile in the Philippines even before she reacquires her natural-born Philippine citizenship.

4.100.5. Indeed, there is no Constitutional or statutory requirement that the residency must be acquired while the candidate is already a citizen and vice-versa. Illustrative is *Frivaldo vs. COMELEC,*[218] where the petitioner reacquired his Philippine citizenship only on the day he was to take his oath of office. This meant that *Frivaldo* was an alien during the required period of residency, and yet he was not disqualified. The Supreme Court construed the citizenship and residency requirements for local officials as separate from each other:

> Under Sec. 39 of the Local Government Code, "(a)n elective local official must be:
>
> * a citizen of the Philippines;
>
> * a registered voter in the barangay, municipality, city, or province . . . where he intends to be elected;

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[215] Underscoring supplied.
[216] G.R. No. 176947, 19 February 2009.
[217] G.R. No. 120295, 28 June 1996.
[218] G.R. Nos. 120295 & 123755, 28 June 1996, 257 SCRA 727.

> * a resident therein for at least one (1) year immediately preceding the day of the election;
>
> * able to read and write Filipino or any other local language or dialect."
>
> * In addition, "candidates for the position of governor . . . must be at least twenty-three (23) years of age on election day."

From the above, it will be noted that the law does not specify any particular date or time when the candidate must possess citizenship, unlike that for residence (which must consist of at least one year's residency immediately preceding the day of election) and age (at least twenty three years of age on election day).

Philippine citizenship is an indispensable requirement for holding an elective public office, and the purpose of the citizenship qualification is none other than to ensure that no alien, i.e., no person owing allegiance to another nation, shall govern our people and our country or a unit of territory thereof. Now, an official begins to govern or to discharge his functions only upon his proclamation and on the day the law mandates his term of office to begin. Since Frivaldo re-assumed his citizenship on June 30, 1995 — the very day the term of office of governor (and other elective officials) began — he was therefore already qualified to be proclaimed, to hold such office and to discharge the functions and responsibilities thereof as of said date. In short, at that time, he was already qualified to govern his native Sorsogon. This is the liberal interpretation that should give spirit, life and meaning to our law on qualifications consistent with the purpose for which such law was enacted. So too, even from a literal (as distinguished from liberal) construction, it should be noted that Section 39 of the Local Government Code speaks of "Qualifications" of "ELECTIVE OFFICIALS", not of candidates. Why then should such qualification be required at the time of election or at the time of the filing of the certificates of candidacies, as Lee insists? Literally, such qualifications — unless otherwise expressly conditioned, as in the case of age and residence — should thus be possessed when the "elective [or elected] official" begins to govern, i.e., at the time he is proclaimed and at the start of his term — in this case, on June 30, 1995. Paraphrasing this Court's ruling in Vasquez vs. Giap and Li Seng Giap & Sons, if the

> purpose of the citizenship requirement is to ensure that our people and country do not end up being governed by aliens, i.e., persons owing allegiance to another nation, that aim or purpose would not be thwarted but instead achieved by construing the citizenship qualification as applying to the time of proclamation of the elected official and at the start of his term.[219]

4.100.6. Similarly in *Jalosjos*,[220] petitioner therein returned to the Philippines with the intention to reside here for good on 22 November 2008. He reacquired his Philippine citizenship under R.A. 9225 only after that date. However, in determining whether the candidate satisfied the residency requirement, the Supreme Court reckoned his residence from his return on 22 November 2008, when his physical presence in the Philippines concurred with his intention to reside here permanently, and not from the date of his reacquisition of citizenship.

4.101. Notably, under Petitioner's theory, i.e., that Respondent could have re-established her residence in the Philippines no earlier than the day she reacquired her natural-born Filipino citizenship (on 7 July 2006), Respondent would have been a resident of the Philippines for almost 7 years as of 13 May 2013.

4.102. Assuming *arguendo* that Respondent had lost her Philippine domicile, she would still have satisfied the two-year residency requirement as of 13 May 2013. In determining whether the "residency" requirement has been satisfied, courts must look at the evidence of intention coupled with physical presence, or acts indicative of such intention.[221] In order to acquire a new domicile by choice, there must concur: (1) residence or bodily presence in the new locality; (2) an intention to remain there; and (3) an intention to abandon the old domicile. There must 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.[222]

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[219] Underscoring supplied.
[220] *Supra* note 214.
[221] Japzon v. Commission on Elections, G.R. No. 180088, 19 January 2009.
[222] Japzon v. Commission on Elections, *supra*, citing Papandayan, Jr. v. Commission on Elections, 430 Phil. 754 (2002).

4.103. In this case, Respondent was physically present in the Philippines no later than May 2005. Such physical presence concurred with her *animus manendi* coupled with an *animus non revertendi*. The *animus non revertendi* (or abandonment of residence in the U.S.A. without the intention of returning) is shown by, among others, her returning in May 2005, pulling out her children from their U.S.A. schools, sale of their Virginia residence in April 2006, resignation of Respondent's husband from his U.S.A. employment immediately after the sale and his return to the Philippines thereafter in May 2006. *Animus manendi* (or re-establishment of Philippine residence with the intent to stay permanently) is shown, among others, by Respondent's return to the country in May 2005, the enrollment of her children in Philippine schools starting in June 2005, her reacquisition of natural-born Filipino citizenship on 7 July 2006, her simultaneous filing of derivative R.A. No. 9225 petitions for her children, her acquisition of BIR TIN, her registration as a voter and continuous residence in the country, her renunciation of U.S.A. citizenship, her acceptance of the MTRCB post, and her candidacy for the Senate. Therefore, as of 13 May 2013, Respondent had definitely met the two-year minimum residency requirement for Senators.

B.3. Petitioner has failed to show that affirming Respondent's election as Senator would "thwart" the purposes of the law or would otherwise be "patently antagonistic to constitutional and legal principles." Therefore, the will of the people who elected Respondent must be upheld, and the *Petition* should be dismissed.

4.104. On 13 May 2013, Respondent was elected to the Senate of the Republic of the Philippines. On that same day, the Philippine electorate passed favorable judgment on her qualifications as Senator. Considering that Respondent's eligibility was sustained by popular mandate, Petitioner cannot simply rely on casting *unsubstantiated* doubts on Respondent's citizenship qualification; neither should he rest on eligibility issues that have long been *barred* by prescription and laches. Respondent must prove that Respondent's supposed ineligibility is "so patently antagonistic to

constitutional and legal principles," that "giving effect to the will of the people," would be more prejudicial to Philippine democracy than frustrating it. He must show that the "purpose of the law will … be thwarted by upholding the victor's right to the office." Jurisprudence is well-settled on these points.

4.104.1. In the fairly recent case of *Dela Pena vs. Osmena and COMELEC,*[223] the Supreme Court held:

> Osmeña has been proclaimed winner in the electoral contest and has therefore the mandate of the electorate
>
> Before his transfer of residence, Osmeña already had intimate knowledge of Toledo City, particularly of the whole 3rd legislative district that he represented for one term. Thus, he manifests a significant level of knowledge of and sensitivity to the needs of the said community. Moreover, Osmeña won the mayoralty position as the choice of the people of Toledo City.
>
> We find it apt to reiterate in this regard the principle enunciated in the case of Frivaldo v. Comelec, that "[i]n any action involving the possibility of a reversal of the popular electoral choice, this Court must exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority."
>
> To successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effectto the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote. The reason for such liberality stems from the recognition that laws governing election contests must be construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections.[224]

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[223] G.R. No. 209286, 23 September 2014.
[224] Underscoring supplied, citations omitted.

4.104.2. In *Sabili vs. COMELEC,*[225] the Supreme Court reaffirmed a few landmark cases which had applied the principle, thus:

> As a final note, we do not lose sight of the fact that Lipa City voters manifested their own judgment regarding the qualifications of petitioner when they voted for him, notwithstanding that the issue of his residency qualification had been raised prior to the elections. Petitioner has garnered the highest number of votes (55,268 votes as opposed to the 48,825 votes in favor of his opponent, Oscar Gozos) legally cast for the position of Mayor of Lipa City and has consequently been proclaimed duly elected municipal Mayor of Lipa City during the last May 2010 elections.
>
> In this regard, we reiterate our ruling in *Frivaldo v. Commission on Elections* that (t)o successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people, would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote.
>
> Similarly, in *Japzon v. Commission on Elections*, we concluded that when the evidence of the alleged lack of residence qualification of a candidate for an elective position is weak or inconclusive and it clearly appears that the purpose of the law would not be thwarted by upholding the victor's right to the office, the will of the electorate should be respected. For the purpose of election laws is to give effect to, rather than frustrate, the will of the voters.
>
> In sum, we grant the Petition not only because petitioner sufficiently established his compliance with the one-year residency requirement for local elective officials under the law. We also recognize that (a)bove and beyond all, the determination of the true will of the electorate should be paramount. It is their voice, not ours or of anyone else, that must prevail. This, in essence, is the democracy we continue to hold sacred.[226]

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[225] G.R. No. 193261, 24 April 2012, citing Enojas, Jr. v. Commission on Elections, 347 Phil. 510 (1997).
[226] Underscoring supplied; citations omitted.

4.105. The rationale for the citizenship and residency qualifications for public office are as follows:

> 4.105.1. "(T)he purpose of the citizenship qualification is none other than to ensure that no alien, i.e., no person owing allegiance to another nation, shall govern our people and our country or a unit of territory thereof."[227]
>
> 4.105.2. On the other hand, the "residency" requirement "seeks to prevent is the possibility of a "stranger or newcomer unacquainted with the conditions and needs of a community and not identified with the latter, from an elective office to serve that community." [228]

4.106. Legalities aside, Respondent has repeatedly demonstrated her allegiance and loyalty to the Philippines. Respondent was not a mere "stranger," "unacquainted" with the needs of the Filipino people, when she was elected to the Senate of the Republic of the Philippines.

4.107. Respondent was born in the Philippines in 1968 and was raised here by her Filipino parents. Having been raised a Filipina and with Filipino values, Respondent chose to be with her husband and to raise their children together. Filipina ideals likewise guided Respondent's decision to follow her husband to the U.S.A. on 29 July 1991, and to eventually return to the Philippines in May 2005, following the untimely demise of her father. Petitioner has been residing in the country with her husband and children ever since.[229] Respondent's husband continues to be employed, and her children continue to study, in the Philippines.[230] Respondent voted in three national elections in the country.[231] She served as Chairperson of the MTRCB and she continues to serve the country as Senator of the Republic of the Philippines.

4.108. Respondent has, through her life, sense of civic duty, and unimpeached record of public service, shown that she is a tried and tested loyal Filipino, and that she

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[227] G.R. No. 120295, 28 June 1996.
[228] Romualdez- Marcos vs. COMELEC, G.R. Nos. 119976, 18 September 1995, citing Gallego vs. Vera, 73 Phil. 453 (1941); Torayno vs. COMELEC, 392 Phil. 343 (2000), cited in Sabili vs. COMELEC, G.R. No. 193261, 24 April 2012.
[229] See Questionnaire Information for Determining Possible Loss of U.S. Citizenship dated 12 July 2011, Annex "**18**" hereof.
[230] *Id.*
[231] *Id.*

understands and is tuned in to the needs and aspirations of her country men and women. The highest offices in the land, including the Senate, were reserved precisely for Philippine citizens and residents like her.

4.109. All told, there would be nothing "antagonistic to constitutional and legal principles," and neither would the "purpose" of the citizenship and residence qualifications be "thwarted," if this Honorable Tribunal "gives effect to the will of the people" who overwhelmingly elected Respondent as Senator in May 2013. In the words of the Supreme Court in *Frivaldo vs. COMELEC,*[232] "(i)n applying election laws, it would be far better to err in favor of popular sovereignty than to be right in complex but little understood legalisms."

Respondent pleads all of the foregoing by reference and states the following, by way of —

V.

MOTION FOR SUMMARY DISMISSAL

5.1. Rule 23 (a) and (b) of the *SET Rules* provides that this Honorable Tribunal may, even without motion and, thus, *motu proprio*, summarily dismiss a petition for *quo warranto*, thus:

> Rule 23. *Summary Dismissal*.- An election protest or petition for *quo warranto* shall be summarily dismissed by the tribunal if:
>
> a. The protest or petition is insufficient in form or substance;
>
> b. The protest or petition is filed beyond the period prescribed in Rule 16 or Rule 18, as the case may be; x x x[233]

5.2. Summary dismissal is also warranted in cases of willful and deliberate forum-shopping. Section 5, Rule 7 of the Rules of Court states that "(i)f the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions."

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[232] G.R. No. 120295, 28 June 1996
[233] Underscoring supplied.

5.3. The *Petition* must be summarily dismissed for the following reasons:

5.3.1. The *Petition* is "insufficient in form." The so-called "certification against non-forum shopping" attached to the *Petition* failed to state that Petitioner had "not theretofeore commenced any action or filed any claim involving the same issues." (See Defense A.1)

5.3.2. Petitioner is guilty of willful and deliberate forum-shopping. He filed before the COMELEC an action with issues identical to those raised in this *Petition* and then surreptitiously concealed that fact from this Honorable Tribunal (See Defense A.2).

5.3.3. The *Petition* was "filed beyond the period prescribed … in Rule 18 (of the *SET Rules*)." It was filed on 17 August 2015, or over two years past the 26 May 2013 deadline. It has prescribed and is barred by laches. (See Defenses A.3 and A.4).

5.3.4. The *Petition* is "insufficient in substance." It fails to state a cause of action, insofar as it assailed Respondent's natural-born Philippine citizenship (See Defense A.5)

VI.

ALTERNATIVELY, MOTION FOR PRELIMINARY HEARING ON GROUNDS FOR IMMEDIATE DISMISSAL /AFFIRMATIVE DEFENSES

6.1. Assuming that this Honorable Court does not summarily dismiss this *Petition*, it may conduct a preliminary hearing on one or more of the affirmative defenses. This Answer pleads the following grounds for immediate dismissal: (a) serious defect in form by reason of a defective certificate against forum shopping; (b) willfull and deliberate forum shopping with the filing of the *Affidavit-Complaint* with the COMELEC Law Department; (c) prescription; (d) laches; (e) failure to state a cause of action, as the Petitioner must point to two specific aliens as Respondent's biological parents, but can only say that they (the parents) are unknown; (f) lack of jurisdiction on the part of the Honorable Tribunal to effectively overturn the B.I.'s approval respecting the Respondent's reacquisition of her natural-born Philippine

citizenship; and (g) in the absence of a valid challenge, the *Petition* ultimately raises a political question which is beyond the jurisdiction of this Honorable Tribunal.

6.2. The foregoing grounds for immediate dismissal/ affirmative defenses are prejudicial, and must be decided before this Honorable Tribunal can tackle the substance of Respondent's supposed lack of eligibility as Senator. Moreover, as already invoked, election contests should be concluded as speedily as possible, to the end that any doubt as to the true expression of the will of the electorate will be dissipated without delay, and that public faith, confidence and cooperation so essential to the success of government will not be undermined.[234]

6.3. Thus, under Rule 28 of the *SET Rules*, the Honorable Tribunal may, in its discretion, hold a preliminary hearing on the affirmative defenses pleaded in an Answer.

6.4. Respondent moves that such discretion be exercised, but only if it does not summarily dismiss the *Petition* pursuant to Rule 23 of the *SET Rules* and/or the second paragraph of Section 5, Rule 7 of the Rules of Court.

VII.

MOTION TO CITE PETITIONER IN DIRECT CONTEMPT OF COURT

7.1. As earlier pointed out, several hours before he filed his *Petition*, Petitioner already filed an *Affidavit-Complaint* with the COMELEC Law Department involving the same issues as those raised in this *Petition*. He therefore, on one and the same day, asked this Honorable Tribunal and the COMELEC to rule on the same issues, in the hope that at least one rules in his favor. He consciously brought about the possibility of conflicting decisions. It ought to be further stressed that the certification against forum shopping in this *Petition* is defective and disingenuously worded (i.e., that there is no other petition for quo warranto before any other tribunal), in order for Petitioner to avoid the consequences of his earlier contumacious behavior and evade having to certify what he must: that he has not filed any other case involving the same issues before any other court. To Respondent's knowledge, Petitioner has not even informed this Honorable

[234] Ortega v. De Guzman, G.R. No. L-25758, 18 February 1967.

Tribunal of the filing of the *Affidavit-Complaint*. There is no other conclusion but that Petitioner has committed willful and deliberate forum shopping.

7.2. The totality of Petitioner's acts shows willful and deliberate forum shopping. Under Section 5, Rule 7, "(I)f the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions". Under Section 1, Rule 71, direct contempt is punished summarily by a fine of Two Thousand Pesos (Php2,000.00) and imprisonment of ten (10) days, or both.

VIII.
COUNTERCLAIM FOR INDIRECT CONTEMPT OF COURT

8.1. The second paragraph of Section 5, Rule 7 of the Rules of Court provides that "(t)he submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court."

8.2. As discussed in Part V of this Answer, due to the initentionally defective language in the so-called "certification of non-forum shopping" (the "Certification") attached to the *Petition*, the *Petition* itself must be summarily dismissed for insufficiency in form, pursuant to Rule 23 (a) of the *SET Rules*. However, if this Honorable Tribunal considers the *Certification* as substantially compliant with the prescribed form, Petitioner would still be liable for willfully executing a false certification of non-forum shopping.

8.2.1. As discussed, around five (5) hours before Petitioner filed his *Petition* with this Honorable Tribunal at 2:55 p.m. on 17 August 2015, Petitioner had filed his *Affidavit-Complaint* with the COMELEC Law Department at 10:05 a.m. of the same day.[235] This *Affidavit-Complaint* is based on the same issues raised in this *Petition.* Nevertheless, Petitioner did not mention this criminal complaint in the *Certification* attached to the *Petition*.

8.2.2. Assuming that he had no obligation to disclose the criminal complaint in his *Certification*, at the

[235] See stamp of time of receipt by COMELEC on the frist page of the Affidavit-Complaint, attached as Annex **"22"** hereof.

very least, Petitioner ought to have informed this Honorable Tribunal of the existence of this criminal complaint, within five (5) days from his "discovery" thereof. To Respondent's knowledge, Petitioner also neglected to perform this duty.

8.3. Under Rule 71 of the Rules of Court, Petitioner's acts also constitute abuses of this Honorable Tribunal's processes,[236] and improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice.[237]

8.4. Therefore, for failing (repeatedly and inexplicably) to inform this Honorable Tribunal of the filing of the *Affidavit Complaint*, Petitioner should likewise be held liable for indirect contempt and, pursuant to Section 7, Rule 71 of the Rules of Court, punished with a fine of Thirty Thousand Pesos (Php30,000.00) and imprisonment of six (6) months

IX.

PRAYER

WHEREFORE, it is respectfully prayed that this Honorable Tribunal:

1. SUMMARILY DISMISS the *Amended Petition* for *Quo Warranto* dated 17 August 2015 (the "Petition"), pursuant to Rule 23 (a) and (b) of the *SET Rules*, and Section 5, Rule 7 of the Rules of Court, on the following grounds:

    a. The *Petition* is insufficient in form;

    b. Petitioner commited willful and deliberate forum-shoppting;

    c. The *Petition* was filed beyond the period prescribed in Rule 18 of the SET Rules; and/or

    d. The *Petition* is insufficient in substance;

2. Alternatively, HOLD, pursuant to Rule 28 of the *SET Rules*, a preliminary hearing on the grounds raised in this Answer for the immediate dismissal of the

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[236] Section 3 (c), Rule 71 of the Rules of Court.
[237] Section 3 (d), Rule 71 of the Rules of Court.

Petition/ Affirmative Defenses (i.e., those discussed in paragraphs 4.1 to 4.53 of the Answer);

3. DISMISS the *Petition* on any or all of the Grounds for Immediate Dismissal and/or Defenses raised;

4. CITE Petitioner in DIRECT CONTEMPT for willful and deliberate forum shopping and, pursuant to Section 1, Rule 71 of the Rules of Court, PUNISH him with a fine of Two Thousand Pesos (Php2,000.00) and imprisonment of ten (10) days;

5. CITE Petitioner in INDIRECT CONTEMPT for failure to inform this Honorable Tribunal of the filing and pendency of his *Affidavit-Complaint* with the COMELEC Law Department and, pursuant to Section 7, Rule 71 of the Rules of Court, PUNISH him with a fine of Thirty Thousand Pesos (Php30,000.00) and imprisonment of six (6) months; and

6. IMPOSE on Petitioner double or treble costs, pursuant to Rule 85 of the *SET Rules*, for filing a frivolous petition for *quo warranto* against Respondent.

Other reliefs, just and equitable, are also prayed for.

Makati City for Quezon City, 31 August 2015.

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Newly Admitted, M.C.L.E. Governing Board Order
I.S. 2008, July 4, 2008

….verification

VERIFICATION

I, **MARY GRACE NATIVIDAD SONORA POE LLAMANZARES**, of legal age, Filipino, and with address care of Poblador Bautista & Reyes Law Offices, 5th Floor, SEDCCO I Building, 120 Rada corner Legaspi Streets, Legaspi Village, Makati City, under oath, hereby depose and state:

1. I am the Respondent in the above-entitled case.

2. I caused the preparation of, and have read, the foregoing Answer and confirm that the factual allegations therein are true and correct of my own personal knowledge and/or based on verifiable information or authentic records.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of August 2015 at Makati City, Philippines.

MARY GRACE NATIVIDAD SONORA POE LLAMANZARES
Affiant

SUBSCRIBED AND SWORN to before me this 31st day of August 2015 at Makati City, affiant exhibiting to me her Philippine Passport No. EC0588861, valid until 17 March 2019, as competent evidence of her identity.

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of 2015.

COPY FURNISHED:

ATTY. MANUEL LUNA
Counsel for Petitioner
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EXPLANATION

A copy of the foregoing *Verified Answer* was served on counsel for the Petitioner via registered mail instead of the preferred mode of personal service due to distance and lack of messengers in the office of undersigned counsel.

SANDRA M.T. MAGALANG

30.10.227
STM\PBR\AJP\SET\Answer SET 31 August 2015_FINAL