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

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

Promulgated:

April 5, 2016

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DISSENTING OPINION

BRION, *J.*:

I. INTRODUCTION

I.A. The Court's Ruling on Reconsideration

After the Court's main ruling in this case was announced and promulgated, a lot of questions were raised about the meaning, significance, and impact of our Decision. A particular question asked was – did the Court declare Grace Poe qualified to run for the Presidency? A running debate in fact ensued in the media between Chief Justice Ma. Lourdes A. Sereno and Senior Associate Justice Antonio T. Carpio on whether the Court, under the ruling and the Justices' votes, effectively declared Grace Poe a natural-born citizen of the Philippines.

Expectedly, the respondents – Estrella C. Elamparo (*Elamparo*), Francisco S. Tatad (*Tatad*), Antonio P. Contreras (*Contreras*), and Amado D. Valdez (*Valdez*) – filed their motions for reconsideration, followed by the Commission on Elections (*COMELEC*) which filed its own. They raised a host of questions about the Decision – constitutional, substantive, procedural, statutory, on international law, and even questions on the logic and the reasoning of the Decision.

No less than the **Integrated Bar of the Philippines** (*IBP*) expressed its misgivings about the Court's ruling[1] because of the tenor of its dispositive portion and the opinions of the different Justices.[2] Even legal academicians[3] and netizens in newspapers and the web, expressed their concerns.

The **Philippine Bar Association (PBA)** likewise expressed their *"grave concern on the recent ruling of the Honorable Supreme Court,"* as the ruling failed *"to resolve legal issues with clarity and certainty such that more questions are raised than answered, the Rule of Law is not served well."* It continued that *"worse, when the ruling of the Supreme Court portends a looming constitutional crisis with the possibility of a person elected by our people on mere presumption of eligibility, potentially being ousted from office by a majority vote of the Supreme Court, the resulting mandate is weakened from inception, the balance of power among the great branches of government is upset, and the contentious issue of succession comes to fore."*[4]

At the Court's first meeting in Baguio for its Summer Session, one of the items taken up was the Grace Poe case. In the usual course, the respondent would have been required to comment on the motions for reconsideration filed. At the very least, a *ponente* who is *disposed to deny the motions* would have issued a resolution explaining the majority's positions on the issues raised. This approach would have been the most responsible and rational to take, given the interest that the case has aroused and the fact that the issues raised were far from insignificant, involving as they do no less than –

- our **Constitution**, our **laws**, and their continued integrity;

- the qualifications for the **Presidency** as the highest office in the land;

- the **Court itself** that the public relies upon as the **Guardian of the Constitution** and the **Gatekeeper** in ensuring that grave abuse of discretion does not exist in the public service and in governance; and, last but not the least,

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[1] See the following website articles: "IBP: SC failed to resolve the heart of Poe's case" in www.mb.com/ibp-sc-failed-to-resolve-the-heart-of-poes-case; "IBP Raises Questions on Poe SC Ruling" in www.tribune.net.ph/headlines/ibp-raises-questions-on-poe-sc-ruling; "Supreme Court Resolved Nothing on Poe, says IBP" in www. Malay.com.ph/business-news/news/supreme-court-resolved-nothing-poe-says-ibp; "SC did not rule on Poe's Eligibility" in www.manilatimes.net/sc-did-not-rule-on-poes-eligibility/251046/

[2] Philippine Daily Inquirer, March 21, 2016; Manila Times, April 7, 2016; Manila Bulletin, April 7, 2016

[3] Tribune, April 2, 2016

[4] See: "More lawyers score SC for letting Poe run" in newsinfo.inquirer.net/777752/more-lawyers-score-sc-for-letting-poe-run.

See also: "SC Ruling on Poe hints looming constitutional crisis-lawyer's group;

- the exercise of the **sovereignty of our people** through the ballot and their right to have the ultimate say on matters of sovereignty and governance.

Topmost among all these is the Constitution, simply because it is the Contract on which our nation is founded and governed, and is the ultimate fountainhead of all the powers, rights, and obligations that exist in this nation; our people themselves promulgated this Constitution and link with one another and with the rest of the country through it. It should thus be *respected to the utmost*, with an awe that is no less than what we owe to the Filipino nation itself. Issues on presidency come close behind as the President is the leader on whose mind, heart, and hands may depend the future of the country for the next six years.

To our surprise (at least, those of us who dissented from the majority's ruling), the *ponente* simply recommended to the Court *en banc* the **outright dismissal of the motions for reconsideration through a Minute Resolution**, *i.e.*, a simple resolution denying the motions for reconsideration for lack of merit.

We pointedly asked if the *ponente* would write an extended resolution that would at least explain the reason/s for the outright denial. The answer was a simple "No," thus, clearly indicating that the majority was simply banking on **force of numbers**, although Members of the majority (not the *ponente*) reserved the right to write their concurring opinions, after the dissenting Justices confirmed that they would write theirs. **In other words, no extended ruling and reasoning can be read by the public as a *ponencia* coming from the Court.**

Indeed, this was a very strange stance coming from the Members of a Court whose Decision has been questioned by different sectors for the confusion it sowed, and whose avowed mission, among others, is to educate the bench, the bar, and members of the public on matters of law. It should not be forgotten, too, that the Court has been entrusted with the care, interpretation, and application of the Constitution.

The least that a responsible and conscientious Court can do when faced with questions relating to the Constitution is to honor this trust through competent, capable, and principled performance of its duties, particularly those touching on constitutional issues and its relationship with the public it serves. That this approach did not take place shall, I am sure, lead to more questions about the Court.

Under these circumstances, I can only conclude that this Court has not fully discharged its sworn duty in ruling on this case. I give credit though to the present movants, among them the COMELEC itself, who, despite the ruling they received from this Court, have been very careful in their language to describe the errors that they attribute to the majority's ruling. Their careful use of words, though, could not hide what they felt about the

challenged *ponencia*: that **the Court itself has committed what the Court would call "grave abuse of discretion" had it been reviewing a lower court ruling in a Rule 65 petition.**

I do not and cannot begrudge the movants this feeling as I too feel that the Court has once again overstepped the bounds allowed us as fallible human beings entrusted with a trust sacred to the nation. It is in this spirit that I write this Opinion – to do my duty to *"settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction,"* even if this abuse had been committed by the Court itself.

This is not to say that, when so questioned, the Court must always yield to the challenge/s made, and respond by retracting or retracing our steps. ***This is not the way of a responsible magistrate***; ours is the duty that calls for a well-considered appreciation of the exact issues before us, as well as the duty to rule justly and fairly on these issues based on the evidence before us and on the competent, reasonable, and logical application of law and jurisprudence, all in accordance with the ***rule of law***.

In a motion for reconsideration situation, this standard simply translates to being ready to take a hard and careful look at the challenges posed, keeping in mind the role assigned to us under our constitutional scheme, *particularly in an election situation*: we are not partisans with fixed objectives anchored on political self-interests; we are ***men and women of the law*** whose bias, if any, should be for the stability of the nation's laws through their reasoned and logical interpretation and application. While we may exercise our right to vote in our country's elections as our individual partisan inclinations direct us, we must rule as disciplined men and women of the law whose obsession is ***to collectively guide the nation as it struggles through the thicket of legal concerns that our nation perennially faces***.

I.B. Brief Background of the Motions for Reconsideration.

These motions for reconsideration started from the petitions for cancellation of certificate of candidacy (*CoC*) separately filed by the present movants Elamparo, Tatad, Contreras, and Valdez (*movants*). They petitioned the COMELEC for the cancellation of Senator Grace Poe's CoC based on her allegedly **false representation in her citizenship and residency qualifications**; they claimed that Poe is not a natural-born citizen of the Philippines, and has not resided in the country for the required period of ten (10) years.

The COMELEC granted the petitions and cancelled Poe's CoC, prompting Poe to come to this Court *via* a Rule 64/65 petition for *certiorari*

on the allegation that the COMELEC gravely abused its discretion in ordering the cancellation.

The Court, through the *ponencia* of Justice Jose P. Perez, granted the petition with the support of nine (9) Justices and with six (6) Justices in dissent.

Of the supporting Justices, five (5) explained their votes through separate opinions; Justices Lucas P. Bersamin and Jose C. Mendoza fully joined the *ponencia* of Justice Jose P. Perez, while Justice Diosdado M. Peralta did not write his own opinion but merely concurred with the Separate Opinion of Justice Alfredo Benjamin S. Caguioa who joined the grant of the petition based on the grave abuse of discretion that he saw, but opted not to rule on the citizenship issue. Thus, all or nine of the majority Justices joined the finding of grave abuse of discretion, but only seven (or less than a majority) of the 15 justices voted to declare Poe a natural-born citizen.

Five (5) of the six (6) dissenting Justices wrote their separate dissents, but Justice Mariano C. del Castillo did not also rule on the citizenship issue (thus, only five [5] Justices dissented on the citizenship issue). All of the dissenting Justices ruled that the COMELEC had the requisite jurisdiction to rule on the cancellation of CoC issue, as against the majority's ruling that the COMELEC did not have jurisdiction, as expressed in the *ponencia.*

My dissent, however, also refuted the *ponencia's* declaration that Poe is qualified to be a candidate for President, under the view that if the majority uniformly ruled that the COMELEC did not have the jurisdiction to cancel Poe's CoC (so that the COMELEC ruling was void and carried no legal effect), the rulings the majority might have made on the citizenship and the residency issues are *obiter dicta* or non-binding observations.

Beyond this ruling, I now hold in these motions for reconsideration that the **Court's majority did not only err; in fact, they gravely abused their discretion in their ruling as the *ponencia*:**

(1) grossly misinterpreted the relevant provisions of the Constitution, the applicable laws on elections, and the rules of procedure;

(2) disregarded and abandoned established jurisprudence without sufficient basis in law and in reason; and

(3) acted on considerations other than legal in making their ruling.

I expound on these gross errors in the discussions below.

II. THE PONENCIA's GROSSLY ERRONEOUS RULINGS

The Court, while it is Supreme, has never been intended to be infallible. It is composed of fallible human beings who can err. It is only "supreme" because there is supposedly no court higher than the Supreme Court to which its errors may be appealed. Left unwritten in this limited concept of supremacy is the unavoidable implication that *the Court's power is not absolute*, even in its assigned area under the Constitution.

The Court, though Supreme, cannot simply disregard the clear terms of the Constitution and the laws, or at its whim, change or abandon its past rulings which have become part of the law of the land, or without reason, refuse to take into account standard norms of interpretation and application of the laws. These, unfortunately, were what the Court majority generally did in its ruling in the present case. ***It acted outside the discretion the Constitution, the laws, and ordinary reason allow it:***

- when it rashly ruled that the COMELEC did not have the jurisdiction to cancel Poe's CoC and ***thereafter*** illogically and unreasonably declared Poe qualified to be a candidate for the Presidency, the *ponencia* thereby disregarded:

    - the constitutional rule on the nature of the orders and rulings of the COMELEC and their review, as well as the power of the Supreme Court over these rulings; and

    - the significance of the COMELEC rules on the cancellation of CoCs and the established jurisdiction on this COMELEC power;

- when it concluded that Poe – an undisputed foundling – is a natural-born Filipino citizen based **on presumptions**, **on unfounded reading and interpretation of international law**, **on circumstantial evidence** that had not been admitted, and **by implication from the silent terms of the Constitution**; the *ponencia* thereby:

    - disregarded the clear terms of the 1935 Constitution on who are citizens of the Philippines and read into these clear terms the citizenship of foundlings – a matter that the Constitutional Convention already expressly rejected;

    - disregarded evidentiary rules that should apply;

    - misread international law and the treaties/agreements applicable to the Philippines; and

- misappreciated the Court's ruling in *Bengzon v. COMELEC*[5] through its superficial and out-of-context application.

- When it ruled that Poe complied with the Constitution's residency requirements:

  - By changing the constitutional meaning and requirements of the term "residence" and disregarding, without sufficient basis in law and reason, the established jurisprudence on residency;

  - by disregarding the nature of the political right that underlie the residency requirement, in the process disregarding too the terms and effects of a balikbayan visa;

  - by turning a blind eye on the effects and significance of Poe's 2012 CoC for the Senate, and simply accepting the claim that Poe made an honest mistake in the representations she made; and

  - by glossing over the "deliberate intent to mislead" aspects of the case in the representations that Poe made in her current CoC.

To encapsulate the nature and immensity of all these errors, particularly those that made a mockery of the Constitution and unsettled established rulings, I can only say that the Court's majority grossly **violated the RULE OF LAW**, thereby allowing – for the first time since July 4, 1946 – the possibility that one who is not a natural-born Filipino citizen would occupy the highest government post in the land.

Inevitably, the majority's abrupt and unprecedented reversal of settled jurisprudence has created problems – both immediate and lasting – which needs to be addressed if this Court were to be true to its role as the "final arbiter" of legal disputes, whether in government of in the private sector.

To be sure, the Court has the legal authority to reverse judicial precedents and in the process introduce new jurisprudence, but it must do so with care and the knowledge that the doctrines it pronounces become part of the law of the land. That we create jurisprudence binding upon lower courts and quasi-judicial agencies until reversed or modified should make us mindful of our role in upholding the rule of law and maintaining the judicial legitimacy of our decisions.

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[5] G.R. No. 142940, May 7, 2001.

In this light, I firmly believe that **judicial precedent should be disregarded only for strong, compelling reasons grounded on legal considerations. They are part of the building blocks and mortars that, if unceremoniously and *mindlessly* removed, can bring down an edifice.**

Sadly, I find that the legal bases used by the majority have been grossly and glaringly inconsistent as well as inadequate to support its conclusions. These defects will inevitably impact on the present jurisdiction of the COMELEC, on the cases it has decided, and on the jurisprudence on the interpretation and application of constitutional provisions.

I am not unaware that the majority may have considered values that allegedly apply to Poe's case, among them, the need to empower foundlings in their exercise of civil and political rights reserved for Philippine citizens, and their assessment and belief that Poe is the best candidate to run the country in the next six years.

Value judgments, however, should never supersede the clear text of the law. Lest we forget and become derailed by our own personal political assessments and resulting convictions, our country is run under the rule of law, and not by what we perceive the law should be. It is our cardinal duty, as Members of the highest Court of the land, to uphold and defend the ideals of the sovereign Filipino nation as embodied in the Constitution, central to which is an independent, democratic government ran under the rule of law.

In these lights, many of my arguments shall touch on the Rule of Law to highlight the need for mindful awareness of the impact of what we say and declare in the decisions we write. I shall also frontally discuss what I find objectionable in the *ponencia* as it is only through this means that we can bring to the public's awareness how we got to where we are now.

III. DISCUSSIONS

III.A. The Rule of Law.

The rule of law is the cornerstone of Philippine democracy and government. At its most basic, the rule of law is what it literally purports to be – **governance through established laws**, rather than through the **arbitrary will of a select few**.

In applying the law, the unvarying first step is to determine what is the Court's or any tribunal's jurisdiction over or authority to intervene in the case; this determination dictates the approach in the consideration of the case before it. In the course of reviewing a case, tools of construction may be used, which tools invariably command that above everything else, what is written in law should be respected and upheld. We then further pursue the rule of law through the established procedure we observe in the petitions

before us, and through our practice of applying the law to the parties, taking care that its interpretation and application are even for all persons, regardless of power, riches, or fame they may have.

To adjudicate, particularly on matters that involve the language of the law, knowledge and facility with the rules of statutory and constitutional construction are a must. This skill directs us to first look at the text of the law, before resorting to extrinsic aids of interpretation. Thus, for statutes, the cardinal rule to observe is that "*verba legis non est recedendum* or from the words of a statute there should be no departure."[6] Constitutional construction, on the other hand, tells us of "*verba legis,*" that is, wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed.[7] It is only when ambiguity in the text cannot be resolved from the examination of the text itself that we are allowed to look outside, from extrinsic aids of construction, to determine the intent and real meaning of the rules we interpret and apply.[8]

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6 *Bolos v. Bolos,* 648 Phil. 630 (2010).

7 *J.M. Tuazon & Co., Inc. v. Land Tenure Administration,* 31 SCRA 413 (1970).

8 In *Chavez v. De Venecia*, 460 Phil. 930 (2003), the Court summarized the long established principles in construing and applying the Constitution:

> ***First***, verba legis, that is, wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed.
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> ***Second***, where there is ambiguity, *ratio legis est anima*. The words of the Constitution should be interpreted in accordance with the intent of its framers.
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> ***Finally***, *ut magis valeat quam pereat.* The Constitution is to be interpreted as a whole. xxx
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> It is a well-established rule in constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.
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> xxx
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> If, however, the plain meaning of the word is not found to be clear, resort to other aids is available. In still the same case of Civil Liberties Union v. Executive Secretary, this Court expounded:
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> While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, ***resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk***, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face." The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framers's understanding thereof.46 (Emphasis and underscoring supplied)

I bring these all up as to me, they are the critical elements of adjudication that would have helped us resolve the present case expeditiously and with certain results.

III.B. The Jurisdiction of the COMELEC

III.B.1. *The Ponencia's Ruling on COMELEC Jurisdiction*.

In my original dissent, I painstakingly specified the rulings I objected to and even quoted the *ponencia* verbatim lest I be accused of twisting its statements. I summarize the *ponencia's* ruling on the COMELEC's jurisdiction, as follows:

> (1) the COMELEC did not have the authority to rule on Poe's citizenship and residency qualifications as these qualifications have not yet been determined by the proper authority;
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> (2) since there is no such prior determination as to Poe's qualifications, there is no basis for a finding that Poe's representations are false; and
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> (3) while a candidate's CoC may be cancelled without prior disqualification finding from the proper authority, the issues involving Poe's citizenship and residency do not involve self-evident facts of unquestioned or unquestionable veracity from which the falsity of representation could have been determined.

To support these rulings, the *ponencia* argued that the COMELEC lacked the jurisdiction to cancel Poe's CoC because:

First, Article IX-C of the 1987 Constitution on the COMELEC's jurisdiction has no specific provision authorizing it to rule on the qualification of the President, Vice President, Senators and Members of the House of Representatives, while Article VI, Section 17 and Article VII, Section 4 of the 1987 Constitution specifically entrusts contest involving the qualifications of Senators and Members of the House of Representatives, and of the President and Vice-President, to the jurisdiction of the Senate Electoral Tribunal (*SET*), the House of Representatives Electoral Tribunal (*HRET*), and the Presidential Electoral Tribunal (*PET*) respectively.[9]

Second, *Fermin v. Comelec*,[10] citing the Separate Opinion of Justice Vicente V. Mendoza in *Romualdez-Marcos v. Comelec*,[11] noted that "the lack of provision for declaring the ineligibility of candidates, however, cannot be supplied by a mere rule."[12] This view was adopted in the revision

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9 See pp. 17-18 of the *ponencia*.
10 595 Phil. 449 (2008).
11 G.R. No. 119976, September 18, 1995, 248 SCRA 300.
12 See p. 19 of the *ponencia*.

of the COMELEC Rules of Procedure in 2012, as reflected in the changes made in the 2012 Rules from the 1993 Rules of Procedure.[13]

The *ponencia* thus read *Fermin* and the 2012 Rules of Procedure to mean that there is no authorized proceeding to determine the qualifications of a candidate before the candidate is elected,[14] and that a CoC "cannot be cancelled or denied due course on grounds of false representations regarding his or her qualifications without a prior authoritative finding that he or she is not qualified, such prior authority being the necessary measure by which the falsity of the representation can be found. The only exception that can be conceded are self-evident facts of unquestioned or unquestionable veracity and judicial confessions."[15]

III.B.2. *The ponencia's ruling on the COMELEC's jurisdiction is grossly erroneous.*

I disagree with both the results and the approach the *ponencia* made in ruling on the COMELEC jurisdiction issue. To my mind, it effectively read a complex issue from **one very narrow perspective** and ruled on the basis of that perspective. Worse, its reading of the law and jurisprudence under its **chosen perspective was not even legally correct.**

The law, supported by the Constitution and jurisprudence, has empowered the COMELEC to cancel the CoC of candidates based on their false material representations in these CoCs. It is this existing basic and established rule that the *ponencia* has emasculated.

I shall answer the two points the *ponencia* raised and in the process discuss the considerations that a responsible ruling should have made.

III.B.2(a). *The required Perspective in Considering the Constitution.*

A first consideration that the *ponencia* missed in considering the jurisdiction of the COMELEC is the cardinal rule in constitutional adjudication that the Constitution should be read in its totality, not by simply reading specific provisions and coming up with rulings and conclusions based on these bits and pieces of the Constitution and the laws.

Had the Constitution in its totality been read, the *ponencia* would have seen that under our constitutional scheme and structure, the COMELEC is an **independent commission** – an agency with a task all its own that it must undertake and deliver to the Filipino people in the exercise of its reasonable discretion.

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13 See p. 20 of the *ponencia*.
14 See pp. 20 – 21 of the *ponencia*.
15 Ibid.

Thus, instead of simply quoting Article IX-C, Section 2 of the Constitution and literally reading it in relation with Article VI, Section 17, the *ponente's* duty as a magistrate would have been better served had he looked deeper into the Constitution's power structures and history, to find out how these provisions interact or were meant to interact with one another.

III.B.2(a)(i). ***COMELEC v. PET/SET/HRET: A Comparison:***

To be sure, the *ponencia* correctly observed that the qualifications of the Members of the Senate and of the House of Representatives, as well as those of the President and the Vice-President, all fall within the jurisdiction of the SET, the HRET, and the PET, respectively, and that the authority to rule has been withheld from the COMELEC under the Constitution.

This kind of superficial reading, however, cannot be the end and totality of a comparison between the COMELEC, on the one hand, and the SET, HRET, and the PET, on the other hand. The *ponencia* should have appreciated that this kind of comparison is more than anything else, an ***apple and orange comparison*** that carries very little relevance in constitutional adjudication.

The COMELEC is tasked with the enforcement and administration of the election laws, and these tasks end after a winning candidate is proclaimed (at least under the jurisprudence before *Ongsiako-Reyes v. COMELEC*[16] that the *ponente,* Justice Jose P. Perez, also wrote for the Court); the other three agencies, on the other hand, acquire jurisdiction only after elections, *i.e.,* after a candidate shall have been proclaimed.

III.B.2(a)(ii) ***Jurisprudence: Ongsiako-Reyes & Others.***

Thus, all matters, except only the right to vote and those given elsewhere by law, are within the jurisdiction of the COMELEC ***before elections***.[17] This jurisdiction includes the authority to rule on the cancellation of CoCs filed before it under Section 78 of the Omnibus Election Code (*OEC*).[18] Clearly established jurisprudence has supported the validity of Section 78 by ruling that the COMELEC indeed has the authority to cancel COCs based on the false material representation made in their CoCs. A representation on citizenship or residency is material because they

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16 G.R. No. 207264, June 25, 2013.

17 See Article IX-C, Section 2 of the 1997 Constitution, the Administrative Code of 1987, and Section 78 (as well as Section 69) of the OEC.

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

involve the qualifications of the candidate, and any falsity on either matter is ground for the cancellation of a CoC.

Interestingly, this was the basis of the *ponente's* own ruling in the *Ongsiako-Reyes* case when he ***upheld the COMELEC's cancellation*** of Ongsiako-Reyes' CoC on the ground that she was a naturalized American citizen and had not resided in the Philippines for the requisite period.

In the present case, ***the ponencia now surprisingly and without any reasonably acceptable legal basis holds that the COMELEC has no jurisdiction to rule on a CoC cancellation on the basis of citizenship and/or residency.*** Coming as this ruling does in a presidential election where an allegedly non-Filipino and survey-leading candidate would be favored, this is a **flip-flop of far-reaching proportions** that the *ponencia* should have fully explained.

To highlight the immensity of the problem that the *ponencia* spawned and will spawn in pending and future election cases, the rule that the Court established in *Ongsiako-Reyes* holds:

> Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is ***not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for***. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. ***Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office.*** If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a quo warranto proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for quo warranto is filed after proclamation of the wining candidate.[19] [emphases, italics, and underscoring supplied]

In *Cerafica v. Comelec*,[20] the Court, *again speaking through Justice Jose Perez*, held that the COMELEC gravely abused its discretion in holding that Kimberly Cerafica (a candidate for councilor) did not file a valid CoC and subsequently cannot be substituted by Olivia Cerafica. Kimberly's CoC is considered valid unless its contents (that includes data on her eligibility) is impugned through a Section 78 proceeding. As Kimberly's CoC had not undergone a Section 78 proceeding, then her CoC remained valid and she could be properly substituted by Olivia. In so doing, the Court quoted and reaffirmed its previous ruling in *Luna v. COMELEC*:[21]

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19 595 Phil. 449, 465-67 (2008).
20 G.R. No. 205136, December 2, 2014.
21 G.R. No. 165983, April 24, 2007.

> "If Hans Roger made a material misrepresentation as to his date of birth or age in his certificate of candidacy, *his eligibility may only be impugned through a verified petition to deny due course* to or cancel such certificate of candidacy under Section 78 of the Election Code."[22] [italics supplied]

The *ponencia* disregarded the following cases – shown in the table below – where the Court previously recognized the COMELEC's jurisdiction to cancel candidates' CoCs for false material representation in their eligibility for office.

(Cases involving Section 78 since the year 2012 - the year the COMELEC amended its Rules of Procedure.)

Case	*Ponente*, Division	Ruling
Aratea v. Comelec, G.R. No. 195229 October 9, 2012	Carpio, J. En banc	The Court affirmed the Comelec's determination that Lonzanida has served for three terms already and therefore misrepresented his eligibility to run for office; this, according to the Court, is a ground for cancelling Lonzanida's CoC under Section 78.
Maquiling v. Comelec, G.R. No. 195649, April 16, 2013	Sereno, CJ, En banc	The Court reversed the Comelec's determination of the Arnado's qualification to run for office because of a recanted oath of allegiance, and thus cancelled his CoC and proclaimed Maquiling as the winner. The Court, in reviewing the Comelec's determination, did not dispute its capacity to determine Arnado's qualifications.
Ongsiako Reyes v. Comelec, G.R. No. 207264, June 25, 2013	Perez, J., En Banc	The Court affirmed the Comelec's evaluation and determination that Ongsiako-Reyes is not a Philippine citizen and a resident of the Philippines. It even upheld the Comelec's cognizance of "newly-discovered evidence" and held that the Comelec can liberally construe its own rules of procedure for the speedy disposition of cases before it.
Cerafica v. Comelec, G.R. No. 205136 December 2, 2014	Perez, J. En Banc	The Court held that the Comelec gravely abused its discretion in holding that Kimberly did not file a valid CoC and subsequently cannot be substituted by

22 *Supra* note 24.

		Olivia; in so doing, the Court quoted and reaffirmed its previous ruling in *Luna v Comelec*, thus: "If Hans Roger made a material misrepresentation as to his date of birth or age in his certificate of candidacy, his eligibility may only be impugned through a verified petition to deny due course to or cancel such certificate of candidacy under Section 78 of the Election Code."
Luna v. Comelec, G.R. No. 165983 April 24, 2007 (cited as reference to its affirmation in *Cerafrica*)	Carpio, J. En Banc	Since Hans Roger withdrew his certificate of candidacy and the COMELEC found that Luna complied with all the procedural requirements for a valid substitution, Luna can validly substitute for Hans Roger. xxx If Hans Roger made a material misrepresentation as to his date of birth or age in his certificate of candidacy, his eligibility may only be impugned through a verified petition to deny due course to or cancel such certificate of candidacy under Section 78 of the Election Code. In this case, there was no petition to deny due course to or cancel the certificate of candidacy of Hans Roger. The COMELEC only declared that Hans Roger did not file a valid certificate of candidacy and, thus, was not a valid candidate in the petition to deny due course to or cancel Luna's certificate of candidacy. In effect, the COMELEC, without the proper proceedings, cancelled Hans Roger's certificate of candidacy and declared the substitution by Luna invalid.

Notably, the writers of these tabulated cases, other than Justice Jose P. Perez, are the two highest ranking Justices of this Court – **Chief Justice Ma. Lourdes P. A. Sereno** and **Senior Associate Justice Antonio T. Carpio**. Significantly, Chief Justice Sereno herself joined the *ponencia*.

The sad part in the present Grace Poe ruling is that the *ponencia* did not clearly and convincingly reason out why the case of Grace Poe should be differently treated. This kind of treatment gives a mischievous mind the opportunity to ask –

- why should Grace Poe be differently treated under the law?

- what is so special in her case that the prevailing ruling should be abandoned and the COMELEC's exercise of authority in elections put at risk without sufficient basis in law and in reason?

- were the COMELEC rulings under review so strong and difficult to reverse under the grave abuse of discretion standard, so that the rug had to be pulled under the COMELEC through the position that it has no authority to undertake the CoC cancellation?

III.B.2(b) *The COMELEC's authority as a Separate and Independent Body.*

Likewise interesting to note is that a court's or tribunal's ruling on citizenship, as a general rule, does not have the effect of *res judicata*, especially when the citizenship ruling is only ***antecedent to the determination of rights of a person in a controversy.***[23]

In other words, the COMELEC can conduct its own inquiry regarding citizenship, separate from and independently of the proceedings of the PET, SET, or HRET. As a means necessary in the granted power to cancel CoCs, the COMELEC is given the means to carry this power into effect, particularly the power, even if only preliminarily and for the purpose only of the cancellation proceedings, to delve into the eligibility aspect that is at issue.

In the present case, the COMELEC, in order to decide whether Poe's CoC should be cancelled, should be able to inquire into her citizenship and residency – *matters that both parties fully argued before the COMELEC on the basis of law and their respective evidentiary submissions.* (The Court, too, during the oral arguments on this case, minutely inquired into the evidence submitted.) Courts, including quasi-judicial agencies such as the COMELEC, may make pronouncements on the status of Philippine citizenship as an incident in the adjudication of the rights of the parties to a controversy.

In making its determination, ***the COMELEC is not bound by the PET, SET, or HRET's decision since these constitutional bodies are separate and independent from one another, each with its own specific jurisdiction and issues to resolve***. The COMELEC, as a constitutional body equipped with DECISIONAL AND INSTITUTIONAL INDEPENDENCE and tasked to implement election laws, has the authority to determine citizenship, even if only on a preliminary matter, to determine whether the candidate committed false material representation in his or her CoC. The PET, SET, or HRET, on the other hand, are constitutional bodies tasked to resolve all contests involving the eligibility of the President, the Vice-President, the Senators, and the House of Representative Members, respectively, after their proclamation.

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[23] See *Go, Sr. v. Ramos*, 614 Phil. 451, 473 (2009). See also *Moy Ya Lim Yao v. Commissioner of Immigration*, No. L-21289, October 4, 1971, 41 SCRA 292, 367; *Lee v. Commissioner of Immigration*, No. L-23446, December 20, 1971, 42 SCRA 561, 565; *Board of Commissioners (CID) v. Dela Rosa*, G.R. Nos. 95612-13, May 31, 1991, 197 SCRA 854, 877-878.

That these bodies have separate, distinct, and different jurisdictions mean that ***none of them has the authority nor the ascendancy over the others, with each body supreme in its own sphere of authority***. Conversely, these bodies have no ascendancy to rule upon issues outside their respective specific authority, much less the authority to bind other bodies on matters outside their respective jurisdictions. (The only exception to this statement would be the PET where the members of the Supreme Court themselves are the Members, but whether their rulings as PET are doctrinal is not a settled matter.) The decision of the PET, SET, or HRET, with their specific jurisdictions to resolve contests involving the qualifications of the President, Vice-President, Senators, or the House of Representative Members, does not have the authority to bind the COMELEC, another constitutional body with a specific mission and jurisdiction of its own. ***Only the ruling of this Court can have this effect, and only because under the Constitution and by law, its rulings form part of the law of the land.***[24]

III.B.2(c) The COMELEC and the PET.

III.B.2(c)(i) *Their Brief Histories*

The PET was a statutory creation that came into existence in 1957 in response to the perceived absence of any tribunal that could rule on presidential and vice-presidential election controversies. It firmly became a constitutional body under the 1987 Constitution with the Justices of the Supreme Court as Members. Presently, this Court, sitting *en banc,* is the sole judge of all contests relating to the election, returns, and *qualifications* of the President or Vice-President.

The grant of jurisdiction to the PET is **exclusive** but at the same time, **limited**. The constitutional phraseology limits the PET's jurisdiction to **election contests** which can only contemplate a post-election and post-proclamation controversy[25] since no "*contest*" can exist before a winner is proclaimed. Understood in this sense, the jurisdiction of the members of the Court, sitting as PET, does *not* pertain to Presidential or Vice-Presidential ***candidates*** but to the President (elect) and Vice-President (elect).

In contrast, the COMELEC was created in 1940, initially by statute whose terms were later incorporated as an amendment to the 1935 Constitution. The COMELEC was given the power to decide, save those involving the right to vote, all *administrative* questions affecting elections.

When the 1973 Constitution was adopted, this COMELEC's powers were retained with the same limitations.

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[24] Civil Code of the Philippines, Article 8.

[25] *Tecson v. Commission on Elections*, G.R. No. 161434, March 3, 2004, 424 SCRA 277; *Macalintal v. Presidential Electoral Tribunal*, G.R. No. 191618, November 23, 2010, 635 SCRA 783.

The 1987 Constitution deleted the adjective "administrative" in the description of the COMELEC's powers and expanded its jurisdiction to decide ***all questions affecting elections, except those involving the right to vote.*** Thus, unlike the very limited jurisdiction over election contests granted to the Supreme Court/PET, the COMELEC's jurisdiction, with its catch-all provision, is all encompassing; it covers all questions/issues not specifically reserved for other tribunals.

The Administrative Code of 1987 further explicitly granted the COMELEC exclusive jurisdiction over *all* pre-proclamation controversies.

Section 78 of the OEC still further refined the COMELEC's power by expressly granting it the power **to deny due course or to cancel a Certificate of Candidacy on the ground of false material representation.** *Ex necessitate legis.* Express grants of power are deemed to include all powers that are necessary or can be fairly implied from the express grant, or are incidental to the powers expressly conferred or essential thereto. This power under Section 78, therefore, necessarily includes the power to make a determination of the truth or falsity of the material representation made in the CoC.

The bottom line from this brief comparison is that the power granted to the PET is limited to election contests while the powers of the COMELEC with respect to elections are broad and extensive. Except for election contests involving the President or Vice-President (*and members of Congress*) [26] and controversies involving the right to vote, the COMELEC has the jurisdiction to decide ALL questions affecting elections. Logically, this includes pre-proclamation controversies such as the determination of the qualifications of candidates for purpose of resolving whether a candidate committed false material representation in his or her CoC.

Thus, if this Court would deny the COMELEC the power to cancel CoCs of presidential candidates simply because the COMELEC thereby effectively passes upon the qualifications of a Presidential *candidate* and on the ground that this power belongs to the PET composed of the Members of this Court, we shall ***self-servingly expand the limited power granted to this Court by Article VII, Section 4, at the expense of limiting the powers explicitly granted to an independent constitutional commission.*** The Court would thus commit an unconstitutional encroachment on the COMELEC's powers.

This seemingly simple constitutional objection is one that the Court should carefully consider as this is what the ponencia's ruling ultimately signifies.

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[26] Art. VI, Sec. 17.

III.B.2(c)(ii) *Jurisprudence on COMELEC–PET Jurisdiction.*

In *Tecson v. Comelec*,[27] the Court indirectly affirmed the COMELEC's jurisdiction over a presidential candidate's eligibility in a cancellation proceeding. The case involved two consolidated petitions assailing the ***eligibility of presidential candidate Fernando Poe Jr.*** (*FPJ*): one petition, **G.R. No. 161824**, invoked the Court's *certiorari* jurisdiction under Rule 64 of the Rules of Court over a COMELEC decision in a CoC cancellation proceeding, while the other, **G.R. No. 161434**, invoked the Court's jurisdiction as PET.

The G.R. No. 161824 petition, in invoking the Court's jurisdiction over the COMELEC's decision to uphold FPJ's candidacy, argued that the COMELEC's decision was within its power to render but its conclusion is subject to the Court's review under Rule 64 of the Rules of Court and Article IX, Section 7 of the 1987 Constitution.

In contrast, the G.R. No. 161434 petition argued that the COMELEC had no jurisdiction to decide a Presidential candidate's eligibility, as this could only be decided by the PET. It then invoked the Court's jurisdiction in its role as PET, to rule on the challenge to FPJ's eligibility.

The Court dismissed both petitions, but for different reasons. The Court dismissed G.R. No. 161824 for failure to show grave abuse of discretion on the part of the COMELEC. G.R. No. 161434 was dismissed for want of jurisdiction.

The difference in the reasons for the dismissal of the two petitions in effect ***affirmed the COMELEC's jurisdiction to determine a Presidential candidate's eligibility in a pre-election proceeding through the medium Section 78. It also clarified that while the PET also has jurisdiction over the questions of eligibility, its jurisdiction begins only after a President has been proclaimed.***

Thus, the two *Tecson* petitions, read in relation with one another, stand for the proposition that the PET has jurisdiction over challenges to a proclaimed President's eligibility, while the COMELEC has jurisdiction over CoC cancellation proceedings, filed prior to the proclamation of a President and which may involve the eligibility and qualifications of presidential candidates.

III.B.2(c)(iii) The *Fermin* and *Romualdez-Marcos* Cases.

As its second point in its discussion of COMELEC jurisdiction, the *ponencia* rhetorically asks: ***Can the COMELEC be such judge***, referring to the COMELEC as a tribunal with jurisdiction over the question of qualifications of the President (at page 18 of the *ponencia*).

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[27] G.R. No. 161434, March 3, 2004, 424 SCRA 277.

The *ponencia* answers the question by citing the Opinion of Justice Vicente V. Mendoza in *Romualdez-Marcos v. COMELEC*,[28] which the Court *en banc* cited in *Fermin v. COMELEC*.[29]

Unfortunately, the *ponencia* did not fully grasp the legal significance of these cases and the cited portions when it cited them as authority for the view that there is no *"authorized proceeding for determining before elections the qualifications of a candidate."*

- ***The Fermin Ruling***

Had the *ponencia* fully understood *Fermin*, it would have realized that this case is not a direct authority for the proposition he wished to establish. Rather than negate the jurisdiction of the COMELEC in a Section 78 proceeding, *Fermin* – like *Tecson* – in fact recognized the COMELEC's authority in these proceedings. The cited case, too, is not about a candidate's qualification for the office he is running for, but about a Section 68 petition for disqualification and a Section 78 petition to deny due course or to cancel a CoC (which was the petition that the COMELEC ruled upon in the present Grace Poe case).

"Disqualification" in the sense used in *Fermin* referred to **Section 68** of the OEC that, in turn, relate to the *commission of prohibited acts* and the *possession of a permanent resident status* in a foreign country as disqualifying grounds. The term carries the same sense under **Section 12 of the OEC** that is based on the *declaration of insanity* or *incompetence* by competent authority, or *conviction by final judgement* of specified crimes. The Local Government Code (*LGC*) also carries its own "disqualification" provision that carries a similar signification.

Fermin further distinguishes "disqualification" from the cancellation of a CoC under Section 78 in terms of grounds (*i.e.*, a statement in the CoC of a material representation...that is false) and consequences. *"While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC."*

A candidate may be *prevented from running* for an elective position either because he is ineligible or he is disqualified from doing so. *The **remedy before election** to prevent a candidate who is **ineligible** or **who lacks the qualification for running** or to become a candidate is to file a petition for cancellation of CoC under **Section 78 of the OEC**.*[30] The cancellation, cognizable by the COMELEC, requires that the material

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28 318 Phil. 329 (1995).
29 595 Phil. 449 (2008).
30 *Id.* at 465-467.

representation on qualification be false. Disqualification, as defined above, requires a prior action or ruling with respect to the cited ground.

After examination of the cited grounds, the Court in *Fermin* concluded that the petition involved in the case was a petition for cancellation of CoC, not a petition for disqualification, and held that it had been filed out of time. It furthermore ruled that a candidate's ineligibility (based on lack of residence) is not a ground for a ***Section 68 proceeding*** for ***disqualification***, despite a COMELEC rule including the lack of residence in the list of grounds for a petition for disqualification.

These were the clear thrusts of *Fermin*, not the *ponencia's* **partially correct but misunderstood statement** that there is no *"authorized proceeding for determining before elections the qualifications of a candidate."* To be sure, *Fermin* does not divest the COMELEC of its authority to determine a candidate's eligibility in the course of resolving Section 78 petitions.

As if looking forward to the possible confusion between a pre-election cancellation (Section 78) and a post-election disqualification (*quo warranto* under Section 253) proceedings, *Fermin* itself clarified this point when it said that:

> Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is ***not based on the lack of qualifications but on a finding that the candidate made a material representation that is false***, which may relate to the qualifications required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. ***Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office.*** If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a quo warranto proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for quo warranto is filed after proclamation of the winning candidate.[31] [emphases and italics supplied]

Thus, *Fermin* in fact affirms that the COMELEC can entertain and rule on a *pre-election proceeding* that shall pass on the eligibility or qualification of a candidate through the medium of a Section 78 proceeding.

This is an implication of *Fermin* that the *ponencia* might not have fully grasped.

- ***The Romualdez-Marcos Ruling***

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31 *Id.*

The *ponencia* also cited the *Romualdez-Marcos* case, apparently without any prior close reading, by quoting from the Concurring Opinion of Justice Vicente V. Mendoza.

In his Opinion, Justice Mendoza essentially discussed the concept of *ineligibility* (due to lack of residence), not the concept of disqualification in the Section 68 sense that is brought *"for the purpose of barring an individual from becoming a candidate or from continuing as a candidate for public office; ...their purpose is to eliminate a candidate from the race either from the start or during its progress.*

Justice Mendoza pointed out that *"ineligibility, on the other hand, refers to the lack of the qualifications prescribed in the Constitution or the statutes for holding public office and the purpose of the proceedings for declaration of ineligibility is to remove the incumbent from office."*

The cited Concurring Opinion concluded that what was involved in the case was a petition to declare Romualdez-Marcos ineligible, which was filed before the COMELEC; the petition was not for the cancellation of her CoC since no allegation of falsity of a material representation had been made.

The quotation the *ponencia* cited thus related to ineligibility and should be understood in that context – **the absence of an *authorized direct proceeding* for determining before election the *eligibility* of a candidate for office**. The quotation merely explained why this was so and among the reasons given were the lack of need for a proceeding unless a candidate wins; the summary nature of a cancellation proceeding which is not suited for a time-consuming eligibility proceeding; and, the policy under the OEC, of not authorizing any inquiry into the qualifications of candidates unless they have been elected.

Significantly, the *Mendoza* quotation did not negate the validity of a CoC cancellation proceeding and in fact stated that ***"[O]nly in cases involving charges of false representations made in certificates of candidacy is the COMELEC given jurisdiction***.

To stress the obvious, what is involved in the present Grace Poe case is a CoC cancellation proceeding, not the direct ineligibility proceeding that the COMELEC cannot undertake before elections. To recall *Fermin,* this direct ineligibility proceeding is available only post-election and the medium is a *quo warranto* proceeding under Section 253 of the OEC (or the PET for the President-elect).

In sum, the arguments and cited quotations in the Grace Poe *ponencia* are not really authorities for its claim regarding COMELEC jurisdiction. If they tell us anything at all, they betray the *ponencia's* confusion in its use of technical election terms, particularly in the concepts of "qualifications," "disqualifications" and "ineligibility "

But whatever may be the cause of the *ponencia's* confusion, **the ultimate result should be the recognition that the conclusion on COMELEC jurisdiction has no solid support from its cited constitutional provisions and cited jurisprudence.**

III.B.2(d) *Analysis of Sections 23 and 25 of the 2012 COMELEC Rules of Procedure*

Taking off from the quotations from Justice Mendoza in *Fermin* and *Romualdez-Marcos*, the *ponencia* jumps into his arguments regarding COMELEC Rules of Procedure, to be exact, Rules 23 and 25 of the 2012 Rules of Procedure. Rule 23 provides:

> Section 1. Ground for Denial or Cancellation of Certificate of Candidacy. –
>
> A verified Petition to Deny Due Course to or Cancel a Certificate of Candidacy for any elective office may be filed by any registered voter or a duly registered political party, organization, or coalition of political parties on the exclusive ground that any material representation contained therein as required by law is false.
>
> A Petition to Deny Due Course to or Cancel Certificate of Candidacy invoking grounds other than those stated above or grounds for disqualification, or combining grounds for a separate remedy, shall be summarily dismissed.

To fully understand Rule 23, its statutory basis – Section 78 of the Omnibus Election Code – must be appreciated. Section 78 provides:

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

In these clear terms, the law lays down the rule that the ground for cancellation should be a **FALSITY** with respect to a material representation required under Section 74 of the OEC. What is "material" has been the subject of the ruling of this Court in **1999** in *Salcedo II v. COMELEC* where we held:[32]

> The only difference between the two proceedings is that, under section 78, the qualifications for elective office are misrepresented in the certificate of candidacy and the proceedings must be initiated before the elections, whereas a petition for quo warranto under section 253 may be brought on the basis of two grounds - (1) ineligibility or (2) disloyalty to

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32 G.R. No. 135886, August 16, 1999, 312 SCRA 447, 459.

> the Republic of the Philippines, and must be initiated within ten days after the proclamation of the election results. Under section 253, a candidate is ineligible if he is disqualified to be elected to office, and he is disqualified if he lacks any of the qualifications for elective office.
>
> x x x x
>
> Therefore, it may be concluded that the material misrepresentation contemplated by section 78 of the Code refer to qualifications for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake.
>
> x x x x

Thus, the first paragraph of Rule 23 simply confirms what Section 78 of the OEC provides with respect to the denial of due course or to the cancellation of a CoC. A striking feature of this Rule is that **it does not provide for the limitation that the COMELEC cannot rule under Section 78 when the representation cited touches on the qualification or eligibility of a candidate**. In fact, the Rule implicitly speaks of eligibility as Section 74 of the OEC to which Section 78 refers, contains the qualification requirements that a candidate should state in his or her CoC.

The second paragraph of Section 1, Rule 23 distinguishes between a Section 78 cancellation proceeding and a disqualification proceeding based on Section 68 and similar disqualification provisions pointed out above. To avoid the muddling or mixing of the grounds for each remedy, the COMELEC opted to provide that petitions that combine or substitute one remedy for the other shall be dismissed summarily. Thus, the petition for cancellation can only invoke a Section 78 ground; it cannot invoke a ground for disqualification which is covered by its own OEC provisions – Section 68 and Section 12 of the OEC or Section 40 of the LGC.

In contrast with Rule 23, Rule 25 of the 2012 Rules provides:

> Section 1. Grounds, - Any candidate who, in an action or protest in which he is a party, is declared by final decision of a competent court, guilty of, or found by the Commission to be suffering from any disqualification provided by law or the Constitution.
>
> A Petition to Disqualify a Candidate invoking grounds for a Petition to Deny or to Cancel a Certificate of Candidacy or Petition to Declare a Candidate as a Nuisance Candidate, or a combination thereof, shall be summarily dismissed.

At the risk of repetition, the *ponencia* in this case read *Fermin* and the 2012 Rules of Procedure to mean that there is no authorized proceeding to

determine the qualifications of a candidate before the candidate is elected. To disqualify a candidate, there must be a declaration by a final judgment of a competent court that the candidate sought to be disqualified "is guilty of or found by the Commission to be suffering from any disqualification provided by law or the Constitution."[33]

Under the first paragraph of Section 1 of Rule 25, the above statement from the *ponencia* is not totally wrong as it merely paraphrases this paragraph. Where the *ponencia* grossly erred was in its ruling, apparently based on its **combined reading of Rules 23 and 25**, that *a CoC "cannot be cancelled or denied due course on grounds of false representations regarding his or her qualifications without a prior authoritative finding that he or she is not qualified, such prior authority being the necessary measure by which the falsity of the representation can be found. The only exception that can be conceded are self-evident facts of unquestioned or unquestionable veracity and judicial confessions."*[34]

By so ruling, the *ponencia* thereby **selectively used part of Rule 23 and combined it with its selected part of Rule 25**, to achieve its desired conclusion. This is a very naughty, if not outrightly fraudulent, use of legal interpretation.

Read side by side and read in relation with one another, Rules 23 and 25 complement one another, with one (Rule 23) providing for the Cancellation of CoC, while the other (Rule 25) providing for Disqualification. These Rules provide that the grounds particular to one cannot be cited in a petition for the other, under pain of dismissal of the petition filed. In clearer terms, CoC cancellation petition can only cite falsities in the material representations mentioned under Section 74 of the OEC, not any ground for disqualification under Section 68 or Section 12 of the OEC or Section 40 of the LGC.

Further compared, it will be noted that the second paragraphs of the Rules' respective Sections 1 are simply statements that confirm one another and strengthen the distinctions between CoC cancellation under Rule 23 and Disqualification under Rule 25. In other words, these paragraphs do not intrude into what each other covers.

Aside from its naughty interpretation, the *ponencia* apparently went astray when it misunderstood, under its interpretation of Rules 23 and 25, the *Fermin* ruling which held that a candidate's ineligibility is not a ground for a ***Section 68 proceeding*** for ***disqualification,*** despite a COMELEC rule including the lack of residence (which is an ineligibility) in the list of grounds for a petition for disqualification. As noted above, the ruling then characterized the disputed petition as a petition for the cancellation of a

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[33] See pp. 20 – 21 of the *ponencia*.
[34] Ibid.

CoC, not a petition for disqualification, and held that it had been filed out of time.

As fully explained therefore, the *Fermin* ruling and its correct significance were not properly utilized by the *ponencia*. Notably, Fermin itself clarified its legal thrusts, as above-quoted, in a manner that is not easy to misunderstand; thus, the *ponencia's* misuse of *Fermin* is difficult to excuse or to attribute to an honest mistake in the interpretation of a point of law. *Rather than a mistake, the better description may perhaps be a determined and overzealous attempt to overcome the cancellation of CoC that the COMELEC ordered.*

In these lights, I hold that based on the Constitution, the Omnibus Election Code, the COMELEC Rules of Procedure, the COMELEC history, and settled jurisprudence, the *ponencia* rashly emasculated the COMELEC of its authority to act pursuant to Section 78. As a remedial measure, its power to rule on the falsity of the eligibility or qualification requirements reflected in candidates' CoC, should be declared intact, unsullied, and be the starting basis for the consideration of the merits of the present case.

III.B.3. <u>The Height of Illogic:</u> *Ruling on review by certiorari that the COMELEC had no jurisdiction on the cancellation of Grace Poe's CoC, while declaring at the same time that Poe is qualified to run for President.*

A **<u>continuing source of wonder</u>** in reading the *ponencia* is how it could rule that the COMELEC's cancellation of Grace Poe's CoC could be void (because the COMELEC had no authority or jurisdiction to make the ruling) AND AT THE SAME TIME declare Grace Poe qualified to run for the Presidency of this country.

Even to a legally unschooled mind, the ruling can be as simple as saying – ***Wala palang kapangyarihan ang COMELEC at di pala ito puede magbigay ng kapasiyahan sa certifico ng kandidatura ni Grace Poe, kaya kandidato pa rin si Grace Poe.***

That would not have been a bad reasoning for a legal layman and should at least be a reasoning track that should not escape the Supreme Court itself. What the consequences and implications of this reasoning and conclusion, of course, cannot usually be expected from the ordinary layman as these consequences may already require legal training to sort out.

The Court should eminently qualify to layout what would happen if indeed the COMELEC lacked or exceeded its jurisdiction, but for the Court to conclude that Grace Poe is qualified to run for the Presidency although the COMELEC did not have the authority to act and its decision had been voided, is a leap in logic – *a non-sequitur* – that equates ***the lack of***

authority to act with ***the separate question of Poe's eligibility to be a candidate***. It is a conclusion that begs for the sounding of alarm bells about the Court's reasoning and about the Court itself and its motivations.

By constitutional rule,[35] a COMELEC decision is reviewable by the Court only by *certiorari* whose procedure is outlined under Rules 64 and 65 of the Rules of Court. This manner and mode of review essentially mean that the Court's standard of review is the presence or absence of jurisdiction, in the latter case, the lack or excess of jurisdiction or grave abuse of discretion amounting to these jurisdictional defects.[36] This standard is vastly stricter and narrower than the review on the merits of a case available in an appeal.

To state the most obvious aspect of the Court's power of review, *certiorari* (under Rule 65) is limited to jurisdictional grounds (at the very least, grave abuse of discretion amounting to lack or excess of jurisdiction), while a review on appeal opens up the merits of the case, both on factual or legal issues, and an appeal by *certiorari* (Rule 45) allows a review on purely legal grounds.

Thus in a Rule 65 review, the Court, if it finds that the tribunal below committed grave abuse of discretion in its appreciation of the facts or in its reading, interpretation, or application of the law, simply declares the challenged ruling null and void for having been rendered without jurisdiction; it may act, too, on the incidental relief that the petitioner might have asked for. ***The Court does not review the merits of the case <u>in order to issue a ruling</u> on what the correct facts and applicable law should be.*** As explained by Justice Herrera, *certiorari* is a corrective and supervisory remedy that cannot be broadened to review the intrinsic correctness or merits of the lower tribunal's decision.[37]

Of course, in considering whether the tribunal gravely abused its discretion in appreciating the facts and the law, the Court must necessarily discuss the errors of facts and law made and on this basis determine if mere error or grave abuse in the exercise of discretion had intervened. ***But the Court does not thereby make a binding ruling on the facts and the law because its enforceable ruling is effectively the nullity of the challenged ruling.***

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[35] See Article IX-A, Section 7 which states.

> Each Commission shall decided by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

[36] See Section 1, Rule 65 of the Rules of Court. See also *Mendoza v. Commission on Elections,* G.R. No. 108308, October 15, 2009; J. Brion Dissenting Opinion in *People v. Romualdez,* G.R. No. 166510, April 29, 2009, citing *Heirs of Hinog v. Melicor,* G.R. No. 140954, April 12, 2005, 455 SCRA 460; and *San Miguel Foods, Inc.-Cebu B-Meg Feed Plant v. Laguesma,* 263 SCRA 63, 84-85 (1996).

[37] Oscar Herrera, *Remedial Law III*, p. 306 (2006).

In the present case, Grace Poe notably prayed only for the nullification of the COMELEC rulings, for incidental reliefs, and "other reliefs, just and equitable." But even the usual course in the review and consideration of the case from the prism of a *certiorari* petition under Rule 65 of the Rules of Court did not take place.

While the Court majority did indeed find the challenged COMELEC ruling void, **its basis was not the consideration of the COMELEC's findings of facts and law, but its interpretation that the COMELEC did not have the authority to rule on citizenship and residency qualifications** as these qualifications had not yet been determined by the proper authorities and do not involve self-evident facts of unquestioned or unquestionable veracity from which the falsity of representations could have been determined. Without these prior findings, the Court majority reasoned out that the COMELEC had no basis to rule that Poe's representations are false.

If indeed the problem is the COMELEC's own authority to act, *i.e.,* that it lacked jurisdiction to rule on citizenship and residency so that its ruling was void, even the layman would ask:

- What was there for the Court to review so that it could make a binding ruling on citizenship and residency if the COMELEC findings on these issues were null and void because the COMELEC in the first place had no authority to render a valid decision?

- Does the Court have the jurisdiction or authority under our laws, ***on its own***, to pass upon the qualifications or eligibility of candidates *before elections*?

  If not, what then were the citizenship and residency rulings that the Court's majority used as basis to declare that Poe is qualified to run for the Presidency?

- Would not a COMELEC ruling on citizenship and residency be relevant only to determine the presence or absence of grave abuse of discretion if the COMELEC had in the first place the jurisdiction over the subject matter of the case?

- If indeed the COMELEC had no jurisdiction as the *ponencia* ruled, then the *ponencia's* declaration of Grace Poe's qualification was merely an *obiter dictum* or an observation with no binding effect.

  Consequently, Grace Poe does not now stand as a qualified candidate but simply one whose CoC was questioned in a proceeding whose results were set aside due to the decision maker's lack of jurisdiction.

- **To pursue this line of thought further, *no legal bar now exists for a qualified petitioner to question the qualification of Grace Poe after elections in the event that she should win*.**

- **If this is the case, then the *ponencia* and this Court have simply given the Filipino electorate a run-around: we simply gave Grace Poe the opportunity to run for President, without giving the electorate the assurance that we have examined her qualifications and found them sufficient.**

- If Grace Poe wins and is subsequently disqualified by the PET, would not this Court be a direct party to the skewing of the results of the 2016 elections? Had her disqualification been known early on, then those who voted for her could have voted for their second preferences and the wasted votes for Poe could have made the difference in the results of the 2016 elections.

These are only some of the questions that the *ponencia's* illogic raises and many more will be raised in the discussions below. But to go back to the situation before us, what is clear to me is that the majority used the **wrong law, wrong cases and wrong considerations** in appreciating and ruling on the COMELEC's jurisdiction: it disregarded the Constitution and the relevant laws, as well as the jurisprudence on Section 78 jurisdiction, thus leaving a ***murky legal situation*** that would prejudice our elections before things can be sorted out. Why the majority has to so rule given its stretched and flimsy cited bases, only the majority can answer.

IV. THE NATURAL-BORN CITIZENSHIP ISSUE.

The citizenship controversy centers on Poe's admitted fact that she is a foundling and it is on this point that the *ponencia* committed the most grievous errors. To escape the consequences of this admission, the *ponencia* had to bank on **presumptions,** on **unfounded reading and interpretation of international law,** on **circumstantial evidence** that had not been admitted, and **by implication from the silent terms of the Constitution**.

Specifically, the *ponencia* claimed that:

- Grace Poe's blood relationship with a Filipino citizen is demonstrable;

- Grace Poe is a Filipino citizen by presumption and based on circumstantial evidence;

- the Filipino citizenship of foundlings can be read from the terms of the 1935 Constitution;

- Philippine laws on adoption support the view that foundlings are Filipino citizens;

- foundlings are Filipino citizens find support from international law;

- the burden of proving the citizenship of a foundling rests with the petitioners because they were the ones challenging the CoC of Grace Poe.

These claims, in my view, are mostly overstretched interpretations of the Constitution and the relevant laws and even involve facts that were never admitted into evidence, or were misleading interpretation of facts. I point them out to set the record straight and to support my position that the COMELEC, in ruling that Grace Poe is not a natural-born citizen of the Philippines, did not commit grave abuse of discretion.

IV.A. The Grace Poe Case and the Constitution.

IV.A.1. *The Constitutional Provisions*.

Consideration of the Constitution in the present case is unavoidable as the core issues arose under it, specifically under the 1935 Constitution provisions on citizenship (Article IV, Section 1, the governing law when Grace Poe was born) and the qualifications under the 1987 Constitution for the Philippine Presidency (Article VII, Section 2).

Article IV, Section 1 of the 1935 Constitution provides:

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

On the other hand, Article VII, Section 2 of the 1987 Constitution under which the 2016 elections will be held, requires:

> SECTION 2. No person may be elected President unless he is a **natural-born citizen of the Philippines**, a registered voter, able to read

> and write, at least forty years of age on the day of the election, and a **resident of the Philippines** for at least ten years immediately preceding such election. [emphasis and underscoring supplied]

As previously adverted to, the Court has established principles in place in construing and applying the provisions of the Constitution.[38] A first principle to apply when the Constitution is involved is its ***textual examination,*** hand in hand with the rule of giving the text of the Constitution its ordinary meaning. Only in cases of ambiguity can the Court resort to the deliberations of the constitutional convention, but ***can never "vary the terms of the Constitution when the meaning is clear."***

IV.A.1(a) ***Disregard of the text of the Constitution.***

The *ponencia*, due perhaps to Grace Poe's admission that she is a foundling (so that an appeal to the constitutional text would not favor her), not surprisingly, **did not focus on nor examine at all the constitutional text**; instead, it went directly to the consideration of the constitutional deliberations. It thus bypassed and disregarded the best and most accurate standard in considering Grace Poe's citizenship.

Under its terms and the jurisprudence that has developed, citizenship under the 1935 Constitution is determined through parentage, *i.e,* through the principle of ***jus sanguinis***.[39] Article IV, Section 1 of the 1935 Constitution likewise distinguishes between citizenship derived from a Filipino father and citizenship derived from a Filipino mother.

Thus, it is necessary to determine the citizenship of a person's parents in order to determine whether he or she is a Philippine citizen. A foundling whose parents cannot be identified obviously does not fall under the neat listing of Article IV of the 1935 Constitution and cannot thus claim with absolute certainty that he or she is a Philippine citizen. Much less can he or she claim the character of being a natural-born citizen of the Philippines.

IV.A.1(b) ***The Constitutional Command on Citizenship.***

In considering Grace Poe's citizenship situation as a foundling running for the Philippine Presidency, the provision that should not be forgotten is Article VII, Section 2 whose full terms are also quoted above. The constitutional qualifications for the Philippine Presidency are couched in the negative; that is, "***No person*** may be elected to the office of President or Vice-President, ***unless*** he be a natural-born citizen of the Philippines..."

This ***negative phrasing*** had not been coincidental, but was deliberate, under the interpretative view that provisions couched in the negative are mandatory and connote an absolute command. These negative provisions are

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38 *Supra*, at page 11.

39 See *Talaroc v. Uy*, 92 Phil. 52 (1952); *Tecson v. Comelec*, 463 Phil. 421 (2004); and *Tan Chong v. Sec. of Labor*, 73 Phil. 307 (1941).

intended to operate with universal force and permit no exceptions, and in this sense, command absolute certainty. Thus, when the Constitution requires that a person be a natural-born Filipino citizen to be able to run for and become president, it requires **absolute certainty of citizenship**.

IV.B. Presumption of Citizenship through the Misuse of Statistics

For the above reason, I cannot agree with the *ponencia's* use of statistics to create a **presumption of Philippine citizenship**. (These statistics, incidentally, had not been marked as evidence, nor were their sources verified.) The *ponencia* claims that the statistical probability that Poe could have been born to a foreigner is 99.83%, given that the total number of foreigners in the Philippines from 1965 to 1975 was 15,986, while the total number of Filipinos at that time was 10,558,278.

This reasoning simply contradicts the absolute command under the Constitution requiring that our President be a natural-born Filipino. Written in the negative, the provision takes no chances with regard to the citizenship of the Philippine President; we would not apply this provision with fidelity if the question of the Philippine president's citizenship is not absolutely 100% certain to be Filipino.

If we were to follow the statistics cited by the *ponencia*, there were approximately 15,896 recorded foreigners in the Philippines at the time Poe was born. This means that there are at least 15,896 foreigners who could have possibly fathered or given birth to Poe, a possibility that, given the absolute command of the Constitution, cannot and should not be glossed over in the way the *ponencia* apparently did.

As a last point to consider, these statistics and the arguments alleging the presumption of Poe's citizenship that can be inferred from these data, had been introduced in evidence only on appeal before the Court, not by the direct parties to the case, but by the Solicitor General who had been invited to the oral arguments by the Court.

These circumstances lead me to ask: **should the COMELEC now be held responsible for not considering data and arguments that were never brought in the Section 78 proceedings before it?**

IV.C. Appeal to Physical Characteristics: a Desperation Argument to support Poe's Citizenship

Additionally, I cannot agree with the argument that Poe's physical characteristics prove her Filipino roots; her flat nasal bridge, straight black hair, almond shaped eyes, and oval face can perhaps identify her to be of Southeast Asian roots, but not specifically of Filipino parentage. The *ponencia* conveniently failed to mention that Poe has ivory white skin, a

characteristic mostly found from those bearing foreign ancestry but not from those whose ancestry is Indo-Malay.

It pains me to realize, too, that we – a people of mixed race – have gone down to the level of appearances to resolve the constitutional and legal question of who is a citizen of the Philippines. More painful is the realization that this Court and the *ponencia* have also gone down to this level and to appeals to emotions in favor of foundlings to support their legal argument on Poe's Filipino citizenship. I have not discussed this emotional appeal at all in this Dissent as I do not want to reduce the issues of this important case to the question of fairness to foundlings.

IV.D. Analysis of the Terms of 1935 Citizenship Provisions

As I discussed in my original Dissenting Opinion, from among the established modes of interpretation that this Court has long established and used,[40] not one supports the inclusion of foundlings among the Filipino citizens listed in the 1935 Constitution. The 1935 Constitution did not expressly list foundlings among Filipino citizens. Using *verba legis,* the 1935 Constitution limited citizens of the Philippines to those expressly listed. In the absence of any ambiguity, the second level of constitutional construction should not also apply.

Even if we apply *ratio legis*, the records of the 1934 Constitutional Convention do not reveal an intention to consider foundlings to be citizens, much less natural-born ones. As discussed above, ***the Constitutional Convention rejected the inclusion of foundlings in the Constitution***. If they would now be deemed to be included, the result would be an anomalous situation of monstrous proportions – foundlings, **with unknown parents**, would have **greater rights than those born under the 1935 Constitution whose mothers are citizens of the Philippines** and who had to elect Philippine citizenship upon reaching the age of majority.

In interpreting the Constitution from the perspective of what it **expressly** contains (*verba legis*), only the terms of the Constitution itself require to be considered. According to the principle of *expressio unius est exclusio alterius*, items not provided in a list are presumed not to be included in it.[41]

In this list, **Paragraphs (1) and (2)** need not obviously be considered as they refer to persons who were *already born* at the time of the adoption of the 1935 Constitution. Petitioner Poe was born only in 1968. **Paragraph**

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[40] As discussed at page 9, Jurisprudence has established three principles of constitutional construction: **first**, *verba legis non est recedendum* – from the words of the statute there should be no departure; **second**, when there is ambiguity, *ratio legis est anima* – the words of the Constitution should be interpreted based on the intent of the framers; and **third**, *ut magis valeat quam pereat* – the Constitution must be interpreted as a whole.

[41] *Initiatives for Dialogue and Empowerment Through Alternative Legal Services, Inc. v. Power Sector Assets and Liabilities Management Corporation*, G.R. No. 192088, October 9, 2012, 682 SCRA 602, 649.

(5), on the other hand and except under the terms mentioned below, does not also need to be included for being immaterial to the facts and the issues posed in the present case.

Thus, we are left with **paragraphs (3) and (4)** which respectively refer to a person's father and mother. *Either or both parents of a child must be Philippine citizens at the time of the child's birth so that the child can claim Philippine citizenship under these paragraphs.*[42]

This is the rule of ***jus sanguinis*** or citizenship by blood, *i.e.,* as traced from one or both parents and as confirmed by the established rulings of this Court.[43] Significantly, **none of the 1935 constitutional provisions contemplate the situation where both parents' identities (and consequently, their citizenships) are unknown, which is the case for foundlings**.

As the list does not include foundlings, then they are not included among those constitutionally-granted or recognized to be Philippine citizens *except to the extent that they fall under the coverage of paragraph 5, i.e., if they choose to avail of the opportunity to be naturalized.* Established rules of legal interpretation tell us that ***nothing is to be added to what the text states or reasonably implies; a matter that is not covered is to be treated as not covered.***[44]

The ***silence*** of Article IV, Section 1, of the 1935 Constitution, in particular of paragraphs (3) and (4) parentage provisions, on the citizenship of foundlings in the Philippines, in fact ***speaks loudly and directly*** about their legal situation. Such silence can only mean that ***the 1935 Constitution did not address the situation of foundlings via paragraphs (3) and (4), but left the matter to other provisions that may be applicable*** *as discussed below.*

Specifically, foundlings can fully avail of Paragraph (5) of the above list, which speaks of those who are naturalized as citizens in accordance with law. Aside from the general law on naturalization,[45] Congress can pass a law specific to foundlings or ratify other treaties recognizing the right of foundlings to acquire Filipino citizenship. The foundling himself or herself, of course, must choose to avail of the opportunity under the law or the treaty.

To address the position that petitioner Poe raised in this case, the fact that the 1935 Constitution did not provide for a situation where both parents are unknown (as also the case in the current 1987 Constitution) does not mean that the provision on citizenship is ambiguous with respect to

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42 This is also the prevailing rule under Section 1(2), Article IV of the 1987 Constitution.

43 *Tan Chong v. Secretary of Labor*, 73 Phil. 307 (1941); *Talaroc v. Uy*, 92 Phil. 52 (1952); *Tecson v. Commission on Elections*, 468 Phil 421 (2004).

44 A. Scalia and B. Garner. *Reading Law: The Interpretation of Legal Texts* (2012 edn.), p. 93.

45 CA No. 473.

foundlings; it simply means that the constitutional provision on citizenship based on blood or parentage has not been made available under the Constitution but the provision must be read in its totality so that we must look to other applicable provision that are available, which in this case is paragraph (5) as explained above.

In negative terms, even if Poe's suggested interpretation *via* the parentage provision did not expressly apply and thus left a gap, the omission does not mean that we can take liberties with the Constitution through stretched interpretation, and forcibly read the situation so as to place foundlings within the terms of the Constitution's parentage provisions. We cannot and should not do this as we would thereby cross the forbidden path of judicial legislation.

The appropriate remedy for the petitioner and other foundlings, as already adverted to, is *via* naturalization, a process that the Constitution itself already provides for. Naturalization can be by specific law that the Congress can pass for foundlings, or on the strength of international law *via* the treaties that binds the Philippines to recognize the right of foundlings to acquire a nationality. There, too, is the possible amendment of the Constitution so that the situation of foundlings can be directly addressed in the Constitution.

Notably, the government operating under the 1935 Constitution has recognized that foundlings who wish to become full-fledged Philippine citizens must undergo naturalization under Commonwealth Act No. 473. DOJ Opinion No. 377 **Series of 1940**, in allowing the issuance of Philippine passports to foundlings found in the Philippines, said:

> However under the principles of International Law, a foundling has the nationality of the place where he is found or born (See chapter on the Conflict of Law, footnote, p. 57 citing Bluntschli in an article in the Revue de Troit 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; Garcia's Quizzer on Private International Law, p. 270) which in this case, is the Philippines. Consequently, Eddy Howard ***may be regarded as a citizen of the Philippines for passport purposes only. If he desires to be a full-fledged Filipino, he may apply for naturalization under the provisions of Commonwealth Act No. 473 as amended by Commonwealth Act No. 535***. [emphasis, italics, and underscoring supplied]

A subsequent DOJ Opinion, DOJ Opinion No. 189, **series of 1951**, stated:

> However under the principles of International Law, a foundling has the nationality of the place where he is found or born (See chapter on the Conflict of Law, footnote, p. 57 citing Bluntschli in an article in the Revue de Troit 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.* [italics supplied]

The two DOJ opinions both state that a foundling is considered a Philippine citizen ***for passport purposes***. That the second DOJ Opinion does not categorically require naturalization for a foundling to become a Philippine citizen does not mean it amended the government's stance on the citizenship of foundlings, ***as these opinions were issued to grant them a Philippine passport and facilitate their right to travel.*** International law is cited as reference because they would be travelling abroad, and it is possible that other countries they will travel to recognize that principle. ***But for purposes of application in the Philippines, the domestic law on citizenship prevails, that is, Article IV, Section 1 of the 1935 Constitution.*** This is why DOJ Opinion No. 377, Series of 1940 clarified that if a foundling wants to become a full-fledged Philippine citizen, then he should apply for naturalization under CA No. 473.

In any case, *DOJ Opinion No. 189, Series of 1950 cannot be interpreted in a way that would contravene the 1935 Constitution; most certainly, it cannot amend or alter Article IV, Section 1, of the 1935 Constitution.*

IV.E. Misinterpretation of the Constitutional Deliberations

Even if we were to examine the intent of the Constitutional Commission which Grace Poe and the *ponencia* cite, its deliberations do not show that they agreed and intended that foundlings should be considered Philippine citizens. At most, it shows a plurality of opinion regarding why the proposal that foundlings be accorded Philippine citizenship, was rejected.

The account of Jose Aruego, one of the members of the 1934 Constitutional Convention, noted that this proposal was primarily rejected because the framers thought that the issue of the citizenship of foundlings should be governed by statutory legislation. **Even the reference made by the *ponencia* to Aruego cites**:

> 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.[46]

In saying this, Aruego also recounted that many, if not most, of the majority of those who voted against the inclusion of foundlings in the 1935 Constitution believed that the matter of their citizenship should be governed by statutory legislation because the cases of foundlings are too few to be included in the Constitution.

If the principles of international law on foundlings were mentioned at all in the constitutional deliberations, they were cited merely to lend support to the primary reason that the matter should be governed by statute and was a secondary reason to the majority's decision not to include foundlings in Article IV, Section 1 of the 1935 Constitution. But even the resort to international law at that time was a shaky argument as the Philippines then was not even an independent country capable of international dealings and bound by international rules.

Notably, too, when the 1934 Constitutional Convention voted not to include foundlings as Philippine citizens under Article IV Section 1 of the 1935 Constitution, they also voted not to give the same status to the illegitimate children of Filipina mothers to foreigners. **The proposal lumped them together and they were both refused citizenship from birth**.

Yet, under the *ponencia*'s view, the Constitution gives foundlings Philippine citizenship from birth, while the other category of children that had been included in the proposal were eventually given a lesser, inchoate right to elect Philippine citizenship upon reaching the age of majority.

The *ponencia*'s ruling therefore does not only disregard the distinction of citizenship based on the father or the mother under the 1935 Constitution; it also ***falsifies what the records signify*** and thereby unfairly treats the children of Filipino mothers under the 1935 Constitution who, although able to trace their Filipino parentage, must yield to the higher categorization that the *ponencia* wants to accord to foundlings who do not enjoy similar roots.

All these are brought up as they show that the *ponencia*, even in its direct arguments on Grace Poe's citizenship, lacks solid legal support. At the most charitable level, it can only be described to be inherently weak.

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[46] See p. 26 of the *ponencia*, citing 1 Jose M. Aruego, The Framing of the Philippine Constitution 209 (1949).

IV.F. Misreading of International Law.

In the same way that the *ponencia* misinterpreted and twisted the Constitution and its proceedings, as well as the established constitutional jurisprudence, so did it read international law and the treaties it invoked.

The Court interprets treaties in a similar manner it interprets the Constitution – the text of the provision in question is harmonized and interpreted with the rest of the treaty. **Thus, a treaty provision is examined in light of the entire treaty in which it is found, taking care that all of its provisions are given effect.**

Notably, the *ponencia's* application of the **International Convention on Civil and Political Rights** (***ICCPR***) and the **United Nations' Convention on the Rights of the Child** (***UNCRC***) isolates the provision recognizing every child's right to acquire a nationality, without considering that these treaties leave it to its signatories the means by which to comply with its agreement. ***This is a slanted and selective reading that the Highest Court in the land – the Supreme Court – should not do for reasons of ethics and self-respect.***

These treaties recognize that the obligations should be complied with within the framework of a State's national laws. This view is reinforced by the provisions that implement these treaties.

Article 2 of the ICCPR on this point provides:

> 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

On the other hand, Article 4 of the UNCRC states:

> States Parties shall ***undertake all appropriate legislative, administrative, and other measures for the implementation of the rights*** recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation. [emphasis and italics supplied]

These terms should be cross-referenced with Section 2, Article 7 of the UNCRC, which provides:

> 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. [emphasis, italics, and underscoring supplied]

Read together, these ICCPR and UNCRC implementation provisions reveal the measure of flexibility that they afford to the signatories.[47] This flexibility runs from the absolute obligation to recognize every child's right to acquire a nationality, all the way to the *allowable and varying* measures that may be taken to ensure this right. These measures may range from an immediate and outright grant of nationality, to the passage of naturalization measures that the child may avail of to exercise his or her rights, all in accordance with the State's national law.

Further, **the right to acquire a nationality is different from the grant of an outright Filipino nationality**. Under the cited treaties, **States are merely required to recognize and facilitate the child's right to acquire a nationality**.

The method through which the State complies with this obligation varies and depends on its discretion. Of course, the automatic and outright grant of citizenship to children in danger of being stateless is one of the means by which this treaty obligation may be complied with. But the treaties allow other means of compliance with their obligations short of the immediate and automatic grant of citizenship to stateless children found in their territory.

This view finds support from the history of the provision *"right to acquire nationality"* in the ICCPR. During the debates that led to the formulation of this provision, *the word "acquire" was inserted in the draft, and the words "from his birth" were deleted.* This change shows the intent of its drafters to, at the very least, vest discretion on the State with respect to the means of facilitating the acquisition of citizenship.

Marc Bussoyt, in his Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights,"[48] even concluded that "the word 'acquire' would infer that naturalization was not to be considered as a right of the individual but was accorded by the State at its discretion."

Lastly, the United Nations Declaration on Human Rights (UDHR) is ***is not a treaty*** that directly creates legally-binding obligations for its signatories.[49] It is an international document recognizing inalienable human rights, which eventually led to the creation of several legally-binding

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[47] See: M. Dellinger. "Something is Rotten in the State of Denmark: The Deprivation of Democratic Rights by Nation States Not Recognizing Dual Citizenship" 20 *Journal of Transnational Law & Policy* 41, 61 (2010-2011).

[48] See: M. Bussuyt. "Guide to the"Travaux Préparatoires" of the International Covenant on Civil and Political Rights" *Martinus Nijhoff Publishers* (1987).

[49] See: Separate Opinion of CJ Puno in *Republic v. Sandiganbayan*, *supra* note 104, at 577.

treaties, such as the ICCPR and the International Covenant on Economic, Social and Cultural Rights (*ICESCR*).[50] Thus, the Philippines is not legally-obliged to comply with the provisions of the UDHR *per se*. It signed the UDHR because it recognizes the rights and values enumerated in the UDHR; this recognition led it to sign both the ICCPR and the ICESCR.[51]

To be sure, international scholars have been increasingly using the provisions of the UDHR to argue that the rights provided in the document have reached the status of customary international law. Assuming, however, that we were to accord the right to nationality under the UDHR the status of a treaty obligation or of a generally-accepted principle of international law, it still does not require the Philippine government to automatically grant Philippine citizenship to foundlings in its territory.

Article 15 of the UDHR provides:

> Article 15.
>
> (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.

Thus, the language of the UDHR itself recognizes the right of everyone to a nationality, **without imposing on the signatory States how they would recognize or implement this right**.

- **Misplaced Use of Generally Accepted Principles of International Law.**

The *ponencia* again appeals to the Constitution, this time to its provision on generally accepted principles of international law and once more misuses a constitutional provision. The constitutional provision runs:

> Article II, Section 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations.

Using this provision and the generally-accepted principles of international law to include a means for determining citizenship is inherently inconsistent with sovereign aspect of the determination of citizenship

I also find the *ponencia's* reference to international customary law – so it can introduce into Philippine jurisdiction the presumption that

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50 See: J. von Bernstorff. "The Changing Fortunes of the Universal Declaration of Human Rights: Genesis and Symbolic Dimensions of the Turn to Rights in International Law" 19(5) *European Journal of International Law* 903, 913-914 (2008).

51 See: *Secretary of National Defense v. Manalo*, 589 Phil. 1, 50-51 (2008) and Separate Opinion of CJ Puno in *Republic v. Sandiganbayan, supra* Note 104 at 577.

foundlings are born of citizens of the country where they are found – to be very disturbing. *The very nature of generally-accepted principles of international law is inconsistent with and thus inapplicable to, the State's sole and sovereign prerogative to choose who may or may not be its citizens, and how the choice is carried out.*

Generally-accepted principles of international law are legal norms that are recognized as customary in the international plane. ***States follow them on the belief that these norms embody obligations that they, on their own, are bound to perform.*** Also referred to as customary international law, generally accepted principles of international law pertain to the collection of international behavioral regularities that nations, over time, come to view as binding on them as a matter of law.[52]

Thus, generally-accepted principles of international law are considered binding on a State *because of evidence showing that it considers this legal norm to be obligatory*. No express consent from the State is needed to be bound to the obligation; its binding authority over a State lies from the inference that most, if not all, States consider the norm to be an obligation.

In contrast, States have the inherent right to decide who may or may not be its citizens, including the process through which citizenship may be acquired. The application of presumptions, or inferences of the existence of a fact based on the existence of other facts, is part of this process of determining citizenship.

This right is strongly associated with and attendant to state sovereignty. Traditionally, nationality has been associated with a State's "right to exclude others", and to defend the territory of the nation from external aggression has been a predominant element of nationality.[53]

In its modern concept, sovereignty is described as the confluence of independence and territorial and personal supremacy, expressed as "the supreme and independent authority of States over all persons in their territory."[54]

Indeed, a State exercises personal supremacy over its nationals wherever they may be. The right to determine who these nationals are is a pre-requisite of a State's personal supremacy, and therefore of sovereignty.[55]

It is in this context that Oppenheimer said that:

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[52] J. Leonen, Concurring Opinion in *Arigo v. Swift*, G.R. No. 206510, September 16, 2014, 735 SCRA 208, 209; citing E. Posner and J. L Goldsmith, "A Theory of Customary International Law" (1998). See also *Razon, Jr. v. Tagitis*, 621 Phil. 536, 600-605 (2009).

[53] See: K. Hailbronner. "Nationality in Public International Law and European Law," *EUDO Citizenship Observatory*, (2006). Available at http://eudo-citizenship.eu/docs/chapter1_Hailbronner.pdf

[54] See: P. Weiss. "Nationality and Statelessness in International Law" *Sijthoff & Noordhoff International Publishers B.V.*, (1979).

[55] *Ibid.*

> It is not for International Law, but for Municipal Law to determine who is, and who is not considered a subject.[56]

Given that the State's right to determine who may be its nationals (as well as how this determination is exercised) is inextricably linked to its sovereignty, I cannot see how it can properly be the subject of state consensus or norm dictated by the practice of other States.

In other words, ***the norm pertaining to the determination of who may or may not be a citizen of a State cannot be the subject of an implied obligation that came to existence because other States impliedly consider it to be their obligation.***

In the first place, a State cannot be obligated to adopt a means of determining who may be its nationals as this is an **unalterable and basic aspect of its sovereignty and of its existence as a State**. Otherwise stated, the imposition of an implied obligation on a State simply because other States recognize the same obligation contradicts and impinges on a State's sovereignty.

Note that treaty obligations that a State enters into involving the determination of its citizens has the express consent of the State; under Philippine law, this obligation is transformed into a municipal law once it is ratified by the Executive and concurred in by the Senate.

The evidence presented by petitioner Poe to establish the existence of generally-accepted principles of international law actually reflects the *inherent inconsistency between the State's sovereign power to determine its nationals and the nature of generally-accepted principles of international law as a consensus-based, implied obligation*. Poe cites various laws and international treaties that provide for the presumption of parentage for foundlings. ***These cited laws and international treaties, however, have the express imprimatur of the States adopting the presumption.***

In contrast, <u>the Philippines has not entered into any international treaty recognizing and applying the presumption of parentage of foundlings; neither is it so provided in the 1935 Constitution</u>. References to international law in the deliberations of the 1934 Constitutional Convention – without an actual ratified treaty or a provision expressing this principle – cannot be considered binding upon the sovereign Filipino people who ratified the 1935 Constitution. The ratification of the provisions of the 1935 Constitution is a sovereign act of the Filipino people; to reiterate for emphasis, this act cannot be amended by widespread practice of other States, even if these other States believe this practice to be an obligation.

In this light, I am also appalled with the way the *ponencia* used the Philippines' signature in the UDHR as basis to conclude that the

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[56] I. Oppenheim, International Law 643 (8th ed. 1955).

Philippines affirms Article 14 of the 1930 Hague Convention, a treaty which we did not sign.

In no way can our recognition of the **principles** found in the UDHR serve as affirmation or recognition of **specific provisions** and obligations found in the 1930 Hague Convention. I find it too much of a stretch to consider that a **non-binding recognition of a principle** under the UDHR would also obligate us to a **specific treaty provision** in the 1930 Hague Convention and in the 1961 United Nations Convention on the Reduction of Statelessness. This is a very irresponsible conclusion that the *ponencia* made.

To illustrate the vast difference in the language between the two instruments, I have juxtaposed the two provisions in table form, as follows:

Universal Declaration of Human Rights	1930 Hague Convention	1961 United Nations Convention on the Reduction of Statelessness
Article 15. (1) Everyone has the right to a nationality.	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.	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

That the Philippines has recognized that everyone has a right to nationality does not translate to a specific obligation to provide citizenship to foundlings under the Constitution. To reiterate, our recognition of this principle under the UDHR, even if considered binding on the Philippines, does not bind us to a specific means by which this principle shall be applied in our legal system. The measure and means of application is still subject to, and must be in conformity with, the fundamental law governing our country; this is a decision for our policymakers, not for this Court, to make.

- ***Legal Nature of Generally-accepted principles of international law.***

Generally-accepted principles of international law form part of the law of the land together with the rulings of this Court. They are likewise established in the same manner and have the same binding effect as jurisprudence established in the Philippine legal system.

Even if we were to recognize the right to nationality as an international custom (as arguably, many provisions found in the UDHR are considered to have crystallized into generally accepted principles of international law, and its inclusion in the UDHR can be considered as evidence of its status as such), this recognition cannot be an automatic recognition of presumptions on the parentage of foundlings (as found in the Convention against Statelessness), or of the citizenship of foundlings (as found in the Hague Convention).

Generally accepted principles of international law are incorporated in the Philippine legal system through the cases that the Court decides, and form part of the law of the land in the same way we develop jurisprudence.

Note that our Constitution recognizes that generally-accepted principles of international law are part of the law of the land. Article II, Section 2 of the 1987 Constitution provides on this point that:

> Article II, Section 2. The Philippines renounces war as an instrument of national policy, **adopts the generally accepted principles of international law as part of the law of the land** and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations.

In the same manner that treaty obligations partake of the character of domestic laws in the domestic plane, so do *generally accepted principles of international law as they "form part of the law of the land."* This constitutional declaration situates in clear and definite terms the role of generally accepted principles of international law in the hierarchy of Philippine laws and in the Philippine legal system.

Generally accepted principles of international law usually gain recognition in the Philippines through decisions rendered by the Supreme Court, pursuant to the *doctrine of incorporation*.[57] The Supreme Court, in its decisions, applies these principles as rules or as canons of statutory construction, or recognizes them as meritorious positions of the parties in the cases the Court decides.[58]

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57 See CONSTITUTION, Article II, Section 2.

58 See *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, 561 Phil. 386, 399 (2003), at 399.

Separately from Court decisions, international law principles may gain recognition through actions by the executive and legislative branches of government when these branches use them as bases for their actions (such as when Congress enacts a law that incorporates what it perceives to be a generally accepted principle of international law).

But until the Court declares a legal norm to be a generally accepted principle of international law, no other means exists in the Philippine legal system to determine *with certainty* that a legal norm is indeed a generally accepted principle of international law that forms part of the law of the land.

The main reason for the need for a judicial recognition lies in the nature of international legal principles. Unlike treaty obligations that involve the *express promises of States* to other States, generally accepted principles of international law d*o not require any categorical expression from States* for these principles to be binding on them.[59]

A legal norm requires the concurrence of two elements before it may be considered as a generally accepted principle of international law: 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***).[60] Implicit in the latter element is the belief that the practice is rendered obligatory by the existence of a rule of law requiring it.

The most widely accepted statement of sources of international law today is Article 38(1) of the Statute of the International Court of Justice (*ICJ*), which provides that the ICJ shall apply international custom, as evidence of a general practice accepted as law.[61] The material sources of custom include state practices, state legislation, international and national judicial decisions, recitals in treaties and other international instruments, a pattern of treaties in the same form, the practice of international organs, and resolutions relating to legal questions in the United Nations General Assembly.[62]

Sometimes referred to as evidence of international law, these sources identify the substance and content of the obligations of States and are indicative of the state practice and the *opinio juris* requirements of international law.

In the usual course, this process passes through the courts as they render their decisions in cases. As part of a court's function of determining the applicable law in cases before it (including the manner a law should be read and applied), the court has to determine the existence of a generally

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59 See: M. Magallona, *supra* note 111, at 2-3.

60 *Razon v. Tagitis*, *supra* note 119, at 601.

61 Statute of the International Court of Justice, Article 38(1)(b). Available at http://www.icj-cij.org/documents/?p1=4&p2=2

62 *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, *supra* note 115, at 399.

applied principle of international law in the cases confronting it, as well as the question of whether and how it applies to the facts of the case.

To my mind, the process by which courts recognize the effectivity of general principles of international law in the Philippines is akin or closely similar to the process by which the Supreme Court creates jurisprudence. Under the principle of *stare decisis*, courts apply the doctrines in the cases the Supreme Court decides as judicial precedents in subsequent cases with similar factual situations.[63]

In a similar manner, the Supreme Court's pronouncements on the application of generally accepted principles of international law to the cases it decides are not only binding on the immediately resolved case, but also serve as judicial precedents in subsequent cases with similar sets of facts. That both jurisprudence and generally accepted principles of international law form ***"part of the law of the land"*** (but are not laws *per se*) is, therefore, not pure coincidence.[64]

As already mentioned, the executive and legislative departments may recognize and use customary international law as basis when they perform their functions. But while such use is not without legal weight, the continued efficacy and even the validity of their use as such *cannot be certain*. While their basis may be principles of international law, their inapplicability or even invalidity in the Philippine legal setting may still result if the applied principles are inconsistent with the Constitution – a matter that is for the Supreme Court to decide.

Thus viewed, the authoritative use of general principles of international law can only come from the Supreme Court whose decisions incorporate these principles into the legal system as part of jurisprudence.

Considering the process by which international customary law becomes incorporated in the Philippine legal system, I do not agree with the largescale, indiscriminate recognition of legal principles that the *ponencia* did in order to arrive at the desired conclusion that foundlings are Philippine citizens.

In the first place, the right to a nationality, the presumption that the parents of the foundlings are citizens of the country where they are found; and the presumption that foundlings are citizens of the country where they are found until the contrary is proven, are all different concepts that yield different conclusions when applied to the facts of actual cases.

As earlier pointed out, the recognition of the right to a nationality does not mean an automatic recognition of Philippine citizenship of foundlings; the Philippine government, through its legislative branch of government, can choose how to recognize this right to a nationality.

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63 *Ting v. Velez-Ting*, 601 Phil. 676, 687 (2009).

64 CONSTITUTION, Article II, Section 2 in relation to CIVIL CODE, Article 8.

On the other hand, the presumption that the parents of foundlings are citizens of the place where they are found (as found in the 1961 Convention on the Reduction of Statelessness) ***could*** have bestowed the status of a natural-born Philippine citizen to Poe, save for the fact that this presumption is antithethical to the distinction made by the 1935 Constitution on citizenship derived from the mother and citizenship derived from the father.

Lastly, bestowing Philippine citizenship to foundlings with no known parents (as found in the 1930 Hague Convention) adds another category to the exclusive list of who are Philippine citizens under the 1935 Constitution, and effectively amends Article IV of the 1935 Constitution. Lest this fundamental principle escape us, I note that international customary law, as well as our obligations under treaties cannot contravene the Philippine Constitution; neither can these be interpreted to modify or amend the sovereign act of the Filipino nation in enacting the Constitution.

The *ponencia*, unfortunately, slavishly parroted Poe's line on generally-accepted principles, thereby potentially making foundling citizens through jurisprudence. Even if its intent was simply to serve the purposes of Grace Poe, its blind adherence to her self-interested claim is dangerous for the country; this step can bring us to situations, so far unseen, that could work to the prejudice of our national interests. ***Did the ponencia and the majority recognize this implication at all when it adopted the Poe arguments?***

To sum up, all the above considerations, both constitutional, international and evidentiary, cannot convince me that Grace Poe is a candidate who has met the standard of natural-born citizenship that the Constitution requires. On the contrary, these considerations leave me with dread on what might be the future role of our Constitution in this country if its terms can be stretched, even to the point of breaking, by those tasked with its care.

Coming after our EDCA ruling, I characterize the future of the Constitution as a governing and leveling instrument for all citizens, to be ***bleak***, and ***bright*** as a tool for the ends that those willing to manipulate it.

IV.G. Poe and the Section 78 Proceedings.

IV.G.1. Burden of Proof

A contested issue that surfaced early on in these cases is the question: who carries the burden of proving that the petitioner is a natural-born Philippine citizen?

Lest we be distracted by the substance of this question, let me clarify at the outset that the cases before us are petitions for *certiorari* under Rule 64 (in relation with Rule 65) of the Rules of Court. In these petitions, the

petitioner challenges the rulings/s made by the respondent pursuant to Article VIII, Section 1 of the Constitution. Thus, it is the petitioner who carries the burden of showing that the respondent, the COMELEC in this case, committed grave abuse of discretion.

Of course, in making the challenged ruling, the COMELEC had a wider view and had to consider the parties' respective situations at the outset. The present private respondents were the petitioners who sought the cancellation of Poe's CoC and who thereby procedurally carried the burden of proving the claim that Poe falsely represented her citizenship and residency qualifications in her CoC.

I would refer to this as the procedural aspect of the burden of proof issue. The original petitioners before the COMELEC (the respondents in the present petitions) – *from the perspective of procedure* – carried the burden under its Section 78 cancellation of CoC petition, to prove that Poe made false material representations; she claimed in her CoC that she is a natural-born Filipino citizen when she is not; she also claimed that she has resided in the Philippines for ten years immediately preceding the May 9, 2016 elections, when she had not. The original petitioners had to prove what they claimed to be false representations.

Thus viewed, the main issue in the case below was the false material representation, which essentially rested on the premises of citizenship and residence – is Poe a natural-born citizen as she claimed and had she observed the requisite qualifying period of residence?

The original petitioners undertook the task on the citizenship issue by alleging that Poe is a foundling; as such, her parents are unknown, so that she is not a Philippine citizen under the terms of the 1935 Constitution.

Poe responded by admitting that indeed she is a foundling, but claimed that the burden is on the original petitioners to prove that she is in fact a foreigner through proof that her parents are foreigners.

Since Poe could not factually show that either of her parents is a Philippine citizen, the COMELEC concluded that the original petitioners are correct in their position and that they have discharged their original burden to prove that Poe is not a natural-born citizen of the Philippines. To arrive at its conclusion, the COMELEC considered and relied on the terms of the 1935 Constitution.

With this original burden discharged, the burden of evidence then shifted to Poe to prove that despite her admission that she is a foundling, she is in fact a natural-born Filipino, either by evidence (not necessarily or solely DNA in character) and by legal arguments supporting the view that a foundling found in the Philippines is a natural-born citizen.

The same process was repeated with respect to the residency issue, after which, the COMELEC ruled that Poe committed false representations as, indeed, she is not a natural-born Philippine citizen and had not resided in the country, both as required by the Constitution.

These were the processes and developments at the COMELEC level, based on which the present Court majority now say that the COMELEC committed grave abuse of discretion for not observing the rules on the burden of proof on the citizenship and the residency issues.

Separately from the strictly procedural aspects of the cancellation of CoC proceedings, it must be considered that the petitioner, by filing a CoC, ***actively represented that she possesses all the qualifications and none of the disqualifications for the office she is running for.***

When this representation is questioned, particularly through proof of being a foundling as in the present case, the burden should rest on the present petitioner to prove that she is a natural-born Philippine citizen, a resident of the Philippines for at least ten years immediately prior to the election, able to read and write, at least forty years of age on the day of the election, and a registered voter. This is the opportunity that the COMELEC gave Poe to the fullest, and I see no question of grave abuse of discretion on this basis.

From the substantive perspective, too, a sovereign State has the right to determine who its citizens are.[65] By conferring citizenship on a person, the State obligates itself to grant and protect the person's rights. In this light and as discussed more fully below, the list of Filipino citizens under the Constitution must be read as *exclusive* and *exhaustive*.

Thus, this Court has held that any doubt regarding citizenship must be resolved in favor of the State.[66] ***In other words, citizenship cannot be presumed; the person who claims Filipino citizenship must prove that he or she is in fact a Filipino.***[67] It is only upon proper proof that a claimant can be entitled to the rights granted by the State.[68]

This was the Court's ruling in *Paa v. Chan*[69] where this Court categorically ruled that it is incumbent upon the person who claims Philippine citizenship, to prove to the satisfaction of the court that he is really a Filipino. This should be true particularly after proof that the claimant has not proven (and even admits the lack of proven) Filipino parentage. ***No presumption can be indulged in favor of the claimant of***

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65 Alexander Marie Stuyt, The General Principles of Law as Applied by International Tribunals to Disputes on Attribution and Exercise of State Jurisdiction (2013), p. 101.

66 *Go v. Ramos*, 614 Phil. 451 (2009).

67 *Ibid.*

68 J. Bernas SJ, The Constitution of the Republic of the Philippines A Commentary, 1st edition (1987), p. 500, *citing* Justice Warren's dissenting opinion in Perez v. Brownell, 356 U.S. 44 (1958).

69 *Paa v. Chan*, 128 Phil. 815 (1967).

Philippine citizenship, and any doubt regarding citizenship must be resolved in favor of the State.

The Court further explained that the exercise by a person of the rights and/or privileges that are granted to Philippine citizens is not conclusive proof that he or she is a Philippine citizen. A person, otherwise disqualified by reason of citizenship, may exercise and enjoy the right or privilege of a Philippine citizen by representing himself to be one.[70]

Based on these considerations, the Court majority's ruling on burden of proof at the COMELEC level appears to be misplaced. On both counts, procedural and substantive (based on settled jurisprudence), the COMELEC closely hewed to the legal requirements.

Thus, the Court majority's positions on where and how the COMELEC committed grave abuse of discretion are truly puzzling. With no grave abuse at the COMELEC level, the present petitioner's own burden of proof in the present *certiorari* proceedings before this Court must necessarily fail.

IV.G.2. *Intent to Deceive as an Element.*

In the present case, the private respondents sought the cancellation of Poe's CoC based on the false representations she allegedly made regarding her Philippine citizenship, her natural-born status, and her period of residence. These are all material qualifications as they are required by the Constitution itself.

To determine under Section 78 whether the representations made were false, the COMELEC must necessarily determine **the eligibility standards, the application of these standards to Poe**, and **the claims she made** *i.e.*, whether she is indeed a natural-born Philippine citizen who has resided in the Philippines for at least ten years preceding the election, as she represented in her CoC, as well as **the circumstances surrounding these representations**. In relation to Poe's defense, **these circumstances** relate to her claim that ***she did not deliberately falsely represent her citizenship and residence, nor did she act with intent to deceive.***

The element of "**deliberate intent to deceive**" first appeared in Philippine jurisprudence in ***Salcedo III v. Comelec***[71] under the following ruling:

> Aside from the requirement of materiality, *a false representation under section 78 must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.* In other words, it must be made with an intention to deceive the electorate as to one's qualifications for public office. The use of a

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70 *Ibid.*

71 G.R. No. 135886, August 16, 1999, 312 SCRA 447, 459.

> surname, when not intended to mislead or deceive the public as to ones identity, is not within the scope of the provision. [italics supplied]

Salcedo III cited ***Romualdez-Marcos v. Comelec***,[72] which provided that:

> It is the fact of residence, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not and individual has satisfied the constitution's residency qualification requirement. *The said statement becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.* It would be plainly ridiculous for a candidate to deliberately and knowingly make a statement in a certificate of candidacy which would lead to his or her disqualification. [italics supplied]

From *Salcedo* and with the exception of ***Tagolino v. HRET***,[73] the "deliberate intent to deceive" element had been consistently included as a requirement for a Section 78 proceeding.

The Court in *Tagolino v. HRET*[74] ruled:

> Corollary thereto, it must be noted that *the deliberateness of the misrepresentation, much less one's intent to defraud, is of bare significance in a Section 78 petition as* ***it is enough that the person's declaration of a material qualification in the CoC be false***. In this relation, jurisprudence holds that an express finding that the person committed any deliberate misrepresentation is of little consequence in the determination of whether one's CoC should be deemed cancelled or not. What remains material is that the petition essentially seeks to deny due course to and/or cancel the CoC on the basis of one's ineligibility and that the same be granted without any qualification. [emphasis, italics, and underscoring supplied]

This statement in *Tagolino* assumes ***validity and merit*** when we consider that ***Romualdez-Marcos*****, the case that *Salcedo III* used as basis, is not a Section 78 proceeding, but a disqualification case.**

Justice Vicente V. Mendoza's Separate Opinion[75] in *Romualdez-Marcos* pointed out that the allegations in the pleadings in *Romualdez-Marcos* referred to **Imelda Romualdez-Marcos'** ***disqualification, and not to an allegation for the cancellation of her CoC***. This was allowed at the time, as Rule 25 of the COMELEC Rules of Procedure, prior to its nullification in *Fermin v. Comelec*,[76] had allowed the institution of disqualification cases based on the lack of residence.

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72 G.R. No. 119976, September 18, 1995, 248 SCRA 300, 326.
73 706 Phil. 534 (2013).
74 *Id.* at 551.
75 G.R. No. 119976, September 18, 1995, 248 SCRA 300, 392-400.
76 595 Phil. 449 (2008).

The quoted portion in *Romualdez-Marcos* thus pertains to the challenge to Romualdez-Marcos' residence *in a disqualification proceeding, and not in a CoC cancellation proceeding*.

The Court held that the statement in Romualdez-Marcos's CoC does not necessarily disqualify her because it did not reflect the necessary residence period, as the actual period of residence shows her compliance with the legal requirements. *The statement "[t]he said statement becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible*" **should thus be understood in the context of a disqualification proceeding looking at the fact of a candidate's residence, and not at a CoC cancellation proceeding determining whether a candidate falsely represented her eligibility**.

Arguably, the element of "deliberate intent to deceive," has been entrenched in our jurisprudence since it was first mentioned in *Salcedo III*. Given the history of this requirement, and the lack of clear reference of "deliberate intent to deceive" in Section 78, ***this deliberate intention could be anchored from the textual requirement in Section 78 that the representation made must have been false, such that the representation was made with the knowledge that it had not been true.***

Viewed from this perspective, the element of "deliberate intent to deceive" should be considered complied with **upon proof of the *candidate's knowledge that the representation he or she made in the CoC was false***.

Note, at this point, that the CoC must contain the candidate's representation, **under oath**, that he or she is eligible for the office aspired for, *i.e.*, that he or she possesses the necessary eligibilities at the time he or she filed the CoC. This statement must have also been considered to be true by the candidate to the best of his or her knowledge.

Section 74 of the OEC, which lists the information required to be provided in a CoC, states:

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

More specifically, COMELEC Resolution No. 9984 requires the following to be contained in the 2015 CoC:

> Section 4. Contents and Form of Certificate of Candidacy. - The *COC shall be under oath* and shall state:
>
> a. office aspired for;
>
> xxxx
>
> g. *citizenship, whether natural-born or naturalized*;
>
> xxxx
>
> k. *legal residence, giving the exact address and the number of years residing in the Philippines* x x x;
>
> xxxx
>
> n. *that the aspirant is eligible for said office*;
>
> xxxx
>
> t. that *the facts stated in the certificate are true and correct to the best of the aspirant's knowledge*;
>
> xxxx
>
> The COC shall be **sworn to before a Notary Public** or any official authorized to administer oath. COMELEC employees are not authorized to administer oath, even in their capacities as notary public. [emphasis and underscoring supplied]

The oath, the representation of eligibility, and the representation that the statements in the CoC are true to the best of the candidate's knowledge all ***operate as guarantees from the candidate that he or she has knowingly provided information regarding his or her eligibility***. The information he or she provided in the CoC should accordingly be considered a ***deliberate representation on his or her part***, and ***any falsehood regarding such eligibility would thus be considered deliberate***.

In other words, once the status of a candidate's ineligibility has been determined, I do not find it necessary to establish a candidate's deliberate intent to deceive the electorate, **as *he or she had already vouched for its veracity and is found to have committed falsehood***. The representations he or she has made in his or her CoC regarding the truth about his or her eligibility comply with the requirement that he or she deliberately and knowingly falsely represented such information.

IV.G.2(a) *Poe had the "Intent to Deceive"*

But even if we were to consider deliberate intent to deceive as a separate element that needs to be established in a Section 78 proceeding, I find that the **COMELEC did not gravely abuse its discretion in**

concluding that Poe deliberately falsely represented her residence and citizenship qualifications.

The COMELEC, in concluding that Poe had known of her ineligibilities to run for President, noted that she is a highly-educated woman with a competent legal team at the time she filled up her 2012 and 2015 CoCs. ***As a highly educated woman, she had the necessary capability to read and understand the plain meaning of the law.*** *I add that she is now after the highest post in the land where the understanding of the plain meaning of the law is extremely basic.*

The COMELEC thus found it unconvincing that Poe would not have known how to fill up a pro-forma CoC, much less commit an "honest mistake" in filling it up. (Interestingly, Poe never introduced any evidence explaining her "mistake" on the residency issue, thus rendering it highly suspect.)

A plain reading of Article IV, Section 1 of the 1935 Constitution could have sufficiently appraised Poe of her citizenship status. Article IV, Section 1 does not provide for the situation where the identities of both an individual's parents from whom citizenship may be traced are unknown. The ordinary meaning of this non-inclusion necessarily means that she cannot be a Philippine citizen under the 1935 Constitution's terms.

The COMELEC also found that ***Poe's Petition for Reacquisition of Philippine citizenship before the BID deliberately misrepresented her status as a former natural-born Philippine citizen, as it lists her adoptive parents to be her parents without qualifications.*** The COMELEC also noted that Poe had been ***falsely representing her status as a Philippine citizen in various public documents.*** All these involved ***a succession of falsities***.

With respect to the required **period of residency**, Poe deliberately falsely represented that she had been a resident of the Philippines for at least ten years prior to the May 9, 2016 elections. Poe's CoC when she ran for the Senate in the May 2013 national elections, however, shows that ***she then admitted that she had been residing in the Philippines for only six years and six months.*** Had she continued counting the period of her residence based on the information she provided in her 2012 CoC, she would have been three months short of the required Philippine residence of ten years. ***Instead of adopting the same representation, her 2015 CoC shows that she has been residing in the Philippines from May 24, 2005, and has thus been residing in the Philippines for more than ten years.***

To the COMELEC, Poe's subsequent change in counting the period of her residence, along with the circumstances behind this change, strongly indicates her ***intent to mislead the electorate regarding her eligibility***.

First, at the time Poe executed her 2012 CoC, she was already a high-ranking public official who could not feign ignorance regarding the requirement of establishing legal domicile. She also presumably had a team of legal advisers at the time she executed this CoC as she was then the Chair of the Movies and Television Review and Clarificatory Board (*MTRCB*). She also had experience in dealing with the qualifications for the presidency, considering that she is the adoptive daughter of a former presidential candidate (who himself had to go to the Supreme Court because of his own qualifications).

Second, Poe's 2012 CoC had been taken ***under oath*** and can thus be considered an admission against interest that ***cannot easily be brushed off or be set aside through the simplistic claim of "honest mistake."***

Third, the evidence Poe submitted to prove that she established her residence (or domicile) in the Philippines as she now claims, mostly refer to ***events prior to her reacquisition of Philippine citizenship***, contrary to the established jurisprudence requiring Philippine citizenship in establishing legal domicile in the Philippines for election purposes.

Fourth, that Poe allegedly had no life-changing event on November 2006 (the starting point for counting her residence in her 2012 CoC) does not prove that she did not establish legal domicile in the Philippines at that time.

Lastly, Poe announced the change in the starting point of her residency period when she was already publicly known to be considering a run for the presidency; thus, ***it appears likely that the change was made to comply with the residence period requirement for the presidency.***

These COMELEC considerations, to my mind, do not indicate grave abuse of discretion. I note particularly that Poe's false representation regarding her Philippine citizenship did ***not merely involve a single and isolated statement***, but a series of acts – ***a series of falsities*** – that started from her RA No. 9225 application, as can be seen from the presented public documents recognizing her citizenship.

I note that Poe's original certificate of live birth (foundling certificate) does not indicate her Philippine citizenship, as she had no known parents from whom her citizenship could be traced. Despite this, she had been issued various government documents, such as a Voter's Identification Card and Philippine passport recognizing her Philippine citizenship. ***The issuance of these subsequent documents alone should be grounds for heightened suspicions, given that Poe's original birth certificate provided no information regarding her Philippine citizenship, and could not have been used as reference for this citizenship.***

Another basis for heightened suspicion is the timing in fact of Poe's amended birth certificate, which was issued on May 4, 2006 (applied for in

November 2005), shortly before she applied for reacquisition of Philippine citizenship with the BID. This amended certificate, where reference to being an adoptee has all been erased as allowed by law, was not used in Poe's RA No. 9225 BID application.

The timing of the application for this amended birth certificate strongly suggest that it was used purposely as a reserve document in case questions are raised about Poe's birth; they became unnecessary and were not used when the BID accepted Poe's statement under oath that she was a former natural-born citizen of the Philippine as required by RA No. 9225.

That government documents that touched on Poe's birth origins had been tainted with irregularities and were issued *before* Poe ran for elective office strongly indicate that ***at the time she executed her CoC, she knew that her claimed Philippine citizenship was already tainted with discrepancies, and that she is not a Philippine citizen under Article IV, Section 1 of the 1935 Constitution***.

IV.G.3. *Intent to Deceive in the Residency Issue.*

On the residency issue, I find it worthy to add that the information in her **2012 CoC (for the Senate)** complies with the requirement that a person must first be a Philippine citizen to establish legal domicile in the Philippines. Based on Poe's 2012 COC, her legal domicile in the Philippines began in November 2006, shortly after the BID issued the Order granting her reacquisition of Philippine citizenship on July 18, 2006.

That her 2012 CoC complies with the ruling in *Japzon v. Comelec*,[77] a 2009 case requiring Philippine citizenship prior to establishing legal domicile in the Philippines, indicates Poe's knowledge of this requirement.

It also indicates her present deliberate intent to deceive the electorate by changing the starting point of her claimed residency in the Philippines to May 24, 2005 in order only to qualify under the Constitution's 10-year residency requirement. This, she did despite being in the Philippines at that time as an alien under a *balikbayan* visa.

Under these facts and reasons, could the COMELEC have acted with grave abuse of discretion? Obviously, if reason would be the norm, it did not.

IV.H. The misreading of the Constitution in *Bengzon v. HRET.*

The Court in *Bengzon* held (albeit in a ruling that found no grave abuse of discretion in the ruling of the HRET[78]) that the repatriation of a

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77 G.R. No. 180088, January 19, 2002, 576 SCRA 331.

former natural-born Filipino who lost his Philippine citizenship through naturalization as a citizen of another country includes the reinstatement of his natural-born status.

According to *Bengzon,* the former natural-born Filipino was ***repatriated*** and was ***not naturalized*** into Philippine citizenship. Since there are only two kinds of Philippine citizens under the 1987 Constitution, *i.e.,* natural-born and naturalized citizens, and Bengzon's repatriation did not amount to naturalization, then necessarily, he must be a natural-born citizen. This was clearly a process of reasoning by elimination, an approach that requires a clear-cut and proper definition of the proffered choices in order to be valid.

Even if *Bengzon* were a correct ruling, it cannot be applied outright to the case of Grace Poe in the absence of a prior finding that she is a natural-born Filipino. I believe though that Bengzon is an incorrect ruling that should now be abandoned in light of the definition of "natural-born citizen" under the 1987 Constitution and should not be applied at all to the case of Poe. The Court majority, too, **misappreciated the *nature and characterization* of repatriation and naturalization viewed from the prism of the Constitution.** This view, by the way, is the material and important view to consider in looking at a constitutional matter such as citizenship.

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

Two views have been expressed in interpreting the phrase "from birth" used by the Constitution in defining "natural-born citizens."

The ***first*** is that found in *Bengzon* and in other cases with similar rulings: that "[a] person who **at the time** of his birth is a citizen of a particular country, is a natural-born citizen thereof." Even if the natural-born citizen subsequently loses Philippine citizenship by naturalization in a foreign country, as long as he or she renounces such foreign citizenship, he or she will regain such natural-born citizen status.

The ***second*** interpretation is that espoused by the minority opinion in *Bengzon*: that once a Philippine citizen is naturalized as citizen in a foreign country, he or she loses his or her natural-born citizen status and may not recover it even under repatriation. Those espousing this view capitalize on the words "from birth" that the natural-born definition contains.

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[78] This signifies that the HRET ruling could have been legally incorrect but was left untouched by the Court because the error did not amount to a grave abuse of discretion, see *Bengzon v. HRET*, *supra* Note 1 at 651-652, and *Romy's Freight Service v. Castro,* 523 Phil. 540, 546 (2006).

The word "from" is used as a function word to indicate a starting point: as (1) a point or place where an actual physical movement has its beginning; (2) something that is taken as a starting point in measuring or reckoning or in a statement of limits; (3) a starting or focal point of any activity or movement; a source, cause, means, or ultimate agent of an action or condition; a ground, reason, or basis.[79]

In contrast, the word "at" is used as a function word to indicate presence in, on, or near: as presence or occurrence in a particular place; location, feeling, quality, condition; used as a function word to indicate age or position in time.[80]

Thus, "**from" implies continuity**, *i.e.,* a continuous and uninterrupted period, activity, movement, etc. that starts or begins from a particular point, time, or place and continues thereafter; whereas "at" implies a single, specific, or particular point or place, or a specific event occurring at a particular fixed point or place.

I believe that the second view espouses the true intent of the Constitution. The use of the word "from" indicates the Constitutional intent to treat "natural-born citizen status" as a ***continuing uninterrupted event that begins from birth and continues until the citizen dies, and implies a continuing relationship between the sovereign State and its people***. This conclusion is truer still when the Constitution's definition of natural-born citizen is considered with the other provisions which require natural-born citizen status as qualification for holding key government elective and appointive positions.

The first view treats "natural-born citizen status" as fixed and inchoate, determined solely from the fact of having been born a Philippine citizen without having performed any act to acquire or perfect such citizenship.

In effect, the first view believes that a person's natural-born status is a fixed and unalterable status. The natural-born citizen status is determined as of the moment of birth, independent of subsequent events that may have caused the loss of that citizenship in the interim; as long as natural-born citizen status is fixed at birth, it can never be lost.

This interpretation, however, is fraught with danger, for it would practically allow "natural-born strangers" to be elected into public office, subject to residency requirements. It must be noted that "natural-born citizen" status means more than a mere blood relation acquired from birth; rather, it is a privilege which entitles a citizen to favorable Constitutional

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[79] Webster's Third New International Dictionary Of The English Language Unabridged (1993), p. 913.

[80] Webster's Third New International Dictionary Of The English Language Unabridged (1993), p. 136.

provisions. Concomitantly, it also entails a jealous allegiance to this country for these privileges to be enjoyed.

The phrase "without having to perform any act to acquire or perfect their Philippine citizenship" should be interpreted likewise as continuing and uninterrupted from birth. The "without having to perform any act to acquire or perfect" is the characteristic or unique condition that defines and distinguishes natural-born from naturalized citizen status.

Under this interpretation, the absence of any acquiring or perfecting act must not only be present at birth, but must continue in order for the Philippine citizen to be a natural-born citizen. A Philippine citizen who, after having lost Philippine citizenship by naturalization in a foreign country, subsequently reacquires such citizenship through any of the means allowed under the law is not and is no longer a Philippine citizen who acquired such citizenship without having to perform any act to acquire or perfect it.

From the constitutional perspective, **repatriation is a *form of naturalization provided by law***, in the same way that the reacquisition of Philippine citizenship expedites the naturalization of foreigners who used to be natural-born Philippine citizens.

Naturalization involves the grant of citizenship to a foreigner, upon his or her compliance with the requirements for acquiring citizenship.

In the Philippines, the acquisition of Philippine citizenship by a foreigner is governed by CA 63,[81] which speaks of three modes that are essentially based on the grounds for the loss of citizenship:

> (1) By ***naturalization***: Provided, That the applicant possess none of the disqualification's prescribed in section two of Act Numbered Twenty-nine hundred and twenty-seven,
>
> (2) By ***repatriation*** of deserters of the Army, Navy or Air Corp: Provided, That a woman who lost her citizenship by reason of her marriage to an alien may be repatriated in accordance with the provisions of this Act after the termination of the marital status; and
>
> (3) By ***direct act of the National Assembly***. [emphases supplied]

Republic Act No. 2630[82] (*RA 2630*) subsequently added another category of reacquisition of lost Filipino citizenship, as follows:

> Section 1. Any person ***who had lost his Philippine citizenship*** by rendering service to, or accepting commission in, the Armed Forces of the

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81 Section 2 of CA 63.

82 Otherwise known as "An act providing for reacquisition of Philippine citizenship by persons who lost such citizenship by rendering service to, or accepting commission in, the Armed Forces of the United States, promulgated on June 18, 1960.

> United States, or after separation from the Armed Forces of the United States, acquired United States citizenship, ***may reacquire*** Philippine citizenship by taking an oath of allegiance to the Republic of the Philippines and registering the same with the Local Civil Registry in the place where he resides or last resided in the Philippines. The said oath of allegiance shall contain a renunciation of any other citizenship. [emphases supplied]

Contrary to the Court's conclusion in *Bengzon*, ***repatriation is a form of expedited naturalization provided by CA 63 and RA No. 2630 for former Philippine citizens who lost their citizenship under particular circumstances.*** Through these laws, Philippine citizens who deserted the Philippine armed forces; those who served in the U.S. armed forces and were subsequently naturalized as U.S. citizens; and women who lost their citizenship though marriage to a foreigner and who thereby lost their Philippine citizenship, may ***reacquire their Philippine citizenship*** upon the execution of an oath of allegiance to the Philippines.

Note that ***CA 63 itself recognizes these people as foreigners***, because **Section 1 of CA 63 divests them of Philippine citizenship**. Section 1 provides:

> Section 1. ***How citizenship may be lost.*** – A Filipino citizen may **lose his citizenship** in any of the following ways and/or events:
>
> xxx
>
> (4) ***By rendering services to, or accepting commission in, the armed forces of a foreign country***: Provided, That the rendering of service to, or the acceptance of such commission in, the armed forces of a foreign country, and the taking of an oath of allegiance incident thereto, with the consent of the Republic of the Philippines, shall not divest a Filipino of his Philippine citizenship if either of the following circumstances is present:
>
> (a) The Republic of the Philippines has a defensive and/or offensive pact of alliance with the said foreign country; or
>
> (b) The said foreign country maintains armed forces on Philippine territory with the consent of the Republic of the Philippines: Provided, That the Filipino citizen concerned, at the time of rendering said service, or acceptance of said commission, and taking the oath of allegiance incident thereto, states that he does so only in connection with his service to said foreign country: And provided, finally, That any Filipino citizen who is rendering service to, or is commissioned in, the armed forces of a foreign country under any of the circumstances mentioned in paragraph (a) or (b), shall not be permitted to participate nor vote in any election of the Republic of the Philippines during the period of his service to, or commission in, the armed forces of said foreign country. Upon his discharge from the service of the said foreign country, he shall

> be automatically entitled to the full enjoyment of his civil and political rights as a Filipino citizen;
>
> xxx
>
> (6) By having been ***declared by competent authority, a deserter of the Philippine armed forces*** in time of war, unless subsequently, a plenary pardon or amnesty has been granted; and
>
> (7) In the case of a ***woman, upon her marriage to a foreigner*** if, by virtue of the laws in force in her husband's country, she acquires his nationality. [emphases and italics supplied]

Even RA No. 2630 recognizes that those who avail of its repatriation process are NOT Philippine citizens, *viz*:

> Section 1. Any person ***who had lost his Philippine citizenship*** by rendering service to, or accepting commission in, the Armed Forces of the United States, or after separation from the Armed Forces of the United States, ***acquired United States citizenship***, may reacquire Philippine citizenship by taking an oath of allegiance to the Republic of the Philippines and registering the same with the Local Civil Registry in the place where he resides or last resided in the Philippines. The said oath of allegiance shall contain a renunciation of any other citizenship. [emphases, italics, and underscoring supplied]

Thus, in the eyes of Philippine law, these people lost their Philippine citizenship because of the overt acts they performed, and, hence, are no longer Philippine citizens. The execution of an oath of allegiance is the procedure through which they can regain their Philippine citizenship. That they did not have to go through the tedious process of naturalization provided under CA 63 is immaterial in determining their status as naturalized Filipinos.

Under these legal realities, the RA No. 2630 process (like the RA No. 9225 process) is simply a citizenship-acquisition mode that addresses a specific ***class of foreigners and non-Filipinos*** who are required to show their links to the Filipino nation before they may acquire Philippine citizenship. Presumably, former Philippine citizens who wish to become Philippine citizens once again already possess these ties, and thus had been provided with a more expeditious process of citizenship acquisition. In the same manner, a foreigner who acquires Philippine citizenship through a direct act of Congress would have presumably been examined by Congress for ties to the Filipino nation.

From this perspective, repatriation and citizenship by direct act of Congress are naturalization processes that differ only from the naturalization of complete foreigners through the intricacy of the process involved. The ***first***, repatriation, applies to foreigners who had been former Philippine citizens, and merely require them to execute an oath of allegiance to the

Republic. The ***second***, on the other hand, applies to foreigners who have secured a legislative grant of citizenship.

These two categories must fall under *"naturalization as provided by law"* provision of the 1935, 1973, and 1987 Constitutions as they *cannot fall under any other category in the Constitution's listing of who are citizens of the Philippines*.

Based on these considerations, the Court's misplaced treatment of repatriation in *Bengzon* amounts to an interpretation contrary to the clear words and intent of the Constitution, *as it allows* ***naturalized*** *Philippine citizens to enjoy privileges reserved solely for* ***natural-born*** *Philippine citizens.*

Blindly applying *Bengzon* to the present case would amount to violating or condoning the violation of the constitutional provision limiting specified public offices to natural-born Philippine citizens. We would thereby allow Filipinos who have voluntarily relinquished their Philippine citizenship for political privileges in another country, to hold positions limited to natural-born Philippine citizens, despite the reality that undergoing a naturalization process to reacquire Philippine citizenship contravenes the maintenance portion required to be considered natural-born as this term is explicitly defined by the Constitution.

The possibility of committing and perpetuating an unconstitutionality, to my mind, is the strongest and most compelling reason not to follow *Bengzon* as precedent in the present case.

V. THE RESIDENCY ISSUE

V.A. The Ponencia's Essential Problems on Residency.

With seeming sincerity and candor, the *ponencia* holds that "Petitioner's claim that she will have been a resident for ten (10 years and eleven (11) months on the day before the 2016, **is true**." To make this claim, Grace Poe computed her "residence" in the Philippines from May 24, 2005. To support this claim, the *ponencia* cites "voluminous" evidence showing that "she and her family abandoned U.S. domicile and relocated to the Philippines for good."

I essentially find the *ponencia's* statement objectionable – hence, the description "with ***seeming*** sincerity and candor" – as the *ponencia* thereby sought to slide past the mandated mode of review by the statement that Grace Poe's claim "is true."

V.A.1. ***Significance of Certiorari as Mode of Review***

As heretofore discussed, the constitutionally-imposed mode of review is *via* a petition for *certiorari*, not *via* an appeal, because the COMELEC is an independent commission and the Constitution accords its findings, particularly of facts, the highest respect. Unless therefore grave abuse of discretion can be shown, this Court should uphold the COMELEC's findings of facts. Poe sought to slide past this mode of review in two ways.

First is *via* its position that the COMELEC does not have jurisdiction to entertain the CoC cancellation as it pertains to eligibility and no prior findings have been made or shown. This matter has been discussed in the consideration of COMELEC jurisdiction.

The second way is *via* the argument the *ponencia* poses – *that Poe's voluminous residency evidence is undisputed but COMELEC refused to consider that her domicile had been changed as of May 24, 2005.* The *ponencia* apparently intended to claim grave abuse of discretion based on the arbitrariness in the COMELEC's refusal.

- **COMELEC's Refusal to Consider Poe's Evidence.**

In arguing that the COMELEC failed to consider Poe's, the *ponencia* missed a critical legal point – that the evidence do not stand by themselves to be nakedly interpreted by the decision maker. The evidence are appreciated on the basis of the applicable law, hence it was rash for the *ponencia* to claim that Poe had been "domiciled" in the Philippines since 24 May 2005 since "domicile" is a legal term that connotes a physical evidence characterized by the applicable law.

The physical evidence that perhaps had not been disputed is that Poe had "physically stayed" in the Philippines since May 24, 2005; whether this stay amounted to "domicile" in the Philippines is another matter as by law and jurisprudence, certain requisites have to be fulfilled before domicile can be changed or established in a new place. But the failure to characterize the undisputed stay as "domicile" can in no way be considered grave abuse of discretion.

- **Domicile and How it is Changed.**

Two essential questions have to be answered in these regards. The first is what is residence or domicile and how is it changed. The second question, related to the first, is when does a foreigner (*i.e.*, a non-citizen of the Philippines) start to be characterized as a resident for purposes of the exercise of the political rights he or she wishes to exercise, such as the right to vote and to be voted for.

To recall, Poe became a naturalized citizen of the United States (U.S.) in 2001, ten (10) years after she married her American husband. When Poe

became a naturalized Philippine citizen, she had abandoned her residence in the Philippines and established a new domicile in the U.S.

Thus, as Poe stood when she returned to the Philippines in 2005, she was a foreigner domiciled in the U.S. and who was aspiring to return to Philippine citizenship; she was also a foreigner who was temporarily in the Philippines but who wanted to stay permanently as a citizen. These two objectives related to two separate acts and involve two separate concepts that at some point are related with one another.

In terms of change of domicile, Poe would have to re-establish her domicile in the Philippines, and this raises the second question: when is stay in the Philippines considered to be the required residence that satisfies the 10-year residency requirement?

The decided cases on these points – *Coquilla* v. COMELEC;[83] *Japzon v. COMELEC*;[84] and *Caballero v. COMELEC*[85] – are one in counting the period of legal residence in the Philippines from the time the candidate reacquired Philippine citizenship.

Poe resists these rulings and insists that she established her legal residence in the Philippines beginning May 24, 2005, *i.e.,* even before the BID Order, declaring her reacquisition of Philippine citizenship, was issued on July 18, 2006.

The *ponencia* itself distinguished her situation from *Coquilla*, *Japzon,* and *Caballero*, on the position that the candidates in these cases did not prove their legal residence in the Philippines *before* acquiring their Philippine citizenship.

In contrast, Poe claims to have sufficiently proven that she established her domicile in the Philippines as early as May 24, 2005, or ten years and eleven months prior to the May 9, 2016 elections. That the COMELEC ignored the evidence she presented on this point constitutes grave abuse of discretion. The evidence that Poe submitted, in the *ponencia's* own words, included:

> "... petitioner's former U.S. passport showing her arrival on May 24 2005 and her return to the Philippines everytime she travelled abroad; email correspondences starting in March 2005 to September 2006 with a freight company to arrange for the shipment of their household items weighing about 28,000 pounds to the Philippines; email with the Philippine Bureau of Animal Industry inquiring how to ship their dog to the Philippines; school records of her children showing enrolment in Philippine schools starting June 2005 and for succeeding years; tax identification card for petitioner issued on July 2005; titles for condominium and parking slot issued in February 2006 and their

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83 434 Phil. 861 (2002).
84 596 Phil. 354 (2009).
85 G.R. No. 209835, September 22, 2015.

> declarations issued in April 2006; receipts dated 23 February 2005 from the Salvation Army in the U.S. acknowledging donation of items from petitioner's family; March 2006 e-mail to the U.S. Postal Service confirming request for change of address; final settlement from the First American Title Insurance Company showing sale of their U.S. home on 27 April 2006; 12 July 2011 filled-up questionnaire submitted to the U.S. Embassy where petitioner indicated that she had been a Philippine resident since May 2005; affidavit from Jesusa Sonora Poe (attesting to the return of petitioner on May 24, 2005 and that she and her family stayed with affiant until the condominium was purchased); and Affidavit from petitioner's husband (confirming that the spouses jointly decided to relocate to the Philippines in 2005 and that he stayed behind in the U.S. only to finish some work and to sell the family home)."

To my mind, the conclusion in *Japzon* and *Caballero* is not just based on the evidence that the candidates therein presented. The conclusion that candidates who reacquired Philippine citizenship under RA No. 9225 may only establish residence in the Philippines after becoming Philippine citizens **reflects the character of the right to establish a new domicile for purposes of participating in electoral exercises as a political right that only Philippine citizens can exercise.**

Following this line of thought, Poe could only begin establishing her domicile in the Philippines on July 18, 2006, the date the BID granted her petition for reacquisition of Philippine citizenship.

Furthermore, **an exhaustive review of the evidence Poe presented to support her view shows that as of May 24, 2005, Poe had not complied with the requirements for establishing a new domicile of choice**. This is discussed as a separate topic below.

- ***Domicile for purposes of the exercise of rights.***

The term "residence" is an elastic concept that should be understood and construed according to the object or purpose of the statute in which it is employed. We have case law distinguishing residence to mean *actual residence*, in contrast with *domicile*, which pertains to a permanent abode. Note, however, that both terms imply a relation between a person and a place.[86] Determining which connotation applies depends on the statute in which it is found.

Generally, we have used the term "residence" to mean actual residence when pertaining to the exercise of civil rights and fulfilment of civil obligations.

Residence, in this sense pertains to a place of abode, whether permanent or temporary, or as the Civil Code aptly describes it, a place of habitual residence. Thus, the Civil Code provides:

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86 See *Romualdez-Marcos v. Commission on Elections*, 318 Phil. 329 (1995).

> Art. 50. For the exercise of **civil rights** and the fulfillment of **civil obligations**, the domicile of natural persons is the place of their habitual residence. (40a)
>
> Art. 51. When the law creating or recognizing them, or any other provision does not fix the domicile of juridical persons, the same shall be understood to be the place where their legal representation is established or where they exercise their principal functions. (41a) [emphases supplied]

Actual residence for purposes of civil rights and obligations may be further delineated into residence in the Philippines, or residence in a municipality in the Philippines, depending on the purpose of the law in which they are employed.[87]

On the other hand, we generally reserve the use of the term residence as domicile for purposes of ***exercising political rights***. Jurisprudence has long established that the term "residence" in election laws is *synonymous with domicile*. ***When the Constitution or the election laws speak of residence, it refers to the legal or juridical relation between a person and a place – the individual's permanent home irrespective of physical presence.***

To be sure, physical presence is a major indicator when determining the person's legal or juridical relation with the place he or she intends to vote or be voted for. But, as residence and domicile are synonymous under our election laws, *residence is a legal concept that has to be determined by and in connection with our laws, independent of or in conjunction with physical presence.*

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

Domicile of origin is the domicile of a person's parents at the time of his or her birth. It is not easily lost and continues until, upon reaching the majority age, he or she abandons it and acquires a new domicile, which new domicile is the domicile of choice.

The concept of domicile is further distinguished between residence in a particular municipality, city, province, or the Philippines, depending on the political right to be exercised. Philippine citizens must be residents of the Philippines to be eligible to vote, but to be able to vote for elective officials

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87 Thus, for purposes of determining venue for filing personal actions, we look to the actual address of the person or the place where he inhabits, and noted that a person can have more than one residence. We said this in light of the purpose behind fixing the situs for bringing real and personal civil actions, which is to provide rules meant to attain the greatest possible convenience to the party litigants by taking into consideration the maximum accessibility to them *i.e.*, to both plaintiff and defendant, not only to one or the other of the courts of justice.

of particular local government units, he must be a resident of the geographical coverage of the particular local government unit.

To effect a change of domicile, a person must comply with the following requirements: (1) an actual removal or an actual change of domicile; (2) a *bona fide* intention of abandoning the former place of residence and establishing a new one; and (3) acts which correspond with such purpose.

In other words, a change of residence requires *animus manendi* coupled with *animus non revertendi*. The ***intent 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***.[88]

Under these requirements, no specific unbending rule exists in the appreciation of compliance because of the element of intent[89] – an abstract and subjective proposition that can only be determined from the surrounding circumstances. It must be appreciated, too, that aside from intent is the question of the **actions taken pursuant to the intent**, ***to be considered in the light of the applicable laws, rules, and regulations***.

Jurisprudence, too, has laid out three basic foundational rules in the consideration of residency issues, namely:

First, a man ***must have a residence*** or domicile somewhere;

Second, when once established, it ***remains until a new one is acquired***; and

Third, a man can have but ***one residence or domicile at a time***.[90]

These jurisprudential foundational rules, hand in hand with the established rules on change of domicile, should be fully taken into account in appreciating Poe's circumstances.

- ***The right to establish domicile is imbued with the character of a political right that only citizens may exercise.***

Domicile is necessary to be able to participate in governance; to vote and/or be voted for, one must consider a locality in the Philippines as his or her permanent home, a place in which he intends to remain in for an indefinite period of time (*animus manendi*) and to return to should he leave (*animus revertendi*).

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88 *Limbona v. Comelec*, 578 Phil. 364 (2008).

89 See *Abella v. Commission on Elections and Larazzabal v. Commission on Elections*, 278 Phil. 275 (1991). See also *Pundaodaya v. Comelec*, 616 Phil. 167 (2009).

90 See *Pundaodaya v. Comelec*, 616 Phil. 167 (2009) and *Jalosjos v. Comelec*, 686 Phil. 563 (2012).

In this sense, the establishment of a domicile not only assumes the color of, but becomes one with a political right, because it allows a person, not otherwise able, to participate in the electoral process of that place. To logically carry this line of thought a step further, a person seeking to establish domicile in a country must first posses the necessary citizenship to exercise this political right. Philippine citizenship is necessary to participate in governance and exercise political rights in the Philippines. The preamble of our 1987 Constitution cannot be clearer on this point:

> We, ***the sovereign Filipino people***, imploring the aid of Almighty God, in order to build a just and humane society, and ***establish a Government*** that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity, the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, ***do ordain and promulgate this Constitution.*** [emphases, italics, and underscoring supplied]

It is the **sovereign Filipino people** (*i.e., the citizens through whom the State exercises sovereignty, and who can vote and participate in governance*) who shall **establish the Government of the country** (*i.e. one of the purposes why citizens get together and collectively act*), and they **themselves ordain and promulgate** the Constitution (*i.e., the citizens themselves directly act, not anybody else*).

Corollarily, a person who does not possess Philippine citizenship, *i.e.,* an alien, cannot participate in the country's political processes. An alien does not have the right to vote and be voted for, the right to donate to campaign funds, the right to campaign for or aid any candidate or political party, and to directly, or indirectly, take part in or influence in any manner any election.

The character of the right to establish domicile as a political right becomes even more evident under our election laws that require that a person's domicile and citizenship coincide to enable him to vote and be voted for elective office. In more concrete terms (subject only to a few specific exceptions), a Philippine citizen must have his domicile in the Philippines in order to participate in our electoral processes.

Thus, a Philippine citizen who has chosen to reside permanently abroad may be allowed the limited opportunity to vote (under the conditions laid down under the Overseas Absentee Voting Act)[91] but he or she cannot be voted for; he or she is disqualified from running for elective office under Section 68 of the OEC.[92]

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[91] See: Sections 4, 5, 6 & 8 of R.A. No. 9189.

[92] Sec. 68. *Disqualifications.* - x x x Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

In the same light, an alien who has been granted a permanent resident visa in the Philippines does not have the right of suffrage in the Philippines, and ***this should include the right to establish legal domicile for purposes of election laws.*** An alien can reside in the Philippines for a long time, but his stay, no matter how lengthy, will not allow him to participate in our political processes.

Thus, **an inextricable link exists among citizenship, domicile, and sovereignty; citizenship and domicile must coincide in order to participate as a component of the sovereign Filipino people.**

In plainer terms, domicile for election law purposes cannot be established without first becoming a Philippine citizen; **these elements must coincide and exist together for the exercise of participating in governance.**

- ***The right to RE-ESTABLISH domicile in the Philippines may be exercised only after reacquiring Philippine citizenship.***

- ***Unless a change of domicile is validly effected, one with reacquired Filipino citizenship acquires the right to reside in the country, but must have a change of domicile; otherwise, he is a Filipino physically in the Philippines but is domiciled elsewhere.***

Once a Philippine citizen permanently resides in another country, or becomes a naturalized citizen thereof, he loses his domicile of birth (the Philippines) and establishes a new domicile of choice in that country. This was what happened to Poe.

If a former Filipino reacquires his or her Philippine citizenship, he reacquires as well the civil and political right to reside in the Philippines, but he does not become a Philippine domiciliary unless he validly effects a change of domicile; otherwise, he remains a Filipino ***physically in the Philippines but is domiciled elsewhere***. ***The reason is simple: an individual can have only one domicile which remains until it is validly changed***.

In *Coquilla*,[93] the Court pointed out that "immigration to the [U.S.] by virtue of a green card, which entitles one to reside permanently in that country, constitutes abandonment of domicile in the Philippines. With more reason then does naturalization in a foreign country result in an abandonment of domicile in the Philippines."

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93 434 Phil. 861 (2002).

Thus, Philippine citizens who are *naturalized as citizens of another country not only abandon their Philippine citizenship; they also abandon their domicile in the Philippines*. Again, this was what happened to Poe.

To re-establish the Philippines as his or her new domicile of choice, a returning former Philippine citizen must thus comply with the requirements of ***physical presence for the required period (when exercising his political right)***, ***animus manendi***, and ***animus non-revertendi***. These are the requirements that Poe was required to comply with.

Several laws govern the reacquisition of Philippine citizenship by former Philippine citizens-aliens each providing for a different mode of, and different requirements for, Philippine citizenship reacquisition. These laws are **Commonwealth Act *(CA)* No. 473**; **RA No. 8171**; and **RA No. 9225**.

All these laws are meant to facilitate an alien's reacquisition of Philippine citizenship by law.

- **CA No. 473**[94] as amended,[95] governs reacquisition of Philippine citizenship by naturalization; it is also a mode for original acquisition of Philippine citizenship.

- **RA No. 8171**,[96] on the other hand, governs repatriation of Filipino women who lost Philippine citizenship by marriage to aliens and Filipinos who lost Philippine citizenship by political or economic necessity; while

- **RA No. 9225**[97] governs repatriation of former natural-born Filipinos in general.

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[94] 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", enacted on June 17, 1939.

CA No. 63, as worded, provides that the procedure for re-acquisition of Philippine citizenship by naturalization shall be in accordance with the procedure for naturalization under Act No. 2927 (or The Naturalization Law, enacted on March 26, 1920), as amended. CA No. 473, however, repealed Act No. 2927 and 3448, amending 2927.

[95] Entitled "An Act Making Additional Provisions for Naturalization", enacted on June 16, 1950.

[96] AN ACT PROVIDING FOR THE REPATRIATION OF FILIPINO WOMEN WHO HAVE LOST THEIR PHILIPPINE CITIZENSHIP BY MARRIAGE TO ALIENS AND OF NATURAL BORN FILIPINOS. Approved on October 23, 1995.

Prior to RA No. 8171, repatriation was governed by Presidential Decree No. 725, enacted on June 5, 1975. Paragraph 5 of PD No. 725 provides that: *"1) Filipino women who lost their Philippine citizenship by marriage to aliens; and (2) natural born Filipinos who have lost their Philippine citizenship may require Philippine citizenship through repatriation by applying with the Special Committee on Naturalization created by Letter of Instruction No. 270, and, if their applications are approved, taking the necessary oath of allegiance to the Republic of the Philippines, after which they shall be deemed to have reacquired Philippine citizenship. The Commission on Immigration and Deportation shall thereupon cancel their certificate of registration."* Note that the repatriation procedure under PD No. 725 is similar to the repatriation procedure under Section 4 of CA No. 63.

[97] See Section 3 of RA No. 9225. It pertinently reads:

> Section 3. *Retention of Philippine Citizenship* - Any provision of law to the contrary notwithstanding, natural-born citizenship by reason of their naturalization

Whether termed as naturalization, reacquisition, or repatriation, all these modes fall under the constitutional term "naturalized in accordance with law" as provided under the 1935, the 1973, and the 1935 Constitutions.

Notably, CA No. 473 provides a more stringent procedure for acquiring Philippine citizenship than RA Nos. 9225 and 8171 both of which provide for a more expedited process. Note, too, that under our Constitution, there are only two kinds of Philippine citizens: natural-born and naturalized.

As RA Nos. 8171 and 9225 apply only to former natural-born Filipinos (who lost their Philippine citizenship by foreign naturalization), CA No. 473 – which is both a mode for acquisition and reacquisition of Philippine citizenship – logically applies in general to all former Filipinos regardless of the character of their Philippine citizenship, *i.e.,* natural-born or naturalized.

The difference in the procedure provided by these modes of Philippine citizenship reacquisition presumably lies in the assumption that those who had previously been natural-born Philippine citizens already have had ties with the Philippines ***for having been directly descended from Filipino citizens or by virtue of their blood*** and are well-versed in its customs and traditions; on the other hand, the alien-former Filipino in general (and no matter how long they have resided in the Philippines) could not be presumed to have such ties.

In fact, CA No. 473 specifically requires that an applicant for Philippine citizenship must have resided in the Philippines for at least six months before his application for reacquisition by naturalization.

Ujano v. Republic[98] interpreted this residence requirement to mean domicile, that is, prior to applying for naturalization, the applicant must have maintained a permanent residence in the Philippines. In this sense, *Ujano* held that an alien staying in the Philippines under a temporary visa does not comply with the residence requirement; to become a qualified applicant, an alien must have secured a permanent resident visa to stay in the Philippines. Obtaining a permanent resident visa was, thus, viewed as the act that establishes domicile in the Philippines for purposes of complying with CA No. 473.

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as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

x x x x

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

[98] G.R. No. L-22041, May 19, 1966, 17 SCRA 147.

The ruling in *Ujano* is presumably the reason for the Court's statement that residence may be waived separately from citizenship in *Coquilla*. In *Coquilla*, the Court observed that:

> The status of being an alien and a non-resident can be waived either separately, when one acquires the status of a resident alien before acquiring Philippine citizenship, or at the same time when one acquires Philippine citizenship. As an alien, an individual may obtain an immigrant visa under 13[28] of the Philippine Immigration Act of 1948 and an Immigrant Certificate of Residence (ICR)[29] and thus waive his status as a non-resident. On the other hand, he may acquire Philippine citizenship by naturalization under C.A. No. 473, as amended, or, if he is a former Philippine national, he may reacquire Philippine citizenship by repatriation or by an act of Congress, in which case he waives not only his status as an alien but also his status as a non-resident alien.[99] [underscoring supplied]

The separate waiver refers to the application for Philippine citizenship under CA No. 437, which requires that the applicant alien be domiciled in the Philippines as evidenced by a permanent resident visa. An alien intending to become a Philippine citizen may avail of CA No. 473 and must first waive his domicile in his country of origin to be considered a permanent resident alien in the Philippines, or he may establish domicile in the Philippines after becoming a Philippine citizen through direct act of Congress.

Note that the **permanent residence requirement under** CA No. 473 ***does not provide the applicant alien with the right to participate in the country's political process, and should thus be distinguished from domicile in election laws.***

In other words, an alien may be considered a permanent resident of the Philippines, but without Philippine citizenship, his stay cannot be considered in establishing domicile in the Philippines for purposes of exercising political rights. Neither could this period be retroactively counted upon gaining Philippine citizenship, as his stay in the Philippines at that time was as an alien with no political rights.

In these lights, I do not believe that a person reacquiring Philippine citizenship under RA No. 9225 could separately establish domicile in the Philippines prior to becoming a Philippine citizen, as the right to establish domicile has, as earlier pointed out, the character of a political right.

RA No. 9225 restores Philippine citizenship upon the applicant's submission of the oath of allegiance to the Philippines and other pertinent documents to the BID (or the Philippine consul should the applicant avail of RA No. 9225 while they remain in their country of foreign naturalization). The BID (or the Philippine consul) then reviews these documents, and issues

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[99] 434 Phil. 861, 873-875 (2002).

the corresponding order recognizing the applicant's reacquisition of Philippine citizenship.

Upon reacquisition of Philippine citizenship under RA No. 9225, a person becomes entitled to full political and civil rights, subject to its attendant liabilities and responsibilities. These rights include the right to re-establish domicile in the Philippines for purposes of participating in the country's electoral processes.

Thus, ***a person who has reacquired Philippine citizenship under RA No. 9225 does not automatically become domiciled in the Philippines, but is given the option to establish domicile in the Philippines to participate in the country's electoral process***.

This, to my mind, is the underlying reason behind the Court's consistent ruling in *Coquilla*, *Japzon,* and *Caballero* that domicile in the Philippines can be considered established only upon, or after, the reacquisition of Philippine citizenship under the expedited processes of RA No. 8171 or RA No. 9225. For foreigners becoming Filipino citizens, domicile is a matter of choice, but the choice can be made only by one who has acquired the right to choose. In other words, only one who has attained Filipino citizenship can establish his domicile as an exercise of a political right.

To recapitulate, the Court in these three cases held that the candidates therein could have established their domicile in the Philippines only after reacquiring their Philippine citizenship.

Thus, the Court in *Coquilla* said:

> In any event, the fact is that, by having been naturalized abroad, he lost his Philippine citizenship and with it his residence in the Philippines. Until his reacquisition of Philippine citizenship on November 10, 2000, petitioner did not reacquire his legal residence in this country.[100] [underscoring supplied]

In *Japzon*, the Court noted:

> "[Ty's] reacquisition of his Philippine citizenship under [RA] 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 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.[101]

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100 434 Phil. 861, 873 (2002).

101 596 Phil. 354, 369-370 (2009).

Caballero, after quoting *Japzon*, held:

> Hence, petitioner's retention of his Philippine citizenship under RA No. 9225 did not automatically make him regain his residence in Uyugan, Batanes. He must still prove that after becoming a Philippine citizen on September 13, 2012, he had reestablished Uyugan, Batanes as his new domicile of choice which is reckoned from the time he made it as such.[102]

In these lights, **the COMELEC correctly applied the doctrine laid out in *Coquilla, Japzon,* and *Caballero* in Poe's case**, ***i.e., that her physical presence allegedly coupled with intent should be counted, for election purposes, only from her reacquisition of Philippine citizenship or surrender of her immigrant status. Any period of residence prior to such reacquisition of Philippine citizenship or surrender of immigrant status cannot simply be counted for Poe as she was at that time an alien non-resident who had no right to permanently reside anywhere in the Philippines***.

V.A.2. ***Compliance with the requirements for change of residence***

The COMELEC, in its evaluation of the pieces of evidence presented before it, presumably assessed all these and gave each evidence its own weight and credibility, and reached the conclusion that Poe had not complied with the required residence period. And this is where the mode of review, adverted to above, becomes critical, as the question before us is not whether the COMELEC committed legal errors in its conclusion, but whether its conclusion had been reached with grave abuse of discretion.

On *certiorari*, the *ponencia* concluded from these submitted evidence presented in Poe's petition to the Court to be sufficient to show that she had establish her residence in the Philippines for more than ten years.

Was it grave abuse of discretion on the part of the COMELEC to conclude that Poe had not yet complied with the ten-year residence period at the time she filed her CoC?

I found then, as I still do now, that the COMELEC did not gravely abuse its discretion in concluding that Poe has not yet complied with the ten-year residence requirement and materially misrepresented her compliance in her CoC.

The evidence Poe submitted in establishing her residence may have shown her *animus manendi* – or intent to remain in the Philippines – but does not establish her *animus non-revertendi*, or intent not to return in her current domicile, *i.e.*, the U.S.

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102 G.R. No. 209835, September 22, 2015.

As discussed above, a person must show that he or she has *animus non-revertendi*, or intent to abandon his or her old domicile. This requirement reflects two key characteristics of a domicile: ***first***, that a person can have only one residence at any time, and ***second***, that a person is considered to have an *animus revertendi* (intent to return) to his current domicile.

Thus, for a person to demonstrate his or her *animus non-revertendi* to the old domicile, he or she must have *abandoned it completely*, such that he or she can no longer entertain any *animus revertendi* with respect to such old domicile. This complete abandonment is necessary in light of the ***one-domicile*** rule.

In more concrete terms, a person seeking to demonstrate his or her *animus non-revertendi* must not only leave the old domicile and is no longer physically present there, he or she must have also shown *acts cancelling his or her animus revertendi to that place*.

Such showing is necessary as a person who simply leaves his or her domicile is considered not to have abandoned it so long as he or she has *animus revertendi* or intent to return to it. We have allowed the defense of *animus revertendi* for challenges to a person's domicile because he or she has left it for a period of time. We held that a person's domicile, once established, does not automatically change simply because he or she has not stayed in that place for a period of time.

Applying these principles to Poe's case, ***as of May 24, 2005, her overt acts may have established an intent to remain in the Philippines, but do not comply with the required animus non-revertendi with respect to the U.S., the domicile that she was abandoning.***

On May 24, 2005, Poe and **her family's home was still in the U.S. as they sold their U.S. family home only on April 27, 2006**. They also officially **informed the U.S. Postal Service of their change of their U.S. address only in late March 2006**. Lastly, as of this date (May 24, 2005), **Poe's husband was still in the U.S. and was a U.S. legal resident.**

Taken together, these facts show that as of May 24, 2005, Poe had not completely abandoned her domicile in the U.S.; she had not established the necessary *animus non-revertendi*.

Note, too, that **Poe's travel documents between May 24, 2005 and July 18, 2006 strongly support this conclusion**. During this period, she travelled to and from the Philippines under a *balikbayan* visa with a fixed period of validity, indicative that her stay in the Philippines during this period was temporary.

While it is not impossible that she could have entered the Philippines under a *balikbayan* visa with the intent to eventually establish domicile in

the Philippines, **her return to the U.S. several times while she was staying in the Philippines under a temporary visa prevents me from agreeing to this possibility**.

On the contrary, Poe's acts of leaving the Philippines for the U.S. as an American citizen who had previously stayed in the Philippines under a temporary visa is an indication of her *animus revertendi* to the U.S., her old domicile.

Notably, between Poe's arrival on May 24, 2005 and her acquisition of Philippine citizenship, Poe made four trips to and from the U.S. in a span of one year and two months; this frequency over a short period of time indicates and supports the conclusion that she had not fully abandoned her domicile in the U.S. during this period.

Additionally, during this time, Poe continued to own two houses in the U.S., one purchased in 1992 and another in 2008 (or after her reacquisition of the Philippine citizenship.[103] While such acquisition is not prohibited because Poe was a dual Filipino–American citizen, the ownership of these houses, considered together with her temporary visa in travelling to the Philippines from May 24, 2005 to July 18, 2006, did not negate her *animus revertendi* to the U.S., *i.e.*, as of May 24, 2005, she had not yet completely abandoned the U.S. as her domicile.

In these lights, I do not think that it had been a grave abuse of discretion on the part of the Comelec to apply *Coquilla*, *Japzon,* and *Caballero* in holding that a balikbayan visa is not indicative of *animus non-revertendi.* As with the candidates in *Coquilla*, *Japzon* and *Caballero*, the evidence Poe presented had not been sufficient to show *animus non-reveretendi* as she was only holding a balikbayan visa.

To reiterate for the sake of clarity, at the time Poe claims to have established her residence in the Philippines, she still had properties in the U.S., including her family home. They also officially informed the U.S. Postal Service of their change of their U.S. address only in late March 2006. She was also still an alien, a temporary visitor in the Philippines under a Balikbayan visa, and thus could not have been a resident.

Thus, the COMELEC did not act with grave abuse of discretion when it considered Poe's evidence and concluded that Poe had not yet establish her *animus non-revertendi* as of her claimed date of May 24, 2005.

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[103] In her Memorandum, Poe admitted to owning two (2) houses in the U.S. up to this day, one purchased in 1992 and the other in 2008. She, however, claims to no longer reside in them. Petitioner's Memorandum, pp. 278-279.

VI. CONCLUSIONS AND CONSEQUENCES

If different sectors of our society have shown concern about the Court's ruling in this case, they have every reason for alarm. This case involves, not simply a town councilor or a small town mayor, but the Presidency of the Republic whose stay in office cannot be uncertain, facing as we do potential problem situations both from within and outside the country.

The ruling, too, may affect the results of the coming election as this development shall surely affect the people's choice of candidate. A worse effect, that we can hope will not transpire, is a Poe electoral victory and continuing and pestering problems and uncertainty about the final electoral outcome.

On a lesser scale perhaps, many problems also lurk, both immediate and practical, directly involving the COMELEC's jurisdiction in Section 78 proceedings. The most immediate of these is the impact of the emasculation of the COMELEC on the pending cases or on those that have not yet reached finality before the COMELEC.

To restate what happened, following the *ponencia*'s pronouncements, the COMELEC was divested of its capability to determine the eligibility of candidates as part of its function to resolve whether there had been a false material representation in his CoC. Hence, the decisions it rendered in this capacity would have been rendered without jurisdiction.

Considering the timing of the release of our decision in *Poe-Llamanzares v. COMELEC*, the new doctrine the ruling represents could affect the Section 78 cases pending reconsideration before the Comelec, as reversals of these decisions based on the lack of jurisdiction of the COMELEC is a very real possibility.

Notably, the COMELEC has already printed close to 50 million ballots as of April 2, 2016. Section 78 cases pending reconsideration before the COMELEC, which prior to the *Poe-Llamanzares* ruling could have been dismissed summarily, could now be granted. If this would be the case, how then, could the names of these candidates be included in the CoC?

In the long term, the *ponencia*'s impact on the COMELEC's jurisdiction would even be more insidious. Section 78 would in effect be an almost impotent remedy, as the requirement of a finding of a "prior competent tribunal" or a "self-evident facts of unquestioned or unquestionable veracity and judicial confessions" would make access to this remedy almost impossible.

Note, for instance, that a Section 78 petition can only be filed within a short time period as the COMELEC Rules of Procedure provide:

> Section 2. Period to File Petition. - The Petition must be filed within five (5) days from the last day for filing of certificate of candidacy; but not later than twenty five (25) days from the time of filing of the certificate of candidacy subject of the petition xxx

Given this short time period, I do not think a competent tribunal's finding could be readily available as the basis for filing a Section 78 petition.

Furthermore, it should be considered that Poe's representation regarding her residency in her 2012 CoC was actually a self-evident fact whose veracity cannot be questioned, as it came from Poe herself. However, despite this admission, the *ponencia* still opted not to consider this self-evident fact, and instead required the COMELEC to look into the truth of Poe's subsequent claim of residence in her 2015 CoC.

Under this kind of reasoning, I cannot find a situation where the "self-evident fact" pointed out by the *ponencia* would be able to fit in to a Section 78 proceeding. That the defense of good faith or honest mistake (as in the present case) is readily available to candidates raises the standard of indubitability of the self-evident fact to the point of being impossible to determine.

In other words, if we were to require petitioners to provide a self-evident fact or a judicial confession to establish false material representation, and at the same time allow the respondent-candidates the defense of good faith, we would be requiring petitioners to present an unquestionable fact that candidates can just deny or feign lack of knowledge of, as in the present case with Poe's honest mistake defense.

All these would not be easy to sort out. In the meanwhile, life goes on, hopefully with bliss despite the uncertainties that this Court has injected into our electoral exercise and in the power of a supposedly independent commission.

For all the above reasons, particularly the almost total lack of legal and factual basis of the challenged *ponencia*, I vote to grant the motions for reconsideration.

ARTURO D. BRION
Associate Justice