HIGH NOON IN THE SUPREME COURT: THE POE-LLAMANZARES DECISION AND ITS IMPACT ON SUBSTANTIVE AND PROCEDURAL JURISPRUDENCE*

*Antonio G. M. La Viña***
*Nico Robert R. Martin****
*Josef Leroi Garcia*****

ABSTRACT

This paper examines the impact of the iconic *Poe-Llamanzares* decision on various bodies of jurisprudence in the Philippines. It begins by tracing the history of Philippine citizenship and then proposes a framework with which to view the Philippine legal concept of citizenship. This framework will be helpful in understanding the novel issue of a foundling's citizenship faced by the Supreme Court in the *Poe-Llamanzares* case. This paper painstakingly outlines each Justice's opinion and condenses hundreds of pages of writing into a more succinct form. This paper then argues that our citizenship laws must be interpreted liberally instead of given exclusionary meaning to accord foundlings the rights and privileges they deserve. A contrary ruling would have resulted in depriving millions of other Filipinos who have already been born with parents unknown and those foundlings who will be born in the future of their rights. This paper posits that the

---

* *Cite as* Antonio G.M. La Viña, Nico Robert R. Martin & Josef Leroi Garcia, *High Noon in the Supreme Court: The Poe-Llamanzares Decision and Its Impact on Substantive and Procedural Jurisprudence*, 90 PHIL. L.J. 218, (page cited) (2017).

** Professorial Lecturer, University of the Philippines College of Law, Ateneo Law School, Xavier University College of Law, Polytechnic University of the Philippines College of Law, De La Salle University College of Law, San Beda Graduate School of Law, Pamantasan ng Lungsod ng Maynila Graduate School of Law, and Philippine Judicial Academy; J.S.D., Yale Law School (1995); LL.M., Yale Law School (1992); LL.B., University of the Philippines (1989).

Prof. La Viña maintained his independence as an academic while the Poe-Llamanzares case was being heard by the Supreme Court in oral arguments, but shortly after, he agreed upon request by Senator Poe to be an adviser to her during the campaign debates.

*** Law Clerk, Office of Court of Appeals Justice Maria Filomena D. Singh; Teaching Fellow of Prof. Antonio G.M. La Viña, Xavier University College of Law; J.D., Ateneo Law School (2014); B.P.A., University of the Philippines National College of Public Administration and Governance (2010).

**** Law practitioner specializing in Election Law; Government and academic consultant; Past lawyer at the Department of Environment and Natural Resources and the Commission on Elections; LL.B., University of the Philippines (1996).

> Supreme Court properly adhered to well-settled precedents in its decision and reiterated a number of doctrines that will continue to serve as jurisprudential guideposts for generations to come. It is time to recognize the right of a human being to bear a nationality from birth and to categorically declare that foundlings are natural-born citizens.

INTRODUCTION

Given the stakes and its political significance, the *Poe-Llamanzares* decision[1] will be recognized as a classic and iconic decision of the Supreme Court of the Philippines. It is relevant not only for constitutional and election law, but also for human rights law, family law, the law on evidence, constitutional and statutory construction, remedial law, and international law. Reading through the hundreds of pages of the various opinions in the case, one can only admire the deliberateness that characterized the Supreme Court ruling. This landmark decision will be praised for its scholarship and practical wisdom, in particular for upholding the rights of foundlings and global Filipinos. It will be praised for its innovative recourse to statistics, international law, and a compassionate application of the rules of evidence. In this case, Chief Justice Maria Lourdes Sereno, through her concurring opinion, cemented her intellectual and political leadership of the Court.

This article will focus principally on the impact of the *Poe-Llamanzares* decision on the jurisprudence of citizenship in the Philippines. The authors will first look at the history of Philippine concepts of citizenship and from that overview propose a framework for understanding the Philippine legal concept of citizenship. It is our view that the *Poe-Llamanzares* decision is a decisive turn to a more liberal interpretation of citizenship and, in relation to that, of how residence is appreciated in the context of election law. Such an interpretation though has historical basis, as Chief Justice Sereno so painstakingly details in her concurring opinion in the *Poe-Llamanzares* decision.[2]

---

[1] Poe-Llamanzares v. COMELEC [hereinafter "Poe-Llamanzares"], G.R. No. 221697, Mar. 8, 2016.

[2] *Poe-Llamanzares*, G.R. No. 221697 (Sereno., *C.J., concurring*).

I. HISTORICAL BACKGROUND OF CITIZENSHIP

Prior to the Spanish colonization of the Philippine Archipelago, there was no concept of citizenship or nationality in the Philippines.[3] It was during the Spanish conquest of the Philippines when the native inhabitants of the Philippine Archipelago who were under the authority of the Spanish King were considered as "Spanish subjects."[4] In the records of the Catholic Church, the natives of the Philippine Archipelago were called "*indios*," a term denoting the low regard with which the Spaniards perceived the inhabitants of the Philippines.[5]

A. Spanish Laws on Citizenship in the Philippines

It was during the 19th Century when Spanish laws on citizenship became highly codified.[6] However, because of their sheer number, it became difficult to point to one comprehensive law on citizenship.[7] Also, not all Spanish citizenship laws were made to apply to the Philippines, only those explicitly extended and made applicable by Royal Decrees.[8]

Spanish laws on citizenship may be traced backed to the *Novisima Recopilacion*, which was promulgated on July 16, 1805. Under this law, the following were considered as "denizens:"

> There shall be considered as denizens, in the first place, all foreigners who obtain the privilege of naturalization and those who are born in these kingdoms; those who residing therein may be converted to our Holy faith; those who, being self supporting, establishes their domicile therein; those who ask for and obtain residence in any town thereof; those who marry a native woman of the said kingdoms and are domiciled therein; and in the case of a foreign woman who marries a native man, she thereby becomes subject to the same laws and acquires the same domicile as her husband; those who establish themselves in the country by acquiring real property; those who have a trade or profession and go there to practice the same; also those who practice some

---

[3] Irene R. Cortes & Raphael Perpetuo M. Lotilla, *Nationality and International Law from the Philippine Perspective*, 60 PHIL. L.J. 1, 6 (1985).

[4] LEON T. GARCIA, THE PROBLEM OF CITIZENSHIP IN THE PHILIPPINES 2 (1949).

[5] Tecson v. COMELEC [hereinafter "Tecson"], G.R. No. 161434, 424 SCRA 277, 327-8, Mar. 3, 2004.

[6] *Id.*

[7] *Id.*

[8] III JOHN BASSETT MOORE, DIGEST OF INTERNATIONAL LAW 273-275 (1906).

> mechanical trade therein or keep a retail store; those who hold public or honorary offices or any such position whatever which can only be held by natives; those who enjoy the privilege of the common pastures and other privileges usually accorded to other residents; those who shall reside in the said kingdoms for a period of ten years in a home of their own; and also those foreigners who, in accordance with the common law, royal orders and other laws of the kingdoms, may have become naturalized or acquired residence therein.[9]

However, whether the provisions of the *Novisima Recopilacion* were extended and made applicable to the Philippines continued to be the subject of contrary views among experts. Justice Malcolm in his concurring opinion in *U.S. v. Lim Bin*,[10] Justice Recto in his concurring opinion in *Caram v. Montinola*,[11] and Justice Florentino Torres in *Sy Joc Lieng v. Sy Quia*[12] all believed that the law was given application in this country. On the contrary, Justices Imperial and Villareal expressed the opposite view.[13]

The next law of Spain touching on citizenship was the *La Orden de la Regencia* of August 14, 1841. It provided that:

> [F]oreigners who desire to gain Spanish citizenship should apply for it by means of an application filed with the Governor-General who was empowered in the interest of the nation to grant or deny the same. Compliance with this Royal Decree has been declared absolutely essential for the acquisition of citizenship with a view to acquire the status of a Spanish subject in the Philippine Islands to the change of sovereignty.[14]

The Royal Decree of August 23, 1868, which was promulgated specifically for the Philippine Islands, concerned the political status of children of foreigners born in the Philippines. It decreed that the following be considered as foreigners:

> First – The legitimate and recognized natural children of a father who belongs to another independent State, and the unrecognized

---

[9] Sy Joc Lieng v. Sy Quia, 16 Phil. 137, 182 (1910), *citing* Novisima Recopilacion, Law 3, Title 11, Book 6.

[10] United States v. Lim Bin, 36 Phil. 924 (1917) (Malcolm, *J.*, *concurring*).

[11] SWAN SIK KO, NATIONALITY AND INTERNATIONAL LAW IN ASIAN PERSPECTIVE 342 (1990), *citing* Caram v. Montinola, Election Protest No. 24, Aug. 29, 1936, in 4 LAW J. 950 (1936).

[12] Sy Joc Lieng v. Sy Quia, 16 Phil. 137 (1910).

[13] SWAN SIK KO, *supra* note 11, at 342.

[14] *Id.*

> natural, and other illegitimate children of a mother belonging to another State born outside of the Spanish dominions;
>
> Second – The children specified in the preceding paragraph, born in the Spanish dominions or on board Spanish vessels on the high seas if they do not, on attaining the age of majority fixed in the laws of the kingdom, elect Spanish nationality;
>
> Third – Those being Spaniards, acquire another nationality, as well by renouncing the first as by accepting employment from another government without the authority of the sovereign;
>
> Fourth – The woman who contracts marriage with a subject of another State.[15]

Finally, there was the Law of July 4, 1870, otherwise known as the *Ley Extranjeria de Ultramar*, which was expressly extended to the Philippines by Royal Decree of July 13, 1870. It was published in the Official Gazette of Manila on September 18, 1870, and provided among other things:

> Art. 1. – These are foreigners: (*a*) All persons born of foreign parents outside of the Spanish territory; (*b*) Those born outside of the Spanish territory of foreign fathers and Spanish mothers while they do not claim Spanish nationality; (*c*) Those born in Spanish territory of foreign parents, or foreign fathers and Spanish mothers, while they do not make that claim; (*d*) Spaniards who may have lost their nationality; (*e*) Those born outside of the Spanish territory of parents who may have lost their Spanish nationality; and (*f*) The Spanish woman married to foreigner. For purposes of this article, national vessels are considered a part of the Spanish dominions.
>
> Art. 2. – Foreigners who under the laws obtain naturalization papers or acquire domicile in any town in the Spanish provinces of the Ultramar are considered Spaniards.[16]

Upon the effectivity of the Spanish Civil Code in the Philippines on December 18, 1889, Article 17 of the said law took effect in the Philippines. It determined who were Spanish citizens, thus:

> (a) Persons born in Spanish territory
>
> (b) Children of a Spanish father or mother, even if they were born outside of Spain,

---

[15] GARCIA, *supra* note 4, at 6-7.

[16] *Id.* at 7.

> (c) Foreigners who have obtained naturalization papers,
>
> (d) Those who, without such papers, may have become domiciled inhabitants of any town of the Monarchy.[17]

With the Spanish Civil Code taking effect in the Philippines, the doctrines of *jus soli* and *jus sanguinis* were adopted as the principles of attributing nationality at birth.[18] However, those born of alien parents in Spanish territory had to make a declaration opting into their Spanish nationality upon reaching the age of majority.[19] In addition, it provided that foreigners who had obtained naturalization papers and those who, without such papers, had acquired domicile in any town in the Monarchy were Spaniards, provided they renounced their former nationality, swore to support the Spanish Constitution, and recorded themselves as Spaniards in the civil registry.[20] However, it must be noted that the law establishing the civil registry was never extended and implemented in the Philippines. Thus, in his concurring opinion in *Caram v. Montinola,*[21] Justice Recto noted:

> It is a fact that articles 325 to 332, inclusive, of the Civil Code, which deal with civil registry, were never made in force in the Philippines. It results from this that, while on one side the Spanish Government wanted to give to those born in the Philippines of foreign parents the right to acquire Spanish nationality, indicating the legal means which should be availed of for that purpose, on the other it prevented the same being made by its failure to enforce in the Philippines that part of the Code which deals with civil registry.[22]

B. Citizenship Under the Malolos Constitution

After the outbreak of the Philippine Revolution against Spain, a Revolutionary Government was established by General Emilio Aguinaldo. Philippine Independence was proclaimed on June 12, 1898 in Kawit, Cavite.[23] On January 21, 1899, the Philippine Constitution of 1899, popularly known

---

[17] *Tecson,* 424 SCRA 277, 329, *citing* art. 17, Civil Code of Spain.

[18] Cortes & Lotilla, *supra* note 3, at 7.

[19] CODIGO CIVIL (1889), art. 19.

[20] Art. 25.

[21] Caram v. Montinola, Election Protest No. 24, Aug. 29, 1936, *in* 4 LAW. J. 950 (1936).

[22] *Id.*

[23] TEODORO AGONCILLO, HISTORY OF THE FILIPINO PEOPLE 207-12 (8th ed., 2012).

as the Malolos Constitution, was promulgated. On January 23, 1899, the First Philippine Republic was inaugurated in Malolos, Bulacan.[24]

Fittingly described by President Aguinaldo as "the most glorious token of the most noble aspirations of the Philippine Revolution and an irrefutable proof before the civilized world of the culture and capacity of the Filipino people for self-government,"[25] it was in the Malolos Constitution that the concept of Filipino Citizenship first appeared in Philippine statute books.

Article 6, Title IV of the Malolos Constitution on Filipinos and their National and Individual Rights declared that the following were Filipinos:

> (1) All persons born in Philippine territory. Any sea vessel where the Philippine flag is flown is considered, for this purpose a part of Philippine territory;
>
> (2) Children of a Filipino father or mother, even though they were born outside the Philippines;
>
> (3) Foreigners who have obtained the certificate of naturalization;
>
> (4) Those who, without such certificate have acquired domicile in any town within Philippine Territory.[26]

By declaring that "Filipinos" included all persons born in Philippine territory, it is apparent that the Malolos Constitution kept the principle of *jus soli*. Further, under the provisions of the Malolos Constitution, domicile was acquired by a foreigner who had been staying in any locality of the Philippine territory for two years without interruption, with an open abode, a known occupation, and who had been paying all the taxes imposed by the government.[27] The loss of Philippine Citizenship, however, was left to the determination of the legislative authority.[28]

Unfortunately, the Malolos Constitution was short-lived and was in force only in areas where the First Philippine Republic had control.[29] The American invasion of the Philippines and its establishment of a colonial government prevented the Malolos Constitution from being fully

---

[24] *Id.* at 216.
[25] *Id.*
[26] MALOLOS CONST. (1899), art. VI.
[27] Art. VI.
[28] Art. VI.
[29] *Poe-Llamanzares*, G.R. No. 221697 (Sereno, C.J., *concurring*).

implemented across the country. It also prevented the First Philippine Republic from gaining international recognition.

C. Citizenship under the American Period

Following the decline of the Spanish Empire at the turn of the 20th century and its defeat in the Spanish-American War, the United States and Spain signed the *Treaty of Peace Between the United States and Spain*, otherwise known as the Treaty of Paris, on December 10, 1898.[30] The treaty provided that Spain would cede its sovereign rights over the area occupied by the Philippine Archipelago to the United States for 20,000,000 US dollars as payment for the improvements made in the colony.[31] It is well-settled that "[a]n accepted principle of international law dictated that a change in sovereignty, while resulting in an abrogation of all political laws then in force would have no effect on civil laws, which would remain virtually intact."[32]

Under Article IX of the Treaty, the civil rights and political status, which includes citizenship, of the native inhabitants of the territories ceded to the United States by Spain would be determined by the Congress of the United States. The Treaty provides:

> Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty may remain in such territory or may remove therefrom, retaining in either even all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce, and professions, being subject in respect thereof to such laws as are applicable to foreigners. In case they remain in the territory, they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of the ratifications of this treaty, a declaration of their decisions to preserve such allegiance; in default of which declaration they shall be held to have adopted the nationality of the territory in which they reside.[33]

Upon the ratification of the Treaty of Paris, and pending legislation by the United States Congress on the civil rights and the political status of the

---

[30] AGONCILLO, *supra* note 23, at 220.

[31] *Id.*

[32] *Tecson*, 424 SCRA 277, 329.

[33] Treaty of Peace Between the United States and Spain art. IX, Dec. 10, 1898, Spain-United States, *available at* http://avalon.law.yale.edu/19th_century/sp1898.asp.

inhabitants of the Philippines, the latter ceased to be Spanish subjects.[34] Although American citizenship was not extended to them, the inhabitants were entitled to the "official protection" of the United States "in all matters where a citizen of the United States similarly situated would be entitled thereto," care being taken to have it appear that they were protected as native inhabitants of the Philippines and not as citizens of the United States.[35]

In the case of *In re Villapol*,[36] the Philippine Supreme Court had occasion to elaborate on the effect of the Treaty of Paris on the nationality of the son of a Spaniard who was residing in the Philippines. The Supreme Court ruled:

> The son of a Spaniard who while under parental authority preserved his parents' nationality and, on the date of the exchange of the ratifications of the Treaty of Paris between the United States and the Kingdom of Spain, was of age and lived aloof from his parents, was at liberty to abide by the law of the land; that is, in compliance with Article IX of said treaty, to recognize the new sovereignty of the Philippine Islands and to acquire the status of a person owing allegiance to the United States, and afterwards, according to the provisions of the Act of Congress of July 1, 1902, to become a citizen of the Philippine Islands.[37]

In *Bosque v. United States*,[38] the United States Supreme Court held that a Spanish resident from the Philippines who left in May 1899 without making any declaration of intention to preserve his allegiance to Spain, and remained away until the expiration of the period allowed by the Treaty continued to be a Spaniard, and did not, even though he intended to return, become a citizen of the Philippines under the new sovereignty.

In Justice Malcolm's concurring opinion in *United States v. Lim Bin*,[39] it was further stated that a child under the parental authority of his father who did not take advantage of the right of declaration of Spanish citizenship as provided for by the Treaty was considered a citizen of the Philippines. However, if a child had no parents or guardians in the Philippines at the time

---

[34] SWAN SIK KO, *supra* note 11, at 343-4.

[35] III MOORE, *supra* note 8, at 315.

[36] *In re* Villapol, 9 Phil. 706 (1908).

[37] *Id.* at 708.

[38] Bosque v. United States, 209 U.S. 91 (1908).

[39] United States v. Lim Bin, 36 Phil. 924 (1917) (Malcolm, *J., concurring*), *citing In re* Arnaiz, 9 Phil. 705 (1906).

the Treaty was ratified, he would retain his Spanish nationality without the necessity of declaring such to be his intention.[40]

With the Treaty of Paris concluded, President William McKinley of the United States issued his "Benevolent Assimilation" Proclamation on December 21, 1898. This proclamation was the first official indication of American policy regarding the Philippines. It expressed the intention of the United States to stay in the Philippines by exercising sovereignty over Filipinos.[41]

Thus, on July 1, 1902, the Philippine Organic Act, or the Philippine Bill of 1902,[42] was enacted. It was the first piece of comprehensive legislation of the United States Congress on the Philippines. Section 4 of the said Act provides:

> Section 4. That all inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in the Philippine Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain signed at Paris December tenth, eighteen hundred and ninety-eight.[43]

In implementing Article IX of the Treaty of Paris, this provision of the Philippine Bill was an act of mass naturalization.[44] It was in this document that the concept of Filipino Citizenship was recognized by non-Filipinos. The word "Filipino" was used by William Howard-Taft, the first Civil Governor General in the Philippines, when he initially made mention of it in his slogan, "[t]he Philippines for the Filipinos."[45] It must be noted, however, that from the time of the ratification of the Treaty of Paris, it was not until July 1, 1902 that the United States Congress spoke regarding the political status of the

---

[40] Rivera v. Pons, 4 Porto Rico Fed. 177 (1908).

[41] AGONCILLO, *supra* note 23, at 222-3.

[42] An Act Temporarily to Provide for the Administration of the Affairs of Civil Government in the Philippine Islands, and for Other Purposes (1902).

[43] § 4.

[44] JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 630 (2009 ed.).

[45] *Tecson*, 424 SCRA 277, 331.

native inhabitants of the Philippines, thereby defining who are citizens of the Philippines.

As a consequence, there was no law in the Philippines regarding citizenship from the period beginning April 11, 1899 to July 1, 1902.[46] Weight was given to the view, articulated in jurisprudential writing at the time, that the common law principle of *jus soli,* otherwise known as the principle of territoriality, operative in the United States and England, governed those born in the Philippine Archipelago within that period.[47] Thus, in the case of *Jose Tan Chong v. Secretary of Labor*;[48] the Supreme Court of the Philippines took note of the fact that the Supreme Court had held in numerous cases that the principle of *jus soli* is the rule in this jurisdiction.[49]

In 1916, the Philippine Autonomy Act of 1916,[50] otherwise known as the Jones Law, virtually restated the provisions of the Philippine Bill of 1902, as so amended by the Act of Congress in 1912.[51] Section 2 on Philippine Citizenship and Naturalization of the said law provides:

> Section 2. – *Philippine Citizenship and Naturalization* - That all inhabitants of the Philippine Islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December tenth, eighteen hundred and ninety-eight, and except such others as have since become citizens of some other country: *Provided*, That the Philippine Legislature, herein provided for, is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein.[52]

---

[46] GARCIA, *supra* note 4, at 23-6.

[47] *Poe-Llamanzares*, G.R. No. 221697 (Sereno, *C.J., concurring*), *citing Tecson*, 424 SCRA 277, 331.

[48] Tan Chong v. Sec. of Labor, 79 Phil. 249 (1947).

[49] *Id.* at 252.

[50] Act No. 240 (1916). The Jones Law of 1916.

[51] *Tecson*, 424 SCRA 277, 331.

[52] Act No. 240 (1916), § 2.

Under the Jones Law, a native-born inhabitant of the Philippines was deemed to be a citizen of the Philippines as of April 11, 1899, if he was (1) a subject of Spain on April 11, 1899; (2) residing in the Philippines on that date; and, (3) if he had not since that date become a citizen of some other country.

D. Citizenship under the 1935, 1973, and 1987 Constitutions

The 1987 Constitution enumerates who Philippine citizens are. Most of the provisions under the Article on Citizenship were lifted from the 1935 and the 1973 Constitutions, with some amendments. Thus, Section 1, Article IV of the 1987 Constitution declares:

> Section 1. The following are citizens of the Philippines:
>
> (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;
>
> (2) Those whose fathers and mothers are citizens of the Philippines;
>
> (3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
>
> (4) Those who are naturalized in accordance with law.[53]

This, in turn, references those citizens at the time of the 1973 Constitution. That Constitution provides:

> Section 1. The following are citizens of the Philippines:
>
> (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution.
>
> (2) Those whose fathers or mothers are citizens of the Philippines.
>
> (3) Those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five.
>
> (4) Those who are naturalized in accordance with law.[54]

---

[53] CONST. art. IV, § 1.
[54] CONST. (1973), art. III, § 1.

Again, the first paragraph of the aforementioned provision refers to citizens under the 1935 Constitution, who are:

> 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.[55]

As can be observed, while there was, at one brief time, divergent views on whether or not *jus soli* was a mode of acquiring citizenship, the 1935 Constitution brought an end to any such link with common law. It adopted, once and for all, *jus sanguinis* or blood relationship as the basis of Filipino citizenship.[56]

The 1973 Constitution also followed the doctrine of *jus sanguinis*—it disregarded a person's place of birth. As long as one was born of Filipino parents, he was considered a Filipino. However, unlike in the 1935 Constitution, Filipino mothers were placed by the 1973 Constitution on equal footing with Filipino fathers insofar as the determination of the citizenship of their children was concerned. The father or mother may be a natural-born Filipino or a Filipino by naturalization or election. The only important consideration was that the mother must be a Filipino at the time of the child's birth.

Likewise, Section 1(2) of Article IV of the 1987 Constitution declares as citizens of the Philippines those whose fathers or mothers are Filipino citizens. This innovation, first introduced by the 1973 Constitution and then adopted by the 1987 Constitution, did not come without any opposition. It came under assault during the deliberations of the 1986 Constitutional Convention.

---

[55] CONST. (1935), art. IV, § 1.

[56] *Tecson*, 424 SCRA 277, 332.

Taking a nationalist perspective, Former Chief Justice and Commissioner Roberto Concepcion saw it as a dangerous facilitation of the acquisition of citizenship, which could open up the exploitation of natural resources to "half-breeds."[57] Commissioner Ambrosio Padilla also argued that as the fruit of feminism, the provision ignored real differences between the children of a Filipino father and those of a Filipina mother. The mother most often leaves her country with her foreign husband to raise her child abroad.[58] These arguments were seen by Commissioner Felicitas Aquino as a "blandishment of purism" and "monumental hypocrisy."[59] In the end, there were only three votes in favor of returning to the 1935 Rule.

In *In re Ching*,[60] the Supreme Court held that:

> Under Article IV, Section 1(4) of the 1935 Constitution, the citizenship of a legitimate child born of a Filipino mother and an alien father followed the citizenship of the father, unless, upon reaching the age of majority, the child elected Philippine citizenship. This right to elect Philippine citizenship was recognized in the 1973 Constitution when it provided that "those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty five" are citizens of the Philippines. Likewise, this recognition by the 1973 Constitution was carried over to the 1987 Constitution which states that "those born before January 17, 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority" are Philippine citizens. It should be noted, however, that the 1973 and 1987 Constitutional provisions on the election of Philippine citizenship should not be understood as having a curative effect on any irregularity in the acquisition of citizenship for those covered by the 1935 Constitution. If the citizenship of a person was subject to challenge under the old charter, it remains subject to challenge under the new charter even if the judicial challenge had not been commenced before the effectivity of the new Constitution.[61]

The first Section of Article IV of the 1987 Constitution did not cure any defect in the acquisition of Philippine citizenship under the old Constitutions.[62] Philippine citizenship fraudulently acquired was still subject

---

[57] I RECORD CONST. COMM'N 201-202 (June 23, 1986).
[58] *Id.* at 204.
[59] *Id.* at 348-9.
[60] *In re* Ching, B.M. No. 914, 316 SCRA 1, Oct. 1, 1999.
[61] *Id.* (Citations omitted.)
[62] BERNAS, S.J., *supra* note 44, at 609-10.

to judicial challenge questioning the validity of one's citizenship regardless of the commencement date.[63] Accordingly, Philippine citizenship is not subject to *res judicata*, regardless of the date of the acquisition.

Finally, it is worth noting that more than two centuries ago, the concept of citizenship in the Philippines began as non-restrictive and broad. It did not require the level of analysis applied by our courts today. It was only when the Spanish Civil Code was introduced that the concepts of *jus soli* and *jus sanguinis* became relevant in the analysis of citizenship in the Philippines.

In the 20th century, citizenship laws evolved from what was merely a practical concept to one that is more specific, academic, and socially relevant. The Malolos Constitution offered an inclusive principle of *jus soli*, but it was superseded by the concept of Philippine citizenship enunciated in the 1902 Philippine Bill. The Commonwealth period and the crafting of the 1935 Constitution gave ascendancy to the principle of *jus sanguinis*, which was carried on to the 1973 and the 1987 Constitutions. Aside from immortalizing the *jus sanguinis* principle in our fundamental laws, those who drafted our Constitutions saw to it that Filipino citizenship would not exist in a vacuum.

II. PHILIPPINE CITIZENSHIP FRAMEWORK

Notably, the history of Philippine citizenship laws clearly demonstrates both its inclusiveness and exclusiveness. It demonstrates how our colonial experience, and our experiences as a nation and as a people have influenced our citizenship laws and our constitutional history. However, to fully understand the depth of Philippine citizenship laws, it is imperative that we examine certain concepts and principles that the law and jurisprudence have used and developed in enriching our understanding of Philippine citizenship. These include an understanding of who are citizens of the Philippines, who are natural-born and naturalized citizens, how Philippine citizenship is lost and renounced, and how it is re-acquired.

A. Natural-Born and Naturalized Citizens

Under the present Constitution, there are two ways of acquiring citizenship. The first is by birth, and the second is by naturalization. These ways of acquiring citizenship correspond to the two kinds of citizens, namely,

---

[63] *Id.*

the natural-born citizen and the naturalized citizen.[64] Those who elect Philippine citizenship, as in the case of those born before January 17, 1973 of Filipino mothers, are deemed natural-born citizens.[65] This is despite the argument that the act of election is a positive act to acquire or perfect Philippine citizenship.[66]

The distinction between natural-born citizens and naturalized citizens is significant because the Constitution has reserved certain constitutional offices for natural-born citizens. Further, under Article XII, natural-born citizens who have lost their Philippine citizenship are allowed to be transferees of private lands.[67] Philippine law favors natural-born status.[68]

What constitutes a natural-born citizen first appeared in the 1973 Constitution.[69] Under it, one who elects Philippine citizenship by virtue of Article III, Section 1(3) is not a natural-born Filipino. Under the regime of the 1935 Constitution, there was no categorical answer. It was the 1987 Constitution that finally settled the issue in providing that "[n]atural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be considered natural-born citizens."[70]

The reason behind the liberalization of natural-born status by the 1987 Constitution to include those citizens by election was explained by Commissioner Bernas in this wise:

> [W]e will recall that during the 1971 Constitutional Convention, the status of a natural-born citizenship of one of the delegates, Mr. Ang, was challenged precisely because he was a citizen by election. Finally, the 1971 Constitutional Convention considered him a natural-born citizen, one of the requirements to be a Member of the 1971 Constitutional Convention. The reason behind the decision was that a person under his circumstances already had the

---

[64] I ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, 188 (1990).

[65] CONST. art. IV, § 2.

[66] ISAGANI CRUZ, CONSTITUTIONAL LAW 359 (1989).

[67] BERNAS, S.J., *supra* note 44, at 641.

[68] Frivaldo v. COMELEC, G.R. No. 87193, 174 SCRA 245, June 23, 1989.

[69] CONST. (1973), art. III, § 4 provides that "[a] natural-born citizen is one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship."

[70] CONST. art. IV, § 2.

> inchoate right to be a citizen by the fact that the mother was a Filipino. [...] So the entire purpose of this proviso is simply to perhaps remedy whatever injustice there may be so that these people born before January 17, 1973 who are not naturalized and people who are not natural-born but who are in the same situation as we are considered as natural-born citizens. So, the goal of the Committee in proposing this is to equalize their status.[71]

It is evident that the scope of this provision is in consonance with the intent to equalize the status of those born of Filipino mothers before January 17, 1973, and those born of Filipino mothers on or after January 17, 1973.

In *Tecson v. Comelec*, the main issue was the citizenship of Fernando Poe, Jr. ("FPJ") who filed his certificate of candidacy to run for president of the Republic. The petitioners assailed his citizenship and claimed that he was not a natural-born citizen. They alleged that his parents were foreigners because his mother was American and his father a Spanish national; therefore, he was not a natural-born citizen.[72] The petitioners further asseverated that even granting that FPJ's father was a Filipino, he could not have validly transmitted his Filipino citizenship to FPJ because FPJ was the illegitimate child of an alien mother.[73]

In upholding FPJ's natural-born citizenship, the Supreme Court held:

> Where jurisprudence regarded an illegitimate child as taking after the citizenship of its mother, it did so for the benefit the child. It was to ensure a Filipino nationality for the illegitimate child of an alien father in line with the assumption that the mother had custody, would exercise parental authority and had the duty to support her illegitimate child. It was to help the child, not to prejudice or discriminate against him.
>
> The fact of the matter—perhaps the most significant consideration—is that the 1935 Constitution, the fundamental law prevailing on the day, month and year of birth of respondent FPJ, can never be more explicit than it is. Providing neither conditions nor distinctions, the Constitution states that among the citizens of the Philippines are 'those whose fathers are citizens of the Philippines.' There utterly is no cogent justification to prescribe conditions or distinctions where there are clearly none provided.[74]

---

[71] I RECORD CONST. COMM'N 189 (June 19, 1986).

[72] *Tecson*, 424 SCRA 277.

[73] *Id.*

[74] *Id.* at 348.

On the other hand, naturalization is the process by which a non-citizen becomes a citizen of the State thereby becoming part of the sovereign people of the Republic. Naturalization confers upon the naturalized citizen all the rights of a Philippine citizen except those reserved by the Constitution to natural-born citizens of the Philippines.[75] Under the generally accepted principles of international law, each territorial sovereign has the inherent and independent prerogative to determine for itself the classes of people entitled to be its citizens.[76] As citizenship involves political status, it should not be simply given away.[77]

Naturalization may be obtained through a general law of naturalization applied for in a judicial process. Such is the process prescribed in the *Revised Naturalization Law*[78] and the *Administrative Naturalization Law of 2000*.[79] Named individuals may also acquire citizenship through a special act of Congress.[80]

In naturalization proceedings, the applicant is duty-bound to strictly follow the procedure prescribed by the law.[81] It is not for the applicant to decide and to select the requirement which he believes are applicable to his case and disregard those which he believes are inconvenient or merely of nuisance value.[82]

B. Loss of Philippine Citizenship

The loss of Philippine citizenship upon naturalization in a foreign country is governed not by the Constitution, but by statutes governing the

---

[75] ISAGANI CRUZ & CARLO CRUZ, CONSTITUTIONAL LAW 817 (2015 ed.).

[76] United States v. Wong Kim Aok, 169 U.S. 649, 668 (1898); Roa v. Collector of Customs, 23 Phil. 315 (1912).

[77] Chua Eng Hok v. Republic, G.R. No. L-20479, 15 SCRA 170, 173, Oct. 29, 1965.

[78] Com. Act No. 473 (1939). 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.

[79] Rep. Act No. 9139 (2001). The Administrative Naturalization Law of 2000.

[80] *See, e.g.* Rep. Act No. 10636 (2013). An Act Granting Citizenship to Andray Blatche

[81] Republic v. De la Rosa, G.R. No. 104654, 232 SCRA 785, 795, June 6, 1994.

[82] *Id.*

loss and re-acquisition of citizenship. These include C.A. No. 473,[83] C.A. No. 63,[84] R.A. No. 965,[85] and R.A. No. 8171.[86]

C.A. No. 473 was enacted because of the need for a statute governing the loss of Philippine citizenship in view of the 1935 Constitution's directive that "Philippine citizenship may be lost or reacquired in the manner provided by law." The same provision was retained in the 1987 Constitution.[87] Thus, Section 1 of C.A. No. 63 provides:

> Section 1. *How citizenship may be lost.* – A Filipino citizen may lose his citizenship in any of the following ways and/or events:
>
> (1) By naturalization in a foreign country;
>
> (2) By express renunciation of citizenship;
>
> (3) By subscribing an oath of allegiance to support the constitution or laws of a foreign country upon attaining twenty one years of age or more: *Provided, however*, That a Filipino may not divest himself in any manner while the Republic of the Philippines is at war with any country;
>
> (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 forced 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 are 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

---

[83] Com. Act No. 473 (1939). Revised Naturalization Law.

[84] Com. Act No. 63 (1936). An Act Providing for Ways in Which Philippine Citizenship may be Lost or Reacquired.

[85] Rep. Act No. 965, (1953). 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 an Allied Foreign Country, and Taking an Oath of Allegiance incident Thereto.

[86] Rep. Act No. 8171 (1995). An Act Providing for the Repatriation of Filipino Women who have Lost their Philippine Citizenship by Marriage to Aliens and of Natural-Born Filipino.

[87] CONST. art. IV, § 3.

> 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 or 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 full enjoyment of his civil and political rights as Filipino citizen.
>
> (5) By cancellation of the certificates of naturalization;
>
> (6) By having been declared by competent authority, a deserted of the Philippine Armed Forces in time of war, unless subsequently, a plenary pardon or amnesty has been granted; and
>
> (7) In case of a woman, upon her marriage to a foreigner by if, by virtue of the laws in force in her husband's country, she acquired his nationality.
>
> The provisions of this section notwithstanding, the acquisition of citizenship by a natural-born Filipino citizen from one of the Iberian and any friendly democratic Ibero-American countries or from the United Kingdom shall not produce loss or forfeiture of his Philippine citizenship if the law of that country grants the same privilege to its citizens and such had been agreed upon by treaty between the Philippines and the foreign country from which the citizenship is acquired.[88]

Citizenship may be lost by making an express renunciation thereof, or through a judicial declaration that one has performed an act or a combination of acts tantamount to an express renunciation, or through the means provided by statute.[89] Unless there is proof that a Filipino has been naturalized in a foreign country, has expressly renounced Philippine citizenship, or has sworn

---

[88] Com. Act No. 63 (1936), § 1, *amended by* Rep. Act. No. 3834 (1963).

[89] Valles v. COMELEC, G.R. No. 137000, 337 SCRA 543, Aug. 9, 2000.

allegiance to a foreign country, such person is still considered a Filipino citizen.[90]

In *Aznar v. COMELEC*[91] (hereinafter "Aznar"), the Supreme Court ruled that the mere fact that a person was a holder of a certificate stating that he is an American citizen did not mean that he is no longer a Filipino, and that an application for an alien certificate of registration was not tantamount to the renunciation of his Philippine citizenship. Further, in *Mercado v. Manzano*[92] (hereinafter "Mercado"), it found that registration as an American Citizen in the Bureau of Immigration and Deportation and the holding of an American passport are just assertions of American nationality before the termination of American citizenship.

In *Valles v. COMELEC,*[93] the Supreme Court reiterated its ruling in *Aznar* and *Mercado*. It further held that the fact that a Filipino holds dual citizenship does not automatically disqualify him from running for public office. The Supreme Court held:

> [F]or candidates with dual citizenship, it is enough that they elect Philippine citizenship upon the filing of their certificate of candidacy, to terminate their status as persons with dual citizenship. The filing of a certificate of candidacy sufficed to renounce foreign citizenship, effectively removing any disqualification as a dual citizen. This is so because in the certificate of candidacy, one declares that he/she is a Filipino citizen and that he/she will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto. Such declaration, which is under oath, operates as an effective renunciation of foreign citizenship.[94]

The Court, however, has not shied away from ruling that citizenship has been lost in some cases. In *Yu v. Defensor-Santiago,*[95] the petitioner was issued a Portuguese passport in 1971. He was naturalized as a Filipino citizen in 1978. However, subsequent thereto, he declared his citizenship as Portuguese in commercial documents, and in 1981, he still had a Portuguese

---

[90] Mercado v. Manzano [hereinafter "Mercado"], G.R. No. 135083, 307 SCRA 630, May 26, 1999.

[91] Aznar v. COMELEC [hereinafter "Aznar"], G.R. No. 83820185 SCRA 703, May 25, 1990.

[92] *Mercado*, 307 SCRA 630.

[93] Valles v. COMELEC, G.R. No. 83820, 337 SCRA 543, Aug. 9, 2000.

[94] *Id.* at 554-5.

[95] Yu v. Defensor-Santiago, G.R. No. 83882, 169 SCRA 364, Jan 24, 1989.

passport, which expired in 1986. The Supreme Court ruled that his actions constituted renunciation.

In *Labo v. COMELEC*,[96] the petitioner went through naturalization for Australian citizenship and thereafter took the oath of allegiance renouncing Philippine citizenship. He subsequently claimed that his acquisition of Australian citizenship was invalid; therefore, he was a Filipino citizen qualified to run for Philippine public office. In ruling against his claim, the Supreme Court held that whether or not he validly acquired Australian citizenship is between him and Australia. The fact remained that he renounced his Philippine citizenship by taking an oath of allegiance to Australia. Since he had not taken any of the steps for re-acquiring Philippine citizenship, he is not one, and he is therefore not qualified to hold an elective office.

C. Reacquisition of Philippine Citizenship

Citizenship, once lost, may be reacquired either by naturalization or by repatriation. Repatriation is the recovery of original citizenship. Thus, if what was lost was naturalized citizenship, then naturalized citizenship is what will be reacquired. If what was lost was natural-born citizenship, then natural-born citizenship is what will be reacquired.[97]

As distinguished from the lengthy and tedious process of naturalization, repatriation simply consists of the taking of an oath of allegiance to the Republic of the Philippines. That oath must then be registered before the Local Civil Registry of the place where the person concerned resides or has last resided and in the Bureau of Immigration.[98]

In *Jacot v. Dal*,[99] the Supreme Court ruled that if a person who has reacquired Philippine citizenship wants to run for public office, he must follow the requirements set forth by R.A. No. 9225.[100] The Supreme Court noted that:

> [S]ection 5(2) of Republic Act No. 9225 compels natural-born Filipinos, who have been naturalized as citizens of a foreign

---

[96] Labo, Jr. v. COMELEC, G.R. No. 86564, 176 SCRA 1, Aug. 1, 1989.

[97] Bengson III v. House of Representatives Electoral Tribunal [hereinafter "Bengson III"], G.R. No. 142840, 357 SCRA 545, May 7, 2001.

[98] Angat v. Republic, G.R. No. 132244, 314 SCRA 438, Sept. 14, 1999; Altarejos v. Commission on Elections, G.R. No. 163256, 441 SCRA 655, Nov. 10, 2004.

[99] Jacot v. Dal, G.R. No. 179848, 572 SCRA 295, Nov. 27, 2008.

[100] Rep. Act No. 9225 (2003). Citizenship Retention and Re-acquisition Act of 2003.

> country, but who reacquired or retained their Philippine Citizenship (1) to take the oath of allegiance under Section 3 of Republic Act No. 9225, and (2) for those seeking elective public offices in the Philippines, to additionally execute a personal and sworn renunciation of any and all foreign citizenship before an authorized public officer prior or simultaneous to the filing of their certificates of candidacy, to qualify as candidates in Philippine elections.[101]

In *Bengson III v. House of Representatives Electoral Tribunal*,[102] Teodorico Cruz was a natural-born Filipino citizen enlisted in the Armed Forces of the United States in 1985, and was naturalized as an American citizen in 1990. In 1994, he was repatriated under R.A. No. 2630 and was subsequently elected as a member of the House of Representatives. His citizenship was then challenged on the ground that it was acquired by repatriation.[103] It was contended that this was not natural-born citizenship because the taking of an oath of allegiance to the Philippines and registering it with the local civil registry is a positive act which negates the application of the definition of the Constitution of natural-born citizens as "those who are citizens from birth without having to perform any act to acquire or perfect [their Philippine] citizenship."[104]

The Supreme Court upheld the natural-born citizenship of Cruz holding that he "is deemed to have recovered his original status as a natural-born citizen, a status which he acquired at birth as the son of a Filipino father."[105] It bears stressing that the act of repatriation allowed him to recover his original status before he lost his Philippine citizenship—natural-born status.[106]

D. Dual Citizenship

Dual citizenship is defined as the possession of citizenship of two different countries.[107] The concept of dual citizenship recognizes that a person may possess and exercise rights of nationality of two countries and be subject to the responsibilities of both.[108] It is generally a result of the concurrent application of different laws of two or more states; a person is

---

[101] Jacot v. Dal, G.R. No. 179848, 572 SCRA 295, 306. (Emphasis omitted.)
[102] *Bengson III*, 357 SCRA 545
[103] *Id.*
[104] *Id.* at 551.
[105] *Id.* at 556.
[106] *Id.*
[107] BLACK'S LAW DICTIONARY (6th ed. 1991).
[108] Kawakita v. United States, 343 U.S. 717 (1952).

simultaneously considered a national by the said states.[109] Providing for the matter, Article IV, Section 5 of the 1987 Constitution states that the dual allegiance of citizens is inimical to the national interest and shall be dealt with by law.

This provision cannot be found in any of our previous Constitutions. It originated from a concern expressed by a number of delegates to the Constitutional Convention which drafted the 1987 Constitution with regard to the impact of liberalized naturalization procedures on the policy on the exploitation of natural resources and national security.[110] To assuage these concerns, Commissioner Ople distinguished dual allegiance from dual citizenship by saying that dual allegiance is larger and more threatening than mere double citizenship, which is seldom intentional and, perhaps, never insidious.[111] Dual citizenship, on the other hand, is often a function of the accident of marriage or of birth on foreign soil.

In dealing with the matter as mandated by the Constitution, Congress enacted R.A. No. 9225,[112] otherwise known as the Citizenship Retention and Re-acquisition Act of 2003. Under this law, citizens of the Philippines who become citizens of another country are deemed not to have lost their Philippine citizenship. [113] Further, the law provided that those who are considered as dual citizens shall enjoy the full civil and political rights of a Philippine citizen, aside from the privileges that they may have as citizens of other states.[114]

In *Mercado,* the Supreme Court elaborated on the distinction between dual citizenship and dual allegiance. In this case, private respondent Eduardo Manzano garnered the highest number of votes for the position of vice mayor in the City of Makati in the 1998 elections. However, Manzano's proclamation as the winning candidate was suspended in view of the pending disqualification case against him due to the allegation that he was not a citizen of the Philippines.

The Second Division of the Commission on Elections (COMELEC) found that Manzano was born in 1955 of a Filipino father and a Filipino mother in the United States. Hence, he is an American citizen, following the

---

[109] JOVITO SALONGA, PRIVATE INTERNATIONAL LAW 166 (1995).

[110] BERNAS, S.J., *supra* note 44, at 233, *citing* 1 RECORD OF THE CONST. COMM'N, at 190-191.

[111] *Id.* at 233-35, *citing* 1 RECORD OF THE CONST. COMM'N, at 207-10.

[112] Rep. Act. No. 9225 (2003). Citizenship Retention and Re-acquisition Act of 2003.

[113] § 2.

[114] § 5.

jus soli rule, and at the same time, a Filipino citizen for being born of Filipino parents. Thus, the Second Division granted the petition seeking Manzano's disqualification, because under Section 40 of the Local Government Code and under the Charter of the City of Makati, persons with dual citizenship are disqualified from running for any elective position.

The COMELEC *en banc* reversed and declared Manzano qualified. Pursuant to the ruling of the COMELEC *en banc*, the board of canvassers proclaimed Manzano as the duly elected vice mayor of Makati City. Hence, the petitioner filed a petition for *certiorari* before the Supreme Court seeking to nullify the COMELEC *en banc's* resolution.[115] In sustaining Manzano's proclamation, the Supreme Court ruled that:

> [T]he phrase "dual citizenship" in R.A. No. 7160, 40(d) and in R.A. No. 7854, § 20 must be understood as referring to "dual allegiance." Consequently, persons with mere dual citizenship do not fall under this disqualification. Unlike those with dual allegiance, who must, therefore, be subject to strict process with respect to the termination of their status, for candidates with dual citizenship, it should suffice if, upon the filing of their certificates of candidacy, they elect Philippine citizenship to terminate their status as persons with dual citizenship considering that their condition is the unavoidable consequence of conflicting laws of different states.[116]

In outlining the distinction between dual citizenship and dual allegiance, the Supreme Court explained that "[t]he former arises when, as a result of the concurrent application of the different laws of the two or more states, a person is simultaneously considered a national by the said states."[117] The Supreme Court provided an example:

> For instance, such a situation may arise when a person whose parents are citizens of a state which adheres to the principle of *jus sanguinis* is born in a state which follows the doctrine of *jus soli*. Such person, *ipso facto* and without any voluntary act on his part, is concurrently considered a citizen of both states.[118]

As for dual allegiance, it "refers to the situation in which a person simultaneously owes, by some positive act, loyalty to two or more states."[119]

---

[115] *Mercado*, 307 SCRA 630, 636.

[116] *Id.* at 643.

[117] *Id.* at 640. (Citations omitted.)

[118] *Id.*

[119] *Id.* at 641.

The Supreme Court differentiated the two by saying that "while dual citizenship is involuntary, dual allegiance is the result of the individual's own volition."[120]

III. THE POE-LLAMANZARES CASE

The *Poe-Llamanzares* case began with petitions filed last November 2015, after the deadline for filing of certificates of candidacy, in the COMELEC. Former Senator Francisco Tatad, Atty. Estrella C. Elamparo, Professor Antonio Contreras and former University of the East Law Dean Amado Valdez filed petitions seeking to disqualify Senator Grace Poe ("Poe") from running for the presidency in the May 9 elections.[121] The grounds for the petitions were: (1) her being a foundling and as a consequence either stateless or not a natural-born citizen; (2) having renounced her citizenship, and that even with reacquisition, she was no longer a natural-born citizen; and (3) her lack of the necessary ten years of residence as required by the 1987 Constitution.[122]

An earlier disqualification case was also filed against Poe in the Senate Electoral Tribunal (SET) by Rizalino David. That petition alleged that as a foundling and as an adopted person, she was not qualified to be a senator of the Republic. On November 17, 2015, the SET, by a vote of five-four, ruled in favor of Poe.[123] That decision was appealed before the Supreme Court.[124]

In the meantime, the COMELEC disqualification petitions were successful. On December 11 and 23, 2015, the COMELEC ruled that Poe was disqualified to run for President.[125] Shortly after those decisions were released, Poe went to the Supreme Court and obtained a Temporary Restraining Order allowing her name to be retained in the ballot. Subsequently, on March 8, 2016, the Supreme Court released its decision on the case reversing the COMELEC decisions.[126] On April 5, 2016, the Court

---

[120] *Id.*

[121] *Poe-Llamanzares*, G.R. No. 221697.

[122] *Id.*

[123] David v. Poe-Llamanzares, SET Case No. 001-15, Nov. 17, 2015.

[124] On September 20, 2016, the Court, in a nine-three vote, upheld the said SET Decision and the subsequent Resolution affirming the same. David v. Senate Electoral Tribunal, G.R. No. 221538, Sept. 20, 2016.

[125] Tatad v. Poe-Llamanzares, SPA No. 15-002, Dec. 11, 2015.

[126] *Poe-Llamanzares*, G.R. No. 221697.

denied the motions for reconsideration[127] and the *Poe-Llamanzares* decision became final.

A. Procedural Considerations and Substantive Issues

Several points should be kept in mind in analyzing the *Poe-Llamanzares* decision. Foremost of this is that the Supreme Court is not a trier of facts. Second, the case that went to the Court was a Rule 64 petition from a decision of the COMELEC *en banc*. Both of these considerations meant that the proceedings before the Court were limited to oral arguments, and that the parties were no longer allowed to present any additional evidence that was not formally offered before the COMELEC.

The rule is that the findings of fact of the COMELEC on this evidence are binding on the Court, unless such findings were arrived at with grave abuse of discretion.[128] If that were the case, the Court may declare a different conclusion from that of the COMELEC based on its own appreciation of the same evidence. Primarily, however, the Court's interest focused on questions of law rather than questions of fact. The facts had been largely settled and uncontested from the beginning, such as Poe's origin of birth as a foundling, her acquisition of American citizenship, her oath of allegiance under R.A. No. 9225, and her eventual renunciation of American citizenship. These facts were not questioned; it is their effects and consequences in law and jurisprudence that were at the heart of the oral arguments and, ultimately, the deliberations of the Court.

Since the case brought to the Supreme Court was a Rule 64 petition from unfavorable resolutions of the COMELEC,[129] Poe had to show that the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Poe had to persuade the Court that the COMELEC did not merely commit an error of law when it ruled that she is not a natural-born citizen and that she had not been a Philippine resident for the past 10 years immediately prior to the May 9, 2016 Elections. She had to prove that the COMELEC arrived at the conclusion with grave abuse of discretion.

There is no hard and fast rule that clearly draws the distinction between a mere error of law and grave abuse of discretion. Although jurisprudence has laid down what, in theory, would constitute a mere error of law as opposed to an error committed in grave abuse of discretion, that same

---

[127] Poe-Llamanzares v. COMELEC, G.R. No. 221697, Apr. 5, 2016 (Resolution).
[128] Alcantara v. COMELEC, G.R. No. 203646, 696 SCRA 547, Apr. 16, 2013.
[129] *Poe-Llamanzares*, G.R. No. 221697.

jurisprudence has taught us that such a distinction is more a principle of law than an immutable rule. Consequently, the primary question in the oral arguments was whether or not the COMELEC's ruling that Poe is neither a natural-born citizen nor a 10-year resident are such blatant and palpable errors of law making them acts that constitute grave abuse of discretion. Substantially, the main issues the Justices had to resolve were the matter of Poe's citizenship and residency.[130]

With respect to Poe's citizenship, the question was: does the 1935 and subsequent Philippine Constitutions exclude foundlings—who by layman's definition cannot identify their birth origins—from ever being recognized as natural-born citizens? Can a liberal interpretation of the 1935, 1973, and 1987 Constitutions allow a preponderance of evidence or substantial evidence, fortified by reasonable presumptions, establish natural-born status? Or do these Constitutions necessarily require, as others claim, conclusive evidence or proof that is beyond question and doubt? Is a birth certificate and the presumption of regularity in its execution the only acceptable document in determining one's status as a natural-born citizen? Or are there other pieces of evidence and presumptions that could be considered, especially in circumstances where the standard evidence and presumption are patently inapplicable?

On the subject of Poe's residency, the main issue was whether or not Poe meets the 10-year residency requirement for presidential aspirants. Was Poe already a resident of the Philippines as early as May 9, 2006, even before she reacquired her Philippine citizenship under R.A. No. 9225? When does the establishment of Philippine residency start for aliens or former Filipinos who are eventually repatriated by taking an oath of allegiance under R.A. No. 9225? Is a Bureau of Immigration certificate the exclusive proof of Philippine residency of aliens or of former Filipinos yet to be repatriated under R.A. No. 9225? Does the Philippine residency of repatriated Filipinos only start on the day they take their oath of allegiance under R.A. No. 9225?

One final issue of specific interest was whether or not Poe committed material misrepresentation when she declared in her Certificate of Candidacy ("CoC") that she is a natural-born citizen and a 10-year resident of the Philippines before the 2016 Elections. For one's CoC to be cancelled on the ground of material misrepresentation, it must be proven that such misrepresentation was knowingly made, i.e. deliberately, willfully, misleadingly, and maliciously.[131] In short, it must be proven that Poe knew

---

[130] *Id.*

[131] *Tecson*, 424 SCRA 277, 350.

from the very beginning that she was not a natural-born citizen or a 10-year resident. The question the Court may ask is whether or not there can be material misrepresentation in asserting a fact that, in itself, consists of a difficult question of law that has kept even legal experts divided in their opinions.

B. The Majority Opinion: Grave Abuse of Discretion from Roots to Fruit

The Supreme Court decision, released in March 8, 2016, overturned the COMELEC's adverse rulings against Poe.[132] In the 47-page decision penned by Associate Justice Jose Perez, the Supreme Court pronounced the COMELEC resolutions, both at the division and *en banc* levels, as "diseased with grave abuse of discretion from roots to fruit."[133] If affirmed, these COMELEC resolutions would have resulted in the "illegitimate elimination of an electoral choice, a choice who appears to be one of the frontrunners in all the relevant surveys."[134]

The majority opinion was concurred in by eight other Justices. Of the eight, five had separate concurring opinions: Chief Justice Ma. Lourdes Sereno, and Justices Presbitero Velasco Jr., Marvic Leonen, Francis Jardeleza and Alfredo Benjamin Caguioa. That left three who did not file separate concurring opinions. Of these three, Justices Lucas Bersamin and Jose Mendoza signed the majority opinion without qualifications, while Justice Diosdado Peralta joined the separate opinion of Justice Caguioa. On the other hand, five Justices wrote dissenting opinions: Justice Antonio Carpio, Justice Arturo Brion, Justice Teresita de Castro, Justice Mariano del Castillo and Justice Estela Bernabe, while Justice Bienvenido Reyes joined Justice Bernabe in her dissent.

All nine Justices in the majority opinion agreed that Poe did not commit any material misrepresentation in her CoC.[135] On that basis alone, Justice Caguioa opined that the COMELEC resolutions should be nullified.[136] There is nothing new in this pronouncement. According to the 1987 Constitution, the Presidential Electoral Tribunal (PET) has sole jurisdiction to rule on election disputes related to qualifications.[137] The COMELEC can

---

[132] *Poe-Llamanzares*, G.R. No. 221697.

[133] *Id.*

[134] *Poe-Llamanzares*, G.R. No. 221697 (Sereno, *C.J., concurring*).

[135] *Poe-Llamanzares*, G.R. No. 221697.

[136] *Poe-Llamanzares*, G.R. No. 221697 (Caguioa, *J., concurring*).

[137] CONST. art. VII, § 4.

cancel certificates of candidacy if there is an express fraud or misrepresentation, like providing the wrong birth date or residence but not if the issues go to the core qualifications, for example the legal status of the candidate.[138]

Procedural issues aside, the majority also squarely addressed the issues raised in the petitions, namely, the citizenship and residency of Poe.

In ruling that Poe is a natural-born Filipino citizen, the Court made a factual finding. They found that Poe has "typical Filipino features" and being "abandoned in a Catholic Church in a municipality where the population of the Philippines is overwhelmingly Filipinos such that there would be more than a 99% chance that a child born in the province would be a Filipino."[139] The Court held that this "would indicate more than ample probability if not statistical certainty" that her parents are Filipinos.[140] To assume otherwise is to accept the absurd—if not the virtually impossible—as the norm, the Court added.[141]

Parenthetically, according to the Court, the burden of proof was on private respondents to show that Poe is not a natural-born Filipino citizen.[142] The private respondents should have shown that both her parents were aliens. The Court held that "[h]er admission that she is a foundling did not shift the burden to her because such status did not exclude the possibility that her parents were Filipinos, especially as in this case where there is a high probability, if not certainty, that her parents are Filipinos."[143]

Discussing further, the Court said that as a matter of law, foundlings are "as a class, natural-born citizens."[144] The Court explained that "[w]hile the 1935 Constitution's enumeration is silent as to foundlings, there is no restrictive language which would definitely exclude foundlings either."[145] The Court also noted that both domestic and international laws grant citizenship to foundlings. Thus, our adoption laws require that the adoptee must be a Filipino to be adopted.[146] International laws which form part of the laws of

---

[138] *Poe-Llamanzares*, G.R. No. 221697.
[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] *Id.*
[144] *Id.*
[145] *Id.*
[146] *Id.*

our country, such as the Universal Declaration of Human Rights and UN Convention on the Rights of the Child (UNCRC), also confer citizenship on foundlings.[147]

On the matter of Poe's residence, the Court also made a factual finding and gave full credence to her assertion that she will have been a resident for 10 years and 11 months on the day before the 2016 elections.[148] The Court cited the voluminous records presented by Poe showing that she reestablished her domicile in the Philippines as early as May 24, 2005, and not in November 2006, the date she inadvertently, albeit in good faith, indicated in her CoC as Senator. For the majority of the Court, it is the fact of residence that determines residence for purposes of compliance with the constitutional requirement of residency for election as President.[149]

C. The Sereno Concurrence: A Comprehensive Argument

Chief Justice Sereno formalized in writing the position she verbalized in the oral arguments by filing a concurring opinion. Her opinion is comprehensive, gives an overview of the history of the law and jurisprudence of citizenship in the Philippines which informed the first part of this article, and covers all the arguments in favor of a liberal interpretation of citizenship.

She started her opinion with words that will be recognized as classic:

> It is important for every Member of this Court to be and to remain professionally indifferent to the outcome of the 2016 presidential election. Whether it turns out to be for a candidate who best represents one's personal aspirations for the country or who raises one's fears, is a future event we must be blind to while we sit as magistrates. We are not the electorate, and at this particular juncture of history, our only role is to adjudicate as our unfettered conscience dictates. We have no master but the law, no drumbeater but reason, and in our hearts must lie only the love for truth and for justice. This is what the Constitution requires of us.[150]

As a beacon of practical wisdom, of the primacy of the rule of law, and of the commitment to compassionate justice, Chief Justice Sereno's

---

[147] *Id.*

[148] *Id.*

[149] *Id, citing* Romualdez-Marcos v. COMELEC, G.R. No. 119976, 248 SCRA 300, 326, Sept. 18, 1995.

[150] *Poe-I Jamanzares*, G.R. No. 221697 (Sereno, *C.J., concurring*).

concurring opinion does not disappoint. While voting to grant the consolidated petitions filed by Poe, the Chief Justice asserted what the challenged COMELEC rulings would have accomplished had they been affirmed: "the illegitimate elimination of an electoral choice, a choice who appears to be one of the frontrunners in all the relevant surveys."[151]

On the residency issue, the Chief Justice pointed out that Poe "has shown by an abundance of substantial evidence that her residence in the Philippines commenced on May 24, 2005 and that the statement she made in the 2012 CoC was due to honest mistake."[152] Unfortunately for private respondents, they failed to meet Poe's evidence head on, resulting in their failure to discharge their burden of proving material misrepresentation with respect to residency.[153]

In concurring with the majority, the Chief Justice stressed that under Section 78, it is not enough that a person lacks the relevant qualification; she must have also made a false representation of the lack of qualification in the certificate of candidacy.[154] The denial of due course to, or the cancellation of, the certificate of candidacy is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which relates to the qualifications required of the public office the candidate is running for. In short, a claim of good faith is a valid defense.[155]

Chief Justice Sereno asserted that the surrounding circumstances in the case did not exclude the possibility that Poe made an honest mistake, both in reckoning her period of residence in the Philippines as well as in determining the proper end period of such residence at the time.[156] She reminded the Court of a basic principle:

> Good faith is always presumed, and in the face of tangible evidence presented to prove the truth of the matter, which is independent of the circumstances that caused petitioner to make that fateful statement of "6 years and 6 months," it would be difficult to dismiss her contention that such is the result of an honest mistake.[157]

---

[151] *Id.*

[152] *Id.*

[153] *Id.*

[154] *Id.*, *citing* Tagolino v. House of Representatives Electoral Tribunal, G.R. No. 202202, 693 SCRA 574, 591, Mar. 19, 2013.

[155] *Poe-Llamanzares*, G.R. No. 221697 (Sereno, *C.J., concurring*).

[156] *Id.*

[157] *Id.*

On the argument that Poe was merely a *balikbayan*, the Chief Justice had this to say:

> [T]he *Balikbayan* Program, as conceptualized from the very beginning, envisioned a system not just of welcoming overseas Filipinos (Filipinos and/or their families and descendants who have become permanent residents or naturalized citizens of other countries) as short-term visitors of the country, but more importantly, one that will encourage them to come home and once again become permanent residents of the Philippines.[158]

Thus, for her, that an alien holds a non-immigrant visa is not controlling. [159] She stated that "[s]o long as the intended stay of a nonimmigrant does not violate any of the legal restriction, sufficient *animus manendi* may be appreciated and domicile may be established."[160]

As to citizenship, Chief Justice Sereno opined that "presumptions operated profoundly in [Senator Poe's] favor to the effect that a foundling is a natural-born citizen."[161] To the Chief Justice, the COMELEC committed grave abuse of discretion when it went beyond an examination of the patent falsity of the representations in the CoC. In her view, Poe presented a preponderance of evidence to prove her declaration in her 2016 certificate of candidacy for President that as of May 2005, she had definitely abandoned her residence in the US and intended to reside permanently in the Philippines. Unfortunately, the COMELEC disregarded these pieces of evidence to find that Poe failed to overcome the probative weight of the alleged admission against interest in her CoC.[162]

Finally, Chief Justice Sereno concluded her discussion by saying that "foundlings are provided legal protection by the state through statutes, rules, issuances and judicial decisions allowing their adoption." [163] Specifically, enactments and issuances on adoption are significant because they effectively recognize foundlings as citizens of the Philippines. All told, she stood by her stance that Poe did not lose her natural-born status when she reacquired Philippine citizenship under R.A. No. 9225.[164]

---

[158] *Id.*
[159] *Id.*
[160] *Id.*
[161] *Id.*
[162] *Id.*
[163] *Id.*
[164] *Id.*

In a brilliant section of her concurrence, the Chief Justice listed all the positions in governments that require natural-born citizenship. She pointed out that the repercussions of an adverse Supreme Court ruling on foundlings are too compelling to ignore:

> A declaration that individuals of unknown parentage are not Filipinos, or at best naturalized citizens, may lead to their removal from government posts; a demand to return all emoluments and benefits granted in connection with their offices; and even the end of pension benefits presently being enjoyed by affected retirees. The proposal for Congress to remedy the unjust situation that would result from an affirmance by this Court of unjust COMELEC rulings is too odious a solution to even consider. It is not the function of Congress to correct any injustice that would result from this Court's proposed unhappy ruling on foundlings. Rather, it is this Court's first and foremost duty to render justice to them, as the Constitution requires.[165]

Near the end of her opinion, Chief Justice Sereno reminded us:

> The duty of the Court to interpret the Constitution is impressed with the equally vital obligation to ensure that the fundamental law serves the ends of justice and promotes the common good. After all, the Constitution is meant to be the legal embodiment of these values, and to be the people's instrument for the protection of existing natural rights and basic human liberties.[166]

D. Concurrences by Leonen and Jardeleza: A Focus on Due Process

In his separate opinion, Justice Marvic Leonen said that in inferring Poe's lack of intent to establish domicile from the actions of her husband, the COMELEC committed willful misappreciation of the evidence presented.[167] The COMELEC's posture in effect presupposes that the wife cannot establish domicile separate from the husband which, according to him, is contrary to the state of Philippine law which requires fundamental equality between men and women.[168]

---

[165] *Id.*

[166] *Id.*

[167] *Poe-Llamanzares*, G.R. No. 221697 (Leonen, *J.*, *concurring*).

[168] *Id.*

Like the other justices who concurred with the *ponencia,* Justice Leonen also found that COMELEC failed to appreciate overwhelming pieces of evidence presented by Poe such as:

> First, the husband was both a Filipino and American citizen.
>
> Second, the husband and the wife uprooted their children, removed them from their schools in the United States, and enrolled them in schools in the Philippines.
>
> Third, one of their children, a baby, was likewise uprooted and brought to the Philippines to stay here permanently.
>
> Fourth, arrangements were made to transfer their household belongings in several container vans from the United States to the Philippines.
>
> Fifth, petitioner did not seek further employment abroad.
>
> Sixth, petitioner's husband resigned from his work and moved to the Philippines, among other evidence.
>
> Seventh, petitioner's husband was employed in the Philippines.
>
> Eighth, they sold the place where they stayed in the United States.
>
> Ninth, they bought property in the Philippines and built a new family home.
>
> Tenth, petitioner registered as a voter again in the Philippines and actually voted.
>
> Eleventh, petitioner registered as a taxpayer in the Philippines and paid taxes.
>
> Lastly, petitioner and her husband formally made announcements with respect to their change of postal address.[169]

Justice Leonen stated that there was no material misrepresentation in the evidence on which petitioner based her claim of residency.[170] He concluded that "it was not only error, but grave abuse of discretion on the

---

[169] *Id.*

[170] *Id.*

part of the Commission on Elections to trivialize the pieces of evidence presented by Poe in order to justify its conclusion."[171]

Touching on the authority of the COMELEC, Justice Leonen said that the poll body "may validly take cognizance of petitions involving qualifications only if the petitions were filed after election and only with respect to elective regional, provincial, city, municipal, and barangay officials."[172] He agreed with Poe that Section 78 should be read in relation to Section 74's enumeration of what CoCs must state.[173] He explained that under Section 74, a person filing a CoC declares that the facts stated in the certificate "are true to the best of his [or her] knowledge," but that the law does not require "absolute certainty"—it allows for mistakes if made in good faith.[174] This, according to him, is consistent with the "summary character of proceedings relating to certificates of candidacy."[175] Justice Leonen categorically stated that "[t]here was no material misrepresentation with respect to petitioner's conclusion that she was a natural-born Filipina. Her statement was not false."[176] On this issue, he asserted that respondents were unable to disprove any of the material facts supporting Poe's conclusion.[177]

Justice Leonen explained that the burden of proof of material misrepresentation in an action for the cancellation of a CoC rests on the party alleging it, citing Section 78 of the Omnibus Election Code.[178] However, he concluded that "private respondents [...] failed to establish a *prima facie* case of material misrepresentation to warrant a shift of burden of evidence to petitioner," for which reason, according to him, the COMELEC should have dismissed the petitions at that stage.[179]

Using a common sense approach, Justice Leonen pointed out that "[Poe's] admission that she is a foundling merely established that her biological parents were unknown. It did not establish that she falsely misrepresented that she was born of Filipino parents. It did not establish that

---

[171] *Id.*

[172] *Id.*

[173] *Id.*

[174] *Id.*, *citing* Romualdez-Marcos v. COMELEC, 318 Phil. 329 (1995).

[175] *Id.*, *citing* Romualdez-Marcos v. COMELEC, 318 Phil. 329, 463 (1995) (Mendoza, *J.*, *separate opinion*).

[176] *Poe-Llamanzares*, G.R. No. 221697 (Leonen, *J.*, *concurring*).

[177] *Id.*

[178] *Id.*, *citing* Salcedo II v. Commission on Elections, 371 Phil. 377 (1999).

[179] *Id.*

both her biological parents were foreign citizens."[180] In asserting as they did, private respondents and COMELEC would arrive at the unjust and unwarranted presumption that "all newborns abandoned by their parents even in rural areas in the Philippines are presumed not to be Filipinos."[181] He noted:

> [This] approach would give rise to the unreasonable requirement that those who were abandoned—even because of poverty or shame—must exert extraordinary effort to search for the very same parents who abandoned them and might not have wanted to be identified in order to have a chance to be of public service.[182]

On the issue of Poe's citizenship, Justice Leonen said that Poe did not undergo the naturalization process; rather, she reacquired her natural-born Filipino citizenship through R.A. No. 9225.[183] Hence, to consider Poe, a foundling, as not natural-born will create "a class of citizens who are stateless due to no fault of theirs."[184] This belief, for him, is inconsistent with the Constitution's citizenship provisions, which requires "only evidence of citizenship and not of the identities of the parents."[185] The effect is the creation of a class of "citizens with limited rights based on the circumstances of their births," which he says is discriminatory.[186]

In Justice Leonen, it was not just Poe who found an advocate, but all foundlings and global Filipinos who will benefit from his position. In Justice Leonen, who famously said during the oral argument that there is a reason members of the Supreme Court are not called legalists but Justices, human rights and basic decency found a champion.

Associate Justice Jardeleza's concurring opinion followed a similar approach. He noted Poe's claim that she is a natural-born citizen because of the presumption under international law that a foundling is a citizen of the place where he or she was born.[187] He also mentioned her argument that the deliberations of the 1934 Constitutional Convention reveal the intent of the framers to consider foundlings as Filipino citizens from birth. He found that

---

[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] *Id.*
[184] *Id.*
[185] *Id.*
[186] *Id.*
[187] *Poe-Llamanzares*, G.R. No. 221697 (Jardeleza, *J.*, *concurring*).

Poe presented enough evidence to buttress her claims. On the other hand, he noted the COMELEC's and private respondents' contention that because she is a foundling whose parentage is unknown, she could not definitively prove that either her father or mother is a Filipino. [188]

He gave more weight to Poe's arguments. He argues persuasively that the approach taken by the COMELEC in using conclusive presumptions, citing the case of *Dycaico v. Social Security System*,[189] is tenuous as it presumed a fact that is not necessarily or universally true. This is disfavored on due process grounds.[190] Although the possibility that the parents of a foundling are foreigners can never be discounted, this was not always the case.[191] Delving on possibilities, he said that "[l]ogic tells us that there are four possibilities with respect to the biological parentage of Poe:"[192]

> (1) [B]oth her parents are Filipinos; (2) her father is a Filipino and her mother is a foreigner; (3) her mother is a Filipino and her father is a foreigner; and (4) both her parents are foreigners. In three of the four possibilities, Poe would be considered as a natural-born citizen.[193]

Borrowing from the Solicitor General's Comment, Justice Jardeleza cited data from the Philippine Statistics Authority (PSA) suggesting that, in 1968, there was a 99.8% statistical probability that her parents were Filipinos. [194] Given these statistics, he found that "Poe's parents [being] unknown does not automatically discount the possibility that either her father or mother is a citizen of the Philippines."[195]

Justice Jardeleza stated that the COMELEC was effectively subjecting Poe to a standard of proof of absolute certainty because it was insisting that Poe must present DNA or other definitive evidence.[196] This is even higher than proof beyond reasonable doubt, which requires only moral certainty. He pointed out that in criminal cases, neither DNA evidence nor direct evidence

---

[188] *Id.*

[189] Dycaico v. Social Security System, G.R. No. 161357, 476 SCRA 538, Nov. 30, 2005.

[190] *Poe-Llamanzares*, G.R. No. 221697 (Jardeleza, J., *concurring*).

[191] *Id.*

[192] *Id.*

[193] *Id.*

[194] *Id.*

[195] *Id.*

[196] *Id.*

are necessary to sustain a conviction.[197] Clearly, by insisting on such a standard, the COMELEC violated Poe's due process rights.[198]

According to him, another due process violation was committed by the electoral body when it presumed that Poe was not a natural-born citizen.[199] Making this injustice worse, the COMELEC went on to set an unreasonably high burden to overcome such presumption.[200] This unduly deprived Poe of citizenship, which has been described as "the right to have rights, from which the enjoyment of all other rights emanates."[201]

For Justice Jardeleza, the "COMELEC's unwarranted presumption against Poe as a foundling likewise violate[d] the equal protection clause."[202] He characterized the COMELEC's presumption as follows:

> In placing foundlings at a disadvantaged evidentiary position at the start of the hearing then imposing a higher quantum of evidence upon them, thereby effectively creating two classes of children: (1) those who know their biological parents; and (2) those whose biological parents are unknown. [...] [T]hose belonging to the first class face no presumption that they are not natural-born and, if their citizenship is challenged, they may prove their citizenship by substantial evidence. On the other hand, those belonging to the second class, such as Poe, are presumed not natural-born at the outset and must prove their citizenship with near absolute certainty.[203]

Another point emphasized by Justice Jardeleza, making direct reference to the statement of the Solicitor General, is that foundlings are a "discrete and insular" minority who should be protected from unreasonable discrimination by applying the strict scrutiny standard.[204] The effect of the application of strict scrutiny is that "[t]he burden is on the government to prove that the classification is necessary to achieve a compelling state interest and that it is the least restrictive means to protect such interest."[205] The

---

[197] *Id.*

[198] *Id.*

[199] *Id.*

[200] *Id.*

[201] *Id.*

[202] *Id.*

[203] *Id.*

[204] *Id. citing* White Light Corp. v. City of Manila, G.R. No. 122846, 576 SCRA 416, 436, Jan. 20, 2009.

[205] *Id.*

rationale for such an approach is that "the political processes ordinarily relied upon to protect minorities may have broken down [and] one aspect of the judiciary's role under the equal protection clause is to protect discrete and insular minorities from majoritarian prejudice or indifference."[206]

E. The Velasco Concurrence: An Appeal to Reason

In concurring with the majority, Justice Presbitero Velasco underscored what is already settled in jurisprudence: that intent on the matter of residency and domicile is basically "a state of mind that exists only in idea; its existence can only be determined by the overt act that translate it to fact."[207] For Justice Velasco, the fulfillment of the intent to change domicile can be made *via* a series of steps, an "incremental process," or the execution of "incremental transfer moves."[208]

In Justice Velasco's view, the series of acts taken by Poe that started in early 2005 showed that Poe's change of domicile and repatriation from the US to the Philippines was "accomplished, not in a single key move but, through an incremental process."[209] Specifically, Justice Velasco pointed out the definite incremental moves that Senator Poe took to re-acquire her domicile of origin, namely: the repatriation of her children and their pet from the US to the Philippines; the repatriation of her husband and his employment in the Philippines; the transfer of their household goods, furniture, cards, and personal belongings from the US to the Philippines; the purchase of a residential condominium in the Philippines; the purchase of a residential lot and the construction of her family home in the country; her oath of allegiance under R.A. No. 9225; her children's acquisition of derivative Philippine citizenship; the renunciation of her US citizenship; her service as chairperson of the MTRCB; and her candidacy and service as a senator of the Philippines.

All these acts, Justice Velasco pointed out, are indicative of Sen. Poe's intent to stay and serve in the country permanently, and not simply to make a temporary sojourn.[210] For him, this must be a necessary conclusion as Poe is not an ordinary "alien" trying to establish her domicile in a "foreign country," *viz:*

---

[206] *Id.*, *citing* Richmond v. J.A. Croson Co., 488 U.S. 169, 1989.
[207] *Poe-I Jamanzares*, G.R. No. 221697 (Velasco, *J.*, *concurring*). (Citations omitted.)
[208] *Id.* (Citations omitted.)
[209] *Id.*
[210] *Id.*

> She was born and raised in the Philippines, who went through the tedious motions of, and succeeded in, reestablishing her home in the country. For him, Poe is, by no means, foreign to the Philippines nor its people. She maintained close ties to the country and has frequently visited it even during the time she was still recognized as a US citizen.[211]

Therefore, Justice Velasco concluded:

> [H]er past, her roots were in the Philippines, it should not be rendered burdensome for her to establish her future in the country.
>
> After all, the residence requirement was in context intended to prevent a stranger from holding office on the assumption that she would be insufficiently acquainted with the conditions and needs of her prospective constituents. Having helped her father during the presidential campaign and having served as a senator and before that an MTRCB chairperson, it cannot be contested that she has more than enough knowledge of the country, its people, and the many issues and problems that beset them. The mischief that the residency requirement was designed to prevent is clearly not present in this case.[212]

On the issue of the citizenship, Justice Velasco posited that while it is not denied that Poe was abandoned by her biological parents, her abandonment on September 3, 1968 in Jaro, Iloilo does not obliterate the fact that she had biological parents and that those who filed the case against her before the COMELEC have not shown any proof that the former were not Filipino citizens.[213]

Echoing the position of the majority in the main opinion, Justice Velasco argued that to shift the burden of proof to foundlings like Poe to prove the citizenship of their parents who had abandoned them is as "preposterous as rubbing salt on an open bleeding wound; it adds insult to the injury."[214] According to him, the judiciary, as the instrumentality of the State in its role of *parens patriae,* must ensure that the abandoned children, the foundlings, and those who were forced into an unfavorable position are duly protected.[215]

---

[211] *Id.*
[212] *Id.* (Citations omitted.)
[213] *Id.*
[214] *Id.*
[215] *Id.*

F. The Caguioa Concurrence: Adherence to Procedure

In his concurring opinion joined by Justice Diosdado Peralta, Justice Alfredo Caguioa examined the scope of the Supreme Court's authority to review the decisions and resolutions of the COMELEC. For Justice Caguioa, it is not necessary for the Supreme Court to finally and definitively determine Poe's qualifications, keeping in mind the narrow confines of the Court's *certiorari* jurisdiction and the principle of judicial restraint. However, it is his opinion that "the COMELEC grossly misappreciated the evidence when it found that Poe deliberately intended to mislead the electorate when she stated that she is a natural-born citizen, knowing fully well that she is a foundling."[216] For him, it was clear that Poe did not have any intention to deceive anybody with respect to her residency and her citizenship when she filed her CoC for the presidency of the Republic.[217]

Like his brethren in the majority, Justice Caguioa deemed the act of the COMELEC in shifting the burden of proof to Poe as grave abuse of discretion; it should have been those who filed the disqualification cases against her in the COMELEC who had to prove the three elements that furnish the grounds for the denial of due course or the cancellation of her CoC. For Justice Caguioa, shifting of the burden of proof unfairly skewed the analysis and resulting conclusions reached by the COMELEC in the petitions.[218]

G. The Carpio and Brion Dissents: Emphasizing the Letter of the Law

In a strong dissent from the majority opinion, Senior Associate Justice Carpio decried the lack of majority in the Court declaring Poe a natural-born Filipino citizen and therefore qualified to run for the presidency.[219] He pointed out that five justices dissented from the majority while three did not give their opinion on the citizenship of petitioner Poe. Hence, he says that there was a lack of the majority vote required. The decision's result, in his opinion, will "lead to absurd results, making a mockery of our national elections by allowing a presidential candidate with uncertain citizenship status

---

[216] *Id.*

[217] *Id.*

[218] *Id.*

[219] *Poe-Llamanzares*, G.R. No. 221697 (Carpio, *J., dissenting*).

to be potentially elected to the Office of the President, an office expressly reserved by the Constitution exclusively for natural-born Filipino citizens."[220]

Justice Carpio argued that Poe failed to comply with the essential requirements of citizenship and residency under Section 2, Article VII of the 1987 Constitution. Her CoC, "wherein she stated that she is qualified for the position of President, contains false material representations, and thus, must be cancelled."[221] Citing *Timbol v. Comelec*,[222] the dissent stated that "the COMELEC can initially determine the qualifications of all candidates and disqualify those found lacking any of such qualifications before the conduct of the elections."[223] According to Justice Carpio, "a person, not a natural-born Filipino citizen, who files a certificate of candidacy for President, 'put[s] the election process in mockery' and is therefore a nuisance candidate;"[224] hence, the COMELEC can cancel his/her certificate of candidacy *motu proprio* under Section 69 of the Omnibus Election Code.[225]

Justice Carpio disagreed with Poe's argument that "the pertinent deliberations of the 1934 Constitutional Convention, on what eventually became Article IV of the 1935 Constitution, show that the intent of the framers was not to exclude foundlings from the term 'citizens' of the Philippines."[226] Contrary to the Solicitor General and Poe's shared assertion, the dissent pointed out that the 1934 Constitutional Convention actually rejected the proposal to include foundlings as citizens of the Philippines.[227] There is no "silence of the Constitution" on foundlings because the majority of the delegates to the 1934 Constitutional Convention expressly rejected Delegate Rafols' proposed amendment to classify children of unknown parentage as Filipino citizens.[228]

He likewise drew attention to Delegate Buslon's suggestion that the subject matter be left in the hands of the legislature, which meant that Congress would decide whether to categorize as Filipinos (1) natural or illegitimate children of Filipino mothers and alien fathers who do not recognize them; and (2) children of unknown parentage. If that were the case,

---

[220] *Id.*
[221] *Id.*
[222] Timbol v. COMELEC, G.R. No. 206004, 751 SCRA 456, Feb. 24, 2015.
[223] *Poe-Llamanzares*, G.R. No. 221697 (Carpio, *J., dissenting*).
[224] *Id.*
[225] *Id.*
[226] *Id.*
[227] *Id.*
[228] *Id.*

according to Justice Carpio, foundlings "were not and could not validly be considered as natural-born Filipino citizens as defined in the Constitution since Congress would then provide the enabling law for them to be regarded as Filipino citizens."[229]

Moreover, Justice Carpio's dissent underscored the absence of law or jurisprudence which supports the Solicitor General's position that natural-born citizenship can be conferred solely based on statistical probability.[230] Hence, "in the absence of any legal foundation for such argument, the Solicitor General cannot validly conclude that a 99.93% (or 99.83%) statistical probability that a foundling born in the Philippines is a natural-born Filipino citizen legally confers on such foundling natural-born citizenship."[231]

Neither could Poe rely on any domestic or international law to buttress her position. Justice Carpio noted that "[o]nly the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, which articulated the presumption on the place of birth of foundlings, was in existence during the deliberations on the 1935 Constitution."[232] Yet the Convention does not guarantee a nationality to a foundling at birth. Simply stated, "there was no prevailing customary international law at that time, as there is still none today, conferring automatically a nationality to foundlings at birth."[233] In fact, customary international law does not presume that a foundling has the citizenship of the country where the foundling is found.[234] The dissent stressed that the Philippines is not a party to any international treaty that grants natural-born citizenship to foundlings in relation to the country in which where they are found.[235]

In another deviation from the position taken by the majority opinion, Justice Carpio's dissent insisted that the burden of proving his or her Philippine citizenship lies on the person who claims to be a citizen of the Philippines.[236] As the burden is on Poe, it is her duty to present evidence, such as DNA evidence, to support her claim that she is a natural-born Filipino citizen, and thus eligible to run for President.[237]

---

[229] *Id.*
[230] *Id.*
[231] *Id.*
[232] *Id.*
[233] *Id.*
[234] *Id.*
[235] *Id.*
[236] *Id.*, *citing* Paa v. Chan, G.R. No. L-25945, 21 SCRA 753, Oct. 31, 1967.
[237] *Id.*

Justice Arturo Brion, on the other hand, took an original approach. He included in his dissent a summary of the votes of the ruling majority that purportedly transpired within the Court's veiled chambers.[238] He disclosed that of the nine members of the Court supporting the *ponencia*, four—among them, Justices Benjamin Caguioa, Francis Jardeleza, and Marvic Leonen, as well as Chief Justice Maria Lourdes Sereno herself—submitted their respective opinions to explain their own votes as reasons for supporting the majority opinion's conclusions. While they offered their respective views, they fully concurred (by not qualifying their respective concurrences) only with the *ponencia's* basic reason in concluding that grave abuse of discretion attended the COMELEC's challenged rulings.[239]

As to his specific objections to the *ponencia's* discussion on substantive issues, Justice Brion pointed out that 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.[240] "Thus, the principle of international law on foundlings is merely supportive of the primary reason that the matter should be governed by statute, or is a secondary reason to the majority's decision not to include foundlings in Article IV, Section 1 of the 1935 Constitution."[241]

Additionally, he pointed out that both the text of the deliberations of the 1934 Constitutional Convention, and the account of its member Jose Aruego, do not disclose that the intent behind the non-inclusion of foundlings was because they are deemed already included.[242] Resultantly, according to the dissenting opinion, the *ponencia's* ruling does not only:

> [D]isregard the distinction of citizenship based on the father or the mother under the 1935 Constitution; it also misreads 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 accorded to foundlings who do not enjoy similar roots.[243]

---

[238] *Poe-Llamanzares*, G.R. No. 221697 (Brion, *J., dissenting*).
[239] *Id.*
[240] *Id.*
[241] *Id.*
[242] *Id.*
[243] *Id.*

On the issue of the citizenship of foundlings beyond the discussion of constitutional intent, the dissent made several submissions. First, it argued that foundlings do not fall under any suspect class.[244] To support this theory, Justice Brion advanced the view that foundlings are not being treated differently on the basis of discriminatory criteria:[245]

> It is the lack of information on the circumstances of their birth because of their unknown parentage and the *jus sanguinis* standard of the Constitution itself, that exclude them from being considered as natural-born citizens. They are not purposely treated unequally nor are they purposely rendered politically powerless; they are in fact recognized under binding treaties to have the right to be naturalized as Philippine citizens. All these take place because of distinctions that the Constitution itself made.[246]

Second, Justice Brion's dissent noted that foundlings may arguably be subject to intermediate scrutiny since their classification may "give rise to recurring constitutional difficulties, i.e. qualification questions for other foundlings who are public officials or are seeking positions requiring Philippine citizenship."[247]

Third, the COMELEC—at the most—"could have erred in its conclusions, but its reasoned approach, even assuming it to be erroneous, cannot amount to grave abuse of discretion."[248] For one, there is no grave abuse of discretion in holding that a foundling cannot be found in the express listing of citizens in the Constitution.

Lastly, Justice Brion argued that the COMELEC saw international law, in the form of treaties, as merely granting Poe the right to acquire a nationality.[249] This COMELEC conclusion is "largely a conclusion of law and is not baseless;"[250] in fact, it is based on the clear terms of the cited treaties to which the Philippines is a signatory and on the principles of international law. There was, again, no grave abuse of discretion in the COMELEC's ruling on this point, according to him.[251]

---

[244] *Id.*
[245] *Id.*
[246] *Id.*
[247] *Id.*
[248] *Id.*
[249] *Id.*
[250] *Id.*
[251] *Id.*

As to the jurisdictional issue, the dissent submitted that the COMELEC's power under Section 78 is quasi-judicial in character:[252]

> 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 acumen to read and understand the plain meaning of the law.[253]

The COMELEC also found that Poe's Petition for Re-acquisition of Philippine Citizenship before the Bureau of Immigration and Deportation (BID) deliberately misrepresented her status as a former natural-born Philippine citizen, as it lists her adoptive parents to be her parents without qualifications.[254] The COMELEC also noted that Poe had been "falsely representing her status as a Philippine citizen in various public documents" and that "all these involve a succession of falsities."[255]

With respect to the required period of residency, Justice Brion's dissent found that Poe deliberately falsely represented that she had been a resident of the Philippines for at least 10 years prior to the May 9, 2016 elections.[256] Poe's CoC when she ran for the Senate in the May 2013 national elections showed 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 10 years.[257] Instead of adopting the same representation, her 2015 CoC showed that she had been residing in the Philippines from May 24, 2005, and had thus been residing in the Philippines for more than 10 years.[258]

H. The Perlas-Bernabe Dissent

In a strong and vigorously argued dissent from the majority opinion, Justice Estela Perlas-Bernabe expressed her assent to the view that stronger proof is required to reestablish national domicile "because a person who has

---

[252] *Id.*
[253] *Id.* (Emphasis omitted.)
[254] *Id.*
[255] *Id.* (Citations omitted.)
[256] *Id.*
[257] *Id.*
[258] *Id.*

been domiciled in another country has already established effective legal ties with that country that are substantially distinct and separate from ours."[259] She further observed that "the need for stronger proof becomes more apparent when the person involved is one who has been domiciled in another country as part of her naturalization as a citizen therein."[260] She argued that this necessity of presenting stronger proof is impelled by the need to discern pervading realities in the place where one seeks to be elected.[261] Thus, Justice Perlas-Bernabe concluded that "a higher standard of proof should be applied to a candidate previously domiciled in a foreign country for he has been out of touch with the needs of the electoral constituency that she seeks to represent."[262]

It is for these reasons that Justice Perlas-Bernabe postulated that the overt acts on which Poe premised her claims were insufficient to prove her *animus manendi* and *animus non-revertendi*. For her, the earliest date that Poe could have reestablished her residence in the country was in July 2006, or the date when she reacquired her Filipino citizenship.[263]

On the issue of citizenship, Justice Perlas-Bernabe heavily faulted the majority's stand that Poe's blood relationship with a Filipino citizen is demonstrable on account of statistical probability and other circumstantial evidence. [264] Justice Perlas-Bernabe argued that "the constitutional requirements for office, especially the highest office in the land, cannot be based on mere probability, [as] matters dealing with qualifications for public elective office must strictly be complied with."[265] For her, that Senator Poe's biological parents are unknown directly puts into question her Filipino citizenship because she has no *prima facie* link to a Filipino parent from which she could have traced her Filipino citizenship.[266] On this account, Justice Perlas-Bernabe concluded that the burden of proving that she is a natural-born Filipino shifted to Poe, which she had not sufficiently overcome.[267]

---

[259] *Poe-Llamanzares*, G.R. No. 221697 (Perlas-Bernabe, *J.*, *dissenting*).
[260] *Id.*
[261] *Id.*
[262] *Id.*
[263] *Id.*
[264] *Id.*
[265] *Id.* (Citations omitted.)
[266] *Id.*
[267] *Id.*

I. The del Castillo and de Castro Dissents

Justice del Castillo's dissenting opinion focused on Poe's alleged failure to comply with the residency requirement imposed by the Constitution.[268] Like the others in the minority, Justice del Castillo noted that since Poe availed herself of R.A. No. 6768,[269] her stay in the Philippines from the time that she arrived here as a foreigner *balikbayan* on May 24, 2005 was not permanent in character but merely temporary.[270] As such, Justice del Castillo opined that Poe's stay was not impressed with *animus manendi*. Further, he opined that "[t]he pieces of evidence she presented in support of this proposition are irrelevant, and are negated by the undisputed fact that she was then a foreigner temporarily staying here as a *balikbayan*."[271]

Furthermore, Justice del Castillo opined that the entry in Poe's 2012 CoC is an admission against the Senator's own interest that is fatal to her cause.[272] According to him:

> Based on the said entry, it could be deduced that by her own reckoning, petitioner started residing in the Philippines in November 2006. Thus by May 8, 2016, or the day immediately preceding the elections on May 9, 2016, her period of residency in the Philippines would only be nine years and six months, or short of the mandatory 10-year residency requirement for the presidential post.[273]

Justice del Castillo remained unmoved by Poe's invocation of the ruling in *Marcos v. COMELEC*[274] and of honest mistake.[275] For him, this "defense is available only if the mistake would make a qualified candidate ineligible for the position [...] [i]t cannot be invoked when the mistake would make an ineligible candidate qualified for the position."[276] For Justice del Castillo, Poe "miserably failed to present sufficient evidence to overthrow the facts she herself supplied in her 2012 CoC."[277]

---

[268] *Poe-Llamanzares*, G.R. No. 221697 (del Castillo, *J.*, *dissenting*).
[269] Rep. Act. No. 6768 (1989). An Act Instituting a Balikbayan Program.
[270] *Poe-Llamanzares*, G.R. No. 221697 (del Castillo, *J.*, *dissenting*).
[271] *Id.*
[272] *Id.*
[273] *Id.*
[274] Romualdez-Marcos v. COMELEC, G.R. No. 119976, 248 SCRA 300.
[275] *Poe-Llamanzares*, G.R. No. 221697 (del Castillo, *J.*, *dissenting*).
[276] *Id.*
[277] *Id.*

Meanwhile, echoing Justice Carpio's strong dissent, Justice Teresita de Castro emphasized in her own dissenting opinion that "natural-born citizenship by legal fiction or presumption of law is contrary to the Constitution under the salient rules of constitutional interpretation."[278] For her, the use of extrinsic aids, such as the deliberations of the 1934 Constitutional Convention and the statistical data offered by the Office of the Solicitor General, is unwarranted.[279] She posits that:

> Statistics have never been used to prove paternity or filiation. With more reason, it should not be used to determine natural-born citizenship, as a qualification to hold public office, which is of paramount importance to national interest. The issue here is the biological ties between a specific or named foundling and her parents, which must be supported by credible and competent evidence.[280]

Justice de Castro then concluded that natural-born citizenship, as a qualification for public office, must be an established fact in view of the *jus sanguinis* principle enshrined in the Constitution; it should not be subjected to uncertainty nor be based in statistical probabilities.[281] For her, this is a disputable presumption that can be overcome any time by evidence to the contrary during the tenure of an elective official resulting to the "prejudice [of] the electorate who may vote [for] a candidate in danger of being disqualified in the future and to cause instability in public service."[282]

IV. RESOLVING THE MOTION FOR RECONSIDERATION

As expected, a motion for reconsideration was filed by the COMELEC and private respondents (those who filed the disqualification petitions). A month later, in time for the May 9, 2016 elections, the motions for reconsideration were denied with finality in a minute one-page resolution. The Court made it very clear that no new appeal or motion for reconsideration would be entertained.[283]

---

[278] *Poe-Llamanzares*, G.R. No. 221697 (de Castro, *J.*, *dissenting*).

[279] *Id.*

[280] *Id.* (Emphasis omitted.)

[281] *Id.*

[282] *Id.*

[283] Poe-Llamanzares v. COMELEC, G.R. No. 221697, Apr. 5, 2016.

The denial of the motions for reconsideration was remarkable in that the Court did not merely issue a mere minute *pro-forma* resolution, but decided to include the concurring opinions of some in the majority and the dissenting opinions of the minority who earlier expressed opposition to the *ponencia*.

In her concurring opinion to the minute resolution, Chief Justice Sereno reiterated that the denial is final and no new pleadings shall be entertained.[284] She voiced out her belief that the decision and the concurring opinions were strong indictments of the grave abuse of discretion that "infested" the COMELEC's assailed actions "from root to fruits."[285] The concurring opinion also dismissed as speculative the view expressed by the dissenters that the decision would lead to an absurd result. She likewise castigated, without mentioning names, the dissenters for their brazen attempt at "tyranny," which, to her, is destructive to the rule of law.[286]

The Chief Justice trained her sights on her dissenting colleagues for trying "to cast uncertainty on an already tense situation." With emphasis, she pointed out that "[t]he dissent gives excessive weight to the fact that there are 5 [five] Justices in the minority who believe that petitioner does not have the qualifications for the presidency, while ignoring the reality that there are at least 7 [seven] Justices who believe that petitioner possesses these qualifications."[287] According to her:

> Since 12 justices took part and 3 did not on the matter of the citizenship of petitioner, it can be rightly said that a ruling has been made when a group of 7 emerged from the deliberations in favor of petitioner. It is offensive to the majority's pride of place that some in the minority are trying to belittle the Decision by saying that since only 7 and not 8 justices declared that petitioner is a natural-born Filipino, such position produces no legal effect. The reply to such position is simple: we are 7, you are 5. Seven is a majority in a group of 12. It is time that this reality be accepted. Whether such majority position will be reversed in a *quo warranto* petition is a future matter, but the odds against its happening are quite telling.[288]

---

[284] Poe-Llamanzares v. COMELEC, G.R. No. 221697, Apr. 5, 2016 (Sereno, *C.J., concurring*).

[285] *Id.*

[286] *Id.*

[287] *Id.*

[288] *Id.*

Chief Justice Sereno branded as misplaced the demand by some in the minority that all the members of the Court take a position on Poe's intrinsic qualification.[289] Nonetheless, according to her, it is not unimportant that seven out of the nine already believe that petitioner possesses the intrinsic qualification for the presidency as opposed to a lesser number espousing a contrary view.[290]

She also dismissed the proposition that a full resolution instead of a minute resolution be issued. For her this would cause undue delay by one to two weeks to the detriment of national interest.[291] However, she did acknowledge that another case, post-election, could be filed against Poe.[292]

Associate Justice Leonen in his own concurring opinion to the Resolution, maintained that the motions for reconsideration failed to show any sufficiently compelling reason to deviate from what the Court had already decided.[293] On the voting, he stated that nine justices agreed that the petition should be granted; how each Justice arrived at their respective conclusions is fully explained in the concurring opinions.[294] Like Chief Justice Sereno, he characterized as unfounded or baseless the fear by some that the decision would result in "chaos and anarchy."[295]

Justice Carpio, on the other hand, stuck to his original position in his dissent. In particular, he stated that while a majority voted to grant the petitions, there is no ruling by a majority on Poe's citizenship, since only seven Justices voted to declare petitioner a natural-born citizen.[296] On the other hand, five Justices voted to declare petitioner not a natural-born Filipino citizen while three who took part and voted to grant the petitions did not have an opinion on petitioner's citizenship.[297]

Based on Justice Carpio's reckoning, all 15 Justices took part in the deliberations. Eight Justices concurred with the *ponente* to grant the petitions,

---

[289] *Id.*

[290] *Id.*

[291] *Id.*

[292] *Id.*

[293] Poe-Llamanzares v. COMELEC, G.R. No. 221697, Apr. 5, 2016 (Leonen, *J., concurring*).

[294] *Id.*

[295] *Id.*

[296] Poe-Llamanzares v. COMELEC, G.R. No. 221697, Apr. 5, 2016 (Carpio, *J., dissenting*).

[297] *Id.*

while six Justices dissented. Five Justices wrote concurring opinions and five wrote dissents, while Justice Peralta joined Justice Caguioa's concurring opinion, and Justices Bersamin and Mendoza merely affixed their signatures to the *ponencia* signifying their concurrence. He asserted that the Chief Justice could not simply exclude from the count the three Justices who took part and voted but had no opinion on the citizenship issue.[298]

Making sense out of this, it is clear that a definite ruling on Poe's citizenship had to await the Supreme Court decision on another disqualification case filed against Poe as a sitting Senator, which is the appeal of the SET decision and resolutions that affirmed that Senator Poe, as a foundling, is a natural-born citizen. On September 20, 2016, the majority of the Court, in a close vote in *David v. Senate Electoral Tribunal*[299] ruled, through Justice Leonen's ponencia, that the SET did not act without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolutions. In the dispositive portion, it concluded that "Mary Grace Poe-Llamanzares is a natural-born Filipino citizen qualified to hold office as Senator of the Republic."[300]

V. A LANDMARK SUPREME COURT DECISION

A review of the records of the *Poe-Llamanzares* case tells us that the Supreme Court heard the case on oral arguments for almost 22 hours on five separate days. It is also hard to miss the fact that the individual opinions filed by the Justices totaled 688 pages. These facts tell us of the great deal of attention that the Supreme Court had given this case and the issues that surround it.

As shown by the individual opinions of the Justices, strong and compelling arguments were given and presented by all sides. But as we come from a starting point of liberality because of the primacy that we give to human rights, it is the authors' position that our citizenship laws must be treated and interpreted liberally instead of given an exclusionary meaning due to the multi-cultural nature of Philippine society. This is the main reason the concurring opinion of Chief Justice Sereno best appeals to us. Encapsulated in her concurring opinion is the Supreme Court's policy of adherence to the overarching social justice principle enshrined in the Constitution to give more in law to those who have less in life.

---

[298] *Id.*

[299] David v. Senate Electoral Tribunal, G.R. No. 221538, Sept. 20, 2016.

[300] *Id.*

In arriving at her conclusion, Chief Justice Sereno painstakingly traced the history of our citizenship laws, went through the deliberations of the Constitutional Commissions on the matter, and cited foreign jurisprudence to shed light to the resolution of the issues before the Court. Indeed, the position she championed has far-reaching implications on all modern-day Filipinos. Aside from championing the rights of foundlings, the Chief Justice also championed the rights of the country's modern day heroes—our overseas Filipino workers.

For different reasons, many have found fault in Poe's act of swearing allegiance to the United States of America, thereby becoming one of its citizens. For them, this is tantamount to turning one's back on one's own country. For them, people who do so have no right to go back home and serve her motherland. For them, people who leave and eventually come home have no right to aspire for public office, moreso, the highest position in the land.

This viewpoint, however, overlooks the prevailing realities today. Most people leave the country not so much by one's own choice, but because of dire necessity. Going to and succeeding in the proverbial "greener pastures" sometimes necessitates giving up even one's own citizenship, not just for better economic opportunities, but sometimes for survival itself. It is the height of hypocrisy, if not outright cruelty, to deny those who do so the right to go back to their own country, to reacquire the citizenship that they once had, and to accord them the rights and privileges appurtenant thereto.

Any alternative disposition of the case would have resulted in dire consequences. Foundlings and overseas Filipino workers would be treated as second-class citizens in their own native land, unable to give back and serve the very country which gave birth to them. We must then be grateful to the Supreme Court for ruling otherwise.

VI. IMPLICATIONS ON OTHER EXISTING BODIES OF JURISPRUDENCE

The *Poe-Llamanzares* decision is an affirmation of the Supreme Court's adherence to well-settled precedents and the high premium it accords human rights. Aside from its pronouncements on the issues of citizenship and residency, the Court also reaffirmed and reiterated a number of doctrines that will continue to serve as jurisprudential guideposts for generations to come. The most notable of these doctrines are as follows.

A. Family Law

1. Adoption Laws

The Supreme Court reiterated that as one of the effects of adoption is to sever all legal ties between the biological parents and the adoptee, except when the biological parent is the spouse of the adoptee, the law allows the adoptee to state that her adoptive parents are her birth parents.[301] Further, given the strict confidentiality of adoption records, an adoptee is also not obligated to disclose in any way that she is an adoptee.[302]

2. Paternity and Filiation

Chief Justice Sereno's concurrence reiterated the methods by which paternity and filiation may be established, as provided for by the Family Code, namely: a) record of birth; b) written admission of filiation; c) open and continuous possession of the status of a legitimate or an illegitimate child; d) other means allowed by the Rules or special laws.[303] None of these methods require physical proof of parentage.[304]

Hence, "[p]hysical or scientific proof of a blood relationship to a putative parent is not required by law to establish filiation or any status arising therefrom, such as citizenship."[305] Consequently, as the Court has repeatedly emphasized in the past, DNA evidence is not absolutely essential so long as paternity or filiation may be established by other proof.[306]

B. The Law on Evidence

1. Onus Probandi

The Supreme Court reaffirmed the rule that he who alleges must be the one to prove.[307] Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. Although it is an established rule that the burden

---

[301] *Poe-Llamanzares*, G.R. No. 221697.

[302] *Id.*

[303] *Poe-Llamanzares*, G.R. No. 221697 (Sereno, *C.J., concurring*), *citing* CIVIL CODE, art. 172.

[304] *Id.*

[305] *Id.* (Citations omitted.)

[306] *Id.*

[307] *Poe-Llamanzares*, G.R. No. 221697.

of evidence may shift depending on the exigencies of the case, the burden of proof remains with the party upon whom it is originally imposed; that is, he who seeks the affirmative of an issue.[308] As applied in election cases, for instance, the Chief Justice states that the burden of proof is placed upon the parties seeking the denial of due course or cancellation of a certificate of candidacy.[309]

2. Probablities and Statistics

There was also a reaffirmation of the place of probability and statistics in our system of laws. Emphasis was given to the principle that "ascertaining evidence does not entail absolute certainty."[310] Courts are not precluded from drawing conclusions from inferences based on established facts, more so when these inferences and probabilities are backed by solid and credible statistics.[311] In fact, as the Chief Justice noted, this is already enshrined in established legal doctrines, including that of probable cause for preliminary investigation, probable cause for the issuance of warrant of arrest, substantial evidence, preponderance of evidence, and character evidence.[312]

3. Admissions Against Interest

The Supreme Court found that, when evaluating statements in CoCs, although a previously filed certificate of candidacy may be offered against the party who previously filed such, the same cannot be considered as binding and conclusive on the party who filed it.[313] Such entries, according to the Court, may be overcome by evidence showing that the entries were mistakenly made.[314]

As applied, the Court reiterated its ruling in *Romualdez-Marcos v. COMELEC*[315] where the candidate mistakenly put seven months as her period of residence where the required period was a minimum of one year, the Supreme Court said that it is the fact of residence—not a statement in a certificate of candidacy—which ought to be decisive in determining whether

---

[308] *Id.*

[309] *Poe-Llamanzares*, G.R. No. 221697 (Sereno, *C.J., concurring*).

[310] *Id.*

[311] *Poe-Llamanzares*, G.R. No. 221697.

[312] *Poe-Llamanzares*, G.R. No. 221697 (Sereno, *C.J., concurring*).

[313] *Poe-Llamanzares*, G.R. No. 221697.

[314] *Id.*

[315] Romualdez-Marcos v. COMELEC, G.R. No. 119976, 248 SCRA 300, 326, Sept. 18, 1995.

or not an individual has satisfied the constitution's residency qualification requirement.[316]

C. Election Law

The rule remains to be that the issue before the COMELEC in a petition to deny due course or to cancel a CoC under Section 78 of the Omnibus Election Code is whether or not the CoC of the person against whom the petition is filed should be denied due course or cancelled on the exclusive ground that he or she made in the certificate a patent material representation of facts.[317] The exclusivity of this ground should depend on the discretion of the COMELEC, and should restrain it from going into the issue of the qualifications of the candidate for the position, if such issue is yet undecided or undetermined by the proper authority. The COMELEC cannot by itself and in the same cancellation case decide and rule on the intrinsic qualification of the candidate. [318] In other words, the COMELEC's jurisdiction in a Section 78 petition is only to verify the accuracy of the material representations made in a CoC, and to determine the existence of an intent to mislead for the sole purpose of deciding whether the certificate of candidacy should be denied due course or cancelled.

D. International Law

The Supreme Court reaffirmed the basic principle under the 1987 Constitution that international law can become part of the sphere of domestic law either by transformation or incorporation.[319] While the transformation method requires that international law be transformed into domestic law through constitutional mechanisms, such as legislation, those that are considered as generally accepted principles of international law, on the other hand, automatically form part of the law of the land by virtue of the incorporation clause of the Constitution.[320]

Applying the abovementioned principles, the Court pronounced that although the Philippines is not party to the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws and the 1961 United Nations Convention on the Reduction of Statelessness, these

---

[316] *Poe-Llamanzares*, G.R. No. 221697 (Sereno, *C.J., concurring*), *citing* Romualdez-Marcos v. COMELEC, 248 SCRA 300, 326.

[317] *Id.*

[318] *Id.*

[319] *Poe-Llamanzares*, G.R. No. 221697.

[320] *Id.*

conventions are nonetheless binding on the country as they are considered as part of the generally accepted principles of international law.[321] In so ruling, the Court took into account the fact that generally accepted principles of international law are based not only on international custom, but also on "general principles of law recognized by civilized nations," as the phrase is understood in Article 38.1 paragraph (c) of the ICJ Statute.[322]

E. Constitutional Interpretation

Contrary to the Justice de Castro's position in her dissenting opinion that the debates and the proceedings of constitutional conventions lack binding force as it is not expressive of the people's intent,[323] the Supreme Court, citing *Nitafan v. Commissioner of Internal Revenue*,[324] reaffirmed the basic tenet in constitutional interpretation that when there is silence and ambiguity in the provisions of the Constitution, an examination of the intent of its framers is imperative.[325] In that case, it was said that the latter is but in keeping with the fundamental principle of constitutional construction that the intent of the framers of the organic law and of the people adopting it should be given effect.[326] Furthermore, the Supreme Court ruled that "the primary task in constitutional construction is to ascertain and thereafter assure the realization of the purpose of the framers and of the people in the adoption of the constitution."[327]

VII. CONCLUSION: CITIZENSHIP AND HUMAN RIGHTS

At stake in the *Poe-Llamanzares* disqualification case was the status of millions of other Filipinos who were born without knowledge of who their parents are, and those foundlings who will be born in the future. As Chief Justice Sereno pointed out, natural-born citizenship is a requirement for many offices—not just the presidency, but nearly 100 elective and appointive positions are exclusive to natural-born citizens—thus a ruling that foundlings are not natural-born citizens would have resulted in depriving these foundlings an opportunity to serve in those offices.[328] Congress can even expand this list to other offices if it so desires, although that could be

---

[321] *Id.*

[322] *Id.*

[323] *Poe-Llamanzares*, G.R. No. 221697 (de Castro, *J.*, *dissenting*).

[324] Nitafan v. Comm'r of Internal Revenue, 236 Phil. 307 (1987).

[325] *Poe-Llamanzares*, G.R. No. 221697.

[326] *Id.*

[327] *Id.*, *citing* Nitafan v. Comm'r of Internal Revenue, 236 Phil. 307 (1987).

[328] *Poe-Llamanzares*, G.R. No. 221697 (Sereno, *C.J.*, *concurring*).

questioned for being unconstitutional.

In our view, there is no middle ground between declaring Poe to be a natural-born citizen and classifying her and all foundlings as stateless citizens. Indeed, if foundlings are considered citizens, they can only be considered natural-born citizens. Foundlings cannot be considered naturalized citizens as naturalization requires an explicit procedure required by law. Naturalization is a procedure specifically provided by law based on an application process. Naturalization can happen through administrative, judicial, and legislative means. Naturalized citizenship is not and never has been automatically conferred.

A ruling that foundlings are stateless would have had very serious consequences. This is not just about running for political office or being appointed to a high position in government, but about basic human rights that require citizenship for them to be bestowed and exercised. A stateless person has only the barest of human rights; many civil and political rights are denied such persons.

A decision against Senator Poe would have violated the rights of foundlings under the United Nations Convention on the Rights of the Child (UNCRC),[329] an international agreement we have ratified. Indeed, as a signatory to the UNCRC, we must ensure the implementation of the inalienable right to a nationality in accordance with our national law and obligations under other international instruments in particular where the child would otherwise be stateless.[330] The Philippine law on citizenship must be read together with this provision of the CRC and the recognized international principle on the right of every human being to a nationality, especially of a child. It must be read against engendering the statelessness of a child or of any human being found in the Philippines who possess no proof of nationality other than the fact that he or she was found in the Philippines.

To say that a foundling cannot be considered a Philippine citizen just because his or her parents are not known is to arbitrarily deprive a human being of his or her inalienable right to a nationality from birth. Clearly, the law on citizenship cannot be interpreted in such a manner as to produce such an absurd and on its face unjust conclusion of law.

Moreover, an adverse ruling would not only affect foundlings; it will

---

[329] United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

[330] Art. 7.

impact their families, too. This includes adoptive parents and relatives if the foundling has in fact been adopted. Such a decision would have a chilling effect on adoption as foreign or stateless children cannot be adopted under present law. Adoptive parents would also be deterred from adopting foundlings because of the complications involved with respect to their legal status.

In sum, it was not just the political future of Grace Poe at stake in this issue relating to the status of foundlings. The human rights of millions of Filipinos were on the balance. Likewise, the same can be said of the other issue against her—the alleged lack of residence. A negative decision on that issue would have affected millions of Filipinos in the global diaspora.

The truth is that the citizenship issue in the *Poe-Llamanzares* case was resolved not so much on the basis of novel principles or groundbreaking legal scholarship on what the constitutional provision on citizenship could have meant, or was intended to mean, inasmuch as it was settled based on the simple and unobstructed application of the rules on evidence. These were rules laid down precisely because it is most often the case that judicial controversies are not determined based on conclusive proof, but on presumptions, probabilities and circumstances on the likelihood or impossibility of a contested fact. This is the result of an objective approach to a case that was heavily politicized from the very beginning.

Once removed, the political lens that colored our opinions on this case enable us to see once again that State policy on foundlings has always been that they are as much a natural-born citizen of this country as any of us who are lucky enough to know our parents. The years that we treated foundlings as one of ours—processing their adoption into families, issuing them passports, registering them to vote, enrolling them in our public schools—show us what we truly are as a nation. We are not one that suddenly casts them aside just because one of them decides to run for President.

- o0o -