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Tecson vs COMELEC : 161434 : March 3, 2004 : J. Carpio-Morales : En Banc : Dissenting Opinion

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DISSENTING OPINION**CARPIO MORALES, J.:**

The Constitution, in unmistakable terms, declares that –

No person may be elected President unless he is a natural born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.[1]

Foremost, thus, in the qualifications for one to seek to become the highest official of the land is that he must be a natural-born Filipino, a “citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship.”[2]

As citizens of a nation which has its own political, social, and cultural identity and independence, it is axiomatic that we elect to the Philippine presidency only a citizen whose fealty to the Filipinos’ most cherished ideals and aspirations as a people is above suspicion or whatever approximates an unfailing allegiance to the Philippine State. The President, with all his multifarious powers and functions, is a focal point in this nation’s governance as shown by the legacies and lessons of history and the continuing realities of the present. The process, therefore, of selecting the person for the Office of the President partakes not only of a moral obligation to choose the one best suited for the job but also, and more importantly perhaps, of the matter of ensuring that he indeed possesses the measurable qualifications as demanded of him by the Constitution.

This Court is once again mandated to interpret the law and apply it to breathe life to its language and give expression to its spirit in the context of real facts. In the present controversy which brings to fore the real import of the Constitutional imposition that a candidate for President of the Philippines must be a natural-born Filipino, it

is specifically tasked to craft a rule of law that will govern the determination of one's citizenship in all cases, now and in the future, without regard for whoever are the personalities involved.

The consolidated petitions subject of the present Decision, all seek to disqualify respondent Ronald Allan Kelley Poe, also known as Fernando Poe, Jr. (FPJ) or Ronnie Poe, from seeking election as President of the Republic of the Philippines on the ground that he is not a natural-born Filipino and, thus, not qualified for the office of Chief Executive.

In G.R. Nos. 161434 and 161634, petitioners Maria Jeannette C. Tecson and Felix B. Desiderio, Jr. (Tecson et al.) and Zoilo Antonio Velez (Velez), through separate original petitions filed with this Court, all invoke this Court's jurisdiction as "sole judge of all contests relating to the election, returns and qualifications of the President"[3] of the Philippines to determine whether FPJ is eligible for the presidency in accordance with the qualifications prescribed by Section 2 of Article VII of the Constitution, viz:

Sec. 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election. (Emphasis supplied),

in relation to Sections 1 and 2 of Article IV thereof, viz:

Sec. 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 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 the law.

Sec. 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens. (Emphasis supplied)

In G.R. No. 161824, petitioner Victorino X. Fornier (Fornier),[4] via a petition for certiorari under Rule 64 in relation to Rule 65 of the Rules of Court, seeks the review by this Court of the Resolutions issued by the Commission on Elections (COMELEC) dismissing a Petition for Disqualification in COMELEC SPA 04-003 filed by him under Section 78 of Batas Pambansa Bilang 881, as amended, otherwise known as the Omnibus Election Code:

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

in relation to Section 74 thereof:

Sec. 74. Contents of certificate of candidacy. - The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post

office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

x x x (Emphasis supplied)

Statement of the Case

On December 31, 2003, FPJ filed with the COMELEC his Certificate of Candidacy for President[5] indicating therein that, among others things, he is a natural-born Filipino citizen, born on August 20, 1939 in the City of Manila.

On January 9, 2004, petitioner Fornier filed a “Petition for Disqualification of Presidential Candidate Ronald Allan Kelley Poe, also known as Fernando Poe, Jr.”[6] (Petition for Disqualification) with the COMELEC, which was docketed as COMELEC SPA No. 04-003. Said Petition for Disqualification prayed that FPJ “be disqualified from running for the position of President of the Republic of the Philippines, and that his Certificate of Candidacy be denied due course, or cancelled.”[7]

In support of his Petition for Disqualification, petitioner Fornier asserted that: (1) Allan F. Poe, father of FPJ, was a Spanish citizen, hence, FPJ could not have derived Philippine citizenship from him;[8] (2) Allan F. Poe’s marriage to FPJ’s mother, Bessie Kelley, an American citizen, was void because of the prior subsisting marriage of Allan F. Poe to one Paulita Gomez;[9] and (3) given that the marriage of FPJ’s parents was void, even assuming *arguendo* that Allan F. Poe was a Filipino citizen, FPJ could still not have derived Philippine citizenship from him since, as an illegitimate child, he followed the citizenship of his American mother.[10]

Petitioner Fornier thus concluded that FPJ, “not being a natural-born citizen of the Philippines, lacks an essential qualification and corollarily possesses a disqualification to be elected President of the Republic of the Philippines, as expressly required under the 1987 Constitution,”[11] and, therefore, FPJ “should be disqualified from being a candidate for the position of President of the Republic of the Philippines in the coming 10 May 2004 elections.”[12]

On January 16, 2004, FPJ filed his Answer[13] to the Petition for Disqualification, maintaining that he is a natural born Filipino since his father, Allan F. Poe, and grandfather, Lorenzo Pou, were both Filipino; his father was never married to a Paulita Gomez;[14] and he is the legitimate son of Allan Fernando Poe and Bessie Kelley.

In his Answer, FPJ expressly admitted the authenticity of the copies of his Certificate of Candidacy and Birth Certificate[15] attached to petitioner Fornier’s Petition for Disqualification, but denied that of the other attached documents.

Attached to FPJ’s Answer was a certified copy[16] of the Marriage Contract[17] between Allan Fernando Poe and Bessie Kelley which shows that Fernando R. Pou, Filipino, was married to Bessie Kelley, American, on September 16, 1940 at 906 Dakota Street, Manila in a ceremony officiated by Rev. Rito Aramil, and witnessed by Roman Despi and Marta Gatbunton.

By Resolution No. 6558 of January 17, 2004, the COMELEC gave due course to FPJ’s Certificate of Candidacy and included him among the six qualified candidates for President.

On January 22, 2004, petitioners Tecson and Desiderio, Jr. filed their Petition (With Application for Writ of

Preliminary Injunction and/or Restraining Order)[18] with this Court questioning the jurisdiction of the COMELEC over the Petition for Disqualification. In their petition, Tecson et al. argue that:

(1) The COMELEC does not have jurisdiction over the Petition for Disqualification filed by petitioner Fornier against FPJ since paragraph 7 of Section 4, Article VII of the Constitution provides that this Court is the sole judge of all contests relating to the qualification of the President. Moreover, this Court's authority to act as the sole judge of all contests relating to the election, returns and qualifications is all-encompassing and covers all matters related thereto from beginning to end, including those arising before the proclamation of winners.[19]

(2) FPJ was an illegitimate child since his Birth Certificate shows that he was born on August 20, 1939, while the Marriage Contract between Fernando R. Pou and Bessie Kelley attached to FPJ's Answer to the Petition for Disqualification shows that they were married on September 16, 1940.

(3) FPJ was not legitimated by the subsequent marriage in 1940 of his parents since, under the Spanish Civil Code of 1889 which was then in force, only acknowledged natural children can be legitimated, and it has not been shown that FPJ was acknowledged by his parents whether before or after their marriage.[20] Moreover, FPJ's parents failed to comply with the procedural requirements to legitimate him, through either voluntary acknowledgment under Article 131 of the Spanish Civil Code or compulsory acknowledgment under Articles 135 and 136 thereof.[21]

(4) The citizenship requirement under Section 2, Article VII of the Constitution must be interpreted strictly. Since he was illegitimate, FPJ follows the nationality of his only legally recognized parent, his mother, who is an American.[22]

By Resolution of January 23, 2004, the First Division of the COMELEC dismissed petitioner Fornier's Petition for Disqualification for lack of merit, holding that:

(1) The COMELEC's jurisdiction under the Constitution is limited to contests relating to elections, returns and qualifications of elective regional, provincial and city officials, and does not include national elective offices.

(2) However, under Section 78 of the Omnibus Election Code, the COMELEC has the power to deny due course or to cancel Certificates of Candidacy exclusively on the ground that any material representation contained therein is false.[23]

(3) While the COMELEC is "not at liberty to finally declare whether or not the respondent is a natural-born Filipino citizen" since it is "not the proper forum," nevertheless it may establish FPJ's citizenship as an incident to the action to deny due course or cancel his Certificate of Candidacy under Section 78 of the Omnibus Election Code.[24]

(4) Petitioner Fornier's Petition for Disqualification did not allege that FPJ's Certificate of Candidacy contained a material misrepresentation. Moreover, the Petition and the evidence presented by him failed to show convincingly and strongly that FPJ's declaration that he is a natural-born Filipino is false.[25]

(5) The 1935 Constitution provided that "[t]hose whose fathers are citizens of the Philippines" are likewise Filipino.[26] Both petitioner Fornier and FPJ agree that the latter is the son of Allan Fernando Poe. Hence, if Allan Fernando Poe is a Filipino, necessarily, FPJ is likewise a Filipino.[27]

(6) The purported marriage contract between Allan Fernando Poe and one Paulita Gomez submitted by petitioner Fornier states that he is the son of Lorenzo Poe, a Spaniard. However, by operation of law and upon the cession of the Philippines to the United States of America by Spain, Lorenzo Poe ceased to be a Spaniard and became a citizen of the Philippine Islands and later a citizen of the Philippines. Consequently, Allan Fernando Poe,

following the citizenship of his father, was also Filipino.[28]

(7) Since paragraph 3, Section 1 of Article IV of the 1935 Constitution does not distinguish between legitimate and illegitimate children, FPJ's legitimacy is beside the point. Since his father was a Filipino, FPJ is a natural-born Filipino.[29]

On January 26, 2004, petitioner Fornier filed a Motion for Reconsideration of the COMELEC First Division Resolution in the Petition for Disqualification.

On the same day, in light of the January 23, 2004 Resolution of the COMELEC First Division, petitioners Tecson et al. filed a Supplemental Petition[30] arguing that: (1) The COMELEC First Division Resolution is void since, as COMELEC itself admitted, it has no jurisdiction to determine the "core issue" of whether FPJ is a natural-born citizen; and (2) the COMELEC's ruling that FPJ is a natural-born citizen under paragraph 3, Section 1 of the 1935 Constitution is fatally flawed.[31]

In their Supplemental Petition, petitioners Tecson et al. reiterate their arguments that FPJ is not a natural-born citizen, he being an illegitimate child and, therefore, follows the citizenship of his American mother;[32] and even assuming that FPJ was legitimated by the subsequent marriage and acknowledgment of his parents, Article 123 of the Spanish Civil Code provides that the effects of such legitimation commence only from the date of the marriage. Thus, petitioners Tecson et al. conclude that FPJ was, from his birth on September 9, 1939 up to September 15, 1940 (the day prior to the marriage of his parents on September 16, 1940), illegitimate and followed the citizenship of his American mother, hence, he cannot be considered a natural-born citizen as Section 2, Article IV of the Constitution mandates that such citizenship must be "from birth." [33]

Still in their Supplemental Petition,[34] Tecson et al. pray that the COMELEC be enjoined from recognizing the candidacy of FPJ and conducting further proceedings in the Petition for Disqualification; and, after hearing on the merits, this Court render judgment:

(a) declaring that [FPJ] is not a natural-born Filipino citizen and thus not qualified to vie for the position of the President of the Republic of the Philippines;

(b) setting aside and reversing Resolution No. 6558 dated 17 January 2004 issued by public respondent Comelec, specifically that portion of the dispositive portion which gives due course to the Certificate of Candidacy filed by [FPJ] for the position of President of the Republic of the Philippines;

(c) setting aside and reversing the Resolution dated 23 January 2004 issued by respondent Comelec in SPA No. 04-003; and

(d) ordering the permanent removal of the name of [FPJ] as a qualified candidate for President of the Republic of the Philippines in all records of respondent Comelec.[35]

On January 29, 2004, petitioner Velez filed an "original petition"[36] with this Court questioning FPJ's qualifications as president "based on Section 4, paragraph 7 of the Constitution." In his Petition, petitioner Velez alleges that:

(1) As an illegitimate child, FPJ acquired the citizenship of his only legally known parent, Bessie Kelley, his American mother.[37]

(2) The subsequent marriage of FPJ's parents did not result in his legitimation since: (1) it has not been shown that he was acknowledged by his parents either before or after their marriage as required by Article 121 of the Spanish Civil Code of 1889; and (2) the procedural requirements for his acknowledgement, whether voluntarily under Article 131 of the Spanish Civil Code or compulsory under Article 135 and 136, have not been complied

with.[38]

(3) Even if respondent Poe was legitimated by the subsequent marriage of his parents, he still cannot be considered a natural-born Filipino considering that said marriage was an act required to perfect his citizenship contrary to Section 2 of Article IV of the Constitution.[39]

Petitioner Velez prays that this Court “take jurisdiction over this instant petition and declare whether [FPJ] is a natural born citizen of the Philippines; hence, qualified to be a candidate for President in the 10 May 2004 national elections.”[40]

By Resolution of February 6, 2004, the COMELEC en banc denied petitioner Fornier’s Motion for Reconsideration, holding as follows:

(1) Petitioner Fornier’s Petition for Disqualification was in the nature of a “petition to deny due course to or cancel a certificate of candidacy” under Section 78 of the Omnibus Election Code. Such a petition relates only to certificates of candidacy, is summary in character and has for its purpose the disqualification of a person from being a candidate on the ground that a material representation contained in the certificate of candidacy is false.[41]

(2) The COMELEC has the power to determine issues of citizenship as an incident to a petition for disqualification or cancellation of a certificate of candidacy which, in turn, falls within the COMELEC’s constitutional mandate to enforce and administer all laws and regulations pertaining to the elections. The COMELEC First Division, in stating that the Commission is not the proper forum to declare with finality the citizenship of respondent Poe, merely prefaced its decision with “the time-honored principle that there is no one court or body that judicially declares the citizenship of any person.” [42]

(3) For a petition under Section 78 of the Omnibus Election Code to prosper, there must be “proof of misrepresentation with a deliberate attempt to mislead.” Thus, it must be shown by direct and substantial evidence that FPJ “must have known or have been aware of the falsehood as appearing on his certificate.”[43]

(4) The COMELEC First Division was correct in concluding that “[c]onsidering that the evidence presented by the petitioner is not substantial,” FPJ “did not commit any material misrepresentation when he stated in his Certificate of Candidacy that he is a natural-born Filipino citizen.”[44]

In his Concurring and Separate Opinion,[45] COMELEC Commissioner Florentino A. Tuason, Jr. sought to distinguish between the COMELEC’s limited power to determine “whether or not respondent committed material misrepresentation in his certificate of candidacy” and the determination of respondent Poe’s citizenship in this wise:

x x x respondent’s representation anent his citizenship stems from his reliance on public records, i.e., his birth certificate, his parents’ marriage contract, his Philippine passport, aside from his personal belief of such fact.

To go beyond these public records and scrutinize the same would inevitably compel the Commission to determine the issue of respondent’s citizenship – a province already outside of the Commission’s jurisdiction. Corollarily, and in the light of the same, neither could there be any deliberate attempt on respondent’s part to commit material misrepresentation in his CoC. As succinctly and clearly explained by the Supreme Court, there is false representation when there is a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. (Salcedo vs. Comelec, et al., GR No. 135886, 16 August 1999)

Nevertheless, I respectfully take exception to the conclusion made by the 1[st] Division that the issue of legitimacy is immaterial in the determination of a person’s citizenship. For contrary to said observation, it is the

settled rule of our jurisprudence that only a legitimate minor child follows the citizenship of his father. (Chiongbian vs. De Leon, 82 Phil. 771 [1949]; Morano vs. Vivo, 20 SCRA 562 [1967]; Paa vs. Chan, 21 SCRA 753 [1967]; Board of Commissioners (CID) vs. De la Rosa, 197 SCRA 854 [1999]). Settlement of said issue then is crucial in the determination of respondent's citizenship in a direct proceeding before the proper forum.[46] (Emphasis supplied)

On February 10, 2004, petitioner Fornier filed his present Petition for Certiorari[47] under Rule 64 in relation to Rule 65 of the Rules of Court, praying that the COMELEC's Resolutions dated January 23, 2004 and February 6, 2004 in the Petition for Disqualification "be reversed, set aside and annulled, and that judgment be rendered disqualifying [FPJ] from running for the position of President of the Republic of the Philippines and directing respondent Comelec to cancel his Certificate of Candidacy." [48] Before this Court, Fornier argues that the COMELEC acted with grave abuse of discretion when:

- (1) It ruled that it had no jurisdiction over the Petition for Disqualification grounded on the lack of an essential qualification of FPJ to be elected President of the Republic of the Philippines;
- (2) It concluded that Lorenzo Pou became a citizen of the Philippine Islands;
- (3) It concluded that Allan F. Poe became a citizen of the Philippine Islands or of the Philippines;
- (4) It concluded that, under the 1935 Constitution, FPJ is a natural-born citizen despite his illegitimacy;
- (5) It concluded that FPJ's Certificate of Candidacy does not contain a material misrepresentation or falsity as to his being a natural-born Filipino citizen;
- (6) It concluded that FPJ should not be declared disqualified to run for President in the May 2004 elections.

Petitioner Fornier maintains that, in any event, this Court can take cognizance of the issue of FPJ's citizenship and rule on his qualifications to run for President of the Republic of the Philippines.

On February 11, 2004, in compliance with this Court's Resolution of January 27, 2004, FPJ submitted his Consolidated Comment[49] on the petitions filed by petitioners Tecson et al. and Velez. In his Comment, FPJ argues that:

- (1) The Supreme Court, acting as the Presidential Electoral Tribunal, may not exercise its jurisdiction as "sole judge" of all contests relating to the qualifications of the President prior to the elections.
- (2) Petitioners Tecson et al. and Velez have no standing to seek the review of the questioned COMELEC Resolutions since the Constitution provides that a review of a decision, order or ruling of the COMELEC may be brought by the "aggrieved party,"[50] and petitioners were never parties, much less "aggrieved parties," to the proceedings in the Petition for Disqualification.
- (3) Moreover, the issues raised by petitioners Tecson et al. and Velez have already been raised in the Petition for Disqualification.

On February 13, 2004, in compliance with this Court's Resolution of January 27, 2004, petitioner Fornier submitted his Comment [To Petitioners Tecson et al.'s Petition and Supplemental Petition in G.R. No. 161434].[51] In his Comment, petitioner Fornier asserts that:

- (1) The petitions filed directly with this Court by petitioners Tecson et al. and Velez are premature and improper considering that the original jurisdiction to try and decide the disqualification case of FPJ, prior to the May 10, 2004 elections, is with the COMELEC. In fact, the original jurisdiction of the COMELEC over disqualification cases has been recognized in a number of cases.[52]

(2) Moreover, the jurisdiction of this Court as “sole judge” of all contests relating to the qualifications of the President begins only after a presidential candidate has already been elected and his or her disqualification is being sought in an election protest or by way of a quo warranto proceeding.

On February 16, 2004, in compliance with this Court’s Resolution of February 11, 2004, FPJ submitted his Comment[53] on the Petition filed by petitioner Fornier. In his Comment, FPJ contends that:

(1) Petitioner Fornier cannot seek equitable relief from this Court since he “does not come with clean hands,” he having knowingly annexed falsified documents to the Petition for Disqualification.

(2) Inasmuch as the only issue in a petition for certiorari is whether the COMELEC acted with grave abuse of discretion when it promulgated its questioned Resolutions, the issues in petitioner Fornier’s present petition are limited to: (a) whether petitioner has shown by clear and convincing evidence that FPJ is not a natural-born citizen; and (b) assuming petitioner has discharged this burden, whether FPJ knew, at the time that he filed his Certificate of Candidacy, that he is not a natural-born citizen.

(4) Petitioner Fornier’s Petition for Certiorari may not be treated as one for disqualification of FPJ on the ground of ineligibility since:

(a) Such would be in clear breach of Section 7, Article IX-A of the Constitution and Rule 65 of the Rules of Court;

(b) It would violate FPJ’s right to procedural due process considering that the Petition for Disqualification was heard summarily pursuant to Rule 23 of the COMELEC Rules of Procedure covering Petitions to Deny Due Course to or Cancel Certificates of Candidacy; and

(c) Neither the COMELEC nor the Supreme Court has jurisdiction to disqualify a candidate for president for ineligibility since:

(i) Paragraph 2 of Section 2, Article IX-C of the Constitution limits the original jurisdiction of the COMELEC to “contests relating to the elections, returns and qualifications of all elective regional, provincial and city officials; and

(ii) This Court’s jurisdiction as the Presidential Electoral Tribunal may only be invoked, and exercised, after the election and proclamation of the President.

(5) FPJ could not be other than a natural-born Filipino considering that his father, Allan Fernando Poe, and his grandfather Lorenzo Pou were both Philippine citizens.

(6) Petitioner Fornier’s evidence purportedly showing that FPJ is not a natural-born Filipino is based on fabricated documents.

(7) That FPJ’s parents were married after his birth is no consequence on his Filipino citizenship since his Birth Certificate declares that he is a Filipino. In addition, the Marriage Contract of FPJ’s parents declares his father, Fernando R. Pou, and his grandfather, Lorenzo Pou, to be Filipinos. Furthermore, FPJ’s legitimacy may no longer be questioned and may not be subject to collateral attack.

On February 18, 2004, petitioners Tecson et al. filed a Consolidated Reply (To [FPJ’s] Consolidated Comment and Respondent Fornier’s Comment)[54] maintaining that:

(1) This Court should assume jurisdiction over the Petition in G.R. No. 161434 and resolve the case on the merits considering that the question of whether FPJ is a natural-born Philippine citizen qualified to run for President is a purely legal one impressed with transcendental importance.

(2) In addition, paragraph 7 of Section 4, Article VII taken together with Section 1, Article VIII of the Constitution authorizes this Court to assume exclusive original jurisdiction over the question of FPJ's qualification to run for the Presidency.

(3) The fact that FPJ did not refute the allegations that he is not a natural-born Philippine citizen, based on the very documents he presented, only proves that he has no solid legal basis on which to anchor his claim of natural-born citizenship.

On February 19, 2004, this Court heard oral arguments by the parties to the present cases during which the opinions of the following who were invited as amici curiae were proffered:

(1) Supreme Court Associate Justice Vicente V. Mendoza (Ret.)

(2) Former Constitutional Commissioner Joaquin G. Bernas

(3) Former Dean Merlin Magallona; and

(4) Professor Ruben C. Balane

For purposes of the oral arguments, the Court issued an Advisory defining the principal issues to be discussed as follows:

(1) Whether the Commission on Elections has jurisdiction over petitions to deny due course to or cancel certificates of candidacy of Presidential candidates.

(2) Whether the Supreme Court has jurisdiction over the petitions of:

i. petitioners Tecson et al.

ii. petitioner Velez

iii. petitioner Fornier

(3) Whether respondent Ronald Allan Kelley Poe is a Filipino citizen. If so, whether he is a natural-born Filipino citizen,

and suggested that:

In discussing these issues, the following may be taken up:

a) the Commission on Election's power to enforce and administer election laws and decide, except those involving the right to vote, all questions affecting elections under paragraphs (1) and (3), Section 2 of Article IX-C of the Constitution;

b) the concept of natural-born citizen;

c) the principle of jus sanguinis;

d) applicability of international law in resolving problems of citizenship;

e) whether "children," as used in citizenship statutes, includes illegitimate children;

f) laws governing the citizenship of a child born under the 1935 Constitution;

g) other Constitutional and statutory provisions as well as jurisprudential principles relevant to the principal issues.

On February 23, 2004, in compliance with the Order given in open court in the course of the oral arguments, the parties and amici curiae submitted their respective position papers in lieu of memoranda. Whereupon, these consolidated cases were submitted for decision.

Issues for Resolution:

In summary, the instant petitions call upon this Court to determine: (1) whether this Court has original and exclusive jurisdiction to pass upon the qualifications of presidential candidates; (2) whether the COMELEC acted with grave abuse of discretion when it issued its Resolutions of January 23, 2004 and February 6, 2004 dismissing the Petition for Disqualification; and (3) whether FPJ is a natural-born Filipino and therefore qualified to seek election as President of the Republic of the Philippines.

These issues will be discussed seriatim.

Supreme Court's Jurisdiction Over

the Petitions in G.R. Nos. 161464 and 161634.

Petitioners Tecson et al. and Velez assert that this Court has exclusive original jurisdiction to determine whether FPJ is qualified to be a candidate for President of the Republic of the Philippines primarily on the basis of paragraph 7, Section 4 of Article VII of the Constitution, to wit:

Sec. 4. x x x

x x x

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

However, the foregoing provision clearly refers to this Court's jurisdiction as the Presidential Electoral Tribunal over electoral contests relating to the election, returns and qualifications of the President, and not to the qualifications or disqualifications of a presidential candidate.

An "electoral contest" has been defined as an adversarial proceeding "by which matters involving the title or claim of title to an elective office, made before or after the proclamation of the winner, is settled whether or not the contestant is claiming the office in dispute."^[55] Thus, the subject matter of such a contest is "the title or claim of title" to an elective office itself and not merely the qualifications or absence of qualifications of a candidate for such office.

In *Topacio v. Paredes*,^[56] this Court distinguished between (a) electoral contests relating to the election and election returns and (b) contests relating to the qualifications for the electoral office:

All election disputes may be divided into two distinct classes: (1) those which pertain to the casting and counting of the ballots; and (2) those which pertain to the eligibility of the candidates. If there be cases incapable of being so classified, they have not been suggested. Those parts of section 27 [Act No. 1582 as amended by Act No. 2170], indicative of the kind of contests which are to be determined under its provisions, read:

"Such court (of First Instance) shall have exclusive and final jurisdiction except as hereinafter provided, and shall forthwith cause the registry lists and all ballots used at such election to be brought before it and examined, and to appoint the necessary officers therefor and to fix their compensation, . . .

xxx xxx xxx

“In such proceedings the registry list as finally corrected by the board of inspectors shall be conclusive as to who was entitled to vote at such election.”

These very words indicate the character of the election disputes which Courts of First Instance are empowered to decide under this provision of law. Contests which cannot be decided by an examination of the registry lists and of the ballots, and evidence of fraud and irregularity in connection with the manner of casting and counting the votes, must be included in the phrase "for the determination of which provision has not been otherwise made" which appears near the beginning of the section. If the nature of the evidence upon which the eligibility (qualifications) of a person to hold office must be decided is considered, it will be seen that such evidence has nothing to do with the manner of casting and counting the votes. To what purpose would be the examination of registry lists and ballots by officers appointed and paid for that purpose in determining the eligibility of a successful candidate for office? The eligibility of a person to be elected to a provincial or municipal office depends upon his qualifications as a voter, his residence, his allegiance to the United States, his age, the absence of disqualifications inflicted by the courts by way of punishment, etc. That is, these qualifications and disqualifications do not depend upon the conduct of election inspectors, the illegal trafficking in votes, the method of casting and counting the ballots, or the election returns. The evidence required to establish such qualifications or disqualifications would not aid in any way in determining the questions relating to the manner of casting and counting the ballots. E converso, would the examination of ballots aid in arriving at a decision as to his eligibility. There is nothing in this section to indicate that the court shall receive or consider evidence as to the personal character or circumstances of candidates.

Again, the effect of a decision that a candidate is not entitled to the office because of fraud or irregularities in the election is quite different from that produced by declaring a person ineligible to hold such an office. In the former case the court, after an examination of the ballots may find that some other person than the candidate declared to have received a plurality by the board of canvassers actually received the greater number of votes, in which case the court issues its mandamus to the board of canvassers to correct the returns accordingly; or it may find that the manner of holding the election and the returns are so tainted with fraud or illegality that it cannot be determined who received a plurality of the legally cast ballots. In the latter case, no question as to the correctness of the returns or the manner of casting and counting the ballots is before the deciding power, and generally the only result can be that the election fails entirely. In the former, we have a contest in the strict sense of the word, because opposing parties are striving for supremacy. If it be found that the successful candidate (according to the board of canvassers) obtained a plurality in an illegal manner, and that another candidate was the real victor, the former must retire in favor of the latter. In the other case, there is not, strictly speaking, a contest, as the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots. In the one case the question is as to who received a plurality of the legally cast ballots; in the other, the question is confined to the personal character and circumstances of a single individual.

x x x

In *Greenwood vs. Murphy* (131 Ill., 604), the court said:

“We think that the statute limits the power of the county court to contests of elections. That court has no other or further jurisdiction than to determine which of the contestants has been duly elected. The question whether or not a party already elected possesses the necessary qualifications for the office is one which must be determined in another way and by a different proceeding.

“Where it is claimed that such an one unlawfully holds an office by reason of his lack of a legal qualification

therefor, his right should be determined by information in the nature of quo warranto in the name of the people of the State.”[57] (Emphasis and underscoring supplied)

Thus, the contest concerning the qualifications of the President referred to in paragraph 7, Section 4 of Article VII of the Constitution clearly refers to a quo warranto proceeding.

Quo warranto literally means “by what authority.” It has been defined as an extraordinary legal remedy whereby a person or entity is challenged to show by what authority he holds a public office or exercises a public franchise.[58] The object of a quo warranto proceeding is to determine the right of a person to the use or exercise of a franchise or office and to oust the holder from its enjoyment, if his claim is not well-founded, or if he has forfeited his right to enjoy the privilege.[59]

Hence, actions falling under paragraph 7, Section 4 of Article VII of the Constitution may only be directed against the persons occupying or having title to the position of President (and Vice President) – i.e. the incumbent President (and Vice President) or the President-elect (and Vice-President-elect) – and not against the candidates for said electoral offices who do not, as such, hold or have any title thereto.

This interpretation is in consonance with Section 7 of Article VII of the Constitution which provides for the procedure to be followed in case the President-elect and/or Vice President-elect fail to qualify:

Sec. 7. The President-elect and the Vice-President-elect shall assume office at the beginning of their terms.

If the President-elect fails to qualify, the Vice-President-elect shall act as President until a President shall have been chosen and qualified.

If at the beginning of the term of the President, the President-elect shall have died or shall have become permanently disabled, the Vice-President-elect shall become President.

Where no President and Vice-President shall have been chosen or shall have qualified, or where both shall have died or become permanently disabled, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives shall act as President until a President or a Vice-President shall have been chosen and qualified.

The Congress shall, by law, provide for the manner in which one who is to act as President shall be selected until a President or a Vice-President shall have qualified, in case of death, permanent disability, or inability of the officials mentioned in the next preceding paragraph. (Emphasis supplied)

The procedure for quo warranto proceedings questioning the eligibility of the President is governed by Rules 12, 13 and 15 of the Rules of the Presidential Electoral Tribunal, which were promulgated by this Court specifically in order to implement the above-cited Constitutional provision. The Rules clearly provide that such quo warranto petition may be initiated by any voter after a candidate has been vested with a claim of title to the Presidency, i.e. after the proclamation of the winner, viz:

Rule 12. Jurisdiction. – The Tribunal shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President of the Philippines.

Rule 13. How Initiated. – An election contest is initiated by the filing of an election protest or a petition for quo warranto against the President or Vice-President. An election protest shall not include a petition for quo warranto. A petition for quo warranto shall not include an election protest.

x x x

Rule 15. Quo Warranto. – A verified petition for quo warranto contesting the election of the President or

Vice-President on the ground of ineligibility or of disloyalty to the Republic of the Philippines may be filed by any voter within ten (10) days after the proclamation of the winner. (Emphasis supplied)

Thus, the petitions in G.R. Nos. 161434 and 161634, which invoke the jurisdiction of this Court, as the Presidential Electoral Tribunal, to determine the eligibility or ineligibility of the President (and Vice-President) or the President-elect (and Vice-President-elect), are clearly premature and must be dismissed.

While conceding that under Republic Act No. 1793,[60] the precursor to the above-cited Constitutional provision, the jurisdiction of the Presidential Electoral Tribunal was limited to post-election controversies,[61] petitioner Velez claims that the use of the word “President” (and “Vice-President”) and not merely “President-elect” (and “Vice-President-elect”) in the present provision implies an expansion of the Presidential Electoral Tribunal’s jurisdiction. Specifically, he asserts that “[t]he dropping of the word ‘elect’ in the present Constitution is significant because this clearly means that the Supreme Court now has jurisdiction over cases involving qualifications of presidential candidates even if he is not yet elected.”

The Record of the Proceedings of the 1986 Constitutional Commission does not, however, support petitioner Velez’s novel theory. No intention to increase the jurisdiction of the Presidential Electoral Tribunal may be fairly inferred from the Record. The intent of the Constitutional Commissioners, as articulated by Commissioner Bernas, appears merely to elevate the status of the Presidential Electoral Tribunal to that of a Constitutional Body, to wit:

x x x

MR. VILLACORTA: Thank you very much, Madam President. I am not sure whether Commissioner Suarez has expressed his point. On page 2, the fourth paragraph of Section 4 provides:

The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President.

May I seek clarification as to whether or not the matter of determining the outcome of the contests relating to the election returns and qualifications of the President or Vice-President is purely a political matter and, therefore, should not be left entirely to the judiciary. Will the above-quoted provision not impinge on the doctrine of separation of powers between the executive and the judicial departments of the government?

MR. REGALADO: No, I really do not feel that would be a problem. This is a new provision incidentally. It was not in the 1935 Constitution nor in the 1973 Constitution.

MR. VILLACORTA: That is right.

MR. REGALADO: We feel that it will not be an intrusion into the separation of powers guaranteed to the judiciary because this is strictly an adversarial and judicial proceeding.

MR. VILLACORTA: May I know the rationale of the Committee because this supersedes Republic Act 7950 which provides for the Presidential Electoral Tribunal?

FR. BERNAS: Precisely, this is necessary. Election contests are, by their nature, judicial. Therefore, they are cognizable only by courts. If, for instance, we did not have a constitutional provision on an electoral tribunal for the Senate or an electoral tribunal for the House, normally, as composed, that cannot be given jurisdiction over contests.

So, the background of this is really the case of Roxas vs. Lopez. The Gentleman will remember that in that election, Lopez was declared winner. He filed a protest before the Supreme Court because there was a republic act

which created the Supreme Court as the Presidential Electoral Tribunal. The question in this case was whether new powers could be given the Supreme Court by law. In effect, the conflict was actually whether there was an attempt to create two Supreme Courts and the answer of the Supreme Court was: “No, this did not involve the creation of two Supreme Courts, but precisely we are giving new jurisdiction to the Supreme Court, as it is allowed by the Constitution. Congress may allocate various jurisdictions.”

Before the passage of that republic act in case there was any contest between two presidential candidates or two vice-presidential candidates, no one had jurisdiction over it. So, it became necessary to create a Presidential Electoral Tribunal. What we have done is to constitutionalize what was statutory but it is not an infringement on the separation of powers because the power being given to the Supreme Court here is a judicial power.[62]

x x x (Emphasis and underscoring supplied)

Petitioners Tecson et al. and Velez also argue that the word “contests” should be interpreted liberally in accordance with this Court’s ruling in *Javier v. Commission on Elections*.[63] They further cite *Javier* as authority for the proposition that this Court may immediately exercise exclusive original jurisdiction over the issues concerning FPJ’s possession of the requisite citizenship qualification to enable him to run as a candidate for the Presidency.

Petitioners’ assertions cannot be sustained. *Javier* involved an electoral contest relating to serious anomalies in the conduct of an election and the canvass election returns, and not to a proceeding to determine the qualifications of a candidate for election, viz:

Alleging serious anomalies in the conduct of the elections and the canvass of the election returns, the petitioner went to the Commission on Elections to prevent the impending proclamation of his rival, the private respondent herein. Specifically, the petitioner charged that the elections were marred by “massive terrorism, intimidation, duress, vote-buying, fraud, tampering and falsification of election returns under duress, threat and intimidation, snatching of ballot boxes perpetrated by the armed men of respondent Pacificador.” Particular mention was made of the municipalities of Caluya, Cabate, Tibiao, Barbaza, Laua-an, and also of San Remigio, where the petitioner claimed the election returns were not placed in the ballot boxes but merely wrapped in cement bags or manila paper.[64] (Emphasis supplied)

In fact, the ponencia, as quoted by petitioners, clearly states that election contests refer to matters involving the claim of title to an elective office, not a claim that one is qualified to be a candidate for such office:

The word “contests” should not be given a restrictive meaning; on the contrary, it should receive the widest possible scope conformably to the rule that the words used in the Constitution should be interpreted liberally. As employed in the 1973 Constitution, the term should be understood as referring to any matter involving the title or claim of title to an elective office, made before or after proclamation of the winner, whether or not the contestant is claiming the office in dispute. Needless to stress, the term should be given a consistent meaning and understood in the same sense under both Section 2(2) and Section 3 of Article XII-C of the Constitution.

The phrase “election, returns and qualifications” should be interpreted in its totality as referring to all matters affecting the validity of the contestee’s title. But if it is necessary to specify, we can say that “election” referred to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of the votes; “returns” to the canvass of the returns and the proclamation of the winners, including questions concerning the composition of the board of canvassers and the authenticity of the election returns; and “qualifications” to matters that could be raised in a quo warranto proceeding against the proclaimed winner, such as his disloyalty or ineligibility or the inadequacy of his certificate of candidacy.[65] (Emphasis and underscoring

supplied)

Finally, petitioners Tecson et al. and Velez claim that the issue of FPJ's qualification for the Presidency may also be brought directly to this Court on the basis of Section 1 of Article VIII of the Constitution through a petition for certiorari under Rule 65 of the Rules of Court, specially considering that the instant case is one of transcendental importance.

This claim cannot likewise be sustained. First, it is axiomatic that a petition for certiorari under Rule 65 of the Rules of Court is not available where there is another plain, speedy and adequate remedy in the ordinary course of law.[66] With respect to the issues raised in the present petitions, such other "plain, speedy and adequate remedy" exists, namely, as will be discussed further below, a petition to deny due course to or cancel a certificate of candidacy before the COMELEC under Section 78 of the Omnibus Rules of Court. Thus, the correct remedy of petitioners Tecson et al. and Velez should have been to intervene in the Petition for Disqualification.

Second, in determining whether procedural rules, such as standing, should be relaxed on the ground of "transcendental importance," the following determinants should be considered: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised.[67] Considering that the substantive issues raised by petitioners Tecson et al. and Velez in G.R. Nos. 161434 and 161634, respectively, are virtually identical to those raised by petitioner Fornier in G.R. No. 161824, this Court is not convinced that the "transcendental importance" of the issues raised herein justifies a direct resort to this Court under Rule 65 of the Rules of Court or the exercise of its expanded certiorari jurisdiction under Sec. 1, Article VIII of the Constitution.

Supreme Court's Jurisdiction Over

the Petition in G.R. No. 161824.

Upon the other hand, there can be no doubt that this Court has jurisdiction over petitioner Fornier's Petition for Certiorari questioning the Resolutions of January 23, 2004 and February 6, 2004 issued by the COMELEC First Division and En Banc, respectively in the Petition for Disqualification. Section 7 of Article IX-A of the Constitution[68] expressly vests this Court with the power of review over decisions, orders or rulings of the COMELEC.

COMELEC's Jurisdiction Over the Subject

Matter of the Petition for Disqualification

Under Section 78 of the Omnibus Election

Code.

The COMELEC, for its part, has original jurisdiction over petitions to deny due course to or cancel the certificate of candidacy of a Presidential candidate on the ground of falsity of material representation under Section 78 of Omnibus Election Code, to wit:

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

This jurisdiction arises from the COMELEC's powers and functions under paragraphs (1) and (3) of Section 2, Article IX-C of the Constitution:

Sect. 2. The Commission on Elections shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

x x x

(3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters. (Emphasis supplied)

and Sec. 52, Article VII of the Omnibus Election Code:

Sec. 52. Powers and functions of the Commission on Elections. – In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections x x x

x x x

As pointed out by petitioner Fornier, the COMELEC's authority to deny due course to or cancel a certificate of candidacy on the ground specified in Section 78 and other similar provisions of the Omnibus Election Code has been recognized in a long line of cases.

FPJ, however, points out that the cases cited by petitioner Fornier do not involve candidates for either President or Vice-President. He argues that the original jurisdiction of the COMELEC is limited only to contests relating to elective regional, provincial and city officials by paragraph (2) of Section 2, Article IX-C of the Constitution, viz:

Sect. 2. The Commission on Elections shall exercise the following powers and functions:

x x x

(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

x x x (Emphasis supplied)

FPJ adds that the above-cited Constitutional provision "refers precisely to the jurisdiction of the Commission on Elections over the 'qualifications' of candidates, definitively establishing that paragraphs (1) and (3) which the petitioner invoked do not include issues or questions involving the qualifications of candidates."

The cited provision does not support FPJ's conclusion. Paragraph (2) of Section 2, Article IX-C refers to the COMELEC's jurisdiction over electoral contests involving elective regional, provincial, and city positions, whether they are questioning the conduct of the election and the canvass of the votes or are in the nature of quo warranto proceedings to determine the eligibility or ineligibility of the proclaimed winner. The provision says nothing at all about the qualifications of a candidate for election, much less the cancellation of a certificate of

candidacy.

In contradistinction, Section 78 of the Omnibus Election Code provides for the sanctions of denial of due course or cancellation where a material representation required by Section 74 (i.e. announcement of candidacy, statement of eligibility, date of birth, civil status, residence, profession or occupation, political affiliation, etc.) as contained in a certificate of candidacy is shown to be false.

The cancellation of a certificate of candidacy under Section 78 of the Omnibus Election Code is clearly separate and distinct from the election contests contemplated in paragraph (2) of Section 2, Article IX-C. The former involves a measure to enforce compliance with the statutory requirements for the filing of certificates of candidacy, while the latter is an adversarial proceeding involving the title or claim of title to an elective office. That there are grounds common to both does not detract from the fact that each has a separate subject matter and purpose.

It is true that the present proceedings mark the first time that a petition questioning the certificate of candidacy of a presidential candidate under Section 78 of the Omnibus Election Code has reached this Court. However, in a number of cases involving candidates for the House of Representatives and the Senate, [69] this Court has already recognized that the jurisdiction vested in the COMELEC by Section 78 arises from its enforcement powers under paragraphs (1) and (3) of Section 2, Article IX-C of the Constitution, not from its adjudicatory powers under paragraph (2) of the same section. Thus, in the recent case of *Domino v. Commission on Elections* [70] involving a candidate for Representative of the lone district of Sarangani, this Court declared:

The COMELEC has jurisdiction as provided in Sec. 78, Art. IX of the Omnibus Election Code, over a petition to deny due course to or cancel certificate of candidacy. In the exercise of the said jurisdiction, it is within the competence of the COMELEC to determine whether false representation as to material facts was made in the certificate of candidacy, that will include, among others, the residence of the candidate.[71]

x x x

DOMINO's contention that the COMELEC has no jurisdiction in the present petition is bereft of merit.

As previously mentioned, the COMELEC, under Sec. 78, Art. IX of the Omnibus Election Code, has jurisdiction over a petition to deny course to or cancel certificate of candidacy. Such jurisdiction continues even after election, if for any reason no final judgment of disqualification is rendered before the election, and the candidate facing disqualification is voted for and receives the highest number of votes and provided further that the winning candidate has not been proclaimed or has taken his oath of office.[72] (Emphasis and underscoring supplied)

FPJ cites the Separate Opinion of Justice Mendoza, an amicus curiae in the present proceedings, in *Romualdez-Marcos v. Commission in Elections* [73] to support his claim that "there are no proceedings to contest the eligibility or the qualification of a candidate before the elections, and more specially, in regard candidates for President, Vice-President and members of Congress."

An examination of Justice Mendoza's Separate Opinion, however, shows that he was well aware of the nature and purpose of a petition to deny due course to or cancel a certificate of candidacy on the basis of Section 78 of the Omnibus Election Code:

The various election laws will be searched in vain for authorized proceedings for determining a candidate's qualifications for an office before his election. There are none in the Omnibus Election Code (B.P. Blg. 881), in the Electoral Reforms Law of 1987 (R.A. No. 6646), or in the law providing for synchronized elections (R.A. No. 7166). There are, in other words, no provisions for pre-proclamation contests but only election protests or quo

warranto proceedings against winning candidates.

To be sure, there are provisions denominated for “disqualification,” but they are not concerned with a declaration of the ineligibility of a candidate. These provisions are concerned with the incapacity (due to insanity, incompetence or conviction of an offense) of a person either to be a candidate or to continue as a candidate for public office. There is also a provision for the denial or cancellation of certificates of candidacy, but it applies only to cases involving false representations as to certain matters required by law to be stated in the certificates.

These provisions are found in the following parts of the Omnibus Election Code:

§ 12. Disqualifications. — Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a. penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.

The disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.

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

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

x x x

The petition filed by private respondent Cirilo Roy Montejo in the COMELEC, while entitled “For Cancellation and Disqualification,” contained no allegation that private respondent Imelda Romualdez-Marcos made material representations in her certificate of candidacy which were false. It sought her disqualification on the ground that “on the basis of her Voter Registration Record and Certificate of Candidacy, [she] is disqualified from running for the position of Representative, considering that on election day, May 8, 1995, [she] would have resided less than ten (10) months in the district where she is seeking to be elected.” For its part, the COMELEC’s Second Division, in its resolution of April 24, 1995, cancelled her certificate of candidacy and corrected certificate of candidacy on the basis of its finding that petitioner is “not qualified to run for the position of Member of the House of Representatives for the First Legislative District of Leyte” and not because of any finding that she had made false representations as to material matters in her certificate of candidacy.

Montejo's petition before the COMELEC was therefore not a petition for cancellation of certificate of candidacy

under § 78 of the Omnibus Election Code, but essentially a petition to declare private respondent ineligible. It is important to note this, because, as will presently be explained, proceedings under § 78 have for their purpose to disqualify a person from being a candidate, whereas quo warranto proceedings have for their purpose to disqualify a person from holding public office. Jurisdiction over quo warranto proceedings involving members of the House of Representatives is vested in the Electoral Tribunal of that body.[74] (Emphasis supplied, italics in the original)

x x x

Moreover, the COMELEC's authority to deny due course to or cancel the certificate of candidacy of a Presidential candidate under Section 78 in connection with Section 74 of the Omnibus Election Code cannot be deemed to run counter to the policy against the filing of pre-proclamation cases against Presidential candidates since it is evidently not one of the actions prohibited under Section 15[75] of Republic Act No. 7166.[76]

Indeed, Section 2, Article I of the Omnibus Election Code makes its provisions, including Sections 74 and 78, applicable to all candidates for all elective positions:

Sec. 2. Applicability. – This Code shall govern all elections of public officers and, to the extent appropriate, all referenda and plebiscites.

There being no provision to the contrary whether Constitutional or statutory, there is every reason to apply Sections 74 and 78 of the Omnibus Election Code to the certificates of candidacy of Presidential candidates.

The COMELEC Acted with Grave Abuse

of Discretion in Dismissing the Petition for

Disqualification for Lack of Merit.

Having determined that the COMELEC has jurisdiction to deny due course to or cancel the certificate of candidacy of a Presidential candidate under Section 78 of the Omnibus Election Code, this Court segues to the issue of whether the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed the Petition for Disqualification for lack of merit.

Grave abuse of discretion has been defined as a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as when the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[77]

A careful review of the questioned COMELEC Resolutions of January 23, 2004 and February 6, 2004 shows that the COMELEC did indeed act with grave abuse of discretion in issuing them: first, by resolving to dismiss the petition in the Petition for Disqualification without stating the factual bases therefor; and second, by resolving to dismiss the Petition for Disqualification without ruling categorically on the issue of FPJ's citizenship.

Absence of Factual Basis for the

Questioned COMELEC Resolutions

Section 14, Article VIII of the Constitution provides that “[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.” This requirement that the factual bases for a judgment must be clearly and distinctly expressed in a decision or resolution has been extended to administrative agencies exercising quasi-judicial functions by legislative fiat through Section 14, Chapter 3, Book VII of Executive Order 292, otherwise known as the Administrative Code of 1987:

Sec. 14. Decision. – Every decision rendered by the agency in a contested case shall be in writing and shall state clearly and distinctly the facts and the law on which it is based. The agency shall decide each case within thirty (30) days following its submission. The parties shall be notified of the decision personally or by registered mail addressed to their counsel of record, if any, or to them. (Emphasis supplied)

Significantly, a corresponding rule was adopted by the COMELEC in Sections 1 and 2 of Rule 18 of the COMELEC Rules of Procedure:

Rule 18. Decisions.

Sec. 1. Procedure in Making Decisions. – xxx

Every Decision shall express therein clearly and distinctly the facts and the law on which it is based.

Sec. 2. Minute Resolution. – No minute resolution resolving a case shall be rendered if evidence has been adduced and received. (Emphasis supplied)

Despite the foregoing, however, a reading of the January 23, 2004 Resolution of COMELEC First Division in the Petition for Disqualification does not state the facts on which the disposition of the said Resolution is based.

Said questioned Resolution contains an enumeration of the evidence submitted by petitioner Fornier,[78] a statement of the contents of FPJ's Certificate of Candidacy,[79] and a statement that the parties stipulated on the fact that Allan F. Poe is the father of FPJ.[80]

However, in determining whether FPJ is a natural-born citizen, the COMELEC First Division had only this to say:

To assail respondent's claim of eligibility, petitioner asserts that respondent is not a natural-born Filipino citizen. According to him, Exhibit "B-2" (alleged Marriage Contract between Allan Fernando Poe and Paulita Gomez) shows that the nationality of the father of Allan Fernando Poe, Lorenzo Poe, is Español. Allan Fernando Poe is admittedly the father of the respondent. In the same Exhibit "B-2" appears an entry that the nationality of Allan Fernando Poe is also Español. Petitioner's line of argument is that respondent could not have acquired Filipino citizenship from his father since the latter is Español.

Did the allegations in the petition as well as the exhibits presented in support thereof convincingly controvert the declaration by respondent in his Certificate of Candidacy that he is a natural-born Filipino citizen?

No.

The petition and the evidence failed to show strongly and convincingly that the declaration in the Certificate of Candidacy as to the citizenship of respondent was a falsehood.[81] (Emphasis supplied)

In discussing the citizenship of Lorenzo Pou, to whom FPJ traces his Philippine citizenship, the COMELEC First Division, after stating what it held to be the applicable law,[82] was equally parsimonious, to wit:

In the alleged marriage contract between Allan Fernando Poe and Paulita Gomez, submitted in evidence by petitioner, it was stated that Lorenzo Poe is the father of Allan Fernando Poe and that he is an "Español." By operation of the foregoing laws, however, Lorenzo Poe, respondent's grandfather, the father of Allan Fernando Poe, had ceased to be a Spanish subject and had become a Filipino citizen. Necessarily, Allan Fernando Poe – Lorenzo Poe's child who was born subsequent to his (Lorenzo's) acquisition of Filipino citizenship – followed his father's citizenship. To dispute that fact, petitioner should have presented proof that Lorenzo Poe intended to preserve his allegiance to the Crown of Spain by making before a court of record, within a year from the date of the exchange of ratifications of the peace treaty, a declaration of his decision to preserve such allegiance. Since there was no such declaration, he should be held to have renounced it and to have adopted the nationality of the

territory in which he resides.[83] (Emphasis supplied; italics in the original)

The February 6, 2004 Resolution issued by the COMELEC En Banc which passed upon Fornier's Motion for Reconsideration of the COMELEC First Division Resolution provides no further elucidation of the operative facts of the Petition for Disqualification. In said Resolution, the COMELEC En Banc redefined the issue to be determined in the Petition as whether FPJ made a deliberate attempt to mislead when he stated that he was a natural-born Philippine citizen in his Certificate of Candidacy:

Undeniably, the question on the citizenship of respondent falls within the requirement of materiality under Section 78. However, proof of misrepresentation with a deliberate attempt to mislead, must still be established. In other words, direct and substantial evidence showing that the person whose certificate of candidacy is being sought to be cancelled or denied due course, must have known or have been aware of the falsehood as appearing on his certificate.[84] (Underscoring in the original)

The COMELEC En Banc then proceeded to quote with approval the Resolution of the COMELEC First Division:

We quote, with approval, the position taken by the First Division, thus:

"Considering that the evidence presented by the petitioner is not substantial, we declare that the respondent did not commit any material misrepresentation when he stated in his Certificate of Candidacy that he is a natural-born Filipino citizen."

This leaves us with the question: Did the First Division err when it proceeded to make a pronouncement that Respondent Poe is a natural-born Filipino citizen in disposing the issue of whether or not he made a material misrepresentation in his Certificate of Candidacy regarding his citizenship?

We do not think so.[85]

But on what factual basis the First Division concluded at respondent FPJ is a natural-born Filipino citizen, the COMELEC En Banc remained silent.

Consequently, I am at a loss as to how the COMELEC appreciated the evidence presented by the parties in order to arrive at its conclusions. As this Court observed in *Nicos Industrial Corp. v. Court of Appeals*:[86]

It is a requirement of due process that the parties to a litigation be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to a higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal.[87] (Emphasis supplied)

In fine, neither the Resolution of the COMELEC First Division, nor the Resolution COMELEC En Banc indicates the factual findings on which both were supposedly anchored. This failure on the part of the COMELEC to abide by the requirements of Section 14, Chapter 3, Book VII of the Administrative Code of 1987 as well as Sections 1 and 2 of Rule 18 of its own Rules of Procedure impressed the questioned Resolutions of January 23, 2004 and February 6, 2004 with the vice of grave abuse of discretion and reduced the same to patent nullities.

Apropos, in this regard, is this Court's admonition in *Naguiat v. National Labor Relations Commission*:[88]

x x x Unfortunately, the NLRC did not discuss or give any explanation for holding Naguiat Enterprises and its

officers jointly and severally liable in discharging CFTI's liability for payment of separation pay. We again remind those concerned that decisions, however concisely written, must distinctly and clearly set forth the facts and law upon which they are based. This rule applies as well to dispositions by quasi-judicial and administrative bodies.[89] (Emphasis supplied)

COMELEC's Jurisdiction to Determine the

Citizenship of a Candidate for Election/

Clarification of the pronouncement in

Salcedo II.

From the records of the present case, it is clearly evident that the central issue of the proceedings before the COMELEC in the Petition for Disqualification, and indeed in the case now before this Court, is FPJ's claim to being a natural-born Filipino citizen.

By his original Petition in the Petition for Disqualification, petitioner Fornier directly called into question FPJ's claim to being a natural-born Filipino citizen who is eligible for the position of President of the Republic of the Philippines, thus:

4. [FPJ], however, is not even a citizen of the Philippines, much more a natural born citizen, and as such lacks one of the essential qualifications for the position of President of the Republic of the Philippines since both of his parents are not Filipino citizens.

x x x

11. Clearly, [FPJ] is not a citizen of the Philippines, much more a natural-born Filipino citizen, considering that both of his parents are aliens. Also, even assuming arguendo that respondent Poe's father, Allan F. Poe, is a Filipino citizen, as indicated in his Certificate of Birth (Annex "B" hereof), since respondent Poe is an illegitimate child of his father with Bessie Kelley, an American, he acquired the citizenship of the latter. [United States vs. Ong Tianse, supra]

12. Hence, [FPJ], not being a natural-born citizen of the Philippines, lacks an essential qualification and corollarily possesses a disqualification to be elected President of the Republic of the Philippines, as expressly required under the 1987 Constitution.

13. In view of the foregoing, [FPJ] should be disqualified from being a candidate for the position of President of the Republic of the Philippines in the coming 10 May 2004 elections.[90]

The COMELEC First Division, while aware of the fact that the Petition for Disqualification before it called for a determination of FPJ's citizenship and that the COMELEC had, in the past, given due course to similar petitions, nevertheless held that it was not the proper forum to finally declare whether FPJ is indeed a natural-born Filipino citizen:

As earlier stated, the Commission has jurisdiction to deny due course to or cancel a Certificate of Candidacy exclusively on the ground that any material representation contained therein is false.

We feel we are not at liberty to finally declare whether or not the respondent is a natural-born Filipino citizen. Comelec is not the proper forum. But we are called upon to decide the question of whether or not the Certificate of Candidacy filed by the respondent should be denied due course or cancelled.[91] (Emphasis supplied)

Passing on Fornier's Motion for Reconsideration, the COMELEC En Banc declared that "[u]ndeniably, the

question on the citizenship of respondent falls within the requirement of materiality under Section 78.” The COMELEC En Banc went on to stress that the power of the COMELEC to determine issues of citizenship as an incident to petitions for disqualification or cancellation of certificates of candidacy has never been questioned by this Court.[92] Nevertheless, it sustained the First Division’s dismissal of the Petition for Disqualification without determining the issue of FPJ’s citizenship.

It is apparent then that the COMELEC avoided ruling squarely, one way or the other, on the issue of FPJ’s citizenship. Considering that Section 74 of the Omnibus Election Code requires that a candidate must state under oath that he is eligible for the office for which he is announcing his candidacy and that Section 2, Article VII of the Constitution clearly provides that “[n]o person may be elected President unless he is a natural-born citizen of the Philippines,” it was the duty of the COMELEC in the Petition for Disqualification to determine, on the basis of the evidence adduced, whether FPJ is in fact a “natural-born Filipino citizen.” In resolving to dismiss the Petition without performing this duty, the COMELEC clearly acted with grave abuse of discretion.

Notatu dignum is that while, under our laws, there can be no action or proceeding for the judicial declaration of the citizenship of an individual,[93] this Court has long recognized the power of quasi-judicial agencies to pass upon, and rule on the issue of citizenship as an incident to the adjudication of a real and justiciable controversy such as when a person asserts a right exercisable only by a Filipino citizen.[94] Indeed, the COMELEC itself has ruled, or has been deemed to have ruled, squarely upon the issue of citizenship in a number of cases concerning candidates for election.[95]

To justify its evasion of the duty to rule squarely on the issue of citizenship, the COMELEC relies on this Court’s ruling in *Salcedo II v. Commission on Elections*,[96] wherein this Court held:

Aside from the requirement of materiality, a false representation under Section 78 must consist of a “deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.” [*Romualdez-Marcos v. COMELEC*, 248 SCRA 300 (1995)] In other words, it must be made with an intention to deceive the electorate as to one’s qualifications for public office. The use of a surname, when not intended to mislead or deceive the public as to one’s identity, is not within the scope of the provision.[97]

Thus, upon the above-quoted pronouncement, the COMELEC En Banc held that Fornier should have presented “proof of misrepresentation with a deliberate attempt to mislead” on the part of FPJ, and evidently confined the issue in the Petition for Disqualification to whether FPJ “must have known or have been aware of the falsehood as [allegedly] appearing on his certificate.”

The COMELEC’s ratio does not convince. First, even accepting its definition of the issue, it is impossible for the COMELEC to determine whether FPJ was aware of a false material representation in his Certificate of Candidacy without first determining whether such material representation (in this case, his claim of natural-born citizenship) was false. The fact alone that there is a public document (i.e., his birth certificate) which FPJ might have relied upon in averring natural-born citizenship does not automatically exclude the possibility that (a) there is other evidence to show that such averment is false, and (b) that FPJ was aware of such evidence.

Second, the COMELEC’s strained construction of the ruling in *Salcedo II v. Commission on Elections*[98] removes the above-quoted portion of the ponencia from the factual circumstances of the case. The issue in *Salcedo II* was whether Ermelita Cacao Salcedo’s use of the surname “Salcedo” in her Certificate of Candidacy constituted a false material representation under Section 78 of the Omnibus Election Code, given the allegation that she was not legally married to Neptali Salcedo. In ruling that Ermelita Cacao’s use of the surname “Salcedo” did not constitute a false material representation, this Court stated:

x x x it may be concluded that the material misrepresentation contemplated by Section 78 of the Code refer[s] to qualifications for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave – to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake.

Petitioner has made no allegations concerning private respondent’s qualifications to run for the office of mayor. Aside from his contention that she made a misrepresentation in the use of the surname “Salcedo,” petitioner does not claim that private respondent lacks the requisite residency, age, citizenship or any other legal qualification necessary to run for a local elective office as provided for in the Local Government Code. Thus, petitioner has failed to discharge the burden of proving that the misrepresentation allegedly made by private respondent in her certificate of candidacy pertains to a material matter.

Aside from the requirement of materiality, a false representation under Section 78 must consist of a “deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.” In other words, it must be made with an intention to deceive the electorate as to one’s qualifications for public office. The use of a surname, when not intended to mislead or deceive the public as to one’s identity, is not within the scope of the provision.

There is absolutely no showing that the inhabitants of Sara, Iloilo were deceived by the use of such surname by private respondent. Petitioner does not allege that the electorate did not know who they were voting for when they cast their ballots in favor of “Ermelita Cacao Salcedo” or that they were fooled into voting for someone else by the use of such name. It may safely be assumed that the electorate knew who private respondent was, not only by name, but also by face and may have even been personally acquainted with her since she has been residing in the municipality of Sara, Iloilo since at least 1986. Bolstering this assumption is the fact that she has been living with Neptali Salcedo, the mayor of Sara for three consecutive terms, since 1970 and the latter has held her out to the public as his wife.

Also arguing against petitioner’s claim that private respondent intended to deceive the electorate is the fact that private respondent started using the surname “Salcedo” since 1986, several years before the elections. In her application for registration of her rice and corn milling business filed with the Department of Trade and Industry in 1993, private respondent used the name “Ermelita Cacao Salcedo.” From 1987 to 1997, she also used the surname “Salcedo” in the income tax returns filed by herself and by Neptali Salcedo. The evidence presented by private respondent on this point, which has remained uncontested by petitioner, belie the latter’s claims that private respondent merely adopted the surname “Salcedo” for purposes of improving her chances of winning in the local elections by riding on the popularity of her husband.

Thus, we hold that private respondent did not commit any material misrepresentation by the use of the surname “Salcedo” in her certificate of candidacy.[99] (Emphasis and underscoring supplied)

The import of this Court’s ruling in *Salcedo II* is clearly that Ermelita Cacao’s use of the surname “Salcedo,” assuming it to be a misrepresentation, was not a “false material representation” in the context of Section 78 of the Omnibus Election Code since it did not deceive the electorate as to either her identity or her qualifications for the position of mayor.

In contrast, a false statement as to a qualification for elective office – in this case, natural-born citizenship – is always material and, if the truth remains undisclosed, it would definitely deceive the electorate as to a candidate’s qualifications for office.

It may indeed be that a false representation in a certificate of candidacy is the result of a candidate's erroneous interpretation of law and not from a false statement of fact, intentional or otherwise.[100] In declaring that he is eligible, a candidate invariably relies on his understanding of the legal requirement of residency or, as in this case, citizenship.

Thus, in *Romualdez-Marcos v. Commission on Elections*,^[101] cited in *Salcedo II*,^[102] Mrs. Marcos stated that she had been a resident of Leyte for only 7 months in the belief that what she was required by the law to state was the period of her actual residence therein. In deciding the case, this Court held that it was the actual fulfillment of the requirement, not the candidate's erroneous understanding of the requirement which was controlling:

It is the fact of residence, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the constitution's residency qualification requirement. The said [false] statement becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. It would be plainly ridiculous for a candidate to deliberately and knowingly make a statement in a certificate of candidacy which would lead to his or her disqualification.^[103] (Emphasis and underscoring supplied)

As applied to the present petitions, it is the status of FPJ's being a natural-born Filipino citizen, not the statement to that effect, which is material since it is the status of being a natural-born Filipino which is decisive in determining whether the Constitutional and statutory requirements have been fulfilled.

Viewed from whatever angle, it is beyond cavil that a determination of FPJ's citizenship was crucial to the proper disposition of the Petition for Disqualification. Such determination was impressed with immense public interest and made more urgent by the fast approaching May 10, 2004 elections as it directly impacts on the informed choice of each and every Filipino voter. The COMELEC's failure to rule squarely on said issue clearly constituted grave abuse of discretion.

Philippine Citizenship as Conferred by the

Constitution.

Having identified FPJ's citizenship to be the crucial issue, whether in the Petition for Disqualification or in the instant petition, it is necessary to consider the applicable law and jurisprudence for its determination.

Citizenship is a political status denoting membership, more or less permanent in character, in a political society and implying the duty of allegiance on the part of the member and a duty of protection on the part of society.^[104]

Thus, a citizen is one who, by birth, naturalization, or otherwise, is a member of a political community, and as such is subject to its laws and entitled to its protection in all his rights incident to that relation. Derived from the Latin word "cives," the term "citizen" conveys the idea of connection or identification with the state or government and participation in its function.^[105] It denotes possession within that particular political community of full civil and political rights subject to special disqualifications such as minority.^[106]

It is a recognized rule that each state, in the exercise of its sovereign power, is free to determine who its citizens are, but not who the citizens of other states are:

As a general principle, each State is free to determine by its own law the persons whom it considers to be its own nationals. The Hague Convention in 1930 on Conflict of Nationality Laws laid down two important rules on the point. The first rule is that it is for the municipal law of each State (not for International Law) to determine who are the nationals of a particular State, subject to certain limitations. Hence, the following provisions of the Hague Convention:

“It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States insofar as it is consistent with international conventions, international customs, and the principles of law generally recognized with regard to nationality.”

The second rule is a logical corollary of the first. If it is for the municipal law of each State to determine who are its nationals, it would necessarily follow that –

“Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State.”

In short, no other law than that of the Philippines determines whether or not a person is a Filipino national.[107] (Emphasis supplied)

In the Philippines, citizenship is essential not only for the exercise of political rights[108] and the right to hold public office,[109] but for the exercise of a number of important economic privileges which the Constitution reserves exclusively to Philippine citizens as well.[110] A comparison of the 1935, 1973 and present 1987 Constitution shows that a number of economic privileges reserved exclusively to Philippine citizens has increased over time.

These “nationalist provisions” make the question of citizenship of even greater importance and “deserving of the most serious consideration.” Thus, it has been said that “[to] those who are citizens by birth it is a precious heritage, while to those who acquire it thru naturalization it is a priceless acquisition.”[111]

Philippine Citizenship as Conferred

by the Constitution.

Being a political status, citizenship is determined by political law and not by civil or other laws. Thus in *Ching Leng v. Galang*,[112] this Court, speaking through Justice (later Chief Justice) Roberto Concepcion, stated:

The framers of the Civil Code had no intention whatsoever to regulate therein political questions. Hence, apart from reproducing the provisions of the Constitution on citizenship, the Code contains no precept thereon except that which refers all matters of “naturalization,” as well as those related to the “loss and reacquisition of citizenship” to “special laws.” Consistently with this policy, our Civil Code does not include therein any rule analogous to Articles 18 to 28 of the Civil Code of Spain, regulating citizenship.[113] (Emphasis supplied, underscoring in the original)

Philippine citizenship is thus governed primarily by Article IV of our 1987 Constitution, viz:

ARTICLE IV

Citizenship

Sec. 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 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.

Sec. 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

Sec. 3. Philippine citizenship may be lost or reacquired in the manner provided by law.

Sec. 4. Citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission they are deemed, under the law, to have renounced it.

Sec. 5. Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law. (Emphasis supplied)

Paragraph (1) of Section 1, Article IV of the 1987 Constitution recognizes as citizens those who were considered Philippine citizens under the 1973 Constitution. Paragraph (1) of Section 1, Article III of the 1973 Constitution,[114] in turn refers to those who were citizens under Article IV of the 1935 Constitution,[115] which provides:

ARTICLE IV

CITIZENSHIP

Sec. 1. The following are citizens of the Philippines:

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

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

Thus, the citizenship of one born during the effectivity of the 1935 Constitution is determined by the provisions thereof. Moreover, the changes in the provisions on citizenship in the present Constitution may not be deemed to retroact to benefit those born before it, except only when such retroactive effect has been made explicit in the Constitution itself. Thus, in *In Re: Application For Admission to the Philippine Bar*, *Vicente D. Ching*,^[116] this Court held that:

x x x 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.^[117] (Emphasis and underscoring supplied).

Prior to the ratification of the 1935 Constitution, citizenship of the Philippine Islands was governed by the principal organic acts by which the United States governed the country. These were the Philippine Bill of July 1, 1902 and the Philippine Autonomy Act of August 29, 1916, also known as the Jones Law. Both of these organic

acts make reference to the Treaty of Paris of December 10, 1898 by which Spain ceded the Philippine Islands to the United States. Article IX of the Treaty of Paris provided for effects of the change in sovereignty on citizenship status in the Philippine Islands:

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 event 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 other 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 ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.

Interpreting the provisions of the Philippine Bill of 1902 and the Jones Law, this Court, in the recent case of *Valles v. Commission on Elections*,^[118] had occasion to state:

The Philippine law on citizenship adheres to the principle of *jus sanguinis*. Thereunder, a child follows the nationality or citizenship of the parents regardless of the place of his/her birth, as opposed to the doctrine of *jus soli* which determines nationality or citizenship on the basis of place of birth.

Private respondent Rosalind Ybasco Lopez was born on May 16, 1934 in Napier Terrace, Broome, Western Australia, to the spouses, Telesforo Ybasco, a Filipino citizen and native of Daet, Camarines Norte, and Theresa Marquez, an Australian. Historically, this was a year before the 1935 Constitution took into effect and at that time, what served as the Constitution of the Philippines were the principal organic acts by which the United States governed the country. These were the Philippine Bill of July 1, 1902 and the Philippine Autonomy Act of August 29, 1916, also known as the Jones Law.

Among others, these laws defined who were deemed to be citizens of the Philippine islands. The Philippine Bill of 1902 defined Philippine citizens as:

SEC. 4. x x x 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.

The Jones Law, on the other hand, provides:

SEC. 2. 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 cannot 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.

Under both organic acts, all inhabitants of the Philippines who were Spanish subjects on April 11, 1899 and resided therein including their children are deemed to be Philippine citizens. Private respondent's father, Telesforo Ybasco, was born on January 5, 1879 in Daet, Camarines Norte, a fact duly evidenced by a certified true copy of an entry in the Registry of Births. Thus, under the Philippine Bill of 1902 and the Jones Law, Telesforo Ybasco was deemed to be a Philippine citizen. By virtue of the same laws, which were the laws in force at the time of her birth, Telesforo's daughter, herein private respondent Rosalind Ybasco Lopez, is likewise a citizen of the Philippines.

The signing into law of the 1935 Philippine Constitution has established the principle of *jus sanguinis* as basis for the acquisition of Philippine citizenship, to wit:

- (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.

So also, the principle of *jus sanguinis*, which confers citizenship by virtue of blood relationship, was subsequently retained under the 1973 and 1987 Constitutions. Thus, the herein private respondent, Rosalind Ybasco Lopez, is a Filipino citizen, having been born to a Filipino father. The fact of her being born in Australia is not tantamount to her losing her Philippine citizenship. If Australia follows the principle of *jus soli*, then at most, private respondent can also claim Australian citizenship resulting to her possession of dual citizenship.[119] (*Emphasis supplied, italics in the original*)

Upon the other hand, in *In Re: Bosque*,[120] this Court elucidated on the requisites for the acquisition of citizenship of the Philippine Islands by operation of the Treaty of Paris as follows:

The cession of the Philippine Archipelago having been agreed upon by the parties to the treaty of Paris of December 10, 1898, the compulsory subjection of the subjects of the ceding power to the new sovereign followed as a logical consequence. The status of these subjects was not uniform, as in addition to the natives there were others who were merely residents but who, equally with the natives had interests and rights inherent in the nationality of the territory. With respect to these the special agreement contained in article 9 was established, by virtue of which it was agreed to accord them the right of electing to leave the country, thus freeing themselves of subjection to the new sovereign, or to continue to reside in the territory, in which case the expiration of the term of eighteen months[121] without their making an express declaration of intention to retain their Spanish nationality resulted in the loss of the latter, such persons thereby becoming subjects of the new sovereign in the same manner as the natives of these Islands. The period of eighteen months began to run from the date of the exchange of the ratifications of the treaty – that is to say, from April 11, 1899, and expired on the corresponding day of October, 1900. The petitioner absented himself from these Islands on May 30, 1899, and remained absent therefrom during the whole period. It was in January, 1901, that he returned to these Islands.

From this conduct on the part of the petitioner it is evident that he elected to take the first of the two courses open to him under his right of option. Neither the Government nor the courts can place any other construction upon the facts above related. Having left the Islands he had no occasion to make any declaration of his intention to preserve his Spanish nationality, which he carried with him on his departure. This nationality could be forfeited only by a continued residence in the ceded territory and a failure to make a declaration of intention to preserve it within the term fixed therefore. The conditions which gave rise to the presumptive change of nationality were residence and the lapse of eighteen months without express declaration to the contrary; these two conditions not being fulfilled there was no change of national status. Neither by the Government of Spain nor by that of the United States could the petitioner be regarded as a Filipino subject. By absenting himself from the territory he continued to be a Spaniard.

To native-born subjects of the territory no such right of option was accorded; it was expressly refused them upon the rejection by the American Commissioners of the proposition in favor of the inhabitants of the ceded territories made by the Spanish Commissioners in Annex No. 1 to the twenty-second protocol. (Conference of December 10, 1898). The native subject could not evade the power of the new sovereign by withdrawing from the Islands, nor while continuing to reside therein make declaration of his intention to preserve the Spanish nationality enjoyed under the former sovereign. Neither the Government of the United States nor that of Spain can consider them as other than Filipino subjects. This is expressly stated by the Spanish Government in article 1 of its royal decree of May 11, 1901.

The dates fixed by the treaty by which the sovereignty of one nation is ceded to another are of the highest importance, they being part of the contract, and are not within the control of the subjects as are those relating to their individual rights by reason of the fact that the political rights of the contracting nations themselves are the subject of the agreement. It is for this reason that the Government of Spain in the royal decree above cited has always taken the dates fixed in the treaty of Paris as the starting point, and, moreover, expressly declares therein that persons who are natives or residents of the ceded or relinquished territories can not, in their relations with the Government or authorities of such territories, lay claim to Spanish nationality preserved or recovered by virtue of said decree, except with the consent of such Government, or under treaty stipulations. (Art. 5.) The Government and courts of these Islands should not act with less circumspection in the matter, and invade the sovereign rights of Spain by giving the presumptive nationality established by Article IX of the treaty of Paris an extent not warranted by the conditions upon which it depends, to wit, residence coupled with failure to make an express declaration to the contrary. The ordinary provisions of local laws in their normal operation with regard to the effect of absence upon the retention of a residence or domicile can not therefore be relied upon, nor the presumptions as to the intention of an absentee recognized by the civil codes and international treaties, although the most general and almost the only proof allowed by statute as evidence of an intention to preserve a residence or domicile in a country is the maintenance of a dwelling or commercial establishment therein, upon which point, as also upon the fact that the petitioner became a member of the bar of Barcelona upon his arrival in that city, we make no decision, not regarding it as of any moment in view of the conclusions above expressed. The fact is that one is not to be regarded as having submitted to the new sovereign by the mere failure to make an express declaration, inasmuch as without a residence de facto the declaration is of no significance, having been established for the express purpose of overcoming the effect of a continued residence, an act which in itself implies subjection to the new sovereign by giving rise to the presumption of waiver of Spanish nationality and the adoption of that of the territory.

The petitioner can not, therefore, be considered to have lost his Spanish nationality by reason of his residence in the territory after the 11[th] of October, 1900, and his failure to make declaration of his intention to preserve it within the period agreed upon by the high contracting parties to the treaty of Paris, and to have adopted the

nationality of the native subjects under the presumption arising from the conditions expressed. He can only acquire it through voluntary renunciation of his present nationality by seeking to become naturalized in these Islands; but upon this matter this court can decide nothing, there having been no legislation upon the subject up to the present.[122] (Emphasis and underscoring supplied)

From the foregoing, it can be gathered that Article IX of the Treaty of Paris contemplated two distinct classes of persons: (a) the native inhabitants of the Philippine Islands, and (b) Spanish subjects who were natives of the Peninsula. The native inhabitants immediately became citizens of the Philippine Islands with no option whatsoever to retain Spanish citizenship. However, for the natives of Spain to become citizens of the Philippine Islands, the following conditions had to be met: (1) they had to be residents of the Philippine Islands on April 11, 1899; (2) they had to maintain actual residence therein for a period of 18 months or until October 11, 1900; (3) without their making an express declaration of intention to retain Spanish citizenship. The absence of any of these requisites prevented them from becoming citizens of the Philippine Islands.

In the later case of *In Re Mallare*,^[123] this Court, speaking through Justice (then Acting Chief Justice) J.B.L. Reyes, held that a claim of Philippine citizenship on the basis of the Treaty of Paris and the two Organic Acts must be supported by preponderant evidence, to wit:

On 16 July 1962, the then Acting Commissioner of Immigration Martiniano P. Vivo denounced the respondent to this Court as a Chinaman masquerading as a Filipino citizen and requested that the matter be investigated thoroughly and if the respondent fails to show that he has legally become a Filipino, steps be taken for striking his name from the roll of persons authorized to practice law. Acting upon the request, this Court, on 9 August 1962, referred the matter to its Legal Officer-Investigator for investigation and report. An investigation was thus held wherein the relator or complainant and the respondent appeared and adduced their respective evidence.

The position of the respondent-lawyer is that he is a Filipino citizen based on the supposed citizenship of his father, Esteban Mallare, alleged to be a Filipino citizen by choice, because he was the illegitimate son of a Chinese father and a Filipina mother, Ana Mallare; and that the respondent's mother, Te Na, a Chinese, followed the citizenship of her husband upon their marriage.

x x x

On respondent's first claim to citizenship by blood, the earliest datum that can be stated about the respondent's supposed ancestry is that in 1902, ex-municipal president Rafael Catarroja, then eight years old, met for the first time Ana Mallare, the supposed paternal grandmother of the respondent, in Macalelon, Quezon. He had not seen her deliver or give birth to the baby boy, Esteban Mallare, father of the respondent, but met the supposed Filipina mother and Esteban Mallare years later when the boy was already eight (8) years old. (Annex "8", pp. 10-12, t.s.n., Sept. 24, 1959, Civil Case No. 329-G, CFI of Quezon Province). There is no evidence that Ana Mallare was an "inhabitant of the Philippine Islands continuing to reside therein who was a Spanish subject on the eleventh day of April, eighteen hundred and ninety-nine", as required by the Philippine Bill of July 1, 1902 and she cannot, therefore, be considered a Filipina. That witness Catarroja, the respondent, and the latter's brothers and sisters, stated that Ana Mallare was a Filipina, as well as their testimonies in the civil case that she had not married her Chinese husband and that she is the true mother of Esteban Mallare, are more of opinion or conjecture than fact, utterly insufficient to overcome the presumption that persons living together as husband and wife are married to each other (Rule 131, par. bb). "Every intendment of law and fact", says Article 220 of our Civil Code "leans toward the validity of marriage and the legitimacy of children."^[124] (emphasis supplied)

It was only after a new trial, wherein Mr. Mallare was able to present sufficient evidence, that his claim of Philippine citizenship was finally recognized:

In Our decision of April 29, 1968, respondent's claim that he is a Filipino was denied for lack of evidence proving the Philippine citizenship of his father, Esteban Mallare. It was ruled that Ana Mallare (Esteban's mother) can not be considered a Filipino, there being no proof that she was "an inhabitant of the Philippines continuing to reside therein who was a Spanish subject on the eleventh day of April, eighteen hundred and ninety-nine"; that the landing certificate issued by the Bureau of Immigration which referred to respondent's mother, Te Na, as "wife of Dy Esteban, P.I. citizen", was based upon an ex parte determination of the evidence presented by therein applicant and consequently carries little evidentiary weight as to the citizenship of her said husband; and that the affidavit of Esteban Mallare, executed on February 20, 1939, to the effect that he had chosen to follow the citizenship of his Filipino mother was not only self-serving, but also it can not be considered a re-affirmation of the alleged election of citizenship since no previous election of such citizenship has been proved to exist.

With the additional evidence submitted by respondent pursuant to the authority granted by this Court, the aforementioned void in the proof of respondent's citizenship has been duly filled.

The witnesses, all natives of Macalelon, who had personal knowledge of the person, birth and residency of both Ana Mallare and her son Esteban, were one in their declaration that Ana Mallare is a Tagalog who had continuously resided in the place, and that Esteban, her son, was reputedly born out of wedlock. Such declarations constitute admissible evidence of the birth and illegitimacy of Esteban Mallare. Reputation has been held admissible as evidence of age, birth, race, or race-ancestry, and on the question of whether a child was born alive. Unlike that of matters of pedigree, general reputation of marriage may proceed from persons who are not members of the family - the reason for the distinction is the public interest that is taken in the question of the existence of marital relations.

The principle could not have been more true than in a Philippine rural community where relationships not in conformity with established conventions become the subject of criticisms and public cynosure. Thus, the public reputation in Macalelon that Esteban was Ana's natural child, testified to by the witnesses, would constitute proof of the illegitimacy of the former. Besides, if Esteban were really born out of legal union, it is highly improbable that he would be keeping the surname "Mallare" after his mother, instead of adopting that of his father. And it would be straining the imagination to perceive that this situation was purposely sought by Esteban's parents to suit some ulterior motives. In 1903, we can not concede that alien inhabitants of his country were that sophisticated or legally-oriented.

The assertion of the witnesses, which have not been controverted, that Ana Mallare is a Tagalog (and, therefore, a Filipino citizen), cannot be assailed as being mere conclusions devoid of evidentiary value. The declarations were not only based on the reputation in the community regarding her race or race-ancestry, which is admissible in evidence, but they must have certain factual basis. For it must be realized that in this Philippine society, every region possesses certain characteristics all its own. Thus, a Tagalog would normally detect if a person hails from the same region even from the way the latter speaks. Considering that the witnesses testified having known, and lived with, Ana Mallare in Macalelon, their declaration that she is a Tagalog should receive a high degree of credibility.[125] (Emphasis and underscoring supplied)

Indeed in *Valles v. Commission on Elections*,^[126] the claim of citizenship was again sufficiently supported by the evidence, viz:

Under both organic acts, all inhabitants of the Philippines who were Spanish subjects on April 11, 1899 and resided therein including their children are deemed to be Philippine citizens. Private respondent's father, Telesforo Ybasco, was born on January 5, 1879 in Daet, Camarines Norte, a fact duly evidenced by a certified true copy of an entry in the Registry of Births. Thus, under the Philippine Bill of 1902 and the Jones Law, Telesforo Ybasco

was deemed to be a Philippine citizen. By virtue of the same laws, which were the laws in force at the time of her birth, Telesforo's daughter, herein private respondent Rosalind Ybasco Lopez, is likewise a citizen of the Philippines.[127] (Emphasis and underscoring supplied)

The same requirement was consistently adopted in other cases decided by this Court.[128]

It thus clear that a claim of citizenship on the basis of the Treaty of Paris, the Philippine Bill of 1902 and the Jones Law must be adequately supported by evidence and cannot be sustained on mere assumption or supposition.

Citizenship of an Illegitimate Child.

It is in light of the foregoing laws and jurisprudence that I now proceed to examine the arguments concerning Philippine citizenship of illegitimate children like FPJ who was born on August 20, 1939, before his parents contracted marriage on September 16, 1940.

Petitioner Fornier argues, on the basis of this Court's rulings in *United States v. Ong Tianse*,^[129] *Serra v. Republic*,^[130] *Zamboanga Transportation Co. v. Lim*,^[131] *Board of Immigration v. Gallano*,^[132] and *Paa v. Chan*,^[133] that an illegitimate child follows the citizenship of his or her mother, and not that of the illegitimate father. Thus, he concludes, even if the illegitimate child's father is a Filipino, paragraph (3) of Section 1, Article IV of the 1935 Constitution would not operate to confer Philippine citizenship on him or her.

In the cited case of *United States v. Ong Tianse*,^[134] decided in 1915 before the ratification of the 1935 Constitution, this Court held:

x x x In the present case, Ong Tianse alleges that he is a Filipino citizen because he was born in the Philippines of a Filipino mother, with the circumstance that his Chinese father was not legally married to his natural mother. Under these conditions the appellant follows, in accordance with law, the status and nationality of his only known parent, who is his mother, Barbara Dangculos, a Filipina.^[135] (Emphasis supplied)

The foregoing was known to and considered by the delegates to the 1934 Constitutional Convention. Indeed, even after the ratification of the 1935 Constitution, commentators were of the opinion that it was a well-settled rule in our jurisdiction that an illegitimate or natural child "follows the status and nationality of its mother, who is the only legally recognized parent."^[136]

Indeed, even former amicus curiae Constitutional Commissioner Fr. Joaquin G. Bernas, S.J., once held the same view:

It is also a settled rule that the principle of *jus sanguinis* applies only to natural filiation and not to filiation by adoption. Likewise, it is a settled rule that only legitimate children follow the citizenship of the father and that "illegitimate children are under the parental authority of the mother and follow her nationality, not that of the illegitimate father." This rule, based on parental authority, remains unchanged by the 1973 Constitution.^[137] (Emphasis supplied; italics in the original)

FPJ, on the other hand, argues that a plain reading of the Constitutional provision does not reveal any distinction in its application with respect to legitimate or illegitimate children. This view is shared by amici curiae Justice Mendoza, Fr. Bernas, and former University of the Philippines College of Law Dean Merlin M. Magallona.

In his Position Paper, Justice Mendoza opines:

On the basis of Art. IV, Sec. 1(3) of the 1935 Constitution ("Those whose fathers are citizens of the Philippines"), as interpreted by this Court, the rule may be summarized as follows:

1. A child follows the citizenship of his Filipino father if he is legitimate. If he is not a legitimate child but a

natural one, he may be legitimated by the subsequent marriage of his parents provided he is acknowledged by them either before or after the marriage.

2. A child born out of wedlock of an alien father and a Filipino mother follows the citizenship of his mother “as the only legally recognized parent.”

Thus, the cases interpreting Art. IV, Sec. 1(3) do not exclude illegitimate children of Filipino fathers from this class of citizens of the Philippines. They do not say that only legitimate children or natural children, who are legitimated as a result of the subsequent marriage of their parents and their acknowledgement before or after the marriage, belong to this class of citizens of the Philippines (“Those whose fathers are citizens of the Philippines”). Nor, on the other hand, by holding that illegitimate children follow the citizenship of their Filipino mothers as the “only legally recognized parents,” do the cases excludes instances in which an illegitimate child may have been acknowledged by his Filipino father.

These cases (*United States v. Ong Tianse*, supra; *Serra v. Republic*, supra; *Santos Co v. Government of the Philippine Islands*, 52 Phil. 543 (1928); *Ratunil Sy Quimsuan v. Republic*, 92 Phil. 675 (1953), holding that illegitimate children follow the citizenship of their Filipino mothers, involve situations in which the fathers are not Filipinos and the discernible effort of the Court is to trace a blood relation in order to give the illegitimate child Philippine citizenship. This blood relationship is easily established in the case of the mother as “the only legally recognized parent of the child.” But it would stand the principle on its head to say that the illegitimate child cannot follow the citizenship of the father if it happens and that he is the citizen of the Philippines, while the mother is the alien. Indeed to hold that an illegitimate child follows the citizenship of his Filipino mother but that an illegitimate child does not follow the citizenship of his Filipino father would be to make an invidious discrimination. To be sure this Court has not ruled thus.

To this Fr. Bernas, adds:

I now come to the question whether *jus sanguinis* applies to illegitimate children. We have many decisions which say that *jus sanguinis* applies to the illegitimate children of Filipino mothers because the mother is the only known or acknowledged parent. But does the law make a distinction and say that *jus sanguinis* does not apply to the illegitimate children of Filipino fathers even if paternity is clearly established?

No law or constitutional provision supports this distinction. On the contrary, the Constitution clearly says without distinction that among those who are citizens of the Philippines are those whose father[s are] Filipino citizen[s]. Hence, what is needed for the application of *jus sanguinis* according to the clear letter of the law is not legitimacy of the child but proof of paternity.

Having said that, however, we must contend with four cases promulgated by the Supreme Court which contain the statement that illegitimate children do not follow the Filipino citizenship of the father. These cases are: *Morano v. Vivo*, 20 SCRA 562 (1967), which in turns cites *Chiongbian v. De Leon*, 46 O.G. 3652 and *Serra v. Republic*, L-4223, May 12, 1952, and finally *Paa v. Chan*, 21 SCRA (1967).

x x x

I submit that the petitioners in this case as well as three Comelec Commissioners, including the two controversial new ones, and even the Solicitor General himself supported by sixteen Solicitors, Associate and Assistant Solicitors, have merely repeated, without any semblance of analysis, the obiter dicta in these four cases. It is I believe an unfortunate lapse in government legal scholarship.

The clear conclusion from all these four cases is that their statements to the effect that *jus sanguinis* applies only

to legitimate children were all obiter dicta which decided nothing. The Court had purported to offer a solution to a non-existent problem. Obiter dicta do not establish constitutional doctrine even if repeated endlessly. Obiter dicta are not decisions, and non-decisions do not constitute stare decisis. They therefore cannot be used to resolve constitutional issues today.

For his part, Dean Magallona states:

The transmissive essence of citizenship here is clearly the core principle of blood relationship or *jus sanguinis*. On this account, the derivation of citizenship from a person or the transmission of citizenship to his child, springs from the fact that he is the father. Thus, paternity as manifestation of blood relationship is all that is needed to be established. To introduce a distinction between legitimacy or illegitimacy in the status of a child vis-a-vis the derivation of his citizenship from the father defeats the transmissive essence of citizenship in blood relationship. The text of the law which reads “Those whose fathers are citizens of the Philippines” becomes an embodiment of the kernel principle of blood relationship, which provides no room for the notion of citizenship by legitimacy or legitimation.

I am aware that under Roman Law, from which the concept of *jus sanguinis* originated, a child born out of the pale of lawful marriage always followed the condition of his or her mother.[138] However, it cannot be denied that the concept of *jus sanguinis* as well as the rights of an illegitimate child have progressed considerably in the three millennia since the inception of Roman Law. Thus, I am open to a closer examination of the pronouncement that an illegitimate “follows the status and nationality of its mother, who is the only legally recognized parent.”

In *Zamboanga Transportation Co. v. Lim*,[139] this Court affirmed an Order by the Public Service Commission to the effect that an illegitimate child born to a Filipino mother during the effectivity of the 1935 Constitution did not have to elect Philippine citizenship upon reaching majority,[140] thereby implying that paragraph (4) of Section 1, Article IV of the 1935 Constitution did not apply to illegitimate children. However, said decision precisely had the effect of recognizing the citizenship of the illegitimate child on the basis of his blood relationship to his Filipino mother. It cannot reasonably be inferred, however, from this pronouncement that paragraph (3) of Section 1, Article IV of the 1935 Constitution should be construed as preventing an illegitimate child from deriving Philippine citizenship from his Filipino father.

I am likewise aware that in *Morano v. Vivo*,[141] *Chiongbian v. de Leon*[142] and *Ching Leng v. Galang*[143] it declared that a legitimate minor child follows the citizenship of his or her father. However, as observed by Justice Mendoza, these pronouncements “did not say that only legitimate children will follow the citizenship of one or the other parent, who is a Filipino.”[144]

As regards this Court’s statement in *United States v. Ong Tianse*[145] that a child born out of wedlock to a foreign father and a Filipino mother is presumed prima-facie to be a citizen of this country for, as under the law, he follows the status and nationality of his only legally recognized parent – his mother, a Filipina, Justice Mendoza comments that such pronouncement is based on the fact that a child’s blood relationship to his mother is easily determined at birth. However, so Justice Mendoza asserts, the pronouncement does not entirely foreclose the possibility that the illegitimate child may derive his father’s citizenship should such blood relationship be proved.

After due consideration of the arguments presented by the parties and amici curiae, I agree with the view of FPJ and the amici curiae that indeed a textual examination of the relevant provisions of the Constitution shows the same do not distinguish between legitimate or illegitimate children. As priorly observed, the Philippines has adopted the principle of *jus sanguinis*, or blood relationship, as the rule in determining citizenship. Consequently, the civil law status of legitimacy or illegitimacy, by itself, is not determinative of Philippine citizenship.

This view is reinforced by an examination of the record of the proceedings of the 1934 Constitutional Convention, particularly the session of November 26, 1934 when the provisions on citizenship were taken up by the plenary. The proceedings of the Constitutional Convention reveals that the delegates were acutely aware of the possible problems with respect to illegitimate children and foundlings that could arise from the adoption of *jus sanguinis* as the exclusive source of Philippine citizenship. Nevertheless, the consensus of the Convention delegates was apparently that such cases were too few to warrant the inclusion of a specific provision in the Constitution, and should be governed by statutory legislation, the principles of international law, and the decisions of this Court.[146]

In sum, finding no cogent reason to, in the language of Dean Magallona, “defeat the transmissive essence of citizenship in blood relationship” between fathers and their children, legitimate or illegitimate, I find that illegitimate children may follow the citizenship of their fathers under the principle of *jus sanguinis*.

In the determination of the citizenship of the illegitimate child, his status as such becomes material only in case his mother is an alien and he desires to claim Philippine citizenship through his putative Filipino father.

Relevance of Legitimacy/Illegitimacy at

Birth/Clarification of Doctrine in *Ong*

Tianse.

Does my foregoing statement render completely irrelevant the pronouncements, whether doctrine or dicta, in *United States v. Ong Tianse*[147] and the other cases cited by petitioner Fornier? FPJ and the amici curiae would argue in the affirmative.

On considered reflection, however, I find in the negative.

The rationale for the rule that the citizenship of an illegitimate child follows that of his or her mother appears to be two-fold: first, as an illegitimate child, he or she does not have an identifiable father and, unless he is identified, considered *nullus filius* or the child of no one; second, because the father is unknown, an unacknowledged illegitimate child acquires no rights with respect to his father. Both reasons appear to possess some practical value.

Undoubtedly, citizenship is a political right which flows not from legitimacy but from paternity. But, while it is impossible to argue with the statement of Fr. Bernas that “paternity begins when the ovum is fertilized nine months before birth and not upon marriage or legitimation,” the practical fact of the matter is that, at the point of conception and perhaps even until and beyond the point of birth, the identity of the father remains a secret known only to God and hidden from men – the child’s father included.

Put differently, the recognition that an illegitimate child may derive citizenship from his Filipino father does not resolve all issues as to his citizenship. All the amici curiae agree that an essential prerequisite is that the identity of the illegitimate child’s father should be firmly established – he should be legally known.

Human biology is such that, as a scientific fact, the identity of the mother is immediately known at birth, but that of the father is not. To manage this uncertainty as well as preserve, protect and promote the family as a social institution,[148] the law steps in and creates certain strong presumptions as to paternity.

With respect to filiation to his or her father, a child born within the marriage of his or her parents differs from one born out of wedlock. For a child born within the marriage of his parents, the law creates a strong presumption as to the paternity of his mother’s husband.[149] Correspondingly, the law makes it difficult to impugn the presumption that he is the child of his father.[150]

The law makes no such presumptions with respect to the paternity of an illegitimate child, however.[151]

As noted by the amici curiae, the rights accorded to illegitimate children have steadily progressed through time. Since the Roman Law to the present legal framework of the Family Code, a trend towards affording the nullius filius with more rights is readily apparent. Thus, the law does allow a father to establish his paternity with respect to his illegitimate child and, correspondingly, it also allows the illegitimate child to prove his filiation to his father. Given this, the principle enunciated in *United States v. Ong Tianse*[152] may be correctly understood to be that an illegitimate child follows the nationality of his legally recognized parent or parents.

For purposes of establishing citizenship, how then may he or she legally establish his or her filial relationship to his or her father? In the absence of more specific legislation, the provisions of civil law, as suggested by amicus curiae Prof. Ruben F. Balane, with respect to filiation may provide some guidance.

Under the Family Code, an illegitimate child may establish his or her filiation in the same manner as a legitimate child.[153] Article 172 of the Family Code thus provides:

Art. 172. The filiation of legitimate children is established by any of the following:

- (1) The record of birth appearing in the civil register or a final judgment; or
- (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

- (1) The open and continuous possession of the status of a legitimate child; or
- (2) Any other means allowed by the Rules of Court and special laws.

May an illegitimate child use the foregoing methods to prove his filiation for purposes of establishing not only his civil law status as the child of his father, but also to derive the political status of citizenship from his father? In evaluating this proposition, I am guided by the knowledge that citizenship confers a broader spectrum of rights and privileges between the individual and the State than between a child and the other members of his family.

With respect to voluntary acknowledgment, specially if made prior to any controversy concerning citizenship, the same may be considered sufficient to prove filiation for purposes of establishing citizenship on the assumption that a man would not lightly assume the solemn responsibilities of fatherhood if he were not certain of his paternity.

With respect to compulsory acknowledgment through a judicial proceeding, the same may be considered ideal as it would provide an opportunity for all parties to furnish all the evidence relevant to the issue of paternity. Moreover, it would give the State the opportunity to intervene and satisfy itself as to the *jus sanguinis* of the parties and ensure the enforcement of the State's strict policies on immigration. In this regard, the observation of this Court in *Tijing v. Court of Appeals*[154] with respect to DNA evidence is significant:

A final note. Parentage will still be resolved using conventional methods unless we adopt the modern and scientific ways available. Fortunately, we have now the facility and expertise in using DNA test for identification and parentage testing. The University of the Philippines Natural Science Research Institute (UP-NSRI) DNA Analysis Laboratory has now the capability to conduct DNA typing using short tandem repeat (STR) analysis. The analysis is based on the fact that the DNA of a child/person has two (2) copies, one copy from the mother and the other from the father. The DNA from the mother, the alleged father and child are analyzed to establish parentage. Of course, being a novel scientific technique, the use of DNA test as evidence is still open to challenge.

Eventually, as the appropriate case comes, courts should not hesitate to rule on the admissibility of DNA evidence. For it was said, that courts should apply the results of science when competently obtained in aid of situations presented, since to reject said result is to deny progress. Though it is not necessary in this case to resort to DNA testing, in future it would be useful to all concerned in the prompt resolution of parentage and identity issues. (Emphasis supplied)[155]

With respect to the open and continuous possession of the status of a legitimate child, the same may prove less weighty considering that a child is accorded the status of a legitimate child for reasons other than blood relationship. The statements of this Court in *Morano v. Vivo*,[156] and *Ching Leng v. Galang*[157] to the effect that blood relationship, and not merely parental authority, is required for a child to derive Philippine citizenship from his father may be considered persuasive.

Natural-born citizenship

Indeed, I note that in the context of the present case, the strictest proof of filiation is required since what must be determined is not merely citizenship but natural-born citizenship.

The concept of “natural-born citizen” was a concept adopted in the 1935 Constitution as a qualification for the offices of President and Vice-President,[158] Senator,[159] as well as Member of the House of Representatives.[160]

The 1935 Constitution did not itself define who is a natural-born citizen, but the concept was elucidated in the discussion between Delegates Artadi and Roxas during the deliberations of the 1934 Constitutional Convention,[161] wherein Delegate Roxas explained that a natural-born citizen is one who is a citizen by reason of his birth and not by naturalization or by any subsequent statement required by the law for his citizenship.[162]

The requirement was considered a reflection of the nationalistic spirit of the Framers of the Constitution.[163] According to Delegate Aruego, “It was felt that, by virtue of the key positions of the President and the Vice-President in the Philippine Government, every precaution should be taken to insure the fact the persons elected, instead of being or developing to be mere instruments of foreign governments or foreign groups, would be loyal to the country and to its people.”[164]

The 1973 Constitution explicitly incorporated the definition of natural-born citizen into the text,[165] as does the present 1987 Constitution:

Sec. 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

The second paragraph of the foregoing provision was intended to equalize the status of those born of Filipina parents before the effectivity of the 1973 Constitution on January 17, 1973 with that of those born after that date. Hence, by express Constitutional fiat, legitimate children of Filipino mothers born before the 1973 Constitution who elect Philippine citizenship within a reasonable time after reaching their majority age are deemed natural-born citizens even though they had to perform an act to perfect their Philippine citizenship.

It may be noted that, with the singular exception of those covered by the second sentence of Section 2, as discussed above, the essential features of natural-born citizenship is that it is (1) established at birth, and (2) involuntary in character — that is, a natural-born citizen has no choice in his being a Filipino.

That more high ranking public officials are required to be natural-born Philippine citizens under the present 1987 Constitution than in previous Constitutions may be interpreted to be further measures taken by the Constitutional

Commissioners to ensure that the nationalist provisions of the Constitution, political, social and economic, are carried out by men and women who are of unquestionable loyalty to the Philippines, whether in war or in peace. It may be further remarked that this expansion of the requirement of natural-born citizenship to other high public offices may prove prophetic in the context of the increasing importance of global trade and the intensity of global economic competition.

The special importance of the status of a natural-born citizen was eloquently stressed by Associate Justice Sandoval-Gutierrez in her dissenting opinion in the recent case of *Bengzon III v. House of Representatives Electoral Tribunal*,^[166] where the question of whether a natural-born citizen who had emigrated to a foreign country could subsequently re-acquire his natural-born status by repatriation:

For sure, the framers of our Constitution intended to provide a more stringent citizenship requirement for higher elective offices, including that of the office of a Congressman. Otherwise, the Constitution should have simply provided that a candidate for such position can be merely a citizen of the Philippines, as required of local elective officers.

The spirit of nationalism pervading the 1935 Constitution, the first charter framed and ratified by the Filipinos (even as the draft had to be approved by President Franklin Delano Roosevelt of the United States) guides and governs the interpretation of Philippine citizenship and the more narrow and bounded concept of being a natural-born citizen.

Under the 1935 Constitution, the requirement of natural-born citizenship was applicable only to the President and Vice President. A person who had been a citizen for only five (5) years could be elected to the National Assembly. Only in 1940, when the first Constitution was amended did natural-born citizenship become a requirement for Senators and Members of the House of Representatives. A Filipino naturalized for at least five (5) years could still be appointed Justice of the Supreme Court or a Judge of a lower court.

The history of the Constitution shows that the meaning and application of the requirement of being natural-born have become more narrow and qualified over the years.

Under the 1973 Constitution, the President, members of the National Assembly, Prime Minister, Justices of the Supreme Court, Judges of inferior courts, the chairmen and members of the Constitutional Commissions and the majority of members of the cabinet, must be natural-born citizens. The 1987 Constitution added the Ombudsman and his deputies and the members of the Commission on Human Rights to those who must be natural-born citizens.

The questioned Decision of respondent HRET reverses the historical trend and clear intendment of the Constitution. It shows a more liberal, if not a cavalier approach to the meaning and import of natural-born citizen and citizenship in general.

It bears stressing that we are tracing and enforcing a doctrine embodied in no less than the Constitution. Indeed, a deviation from the clear and constitutional definition of a "natural-born Filipino citizen" is a matter which can only be accomplished through a constitutional amendment. Clearly, respondent HRET gravely abused its discretion.^[167] (Emphasis supplied; italics in the original)

Considering the special status and privileges of a natural-born citizen, how should be determine whether a child born out of wedlock to an alien mother is indeed a natural-born Filipino citizen?

Justice Mendoza offers a possible solution in his Position Paper:

Finally, the question is whether respondent FPJ is a natural born citizen. The definition of who is a natural born

citizen of the Philippines in the 1973 and in the 1987 document follows the general idea that a person be a citizen at birth. This notion applies whether citizenship in a nation is based on the principle of *jus sanguinis* (blood relationship) or the principle of *jus soli* (place of birth). The notion was articulated in the American case of *United State[s] v. Wong Kim Ark*, 769 U.S. 649, 18 S. Ct. 456, 42 L. Ed. 890 (1848) and considered by the Constitutional Convention of 1934. (See the discussion between delegates Roxas and Artadi (See 5 Proceedings of the 1934-1935 Constitutional Convention 306-309 (Salvador H. Laurel, ed. 1966)). Consequently, if it can be shown that his acknowledgment by his supposed father was made upon his birth, then respondent FPJ is a natural born citizen of the Philippines within the meaning of Art. IV Sec. 2 of the 1987 Constitution.

x x x

6. If an illegitimate child's filiation to his supposed father and his acknowledgment by the latter are made at the moment of the child's birth and these matter are duly proven, then he is a natural born citizen of the Philippines. (Emphasis and underscoring supplied; italics in the original)

The suggestion of Justice Mendoza that an illegitimate child of a foreigner-mother who claims to be the son or daughter of a Filipino father may be considered a natural-born citizen if he was duly acknowledged by the latter at birth, in so far as it requires that citizenship be established at birth and preserves the involuntary character of natural-born citizenship, is well taken.

Citizenship of FPJ

The determination of FPJ's citizenship, which is the pivotal issue in the Petition for Disqualification, thus hinges on the application of the foregoing laws and jurisprudence to the facts of the present case.

But what precisely are the facts to which the law should be applied? As aforementioned, the COMELEC, in grave abuse of its discretion, limited itself to the entries in respondent Poe's certificate of candidacy without determining the veracity of these entries on the basis of the evidence adduced by the parties.

The rules governing the Petition for Disqualification were laid out by the COMELEC in its Resolution 6452,[168] promulgated on December 10, 2003. By said Resolution, the COMELEC, in the interest of justice and speedy disposition, suspended its Rules of procedure as may be inconsistent therewith;[169] designated the Clerk of the Commission to receive petitions pertaining to candidates for President;[170] and specified the procedure for presentation of evidence in Petitions to Deny Due Course or to Cancel Certificates of Candidacy,[171] and Petitions to Disqualify a Candidate Pursuant to Sec. 68 of the Omnibus Election Code and Petitions to Disqualify for Lack of Qualifications or Possessing Same Grounds for Disqualification.[172]

Pursuant to said COMELEC Resolution 6452, petitioner Fornier presented the following documentary evidence in the Petition for Disqualification:

- (1) A certified copy of FPJ's Birth Certificate, certified by V. C. Feliciano, Registration Officer IV of the City Civil Registry Office of Manila, indicating that FPJ was born on August 20, 1939, and that his parents are Bessie Kelley, an American citizen, and Allan F. Poe, allegedly a Filipino citizen. (petitioner's Exhibit "A").
- (2) A certified photocopy of an Affidavit executed on July 13, 1939 by Paulita Poe y Gomez in Spanish, certified by Ricardo L. Manapat of the Records Management and Archives Office, attesting to the fact that she filed a case of bigamy and concubinage against respondent's father, Allan F. Poe, after discovering the latter's bigamous relationship with respondent's mother, Bessie Kelley. (petitioner's Exhibit "B" and "B-1")
- (3) A certified photocopy of the Marriage Contract entered into on July 5, 1936 by and between respondent's father, Allan Fernando Poe and Paulita Gomez, certified by Ricardo L. Manapat of the Records Management and

Archives Office, showing that respondent's father is "Español;" and that his parents, Lorenzo Poe and Marta Reyes, were "Español" and "Mestiza Española", respectively. (petitioner's Exhibit "B-2")

(4) An English translation of the Affidavit dated July 13, 1939 executed by Paulita Poe y Gomez. (petitioner's Exhibit "B-3")

(5) A certified photocopy of the Birth Certificate of Allan Fernando Poe, certified by Ricardo L. Manapat of the Records Management and Archive Office, showing that he was born on May 17, 1915, and that his father, Lorenzo Poe, is "Español" and his mother, Marta Reyes, is "Mestiza Española". (petitioner's Exhibit "C")

(6) A Certification dated 16 January 2004 issued by Ricardo L. Manapat, Director of the Records Management and Archives Office, certifying that the National Archives does not possess any record of a certain Lorenzo Poe or Lorenzo Pou residing or entering the Philippines before 1907. (petitioner's Exhibit "D")

(7) A Certification dated 12 January 2004 issued by Estrella M. Domingo, OIC of the Archives Division of the National Archives, certifying that there is no available information in the files of the National Archives, regarding the birth of "Allan R. Pou", alleged to have been born on November 27, 1916. (petitioner's Exhibit "E")

FPJ, for his part, offered the following as evidence in the Petition for Disqualification:

(1) A Certification dated January 12, 2004, issued by Estrella M. Domingo, OIC of the Archives Division of the National Archives, certifying, among others, that there is no available information regarding the birth of Allan R. Pou in the Register of Births for San Carlos, Pangasinan, in the files of said Office. (respondent's Exhibit "1")

(2) A Certification dated January 13, 2004, issued by Estrella M. Domingo, OIC of the Archives Division of the National Archives, certifying, among others, that there is no available information about the marriage of Allan Fernando Poe and Paulita Gomez alleged to have been married on 18 July 1936 in Manila. (respondent's Exhibit "2")

(3) A certified copy of the Birth Certificate of Ronald Allan Poe, certified by Gloria C. Pagdilao of the City Civil Registrar of Manila. (respondent's Exhibit "3")

(4) A certified photocopy of Opinion No. 49, Series of 1995 rendered by Acting Secretary Demetrio G. Demetria on May 3, 1995, certified by Monalisa T. Esguerra, Chief of the Records Section, Department of Justice. (respondent's Exhibit "4")

(5) A Certification dated January 12, 2004 issued by Zenaida A. Peralta of the City Civil Registrar of San Carlos City, Pangasinan, certifying, among others, that as appearing from the Register of Death, Lorenzo Pou died on 11 September 1954 in San Carlos, Pangasinan. (respondent's Exhibit "5")

(6) A copy of Original Certificate of Title No. P-2247 of the Registry of Deeds for the Province of Pangasinan in the name of Lorenzo Pou, certified by the Registrar of Deeds/Deputy Registrar of Deeds of San Carlos City, Pangasinan on January 12, 2004 as a certified true copy, the original of which is on file in said Registry of Deeds. (respondent's Exhibit "6")

(7) Copies of Tax Declaration Nos. 20644, 20643, 23477 in the name of Lorenzo Pou, certified as true copies from the office file by Irene M. De Vera, In-charge of the Records Division, and of Tax Declaration No. 23478 in the name of Lorenzo Pou, certified as true copy from the original by Irene M. De Vera, In-charge of the Records Division (respondent's Exhibit "6-A" to "6-D")

(8) Certified copy of the Certificate of Death of Fernando R. Poe, certified by Gloria C. Pagdilao of the City Civil Registrar of Manila, stating, among others, that he died on October 23, 1951. (respondent's Exhibit "7")

- (9) A Certification dated January 13, 2004 issued by Lt. Colonel Narciso S. Erna, Assistant Adjutant General of the Armed Forces of the Philippines, showing certain available data regarding Fernando Reyes Poe. (respondent's Exhibit "8")
- (10) Certified copy of an alleged Affidavit for Army Personnel executed by Fernando R. Poe on December 22, 1947, certified by Lt. Colonel Narciso S. Erna, Assistant Adjutant General of the Armed Forces of the Philippines. (respondent's Exhibit "8-A")
- (11) Purported copy of General Order No. 175 allegedly issued by Army Headquarters APO 501 conferring Award of Gold Cross to Fernando Poe. (respondent's Exhibit "9")
- (12) A copy of Memorandum dated January 27, 1951 purportedly issued by S.H. Concepcion of the Office of the Adjutant General, Armed Forces of the Philippines addressed to Lt. Col Conrado Rigor, the latter being the officer tasked by the Armed Forces of the Philippines to present the Gold Cross Medal to the family of the late Captain Fernando Poe. (respondent's Exhibit "10")
- (13) A certified photocopy of the Certificate of Birth of Elizabeth Ann Poe, sister of respondent Poe. (respondent's Exhibit "11")
- (14) A certified photocopy of the Certificate of Birth of Fernando Poe II, of the City Civil Registrar of Manila. (respondent's Exhibit "12")
- (15) Certified photocopy of the original Certificate of Birth of Martha Genevieve Poe, sister of respondent, issued and certified by Gloria C. Pagdilao of the City Civil Registrar of Manila, showing that her nationality is "American." (respondent's Exhibit "13")
- (16) Certified photocopy of the original Certificate of Birth of Baby Poe, brother of respondent, issued and certified by Gloria C. Pagdilao of the City Civil Registrar of Manila. (respondent's Exhibit "14")
- (17) Certified photocopy of the original Certificate of Birth of Evangeline K. Poe, respondent's sister, issued and certified by Gloria C. Pagdilao of the City Civil Registrar of Manila. (respondent's Exhibit "15")
- (18) Copy of Passport No. 11491191 issued on June 25, 2003 in the name of respondent Poe. (respondent's Exhibit "16")
- (19) A photocopy of Transfer Certificate of Title No. 55020 of the Registry of Deeds for Rizal in the name of spouses Jesusa Poe and Ronald Allan Poe. (respondent's Exhibit "17")
- (20) A photocopy of Transfer Certificate of Title No. RT-116312 of the Registry of Deeds for Quezon City in the name of Ronald Allan Poe. (respondent's Exhibit "18")
- (21) A photocopy of Transfer Certificate of Title No. 300533 of the Registry of Deeds for Quezon City in the name of spouses Ronald Allan Poe and Jesusa Sonora. (respondent's Exhibit "19")
- (22) A Declaration of Ruby Kelly Mangahas, sister of the late Bessie Kelly, executed on January 12, 2004 in Stockton, California, U.S.A. notarized before Dorothy Marie Scheflo of San Joaquin County, California, U.S.A., attesting that her nephew, Ronald Allan Poe, is a natural born Filipino and is the legitimate child of Fernando Poe Jr. (respondent's Exhibit "20")
- (23) A certified photocopy of the Marriage Contract entered into by and between respondent's father, "Fernando Pou" and respondent's mother Bessie Kelly on September 16, 1940, certified by Florendo G. Suba, Administrative Officer II of the Civil Registrar of Manila. (respondent's Exhibit "21")

(24) A Certification issued by the Office of the City Civil Registrar of San Carlos City, Pangasinan, certifying, among others, that the records of birth of said office during the period 1900 to May 1946, were totally destroyed during the last World War II. (respondent's Exhibit "22")

Each of the foregoing must be carefully considered and evaluated, both individually and in comparison with the others, as to admissibility, relevance, and evidentiary weight in order that a firm factual footing for this case may be established.

A review of the arguments presented by the parties during the oral arguments and a preliminary examination of the foregoing documents leads to the following initial observations:

Some of the documents presented by petitioner Fornier[173] as well as those offered by FPJ[174] appear to be documents consisting of entries in public records. As such, they are prima facie evidence of the facts stated therein.[175] However, several of these documents conflict with one another in material points.

Some of FPJ's documentary submissions[176] appear to be transfer certificates of title to real properties acquired by him jointly with his wife, Jesusa Sonora. Considering that the exercise of rights exclusive to Filipinos has been held not to be conclusive proof that he is a Filipino citizen,[177] these do not appear to be relevant to the issue of citizenship.

Several Certifications[178] submitted by the parties may be admissible evidence that the records of the custodian's office do not contain a certain record or entry,[179] but do not necessarily prove the said record or entry does or did not ever exist or that the purported contents thereof are either true or false.

On further examination, the evidence submitted by the parties, taken together, do not form a coherent and consistent whole. Indeed, even considered apart from the documents submitted by petitioner Fornier, the documents offered by FPJ are in conflict with each other.

Thus, for example, FPJ's birth certificate refers to his putative father as Allan F. Poe, while the name in the space for the "father" in the birth certificates of his putative siblings uniformly appears as Fernando Poe. Similarly, what he claims to be his father's death certificate is also in the name of Fernando R. Poe. While that appearing under "husband" in the alleged Marriage Contract of his putative parents is Fernando R. Pou.

As a further example, FPJ's birth certificate indicates that his parents were married, and that he is a legitimate child. However, the Marriage Contract of his putative parents, Fernando R. Pou and Bessie Kelley, is dated September 16, 1940; thus, seemingly indicating that FPJ was born out of wedlock.

The difficulty in appreciating and weighing the foregoing pieces of evidence was further compounded during the oral arguments of the present case when, after the Chief Justice suggested that the parties enter into a stipulation of facts in order to abbreviate the proceedings, counsel for FPJ Atty. Estelito Mendoza disclaimed any knowledge as to the truth of the entries in FPJ's Birth Certificate as well as the Marriage Contract of Allan F. Poe and Bessie Kelley:

CHIEF JUSTICE: I think we can avoid all these disputations on these fact[s], if the parties will only agree on stipulation of facts on very, very simple questions. Cannot the parties for instance agree for the record that private respondent Fernando Poe, Jr. was born on 20 August 1939 in Manila, Philippines? Second, that his parents were Allan Poe and Bessie Kelley? Third[,] that Bessie Kelly was an American citizen before and at the time she gave birth to Fernando Poe Jr. and that Allan Poe and Bessie Kelly subsequently contracted marriage. They were married on 16 September 1940. If you can agree on that there seems to be no disputation at all on the details and so on. And if there is no agreement on the entries in both the record of birth and the marriage contract and then

that would call for a presentation of evidence, and this Court is not a trier of facts.

ATTY. FORNIER: We are willing to agree, Your Honor.

CHIEF JUSTICE: Justice Quisumbing.

JUSTICE QUISUMBING: A few questions, Mr. Counsel.

CHIEF JUSTICE: Yes, would Atty. Mendoza agree to these facts? So, we could terminate faster this oral argument. So, I will ask first Atty. Fornier. Do you agree that private respondent Fernando Poe Jr. was born on 20 August 1939 in Manila, Philippines?

ATTY. [FORNIER]: Yes, Your Honor.

CHIEF JUSTICE: Atty. Mendoza, do you agree to that?

ATTY. MENDOZA: Your Honors please, I can only stipulate [that] is what the birth certificate says.

CHIEF JUSTICE: But is that a fact?

ATTY. MENDOZA: Your Honors, please I can only agree that that is what the birth certificate says.

CHIEF JUSTICE: But is that a fact?

ATTY. MENDOZA: No, I cannot agree, Your Honor, please.

CHIEF JUSTICE: In other words, (interrupted)

ATTY. MENDOZA: I have no personal knowledge on that and I cannot confirm it. Both the father and mother are already deceased. There is no one from whom I can confirm those as facts. I regret very much Your Honor that I cannot agree to those as facts. All that I know [is] that the birth certificate stated that and that the petitioner marked that as evidence twice and he presented that as his own evidence and he must be bound by everything that he has stated in the certificate of voters. For example, Your Honor, that Bessie Kelly states that she is an American, but she is also a Filipino, because she was born in the Philippines. So, this is something which requires evidence. Based on all the extant records in the case he was (interrupted)

CHIEF JUSTICE: Yes, before you go into that (interrupted)

ATTY. MENDOZA: That is why if Your Honor please which I regret very much (interrupted)

CHIEF JUSTICE: Do you admit that the documents mentioned by Atty. Fornier, that is the birth certificate and the marriage contract were furnished by you or by the respondent here?

ATTY. MENDOZA: I have my turn but I'll have to explain (interrupted)

CHIEF JUSTICE: We try to shorten the proceedings, but it would appear that you are not agreeable to these facts even if this would come from documents presented by you?

ATTY. MENDOZA: No, no, Your Honor please. May I clarify?

CHIEF JUSTICE: Yes.

ATTY. MENDOZA: The birth certificate was presented by petitioner Fornier. It was marked as Exhibit "A" and Exhibit "B". Apart from that, if Your Honor please, it was Atty. Fornier who subpoenaed the Civil Registrar of Manila to bring the original of the birth certificate. And the birth certificate was brought to the COMELEC and the certified copies that we used were confirmed as authentic. Now, marriage contract was our evidence and since

that was our evidence, I am not conceding that for example, that Bessie Kelly was not necessarily Filipino. The fact that her citizenship is stated in the birth certificate as American does not necessarily preclude that she was also Filipino. Because as a matter of fact I can also prove that is, from information, that Bessie Kelly's mother was a Filipina. Her name was Martha Gatbonton. She was from Candaba, Pampanga. So, there are many facts, if Your Honor please, which I cannot stipulate on this. Because even my client Mr. Poe does not know this, he was just a small boy when his [father] died. So, I regret very much Your Honor please I can go no further but to stipulate on certain documents. But on whether those documents states the truth is something I cannot stipulate on because I would have no basis.

CHIEF JUSTICE: That seems to [be] very, very clear to the Court. You can stipulate on the authenticity of the document presented, the record of birth and the marriage contract but as to the truth or falsity of the contents therein you cannot stipulate? That would seem to be clear to us.

ATTY. MENDOZA: Your Honor, at the stage of the proceeding this is already a petition to review by certiorari a resolution of the COMELEC. And I do not think the Supreme Court may review on the basis of Rule 65 petition proceeding before the COMELEC and the basis of stipulation made by the parties before this Court. This case is only before the Court on a petition for certiorari under Rule 65. So, I regret very much if Your Honors please, that at the stage of the proceeding, I am unable to stipulate on many things.

CHIEF JUSTICE: Thank you, We cannot force you. Anyway, Fornier himself admitted, rather tried to insinuate of certain false entries. So, I doubt very much if these facts could be considered as no longer disputed by the parties. We can now proceed with interpolation of Atty. Fornier. The Court now recognizes Justice Quisumbing. (Emphasis and underscoring supplied)[180]

Even Prof. Balane, upon a question by the Chief Justice, could not determine whether the evidence submitted by the parties was sufficient to prove filiation under the provisions of the Civil Code:

CHIEF JUSTICE: One or two questions Professor Balane. In light of your recommendations, and the possible conclusion regarding the political status of the private respondent here, especially on the matter of issue of legitimation and the effects thereof, according to the rules established by the New Civil Code, can you conclude from the facts adduced here admitted by the parties or otherwise undisputed by the parties, to be sufficient to show that there had been legitimation in the case of private respondent?

PROFESSOR BALANE: First of all Mr. Chief Justice, I would like to confess that I looked at the pleadings, but I did not go very thoroughly [at] them because I did not have enough time. But my impression now is that [there is] still that requirement of recognition for legitimation I am not sure that the facts as we have them, now amount to a recognition, even if we were to follow the rule laid down in Tongoy vs. Court of Appeals that for legitimation, you do not even need voluntary recognition, but just the continuous possession of a state of a natural child. I am not sure that there is enough evidence to establish [that] at this stage.

CHIEF JUSTICE: So, in light of your observation that there is not enough evidence to reach that conclusion to sustain your view, would you recommend that this case be remanded to the COMELEC, for the COMELEC to receive the evidence in this regard?

PROFESSOR BALANE: I would probably recommend Mr. Chief Justice, that evidence be presented, to determine whether the requirements of recognition and therefore, legitimation are present.

CHIEF JUSTICE: But definitely not before this Court because this Court is not a trier of facts but to the proper instrumentality, more specifically [in] this case[, to] the COMELEC because this case started with the COMELEC and the COMELEC has jurisdiction over the issue?

PROFESSOR BALANE: If the COMELEC has the competence to pass upon these matters in not a summary manner but in a thorough manner which I am not sure of. In fact, I have been grappling with that question Mr. Chief Justice, I am not an expert in procedural law.

CHIEF JUSTICE: Since evidence would be necessary.

PROFESSOR BALANE: Since evidence seems to be necessary in order to establish the fact of his legitimation (interrupted)

CHIEF JUSTICE: Whose burden would it be to prove these facts, would it be the burden of the petitioner or will it be the burden of the respondent?

PROFESSOR BALANE: Well, generally, it is he who seeks to establish his status as a legitimated child, he will have the burden to prove it. It may not be difficult to prove, but I think he would have the burden. Frankly, honestly, I am not sure what the proper Tribunal is to which it should be referred.

CHIEF JUSTICE: [In] other words, it [may] not even be the COMELEC but definitely it should not be the Supreme Court?

PROFESSOR BALANE: Because that would make this Court a trier of facts, Mr. Chief Justice.[181] (Emphasis supplied)

Given this situation, it may have been prudent for this Court to have remanded or referred this case to trier of facts in order that all available relevant evidence may be presented and threshed out in the necessary evidentiary hearings. As it is, I am constrained to scrutinize the records of this case to determine five crucial factual questions, to wit:

- (1) Whether Lorenzo Pou has been established to be a Filipino citizen at the time of the birth of his son, Allan F. Poe;
- (2) Whether Allan F. Poe, the putative father of FPJ was a Filipino at the time of the birth of the latter;
- (3) Whether FPJ is a legitimate or illegitimate child;
- (4) Whether Allan F. Poe has been legally determined to be the father of FPJ;
- (5) Whether FPJ is a natural-born Filipino Citizen.

Citizenship of Lorenzo Pou

In his Answer in the Petition for Disqualification, FPJ claimed to have derived Philippine citizenship from his father, Allan F. Poe, who in turn derived from his father (FPJ's grandfather) Lorenzo Pou:

Respondent is a citizen of the Republic of the Philippines because his father, Allan Fernando Poe, was a citizen of the Philippines. Upon the other hand, Allan Fernando Poe, was a citizen of the Philippines, because Lorenzo Pou, the father of Allan Fernando Poe, or respondent's grandfather, was a citizen of the Philippines.

x x x

Lorenzo Pou was born a Spanish subject. He was an inhabitant of the Philippine Islands when on December 10, 1898, by virtue of the Treaty of Paris, Spain ceded the Philippine Islands to the United States.[182]

In support of the foregoing, FPJ submitted a Certification from the Civil Registrar of San Carlos City, Pangasinan which contains the following entries:

Registry number : 681

Date of Registration : September 11, 1954

Name of deceased : LORENZO POU

Sex: : Male

Age : 84 yrs old

Civil Status : Married

Citizenship : Filipino

Date of death : September 11, 1954

Place of death : San Carlos, Pangasinan

Cause of death : Cerebral Hemorrhage,

Hypertensive, heart disease

FPJ also submitted Original Certificate of Title No. P-2247 of the Registry of Deeds of the Province of Pangasinan in the name of Lorenzo Pou covering a Sales Patent dated September 10, 1936.

Under prevailing jurisprudence, the foregoing submissions by the parties are insufficient to prove that Lorenzo Pou became a citizen of the Philippine Islands by operation of the Treaty of Paris, the Philippine Bill of 1902 and the Jones Law.

The above-mentioned entry in the Registry of Deaths is only prima facie evidence that Lorenzo Pou died in Pangasinan on September 11, 1954. No presumption can be made that he was a resident of Pangasinan before that date.

Similarly, Original Certificate of Title P-2247 of the Registry of Deeds of the Province of Pangasinan is only prima facie evidence that Lorenzo Pou purchased a parcel of land in Pangasinan on September 10, 1936. It is neither proof that Lorenzo Pou resided in Pangasinan prior to that date nor proof that Lorenzo Pou was a citizen of the Philippine Islands.

Following the cases of *In re Mallari and Valles v. Commission on Elections*,^[183] the claim that Lorenzo Pou was an inhabitant of the Philippine Islands when on December 10, 1898, by virtue of the Treaty of Paris, Spain ceded the Philippine Islands to the United States must be supported by a record of birth evidencing his birth in the Philippine Islands, testimonial evidence to that effect, or some other competent evidence of that fact.

Moreover, the admission that Lorenzo Pou was a subject of Spain and not merely a native of the Philippine Islands opens the possibility that he was a native of the Spanish Peninsula. If such were the case, then he would have had to comply with the requirements prescribed in *In Re: Bosque*,^[184] to become a citizen of the Philippine Islands. To reiterate, these requirements are: (1) he should have been a resident of the Philippine Islands on April 11, 1899; (2) he should have maintained actual residence therein for a period of 18 months or until October 11, 1900; (3) without their making an express declaration of intention to retain his Spanish citizenship.

In sum, the evidence presented does not show that Lorenzo Pou acquired Philippine citizenship by virtue of the Treaty of Paris or the Organic Acts covering the Philippine Islands.

Citizenship of Allan F. Poe at the

time of the Birth of FPJ

In the proceedings in the COMELEC, petitioner Fornier presented a document (Petitioner's Exhibit "C") purported to be the Birth Certificate of Allan F. Poe and stamped:

CERTIFIED PHOTOCOPY:

(Sgd.)

RICARDO L. MANAPAT

RECORDS MANAGEMENT

AND ARCHIVES OFFICE

The entries in petitioner Fornier's Exhibit "C" indicate that Allan F. Poe was a Spanish citizen born to Lorenzo Pou, "Español," and Marta Reyes, "mestiza Española."

FPJ vehemently denied the authenticity and due execution of petitioner Fornier's Exhibit "C," alleging that the same is a "Manapat- fabricated document" on the basis of the testimony of certain personnel of the Records Management and Archives Office before the Senate Committee on Constitutional Amendments, Revision of Codes and Laws.

Granting arguendo that the testimony of the witnesses in the Senate is competent proof that may be appreciated both in the proceedings in the Petition for Disqualification as well as in the present petition, this Court shall examine only the claim made by FPJ in that Allan F. Poe acquired Philippine citizenship independently of the latter's father, Lorenzo Pou, by virtue of jus soli, Allan F. Poe having been allegedly born in the Philippines on November 27, 1916.

Allan Fernando Poe was born in San Carlos, Pangasinan, on November 27, 1916. His parents were Lorenzo Pou and Marta Reyes of Pangasinan. Allan Fernando Poe was also known as Fernando Poe, Sr. He obtained the degree of Bachelor of Science in Chemistry from the University of the Philippines in 1935 and the degree of Doctor of Dental Medicine from the Philippine Dental College in 1942. He later became a leading movie actor. He died on October 23, 1951. Like his father, Lorenzo Pou, he died, as his Certificate of Death states, a "Filipino".

Since Lorenzo Pou, the father of Allan Fernando Poe, was a citizen of the Philippine Islands, his children, including Allan Fernando Poe, were citizens of the Philippines.

Moreover, because Allan Fernando Poe was born in 1916 in the Philippines, before the 1935 Constitution, he furthermore acquired citizenship of the Philippine Islands because he was born in the Philippines – independently of the citizenship of his parents.[185]

No evidence appears to have been submitted by FPJ in support of the foregoing allegations. However, even assuming arguendo that Allan F. Poe was born in the Philippines on November 27, 1916, such fact, per se, would not suffice to prove that he was a citizen of the Philippine Islands absent a showing that he was judicially declared to be a Filipino citizen.

In *Tan Chong v. Secretary of Labor*,[186] this Court ruled that the principle jus soli or acquisition of citizenship by place of birth was never extended or applied in the Philippine Islands:

It appears that the petitioner in the first case was born in San Pablo, Laguna, in July 1915, of a Chinese father and a Filipino mother, lawfully married, left for China in 1925, and returned to the Philippines on 25 January 1940.

The applicant in the second case was born in Jolo, Sulu, on 8 May 1900, of a Chinese father and a Filipino mother. It does not appear whether they were legally married, so in the absence of proof to the contrary they are presumed to be lawfully married. From the date of his birth up to 16 November 1938, the date of the filing of his application for naturalization, and up to the date of hearing, he had been residing in the Philippines. He is married to a Filipino woman and has three children by her. He speaks the local dialect and the Spanish and English languages.

Considering that the common law principle or rule of *jus soli* obtaining in England and in the United States, as embodied in the Fourteenth Amendment to the Constitution of the United States, has never been extended to this jurisdiction (section 1, Act of 1 July 1902; sec. 5, Act of 29 August 1916); considering that the law in force and applicable to the petitioner and the applicant in the two cases at the time of their birth is sec. 4 of the Philippine Bill (Act of 1 July 1902), as amended by Act of 23 March 1912, which provides that only those "inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the 11th day of April, 1899; and then resided in said Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands," we are of the opinion and so hold that the petitioner in the first case and the applicant in the second case, who were born of alien parentage, were not and are not, under said section, citizens of the Philippine Islands.

Needless to say, this decision is not intended or designed to deprive, as it cannot divest, of their Filipino citizenship those who had been declared to be Filipino citizens, or upon whom such citizenship had been conferred, by the courts because of the doctrine or principle of *res adjudicata*. (Emphasis and underscoring supplied).[187]

Allan F. Poe then cannot, even by virtue of the doctrine of *res judicata*, be considered a Filipino citizen.

Legitimacy or Illegitimacy of FPJ

As priorly mentioned, FPJ's birth certificate indicates that his parents were married, and that he is a legitimate child. However, the Marriage Contract of his putative parents, Fernando R. Pou and Bessie Kelley, is dated September 16, 1940, thereby indicating that he was born out of wedlock. The entries in the two documents, both entries in a public record and *prima facie* proof of their contents, are obviously in conflict with each other.

In appreciating the evidentiary weight of each document, it is observed that the Birth Certificate was prepared by the attending physician who would have had personal knowledge of the fact and date of birth, but would have had to rely on hearsay information given to him as regards the other entries including legitimacy of FPJ. Hence, greater weight may be given to the date and fact of FPJ's birth as recorded in the Birth Certificate, but less weighty with respect to the entries regarding his legitimacy or paternity.[188]

As for the marriage contract, since the two contracting parties, Allan F. Poe and Bessie Kelley, participated in its execution, the entry therein with respect to the date of their marriage should be given greater weight.

This Court thus concludes, on the basis of the evidence before it, that FPJ was born out of wedlock, and was thus an illegitimate child at birth. As such, he, at birth, acquired the citizenship of his legally known American mother, Bessie Kelley.

Whether Allan F. Poe Has Been

Legally Determined to be the Father

of FPJ

Assuming *arguendo* that Allan F. Poe has been shown to have acquired Philippine citizenship, whether derived

from Lorenzo Pou or through some other means, before the birth of FPJ, this Court now examines FPJ's claim of filiation.

As proof of his filiation, FPJ relies upon (1) the stipulation by petitioner Fornier, both before the COMELEC and this Court that Allan F. Poe is indeed the father of FPJ; (2) the declaration of Ruby Kelley Mangahas; and (3) a certified copy of an affidavit of "Fernando R. Poe" for Philippine Army Personnel.

With respect to the admission made by petitioner Fornier that Allan F. Poe is indeed the father of FPJ, the same appears to have been based on the Birth Certificate of FPJ which is a common exhibit of both parties. However, the same is deemed negated by the statements of Atty. Estelito Mendoza, counsel for FPJ, during the oral arguments, when the Chief Justice asked him to stipulate on the truth of the entries of the said document, that:

x x x I have no personal knowledge on that and I cannot confirm it. Both the father and mother are already deceased. There is no one from whom I can confirm those as facts. I regret very much Your Honor that I cannot agree to those as facts.

x x x

x x x So, there are many facts, if Your Honor please, which I cannot stipulate on this. Because even my client Mr. Poe does not know this, he was just a small boy when his [father] died. So, I regret very much Your Honor please I can go no further but to stipulate on certain documents. But on whether those documents states the truth [is] something I cannot stipulate on because I would have no basis. (Emphasis and underscoring supplied)[189]

Certainly it would be absurd to bind one party's stipulation as to the truth of certain facts after the party alleging the same facts has categorically denied knowledge of the truth thereof.

In any event, such an admission, if it may be deemed one, made by a third party (petitioner Fornier) is not one of the accepted means of proving filiation under the Family Code, it having been made by one who does not claim to have personal knowledge of the circumstances of FPJ's birth.

With respect to the Declaration of Ruby Kelley Mangahas, to wit:

DECLARATION

of

RUBY KELLEY MANGAHAS

I, Ruby Kelley Mangahas, of legal age and sound mind, presently residing in Stockton, California, U.S.A., after being sworn in accordance with law, do hereby declare that:

1. I am the sister of the late BESSIE KELLEY POE.
2. Bessie Kelley Poe was the wife of FERNANDO POE, SR.
3. Fernando and Bessie Poe had a son by name of RONALD ALLAN POE, more popularly known in the Philippines as "Fernando Poe, Jr", or "FPJ".
4. Ronald Allan Poe "FPJ" was born on August 20, 1939 at St. Luke's Hospital, Magdalena St., Manila.
5. At the time of Ronald Allan Poe's birth, his father, Fernando Poe, Sr., was a Filipino citizen and his mother, Bessie Kelley Poe, was an American citizen.
6. Considering the existing citizenship law at that time, Ronald Allan Poe automatically assumed the citizenship

of his father, a Filipino, and has always identified himself as such.

7. Fernando Poe, Sr. and my sister, Bessie, met and became engaged while they were students at the University of the Philippines in 1936. I was also introduced to Fernando Poe, Sr., by my sister that same year.

8. Fernando Poe, Sr., and my sister, Bessie had their first child in 1938.

9. Fernando Poe, Sr., my sister Bessie, and their first three children, Elizabeth, Ronald Allan, and Fernando II, and myself lived together with our mother at our family's house on Dakota St. (now Jorge Bocobo St.), Malate until the liberation of Manila in 1945, except for some months between 1943-1944.

10. Fernando Poe, Sr. and my sister, Bessie, were blessed with four (4) more children after Ronald Allan Poe.

11. From the very first time I met Fernando Poe, Sr., in 1936, until his death in 1951, I never heard my sister mention anything about her husband having had a marital relationship prior to their marriage.

12. During the entire life of Fernando Poe, Sr., as my brother-in-law, I never heard of a case filed against him by a woman purporting to be his wife.

13. Considering the status of Fernando Poe, Sr., as a leading movie personality during that time, a case of this nature could not have escaped publicity.

14. Assuming, for the sake of argument, that the case was never published in any newspaper or magazine, but was in fact filed in court, I would have known about it because my sister would have been an indispensable party to the case, and she could not have kept an emotionally serious matter from me.

15. This is the first time, after almost 68 years, that I have heard Fernando Poe, Sr., being maliciously accused of being a married man prior to his marriage to my sister.

16. This is the first time, after almost 68 years, that I have heard the name Paulita Poe y Gomez as being the wife of Fernando Poe, Sr.

17. There was no Paulita Poe y Gomez, or any complainant for that matter, in or out of court, when my sister gave birth to six (6) children, all fathered by Fernando Poe, Sr.

18. I am executing this Declaration to attest to the fact that my nephew, Ronald Allan Poe is a natural born Filipino, and that he is the legitimate child of Fernando Poe, Sr.

Done in the City of Stockton, California, U.S.A., this 12[th] day of January 2004.

(SIGNED)

RUBY KELLEY MANGAHAS

Declarant,

(Emphasis supplied)

aside from the fact that it is hearsay,[190] it does not serve as proving either FPJ's filiation or his citizenship.

It may not be the basis for proving paternity and filiation since it is in the nature of a self-serving affidavit, the reliance on which has long been frowned upon.[191] The self-serving nature of the affidavit is readily apparent, the affidavit having been executed on January 12, 2004 or after the petition for disqualification had already been filed by petitioner Fornier on January 9, 2004. The only conclusion then is that the extrajudicial Declaration was

executed solely to buttress respondent's defense.

Inadmissibility in evidence aside, the statements in the Declaration are regarded as favorable to the interest of the declarant, being the aunt of FPJ. To admit Declaration as proof of the facts asserted therein would open the door to frauds and perjuries.[192]

Neither can the same Declaration be made the basis to prove pedigree under Section 39, Rule 130 of the Rules of Evidence, as it is necessary that the following requisites be present: (1) the declarant is already dead or unable to testify (2) pedigree of a person must be in issue (3) declarant must be a relative of the person whose pedigree is in question (4) declaration must be made before the controversy has occurred (5) the relationship between the declarant and the person whose pedigree must be shown by evidence other than such act or declaration.

The Declaration of Mrs. Mangahas was executed AFTER the controversy had already arisen. There is thus failure to comply with the requisite that the declaration must have been made ante litem motam – that is before the controversy, and under such circumstances that the person making them could have no motive to misrepresent the facts.

In order thus for a declaration as to pedigree to be admissible, it is necessary that the declarant should have been disinterested to the extent of having no motive which can fairly be assumed to be such as it would induce him to state the fact otherwise than as he understood it. The statement must, therefore, be shown to have been made ante litem motam; a fortiori, it must have been made before the commencement of a suit involving the issue to which the declaration relates.”[193]

Nor can the Declaration be the basis to prove family reputation or tradition regarding pedigree under Section 40, Rule 130 of the Rules of Evidence. While a declaration relating to pedigree may be in any form capable of conveying thought, provided the authenticity of the vehicle conveying the statement is established to the satisfaction of the court by evidence as recognition in the family or production from proper custody, the declaration must be a statement of fact.[194] The statements that FPJ is a natural-born Filipino and a legitimate child of Fernando Poe, Sr. are not statements of fact, but conclusions of law.

More. The Declaration may not also be the basis for proving the citizenship of Allan Poe since, again, the same is a conclusion of law.

In *In re Mallare*,[195] this Court, based on the testimonies of the claimant's witnesses, concluded that the claimant's father was a Filipino citizen. These testimonies included facts respecting claimant's father – his childhood, residency, habits, on the bases of which this Court concluded that claimant's father was indeed Filipino.

Mrs. Mangahas' Declaration, on the other hand does not state the operative facts on which such a conclusion were based.

As for the Affidavit for Philippine Army Personnel[196] of December 22, 1947, it does not qualify as an acknowledgment in a public document. In acknowledgment through a public instrument, the parent must admit legitimate filiation in a document duly acknowledged before a notary public or similar functionary, with the proper formalities, through private handwritten document signed by him.[197]

Moreover, the admission must be direct and unambiguous to make it at par with, or at least comparable in form and substance to, either a record of birth or a final judgment. An incidental statement that does not convey a clear intent to establish the child's legitimacy should, at best, be just a piece of evidence that might be considered in proving that filiation by judicial action.[198]

Parenthetically, the age of FPJ indicated in the affidavit which was purportedly executed on December 22, 1947 does not jibe with his date of birth appearing in his Birth Certificate.

In sum, the proofs relied upon by FPJ do not constitute sufficient proofs of filiation under Article 172 of the Family Code.

Whether FPJ is a natural-born citizen

Following the suggestion of Justice Mendoza, I am adopting the rule that an illegitimate child of an alien-mother who claims to be an offspring of a Filipino father may be considered a natural-born citizen if he was duly acknowledged by the latter at birth, thus leaving the illegitimate child with nothing more to do to acquire or perfect his citizenship.

Assuming *arguendo*, therefore, that Allan F. Poe, the putative father of FPJ, was indeed a Filipino citizen at the time of his birth, no evidence has been submitted to show that Allan F. Poe did indeed acknowledge FPJ as his own son at birth. In fact, as emphasized by petitioner Fornier, in the course of the proceedings before the COMELEC, both parties verified that there was no such acknowledgment by Allan F. Poe on the dorsal portion of FPJ's Birth Certificate.

Since FPJ then was born out of wedlock and was not acknowledged by his father, the only possible Filipino parent, at the time of his birth, the inescapable conclusion is that he is not a natural-born Philippine citizen.

Consequently, the material representations in his Certificate of Candidacy that "[he] is a natural born Filipino citizen," and that "[he] is eligible for the office [he] seek[s] to be elected" are false. Necessarily, his Certificate of Candidacy must be cancelled pursuant to Section 78 of the Omnibus Election Code.

A Final Note

The onus of resolving the disqualification case against FPJ, lodged in this Court as the final arbiter of all legal or justiciable disputes, had to be discharged, the clamor for this Court to stay away therefrom and let the will of the electorate decide it notwithstanding.

By no stretch of the imagination does this Court envision itself as impeding or frustrating the will of the people in choosing their leaders, for this institution is precisely built to uphold and defend the principle underlying our system of government — that "sovereignty resides in the people and all government authority emanates from them." [199]

But if a candidate for public office has not shown that he possesses the basic qualifications required by law, will he be allowed to continue his candidacy? Why then, in the first place, have laws been legislated charting the procedure for pre-election disqualification or declaration of ineligibility of candidates?

The rallies and show of force that have been, and appear to continue to be carried out by sympathizers of FPJ, the threats of anarchy, the incendiary statements against this Court spawned by the present controversy have no place in a society that adheres to the rule of law. Nor do they matter in the arrival of a judicial decision, rendered in accordance with the facts, evidence, law and jurisprudence.

To be cowed or intimidated by these currents of misguided resentment, and unrest, to say the least, is to allow extralegal forces to bastardize the decision making process.

WHEREFORE, I vote to: (1) DISMISS the petitions in G.R. Nos. 161434 and 161634 for being premature, (2) DECLARE COMELEC Resolutions dated January 23, 2004 and February 6, 2004, rendered in COMELEC SPA

No. 04-003 NULL AND VOID, and (3) DIRECT the COMELEC to cancel the Certificate of Candidacy of Ronald Allan Kelley Poe, a.k.a. Fernando Poe Jr., for containing a false material representation.

[1] CONSTITUTION, Art. VII, Sec. 2.

[2] Id., Art. IV, Sec. 2.

[3] Const. art. VII, sec. 4, par. 7.

[4] Atty. Fornier is a private respondent in GR No. 161434. However, for ease of reference, he is consistently referred to in this Decision as petitioner Fornier.

[5] G.R. No. 161824 Rollo Vol I at 75.

[6] G.R. No. 161824 Rollo Vol. I at 67-74.

[7] G.R. No. 161824 Rollo Vol. I at 72.

[8] G.R. No. 161824 Rollo Vol. I at 69.

[9] G.R. No. 161824 Rollo Vol. I at 69-70.

[10] G.R. No. 161824 Rollo Vol. I at 71.

[11] G.R. No. 161824 Rollo Vol. I at 71.

[12] G.R. No. 161824 Rollo Vol. I at 71.

[13] G.R. No. 161824 Rollo Vol. I at 82-113.

[14] G.R. No. 161824 Rollo Vol. I at 89-90.

[15] G.R. No. 161824 Rollo Vol. I at 88.

[16] Certified by Florendo G. Suba, Administrative Officer III, of the Manila Civil Registrar's Office.

[17] G.R. No. 161434 Rollo at 115.

[18] G.R. No. 161434 Rollo at 24; docketed as GR No. 161434.

[19] G.R. No. 161434 Rollo at 10-11.

[20] G.R. No. 161434 Rollo at 18.

[21] G.R. No. 161434 Rollo at 18.

[22] G.R. No. 161434 Rollo at 18.

[23] G.R. No. 161824 Rollo Vol. I at 241.

[24] G.R. No. 161824 Rollo Vol. I at 243-245.

[25] G.R. No. 161824 Rollo Vol. I at 246.

[26] Const. (1935), art. IV, sec. 1, par. 3

[27] G.R. No. 161824 Rollo Vol. I at 247.

[28] G.R. No. 161824 Rollo Vol. I at 249.

- [29] G.R. No. 161824 Rollo Vol. I at 250.
- [30] G.R. No. 161434 Rollo at 120 -127.
- [31] G.R. No. 161434 Rollo at 120-123.
- [32] G.R. No. 161434 Rollo at 124.
- [33] G.R. No. 161434 Rollo at 125.
- [34] G.R. No. 161434 Rollo at 120-144.
- [35] G.R. No. 161434 Rollo at 126.
- [36] G.R. No. 161634 Rollo at 3-12; docketed as GR No. 161634.
- [37] G.R. No. 161634 Rollo at 8.
- [38] G.R. No. 161634 Rollo at 8-9.
- [39] G.R. No. 161634 Rollo at 10.
- [40] G.R. No. 161634 Rollo at 11.
- [41] G.R. No. 161824 Rollo Vol. I at 366.
- [42] G.R. No. 161824 Rollo Vol. I at 368-369.
- [43] G.R. No. 161824 Rollo Vol. I at 367.
- [44] G.R. No. 161824 Rollo Vol. I at 367.
- [45] G.R. No. 161434 Rollo Vol. 228-230.
- [46] G.R. No. 161434 Rollo Vol. I 229-230.
- [47] G.R. No. 161824 Rollo Vol. I at 3-66; docketed as GR No. 161824.
- [48] G.R. No. 161824 Rollo Vol. I at 61-62.
- [49] G.R. No. 161434 Rollo at 188-208.
- [50] Const. art. IX-A, sec. 7.
- [51] G.R. No. 161824 Rollo Vol. II at 375-396.
- [52] *Nolasco v. Commission on Elections*, 275 SCRA 762 (1997); *Loong v. Commission on Elections*, 216 SCRA 760 (1990); *Aquino v. Commission on Elections*, 248 SCRA 400 (1995); *Valles v. Commission on Elections*, 337 SCRA 543 (2000); *Frivaldo v. Commission on Elections*, 257 SCRA 727 (1996); *Labo, Jr. v. Commission on Elections*, 176 SCRA 1 (1989) and 211 SCRA 297 (1992); *Aznar v. Commission on Elections*, 185 SCRA 703 (1990); and *Mercado v. Manzano*, 307 SCRA 630 (1999).
- [53] G.R. No. 161824 Rollo Vol. II at 446-577.
- [54] G.R. No. 161434 Rollo at 431-445.
- [55] *Taule v. Santos*, 200 SCRA 512, 519 (1991).
- [56] 23 Phil. 238 (1912).

[57] Id. at 253-256.

[58] *Del Mar v. Phil. Amusement and Gaming Corp.*, 346 SCRA 485, 541 (2000).

[59] *Mendoza v. Allas*, 302 SCRA 623, 628 (1999) citing *Castro v. del Rosario*, 19 SCRA 196, 200 (1967).

[60] An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Protests Contesting the Election of the President-elect and the Vice-President-elect of the Philippines and Providing for the Manner of Hearing the Same.

[61] Section 1 of R.A. No. 1793 reads:

SECTION 1. There shall be an independent Presidential Electoral Tribunal to be composed of eleven members which shall be the sole judge of all contests relating to the election, returns, and qualifications of the president-elect and the vice-president-elect of the Philippines. It shall be composed of the Chief Justice and the other ten members of the Supreme Court. The Chief Justice shall be its chairman. If on account of illness, absence, or incapacity upon any of the grounds mentioned in section one, Rule one hundred and twenty-six of the Rules of Court, of any member of the Tribunal, or whenever, by reason of temporary disability of any member thereof, or vacancies occurring therein the requisite number of members of the Tribunal necessary to constitute a quorum or to render a judgment in any given contest, as hereafter provided, is not present, or for any other good reason for the early disposal of the contest, the Chief Justice may designate any retired justice or justices of the Supreme Court as may be necessary, to sit temporarily as Member of the Tribunal, in order to form a quorum or until a judgment in said contest is reached: Provided, however, That if no retired justices of the Supreme Court are available or the number available is not sufficient, justices of the Court of Appeals and retired justices of the Court of Appeals may be designated to act as Member of the Tribunal. (Emphasis supplied)

[62] II Record of Constitutional Commission: Proceedings and Debates (1986) at 407-408.

[63] 144 SCRA 194 (1986).

[64] Id. at 199.

[65] Id. at 204.

[66] Sec. 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (1a) (Emphasis supplied)

[67] *Francisco v. House of Representatives*, GR Nos. 160261, 160262, 160263, 160277, 160292, 160295, 160310, 160318, 160342, 160343, 160360, 160365, 160370, 160376, 160392, 160397, 160403 & 160405, November 10, 2003 citing the separate opinion of Justice Feliciano in *Kilosbayan v. Guingona*, 232 SCRA 110 (1994).

[68] Sec. 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the

rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof. (Emphasis supplied)

[69] *Aquino v. Commission on Elections*, 248 SCRA 400 (1995); *Valles v. Commission on Elections*, 337 SCRA 543 (2000); *Aznar v. Commission on Elections*, 185 SCRA 703 (1990); *Romualdez-Marcos v. COMELEC*, 248 SCRA 300 (1995).

[70] 310 SCRA 546 (1999).

[71] *Id.* at 563.

[72] *Id.* at 571-572.

[73] 248 SCRA 300 (1999).

[74] *Id.* at 392-395.

[75] Sec. 15. Pre-proclamation Cases Not Allowed in Elections for President, Vice-President, Senator, and Member of the House of Representatives. – For purposes of the elections for President, Vice-President, Senator and Member of the House of Representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of the election returns or the certificates of canvass, as the case may be. However, this does not preclude the authority of the appropriate canvassing body *motu proprio* or upon written complaint of an interested person to correct manifest errors in the certificate of canvass or election returns before it.

Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission in accordance with Section 19 hereof.

Any objection on the election returns before the city or municipal boards of canvassers, or on the municipal certificates of canvass before the provincial board of canvassers or district boards of canvassers in Metro Manila Area, shall be specifically noted in the minutes of their respective proceedings. (Emphasis supplied)

[76] AN ACT PROVIDING FOR SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND FOR ELECTORAL REFORMS, AUTHORIZING APPROPRIATIONS THEREFOR, AND FOR OTHER PURPOSES.

[77] *II J.Y. Feria and M.C.S. Noche*, Civil Procedure Annotated 463 (2001), citing *Intestate Estate of Carmen de Luna v. Intermediate Appellate Court*, 170 SCRA 246, 254 (1989); *Soriano v. Atienza*, 171 SCRA 284 (1989); *Gold City Integrated Port Services, Inc. v. Intermediate Appellate Court*, 171 SCRA 579 (1989).

[78] The Petitioner submitted the following material exhibits:

1. Certificate of Candidacy of Ronald Allan Poe also known as Fernando Poe, Jr. – Annex “A” of the Petition;
2. Certificate of Birth of Ronald Allan Poe – Exhibit “A”;
3. Sworn Statement in Spanish of one Paulita Gomez – Exhibits “B” and “B-1”;
4. Marriage Contract of Allan Fernando Poe and Paulita Gomez – Exhibit “B-2” (G.R. No. 161824 Rollo Vol. I at 243)

[79] In respondent’s Certificate of Candidacy, he declared that he is eligible to run as President of the Philippines.

He attested that he possesses all of the qualifications set forth by Section 2, Article VII of the Constitution. (G.R. No. 161824 Rollo Vol. I at 245)

[80] Parenthetically, petitioner and respondent agreed on the fact that Allan Fernando Poe is the father of Ronald Allan Poe. Hence, if Allan Fernando Poe is Filipino, necessarily Ronald Allan Poe, his son is likewise a Filipino.

[81] G.R. No. 161824 Rollo Vol. I at 246-247.

[82] Anyway, to know who are the citizens of the Philippines at the time of the adoption of the Constitution, it becomes necessary to inquire into the citizenship laws at that time.

The 1935 Constitution of the Philippines was adopted on November 15, 1935.

Who were citizens of the Philippines then?

1. "...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 said Islands..." provided they had not yet lost their citizenship on November 15, 1935.

This provision of the Philippine Bill is an act of mass naturalization. It implements Article IX of the Treaty of Paris. For the first time, it creates the category of Filipino citizen. Prior to the Philippine Bill there were only Spanish subjects.

The provision includes: (a) persons born in the Philippines, (b) persons born in Spain, and (c) all other inhabitants of the Philippines provided that they were subjects of Spain and residents of the Philippines on April 11, 1899, the date of the exchange of ratification of the Treaty of Paris.

Not included, however, were those who had "elected to preserve their allegiance to the Crown of Spain in accordance with the Treaty of Peace between the [United] States and Spain..." The Treaty of Paris allowed Peninsular Spaniards residing in the Philippines to "preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of exchange of ratification of this treaty [April 11, 1899], a declaration of their decision to preserve such allegiance..."

2. The children of those who became Filipino citizens under the Philippine Bill, provided they had not lost their citizenship prior to November 15, 1935 (G.R. No. 161824 Rollo Vol. I at 247-249). (Emphasis in the original)

[83] G.R. No. 161824 Rollo Vol. I at 249.

[84] G.R. No. 161824 Rollo Vol. I at 367.

[85] G.R. No. 161824 Rollo Vol. I at 367.

[86] 206 SCRA 127 (1992).

[87] Id. at 132.

[88] 269 SCRA 564 (1997).

[89] Id. at 577.

[90] G.R. No. 161824 Rollo Vol. I at 68-71.

[91] G.R. No. 161824 Rollo Vol. I at 243.

[92] G.R. No. 161824 Rollo Vol. I at 368.

[93] In re Mallare,, 23 Phil. 292, 299 (1968) citing Tan v. Republic, 107 Phil 632, 633 (1960).

[94] Tan Pong v. Republic, 30 SCRA 380, 389 (1969); Tan v. Republic, 107 Phil 632, 633 (1960).

[95] Labo v. Commission on Elections, 176 SCRA 1 (1989) [also 211 SCRA 297 (1992)]; Aznar v. Commission on Elections, 185 SCRA 703 (1990); Frivaldo v. Commission on Elections, 257 SCRA 727 (1996); Mercado v. Manzano, 307 SCRA 630 (1999); Valles v. COMELEC 337 SCRA 543 (2000).

[96] 312 SCRA 447 (1999).

[97] Id. at 459.

[98] Supra.

[99] Id. at 458-460; citations omitted.

[100] Vide: People v. Yanza, 107 Phil 888 (1960).

[101] 248 SCRA 300 (1995).

[102] Supra at 458-460.

[103] Id. at 326.

[104] II L.M. Tañada and E.M. Fernando, Constitution of the Philippines 647 (1953); V. Sinco, Philippine Political Law Principles and Concepts 497 (1954)

[105] R. Velayo, Philippine Citizenship and Naturalization 1 (1964); ; E. Q. Fernando, The 1973 Constitution: A Survey 31 (1977); R. Ledesma, An Outline on Philippine Immigration and Citizenship laws 353 (1999)

[106] J.G. Bernas, S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary 609 (2003) ;

[107] Jovito R. Salonga, Private International Law 163-164 (1995).

[108] ARTICLE V

SUFFRAGE

Sec. 1. Suffrage may be exercised by all citizens of the Philippines x x x.

[109] ARTICLE VI

THE LEGISLATIVE DEPARTMENT

Sec. 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines x x x.

Sec. 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines x x x.

ARTICLE VII

EXECUTIVE DEPARTMENT

Sec. 2. No person may be elected President unless he is a natural-born citizen of the Philippines x x x.

Sec. 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected

with and in the same manner as the President. x x x

ARTICLE VIII

JUDICIAL DEPARTMENT

Sec. 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. x x x

ARTICLE IX

CONSTITUTIONAL COMMISSIONS

x x x

B. THE CIVIL SERVICE COMMISSION

Sec. 1. (1) The civil service shall be administered by the Civil Service Commission composed of a Chairman and two Commissioners who shall be natural-born citizens of the Philippines x x x.

C. THE COMMISSION ON ELECTIONS

Sec. 1. (1) There shall be a Commission on Elections composed of a Chairman and six Commissioners who shall be natural-born citizens of the Philippines x x x.

D. THE COMMISSION ON AUDIT

Sec. 1 (1) There shall be a Commission on Audit composed of a Chairman and two Commissioners, who shall be natural-born citizens of the Philippines x x x.

ARTICLE XI

ACCOUNTABILITY OF PUBLIC OFFICERS

Sec. 8. The Ombudsman and his Deputies shall be natural-born citizens of the Philippines x x x.

Sec. 18. Public officers and employees owe the State and this Constitution allegiance at all times, and any public officer or employee who seeks to change his citizenship or acquire the status of an immigrant of another country during his tenure shall be dealt with by law. x x x

ARTICLE XII

NATIONAL ECONOMY AND PATRIMONY

Sec. 20. The Congress shall establish an independent central monetary authority, the members of whose governing board must be natural-born Filipino citizens x x x.

ARTICLE XIII

SOCIAL JUSTICE AND HUMAN RIGHTS

HUMAN RIGHTS

Sec. 17. x x x

(2) The Commission shall be composed of a Chairman and four Members who must be natural-born citizens of the Philippines and a majority of whom shall be members of the Bar. The term of office and other qualifications and disabilities of the Members of the Commission shall be provided by law. x x x

[110] ARTICLE XII

NATIONAL ECONOMY AND PATRIMONY

Sec. 2. x x x The State may directly undertake such activities [exploration, development and utilization of natural resources], or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens. x x x

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, x x x.

Sec. 3. x x x Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof, by purchase, homestead, or grant.

x x x

Sec. 8. Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law.

x x x

Sec. 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

x x x

Sect. 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, x x x. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

Sec. 12. The State shall promote the preferential use of Filipino labor, domestic materials and locally produced

goods, and adopt measures that help make them competitive.

ARTICLE XIV

EDUCATION, SCIENCE AND TECHNOLOGY, ARTS, CULTURE AND SPORTS EDUCATION

Sec. 4. (1) x x x

(2) Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions.

The control and administration of educational institutions shall be vested in citizens of the Philippines.

ARTICLE XVI

GENERAL PROVISIONS

Sec. 11. (1) The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.

x x x

(2) x x x

Only Filipino citizens or corporations or associations at least seventy per centum of the capital of which is owned by such citizens shall be allowed to engage in the advertising industry.

The participation of foreign investors in the governing body of entities in such industry shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such entities must be citizens of the Philippines.

Sec. 14. x x x The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.

[111] R. Velayo, Philippine Citizenship and Naturalization 7 (1964).

[112] G.R. No. L-11931, October 22, 1958 (unreported).

[113] Ibid.

[114] Sec. 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.

x x x

[115] Joaquin G. Bernas, S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary 610 (2003).

[116] 316 SCRA 1 (1999).

[117] Id. at 8.

[118] 337 SCRA 543 (2000).

[119] Id. at 549-551; citations omitted.

[120] 1 Phil. 88 (1902).

[121] The original period of 1 year granted to Spanish subjects to declare their intention to retain Spanish citizenship was extended for six months from April 11, 1900 by a protocol signed between Spain and the United States at Washington on March 29, 1900. (R. Velayo, Philippine Citizenship and Naturalization 23 (1964).

[122] Id. at 89-91.

[123] 23 SCRA 292 (1968).

[124] Id. at 293-295.

[125] In Re: Florencio Mallare, 59 SCRA 45, 50-52 (1974)

[126] Supra.

[127] Id. at 550.

[128] Palanca v. Republic, 80 Phil 578, 580 (1948); Co v. Electoral Tribunal of the House of Representatives, 92 SCRA, 692, 711 (1995).

[129] 29 Phil. 332 (1915).

[130] G.R No. L-4223, May 12, 1952 (unreported).

[131] 105 Phil 1321 (1959).

[132] 25 SCRA 980 (1968).**[133] 21 SCRA 753 (1967).**

[134] 29 Phil. 332 (1915).

[135] Id. at 551.

[136] L.T. Garcia, Problems of Citizenship in the Philippines 111 (1949); II L.M. Tañada and E. M. Fernando, Constitution of the Philippines 661-662 (1953); R.M. Velayo, Philippine Citizenship and Naturalization 48-49 (1964).

[137] II J.G. Bernas, S.J., The (Revised) 1973 Philippine Constitution: Notes and Cases 4 (1983); citations omitted.

[138] Digest of Justinian, Book I, Title IV, 18 Celsus; Jorge R. Coquia, Principles of Roman Law 23 (1979).

[139] Supra.

[140] Id. at 1322.

[141] 20 SCRA 562 (1967).

[142] 82 Phil 771. (1949).

[143] G.R. No. L-11931, Oct. 27, 1958 (unreported).

[144] TSN, February 19, 2004 at 52.

[145] 29 Phil. 332 (1915).

[146] I Jose M. Aruego, *The Framing of the Philippine Constitution* 209 (1949).

[147] 29 Phil. 332 (1915).

[148] CONST. Art. II, Sec. 12.

The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. x x x

[149] Family Code, Art. 164. Children conceived or born during the marriage of the parents are legitimate.

Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided, that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child.

[150] Family Code, Art. 166. Legitimacy of a child may be impugned only on the following grounds:

(1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of:

(a) the physical incapacity of the husband to have sexual intercourse with his wife;

(b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or

(c) serious illness of the husband, which absolutely prevented sexual intercourse;

(2) That it is proved that for biological or other scientific reasons, the child could not have been that of the husband, except in the instance provided in the second paragraph of Article 164; or

(3) That in case of children conceived through artificial insemination, the written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation, or undue influence.

Art. 167. The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

Art. 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.

If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.

Art. 171. The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:

- (1) If the husband should die before the expiration of the period fixed for bringing his action;
- (2) If he should die after the filing of the complaint without having desisted therefrom; or
- (3) If the child was born after the death of the husband.

[151] Family Code, Art. 165. Children conceived and born outside a valid marriage are illegitimate, unless otherwise provided in this Code.

Family Code, Art. 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The legitime of an illegitimate child shall consist of one-half of the legitime of each legitimate child. Except for this modification, all other provisions in the Civil Code governing successional rights shall remain in force. (Underscoring supplied)

[152] 29 Phil. 332 (1915).

[153] Family Code, Art. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent. (289a)

[154] 354 SCRA 17 (2001).

[155] Id. at 26.

[156] 20 SCRA 562 (1967).

[157] G.R. No. L-11931, Oct. 27, 1958 (unreported).

[158] ARTICLE VII

EXECUTIVE DEPARTMENT

Sec. 3. No person may be elected to the office of the President or Vice-President unless he is a natural-born citizen of the Philippines x x x.

[159] ARTICLE VI

LEGISLATIVE DEPARTMENT

Sec. 4. No person shall be a Senator unless he be a natural-born citizen of the Philippines x x x.

[160] Sec. 7. No person shall be a Member of the House of Representatives unless he be a natural-born citizen of the Philippines x x x.

[161] V PROCEEDINGS OF THE PHILIPPINE CONSTITUTIONAL CONVENTION (1943-1935) Tuesday, December 18, 1934 10:10 AM – 7:07 PM, pp. 306-308.

[162] SR. ARTADI: Yo voy a pedir la reconsideración en lo que respecta al asunto que aparece en la página 22-A que trata de la interpretación de las palabras natural born, porque quisiera informar a la Asamblea de que he

tenido una conversación con algunos miembros del Comité que entendió de este asunto y me han explicado que las palabras natural born no quieren decir necesariamente nacido en Filipinas; es decir, que traducidas al castellano, quieren decir que uno que posea las facultades para ser Presidente de la República, según como está escrito, no es que sea necesariamente nacido en Filipinas. Así es que para fines del record yo desearía que uno de los miembros del Comité explique la verdadera interpretación de las palabras natural born para conocimiento de la Asamblea y para fines de record.

EL PRESIDENTE: El Delegado por Capiz, Sr. Roxas, se servirá decir cual es la exacta equivalencia de esas palabras.

SR. ROXAS: Señor Presidente, la frase natural born citizen aparece en la Constitución de los Estados Unidos; pero los autores dicen que esta frase nunca ha sido interpretada autoritativamente por la Corte Suprema de los Estados Unidos, en vista de que nunca se había suscitado la cuestión de si un Presidente elegido, reunía o no esta condición. Los autores están uniformes en que las palabras natural born citizen, quiere decir un ciudadano por nacimiento, una persona que es ciudadano por razón de su nacimiento y no por naturalización o por cualquiera declaración ulterior exigida por la ley para su ciudadanía. En Filipinas, por ejemplo, bajo las disposiciones de los artículos sobre ciudadanía que hemos aprobado, sería ciudadano por nacimiento, o sea natural born todos aquellos nacidos de un padre que es ciudadano filipino, ya sea una persona nacida en Filipinas o fuera de ellas.

Y con respecto de uno nacido de madre filipinas, pero de padre extranjero, el artículo que aprobamos sobre ciudadanía, requiere de que al llegar a la mayoría de edad, este hijo necesita escoger la ciudadanía por la cual opta, y si opta por la ciudadanía filipina al llegar a la mayoría de edad, entonces será considerado ciudadano filipino. Bajo esta interpretación el hijo de una madre filipina con padre extranjero, no sería un ciudadano por nacimiento, por aquello de que la ley o la Constitución requiere que haga una declaración ulterior a su nacimiento. Por lo tanto, la frase a natural born citizen, tal como se emplea en el texto inglés, quiere decir un ciudadano filipino por nacimiento, sin tener en cuenta dónde ha nacido.

SR. ARTADI: Señor Presidente, para una pregunta al orador.

EL PRESIDENTE: El orador puede contestar, si le place.

SR. ROXAS: Sí, señor.

[163] V.G. Sinco, *Philippine Political Law: Principles and Concepts* 248 (1954).

[164] I J.M. Aruego, *The Framing of the Philippine Constitution* 401 (1936).

[165] ARTICLE III

Sec. 4. 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.

[166] 357 SCRA 545 (2001).

[167] *Id.* at 577-578.

[168] Rules Delegating To COMELEC Field Officials The Hearing And Reception of Evidence Of Disqualification Cases Filed In Connection With the May 10, 2004 National and Local Elections, *Motu Proprio* Actions and Disposition of Disqualification Cases.

[169] Sec. 2. Suspension of the Comelec Rules of Procedure. – In the interest of justice and in order to attain speedy disposition of cases, the Comelec Rules of Procedure or any portion thereof inconsistent herewith is

hereby suspended.

[170] Sec. 3. Where to file petitions. – The petitions shall be filed with the following offices of the Commission:

a. For President, Vice-President, Senator and Party-List Organizations, with the Clerk of the Commission, Commission on Elections in Manila.

x x x

[171] SEC. 5. Procedure in filing petitions. – For purposes of the preceding section, the following procedure shall be observed:

A. PETITION TO DENY DUE COURSE

OR TO CANCEL CERTIFICATE OF CANDIDACY

1. A verified petition to deny due course or to cancel certificate of candidacy may be filed at any time after the filing of the certificate of the person whose candidacy is sought to be denied due course or cancelled but not later than January 7, 2004.

x x x

6. The proceeding shall be summary in nature. In lieu of the testimonies, the parties shall submit their affidavits or counter-affidavits and other documentary evidence including their position paper or memorandum within a period of three (3) inextendible days;

x x x (Emphasis supplied)

[172]

C. PETITION TO DISQUALIFY A CANDIDATE PURSUANT TO SEC. 68 OF THE OMNIBUS ELECTION CODE AND PETITION TO DISQUALIFY FOR LACK OF QUALIFICATIONS OR POSSESSING SAME GROUNDS FOR DISQUALIFICATION

1. The verified petition to disqualify a candidate pursuant to Sec. 68 of the Omnibus Election Code and the verified petition to disqualify a candidate for lack of qualifications or possessing same grounds for disqualification, may be filed any day after the last day for filing of certificates of candidacy but not later than the date of proclamation.

x x x

3. The petition to disqualify a candidate for lack of qualification or possessing same grounds for disqualification, shall be filed in ten (10) legible copies with the concerned office mentioned in Sec. 3 personally or through duly authorized representative by citizen of voting age, or duly registered political party, organization or coalition of political parties on the grounds that the candidate does not possess all the qualifications of a candidate as provided for by the constitution or by existing law or who possesses some grounds for disqualification,

3.a. Disqualification under Existing Law

1. for not being a citizen of the Philippines;
2. for being a permanent resident of or an immigrant of a foreign country;
3. for lack of age;

4. for lack of residence;
5. for not being a registered voter;
6. for not being able to read and write;
7. for not being a bona fide member of the party or organization which the nominee seeks to represent for at least ninety (90) days preceding the day of the election. (for party-list nominee)

3.b Some grounds for Disqualifications:

1. for not being a citizen of the Philippines;
2. for being a permanent resident of or an immigrant of a foreign country;
3. for lack of age;
4. for lack of residence;
5. for not being a registered voter;
6. for not being able to read and write;
7. for not being a bona fide member of the party or organization which the nominee seeks to represent for at least ninety (90) days preceding the day of the election. (for party-list nominee)

x x x

8. The proceeding shall be summary in nature. In lieu of the testimonies, the parties shall submit their affidavits or counter-affidavits and other documentary evidences including their position paper or memorandum.

x x x (Emphasis supplied)

[173] Petitioner Fornier's Exhibits "A," (copy of FPJ's Birth Certificate) and "C" (certified photocopy of the Birth Certificate of FPJ's putative father Allan Fernando Poe).

[174] FPJ's Exhibits "6," (copy of Original Certificate of Title No. P-2247 of the Registry of Deeds for the Province of Pangasinan in the name of FPJ's putative grandfather Lorenzo Pou) "7," (copy of the Certificate of Death of Fernando R. Poe) "11," (certified photocopy of the Certificate of Birth of FPJ's sister Elizabeth Ann Poe) "12," (certified photocopy of the Certificate of Birth of FPJ's brother Fernando Poe II) "13," (certified photocopy of the original Certificate of Birth of FPJ's sister Martha Genevieve Poe) "14," (certified photocopy of the original Certificate of Birth of FPJ's sister Baby Poe) "15," (certified photocopy of the original Certificate of Birth of FPJ's sister Evangeline K. Poe) "16," (copy of Passport No. 11491191 issued on June 25, 2003 in the name of FPJ) "17," (photocopy of Transfer Certificate of Title No. 55020 of the Registry of Deeds for Rizal in the name of spouses Jesusa Poe and FPJ) "18," (photocopy of Transfer Certificate of Title No. RT-116312 of the Registry of Deeds for Quezon City in the name of FPJ) "19," (photocopy of Transfer Certificate of Title No. 300533 of the Registry of Deeds for Quezon City in the name of spouses FPJ and Jesusa Sonora) and "21" (certified photocopy of the Marriage Contract entered into by and between respondent's father, "Fernando Pou" and respondent's mother Bessie Kelly).

[175] Rules of Court, Rule 132, sec. 23.

[176] Respondent Poe's Exhibits "17," (photocopy of Transfer Certificate of Title No. 55020 of the Registry of Deeds for Rizal in the name of spouses Jesusa Poe and FPJ) "18," (photocopy of Transfer Certificate of Title No. RT-116312 of the Registry of Deeds for Quezon City in the name of FPJ) "19," (photocopy of Transfer

Certificate of Title No. 300533 of the Registry of Deeds for Quezon City in the name of spouses FPJ and Jesusa Sonora)

[177] Paa v. Chan, 21 SCRA 753, 761 (1967)

[178] Petitioner Fornier's Exhibits "D" and (certification dated 16 January 2004 issued by Ricardo L. Manapat, Director of the Records Management and Archives Office, certifying that the National Archives does not possess any record of a certain Lorenzo Poe or Lorenzo Pou residing or entering the Philippines before 1907) "E" (certification dated 12 January 2004 issued by Estrella M. Domingo, OIC of the Archives Division of the National Archives, certifying that there is no available information in the files of the National Archives, regarding the birth of "Allan R. Pou", alleged to have been born on November 27, 1916), and FPJ's Exhibits "1," (Certification dated January 12, 2004, issued by Estrella M. Domingo, OIC of the Archives Division of the National Archives, certifying, among others, that there is no available information regarding the birth of Allan R. Pou in the Register of Births for San Carlos, Pangasinan, in the files of said Office) "2," (Certification dated January 13, 2004, issued by Estrella M. Domingo, OIC of the Archives Division of the National Archives, certifying, among others, that there is no available information about the marriage of Allan Fernando Poe and Paulita Gomez alleged to have been married on 18 July 1936 in Manila) "5," (Certification dated January 12, 2004 issued by Zenaida A. Peralta of the City Civil Registrar of San Carlos City, Pangasinan, certifying, among others, that as appearing from the Register of Death, Lorenzo Pou died on 11 September 1954 in San Carlos, Pangasinan) and "22" (Certification issued by the Office of the City Civil Registrar of San Carlos City, Pangasinan, certifying, among others, that the records of birth of said office during the period 1900 to May 1946, were totally destroyed during the last World War II).

[179] Rules of Court, Rule 132, sec. 28.

[180] Transcript of Stenographic Notes (TSN) of Oral Arguments, February 19, 2004 at 136-145.

[181] TSN of Oral Arguments, February 19, 2004 at 41-45.

[182] G.R. No. 161824, Rollo Vol. I at 96-97.

[183] Supra.

[184] Supra.

[185] G.R. No. 161824, Rollo Vol. I at 99-100.

[186] 79 Phil 249 (1947).

[187] Id. at 257-258.

[188] 41 Am. Jur. 2d Illegitimate Children Sec. 24.; 10 Am. Jur. Trials 653 Sec. 58.

[189] TSN, February 19, 2004 at 140-144.

[190] Albeit under the COMELEC Resolution 6452 parties are directed to submit their affidavits or counter-affidavits in lieu of testimony.

[191] O'Hara v. COMELEC, G.R. Nos. 148941-42, March 12, 2002.

[192] Vicente Francisco, The Revised Rules of Court of the Philippines Volume VII, 3[rd] ed., 1997 at 5.

[193] Francisco at 571, citing C.J.S. 975.

[194] Francisco at 578.

[195] Supra.

[196] G.R. No. 161434, Rollo at 97-98.

[197] Arturo M. Tolentino, CIVIL CODE OF THE PHILIPPINES, Commentaries and Jurisprudence, 1999 ed., p.540 citing citing 1 Manresa 538; 5 Sanchez Roman 982; 4 Valverde 413.

[198] I Jose C. Vitug, CIVIL LAW, Persons and Family Relations 365-366 (2003); vide: Fernandez v. Fernandez, 363 SCRA 811 (2001).

[199] Constitution, Art. II, Sec. 1.

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