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Tecson vs Comelec : 161434 : March 3, 2004 : J. Puno : En Banc : Separate Opinion ammy 6 116
 2004-03-04T01:52:00Z 2004-09-06T21:45:00Z 2005-05-19T07:47:00Z 1 15217 86737 722 203 101751 10.2625
 7 pt 19.05 pt 2 MicrosoftInternetExplorer4 st1:*{behavior:url(#ieooui) } /* Style Definitions */
 table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0;
 mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in;
 mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New
 Roman";} // Change to 1 to have "Next Hit" go to the next document // after the last hit in the current document
 fAutoNextDoc = 0; nHit = 0; maxHits = 5; var simpleNav = 1; var browser = navigator.appName; var version =
 parseInt(navigator.appVersion); if ((browser.indexOf("Microsoft") != -1) || (version >= 4)) simpleNav = 0;
 function old_gotoHit(where) { window.location.hash = where; } function findLink(links, name) { if
 (links.namedItem) return links.namedItem(name); for (i = 0; i 1) return; if (a.y) { // Netscape window.scrollTo(0,
 a.y); } else { // IE window.scrollTo(0, a.offsetTop - a.offsetHeight + a.offsetParent.offsetTop); } var s =
 document.body.createTextRange(); if (s != null) { s.moveToElementText(a); s.moveEnd("word"); s.select();
 s.scrollIntoView(); } } function gotoNthHit(n) { nHit = n; if ((n > 1) && (n == maxHits)) gotoHit('hit_last'); else
 if (n == 0) old_gotoHit('hit0'); else gotoHit('hit' + n); } function nextHit() { if (nHit 0) { gotoNthHit(nHit-1); } }

SEPARATE OPINION**PUNO, J.:**

Why bastard? Wherefore

When my dimensions are well compact,

My mind as generous, and my shape as true

As honest madam's issue?

Why brand they us

With base? With baseness

Bastardy? Base, base?

Who, in the lusty stealth of nature take

More composition and fierce quality

Than doth, within a dull stale, tired bed,

Got 'tween sleep and wake?

– well then,

Legitimate Edgar, I must have your land:

Our father's love is to the bastard Edmund.
As to the legitimate: fine word – legitimate!
Well my legitimate, if this letter speed,
And my invention thrive, Edmund the base
Shall top the legitimate. I grow; I prosper –
Now, gods, stand up for bastards!
(Edmund, Bastard Son to Gloster,
King Lear, Act I, Scene II)

I.

PROLOGUE

The petitions at bar seek the disqualification of respondent Fernando Poe, Jr. from running for the Presidency in the May 2004 national elections. But the issues posed by the petitions at bar transcend the person of respondent Poe. These issues affect some of our most deeply held values in democracy - - the protection of the exercise of political rights, such as the right to run for public office against irrelevant impediments, the levelling of the political playing field, the disapprobation of political loyalty in our temples of justice, elimination of all invidious discrimination against non-marital children, and the continued enthronement of the sovereignty of the people in the election of our leaders. The petitions at bar concern all these democratic values. It is the people on the line. It is us.

II.

THE FACTS AND THE PROCEEDINGS

Let us first look at the facts for they are staring at us. On December 31, 2003, respondent Ronald Allan Kelley Poe, also known as Fernando Poe, Jr. filed with the Commission on Elections his Certificate of Candidacy for President in the May 10, 2004 elections. He made the following declarations under oath in his certificate of candidacy:

CERTIFICATE OF CANDIDACY

FOR PRESIDENT

I hereby announce my candidacy for the position of PRESIDENT, Republic of the Philippines, in the May 10, 2004 elections; and after having been sworn in accordance with law, hereby state the following:

1. FULL NAME: POE, FERNANDO, JR./RONALD ALLAN KELLEY
2. ONE NICKNAME OR STAGE NAME (by which I am generally or popularly known): FPJ

3. OFFICIALLY NOMINATED BY: KNP

4. DATE OF BIRTH: 20 August 1939 PLACE OF BIRTH: MANILA SEX: MALE

5. CIVIL STATUS: M IF MARRIED, FULL NAME OF SPOUSE: JESUSA SONORA

6. I AM A NATURAL BORN FILIPINO CITIZEN

7. PROFESSION OR OCCUPATION: MOVIE PRODUCER/ACTOR

8. RESIDENCE: 23 LINCOLN ST., GREENHILLS, SAN JUAN, METRO MANILA

9. RESIDENCE IN THE PHILIPPINES BEFORE MAY 10, 2004: 64 Years and 8 Months

10. I AM A REGISTERED VOTER OF PRECINCT NO. 227 A, BARANGAY GREENHILLS CITY/MUNICIPALITY OF SAN JUAN, PROVINCE OF METRO MANILA

11. I AM NOT A PERMANENT RESIDENT OF, OR MIGRANT TO, A FOREIGN COUNTRY.

12. I AM ELIGIBLE for the office I seek to be elected. I will support and defend the Constitution of the Philippines, and will maintain true faith and allegiance thereto; that I will obey the laws, legal orders and decrees promulgated by the duly constituted authorities of the Republic of the Philippines; and that I impose this obligation upon myself voluntarily, without mental reservation or purpose of evasion, I hereby certify that the facts stated herein are true and correct of my own personal knowledge.

31 December 2003

(thumbmarked) (sgd) RONALD ALLAN K. POE

SUBSCRIBED AND SWORN to before me this 31[st] day of Dec. 2003 at Manila, affiant exhibiting to me his/her Community Tax Certificate No. 11835585 issued on 8 Jan. 2003 at San Juan, M. Mla.

Doc. No. 92 (sgd) ATTY. KEVIN NARCE B. VIVERO

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Book No. III until December 31, 2003

Series of 2003 PTR NO. 881104, JAN. 09, 2003, MANILA

On January 9, 2004, petitioner in G.R. No. 161824, Victorino X. Fornier, filed with the COMELEC a "Petition for Disqualification of Presidential Candidate Ronald Allan Kelley Poe, also known as Fernando Poe, Jr." Fornier alleged that respondent Poe is not a citizen of the Philippines, much less a natural-born citizen, and as such, lacks one of the essential qualifications for the position of President of the Republic of the Philippines. Fornier presented a photocopy of the marriage contract of Allan Fernando Poe, respondent Poe's father, and a certain Paulita Gomez which appears to have been executed on July 5, 1936.[1] Said marriage contract indicates that Allan Fernando Poe's nationality was "Español", and that his parents, Lorenzo Poe and Marta Reyes, were both Spanish citizens. The copy presented by Fornier was certified by Ricardo Manapat, Chief of the Records Management and Archives Office.[2] Based on said document, Fornier alleged that respondent Poe could not have acquired Filipino citizenship from his father. Fornier added that even if respondent Poe's father were a Filipino citizen, he still could not have validly acquired Filipino citizenship from the former because the prior marriage of Allan Fernando Poe and Paulita Gomez renders the marriage of his parents, Allan Fernando Poe and Bessie Kelley, void, thus making him an illegitimate child. He contended that an illegitimate child follows the citizenship of the legally known parent which is the mother. Respondent Poe's mother, Bessie Kelley, was

admittedly an American citizen.[3] In addition to the copy of the marriage contract between Allan Fernando Poe and Paulita Gomez, petitioner Fornier also presented a photocopy of the affidavit of Paulita Gomez stating that she filed a bigamy case against Allan Fernando Poe.[4] Petitioner prayed that respondent Poe 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.

In his Answer, respondent Poe asserted that he is a Filipino citizen and denied Fornier's allegation that his father and his grandparents were Spanish subjects. He likewise denied the alleged prior marriage between Allan Fernando Poe and one Paulita Gomez. He maintained that his father, Allan Fernando Poe, and grandfather, Lorenzo Pou, were Filipino citizens. He alleged that since the Constitution provides that "those whose fathers are citizens of the Philippines" are Filipinos, he is therefore a Filipino citizen. Respondent presented a certification from the Office of the Civil Registrar of San Carlos City, Pangasinan stating the contents of page 32 of Book 4 of the Register of Death of San Carlos City which show, among others, that Lorenzo Pou died a Filipino citizen.[5] Respondent alleged that Lorenzo Pou was born a Spanish subject; he was an inhabitant of the Philippine Islands when Spain ceded the Philippine Islands to the United States by virtue of the Treaty of Paris on December 10, 1898; and he became a citizen of the Philippines under the provisions of the Philippine Bill of 1902 and the Jones Law. Respondent further averred that in his lifetime, Lorenzo Pou comported himself a Philippine citizen - - he voted in elections; he did not register as an alien; and he owned real properties.[6] Respondent Poe also presented the death certificate of his father, Allan Fernando Poe, which states that he died as Filipino.[7] Respondent further alleged that his father was born in the Philippines in 1916, before the 1935 Constitution took effect, hence, a Filipino by reason of his birthplace. He stated that Allan Fernando Poe acted as a Filipino during his lifetime. He was called to active duty to serve in the Philippine Army; he was inducted into the USAFFE; he fought in Bulacan and was in the "Death March"; and after the war, he reverted to inactive status with the rank of Captain;[8] he was awarded the Gold Cross[9] and served the guerilla movement during the Japanese occupation. Respondent Poe also presented his own Certificate of Birth[10] which indicates that he is a Filipino citizen and that his father, Allan F. Poe, was Filipino. Like his father and grandfather, respondent Poe represented and conducted himself as Filipino from birth. He is a registered voter and has voted in every election; he holds a Philippine passport;[11] he owns real properties which only citizens of this country may do;[12] he represented himself as a citizen of the Philippines in all contracts or transactions. Respondent dismissed as a "worthless piece of paper" the alleged marriage contract between Allan Fernando Poe and Paulita Gomez for the following reasons: (1) it is only a xerox copy which is not even represented to be a xerox copy of an original document; (2) no averment is made whether an original exists and where it is located; (3) assuming an original exists, its genuineness and due execution may not be assumed and no proof is offered; and (4) it is not evidence, much less persuasive evidence of the citizenship of the parties. Respondent further presented the sworn statement of Ms. Ruby Kelley Mangahas, a surviving sister of Bessie Kelley belying, among others, petitioner's claim of the prior marriage between Allan Fernando Poe and Paulita Gomez.[13]

Meanwhile, Maria Jeanette C. Tecson and Felix B. Desiderio, Jr., as well as Zoilo Antonio Velez, filed their separate petitions with this Court, also seeking the disqualification of respondent Poe from the presidential elections on the ground that he is not a natural-born citizen of the Philippines. Petitioners Tecson and Desiderio[14] contended that respondent Poe is an illegitimate child and therefore follows the citizenship of his mother. Petitioners cite the marriage certificate of Poe's parents which shows that they were married in 1940, while Poe was born in 1939. They contend that it does not appear that Poe has been legitimated by the subsequent marriage of his parents as he had not been acknowledged by his father. The same arguments were advanced by petitioner Velez.[15]

The Senate also conducted two public hearings on January 21, 2004 and February 2, 2004 on the authenticity of

the following documents submitted by petitioner Fornier to the COMELEC: (1) the alleged birth certificate of Allan Fernando Poe; (2) the alleged marriage certificate between Allan Fernando Poe and Paulita Gomez; and (3) the alleged bigamy charge filed by Paulita Gomez against Allan Fernando Poe. The Senate issued subpoena duces tecum and ad testificandum to compel the appearance of witnesses and the production of documents, equipment and other materials relevant to the investigation. Witnesses from the Records Management and Archives Office came forward and testified that they have been unwitting instruments in the fabrication of the documents in question. The Senate Committee Report No. 517, signed by Senators Edgardo Angara, Teresa Aquino-Oreta, Rodolfo Biazon, Loren Legarda, Aquilino Pimentel, Sergio Osmeña, Juan Flavio and Vicente C. Sotto III, recommended the criminal prosecution of Director Ricardo Manapat for falsification of public documents, perjury, incriminatory machination, theft, infidelity in the custody of document, violation of the Anti-Graft and Corrupt Practices Act and obstruction of justice. The Report was submitted by the respondent to the COMELEC en banc.

After hearing the parties, the First Division of the COMELEC, on January 23, 2004, issued a Resolution dismissing Fornier's petition for disqualification for lack of merit. The First Division stated that its jurisdiction is limited to all contests relating to elections, returns and qualifications of all elective regional, provincial and city officials. It, however, has authority to pass upon the issue of citizenship of national officials in actions under Section 78 of the Omnibus Election Code, that is, in Petitions to Deny Due Course or Cancel a Certificate of Candidacy on the ground that any material representation contained therein is false. Thus, the First Division of the COMELEC proceeded to assess the evidence presented by the parties to resolve the issue of whether respondent Poe is a natural-born Filipino citizen. The COMELEC First Division concluded: "(c)onsidering 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."

Petitioner Fornier moved to reconsider the Resolution of the First Division.

On February 6, 2004, the Commission En Banc affirmed the Resolution of the First Division.

Thus, petitioner Fornier filed a Petition for Certiorari with this Court assailing the Resolution of the Commission En Banc. He cited the following grounds for the petition:

1. Respondent Comelec committed grave and reversible error of law and even acted with grave abuse of discretion tantamount to lack or excess of jurisdiction when it arbitrarily and whimsically ruled, in violation of the Constitution, existing laws, jurisprudence and its own rules and issuance, that it had no jurisdiction over the disqualification case below grounded on the lack of essential qualification of respondent FPJ and on his disqualification to be elected President of the Republic of the Philippines.
2. Respondent Comelec committed grave and reversible error of law, and even acted with grave abuse of discretion tantamount to lack or excess of jurisdiction, in concluding that under the law Lorenzo Pou became a citizen of the Philippine Islands.
3. Respondent Comelec committed grave and reversible error of law, and even acted with grave abuse of discretion tantamount to lack or excess of jurisdiction, in concluding that, under law and Constitution, Allan F. Poe/Allan Fernando Poe/Allan R. Pou/Fernando R. Pou became a citizen of the Philippine Islands or of the Philippines.
4. Respondent Comelec committed grave and reversible error of law, and even acted with grave abuse of discretion tantamount to lack or excess of jurisdiction, in concluding that, under the 1935 Constitution, respondent FPJ is a natural-born Filipino citizen despite his illegitimacy.

5. Assuming *arguendo* that respondent Comelec's jurisdiction is limited to denying due course or cancelling certificate of candidacy on the ground of material misrepresentation, respondent Comelec committed grave and reversible error of law, and even acted with grave abuse of discretion tantamount to lack or excess of jurisdiction, in concluding that respondent FPJ's certificate of candidacy does not contain a material misrepresentation or falsity as to his being a natural-born Filipino citizen.

6. Respondent Comelec committed grave and reversible error of law, and even acted with grave abuse of discretion tantamount to lack or excess of jurisdiction, in concluding that respondent FPJ should not be declared as disqualified to run for President in the May 2004 elections, and in consequently dismissing the petition of petitioner Fornier.

7. In any event, regardless of whether or not respondent Comelec has jurisdiction to rule on the disqualification case below which is grounded on the fact that respondent FPJ is not a natural-born Filipino citizen and thus lacks an essential qualification, the Honorable Court can take cognizance of said issue and rule on the qualifications of respondent FPJ to run for the position of President for the Republic of the Philippines.

III.

THE ISSUES

On February 23, 2004, the Court held a session to discuss the cases at bar. The issues discussed were the following: (1) Whether the Court has jurisdiction over the Tecson and Valdez petitions and the Fornier petition; (2) Assuming the Court has jurisdiction, whether the COMELEC *en banc* gravely abused its discretion in dismissing the Fornier petition on the ground that Fornier failed to prove that respondent Poe deliberately misrepresented himself as a natural-born Filipino; (3) Assuming there is no grave abuse of discretion, whether the issue of the citizenship of respondent Poe should now be resolved; and (4) Assuming the issue will now be resolved, whether the Court should resolve it on the basis of the evidence on record or whether it should be remanded to the COMELEC to enable the parties to adduce further evidence on the acknowledgment made by Allan F. Poe of respondent Poe as his son.

These issues shall be discussed in *seriatim*.

IV.

DISCUSSION

A.

JURISDICTION

The Court is unanimous on the issue of jurisdiction. It has no jurisdiction on the Tecson and Valdez petitions. Petitioners cannot invoke Article VII, Section 4, par. 7 of the Constitution which 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 and may promulgate its rules for the purpose.

The word "contest" in the provision means that the jurisdiction of this Court can only be invoked after the election and proclamation of a President or Vice President. There can be no "contest" before a winner is proclaimed.

On the other hand, the Court is also unanimous in its view that it has jurisdiction over the Fornier petition. The COMELEC treated the Fornier petition as a petition to deny due course or to cancel a certificate of candidacy under Section 78 of B.P. Blg. 881 which provides:

B.P. Blg. 881, Section 78. Petition to deny due course 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.

Article IX (C), Section 7 of the 1987 Constitution provides:

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.

The Fornier petition is before this Court on review under Rule 64 in relation to Rule 65 of the Rules of Court. The jurisdiction of this Court is therefore unassailable.

B.

THE COMELEC DID NOT COMMIT GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT PETITIONER FAILED TO PROVE BY SUBSTANTIAL EVIDENCE THE CHARGE THAT RESPONDENT POE DELIBERATELY MISREPRESENTED THAT HE IS A NATURAL- BORN FILIPINO CITIZEN IN HIS CERTIFICATE OF CANDIDACY.

Certiorari power of this Court to
review COMELEC decisions is a
limited power.

We start with the elementary proposition that the certiorari power of this Court to review decisions of the COMELEC is a limited one. This Court can only reverse or change the COMELEC decision on the ground that the COMELEC committed grave abuse of discretion. Grave abuse of discretion has a well defined meaning in our jurisprudence. It means despotic, arbitrary or capricious. A decision supported by substantial evidence is not despotic, arbitrary or capricious. Neither is a decision interpreting a novel or difficult question of law with logical reasons. A mere disagreement with COMELEC on the weight it gave to certain evidence or on its interpretation of some difficult provisions of law is no basis to strike down the COMELEC decision as despotic, arbitrary or whimsical. More so when the case involves election law where the expertise of COMELEC ought to be conceded.

The ruling of the COMELEC
denying the petition to disqualify
respondent Poe is based on
substantial evidence, hence is not
despotic, whimsical or capricious.

To stress again, the petition of Fornier was treated by the COMELEC as a petition to deny due course or cancel the certificate of candidacy of respondent Poe on the ground of material misrepresentation under B.P. Blg. 881,

Section 78. Allegedly, respondent Poe misrepresented himself as a natural-born Filipino citizen. In *Romualdez-Marcos vs. COMELEC*[16] we held that the misrepresentation must not only be material but also deliberate and willfull.

Petitioner, therefore, has the burden to prove by substantial evidence the following facts: (1) that respondent Poe made a misrepresentation in his Certificate of Candidacy; (2) that the misrepresentation is material to the position of which he is a candidate; and (3) that the material misrepresentation was made deliberately and willfully. Let us now examine the evidence presented by petitioner Fornier to determine whether he was able to discharge the burden of evidence.

Analysis of Petitioner's

Evidence

The first evidence of petitioner is Exhibit "A" which is the Certificate of Birth of respondent Poe. This evidence proved the date of birth of respondent Poe, i.e., August 20, 1939. It is no proof that he is not a natural-born citizen. Nor is it proof that respondent Poe knew that he was not a natural-born citizen and deliberately represented himself as such in his Certificate of Candidacy.

The second evidence of petitioner are Exhibits "B", "B-1" and "B-2". Exhibits "B" and "B-1" is the Sworn Statement of Paulita Gomez charging Allan F. Poe with bigamy. Exhibit "B-2" is the alleged marriage contract between Allan F. Poe and Paulita Gomez. Exhibits "B", "B-1" and "B-2" were presented thru Director Manapat. These exhibits do not prove anything. They are out and out fabrications. The sworn statements of Mr. Remmel G. Talabis, Mr. Emman A. Llamora, Ms. Vicelyn G. Tarin, all employees of the Records Management and Archives Office, as well as the sworn statements of Mr. William Duff and Mr. Victorino Floro III of Florofoto proved the fabrications of Director Manapat.

The sworn statement of Remmel Talabis states:

REPUBLIKA NG PILIPINAS)

SIYUDAD NG MAYNILA) s.s.

SINUMPAANG SALAYSAY

Ako Si Remmel G. Talabis, nasa wastong gulang, walang asawa, naninirahan sa 149 P. Gomez St., Bagong Barrio, Caloocan City, pagkatapos manumpa ay nagsasabing:

1. Ako ay kasalukuyang naninilbihan sa Pambansang Sinupan bilang Store Keeper I sa Supplies Section. Inilipat ako ni Dir. Ricardo Manapat sa aming Computer Section dahil sa ako ay nagtapos ng Computer Technology.
2. Noong magkakatapusan ng buwan ng Nobyembre 2003 ay ipinatawag ako ni Dir. Manapat sa kanyang tanggapan at ako ay inutusan mag-scan ng mga birth record sa Archives, Paco. Nakahanda na raw ang mga ito at ii-scan na lang. Ang mga birth record na ito ay mula sa mga taong 1936 hanggang 1941.

Matapos kong i-scan ang mga birth record at makabalik sa opisina ay inutusan naman niya ako na linisin ang mga ito at alisin ang mga datos na nakalagay dito at pagkatapos ay gawan ko raw ito ng black and white copy. Ginawa ko ito sa Adobe Photoshop. Nagpa-print din siya ng mga kopya nito.

3. Muli na naman akong ipinatawag ni Dir. Manapat noong kaagahan ng buwan ng Disyembre 2003 at ako ay inutusan na naman niya na mag-scan ng birth record sa Archives, Paco. Ayon sa kanya ang kailangan niya raw na record ay para sa taon ng 1915 o 1916 pero ang pinakamaagang kopya lang ng birth record na nasa Archives,

Paco ay para sa taon ng 1928 lang. Kaya yun na lang ang ipina-scan niya sa akin.

3.1 Nang matapos kong i-scan ang birth record ay inutusan niya ako uli na linisin ang birth record, alisin ang mga datos nito at gawing black and white copy. Inutusan din niya ako na dagdagan ng entrada ang black and white na kopya ng 1928 birth record ng in-scan ko, para sa “province” at “municipality.” Pina-alis din niya ang numero “2” sa lahat ng “192_” na entrada. Nagpa-print siya ng kopya nito.

3.2 Pinahanap din ako ni Dir. Manapat ng katulad na font na ginamit sa 1928 birth record na in-scan ko pero hindi ako makakita kaya “nag-cut and paste” na lang ako ng mga letra mula din sa nasabing dokumento at ipinagdugtong-dugtong ko na lang para mabuo ang mga salitang isisingit.

4. Bago mag-pasko ay ipinatawag niya akong muli sa kanyang tanggapan. Inutusan niya ako na kopyahin ang isang faxed copy ng marriage certificate at gawan ito ng “form.” Naumpisahan kong gawin ang porma ngunit hindi ko natapos dahil sumapit na ang takdang araw ng aking forced leave na na-file. Nang mga panahon ding iyon ay inuutusan na rin niya ako na mag scan ng mga pirma mula sa iba’t-ibang dokumento at linisin ang mga iyon.

4.1 Tinawagan ko si Emman Llamera upang pakiusapan na siya na lang ang tumapos duon sa iniuutos sa akin ni Dir. Manapat. Pumayag naman siya dahil wala ng ibang gagawa noon.

5. Nakaraan ang ilang araw ay nakatanggap naman ako ng tawag mula kay Dir. Manapat na nagtatanong kung paano lilinis ang pirma na ilalagay sa MS Word document. Sinabi ko na sa Adobe Photoshop ang gamitin para malinis ang mga dumi.

6. Matapos iyon ay wala na kaming komunikasyon hanggang sa ako’y pumasok ng Enero 5, 2004. Ipinatawag niya ako muli sa kanyang tanggapan at inutusan na i-print ang isang Marriage Contract. Ito yung “form” ng Marriage Contract na pinagawa niya sa akin noong Disyembre.

6.1 Nang aking suriin ang dokumento, nakita ko na meron nang mga entrada tulad ng pangalan, pirma, selyo, atbp. Pero gusto ni Dir. Manapat na paliitin ito. Sinabi ko sa kanya na mahirap gawin yun sa isang Word Document.

6.2 Iminungkahi ko sa kanya na kung gusto nyang paliitin ang marriage contract ay mas maigi na i-print ito ng actual size at pagkatapos ay i-scan muli at pagkatapos ay i-paste sa MS Word para madali tong i-resize. Pumayag naman siya at ito nga ang aming ginawa. Ayon sa kanya ay gawin namin itong katulad lamang ng laki ng isang lumang litrato sa Archives Library.

6.3 Pinalagyan din niya ng parang wavy line na border ang ipina-print nyang marriage contract sa akin. Pagkatapos ay pinadagdagan na naman niya ito ng isa pang border para raw magmukhang naka ipit. Pina-print niya ito ulit sa akin gamit ang isang newsprint na papel.

7. Ang sumunod naman nyang ipinagawa sa akin ay ang paglalagay naman ng pirma ng isang Paulita Gomez sa gilid ng isang dokumento at pirma ng isang nagngangalang Cordero sa ikalawang pahina ng pareho ring dokumento na nakasaad sa wikang espanyol. Dati ng may nakalagay na pirma ni Paulita Gomez sa ibabaw ng pangalan nito sa ikalawang pahina ng dokumento. Nang matapos ko ang pinagagawa niya, ipina-print niya sa akin ang nasabing dokumento gamit ang isang newsprint na papel.

8. Makaraan pa ng ilang araw, pinatawag akong muli ni Dir. Manapat upang ipa-scan naman ang isang birth record na may pangalan ng isang Allan Fernando Poe. Inutusan po ako na mag-print ng isang negative copy at isang positive copy.

8.1 Nang makita ko ang Xerox copy ng minarkahang “Exhibit C” sa kasong disqualification sa COMELEC ay

katulad ito ng ipina scan at ipinalinis na birth record sa akin ni Dir. Manapat noong Disyembre 2003.

9. Nito nga pong nakaraang lingo ay inutusan na naman ako ni Dir. Manapat na i-scan uli yung mga dokumento na ipina print nya sa akin noon (marriage contract at dokumento ni Paulita Gomez). Napansin ko na sinunog ang mga gilid ng dokumento. Nagpa print po siya uli ng isang negative copy at isang positive copy ng mga nabanggit na dokumento.

10. Sa lahat po ng mga iniutos at ipinagawa ni Dir. Manapat sa akin ay hindi po niya ni minsan binanggit kung ano at para saan gagamitin ang mga ipinagagawa niya sa akin.

(sgd) Remmel Talabis

Nagsalaysay

Subscribed and sworn to before me, at Quezon City this 21[st] day of January, 2004, Affiant exhibiting to me his Community Tax No. 15325884, issued on January 21, 2004 at Valenzuela City.

NOTARY PUBLIC

(sgd) ATTY. KENNETH S. TAMPAL

Notary Public

Until Dec. 31, 2005

PTR No. 50648646

Quezon City

Doc. No. 673;

Page No. 135;

Book No. XIII;

Series of 2004.

The sworn statement of Emman A. Llamera states:

REPUBLIKA NG PILIPINAS)

SIYUDAD NG MAYNILA)s.s.

SINUMPAANG SALAYSAY

Ako si Emman A. Llamera, nasa wastong gulang, walang asawa, naninirahan sa 825 Rosarito Street, Sampaloc, Manila, pagkatapos manumpa ay nagsasabing:

1. Ako ay kasalukuyang naninilbihan sa Pambansang Sinupan bilang isang contractual, na may alam sa lahat ng gawain pang computer, at direktang nagrereport sa opisina ni Dir. Ricardo Manapat. Ako po nagtatapos ng computer science at isinabay ang kursong computer technician, at nagpatuloy sa pag-aral bilang computer engineer hanggang sa ikaapat na taon.

2. Noong bago magkatapusan ng Disyembre ng taong nagdaan, may ipinasa si Remmel Talabis sa akin na trabaho na ipinapagawa sa kanya ni Dir. Manapat. Nakisuyo si Remmel sa akin na ipagpatuloy ko yong naumpisahan niyang trabaho at ibigay na lang kay Mr. Manapat pag natapos ko.

3. Nang humarap ako sa computer ni Dir. Manapat, nakita ko sa unang pagkakataon ang isang blankong porma ng Marriage Contract. Pagkaraan ng ilang minuto ay kinausap ako ni Dir. Manapat at may pinakita at ibinigay sa akin na kopya ng Marriage Contract na may lamang datos at entrada na gawa sa sulat kamay niya. Ang sabi niya, kopyahin ko daw ang mga datos at entrada at ilipat ang mga ito sa blankong porma ng Marriage Certificate na nakasalang sa computer.

3.1 Inumpisahan ko na ipinil-up sa blankong porma ng Marriage Contract na nasa computer ang mga pangalan nina Allan Fernando Poe at Paulita Gomez at iba pang impormasyon na nakalagay sa papel na binigay ni Dir. Manapat.

3.2 Nang matapos na naming makompleto ang mga datos at entrada sa Marriage Contract ay dahan-dahan ko namang in-insert ang tatlong pirma na ang natatandaan ko po lamang ay ang pirma ng isang nagnangalang Mata, na nakalagay sa gitna sa bandang baba ng dokumento. Nang matapos kong mailagay lahat ang tatlong pirma ay ipinapaprint na ni Dir. Mata. Di nagtagal, pinauwi na niya ako dakong mag-aalas singko na.

3.3 Wala pang nakalagay na pirma sa pangalan nina Allan Fernando Poe at Paulita Gomez.

3.4 Nakabantay sa tabi ko si Dir. Manapat habang nagtrabaho ako, mula umpisa hanggang matapos ko ang pinagawa niya.

4. Sa lahat po ng mga iniutos at pinagawa ni Dir. Manapat sa akin ay hindi po niya ni minsan binanggit kung ano at para saan gagamitin ang mga ipinagagawa niya sa akin.

(sgd) Emman A. Llamera

Nagsalaysay

Subscribed and sworn to before me at Quezon City this 21[st] day of January, 2004, Affiant exhibiting to me his Community Tax No. 01477379, issued on April 10, 2003 at City of Manila.

NOTARY PUBLIC

(sgd) KENNETH S. TAMPAL

Notary Public

Doc. No. 672;

Page No. 135;

Book No. XIII;

Series of 2004.

The sworn statement of Vicelyn G. Tarin states:

REPUBLIKA NG PILIPINAS)

SIYUDAD NG MAYNILA)s.s.

SINUMPAANG SALAYSAY

Ako si Vicelyn G. Tarin, nasa wastong gulang, walang asawa, naninirahan sa 3150 Gen. T. de Leon, Valenzuela City, pagkatapos manumpa ay nagsasabing:

1. Ako ay kasalukuyang naninilbihan sa Pambansang Sinupan bilang isang Records Management Analyst I. Bahagi ng aking katungkulan ay ang wastong paggamit at pagsusuri ng mga iba't-ibang anyo ng mga dokumento at kasulatan. Ako ay pansamantalang inilipat noong Agosto, 2002 sa computer section ng aming tanggapan. Naging bahagi ng aking panibagong tungkulin ang humawak ng anumang gawain hinggil sa computer.

2. Noong Disyembre 30, 2003 ng gawing hapon, inutusan ako ni G. Ricardo L. Manapat na mag-scan ng mga dokumento.

2.1 Iniabot ni G. Manapat sa akin ang dalawang piraso ng papel para i-scan. Iyung isang papel ay naglalaman ng maraming pirmang "Allan Poe"; at iyung isa naman ay naglalaman ng maraming pirmang "Paulita Gomez". Iniutos ni G. Manapat na mamili kami ni Leizl Punongbayan ng pinakamaayos na pirma.

2.2 Pagkatapos kong i-scan ang buong papel, krinap (crop) ko iyong pinakamaayos na pirma nina "Allan Poe" at "Paulita Gomez", at nilinis sa pamamagitan ng software na Adobe Photoshop. Pagkatapos noon, "Ininsert" ko yung dalawang napili kong lagda sa MS Word at I-save sa diskette.

2.3 Nang matapos kong I-save sa diskette ang lahat ng aking mga nagawa ay iniwan ko na lang ito kay Leizl para ibigay kay G. Manapat sa kadahilanang may kausap si G. Manapat sa kaniyang opisina noong mga oras na iyon.

3. Matapos ang ilang araw, pinatawag ako muli ni G. Manapat para baguhin ang pirma ni Paulita Gomez dahil masyado daw malaki ang tipo at sukat. Nang pumunta ako sa computer niya, doon ko na muling nakita na iyong ini-scan kong mga pirma ay nakapaloob na sa isang file o "softcopy" ng isang dokumento na may titulo na "Marriage Contract".

3.1 Inedit ko yung pirma ni Paulita Gomez sa pamamagitan ng Adobe Photoshop. Nang matapos kong baguhin ito ayon sa kagustuhan ni G. Manapat, I-ninsert ko muli sa MS Word at si-nave ko ito sa isang diskette. Binigay ko ang diskette na naglalaman ng edited version ng pirma ni Paulita Gomez kay G. Manapat mismo.

4. Makaraan ang isang linggo nakita ko muli sa ikalawang pagkakataon yung dokumento na may titulong "Marriage Contract" kung saan nakapaloob na ang mga pirma nina Allan Fernando Poe at Paulita Gomez na ini-scan at trinabaho ko sa mismong loob ng kuwarto namin ni Remmel Talabis. Napagalaman ko kay Remmel na inutusan siya ni G. Manapat na I-print na yung kopya ng "Marriage Contract".

5. Ginawa ko ang Sinumpaang Salaysay ng buong kusa at laya upang patotohanan ang lahat ng mga nakasaad dito.

(sgd) VICELYN G. TARIN

Nagsalaysay

Subscribed and sworn to before me at Quezon City this 21[st] day of January, 2004, Affiant exhibiting to me his Community Tax No. 15325883 , issued on January 21, 2004 at Valenzuela City.

NOTARY PUBLIC

(Sgd.) KENNETH S. TAMPAL

Notary Public

Until Dec. 31, 2005

PTR No. 50648641

Doc. No. 674;

Page No. 135;

Book No. XIII;

Series of 2004.

This is not all. Equally damaging to the credibility of Director Manapat are the sworn statements of Mr. William Duff and Mr. Victorino A. Floro III of Florofoto. The sworn statement of Mr. Duff states:

REPUBLIKA NG PILIPINAS)

SIYUDAD NG MAYNILA)s.s.

SINUMPAANG SALAYSAY

Ako si William Bautista Duff, may sapat na gulang, may asawa, kasalukuyang namamasukan sa Florofoto na may address sa No. 502, C. Palanca St., Quiapo, Manila, pagkatapos manumpa ay nagsasabing:

1. Ako po ay kasalukuyang naninilbihan bilang isang service supervisor sa naturang tanggapan.
2. Noong ika-sampu ng Enero ngayong taong kasalukuyan, sabado ng umaga, sinabihan ako ni Mr. Floro na i-setup ang aming kamera dahil may ipapamicrofilm si Director Manapat na “confidential in nature”.
3. Dumating si Director Manapat mga dakong alas-onse ng umaga. Mahigit mga 30 to 50 dokumento ang iniwan niya na minicrofilm ko. Mga deed of sale na nakasaad sa espanyol ang mga naturang dokumento.
 - 3.1 Tinanong ako ni Mr. Manapat kung ilang oras ko magagawa ito? Ang sabi ko, sandali lang mga 30 minutes to 1 hour. Iiwanan ko na lang kay Emy, sekretarya ni Mr. Floro ang mga dokumento para doon na lang niya kunin.
 - 3.2 Kinuha ni Director Manapat ang mga naturang dokumento bandang hapon kay Emy.
4. Noong ika-labindalawa ng Enero, tinawagan ako ng processor ng film at sinabihan na hindi daw malinaw at mabasa ang microfilm na ginawa ko.
 - 4.1 Agad-agad kong tinawag si Director Manapat sa kanyang opisina at pinakiusapang ibalik ang mga dokumento na minicrofilm ko dahil hindi ito mabasa at kukunan ko ulit.
 - 4.2 Sinabihan ako ni Director Manapat na hintayin ako noong oras ding iyon. Dumating siya mga dakong alas-onse na ng umaga at may dalang dalawang bundle ng mga dokumento. Ang tantiya ko, iyong isang bundle naglalaman ng humigit kumulang tatlong daang dokumento, at iyong isa naman ay may humigit kumulang limang daang dokumento.
 - 4.3 Sinabihan ko si Direktor Manapat na gagawin ko agad at balikan na lang niya. Napagalaman ko na mga birth certificate ang laman ng isang folder at mga deed of sale naman ang laman noong isang folder.
5. Bumalik si Director Manapat mga dakong 12:30 ng hapon habang kasalukuyang akong nag-mimicrofilm ako ng mga deed of sale. Nang tinanong ako ang kalagayan ng trabaho, sinabi ko na tapos na yong mga birth certificates at pwede na niyang kunin. Iyong mga deed of sale, balikan na lang niya at matatagalan pa. Iwanan ko na lang uli sa sekretarya ni Mr. Floro at doon niya kunin ang mga dokumento.
 - 5.1 Sinabihan ako ni Director Manapat na magdagdag ng isa pang kopya para sa mga deed of sale.
6. Pagkatapos ko pong magawa ang mga microfilm, pinadala ko sa planta namin para sa developing. Sinabihan ko ang supervisor ng aming planta na kabilin-bilinan ni Director Manapat kay Mr. Floro na “highly confidential” ang

laman ng microfilms.

7. Noon ika-labingpito ng Enero, bumalik si Director Manapat para kunin ang mga rolyo ng developed film. Sinabihan ako ni Director Manapat na mag-print ng mga kopya ng microfilms.

7.1 Sinita ako dahil nag-iisa ang kopya ng microfilm na naglalaman ng mga deed of sale.

7.2 Agad akong tumawag sa planta namin para magpakopya pa ng isa. Sinabi ni Director Manapat na siya lang ang magdadala ng film sa isang planta. Ito ay pinaalam ko kay Mr. Floro.

8. Gusto ni Director Manapat ng print copies kaya pina-basa ko sa makina ang rolyo ng birth certificate. Habang ginagawa ko ito, pinatigil ako sa isang image. Nakita ko ang birth certificate ng isang Allan Fernando Poe. Nag-print ako ng kopya sa utos ni Director Manapat. Malabo po ang lumabas na printout. Lahat na ng paraan ginawa namin para gumanda ang printout ngunit di namin magawa.

8.1 Iyong isang rolyo na naglalaman ng mga deed of sale naman ang isinunud naming ipabasa sa makina. Pinatigil ako ni Director Manapat sa isang image. Nakita ko ang marriage contract ni Allan Fernando Poe at Paulita Gomez. Nakita ko rin ang isang image na nakasulat sa espanyol na may pangalang Paulita Gomez. Sa utos niya, nag-print ako ng isang kopya ngunit katulad ng dati malabo ang printout.

9. Para luminaw ang mga printout, pinalaki ko ang mga microfilms gamit ang isang enlarger. Doon lumabas ng maganda ang mga imahen sa loob ng dalawang microfilm. Nagprint ako ng kopya ng marriage contract, birth certificate at ang dalawang pahinang documento na nakasulat sa espanyol na may pangalang Paulita Gomez. Natapos ko lahat ng mga ito dakong alas-4 na ng hapon. Kinuha mismo ni Director Manapat ang mga microfilms at mga printouts sa akin.

10. Gusto akong ihatid ni Director Manapat sa bahay ko ngunit sinabihan kong madami pa akong gagawin.

11. Ang lahat po ng mga iniutos at ipinagawa ni Director Manapat sa akin ay bahagi lamang ng aking katungkulan. Ni minsan po ay hindi nabanggit kung ano at para saan gagamitin ang mga trabahong ipinagagawa sa akin.

12. Ginawa ko ang Sinumpaang Salaysay ng buong kusa at laya upang patotohanan ang lahat ng mga nakasaad dito.

(sgd) WILLIAM B. DUFF

Nagsalaysay

Subscribed and sworn to before me at Quezon City this 2[nd] day of February, 2004, Affiant exhibiting to me his Information Tax No. 109-998-007, issued by the Bureau of Internal Revenue.

NOTARY PUBLIC

(sgd) KENNETH S. TAMPAL

Notary Public

Until Dec. 31, 2005

PTR No. 50648641

Doc. No. 696;

Page No. 135;

Book No. XIII;

Series of 2004.

The sworn statement of Mr. Floro is as follows:

REPUBLIKA NG PILIPINAS)

SIYUDAD NG MAYNILA)s.s.

A F F I D A V I T

I, VICTORINO A. FLORO III, of legal age, married, with business address at No. 502 Carlos Palanca St., Quiapo, Manila, under oath, states:

1. I am the Vice-President of Florofoto;
2. Floro International, a sister company of Florofoto has a standing business agreement with the Records and Management and Archives Office (RMAO) for the supply of microfilms;
3. Sometime in the first week of January, 2004, Mr. Ricardo L. Manapat, Director of the RMAO, called me up, asking if Florofoto could microfilm some confidential documents;
4. On January 10, 2004, Mr. Manapat brought to my office a set of documents, numbering about 20 to 30 pages, and requested that the same be microfilmed;
5. On January 12, 2004, our technician, Mr. William Duff informed me that the microfilm was unreadable;
6. On January 17, 2004, Mr. Manapat came to pick up the microfilm rolls;
7. Mr. Duff, with whom Mr. Manapat communicated directly on the matter of the production of the microfilms will be most willing to give details in the transactions he had with Mr. Manapat;
8. Florofoto had absolutely no knowledge of the intention of Mr. Manapat on what he intended to do with the microfilms he asked our company to produce;
9. I am executing this affidavit for the purpose of the Senate hearing.

Affiant further sayeth naught.

(sgd) VICTORINO A. FLORO III

Affiant

Subscribed and sworn to before me at Quezon City this 2[nd] day of February, 2004, Affiant exhibiting to me his Community Tax No. 12356783, issued on January 6, 2004 at Manila.

NOTARY PUBLIC

(sgd) KENNETH S. TAMPAL

Notary Public

Until Dec. 31, 2005

PTR No. 50648641

Doc. No. 695;

Page No. 140;

Book No. XIII;

Series of 2004.

These sworn statements were submitted to the COMELEC en banc by the respondent Poe. Instead of traversing them, petitioner merely contended that they should not be considered on the technical grounds that they were not formally offered in evidence before the COMELEC and that they cannot be the subject of judicial notice. Petitioner, however, overlooks that the COMELEC is a quasi-judicial body and hence is not bound by the technical rules of evidence. It can accept evidence which cannot be admitted in a judicial proceeding where the rules of court on evidence are strictly observed. It can accord weight to such evidence depending on its trustworthiness. In any event, petitioner cannot complain they are hearsay for he was given an opportunity to challenge the credibility of the witnesses who executed the foregoing sworn statements.

The third evidence of petitioner is Exhibit "C" which is the birth certificate of Allan F. Poe. This is part of the Manapat fabricated evidence with a zero value. But even assuming it has a value, it merely proves the fact of birth of Allan F. Poe as all birth certificates merely do. It does not prove that respondent Poe is not a natural-born citizen. Neither does it prove that respondent Poe deliberately misrepresented that he is a natural-born citizen.

The fourth evidence of petitioner is Exhibit "D", the certification of Director Manapat that the National Archives has no record that Lorenzo Pou entered or resided in the Philippines before 1907. Again, this is part of the Manapat manufactured evidence which can only be given the value of a cypher. But even if it is admissible, it has little weight for there is no evidence that the National Archives has a complete record of all persons who lived in the Philippines during the Spanish and American occupation of our country. Needless to state, petitioner again failed to prove that Lorenzo Pou, grandfather of respondent Poe, was a Spanish subject.

The fifth and last evidence of the petitioner is Exhibit "E" (also Exhibit "1" of respondent Poe). It is a certification of Estrella M. Domingo, OIC, Archives Division that the Register of Births for the municipality of San Carlos, Pangasinan in the year 1916 is not on file with the National Archives, hence, there is no available information about the birth of Allan Poe to the spouses Lorenzo Pou and Marta Reyes in San Carlos Pangasinan. This lack of information is not proof that respondent Poe deliberately misrepresented that he is a natural-born citizen. Law and logic bar that non sequitur conclusion.

These are all the evidence presented by the petitioner. Even a sweep eye contact both with these evidence will show that petitioner failed to discharge the burden of proving that respondent Poe is not a natural-born citizen. Petitioner was more dismal in trying to prove that respondent Poe willfully and deliberately misrepresented himself as a natural-born citizen. For one, the Manapat evidence appears to have been manufactured evidence. For another, these and the other evidence are irrelevant evidence and there is no proof that they ever crossed the attention of respondent Poe. On the other hand, the evidence unerringly show that respondent Poe, from the time of his involuntary birth here, has always conducted himself as a Filipino. He is a registered voter, he owns land, he is married to a Filipina, he carries a Filipino passport - - he has always lived the life of a Filipino (Exhibits "16", "17" to "19"). Thus, there is no iota of doubt that petitioner miserably failed to discharge his burden of proving that respondent Poe deliberately misrepresented that he is a natural-born citizen. For failure of petitioner to discharge the burden of proof, respondent Poe is entitled to an outright dismissal of the Fornier petition. Respondent Poe need not present any contrary evidence for the burden of proof has not shifted to him. Prescinding from these premises, this Court cannot hold that the COMELEC committed grave abuse of discretion

when it ruled that no substantial evidence was offered by petitioner to disqualify respondent Poe.

C.

ASSUMING THE COMELEC GRAVELY ABUSED ITS JURISDICTION AND THE ISSUE OF WHETHER RESPONDENT POE IS A NATURAL-BORN FILIPINO SHOULD NOW BE RESOLVED, THE FORNIER PETITION NEED NOT BE REMANDED TO THE COMELEC FOR FURTHER RECEPTION OF EVIDENCE.

Remand to the COMELEC to give

the petitioner a second opportunity

to prove his case is a palpable error.

As aforesaid, petitioner has the following burden of proof in the COMELEC: (1) prove that respondent Poe is not a natural-born citizen, and (2) prove that knowing he is not a natural-born citizen, he willfully and deliberately misrepresented that fact in his Certificate of Candidacy.

The COMELEC en banc dismissed the petition of Fornier for failure to prove these operative facts by substantial evidence. After the 12-hour marathon hearing of the case at bar before this Court, the hope of petitioner to disqualify respondent Poe became dimmer. Petitioner's principal thesis that respondent Poe is an illegitimate child and therefore follows the American citizenship of his mother, Bessie Kelley, was completely smothered by the learned opinions of the amici curiae. They opined that respondent Poe's illegitimacy is immaterial in resolving the issue of whether he is a natural-born citizen and whether he has a political right to run for President. They further submitted the view that all that is required is clear proof of his filiation - - - i.e., that his father is Allan F. Poe, a Filipino citizen. Mr. Justice Mendoza left it to the Court to determine the standard of proof that should be imposed to prove this filiation.

In light of these erudite opinions of our amici curiae, it is daylight clear that petitioner Fornier is not only wrong with his facts but also wrong with his law. Considering that petitioner is wrong both with his facts and the law, the Court has no option but to dismiss the petition at bar which espouses nothing but errors. This Court will be compounding the wrongs committed by petitioner Fornier with another wrong if it remands the petition at bar to the COMELEC. A remand means a new round of litigation in the COMELEC when its proceedings have long been closed and terminated. Remand means the petitioner will be gifted with another chance to prove facts which he has failed to prove before. Remand means the petitioner will be given the extra-ordinary privilege of correcting his erroneous understanding of the law on who are natural-born Filipino citizens. These are favors which cannot be extended to a litigant without shattering the Court's stance of political neutrality. The Court must be above politics for in the temples of justice, we do not follow any political god.

Remand will change the nature of a

Section 78 proceeding by judicial

legislation, hence, unconstitutional.

The Fornier petition was treated by the COMELEC as a petition to deny due course or to cancel a certificate of candidacy under B.P. Blg. 881, Section 78. The principal issue on a Section 78 petition is whether the respondent deliberately made a material misrepresentation in his Certificate of Candidacy. In the particular petition at bar, the issue is whether respondent Poe deliberately misrepresented that he is a natural-born Filipino citizen. The issue of whether respondent Poe is in truth a natural-born citizen is considered only because it is necessary to determine the deliberateness and the willfulness of the material misrepresentation. The proceedings are summary in

character for the central issue to be resolved is the deliberateness of the material misrepresentation, as the issue of natural-born citizenship is a mere incident. In fine, the complex issue of natural-born citizenship may not be finally litigated and can still be raised in an appropriate proceeding such as a quo warranto proceeding after election. The citizenship issue in a quo warranto proceeding will be determined in full length proceedings.

The remand of the case to the COMELEC will change the character of a Section 78 proceeding. The citizenship of respondent Poe will no longer be inquired into as a mere incident necessary to determine whether he deliberately made a material misrepresentation that he is a natural-born citizen. It will now be determined as if it is the main issue in a Section 78 proceeding. This Court cannot change the nature of a Section 78 proceeding without usurping legislative power. It is Congress by law that defined the nature of a Section 78 proceeding and it is only Congress that can change it by another law. We cannot engage in judicial legislation.

Remand will violate respondent

Poe's right to due process, hence,
unconstitutional.

There is a more compelling reason why the petition at bar should not be remanded to the COMELEC for re-litigation. The COMELEC that will resolve the issue of whether respondent Poe is a natural-born Filipino has ceased to be an impartial tribunal. Three of its members, Commissioners Tuazon, Barcelona and Garcellano, submitted separate Comments to this Court expressing the firm view that respondent Poe is not a natural-born Filipino. Their views are contrary to the decision of the COMELEC under review by this Court. It is improper enough for individual commissioners to assail the decision of the COMELEC of which they are members. It is worse in the case of Commissioners Barcelona and Garcellano, who are not even sitting commissioners when the COMELEC promulgated its decision under review. This is plain and simple prejudgment and it is not even disguised prejudgment that needs to be unmasked. The COMELEC is composed of seven commissioners all of whom must be independent and unbiased. The right to due process of respondent Poe is the right to be heard by seven unbiased COMELEC commissioners - - not 1, not 2, not 3, not 4, but by 7 unbiased members. We do not have such a COMELEC.

Remand will delay the resolution

of the issue of whether respondent Poe

is qualified. Delay will also

prejudice his candidacy and will

favor his political opponents.

Remand of the petition at bar to the COMELEC will inevitably delay the resolution of the issue of whether respondent Poe is a natural-born Filipino citizen. The issue will not be finally resolved by the COMELEC. The decision of the COMELEC can still be appealed to this Court. Given the temperature of the present presidential contest, such an appeal can be assumed.

It cannot be gainsaid that any doubt on the qualification of respondent Poe to run as President is prejudicial to his presidential bid and favorable to his political opponents. The right to run for a public office includes the right to equal chance to compete. The right to run is empty if the chance to win is diminished or denied a candidate. This chance to win may amount to a mere chimera if the disqualification of respondent Poe will be left hanging in the air for a long time. It is the solemn duty of this Court to equalize the chances of winning of all candidates to a public office. Any failure to equalize the chances of all candidates is to insure the defeat of the disfavored.

D.

TO AVOID DELAY, THE COURT SHOULD ITSELF DECIDE THE ISSUE AND DECLARE RESPONDENT POE AS A NATURAL-BORN CITIZEN ON THE BASIS OF THE EVIDENCE ADDUCED BEFORE THE COMELEC.

Whether respondent Poe is
illegitimate is irrelevant in
determining his status as natural-
born citizen - - - that is the law.

Petitioner has always submitted the legal thesis that: (1) respondent Poe is an illegitimate child as he was born out of wedlock, i.e., he was born before the marriage of Allan F. Poe and Bessie Kelly; (2) as an illegitimate child, he follows the American citizenship of his mother, Bessie Kelly; therefore, (3) he is not a natural-born citizen. Petitioner contends that evidence of respondent Poe himself, Exhibits “3” and “21”, prove these facts.

This interpretation of the law by the petitioner is erroneous. The amici curiae have opined that the illegitimacy of respondent Poe is immaterial in determining his status as natural-born citizen. I quote the learned opinion of Father Joaquin Bernas:

**AN ILLEGITIMATE CHILD OF A FILIPINO FATHER
IS BORN A FILIPINO AND IS THEREFORE A
NATURAL-BORN FILIPINO CITIZEN. PUT DIFFERENTLY,
THE PRINCIPLE OF JUS SANGUINIS APPLIES EVEN TO
ILLEGITIMATE CHILDREN**

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 is a Filipino citizen. 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 turn 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 753 (1967).

We must analyze these cases and ask what the *lis mota* was in each of them. If the pronouncement of the Court on jus sanguinis was on the *lis mota*, the pronouncement would be a decision constituting doctrine under the rule of *stare decisis*. But if the pronouncement was irrelevant to the *lis mota*, the pronouncement would not be a decision but a mere *obiter dictum* which did not establish doctrine. I therefore invite the Court to look closely into these

cases.

First, *Morano v. Vivo*. This case was not about an illegitimate child of a Filipino father. It was about a stepson of a Filipino, a stepson who was the child of a Chinese mother and a Chinese father. The issue was whether the stepson followed the naturalization of the stepfather. Nothing about *jus sanguinis* there. The stepson did not have the blood of the naturalized stepfather.

Second, *Chiongbian v. de Leon*. This case was not about the illegitimate son of a Filipino father. It was about a legitimate son of a father who had become Filipino by election to public office before the 1935 Constitution pursuant to Article IV, Section 1(2) of the 1935 Constitution. No one was illegitimate here.

Third, *Serra v. Republic*. The case was not about the illegitimate son of a Filipino father. Serra was an illegitimate child of a Chinese father and a Filipino mother. The issue was whether one who was already a Filipino because of his mother who still needed to be naturalized. There is nothing there about invidious *jus sanguinis*.

Finally, *Paa v. Chan*. This is a more complicated case. The case was about the citizenship of Quintin Chan who was the son of Leoncio Chan. Quintin Chan claimed that his father, Leoncio, was the illegitimate son of a Chinese father and a Filipino mother. Quintin therefore argued that he got his citizenship from Leoncio, his father. But the Supreme Court said that there was no valid proof that Leoncio was in fact the son of a Filipina mother. The Court therefore concluded that Leoncio was not Filipino. If Leoncio was not Filipino, neither was his son Quintin. Quintin therefore was not only not a natural-born Filipino but was not even a Filipino.

The Court should have stopped there. But instead it followed with an obiter dictum. The Court said obiter that even if Leoncio, Quintin's father, were Filipino, Quintin would not be Filipino because Quintin was illegitimate. This statement about Quintin, based on a contrary to fact assumption, was absolutely unnecessary for the case. Quintin was already on the floor and the Court still kicked him. It was obiter dictum pure and simple, simply repeating the obiter dictum in *Morano v. Vivo*. I submit that the petitioners in this case as well as three Comelec Commissioners including the two new ones and also the Solicitor General have merely been repeating without any semblance of analysis the obiter dicta in these four cases.

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 therefore they do not constitute *stare decisis*. They therefore cannot be used to resolve constitutional issues today.

Now to Fernando Poe, Jr. If indeed he is an illegitimate son of a Filipino father, should the Court now pronounce a new doctrine that an illegitimate son of a Filipino father is not born a Filipino citizen even if paternity is established? There is compelling constitutional reason why the Court should not do so. Aside from the fact that such a pronouncement would have no textual foundation in the Constitution, it would also violate the equal protection clause of the Constitution not once but twice. First, it would make an illegitimate distinction between a legitimate child and an illegitimate child, and second it would make an illegitimate distinction between the illegitimate child of a Filipino father and the illegitimate child of a Filipino mother.

The doctrine on constitutionally allowable distinctions was established long ago by *People v. Cayat*. I would grant that the distinction between legitimate and illegitimate children rests on real differences even if the differences are not as pleasurable as the differences between male and female. But real differences alone do not justify invidious distinction. Real differences may justify distinction for one purpose but not for another purpose.

Among the four requirements of allowable distinction is that the distinction must be germane to the purpose of the

law. Thus, the distinction between male and female is real, and we thank God for that. But such distinction would not be relevant for purposes of, for instance, improving the standards of the legal profession. Such distinction cannot be made the basis for disqualifying women from the practice of law or sitting in the Supreme Court.

It is the same thing with respect to the exercise of political rights. What is the relevance of legitimacy or illegitimacy to elective public service? What possible state interest can there be for disqualifying an illegitimate child from becoming a public officer. It was not the fault of the child that his parents had illicit liaison. Why deprive the child of the fullness of political rights for no fault of his own? To disqualify an illegitimate child from holding an important public office is to punish him for the indiscretion of his parents. There is neither justice nor rationality in that. And if there is neither justice nor rationality in the distinction, then the distinction transgresses the equal protection clause and must be reprobated.

The delegates to the 1935 Constitutional Convention, honorable men that they were, must have been aware of the injustice of punishing the child politically for the indiscretion of his or her parents. I invite the honorable Court to peruse the debates of the 1935 Constitutional Convention. When the delegates were debating *jus sanguinis*, there was not the slightest suggestion to make a distinction between legitimate and illegitimate children. For them *sanguis*, or blood, whether injected legitimately or illegitimately was the same blood and had the same political effect – citizenship of the offspring.

The only time the Convention distinguished between legitimate and illegitimate children was in relation to the right of children born of Filipino mothers and alien fathers to elect Philippine citizenship upon reaching majority. But it was an unnecessary distinction. When Delegate Rafols raised the question whether the right to elect belonged to both legitimate and illegitimate children, Delegate Cuaderno answered that only legitimate children could elect because only legitimate children needed to elect. Illegitimate children already had the Filipino citizenship of their mother flowing in their veins.

What then should be done with the obiter dicta in the four cases cited by the petitioners? I answer this question with what the Court said when it declared in *Tan Chong v. Secretary of Labor* that *Roa v. Collector of Customs* was wrong in holding that *jus soli* was put in effect in the Philippines. The Court said: “The duty of this Court is to forsake and abandon any doctrine or rule found to be in violation of the law in force.” *Tan Chong v. Secretary of Labor*, 79 Phil. 249 (1947).

The four cases cited by petitioners are not even decisions. They do not come under *stare decisis*. They are obiter dicta more easily repudiated and should be repudiated.

In conclusion, therefore, when the Constitution says: “The following are citizens of the Philippines ... “Those whose fathers are citizens of the Philippines””, the Constitution means just that without invidious distinction. *Ubi lex non distinguit ne nos distinguere debemus*, especially if the distinction has no textual foundation in the Constitution, serves no state interest, and even imposes an injustice on an innocent child. What flow from legitimacy are civil rights; citizenship is a political right which flows not from legitimacy but from paternity. And paternity begins when the ovum is fertilized nine months before birth and not upon marriage or legitimation.

As to Fernando Poe, Jr., therefore, if it is established by competent proof that he is the son of a Filipino father, legitimate or illegitimate, he is a natural-born Filipino citizen.

The former Dean of the UP College of Law Merlin Magallona espoused the same scholarly view. I quote him:

4. Transmissive Essence of Citizenship

4.1 It is an essential feature of citizenship that it is transmissible. The key issue is: What principle governs its

transmissibility? The Philippine Bill of 1902 as well the Jones Law defines the conditions by which persons similarly situated as Lorenzo Pou as a Spanish subject “shall be deemed and held to be citizens of the Philippine Islands.” Over and above that, these laws provide for the means by which Lorenzo Pou’s Philippine citizenship would be transmitted when they declare that their or his “children born subsequent” to the date of exchange of ratifications of the Treaty of Paris as “citizens of the Philippine Islands” as well.

4.2 While the text of the law speaks of children of Spanish subjects who are deemed to be “citizens of the Philippine Islands,” it is at that same time an embodiment of a core principle of blood relationship or *jus sanguinis*. The word children becomes merely a reflection of the transmissive essence of citizenship which lies in blood relationship. In this sense, the transmissibility of citizenship, such as that of Lorenzo Pou, is not limited to the immediate generation to which Allan R. Pou belonged; it continues to run through all children across generations, barring naturalization and other methods of extradition.

4.3 The operation of the core principle of transmissibility in blood relation finds affirmation and, more significantly, continuity in the 1935, 1973 and 1987 Constitutions in which blood relationship becomes a principal derivation and transmissibility of citizenship. All Constitutions embody this transmissive essence of citizenship in blood relationship. In the determination as to who are citizens of the Philippines, they have a common provision that those whose fathers are citizens of the Philippines are citizens.

4.4 The interconnection between the Philippine citizenship of children born to Spanish subjects under the Philippine Bill of 1902 and the Jones Law and the said provision common to the three Philippine Constitutions becomes a long line of generations that illustrates the transmissive essence of citizenship.

4.5 Under the circumstances defined by the Treaty of Paris in correlation with the Philippine Bill of 1902 and the Jones Law, the Philippine citizenship of Lorenzo Pou and his son Allan R. Pou were further affirmed by the application of subsection (1), Section 1, Article IV of the 1935 Constitution, by which citizenship is defined on the part of:

Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

4.6 On his own account, having become citizen of the Philippine Islands as a child of Lorenzo Pou born subsequent to the date of exchange of ratifications of the Treaty of Paris under Section 4 of the Philippine Bill of 1902 and Section 2 of the Jones Law, Allan R. Pou has the benefit of subsection (1), Section 1, Article IV of the 1935 Constitution, quoted above.

4.7 As thus defined, Philippine citizenship on the part of Allan R. Pou is not limited to his person; his citizenship is transmissible by its nature. The principle governing the transmissibility of his citizenship to his children is provided by subsection 3, Section 1, Article IV of the 1935 Constitution, which declares as citizens of the Philippines –

Those whose fathers are citizens of the Philippines.

4.8 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 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 the child vis-à-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.

4.9 The transmissive essence of citizenship as outlined above may receive further clarification in the 1987 Constitution, in which it is provided in subsection 2, Section 1 of Article IV that Philippine citizenship is derived as follows:

Those whose fathers or mothers are citizens of the Philippines. (Emphasis added.)

A woman becomes a derivation of citizenship not because of the illegitimate status of her child but for the reason that she is a mother and as mother she is the medium of blood relationship. In this provision of law, the father and the mother stand in equality. Both are derivative of citizenship on the same principle of blood relationship.

4.10 The approach to the problem of citizenship from the angle of transmissive essence of citizenship receives authoritative support from Chief Justice Manuel Moran speaking for this Honorable Court in *Chiongbian v. De Leon* (82 Phil. 771 [1949]). In question was the interpretation of the provision in the 1935 Constitution declaring that “Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office.” (Art. IV, Section 1, subsection 2). It was contended that citizenship thus acquired is personal and cannot be transmitted to the children. In response, Chief Justice Moran emphasized the “transmissive essence of citizenship,” saying that this provision does not stand alone and requires its application together with the provision that “Those whose fathers are citizens of the Philippines”, thus bringing in the transmissibility of citizenship on the principle of blood relationship.

Associate Justice Vicente V. Mendoza, a former member of this Court and an expert in Constitutional Law, similarly opined:

The cases, in interpreting Art. IV, Section 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 acknowledgment 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 some of the cases exclude instances in which an illegitimate child may have been acknowledged by his Filipino father.

Indeed, cases holding that illegitimate children follow the citizenship of their Filipino mothers involve situations in which the fathers are not Filipinos. (*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]). To hold that the 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.

What is only needed is that the illegitimate child must be acknowledged by the father to establish his filiation to the latter. The acknowledgment and establishment of filiation of such child may not be sufficient to entitle him to support, successional rights, and other benefits under Civil Law, but, for purposes of determining his political status as a citizen of the Philippines, such proof of acknowledgment and filiation is all that is required.

A ruling by this Court that the constitutional provision (that those whose fathers are citizens of the Philippines are citizens of the Philippines themselves) will require no overruling of prior decisions. After all, none of the prior decisions of this Court deal with a situation in which the Filipino parent of the illegitimate child is the father.

If this Court interprets the constitutional provision as including in the class of citizens illegitimate children whose filiation to their Filipino fathers is established, the Court will simply be adding a third category of citizens. In 1949, *Chiongbian v. De Leon*, supra, this Court held that “a legitimate minor child follows the citizenship of his

Filipino father.” This is the first category. In 1967, in *Paa v. Chan*, supra, it was held that a legitimated natural child, whose father is a Filipino, is also Filipino. This is the second category of citizens whose fathers are Filipinos.

By holding that an illegitimate child follows the citizenship of his Filipino father provided he is acknowledged or his filiation to him is duly proven, this Court will be creating a third category of Filipino citizens “whose fathers are citizens of the Philippines.” For there is really no difference in principle between, on the one hand, the illegitimate child of a Filipino mother and an alien father, and, on the other hand, the illegitimate child of a Filipino father and an alien mother. As long as the child’s filiation to his supposed father is established, it does not matter whether he is a legitimate or an illegitimate child.

These opinions of the amici curiae support the ruling of the First Division of the COMELEC that:

x x x

Note that Section 3 of Article IV of the 1935 Constitution does not have a qualifying term “legitimate” after the words “those whose fathers” and before the phrase “are citizens of the Philippines.” Legitimacy therefore is beside the point. As long as the father is a Filipino, the child will always be a Filipino. As we have discussed early on, since Allan Fernando Poe is a Filipino, his son Ronald Allan Poe, the respondent herein, is a natural-born Filipino.

This ruling was unanimously affirmed by the COMELEC en banc.

If petitioner Fornier is wrong in his understanding of the law on who are natural-born citizens of the Philippines, how can he+ be right in assailing the status of respondent Poe?

To establish that respondent Poe

is a natural-born citizen, all that is

needed is proof of his filiation to his

father Allan R. Poe, a Filipino

citizen - - - that is the critical fact.

The critical fact in the determination of whether respondent Poe is a natural-born citizen is his filiation with Allan F. Poe, a citizen of the Philippines. The fact that respondent Poe is the son of Allan F. Poe is not disputed. It is an admitted fact. Petitioner Fornier from Day 1 proceeded from the premise that respondent Poe is the son of Allan F. Poe.

The records of the case at bar speak for themselves. Let us first examine the Petition filed by Fornier in SPA No. 04-003 before the First Division of the COMELEC. The Petition never questioned the fact that Allan F. Poe is the father of respondent Fernando Poe, Jr. What it questioned is the alleged Filipino citizenship of Allan F. Poe. I quote the Petition in extenso:

x x x

3. Under Section 2, Article VII of the 1987 Constitution, the qualifications of the President of the Republic of the Philippines are enumerated as follows:

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

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

5. Based on respondent Poe's alleged Certificate of Birth, he was born on 20 August 1939. A copy of the said Certificate of Birth is attached and made integral part hereof as Annex "B".

5.1. Respondent Poe's alleged Certificate of Birth indicated that his parents are Allan F. Poe and Bessie Kelley.

5.2. Respondent Poe's alleged Certificate of Birth indicated that his mother, Bessie Kelley, is an American citizen.

5.3. However, the alleged Certificate of Birth of respondent Poe falsely or incorrectly indicated the real citizenship of his father Allan F. Poe, since he is legally not a Filipino citizen, as shown below.

6. Contrary to what was falsely indicated in the alleged Certificate of Birth of respondent Poe, the latter's father, Allan F. Poe, is not a Filipino, but an alien, specifically, a citizen of Spain.

6.1. On 05 July 1936, Allan F. Poe expressly and categorically declared in a public instrument that he was a Spanish citizen. A copy of the Marriage Contract executed by Allan F. Poe, and one Paulita Gomez at the Convento de Santo Domingo at Intramuros, Manila is attached and made an integral part hereof as Annex "C".

6.2. Moreover, in said Marriage Contract, Allan F. Poe likewise categorically and expressly admitted that both of his parents, Lorenzo Poe and Marta Reyes are also citizens of Spain.

6.3. Clearly respondent Poe's father is a Spanish citizen whose parents are both Spanish citizens.

7. Thus, respondent Poe could not have possibly acquired Filipino citizenship from his father, Allan F. Poe since the latter is a Spanish citizen.

8. But even assuming arguendo that respondent Poe's father, Allan F. Poe was a Filipino citizen, as indicated in respondent Poe's Certificate of Birth (Annex "B" hereof), still respondent Poe could not have validly acquired Filipino citizenship from his father due to the fact that the purported marriage of his parents, Allan F. Poe and Bessie Kelley, is void.

8.1. Under Philippine jurisprudence, an illegitimate child, i.e., a child conceived and born outside a valid marriage, follows the citizenship of his mother. (United States vs. Ong Tianse, 29 Phil. 332 [1915])

8.2. As previously stated, respondent Poe's father, Allan F. Poe, married Paulita Gomez on 05 July 1936, which marriage was subsisting at the time of the purported marriage of respondent Poe's father to his mother, Bessie Kelley. (cf. Annex "C" hereof)

8.3. Moreover, it appears that Allan F. Poe's first wife, Paulita Gomez, even filed a case of bigamy and concubinage against him after discovering his bigamous relationship with Bessie Kelley. A copy of the Affidavit dated 13 July 1939 executed by Paulita Gomez in Spanish attesting to the foregoing facts, together with an English translation thereof, are attached and made an integral parts hereof as Annexes "D" and "D-1", respectively.

9. Verily, having been born out of void marriage, respondent Poe is an illegitimate child of Allan F. Poe and Bessie Kelley. Consequently, the citizenship of respondent Poe follows that of his mother, Bessie Kelley, who is undeniably an American citizen.

10. Under the 1935 Constitution, which was then applicable at the time of respondent Poe's birth, only the

following are considered Filipino citizens:

Section 1. The following are citizens of the Philippines:

- 1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution;
- 2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippines 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; and
- 5) Those who are naturalized in accordance with law.

11. Clearly, respondent Poe 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, respondent Poe, 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, respondent Poe 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.

The Answer of respondent Fernando Poe, Jr. did not touch on the fact that his father is Allan F. Poe as that is a non-issue. Rather, it discussed the citizenship of Lorenzo Pou, the grandfather of respondent Fernando Poe, Jr., the citizenship of Allan F. Poe, the father of respondent Fernando Poe, Jr., and the Philippine citizenship of respondent Fernando Poe, Jr. himself.

After the evidence of the parties were received by the First Division of the COMELEC, petitioner offered the following evidence as narrated in his Memorandum, viz:

x x x

1.8. In support of the petition, the petitioner presented and offered in evidence the following documentary evidence showing that FPJ is not a natural-born Filipino citizen and is, therefore, disqualified to run for President of the Republic of the Philippines, and that he made a material misrepresentation in his certificate of candidacy as to his true and real citizenship.

1.8.1. As Exhibit "A" – A copy of FPJ's Certificate of Birth, indicating that respondent Poe was born on 20 August 1939 and that his parents are Bessie Kelley, an American citizen, and Allan F. Poe, allegedly a Filipino citizen.

1.8.2. As Exhibits "B" and "B-1" – A certified photocopy of an Affidavit executed on 13 July 1939 by Paulita Poe y Gomez in Spanish, 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.

1.8.3. As Exhibit "B-2" – A certified photocopy of the Marriage Contract entered into on 5 July 1936 by and

between respondent's father, Allan Fernando Poe and Paulita Gomez, showing that respondent's father is "Español;" and that his parents, Lorenzo Poe and Marta Reyes, were "Español" and "Mestiza Española," respectively.

1.8.4. As Exhibit "B-3" – An English translation of the Affidavit dated 13 July 1939 executed by Paulita Poe y Gomez.

1.8.5. As Exhibit "C" – A certified photocopy of the Certificate of Birth of Allan Fernando Poe 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,"

1.8.6. As Exhibit "D" – 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.

1.8.7. As Exhibit "E" (also respondent's Exhibit "1") – 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.

Again, it is plain to see that petitioner offered no evidence to impugn the fact that Allan F. Poe is the father of respondent Fernando Poe, Jr. Indeed, petitioner's Exhibits "A", "B", "B-1" and "B-2" recognized that Allan F. Poe is the father of the respondent.

Consequently, the First Division of the COMELEC in its Resolution of January 23, 2004 treated the fact that Allan F. Poe is the father of respondent Poe as an admitted fact. Page 7 of the Resolution states:

x x x

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.

Page 8 of the Resolution reiterated:

x x x

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.

Page 11 of the Resolution is similarly emphatic that respondent Poe, is the son of Allan F. Poe, viz:

x x x

Note that Section 3 of Article IV of the 1935 Constitution does not have a qualifying term "legitimate" after the words "those whose fathers" and before the phrase "are citizens of the Philippines." Legitimacy therefore is beside the point. As long as the father is a Filipino, the child will always be a Filipino. As we have discussed early on, since Allan Fernando Poe is a Filipino, his son Ronald Allan Poe, the respondent herein, is a natural-born Filipino.

Petitioner filed a Motion for Reconsideration dated January 26, 2004. In this Motion for Reconsideration, petitioner always conceded that respondent Fernando Poe, Jr., is the son of Allan F. Poe.[17] Petitioner simply continued to allege that the evidence does not show that the citizenship of Lorenzo Pou (grandfather of respondent Poe) and Allan F. Poe (father of respondent Poe) is Filipino. Petitioner insisted in the conclusion that respondent Poe is not a Filipino, let alone a natural-born Filipino. Again, this is evident from the grounds invoked by petitioner in his Motion for Reconsideration, viz:

x x x

Grounds

I.

The Honorable First Division committed a serious and reversible error in holding that it is not the proper forum to finally declare whether or not the respondent is a natural-born Filipino citizen.

II.

The Honorable First Division committed a serious and reversible error in not appreciating all the evidence presented by the parties in determining whether or not respondent made a material misrepresentation or false material representation regarding his real citizenship in his certificate of candidacy.

III.

The Honorable First Division committed a serious and reversible error in holding that the evidence presented do not controvert the declaration of the respondent in his certificate of candidacy that he is a natural-born Filipino citizen.

IV.

The Honorable First Division committed a serious and reversible error in holding that legitimacy is beside the point in determining the citizenship of the respondent.

On February 4, 2004, petitioner filed his Memorandum In Support Of Petitioner's Motion For Reconsideration. As to be expected, petitioner did not again assail the fact that respondent Poe is the son of Allan F. Poe.[18]

In its February 6, 2004 Resolution, the COMELEC en banc affirmed in toto, the resolution of its First Division that respondent Poe, "x x x did not commit any material misrepresentation when he stated in his Certificate of Candidacy that he is a natural-born Filipino citizen." Significantly, it did not waste any word on whether Allan F. Poe is the father of respondent Fernando Poe, Jr. The paternity of respondent Fernando Poe, Jr., is conceded, a non-issue.

In the Petition for Certiorari dated February 9, 2004 and filed with this Court, petitioner again proceeded from the premise that Allan Poe is the father of respondent Fernando Poe, Jr. The pertinent portion of the Petition states:

x x x

The Relevant Facts

8. Briefly stated, the pertinent facts concern the circumstances of Lorenzo Pou – respondent FPJ's grandfather, of Allan F. Poe/Allan Fernando Poe/Allan R. Pou/Fernando R. Poe – respondent FPJ's father, of Bessie Kelley – respondent FPJ's mother, and accordingly of respondent FPJ himself.

The fact that respondent Poe is the son of Allan F. Poe is a judicial admission. It does not require proof.[19]

Aside from these admissions, the filiation of respondent Poe is also proved by the declaration of Mrs. Ruby Kelley Mangahas, Exhibit “20” of the respondent. Mrs. Mangahas is the sister of Bessie Kelly, mother of the respondent. Her sworn statement states:

**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.

(Sgd.) RUBY KELLEY MANGAHAS

Declarant

The allegation of Mrs. Mangahas that respondent Fernando Poe, Jr. is the son of Allan F. Poe stands unchallenged.

We follow the principle of jus sanguinis, the rule of blood relationship. Proof that Allan F. Poe, a Filipino citizen, is the father of respondent Poe is proof that the blood of Allan F. Poe flows in the veins of respondent Poe. No other proof is required for the principle of jus sanguinis to apply. There is no need for other proofs such as proofs of acknowledgment, for such proofs are only used in civil law for the purpose of establishing the legitimation of illegitimate children. Our Constitutions from 1935 merely state – “those whose fathers are citizens of the Philippines.” The ineluctable conclusion is that the only proof required for the principle of jus sanguinis to operate is filiation, i.e., that one’s father is a citizen of the Philippines. No other kind of proof is required. In fine, the quantity and quality of proof or the standard of proof is provided by the Constitution itself. We cannot alter this standard by suggesting either a strict or liberal approach.

In any event, if further proof of acknowledgment is required, Exhibit “8-a” of the respondent Poe, should be considered. It is entitled “Affidavit for Philippine Army Personnel,” executed by Allan F. Poe. In this Affidavit, Allan F. Poe declared and acknowledged his children to be Elizabeth, 6 years old, Ronnie, 5 years old and Fernando II, 3 years old. This Affidavit is not refuted.

Filipino citizenship of Allan F. Poe,

respondent’s father is well established.

The Filipino citizenship of respondent Poe’s father, Allan F. Poe, is well established by evidence. Allan F. Poe’s father is Lorenzo Pou. Lorenzo Pou was a Spanish subject. He was an inhabitant of the Philippines on December 10, 1898 when Spain ceded the Philippines to the United States by virtue of the Treaty of Paris. Said Treaty pertinently provides:

x x x

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 to 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.

In relation to this Treaty, the Philippine Bill of 1902, provided as follows:

SEC. 4. That all inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the eleventh day of April eighteen hundred 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.

while the Jones Law provided as follows:

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 residing therein.

The death certificate of Lorenzo Pou, Exhibit "S" shows he died at age 84 in San Carlos, Pangasinan. By the Treaty of Paris, the Philippine Bill of 1902 and the Jones Law, Lorenzo Pou was a citizen of the Philippines. Allan F. Poe followed the citizenship of his father (Lorenzo) as a Filipino. Allan F. Poe can also be considered as a Filipino by birth. He was born in the Philippines on November 27, 1916, before the 1935 Constitution. He studied, worked, lived and died in the Philippines.[20] His Filipino citizenship is transmitted to his son, respondent Poe. The attempt of petitioner to cast doubt on the Filipino citizenship of Allan F. Poe is an exercise in futility.

E.

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

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

Article 2

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

The Convention protects in the most comprehensive way all rights of children: political rights, civil rights, social rights, economic rights and cultural rights. It adopted the principle of interdependence and indivisibility of children's rights. A violation of one right is considered a violation of the other rights. It also embraced the rule that all actions of a State concerning the child should consider the "best interests" of the child.

Pursuant to Article VII, Section 21 of the 1987 Constitution, this Convention on the Rights of the child became valid and effective on us in July 1990 upon concurrence by the Senate. We shall be violating the Convention if we disqualify respondent Poe just because he happened to be an illegitimate child. It is our bounden duty to comply with our treaty obligation pursuant to the principle of pacta sunt servanda. As we held in *La Chemise Lacoste, S.A. vs. Fernandez*,^[21] viz:

x x x

For a treaty or convention is not a mere moral obligation to be enforced or not at the whims of an incumbent head of a Ministry. It creates a legally binding obligation on the parties founded on the generally accepted principle of international law of pacta sunt servanda which has been adopted as part of the law of our land. (Constitution, Article II, Section 3)

Indeed there is no reason to refuse compliance with the Convention for it is in perfect accord with our Constitution and with our laws.

Moreover to disqualify respondent Poe due to his illegitimacy is against the trend in civil law towards equalizing the civil rights of an illegitimate child with that of a legitimate child. Called originally as nullius filius or no one's child, an illegitimate child started without any birthright of significance. The passage of time, however, brought about the enlightenment that an illegitimate should not be punished for the illicit liaison of his parents of which he played no part. No less than our Chief Justice Hilario G. Davide, Jr., then a Commissioner of the Constitutional Commission, proposed the adoption of the following radical provision in the 1987 Constitution, viz: "All children regardless of filiations shall enjoy the same social protection." In an exchange with Commissioner Nollado, he explained its rationale as follows: ^[22]

x x x

Mr. Nollado. Would it be appropriate to say that social protection is earned and should not be imposed by legal mandate?

Mr. Davide: Mr. Presiding Officer, it is not, it may not be imposed but we are framing a Constitution to provide for a directive policy or directive principles of state policy, there is no harm in making it as a directive principle or a state policy especially if it would affect the lives of citizens who, I would like to state again, are not responsible for a misfortune in life.

Following the undeniable injustice committed to illegitimate children due alone to the accident of their birth, the universal trend of laws today is to abolish all invidious discriminations against their rights. Slowly, they were granted more rights until their civil rights are now equal to the rights of legitimate children. The Philippines has joined the civilized treatment of illegitimate children. Hence, under Article 178 of our New Family Code, a child born out of wedlock of parents without any impediment to marry (like the parents of respondent Poe) can be

legitimated. If legitimated, Article 179 of the same Code provides that the child shall enjoy the same civil rights as a legitimate child. In *Ilano vs. Court of Appeals*,^[23] this Court expressed the enlightened policy that illegitimate children “were born with a social handicap and the law should help them to surmount the disadvantages facing them through the misdeeds of their parents.” The march towards equality of rights between legitimate and illegitimate children is irreversible. We will be medieval in our outlook if we refuse to be in cadence with this world wide movement.

V.

EPILOGUE

Whether respondent Fernando Poe, Jr. is qualified to run for President involves a constitutional issue but its political tone is no less dominant. The Court is split down the middle on the citizenship of respondent Poe, an issue of first impression made more difficult by the interplay of national and international law. Given the indecisiveness of the votes of the members of this Court, the better policy approach is to let the people decide who will be the next President. For on political questions, this Court may err but the sovereign people will not. To be sure, the Constitution did not grant to the unelected members of this Court the right to elect in behalf of the people.

IN VIEW WHEREOF, the petitions in G.R. Nos. 161434, 161634 and 161824 are DISMISSED.

SO ORDERED.

[1] Exh. “B-2”.

[2] Exh. “B-2-a”.

[3] Exh. “A” (Certificate of Birth of Ronald Allan Poe).

[4] Exh. “B”; Exh. “B-3” (English translation).

[5] Exh. “5”.

[6] Exhs. “6”; “6-A”; “6-B”; “6-C”; “6-D”.

[7] Exh. “7”.

[8] Exh. “8-b”.

[9] Exh. “9”.

[10] Exh. “3”.

[11] Exh. “16”.

[12] Exhs. “5”; “17”; “18”; “19”.

[13] Exh. “20”.

[14] G.R. No. 161434.

[15] G.R. No. 161634.

[16] 248 SCRA 300 (1995).

[17] See pp. 18, 19, 29, 33, 35 and 39 of Motion.

[18] See pp. 20, 21, 23, 28, 30, 32, 34, 38, 39, 41 and 45 of the Memorandum.

[19] Rule 129, Section 4.

[20] Exhibit “7”.

[21] 129 SCRA 373 (1984).

[22] V Record 67, Sept. 25, 1986, p. 69.

[23] 230 SCRA 242 (1994).

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