

**MARIA JEANETTE C. TECSON AND FELIX B. DESIDERIO, JR.,
PETITIONERS, VS. THE COMMISSION ON ELECTIONS, RONALD
ALLAN KELLY POE (A.K.A. FERNANDO POE, JR.) AND VICTORINO X.
FORNIER, R...**

G.R. No. 161434. March 03, 2004

Ponente: VITUG, J.

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VITUG, J.:

Citizenship is a treasured right conferred on those whom the state believes are deserving of the privilege. It is a “precious heritage, as well as an inestimable acquisition,”[1] that cannot be taken lightly by anyone - either by those who enjoy it or by those who dispute it.

Before the Court are three consolidated cases, all of which raise a single question of profound importance to the nation. The issue of citizenship is brought up to challenge the qualifications of a presidential candidate to hold the highest office of the land. Our people are waiting for the judgment of the Court with bated breath. Is Fernando Poe, Jr., the hero of silver screen, and now one of the main contenders for the presidency, a natural-born Filipino or is he not?

The moment of introspection takes us face to face with Spanish and American colonial roots and reminds us of the rich heritage of civil law and common law traditions, the fusion resulting in a hybrid of laws and jurisprudence that could be no less than distinctly Filipino.

Antecedent Case Settings

On 31 December 2003, respondent Ronald Allan Kelly Poe, also known as Fernando Poe, Jr. (hereinafter "FPJ"), filed his certificate of candidacy for the position of President of the Republic of the Philippines under the Koalisyon ng Nagkakaisang Pilipino (KNP) Party, in the forthcoming national elections. In his certificate of candidacy, FPJ, representing himself to be a natural-born citizen of the Philippines, stated his name to be "Fernando Jr.," or "Ronald Allan" Poe, his date of birth to be 20 August 1939 and his place of birth to be Manila.

Victorino X. Fornier, petitioner in G.R. No. 161824, entitled "Victorino X. Fornier, Petitioner, versus Hon. Commission on Elections and Ronald Allan Kelley Poe, also known as Fernando Poe, Jr., Respondents," initiated, on 09 January 2004, a petition docketed SPA No. 04-003 before the Commission on Elections ("COMELEC") to disqualify FPJ and to deny due course or to cancel his certificate of candidacy upon the thesis that FPJ made a material misrepresentation in his certificate of candidacy by claiming to be a natural-born Filipino citizen when in truth, according to Fornier, his parents were foreigners; his mother, Bessie Kelley Poe, was an American, and his father, Allan Poe, was a Spanish national, being the son of Lorenzo Pou, a Spanish subject. Granting, petitioner asseverated, that Allan F. Poe was a Filipino citizen, he could not have transmitted his Filipino citizenship to FPJ, the latter being an illegitimate child of an alien mother. Petitioner based the allegation of the illegitimate birth of respondent on two assertions - first, Allan F. Poe contracted a prior marriage to a certain Paulita Gomez before his

marriage to Bessie Kelley and, second, even if no such prior marriage had existed, Allan F. Poe, married Bessie Kelly only a year after the birth of respondent.

In the hearing before the Third Division of the COMELEC on 19 January 2004, petitioner, in support of his claim, presented several documentary exhibits - 1) a copy of the certificate of birth of FPJ, 2) a certified photocopy of an affidavit executed in Spanish by Paulita Poe y Gomez attesting to her having filed a case for bigamy and concubinage against the father of respondent, Allan F. Poe, after discovering his bigamous relationship with Bessie Kelley, 3) an English translation of the affidavit aforesaid, 4) a certified photocopy of the certificate of birth of Allan F. Poe, 5) a certification issued by the Director of the Records Management and Archives Office, attesting to the fact that there was no record in the National Archives that a Lorenzo Poe or Lorenzo Pou resided or entered the Philippines before 1907, and 6) a certification from the Officer-In-Charge of the Archives Division of the National Archives to the effect that no available information could be found in the files of the National Archives regarding the birth of Allan F. Poe.

On his part, respondent, presented twenty-two documentary pieces of evidence, the more significant ones being - a) a certification issued by Estrella M. Domingo of the Archives Division of the National Archives that there appeared to be no available information regarding the birth of Allan F. Poe in the registry of births for San Carlos, Pangasinan, b) a certification issued by the Officer-In-Charge of the Archives Division of the National Archives that no available information about the marriage of Allan F. Poe and Paulita Gomez could be found, c) a certificate of birth of Ronald Allan Poe, d) Original Certificate of Title No. P-2247 of the Registry of Deeds for the Province of Pangasinan, in the name of Lorenzo Pou, e) copies of Tax Declaration No. 20844, No. 20643, No. 23477 and No. 23478 in the name of Lorenzo Pou, f) a copy of the certificate of death of Lorenzo Pou, g) a copy of the purported marriage contract between Fernando Pou and Bessie Kelley, and h) a certification issued by the City Civil Registrar of San Carlos City, Pangasinan, stating that the records of birth in the said office during the period of from 1900 until May 1946 were totally destroyed during World War II.

On 23 January 2004, the COMELEC dismissed SPA No. 04-003 for lack of merit. Three days later, or on 26 January 2004, Fornier filed his motion for reconsideration. The motion was denied on 06 February 2004 by the COMELEC en banc. On 10 February 2004, petitioner assailed the decision of the COMELEC before this Court conformably with Rule 64, in relation to Rule 65, of the Revised Rules of Civil Procedure. The petition, docketed G. R. No. 161824, likewise prayed for a temporary restraining order, a writ of preliminary injunction or any other resolution that would stay the finality and/or execution of the COMELEC resolutions.

The other petitions, later consolidated with G. R. No. 161824, would include G. R. No. 161434, entitled "Maria Jeanette C. Tecson, and Felix B. Desiderio, Jr., vs. The Commission on Elections, Ronald Allan Kelley Poe (a.k.a. 'Fernando Poe, Jr.),' and Victorino X. Fornier," and the other, docketed G. R. No. 161634, entitled "Zoilo Antonio G. Velez, vs. Ronald Allan Kelley Poe, a.k.a. Fernando Poe, Jr.," both challenging the jurisdiction of the COMELEC and asserting that, under Article VII, Section 4, paragraph 7, of the 1987 Constitution, only the Supreme Court had original and exclusive jurisdiction to resolve the basic issue on the case.

Jurisdiction of the Court

In G. R. No. 161824

In seeking the disqualification of the candidacy of FPJ and to have the COMELEC deny due course to or cancel FPJ's certificate of candidacy for alleged misrepresentation of a material fact (i.e., that FPJ was a natural-born citizen) before the COMELEC, petitioner Fornier invoked Section 78 of the Omnibus Election Code –

“Section 78. Petition to deny due course to or cancel a certificate of candidacy. --- A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground

that any material representation contained therein as required under Section 74 hereof is false” –

in consonance with the general powers of COMELEC expressed in Section 52 of the Omnibus Election Code -

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

and in relation to Article 69 of the Omnibus Election Code which would authorize "any interested party" to file a verified petition to deny or cancel the certificate of candidacy of any nuisance candidate.

Decisions of the COMELEC on disqualification cases may be reviewed by the Supreme Court per Rule 64[2] in an action for certiorari under Rule 65[3] of the Revised Rules of Civil Procedure. Section 7, Article IX, of the 1987 Constitution also reads –

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

Additionally, Section 1, Article VIII, of the same Constitution provides that judicial power is vested in one Supreme Court and in such lower courts as may be established by law which power “includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”

It is sufficiently clear that the petition brought up in G. R. No. 161824 was aptly elevated to, and could well be taken cognizance of by, this Court. A contrary view could be a gross denial to our people of their fundamental right to be fully informed, and to make a proper choice, on who could or should be elected to occupy the highest government post in the land.

In G. R. No. 161434 and G. R. No. 161634

Petitioners Tecson, et al., in G. R. No. 161434, and Velez, in G. R. No. 161634, invoke the provisions of Article VII, Section 4, paragraph 7, of the 1987 Constitution in assailing the jurisdiction of the COMELEC when it took cognizance of SPA No. 04-003 and in urging the Supreme Court to instead take on the petitions they directly instituted before it. The Constitutional provision cited reads:

"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 provision is an innovation of the 1987 Constitution. The omission in the 1935 and the 1973 Constitution to designate any tribunal to be the sole judge of presidential and vice-presidential contests, has constrained this Court to declare, in *Lopez vs. Roxas*,^[4] as “not (being) justiciable” controversies or disputes involving contests on the elections, returns and qualifications of the President or Vice-President. The constitutional lapse prompted Congress, on 21 June 1957, to enact Republic Act No. 1793, "An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Protests Contesting the Election of the President-Elect and the Vice-President-Elect of the Philippines and Providing for the Manner of Hearing the Same." Republic Act 1793 designated the Chief Justice and the Associate Justices of the Supreme Court to be the members of the tribunal.

Although the subsequent adoption of the parliamentary form of government under the 1973 Constitution might have implicitly affected Republic Act No. 1793, the statutory set-up, nonetheless, would now be deemed revived under the present Section 4, paragraph 7, of the 1987 Constitution.

Ordinary usage would characterize a "contest" in reference to a post-election scenario. Election contests consist of either an election protest or a quo warranto which, although two distinct remedies, would have one objective in view, i.e., to dislodge the winning candidate from office. A perusal of the phraseology in Rule 12, Rule 13, and Rule 14 of the "Rules of the Presidential Electoral Tribunal," promulgated by the Supreme Court en banc on 18 April 1992, would support this premise -

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

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

"Rule 14. Election Protest. - Only the registered candidate for President or for Vice-President of the Philippines who received the second or third highest number of votes may contest the election of the President or the Vice-President, as the case may be, by filing a verified petition with the Clerk of the Presidential Electoral Tribunal within thirty (30) days after the proclamation of the winner."

The rules categorically speak of the jurisdiction of the tribunal over contests relating to the election, returns and qualifications of the "President" or "Vice-President", of the Philippines, and not of "candidates" for President or Vice-President. A quo warranto proceeding is generally defined as being an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office.^[5] In such context, the election contest can only contemplate a post-election scenario. In Rule 14, only a registered candidate who would have received either the second or third highest number of votes could file an election protest. This rule again presupposes a post-election scenario.

It is fair to conclude that the jurisdiction of the Supreme Court, defined by Section 4, paragraph 7, of the 1987 Constitution, would not include cases directly brought before it, questioning the qualifications of a candidate for the presidency or vice-presidency before the elections are held.

Accordingly, G. R. No. 161434, entitled "Maria Jeanette C. Tecson, et al., vs. Commission on Elections et al.," and G. R. No. 161634, entitled "Zoilo Antonio Velez vs. Ronald Allan Kelley Poe a.k.a. Fernando Poe, Jr." would have to be dismissed for want of jurisdiction.

The Citizenship Issue

Now, to the basic issue; it should be helpful to first give a brief historical background on the concept of citizenship.

Perhaps, the earliest understanding of citizenship was that given by Aristotle, who, sometime in 384 to 322 B.C., described the "citizen" to refer to a man who shared in the administration of justice and in the holding of an office.^[6] Aristotle saw its significance if only to determine the constituency of the "State," which he described as being composed of such persons who would be adequate in number to achieve a self-sufficient existence.^[7] The concept grew to include one who would both govern and be governed, for which qualifications like autonomy, judgment and loyalty could be expected. Citizenship was seen to deal with rights and entitlements, on the one hand, and with concomitant obligations, on the other.^[8] In its ideal setting, a citizen was active in public life and fundamentally willing to submit his private interests to the general interest of society.

The concept of citizenship had undergone changes over the centuries. In the 18th century, the concept was limited, by and large, to civil citizenship, which established the rights necessary for individual freedom, such as rights to property, personal liberty and justice.[9] Its meaning expanded during the 19th century to include political citizenship, which encompassed the right to participate in the exercise of political power.[10] The 20th century saw the next stage of the development of social citizenship, which laid emphasis on the right of the citizen to economic well-being and social security.[11] The idea of citizenship has gained expression in the modern welfare state as it so developed in Western Europe. An ongoing and final stage of development, in keeping with the rapidly shrinking global village, might well be the internationalization of citizenship.[12]

The Local Setting - from Spanish Times to the Present

There was no such term as "Philippine citizens" during the Spanish regime but "subjects of Spain" or "Spanish subjects." [13] In church records, the natives were called 'indios', denoting a low regard for the inhabitants of the archipelago. Spanish laws on citizenship became highly codified during the 19th century but their sheer number made it difficult to point to one comprehensive law. Not all of these citizenship laws of Spain however, were made to apply to the Philippine Islands except for those explicitly extended by Royal Decrees.[14]

Spanish laws on citizenship were traced back to the Novisima Recopilacion, promulgated in Spain on 16 July 1805 but as to whether the law was extended to the Philippines remained to be the subject of differing views among experts; [15] however, three royal decrees were undisputably made applicable to Spaniards in the Philippines - the Order de la Regencia of 14 August 1841, [16] the Royal Decree of 23 August 1868 specifically defining the political status of children born in the Philippine Islands, [17] and finally, the Ley Extranjera de Ultramar of 04 July 1870, which was expressly made applicable to the Philippines by the Royal Decree of 13 July 1870. [18]

The Spanish Constitution of 1876 was never extended to the Philippine Islands because of the express mandate of its Article 89, according to which the provisions of the Ultramar among which this country was included, would be governed by special laws. [19]

It was only the Civil Code of Spain, made effective in this jurisdiction on 18 December 1889, which came out with the first categorical enumeration of who were Spanish citizens. -

“(a) Persons born in Spanish territory,

“(b) Children of a Spanish father or mother, even if they were born outside of Spain,

“(c) Foreigners who have obtained naturalization papers,

“(d) Those who, without such papers, may have become domiciled inhabitants of any town of the Monarchy.” [20]

The year 1898 was another turning point in Philippine history. Already in the state of decline as a superpower, Spain was forced to so cede her sole colony in the East to an upcoming world power, the United States. An accepted principle of international law dictated that a change in sovereignty, while resulting in an abrogation of all political laws then in force, would have no effect on civil laws, which would remain virtually intact.

The Treaty of Paris was entered into on 10 December 1898 between Spain and the United States. [21] Under Article IX of the treaty, the civil rights and political status of the native inhabitants of the territories ceded to the United States would be determined by its Congress -

"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 foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they reside.

Thus –

"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." [22]

Upon the ratification of the treaty, and pending legislation by the United States Congress on the subject, the native inhabitants of the Philippines ceased to be Spanish subjects. Although they did not become American citizens, they, however, also ceased to be "aliens" under American laws and were thus issued passports describing them to be citizens of the Philippines entitled to the protection of the United States.

The term "citizens of the Philippine Islands" appeared for the first time in the Philippine Bill of 1902, also commonly referred to as the Philippine Organic Act of 1902, the first comprehensive legislation of the Congress of the United States on the Philippines -

".... that all inhabitants of the Philippine Islands continuing to reside therein, who were Spanish subjects on the 11th day of April, 1891, and then resided in said 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." [23]

Under the organic act, a "citizen of the Philippines" was one who was an inhabitant of the Philippines, and a Spanish subject on the 11[th] day of April 1899. The term "inhabitant" was taken to include 1) a native-born inhabitant, 2) an inhabitant who was a native of Peninsular Spain, and 3) an inhabitant who obtained Spanish papers on or before 11 April 1899. [24]

Controversy arose on to the status of children born in the Philippines from 11 April 1899 to 01 July 1902, during which period no citizenship law was extant in the Philippines. Weight was given to the view, articulated in jurisprudential writing at the time, that the common law principle of *jus soli*, otherwise also known as the principle of territoriality, operative in the United States and England, governed those born in the Philippine Archipelago within that period. [25] More about this later.

In 23 March 1912, the Congress of the United States made the following amendment to the Philippine Bill of 1902 -

"Provided, That the Philippine Legislature is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of other insular possession of the United States, and such other persons residing in the Philippine Islands who would become citizens of the United States, under the laws of the United States, if residing therein." [26]

With the adoption of the Philippine Bill of 1902, the concept of "Philippine citizens" had for the first time crystallized. The word "Filipino" was used by William H. Taft, the first Civil Governor General in the Philippines

when he initially made mention of it in his slogan, "The Philippines for the Filipinos." In 1916, the Philippine Autonomy Act, also known as the Jones Law restated virtually the provisions of the Philippine Bill of 1902, as so amended by the Act of Congress in 1912 -

"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 subsequently 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 for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States, if residing therein."

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

While there was, at one brief time, divergent views on whether or not *jus soli* was a mode of acquiring citizenship, the 1935 Constitution brought to an end to any such link with common law, by adopting, once and for all, *jus sanguinis* or blood relationship as being the basis of Filipino citizenship -

"Section 1, Article III, 1935 Constitution. 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 Philippines Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

"(3) Those whose fathers are citizens of the Philippines.

"(4) Those whose mothers are citizens of the Philippines and upon reaching the age of majority, elect Philippine citizenship.

"(5) Those who are naturalized in accordance with law."

Subsection (4), Article III, of the 1935 Constitution, taken together with existing civil law provisions at the time, which provided that women would automatically lose their Filipino citizenship and acquire that of their foreign husbands, resulted in discriminatory situations that effectively incapacitated the women from transmitting their Filipino citizenship to their legitimate children and required illegitimate children of Filipino mothers to still elect Filipino citizenship upon reaching the age of majority. Seeking to correct this anomaly, as well as fully cognizant of the newly found status of Filipino women as equals to men, the framers of the 1973 Constitution crafted the provisions of the new Constitution on citizenship to reflect such concerns -

"Section 1, Article III, 1973 Constitution - The following are citizens of the Philippines:

"(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution.

"(2) Those whose fathers or mothers are citizens of the Philippines.

"(3) Those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five.

“(4) Those who are naturalized in accordance with law.”

For good measure, Section 2 of the same article also further provided that –

"A female citizen of the Philippines who marries an alien retains her Philippine citizenship, unless by her act or omission she is deemed, under the law to have renounced her citizenship."

The 1987 Constitution generally adopted the provisions of the 1973 Constitution, except for subsection (3) thereof that aimed to correct the irregular situation generated by the questionable proviso in the 1935 Constitution.

Section I, Article IV, 1987 Constitution now provides:

“The following are citizens of the Philippines:

“(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution.

“(2) Those whose fathers or mothers are citizens of the Philippines.

“(3) Those born before January 17, 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and

“(4) Those who are naturalized in accordance with law.”

The Case Of FPJ

Section 2, Article VII, of the 1987 Constitution expresses:

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

The term "natural-born citizens," is defined to include "those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship." [27]

The date, month and year of birth of FPJ appeared to be 20 August 1939 during the regime of the 1935 Constitution. Through its history, four modes of acquiring citizenship - naturalization, *jus soli*, *res judicata* and *jus sanguinis* [28] – had been in vogue. Only two, i.e., *jus soli* and *jus sanguinis*, could qualify a person to being a “natural-born” citizen of the Philippines. *Jus soli*, per *Roa vs. Collector of Customs* [29] (1912), did not last long. With the adoption of the 1935 Constitution and the reversal of *Roa* in *Tan Chong vs. Secretary of Labor* [30] (1947), *jus sanguinis* or blood relationship would now become the primary basis of citizenship by birth.

Documentary evidence adduced by petitioner would tend to indicate that the earliest established direct ascendant of FPJ was his paternal grandfather Lorenzo Pou, married to Marta Reyes, the father of Allan F. Poe. While the record of birth of Lorenzo Pou had not been presented in evidence, his death certificate, however, identified him to be a Filipino, a resident of San Carlos, Pangasinan, and 84 years old at the time of his death on 11 September 1954. The certificate of birth of the father of FPJ, Allan F. Poe, showed that he was born on 17 May 1915 to an Español father, Lorenzo Pou, and a mestiza Español mother, Marta Reyes. Introduced by petitioner was an “uncertified” copy of a supposed certificate of the alleged marriage of Allan F. Poe and Paulita Gomez on 05 July 1936. The marriage certificate of Allan F. Poe and Bessie Kelley reflected the date of their marriage to be on 16 September 1940. In the same certificate, Allan F. Poe was stated to be twenty-five years old, unmarried, and a Filipino citizen, and Bessie Kelley to be twenty-two years old, unmarried, and an American citizen. The birth certificate of FPJ, would disclose that he was born on 20 August 1939 to Allan F. Poe, a Filipino, twenty-four years old, married to Bessie Kelly, an American citizen, twenty-one years old and married.

Considering the reservations made by the parties on the veracity of some of the entries on the birth certificate of respondent and the marriage certificate of his parents, the only conclusions that could be drawn with some degree of certainty from the documents would be that -

- The parents of FPJ were Allan F. Poe and Bessie Kelley;
- FPJ was born to them on 20 August 1939;
- Allan F. Poe and Bessie Kelley were married to each other on 16 September, 1940;
- The father of Allan F. Poe was Lorenzo Poe; and
- At the time of his death on 11 September 1954, Lorenzo Poe was 84 years old.

Would the above facts be sufficient or insufficient to establish the fact that FPJ is a natural-born Filipino citizen? The marriage certificate of Allan F. Poe and Bessie Kelley, the birth certificate of FPJ, and the death certificate of Lorenzo Pou are documents of public record in the custody of a public officer. The documents have been submitted in evidence by both contending parties during the proceedings before the COMELEC.

The birth certificate of FPJ was marked Exhibit "A" for petitioner and Exhibit "3" for respondent. The marriage certificate of Allan F. Poe to Bessie Kelley was submitted as Exhibit "21" for respondent. The death certificate of Lorenzo Pou was submitted by respondent as his Exhibit "5." While the last two documents were submitted in evidence for respondent, the admissibility thereof, particularly in reference to the facts which they purported to show, i.e., the marriage certificate in relation to the date of marriage of Allan F. Poe to Bessie Kelley and the death certificate relative to the death of Lorenzo Pou on 11 September 1954 in San Carlos, Pangasinan, were all admitted by petitioner, who had utilized those material statements in his argument. All three documents were certified true copies of the originals.

Section 3, Rule 130, Rules of Court states that -

“Original document must be produced; exceptions. - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

“x x x x x x x x

“(d) When the original is a public record in the custody of a public office or is recorded in a public office.”

Being public documents, the death certificate of Lorenzo Pou, the marriage certificate of Allan F. Poe and Bessie Kelly, and the birth certificate of FPJ, constitute prima facie proof of their contents. Section 44, Rule 130, of the Rules of Court provides:

“Entries in official records. Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated.”

The trustworthiness of public documents and the value given to the entries made therein could be grounded on 1) the sense of official duty in the preparation of the statement made, 2) the penalty which is usually affixed to a breach of that duty, 3) the routine and disinterested origin of most such statements, and 4) the publicity of record which makes more likely the prior exposure of such errors as might have occurred.[31]

The death certificate of Lorenzo Pou would indicate that he died on 11 September 1954, at the age of 84 years, in San Carlos, Pangasinan. It could thus be assumed that Lorenzo Pou was born sometime in the year 1870 when the Philippines was still a colony of Spain. Petitioner would argue that Lorenzo Pou was not in the Philippines during

the crucial period of from 1898 to 1902 considering that there was no existing record about such fact in the Records Management and Archives Office. Petitioner, however, likewise failed to show that Lorenzo Pou was at any other place during the same period. In his death certificate, the residence of Lorenzo Pou was stated to be San Carlos, Pangasinan. In the absence of any evidence to the contrary, it should be sound to conclude, or at least to presume, that the place of residence of a person at the time of his death was also his residence before death. It would be extremely doubtful if the Records Management and Archives Office would have had complete records of all residents of the Philippines from 1898 to 1902.

Proof of Paternity and Filiation

Under Civil Law.

Petitioner submits, in any case, that in establishing filiation (relationship or civil status of the child to the father [or mother]) or paternity (relationship or civil status of the father to the child) of an illegitimate child, FPJ evidently being an illegitimate son according to petitioner, the mandatory rules under civil law must be used.

Under the Civil Code of Spain, which was in force in the Philippines from 08 December 1889 up until the day prior to 30 August 1950 when the Civil Code of the Philippines took effect, acknowledgment was required to establish filiation or paternity. Acknowledgment was either judicial (compulsory) or voluntary. Judicial or compulsory acknowledgment was possible only if done during the lifetime of the putative parent; voluntary acknowledgment could only be had in a record of birth, a will, or a public document.[32] Complementary to the new code was Act No. 3753 or the Civil Registry Law expressing in Section 5 thereof, that -

“In case of an illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only by the mother if the father refuses. In the latter case, it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge the child, or to give therein any information by which such father could be identified.”

In order that the birth certificate could then be utilized to prove voluntary acknowledgment of filiation or paternity, the certificate was required to be signed or sworn to by the father. The failure of such requirement rendered the same useless as being an authoritative document of recognition.[33] In *Mendoza vs. Mella*,[34] the Court ruled -

"Since Rodolfo was born in 1935, after the registry law was enacted, the question here really is whether or not his birth certificate (Exhibit 1), which is merely a certified copy of the registry record, may be relied upon as sufficient proof of his having been voluntarily recognized. No such reliance, in our judgment, may be placed upon it. While it contains the names of both parents, there is no showing that they signed the original, let alone swore to its contents as required in Section 5 of Act No. 3753. For all that might have happened, it was not even they or either of them who furnished the data to be entered in the civil register. Petitioners say that in any event the birth certificate is in the nature of a public document wherein voluntary recognition of a natural child may also be made, according to the same Article 131. True enough, but in such a case, there must be a clear statement in the document that the parent recognizes the child as his or her own."

In the birth certificate of respondent FPJ, presented by both parties, nowhere in the document was the signature of Allan F. Poe found. There being no will apparently executed, or at least shown to have been executed, by decedent Allan F. Poe, the only other proof of voluntary recognition remained to be "some other public document." In *Pareja vs. Pareja*,[35] this Court defined what could constitute such a document as proof of voluntary acknowledgment:

"Under the Spanish Civil Code there are two classes of public documents, those executed by private individuals which must be authenticated by notaries, and those issued by competent public officials by reason of their office. The public document pointed out in Article 131 as one of the means by which recognition may

be made belongs to the first class."

Let us leave it at that for the moment.

The 1950 Civil Code categorized the acknowledgment or recognition of illegitimate children into voluntary, legal or compulsory. Voluntary recognition was required to be expressly made in a record of birth, a will, a statement before a court of record or in any authentic writing. Legal acknowledgment took place in favor of full blood brothers and sisters of an illegitimate child who was recognized or judicially declared as natural. Compulsory acknowledgment could be demanded generally in cases when the child had in his favor any evidence to prove filiation. Unlike an action to claim legitimacy which would last during the lifetime of the child, and might pass exceptionally to the heirs of the child, an action to claim acknowledgment, however, could only be brought during the lifetime of the presumed parent.

Amicus Curiae Ruben F. Balane defined, during the oral argument, "authentic writing," so as to be an authentic writing for purposes of voluntary recognition, simply as being a genuine or indubitable writing of the father. The term would include a public instrument (one duly acknowledged before a notary public or other competent official) or a private writing admitted by the father to be his.

The Family Code has further liberalized the rules; Article 172, Article 173, and Article 175 provide:

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

"(1) The record of birth appearing in the civil register or a final judgment; or

"(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

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

"(1) The open and continuous possession of the status of a legitimate child; or

"(2) Any other means allowed by the Rules of Court and special laws.

"Art. 173. The action to claim legitimacy may be brought by the child during his or her lifetime and shall be transmitted to the heirs should the child die during minority or in a state of insanity. In these cases, the heirs shall have a period of five years within which to institute the action.

"The action already commenced by the child shall survive notwithstanding the death of either or both of the parties.

"x x x x x x x x.

"Art. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same, evidence as legitimate children.

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

The provisions of the Family Code are retroactively applied; Article 256 of the code reads:

"Art. 256. This Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws."

Thus, in *Vda. de Sy-Quia vs. Court of Appeals*,^[36] the Court has ruled:

"We hold that whether Jose was a voluntarily recognized natural child should be decided under Article 278 of the Civil Code of the Philippines. Article 2260 of that Code provides that 'the voluntary recognition of a natural child shall take place according to this Code, even if the child was born before the effectivity of this body of laws' or before August 30, 1950. Hence, Article 278 may be given retroactive effect."

It should be apparent that the growing trend to liberalize the acknowledgment or recognition of illegitimate children is an attempt to break away from the traditional idea of keeping well apart legitimate and non-legitimate relationships within the family in favor of the greater interest and welfare of the child. The provisions are intended to merely govern the private and personal affairs of the family. There is little, if any, to indicate that the legitimate or illegitimate civil status of the individual would also affect his political rights or, in general, his relationship to the State. While, indeed, provisions on "citizenship" could be found in the Civil Code, such provisions must be taken in the context of private relations, the domain of civil law; particularly -

"Civil Law is that branch of law which has for its double purpose the organization of the family and the regulation of property. It has thus [been] defined as the mass of precepts which determine and regulate the relations of assistance, authority and obedience among members of a family, and those which exist among members of a society for the protection of private interests."[37]

In *Yañez de Barnuevo vs. Fuster*,[38] the Court has held:

"In accordance with Article 9 of the Civil Code of Spain, x x x the laws relating to family rights and duties, or to the status, condition and legal capacity of persons, govern Spaniards although they reside in a foreign country; that, in consequence, 'all questions of a civil nature, such as those dealing with the validity or nullity of the matrimonial bond, the domicile of the husband and wife, their support, as between them, the separation of their properties, the rules governing property, marital authority, division of conjugal property, the classification of their property, legal causes for divorce, the extent of the latter, the authority to decree it, and, in general, the civil effects of marriage and divorce upon the persons and properties of the spouses, are questions that are governed exclusively by the national law of the husband and wife.'"

The relevance of "citizenship" or "nationality" to Civil Law is best exemplified in Article 15 of the Civil Code, stating that -

"Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad" -

that explains the need to incorporate in the code a reiteration of the Constitutional provisions on citizenship. Similarly, citizenship is significant in civil relationships found in different parts of the Civil Code,[39] such as on successional rights and family relations.[40] In adoption, for instance, an adopted child would be considered the child of his adoptive parents and accorded the same rights as their legitimate child but such legal fiction extended only to define his rights under civil law[41] and not his political status.

Civil law provisions point to an obvious bias against illegitimacy. This discriminatory attitude may be traced to the Spanish family and property laws, which, while defining proprietary and successional rights of members of the family, provided distinctions in the rights of legitimate and illegitimate children. In the monarchical set-up of old Spain, the distribution and inheritance of titles and wealth were strictly according to bloodlines and the concern to keep these bloodlines uncontaminated by foreign blood was paramount.

These distinctions between legitimacy and illegitimacy were codified in the Spanish Civil Code, and the invidious discrimination survived when the Spanish Civil Code became the primary source of our own Civil Code. Such distinction, however, remains and should remain only in the sphere of civil law and not unduly impede or impinge on the domain of political law.

The proof of filiation or paternity for purposes of determining his citizenship status should thus be deemed independent from and not inextricably tied up with that prescribed for civil law purposes. The Civil Code or Family Code provisions on proof of filiation or paternity, although good law, do not have preclusive effects on matters alien to personal and family relations. The ordinary rules on evidence could well and should govern. For instance, the matter about pedigree is not necessarily precluded from being applicable by the Civil Code or Family Code provisions.

Section 39, Rule 130, of the Rules of Court provides -

“Act or Declaration about pedigree. The act or declaration of a person deceased, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word ‘pedigree’ includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree.”

For the above rule to apply, it would be necessary that (a) the declarant is already dead or unable to testify, (b) the pedigree of a person must be at issue, (c) the declarant must be a relative of the person whose pedigree is in question, (d) declaration must be made before the controversy has occurred, and (e) the relationship between the declarant and the person whose pedigree is in question must be shown by evidence other than such act or declaration.

Thus, the duly notarized declaration made by Ruby Kelley Mangahas, sister of Bessie Kelley Poe submitted as Exhibit 20 before the COMELEC, might be accepted to prove the acts of Allan F. Poe, recognizing his own paternal relationship with FPJ, i.e, living together with Bessie Kelley and his children (including respondent FPJ) in one house, and as one family -

"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 the 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 Street, Manila.

“x x x x x x x x

“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.

“x x x x x x x x

“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 City of Stockton, California, U.S.A., this 12th day of January 2004.

Ruby Kelley Mangahas
Declarant

DNA Testing

In case proof of filiation or paternity would be unlikely to satisfactorily establish or would be difficult to obtain, DNA testing, which examines genetic codes obtained from body cells of the illegitimate child and any physical residue of the long dead parent could be resorted to. A positive match would clear up filiation or paternity. In *Tijing vs. Court of Appeals*,^[42] this Court has acknowledged the strong weight of DNA testing -

"Parentage will still be resolved using conventional methods unless we adopt the modern and scientific ways available. Fortunately, we have now the facility and expertise in using DNA test for identification and parentage testing. The University of the Philippines Natural Science Research Institute (UP-NSRI) DNA Analysis Laboratory has now the capability to conduct DNA typing using short tandem repeat (STR) analysis. The analysis is based on the fact that the DNA of a child/person has two (2) copies, one copy from the mother and the other from the father. The DNA from the mother, the alleged father and the child are analyzed to establish parentage. Of course, being a novel scientific technique, the use of DNA test as evidence is still open to challenge. Eventually, as the appropriate case comes, courts should not hesitate to rule on the admissibility of DNA evidence. For it was said, that courts should apply the results of science when competently obtained in aid of situations presented, since to reject said result is to deny progress."

Petitioner's Argument For Jurisprudential Conclusiveness

Petitioner would have it that even if Allan F. Poe were a Filipino citizen, he could not have transmitted his citizenship to respondent FPJ, the latter being an illegitimate child. According to petitioner, prior to his marriage to Bessie Kelley, Allan F. Poe, on July 5, 1936, contracted marriage with a certain Paulita Gomez, making his subsequent marriage to Bessie Kelley bigamous and respondent FPJ an illegitimate child. The veracity of the supposed certificate of marriage between Allan F. Poe and Paulita Gomez could be most doubtful at best. But the documentary evidence introduced by no less than respondent himself, consisting of a birth certificate of respondent and a marriage certificate of his parents showed that FPJ was born on 20 August 1939 to a Filipino father and an American mother who were married to each other a year later, or on 16 September 1940. Birth to unmarried parents would make FPJ an illegitimate child. Petitioner contended that as an illegitimate child, FPJ so

followed the citizenship of his mother, Bessie Kelley, an American citizen, basing his stand on the ruling of this Court in *Morano vs. Vivo*,^[43] citing *Chiongbian vs. de Leon*^[44] and *Serra vs. Republic*.^[45]

On the above score, the disquisition made by amicus curiae Joaquin G. Bernas, SJ, is most convincing; he states -

"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 vs. Vivo*. The 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 vs. 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 vs. 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 vs. Chan*.^[46] 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. x x x It was *obiter dictum*, pure and simple, simply repeating the *obiter dictum* in *Morano vs. Vivo*.

"x x x x x x x x

"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 vs. Cayat*.^[47] I would grant that the distinction between legitimate children and illegitimate children rests on real differences. x x x But real differences alone do not justify invidious distinction. Real differences may justify distinction for one purpose but not for another purpose.

"x x x 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 other amici curiae, Mr. Justice Vicente Mendoza (a former member of this Court), Professor Ruben Balane and Dean Martin Magallona, at bottom, have expressed similar views. The thesis of petitioner, unfortunately hinging solely on pure obiter dicta, should indeed fail.

Where jurisprudence regarded an illegitimate child as taking after the citizenship of its mother, it did so for the benefit the child. It was to ensure a Filipino nationality for the illegitimate child of an alien father in line with the assumption that the mother had custody, would exercise parental authority and had the duty to support her illegitimate child. It was to help the child, not to prejudice or discriminate against him.

The fact of the matter – perhaps the most significant consideration – is that the 1935 Constitution, the fundamental law prevailing on the day, month and year of birth of respondent FPJ, can never be more explicit than it is. Providing neither conditions nor distinctions, the Constitution states that among the citizens of the Philippines are “those whose fathers are citizens of the Philippines.” There utterly is no cogent justification to prescribe conditions or distinctions where there clearly are none provided.

In Sum –

(1) The Court, in the exercise of its power of judicial review, possesses jurisdiction over the petition in G. R. No. 161824, filed under Rule 64, in relation to Rule 65, of the Revised Rules of Civil Procedure. G.R. No. 161824 assails the resolution of the COMELEC for alleged grave abuse of discretion in dismissing, for lack of merit, the petition in SPA No. 04-003 which has prayed for the disqualification of respondent FPJ from running for the position of President in the 10th May 2004 national elections on the contention that FPJ has committed material representation in his certificate of candidacy by representing himself to be a natural-born citizen of the Philippines.

(2) The Court must dismiss, for lack of jurisdiction and prematurity, the petitions in G. R. No. 161434 and No. 161634 both having been directly elevated to this Court in the latter’s capacity as the only tribunal to resolve a presidential and vice-presidential election contest under the Constitution. Evidently, the primary jurisdiction of the Court can directly be invoked only after, not before, the elections are held.

(3) In ascertaining, in G.R. No. 161824, whether grave abuse of discretion has been committed by the COMELEC, it is necessary to take on the matter of whether or not respondent FPJ is a natural-born citizen, which, in turn, depended on whether or not the father of respondent, Allan F. Poe, would have himself been a Filipino citizen and, in the affirmative, whether or not the alleged illegitimacy of respondent prevents him from taking after the Filipino citizenship of his putative father. Any conclusion on the Filipino citizenship of Lorenzo Pou could only be drawn from the presumption that having died in 1954 at 84 years old, Lorenzo would have been born sometime in the year 1870, when the Philippines was under Spanish rule, and that San Carlos, Pangasinan, his place of residence upon his death in 1954, in the absence of any other evidence, could have well been his place of residence before death, such that Lorenzo Pou would have benefited from the “en masse Filipinization” that the Philippine Bill had effected in 1902. That citizenship (of Lorenzo Pou), if acquired, would thereby extend to his son, Allan F. Poe, father of respondent FPJ. The 1935 Constitution, during which regime respondent FPJ has seen first light, confers citizenship to all persons whose fathers are Filipino citizens regardless of whether such children are legitimate or illegitimate.

(4) But while the totality of the evidence may not establish conclusively that respondent FPJ is a natural-born citizen of the Philippines, the evidence on hand still would preponderate in his favor enough to hold that he cannot be held guilty of having made a material misrepresentation in his certificate of candidacy in violation of Section 78, in relation to Section 74, of the Omnibus Election Code. Petitioner has utterly failed to substantiate his case before the Court, notwithstanding the ample opportunity given to the parties to present their position and evidence, and to prove whether or not there has been material misrepresentation, which, as so ruled in *Romualdez-Marcos vs. COMELEC*,^[48] must not only be material, but also deliberate and willful.

WHEREFORE, the Court RESOLVES to DISMISS –

- G. R. No. 161434, entitled "Maria Jeanette C. Tecson and Felix B. Desiderio, Jr., Petitioners, versus Commission on Elections, Ronald Allan Kelley Poe (a.k.a. "Fernando Poe, Jr.,) and Victorino X. Fornier, Respondents," and G. R. No. 161634, entitled "Zoilo Antonio Velez, Petitioner, versus Ronald Allan Kelley Poe, a.k.a. Fernando Poe, Jr., Respondent," for want of jurisdiction.

- G. R. No. 161824, entitled "Victorino X. Fornier, Petitioner, versus Hon. Commission on Elections and Ronald Allan Kelley Poe, also known as Fernando Poe, Jr.," for failure to show grave abuse of discretion on the part of respondent Commission on Elections in dismissing the petition in SPA No. 04-003.

No Costs.

SO ORDERED.

Davide, Jr., C.J., see separate opinion, concurring.

Puno, J., on leave but was allowed to vote; see separate opinion.

Panganiban, J., on official leave; allowed to vote but did not send his vote on the matter.

Quisumbing, J., joins the dissent of Justices Tinga and Morales; case should have been remanded.

Ynares-Santiago, J., concurs and also with J. Puno's separate opinion.

Sandoval-Gutierrez, J., concurs, please see separate opinion.

Carpio, J., see dissenting opinion.

Austria-Martinez, J., concurs, please see separate opinion.

Corona, J., joins the dissenting opinion of Justice Morales.

Carpio-Morales, J., see dissenting opinion.

Callejo, Sr., J., please see concurring opinion.

Azcuna, J., concurs in a separate opinion.

Tinga, J., dissents per separate opinion.

[1] *Tan Chong vs. The Secretary of Labor*, 45 O.G. No. 31, 1269.

[2] Sec. 2. Mode of review. – A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, except as hereinafter provided. (Rule 64)

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

officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (Rule 65)

[4] 17 SCRA 761.

[5] See Rule 66, Revised Rules of Civil Procedure.

[6] The Politics of Aristotle, edited and translated by Ernest Barker, Oxford University Press, London, 1946. at p. 93.

[7] Id., at 95.

[8] Introduction, "The Conditions of Citizenship," edited by Bart Van Steenberg, Sage Publications, London, Thousand Oaks, New Delhi (1994).

[9] Ibid.

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Under the codified Novisima Recopilacion promulgated in Spain in 1805, the following were considered denizens (vecinos) " all foreigners who obtained the privilege of naturalization, those who were born in these kingdoms, those who residing therein may be converted to the holy Catholic faith; those, being self-supporting, established their domicile therein; and in the case of a foreign woman who married a native man, she thereby becomes subject to the same laws and acquires the same domicile as her husband; those who establish themselves in the country by acquiring real property; those who have trade or profession and go there to practice the same; also those who practice some mechanical trade therein or keep a retail store;....those who reside for a period of ten years in a home of his own; and also those foreigners who, in accordance with the common law, royal orders and other laws of the kingdoms, may have become naturalized or acquired residence therein. (Leon T. Garcia, "The Problems of Citizenship in the Philippines," Rex Bookstore, 1949, at p. 4)

[14] Garcia, supra., at p. 3.

[15] Justices Malcolm, Recto and Florentino Torres believed that the law was effective in the Philippines. Those who entertained the contrary view were Justices Imperial and Villareal. (Garcia, supra., at 4.).

[16] Garcia, supra., pp. 5-6.

[17] Under the Royal Decree of August 23, 1868, the following were considered foreigners --- (1) The legitimate and recognized natural children of a father who belongs to another independent state, and the unrecognized and natural and other illegitimate children of a mother belonging to another State born outside of the Spanish dominions, (2) The children specified in the preceding paragraph, born in the Spanish dominions or on board Spanish vessels on the high seas if they do not, on attaining the age of majority fixed in the laws of the Kingdom, elect Spanish nationality, (3) Those being Spaniards, acquire another nationality, as well by renouncing the first as by accepting employment, from another government without the authority of the sovereign and (4) The woman who contracts marriage with a subject of another State. (Garcia, supra., pp. 6-7)

[18] Under the law, the following were foreigners (a) All persons born of foreign parents outside of the Spanish territory; (b) Those born outside of the Spanish territory of foreign fathers and Spanish mothers while they do not claim Spanish nationality, (3) Those born in Spanish territory of foreign parents or foreign fathers and Spanish mothers while they do not make that claim, (4) Spaniards who may have lost their nationality, (5) Those born outside of the Spanish territory of parents who may have lost their Spanish nationality; and (6), the Spanish woman married to a foreigner. (Garcia, supra., p. 7)

[19] Velayo, infra., p. 11.

[20] Article 17, The Civil Code of Spain.

[21] Garcia, supra, pp. 6-7.

[22] Ramon M. Velayo, "Philippine Citizenship And Naturalization," Central Book Supply, Manila (1965), pp. 22-23.

[23] Ibid., p. 30.

[24] Garcia, supra, at pp. 31-32.

[25] Garcia, supra, pp. 23-26.

[26] Velayo, supra, p. 31

[27] Section 2, Article IV, 1987 Constitution.

[28] Per amicus curiae Joaquin G. Bernas, SJ.

[29] 23 Phil 315 (1912).

[30] Supra., which held that jus soli was never applied in the Philippines.

[31] Antillon vs. Barcelon, 37 Phil 148.

[32] Article 131 Old Civil Code.

[33] Dayrit vs. Piccio, 92 Phil 729.

[34] 17 SCRA 788.

[35] 95 Phil 167.

[36] 125 SCRA 835.

[37] Vicente J. Fransisco, Civil Code of the Philippines, Bk I, 1953 at p. 5

[38] 29 Phil 606.

[39] Article 16. Real property as well as personal property is subject to the law of the country where it is situated.

However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found.

Article 17. The forms and solemnities of contracts, wills, and other public instruments shall be governed by the

laws of the country in which they are executed.

When the acts referred to are executed before the diplomatic or consular officials of the Republic of the Philippines in a foreign country, the solemnities established by Philippine laws shall be observed in their execution.

Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs, shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.

Article 815. When a Filipino is in a foreign country, he is authorized to make a will in any of the forms established by the law of the country in which he may be. Such will may be probated in the Philippines.

Article 816. The will of an alien who is abroad produces effect in the Philippines if made with the formalities prescribed by the law of the place in which he resides, or according to the formalities observed in his country, or in conformity with those which this Code prescribes.

Article 817. A will made in the Philippines by a citizen or subject of another country, which is executed in accordance with the law of the country of which he is a citizen or subject, and which might be proved and allowed by the law of his own country, shall have the same effect as if executed according to the laws of the Philippines.

Article 819. Wills, prohibited by the preceding article, executed by Filipinos in a foreign country shall not be valid in the Philippines, even though authorized by the laws of the country where they may have been executed.

Article 1039. Capacity to succeed is governed by the law of the nation of the decedent.

[40] Article 10. Marriages between Filipino citizens abroad may be solemnized by a consul general, consul or vice-consul of the Republic of the Philippines. The issuance of the marriage license and the duties of the local civil registrar and of the solemnizing officer with regard to the celebration of marriage shall be performed by said consular official.

Article 21. When either or both of the contracting parties are citizens of a foreign country, it shall be necessary for them before a marriage license can be obtained, to submit a certificate of legal capacity to contract marriage, issued by their respective diplomatic or consular officials.

Stateless persons or refugees from other countries shall, in lieu of the certificate of legal capacity herein required, submit an affidavit stating the circumstances showing such capacity to contract marriage.

Article 26. x x x

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.

Article 80. In the absence of a contrary stipulation in the marriage settlements, the property relations of the spouses shall be governed by Philippine laws, regardless of the place of the celebration of the marriage and their residence. This rule shall not apply:

- (1) Where both spouses are aliens;
- (2) With respect to the extrinsic validity of contracts affecting property not situated in the Philippines and executed in the country where the property is located; and
- (3) With respect to the extrinsic validity of contracts entered into in the Philippines but affecting property situated

in a foreign country whose laws require different formalities for their extrinsic validity.

[41] See *Ching Leng vs. Galang*, L-11931, October 1958, unreported.

[42] 354 SCRA 17.

[43] 20 SCRA 562, *Paa vs. Chan* 21 SCRA 753.

[44] 82 Phil. 771.

[45] 91 Phil. 914, unreported.

[46] 21 SCRA 753.

[47] 68 Phil 12.

[48] 248 SCRA 300 (1995)

SEPARATE OPINION

AUSTRIA-MARTINEZ, J.:

There are three petitions before this Court which seek the disqualification of a prominent presidential aspirant in the forthcoming May 10, 2004 elections. The petitions are common in their allegation that Fernando Poe, Jr. (FPJ) is not a qualified candidate for the position of the President of the Philippines since he is not a natural-born Filipino citizen for the following reasons: (a) FPJ's father, Allan F. Poe, was not a Filipino citizen, but a Spanish citizen; (b) FPJ is an illegitimate child having been born out of wedlock; (c) the subsequent marriage of his parents did not inure to his benefit since they failed to comply with the procedural requirements for legitimation; and (d) FPJ, as an illegitimate child, follows the citizenship of his American mother, Bessie Kelley.

G.R. Nos. 161434 and 161634 invoke the Court's exclusive jurisdiction under the last paragraph of Section 4, Article VII of the 1987 Constitution.[1] I agree with the majority opinion that these petitions should be dismissed outright for prematurity. The Court has no jurisdiction at this point of time to entertain said petitions.

The Supreme Court, as a Presidential Electoral Tribunal (PET), the Senate Electoral Tribunal (SET) and House of Representatives Electoral Tribunal (HRET)[2] are electoral tribunals, each specifically and exclusively clothed with jurisdiction by the Constitution to act respectively as "sole judge of all contests relating to the election, returns, and qualifications" of the President and Vice-President, Senators, and, Representatives.[3] In a litany of cases, this Court has long recognized that these electoral tribunals exercise jurisdiction over election contests only after a candidate has already been proclaimed winner in an election.[4] Rules 14 and 15 of the Rules of the Presidential Electoral Tribunal[5] provide that, for President or Vice-President, election protest or quo warranto may be filed after the proclamation of the winner.

Prior to the proclamation of winners, questions on the eligibility and qualifications of a candidate may be addressed to the COMELEC only if they fall under Section 78 of the Batas Pambansa Blg. 881 (Omnibus Election Code) which provides:

Section 78. Petition to deny due course to or cancel a certificate of candidacy – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74[6] hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of

candidacy and shall be decided after due notice and hearing, not later than fifteen days before the election.
(Emphasis supplied)

In his Certificate of Candidacy, respondent FPJ asserts that he is a natural-born citizen and therefore eligible to the position of President of the Philippines.[7] Petitioner assails the truthfulness of such material representation. Thus, the issue whether or not respondent Poe made a material representation which is false is within the jurisdiction of the COMELEC to resolve under Section 78 of the Omnibus Election Code. And when the COMELEC denied the cancellation of the Certificate of Candidacy, petitioner, ascribing grave abuse of discretion on the part of COMELEC in denying his petition, appropriately filed G.R. No. 161824 under Rule 64 in relation to Rule 65 of the Rules of Court which provides that the mode of review of a judgment of the COMELEC may be brought by the aggrieved party to the Court on certiorari under Rule 65. Needless to stress, certiorari is an extraordinary remedy that can be availed of only for an error of jurisdiction, that is, one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction.[8]

In *Salcedo II vs. COMELEC*,[9] the Court held that in order to justify the cancellation of the certificate of candidacy under Section 78 of the Omnibus Election Code, it is essential that: (1) the false representation mentioned therein pertains to a material matter on the contents of the certificate of candidacy as provided in Section 74, that is, the qualifications for elective office as provided in the Constitution; and (2) the false representation must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.

The Court's jurisdiction in the present petition for certiorari is limited only to the question whether the COMELEC has acted with grave abuse of discretion amounting to lack or excess of jurisdiction in finding that the evidence of petitioner is weak and not convincing. Is it a capricious, whimsical and arbitrary exercise of discretion? The answer is definitely in the negative.

The Certificate of Candidacy was executed by respondent FPJ under oath. The law always presumes good faith.[10] One who alleges malice has the burden of proving the same.[11] It is elementary that contentions must be proved by competent evidence and reliance must be based on the strength of the party's own evidence and not upon the weakness of the opponent's defense.[12] To lay the burden of proof upon FPJ to prove his citizenship simply because petitioner assails the same is anathema to the well-recognized rule on the burden of proof.

The burden of proof is on the party who would be defeated if no evidence is given on either side.[13]

In other words, petitioner should have established by competent evidence before the COMELEC that the subject material representation is false and that it must have been made by respondent FPJ deliberately to deceive the electorate as to his eligibility for the position of President of the Philippines.

Justice Puno, in his separate opinion, has extensively discussed the evidence that were correctly considered by the COMELEC as weak and not convincing to which I fully subscribe, with the following additional observations:

Under Section 1 of Article IV of the 1935 Constitution, the following are citizens of the Philippines:

- Those who are citizens of the Philippines at the time of the adoption of this Constitution.

...

- Those whose fathers are citizens of the Philippines.

- Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

...

Pertinent in the determination of who were the citizens of the Philippines at the time of the adoption of the 1935 Constitution are the Treaty of Paris of 1898, the Philippine Bill of 1902 and the Philippine Autonomy Act of 1916, otherwise known as the Jones Law.

Article IX of the Treaty of Paris of 1898 reads:

Spanish subjects, natives of the peninsula, residing in the territory over which Spain by the present treaty relinquished or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights or 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, a year from the date of the exchange of ratification of this treaty, a declaration of their decision to preserve such allegiance' in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside. (Emphasis supplied)

Section 4 of the Philippine Bill of 1902 enacted by U.S. Congress, reads:

That all inhabitants of the Philippines 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 Philippines 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 in 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 Philippines citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippines Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein. (Emphasis supplied)

Section 2 of the Jones Law reads:

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 Philippines Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December tenth, eighteen hundred and ninety eight, and except such others as have since become citizens of some other country: Provided, that the Philippine Legislature, herein provided for, is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein. (Emphasis supplied)

Petitioner's Exhibit "D", a certification of the National Archives that it has no record that respondent's grandfather Lorenzo Pou entered or resided in the Philippines before 1907, seeks to establish that respondent FPJ is Spanish as his grandfather was a Spanish citizen for which reason, his son, Allan Poe, FPJ's father, was a Spanish citizen under the aforequoted provisions of the Treaty of Paris and Philippine Bill of 1902. Said exhibit is neither here nor there considering that, as noted by Justice Puno, the petitioner had failed to demonstrate that the National Archives has a complete record of all persons who lived in the Philippines during the Spanish and

American occupation.

Moreover, petitioner Fornier failed to present competent evidence that respondent FPJ's grandfather had preserved his allegiance to the Crown of Spain by having made a declaration to that effect before a court of record, pursuant to the Treaty of Paris. Consequently, in the absence of such evidence, it cannot be validly concluded that FPJ's grandfather remained a Spanish citizen and transmitted his citizenship to FPJ's father. It is also true that neither could anyone conclusively conclude on that basis, that FPJ's grandfather did not retain his Spanish citizenship. In either case, it sustains the view of the COMELEC that the evidence of petitioner is weak and not convincing.

As earlier stated, the onus probandi is on petitioner to prove his claim, failing which his petition to cancel the certificate of candidacy of respondent FPJ must necessarily fail. The COMELEC's assessment of the evidence presented before it must perforce be accorded full respect.

It is suggested that the case be remanded to the COMELEC or the Court of Appeals for the presentation of additional evidence to enable the Court to finally determine the citizenship of respondent Poe. With all due respect to the proponents, I submit that to do so would not only be contrary to basic fair play but also it is not within the jurisdiction of the Court to make a final determination of respondent FPJ's citizenship in the present petition for certiorari which is specifically on the ground of grave abuse of discretion in not canceling the certificate of candidacy under Section 78 of the Omnibus Election Code. The issue on citizenship may be properly dealt with in a quo warranto proceeding which is available to protesters only after elections under Section 4, Article VII of the 1987 Constitution.

As a last pitch effort to disqualify respondent FPJ, petitioner posits that the phrase "those whose fathers are citizens of the Philippines" in the 1935 Constitution should refer only to legitimate children, relying upon the cases of *Chiongbian vs. De Leon*,^[14] *Serra vs. Republic*,^[15] *Morano vs. Vivo*,^[16] and *Paa vs. Chan*,^[17] that inasmuch as it appears that respondent Poe is an illegitimate son, then he follows the citizenship of his mother who was an American citizen per respondent FPJ's birth certificate. However, the cited cases are inapplicable because they are not squarely in point. These cases did not involve an illegitimate child of a Filipino father or the issue of citizenship in relation to the exercise of the right to be elected into office. Besides, the Court's pronouncements in these cases that illegitimacy in relation to citizenship are merely obiter dicta, obviously non sequitur. Obiter dictum simply means words of a prior opinion entirely unnecessary for the decision of the case^[18] or an incidental and collateral opinion uttered by a judge and therefore not material to his decision or judgment and not binding.^[19] As such, the pronouncements therein on illegitimacy in relation to citizenship must be disregarded as the ruling of the Court cannot be duly extended to expand the main thrust of the decisions beyond their true import.

The fundamental principle in constitutional construction is that the primary source from which to ascertain constitutional intent or purpose is the language of the provision itself. The presumption is that the words in which the constitutional provisions are couched express the objective sought to be attained. Otherwise stated, *verba legis* still prevails. Only when the meaning of the words used is unclear and equivocal should resort be made to extraneous aids of construction and interpretation, such as the proceedings of the Constitutional Commission or Convention, in order to shed light on and ascertain the true intent or purpose of the provision being construed.^[20]

Section 1, Article IV of the 1935 Constitution does not provide for a qualification that the child be a product of a legitimate union for the child to acquire the nationality of the Filipino father. *Ubi lex non distinguit nec nos distinguere debemus*. When the law does not distinguish, neither should we. There should be no distinction in the application of the fundamental law where none is indicated. The drafters of the Constitution, in making no

qualification in the use of the general word “father” must have intended no distinction at law. The Courts could only distinguish where there are facts or circumstances showing that the lawgiver intended a distinction or qualification. In such a case, the courts would merely give effect to the lawgiver’s intent.[21]

Clearly, the framers of the 1935 Constitution simply provided that when paternity is known or established, the child follows the father’s citizenship; otherwise, the citizenship of the mother is followed. If we concede that the framers of the Constitution intended a qualification that the child be the product of a legitimate union, such would lead to clear injustice, and a restricted interpretation, by creating a distinction when the language of the law is clear and unambiguous.

Thus, based on the evidence presented before it, the COMELEC did not commit any grave abuse of discretion in concluding that petitioner failed to present substantial evidence that FPJ has knowingly or deliberately committed a material representation that is false in his certificate of candidacy.

For the foregoing reasons, I vote to dismiss all the petitions.

[1] SEC. 4. . . . 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 rule for the purpose.

[2] Section 17, Article VI of the 1987 Constitution reads:

SEC. 17. The Senate and the House of Representatives shall each have an electoral tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective members. . . .

[3] *Angara vs. Electoral Commission*, 63 Phil. 139 (1936); *Lazatin vs. House of Representatives Electoral Tribunal*, 168 SCRA 391 (1988); *Co vs. Electoral Tribunal of the House of Representatives*, 199 SCRA 692 (1991); and, *Chavez vs. COMELEC*, 211 SCRA 315, 322 (1992).

[4] See *O’Hara vs. COMELEC*, 379 SCRA 247 (2002); *Dumayas, Jr. vs. COMELEC*, 357 SCRA 358 (2001); *Guerrero vs. COMELEC*, 336 SCRA 458 (2000); *Barroso vs. Ampig, Jr.*, 328 SCRA 530 (2000); *Caruncho III vs. COMELEC*, 315 SCRA 693 (1999); *Rasul vs. COMELEC*, 313 SCRA 18 (1999); *Aquino vs. COMELEC*, 248 SCRA 400 (1995); *Romualdez-Marcos vs. COMELEC*, 248 SCRA 300 (1995); *Pangilinan vs. COMELEC*, 228 SCRA 36 (1993); *Sampayan vs. Daza*, 213 SCRA 807 (1992); *Lazatin vs. COMELEC*, 157 SCRA 337, 338 (1988) *Lomugdang vs. Javier*, 21 SCRA 402 (1967); and, *Vda. de De Mesa vs. Mencias*, 18 SCRA 533 (1966).

[5] Rules 14 and 15 of the Rules of the Presidential Electoral Tribunal read as follows:

RULE 14. Election Protest. – Only the registered candidate for President or for Vice-President of the Philippines who received the second or third highest number of votes may contest the election of the President or the Vice-President, as the case may be, by filing a verified petition with the Clerk of the Presidential Electoral Tribunal within thirty (30) days from the proclamation of the winner.

RULE 15. Quo Warranto. – A verified petition for quo warranto contesting the election of the President or Vice-President on the ground of ineligibility or of disloyalty to the Republic of the Philippines may be filed by any voter within ten (10) days after the proclamation of the winner. (Emphasis supplied)

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

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

.....

[7] Section 2, Article VII of the Constitution provides:

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

[8] *Fortich vs. Corona*, 289 SCRA 624, 642 (1998).

[9] 312 SCRA 447 (1999). See also *Frivaldo vs. COMELEC*, 174 SCRA 245 (1989); *Abella vs. Larrazabal*, 180 SCRA 509 (1989); *Labo vs. COMELEC*, 211 SCRA 297 (1992); *Frivaldo vs. COMELEC*, 232 SCRA 785 (1996); and, *Frivaldo vs. COMELEC*, 257 SCRA 727 (1996).

[10] *Chua vs. Court of Appeals*, 242 SCRA 341, 345 (1995).

[11] *Bernardino vs. Ignacio*, 253 SCRA 641, 644 (1996); *Ford Philippines, Inc. vs. Court of Appeals*, 267 SCRA 320, 329 (1997); *Cancio vs. Garchitorena*, 311 SCRA 268, 286 (1999).

[12] *Saguid vs. Court of Appeals*, G.R. No. 150611, June 10, 2003; *Heirs of Anastacio Fabela vs. Court of Appeals*, 362 SCRA 531, 547 (2001); *Javier vs. Court of Appeals*, 231 SCRA 498, 504 (1994); and, *Pornellosa vs. Land Tenure Administration*, 110 Phil. 986, 991 (1961).

[13] *Summa Insurance Corporation vs. Court of Appeals*, 253 SCRA 175, 185 (1996).

[14] 46 O.G. 3652.

[15] L-4223, May 12, 1952.

[16] 20 SCRA 562 (1967).

[17] 21 SCRA 753 (1967).

[18] *Black's Law Dictionary*, p. 1222, citing *Noel vs. Olds*, 78 U.S. App. D.C. 155.

[19] *Webster's Third New International Dictionary*, p. 1555.

[20] *Ang Bagong Bayani-OFW Labor Party vs. COMELEC*, 359 SCRA 698, 724 (2001), citing *JM Tuason & Co., Inc. vs. Land Tenure Administration*, 31 SCRA 413 (1970); *Gold Creek Mining Corp. vs. Rodriguez*, 66 Phil. 259, 264 (1938); *Ruben C. Agpalo*, *Statutory Construction*, 1990 ed., p. 311.

[21] *Guerrero vs. COMELEC*, *supra*, Note No. 4, p. 468, citing *Social Security System vs. City of Bacolod*, 115 SCRA 412, 415 (1982).

CONCURRING OPINION

“A court which yields to the popular will
thereby licenses itself to practice despotism for
there can be no assurance that it will not on
another occasion indulge its own will.”[1]

CALLEJO, SR., J.:

Before the Court are three petitions seeking to disqualify respondent Ronald Allan Kelley Poe as candidate for President of the Republic of the Philippines, on the ground of ineligibility as he is not a natural-born Filipino citizen, one of the qualifications for the said position under Section 2, Article VII of the 1987 Constitution.[2]

The petitions in G.R. No. 161434[3] and G.R. No. 161634[4] were filed directly with this Court invoking Section 4, Article VII of the 1987 Constitution. The petition in G.R. No. 161824 was filed by Victorino X. Fornier under Rule 64 in relation to Rule 65 of the Rules of Court. It seeks to set aside and nullify the Resolution dated February 6, 2004 of the respondent Commission on Elections (COMELEC) en banc which affirmed the Resolution of its First Division dated January 23, 2004 dismissing the petition for disqualification filed against respondent Poe by petitioner Fornier.

I vote to dismiss outright the first two petitions for prematurity and for want of jurisdiction.

It is on the third petition, G.R. No. 161824, that I submit this Opinion.

The petitioner invokes the certiorari jurisdiction of this Court over “a judgment or final order or resolution” of respondent COMELEC by authority of Section 7, Article IX of the 1987 Constitution.[5]

Briefly, the factual antecedents giving rise to the petition in G.R. No. 161824 are as follows:

On December 31, 2003, respondent Poe filed his Certificate of Candidacy for President with the COMELEC. Among others, it is stated therein that he is a “natural-born Filipino citizen.” On January 9, 2004, petitioner Fornier filed a “Petition for Disqualification of Presidential Candidate Ronald Allan Kelley Poe, also known as Fernando Poe, Jr.” (the petition a quo). The petitioner asserted that respondent Poe is not a citizen, much more a natural-born citizen, of the Philippines. As such, he lacks one of the essential qualifications for the position of President.

According to the petition a quo, respondent Poe’s father, Allan Fernando Poe, was a Spanish citizen as shown by the marriage contract[6] between him and a certain Paulita Gomez. On the other hand, his mother, Bessie Kelley, was an American citizen as shown by his birth certificate.[7] Granting arguendo that respondent Poe’s father was a Filipino citizen, still, respondent Poe could not acquire the citizenship of his father; the latter’s marriage to Bessie Kelley was void, since he was previously married to Paulita Gomez. As an illegitimate child, respondent Poe followed the citizenship of his American mother. The petition a quo then prayed that respondent Poe “be disqualified from running for the position of the President of the Republic of the Philippines and that his Certificate of Candidacy be denied due course, or cancelled.”

On the basis of the allegations therein, the petition a quo was treated by the COMELEC (First Division) as a petition to deny due course to or cancel a certificate of candidacy under Section 78 of the Omnibus Election Code.

Pursuant to Section 1,[8] Rule 23 of the COMELEC Rules of Procedure, the petition was correspondingly docketed as a special action – SPA No. 04-003.[9] Because the proceedings were heard summarily,[10] respondent Poe was given only three (3) days within which to answer. He seasonably filed his Answer on January

16, 2004 substantially denying the material allegations contained in the petition a quo.[11] Attached to respondent Poe's answer was his birth certificate[12] and the marriage contract of his parents, Allan Fernando Poe and Bessie Kelley,[13] to support his contention that he is a natural-born Filipino citizen and a legitimate child. Respondent Poe also maintained that while his mother was an American citizen, his father was a Filipino citizen. Thus, respondent Poe concluded, he is a natural-born citizen as he follows the citizenship of his father.

The hearing was held on January 19, 2004. The parties were given only two (2) days within which to submit their respective memoranda which was timely filed by the parties on January 21, 2004.[14]

On January 23, 2004, based on the pleadings filed therewith, the COMELEC (First Division) rendered the assailed Resolution of January 23, 2004, dismissing the petition a quo for lack of merit.[15] Citing Section 78 of the Omnibus Election Code,[16] the COMELEC (First Division) opined that it only has jurisdiction to deny due course to or cancel a certificate of candidacy exclusively on the ground that any material representation contained therein is false. It added that, it is not "at liberty to finally declare whether or not the respondent is a natural-born Filipino."

According to the COMELEC (First Division), the evidence adduced by the petitioner, namely:

- Certificate of Candidacy of Ronald Allan Poe also known as Fernando Poe, Jr.;[17]
- Certificate of Birth of Ronald Allan Poe;[18]
- Sworn Statement in Spanish of one Paulita Gomez;[19] and
- Marriage Certificate of Allan Fernando Poe and Paulita Gomez.[20]

failed to show "strongly and convincingly" that the declaration in respondent Poe's Certificate of Candidacy as to his citizenship was a falsehood.

The COMELEC (First Division) also made a provisional finding that respondent Poe is a natural-born Filipino. It found that his grandfather, Lorenzo Pou, was a Spanish subject who acquired Filipino citizenship by virtue of Section 4 of the Philippine Bill of 1902.[21] There being no evidence to show that Lorenzo Pou made a declaration to preserve his allegiance to the Crown of Spain in accordance with Article IX of the Treaty of Paris,[22] he was held to have renounced it and became a Filipino citizen. Consequently, Allan Fernando Poe, who was born subsequent to his father's acquisition of Filipino citizenship, followed Lorenzo Pou's citizenship.

Regarding the petitioner's claim that respondent Poe is an illegitimate child of Allan Fernando Poe and Bessie Kelley, the COMELEC (First Division) cited Section 1, Article IV of the 1935 Constitution, the law determinative of respondent Poe's citizenship, which stated that:

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

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

...

3. Those whose fathers are citizens of the Philippines.

It noted that the parties agreed on the fact that Allan Fernando Poe was the father of Ronald Allan Poe. Hence, if Allan Fernando Poe was Filipino, necessarily, his son, Ronald Allan Poe, is likewise a Filipino.

As to the allegation that respondent Poe was an illegitimate child, the COMELEC (First Division) ratiocinated that:

Note that section 3 [should read section 1, paragraph (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.[23]

Accordingly, it concluded that, “considering 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.”[24]

Petitioner Fornier then filed with the COMELEC en banc a motion for reconsideration of the First Division’s resolution.[25] He urged the respondent COMELEC to assert its original and exclusive jurisdiction to conclusively determine whether respondent Poe is a natural-born Filipino citizen, invoking paragraphs (1) and (3), Section 2, Article IX-C[26] of the Constitution and COMELEC Resolution No. 6452.[27] Further, petitioner Fornier maintained that respondent Poe failed to establish that he is a natural-born Filipino citizen as he failed to rebut the petitioner’s evidence tending to show that his grandfather, Lorenzo Pou, and father, Allan Fernando Poe, were Spanish citizens. The petitioner further insisted that even if respondent Poe’s father was a Filipino citizen, since his (respondent Poe’s) own evidence showed that he was born prior to the marriage of his parents and therefore an illegitimate child, he acquired the citizenship of his mother, i.e., American citizenship. Petitioner Fornier thus reiterated his prayer that respondent Poe’s Certificate of Candidacy be denied due course or ordered cancelled for containing a material misrepresentation regarding his citizenship.

On February 6, 2004, the COMELEC en banc promulgated the assailed Resolution dismissing the petitioner’s motion for reconsideration for lack of merit.[28] The COMELEC en banc maintained that since the petition a quo was characterized as one falling under Section 78 of the Omnibus Election Code, the proceedings covered thereby was limited to a determination as to whether or not a material misrepresentation contained in the certificate of candidacy is false. On this score, the COMELEC en banc sustained the propriety of the First Division’s declaration on the paucity of the petitioner’s evidence to disprove respondent Poe’s representation as to his Filipino citizenship. It thereby affirmed that the First Division’s favorable pronouncement as to respondent Poe’s citizenship was inevitably crucial to resolve the issue as to whether respondent Poe had, indeed, made a material misrepresentation in his CoC as to warrant its denial in due course and/or cancellation.

Aggrieved by the dismissal of the petition a quo, petitioner Fornier now comes to this Court on certiorari.

At the outset, it bears stressing that resort to a special civil action for certiorari under Rule 65 of the Rules of Court, as in the present recourse, is limited to the resolution of jurisdictional issues, that is, lack or excess of jurisdiction and grave abuse of discretion amounting to lack of jurisdiction on the part of the tribunal rendering the assailed decision, order or resolution.[29] Thus –

There is grave abuse of discretion justifying the issuance of the writ of certiorari when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction; where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law.[30]

Simply stated then, the threshold issue for resolution is whether or not the COMELEC committed a grave abuse of its discretion amounting to excess or lack of jurisdiction in dismissing the petition before it, for failure of the petitioner to prove the essential requisites for the cancellation of the certificate of candidacy of respondent Poe under Section 78 of the Omnibus Election Code.

The well-entrenched principle is that in the absence of any jurisdictional infirmity or an error of law of the utmost

gravity, the conclusion rendered by the COMELEC on a matter that falls within its competence is entitled to utmost respect. Not every abuse of discretion justifies the original action of certiorari; it must be grave. The test therefore is whether the petitioner has demonstrated convincingly that the tribunal has committed grave abuse of discretion.[31]

The COMELEC should have dismissed the petition for failure to state a sufficient basis for the cancellation of respondent Poe's certificate of candidacy

Irrefragably, the petition filed before the COMELEC was a petition under Section 78 of the Omnibus Election Code, to cancel the certificate of candidacy of respondent Poe. The said section reads:

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.

Section 74 of the Code provides that:

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

Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

A petition for the cancellation of a certificate of candidacy under Section 78 of the Omnibus Election Code must aver three essential elements: (a) the candidate makes a representation in his certificate of candidacy; (b) the representation pertains to a material matter which would affect the substantive rights of the candidate – the right to run for the election for which he filed his certificate of candidacy; (c) the candidate makes the false

representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempts to mislead, misinform, or hide a fact which would otherwise render him ineligible.[32] If the petition fails to state the three essential elements, the petitioner would have no cause of action for the cancellation of the certificate of candidacy of the respondent candidate; hence, the petition must be dismissed.

The entries in a certificate of candidacy are prima facie correct. In making the said entries, the candidate is presumed to have acted in good faith. In this case, the material averments of the petition filed in the COMELEC reads:

- Petitioner is of legal age, Filipino citizen of voting age and registered voter of Pasay City with address at 122 Suerte Street, Pasay City 1300, where he may be served with processes of the Honorable Commission.

- Respondent Ronald Allan Kelley Poe, also known as Fernando Poe, Jr. ("Poe"), is a candidate for the position of President of the Republic of the Philippines under the Koalisyon ng Nagkakaisang Pilipino ("KNP") party for the 10 May 2004 elections. Based on his Certificate of Candidacy, respondent Poe claims to be of legal age and is a resident of 23 Lincoln Street, Greenhills, San Juan, Metro Manila, where he may be served with summons and other processes of the Honorable Commission. A copy of respondent Poe's Certificate of Candidacy is attached and made integral part hereof as Annex "A."

- Under Section 2, Article VII of the 1987 Constitution, the qualifications of the President of the Republic of the Philippines are enumerated as follows: "Sec. 2. No person may be elected president unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and resident of the Philippines for at least ten years immediately preceding such election." (Emphasis supplied)

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

- 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.

- 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.

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

- 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 Annex "D" and "D-1," respectively.

- 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.

- 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 Philippine Islands;

3)

Those whose fathers are citizens of the Philippines;

4)

Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship; and

5)

Those who are naturalized in accordance with law."

- 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]

- 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.

- 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.

PRAYER

WHEREFORE, it is respectfully prayed that Ronald Allan Kelley Poe, also known as Fernando Poe, Jr., 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.[33]

The petition does not contain any material averments that in stating in his certificate of candidacy that he was a natural-born citizen, respondent Poe intended to deceive the electorate or that he deliberately attempted to mislead, misinform, or hide the fact that he is not eligible for the position of President of the Republic of the Philippines.

The respondent Poe's statement in his CoC that he was a natural-born Filipino citizen does not ipso facto amount to an erroneous and deliberate statement of a material fact which would constitute "material misrepresentation." Indeed, the determination of whether one is "a natural-born citizen" as defined by our Constitution is, ultimately, a conclusion of law.[34] Corollarily, granting arguendo that respondent Poe's statement in his CoC later turned out to be erroneous or inexact, the same is not entirely groundless, having been honestly based on admitted and authentic public records. Such error could not be considered a falsity within the meaning of Section 78 of the Omnibus Election Code because expressing an erroneous conclusion of law cannot be considered a deliberate untruthful statement of a fact.[35]

But even if it were to be assumed that respondent Poe's declaration in his CoC that he is a natural-born Filipino citizen is a statement of a fact, the COMELEC did not gravely err in its provisional finding that, based on the records extant in this case, respondent Poe was in truth and in fact a natural-born Filipino citizen. Hence, respondent Poe made no material misrepresentation in his CoC.

The petitioner failed to prove
the essential elements for an
action under Section 78 of the
Omnibus Election Code

Obviously, the burden of proof is, in the first instance, with the party who initiated the action.[36] But in the final analysis, the party upon whom the ultimate burden lies is to be determined by the pleadings, not by who is the plaintiff or the defendant. The test for determining where the burden of proof lies is to ask which party to an action or suit will fail if he offers no evidence competent to show the facts averred as the basis for the relief he seeks to obtain,[37] and based on the result of an inquiry, which party would be successful if he offers no evidence.

In ordinary civil cases, the plaintiff has the burden of proving the material allegations of the complaint which are denied by the defendant, and the defendant has the burden of proving the material allegations in his case where he sets up a new matter. All facts in issue and relevant facts must, as a general rule, be proven by evidence except the following:

- (1) Allegations contained in the complaint or answer immaterial to the issues.
- (2) Facts which are admitted or which are not denied in the answer, provided they have been sufficiently alleged.
- (3) Those which are the subject of an agreed statement of facts between the parties; as well as those admitted by the party in the course of the proceedings in the same case.
- (4) Facts which are the subject of judicial notice.
- (5) Facts which are legally presumed.
- (6) Facts peculiarly within the knowledge of the opposite party.[38]

I am convinced that the petitioner failed to prove that the COMELEC committed a grave abuse of its discretion in dismissing the petition to disqualify respondent Poe for the petitioner's failure to allege and prove that the respondent Poe made a false representation when he stated in his certificate of candidacy that he is a natural-born Filipino.

The only evidence adduced by the petitioner to prove the falsity of respondent Poe's statement that he is a natural-born Filipino are the following:

- Certified photocopy of the Certificate of Birth of Ronald Allan Poe, which indicates the citizenship of Lorenzo Pou as "Español";[39]
- Certified photocopy of the Marriage Certificate of Allan Fernando Poe and Paulita Gomez, which indicates the citizenship of respondent Poe's father as also "Español";[40] and
- Certification issued by Director Ricardo Manapat that the National Archives does not possess any record in regard to the entry of "Lorenzo Poe" or "Lorenzo Pou" in the Philippines before 1907.[41]

However, as gleaned from the affidavits of Remmel G. Talabis, Emman A. Llanera, Vicelyn G. Tarin, William Duff and Victorino A. Floro III, the aforementioned documents relied upon by the petitioner are false documents. In fact, the lack of probative value to be credited to the foregoing documents was implicitly affirmed by the petitioner himself during the oral arguments of the parties before the Court on February 19, 2004. Failing to discharge his burden with his own documentary evidence, the petitioner had to rely on the private respondent's Certificate of Birth[42] and the Marriage Contract[43] of his parents.

The petitioner alleges that respondent Poe was born on August 20, 1939, that is, before the marriage of his parents on September 16, 1940. Being born out of wedlock, respondent Poe was an illegitimate child who could not acquire the Filipino citizenship of Allan Fernando Poe under Section 1(3), Article IV of the 1935 Constitution which, the petitioner posits, encompass within its terms only legitimate children.[44] Hence, respondent Poe followed the citizenship of his mother who was an American.[45] The petitioner further asserts that assuming the validity of the subsequent marriage of respondent Poe's parents, Article 121 of the Old Civil Code[46] necessitated, as a fundamental requirement of legitimation, that the father and the mother acknowledge the child. In any event, assuming that legitimation had properly taken place, its effects would retroact only to the date of marriage of respondent Poe's parents.[47] The subsequent legitimation would not anyhow effectively confer upon respondent Poe the status of a "natural-born Filipino citizen" which is defined by our Constitution as "one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship." [48]

The petitioners' assertions are barren of merit.

First. The provisions of the Old Civil Code adverted to by the petitioner should not be made to apply in the present case. There is no legal impediment to the application in this case of the rule of retroactivity provided in Article 256 of the Family Code to the effect that, “[T]his Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.” “Vested right” is a right in property which has become fixed and established and is no longer open to doubt or controversy. It expresses the concept of present fixed interest, which in right reason and natural justice should be protected against arbitrary State action.”[49] In the present case, there appears to be no substantial evidence on record to prove that vested rights will be prejudiced or impaired by a confirmation, that is, of respondent Poe’s legitimate status since he has, since birth, been regarded a legitimate child by his parents, siblings and other relatives. Consequently, the provisions of Article 177,[50] 178,[51] 179[52] and 180[53] of the Family Code may be applied retroactively to respondent Poe’s case. As a corollary, respondent Poe’s legitimation became the necessary legal consequence of the subsequent marriage of his parents, the effects of which would retroact to the time of respondent Poe’s birth in 1939.

Second. As correctly maintained by the COMELEC, the issue of legitimacy bears no direct relevance to the determination of respondent Poe’s citizenship in the petition at bar. Contrary to the petitioner’s protestations, “legitimacy” or the lack of it cannot by itself be made determinative of a child’s citizenship. The fact of legitimacy cannot, even if successfully concluded, be used as a spring board to secure a declaration of a child’s citizenship. The legitimate status of a child emanates from civil law which regulates the private relations of the members of civil society, while citizenship is political in character and the ways in which it should be conferred lie outside the ambit of the Civil Code. It is not within the province of our civil law to determine how or when citizenship is to be acquired.[54] This is precisely evinced by the fact that the right to acquire the parents’ citizenship is not among the enumerated rights of a legitimate child under our civil laws.[55]

Third. Section 1(3), Article IV of the 1935 Constitution did not, by its express terms, distinguish between a legitimate and an illegitimate child for purposes of acquiring the Filipino citizenship of the father. It is a rudiment in legal hermeneutics that when no distinction is made by law, the Court should not distinguish – *Ubi lex non distinguit nec nos distinguere debemos*.[56]

In *Domino v. COMELEC*,[57] we held that:

It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer’s document, it being essential for the rule of law to obtain that it should ever be present in the people’s consciousness, its language as much as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus there are cases where the need for construction is reduced to a minimum.

In *Llamado v. Court of Appeals*,[58] the Court affirmed that:

... As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. The great judges have constantly admonished their brethren of the need for discipline in observing the limitations. A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradictions.

Any other interpretation of the provision would visit unmitigated violence not only upon statutory construction but on existing laws and the generally accepted principles of international law, to which we are bound under the present state of affairs, as hereafter to be discussed.

Fourth. To circumscribe the application of the endowed political privilege under Section 1(3), Article IV of the 1935 Constitution only to the legitimate children of Filipino fathers would be clearly violative of the equal protection clause of the Constitution. There appears to be no substantial distinction between legitimate and illegitimate children to justify their disparate treatment vis-à-vis the possession of the status of and the exercise of a political privilege, including the right to run for and be elected to public office. The legal status of illegitimacy, however defined, bears no relation to the individual's ability to participate in and contribute to society.[59] The only purported purpose of the "natural-born citizen" requirement is to ensure the elected public officer's allegiance to the Republic. The petitioners have failed to demonstrate how legitimate or illegitimate birth affects loyalty to the Republic. Not to be overlooked is the fact that a natural child's conception may take place under circumstances that render it practically indistinguishable from that of a legitimate child, except for the absence of a marriage ceremony between the parents. To hold that a child's illegitimacy can bear significance on his right to acquire citizenship is to step from the bounds of law, into the realm of inequitable and bigoted rationalism.

The following provisions and principles of law further militate against a restrictive interpretation of the disputed constitutional provision:

- Article 3 of P.D. 603, otherwise known as the Child and Youth Welfare Code provides that "all children shall be entitled to the rights herein set forth without distinction as to legitimacy or illegitimacy, sex, social status, religion, political antecedents, and other factors."
- The Philippines is a party to the "Convention on the Rights of the Child, Article 2.1 of which guarantees that each child within its jurisdiction shall be treated "without discrimination of any kind, irrespective of the child's ... birth or other status."
- Article 25 of "The Universal Declaration of Human Rights" itself provides that "all children whether born in or out of wedlock, shall enjoy the same social protection."

Finally, the amici curiae[60] of the Court are unanimous in their position that Section 1(3), Article IV of the 1935 Constitution is founded upon the principle of *jus sanguinis*. In other words, the derivation of citizenship from a person, or the transmission of citizenship to his child, springs from blood relationship which, whether injected legitimately or illegitimately, is the same blood and has the same political effect. Hence, all that is needed to be established is paternity as a manifestation of blood relationship.

In the present petition, the petitioner does not deny that respondent Poe is the natural son of Allan Fernando Poe. On the question as to whether Allan Fernando Poe was a Filipino citizen, the petitioner failed to adduce evidence to controvert respondent Poe's evidence attesting to the Filipino citizenship of his father. The petitioner initially endeavored to corroborate the Spanish nationality of Lorenzo Pou to bear out the Spanish nationality of Allan Fernando Poe. He then presented a certification by Director Ricardo Manapat stating that the National Archives does not possess any record of a certain LORENZO POE or LORENZO POU residing or entering the Philippines before 1907 in its Spanish Documents Section.[61] The authenticity of this piece of documentary evidence, however, as earlier alluded to, has been put to serious question for being a fabricated. Also debilitating to its probative value was Manapat's own admission on cross-examination that the National Archives does not have a complete record of all persons who lived in the Philippines during the Spanish and American occupations.

I agree with the position of learned Rev. Joaquin G. Bernas, S.J., thus:

Naturalization can be individual naturalization or mass naturalization. For the purpose of the present case, what is relevant is the mass naturalization achieved by the Treaty of Paris jointly with the Philippine Bill of 1902. These two historical documents decreed that subjects of Spain, whether Peninsulares or Indios, residing in the Philippines on the eleventh day of April 1899 were deemed citizens of the Philippines unless the Peninsulares, that is, natives of Spain, either abandoned Philippine residence within a specified period or elected before a court of record to remain subjects of Spain also within a specified period. Under these documents, therefore, those claiming citizenship must prove that on the date indicated they were (1) subjects of Spain and (2) residents of the Philippines. Conversely, those who challenge the citizenship of Peninsulares must show either that such natives of Spain abandoned Philippine residence or elected before a court of record to remain subjects of Spain.

I submit that these requirements apply to the grandfather of Fernando Poe, Jr., but I am in no position to present evidence in either direction.[62]

The petitioner challenged the citizenship of Lorenzo Pou. He has not adduced evidence to prove that Lorenzo Pou, while admittedly born a Spanish Subject, was not an inhabitant of the Philippine Islands on December 10, 1898 when Spain ceded the Philippine Islands to the U.S. by virtue of the Treaty of Paris. The petitioner has also failed to proffer evidence to prove that Lorenzo Poe renounced his allegiance to the crown of Spain and embraced Filipino citizenship by operation of law.[63] Neither has the petitioner disproved Lorenzo Pou's continued residence in the Philippines until his death on September 11, 1954 in San Carlos, Pangasinan,[64] nor proffered evidence to prove that Lorenzo Pou was a resident of any other state in the intervening period from April 11, 1899 until his death. Incidentally, in the Certification dated January 12, 2004 of excerpts from the Register of Death in San Carlos, Pangasinan,[65] the citizenship of Lorenzo Pou is stated to be "Filipino." Again, there lies here in favor of respondent Poe's cause a prima facie proof of the Filipino citizenship of his grandfather as per entry in the Civil Register of the latter's Certificate of Death, a public record. Moreover, during his lifetime, Lorenzo Poe comported himself as a Filipino. He voted in elections and did not register as an alien. He even owned real properties in the Philippines.[66] Accordingly, by Lorenzo Pou's acquisition of Filipino citizenship under the pertinent provisions of the Treaty of Paris and the relevant succeeding laws, Allan Fernando Poe also acquired the Filipino citizenship of his father.

Apart from the foregoing, respondent Poe also presented supplementary evidence corroborating Allan Fernando Poe's Filipino citizenship as revealed by the following facts which have not been in any way refuted by the petitioner:

- Allan Fernando Poe obtained the degree of Bachelor of Science in Chemistry from the U.P. in 1935 and the degree of Doctor of Dental Medicine from the Philippine Dental College in 1942;
- He later became a leading movie actor in the Philippines;
- He was called to active duty to serve in the Philippine Army on December 24, 1942; inducted into the USAFE on December 25, 1941, fought in Bulacan, was in the "Death March", and reverted to inactive status with the rank of Captain on November 20, 1945.[67] On September 27, 1945, he was awarded the "Gold Cross" by "direction of the President" for "meritorious services rendered while under furious and intense enemy bombing and strafing;"[68] and,
- He died on October 23, 1951 and his death certificate also reflected his political status as "Filipino." [69]

As shown, Allan Fernando Poe comported himself as a Filipino citizen, was regarded as such in the community where he lived, and was acknowledged to be a Filipino by the Philippine government during his lifetime. The paternity of Allan Fernando Poe having been admitted, and his Filipino citizenship having been established,

respondent Poe was correct in representing in his CoC that he was a natural-born Filipino citizen.

Accordingly, the petition in G.R. 161824 must be dismissed for failure to show that respondent COMELEC committed grave abuse of discretion in dismissing the petition a quo as the petitioner failed to establish that respondent Poe committed a material misrepresentation, within the meaning of Section 78 of the Omnibus Election Code, when he stated that he is a natural-born Filipino citizen in his Certificate of Candidacy.

One caveat. The resolution of the issue in the present petition will be without prejudice to the filing by the proper party of the appropriate quo warranto petition before the Court En Banc to assail respondent Poe's eligibility in case he wins the elections and there to litigate all the issues raised in as much detail as may be deemed necessary or apropos.

WHEREFORE, I VOTE to –

- DISMISS the petitions in G.R. Nos. 161434 and 161634 for prematurity and want of jurisdiction; and
- DISMISS the petition in G.R. No. 161824 for failure to show that respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Resolutions.

[1] A.F.F.L. v. American Scale & Door, Co., 335 US 538, 557 (1949).

[2] The provision reads in full:

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

[3] Filed by Maria Jeanette C. Tecson and Felix B. Desiderio, Jr.

[4] Filed by Zoilo Gomez.

[5] Sec. 7. Each Commission [referring to the Civil Service Commission, Commission on Audit and Commission on Elections] shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof (Underscoring supplied).

[6] Exhibit "B-2."

[7] Exhibit "A."

[8] B. SPECIAL ACTIONS

Rule 23 – Petition to Deny Due Course to or Cancel Certificate of Candidacy

SECTION 1. Grounds for Denial of Certificate of Candidacy. – A petition to deny due course to or cancel a certificate of candidacy for any elective office may be filed with the Law Department of the Commission by any citizen of voting age or a duly registered political party, organization, or coalition of political parties on the exclusive ground that any material representation contained therein as required by law is false.

[9] Annex "A" of the petition in G.R. No. 161824.

[10] Section 3, Rule 23 of the COMELEC Rules of Procedure states:

Rule 23- Petition to Deny Due Course to or Cancel Certificates of Candidacy

...

Sec. 3. Summary Proceeding. – This petition shall be heard summarily after due notice.

[11] Annex “B” of the petition in G.R. No. 161824.

[12] Exhibit “3.”

[13] Exhibit “21.”

[14] Annexes “C” & “C-28” of the petition in G.R. No. 161824.

[15] Annex “D” of the petition in G.R. No. 161824.

[16] Supra.

[17] Annex “A” of the petition in SPA No. 04-003.

[18] Exhibit “A.”

[19] Exhibits “B” & “B-1.”

[20] Exhibit “B-2.”

[21] 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 and ninety-nine, and then resided in the Philippine Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain signed at Paris December tenth, eighteen hundred and ninety-eight.

[22] The provision reads in full:

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

[23] Resolution, dated January 23, 2004, of the COMELEC (First Division), p. 11.

[24] Id. at 12.

[25] Annexes “E” & “F” of the petition in G.R. No. 161824.

[26] Section 2. The Commission on Elections shall exercise the following powers and functions:

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

referendum, and recall.

...

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

...

[27] The pertinent proviso of the Resolution reads:

SECTION 1. Delegation of reception of evidence. -- The Commission hereby designates its field officials who are members of the Philippine Bar to hear and receive evidence in the following petitions:

- Petition to deny due course or to cancel Certificate of Candidacy;
- Petition to declare a nuisance candidate;
- Petition to disqualify a candidate pursuant to Sec. 68 of the Omnibus Election Code and disqualify a candidate for lack of qualifications or possessing same grounds for disqualification; and
- Petition to disqualify a candidate engaged in gunrunning, using and transporting of firearms or in organizing special strike forces.

...

SECTION 3. Where to file petitions. -- The petitions shall be filed with the following offices of the Commission:

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

[28] Annex "G" of the petition in G.R. No. 161824.

[29] *Recabo, Jr. v. COMELEC*, 308 SCRA 793 (1999).

[30] *Malinias v. COMELEC*, 390 SCRA 480 (2002).

[31] *Arao v. COMELEC*, 210 SCRA 290 (1992).

[32] *Salcedo II v. Commission on Elections*, 312 SCRA 447 (1999).

[33] *Supra*, pp. 1-6.

[34] In *Syquian v. People* (171 SCRA 223 [1989]), the Court held that:

"Conclusion of law" is defined as a proposition not arrived at by any process of natural reasoning from a fact or combination of facts stated but by the application of the artificial rules of law to the facts pleaded [*Levins v. Rovegno*, 71 Cal. 273, 12 p. 161; *Black's Law Dict.*, p. 362].

[35] *People v. Yanza*, 107 Phil. 888 (1960).

[36] *Francisco*, *The Revised Rules of Court in the Philippines*, Vol. VII, Part II, 1997 ed., pp. 5-6.

[37] *Di Baco v. Bendetto*, 95 SE 601.

[38] *Francisco*, *The Revised Rules of Court in the Philippines*, Vol. VII, Part II, 1997 ed., pp. 8-9.

[39] Exhibit “A.”

[40] Exhibit “B-2.”

[41] Exhibit “D.”

[42] Exhibit “3.”

[43] Exhibit “21.”

[44] Citing *Morano v. Vivo & Paa v. Chan*.

[45] Exhibit “21.”

[46] The provision reads in full:

Article 121. Children shall be considered as legitimated by a subsequent marriage only when they have been acknowledged by the parents before or after the celebration thereof.

[47] Article 123 of the Old Civil Code reads in full: In all cases the effects of legitimation shall commence from the date of the marriage.

[48] Section 2, Article IV of the 1987 Constitution.

[49] *Marquino v. Intermediate Appellate Court*, 233 SCRA 348, 355 (1994).

[50] ART. 177. Only children conceived and born outside of wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other may be legitimated.

[51] ART. 178. Legitimation shall take place by a subsequent valid marriage between parents. The annulment of a voidable marriage shall not affect the legitimation.

[52] ART. 179. Legitimated children shall enjoy the same rights as legitimate children.

[53] ART. 180. The effects of legitimation shall retroact to the time of the child’s birth.

[54] *Malkinson v. Agrava*, 54 SCRA 66 (1973); *Lo Beng Ha Ong v. Republic*, 25 SCRA 247 (1968); *Uggi Lindamand Therkelsen v. Republic*, 12 SCRA 400 (1964).

[55] Article 114 of the Old Civil Code; Article 264 of the New Civil Code; Article 174 of the Family Code.

[56] *Guerrero v. COMELEC*, 336 SCRA 458 (2000).

[57] 310 SCRA 546 (1999).

[58] 174 SCRA 566 (1989).

[59] *Weber Aetna Casualty & Surety Co.*, 406 US 164 (1972).

[60] Retired Justice Vicente V. Mendoza, Rev. Joaquin G. Bernas, SJ, Dean Merlin M. Magallona, and Prof. Ruben C. Balane.

[61] Exhibit “D.”

[62] *Supra*, p. 3.

[63] Article IX of the Treaty of Paris, *supra*.

[64] Exhibit “5.”

[65] Exhibit “5.”

[66] See certified true copy of OCT No. P-2247 and copies of Declaration of Real Property for tax purposes. Exhibits “6” & submarkings.

[67] See Certification dated January 13, 2004 by Lt. Col. Narciso S. Erna, Asst. Adjutant General (Exhibit “8”). See also Affidavit for Army Personnel dated December 22, 1947 signed by Fernando R. Poe (Exhibit “8-a”).

[68] See General Order No. 175, dated September 27, 1945 (Exhibit “9”) and Memorandum For: Lt. Col. Conrado B. Rigor, 0-1535, Office of Chief of Staff, AFP, dated October 27, 1951 (Exhibit “10”).

[69] Exhibit “7.”

SEPARATE OPINION

DAVIDE, JR. C.J.:

The procedural and factual antecedents of these consolidated cases are as follows:

On 9 January 2004, petitioner Victorino X. Fornier filed with public respondent Commission on Elections (COMELEC) a petition to disqualify private respondent Fernando Poe, Jr. (FPJ) and to deny due course to or cancel his certificate of candidacy for the position of President in the forthcoming 10 May 2004 presidential elections. As a ground therefore, he averred that FPJ committed falsity in a material representation in his certificate of candidacy in declaring that he is a natural-born Filipino citizen when in truth and in fact he is not, since he is the illegitimate son of Bessie Kelley, an American citizen, and Allan Poe, a Spanish national. The case was docketed as COMELEC Case SPA No. 04-003 and assigned to the COMELEC’s First Division.

At the hearing before the First Division of the COMELEC, petitioner Fornier offered FPJ’s record of birth to prove that FPJ was born on 20 August 1939 to Bessie Kelley, an American citizen, and Allan Poe, who was then married to Paulita Gomez. Upon the other hand, FPJ tried to establish that his father was a Filipino citizen whose parents, although Spanish nationals, were Filipino citizens. He adduced in evidence a copy of the marriage contract of Allan Poe and Bessie Kelley, showing that they were married on 16 September 1940 in Manila.

In its Resolution of 23 January 2004, the First Division of the COMELEC dismissed COMELEC Case SPA No. 04-003 for lack of merit. It declared that COMELEC’s jurisdiction is limited to all matters relating to election, returns and qualifications of all elective regional, provincial and city officials, but not those of national officials like the President. It has, however, jurisdiction to pass upon the issue of citizenship of national officials under Section 78 of the Omnibus Election Code on petitions to deny due course or cancel certificates of candidacy on the ground that any material representation contained therein is false. It found that the evidence adduced by petitioner Fornier is not substantial, and that FPJ did not commit any falsehood in material representation when he stated in his certificate of candidacy that he is a natural-born Filipino citizen.

His motion for reconsideration filed before the COMELEC en banc having been denied, petitioner Fornier filed a petition with this Court, which was docketed as G.R. No. 161824.

Meanwhile, petitioners Maria Jeanette C. Tecson and Felix B. Desiderio, Jr. came to this Court via a special civil action for certiorari under Rule 65 of the Rules of Court, docketed as G.R. No. 161434, to challenge the jurisdiction of the COMELEC over the issue of the citizenship of FPJ. They assert that only this Court has

jurisdiction over the issue in light of the last paragraph of Section 4 of Article VII 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.

On 29 January 2004 petitioner Velez filed a similar petition, which was docketed as G.R. No. 161634.

The core issues in these consolidated cases, as defined by the Court during the oral argument, are as follows:

- (1) Whether the COMELEC has jurisdiction over petitions to deny due course to or cancel certificates of candidacy of Presidential candidates;
- (2) Whether the Supreme Court has jurisdiction over the petitions of (a) Tecson, et al., (b) Velez, and (c) Fornier; and
- (3) Whether respondent FPJ is a Filipino citizen, and if so, whether he is a natural-born Filipino citizen.

These consolidated petitions must be dismissed.

Both the petitions of Tecson and Velez invoke the jurisdiction of this Court as provided for in the last paragraph of Section 4 of Article VII of the Constitution, and raise the issue of the ineligibility of a candidate for President on the ground that he is not a natural-born citizen of the Philippines. The actions contemplated in the said provision of the Constitution are post-election remedies, namely, regular election contests and quo warranto. The petitioner should have, instead, resorted to pre-election remedies, such as those prescribed in Section 68 (Disqualifications), in relation to Section 72; Section 69 (Nuisance candidates); and Section 78 (Petition to deny course to or cancel a certificate of candidacy), in relation to Section 74, of the Omnibus Election Code, which are implemented in Rules 23, 24 and 25 of the COMELEC Rules of Procedure. These pre-election remedies or actions do not, however, fall within the original jurisdiction of this Court.

Under the Omnibus Election Code and the COMELEC Rules of Procedure, the COMELEC has the original jurisdiction to determine in an appropriate proceeding whether a candidate for an elective office is eligible for the office for which he filed his certificate of candidacy or is disqualified to be a candidate or to continue such candidacy because of any of the recognized grounds for disqualification. Its jurisdiction over COMELEC SPA No. 04-003 is, therefore, beyond question.

Upon the other hand, this Court has jurisdiction over Fornier's petition (G.R. No. 161824) under Section 7 of Article IX-A of the Constitution, which provides:

Section 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

This Court can also take cognizance of the issue of whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the challenged resolution in COMELEC SPA No. 04-003 by virtue of Section 1 of Article VIII of the Constitution, which reads as follows:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are

legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

On the issue of whether private respondent FPJ is a natural-born Filipino citizen, the following facts have been established by a weighty preponderance of evidence either in the pleadings and the documents attached thereto or from the admissions of the parties, through their counsels, during the oral arguments:

- FPJ was born on 20 August 1939 in Manila, Philippines.
- FPJ was born to Allan Poe and Bessie Kelley.
- Bessie Kelley and Allan Poe were married on 16 September 1940.
- Allan Poe was a Filipino because his father, Lorenzo Poe, albeit a Spanish subject, was not shown to have declared his allegiance to Spain by virtue of the Treaty of Paris and the Philippine Bill of 1902.

From the foregoing it is clear that respondent FPJ was born before the marriage of his parents. Thus, pursuant to the Civil Code then in force, he could either be (a) a natural child if both his parents had no legal impediments to marry each other; or (b) an illegitimate child if, indeed, Allan Poe was married to another woman who was still alive at the time FPJ was born.

Petitioner Fornier never alleged that Allan Poe was not the father of FPJ. By revolving his case around the illegitimacy of FPJ, Fornier effectively conceded paternity or filiation as a non-issue. For purposes of the citizenship of an illegitimate child whose father is a Filipino and whose mother is an alien, proof of paternity or filiation is enough for the child to follow the citizenship of his putative father, as advanced by Fr. Joaquin Bernas, one of the amici curiae. Since paternity or filiation is in fact admitted by petitioner Fornier, the COMELEC committed no grave abuse of discretion in holding that FPJ is a Filipino citizen, pursuant to paragraph 3 of Section 1 of Article IV of the 1935 Constitution, which reads:

Section 1. The following are citizens of the Philippines:

...

(3) Those whose fathers are citizens of the Philippines.

I agree with the amici curiae that this provision makes no distinction between legitimate and illegitimate children of Filipino fathers. It is enough that filiation is established or that the child is acknowledged or recognized by the father.

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:

- FULL NAME: POE, FERNANDO, JR./RONALD ALLAN KELLEY
- ONE NICKNAME OR STAGE NAME (by which I am generally or popularly known): FPJ
- OFFICIALLY NOMINATED BY: KNP
- DATE OF BIRTH: 20 August 1939 PLACE OF BIRTH: MANILA SEX: MALE

- CIVIL STATUS: M IF MARRIED, FULL NAME OF SPOUSE: JESUSA SONORA
- I AM A NATURAL BORN FILIPINO CITIZEN
- PROFESSION OR OCCUPATION: MOVIE PRODUCER/ACTOR
- RESIDENCE: 23 LINCOLN ST., GREENHILLS, SAN JUAN, METRO MANILA
- RESIDENCE IN THE PHILIPPINES BEFORE MAY 10, 2004: 64 Years and 8 Months
- I AM A REGISTERED VOTER OF PRECINCT NO. 227 A, BARANGAY GREENHILLS CITY/MUNICIPALITY OF SAN JUAN, PROVINCE OF METRO MANILA
- I AM NOT A PERMANENT RESIDENT OF, OR MIGRANT TO, A FOREIGN COUNTRY.
- 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 31st 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:

- 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.
- 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.
- 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.
- 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.
- 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.
- 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.

- 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 inutusan na rin niya ako na mag scan ng mga pirma mula sa iba’t-ibang dokumento at linisin ang nga 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 ipinagawa 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 nagngangalang 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 documento.

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 documento 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 microfilm 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-microfilm 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:

- I am the Vice-President of Florofoto;
- 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;
- 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;
- 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;
- On January 12, 2004, our technician, Mr. William Duff informed me that the microfilm was unreadable;
- On January 17, 2004, Mr. Manapat came to pick up the microfilm rolls;
- 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;
- 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;
- 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 flows 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 as 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

- 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.

- 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.

- 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.

- 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.

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

- 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.

- 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.

- 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.

- 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)

- 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.

- 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

- 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:

- I am the sister of the late BESSIE KELLEY POE.
- Bessie Kelley Poe was the wife of FERNANDO POE, SR.
- 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”.
- Ronald Allan Poe “FPJ” was born on August 20, 1939 at St. Luke’s Hospital, Magdalena St., Manila.
- 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.
- 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.
- 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.
- Fernando Poe, Sr. and my sister, Bessie had their first child in 1938.
- 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.
- Fernando Poe, Sr. and my sister, Bessie, were blessed with four (4) more children after Ronald Allan Poe.
- 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.
- 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.
- 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.
- 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.
- 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.

- 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.

- 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.

- 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 12th 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

- 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.

[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).

CONCURRING OPINION

SANDOVAL-GUTIERREZ, J.:

This Court has repeatedly stressed the importance of giving effect to the sovereign will in order to ensure the survival of our democracy. In cases where the sovereignty of the people is at stake, we must not only be legally right but also politically correct. We cannot fail by making the people succeed.[1] “In resolving election cases, a dominant consideration is the need to effectuate the will of the electorate x x x. We cannot frustrate this sovereign will on highly arguable technical considerations. In case of doubt, we should lean towards a rule that will give life to the people’s political judgment.”[2]

I

May this Court exercise its
“judicial power” to disqualify a
candidate before the election?

The candidates for President, Gloria Macapagal-Arroyo, Fernando Poe (or FPJ), Raul Roco, Ping Lacson, and Eddie Villanueva are on the campaign trail. But petitioner Fornier would have this Court pull out FPJ from the track.

I submit that while the campaign for the Presidency is on, this Court may not exercise its “judicial power” to disqualify a candidate. That would definitely wreck the constitutional right of the people to choose their candidate. Only after the election is over and a winner is proclaimed and the result of the election is contested, may this Court participate and decide the contest.

How is the President elected? Only by “direct vote of the people.” He shall not be chosen by the incumbent President. He shall not be elected by Congress nor by the Commission on Elections. And neither by this Court. Only by “direct vote of the people.”

While the President is elected by “direct vote of the people,” they may only vote for one who is a candidate. It does not matter whether they believe he would not be the best President.

Petitioner Fornier would have this Court, in the exercise of its “judicial power,” intrude into the right of the voters to elect by “direct vote” the President by removing respondent Fernando Poe, Jr. from among those whom they may vote for President, thereby constricting or limiting the “candidates,” and consequently, the right of the people to vote (or not to vote) for respondent Poe.

The Constitution does not allow such intervention. Mr. Justice Vicente V. Mendoza, a retired member of this Court, in his Separate Opinion in *Romualdez-Marcos vs. COMELEC*,^[3] said, “In my view, the issue in this case is whether the Commission on Elections has the power to disqualify candidates on the ground that they lack eligibility for the office to which they seek to be elected. I think that it has none and that the qualifications of candidates may be questioned only in the event they are elected, by filing a petition for quo warranto or an election protest in the appropriate forum.”

The assailed ruling of the COMELEC dismissing Fornier’s petition is consistent with the above view.

The impact of a proceeding to disqualify a candidate, particularly a leading candidate for President, after the

electoral process has started, is shown by the contemporary events. The instant cases have agitated the people. Those who support respondent Poe, and their number is not miniscule, openly accuse the supporters of President Arroyo as those behind the effort to disqualify respondent Poe. From well-publicized reports of the campaign, his campaign sorties have been welcomed with enthusiasm exceeding those of President Estrada. What can not be ignored is that those who support respondent Poe come principally from the “masses” – those whose “voices,” albeit an integral part of the sovereign will of the people, are generally silent and heard only through the ballots. The intervention by this Court, through the exercise of its “judicial power” on grounds that are at best highly disputable, can not but be viewed as political. Indeed, what is worrisome is that the termination of the candidacy of respondent Poe, who appears to be a leading candidate, will in the long term impair the mandate of the people.

What is at stake is not just the candidacy of respondent Poe or the right of the “masses” to vote for him. Equally at stake is the credibility of this Court. It should not enter the “political thicket.” Intrusion into a campaign for President, and worse, in the right of the people to choose their candidate, is an intrusion into their vested right to elect by “direct vote” the President.

History will judge whether this Court ought to have declined in determining if FPJ is a natural born Filipino citizen even before the presidential election. I am not certain whether history will judge kindly. What I can foresee is that disqualifying respondent Poe will be viewed as directed against the “masses,” a situation not allowed by the Constitution.

While this Court, in exercising its judicial power, should not cater to popular support, the force of its Decisions springs from the faith of the people reposed in its fairness and integrity. That faith is not strengthened and respect and obedience to its Decisions are not enhanced had this Court intruded in the choice of President by the people.

Let it not be forgotten that the historic core of our democratic system is political liberty, which is the right and opportunity to choose those who will lead the governed with their consent. This right to choose cannot be subtly interfered with through the elimination of the electoral choice. The present bid to disqualify respondent Poe from the presidential race is a clear attempt to eliminate him as one of the choices. This Court should resist such attempt. The right to choose is the single factor that controls the ambitions of those who would impose – through force or stealth – their will on the majority of citizens. We should not only welcome electoral competition, we should cherish it. Disqualifying a candidate, particularly the popular one, on the basis of doubtful claims does not result to a genuine, free and fair election. It results to violence. In some countries, incumbents have manipulated every resource at their disposal to eliminate electoral choice. The result is a frustrated and angry public; a public that has no place to express this anger because the electoral system is rigged to guarantee the re-election of the incumbents in office. We have seen Edsa I and Edsa II, thus, we know that when democracy operates as intended, an aroused public can replace those who govern in a manner beyond the parameters established by public consent.

The Philippines is not alone in her predicament. Iran is besieged by the same political crisis. The Guardian Council, an unelected hard-line constitutional watchdog, has barred more than 3,000 of the 8,200 candidates in the 290-member parliament. State broadcast media controlled by hard-liners said that the candidates were disqualified because they lack “the necessary legal qualifications.” This prompted Iran’s largest reformist party, the Islamic Iran Participation Front, to state: “We consider the disqualification as national treason and an attempt to transform the Republic into a despotic establishment. Disqualifications deny the people of their constitutional right to choose and be chosen...” Thus, threatening to resign, Iran’s reformist government stressed that, “if the government feels that it cannot fulfill its responsibilities in protecting legitimate freedoms, such as defending the rights of the nation for a free and fair elections, then it does not believe that there is any reason to stay in power.”

This Court, as the last guardian of democracy, has the duty to protect the right of our nation to a genuine, free and

fair election. Article 25 of the International Covenant on Civil and Political Rights guarantees that “every citizen shall have the right and the opportunity... to vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.” There can be no genuine, free and fair election when the people’s right to choose is manipulated or eliminated. Political liberty cannot be subverted to the personal ambitions of some politicians. This Court should take an active stance in crushing the devious ploy, for in the last analysis, its handling of the electoral issues is the fundamental measure of the present government’s credibility.

When the people vote on May 10 and cast their ballots for President, they will be exercising a sovereign right. They may vote for respondent Poe, or they may not. When they vote, they will consider a myriad of issues, some relevant, others trivial, including the eligibility of the candidates, their qualities of leadership, their honesty and sincerity, perhaps including their legitimacy. That is their prerogative. After the election, and only after, and that is what the Constitution mandates – the election of whoever is proclaimed winner may be challenged in an election contest or a petition for quo warranto. Where the challenge is because of ineligibility, he will be ousted only if this Court “exerts utmost effort to resolve the issue in a manner that would give effect to the will of the majority, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority.”[4]

II

Whether the COMELEC committed
grave abuse of discretion in dismissing
Fornier’s petition for disqualification
against respondent.

To begin with, in *Salcedo II vs. Commission on Elections*,^[5] we emphasized that there is only one instance where a petition questioning the qualifications of a registered candidate to run for the office for which his certificate of candidacy was filed can be raised before election. That only instance is when the petition is based on Section 78 of the Omnibus Election Code, quoted as follows:

“Section 78. Petition to deny due course or to 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.’

As stated in the above provisions, in order to justify the cancellation of the certificate of candidacy, it is essential that the false representation mentioned therein pertains to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate – the right to run for the elective post for which he filed the certificate of candidacy.^[6]

Aside from the requirement of materiality, a false representation under Section 78 must consist of a “deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.”^[7] In other words, it must be made with an intention to deceive the electorate as to one’s qualifications for public office.^[8]

The Fornier petition before this Court is one brought under Rule 65 of the 1997 Rules of Civil Procedure, as amended. What is to be determined, therefore, is whether the COMELEC acted with “grave abuse of discretion” in issuing its assailed Resolutions of January 23, 2004 and February 6, 2004 holding that “considering that the evidence presented by petitioner is not substantial, we declare that respondent did not commit any material

misrepresentation when he stated in his Certificate of Candidacy that he is natural born Filipino citizen.”

Petitioner Fornier’s basic allegations in his petition filed with the COMELEC are:

- Respondent Poe committed false material representation by stating in his Certificate of Candidacy that he is a natural born Filipino citizen; and
- He knowingly made such false representation.

According to petitioner, respondent Poe is in fact “not a citizen of the Philippines, much more a natural born Filipino citizen, considering that both his parents are aliens.” Annexed to the petition as its principal basis is a copy of a “Marriage Contract” dated July 5, 1936 between “Allan Fernando Poe” and “Paulita Gomez.” Since the “Marriage Contract” states the “nationality” of respondent’s father, Allan Fernando Poe, and his grandfather, Lorenzo Pou, as “Español,” respondent Poe is also “Español.” Even assuming that Allan Fernando Poe is a Filipino, still, respondent Poe could not have validly acquired Filipino citizenship from his father because the marriage of his parents is void. Respondent Poe’s father married Paulita Gomez on July 5, 1936, which marriage was subsisting at the time of the marriage of respondent Poe’s father to his mother, Bessie Kelley, an American citizen. Fornier then concluded that respondent Poe, being illegitimate, follows the citizenship of his mother.

Devastating to the Fornier petition is that the “Contract of Marriage” between “Allan Fernando Poe” and “Paulita Gomez” (Annex “C”, Petition; Exhibits “B”, “B-1”, “B-2”) and the “Birth Certificate” of Allan Fernando Poe (Exhibit “C”), appear to have been falsified by Director Ricardo L. Manapat of the National Archives. The records of the hearing of the Senate Committee on “Constitutional Amendments, and Revision of Codes and Laws” held on January 21, 2004 and February 2, 2004, which incidentally were shown live on television and aired over the radio, show in shocking detail how the falsification was so brazenly done. The Court may not gloss over these casually. The details are spread in the record of these proceedings. Given this pathetic state of petitioner’s evidence, we cannot conclude that he has proved his allegations by sufficient evidence. Without doubt, the COMELEC, in dismissing Fornier’s petition for lack of substantial evidence, did not gravely abuse its discretion.

It bears stressing that petitioner has the burden of establishing his allegations of respondent’s material misrepresentation in his Certificate of Candidacy.

Ei incumbit probation qui dicit, non que negat, otherwise stated, “he who asserts, not he who denies, must prove.”[9] What I observe from his allegations is a misconception as to whom the burden of proof lies.

Section 1, Rule 131 of the Revised Rules on Evidence provides:

“Sec. 1. Burden of proof. – Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim x x x by the amount of evidence required by law.”

In *Borlongan vs. Madrideo*,[10] we held:

“The burden of proof x x x is on the plaintiff who is the party asserting the affirmative of an issue. He has the burden of presenting evidence required to obtain a favorable judgment, and he, having the burden of proof, will be defeated if no evidence were given on either side.”

Obviously, petitioner Fornier failed to prove his allegations. The documentary evidence he presented in support of his allegation that respondent Poe made a false material representation that he is a natural born Filipino citizen are falsified. Likewise, Fornier’s allegation that respondent Poe fully knew such false representation, has not been substantiated. Indeed, his allegations remain as mere allegations. Hence, the COMELEC correctly dismissed his petition.

The only way petitioner can be entitled to a writ of certiorari from this Court is to show that the COMELEC committed grave abuse of discretion. For this Court to issue the extraordinary writ of certiorari, the tribunal or administrative body must have issued the assailed decision, order or resolution in a capricious and despotic manner.[11] Grave abuse of discretion means “such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.”[12]

We cannot discern from the records any indication that the COMELEC gravely abused its discretion in dismissing Fornier’s petition. Indeed, his availment of the extraordinary writ of certiorari is grossly misplaced.

III

Whether the respondent committed a material and false representation when he declared in his Certificate of Candidacy that he is a natural born Filipino citizen.

At any rate, in order to show that respondent Poe did not commit a false material representation in his certificate of candidacy, I believe that this Court should decide whether respondent Poe is a natural born Filipino citizen on the basis of the evidence at hand.

The COMELEC’s First Division held that respondent Poe did not commit any material misrepresentation when he stated in his Certificate of Candidacy that he is a natural born Filipino citizen because his father, Allan Fernando Poe, is a Filipino citizen; and that by virtue of the principle of jus sanguinis, he is also a Filipino citizen under the 1935 Constitution.

In *Valles vs. Commission on Elections*,[13] we emphasized that “the Philippine law on citizenship adheres to the principle of jus sanguinis. Thereunder, a child follows the nationality or citizenship of the parents regardless of the place of his birth.”

Respondent’s Certificate of Birth reveals that he was born on August 20, 1939 at St. Luke’s Hospital, Magdalena Street, Manila to Allan Fernando Poe, a Filipino citizen, and Bessie Kelley, an American citizen. This was almost four (4) years after the 1935 Constitution took effect. Under Section 3, Article IV, the following are citizens of the Philippines:

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

Pursuant to the above provision, the law in force at the time of his birth, respondent Poe is a citizen of the Philippines, having been born to a Filipino father.

That respondent Poe is the son of Allan Fernando Poe is admitted by the parties.

According to petitioner, Allan Fernando Poe is a citizen of Spain as shown by the “Marriage Contract” between him and Paulita Gomez stating that his parents, Lorenzo Pou and Marta Reyes, are citizens of Spain. It follows that Allan Fernando Poe is also a Spanish citizen. And clearly, “respondent Poe could not have possibly acquired Filipino citizenship from his father, Allan Fernando Poe, since the latter is a Spanish citizen.”

Suffice it to state that this allegation must fail because the “Marriage Contract” between Allan Fernando Poe and Paulita Gomez has been shown to be falsified.

It bears reiterating that petitioner Fornier does not dispute that Allan Fernando Poe is the father of respondent Poe. Allan’s father is Lorenzo Pou, a Spanish subject and an inhabitant of the Philippines on April 11, 1899 when Spain ceded the Philippines to the United States by virtue of the Treaty of Paris. Specifically, this Treaty provides that:

“Spanish subjects x x x may remain in such territory x x x. 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 the treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.”

Relative to this Treaty, Section 4 of the Philippine Bill of 1902 provides:

“That all inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the leventh day of April, eighteen hundred and ninety-nine, and then resided to the Philippine Islands, and their children born subsequent thereto shall be deemed and held to be citizens of the Philippines and 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.”

Likewise, the Jones Law provides as follows:

“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: x x x.”

We held in the case of *In Re Bosque*:^[14]

“With respect to Spanish residents, it was agreed to accord them the right of electing to leave the country, thus freeing themselves of subjection to the new sovereign, or to continue to reside in the territory, in which case the expiration of the term of eighteen months (April 11, 1899 to October 1900) without their making an express declaration of intention to retain their Spanish nationality resulted in the loss of the latter, such persons thereby becoming subjects of the new sovereign in the same manner as the natives of these Islands.”

Likewise, in *Palanca vs. Republic*,^[15] we ruled:

“A person, who was an inhabitant of the Philippine Islands and a naturalized subject of Spain on the 11th day of April 1899, is a Filipino citizen, by virtue of the provisions of Sec. 4 of the Act of Congress on 1 July 1902 and of Sec. 2 of the Act of Congress of 29 August 1916. Under the Constitution, he is also a citizen of the Philippines because he was such at the time of the adoption of the Constitution.”

Under the above provisions and jurisprudence, Lorenzo Pou was a citizen of the Philippines. In turn, his son Allan Fernando Poe, followed his (Lorenzo's) citizenship as a Filipino. Section 3, Article IV of the 1935 Constitution states that "those whose fathers are citizens of the Philippines" are Filipino citizens. We thus follow the principle of *jus sanguinis*, the rule of blood relationship. Consequently, since Allan Fernando Poe is a Filipino citizen, it follows that respondent Poe is also a Filipino citizen. That he is a natural born Filipino citizen is beyond question. The following provisions are in point:

"SECTION 4. A natural born citizen is one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship." (Article III of the 1973 Constitution)

"SECTION 2. Natural born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. x x x." (Article IV of the 1987 Constitution).

Respondent Poe, being a Filipino citizen from birth without having to perform any act to acquire or perfect his Philippine citizenship is, therefore, a natural born Filipino citizen.

Still, petitioner insists that even if respondent Poe's father is a Filipino citizen, he (respondent) is not a natural born Filipino citizen because he is an illegitimate child whose citizenship follows that of his mother, Bessie Kelley, an American citizen.

On this point, the following *amici curiae* have a common opinion – the illegitimacy of respondent Poe is inconsequential in determining whether he is a natural born Filipino citizen.

Mr. Justice Vicente V. Mendoza said:

"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 legitimate or an illegitimate child."

Rev. Fr. Joaquin G. Bernas, former Constitutional Commissioner, advanced the following view:

"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 nec 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."

Dean Merlin M. Magallona's theory is reproduced as follows:

"The transmissive essence of citizenship here is clearly the core principle of blood relationship or *jus sanguinis*. On this account, the derivation of citizenship from a person or the transmission of citizenship to his child springs from the fact that he is the father. Thus, paternity as manifestation of blood relationship is all that is needed to be established. To introduce a distinction between legitimacy or illegitimacy in the status of 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 father 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."

The ascertainment of the meaning of the provision of the Constitution begins with the language of the document itself. The words of the Constitution should as much as possible be understood in the sense they have in common

use and given their ordinary meaning. The reason for this is because the Constitution is not primarily a lawyer's document but essentially that of the people, in whose consciousness it should even be present as an important condition for the rule of law to prevail.[16] Section 3, Article IV of the 1935 Constitution is very clear. As the provision does not distinguish between a legitimate child and an illegitimate child of a Filipino father, we should not make a distinction.

In fine, I reiterate that the COMELEC did not gravely abuse its discretion in rendering its assailed Resolutions dated January 23, 2004 and February 6, 2004.

WHEREFORE, I concur with Justice Jose C. Vitug in his ponencia and with Senior Justice Reynato S. Puno in his Separate Opinion DISMISSING Fornier's petition.

[*]I concur in the retiocination and conclusion of the majority that this Court has no jurisdiction over petitions.[1] *Frivaldo vs. COMELEC*, G.R. No. 120295, June 28, 1996, 257 SCRA 727.

[2] Concurring Opinion of Justice Reynato S. Puno in *Romualdez-Marcos vs. COMELEC*, G.R. No. 119976, September 18, 1995, 248 SCRA 300, 364-365.

[3] *Supra*.

[4] *Frivaldo vs. COMELEC*, *supra*.

[5] G.R. No. 135886, August 16, 1999, 312 SCRA 447, 456-457, citing *Aznar vs. Commission on Elections*, 185 SCRA 703 (1990).

[6] *Ibid.* at 455.

[7] *Romualdez-Marcos vs. Commission on Elections*, *supra* at 326.

[8] *Salcedo II vs. Commission on Elections*, *supra*. at 459.

[9] *Balanay vs. Sandiganbayan*, G.R. No. 112924, October 20, 2000, 344 SCRA 1.

[10] G.R. No. 120267, January 225, 2000, 323 SCRA 248, 255, citing *Transpacific Supplies, Inc. vs. Court of Appeals*, 235 SCRA 494, 502 (1994); *Geraldez vs. Court of Appeals*, 230 SCRA 320, 330 (1994); *Republic vs. Court of Appeals*, 182 SCRA 290, 301 (1990); and *Summa Insurance Corporation vs. Court of Appeals*, 253 SCRA 175 (1996).

[11] *Malinias vs. COMELEC*, G.R. No. 146943, October 4, 2002, 390 SCRA 480.

[12] *Benito vs. COMELEC*, G.R. No. 134913, January 19, 2001, 349 SCRA 705, 713-714, citing *Cuizon vs. Court of Appeals*, 289 SCRA 159 (1998).

[13] G.R. No. 137000, August 9, 2000, 337 SCRA 543, 549.

[14] G.R. No. 666, January 14, 1902, 1 Phil. 88.

[15] G.R. No. L-301, April 7, 1948, 80 Phil. 578, 584.

[16] Separate Opinion of J. Gutierrez in *Ernesto B. Francisco, Jr. vs. The House of Representatives*, G.R. Nos. 160261, 160262, 160263, 160277, 160292, 160295, 160310, 160318, 160342, 160343, 160360, 160365, 160370, 160376, 160392, 160397, 160403 & 160405, November 10, 2003, citing *J.M. Tuazon & Co., Inc. vs. Land Tenure Administration*, 31 SCRA 413 (1970); *Ordillo vs. Commission on Elections*, 192 SCRA 100 (1990); *Occeña vs. Commission on Elections*, 95 SCRA 755 (1980); and *Agpalo*, *Statutory Construction*, 1995 Ed. at 344.

SEPARATE OPINION

AZCUNA, J.:

“Present your evidence and don’t be nervous”

- Alice in Wonderland

“[This gets] curioser and curioser”

- Through the Looking Glass

These are petitions that, directly or indirectly, seek to disqualify a candidate for the Presidency of the land.

Two of the petitions seek a direct action for this purpose, those of petitioners Tecson, et al., and Velez. These two petitions fail outright. The “contest” they rely on is as yet non-existing, since it refers to a situation when someone has been proclaimed a winner after the elections and his proclamation is challenged in a “contest.” The provision in the Constitution (Art. VII, Sec. 4, par. 7, Constitution) that says that “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,” cannot be invoked before the elections.

The petition of Fornier, on the other hand, took a different route. Fornier started by filing a petition in the Commission on Elections and, having lost there, he now comes to us for relief.

Precisely what was Fornier’s case in the Comelec?

Fornier sought to disqualify Fernando Poe, Jr. from running for the Presidency on the ground that he stated in his certificate of candidacy a material statement that is false. What was that? The statement that he was a natural-born Filipino. And what did the Comelec do? It first held, in its First Division, that it had no jurisdiction to rule on the issue, then, en banc, it held that, in any event, Fernando Poe, Jr. has not been shown to have deliberately misrepresented his citizenship even assuming that what he said was false. It then concluded that there is no ground to cancel his certificate of candidacy because by “a material statement that is false” is meant a deliberate falsehood.

Now, Fornier seeks to declare the Comelec en banc decision as erroneous and/or done with grave abuse of discretion amounting to lack or excess of jurisdiction.

Fornier argues that the Comelec en banc erred and/or gravely abused its discretion in that it should have squarely ruled on whether or not the statement of Poe, Jr. regarding his citizenship is false. Fornier further argues that the statement is in fact false so that Poe, Jr. is not qualified to run for President and should have been so declared and/or should be so declared by us now.

The first question is, do we have power or jurisdiction to review the Comelec en banc decision?

I say that we do, on two counts: First, under the specific provision of the Constitution stating that any decision, order, or ruling of the Comelec may be brought to us on certiorari by the aggrieved party within thirty days from receipt of a copy thereof (Art. IX, A., Sec. 7, Constitution). And second, under our power to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government (Art. VIII, Sec. 1, Constitution).

Addressing the subject at hand, how do we proceed?

First, by recognizing that we can only resolve questions of law and of jurisdiction, not of facts.

Is the question whether or not Fernando Poe, Jr. made a material representation that is false in his certificate of candidacy one of law, of jurisdiction, or of facts?

I submit that it has aspects of all three. We can resolve only the first and second (law and jurisdiction) but not the third (factual) aspects.

Accordingly, we shall proceed on the basis principally of three undisputed facts. These are:

- The fact that Fernando Poe, Jr. was born on August 20, 1939 (Birth Certificate);
- The fact that Fernando Poe, Sr. and Bessie Kelley (Poe, Jr.'s mother) were married on September 16, 1940 (Marriage Contract); and
- The fact that Bessie Kelley was an American citizen (Admission in the Answer of Poe, Jr.).

I first wanted to refer the case back to the Comelec for reception of more evidence to cover gaps in the factual premises. There being no majority to sustain that course, I have to proceed by seeking to resolve the issues raised on the basis of the facts available to us now.

From the foregoing facts, Fornier argues that Poe, Jr. is shown to be an illegitimate child, since he was born before, or outside of, marriage, and thus, applying a number of our decisions in the past,[1] he follows the citizenship of his mother. Poe, Jr., therefore, was an American citizen at birth. Thus, he is not a natural-born Filipino, for the Constitution defines that term to mean one who is so at birth without having to perform any act to acquire or perfect his citizenship (Art. IV, Sec. 2, Constitution). Upon this reasoning, Fornier rests his case, arguing that the Comelec cannot evade this issue as it goes into the falsity of the statement made in the certificate of candidacy (which Fornier claims was deliberately made) and, it also goes into the qualifications of a candidate for President, which the Comelec is empowered to determine even before the elections.

Is he right?

I submit that he is not. Fornier's case rests on the premise that Fernando Poe, Jr. is an illegitimate child at birth.

This takes us into the realm of civil law, regarding which we are thankful for the excellent presentation of amicus curiae Professor Ruben C. Balane, and under which an illegitimate (natural) child becomes legitimated by the subsequent marriage of his parents.

It is true that under the Old Civil Code, prevailing when Poe, Jr. was born, the effects of legitimation retroact only to the time of the marriage, and not to the time of birth.[2] However, the New Civil Code, effective on August 30, 1950, made the effects retroact to the time of the birth of the child.[3] It is also true that the Old Civil Code required, in addition to the marriage, an acknowledgment by the parent(s) in the birth certificate, a will or any public instrument.[4] Under the New Civil Code, however, this was liberalized so that acknowledgment can be done also in a statement before a court of record or in any authentic writing.[5] Furthermore, these new provisions of the law are made expressly applicable to persons born under the old regime if these are beneficial to them.[6] And, finally, under the Family Code of 1988, even the need for acknowledgment has been dropped, and retroactivity is also provided for, without prejudice to vested rights.[7]

Now, what we are concerned with here are not the civil rights of the person -- whether to support or to succession in the estate. And, as admitted by Fornier's counsel during the oral arguments, violation of vested rights are not presumed but must be proved, which has not been done here. Accordingly, at issue here is simply political status as a citizen, as ably pointed out by amicus curiae Justice Vicente V. Mendoza. Therefore, I hold the view that the

new legislations retroact to benefit Poe, Jr., so that he must be deemed legitimated as of his birth. Since a legitimated child has all the rights of a legitimate child (and here, as stated, we refer only to citizenship), it is clear that, pursuant to the law, not being illegitimate at birth, Poe, Jr. does not follow the citizenship of his mother.

As to the point that such legitimation needed an act after birth, namely, the marriage of the parents, the same would not detract from the concept of a natural-born citizen. For the definition in the Constitution refers to those who are citizens from birth without having to perform any act to acquire or perfect their citizenship (Art. IV, Sec. 2, Constitution). Thus, it speaks of an act having to be done by the child, to acquire or perfect his citizenship, and does not cover acts of his parents.

From this it follows that Fornier's case falls, since he has not proven that Poe, Jr. was not a Filipino citizen at birth, a point that as petitioner he has the burden of showing.

For the nonce, this suffices. The rest of the questions, fortunately or unfortunately, will have to be resolved in an election contest, should one become appropriate in the future, in which the points brilliantly covered by amici curiae Rev. Joaquin G. Bernas, S.J. and Dean Merlin M. Magallona regarding the determination of the citizenship of Poe, Jr.'s father, may find application once the pertinent factual premises shall have been duly presented and established.

I VOTE, THEREFORE, to DISMISS the petitions of Tecson, et al., and Velez for lack of jurisdiction, and to DENY the petition of Fornier for lack of merit.

[1] Board of Immigration Commissioners v. Callano, 25 SCRA 890 (1968); Paa v. Chan, 21 SCRA 753 (1967); Zamboanga Transportation Co. v. Lim, 105 Phil. 1321 (1959); Serra v. Republic, G.R. No. L-4223, May 12, 1952; and United States v. Ong Tianse, 29 Phil. 332 (1915).

[2] Art. 123, Old Civil Code.

[3] Art. 273, New Civil Code.

[4] Art. 131, Old Civil Code.

[5] Art. 278, New Civil Code.

[6] Art. 2253, New Civil Code.

[7] Art. 256, Family Code.

DISSENTING OPINION

CARPIO, J.:

I dissent from the majority opinion.

The Antecedent Proceedings

Petitioner Fornier filed before the Commission on Elections ("Comelec") a "Petition for Disqualification of Presidential Candidate Ronald Allan Kelley Poe a.k.a. Fernando Poe, Jr." on the ground that Fernando Poe, Jr. ("FPJ") is not a natural-born Philippine citizen. The Comelec First Division dismissed the petition, ruling that petitioner failed to present substantial evidence that FPJ committed "any material misrepresentation when he stated in his Certificate of Candidacy that he is a natural-born citizen." On motion for reconsideration, the

Comelec En Banc affirmed the ruling of the First Division. Petitioner Fornier now assails the Comelec En Banc resolution under Rule 64 in relation to Rule 65 of the Rules of Court.

The Undisputed Facts

The undisputed facts are based on two documents and the admission of FPJ. The first document is the Birth Certificate of FPJ, showing he was born on 20 August 1939. The Birth Certificate is an evidence of FPJ.[1] The second document is the Marriage Certificate of Allan F. Poe and Bessie Kelley, showing that their marriage took place on 16 September 1940. The Marriage Certificate is also an evidence of FPJ.[2] Moreover, FPJ admits that his mother Bessie Kelley was an American citizen.[3]

Based on these two documents and admission, the undisputed facts are: (1) FPJ was born out of wedlock and therefore illegitimate,[4] and (2) the mother of FPJ was an American citizen.

The Issues

The issues raised in Fornier's petition are:

(a)

Whether the Court has jurisdiction over the petition to disqualify FPJ as a candidate for President on the ground that FPJ is not a natural-born Philippine citizen;

(b)

Whether FPJ is a natural-born citizen of the Philippines.

Jurisdiction

The Comelec has jurisdiction to determine initially the qualifications of all candidates. Under Section 2(1), Article IX-C of the Constitution, the Comelec has the power and function to "[E]nforce and administer all laws and regulations relative to the conduct of an election." The initial determination of who are qualified to file certificates of candidacies with the Comelec clearly falls within this all-encompassing constitutional mandate of the Comelec. The conduct of an election necessarily includes the initial determination of who are qualified under existing laws to run for public office in an election. Otherwise, the Comelec's certified list of candidates will be cluttered with unqualified candidates making the conduct of elections unmanageable. For this reason, the Comelec weeds out every presidential election dozens of candidates for president who are deemed nuisance candidates by the Comelec.[5]

Section 2(3), Article IX-C of the Constitution also empowers the Comelec to "[D]ecide, except those involving the right to vote, all questions affecting elections x x x." The power to decide "all questions affecting elections" necessarily includes the power to decide whether a candidate possesses the qualifications required by law for election to public office. This broad constitutional power and function vested in the Comelec is designed precisely to avoid any situation where a dispute affecting elections is left without any legal remedy. If one who is obviously not a natural-born Philippine citizen, like Arnold Schwarzenegger, runs for President, the Comelec is certainly not powerless to cancel the certificate of candidacy of such candidate. There is no need to wait until after the elections before such candidate may be disqualified.

Under Rule 25 on "Disqualification of Candidates" of the Comelec Rules of Procedure, a voter may question before the Comelec the qualifications of any candidate for public office. Thus, Rule 25 provides:

Section 1. Grounds for Disqualification. — Any candidate who does not possess all the qualifications of a candidate as provided for by the Constitution or by existing law or who commits any act declared by law to be

grounds for disqualification may be disqualified from continuing as a candidate.

Section 2. Who May File Petition for Disqualification. — Any citizen of voting age, or duly registered political party, organization or coalition of political parties may file with the Law Department of the Commission a petition to disqualify a candidate on grounds provided by law. (Emphasis supplied)

The Comelec adopted its Rules of Procedure pursuant to its constitutional power to promulgate its own rules of procedure^[6] to expedite the disposition of cases or controversies falling within its jurisdiction.

The Comelec has ruled upon the qualifications of candidates, even if the Constitution provides that some other body shall be the “sole judge” of the qualifications of the holders of the public offices involved. The Court has upheld the jurisdiction of Comelec to issue such rulings,^[7] even when the issue is the citizenship of a candidate.^[8] Thus, the Comelec has jurisdiction to determine initially if FPJ meets the citizenship qualification to run for President.

However, the Comelec En Banc, in its scanty resolution, failed to state the factual bases of its ruling. The Comelec En Banc also failed to rule conclusively on the issue presented – whether FPJ is a natural-born Philippine citizen. The Comelec En Banc affirmed the First Division ruling that “[W]e feel we are not at liberty to finally declare whether or not the respondent is a natural-born citizen.” In short, the Comelec En Banc allowed a candidate for President to run in the coming elections without being convinced that the candidate is a natural-born Philippine citizen. Clearly, the Comelec En Banc acted with grave abuse of discretion. Under Section 1, Article VIII, as well as Section 5, Article VIII, of the Constitution, the Court has jurisdiction to hear and decide the issue in a petition for certiorari under Rule 64 in relation to Rule 65.

To hold that the Court acquires jurisdiction to determine the qualification of a candidate for President only after the elections would lead to an absurd situation. The Court would have to wait for an alien to be elected on election day before he could be disqualified to run for President. If the case is not decided immediately after the election, an alien who wins the election may even assume office as President before he is finally disqualified. Certainly, this is not what the Constitution says when it provides that “[N]o person may be elected President unless he is a natural-born citizen of the Philippines.”^[9] The clear and specific language of the Constitution prohibits the election of one who is not a natural-born citizen. Thus, the issue of whether a candidate for President is a natural-born Philippine citizen must be decided before the election.

Governing Laws

Since FPJ was born on 20 August 1939, his citizenship at the time of his birth depends on the Constitution and statutes in force at the time of his birth.^[10] FPJ’s citizenship at the time of his birth in 1939, applying the laws in force in 1939, determines whether he is a natural-born Philippine citizen.

Natural-born Philippine citizens are “those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship.”^[11] If a person has to perform an act, such as proving in an administrative or judicial proceeding, that an event subsequent to his birth transpired thus entitling him to Philippine citizenship, such person is not a natural born citizen.^[12]

The 1935 Constitution and the Spanish Civil Code, the laws in force in 1939, are the governing laws that determine whether a person born in 1939 is a Philippine citizen at the time of his birth in 1939. Any subsequent legislation cannot change the citizenship at birth of a person born in 1939 because such legislation would violate the constitutional definition of a natural-born citizen as one who is a Philippine citizen from birth. In short, one who is not a Philippine citizen at birth in 1939 cannot be declared by subsequent legislation a natural-born citizen.

General Principles

A legitimate child of a Filipino father follows the citizenship of the father. A child born within wedlock is presumed to be the son of the father^[13] and thus carries the blood of the father. Under the doctrine of *jus sanguinis*, as provided for in Section 1(3), Article III of the 1935 Constitution, a legitimate child, by the fact of legitimacy, automatically follows the citizenship of the Filipino father.

An illegitimate child, however, enjoys no presumption at birth of blood relation to any father unless the father acknowledges the child at birth.^[14] The law has always required that “in all cases of illegitimate children, their filiation must be duly proved.”^[15] The only legally known parent of an illegitimate child, by the fact of illegitimacy, is the mother of the child who conclusively carries the blood of the mother. Thus, unless the father acknowledges the illegitimate child at birth, the illegitimate child can only acquire the citizenship of the only legally known parent - the mother.

However, if the Filipino father is legally known because the filiation (blood relation of illegitimate child to the father) of the child to the Filipino father is established in accordance with law, the child follows the citizenship of the Filipino father. This gives effect, without discrimination between legitimate and illegitimate children, to the provision of the 1935 Constitution that “[T]hose whose fathers are citizens of the Philippines”^[16] are Philippine citizens.

Nature of Citizenship

If the Filipino father acknowledges the illegitimate child at birth, the child is a natural-born Philippine citizen because no other act after his birth is required to acquire or perfect his Philippine citizenship. The child possesses all the qualifications to be a Philippine citizen at birth.

If the Filipino father acknowledges the child after birth, the child is a Philippine citizen as of the time of the acknowledgment. In this case, the child does not possess all the qualifications to be a Philippine citizen at birth because an act - the acknowledgement of the Filipino father - is required for the child to acquire or perfect his Philippine citizenship. Statutory provisions on retroactivity of acknowledgment cannot be given effect because they would be contrary to the constitutional definition of natural- born citizens as those who are Philippine citizens at birth without having to perform any act to acquire or perfect their Philippine citizenship.

If the illegitimacy of a child is established, there is no presumption that the child has the blood of any man who is supposed to be the father. There is only a conclusive presumption that the child has the blood of the mother. If an illegitimate child claims to have the blood of a man who is supposed to be the child’s father, such blood relation must be established in accordance with proof of filiation as required by law.

Where the illegitimate child of an alien mother claims to follow the citizenship of the putative father, the burden is on the illegitimate child to establish a blood relation to the putative Filipino father since there is no presumption that an illegitimate child has the blood of the putative father. Even if the putative father admits paternity after the birth of the illegitimate child, there must be an administrative or judicial approval that such blood relation exists upon proof of paternity as required by law.

Citizenship, being a matter of public and State interest, cannot be conferred on an illegitimate child of an alien mother on the mere say so of the putative Filipino father. The State has a right to examine the veracity of the claim of paternity. Otherwise, the grant of Philippine citizenship to an illegitimate child of an alien mother is left to the sole discretion of the putative Filipino father. For example, a Philippine citizen of Chinese descent can simply claim that he has several illegitimate children in China. The State cannot be required to grant Philippine passports to these supposed illegitimate children born in China of Chinese mothers just because the putative Filipino father acknowledges paternity of these illegitimate children. There must be either an administrative or

judicial determination that the claim of the putative Filipino father is true.

The case of the illegitimate Vietnamese children, born in Vietnam of Vietnamese mothers and allegedly of Filipino fathers, is illustrative. These children grew up in Vietnam, many of them studying there until high school. These children grew up knowing they were Vietnamese citizens. In 1975, a Philippine Navy vessel brought them, together with their Vietnamese mothers, to the Philippines as Saigon fell to the communists. The mothers of these children became stateless when the Republic of (South) Vietnam ceased to exist in 1975. The Department of Justice rendered Opinion No. 49 dated 3 May 1995 that being children of Filipino fathers, these Vietnamese children, even if illegitimate, are Philippine citizens under Section 1(3), Article IV of the 1935 Constitution and Section 1(2), Article III of the 1973 Constitution. This Opinion is cited by FPJ as basis for his claim of being a natural-born Philippine citizen.[17] However, this Opinion categorically stated that before the illegitimate Vietnamese children may be considered Filipino citizens “it is necessary in every case referred to that such paternity be established by sufficient and convincing documentary evidence.”[18]

In short, the illegitimate child must prove to the proper administrative or judicial authority the paternity of the alleged Filipino father by “sufficient and convincing documentary evidence.” Clearly, an administrative or judicial act is necessary to confer on the illegitimate Vietnamese children Philippine citizenship. The mere claim of the illegitimate child of filiation to a Filipino father, or the mere acknowledgment of the alleged Filipino father, does not automatically confer Philippine citizenship on the child. The State must be convinced of the veracity of such claim and approve the same. Since the illegitimate Vietnamese children need to perform an act to acquire or perfect Philippine citizenship, they are not natural-born Philippine citizens. They become Philippine citizens only from the moment the proper administrative or judicial authority approve and recognize their filiation to their alleged Filipino fathers.

The rationale behind requiring that only natural-born citizens may hold certain high public offices[19] is to insure that the holders of these high public offices grew up knowing they were at birth citizens of the Philippines. In their formative years they knew they owed from birth their allegiance to the Philippines. In case any other country claims their allegiance, they would be faithful and loyal to the Philippines of which they were citizens from birth. This is particularly true to the President who is the commander-in-chief of the armed forces.[20] The President of the Philippines must owe, from birth, allegiance to the Philippines and must have grown up knowing that he was a citizen of the Philippines at birth. The constitutional definition of a natural-born Philippine citizen would lose its meaning and efficacy if one who was at birth recognized by law as an alien were declared forty years later[21] a natural-born Philippine citizen just because his alleged Filipino father subsequently admitted his paternity.

Proof of Filiation

Article 131[22] of the Spanish Civil Code, the law in force in 1939, recognized only the following as proof of filiation of a natural child:

- acknowledgment in a record of birth;
- acknowledgment in a will;
- acknowledgment in some other public document.

To establish his Philippine citizenship at birth, FPJ must present either an acknowledgement in a record of birth, or an acknowledgment in some other public document executed at the time of his birth. An acknowledgment executed after birth does not make one a citizen at birth but a citizen from the time of such acknowledgment since the acknowledgment is an act done after birth to acquire or perfect Philippine citizenship.

After the birth of one who is not a natural-born Philippine citizen, a subsequent legislation liberalizing proof of

filiation cannot apply to such person to make him a natural-born citizen. A natural-born Philippine citizen is expressly defined in the Constitution as one who is a citizen at birth. If a person is not a citizen at birth, no subsequent legislation can retroactively declare him a citizen at birth since it would violate the constitutional definition of a natural-born citizen.

Burden of Proof

Any person who claims to be a citizen of the Philippines has the burden of proving his Philippine citizenship. Any person who claims to be qualified to run for President because he is, among others, a natural-born Philippine citizen, has the burden of proving he is a natural-born citizen. Any doubt whether or not he is natural-born citizen is resolved against him. The constitutional requirement of a natural-born citizen, being an express qualification for election as President, must be complied with strictly as defined in the Constitution. As the Court ruled in *Paa v. Chan*: [23]

It is incumbent upon a person who claims Philippine citizenship to prove to the satisfaction of the Court that he is really a Filipino. No presumption can be indulged in favor of the claimant of Philippine citizenship, and any doubt regarding citizenship must be resolved in favor of the State.

Since the undisputed facts show that FPJ is an illegitimate child, having been born out of wedlock, the burden is on FPJ to prove his blood relation to his alleged Filipino father. An illegitimate child enjoys no presumption of blood relation to any father. Such blood relationship must be established in the appropriate proceedings in accordance with law.

Private party litigants cannot stipulate on the Philippine citizenship of a person because citizenship is not a private right or property, but a matter of public and State interest. Even if petitioner Fornier admits that FPJ, although illegitimate, is the son of Allan F. Poe, such admission cannot bind the State for the purpose of conferring on FPJ the status of a natural-born Philippine citizen or even of a naturalized citizen. Certainly, the Court will not recognize a person as a natural-born Philippine citizen just because the private party litigants have admitted or stipulated on such a status. In the present case, the Solicitor General, as representative of the Government, is strongly disputing the status of FPJ as a natural-born Philippine citizen.

Legitimation

Under Article 123[24] of the Spanish Civil Code, legitimation took effect as of the date of marriage. There was no retroactivity of the effects of legitimation on the rights of the legitimated child. Thus, a legitimated child acquired the rights of a legitimate child only as of the date of marriage of the natural parents. Allan F. Poe and Bessie Kelley were married on 16 September 1940 while FPJ was born more than one year earlier on 20 August 1939. Assuming that Allan F. Poe was FPJ's natural father, the effects of legitimation did not retroact to the birth of FPJ on 20 August 1939.

Besides, legitimation vests only civil, not political rights, to the legitimated child. As the Court held in *Ching Leng*: [25]

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

Clearly, even assuming that the marriage of Allan F. Poe and Bessie Kelley legitimated FPJ, such legitimation did not vest retroactively any civil or political rights to FPJ.

Treaty of Paris of 1898 and Philippine Bill of 1902

FPJ admits that his grandfather, Lorenzo Pou, was a Spanish citizen who came to the Philippines from Spain.[26] To benefit from the mass naturalization under the Treaty of Paris of 1898 and the Philippine Bill of 1902, FPJ must prove that Lorenzo Pou was an inhabitant and resident of the Philippines on 11 April 1899. Once it is established that Lorenzo Pou was an inhabitant and resident of the Philippines on 11 April 1899, then he is presumed to have acquired Philippine citizenship under the Treaty of Paris of 1898 and the Philippine Bill of 1902.[27] Being an inhabitant and resident of the Philippines on 11 April 1899 is the determinative fact to fall under the coverage of the Treaty of Paris of 1898 and the Philippine Bill of 1902.[28]

There is, however, no evidence on record that Lorenzo Pou was a Philippine inhabitant and resident on 11 April 1899. The date of arrival of Lorenzo Pou in the Philippines is not known. If he arrived in the Philippines after 11 April 1899, then he could not benefit from the mass naturalization under the Treaty of Paris of 1898 and the Philippine Bill of 1902. There is also no evidence that Lorenzo Pou was naturalized as a Philippine citizen after 11 April 1899. Thus, there can be no presumption that Lorenzo Pou was a Philippine citizen.

There is also no evidence on record that Allan F. Poe, the son of Lorenzo Pou and the alleged father of FPJ, was naturalized as a Philippine citizen. Thus, based on the evidence adduced there is no legal basis for claiming that Allan F. Poe is a Philippine citizen. Nevertheless, there is no need to delve further into this issue since the Court can decide this case without determining the citizenship of Lorenzo Pou and Allan F. Poe. Whether or not Lorenzo Pou and Allan F. Poe were Philippine citizens is not material in resolving whether FPJ is a natural-born Philippine citizen.

Convention on the Rights of the Child

The Philippines signed the Convention on the Rights of the Child on 26 January 1990 and ratified the same on 21 August 1990. The Convention defines a child to mean “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.” Obviously, FPJ cannot invoke the Convention since he is not a child as defined in the Convention, and he was born half a century before the Convention came into existence. FPJ’s citizenship at birth in 1939 could not in any way be affected by the Convention which entered into force only on 2 September 1990.

The Convention has the status of a municipal law[29] and its ratification by the Philippines could not have amended the express requirement in the Constitution that only natural-born citizens of Philippines are qualified to be President. While the Constitution apparently favors natural-born citizens over those who are not, that is the explicit requirement of the Constitution which neither the Executive Department nor the Legislature, in ratifying a treaty, could amend. In short, the Convention cannot amend the definition in the Constitution that natural-born citizens are “those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship.”

In any event, the Convention guarantees a child “the right to acquire a nationality,”[30] and requires States Parties to “ensure the implementation” of this right, “in particular where the child would otherwise be stateless.”[31] Thus, as far as nationality or citizenship is concerned, the Convention guarantees the right of the child to acquire a nationality so that he may not be stateless. The Convention does not guarantee a child a citizenship at birth, but merely “the right to acquire a nationality” in accordance with municipal law. When FPJ was born in 1939, he was apparently under United States law an American citizen at birth.[32] After his birth FPJ also had the right to acquire Philippine citizenship by proving his filiation to his alleged Filipino father in accordance with Philippine law. At no point in time was FPJ in danger of being stateless. Clearly, FPJ cannot invoke the Convention to claim he is a natural-born Philippine citizen.

The Doctrine in Ching Leng v. Galang

The prevailing doctrine today is that an illegitimate child of a Filipino father and an alien mother follows the citizenship of the alien mother as the only legally known parent. The illegitimate child, even if acknowledged and legally adopted by the Filipino father, cannot acquire the citizenship of the father. The Court made this definitive doctrinal ruling in *Ching Leng v. Galang*,^[33] which involved the illegitimate minor children of a naturalized Filipino of Chinese descent with a Chinese woman, Sy An. The illegitimate children were later on jointly adopted by the naturalized Filipino and his legal wife, So Buan Ty.

The facts in *Ching Leng* as quoted by the Court from the trial court's decision are as follows:

After the petitioner Ching Leng Alias Ching Ban Lee obtained judgment in this Court dated May 2, 1950 granting his petition for naturalization, he together with his wife So Buan Ty filed another petition also in this Court in Special Proc. No. 1216 for the adoption of Ching Tiong Seng, Ching Liong Ding, Victoria Ching Liong Yam, Sydney Ching and Ching Tiong An, all minors and admittedly the illegitimate children of petitioner Ching Leng with one Sy An, a Chinese citizen. Finding the petition for adoption proper, this Court granted the same in a decision dated September 12, 1950, declaring the said minors free from all legal obligations of obedience and maintenance with respect to their mother Sy An and to all legal intents and purposes the children of the adopter Ching Leng alias Ching Ban Lee and So Buan Ty with all the legal rights and obligations provided by law.

On September 29, 1955, Ching Leng took his oath of allegiance and became therefore a full pledge (sic) Filipino citizen. Believing now that his adopted illegitimate children became Filipino citizens by virtue of his naturalization, petitioner Ching Leng addressed a communication to the respondent Commissioner of Immigration requesting that the alien certificate of registration of the said minors be cancelled. (Bold underscoring supplied)

In *Ching Leng*, the Court made a definitive ruling on the meaning of “minor child or children” in Section 15 of the Naturalization Law,^[34] as well as the meaning of children “whose parents are citizens of the Philippines” under the Constitution. The Court categorically ruled that these children refer to legitimate children only, and not to illegitimate children. Thus, the Court held:

It is claimed that the phrases “minor children” and “minor child”, used in these provisions, include adopted children. The argument is predicated upon the theory that an adopted child is, for all intents and purposes, a legitimate child. Whenever, the word “children” or “child” is used in statutes, it is generally understood, however, to refer to legitimate children, unless the context of the law and its spirit indicate clearly the contrary. Thus, for instance, when the Constitution provides that “those whose parents are citizens of the Philippines,” and “those whose mothers are citizens of the Philippines,” who shall elect Philippine citizenship “upon reaching the age of majority”, are citizens of the Philippines (Article IV, Section 1, subdivisions 3 and 4), our fundamental law clearly refers to legitimate children (*Chiong Bian vs. De Leon*, 46 Off. Gaz., 3652-3654; *Serra v. Republic*, L-4223, May 12, 1952).

Similarly, the children alluded to in said section 15 are those begotten in lawful wedlock, when the adopter, at least is the father. In fact, illegitimate children are under the parental authority of the mother and follow her nationality, not that of the illegitimate father (*U.S. vs. Ong Tianse*, 29 Phil. 332, 335-336; *Santos Co vs. Gov't of the Philippines*, 52 Phil. 543, 544; *Serra v. Republic*, supra; *Gallofin v. Ordoñez*, 70 Phil. 287; *Quimsuan vs. Republic*, L-4693, Feb. 16, 1953). Although, adoption gives “to the adopted person the same rights and duties as if he were a legitimate child of the adopter”, pursuant to said Article 341 of our Civil Code, we have already seen that the rights therein alluded to are merely those enumerated in Article 264, and do not include the acquisition of the nationality of the adopter.

Moreover, as used in said section 15 of the Naturalization Law, the term “children” could not possibly refer to

those whose relation to the naturalized person is one created by legal fiction, as, for instance, by adoption, for, otherwise, the place and time of birth of the child would be immaterial. The fact that the adopted persons involved in the case at bar are illegitimate children of appellant Ching Leng does not affect substantially the legal situation before us, for, by legal fiction, they are now being sought to be given the status of legitimate children of said appellant, despite the circumstance that the Civil Code of the Philippine does not permit their legitimation. (Bold underscoring supplied)

Ching Leng, penned by Justice Roberto Concepcion in October 1958, was a unanimous decision of the Court En Banc. Subsequent Court decisions, including *Paa v. Chan*[35] and *Morano et al. v. Vivo*,[36] have cited the doctrine laid down in Ching Leng that the provision in the 1935 Constitution stating “those whose fathers are citizens of the Philippines” refers only to legitimate children. When the 1973 and 1987 Constitutions were drafted, the framers did not attempt to change the intent of this provision, even as they were presumably aware of the Ching Leng doctrine.

Nevertheless, I believe that it is now time to abandon the Ching Leng doctrine. The inexorable direction of the law, both international and domestic in the last 100 years, is to eliminate all forms of discrimination between legitimate and illegitimate children. Where the Constitution does not distinguish between legitimate and illegitimate children, we should not also distinguish, especially when private rights are not involved as in questions of citizenship. Abandoning the Ching Leng doctrine upholds the equal protection clause of the Constitution. Abandoning the Ching Leng doctrine is also in compliance with our treaty obligation under the Covenant on the Rights of Children mandating States Parties to eliminate all forms of discrimination based on the status of children, save of course those distinctions prescribed in the Constitution itself like the reservation of certain high public offices to natural-born citizens.

Abandoning the Ching Leng doctrine does not mean, however, that an illegitimate child of a Filipino father and an alien mother automatically becomes a Philippine citizen at birth. We have repeatedly ruled that an illegitimate child does not enjoy any presumption of blood relation to the alleged father until filiation or blood relation is proved as provided by law.[37] Article 887 of the Civil Code expressly provides that “[I]n all cases of illegitimate children, their filiation must be duly proved.” The illegitimate child becomes a Philippine citizen only from the time he establishes his blood relation to the Filipino father. If the blood relation is established after the birth of the illegitimate child, then the child is not a natural-born Philippine citizen since an act is required after birth to acquire or perfect his Philippine citizenship.

Conclusion

In conclusion, private respondent Fernando Poe, Jr. is not a natural-born Philippine citizen since there is no showing that his alleged Filipino father Allan F. Poe acknowledged him at birth. The Constitution defines a natural-born citizen as a Philippine citizen “from birth without having to perform any act to acquire or perfect” his Philippine citizenship. Private respondent Fernando Poe, Jr. does not meet this citizenship qualification.

Therefore, I vote to grant the petition of Victorino X. Fornier. However, I vote to dismiss the petitions of Maria Jeanette C. Tecson, Felix B. Desiderio, Jr. and Zoilo Antonio Velez on the ground that their direct petitions invoking the jurisdiction of the Court under Section 4, paragraph 7, Article VII of the Constitution are premature, there being no election contest in this case.

[1] FPJ’s Memorandum before the Comelec dated 4 February 2004, pp. 2-3.

[2] *Ibid.*, pp. 4-5.

- [3] FPJ's Answer before the Comelec dated 16 January 2004, pp. 5 and 21.
- [4] Article 108, Spanish Civil Code; Article 255, New Civil Code; Article 165, Family Code.
- [5] Section 69 of Batas Pambansa Blg. 881 and Section 5 of Republic Act No. 6646. See *Bautista v. Commission on Elections*, 359 Phil. 1 (1998); *Fernandez v. Fernandez, et al.*, 146 Phil. 605 (1970).
- [6] Section 6, Article IX-A and Section 3, Article IX-C of the Constitution.
- [7] *Romualdez Marcos v. Comelec*, G.R. No. 119976, 13 September 1995, 248 SCRA 300; *Aquino v. Comelec*, 130 Phil. 275 (1968).
- [8] *Frivaldo v. Comelec*, G.R. No. 8793, 23 June 1989, 174 SCRA 245.
- [9] Section 2, Article VII of the Constitution.
- [10] *United States v. Lim Bin*, 36 Phil. 924 (1917); *Tan Chong v. Secretary of Labor*, 79 Phil. 249 (1947).
- [11] Section 2, Article IV of the 1987 Constitution; Section 4, Article III of the 1973 Constitution.
- [12] The only exception is that specified in Section 1(3), Article IV of the 1987 Constitution, which means that there can be no other exception to this rule.
- [13] See note 4.
- [14] *Sebbano v. Aragon*, 22 Phil. 10 (1912).
- [15] Article 887, New Civil Code.
- [16] Section 1(3), Article III of the 1935 Constitution.
- [17] *Supra*, note 3 at pp. 8-9.
- [18] Department of Justice Opinion No. 49 dated 3 May 1995.
- [19] Section 2, Article VIII of the 1987 Constitution.
- [20] Under the United States Constitution, the President, who is the commander-in-chief of the armed forces, is required to be a natural-born citizen. The rationale for this is to insure that no foreigner or former foreigner becomes the commander-in-chief of the armed forces. This is culled from John Jay's letter to George Washington when the qualifications for President of the United States were being discussed in the constitutional convention. See Jill A. Pryor, *The Natural-Born Citizen Clause and Presidential Eligibility: An Approach for Resolving Two Hundred Years of Uncertainty*, *Yale Law Review*, April 1988.
- [21] Under Section 2, Article VII of the 1987 Constitution, the minimum age requirement to run for President is forty years of age.
- [22] Article 131 of the Spanish Civil Code provides: "The acknowledgment of a natural child must be made in the record of birth, in a will, or in some other public document."
- [23] 128 Phil. 815 (1967).
- [24] Article 123 of the Spanish Civil Code provides: "Legitimation shall produce its effects in any case from the date of the marriage."
- [25] No. L-11931, 27 October 1958, 104 Phil. 1058 (unreported).

[26] Supra, note 3 at p. 14.

[27] Article IX, Treaty of Paris, 10 December 1898; Section 4, Philippine Bill of 1902.

[28] Ibid.

[29] Emerald Garments Manufacturing Corp. v. Court of Appeals, G.R. No. 100098, 29 December 1995, 251 SCRA 600.

[30] Paragraph 1, Article 7, Convention on the Rights of the Child.

[31] Paragraph 2, *ibid.*

[32] See Daniel Levy, U.S. Citizenship and Naturalization Handbook, December 2003, stating in Chapter 4:

4:29. OUT-OF-WEDLOCK CHILDREN

Out-of-wedlock children born to a U.S. citizen mother between May 24, 1934 and January 13, 1941, acquired U.S. citizenship at birth through the general provision of the 1934 act, which granted U.S. citizenship to children born abroad to a U.S. citizen parent. Since the natural father in such cases is not considered the legal father, the retention requirement when one parent is a non-citizen does not apply. The citizenship acquired under this provision is not affected by subsequent legitimation of the child.

[33] Supra, note 25.

[34] Section 15 of the Naturalization Law provided as follows:

Minor children of persons naturalized under this law who have been born in the Philippines shall be considered citizens thereof.

A foreign-born minor child, if dwelling in the Philippines at the time of the naturalization of the parent, shall automatically become a Philippine citizen, and a foreign-born minor child, who is not in the Philippines at the time the parent is naturalized, shall be deemed a Philippine citizen only during his minority, unless he begins to reside permanently in the Philippines when still a minor, in which case, he will continue to be a Philippine citizen even after becoming of age.

A child born outside of the Philippines after the naturalization of his parent, shall be considered a Philippine citizen, unless within one year after reaching the age of majority, he fails to register himself as a Philippine citizen at the American Consulate of the country where he resides, and to take the necessary oath of allegiance.

[35] Supra, note 23.

[36] 128 Phil. 923 (1967).

[37] Reyes, et al. v. CA, et. al., 220 Phil. 116 (1985); Colorado v. Court of Appeals, G.R. No. L-39948, 28 February 1985, 135 SCRA 47; Berciles, et al. v. GSIS, et al., 213 Phil. 48 (1984); Divinagracia v. Rovira, G.R. No. L-42615, 10 August 1976, 72 SCRA 307; Noble v. Noble, 125 Phil. 123 (1966); Rep. of the Phils. v. WCC and Espiritu, 121 Phil. 261 (1965); Paulino v. Paulino, G.R. No. L-15091, 28 December 1961, 3 SCRA 730.

DISSENTING OPINION

CARPIO MORALES, J.:

The Constitution, in unmistakable terms, declares that –

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

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

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

This Court is once again mandated to interpret the law and apply it to breathe life to its language and give expression to its spirit in the context of real facts. In the present controversy which brings to fore the real import of the Constitutional imposition that a candidate for President of the Philippines must be a natural-born Filipino, it is specifically tasked to craft a rule of law that will govern the determination of one’s citizenship in all cases, now and in the future, without regard for whoever are the personalities involved.

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

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

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

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

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

- (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;
- (2) Those whose fathers or mothers are citizens of the Philippines;
- (3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and

(4) Those who are naturalized in accordance with the law.

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

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

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

in relation to Section 74 thereof:

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

x x x (Emphasis supplied)

Statement of the Case

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

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

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

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

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

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

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

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

On January 22, 2004, petitioners Tecson and Desiderio, Jr. filed their Petition (With Application for Writ of Preliminary Injunction and/or Restraining Order)[18] with this Court questioning the jurisdiction of the COMELEC over the Petition for Disqualification. In their petition, Tecson et al. argue that:

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

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

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

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

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

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

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

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

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

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

(6) The purported marriage contract between Allan Fernando Poe and one Paulita Gomez submitted by petitioner Fornier states that he is the son of Lorenzo Poe, a Spaniard. However, by operation of law and upon the cession of the Philippines to the United States of America by Spain, Lorenzo Poe ceased to be a Spaniard and became a citizen of the Philippine Islands and later a citizen of the Philippines. Consequently, Allan Fernando Poe, following the citizenship of his father, was also Filipino.[28]

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

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

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

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

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

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

(b) setting aside and reversing Resolution No. 6558 dated 17 January 2004 issued by public respondent

Comelec, specifically that portion of the dispositive portion which gives due course to the Certificate of Candidacy filed by [FPJ] for the position of President of the Republic of the Philippines;

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

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

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

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

(2) The subsequent marriage of FPJ’s parents did not result in his legitimation since: (1) it has not been shown that he was acknowledged by his parents either before or after their marriage as required by Article 121 of the Spanish Civil Code of 1889; and (2) the procedural requirements for his acknowledgement, whether voluntarily under Article 131 of the Spanish Civil Code or compulsory under Article 135 and 136, have not been complied with.[38]

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

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

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

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

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

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

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

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

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

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

Nevertheless, I respectfully take exception to the conclusion made by the 1st Division that the issue of legitimacy is immaterial in the determination of a person's citizenship. For contrary to said observation, it is the settled rule of our jurisprudence that only a legitimate minor child follows the citizenship of his father. (Chiongbian vs. De Leon, 82 Phil. 771 [1949]; Morano vs. Vivo, 20 SCRA 562 [1967]; Paa vs. Chan, 21 SCRA 753 [1967]; Board of Commissioners (CID) vs. De la Rosa, 197 SCRA 854 [1999]). Settlement of said issue then is crucial in the determination of respondent's citizenship in a direct proceeding before the proper forum.[46] (Emphasis supplied)

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

(1)

It ruled that it had no jurisdiction over the Petition for Disqualification grounded on the lack of an essential qualification of FPJ to be elected President of the Republic of the Philippines;

(2)

It concluded that Lorenzo Pou became a citizen of the Philippine Islands;

(3)

It concluded that Allan F. Poe became a citizen of the Philippine Islands or of the Philippines;

(4)

It concluded that, under the 1935 Constitution, FPJ is a natural-born citizen despite his illegitimacy;

(5)

It concluded that FPJ's Certificate of Candidacy does not contain a material misrepresentation or falsity as to his being a natural-born Filipino citizen;

(6)

It concluded that FPJ should not be declared disqualified to run for President in the May 2004 elections.

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

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

(1) The Supreme Court, acting as the Presidential Electoral Tribunal, may not exercise its jurisdiction as "sole judge" of all contests relating to the qualifications of the President prior to the elections.

(2) Petitioners Tecson et al. and Velez have no standing to seek the review of the questioned COMELEC Resolutions since the Constitution provides that a review of a decision, order or ruling of the COMELEC may be brought by the "aggrieved party,"[50] and petitioners were never parties, much less "aggrieved parties," to the proceedings in the Petition for Disqualification.

(3) Moreover, the issues raised by petitioners Tecson et al. and Velez have already been raised in the Petition for Disqualification.

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

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

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

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

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

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

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

(a)

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

(b)

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

(c)

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

(i)

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

(ii)

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

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

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

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

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

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

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

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

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

(1)

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

(2)

Former Constitutional Commissioner Joaquin G. Bernas

(3)

Former Dean Merlin Magallona; and

(4)

Professor Ruben C. Balane

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

(1)

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

(2)

Whether the Supreme Court has jurisdiction over the petitions of:

i.

petitioners Tecson et al.

ii.

petitioner Velez

iii.

petitioner Fornier

(3)

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

and suggested that:

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

a)

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

b)

the concept of natural-born citizen;

c)

the principle of jus sanguinis;

d)

applicability of international law in resolving problems of citizenship;

e)

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

f)

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

g)

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

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

Issues for Resolution:

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

These issues will be discussed seriatim.

Supreme Court's Jurisdiction Over the
Petitions in G.R. Nos. 161464 and 161634.

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

Sec. 4. x x x

x x x

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

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

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

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

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

and shall forthwith cause the registry lists and all ballots used at such election to be brought before it and examined, and to appoint the necessary officers therefor and to fix their compensation, . . .

xxx xxx xxx

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

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

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

x x x

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

“We think that the statute limits the power of the county court to contests of elections. That court has no other or further jurisdiction than to determine which of the contestants has been duly elected. The question whether

or not a party already elected possesses the necessary qualifications for the office is one which must be determined in another way and by a different proceeding.

“Where it is claimed that such an one unlawfully holds an office by reason of his lack of a legal qualification therefor, his right should be determined by information in the nature of quo warranto in the name of the people of the State.”[57] (Emphasis and underscoring supplied)

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

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

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

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

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

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

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

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

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

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

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

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

x x x

Rule 15. Quo Warranto. – A verified petition for quo warranto contesting the election of the President or Vice-President on the ground of ineligibility or of disloyalty to the Republic of the Philippines may be filed by any voter within ten (10) days after the proclamation of the winner. (Emphasis supplied)

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

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

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

x x x

MR. VILLACORTA:

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

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

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

MR. REGALADO:

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

MR. VILLACORTA:

That is right.

MR. REGALADO:

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

MR. VILLACORTA:

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

FR. BERNAS:

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

So, the background of this is really the case of Roxas vs. Lopez. The Gentleman will remember that in that election, Lopez was declared winner. He filed a protest before the Supreme Court because there was a republic act which created the Supreme Court as the Presidential Electoral Tribunal. The question in this case was whether new powers could be given the Supreme Court by law. In effect, the conflict was actually whether there was an attempt to create two Supreme Courts and the answer of the Supreme Court was: “No, this did not involve the creation of two Supreme Courts, but precisely we are giving new jurisdiction to the Supreme Court, as it is allowed by the Constitution. Congress may allocate various jurisdictions.”

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

x x x (Emphasis and underscoring supplied)

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

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

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

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

The word “contests” should not be given a restrictive meaning; on the contrary, it should receive the widest possible scope conformably to the rule that the words used in the Constitution should be interpreted liberally. As employed in the 1973 Constitution, the term should be understood as referring to any matter involving the title or claim of title to an elective office, made before or after proclamation of the winner, whether or not the

contestant is claiming the office in dispute. Needless to stress, the term should be given a consistent meaning and understood in the same sense under both Section 2(2) and Section 3 of Article XII-C of the Constitution.

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

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

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

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

Supreme Court's Jurisdiction Over
the Petition in G.R. No. 161824.

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

COMELEC's Jurisdiction Over the Subject
Matter of the Petition for Disqualification
Under Section 78 of the Omnibus Election
Code.

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

Omnibus Election Code, to wit:

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

This jurisdiction arises from the COMELEC's powers and functions under paragraphs (1) and (3) of Section 2, Article IX-C of the Constitution: Sect. 2. The Commission on Elections shall exercise the following powers and functions:

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

x x x

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

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

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

x x x

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

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

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

x x x

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

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

x x x (Emphasis supplied)

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

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

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

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

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

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

x x x

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

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

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

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

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

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

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

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

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

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

x x x

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

representations as to material matters in her certificate of candidacy.

Montejo's petition before the COMELEC was therefore not a petition for cancellation of certificate of candidacy under § 78 of the Omnibus Election Code, but essentially a petition to declare private respondent ineligible. It is important to note this, because, as will presently be explained, proceedings under § 78 have for their purpose to disqualify a person from being a candidate, whereas quo warranto proceedings have for their purpose to disqualify a person from holding public office. Jurisdiction over quo warranto proceedings involving members of the House of Representatives is vested in the Electoral Tribunal of that body.[74] (*Emphasis supplied, italics in the original*)

x x x

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

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

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

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

The COMELEC Acted with Grave Abuse
of Discretion in Dismissing the Petition for
Disqualification for Lack of Merit.

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

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

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

Absence of Factual Basis for the
Questioned COMELEC Resolutions

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

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

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

Rule 18. Decisions.

Sec. 1. Procedure in Making Decisions. – xxx

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

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

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

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

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

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

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

No.

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

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

In the alleged marriage contract between Allan Fernando Poe and Paulita Gomez, submitted in evidence by petitioner, it was stated that Lorenzo Poe is the father of Allan Fernando Poe and that he is an "Español." By operation of the foregoing laws, however, Lorenzo Poe, respondent's grandfather, the father of Allan Fernando Poe, had ceased to be a Spanish subject and had become a Filipino citizen. Necessarily, Allan Fernando Poe – Lorenzo Poe's child who was born subsequent to his (Lorenzo's) acquisition of Filipino citizenship – followed his father's citizenship. To dispute that fact, petitioner should have presented proof that Lorenzo Poe intended to preserve his allegiance to the Crown of Spain by making before a court of record, within a year from the date of the exchange of ratifications of the peace treaty, a declaration of his decision to preserve such allegiance. Since there was no such declaration, he should be held to have renounced it and to have adopted the nationality of the territory in which he resides.[83] (Emphasis supplied; italics in the original)

The February 6, 2004 Resolution issued by the COMELEC En Banc which passed upon Fornier's Motion for

Reconsideration of the COMELEC First Division Resolution provides no further elucidation of the operative facts of the Petition for Disqualification. In said Resolution, the COMELEC En Banc redefined the issue to be determined in the Petition as whether FPJ made a deliberate attempt to mislead when he stated that he was a natural-born Philippine citizen in his Certificate of Candidacy:

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

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

We quote, with approval, the position taken by the First Division, thus: “Considering that the evidence presented by the petitioner is not substantial, we declare that the respondent did not commit any material misrepresentation when he stated in his Certificate of Candidacy that he is a natural-born Filipino citizen.”

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

We do not think so.[85]

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

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

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

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

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

x x x Unfortunately, the NLRC did not discuss or give any explanation for holding Naguiat Enterprises and its officers jointly and severally liable in discharging CFTI’s liability for payment of separation pay. We again remind those concerned that decisions, however concisely written, must distinctly and clearly set forth the facts and law upon which they are based. This rule applies as well to dispositions by quasi-judicial and administrative bodies.[89] (Emphasis supplied)

COMELEC’s Jurisdiction to Determine the

Citizenship of a Candidate for Election/
Clarification of the pronouncement in
Salcedo II.

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

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

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

x x x

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

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

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

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

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

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

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

It is apparent then that the COMELEC avoided ruling squarely, one way or the other, on the issue of FPJ's citizenship. Considering that Section 74 of the Omnibus Election Code requires that a candidate must state under

oath that he is eligible for the office for which he is announcing his candidacy and that Section 2, Article VII of the Constitution clearly provides that “[n]o person may be elected President unless he is a natural-born citizen of the Philippines,” it was the duty of the COMELEC in the Petition for Disqualification to determine, on the basis of the evidence adduced, whether FPJ is in fact a “natural-born Filipino citizen.” In resolving to dismiss the Petition without performing this duty, the COMELEC clearly acted with grave abuse of discretion.

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

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

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

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

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

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

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

Petitioner has made no allegations concerning private respondent’s qualifications to run for the office of mayor. Aside from his contention that she made a misrepresentation in the use of the surname “Salcedo,” petitioner does not claim that private respondent lacks the requisite residency, age, citizenship or any other

legal qualification necessary to run for a local elective office as provided for in the Local Government Code. Thus, petitioner has failed to discharge the burden of proving that the misrepresentation allegedly made by private respondent in her certificate of candidacy pertains to a material matter.

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

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

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

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

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

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

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

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

It is the fact of residence, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the constitution’s residency qualification requirement.

The said [false] statement becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. It would be plainly ridiculous for a candidate to deliberately and knowingly make a statement in a certificate of candidacy which would lead to his or her disqualification.[103] (Emphasis and underscoring supplied)

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

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

Philippine Citizenship as Conferred by the Constitution.

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

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

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

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

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

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

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

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

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

In the Philippines, citizenship is essential not only for the exercise of political rights[108] and the right to hold

public office,[109] but for the exercise of a number of important economic privileges which the Constitution reserves exclusively to Philippine citizens as well.[110] A comparison of the 1935, 1973 and present 1987 Constitution shows that a number of economic privileges reserved exclusively to Philippine citizens has increased over time.

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

Philippine Citizenship as Conferred by the Constitution.

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

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

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

ARTICLE IV

Citizenship

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

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

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

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

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

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

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

ARTICLE IV

CITIZENSHIP

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

(1)

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

(2)

Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

(3)

Those whose fathers are citizens of the Philippines.

(4)

Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

(5)

Those who are naturalized in accordance with law.

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

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

x x x It should be noted, however, that the 1973 and 1987 Constitutional provisions on the election of Philippine citizenship should not be understood as having a curative effect on any irregularity in the acquisition of citizenship for those covered by the 1935 Constitution. If the citizenship of a person was subject to challenge under the old charter, it remains subject to challenge under the new charter even if the judicial challenge had not been commenced before the effectivity of the new Constitution.[117] (Emphasis and underscoring supplied).

Prior to the ratification of the 1935 Constitution, citizenship of the Philippine Islands was governed by the principal organic acts by which the United States governed the country. These were the Philippine Bill of July 1, 1902 and the Philippine Autonomy Act of August 29, 1916, also known as the Jones Law. Both of these organic acts make reference to the Treaty of Paris of December 10, 1898 by which Spain ceded the Philippine Islands to the United States. Article IX of the Treaty of Paris provided for effects of the change in sovereignty on citizenship status in the Philippine Islands:

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

which they may reside.

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

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

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

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

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

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

The Jones Law, on the other hand, provides:

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

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

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

(1)

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

(2)

Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution had been elected to public office in the Philippine Islands.

(3)

Those whose fathers are citizens of the Philippines.

(4)

Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

(5)

Those who are naturalized in accordance with law.

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

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

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

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

nor by that of the United States could the petitioner be regarded as a Filipino subject. By absenting himself from the territory he continued to be a Spaniard.

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

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

The petitioner can not, therefore, be considered to have lost his Spanish nationality by reason of his residence in the territory after the 11th of October, 1900, and his failure to make declaration of his intention to preserve it within the period agreed upon by the high contracting parties to the treaty of Paris, and to have adopted the nationality of the native subjects under the presumption arising from the conditions expressed. He can only acquire it through voluntary renunciation of his present nationality by seeking to become naturalized in these Islands; but upon this matter this court can decide nothing, there having been no legislation upon the subject up to the present.[122] (Emphasis and underscoring supplied)

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

requisites prevented them from becoming citizens of the Philippine Islands.

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

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

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

x x x

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

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

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

With the additional evidence submitted by respondent pursuant to the authority granted by this Court, the

forementioned void in the proof of respondent's citizenship has been duly filled.

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

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

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

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

Under both organic acts, all inhabitants of the Philippines who were Spanish subjects on April 11, 1899 and resided therein including their children are deemed to be Philippine citizens. Private respondent's father, Telesforo Ybasco, was born on January 5, 1879 in Daet, Camarines Norte, a fact duly evidenced by a certified true copy of an entry in the Registry of Births. Thus, under the Philippine Bill of 1902 and the Jones Law, Telesforo Ybasco was deemed to be a Philippine citizen. By virtue of the same laws, which were the laws in force at the time of her birth, Telesforo's daughter, herein private respondent Rosalind Ybasco Lopez, is likewise a citizen of the Philippines.[127] (Emphasis and underscoring supplied)

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

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

Citizenship of an Illegitimate Child.

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

Petitioner Fornier argues, on the basis of this Court's rulings in *United States v. Ong Tianse*,[129] *Serra v. Republic*,[130] *Zamboanga Transportation Co. v. Lim*,[131] *Board of Immigration v. Gallano*,[132] and *Paa v.*

Chan,[133] that an illegitimate child follows the citizenship of his or her mother, and not that of the illegitimate father. Thus, he concludes, even if the illegitimate child's father is a Filipino, paragraph (3) of Section 1, Article IV of the 1935 Constitution would not operate to confer Philippine citizenship on him or her.

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

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

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

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

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

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

In his Position Paper, Justice Mendoza opines:

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

- A child follows the citizenship of his Filipino father if he is legitimate. If he is not a legitimate child but a natural one, he may be legitimated by the subsequent marriage of his parents provided he is acknowledged by them either before or after the marriage.
- A child born out of wedlock of an alien father and a Filipino mother follows the citizenship of his mother “as the only legally recognized parent.”

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

These cases (*United States v. Ong Tianse*, *supra*; *Serra v. Republic*, *supra*; *Santos Co v. Government of the Philippine Islands*, 52 Phil. 543 (1928); *Ratunil Sy Quimsuan v. Republic*, 92 Phil. 675 (1953), holding that illegitimate children follow the citizenship of their Filipino mothers, involve situations in which the fathers are not Filipinos and the discernible effort of the Court is to trace a blood relation in order to give the illegitimate

child Philippine citizenship. This blood relationship is easily established in the case of the mother as “the only legally recognized parent of the child.” But it would stand the principle on its head to say that the illegitimate child cannot follow the citizenship of the father if it happens and that he is the citizen of the Philippines, while the mother is the alien. Indeed to hold that an illegitimate child follows the citizenship of his Filipino mother but that an illegitimate child does not follow the citizenship of his Filipino father would be to make an invidious discrimination. To be sure this Court has not ruled thus.

To this Fr. Bernas, adds:

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

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

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

x x x

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

The clear conclusion from all these four cases is that their statements to the effect that *jus sanguinis* applies only to legitimate children were all obiter dicta which decided nothing. The Court had purported to offer a solution to a non-existent problem. Obiter dicta do not establish constitutional doctrine even if repeated endlessly. Obiter dicta are not decisions, and non-decisions do not constitute *stare decisis*. They therefore cannot be used to resolve constitutional issues today.

For his part, Dean Magallona states:

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

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

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

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

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

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

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

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

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

Relevance of Legitimacy/Illegitimacy at
Birth/Clarification of Doctrine in *Ong*
Tianse.

Does my foregoing statement render completely irrelevant the pronouncements, whether doctrine or dicta, in

United States v. Ong Tianse[147] and the other cases cited by petitioner Fornier? FPJ and the amici curiae would argue in the affirmative.

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

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

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

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

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

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

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

As noted by the amici curiae, the rights accorded to illegitimate children have steadily progressed through time. Since the Roman Law to the present legal framework of the Family Code, a trend towards affording the nullius filius with more rights is readily apparent. Thus, the law does allow a father to establish his paternity with respect to his illegitimate child and, correspondingly, it also allows the illegitimate child to prove his filiation to his father. Given this, the principle enunciated in United States v. Ong Tianse[151] may be correctly understood to be that an illegitimate child follows the nationality of his legally recognized parent or parents.

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

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

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

(1)

The record of birth appearing in the civil register or a final judgment; or

(2)

An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

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

(1)

The open and continuous possession of the status of a legitimate child; or

(2)

Any other means allowed by the Rules of Court and special laws.

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

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

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

A final note. Parentage will still be resolved using conventional methods unless we adopt the modern and scientific ways available. Fortunately, we have now the facility and expertise in using DNA test for identification and parentage testing. The University of the Philippines Natural Science Research Institute (UP-NSRI) DNA Analysis Laboratory has now the capability to conduct DNA typing using short tandem repeat (STR) analysis. The analysis is based on the fact that the DNA of a child/person has two (2) copies, one copy from the mother and the other from the father. The DNA from the mother, the alleged father and child are analyzed to establish parentage. Of course, being a novel scientific technique, the use of DNA test as evidence is still open to challenge. Eventually, as the appropriate case comes, courts should not hesitate to rule on the admissibility of DNA evidence. For it was said, that courts should apply the results of science when competently obtained in aid of situations presented, since to reject said result is to deny progress. Though it is not necessary in this case to resort to DNA testing, in future it would be useful to all concerned in the prompt resolution of parentage and identity issues. (Emphasis supplied)[155]

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

Natural-born citizenship

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

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

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

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

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

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

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

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

That more high ranking public officials are required to be natural-born Philippine citizens under the present 1987 Constitution than in previous Constitutions may be interpreted to be further measures taken by the Constitutional Commissioners to ensure that the nationalist provisions of the Constitution, political, social and economic, are carried out by men and women who are of unquestionable loyalty to the Philippines, whether in war or in peace. It may be further remarked that this expansion of the requirement of natural-born citizenship to other high public offices may prove prophetic in the context of the increasing importance of global trade and the intensity of global economic competition.

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

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

The spirit of nationalism pervading the 1935 Constitution, the first charter framed and ratified by the Filipinos

(even as the draft had to be approved by President Franklin Delano Roosevelt of the United States) guides and governs the interpretation of Philippine citizenship and the more narrow and bounded concept of being a natural-born citizen.

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

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

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

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

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

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

Justice Mendoza offers a possible solution in his Position Paper:

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

x x x

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

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

Citizenship of FPJ

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

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

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

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

(1)

A certified copy of FPJ's Birth Certificate, certified by V. C. Feliciano, Registration Officer IV of the City Civil Registry Office of Manila, indicating that FPJ was born on August 20, 1939, and that his parents are Bessie Kelley, an American citizen, and Allan F. Poe, allegedly a Filipino citizen. (petitioner's Exhibit "A").

(2)

A certified photocopy of an Affidavit executed on July 13, 1939 by Paulita Poe y Gomez in Spanish, certified by Ricardo L. Manapat of the Records Management and Archives Office, attesting to the fact that she filed a case of bigamy and concubinage against respondent's father, Allan F. Poe, after discovering the latter's bigamous relationship with respondent's mother, Bessie Kelley. (petitioner's Exhibit "B" and "B-1")

(3)

A certified photocopy of the Marriage Contract entered into on July 5, 1936 by and between respondent's father, Allan Fernando Poe and Paulita Gomez, certified by Ricardo L. Manapat of the Records Management and Archives Office, showing that respondent's father is "Español;" and that his parents, Lorenzo Poe and Marta Reyes, were "Español" and "Mestiza Española", respectively. (petitioner's Exhibit "B-2")

(4)

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

(5)

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

(6)

A Certification dated 16 January 2004 issued by Ricardo L. Manapat, Director of the Records Management and Archives Office, certifying that the National Archives does not possess any record of a certain Lorenzo

Poe or Lorenzo Pou residing or entering the Philippines before 1907. (petitioner's Exhibit "D")

(7)

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

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

(1)

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

(2)

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

(3)

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

(4)

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

(5)

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

(6)

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

(7)

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

(8)

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

(9)

A Certification dated January 13, 2004 issued by Lt. Colonel Narciso S. Erna, Assistant Adjutant General of the Armed Forces of the Philippines, showing certain available data regarding Fernando Reyes Poe. (respondent's Exhibit "8")

(10)

Certified copy of an alleged Affidavit for Army Personnel executed by Fernando R. Poe on December 22, 1947, certified by Lt. Colonel Narciso S. Erna, Assistant Adjutant General of the Armed Forces of the Philippines. (respondent's Exhibit "8-A")

(11)

Purported copy of General Order No. 175 allegedly issued by Army Headquarters APO 501 conferring Award of Gold Cross to Fernando Poe. (respondent's Exhibit "9")

(12)

A copy of Memorandum dated January 27, 1951 purportedly issued by S.H. Concepcion of the Office of the Adjutant General, Armed Forces of the Philippines addressed to Lt. Col Conrado Rigor, the latter being the officer tasked by the Armed Forces of the Philippines to present the Gold Cross Medal to the family of the late Captain Fernando Poe. (respondent's Exhibit "10")

(13)

A certified photocopy of the Certificate of Birth of Elizabeth Ann Poe, sister of respondent Poe. (respondent's Exhibit "11")

(14)

A certified photocopy of the Certificate of Birth of Fernando Poe II, of the City Civil Registrar of Manila. (respondent's Exhibit "12")

(15)

Certified photocopy of the original Certificate of Birth of Martha Genevieve Poe, sister of respondent, issued and certified by Gloria C. Pagdilao of the City Civil Registrar of Manila, showing that her nationality is "American." (respondent's Exhibit "13")

(16)

Certified photocopy of the original Certificate of Birth of Baby Poe, brother of respondent, issued and certified by Gloria C. Pagdilao of the City Civil Registrar of Manila. (respondent's Exhibit "14")

(17)

Certified photocopy of the original Certificate of Birth of Evangeline K. Poe, respondent's sister, issued and certified by Gloria C. Pagdilao of the City Civil Registrar of Manila. (respondent's Exhibit "15")

(18)

Copy of Passport No. 11491191 issued on June 25, 2003 in the name of respondent Poe. (respondent's Exhibit "16")

(19)

A photocopy of Transfer Certificate of Title No. 55020 of the Registry of Deeds for Rizal in the name of spouses Jesusa Poe and Ronald Allan Poe. (respondent's Exhibit "17")

(20)

A photocopy of Transfer Certificate of Title No. RT-116312 of the Registry of Deeds for Quezon City in the name of Ronald Allan Poe. (respondent's Exhibit "18")

(21)

A photocopy of Transfer Certificate of Title No. 300533 of the Registry of Deeds for Quezon City in the name of spouses Ronald Allan Poe and Jesusa Sonora. (respondent's Exhibit "19")

(22)

A Declaration of Ruby Kelly Mangahas, sister of the late Bessie Kelly, executed on January 12, 2004 in Stockton, California, U.S.A. notarized before Dorothy Marie Schefflo of San Joaquin County, California, U.S.A., attesting that her nephew, Ronald Allan Poe, is a natural born Filipino and is the legitimate child of Fernando Poe Jr. (respondent's Exhibit "20")

(23)

A certified photocopy of the Marriage Contract entered into by and between respondent's father, "Fernando Pou" and respondent's mother Bessie Kelly on September 16, 1940, certified by Florendo G. Suba, Administrative Officer II of the Civil Registrar of Manila. (respondent's Exhibit "21")

(24)

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

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

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

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

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

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

On further examination, the evidence submitted by the parties, taken together, do not form a coherent and

consistent whole. Indeed, even considered apart from the documents submitted by petitioner Fornier, the documents offered by FPJ are in conflict with each other.

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

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

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

CHIEF JUSTICE:

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

ATTY. FORNIER:

We are willing to agree, Your Honor.

CHIEF JUSTICE

Justice Quisumbing.

JUSTICE QUISUMBING:

A few questions, Mr. Counsel.

CHIEF JUSTICE:

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

ATTY. [FORNIER]:

Yes, Your Honor.

CHIEF JUSTICE:

Atty. Mendoza, do you agree to that?

ATTY. MENDOZA:

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

CHIEF JUSTICE:

But is that a fact?

ATTY. MENDOZA:

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

CHIEF JUSTICE:

But is that a fact?

ATTY. MENDOZA:

No, I cannot agree, Your Honor, please.

CHIEF JUSTICE:

In other words, (interrupted)

ATTY. MENDOZA:

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

CHIEF JUSTICE:

Yes, before you go into that (interrupted)

ATTY. MENDOZA:

That is why if Your Honor please which I regret very much (interrupted)

CHIEF JUSTICE:

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

ATTY. MENDOZA:

I have my turn but I'll have to explain (interrupted)

CHIEF JUSTICE:

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

ATTY. MENDOZA:

No, no, Your Honor please. May I clarify?

CHIEF JUSTICE:

Yes.

ATTY. MENDOZA:

The birth certificate was presented by petitioner Fornier. It was marked as Exhibit "A" and Exhibit "B". Apart from that, if Your Honor please, it was Atty. Fornier who subpoenaed the Civil Registrar of Manila to bring the original of the birth certificate. And the birth certificate was brought to the COMELEC and the certified copies that we used were confirmed as authentic. Now, marriage contract was our evidence and since that was our evidence, I am not conceding that for example, that Bessie Kelly was not necessarily Filipino. The fact that her citizenship is stated in the birth certificate as American does not necessarily preclude that she was also Filipino. Because as a matter of fact I can also prove that is, from information, that Bessie Kelly's mother was a Filipina. Her name was Martha Gatbonton. She was from Candaba, Pampanga. So, there are many facts, if Your Honor please, which I cannot stipulate on this. Because even my client Mr. Poe does not know this, he was just a small boy when his [father] died. So, I regret very much Your Honor please I can go no further but to stipulate on certain documents. But on whether those documents states the truth is something I cannot stipulate on because I would have no basis.

CHIEF JUSTICE:

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

ATTY. MENDOZA:

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

CHIEF JUSTICE:

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

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

CHIEF JUSTICE:

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

PROFESSOR BALANE:

First of all Mr. Chief Justice, I would like to confess that I looked at the pleadings, but I did not go very thoroughly [at] them because I did not have enough time. But my impression now is that [there is] still that requirement of recognition for legitimation I am not sure that the facts as we have them, now amount to a recognition, even if we were to follow the rule laid down in *Tongoy vs. Court of Appeals* that for legitimation,

you do not even need voluntary recognition, but just the continuous possession of a state of a natural child. I am not sure that there is enough evidence to establish [that] at this stage.

CHIEF JUSTICE:

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

PROFESSOR BALANE:

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

CHIEF JUSTICE:

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

PROFESSOR BALANE:

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

CHIEF JUSTICE:

Since evidence would be necessary.

PROFESSOR BALANE:

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

CHIEF JUSTICE:

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

PROFESSOR BALANE:

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

CHIEF JUSTICE:

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

PROFESSOR BALANE:

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

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

(1)

Whether Lorenzo Pou has been established to be a Filipino citizen at the time of the birth of his son, Allan F. Poe;

(2)

Whether Allan F. Poe, the putative father of FPJ was a Filipino at the time of the birth of the latter;

(3)

Whether FPJ is a legitimate or illegitimate child;

(4)

Whether Allan F. Poe has been legally determined to be the father of FPJ;

(5)

Whether FPJ is a natural-born Filipino Citizen.

Citizenship of Lorenzo Pou

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

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

x x x

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

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

Registry number

:

681

Date of Registration

:

September 11, 1954

Name of deceased

:

LORENZO POU

Sex:

:

Male

Age

:

84 yrs old

Civil Status

:

Married

Citizenship

:

Filipino

Date of death

:

September 11, 1954

Place of death

:

San Carlos, Pangasinan

Cause of death

:

Cerebral Hemorrhage,
Hypertensive, heart disease

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

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

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

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

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

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

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

Citizenship of Allan F. Poe at the
time of the Birth of FPJ

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

CERTIFIED PHOTOCOPY:

(Sgd.)

RICARDO L. MANAPAT
RECORDS MANAGEMENT
AND ARCHIVES OFFICE

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

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

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

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

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

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

No evidence appears to have been submitted by FPJ in support of the foregoing allegations. However, even

assuming arguendo that Allan F. Poe was born in the Philippines on November 27, 1916, such fact, per se, would not suffice to prove that he was a citizen of the Philippine Islands absent a showing that he was judicially declared to be a Filipino citizen.

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

It appears that the petitioner in the first case was born in San Pablo, Laguna, in July 1915, of a Chinese father and a Filipino mother, lawfully married, left for China in 1925, and returned to the Philippines on 25 January 1940. The applicant in the second case was born in Jolo, Sulu, on 8 May 1900, of a Chinese father and a Filipino mother. It does not appear whether they were legally married, so in the absence of proof to the contrary they are presumed to be lawfully married. From the date of his birth up to 16 November 1938, the date of the filing of his application for naturalization, and up to the date of hearing, he had been residing in the Philippines. He is married to a Filipino woman and has three children by her. He speaks the local dialect and the Spanish and English languages.

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

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

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

Legitimacy or Illegitimacy of FPJ

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

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

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

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

Bessie Kelley.

Whether Allan F. Poe Has Been
Legally Determined to be the Father
of FPJ

Assuming arguendo that Allan F. Poe has been shown to have acquired Philippine citizenship, whether derived from Lorenzo Pou or through some other means, before the birth of FPJ, this Court now examines FPJ's claim of filiation.

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

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

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

x x x

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

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

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

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

DECLARATION
of
RUBY KELLEY MANGAHAS

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

- I am the sister of the late BESSIE KELLEY POE.
- Bessie Kelley Poe was the wife of FERNANDO POE, SR.
- 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".
- Ronald Allan Poe "FPJ" was born on August 20, 1939 at St. Luke's Hospital, Magdalena St., Manila.

- 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.
- 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.
- 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.
- Fernando Poe, Sr., and my sister, Bessie had their first child in 1938.
- 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.
- Fernando Poe, Sr. and my sister, Bessie, were blessed with four (4) more children after Ronald Allan Poe.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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 12th day of January 2004.

(SIGNED)

RUBY KELLEY MANGAHAS

Declarant,

(Emphasis supplied)

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

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

executed solely to buttress respondent's defense.

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

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

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

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

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

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

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

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

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

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

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

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

Whether FPJ is a natural-born citizen

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

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

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

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

A Final Note

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[57] Id. at 253-256.

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

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

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

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

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

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

[63] 144 SCRA 194 (1986).

[64] Id. at 199.

[65] Id. at 204.

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

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

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

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

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

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

[70] 310 SCRA 546 (1999).

[71] *Id.* at 563.

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

[73] 248 SCRA 300 (1999).

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

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

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

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

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

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

[78] The Petitioner submitted the following material exhibits:

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

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

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

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

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

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

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

Who were citizens of the Philippines then?

- "...all inhabitants of the Philippine Islands continuing to reside, therein, who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Islands..." provided they had not yet lost their citizenship on November 15, 1935.

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

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

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

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

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

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

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

[86] 206 SCRA 127 (1992).

[87] Id. at 132.

[88] 269 SCRA 564 (1997).

[89] Id. at 577.

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

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

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

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

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

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

[96] 312 SCRA 447 (1999).

[97] Id. at 459.

[98] Supra.

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

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

[101] 248 SCRA 300 (1995).

[102] Supra at 458-460.

[103] Id. at 326.

[104] II L.M. TAÑADA and E.M. FERNANDO, CONSTITUTION OF THE PHILIPPINES 647 (1953); V. SINCO, PHILIPPINE POLITICAL LAW PRINCIPLES AND CONCEPTS 497 (1954)

[105] R. VELAYO, PHILIPPINE CITIZENSHIP AND NATURALIZATION 1 (1964); ; E. Q. FERNANDO, THE 1973 CONSTITUTION: A SURVEY 31 (1977); R. LEDESMA, AN OUTLINE ON PHILIPPINE IMMIGRATION AND CITIZENSHIP LAWS 353 (1999)

[106] J.G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 609 (2003) ;

[107] Jovito R. Salonga, PRIVATE INTERNATIONAL LAW 163-164 (1995).

[108] ARTICLE V

SUFFRAGE

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

[109] ARTICLE VI

THE LEGISLATIVE DEPARTMENT

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

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

ARTICLE VII

EXECUTIVE DEPARTMENT

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

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

ARTICLE VIII

JUDICIAL DEPARTMENT

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

ARTICLE IX

CONSTITUTIONAL COMMISSIONS

x x x

B. THE CIVIL SERVICE COMMISSION

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

C. THE COMMISSION ON ELECTIONS

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

D. THE COMMISSION ON AUDIT

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

ARTICLE XI

ACCOUNTABILITY OF PUBLIC OFFICERS

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

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

ARTICLE XII

NATIONAL ECONOMY AND PATRIMONY

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

ARTICLE XIII

SOCIAL JUSTICE AND HUMAN RIGHTS

HUMAN RIGHTS

Sec. 17. x x x

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

[110] ARTICLE XII

NATIONAL ECONOMY AND PATRIMONY

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

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

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

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

x x x

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

x x x

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

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

x x x

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

Sec. 12. The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.

ARTICLE XIV

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

Sec. 4. (1) x x x

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

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

ARTICLE XVI

GENERAL PROVISIONS

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

x x x

(2) x x x

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

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

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

[111] R. VELAYO, PHILIPPINE CITIZENSHIP AND NATURALIZATION 7 (1964).

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

[113] Ibid.

[114] Sec. 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution.

x x x

[115] Joaquin G. Bernas, S.J., The 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 610 (2003).

[116] 316 SCRA 1 (1999).

[117] Id. at 8.

[118] 337 SCRA 543 (2000).

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

[120] 1 Phil. 88 (1902).

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

[122] Id. at 89-91.

[123] 23 SCRA 292 (1968).

[124] Id. at 293-295.

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

[126] Supra.

[127] Id. at 550.

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

[129] 29 Phil. 332 (1915).

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

[131] 105 Phil 1321 (1959).

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

[134] 29 Phil. 332 (1915).

[135] Id. at 551.

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

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

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

[139] Supra.

[140] Id. at 1322.

[141] 20 SCRA 562 (1967).

[142] 82 Phil 771. (1949).

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

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

[145] 29 Phil. 332 (1915).

[146] I Jose M. Aruego, THE FRAMING OF THE PHILIPPINE CONSTITUTION 209 (1949).

[147] 29 Phil. 332 (1915).

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

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

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

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

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

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

(a)

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

(b)

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

(c)

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

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

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

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

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

If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph

or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.

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

(1)

If the husband should die before the expiration of the period fixed for bringing his action;

(2)

If he should die after the filing of the complaint without having desisted therefrom; or

(3)

If the child was born after the death of the husband.

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

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

[151] 29 Phil. 332 (1915).

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

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

[154] 354 SCRA 17 (2001).

[155] Id. at 26.

[156] 20 SCRA 562 (1967).

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

[158] ARTICLE VII
EXECUTIVE DEPARTMENT

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

[159] ARTICLE VI
LEGISLATIVE DEPARTMENT

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

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

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

[162] SR. ARTADI: Yo voy a pedir la reconsideración en lo que respecta al asunto que aparece en la página 22-A que trata de la interpretación de las palabras natural born, porque quisiera informar a la Asamblea de que he tenido una conversación con algunos miembros del Comité que entendió de este asunto y me han explicado que las palabras natural born no quieren decir necesariamente nacido en Filipinas; es decir, que traducidas al castellano, quieren decir que uno que posea las facultades para ser Presidente de la República, según como está escrito, no es que sea necesariamente nacido en Filipinas. Así es que para fines del record yo desearía que uno de los miembros del Comité explique la verdadera interpretación de las palabras natural born para conocimiento de la Asamblea y para fines de record.

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

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

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

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

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

SR. ROXAS: Sí, señor.

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

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

[165] ARTICLE III

Sec. 4. A natural-born citizen is one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship.

[166] 357 SCRA 545 (2001).

[167] Id. at 577-578.

[168] RULES DELEGATING TO COMELEC FIELD OFFICIALS THE HEARING AND RECEPTION OF EVIDENCE OF DISQUALIFICATION CASES FILED IN CONNECTION WITH THE MAY 10, 2004 NATIONAL AND LOCAL ELECTIONS, MOTU PROPRIO ACTIONS AND DISPOSITION OF DISQUALIFICATION CASES.

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

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

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

x x x

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

A. PETITION TO DENY DUE COURSE
OR TO CANCEL CERTIFICATE OF CANDIDACY

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

x x x

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

x x x (Emphasis supplied)

[172]

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

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

x x x

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

qualifications of a candidate as provided for by the constitution or by existing law or who possesses some grounds for disqualification, 3.a. Disqualification under Existing Law

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

3.b Some grounds for Disqualifications:

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

x x x

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

x x x (Emphasis supplied)

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

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

(certified photocopy of the Marriage Contract entered into by and between respondent's father, "Fernando Pou" and respondent's mother Bessie Kelly).

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

[176] Respondent Poe's Exhibits "17," (photocopy of Transfer Certificate of Title No. 55020 of the Registry of Deeds for Rizal in the name of spouses Jesusa Poe and FPJ) "18," (photocopy of Transfer Certificate of Title No. RT-116312 of the Registry of Deeds for Quezon City in the name of FPJ) "19," (photocopy of Transfer Certificate of Title No. 300533 of the Registry of Deeds for Quezon City in the name of spouses FPJ and Jesusa Sonora)

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

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

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

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

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

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

[183] Supra.

[184] Supra.

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

[186] 79 Phil 249 (1947).

[187] Id. at 257-258.

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

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

[190] Albeit under the COMELEC Resolution 6452 parties are directed to submit their affidavits or

counter-affidavits in lieu of testimony.

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

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

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

[194] Francisco at 578.

[195] Supra.

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

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

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

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

SEPARATE OPINION

TINGA, J.:

Unabated, the “interesting” times march on.[1]

No sooner had the dust of battle settled in the impeachment case,[2] where this writer noted the unfurling saga of profound events that dominated the country's recent past,[3] the cavalcade of occurrences of the last three months reached a crescendo with the filing of the instant cases before this Court. After the case involving the Chief Justice, we now address the question on the citizenship qualification for President of the land.

How the Chinese customary wish of “interesting” times will turn out for the Filipinos' lot, whether as a curse or a blessing, still remains to be seen. But definitely, more than much depends on the Court's disposal of the present controversy.

The instant cases are unique and unprecedented. For the first time the Court is tasked to ascertain the farthest reach of the term “natural-born citizen” in the context of an out-of-wedlock birth. For the first time too, the Court is disposed to resolve the citizenship qualification, affecting no less than a leading candidate for President before, in fact some time reasonably before and not after the elections, as was the Court's wont in prior instances.[4]

To a man, the members of the Court are agreed that the Tecson and Velez petitions (G.R. No. 161434 and G.R. No. 161634) deserve unceremonious dismissal for prematurity and lack of jurisdiction. A different view though obtains as regards the Fornier petition (G.R. No. 161824). As it seeks to set aside rulings of the Commission of Elections (COMELEC), the Court's jurisdiction over the petition finds mooring in no less than the Constitution.[5]

COMELEC Acted With Grave Abuse of Discretion

Fornier posits that the COMELEC acted with grave abuse of discretion in promulgating the assailed resolutions. The contention is meritorious.

In seeking outright dismissal of the Fornier petition, private respondent Poe proceeds from the premise that it is

exclusively a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. It is not.

The petition invokes as its basis Rule 64 of the Rules of Court, which is captioned “Review of Judgments and Final Orders or Resolutions of the Commission on Elections and the Commission on Audit.”

The 1997 Rules of Civil Procedure introduced this mode of review separate and distinct from the Rule 65 special civil action. The innovation is consonant with the constitutional provision[6] which allows the institution of a new review modality for rulings of constitutional commissions. It ordains that “(U)nless otherwise provided by this Constitution or by law,” the mode of review is certiorari. The Supreme Court introduced the new mode in the exercise of its power under the Constitution[7] to promulgate rules of pleading, practice and procedure in all courts.

Rule 64 appears to be a fusion of sorts of at least three other Rules, i.e., Rule 65, Rule 46 and Rule 43. Notably, as in a special civil action for certiorari under Rule 65, the Commission concerned is joined as party respondent unlike in an ordinary appeal or petition for review; the contents of the petition are similar to those required under Section 3 of Rule 46; the order to comment is similar to Section 6 of Rule 65; the effect of filing a petition is similar to Section 12 of Rule 43; and the provision on when the case is deemed submitted for decision is similar to Section 13 of Rule 43.[8]

A Rule 64 petition must be filed within thirty days from notice of the judgment, final order or resolution sought to be reviewed,[9] whereas a Rule 65 petition for certiorari calls for a sixty day period. The distinction gains greater significance in the context that great public interest inheres in the goal to secure expeditious resolution of election cases before the COMELEC.

In form, a petition under Rule 64 takes on the characteristics of a Rule 43 petition, which may allege errors of fact or law.[10] Similar to Rule 43, Rule 64 also provides that findings of fact that are supported by substantial evidence are binding.[11] As a new and independent mode of review a Rule 64 petition may as well be treated as a petition for review, under which errors of fact or law may also be rectified.

However, the Fornier petition also alleges grave abuse of discretion tantamount to lack or excess of jurisdiction. Verily, he prefaced all the grounds and arguments he raised with the common statement that the COMELEC committed grave and reversible errors of law and even acted with grave abuse of discretion.

Hence, while the Fornier petition comes out as an inelegant pastiche of Rule 64 and Rule 65 initiatory pleadings, it is not defective in form but on the contrary it can stand on its own merits. Aside from errors of law, it also raised errors of jurisdiction amounting to grave abuse of discretion.

The Fornier petition before the COMELEC is grounded on Section 1, Rule 23 of the COMELEC Rules of Procedure, which recognizes and allows petitions to deny due course to or cancel certificates of candidacy:

Section 1. Grounds for Denial of Certificate of Candidacy. – A petition to deny due course to or cancel, a certificate of candidacy for any elective office may be filed with the Law Department of the Commission by any citizen of voting age or a duly registered political party, organization, or coalition of political parties on the exclusive ground that any material representation contained therein as required by law is false.

Section 1, Rule 23 of said Rules, in turn, gives flesh to Section 78 of the Omnibus Election Code, which provides:

SEC. 78. Petition to deny due course to or cancel a certificate of candidacy. – A verified petition seeking to deny due course to or 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 notice and hearing, not later than fifteen days before the election.

Section 74, to which Section 78 refers, states:

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

Unless a candidate has officially changed his name through a court approved proceeding, a candidate shall use in a certificate of candidacy the name by which he has been baptized, or he has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in this certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires. [Emphasis supplied]

Thus, in accordance with Section 78, *supra*, the petitioner in a petition to deny due course or to cancel a certificate of candidacy need only prove three elements. First, there is a representation contained in the certificate of candidacy. Second, the representation is required under Section 74. Third, the representation must be “material,” which, according to jurisprudence,[12] means that it pertains to the eligibility of the candidate to the office. Fourth, the representation is false.

Asserting that proof of intent to conceal is also necessary for a petition under Section 78 to prosper, Mr. Justice Kapunan wrote in *Romualdez-Marcos v. Commission on Elections*,[13] thus:

It is the fact of residence, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the [C]onstitution’s residency qualification requirement. The said statement becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. It would be plainly ridiculous for a candidate to deliberately and knowingly make a statement in a certificate of candidacy which would lead to his or her disqualification.[14] [Emphasis supplied]

The Court, reiterated the Kapunan pronouncement in *Salcedo II v. Commission on Elections*. [15]

Adverting to *Romualdez-Marcos* and *Salcedo II*, the COMELEC En Banc ruled that while the element of materiality was not in question the intent to deceive was not established, not even the knowledge of falsity, thus:

Undeniably, the question on the citizenship or respondent falls within the requirement of materiality under Section 78. However, proof of misrepresentation with a deliberate attempt to mislead must still be established. In other words, direct and substantial evidence showing that the person whose certificate of candidacy is being sought to be cancelled or denied due course, must have known or have been aware of the falsehood as appearing on his certificate.[16]

The pronouncements in Romualdez-Marcos and Salcedo II, however, are clearly not supported by a plain reading of the law. Nowhere in Section 78 is it stated or implied that there be an intention to deceive for a certificate of candidacy to be denied due course or be cancelled. All the law requires is that the “material representation contained [in the certificate of candidacy] as required under Section 74... is false.” Be it noted that a hearing under Section 78 and Rule 23 is a quasi-judicial proceeding where the intent of the respondent is irrelevant. Also drawing on the principles of criminal law for analogy, the “offense” of material representation is *malum prohibitum* not *malum in se*. Intent is irrelevant. When the law speaks in clear and categorical language, there is no reason for interpretation or construction, but only for application.[17]

The reason for the irrelevance of intent or belief is not difficult to divine. Even if a candidate believes that he is eligible and purports to be so in his certificate of candidacy, but is subsequently proven in a Rule 23 proceeding to be, in fact or in law, not eligible, it would be utterly foolish to allow him to proceed with his candidacy. The electorate would be merely squandering its votes for – and the COMELEC, its resources in counting the ballots cast in favor of – a candidate who is not, in any case, qualified to hold public office.

The Kapunan pronouncement in the Romualdez-Marcos case did not establish a doctrine. It is not supported by law, and it smacks of judicial legislation. Moreover, such judicial legislation becomes even more egregious considering that it arises out of the pronouncement of only one Justice, or 6% of a Supreme Court. While several other Justices joined Justice Kapunan in upholding the residence qualification of Rep. Imelda Romualdez-Marcos, they did not share his dictum.[18] It was his by his lonesome. Justice Puno had a separate opinion, concurred in by Justices Bellosillo and Melo. Justice Mendoza filed a separate opinion too, in which Chief Justice Narvasa concurred. Justices Romero and Francisco each had separate opinions.[19] Except for Chief Justice Narvasa and Justice Mendoza, the Justices in the majority voted to grant Rep. Marcos’ petition on the ground that she reestablished her domicile in Leyte upon being widowed by the death of former President Marcos.

On the other hand, the reiteration of the Kapunan pronouncement in Salcedo is a mere *obiter dictum*. The Court dismissed the disqualification case on the ground that the respondent’s use of the surname “Salcedo” in her certificate of candidacy is not a material representation since the entry does not refer to her qualification for elective office.[20] Being what it is, the Salcedo *obiter* cannot elevate the Kapunan pronouncement to the level of a doctrine regardless of how many Justices voted for Salcedo. Significantly, Justice Puno concurred in the result only.[21]

Thus, in this case, it does not matter that respondent knows that he was not a natural-born Filipino citizen and, knowing such fact, proceeded to state otherwise in his certificate of candidacy, with an intent to deceive the electorate. A candidate’s citizenship eligibility in particular is determined by law, not by his good faith. It was, therefore, improper for the COMELEC to dismiss the petition on the ground that petitioner failed to prove intent to mislead on the part of respondent.

I submit, therefore, that the COMELEC acted with grave abuse of discretion in failing to make a determination of the findings of fact, as well as rule on the evidence before it. This failure is even violative of the Constitution, as well as relevant statutes and rules of procedure.[22] Especially blatant to my mind was the conclusion of the COMELEC that Lorenzo Pou “had ceased to be a Spanish subject and had become a Filipino citizen” by operation of the Philippine Bill of 1902 and the Jones Law, despite the absence of substantial evidence to support this claim. The relevant provisions of these laws are explicit. Those who were considered citizens of the Philippines under the Philippine Bill of 1902 and the Jones Law were those who, on 11 April 1899, were inhabitants of the Philippines who were Spanish subjects, and then resided in the Philippines, and did not elect to preserve their allegiance to the Crown of Spain.[23]

In *In Re: Bosque*,^[24] petitioner therein, a Spanish national, had left the Philippines on 30 May 1899, returning only in 1901. The Court considered the established fact that Bosque had been in the Philippines on 11 April 1899. By operation of the Treaty of Paris, Bosque retained his Spanish citizenship by virtue of his presence in the Philippines on 11 April 1899. Furthermore, Bosque did not lose such Spanish citizenship because he failed to comply with the provisions of the Treaty of Paris that a Spanish national in the Philippines should expressly renounce his foreign allegiance within the eighteen-month period provided for in the Treaty of Paris that expired in 11 October 1900.^[25]

It was possible that Lorenzo Pou, just like Bosque, failed to duly renounce his Spanish allegiance, assuming he was here in 11 April 1899. The COMELEC could have only concluded as it did that Lorenzo Pou was among those naturalized by the Treaty of Paris and relevant laws if it was established that Lorenzo Pou was present in the Philippines on 11 April 1899. No such proof was submitted to the COMELEC, and its baseless conclusion that Lorenzo Pou became a Filipino citizen constitutes grave abuse of discretion.

The Appreciation of the Evidence

The COMELEC failed in its duty as a trier of facts in refusing to appreciate the evidence presented before it. Instead, it chose to treat the matter as one of a pure question of law, despite that the allegations in the petition and arguments in rebuttal were grounded on factual matters.

Similarly before the Court, the resolution of the questions before us hinge on a definitive finding of fact. Ideally, this should entail deliberate appreciation of evidence, rulings on the admissibility, materiality and veracity of the documents. The Supreme Court is not a trier of facts,^[26] nor does it appreciate evidence at the first instance.^[27] The Court was not precluded by rule of procedure to remand the case to the COMELEC for the reception and trial on the facts. Moreover, the Court could have referred the Fornier petition to the Court of Appeals for the reception and trial on the evidence.

The Court however, has chosen not to remand the case either to the COMELEC or the Court of Appeals. The duty therefore, is to rule on the evidence as presented right now, even if its mettle has not been tested before a trier of facts. There is no substantial evidence at this point that indubitably proves the claim that Ronald Poe is a natural-born Filipino. Thus, as with the rest of my colleagues, I am compelled to primarily employ legal presumptions in formulating my opinion.

I am very mindful of the Court's pronouncement that no presumption can be indulged in favor of the claimant of Philippine citizenship, and any doubt regarding citizenship must be resolved in favor of the State.^[28]

This doctrine provides the Court guidance on how to resolve the several doubtful factual issues in the case. There may be several matters under the law that may be liberally construed, but I believe citizenship is not one of them. Filipino citizenship is conferred by law and nothing else, not even good faith or colorable possession thereof. Citizenship is a privilege, and not a right.^[29] To cheapen citizenship by according it through haphazard presumptions is tantamount to cheapening our nation's worth and soul.

Thus, any unresolved doubt cannot be adjudged in favor of Poe. His claim to natural-born citizenship must be established by law, and evidence in accord with the law.

I am willing to consider as authentic the following documents: the 1939 Birth Certificate of Poe, the 1941 Marriage Contract between Allan F. Poe and Bessie Kelley, the 1951 Death Certificate of Allan F. Poe, and the 1954 Death Certificate of Lorenzo Pou. These are official public documents which carry with them the presumption of regularity in execution, and moreover, their authenticity is not challenged by the parties. These documents are, at the very least, conclusive as to the facts of birth, marriage and death.

These documents were submitted by Poe before the COMELEC, in order to rebut Fornier's allegations. Yet these documents establish facts that are actually damaging to Poe's very claims. The Marriage Contract contradicts the notation in the Birth Certificate that in 1939, Allan F. Poe and Bessie Kelley were married. Since it is the Marriage Contract, and not the Birth Certificate that indubitably establishes the fact of marriage, it is more believable that Allan F. Poe and Bessie Kelley were married in 1941, two years after the birth of Poe. The conclusion that Poe was born illegitimate thus arises.

The submission of these documents effectively shifted the burden of evidence to Poe. The documents constitute prima facie evidence that Poe was born illegitimate, and correspondingly, carry no presumption of paternity. The duty falls on Poe to controvert the prima facie case.[30] Burden of proof remains immutable, but the burden of evidence can shift depending on the exigencies of the case.[31]

Apart from these documents, there really are no other factual findings that deserve consideration by this Court, not even the findings of a Senate Committee since they cannot be binding on this Court, as stressed by Justice Puno in another case.[32]

Paternity of Ronald Allan Poe Not Duly Established

The paternity of Ronald Allan Poe has not been conclusively established. Some may take stock in the purported admission of petitioner Fornier in his pleadings before both the COMELEC and this Court that respondent Poe is the son of Allan F. Poe. I am not as hasty to conclude that such an admission dispenses with proof. The rule on judicial admissions[33] is but an application of the law on estoppel.[34] The State is not put in estoppel by the mistakes or errors of its officials,[35] much less by those who, not being an agent thereof, is in no position to bind it. To hold otherwise would be to compel the State to recognize as a citizen one who is not by its most fundamental of laws, and in effect "sanction a monstrosity known as citizenship by estoppel." [36]

The truth is that no incontestable proof establishes that respondent Poe had been acknowledged by Allan F. Poe as his son. Allan F. Poe might have been listed as the father in the 1939 Birth Certificate, but such document was not signed by him. As Justice Vitug explains in his Separate Opinion, the birth certificate can be utilized to prove voluntary acknowledgment of filiation of paternity only if signed or sworn to by the father.[37]

I disagree with some of my colleagues who would utilize the Affidavit executed by one Ruby Kelley Mangahas as conclusive proof of respondent's paternity. This particular declaration does not fall under the evidentiary rule on "act or declaration about pedigree". The rule requires that the declaration about pedigree be made before the controversy has occurred.[38] The Mangahas Affidavit was executed on 12 January 2004, three days after Fornier filed his petition before the COMELEC. This declaration was clearly made only after the controversy had arisen, and reinforces the notion that it is a self-serving statement made by a relative of Poe.

Moreover, the Mangahas Affidavit is hearsay[39] and therefore inadmissible in evidence. Mangahas never testified as to her due execution of the affidavit. Perhaps her testimony was unnecessary before the summary proceedings in the COMELEC, but it is urged here that we accept the same as conclusive. To do so will create an ignominious precedent that would allow for all sorts of affidavits unverified by testimony to be introduced before this Court and be deemed admissible and conclusive.

Neither do I put much value as proof of filiation, the 1947 Philippine Army Affidavit purportedly executed by Allan F. Poe. Therein, Allan F. Poe acknowledged one "Ronnie, age 5," as his son. This document does not clearly establish that Allan F. Poe had acknowledged respondent Poe who was born in 1939. On its face, the document refers to a child born in 1942. This affidavit also contains other inconsistencies that contradict the other evidence which I deem as authentic. It adverts to a 1939 marriage between Allan F. Poe and Bessie Kelley, an

item inconsistent with the Marriage Contract itself. I am not prepared to declare respondent Poe a Filipino citizen or the son of Allan F. Poe on the basis of such a dubious document.

In the end, there is nothing left but the Birth Certificate of 1939 and the Marriage Contract of 1940 that could be taken as proper evidence to establish filiation. Not only do they fail to prove filiation, they actually caution us against any hasty presumptions of paternity. These documents establish the illegitimacy of Poe, and illegitimate birth does not carry any presumption on paternity. Indeed, paternity has to be established by independent evidence. No such independent evidence is before this Court.

Since paternity has not been proven, there is no choice but to deem Poe as following the citizenship of his mother, the only parent conclusively established. This conclusion is militantly opposed by Poe, and even the amici curiae maintain that when Section 1(3), Article IV of the 1935 Constitution speaks of children “whose fathers are citizens of the Philippines,” it does not distinguish between legitimate and illegitimate children. So long as the father is a Filipino, so the argument goes, his child shall also be a Filipino.

Whether existing jurisprudence supports Fornier’s thesis has been the subject of extensive debate. Of these cases, perhaps *Ching Leng v. Galang*[40] comes the closest. There, the Court was confronted with the question of whether a naturalized Filipino transmits his Filipino citizenship when he adopts his illegitimate children by his Chinese wife. The Court held that the Civil Code did not extend the father’s privilege of citizenship to his adopted children. Although the Court found that —

.... The fact that the adopted persons involved in the case at bar are illegitimate children of appellant Ching Leng does not affect substantially the legal situation before us, for, by legal fiction, they are now being sought to be given the status of legitimate children of said appellant, despite the circumstances that the Civil Code of the Philippines does not permit their legitimation.[41]

— it nevertheless foreclosed any question on the significance of the children’s illegitimacy. In definite terms, the Court ruled, thru Justice Roberto Concepcion, that “[in] fact, illegitimate children are under the parental authority of the mother and follow her nationality, not that of the illegitimate father.”[42]

This principle, enunciated in *Ching Leng* and cases cited therein, is supported by international custom and the principles of law generally recognized with regard to nationality.[43] Thus, the delegates to the 1935 Constitutional Convention even voted down a proposed amendment to include as Filipino citizens the illegitimate children with a foreign father of a mother who was a citizen of the Philippines, believing “that the rules of international law were already clear to the effect that illegitimate children followed the citizenship of the mother.”[44]

This principle rests on sound policy. It is not rare that in cases of children born out of wedlock, the paternity is either unknown or disputed. Logically, the nationality of the illegitimate child cannot follow that of the father. For States adhering to the rule of *jus sanguinis*, therefore, the nationality of the mother, the child’s only known parent, becomes the only basis for the child’s nationality. The principle thus benefits the child, saving him from a limbic, stateless existence.

The argument of respondent is premised on the notion that the paternity between respondent Poe and his alleged father Allan F. Poe has been sufficiently proven. Indeed, if that be the case, the principle that the citizenship of an illegitimate child follows that of the mother would lose its rationale and preclude its application. It is my assertion, however, that paternity has not been so proven; consequently, the rule invoked by petitioner still holds.

It has been urged that disqualifying Poe as a consequence of ruling that he follows the citizenship of his mother would constitute a violation of international law, particularly the Convention on the Rights of the Child. The

Convention proscribes the commission of discriminatory acts against any person by reason of birth. The submission proceeds from the conviction that the paternity of Poe and, therefore, his Filipino citizenship, has been duly established. Truly, the Convention would find full application if it were so, but, sadly, it has not.

Surely, it is not suggested that, regardless of his not being a natural-born Filipino citizen, respondent is eligible to be President by virtue of such Convention. Obviously, it is municipal law, not international law, that determines the qualifications of a candidate for public office. It is also municipal law, not international law, that determines citizenship.[45]

Our Constitution requires natural-born citizenship as a requisite for holding the office of the Presidency of the Philippines. This is a rule derived mainly from the American legal experience, which adopted the principle as a safeguard against foreign subversion. As explained in a popular online magazine:

Though their concerns may now seem archaic, the framers were genuinely afraid of foreign subversion. Among their nightmare scenarios was the prospect of a European noble using his money and influence to sway the Electoral College, take command of the American army, and return the nascent nation to the royalist fold. At the time, several European figures such as France's Marquis de Lafayette, a hero of the Revolutionary War were quite popular in the New World, so the idea wasn't completely far-fetched.

The framers also took a lesson from Europe, where dynasties constantly schemed against one another. The men who drafted the Constitution were certainly familiar with the tragic example of Poland, where agents from Russia, Prussia, and Austria conspired to install a friendly monarch, Stanislaus II, and subsequently seized upon his weakness and partitioned the country among themselves. Keep in mind, too, that dynasties occasionally shuffled around Europe regardless of national origin; England's King George I, for example, was a Hanoverian who spoke zero English.

There is scant primary source material attesting to the 1787 Constitutional debate over Article II, Section I, which contains the "natural born" provision. The potential scourge of foreign influence, however, is mentioned several times in the Federalist Papers. And in a letter dated July 25, 1787, John Jay, the future first Chief Justice of the Supreme Court, wrote to George Washington: Permit me to hint, whether it would not be wise & seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in chief of the American army shall not be given to, nor devolve on, any but a natural born Citizen.[46]

Historical context notwithstanding, the issues leading to the adoption of the rule cannot be easily discarded, even with the pretense of 20/20 hindsight. For many, these considerations remain material. Yet whether or not these concerns maintain to this day is of no moment. It would take a constitutional amendment, and not a judicial declaration, that would overturn this requirement of natural-born citizenship.

No Proof of Lorenzo Pou's Acquisition of Filipino Citizenship

There is no evidence adduced that Lorenzo Pou was born in the Philippines, or was even present in the Philippines up until the first few decades of the 20th century. However, it is insisted that Lorenzo Pou obtained his citizenship by virtue of the Treaty of Paris and the Philippine Bill of 1902. I earlier concluded that the COMELEC acted with grave abuse of discretion in adopting this theory without any substantial evidence. Again, there is no proof that exists that Lorenzo Pou, a Spanish subject, was already present in the Philippines on 11 April 1899. It is the fact of presence on that date that renders operative the grant of mass naturalization. It is a fact that must be established, and sadly, the evidence fails to do so.

In *Co v. Electoral Tribunal*,^[47] the majority opinion concluded that the son of a naturalized Filipino and a natural-born Filipina was a natural-born Filipino by virtue of his election of Filipino citizenship in accordance

with the 1973 Constitution; and the declaration of the 1971 Constitutional Convention that his brother had been earlier declared a natural-born citizen by virtue of his grandfather's acquisition of Filipino citizenship by operation of the Philippine Bill of 1902. However, the dissenting opinion of Mr. Justice Teodoro Padilla raises several points well worth considering, especially on the residency requirement core to the Philippine Bill of 1902:

The 1971 Constitutional Convention in holding that Emil L. Ong was a "natural-born citizen" of the Philippines under the 1935 Constitution laid stress on the 'fact'-and this appears crucial and central to its decision-that Emil L. Ong's grandfather, Ong Te, became a Filipino citizen under the Philippine Bill of 1902 and, therefore, his descendants like Emil L. Ong (and therefore, also private respondent) became natural-born Filipinos. The 1971 Constitutional Convention said:

"Ong Te, Emil Ong's grandfather, was a Spanish subject residing in the Philippines on April 11, 1899 and was therefore one of the many who became ipso facto citizens of the Philippines under the provisions of the Philippine Bill of 1902. Said law expressly declared that all inhabitants of the Philippine Islands who continued to reside therein and who were Spanish subjects on April 11, 1899 as well as their children born subsequent thereto, 'shall be deemed and held to be citizens of the Philippine Islands.' (Section 4, Philippine Bill of 1902)."

The "test" then, following the premises of the 1971 Constitutional Convention, is whether or not Ong Te, private respondent's and Emil L. Ong's grandfather was "an inhabitant of the Philippines who continued to reside therein and was a Spanish subject on April 11, 1899. " If he met these requirements of the Philippine Bill of 1902, then, Ong Te was a Filipino citizen; otherwise, he was not a Filipino citizen.

xxx

"Registro de Chinos" from years 1896 to 1897 which show that Ong Te was not listed as an inhabitant of Samar where he is claimed to have been a resident. Petitioners (protestants) also submitted and offered in evidence before the House Electoral Tribunal exhibit V, a certification of the Chief of the Archives Division, Records and Management and Archives Office, stating that the name of Ong Te does not appear in the "Registro Central de Chinos" for the province of Samar for 1895. These exhibits prove or at least, as petitioners validly argue, tend to prove that Ong Te was NOT a resident of Samar close to 11 April 1899 and, therefore, could not continue residing in Samar, Philippines after 11 April 1899, contrary to private respondents pretense. In the face of these proofs or evidence, private respondent FAILED TO PRESENT ANY REBUTTAL OR COUNTERVAILING EVIDENCE, except the decision of the 1971 Constitutional Convention in the case of Emil L. Ong, previously discussed.

It is not surprising then that, as previously noted, the majority decision of the House Electoral Tribunal skirted any reliance on the alleged ipso facto Filipino citizenship of Ong Te under the Philippine Bill of 1902. It is equally not surprising that Ong Chuan, the son of Ong Te and father or private respondent, did not even attempt to claim Filipino citizenship by reason of Ong Te's alleged Filipino citizenship under the Philippine Bill of 1902 but instead applied for Philippine citizenship, through naturalization.

Nor can it be contended by the private respondent that the House Electoral Tribunal should no longer have reviewed the factual question or issue of Ong Te's citizenship in the light of the resolution of the 1971 Constitutional Convention finding him (Ong Te) to have become a Filipino citizen under the Philippine Bill of 1902. The tribunal had to look into the question because the finding that Ong Te had become a Filipino citizen under the Philippine Bill of 1902 was the central core of said 1971 resolution but as held in *Lee vs. Commissioners of Immigration*:

x x x. Everytime the citizenship of a person is material on indispensable in a judicial or administrative case, whatever the corresponding Court or administrative authority decides therein as to such citizenship is generally not considered as *res adjudicata*, hence it has to be threshed out again and again as the occasion may demand.[48]

Notably, not one of the Justices in the majority in the Co case chose to counter these observations of Justice Padilla. Hence, these pronouncements, even if in dissent, should not be deemed as discredited, as they have not been contradicted. Taken together with the rulings of the Court in Bosque and Valles, a doctrinal point is apparent - proof of residence in the Philippines on and after 11 April 1899 is necessary to establish that one has acquired the benefits of Filipino citizenship in accordance with the Treaty of Paris and the Philippine Bill of 1902. This is a matter that has been taken for granted by Poe, and even by some members of this Court.

Instead, tenuous connections are drawn from Lorenzo Pou's 1954 Death Certificate. Admittedly, the Death Certificate states that Lorenzo Pou was a Filipino. But it does not say when he became a Filipino. If, for example, Lorenzo Pou became a Filipino only in 1953, his death certificate would also state, without comment, that he was a Filipino. In this case, the date Lorenzo Pou became a citizen is crucial to Poe's cause, as he is alleging that he draws his natural-born citizenship from that of Lorenzo Pou. Yet the Death Certificate does not establish any presumption, disputable or conclusive, as to when Lorenzo Pou became a Filipino citizen. More so, it clearly cannot establish the fact that Lorenzo Pou was present in the Philippines on 11 April 1899. What it only establishes was that Lorenzo Pou was a resident of San Carlos, Pangasinan at the time of his death in 1954.

Even conceding that the presence of Lorenzo Pou in the Philippines was established as of 1916, when Allan F. Poe was born, the rule is that proof of the existence at a particular time of a fact of a continuous nature gives rise to an inference, that it exists at a subsequent time.[49] No similar inference can be drawn that such fact existed prior to the time it had been established. The presumption of inference of the continued existence of a condition or state of facts is generally considered to be prospective, not retrospective. Indeed, the presumption never runs backward.[50] The presence of Lorenzo Pou in the Philippines in 1916 or 1954 does not establish his presence in the Philippines in 1899. In 1916, he was already 46 years old, the average lifespan of the average male during that period, and yet it remains unanswered where he was prior to that time and more so in 1899.

The following findings are thus binding on the Court. Poe is an illegitimate child whose paternity has not been duly established. Even if it is assumed that Allan F. Poe was respondent's father, his own nationality has not been duly established. Lorenzo Pou's presence in the Philippines in 1899 cannot be determined; hence, no presumption of nationality can be accorded him.

"Let the people decide," respondent insists. That is also the battle cry of those among us who opt to take the path of least resistance – to let the sovereign will chart the course of the Philippine political landscape. That argument is also a malaise, whether caused by academic sloth, intellectual cowardice or judicial amnesia, which has unfortunately plagued this Court.[51] It is an easy cop-out that overlooks the fact that the Constitution is itself an expression of the sovereign will. The Filipino people, by ratifying the Constitution, elected to be bound by it, to be ruled by a fundamental law and not by a hooting throng.

I harbor no pretensions of being wiser than our people when it comes to political questions. The questions raised, however, are not political but legal, and the people, by the same Charter to which they bound themselves, have reposed upon the members of this Court a duty to perform and an oath to uphold, to answer the hard legal questions and to blaze new trails in jurisprudence.

The Constitution prescribes the qualifications for elective office. The Omnibus Election Code outlines the procedures for challenging such qualifications. The Commission on Elections has rendered a resolution upholding respondent's eligibility. Petitions assailing that resolution have been filed before this Court. I see no reason why the Court should shirk from its constitutional obligation and allow the electorate to squander its votes on an ineligible candidate.

Respondent may indeed be at heart, and in mind, a natural-born Filipino. He may speak the vernacular, partake of

the native ale, and portray the Filipino hero. He may have even exercised rights and enjoy privileges reserved to Filipino citizens. All these, however, do not constitute conclusive proof that he is one. For it may be that a person, otherwise disqualified by reason of citizenship, may exercise and enjoy such rights and privileges by representing – or mistaking – himself to be a Filipino.[52] It was incumbent upon the respondent, who claims natural-born status, to prove to the satisfaction of the Court that he really is such. Failing thus, and, as no presumption can be indulged in favor of the claimant of Philippine citizenship, the doubt must be resolved in favor of the State.[53]

I come to this conclusion without judgment on whether respondent is a curse about to be inflicted, or a blessing to be bestowed, upon the Filipino people. The undoubtedly interesting times that lay before us notwithstanding,

I vote to GRANT the Fornier Petition.

[1] See J. Tinga, concurring, *Francisco v. House of Representatives*, G. R. Nos. 160261-63, and accompanying cases, 10 November 2003.

[2] *Supra*, note 1.

[3] *Id.*

[4] See e.g., *Frivaldo v. COMELEC*, G.R. No 87193, 23 June 1989; *Labo, Jr. v. COMELEC*, G.R. No. 10511, 3 July 1992, 211 SCRA 297, G.R. No. 86564, 7 August 1989, 176 SCRA 1; *Romualdez-Marcos v. COMELEC*, G.R. No. 119976, 18 September 1995, 300 SCRA 248; *Salcedo II v. COMELEC*, G.R. No. 135886, 16 August 1999, 447 SCRA 312; *Aquino v. COMELEC*, G.R. No. 120265, 18 September 1995, 248 SCRA 400.

[5] Sec. 7, Art. IX-A, 1987 Const. “ . . . Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Constitution may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.”

[6] *Feria and Noche*, CIVIL PROCEDURE ANNOTATED, vol. 2, 2001, p. 450.

[7] Sec. 5(5), Art. VIII, 1987 Const.

[8] *Supra*, note 6 at 452-453.

[9] Sec. 3, Rule 64, Revised Rules of Court.

[10] See Sections 3 and 7, Rule 43, Revised Rules of Court.

[11] See Section 10, Rule 43 and Section 5, Rule 64, Revised Rules of Court.

[12] *Salcedo II v. Commission on Elections*, G.R. No. 135886, 16 August 1999, 312 SCRA 447, citing cases.

[13] G.R. No. 119976, September 18, 1995, 248 SCRA 300.

[14] *Id.*, at 326.

[15] *Supra*, note 12.

[16] COMELEC En Banc Resolution, p. 4.

[17] *Republic v. Court of Appeals*, G.R. No. 103882, 25 November 1998, 299 SCRA 199.

[18] Voting to grant the petition were Chief Justice Narvasa, Justices Puno, Francisco, Bellosillo, Melo, and Mendoza. Curiously, in the cases at bar, Justice Vitug, who relies on the purported dictum of Justice Kapunan in his separate opinion, dissented from the main opinion. Justice Puno, who likewise cites this erroneous

pronouncement, did not join the main opinion but chose to concur on other grounds.

[19] *Supra*, note 13 at pp. 347-368.

[20] *Supra*, note 12.

[21] *Supra*, note 15 at p. 462.

[22] See Section 14, Article VII, CONSTITUTION; Section 14, Chapter 3, Book VIII, E.O. 292, "The Administrative Code of 1987," Sections 1&2, Rule 18, COMELEC Rules of Procedure.

[23] See Article IX, Treaty of Paris (1898); Section 4, Philippine Bill of 1902; Section 2, Jones Law (1916).

[24] 1 Phil. 88. (1902).

[25] *Id.*, at 91. See also *Valles v. COMELEC*, G.R. No. 137000, 9 August 2000. "Under both organic acts, all inhabitants of the Philippines who were Spanish subjects on April 11, 1899 and resided therein including their children are deemed to be Philippine citizens. Private respondent's father, Telesforo Ybasco, was born on January 5, 1879, in Daet, Camarines Norte, a fact duly evidenced by a certified true copy of an entry in the Registry of Births. Thus, under the Philippine Bill of 1902 and the Jones Law, Telesforo Ybasco was deemed a Philippine Citizen." *Valles v. COMELEC*, G.R. No. 137000, 9 August 2000, 337 SCRA 543, 550.

[26] See *St. Martin Funeral Home v. NLRC, et al*, 356 Phil. 811, 824 (1998); *People v. Go*, G.R. Nos. 116001 & 123943, 14 March 2001, 354 SCRA 338, 346.

[27] "Documents forming no part of the proofs before the appellate court will not be considered in disposing of the issues of an action." *De Castro v. Court of Appeals*, 75 Phil. 824, 835 (1946).

[28] *Paa v. Chan*, 128 Phil. 815, 825. (1967).

[29] *Lo Beng Ha Ong v. Republic*, 134 Phil. 300, 305 (1968).

[30] *Jison v. Court of Appeals*, G.R. No. 124853, 24 February 1998, 286 SCRA 495, 532.

[31] *Bautista v. Hon. Sarmiento*, G.R. No. L-31733, 23 September 1985, 138 SCRA 587, 593.

[32] "There is a fundamental difference between a case in court and an investigation of a congressional committee. The purpose of a judicial proceeding is to settle the dispute in controversy by adjudicating the legal rights and obligations of the parties to the case. On the other hand, a congressional investigation is conducted in aid of legislation. Its aim is to assist and recommend to the legislature a possible action that the body may take with regard to a particular issue, specifically as to whether or not to enact a new law or amend an existing one. Consequently, this Court cannot treat the findings in a congressional committee report as binding because the facts elicited in congressional hearings are not subject to the rigors of the Rules of Court on admissibility of evidence. *Agan, et al. v. Piatco*, G. R. Nos. 155001, 155547, and 155661, 21 January 2004.

[33] RULES OF COURT, rule 129, sec. 2.

[34] *Sta. Ana v. Maliwat*, G.R. No. L-23023, 31 August 1968, 24 SCRA 1018.

[35] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 112024, 28 January 1999, 302 SCRA 241.

[36] See *Republic v. Valero*, G.R. No. L-23524, 31 May 1985, 136 SCRA 617.

[37] See also Section 5 of the Civil Registry Law, Act No. 3753, also cited by Justice Vitug. "In case of an

illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only by the mother if the father refuses. In the latter case, it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge the child, or to give therein any information by which such father could be identified.”

[38] See Section 39, Rule 130, Revised Rules of Court.

[39] “Affidavits are classified as hearsay evidence since they are not generally prepared by the affiant but by another who uses his own language in writing the affiant’s statements, which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants, For this reason, affidavits are generally rejected for being hearsay, unless the affiant themselves are placed on the witness stand to testify thereon.” *People’s Bank and Trust Company v. Leonidas*, G.R. No. 47815, 11 March 1992, 207 SCRA 164, 166.

[40] G.R. No. L-11931, October 27, 1958. (Unrep.)

[41] *Id.*, at 10.

[42] *Ibid.* Underscoring in the original.

[43] See Dissenting Opinion, Fuller, C.J., *United States v. Wong Kim Ark*, 169 US 649, 708-789 (1897), 42 L. Ed. 890, 912. Also I Oppenheim, L. INTERNATIONAL LAW §298.

[44] I Aruego, J. THE FRAMING OF THE PHILIPPINE CONSTITUTION 209.

[45] The Convention on Conflict of Nationality Laws, April 12, 1930 (signed at Hague Conference for Codification of International Law; 5 Hudson, International Legislation 359) provides as follows:

Art. 1. It is for each state to determine under its own law who are its nationals.xxx

Art. 2. Any question as to whether a person possesses the nationality of a particular state shall be determined in accordance with the law of that state.

[46] “Why Can’t Arnold Be President? What the Founding Fathers were afraid of.” <http://slate.msn.com/id/2096192>; by Brendan Koerner. (Posted 26 February 2004) The author is fellow at the New America Foundation.

[47] G.R. Nos. 92191-92 & 92202-03, 30 July 1991, 199 SCRA 692.

[48] *Id.*, at 745-746.

[49] VI REMEDIAL LAW 127, Oscar Herrera (1999 ed.), citing 1 Wharton’s Criminal Evidence, 11th ed. 158).

[50] Am Jur 2d §245, pp. 292-293.

[51] E.g., *Frivaldo v. Commission on Elections*, G.R. Nos. 120295 and 123755, 28 June 1996, 257 SCRA 727.

[52] “The exercise by a person of the rights and/or privileges that are granted to Filipino citizens is not conclusive proof that he or she is a Filipino citizen. A person, otherwise disqualified by reason of citizenship, may exercise and enjoy the right or privilege of a Filipino citizen by representing himself to be a Filipino.” *Paa v. Chan*, G.R. No. L-25845, October 31, 1967, 21 SCRA 753, 761.

[53] *Ibid.*

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