

JUAN GALLANOSA FRIVALDO, PETITIONER, VS. COMMISSION ON ELECTIONS AND THE LEAGUE OF MUNICIPALITIES, SORSOGON CHAPTER, HEREIN REPRESENTED BY ITS PRESIDENT, SALVADOR NEE ESTUYE, RE...*G.R. No. 87193. June 23, 1989*

Ponente: CRUZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-87193/>**CRUZ, J.:**

Petitioner Juan G. Frivaldo was proclaimed governor-elect of the province of Sorsogon on January 22, 1988, and assumed office in due time. On October 27, 1988, the League of Municipalities, Sorsogon Chapter (hereafter, League), represented by its President, Salvador Estuye, who was also suing in his personal capacity, filed with the Commission on Elections a petition for the annulment of Frivaldo's election and proclamation on the ground that he was not a Filipino citizen, having been naturalized in the United States on January 20, 1983. In his answer dated May 22, 1988, Frivaldo admitted that he was naturalized in the United States as alleged but pleaded the special and affirmative defenses that he had sought American citizenship only to protect himself against President Marcos. His naturalization, he said, was "merely forced upon himself as a means of survival against the unrelenting persecution by the Martial Law Dictator's agents abroad." He added that he had returned to the Philippines after the EDSA revolution to help in the restoration of democracy. He also argued that the challenge to his title should be dismissed, being in reality a quo warranto petition that should have been filed within ten days from his proclamation, in accordance with Section 253 of the Omnibus Election Code. The League, moreover, was not a proper party because it was not a voter and so could not sue under the said section.

Frivaldo moved for a preliminary hearing on his affirmative defenses but the respondent Commission on Elections decided instead by its Order of January 20, 1988, to set the case for hearing on the merits. His motion for reconsideration was denied in another Order dated February 21, 1988. He then came to this Court in a petition for certiorari and prohibition to ask that the said orders be set aside on the ground that they had been rendered with grave abuse of discretion. Pending resolution of the petition, we issued a temporary order against the hearing on the merits scheduled by the COMELEC and at the same time required comments from the respondents.

In their Comment, the private respondents reiterated their assertion that Frivaldo was a naturalized American citizen and had not reacquired Philippine citizenship on the day of the election on January 18, 1988. He was therefore not qualified to run for and be elected governor. They also argued that their petition in the Commission on Elections was not really for quo warranto under Section 253 of the Omnibus Election Code. The ultimate purpose was to prevent Frivaldo from continuing as governor, his candidacy and election being null and void ab initio because of his alienage. Even if their petition were to be considered as one for quo warranto, it could not have been filed within ten days from Frivaldo's proclamation because it was only in September 1988 that they received proof of his naturalization. And assuming that the League itself was not a proper party, Estuye himself, who was suing not only for the League but also in his personal capacity, could nevertheless institute the suit by himself alone.

Speaking for the public respondent, the Solicitor General supported the contention that Frivaldo was not a citizen of the Philippines and had not repatriated himself after his naturalization as an American citizen. As an alien, he was disqualified from public office in the Philippines. His election did not cure this defect because the electorate of Sorsogon could not amend the Constitution, the Local Government Code, and the Omnibus Election Code. He also joined in the private respondent's argument that Section 253 of the Omnibus Election Code was not applicable because what the League and Estuye were seeking was not only the annulment of the proclamation and election of Frivaldo. He agreed that they were also asking for the termination of Frivaldo's incumbency as governor of Sorsogon on the ground that he was not a Filipino.

In his Reply, Frivaldo insisted that he was a citizen of the Philippines because his naturalization as an American citizen was not "impressed with voluntariness." In support he cited the *Nottebohm Case*, [1955 I.C.J. 4; 49 A.J.I.L. 396 (1955)] where a German national's naturalization in Liechtenstein was not recognized because it had been obtained for reasons of convenience only. He said he could not have repatriated himself before the 1988 elections because the Special Committee on Naturalization created for the purpose by LOI No. 270 had not yet been organized then. His oath in his certificate of candidacy that he was a natural-born citizen should be a sufficient act of repatriation. Additionally, his active participation in the 1987 congressional elections had divested him of American citizenship under the laws of the United States, thus restoring his Philippine citizenship. He ended by reiterating his prayer for the rejection of the move to disqualify him for being time-barred under Section 253 of the Omnibus Election Code.

Considering the importance and urgency of the question herein raised, the Court has decided to resolve it directly instead of allowing the normal circuitous route that will after all eventually end with this Court, albeit only after a long delay. We cannot permit this delay. Such delay will be inimical to the public interest and the vital principles of public office to be here applied.

It is true that the Commission on Elections has the primary jurisdiction over this question as the sole judge of all contests relating to the election, returns and qualifications of the members of the Congress and elective provincial and city officials. However, the decision on Frivaldo's citizenship has already been made by the COMELEC through its counsel, the Solicitor General, who categorically claims that Frivaldo is a foreigner. We assume this stance was taken by him after consultation with the public respondent and with its approval. It therefore represents the decision of the COMELEC itself that we may now review. Exercising our discretion to interpret the Rules of Court and the Constitution, we shall consider the present petition as having been filed in accordance with Article IX-A, Section 7, of the Constitution, to challenge the aforementioned Orders of the COMELEC.

The basic question we must resolve is whether or not Juan G. Frivaldo was a citizen of the Philippines at the time of his election on January 18, 1988, as provincial governor of Sorsogon. All the other issues raised in this petition are merely secondary to this basic question.

The reason for this inquiry is the provision in Article XI, Section 9, of the Constitution that all public officials and employees owe the State and the Constitution "allegiance at all times" and the specific requirement in Section 42 of the Local Government Code that a candidate for local elective office must be *inter alia* a citizen of the Philippines and a qualified voter of the constituency where he is running. Section 117 of the Omnibus Election Code provides that a qualified voter must be, among other qualifications, a citizen of the Philippines, this being an indispensable requirement for suffrage under Article V, Section 1, of the Constitution.

In the certificate of candidacy he filed on November 19, 1987, Frivaldo described himself as a "natural-born" citizen of the Philippines, omitting mention of any subsequent loss of such status. The evidence shows, however, that he was naturalized as a citizen of the United States in 1983 per the following certification from the United

States District Court, Northern District of California, as duly authenticated by Vice Consul Amado P. Cortez of the Philippine Consulate General in San Francisco, California, U.S.A.

OFFICE OF THE CLERK

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

September 23, 1988

TO WHOM IT MAY CONCERN:

Our records show that JUAN GALLANOSA FRIVALDO, born on October 20, 1915, was naturalized in this Court on January 20, 1983, and issued Certificate of Naturalization No. 11690178.

Petition No. 280225.

Alien Registration No. A23 079 270.

Very truly yours,

WILLIAM L. WHITTAKER, Clerk

by: (Sgd.)

ARACELI V. BARENG

Deputy Clerk

This evidence is not denied by the petitioner. In fact, he expressly admitted it in his answer. Nevertheless, as earlier noted, he claims it was "forced" on him as a measure of protection from the persecution of the Marcos government through his agents in the United States.

The Court sees no reason not to believe that the petitioner was one the enemies of the Marcos dictatorship. Even so, it cannot agree that as a consequence thereof he was coerced into embracing American citizenship. His feeble suggestion that his naturalization was not the result of his own free and voluntary choice is totally unacceptable and must be rejected outright.

There were many other Filipinos in the United States similarly situated as Frivaldo, and some of them subject to greater risk than he, who did not find it necessary - nor do they claim to have been coerced - to abandon their cherished status as Filipinos. They did not take the oath of allegiance to the United States, unlike the petitioner who solemnly declared "on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty of whom or which I have heretofore been a subject or citizen," meaning in his case the Republic of the Philippines. The martyred Ninoy Aquino heads the impressive list of those Filipinos in exile who, unlike the petitioner held fast to their Philippine citizenship despite the perils of their resistance to the Marcos regime.

The Nottebohm case cited by the petitioner invoked the international law principle of effective nationality which is clearly not applicable to the case at bar. This principle is expressed in Article 5 of the Hague Convention of 1930 on the Conflict of Nationality Laws as follows:

Art. 5. Within a third State a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status an of any convention in force, a third State shall, of the nationalities which any such person possesses, recognize exclusively in its territory

either the nationality of the country in which he is habitually and principally resident or the nationality of the country with which in the circumstances he appears to be in fact most closely connected.

Nottebohm was a German by birth but a resident of Guatemala for 34 years when he applied for and acquired naturalization in Liechtenstein one month before the outbreak of World War II. Many members of his family and his business interests were in Germany. In 1943, Guatemala, which had declared war on Germany, arrested Nottebohm and confiscated all his properties on the ground that he was a German national. Liechtenstein thereupon filed suit on his behalf, as its citizen, against Guatemala. The International Court of Justice held Nottebohm to be still a national of Germany, with which he was more closely connected than with Liechtenstein.

That case is not relevant to the petition before us because it dealt with a conflict between the nationality laws of two states as decided by a third state. No third state is involved in the case at bar; in fact, even the United States is not actively claiming Frivaldo as its national. The sole question presented to us is whether or not Frivaldo is a citizen of the Philippines under our own laws, regardless of other nationality laws. We can decide this question alone as sovereign of our own territory, conformably to Section 1 of the said Convention providing that "it is for each State to determine under its law who are its nationals."

It is also worth noting that Nottebohm was invoking his naturalization in Liechtenstein whereas in the present case Frivaldo is rejecting his naturalization in the United States.

If he really wanted to disavow his American citizenship and reacquire Philippine citizenship, the petitioner should have done so in accordance with the laws of our country. Under CA No. 63 as amended by CA No. 473 and PD No. 725, Philippine citizenship may be reacquired by direct act of Congress, by naturalization, or by repatriation.

While Frivaldo does not invoke either of the first two methods, he nevertheless claims he has reacquired Philippine citizenship by virtue of a valid repatriation. He claims that by actively participating in the elections in this country, he automatically forfeited American citizenship under the laws of the United States. Such laws do not concern us here. The alleged forfeiture is between him and the United States as his adopted country. It should be obvious that even if he did lose his naturalized American citizenship, such forfeiture did not and could not have the effect of automatically restoring his citizenship in the Philippines that he had earlier renounced. At best, what might have happened as a result of the loss of his naturalized citizenship was that he became a stateless individual.

Frivaldo's contention that he could not have repatriated himself under LOI 270 because the Special Committee provided for therein had not yet been constituted seems to suggest that the lack of that body rendered his repatriation unnecessary. That is far-fetched if not specious. Such a conclusion would open the floodgates, as it were. It would allow all Filipinos who have renounced this country to claim back their abandoned citizenship without formally rejecting their adopted state and reaffirming their allegiance to the Philippines.

It does not appear that Frivaldo has taken these categorical acts. He contends that by simply filing his certificate of candidacy he had, without more, already effectively recovered Philippine citizenship. But that is hardly the formal declaration the law envisions - surely, Philippine citizenship previously disowned is not that cheaply recovered. If the Special Committee had not yet been convened, what that meant simply was that the petitioner had to wait until this was done, or seek naturalization by legislative or judicial proceedings.

The argument that the petition filed with the Commission on Elections should be dismissed for tardiness is not well-taken. The herein private respondents are seeking to prevent Frivaldo from continuing to discharge his office of governor because he is disqualified from doing so as a foreigner. Qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. Once any of the required qualifications is lost, his title may be seasonably challenged. If, say, a female legislator were to marry a foreigner during her term and by her act or omission

acquires his nationality, would she have a right to remain in office simply because the challenge to her title may no longer be made within ten days from her proclamation? It has been established, and not even denied, that the evidence of Frivaldo's naturalization was discovered only eight months after his proclamation and his title was challenged shortly thereafter.

This Court will not permit the anomaly of a person sitting as provincial governor in this country while owing exclusive allegiance to another country. The fact that he was elected by the people of Sorsogon does not excuse this patent violation of the salutary rule limiting public office and employment only to the citizens of this country. The qualifications prescribed for elective office cannot be erased by the electorate alone. The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this case, that the candidate was qualified. Obviously, this rule requires strict application when the deficiency is lack of citizenship. If a person seeks to serve in the Republic of the Philippines, he must owe his total loyalty to this country only, abjuring and renouncing all fealty and fidelity to any other state.

It is true as the petitioner points out that the status of the natural-born citizen is favored by the Constitution and our laws, which is all the more reason why it should be treasure like a pearl of great price. But once it is surrendered and renounced, the gift is gone and cannot be lightly restored. This country of ours, for all its difficulties and limitations, is like a jealous and possessive mother. Once rejected, it is not quick to welcome back with eager arms its prodigal if repentant children. The returning renegade must show, by an express and unequivocal act, the renewal of his loyalty and love.

WHEREFORE, the petition is DISMISSED and petitioner JUAN G. FRIVALDO is hereby declared not a citizen of the Philippines and therefore DISQUALIFIED from serving as Governor of the Province of Sorsogon. Accordingly, he is ordered to vacate his office and surrender the same to the duly elected Vice-Governor of the said province once this decision becomes final and executory. The temporary restraining order dated March 9, 1989, is LIFTED.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Paras, Feliciano, Gancayco, Padilla, Bidin, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Gutierrez, Jr., J., concurred with a brief concurring statement.

Sarmiento, J., no part, Petitioner is my client.

Cortes, J., in the result.

Frivaldo vs COMELEC : 87193 : June 23, 1989 : J. Gutierrez Jr : En Banc : Concurring Opinion Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:*{behavior:url(#ieooui) } /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

CONCURRING OPINION

GUTIERREZ, JR., J.:

I concur in the pragmatic approach taken by the Court. I agree that when the higher interests of the State are involved, the public good should supersede any procedural infirmities which may affect a petition filed with the Commission on Elections. I fail to see how the Court could allow a person who by his own admissions is

indubitably an alien to continue holding the office of Governor of any province.

It is an established rule of long standing that the period fixed by law for the filing of a protest -- whether quo warranto or election contest -- is mandatory and jurisdictional.[1]

As a rule, the quo warranto petition seeking to annul the petitioner's election and proclamation should have been filed within ten days after the proclamation of election results.[2] The purpose of the law in not allowing the filing of protests beyond the period fixed by law is to have a certain and definite time within which petitions against the results of an election should be filed and to provide summary proceedings for the settlement of such disputes.[3] The Rules of Court allow the Republic of the Philippines to file quo warranto proceedings against any public officer who performs an act which works a forfeiture of his office.[4] However, where the Solicitor General or the President feel that there are no good reasons to commence quo warranto proceedings,[5] the Court should allow a person like respondent Estuye or his league to bring the action.

I must emphasize, however, that my concurrence is limited to a clear case of an alien holding an elective public office. And perhaps in a clear case of disloyalty to the Republic of the Philippines.[6] Where the disqualification is based on age, residence, or any of the many grounds for ineligibility,[7] I believe that the ten-day period should be applied strictly.

The pragmatic approach is also shown by the fact that the Court found it inexpedient to wait for the final decision of COMELEC. This step is most unusual but considering the total lack of any serious grounds for the petitioner's claim of having regained his Philippine citizenship, I am constrained to concur in the procedure pro hac vice.

[1] Ferrer v. Gutierrez and Lucot, 43 Phil. 795 [1922]; and Nisperos v. Araneta Diaz and Flores, 47 Phil. 806 [1925].

[2] Section 253, Omnibus Election Code, B.P. Blg. 881.

[3] Municipal Council of Masantol v. Guevarra, 44 Phil. 580 [1923].

[4] Rule 66, Section 1, Rules of Court.

[5] Rule 66, Section 2.

[6] Section 253, Omnibus Election Code; See Casin v. Caluag, 80 Phil. 758 [1948].

[7] Among them are corrupting voters or election officials with money or other material considerations (Section 68, B.P. 881); committing acts of terrorism to enhance one's candidacy (id); overspending for election expenses (id); soliciting, receiving, or making prohibited contributions (Sections 89, 95, 96, 97, and 104 of B.P. 881); the use of a void certificate of candidacy (Section 78, id); engaging in partisan political activity outside of the campaign period (Section 80, id); destroying or defacing lawful election propaganda (Section 83, id); using prohibited forms of certificate election propaganda (Section 85, id); unlawful use of mass media (Section 86, id); coercion by a public officer of subordinates to campaign for or against a candidate (Section 261-d, id); using threats and intimidation to force a person to campaign or to prevent him from campaigning for or against a candidate (Section 261-e, id); electioneering within the prohibited space around or inside a polling place (Section 261-k, id); use of public funds for certain election purposes (Section 261-u, id); and use of a void certificate of candidacy (Section 78). Under Section 2175 of the Revised Administrative Code, certain persons like ecclesiastics and soldiers in the active service are disqualified from running for elective municipal office.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.