RIZALITO Y. DAVID, Petitioner, v. MARY GRACE POE LLAMANZARES, Respondent.
SET CASE No. 001-15

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dissenting SEPARATE OPINION

LEONARDO-DE CASTRO, *J.*:

I vote to GRANT the petition for *quo warranto* filed by Rizalito Y. David seeking to unseat respondent Senator Mary Grace Poe Llamanzares from the Senate of the Philippines on the ground that she is not a natural-born Filipino citizen.

The Significance of this Case

This is a case of first impression on a matter of paramount importance for the following reasons:

1. The decision here will have far reaching legal consequence not only to respondent as it can set a precedent to determine the citizenship of all foundlings similarly situated as respondent and whether or not their status and rights are adequately addressed by existing laws;

2. The subject of this case is eligibility to hold a public office or position that ranks high in the hierarchy of one of the three great branches of government; and

3. There may now or in the future be other public officers or officials, similarly situated as respondent, who hold or will hold positions requiring the same natural-born citizenship as a qualification who may be affected by the decision in this case.

After a meticulous study of the relevant provisions of the Constitution, law, jurisprudence, rules of procedure and evidence on record, I arrived at my vote without any mental reservation or peradventure of doubt.

On the Procedural/Technical Issues

I agree that the procedural or technical issues raised pertaining to forum shopping, prescription, and burden of proof lack merit. There is no forum shopping, since there is no identity of reliefs prayed for in this *quo*

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warranto petition and the criminal action filed against respondent by the same petitioner here in the Commission on Elections. The *quo warranto* petition is not barred by prescription or laches in view of Rule 18 of the 2013 Rules of the Senate Electoral Tribunal which provides "that the petition for *quo warranto* on the ground of ineligibility may be filed at anytime during the respondent's tenure."

Regarding the issue on the burden of proof, I find that the petitioner was able to discharge said burden by presenting, among others, respondent's original birth certificate dated November 27, 1968 showing that she was a foundling with unknown father and mother,[1] and the decree of adoption dated May 13, 1974 issued by the then Municipal Court of San Juan evidencing that respondent was an adopted and not a natural child of spouses Ronald Allan Poe and Jesusa Sonora Poe.[2] Her parents being unknown, the burden of evidence shifted to respondent to show that she is a natural-born child of a Filipino father or mother, which is an indispensable qualification for the validity of her certificate of candidacy as Senator.

Moreover, her reliance on an alleged disputable presumption of natural-born citizenship that would purportedly place the burden on the petitioner to prove that respondent's parents are foreigners is erroneous. A disputable presumption cannot be applied in the face of the constitutional requirement of biological or blood ties to a Filipino father or mother to be a natural-born citizen. This requirement coupled with another constitutional provision imposing natural-born citizenship as a qualification to be a Senator rely on the definite existence of a factual basis and eliminate any room for the acceptance of a presumption which is at best disputable and therefore uncertain. Furthermore, to recognize the validity or effectivity of a disputable presumption of natural-born citizenship will not be in accord with the definition of a natural-born citizen under Section 2, Article IV of the 1987 Constitution which reads:

> 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.

Assuming *arguendo*, that the provision of an international convention on a supposed "disputable presumption" of citizenship/nationality can be applied or be put into operation, the fact of being a foundling must be preliminarily established by a legal process.

A presumption is an inference as to the existence of a fact not actually known, arising from its usual connection with another fact or other facts which are known.[3] The disputable presumption invoked by respondent that a foundling is a natural-born citizen is supposed to arise from the fact of

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1 Exhibit P for petitioner; Exhibit 1 for respondent.
2 Exhibit Q for petitioner; Exhibit 2 for respondent.
3 *Martin v. Court of Appeals*, G.R. No. 82248, January 30, 1992, 205 SCRA 591, 595.

being a foundling. Hence, to be able to apply said presumption, the said fact must first be established or proven.

By way of example, a foundling under Section 5 of Republic Act (R.A.) No. 8552,[4] and Sections 4, 5 and 8 of R.A. No. 9523,[5] must undergo a specific legal process, administrative in nature, for the issuance of a foundling certificate to establish the fact of being an abandoned child before said foundling can be accorded the rights of a Filipino child under the said laws on adoption. For this reason, respondent being a foundling will not meet the definition of natural-born citizen under the above-quoted Section 2, Article IV of the 1987 Constitution. This point will be discussed more comprehensively in the appropriate segment of this Separate Opinion.

On the Substantive Issues

My position, which shall be discussed extensively *in seriatim* below, is summed as follows:

I. The Philippine Constitution follows the principle of "*jus sanguinis*," *i.e.*, natural-born citizenship is based on blood relationship to a Filipino father or Filipino mother, and respondent, admittedly a foundling, does not come within the ambit of this constitutionally ordained principle.

II. The text of Sections 3 and 4 of the 1935 Constitution, in effect when respondent was born, was clear and unambiguous and did not provide any exception to the application of the principle of "*jus sanguinis*" or blood relationship between parents and child, such that where no blood ties exist, natural-born citizenship cannot be legislated by Congress nor be deemed conferred or recognized by official acts of Executive Department officials.

III. Since respondent anchors her claim of natural-born citizenship on a generally accepted principle of international law pursuant to the theory of incorporation, assuming only for the sake of argument that its invocation is proper, her claimed natural-born citizenship is not based on the actual existence of blood relationship with a Filipino father or mother as required by the Constitution but on a

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4 An Act Establishing the Rules and Policies on the Domestic Adoption of Filipino Children and for Other Purposes, February 25, 1998, otherwise known as the Domestic Adoption Act of 1998.

5 An Act Requiring the Certification of the Department of Social Welfare and Development (DSWD) to Declare a "Child Legally Available for Adoption" as a Prerequisite for Adoption Proceedings, March 12, 2009.

supposed legal fiction which will run afoul of the concept of natural-born citizenship under the Constitution and is therefore constitutionally objectionable.

IV. **Aside from the fact that the Philippines has not ratified the international conventions namely, the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws and the 1961 Convention on the Reduction of Statelessness, cited by respondent to claim natural-born citizenship by disputable presumption, the said conventions are not self-executing as the Contracting State is granted the discretion to determine under its national law the conditions and manner by which citizenship is to be granted. Even then, the citizenship, if acquired by virtue of such conventions, assuming the latter are implemented by Philippine law, is akin to the citizenship falling under Section 1(4), Article IV of the 1987 Constitution, recognizing citizenship by naturalization in accordance with law or by a special act of Congress.**

V. **The definition of a natural-born citizen, under Section 2, Article IV of the 1987 Constitution, cannot be met by a foundling even if the disputable presumption is applied because before the said presumption can operate, the fact of being a foundling must first be established by a legal proceeding, as illustrated by Section 5 of R.A. No. 8552, and Sections 4, 5, and 8 of R.A. No. 9523, which require an official declaration that the child is a foundling or an abandoned child before he/she can be entitled to the rights of a Filipino child under the aforesaid laws.**

THE CASE

Petitioner's Arguments

The Petition for *Quo Warranto* filed under Rule 18 of the 2013 Rules of Procedure of the Senate Electoral Tribunal by petitioner Rizalito Y. David seeks to unseat respondent Mary Grace Poe Llamanzares from her position as Senator of the Republic of the Philippines on the ground that she is not qualified to be a Member of the Senate of the Philippines based on the fact that (*i*) she is not a *natural-born* citizen of the Philippines; and (*ii*) she did not comply with the two-year residency requirement imposed upon a Senatorial candidate by Section 3, Article VI of the 1987 Constitution. The second ground has already prescribed and is no longer an issue in this case.

Petitioner David alleges the factual bases of his petition as follows:

10. Respondent Grace Poe Llamanzares was born on September 3, 1968 in Jaro, Iloilo. Her biological parents as of this writing are still unknown. In a recent news report, respondent Llamanzares went to Jaro to locate her biological parents but to no avail. Being a child with no known parents at birth, the law classified Respondent's situation as a foundling, defined in the Rules of Adoption by the Supreme Court as referring to a deserted or abandoned infant or child whose parents, guardian or relatives are unknown.

11. The reported circumstances of her birth yield no proof upon which to conclude that her father or mother is a Filipino citizen, so as to make her a Filipino citizen at birth, *i.e.*, a natural-born Filipino citizen as defined by the 1987 Philippine Constitution.

12. When respondent Llamanzares was about five years old, she was adopted (not clear if indeed she is legally adopted) by the couple Fernando Poe Jr. and Jesusa Sonora Poe. She grew up as the legitimate daughter of the couple. After respondent Llamanzares finished her high school education at Assumption College, she continued her studies at the University of the Philippines and then in Boston, Massachusetts, United States of America.

13. She travelled to the United States presumably as a Filipino, using a Philippine passport. It is not well-established how she had become a Filipino.

While in the United States, respondent became a naturalized American citizen on October 18, 2001 after she met Teodoro Misael 'Neil' Llamanzares, who became her husband sometime in 1991. She renounced and abjured her Filipino citizenship and pledged residence and domicile in the United States. She procured an American passport on December 19, 2001 under passport No. 017037793.

At this time and who knows when, respondent Llamanzares embraced the American way of life, bore children who are Americans, and lived and grew up with husband and children as Americans.

14. From her various interviews with media, respondent Llamanzares said she came home to the Philippines in 2005 due to the untimely death of her adopting father, Fernando Poe Jr. (FPJ) on December 14, 2004. Prior to his death, FPJ suffered defeat in the 2004 presidential election, which was marred by allegations of cheating and rigging of the polls. Presuming that she did come home not only to condole with his bereaved adopting father, but ultimately to return for good to the country she had previously, absolutely and entirely renounced and abjured, she purportedly filed a petition for the re-acquisition of Filipino citizenship based on records of the Bureau of Immigration. In the said petition, she stated that her residence was at 23 Lincoln St., Greenhills West, San Juan, Metro Manila.

Despite her purported re-acquisition of Filipino citizenship, evidence showed that respondent Llamanzares still made several travels to the United States and back to the Philippines and vice versa from [the] years 2000 to 2009 using [an] American/U.S. passport instead of [a] Philippine passport.

15. Respondent was appointed Chairperson of the Movie and Television Review and Classification Board (MTRCB) in 2010 and prior to said appointment, she purportedly pledged allegiance to the sovereignty of the Republic of the Philippines as required by R.A. 9225. It was not known, that by accepting her employment as Chairman of MTRCB she complied with another important requirement provided in Section 5(3) of R.A. 9225 which is to renounce her American citizenship. Failure to do so makes her appointment void. However, this is another matter she has to reckon with.

16. Before she became MTRCB Chairman, respondent attempted to run for the Senate. She did not pursue it, but she eventually ran in 2013 and was elected as senator. And it was at [that] time up to the present that she is hounded by her disqualification to hold such office. [6]

On the substantive legal issues, petitioner argues as follows, *viz.*:

19. One of the qualifications required for senators is that of citizenship. Section 3 of Article VI of the 1987 Philippine Constitution provides:

> "Section 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election."

20. Respondent Lllamanzares's citizenship is governed by the charter in force in 1968, the time she was born, the 1935 CONSTITUTION. Sections 1 of Article VI thereof provides:

> "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 [i]n 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."

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6 Amended Petition filed on August 17, 2015; Records, Vol. I, pp. 33-35.

21. Respondent does not fall [under] any of these provisions, thus her citizenship status is in peril. Citizenship is one of the most important qualifications of a candidate.

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23. The 1935 Constitution, which was in force when respondent Llamanzares was born, does not define "natural-born citizen." But Section 2 of Article IV of the 1987 Constitution, under which respondent Llamanzares ran for Senator, does, and it states:

> "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."

The two requisites can be deducted from the above-mentioned provision. A person in order to be a natural-born Filipino, 1) must be a Filipino citizen from birth, and 2) does not have to perform any act to acquire or perfect said Philippine citizenship x x x.

24. For one to become a natural-born Filipino citizen from birth, his parents must be Filipino citizens. Respondent Llamanzares is not able to comply with the requisites provided above. Being a foundling, her parents are not known and cannot be presumed as Filipino citizens, hence, she cannot claim or acquire the status of a natural-born citizen. The reported circumstances of respondent Llamanzares's birth as a foundling yield no proof upon which to conclude that her parents are Filipino citizens, as to make her a Filipino citizen at birth, *i.e.*, a natural-born Filipino citizen.

Further, respondent Llamanzares cannot claim natural-born citizen status because there is no law in the country that states that a foundling, born in the country (Philippines) is considered [a] natural-born citizen. The Philippine Constitution is very clear as to who are natural-born citizens of the Philippines.

25. Although Section 2, Article [II] of the Constitution adopts the generally accepted principles of international law such that some people may argue that a foundling may be considered a natural-born citizen as defined in Article 2 of the 1961 U.N. Convention on Reduction of Statelessness which states:

> "Article 2 – A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State."

This is however not applicable to respondent Llamanzares because when she was born on September 3, 1968, the 1961 Convention on the Reduction of Statelessness was not yet in effect. The said Convention only entered into force on December 13, 1975. And its enforceability is provided in Article 18 thereof which states:

> 1. This Convention shall enter into force two years after the date of the deposit of the sixth instrument of ratification or accession.
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> 2. For each State ratifying or acceding to this Convention after the deposit of the sixth instrument of ratification or accession, it shall enter into force on the ninetieth day after the deposit by such State of its instrument of ratification or accession or on the date on which this Convention enters into force in accordance with the provisions of paragraph 1 of this article, whichever is the later.
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> x x x x
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> 27. This Convention is likewise not applicable to respondent because the Philippines is not a signatory nor [has it] acceded to this Convention.
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> Further, a DOJ Circular issued on October 18, 2012 (Establishing the Refugee and Stateless Status Determination Procedure) does not provide for any provision concerning citizenship of stateless persons or refugees.
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> Hence, the presumption in Article 2 of the 1961 Convention concerning foundlings, if ever binding shall only be applicable to foundlings found after the Philippines has entered into force or acceded to the said Convention, and per record, the Philippines has not yet acceded. Respondent Llamanzares, having been born prior to accession by the Philippines to the 1961 Convention, cannot avail the benefits thereof.
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> 28. Article 12(3) of the 1961 Convention states that the provisions of Article 2 of this Convention shall apply only to foundlings found in the territory of a Contracting State after the entry into force of the Convention for that State.
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> And also, the presumptions in Article 2 is a rule or specie of evidence which shall apply only "in the absence of proof to the contrary," and which presumption may be overcome by contrary evidence as stated by the Supreme Court in the People v. de Guzman case (G.R. No. 1060, Feb. 9, 1994) x x x.
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> 29. Lastly, the presumption in favor of foundlings in Article 2 of the 1961 Convention does not automatically [bind] the signatory country, presuming that the Philippines is a signatory thereof.
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> 30. Article I of the said Convention recognizes the authority of the signatory country to grant nationality to a foundling at birth, or by operation of law, or in an appropriate proceeding. No law in the country has so far been passed granting natural-born status to foundlings x x x.[7]

From the foregoing, petitioner concludes that respondent is not only not a natural-born Filipino citizen, but is also a stateless individual; and that

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[7] Id. at 36-41.

though she was adopted, respondent still cannot claim the citizenship of her adopters or adopting parents, much less the status of a natural-born Filipino citizen for the simple reason quoted below that:

> [A]n adopted child is considered [the] legitimate child of the adopting parents, but 'such legal fiction extended only to define his rights under civil law and not his political status.' Citizenship is a political status as held in Tan Chong v. Secretary of Labor (G.R. No. 47616, September 16, 1947) x x x.[8]

Petitioner is also of the view that even assuming that respondent was accorded Philippine citizenship because respondent was issued a Philippine passport, such citizenship was extinguished when she renounced and abjured the same upon taking her oath of allegiance to the United States of America as its naturalized citizen. Respondent did not reacquire Philippine citizenship despite complying with the provisions of R.A. No. 9552, or the "*Citizen Retention and Reacquisition Act of 2003,*" because said law applies only to natural-born Filipino citizens. Respondent was never a natural-born citizen from birth. The end result of her actions, according to petitioner, is that respondent became stateless when she gave up her United States (U.S.) citizenship. Therefore, petitioner prays –

> WHEREFORE, it is respectfully prayed that this PETITION for *quo warranto* be GRANTED and that the herein respondent Mary Grace Poe Llamanzares be ORDERED to immediately vacate her position as a Member of the Senate of the Congress of the Philippines on the ground that she is not qualified for the office being not a natural-born citizen of the Philippines.

Respondent's Arguments

Respondent invokes a legal presumption in her favor that she is a natural-born citizen of the Philippines. Thus, she is eligible to continue sitting as a Member of the Senate of the Philippines.

Respondent assails petitioner's failure to overcome said legal presumption by not discharging the burden of proof incumbent upon him who asserts the fact of her disqualification, *i.e.*, to prove by preponderance of evidence that "*Respondent was born of foreign father and mother, and hence, is not a natural-born Filipino.*"[9]

Respondent prays for the dismissal of the petition because it is based not on hard evidence but upon a speculation – "*that since Respondent's parents are unknown, [the petitioner] cannot tell whether Respondent's parents are Filipinos or foreigners[;] [t]herefore, x x x Respondent x x x is not a natural-born Filipino, and must be considered stateless*"[10] – which

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8 Id. at 42.

9 Respondent's Position Paper, p. 2; Records, Vol. III, p. 1073.

10 Id.

speculation will "*set at naught the will of more than twenty million Filipino voters who elected Respondent in 2013.*"[11] Respondent insists that, unlike petitioner, she was able to present overwhelming documentary evidence that she is a Filipino, and presumed to be a natural-born one.[12]

Respondent reasons that "*[the] official acts of the Philippine Government recognizing Respondent's status as a natural-born Filipino citizen, and the ultimate expression of the sovereign will of the Filipino people who elected Respondent as a Senator x x x should prevail over Petitioner's challenge that is anchored, not on facts, but on a mere hypothesis x x x the Government's repeated recognition that Respondent is a natural-born Philippine citizen create a presumption that she is a natural-born Filipino.*"

In sum, respondent claims that (*i*) "*[t]he framers of the 1935 Constitution intended that foundlings be considered citizens of the Philippines*"[13] based on the deliberations of the Constitutional Convention held at the time; (*ii*) the framers of the 1935 Constitution intended, under both conventional and customary international law, that a child born in the Philippines in 1968 of unknown parents, is a natural-born citizen because she has a right: to a nationality from birth, to be protected against statelessness, to be presumed a citizen of the country where she is found, she need not perform any act to acquire such nationality, and she is not naturalized;[14] (*iii*) she reacquired her natural-born citizenship *via* the process enunciated under R.A. No. 9225;[15] (*iv*) she effectively renounced her U.S. citizenship as required under R.A. No. 9225 in order to qualify for an elective post, on October 20, 2010;[16] (*v*) the U.S.'s approval of her renunciation of said foreign citizenship was not necessary to qualify her to seek a Philippine elective office;[17] (*vi*) her use of her U.S. Passport before she renounced her U.S. citizenship did not negate her repatriation in this country in 2006;[18] and (*vii*) she no longer used her U.S. Passport after she had renounced her U.S. citizenship on October 20, 2010.

With the foregoing arguments, respondent submits that she has duly established her status as a natural-born Filipino citizen, thus, eligible to sit, and continue to sit, as a Member of the Senate of the Philippines.

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11 Id.
12 Id. at 1075.
13 Id. at 1077.
14 Id. at 1079.
15 Id. at 1090.
16 Id. at 1092.
17 Id. at 1093.
18 Id. at 1096.

DISCUSSIONS

I

With the advent of the 1935 Constitution, the Philippines has categorically followed the doctrine of *jus sanguinis*, literally translated to *right by blood*, or the acquisition of citizenship by birth to parents who are citizens of the State. The Supreme Court, in a decided case, stated:

> [T]he 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 —
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> > "Section 1, Article [IV], 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 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 or mothers 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."[19]

The principle of "*jus sanguinis*" or "right by blood" is well-entrenched in our constitutional system. The 1935, 1973, and 1987 Constitutions follow this principle as basis for natural-born citizenship. Although the provisions on citizenship had evolved or were modified, it was only to conform to the emerging principle of gender equality by placing the Filipino father and mother on equal footing in transmitting to their children their citizenship.

By accepting the doctrine of *jus sanguinis* in this jurisdiction, it was recognized that a blood relationship would be a sounder guarantee of loyalty to the country of one's parents than the doctrine of *jus soli*, or the attainment of a citizenship by the place of one's birth.[20]

Since then, it is this doctrine of *jus sanguinis* that has defined who are natural-born citizens of the Republic of the Philippines. The 1973 Constitution provided as follows:

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19 *Tecson v. Commission on Elections*, 468 Phil. 421, 469 (2004).

20 Lorenzo M. Tañada & Enrique M. Fernando, *Constitution of the Philippines*, p. 658 (1953).

ARTICLE III
Citizenship

SECTION 1. The following are citizens of the Philippines:

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

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

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

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

Jus sanguinis continues to be the controlling doctrine in this jurisdiction pursuant to Article IV on Citizenship of the 1987 Constitution, which reads in part:

ARTICLE IV
Citizenship

SECTION 1. The following are citizens of the Philippines:

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

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

(3) Those 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.

Respondent's original birth certificate stated that she was a foundling or a child of unknown father or mother found in Jaro, Iloilo, on September 3, 1968. The Constitution in effect then was the 1935 Constitution. It enumerated the "citizens of the Philippines" in Section 1, Article IV, which included the following:

(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.

The principle of *jus sanguinis* is evident in the above-quoted paragraphs (3) and (4). The said provisions are clear and require no further interpretation. An elementary rule in statutory construction dictates that when the words and phrases of a statute are clear and unequivocal, their meaning must be determined from the language employed and the statute

must be taken to mean exactly what it says. This is known as the plain-meaning or *verba legis rule*, expressed in the Latin maxim "*verba legis non est recedendum*," "from the words of a statute there should be no departure."[21]

Indisputably, respondent does not come within the scope of Filipino citizens covered by paragraphs (3) and (4). She cannot be considered a natural-born citizen under the literal meaning of the aforementioned constitutional provisions.

Incidentally, respondent's assertion that a foundling is a natural-born citizen at birth by virtue of a disputable presumption cannot be sustained as it will put those whose mothers are known to be citizens of the Philippines at an inferior status than a foundling, as the former were required to still elect Philippine citizenship upon reaching the age of majority in the 1935 Constitution.

II

Congress cannot pass a law negating the principle of *jus sanguinis* enunciated in the Constitution. The supremacy of the Constitution is without question. Any action by the executive or any law enacted by Congress must comply with the said fundamental law of the land, otherwise, such action would be null and void. It is settled that no act of government can add, subtract or modify what the sovereign people have written in their Constitution unless the same is subjected to amendment or revision by the same sovereign constituency. In case of conflict between the Constitution and a statute, the Constitution must necessarily prevail.

The supremacy of the Constitution is exemplified by the duty vested upon the Court to uphold the Constitution and to declare void all laws that do not conform to it.[22] In a catena of cases, the Supreme Court adhered faithfully to this basic precept which is expounded in the ruling quoted below:

> In *Social Justice Society v. Dangerous Drugs Board*, the Court held that, '**It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution**.' In *Sabio v. Gordon*, the Court held that, '**the Constitution is the highest law of the land. It is the 'basic and paramount law to which all other laws must conform.**' In *Atty. Macalintal v. Commission on Elections*, the Court held that, 'The Constitution is the fundamental and paramount law of the nation to which all other laws must conform and in accordance with which all private rights must be determined and all public authority administered. **Laws that do not conform to the Constitution shall be stricken down**

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21 *Garcia v. Commission on Elections*, G.R. No. 216691, July 21, 2015.

22 *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, 661 Phil. 390, 402 (2011).

for being unconstitutional.' In *Manila Prince Hotel v. Government Service Insurance System*, the Court held that:

> Under the doctrine of constitutional supremacy, **if a law** or contract **violates any norm of the constitution that law** or contract **whether promulgated by the legislative or by the executive branch** or entered into by private persons for private purposes **is null and void and without any force and effect**. Thus, **since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute** and contract.[23]

This is not an assertion of superiority by the courts over the other branches of government, but merely an expression of the supremacy of the Constitution.[24] The duty remains to assure that supremacy of the Constitution is upheld.[25] This tribunal has the same imperative duty to defend and uphold the Constitution.

To be sure, even Congress cannot legislate natural-born citizenship if no blood relationship exists between a child and a Filipino parent. To do so will violate the Constitution which does not provide for an exception to the *jus sanguinis* principle enunciated in the provisions of Sections 3 and 4 of Article IV of the 1987 Constitution. For the same reason, respondent's claim of natural-born citizenship cannot be anchored on the official acts, that will contravene the Constitution, such as the issuance of her voter's I.D. by the Commission on Elections, her Philippine passport by the Ministry/Department of Foreign Affairs and the Order dated July 18, 2006 by the Bureau of Immigration granting her petition for reacquisition of Philippine citizenship under R.A. No. 9552.

Nonetheless, it can be conceded that citizenship may be conferred or acquired by operation of law or in accordance with law, be it a law that is intended to implement a generally accepted principle of international law, customary international law principle, or an international convention. That type of citizenship, if so granted, is citizenship by naturalization which is recognized in Section 1(4) of Article IV of the 1987 Constitution, as distinguished from natural-born citizenship that emanates solely from the incontrovertible biological or blood ties of the child with the Filipino father or mother.

III

Respondent seeks to carve an exception to the *jus sanguinis* principle and claims natural-born citizenship based on generally accepted principles of international law which, according to respondent, under the theory of incorporation, is considered by the Constitution as part of the law of the

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23 Id. at 402-403.

24 *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936).

25 *Aquino v. Enrile*, 158-A Phil. 1 (1974).

land.[26] Respondent invokes international conventions on instruments that embody such generally accepted principles of international law.

Putting aside for now the issue of whether the conventions cited to which the Philippines is not a signatory, have acquired the elevated status of generally accepted principles of law and therefore must be obeyed, the rightful place of said international law principles in our hierarchy of laws must be stressed.

Treaties and international conventions are accorded equal status as statutes or laws passed by Congress. As such, they cannot contravene the express provisions of the Constitution. It is for this reason that "a treaty, international or executive agreement," like a law passed by Congress can be declared unconstitutional by the Court if it violates the Constitution.[27] They are subject to the same provisions, limitations or conditions enunciated in the Constitution like any legislative enactment. Hence, an international convention cannot grant natural-born citizenship where no blood ties exist between a Filipino parent and the child. Otherwise, the convention will become superior to an act of Congress and supplant the specific provision of the Constitution. The conventions cited by respondent do not attempt to do so as they defer to the national law of the Contracting State on how statelessness of foundlings can be avoided. This will be demonstrated in the next item (IV) below.

In gist, respondent cannot seek refuge in a disputable presumption of being born in the Philippines to parents possessing the "nationality" of the Philippines under the provision of an international convention which runs counter to the provision of the Constitution that requires nothing less than the existence of biological or blood ties between a child and a Filipino father or mother. The said determinative factual basis enshrined in the Constitution cannot be substituted by a fiction indulged in by an international instrument which respondent attempts to connect to the Constitution by a non-specific and general rule on the incorporation of generally accepted principle of international law. It is a well-established doctrine applicable to the interpretation of the Constitution that:

> This is in accord with the rule on statutory construction that specific provisions must prevail over general ones. A special and specific provision prevails over a general provision irrespective of their relative positions in the statute. *Generalia specialibus non derogant.* Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.[28]

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26 Section 2, Article II of the 1987 Constitution.

27 Section 4(2), Article VIII of the 1987 Constitution.

28 *Batangas City, Maria Teresa Geron v. Pilipinas Shell Petroleum Corporation*, G.R. No. 187631, July 8, 2015.

IV

The conventions, covenants, or declarations invoked by respondent are not self-executing. Instead, they recognize the need for their provisions to be transformed first and/or be embodied in an enactment by Congress to form part of domestic or municipal law. Thus, the international instruments invoked by respondent, follow the "transformation method," not the "incorporation method" as it requires that "an international law be transformed into a domestic law through a constitutional mechanism such as local legislation."[29] This is manifested by their provisions quoted hereunder:

(a) The 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, which provides:

> **Article 14.**
>
> A child whose parents are both unknown **shall have the nationality of the country of birth.** If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known.
>
> A foundling is, until the contrary is proved, **presumed to have been born on the territory of the State in which it was found.**
>
> **Article 15.**
>
> Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State. **The law of that State shall determine the conditions governing the acquisition of its nationality in such cases.**

(b) The 1961 Convention on the Reduction of Statelessness, provides:

> **Article 1**
>
> 1. **A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.** Such nationality shall be granted:
>
> (a) At birth, by operation of law, or
>
> (b) **Upon an application** being lodged with the appropriate authority, by or on behalf of the person concerned, **in the manner prescribed by the national law.** Subject to the

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29 *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, 561 Phil. 386, 398 (2007).

> provisions of paragraph 2 of this article, no such application may be rejected.
>
> A Contracting State which provides for the grant of its nationality in accordance with subparagraph (b) of this paragraph **may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law**.
>
> x x x x.
>
> **Article 2**
>
> **A foundling found in the territory of a Contracting State** shall, in the absence of proof to the contrary, **be considered to have been born within that territory of parents possessing the nationality of that State**.

Notably, too, the Philippines has neither acceded nor ratified any of the above conventions.

Respondent also cited the following covenants which the Philippines has acceded to and ratified, which also follow the transformation method of implementing international instruments. The pertinent provisions read:

(a) The 1989 UN Convention on the Rights of the Child, ratified by the Philippines on August 21, 1990, providing that:

> **Article 7**
>
> 1. The child shall be registered immediately after birth and shall have the right from birth to a name, **the right to acquire a nationality** and. as far as possible, the right to know and be cared for by his or her parents.
>
> 2. States Parties shall ensure the **implementation of these rights in accordance with their national law** and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

(b) The 1966 International Covenant on Civil and Political Rights, which the Philippines ratified on October 23, 1986 providing that:

> **Article 24**
>
> 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. **Every child has the right to acquire a nationality.**

(c) The 1947 Universal Declaration on Human Rights.

Article 15

(1) **Everyone has the right to a nationality.**

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The concept of statehood and sovereignty of the State are so well entrenched in the generally accepted principles of international law that the conventions themselves cited by the respondent turn to the national law of the Contracting State in the implementation of their provisions. It is clear that there is no attempt to set aside national laws on citizenship but to respect national laws as long as statelessness is avoided. It is up to the Contracting State to determine the conditions and manner by which the nationality or citizenship of a stateless person, like a foundling, may be **acquired** instead of being automatically conferred at birth. Neither do the conventions impose a particular type of citizenship nor nationality. The citizenship allowed to be acquired by the child of unknown parentage under the cited international instruments is merely that of a "national." Nowhere in the identified international rules or principles is there an obligation to accord the stateless child a citizenship that is of a "natural-born" character. Moreover, even if it so provided, it cannot be enforced in our jurisdiction because it would go against the provisions of the Constitution.

Citizenship is not automatically conferred under the international conventions cited but will entail an affirmative action of the State, by a national law or legislative enactment, so that the nature of citizenship, if ever acquired pursuant thereto, is citizenship by naturalization. There must be a law by which citizenship can be acquired. By no means can this citizenship be considered that of a natural-born character under the principle of *jus sanguinis* in the Philippine Constitution.

Natural-born citizenship, as a qualification for public office, must be an established physical fact and not a possibility qualification which can later be proven true or untrue because the disputable presumption of the said qualification can be overcome anytime by evidence to the contrary during the tenure of an elective official. The uncertainty in a government official's tenure has a great potential to prejudice public service, specially if a high ranking office or position is involved.

V

Section 2, Article IV of the Constitution defines the term "natural-born citizens" to cover "those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship."

A foundling does not meet the above-quoted definition of a natural-born citizen. The fact of being a foundling must first be officially established before a foundling can claim the rights of a Filipino citizen. The self-serving declaration of any person without official confirmation will not suffice to entitle the child to the rights of a citizen. This is to insure the genuineness of the claim that a child is a foundling.

A foundling must first go through a legal process to obtain an official or formal declaration that he/she is in fact a foundling to be covered by provisions of law reserving certain rights to Filipino citizens. This is a necessary preliminary step which is also for the protection of both the child and his/her parents in order to insure that he/she is in truth an abandoned child and that abandonment was not the product of an unlawful act intended to deprive the child and parents of their reciprocal rights under the law.

An illustration of the requirement is found in R.A. No. 8552, "An Act Establishing the Rules and Policies on the Domestic Adoption of **Filipino** Children and For Other Purposes" and its amendatory act, R.A. No. 9523.

Section 5 of R.A. No. 8552, provides:

> SECTION 5. Location of Unknown Parent(s). – **It shall be the duty of the Department** or the **child-placing or child-caring agency** which has custody of the child **to exert all efforts** to locate his/her unknown biological parent(s). If such efforts fail, the child shall be **registered as a foundling** and subsequently be the **subject of legal proceedings** where he/she shall be declared abandoned.

The pertinent provisions of R.A. No. 9523, read as follows:

> SECTION 2. Definition of Terms. – As used in this Act, the following terms shall mean:
>
> x x x x
>
> (3) Abandoned Child refers to a child who has no proper parental care or guardianship, or whose parent(s) have deserted him/her for a period of at least three (3) continuous months, which includes a foundling.
>
> x x x x
>
> SECTION 4. Procedure for the Filing of the Petition. – The petition shall be filed in the regional office of the DSWD where the child was found or abandoned.

> The Regional Director shall examine the petition and its supporting documents, if sufficient in form and substance and shall authorize the **posting of the notice of the petition** in conspicuous places for five (5) consecutive days in the locality where the child was found.
>
> The Regional Director shall act on the same and shall render a recommendation not later than five (5) working days after the completion of its posting. He/she shall transmit a copy of his/her recommendation and records to the Office of the Secretary within forty-eight (48) hours from the date of the recommendation.
>
> SECTION 5. Declaration of Availability for Adoption. — Upon finding merit in the petition, **the Secretary shall issue a certification** declaring the child legally available for adoption within seven (7) working days from receipt of the recommendation.
>
> **Said certification, by itself, shall be the sole basis for the immediate issuance by the local civil registrar of a foundling certificate.** Within seven (7) working days, the local civil registrar shall transmit the foundling certificate to the National Statistics Office (NSO).
>
> SECTION 8. – The certification that a child is legally available for adoption shall be issued by the DSWD in lieu of a judicial order, thus, making the entire process **administrative in nature.**
>
> The certification, shall be, for all intents and purposes, the primary evidence that the child is legally available in a domestic adoption proceeding, as provided in Republic Act No. 8552 and in an inter-country adoption proceeding, as provided in Republic Act No. 8043.

The above laws succinctly illustrate that a foundling needs to go through a legal process prior to being accorded the right of a Filipino child to be adopted. The fact of being a foundling must be officially confirmed as a precautionary step before government authorities can act on behalf of the child principally if not exclusively for his/her protection under the law. The legal process, administrative in nature, is initiated by the Department of Social Welfare and Development (DSWD) official, among others, who acts **on behalf** of the abandoned child or foundling pursuant to the doctrine of *parens patriae*[30] to allow the adoption of a foundling as a Filipino child.

Obviously, there is a big gap in the law as to the proper treatment of foundlings particularly as to how they can officially acquire Philippine citizenship or be recognized as Filipino citizen to facilitate their enjoyment of the rights of citizenship, such as the right to vote, to be issued a Philippine passport and the right to be appointed or elected to a public office or admitted to certain professions reserved for Filipino citizens but which do

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30 *Malto v. People*, 560 Phil. 119, 140 (2007).

not require natural-born citizenship as a qualification. It is about time for Congress to address this matter by special law so that a foundling need not undergo the usual lengthy and complex naturalization proceedings provided for foreigners.

The fallacy of invoking the "disputable presumption" of alleged "natural-born citizenship" is evident as there can be no presumption of citizenship before there is an official determination of the fact that a child is a foundling. It is only after this fact is established that the inference or presumption can arise.[31] That being so, a foundling will not come within the definition of a natural-born citizen who by birth right, being the biological child of a Filipino father or mother, does not need to perform any act to acquire or perfect his/her citizenship.

Nationality of Respondent

Given the above disquisitions, the inescapable conclusion is that respondent is not a natural-born citizen. Thus, she is not covered by Republic Act No. 9225 which provides for the reacquisition of Filipino citizenship by natural-born citizens. Respondent may later on be able to prove by scientific evidence that her biological father or mother is a Filipino citizen. Before then, it is my considered opinion that she does not possess the citizenship qualification required by the Constitution to be elected a Senator.

A final note. This Tribunal is very much aware that the respondent was voted into office by an overwhelming number of votes, close to 20 million. However, it is settled doctrine in jurisprudence that an election victory cannot override constitutional and statutory provisions on the qualifications and disqualifications of elected officials nor can it be "used as a magic formula to bypass eligibility requirements."[32]

This Tribunal, in upholding the 1987 Constitution, cannot, and will not, bow to any other rule but that of the Law, lest it be accused of bias or arbitrariness. We call to mind the apt observation that, "[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.*"[33]

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31 *Martin v. Court of Appeals*, supra note 3.

32 *Arnado v. Commission on Elections*, G.R. No. 210164, August 18, 2015.

33 *A.A.F.L. v. American Scale & Door, Co.*, 335 US 538, 557 (1949), as cited in the Separate Opinion of J. Romeo Callejo in *Tecson v. Commission on Elections*, supra note 19.

WHEREFORE, I vote to **GRANT** the *Petition for Quo Warranto*. Respondent Mary Grace S. Poe Llamanzares, not being a natural-born Filipino citizen, is declared **INELIGIBLE** to sit as a Member of the Senate of the Philippines.

Teresita Leonardo de Castro

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Member

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