Republic of the Philippines
SENATE ELECTORAL TRIBUNAL

RIZALITO Y. DAVID,
Petitioner,

-versus- **SET CASE NO. 001-15**

MARY GRACE POE LLAMANZARES,
Respondent.
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Promulgated: 17 NOVEMBER 2015

DECISION

This is a Petition for *Quo Warranto* under Rule 18 of the 2013 Rules of the Tribunal which seeks to unseat Respondent Mary Grace Poe Llamanzares ("Respondent") as Senator of the Republic on the grounds that she is not a natural-born citizen of the Philippines and lacks the residency requirement; hence, not qualified to sit as a member of the Philippine Senate.

THE UNDISPUTED FACTS

Respondent is a foundling. Her Certificate of Live Birth states that she was found in the Parish Church of Jaro, on 03 September 1968, at about 9:30 A.M. by Mr. Edgardo Militar. The fact of her finding was reported to the Office of the Local Civil Registrar on 06 September 1968 by Mr. Emiliano Militar, under whose custody she was at the time of the reporting. Respondent was registered as Mary Grace Contreras Militar.[1] Respondent's biological parents were unknown and to date remain unknown.

When Respondent was five (5) years old, she was adopted by the couple Ronald Allan Poe (also known as Fernando Poe, Jr. or FPJ) and Jesusa Sonora

[1] Exhibit P for Petitioner/Exhibit 1 for Respondent.

Poe (also known as Susan Roces) as evidenced by a Decision dated 13 May 1974 of the Municipal Trial Court of San Juan, Rizal.[2]

On 13 December 1986, having reached the voting age of eighteen (18) years, Respondent was issued a Voter's ID by the Commission on Elections.[3] She was issued Philippine Passports by the Ministry/Department of Foreign Affairs on 04 April 1988, 05 April 1993, 19 May 1998, 13 October 2009, 19 December 2013, and 18 March 2014.[4]

In 1988, Respondent enrolled at Boston College in Chestnull Hill, Massachusetts, U.S.A., where she obtained her Bachelor of Arts degree in Political Studies in 1991.[5] On 27 July 1991, she married Teodoro Misael Daniel V. Llamanzares, who is a citizen of both the Philippines and the United States, at the Sanctuario de San Jose Parish at San Juan City, Metro Manila.[6] Two days later, on 29 July 1991, she joined her husband in United States.

Respondent became a naturalized American citizen on 18 October 2001.[7] She was issued USA Passport No. 17037793 on 19 December 2001.[8]

Respondent came home to the Philippines in 2005[9] and was issued a Tax Identification Number (TIN) by the Bureau of Internal Revenue on 22 July 2005.[10]

On 07 July 2006, respondent executed an "Oath of Allegiance" to the Republic of the Philippines,[11] and three days later, on 10 July 2006, filed with the Bureau of Immigration a Petition for Reacquisition of Filipino Citizenship pursuant to R.A. 9225.[12] The said petition was granted by the Bureau of Immigration in an Order dated 18 July 2006 signed by Associate Commissioner Roy M. Almoro for Commissioner Alipio F. Fernandez, Jr.[13]

Between 2006 and 2009, respondent made several trips to the USA using her USA Passport.[14]

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[2] Exhibit Q for the Petitioner/Exhibit 2 for the Respondent.
[3] Exhibit R for the Petitioner/Exhibit 4 for the Respondent.
[4] Exhibits B to B-5 for the Petitioner/Exhibits 5 to 5-5 for the Respondent.
[5] Par. 12, p. 5, Petition/par. 1.4, p. 6, Answer.
[6] Par. 13, p. 1, Petition; par. 1.5, p. 6, Answer.
[7] Exhibit JJ for the Petitioner.
[8] Exhibit KK for the Petitioner/Exhibit 20 for the Respondent.
[9] Amended Petition, p. 6, par. 14.
[10] Exhibit S for the Petitioner/Exhibit 6 for the Respondent.
[11] Exhibit 8 for the Respondent.
[12] Exhibit C for the Petitioner/Exhibit 7 for the Respondent.
[13] Exhibit E for the Petitioner/Exhibit 10 for the Respondent.
[14] Exhibit LL-LL-2 for the Petitioner/Exhibit 22-1 to 22-3 for the Respondent.

Respondent was appointed Chairperson of the Movie and Television Review and Classification Board (MTRCB) on 06 October 2010.[15] Prior to taking her Oath of Office as MTRCB Chairperson on 21 October 2010,[16] respondent executed an "Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship" on 20 October 2010.[17] The original copy of the Affidavit was submitted to the Bureau of Immigration also on 20 October 2010 by her legal counsel, Escudero Marasigan Valiente & E.H. Villareal.[18] On 26 October 2010, respondent assumed office as MTRCB Chairperson.[19]

On 12 July 2011, Respondent executed an "Oath/Affirmation of Renunciation of Nationality of the United States" before Vice-Consul Somer E. Bessire-Briers.[20] She likewise accomplished on the same date the "Questionnaire Information for Determining Possible Loss of U.S. Citizenship."[21] Respondent's Certificate of Loss of Nationality was executed by Vice Consul Jason Galian on 09 December 2011[22] and was approved by the Overseas Citizen Service, Department of State, on 03 February 2012.[23]

In the 2013 elections, respondent ran for the position of Senator. Her Certificate of Candidacy (COC) executed on 27 September 2012 was filed with the Commission on Elections on 02 October 2012.[24] She was declared senator-elect by the Commission on Elections on 16 May 2013.[25] To this day, respondent is sitting as a member of the Senate.[26]

THE CASE

On 6 August 2015, Petitioner Rizalito Y. David ("Petitioner") filed before the Tribunal a Petition for *Quo Warranto*[27] against Respondent, contesting her election as Senator of the Republic for failure to comply with the citizenship and residency requirements mandated by the 1987 Constitution.

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[15] Exhibit U for the Petitioner/Exhibit 13 for the Respondent.
[16] Exhibit X for the Petitioner/Exhibit 16 for the Respondent.
[17] Exhibit V for the Petitioner/Exhibit 14 for the Respondent.
[18] Exhibit W for the Petitioner/Exhibit 15 for the Respondent.
[19] Exhibit 16-1 for the Respondent.
[20] Exhibit Y for the Petitioner/Exhibit 17 for the Respondent.
[21] Exhibit Z for the Petitioner/Exhibit 18 for the Respondent.
[22] Exhibit 19 for the Respondent.
[23] Exhibit AA for the Petitioner.
[24] Exhibit MM for the Petitioner/Exhibit 21 for the Respondent.
[25] Verified Answer, p. 1
[26] Amended Petition, p. 2/Verified Answer, p. 2
[27] Petition, Rollo, Vol. 1, pp. 1-25.

On 11 August 2015, the Tribunal, through Resolution No. 15-01, required Petitioner David to correct the formal defects of his petition within a non-extendible period of three (3) days from receipt of the said Resolution.[28]

On 17 August 2015, Petitioner filed his Amended Petition.[29] On the same date, Atty. Manuelito R. Luna, entered his appearance as counsel for Petitioner. [30]

On 18 August 2015, the Tribunal, through its Executive Committee, issued Resolution No. 15-02, directing the Secretary of the Tribunal to issue the corresponding summons to Respondent, requiring her to file her ANSWER to the Amended Petition within a non-extendible period of ten (10) days from receipt of the summons.[31]

On 25 August 2015, pending submission of Respondent's Answer, Petitioner moved to subpoena the Bureau of Immigration *Record of Application of Citizenship Re-Acquisition* and related documents, including the record of travels and NSO-Kept Birth Certificate of Respondent.[32]

The aforesaid Motion was granted by the Executive Committee of the Tribunal in Resolution No. 15-04 dated 26 August 2015. The Secretary of the Tribunal was directed to issue the corresponding subpoenas to the respective officials of the Bureau of Immigration and the National Statistics Office having official custody of the documents requested.[33] The subpoenas commanded them to appear at the Office of the Secretary of the Senate Electoral Tribunal on 01 September 2015 at 10:00 o'clock in the morning and to bring and produce three sets of the documents enumerated in their respective subpoenas.[34]

On 1 September 2015, the representatives of the Bureau of Immigration and the National Statistics Office attended the hearing and submitted the required documents.[35]

On the same date, Respondent filed her Verified Answer with (1) Prayer for Summary Dismissal; (2) Motion for Preliminary Hearing on Grounds for Immediate Dismissal/Affirmative Defenses; (3) Motion to Cite Petitioner for Direct Contempt of Court; and (4) Counterclaim for Indirect Contempt of Court.[36]

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[28] Rollo, Vol. 1, p. 28.
[29] Rollo, Vol. 1, pp. 29-63.
[30] Rollo, Vol. 1 pp. 64-69.
[31] Rollo, Vol. 1, pp. 72-73.
[32] Rollo. Vol. 1, pp. 76-80.
[33] Rollo, Vol. 1, pp. 96-97.
[34] Rollo, Vol. 1 pp. 102-103..
[35] Appearances, Rollo, Vol. 1, p. 103-A.
[36] Rollo, Vol. 1, pp. 134 – 303.

The issues having been joined, the Executive Committee of the Tribunal, in Resolution No. 15-05 dated 2 September 2015, resolved to call the parties and their respective counsel to a preliminary conference to be held on 11 September 2015. The Tribunal likewise required the parties to file not later than 09 September 2015 their respective Preliminary Conference Brief.[37]

During the Preliminary Conference, Petitioner agreed to drop the issue of residency on the ground of prescription.[38]

Thereafter, on 21 September 2015, the Tribunal heard the parties in Oral Argument, at the conclusion of which, the parties were required to submit their respective Memorandum, without prejudice to the submission of DNA evidence by Respondent within thirty (30) days from the said date.[39]

On 21 October 2015, Respondent moved for an extension of fifteen (15) days or until 05 November 2015 within which to submit DNA test results.[40] The motion was granted by the Executive Committee in its Resolution No. 15-08 dated 27 October 2015.[41]

However, on 05 November 2015, Respondent filed a Manifestation (re: Results of DNA Testing), stating that none of the tests that Respondent took provided results that would shed light to the real identity of her biological parents. While she would continue her efforts to find personal closure with respect to this issue and undertook to inform the Tribunal should a positive development arise, Respondent submitted the issue of her natural-born Filipino citizenship as a foundling for resolution upon the legal arguments set forth in her submissions to the Tribunal.[42] In Resolution No. 15-10 dated 06 November 2015, the Tribunal noted the manifestation and considered the case submitted for resolution.

ISSUE and SUB-ISSUES

At the Preliminary Conference, the parties narrowed down the main issue and sub-issues to be resolved, as follows:

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[37] Rollo, Vol. 1, pp. 312-313.
[38] Preliminary Conference, 11 September 2015, tsn, p. 3.
[39] Resolution No. 15-07 dated 21 September 2015, Rollo, Vol. 5, pp. 1386-1387.
[40] Manifestation with Motion for Leave for Extension, Rollo, Vol. 6, pp. 1805-1808.
[41] Rollo, Vol. 6, pp. 1811-1812.
[42] Rollo, Vol. 6, pp. 1813-1816.

Main Issue:

Whether or not Respondent is eligible to sit as Senator of the Republic of the Philippines.

Sub-issues:

1. Whether or not Respondent is a natural-born citizen of the Philippines.

    a. Whether or not it was the intent of the framers of the 1935 Constitution to consider foundlings as citizens of the Philippines under Section 1, Article IV of the 1935 Constitution (even though foundlings are not expressly mentioned therein).

    b. Whether or not, under both conventional and customary international law, in relation to the definition of a natural-born Philippine citizen under Section IV of the 1987 Constitution, a child born in the Philippines in 1968, of unknown parents, is a natural-born Filipino.

        i. Whether or not a foundling has a right to a nationality from birth;

        ii. Whether or not a foundling has a right to be protected against statelessness;

        iii. Whether or not a foundling is presumed to be a citizen of the country in which she is found;

        iv. Whether or not Respondent has to "perform any act to acquire or perfect" her Filipino citizenship; and

        v. Whether or not Respondent, is perforce, a natural-born Filipino, considering that she is admittedly not a naturalized Filipino.

    c. Whether or not Respondent reacquired her natural-born Filipino citizenship on 7 July 2006, when she took the Oath of Allegiance to the Republic of the Philippines as prescribed in Section 3 of R.A. No. 9225.

    d. Whether or not on 20 October 2010, Respondent complied with the requirement under Section 5 (2) of R.A. No. 9225 to qualify for elective public office, i.e., to renounce her USA citizenship in an

affidavit duly executed before an officer of the law who is authorized to administer oath.

e. Whether or not under Philippine law or jurisprudence, the USA must first approve Respondent's renunciation of USA citizenship before she can qualify for Philippine public office.

f. Whether or not Respondent's use of her USA Passport after 07 July 2006 affected her acquisition of natural-born Filipino citizenship.

g. Whether or not Respondent's prior use of her USA passport affected her formal sworn renunciation of USA citizenship on 20 October 2010 (considering that Respondent did not use her USA Passport after 20 October 2010).

THE PARTIES' POSITION

Section 3, Article VI of the 1987 Philippine Constitution prescribes that "(n)o 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** preceding the day of the election."[43]

"Natural-born citizens" are defined under Section 2, Article IV of the 1987 Constitution, thus:

> "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. xxx"

Petitioner claims that respondent is not a natural-born citizen of the Philippines; hence, she is not qualified to be a member of the Senate. Petitioner posits that Respondent does not fall under any of the classes of citizens enumerated in Section 1, Article IV of the 1935 Constitution, which governs Respondent's citizenship.

Section 1, Article IV of the 1935 Constitution reads:

> "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.

[43] Emphasis supplied.

(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."

For Petitioner, to be a natural-born Filipino citizen from birth, one's parents must be Filipino citizens. Respondent 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." Petitioner declares that "the reported circumstances of respondent'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."[44]

Although Section 2, Article III of the Constitution adopts the generally accepted principles of international law, Petitioner maintains that the provisions of the *1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws* and the *1961 U.N. Convention on the Reduction of Statelessness* are not applicable to Respondent because the Philippines has yet to accede to both Conventions.

Article 14 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws states:

"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 2 of the *1961 U.N. Convention on the Reduction of Statelessness*, provides as follows:

"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."

[44] Amended Petition, p. 10.

In particular, Petitioner asserts that the presumption in favor of foundlings in the above-quoted Article 2 does not automatically bind the signatories because Article 1 thereof recognizes the authority of the signatory country to grant nationality to a foundling found in its territory "at birth, or by operation of law, or in an appropriate proceeding." Petitioner proclaims that no law in the country has so far been passed granting natural-born status to a foundling.[45]

Petitioner also advances the view that Respondent's adoption by the couple Fernando Poe, Jr. and Jesusa Sonora Poe did not confer upon her the status of "natural-born" Filipino citizen. The adoption had only the legal effect of conferring unto her the status as a legitimate daughter of the Poe couple.[46]

Likewise, petitioner strongly believes that Respondent did not possess the residency requirement for senatorial candidate under Section 3, Article VI of the 1987 Constitution. Petitioner alleges that since Respondent is not a natural-born citizen, she cannot avail of the benefits of R.A. 9225, which is the re-acquisition of natural-born citizenship. It is his view that when Respondent became an American citizen through naturalization in October 2001, she lost her Philippine residence and domicile. Being an American citizen, she established a new residence in the United States. Not being qualified to re-acquire her Filipino citizenship under R.A. 9225, Respondent's domicile remained in the U.S. until she renounced her U.S. citizenship and thereby became stateless.[47]

In her Verified Answer, Respondent prayed for summary dismissal of the petition based on the following grounds, among others:

1. The petition lacks the required certificate of forum shopping;

2. Petitioner is guilty of willful and deliberate forum shopping;

3. The Petition has prescribed both as to alleged citizenship and residency disqualifications;

4. The petition is barred by laches;

5. The petition fails to state a cause of action, insofar as it assails Respondent's natural-born Philippine citizenship. The Petition does not allege, and the Petitioner does not intend to prove, the fact of

[45] Amended Petition, pp. 11- 13.
[46] Amended Petition, pp. 14- 15.
[47] Amended Petition, pp. 22-23.

Respondent's disqualification, i.e., that her biological parents are aliens.

Respondent asserts that she is a natural-born citizen of the Philippines and is eligible to sit as a Senator. While admitting that Section 1, Article IV of the 1935 Constitution does not expressly mention foundlings, she, however, argues that the framers of the 1935 Constitution intended to include foundlings in the term "citizens of the Philippines" as allegedly revealed by the pertinent deliberations of the 1934 Constitutional Convention.[48] Respondent claims that as early as the 1935 Constitution, it was always the intention of the framers to consider foundlings found in the Philippines as Filipino citizens. According to her, the framers of later organic laws also shared the view that no express provision on foundlings needs to be included in the text of the Constitutions, as they are adequately protected under international law.[49]

Thus, Respondent anchors her defense on the principle that a treaty forms part of the law of the land and that a State must perform its obligations under a treaty in good faith pursuant to the principle of *pacta sunt servanda*. Respondent asserts that the Philippines ratified the *UN Convention on the Rights of the Child* on 21 August 1990 and the *1966 International Covenant on Civil and Political Rights* on 23 October 1986.[50]

Article 7 of *UN Convention on the Rights of the Child* (UNCRC), adverted to by Respondent, provides:

> "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."[51]
>
> 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."

Similarly, the *1966 International Covenant on Civil and Political Rights* (ICCPR) provides in 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.

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[48] Verified Answer, p. 55 / Respondent's Position Paper, p. 6 /Exhibit 32 for the Respondent.
[49] Verified Answer, p. 58.
[50] Verified Answer pp. 59-60.
[51] Underscoring supplied.

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

3. Every child has the right to acquire a nationality.[52]

Respondent maintains that the UNCRC and the ICCPR create an obligation on the part of the Philippines to recognize a foundling as its citizen from the time of the foundling's birth. It is her submission that under the 1987 Constitution, a foundling who is a Filipino under the UNCRC and the ICCPR is natural-born because: (a) she is a Philippine citizen from birth; and (b) she possesses said citizenship without having to perform any act to acquire or perfect her Philippine citizenship. Respondent supports her position with the Supreme Court pronouncement in *Bengzon III vs. HRET and Cruz,*[53] which declared only two (2) types of citizens under the 1987 Constitution, namely: (a) the natural-born citizen, and (b) the naturalized citizen. She, thus, claims that since a foundling does not have to go through the process of naturalization, she is perforce a natural-born Filipino.[54]

Respondent contends that although neither the ICCPR nor the UNCRC was in force when respondent was born in 1968, each may apply retroactively to the date of her birth in determining her citizenship. She opines that the refusal to give retroactive application will discriminate against foundlings born before the Philippines' ratification of these treaties in violation of the equal protection clause of the Constitution. Respondent also claims that the ICCPR and the UNCRC, being curative statutes insofar as they supply deficiencies in Philippine law on the rights of a new-born to a nationality and to be protected against statelessness, apply retrospectively to her birth in 1968. She also cites Article 28 of the Vienna Convention on the Law of Treaties as the same does not prohibit the retroactive application of treaties.[55]

Respondent also finds relief under the "generally accepted principles of international law" pursuant to Section 3, Article II of the 1935 Constitution which declares:

> "Section 3. The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as part of the law of the Nation."[56]

It is Respondent's position that the *1948 Universal Declaration of Human Rights* (UDHR) is part of the generally accepted principles of

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[52] Underscoring supplied.
[53] *G.R. No. 142840, May 7, 20010.*
[54] Verified Answer, pp. 61-63.
[55] Verified Answer, pp. 63-64.
[56] Underscoring supplied.

international law and has become a part of binding customary international law as allegedly declared by the Supreme Court in the cases of *Republic vs. Sandiganbayan*[57] and *Razon vs. Tagitis.*[58] Respondent asserts that the UDHR, which was adopted by the UN General Assembly of which the Philippines is a member and thus, a signatory, recognizes the right of everyone to a nationality,[59] in this wise:

> "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."

Citing Article 14 of the *1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws*, Respondent submits that the presumption that a foundling is a citizen of the State in which she is found is a generally accepted principle of international law.

Respondent also asserts that Article 2 of the *1961 UN Convention on the Reduction of Statelessness* gives effect to Article 15 of the UDHR.[60] It is Respondent's view that said Article 2 expresses a rebuttable presumption of descent from a citizen, consistent with *jus sanguinis* which is the primary basis for determining citizenship under the 1935 Constitution. Respondent maintains that this presumption is a generally accepted principle of international law as shown by the number of *jus sanguinis* countries which have passed legislation decreeing that foundlings found in their territories are their citizens. Pursuant, therefore, to the doctrine of incorporation, Respondent avers that these principles automatically formed part of the law of the Philippines. As such, it is Respondent's claim that at the time of her birth, international law considered her a Philippine citizen because she was found in the Philippines of unknown parentage.[61]

Finally, Respondent proclaims that she validly re-acquired her natural-born Philippine citizenship under the provisions of R.A. No. 9225 when she took her Oath of Allegiance to the Republic of the Philippines on 07 July 2006.[62] Having executed before a notary public an Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship on 20 October 2010, Respondent claims that said renunciation was sufficient to qualify her for her appointive office at the MTRCB and her elective office at the Senate.[63]

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[57] G.R. No. 104768, July 21, 2003.
[58] G.R. No. 182498, December 3, 2009.
[59] Verified Answer, pp. 68-69.
[60] Verified Answer ,pp. 71, 73.
[61] Verified Answer, pp. 74-75, 77.
[62] Verified Answer, pp. 78-79.
[63] Verified Answer pp. 84-85.

On the alleged lack of residency, Respondent insists that any attack based on residency has prescribed and is barred by laches. She asserts that Petitioner's premise is based on hasty and uninformed supposition that Respondent became stateless when she renounced her U.S citizenship.[64]

RULINGS

MOTION FOR SUMMARY DISMISSAL

Forum Shopping

- The petition lacks the required certificate of forum shopping.
- Petitioner is guilty of willful and deliberate forum shopping.

Petitioner, in his Amended Petition, attached a Certification of Non-Forum Shopping, stating:

> "I hereby certify that I have not filed any similar PETITION for *quo warranto* before any court or tribunal, quasi-judicial body, or agency of the government, no such PETITION has been filed before any court, or tribunal, quasi-judicial body, or agency of the government; in the event that I learn of any such PETITION, I hereby undertake to inform this Honorable Tribunal of the same within five (5) days from my discovery thereof."[65]

Respondent claims that the Petition should be dismissed outright under Rule 23 of the SET Rules since it lacks the required certificate of non-forum shopping. According to Respondent, the Certification annexed to the Petition simply states that he did not file another petition for *quo warranto*, hence, the Certification did not state the most critical statement in a certification, i.e., that Petitioner had "not commenced any action or filed any claim involving the same issues."

Respondent alleges that petitioner is guilty of willful and deliberate forum shopping because Petitioner had filed before the COMELEC Law Department, on 17 August 2015, an Affidavit-Complaint charging Respondent with an election offense for having misrepresented material facts in her Certificate of Candidacy for Senator, particularly her being a natural-born Filipino citizen and her having complied with the two-year residency requirement in violation of Section 22 in relation to Section 74 of the Omnibus Election Code. Respondent maintains that the Affidavit-Complaint raises

[64] Verified Answer, p. 88.
[65] Amended Petition, p. 26, Rollo, Vol. 1, p. 54.

exactly the same issues as those already raised in the instant Petition for *Quo Warranto* and that Petitioner did not disclose to the Tribunal the filing of the said Affidavit-Complaint before the COMELEC.[66]

Forum shopping is the institution of two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs. It is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets.[67]

The Supreme Court, in the case of *Alonso, et al. vs. Relamida,*[68] has this to say:

> "The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. It exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion in another, or when he institutes two or more actions or proceedings grounded on the same cause to increase the chances of obtaining a favorable decision. **An important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs.** Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. Thus, the following requisites should concur:
>
> x x x (a) identity of parties, or at least such parties as represent the same interests in both actions, (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and (c) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. (Emphasis and underscoring supplied.)

The manner by which forum shopping may be committed was elaborated in the case of *Sotto et. al. vs. Palicte,*[69] to wit:

> "Forum shopping can be committed in either three ways, namely: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (*litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (*res judicata*); or (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for the dismissal is also either litis pendentia or res judicata). If the forum shopping is not willful or deliberate, the subsequent cases shall be dismissed without prejudice on one

[66] Respondent's Verified Answer, p. 28.
[67] Emilio S. Young vs. John Ken Seng, G.R. No. 143464, March 5, 2003.
[68] AC No. 8481, August 3, 2010.
[69] G.R. No. 159691, February 17, 2014.

> of the two grounds mentioned above. But if the forum shopping is willful and deliberate, both (or all if there are more than two) actions shall be dismissed with prejudice."[70] (Underscoring supplied)

While there is identity of parties in the instant case and the complaint before the COMELEC, there is no identity in the reliefs prayed for and neither will a final judgment in one case amount to *res judicata* in the other case. It should be noted that the issue in this petition for *quo warranto* is the qualifications of Respondent, or the lack of it, while the Affidavit-Complaint[71] filed before the COMELEC deals with a purported violation of Section 262 in relation to Section 74 of the Omnibus Election Code. A *quo warranto* petition is a civil action while the latter is a criminal action. The *quo warranto* case may result in the removal of the Respondent from office while the criminal action for election offense may result in imprisonment, which may carry the accessory penalty of disqualification from office.

The possibility of conflicting decisions feared by Respondent is farfetched. Indeed, the determination of Respondent's criminal liability is inextricably linked with the resolution of the issues raised before the Tribunal. The issue before the Tribunal is in the nature of a prejudicial question. A prejudicial question is one that must be decided before any criminal prosecution may be instituted or before it may proceed.[72]

Rule 5 of the Rules of Court states two (2) essential elements of a prejudicial question, namely: a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and b) the resolution of such issue determines whether or not the criminal action may proceed.

The resolution of the prejudicial question is a logical antecedent of the issues involved in the criminal case. Thus, the evil being avoided by the rule against forum shopping which is the simultaneous pursuit of remedies in different forums is not present in the instant situation. The formal defect in the certification subject hereof may be disregarded. Time and again, the Supreme Court has held that rules of procedure are only tools designed to facilitate the attainment of justice, such that when rigid application of the rules tend to frustrate rather than promote substantial justice, technicalities may be set aside in favor of what is fair and just. The spirit embodied in a Constitutional provision must not be attenuated by a rigid application of procedural rules.[73]

Accordingly, we rule that Petitioner is not guilty of forum shopping.

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[70] Ao-as vs. Court of Appeals, G.R. No. 128464, June 20, 2006, 491 SCRA 339, 354-355.
[71] Annex "22" of Respondent's Verified Answer.
[72] Art. 36, Civil Code.
[73] *Latasa vs. COMELEC, 417 SCRA 60, December 10, 2003.*

Prescription/Laches

- The petition has prescribed or is barred by laches.

Respondent avers that she was proclaimed elected-Senator on 16 May 2013. Petitioner should therefore have filed the instant Petition within 10 days from 16 May 2013 or by 26 May 2013. She added that any exception to the ten-day period for filing *quo warranto* petitions should be limited only to petitions, the basis for the attack on citizenship of which was unknown or concealed at the time of the Senator's proclamation.[74] In the alternative, Respondent invokes laches as a bar to the instant petition, as laches can still bar an action even if it has not yet prescribed.

Rule 18 of the 2013 Rules of the Senate Electoral Tribunal on the filing of *Quo Warranto* petitions is very clear.

> "Rule 18. *Quo Warranto.* – A verified petition for *quo warranto* contesting the election of a Member of the Senate on the ground of ineligibility or disloyalty to the Republic shall be filed by any registered voter within ten (10) days after the proclamation of the respondent; *Provided, however,* that the petition for *quo warranto* on the ground of ineligibility based on citizenship may be filed at any time during respondent's tenure.[75]

Thus, while the issue of lack of residence has clearly prescribed, the issue of citizenship persists, without regard to whether or not the basis for the attack on the citizenship is known or unknown at the time of the senator's proclamation. Rule 18 does not make such a distinction.

The defense of laches is likewise unavailing. There is no absolute rule as to what constitute laches. Each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court.[76] Since it is an equitable doctrine, its application is controlled by equitable considerations.[77]

Be it noted that qualifications for elective office, prescribed by not less than the Constitution, are mandatory, continuing requirements. In addition, there is an existing rule of procedure governing the filing of *quo warranto* petitions before the Tribunal. Laches cannot be set up to defeat the mandatory prescription of the Constitution, statutory law or rules of procedure.

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[74] Verified Answer, p. 33.
[75] Underscoring supplied.
[76] *Sime Darby Pilipinas, Inc. vs. Goodyear Philippines, Inc., G.R. No. 182148, June 8, 2011, 651 SCRA 551.*
[77] *Esmaquel vs. Coprada, G.R. No. 152423, December 15, 2010, 638 SCRA 428.*

The case of *Mateo et. al. vs. Diaz et. al.*[78] declares: "With more reason are these principles applicable to laches, which is an equitable principle. Laches may not prevail against a specific provision of law, since equity, which has been defined as justice outside legality is applied in the absence of and not against statutory law or rules of procedure."

More importantly, the eligibility or ineligibility springing from the citizenship of a sitting member of the Philippine Senate is an issue imbued with public interest.

It may be worth to note that even the Supreme Court had ruled on a citizenship issue in a moot and academic case.[79] In fact, the Supreme Court, on several occasions, decided cases otherwise moot and academic, where: *first,* there was a grave violation of the Constitution; *second,* the exceptional character of the situation and the paramount public interest involved; *third,* the constitutional issue raised required formulation of controlling principles to guide the bench, the bar and the public; or *fourth,* the case was capable of repetition yet evasive of review.[80]

There is no reason why this Tribunal should decline jurisdiction over a "stale demand," as Respondent would like to treat the instant petition, based on any of the above-listed grounds.

Cause of Action/Burden of Proof

- The petition fails to state a cause of action.
- Petitioner failed to discharge the burden of proof required under the law.

Respondent argues that *a quo warranto* petition that would seek to unseat Respondent from her Senate seat because she is not a natural-born Filipino must expressly allege that she is disqualified because neither of her parents is a Filipino. Other than stating his legal conclusion that Respondent is disqualified, the Petition states no more than that there is "no proof with which to conclude that her father or mother is a Filipino citizen, so as to make her a Filipino citizen at birth." The Petition therefore does not only rest on a complete misconception on Petitioner's part as to who had the burden of proof in this case; more importantly, it does not state a cause of action against Respondent and should be dismissed outright.[81]

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[78] *G.R. No. 137305, January 17, 2002*; underscoring supplied.
[79] *Vilando vs. HRET, G.R. Nos. 192147 & 192149, August 23, 2011, 656 SCRA 17.*
[80] *Mendoza vs. Familara, G.R. No. 191017, November 15, 2011, 660 SCRA 70.*
[81] Respondent's Verified Answer, pp. 40-41.

In the case of *Soloil, Inc. vs. Philippine Coconut Authority*,[82] the Supreme Court laid down the essential elements of cause of action, to wit:

> "Rule 2 of the Rules of Court defines a cause of action as:
>
> Sec. 2. *Cause of action, defined.* A cause of action is the act or omission by which a party violates a right of another.
>
> "The essential elements of a cause of action are (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.
>
> x x x x x x x x x
>
> "In determining whether a complaint states a cause of action, the trial court can consider all the pleadings filed, including annexes, motions, and the evidence on record. The focus is on the sufficiency, not the veracity, of the material allegations. Moreover, the complaint does not have to establish facts proving the existence of a cause of action at the outset; this will have to be done at the trial on the merits of the case."

In this case, the allegations made in the pleadings as well as the admissions made by the parties sufficiently constituted a cause of action: (1) Sec. 3, Article VI of the 1987 Constitution requires that no person shall be a Senator unless he is a natural-born citizen of the Philippines; (2) Respondent ran for the Senate and is thus legally bound to comply with the requirements of the Constitution; and (3) As a foundling, with no known parentage and with no clear proof of citizenship, Respondent is alleged to be in continuous violation of the requirements of the Constitution and should therefore be disqualified to sit as a member of the Senate.

In a *quo warranto* case, it is the burden of the petitioner to first prove the very fact of disqualification before the candidate should even be called upon to defend himself with countervailing evidence.[83]

In the instant case, what Petitioner was able to establish is that Respondent is a foundling, as evidenced by the certified true copy of Respondent's Foundling Certificate No. 4175 issued by the Local Civil Registrar of Jaro, Iloilo.[84] From this uncontroverted fact, Petitioner immediately concludes that Respondent is not able to comply with the citizenship requirement for election as Senator. He alleges "that Respondent,

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[82] *G.R. No. 174806, August 11, 2010.*
[83] *Fernandez vs. HRET et. al., G.R. No. 187478, December 21, 2009.*
[84] Exhibit P for the Petitioner/Exhibit 1 for the Respondent.

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'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."[85]

To our mind, the fact that Petitioner was able to show that Respondent is a foundling did not necessarily carry with it the proof that Respondent's parents were/are not citizens of the Philippines. On the contrary, it did not exclude the possibility that her parents are citizens of the Philippines. As admitted by Petitioner's counsel during the Oral Argument:

> SEN. LEGARDA: So the unknown father could be a foreigner but the unknown father could also be a Filipino. Is that correct?
>
> ATTY. LUNA: Yes, Your Honor.
>
> x x x x x x x x x
>
> SEN. LEGARDA: And you cannot exclude for certain the possibility that one or both of the parents of Senator Poe are Filipinos.
>
> ATTY. LUNA: Yes, Your Honor.
>
> x x x x x x x x x
>
> SEN. LEGARDA: So in the end there's always a possibility that one or both parents were actually Filipinos.
>
> ATTY. LUNA: That's possible, Your Honor.[86]

Such possibility is strengthened by the Respondent's physical features as well as the circumstances surrounding Respondent's abandonment and discovery. Respondent is only 5 ft. 2 inches tall. She has brown eyes and dark brown (black) hair, low nasal bridge and an oval-shaped face, which are consistent with the physical features of the ordinary Filipino. She was found abandoned in a Roman Catholic Church in Jaro, Iloilo, the population of which was predominantly Filipinos. These undisputed facts, are in accord with "things that happened according to the ordinary course of nature and ordinary habits of life" that give rise to a disputable presumption that her parents are Filipinos. Such disputable presumption is satisfactory, if uncontradicted.[87] Thus, as elicited by Tribunal Member Senator Loren B. Legarda during the Oral Argument:

> SEN. LEGARDA: So perhaps Senator Poe has a typical height of a Filipino, just probably. I am not even talking about legalities here, just possibilities.

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[85] Amended Petition, p. 10.
[86] Tsn, Oral Argument, September 21, 2015, pp. 24-27.
[87] Section 3(y), Rule 131 of the Rules of Court.

ATTY. LUNA: Usually, southeast-asian people have that particular profile.

x x x x x x x x x

SEN. LEGARDA. . . . You've seen the hair of Senator Poe, it is black, and she has typical Filipino features, and she was found in a Roman Catholic Church. Are we not 80% Catholics in this country, more or less?

ATTY. LUNA: I think so, Your Honor.

SEN. LEGARDA: And do you have proof that in 1968 or at any other time, the population of Iloilo, the city where she was found in the Philippines, were predominantly foreigners?

x x x x x x x x x

ATTY. LUNA. What I'm sure about is that majority are Filipinos, Your Honor.

SEN. LEGARDA: I would just like to ask you, could you possibly give me a reason why a foreigner who is about to give birth would actually leave her country of origin to give birth in the Philippines? Would it perhaps not be more reasonable to assume that the pregnant foreigner would give birth in her own country for her family is there and a state support?

ATTY. LUNA: Maybe many reasons, Your Honor, and your guess may be as good as mine because we're just basing all of these on probabilities. So we cannot certainly say what was the reason for that decision on the part of the mother to abandon a poor child.

SEN. LEGARDA: In 1968, did Iloilo already have an international airport?

ATTY. LUNA: I'm not sure, Your Honor.

x x x x x x x x x

SEN. LEGARDA: And a pregnant foreigner in 1968 would have found it easier to give birth in Manila perhaps where the international airport was. But what boggles the mind is why would she want to give birth in Iloilo? Would you have a reason for that?

ATTY. LUNA: It would be very difficult for us to speculate, Your Honor, and we are not sure even if her mother is a foreigner because as you have said, it's also possible that her mother is a Filipino.

SEN. LEGARDA: Would you agree with me that most of the time, parents, people who abandon children is due to poverty?

ATTY. LUNA: Correct, Your Honor.

SEN. LEGARDA: Could you kindly tell me how in 1968 an impoverished foreigner would leave the country, travel to the Philippines, and travel all the way to the Philippines to give birth and abandon her baby?

ATTY. LUNA: We cannot speculate on that, Your Honor, because that's clearly without foundation considering that the question is anchored on probabilities. We are not sure of the particular circumstances that led that mother to abandon her poor child on September 3, 1968.

SENATOR LEGARDA: Would it not be a more probable scenario that in 1968, an impoverished Roman Catholic Filipina living in Iloilo City which was then, as now, overwhelmingly populated by Filipinos, gave birth to Senator Poe and left the baby in the church of her faith?

ATTY. LUNA: That's also possible, Your Honor.[88]

Considering that Respondent, although a foundling enjoyed in her favor the disputable presumption that she was born of Filipinos, it remained incumbent upon Petitioner to destroy such presumption by proving that her parents are foreigners. This, Petitioner was unable to do. Hence, the burden of proof did not shift to Respondent.

MOTION TO CITE PETITIONER FOR DIRECT AND INDIRECT CONTEMPT OF COURT

Respondent alleges that Petitioner should be cited in direct contempt of the Tribunal for willful and deliberate forum shopping and, pursuant to Section 1, Rule 71 of the Rules of Court, penalized with a fine of Two Thousand Pesos (P 2,000.00) and imprisonment of ten (10) days.

Moreover, Respondent would like Petitioner to be cited in indirect contempt for failure to inform the Tribunal of the filing and pendency of his Affidavit-Complaint with the COMELEC Law Department and, pursuant to Section 7, Rule 71 of the Rules of Court, penalized with a fine of Thirty Thousand Pesos and imprisonment of six (6) months.

Considering that the Tribunal has already ruled that Petitioner did not commit forum shopping, the aforementioned motions are denied for lack of merit.

[88] Tsn, September 21, 2105, pp. 27-31.

CITIZENSHIP OF RESPONDENT UNDER THE 1935 CONSTITUTION

Petitioner contends that Respondent is not a natural-born citizen of the Philippines and is therefore disqualified to continue serving as Senator of the Republic. He anchors his arguments on the fact that the 1935 Constitution did not mention foundlings as citizens of the Philippines and international law does not confer upon Respondent natural-born citizenship.

Respondent, on the other hand, claims that she is a natural-born citizen because the framers of the 1935 Constitution intended to include foundlings among those who are considered as natural-born citizens of the Philippines. She also argues that international treaties, conventions, customary law and general principles of international law confer upon her natural-born citizenship.

Section 1, Article IV of the 1935 Constitution enumerates who are citizens of the Philippines, to wit:

> 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 on 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.

The aforesaid provisions do not mention foundlings and it is for this reason that Respondent urges us to look further in order to discover the true intent of the framers of the 1935 Constitution.

In the case of *Funa vs. The Chairman, Commission on Audit*[89], the Supreme Court said:

> "In case of doubt as to the import and react of a constitutional provision, resort should be made to extraneous aids of construction, such as debates and proceedings of the Constitutional Convention, to shed light on

[89] *G.R. No. 192791, April 24, 2012.*

and ascertain the intent of the framers or the purpose of the provision being construed."[90]

The deliberations of the 1934 Constitutional Convention on citizenship disclosed the following:

SR. RAFOLS:

For an amendment, I propose that after subsection 2, the following is inserted: "The natural children of a foreign father and a Filipino mother not recognized by the father.

x x x

PRESIDENT:

[We] would like to request a clarification from the proponent of the amendment. The gentleman refers to natural children or to any kind of illegitimate children?

SR. RAFOLS:

To all kinds of illegitimate children. It also includes natural children of unknown parentage, natural or illegitimate children of unknown parents.

SR. MONTINOLA:

For clarification. The gentleman said "of unknown parents." Current codes consider them Filipino, that is, I refer to the Spanish Code wherein all children of unknown parentage born in Spanish territory are considered Spaniards, because the presumption is that a child of unknown parentage is the son of a Spaniard. This may be applied in the Philippines in that a child of unknown parentage born in the Philippines is deemed to be Filipino, and there is no need…

SR. RAFOLS:

There is a need, because we are relating the conditions that are [required] to be Filipino.

SR. MONTINOLA:

But that is the interpretation of the law, therefore, there is no [more] need for the amendment.

SR. RAFOLS:

The amendment should read thus: "Natural or illegitimate of a foreign father and a Filipino mother recognized by one, or the children of unknown parentage.

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[90]Id, citing the case of J.M. Tuason & Co vs. Land Tenure Administration, No. L-21064, February 18, 1970, 31 SCRA 413.

SR. BRIONES:

The amendment [should] mean children born in the Philippines of unknown parentage.

SR. RAFOLS:

The son of a Filipina to a foreigner, although this [person] does not recognize the child, is not unknown.

PRESIDENT:

Does the gentleman accept the amendment or not?

SR. RAFOLS:

I do not accept the amendment because the amendment would exclude the children of a Filipina with a foreigner who does not recognize the child. Their parentage is not unknown and I think those children of overseas Filipino mother and father [whom the latter] does not recognize, should also be considered as Filipinos.

PRESIDENT:

The question in order is the amendment to the amendment from the Gentlemen from Cebu, Mr. Briones.

MR. BULSON:

Mr. President, don't you think it would be better to leave the matter in the hands of the Legislature.

SR. ROXAS:

Mr. President, my humble opinion is that **these cases are few and far in between, that the constitution need [not] refer to them. By international law the principle that children or people born in a country of unknown parents are citizens in this nation is recognized, and it is not necessary to include a provision on the subject exhaustively.**[91] (Emphasis supplied)

From the above-quoted exchanges, in particular, the statement made by Sr. Roxas, we discern that it was never the intention of the framers of the 1935 Constitution to exclude foundlings from natural-born Philippine citizenship. There was a recognition that "children or people born in a country of unknown parents are citizens of this nation" and the only reason that there was no specific reference to foundlings in the 1935 Constitution was that foundlings are "few and far in between" so that "it is not necessary to include a provision on the subject exhaustively."

The evident intent is to adopt and incorporate into the 1935 Constitution itself the concept found in the Spanish Code "wherein all children of unknown

[91]Respondent's Verified Answer, pages 56-57 and Memorandum for Respondent, pages 59-60.

parentage born in Spanish territory are considered Spaniards, because the presumption is that a child of unknown parentage is the son of a Spaniard." As enunciated by Sr. Montinola, "(t)his may be applied in the Philippines in that a child of unknown parentage born in the Philippines is deemed to be Filipino, and there is no need. . ." After being interrupted by Sr. Rafols, he continued, ""But that is the interpretation of the law, therefore, there is no [more] need for the amendment."

Sr. Roxas mentioned the phrase "[B]y international law." In 1934, the *Convention on Certain Questions Relating to the Conflict of Nationality Laws*[92], otherwise known as the Hague Convention of 1930, was the only international law which dealt with the issue of citizenship of foundlings. Article 14 of said Convention states:

> 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.[93]

Although the Philippines is not a signatory to said convention, its provisions are binding on the Philippines since they form part of the law of our nation. This was the ruling in the case of *Kuroda vs. Jalandoni*[94] wherein the Supreme Court held that the constitutional provision stating that the Philippines adopts the generally accepted principles of international law as part of the law of the nation, is not confined to the recognition of rules and principles of international law as contained in treaties to which our government may have been or shall be a signatory. The pertinent portion of *Kuroda* states:

> "It cannot be denied that the rules and regulation of The Hague and Geneva Conventions form part of and are wholly based on the generally accepted principles of international law. x x x Such rules and principles, therefore, form part of the law of our nation, even if the Philippines was not a signatory to the conventions embodying them, for our Constitution has been deliberately general and extensive in its scope and is not confined to the recognition of rules and principles of international law as contained in treaties to which our government may have been or shall be a signatory."

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[92] Hague, 12 April 1930, Philippines is not a signatory.
[93] Underscoring supplied.
[94] *83 Phil. 171, 178 (1949)* cited in the case of *Bayan Muna vs. Romulo, G.R. No. 159618, February 1, 2011,* J. Carpio dissenting.

By referring to the rule in "international law," which was no other than Article14 of the Hague Convention of 1930, what was effectively created in the Constitution itself, was an exception to the general rule of natural-born citizenship based on blood descent. In this particular case, foundlings, i.e. children born in the Philippines with unknown parentage, were by birth accorded by no less than the Constitution itself, natural-born citizenship; thus giving rise to what Tribunal Member Associate Justice Teresita Leonardo-de Castro termed as "natural-born citizens by legal fiction."

It may be recalled that during the oral argument, Justice De Castro required Respondent to argue on the basis of the Constitution and to prove that the Constitution admits of an exception that there can be a natural born citizen by fiction of law, to wit:

> JUSTICE DE CASTRO:
>
> I am not arguing with you. I want you to explain why you believe there is such an exception under the Constitution that even if blood relationship is not established, by fiction of law, we will have a natural born citizen[95]. xxx
>
> xxx xxx xxx
>
> Can a foundling be considered a natural born citizen? Looking at the provision of the Constitution which we detailed the Chair and the members of the SET detailed who are considered Filipino citizens and we have an idea who is a natural born citizen of the Philippines. Now you are presenting a proposition even if this person is not covered by any of the provision of the Constitution then by legal fiction or by operation of law, someone can be considered a natural born citizen and that can be justified by the provision of the Constitution. I would not like you to argue on the basis of international law. I would like you to argue on the basis of what is found in the Constitution to prove to us or to convince us that the Constitution admits of an exception that there can be a natural born citizen by fiction of law. Even if there is no factual or biological relationship with a Filipino citizen or a Filipino father or a Filipino mother. I think that is the issue in this case. The factual matters are not disputed. What is in dispute is a legal question. Does the Constitution admit of an exception when a person can be considered a natural born citizen of the Philippines? There is no need for us to argue at this time. You just put that in your memorandum[96].

That the framers of the Constitution were sufficiently empowered to create a class of natural-born citizens by legal fiction, as an exception to the *jus sanguinis* rule, is evident from Articles 1 and 2 of the 1930 Hague Convention that state:

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[95] TSN, Oral Argument, September 21, 2015, page 155, underscoring supplied.
[96] Id., page 156-157.

Article 1

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

Article 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.

We rule that Respondent is a natural-born citizen under the 1935 Constitution and continue to be a natural-born citizen as defined under the 1987 Constitution, as she is a "citizen of the Philippines from birth, without having to perform any act to acquire or perfect (her) Philippine citizenship."[97]

REACQUISITION OF NATURAL-BORN CITIZENSHIP BY RESPONDENT UNDER R.A. No. 9225

Section 3 of Republic Act No. 9225, otherwise known as "Citizenship Retention and Re-acquisition Act of 2003" provides:

Section 3. Retention of Philippine Citizenship - Any provision of law to the contrary notwithstanding, natural-born citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

'I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I imposed this obligation upon myself voluntarily without mental reservation or purpose of evasion.'

Natural born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath."

It is an admitted fact that Respondent executed an "Oath of Allegiance" to the Republic of the Philippine on 07 July 2006; and three (3) days later, on 10 July 2006, filed with the Bureau of Immigration a petition for reacquisition

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

of Filipino citizenship pursuant to R. A. No. 9225. Respondent's petition for reacquisition of Filipino citizenship was granted by the Bureau of Immigration in an Order dated 18 July 2006 signed by Associate Commissioner Roy M. Almoro for Commissioner Alipio F. Fernandez, Jr.

In light of our earlier pronouncement that Respondent is a natural-born Filipino citizen, Respondent validly reacquired her natural-born Filipino citizenship upon taking her Oath of Allegiance to the Republic of the Philippines, as required under Section 3 of R.A. No. 9225.

Under Section 11 of B.I. Memorandum Circular No. AFF. 05-002 (the Revised Rules Implementing R.A. No. 9225), the foregoing Oath of Allegiance is the "final act" to reacquire natural-born Philippine citizenship.

RENUNCIATION OF FOREIGN CITIZENSHIP

Section 5 of R.A. No. 9225 states that those who have re-acquired their natural-born Philippine citizenship under R.A. No. 9225 "shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

> "2. Those seeking elective public office in the Philippines shall meet the qualification for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;
>
> 3. Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: Provided, That they renounce their oath of allegiance to the country where they took that oath;"

In *Sobejana-Condon vs. COMELEC*[98], the Supreme Court held that "(t)he renunciation must be contained in an affidavit duly executed before an officer of the law who is authorized to administer an oath stating in clear and unequivocal terms that the affiant is renouncing all foreign citizenship.[99]" The foreign citizenship must be formally rejected through an affidavit duly sworn before an officer authorized to administer oath."

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[98] *G.R. No. 198742, 10 August 2012.*

[99] Citing *Lopez vs. COMELEC, G.R. No. 182701, 23 July 2008.*

Again, it is admitted that before assuming her position as Chairperson of the MTRCB, Respondent executed on 20 October 2010 before Notary Public Conrada A. Balboa an "Affidavit of Renunciation of Allegiance to the United States of America and Renunciation of American Citizenship" wherein she "hereby expressly and voluntarily renounce my United States nationality/American citizenship, together with all rights and privileges and all duties and allegiance and fidelity thereunto prevailing. I make this renunciation intentionally, voluntarily, and of my own free will, free of any duress or undue influence."[100]

An original copy of her affidavit of renunciation of allegiance and of citizenship of the United States of America was furnished the Bureau of Immigration on 21 October 2010 by her counsel, Escudero Marasigan Vallente & E.H. Villareal.[101]

The affidavit of renunciation that Respondent executed was sufficient to qualify her for her appointive position, and later, her elective office as R.A. No. 9225 did not require that her Certificate of Loss of Nationality filed before the Embassy of the United States of America be first approved in order that she may qualify for public office.

Sobejana-Candon vs. COMELEC[102] is again instructive:

> "We have stressed in Advocates and Adherents of Social Justice for School Teachers and Allied Workers (AASJS) Member v. Datumanong that the framers of R.A. No. 9225 did not intend the law to concern itself with the actual status of the other citizenship.
>
> "This Court as the government branch tasked to apply the enactments of the legislature must do so conformably with the wisdom of the latter sans the interference of any foreign law. If we were to read the Australian Citizen Act of 1948 into the application and operation of R.A. No. 9225, we would be applying not what our legislative department has deemed wise to require. To do so would be a brazen encroachment upon the sovereign will and power of the people of this Republic."

Be that as it may, it is worth mentioning that Respondent was in fact able to secure the U.S.A.'s approval of her renunciation of her U.S.A. citizenship.

On 12 July 2011, Respondent executed before the Vice Consul of the U.S.A. Embassy in Manila, an Oath/Affirmation of Renunciation of Nationality of the United States.[103] The Certificate of Loss of Nationality of the United States of Respondent executed by U.S.A. Vice Consul Jason

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[100] Exhibit V for the Petitioner/Exhibit 14 for the Respondent.
[101] Exhibit W for the Petitioner/Exhibit 15 for the Respondent.
[102] *G.R. No. 198742, 10 August 2012.*
[103] Respondent's Verified Answer, page 86.

Gallian on 09 December 2011 was approved by the Overseas Citizens Service, Department of State on 03 February 2012.[104]

USE BY RESPONDENT OF HER USA PASSPORT

The records of the Bureau of Immigration[105] show that Respondent still used her U.S.A. Passport No. 170377935 after having taken her Oath of Allegiance to the Republic on 07 July 2006, but not after she has formally renounced her US citizenship on 20 October 2010, thus:

Departures	Flight No.
November 1, 2006	SQ071
July 20, 2007	PR730
October 31, 2007	PR300
October 2, 2008	PR358
April 20, 2009	PR104
July 31, 2009	PR730
October 19, 2009	PR102
November 15, 2009	PR103
December 27, 2009	PR112
March 27, 2010	PR102

Arrivals	Flight No.
November 4, 2006	SQ076
July 23, 2007	PR731
November 5, 2007	PR337
May 8, 2008	PR103
October 5, 2008	PR359
May 21, 2009	PR105
August 3, 2009	PR733
November 15, 2009	PR103

It appearing from the records that during the times that Respondent used her American passport, she was still a dual citizen, her use thereof was in order. As Respondent did not use her American passport after she renounced her US citizenship, she cannot be considered to have recanted her Oath of Renunciation and to have reverted to her status as dual citizen. The rule enunciated in the case of *Maquiling vs. Comelec,* G.R. No. 195649, 16 April 2013, finds no application in the instant case:

> "While the act of using a foreign passport is not one of the acts enumerated in Commonwealth Act No. 63 constituting renunciation and loss

[104] Exhibit AA for the Petitioner/Exhibit 19 for the Respondent.
[105] Exhibits LL, LL-1 and LL-2 for the Petitioner/Exhibits 22-1, 22-2 and 22-3 for the Respondent.

of Philippine citizenship, it is nevertheless an act which repudiates the very oath of renunciation required for a former Filipino citizen who is also a citizen of another country to be qualified to run for a local elective position.

"When Arnaldo used his US passport on 14 April 2009, or just eleven days after he renounced his American citizenship, he recanted his Oath of Renunciation that he absolutely and perpetually renounces all allegiance and fidelity to the United States of America and that he divest(s) himself of full employment of all civil and political rights and privileges of the United States of America.

"We agree with the COMELEC En Banc that such act of using a foreign passport does not divest Arnaldo of his Filipino citizenship, which he acquired by repatriation. However, by representing himself as an American citizen, Arnaldo voluntarily and effectively reverted o his earlier status as a dual citizen. Such reversion was not retroactive; it took place the instant Arnaldo represented himself as an American citizen by using his US passport."

To repeat, Respondent never used her USA passport from the moment she renounced her American citizenship on 20 October 2010. She remained solely a natural-born Filipino citizen from that time on until today.

WHEREFORE, in view of the foregoing, the petition for *quo warranto* is **DISMISSED.**

No pronouncement as to costs.

SO ORDERED.

17 November 2015.

See Dissenting Opinion

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

See Dissenting Opinion:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Member

See: Dissenting Opinion

ARTURO D. BRION
Associate Justice
Member

See separate concurring opinion

PAOLO BENIGNO "BAM" AQUINO IV
Senator
Member

Will submit separate concurring opinion

COMPAÑERA "PIA" S. CAYETANO
Senator
Member

I join the dissenting position of the Justices

See separate concurring opinion

CYNTHIA A. VILLAR
Senator
Member

MARIA LOURDES NANCY S. BINAY
Senator
Member

VICENTE C. SOTTO III
Senator
Member

Concurring See Separate opinion

LOREN B. LEGARDA
Senator
Member