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*

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.