G.R. No. 221029 — REPUBLIC OF THE PHILIPPINES, *petitioner,* ***versus*** **MARELYN TANEDO MANALO,** *respondent.*

Promulgated:

April 24, 2018

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DISSENTING OPINION

CAGUIOA, *J.*:

> ***The Supreme Court x x x aims to adopt a liberal construction of statutes. By liberal construction of statutes is meant that method by which courts from the language used, the subject matter, and the purposes of those framing laws, are able to find out their true meaning. There is a sharp distinction, however, between construction of this nature and the act of a court in engrafting upon a law something that has been omitted which someone believes ought to have been embraced. The former is liberal construction and is a legitimate exercise of judicial power. The latter is judicial legislation forbidden by the tripartite division of powers among the three departments of government, the executive, the legislative, and the judicial.***[1]

On the basis of the Court's rulings in *Van Dorn v. Romillo, Jr.*[2] (*Van Dorn*), *Republic of the Philippines v. Orbecido III*[3] (*Orbecido*), and *Dacasin v. Dacasin*[4] (*Dacasin*), the *ponencia* holds that Article 26(2) of the Family Code permits the **blanket** recognition, under Philippine law, of a divorce decree obtained abroad by a Filipino citizen against the latter's foreigner spouse.

I disagree.

At the outset, it bears to emphasize that the public policy against absolute divorce remains in force. At present, there exists no legal mechanism under Philippine law through which a Filipino may secure a divorce decree upon his own initiative. Accordingly, it is the Court's duty to uphold such policy and apply the law as it currently stands until the passage of an amendatory law on the subject.

As members of the Court, ours is the duty to interpret the law; this duty does not carry with it the power to determine what the law should be in the face of changing times, which power, in turn, lies solely within the province of Congress.

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1 See *Tañada v. Yulo,* 61 Phil. 515-516, 519 (1935) [Per J. Malcolm, En Banc]; emphasis supplied.
2 223 Phil. 357 (1985) [Per J. Melencio-Herrera, First Division].
3 509 Phil. 108 (2005) [Per J. Quisumbing, First Division].
4 625 Phil. 494 (2010) [Per J. Carpio, Second Division].

Article 26(2) of the Family Code is an exception to the nationality principle under Article 15 of the Civil Code.

Article 26(2) was introduced during the meetings of the Joint Civil Code and Family Law Committee (the Committee) to address the effect of foreign divorce decrees on mixed marriages between Filipinos and foreigners. The provision, as originally worded, and the rationale for its introduction, appear in the deliberations:

> [Professor Esteban B. Bautista (Prof. Bautista)]'s position, even under the present law, was that the Filipina wife should be allowed to remarry as long as the divorce is valid under the national law of the husband, with which [Judge Alicia Sempio-Diy (Judge Diy)] and [Justice Leonor Ines-Luciano (Justice Luciano)] concurred.
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> After further deliberation, [Justice Ricardo C. Puno (Justice Puno)] suggested that they formulate the base to cover the above situation. Judge Diy and [Justice Eduardo P. Caguioa (Justice Caguioa)] formulated the base as follows:
>
> > In a mixed marriage between a Filipino citizen and a foreigner, both capacitated to marry under Philippine law, in case the foreigner should obtain a valid divorce abroad, capacitating him to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.[5]

However, subsequent deliberations show that the Committee ultimately resolved to delete the provision and defer action until absolute divorce is determined in future legislation:

> On Article [26(2)], [Justice Jose B.L. Reyes (Justice Reyes)] commented that it seems to discriminate against Filipinos, who are married to Filipinos, since the provision governs only Filipinos married to foreigners.
>
> Justice Puno suggested that, in line with Justice Caguioa's view that x x x they should make the Proposed Family Code as acceptable as possible and since they are not touching on divorce which is one of the big issues and they are leaving it to future legislation, **they omit Article [26(2)] temporarily and take it up when they take up the matter of absolute divorce**.
>
> Prof. Bautista remarked that it is a matter of equity, justice and fairness that Article [26(2)] should be retained. On the point raised by Justice Reyes, Prof. Bautista opined that there is no unfairness in the case of a Filipino, who is married to a Filipino, because in the case of a Filipino who is married to a foreigner, the foreigner is already free, and yet the Filipino is still married to nobody. [Dean Bartolome S. Carale (Dean Carale)] added that if two Filipinos are married anywhere, they are both covered by the Philippine prohibitory laws because they are nationals of the Philippines. Justice Caguioa, however, pointed out that, in effect, there

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[5] Minutes of the 146th Joint Meeting of the Civil Code and Family Law Committees dated July 12, 1986, p. 5.

> is preferential treatment in the case of Filipinos married to foreigners, since if the foreigner gets a divorce, the Filipino spouse also automatically gets a divorce. Dean Carale remarked that Article [26(2)] will in effect encourage Filipinos to marry foreigners. Prof. Bautista disagreed since **it is the foreigner and not the Filipino, who will seek divorce**.
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> x x x x
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> **Justice Reyes remarked that this article is an implicit recognition of foreign divorce, with which Justice Caguioa concurred. Prof. Bautista and [Professor Flerida Ruth P. Romero (Prof. Romero)] pointed out that the article will only cover exceptional cases and special situations and that there is a reasonable and substantial basis for making it an exception**.
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> After further discussion, Justice Puno rephrased Article [26(2)] in accordance with Dr. Cortes' suggestion as follows:
>
> > Where a marriage between a Filipino citizen and a foreigner is validly celebrated abroad and a divorce is thereafter validly obtained abroad capacitating such foreigner to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.
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> Having sufficiently discussed the matter, the Committee decided to put the issue to a vote.
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> The members voted as follows:
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> (1) Justice Puno, Justice Caguioa, Dr. Cortes, Dean Carale, Dean Gupit and Prof. Baviera were for the deletion of Article [26(2)].
>
> (2) Justice Diy, Prof. Bautista, Prof. Romero and [Director Flora C. Eufemio] were for its retention.
>
> Hence, **the Committee agreed that x x x Article [26(2)] shall be deleted** x x x.[6] (Emphasis and underscoring supplied)

Accordingly, Article 26(2) did not appear in the initial version of the Family Code under Executive Order (EO) 209 which was signed into law by then President Corazon Aquino on July 6, 1987. Days later, or on July 17, 1987, President Aquino issued EO 227 which incorporated, among others, Article 26(2). Thus, when the Family Code finally took effect on August 3, 1988, Article 26, in its entirety, read as follows:

> ART. 26. All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38.

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[6] Minutes of the 149th Joint Meeting of the Civil Code and Family Law Committees dated August 2, 1986, pp. 14-15.

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

While Article 26(2) was reinstated by executive fiat, it is nevertheless clear that the true spirit behind the provision remains explicit in the Committee deliberations — **Article 26(2) had been crafted to serve as an exception to the nationality principle embodied in Article 15 of the Civil Code, which states:**

> ART. 15. Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.

The deliberations show that Article 26(2) has the effect of (i) enforcing divorce decrees which are binding on foreign nationals under their national law; and (ii) recognizing the *residual* effect of such foreign divorce decrees on their Filipino spouses who are bound by the prohibition against absolute divorce under the Civil Code.[7]

To be sure, Article 26(2) had not been crafted to dilute the Philippines' policy against absolute divorce. In fact, this perceived possible dilution is precisely what prompted the majority of the Committee members to vote for the deletion of Article 26(2) in the initial version of the Family Code found in EO 209. **As the deliberations indicate, the exception provided in Article 26(2) is narrow, and intended *only* to address the unfair situation that results when a foreign national obtains a divorce decree against a Filipino citizen, leaving the latter stuck in a marriage without a spouse**, thus:

> Justice Caguioa explained that the intention of the provision is to legalize foreign divorces for the Filipino so that in the case of a Filipina, who was married to an American, who in turn later secured a divorce, said Filipina will be allowed to remarry. Justice Puno and Judge Diy remarked that this is not clear in the provision [Article 26(2)]. **Justice Puno, however, commented that it will open the gates to practically invalidating the Philippine laws by the simple expedient of marrying a foreigner, and that it will be an additional cause for the breakage of families, with which Justice Caguioa concurred. Judge Diy stated that, on the other hand, it is an absurdity for a Filipina to be married without a husband.**[8] (Emphasis supplied)

I believe that this view is consistent with the Court's rulings in *Van Dorn, Orbecido,* and *Dacasin.*

In *Van Dorn,* a case decided prior to the enactment of the Family Code, an American citizen sought to compel his former Filipina wife to render an

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7 See CIVIL CODE, Arts. 15 and 17.

8 Supra note 5.

accounting of their alleged conjugal business in Manila. The American citizen argued that he retained the right to share in the proceeds of the disputed business, as the divorce decree issued by the Nevada District Court cannot be given effect in the Philippines. Ruling against the American citizen, **the Court held that the divorce decree issued by a United States court is binding against him as an American citizen.**[9] **As a *residual* effect of such divorce, the American citizen no longer had standing to sue as the husband of his former Filipina wife.**[10] Hence, in *Van Dorn,* the Court held:

> It is true that owing to the nationality principle embodied in Article 15 of the Civil Code, only Philippine nationals are covered by the policy against absolute divorces the same being considered contrary to our concept of public policy and morality. However, **aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law.** x x x[11] (Emphasis supplied)

In *Orbecido,* a Filipino citizen sought permission to remarry before the courts, claiming that his former Filipina wife had obtained a divorce decree against him from an American court *after* she had become a naturalized American citizen. **The Court held that the effects of the divorce decree should be recognized in the Philippines since it was obtained by the former wife as an American citizen in accordance with her national law, and that as a consequence, the Filipino husband should be allowed to remarry pursuant to Article 26(2).** In so ruling, the Court laid down elements for the application of Article 26(2), thus:

> In view of the foregoing, we state the twin elements for the application of Paragraph 2 of Article 26 as follows:
>
> 1. There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and
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> 2. **A valid divorce is <u>obtained abroad by the alien spouse</u> capacitating him or her to remarry.**
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> The reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship *at the time a valid divorce is obtained abroad* by the alien spouse capacitating the latter to remarry.
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> In this case, when [the Filipino spouse's] wife was naturalized as an American citizen, there was still a valid marriage that has been celebrated between [them]. As fate would have it, the naturalized alien wife subsequently obtained a valid divorce capacitating her to remarry. Clearly, the twin requisites for the application of Paragraph 2 of Article 26 are both present in this case. Thus x x x the "divorced" Filipino spouse, should be allowed to remarry.[12] (Emphasis and underscoring supplied)

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9 Supra note 2, at 361.
10 Id. at 362.
11 Id.
12 Supra note 3, at 115-116.

Still, in *Dacasin,* a Filipino wife secured a divorce decree against her American husband from an Illinois court. The decree awarded sole custody over the parties' daughter in favor of the Filipino wife. While the parties subsequently executed a Joint Custody Agreement, the Filipino wife refused to honor the agreement, prompting the American husband to seek redress before the Philippine courts. The Court held that the Illinois divorce decree is binding on the American citizen, and that the latter cannot be permitted to evade the terms of the custodial award. **Citing the nationality principle, the Court stressed that "a foreign divorce decree carries as much validity against the alien divorcee in this jurisdiction as it does in the jurisdiction of the alien's nationality, irrespective of who obtained the divorce."**[13] It bears stressing that the issue raised in *Dacasin* was the enforceability of the Joint Custody Agreement against the American husband, and *not* the validity of the foreign divorce decree as against the Filipino wife.

Thus, rather than serving as bases for the blanket recognition of foreign divorce decrees in the Philippines, I believe that the Court's rulings in *Van Dorn, Orbecido* and *Dacasin* merely clarify the parameters for the application of the nationality principle found in Article 15 of the Civil Code, and the exception thereto found in Article 26(2) the Family Code. These parameters may be summarized as follows:

1. Owing to the nationality principle, all Filipino citizens are covered by the prohibition against absolute divorce. As a consequence of such prohibition, a divorce decree obtained abroad **by a Filipino citizen** cannot be enforced in the Philippines. **To allow otherwise would be to permit a Filipino citizen to invoke foreign law to evade an express prohibition under Philippine law**.

2. Nevertheless, the effects of a divorce decree obtained **by a foreign national** may be extended to the Filipino spouse, provided the latter is able to prove (i) the issuance of the divorce decree, and (ii) the personal law of the foreign spouse allowing such divorce.[14] This exception, found under Article 26(2) of the Family Code, respects the binding effect of the divorce decree on the foreign national, and merely recognizes the residual effect of such decree on the Filipino spouse.

It should be emphasized, however, that the prohibition against absolute divorce only applies to Filipino citizens. Accordingly, it cannot be invoked by a foreign national to evade the effects of a divorce decree issued pursuant to his national law. To reiterate, **a divorce decree issued by a foreign court remains binding on the foreign spouse in the Philippines, regardless of the party who obtained the same *provided* that such decree is valid and effective under the foreign spouse's national law.**

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[13] Supra note 4, at 508; emphasis and underscoring supplied.

[14] See *Medina v. Koike,* 791 Phil. 645, 651-652 (2016) [Per J. Perlas-Bernabe, First Division]; *Garcia v. Recio,* 418 Phil. 723, 725 and 730-731 (2001) [Per J. Panganiban, Third Division].

In essence, the applicable rule (whether Article 15 of the Civil Code on one hand, or Article 26[2] of the Family Code on the other), is determined by (i) the law upon which the divorce decree had been issued; (ii) the party who obtained the divorce decree; (iii) the nature of the action brought before the Philippine courts; and (iv) the law governing the personal status of the party seeking relief.

The corresponding effect of these determining factors are, in turn, illustrated by the relevant cases involving the issue at hand, decided after the issuance of EO 227:

Case	Incidents of Divorce	Incidents of Action in the Philippines	Court's Resolution
Pilapil v. Ibay-Somera[15] (*Pilapil*)	Divorce obtained in Germany by German spouse	German spouse filed two (2) complaints charging Filipino spouse with adultery	The divorce decree is binding on the German spouse pursuant to the nationality principle. Accordingly, the German spouse lacks standing to file the complaints as "offended spouse", having obtained the divorce decree prior to the filing of said complaints.
Republic v. Iyoy[16] (*Iyoy*)	Divorce obtained in the United States by Filipino wife prior to her naturalization as an American citizen	Filipino husband invokes the divorce decree secured by his Filipino wife as additional ground to grant his petition for declaration of nullity	The divorce decree cannot be recognized in the Philippines since the Filipino wife obtained the same while still a Filipino citizen, and was, at such time, bound by Philippine laws on family rights and duties, pursuant to the nationality principle.
Orbecido	Divorce obtained in the United States by naturalized American spouse	Filipino spouse sought enforcement of divorce in the Philippines	The effects of the divorce decree must be recognized in favor of the Filipino spouse pursuant to Article 26(2) of the Family Code. Accordingly, the Filipino spouse should be allowed to re-marry.
Dacasin	Divorce obtained in the United States by Filipino spouse	American spouse sought enforcement of the Joint Custody Agreement he had executed with his former Filipino wife, which bore terms	The divorce decree is binding on the American spouse, pursuant to the nationality principle. Accordingly, he cannot be allowed to evade the same by invoking the

[15] 256 Phil. 407 (1989) [Per J. Regalado, Second Division].
[16] 507 Phil. 485 (2005) [Per J. Chico-Nazario, Second Division].

		contrary to those in the divorce decree	terms of the Joint Custody Agreement.
Bayot v. Court of Appeals[17] (*Bayot*)	Divorce obtained in the Dominican Republic by naturalized American spouse	Naturalized American spouse sought annulment of her marriage with her Filipino spouse through a petition for annulment filed before the Regional Trial Court (RTC)	The divorce decree is binding on the naturalized American spouse, pursuant to the nationality principle. Accordingly, she is left without any cause of action before the RTC, as a petition for annulment presupposes a subsisting marriage.
Fujiki v. Marinay[18] (*Fujiki*)	Divorce obtained in Japan by Filipina wife against her second husband, who is a Japanese national	First husband (also a Japanese national) sought recognition of the divorce obtained by his Filipina wife against her second husband through a Petition for Judicial Recognition of Foreign Judgment (or Decree of Absolute Nullity of Marriage) filed before the RTC	The effect of the divorce decree issued pursuant to Japanese law may be recognized in the Philippines in order to affect the status of the first husband, who, pursuant to the nationality principle, is governed by Japanese law. Such recognition is in line with the Philippines' public policy, which characterizes bigamous marriages as void *ab initio.*
Medina v. Koike[19] (*Medina*)	Divorce **jointly** obtained in Japan by Filipina wife and Japanese husband	Filipina wife sought to enforce the divorce in the Philippines through a Petition for Judicial Recognition of Foreign Divorce and Declaration of Capacity to Remarry before the RTC	The case was remanded to the CA to allow Filipina wife to prove that the divorce obtained abroad by her **and** her Japanese husband is valid according to the latter's national law.

The factual circumstances in the foregoing cases illustrate and confirm the legislative intent behind Article 26(2), that is, primarily, to recognize foreign divorce decrees secured by foreign nationals insofar as they affect Filipinos who would otherwise be precluded from invoking such decrees in our jurisdiction, and, as well, to recognize those foreign divorce decrees obtained by Filipinos insofar as they affect their foreign spouses whose national laws allow divorce. For emphasis, I quote the relevant portion of the deliberations:

> Prof. Bautista remarked that it is a matter of equity, justice and fairness that Article [26(2)] should be retained. x x x Dean Carale added that if two Filipinos are married anywhere, they are both covered by the Philippine prohibitory laws because they are nationals of the Philippines. Justice Caguioa, however, pointed out that, in effect, there is preferential

[17] 591 Phil. 452 (2008) [Per J. Velasco, Jr., Second Division].
[18] 712 Phil. 524 (2013) [Per J. Carpio, Second Division].
[19] Supra note 14.

> treatment in the case of Filipinos married to foreigners, since if the foreigner gets a divorce, the Filipino spouse also automatically gets a divorce. Dean Carale remarked that Article [26(2)] will in effect encourage Filipinos to marry foreigners. **Prof. Bautista disagreed since it is the foreigner and not the Filipino, who will seek divorce.**
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> **Justice Reyes remarked that this article is an implicit recognition of foreign divorce, with which Justice Caguioa concurred. Prof. Bautista and Prof. Romero pointed out that the article will only cover exceptional cases and special situations and that there is a reasonable and substantial basis for making it an exception.**[20] (Emphasis and underscoring supplied)

Consistent with the foregoing, the Court held in *Iyoy:*

> As it is worded, Article 26, paragraph 2, refers to a special situation wherein one of the [parties in the marriage] is a foreigner who divorces his or her Filipino spouse. *By its plain and literal interpretation, the said provision cannot be applied to the case of respondent Crasus and his wife Fely because at the time Fely obtained her divorce, she was still a Filipino citizen.* x x x **At the time she filed for divorce, Fely was *still a Filipino citizen*, and pursuant to the nationality principle embodied in Article 15 of the Civil Code of the Philippines, she was still bound by Philippine laws on family rights and duties, status, condition, and legal capacity, even when she was already living abroad. Philippine laws, then and even until now, do not allow and recognize divorce between Filipino spouses. Thus, Fely could not have validly obtained a divorce from respondent Crasus.**[21] (Emphasis and underscoring supplied)

Article 26(2) of the Family Code merely recognizes the classification previously made pursuant to the nationality principle.

The *ponencia* characterizes Article 26(2) of the Family Code as unconstitutional, as it proceeds from a "superficial [and] arbitrary" classification.[22] This position appears to be based on the premise that Article 26(2) creates new distinctions in itself. This premise, however, is simply erroneous.

The classification under Article 26(2), (that is, between Filipinos in mixed marriages and Filipinos married to fellow Filipinos) was created as a matter of necessity, in *recognition* of the classification between Filipinos and foreign nationals which had been created by Article 15 of the Civil Code decades prior.

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20 Supra note 6.
21 Supra note 16, at 503-504.
22 *Ponencia,* p. 14.

In his Separate Opinion in *Pilapil,* Justice Paras highlights the interplay between these two provisions, thus:

> In the case of *Recto v. Harden* (100 Phil. 427 [1956]), the Supreme Court considered the absolute divorce between the American husband and his American wife as valid and binding in the Philippines on the theory that their status and capacity are governed by their *National law*, namely, American law. There is no decision yet of the Supreme Court regarding the validity of such a divorce if one of the parties, say an American, is married to a Filipino wife, for then two (2) different nationalities would be involved.
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> In the book of Senate President Jovito Salonga entitled Private International Law and precisely because of the *National law* doctrine, he considers the absolute divorce as valid insofar as the American husband is concerned but void insofar as the Filipino wife is involved. This results in what he calls a "socially grotesque situation," where a Filipino woman is still married to a man who is no longer her husband. It is the opinion however, of the undersigned that very likely the opposite expresses the correct view. **While under the *national law* of the husband the absolute divorce will be valid, still one of the exceptions to the application of the proper foreign law (one of the exceptions to comity) is when the foreign law will work an injustice or injury to the people or residents of the forum. Consequently since to recognize the absolute divorce as valid on the part of the husband would be injurious or prejudicial to the Filipino wife whose marriage would be still valid under her national law, it would seem that under our law existing before the new Family Code (which took effect on August 3, 1988) the divorce should be considered void both with respect to the American husband and the Filipino wife.**[23] (Emphasis supplied)

Hence, to characterize Article 26(2) as unconstitutional in such respect would be to disregard the nationality principle and the reasons which render the adoption thereof necessary; it would be tantamount to insisting that Filipinos should be governed with whatever law they choose.

Article 26(2) of the Family Code rests on substantial and reasonable distinctions.

It has been argued that the *verba legis* interpretation of Article 26(2) of the Family Code violates the equal protection clause, and that the application of the provision in this manner would not only be oppressive, but likewise unconstitutional.

These reservations appear to proceed from three different classifications which, in turn, have been called into question — *first,* that between Filipinos in mixed marriages and Filipinos who are married to fellow Filipinos; *second,* that between Filipinos and foreigners; and *finally,* that between men and women.

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[23] Supra note 15, at 421.

As earlier discussed, the *ponencia* finds the first classification "superficial [and] arbitrary"[24] insofar as it limits the scope of recognition to cover only those divorce decrees obtained by foreign nationals.

It bears to stress, however, that the guarantee of equal protection under the Constitution does not require that all laws indiscriminately operate with equal force with respect to all subjects at all times;[25] the guarantee does not preclude classification provided they are reasonable and based on substantial distinctions.[26]

> The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. **Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same.** The equal protection clause does not forbid discrimination as to things that are different. **It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.**
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> The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. **All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary**.[27] (Emphasis supplied)

There should be no dispute on the existence of substantial distinctions between Filipinos in mixed marriages and those who are married to fellow Filipinos. In fact, several of these distinctions were highlighted in the *ponencia,* thus:

> A Filipino who is married to another Filipino is not similarly situated with a Filipino who is married to a foreign citizen. There are real, material and substantial differences between them. *Ergo,* they should not

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[24] *Ponencia,* p. 14.

[25] See generally *Department of Education, Culture and Sports v. San Diego,* 259 Phil. 1016 (1989) [Per J. Cruz, En Banc].

[26] See *Fariñas v. Executive Secretary,* 463 Phil. 179, 206-208 (2003) [Per J. Callejo, Sr., En Banc].

[27] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 559-560 (2004) [Per J. Puno, En Banc].

> be treated alike, both as to rights conferred and liabilities imposed. Without a doubt, there are political, economic, cultural, and religious dissimilarities as well as varying legal systems and procedures, all too unfamiliar, that a Filipino national who is married to an alien spouse has to contend with. **More importantly, while a divorce decree obtained abroad by a Filipino against another Filipino is null and void, a divorce decree obtained by an alien against his or her Filipino spouse is recognized if made in accordance with the national law of the foreigner.**[28] (Emphasis supplied)

As observed by the *ponencia,* the most important distinction between Filipinos in mixed marriages and those who are married to fellow Filipinos is their exposure to the absurdity for which Article 26(2) had been precisely crafted, as only Filipinos in mixed marriages may find themselves married without a spouse due to the effects of a foreign divorce decree. This distinction is "substantial" as to necessitate a difference in treatment before the law.

To disregard these substantial distinctions for the sake of liberality would empower Filipinos in mixed marriages to obtain divorce decrees by invoking foreign law at whim, and effectively sanction a legal preference in their favor at the expense of those Filipinos who happen to be married to their fellow Filipinos. A liberal interpretation of Article 26(2) would, in Dean Carale's words, "encourage Filipinos to marry foreigners."[29]

To stress, all Filipinos are bound by the prohibition against absolute divorce. **The recognition afforded to foreign divorce under Article 26(2) is extended only as a means to recognize its residual effect on Filipinos whose marital ties to their alien spouses are severed by operation of the latter's national laws. <u>The provision was not intended to grant any preferential right in favor of Filipinos in mixed marriages, but intended merely to recognize the operation of foreign divorce on foreigners whose national laws permit divorce</u>.**

Equally apparent is the fundamental distinction between foreigners and Filipinos under the second classification, the former being subject to their respective national laws and the latter being bound by the laws of the Philippines regardless of their place of residence. Clearly, foreigners and Filipinos are not similarly situated. Hence, the determination of their legal status, among others, cannot be made subject to the same parameters. In any case, I emphasize, at the sake of being repetitious, that such classification had been created not by Article 26(2) of the Family Code, but rather, the nationality principle under Article 15 of the Civil Code:

> ART. 15. Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.

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28 *Ponencia,* p. 14.

29 Supra note 6, at 14.

Finally, I find that Article 26(2) does not make any discernable distinction between men and women, as the exception therein may be invoked by both men and women with equal force to attain the same end, provided that the requirements for its application obtain. While I am certainly aware that the respondent in this case is one of the many Filipino women who find themselves in unsuccessful marriages with foreign nationals, I am equally aware that this unfortunate circumstance is similarly faced by Filipino men, who, like their female counterparts, are precluded from obtaining an absolute divorce under Philippine law.

Respondent's case falls outside of the scope of Article 26(2) of the Family Code.

In this case, it has been established that (i) the respondent is a Filipino citizen who married a Japanese national; (ii) **it was the respondent who subsequently obtained a divorce decree against her Japanese husband** from a Japanese court; and (iii) the respondent thereafter filed a Petition for Recognition and Enforcement of a Foreign Judgment[30] before the RTC.[31] It is clear that respondent is, and has always been, a Filipino citizen. Pursuant to the nationality principle, respondent's personal status is subject to Philippine law which, in turn, prohibits absolute divorce.

Hence, the divorce decree which respondent obtained under Japanese law cannot be given effect, as she is, without dispute, a national *not* of Japan, but of the Philippines. Nevertheless, the *verba legis* application of Article 26(2) does not deprive the respondent of legal remedies, as she may pray for the severance of her marital ties before the RTC in accordance with the mechanisms now existing under the Family Code.

The Constitution mandates the protection of the family as a basic autonomous social institution.[32] In this connection, the Family Code characterizes marriage as a special contract of **permanent union**, and regards the family as "an inviolable social institution whose nature, consequences, and incidents are governed by law" and generally, not subject to stipulation.[33] Upon these fundamental principles rests the prohibition against absolute divorce, which had remained effective and unchanged since the enactment of the Civil Code in 1950.[34]

Adherence to this prohibition is met with much reservation, as it purportedly forces Filipinos to play second-fiddle to their foreign spouses, and places said Filipinos at a disadvantage. Moreover, it had been argued in

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30 Formerly captioned as Petition for Cancellation of Entry of Marriage; see *ponencia,* p. 2.
31 *Ponencia,* p. 2.
32 CONSTITUTION, Art. II, Sec. 12.
33 FAMILY CODE, Title I, Art. 1.
34 See generally *Raymundo v. Peñas,* 96 Phil. 311 (1954) [Per J. J.B.L. Reyes, En Banc].

the deliberations of the Court that such adherence sanctions various forms of abuse that plague mixed marriages, and deprives Filipinos in such marriages of a way out. I find that these observations, pressing as they are, already delve into the wisdom of statutes governing marriage and personal status with which the Court cannot interfere.

To note, Article 26(2) of the Family Code has remained unchanged since the issuance of EO 227. The blanket recognition of absolute divorce overturns the Court's unequivocal interpretation of the provision as laid down in the cases of *Pilapil, Iyoy, Orbecido, Dacasin, Bayot, Fujiki* and *Medina,* which span a period of nearly three decades. Ascribing a contradictory interpretation to the provision, under the guise of equal protection, essentially re-writes Article 26(2) and gives it a meaning completely different from the framers' intention.

While I am not oblivious to the difficulty that results from the prohibition on absolute divorce and commiserate totally with the respondent in this regard, I find that the prohibition remains, and thus, must be faithfully applied. To my mind, a contrary ruling will subvert not only the intention of the framers of the law, but also that of the Filipino people, as expressed in the Constitution. **The Court is bound to respect the prohibition, until the legislature deems it fit to lift the same through the passage of a statute permitting absolute divorce**.

As recognized by the *ponencia*, there are currently four bills on the subject of divorce and severance of marriage pending before the 17th Congress: (i) House Bill No. 116 (HB 116) and House Bill No. 2380 (HB 2380) which propose different grounds for the issuance of a judicial decree of absolute divorce; (ii) House Bill No. 1062 (HB 1062) which proposes the inclusion of separation in fact as an additional ground for annulment of marriage; and (iii) House Bill No. 6027 (HB 6027) which proposes additional grounds for dissolution of marriage. These bills have been consolidated and substituted by House Bill No. 7303[35] (HB 7303), which, at present, is awaiting deliberations before the Senate.[36]

HB 7303 proposes the issuance of divorce decrees on the basis of the following grounds:

1. The existing grounds for legal separation and annulment of marriage under Articles 55 and 45 of the Family Code;

2. Separation in fact for at least five years;

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35 AN ACT INSTITUTING ABSOLUTE DIVORCE AND DISSOLUTION OF MARRIAGE IN THE PHILIPPINES.

36 HB 7303 passed its second reading on March 14, 2018, and was likewise approved on its third and final reading before the lower house on March 19, 2018. See "*House passes divorce bill on second reading*," <http://www.sunstar.com.ph/article/423557> (last accessed on March 19, 2018) and "*House approves divorce bill on 3rd reading*," <https://www.rappler.com/nation/198516-divorce-bill-philippines-passes-third-reading-house-representatives> (last accessed on March 22, 2018).

3. Psychological incapacity, whether or not present at the time of the celebration of the marriage;

4. Gender reassignment surgery or transition from one sex to another undertaken by either spouse; and

5. Irreconcilable marital differences.[37]

These movements towards the passage of a divorce law illustrate that the difficulty which results from the absolute prohibition against marriage is being addressed by the 17th Congress through a statute specifically crafted for the purpose. **That the legislature has seen it necessary to initiate these proposed laws is a clear delineation of the Court's role — that is, to simply apply the current law and not for it to indulge in judicial legislation.**

Indeed, it is desirable, if not imperative, that statutes in a progressive democracy remain responsive to the realities of the present time. ***However***, responsiveness is a matter of policy which requires a determination of what the law *ought* to be, and not what the law actually *is*.[38] Widening the scope of the exception found in Article 26(2) so as to indiscriminately recognize foreign divorce in this jurisdiction is doing, in Justice Elias Finley Johnson's[39] words, "exactly what the Legislature itself [has] refused to do."[40] It *not only* subverts the standing public policy against absolute divorce; *worse*, it sanctions a violation of the fundamental principle of separation of powers — a violation which cannot be undone by any subsequent law. To wield judicial power in this manner is to arrogate unto the Court a power which it does not possess; it is to forget that this State, is foremost governed by the rule of law and not of men, however wise such men are or purport to be.

Considering the foregoing, I submit that the Court of Appeals erred when it reversed the RTC's order denying respondent's Petition for Enforcement. Hence, I vote to **GRANT** the instant Petition for Review.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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37 See HB 7303, Sec. 5.

38 See generally *People v. Vera*, 65 Phil. 56 (1937) [Per J. Laurel, En Banc].

39 Justice Elias Finley Johnson served as Associate Justice of the Supreme Court of the Philippines from 1903 to 1933.

40 See *Nicolas v. Alberto*, 51 Phil. 370, 380 (1928) [Dissenting Opinion, J. Johnson].