EN BANC

G.R. No. 221697 – MARY GRACE NATIVIDAD S. POE-LLAMANZARES, Petitioner, **v. COMMISSION ON ELECTIONS and ESTRELLA C. ELAMPARO,** Respondents.

G.R. No. 221698–700 – MARY GRACE NATIVIDAD S. POE-LLAMANZARES, Petitioner, **vs. COMMISSION ON ELECTIONS, FRANCISCO S. TATAD, ANTONIO P. CONTRERAS, and AMADO D. VALDEZ,** Respondents.

Promulgated:

April 5, 2016

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CONCURRING OPINION

LEONEN, *J.*:

I maintain my vote. I concur that the Motions for Reconsideration must be denied with finality.

Following the grant of the consolidated Petitions for Certiorari of Senator Mary Grace Natividad S. Poe-Llamanzares in G.R. No. 221697 and G.R. Nos. 221698-700, public respondent Commission on Elections filed its Motion for Reconsideration, and private respondents Estrella C. Elamparo, Antonio P. Contreras, Amado D. Valdez, and Francisco S. Tatad filed an "Urgent Plea for Reconsideration." This notwithstanding, private respondent Amado D. Valdez still proceeded to file his own Motion for Reconsideration.

The Commission on Elections argues that there is neither factual nor legal basis for the ruling that petitioner is a qualified candidate for President. There is no Supreme Court majority that found that petitioner is a natural-born Filipino citizen. Among the fifteen (15) Justices who took part in the deliberation, only seven (7) voted that petitioner is natural-born. The other five (5) Justices voted that petitioner is not a natural-born Filipino citizen, while three (3) voted not to rule on the issue of citizenship.[1]

Based on this tally, the Commission on Elections concludes that there is no majority vote validating petitioner's Presidential run, as required by

[1] COMELEC Motion for Reconsideration, p. 7.

Article VIII, Section 4 of the Constitution and Rule XII, Section 1(a) of A.M. No. 10-4-20-SC (Internal Rules of the Supreme Court):

> 1987 Constitution, Article VIII, **Section 4.** (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit en banc or, in its discretion, in division of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.
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> (2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc, and all other cases which under the Rules of Court are required to be heard en banc, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of the majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.
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> . . . .
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> A.M. No. 10-4-20-SC, Rule XII, **Section 1.** *Voting requirements.* – (a) All decisions and actions in Court en banc cases shall be made upon the concurrence of the majority of the Members of the Court who actually took part in the deliberation on the issues or issues involved and voted on them.
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> . . . .

The Commission on Elections points out that there was no concurrence of the majority of the Members who actually took part in the deliberations of the issues and voted thereon.[2]

Further, according to the Commission on Elections, this Court's decision to leave the matter of citizenship eligibility for resolution later after elections would only lead to a mockery of our elections. Allowing a presidential candidate with uncertain citizenship to run and be elected President may cause chaos and anarchy.[3] This Court should re-deliberate the issue of citizenship and see to it that only the Constitution, law, and jurisprudence become the overriding factors and considerations for its decision.[4]

The Commission on Elections also argues that this Court effectively ruled against the Commission on Elections' exercise of its power to deny due course or cancel a certificate of candidacy under Section 78 of the Omnibus Election Code. The Commission on Elections is, thus, "unduly emasculate[d]," with its powers and functions "rendere[d] illusory."[5]

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2 Id. at 8.
3 Id. at 11.
4 Id. at 12.
5 Id. at 13.

Ironically, this Court relied on *Fermin v. Commission on Elections*[6] and *Tecson v. Commission on Elections*,[7] which affirmed the Commission on Elections' power under Section 78 of the Omnibus Election Code.[8] Citing the Dissenting Opinion of Associate Justice Arturo D. Brion, the Commission on Elections argues that this Court disregarded the several cases where it ruled that the Commission on Elections has the power to determine a candidate's eligibility as an integral part of its power to determine false material misrepresentation.[9]

The Commission on Elections assails the finding that petitioner's blood relationship with a Filipino was "demonstrable."[10] This Court cannot rely on statistics as statistics does not establish bloodline. This was not substantial evidence, but merely speculative evidence.[11] Statistics cannot be the basis of a finding that the Commission on Elections gravely abused its discretion in cancelling petitioner's Certificate of Candidacy.

On the issue of determination of material misrepresentation, the Commission on Elections cites Associate Justice Estela Perlas-Bernabe's Dissenting Opinion stating that it is enough that the misrepresentation refers to a material qualification.[12] The eligibility of a candidate is not determined by his or her good faith, but by law.[13]

Furthermore, the Commission on Elections argues that the import of the 1934 Constitutional Convention Deliberations was misconstrued by this Court. A reading of the deliberations would show that foundlings were never intended to be included among those who are considered Filipino citizens.[14]

Lastly, the Commission on Elections points out that petitioner did not comply with the residency requirement for President under the Constitution.

Private respondents bewail how this Court "unconstitutionally strip[ped]"[15] the Commission on Elections of its powers in delineating the extent of its competence in Section 78 petitions. They maintain that it has jurisdiction to make findings on petitioner's qualification.[16] Paradoxically, they insist that it was an error for this Court—while reviewing the Commission on Elections' actions—to make findings on petitioner's actual

6 595 Phil. 449 (2008) [Per J. Nachura, En Banc].
7 468 Phil. 421 (2004) [Per J. Vitug, En Banc].
8 COMELEC Motion for Reconsideration, pp. 13–14.
9 Id. at 19.
10 Id. at 28.
11 Id.
12 Id. at 35.
13 Id. at 40.
14 Id. at 44 and 47.
15 Private respondents' Urgent Plea for Reconsideration, p. 9.
16 Id. at 7.

citizenship status and residence in the Philippines and thereby conclude that, in respect of these, she possesses the qualification for President.[17] They not only assail these findings and conclusions but also intimate their own impressions and conclusions on how this Court voted on these matters.[18]

Private respondents maintain that petitioner is not a natural-born citizen. They find fault in this Court's invocation of the Constitution's social justice underpinnings,[19] reference to statistical tools,[20] and appreciation of the common normative thread in international instruments.[21] As they did in the original proceedings before the Commission on Elections and in the preceding episodes before this Court, they capitalize on the Constitution's silence on the specific matter of foundlings and reiterate their claim that lack of knowledge as to a foundling's biological parents is fatal to their status as natural-born citizens.[22] In addition, they claim that petitioner's acts to re-acquire Philippine citizenship, pursuant to Republic Act No. 9225, militate against her natural-born status.[23]

As to petitioner's residence, private respondents maintain that her re-acquisition of Philippine citizenship only on July 7, 2006 belies compliance with the ten-year residency requirement. They harp on a supposedly "uniform and consistent"[24] jurisprudence—*Coquilla v. Commission on Elections*,[25] *Caballero v. Commission on Elections*,[26] and *Reyes v. Commission on Elections*[27]—"to the effect that the earliest possible reckoning point for the re-establishment of domicile in the Philippines can only be upon re-acquisition of Filipino citizenship."[28] They continue to rely on petitioner's return to the Philippines as a "balikbayan" as supposedly belying domicile in the Philippines.[29]

Private respondents also continue to insist that intent to deceive or mislead is not a requirement in Section 78 petitions. However, they posit that even if this were not a requirement, petitioner still showed through her actions a deceptive animus.[30]

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17 Id. at 3–4.
18 Id. at 4–7.
19 Id. at 13–19.
20 Id.
21 Id. at 24–27.
22 Id. at 19–24.
23 Id. at 28–32.
24 Id. at 33.
25 434 Phil 861 (2002) [Per J. Mendoza, En Banc].
26 G.R. No. 209835, September 22, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/september2015/209835.pdf> [Per J. Peralta, En Banc].
27 G.R. No. 207264, October 22, 2013, 708 SCRA 197 [Per J. Perez, En Banc].
28 Private respondents' Urgent Plea for Reconsideration, p. 33.
29 Id. at 38–40.
30 Id. at 41–47.

The basic issues borne by the consolidated Petitions pertained to the Commission on Elections' grave abuse of discretion in cancelling petitioner's Certificate of Candidacy for President in the May 9, 2016 elections. This overarching issue entailed an examination of the extent of the Commission on Elections' jurisdiction and competence in petitions to deny due course to or to cancel certificates of candidacy under Section 78 of the Omnibus Election Code. Related to this was the matter of whether a candidate's deliberate intent to deceive is a necessary element for the cancellation of his or her certificate of candidacy.

With respect to petitioner, the issue was whether she made a material misrepresentation in her Certificate of Candidacy in declaring that she was a natural-born Filipino citizen and that she has satisfied the requirement of ten-year residence in the Philippines. Ruling on the matter of her citizenship required an evaluation of her status as a foundling whose biological parents are unknown, as well as of her status as one who, years ago, was naturalized an American citizen, but eventually re-acquired Philippine citizenship pursuant to Republic Act No. 9225. These, in turn, called for a consideration of burden of proof and of fundamental principles—as contained and expressed in the Constitution, in domestic law, and in binding international mechanisms—that animate the determination of citizenship of marginalized individuals like foundlings. This also entailed an appraisal of the official acts of certain government organs that have previously made statements on petitioner's citizenship, in a milieu devoid of the present day's partisanship. Evaluating her residence required a meticulous consideration of her actions beginning 2004, in light of the settled principles governing residence in the context of election laws.

The constitutional, statutory, and jurisprudential foundations for my position on these points were fully explained in my Concurring Opinion. I do not see the need to reiterate what has been adequately passed. The Motions for Reconsideration failed to aver any sufficiently compelling reason to deviate from what this Court has already decided.

The Commission on Elections' insistence that the vote of this Court should lay to rest all issues regarding petitioner's qualifications is a misguided view of the availability of remedies to all voters, a misunderstanding of the difference between Certiorari on the one hand and Quo Warranto on the other, or an attempt to have the Constitution amended so that this Court would not be the "sole judge of election contests relating to . . . qualifications for President."[31]

A decision on these consolidated Petitions for Certiorari questioning the Commission on Elections' exercise of discretion under Section 78 of the

[31] CONST., art. VII, sec. 4, par. (7).

Omnibus Election Code does not legally bar any voter from challenging the "election, returns, and qualifications"[32] of the President in an election contest before this Court. Nine (9) Justices addressed the question as to whether the Commission on Elections had jurisdiction or, if it did have jurisdiction, whether the Commission gravely abused its discretion. That was what was required by the remedy invoked by petitioner. Nine (9) of the Justices agreed that the Petition should be granted with the consequence that the resolutions of the Commission on Elections be annulled and vacated, thus providing no obstacle for petitioner's candidacy. How each of us arrived at that conclusion is fully explained in our concurring opinions.

That "chaos and anarchy" may result because this Court may, after the elections, declare petitioner as not qualified relies on several premises that I cannot accept.

First, that the seventh paragraph of Article VII, Section 4 of the Constitution does not exist;

Second, that the electorate, composed of the People exercising their fundamental sovereign function, cannot make their own evaluations of the meaning of the Constitution as well as of who, among the candidates, has the better qualifications to run for President;

Third, that only the position presented by the movants and six (6) of the Justices make sense. The opinion of nine (9) of the fifteen (15) Justices of this Court are so patently unreasonable and not supported by the Constitution, by law, and by jurisprudence; and

Lastly, that this Court, acting on an election contest or a quo warranto action, should any be filed, will act in a particular way in the future.

To predict "chaos and anarchy" as the Commission on Elections does in its Motion for Reconsideration, therefore, is to caricature and simplify the extended opinions expressed by the Justices of this Court who did not agree with the Commission. Worse, the evil that the Constitution sought to avoid by not endowing it with unbridled power to determine the qualification of a candidate has come to pass. It is not unreasonable to fear that the Commission is now partial against a candidate for the elections for President. Its actuations can easily be misinterpreted as participating in the partisan voices of those who are supporting a different candidate for the elections.

To reduce the complex opinion of this Court is dangerous.

32 CONST., art. VII, sec. 4, par. (7).

In 1928, Edward L. Bernays—the intellectual guru that inspired the propaganda machinery of Nazi Germany, did "public relations" for a host of companies, and softened the media for purposes of supporting the coup in Guatamela, among other countries[33]—published a book entitled *Propaganda*. In chilling and disturbing detail he opens his book, as follows:

> The conscious and intelligent manipulation of the organized habits and opinions of the masses is an important element in democratic society. Those who manipulate this unseen mechanism of society constitute an invisible government which is the true ruling power of our country.
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> We are governed, our minds are molded, our tastes formed, our ideas suggested, largely by men [and women] we have never heard of. This is a logical result of the way in which our democratic society is organized. Vast numbers of human beings must cooperate in this manner if they are to live together as a smoothly functioning society.
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> Our invisible governors, are in many cases, unaware of the identity of their fellow members in the inner cabinet.
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> They govern us by their qualities of natural leadership, their ability to supply needed ideas and by their key position in the social structure. Whatever attitude one chooses to take toward this condition, it remains a fact that in almost every act of our daily lives, whether in the sphere of politics or business, in our social conduct or our ethical thinking, we are dominated by the relatively small number of persons—a trifling fraction of our hundred and twenty million—who understand the mental processes and social patters of the masses. It is they who pull the wires which control the public mind, who harness old social forces and contrive new ways to bind and guide the world.
>
> It is not usually realized how necessary these invisible governors are to the orderly functioning of our group life. In theory, every citizen may vote for whom he [or she] pleases. Our Constitution does not envisage political parties as part of the mechanism of government, and its framers seem not to have pictured to themselves the existence in our national politics of anything like the modern political machine. But the American voters soon found that without organization and direction their individual votes, cast, perhaps for dozens or hundreds of candidates, would produce nothing but confusion. Invisible government, in the shape of rudimentary political parties, arose almost overnight. Ever since then we have agreed, for the sake of simplicity and practicality, that party machines should narrow down the field of choice to two candidates, or at most three or four.
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> In theory, every citizen makes up his [or her] mind on public questions and matters of private conduct. In practice, if all [people] had to study for themselves the abstruse economic, political, and ethical data involved in every question, they would find it impossible to come to a conclusion about anything. We have voluntarily agreed to let an invisible

[33] *See, for instance,* Stephen Kinzer, Overthrow: America's Century of Regime Change from Hawaii to Iraq (Times Books, New York: 2006) and the BBC Documentary, Century of Self.

> government sift the data and high-spot the outstanding issues so that our field of choice shall be narrowed to practical proportions. From our leaders and the media they use to reach the public, we accept the evidence and the demarcation of issues bearing upon public questions; from some ethical teacher, be it a minister, a favorite essayist, or merely prevailing opinion, we accept a standardized code of social conduct to which we conform most of the time.
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> In theory, everybody buys the best and cheapest commodities offered him [or her] on the market. In practice, if every one went around pricing, and chemically testing before purchasing, the dozens of soaps or fabrics or brands of bread which are for sale, economic life would become hopelessly jammed. To avoid such confusion, society consents to have its choice narrowed to ideas and objects brought to its attention through propaganda of all kinds. There is consequently a vast and continuous effort going on to capture our minds in the interest of some policy or commodity or idea.
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> It might be better to have, instead of propaganda and special pleading, committees of wise men [and women] who would choose our rulers, dictate our conduct, private and public, and decide upon the best types of clothes for us to wear and the best kinds of food for us to eat. But we have chosen the opposite method, that of open competition. We must find a way to make free competition function with reasonable smoothness. To achieve this, society has consented to permit free competition to be organized by leadership and propaganda.
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> Some of the phenomena of this process are criticized—the manipulation of news, the inflation of personality, and the general ballyhoo by which politicians and commercial products and social ideas are brought to the consciousness of the masses. The instruments by which public opinion is organized and focused may be misused. But such organization and focusing are necessary to orderly life.[34]

I reject the premise that propaganda is necessary to shape meaningful social consciousness in a democracy. With every bone in my body, I refuse to accept that our People should forever be malleable through the maintenance of a political economy of ignorance.

Yet, it is during elections that those who are part of our "invisible government" thrive. They attempt to shape opinion by giving incomplete information. Press releases may be characterized by partisan simplification of complex issues of citizenship and residence. Public relations are enhanced when they color speculative outcomes with strident voices or hysteria about a future with "chaos and anarchy." The public is treated as a passive subject, vulnerable only to dominant sources of media and information. The prize is not a strong and informed sovereign People; rather, it is the statistics of powerful pollsters prior to elections.

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[34] Edward L. Bernays, *Propaganda* 9–12 (1928). Gender bias corrected. Analogous situation in the Philippines.

Lawyers and lawyers' groups may serve as witting or unwitting pawns to this tendency when they fail to present a balanced but critical view of the opinion of this entire Court. True, it will take patience and an open mind to wade through all the arguments packed in more than six hundred pages of opinion. Diligence and patience, however, is fundamental to a mature democracy.

In deciding these consolidated Petitions, we have endeavored to be transparent and legible because we were all aware of the possible repercussions of our Decision. The lengthy opinions were, to my mind, a tribute to our strong fighting faith that our People can empower themselves by taking the time to read and analyze the various reasons why each of us came to our Decision. After all, a critical and informed view is the mark of an empowered sovereign.

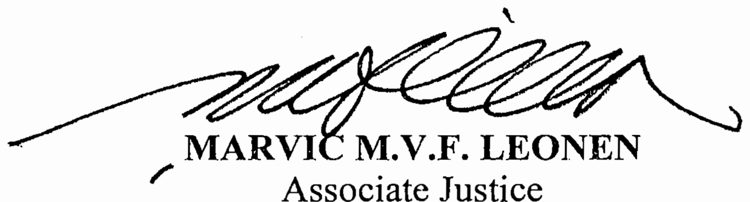
Reality is complex, nuanced, and layered with many dimensions. Understanding is always possible, but it only comes about with patience, diligence, and a great deal of respect and understanding for the other standpoint. Each of us can come to our own decision based on our own premises and in light of our own consciences and reasons. That the conclusion is not what one expects should not be the sole basis to conclude that the contrary opinion is unreasonable, illogical, or brought about by some malevolent motive.

Otherwise, we allow Bernays' "invisible government" to hold sway over the democracy we are all hoping to meaningfully shape.

I respect the eloquent dissents by some of my colleagues. I have perused the Motions for Reconsideration. Yet, I still see no reason to deviate from my earlier conclusions.

I maintain my vote.

ACCORDINGLY, I vote to **DENY WITH FINALITY** respondents' Motions for Reconsideration as the basic issues in this case have been passed upon in our March 8, 2016 Decision. In view of this denial with finality, no further pleadings must be allowed and entry of judgment must be made in due course.



MARVIC M.V.F. LEONEN
Associate Justice

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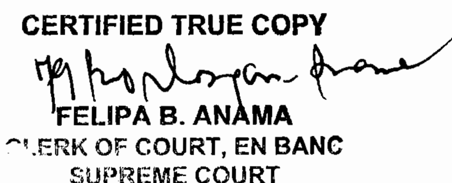

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