G.R. No. 207264 – REGINA ONGSIAKO REYES, *Petitioner,* versus COMMISSION ON ELECTIONS and JOSEPH SOCORRO B. TAN, *Respondents.*

Promulgated:

JUNE 25, 2013

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DISSENTING OPINION

BRION, *J.*:

The petition before us is a petition for *certiorari*[1] with a prayer for a temporary restraining order, preliminary injunction and/or status *quo ante* order, that seeks to annul: (1) the respondent Commission on Elections (*COMELEC*) March 27, 2013[2] and May 14, 2013[3] COMELEC Resolutions cancelling petitioner Regina Ongsiako Reyes' (*petitioner* or *Reyes*) Certificate of Candidacy (*COC*) for the position of Representative in the lone district of Marinduque, and (2) the June 5, 2013 Certificate of Finality[4] declaring the May 14, 2013 Resolution final and executory in SPA Case No. 13-053(DC).

I. THE CASE AND THE DISSENT IN CONTEXT

I submit this Dissenting Opinion to express my strong reservations to the majority's outright dismissal of this most ***unusual case*** – a term I do not use lightly as shown by the reasons stated below.

I clarify at the outset that the present case is at its **inception stage**; it is a **newly filed petition** that the Court is **acting upon for the first time** and which the majority opted to **DISMISS OUTRIGHT** after an initial review, based solely on the petition and its annexes and its "finding [that there was] no grave abuse of discretion on the part of the Commission on Elections."

Subsequent to the COMELEC's rulings, however, **intervening events occurred** that might have materially affected the jurisdictional situation and the procedural requirements in handling and resolving the case. The petitioner was **proclaimed** as the winner by the Marinduque Provincial Board of Canvassers (*PBOC*), and she subsequently **took her oath of office**.

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1 *Rollo*, pp. 3-37.
2 Id. at 40-51.
3 Id. at 52-55.
4 Id. at 163-165.

This Dissent is filed, not on the basis of the intrinsic merits of the case, but because of the outright and reckless denial of the minority's plea that the respondents be required to at least **COMMENT** on the petition in light of the **gravity of the issues** raised, the potential **effect on jurisprudence**, and the affected personal relationships within and outside the Court, before any further action can be made. The presented issues refer to –

- the Court's **lack of jurisdiction** over the subject matter of the petition, which jurisdiction should now lie with the House of Representatives Electoral Tribunal (*HRET)*, and

- the **grave abuse of discretion** by the COMELEC in handling the case that led to the assailed COMELEC decision.

Viewed in these lights, it should be appreciated that **the Court in effect did not rule on the merits of the case after considering the parties' legal and factual positions**. The majority's Resolution is in fact only a ruling that the Court no longer wishes to review the COMELEC's rulings despite the issues raised and the attendant intervening circumstances.

Despite its seemingly simple approach, the Court's outright dismissal of the petition is replete with profound effects on the petitioner on the indirect beneficiary of the ruling, and on jurisprudence, as it effectively upholds the disqualification of petitioner and leaves the remaining candidate in Marinduque as an unopposed candidate.[5] What is not easily seen by the lay observer is that by immediately ruling and ***avoiding the jurisdiction of the HRET on the matter of qualification***, the majority avoids a *quo warranto* petition that, if successful, would render petitioner Reyes disqualified, leaving the congressional position in Marinduque's lone district vacant.

Significantly, the Dissent is not a lonely one made solely by the undersigned; he is joined by three (3) other Justices.[6] Seven (7) Justices[7] formed the majority with three (3) Justices inhibiting for personal reasons,[8] with one (1) Justice absent.[9]

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[5] Congressman Lord Allan Jay Velasco, son of incumbent Supreme Court Justice Presbitero J. Velasco, Jr.

[6] Justices Antonio T. Carpio, Martin S. Villarama, Jr. and Marvic Mario Victor F. Leonen.

[7] Chief Justice Maria Lourdes P. A. Sereno; and Justices Teresita J. Leonardo-de Castro, Lucas P. Bersamin, Mariano C. del Castillo, Roberto A. Abad, Jose Portugal Perez, and Bienvenido L. Reyes.

[8] Justices Presbitero J. Velasco, Jr., Jose Catral Mendoza and Estela M. Perlas-Bernabe.

[9] Justice Diosdado M. Peralta.

II. SUMMARY OF THE DISSENT'S SUPPORTING POSITIONS

That this unusual case at least deserves further proceedings from this Court other than the OUTRIGHT DISMISSAL the majority ordered, is supported by the following considerations:

***First*, the questions raised in the petition are NOT too unsubstantial to warrant further proceedings.**

a. Under Section 6, Rule 64 of the Rules of Court, the Court may dismiss the petition if it was filed ***manifestly for delay, or the questions raised are too unsubstantial to warrant further proceedings***. In the present case, the majority dismissed the petition outright despite the threshold issue of jurisdiction that Reyes squarely raised.

b. The due process issues Reyes raised with respect to the COMELEC proceedings cannot be taken lightly**,** in particular, the COMELEC's failure to accord her the opportunity to question the nature and authenticity of the evidence submitted by the respondent Joseph Tan (*Tan*) as well as controverting evidence the petition cited. In fact, no less than **COMELEC Chairman Sixto Brillantes Jr**., echoed this concern in his **Dissenting Opinion** from the May 14, 2013 Resolution of the COMELEC *en banc*.

c. A third issue raised relates to the COMELEC's imposition of a qualification for the position of congressman, other than those mentioned in the Constitution. The Court's Resolution glossed over this issue and did not touch it at all. For this reason, this Dissent will similarly refrain from discussing the issue, except to state that the issue raised touches on the Constitution and should have at least merited a passing mention by the Court in its immediate and outright dismissal of the petition.

***Second*, unless the case is clearly and patently shown to be without basis and out of our sense of *delicadeza* (which we should have), the Court should at least hear and consider both sides before making a ruling that would favor the son of a Member of the Court.**

To reiterate, the COMELEC *en banc* ruling cancelling Reyes' CoC means that: (1) Reyes' CoC is void *ab initio*; (2) that she was never a valid candidate at all; and (3) all the votes in her favor are stray votes. Consequently, the remaining candidate would be declared the winner, as

held in *Aratea v. Commission on Elections*[10] *Jalosjos, Jr. v. Commission on Elections*[11] and *Maquiling v. Commission on Elections.*[12]

Third, the majority's holding that the jurisdiction of the HRET only begins after the candidate has assumed the office on June 30 is contrary to prevailing jurisprudence; in fact, it is **a major retrogressive jurisprudential development** that can emasculate the HRET. In making this kind of ruling, the *Court should have at least undertaken a full-blown proceeding rather than simply declare the* ***immediate and outright dismissal*** of the petition.

Note in this regard that the majority's jurisprudential ruling –

a. is contrary to the HRET rules.

b. effectively allows the filing of any election protest or a petition for *quo warranto* only after the assumption to office by the candidate on June 30 at the earliest. In the context of the present case, any election protest protest or petition for *quo warranto* filed on or after June 30 would be declared patently out of time since the filing would be more than fifteen (15) days from Reyes' proclamation on May 18, 2013.

c. would affect all future proclamations since they cannot be earlier than 15 days counted from the June 30 constitutional cut-off for the assumption to office of the newly elected officials.

III. THE ASSAILED COMELEC PETITION

A. *The Petition Before the COMELEC*

The present petition before this Court and its attachments show that on October 1, 2012, Reyes filed her CoC for the position of Representative for the lone district of Marinduque. On October 10, 2012, Tan filed with the COMELEC a petition to deny due course or to cancel Reyes' CoC. Tan alleged that Reyes committed material misrepresentations in her CoC, specifically: (1) that she is a resident of Brgy. Lupac, Boac Marinduque when in truth she is a resident of 135 J.P. Rizal, Brgy. Milagrosa Quezon City or Bauan Batangas following the residence of her husband; (2) that she is a natural-born Filipino citizen; (3) that she is not a permanent resident of, or an immigrant to, a foreign country; (4) that her date of birth is July 3,

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10 G.R. No. 195229, October 9, 2012.
11 G.R. Nos. 193237 and 193536, October 9, 2012.
12 G.R. No. 195649, April 16, 2013.

1964, when in truth it is July 3, 1958; (5) that her civil status is single; and (6) that she is eligible for the office she seeks to be elected to.

B. *The COMELEC Proceedings*

In her Answer, Reyes averred that while she is publicly known to be the wife of Rep. Hermilando Mandanas of Bauan, Batangas, the truth of the matter is that they are not legally married; thus, Mandanas' residence cannot be attributed to her. She also countered that the evidence presented by Tan does not support the allegation that she is a permanent resident or a citizen of the United States. With respect to her birth date, her birth certificate issued by the NSO showed that it was on July 3, 1964. At any rate, Reyes contended that the representations as to her civil status and date of birth are not material so as to warrant the cancellation of her CoC.

On February 8, 2013, Tan filed a Manifestation with Motion to Admit Newly Discovered Evidence and Amended List of Exhibits consisting of, among others, a copy of an article published online on January 8, 2013 entitled "Seeking and Finding the Truth about Regina O. Reyes." This article provided a database record from the Bureau of Immigration and Deportation (*BID*) indicating that Reyes is an American citizen and a holder of a US passport that she has been using since 2005. Tan also submitted a photocopy of a Certification of Travel Records from the BID, which showed that Reyes holds a US passport No. 306278853. Based on these pieces of evidence and the fact that Reyes failed to take an Oath of Allegiance and execute an Affidavit of Renunciation of her American citizenship pursuant to Republic Act No. 9225 (*RA 9225*), Tan argued that Reyes' was ineligible to run for the position of Representative and thus, her CoC should be cancelled.

C. *The COMELEC First Division Ruling*

On **March 27, 2013**, the COMELEC First Division issued a Resolution granting the petition and cancelling Reyes' CoC. On the alleged misrepresentations in Reyes' CoC with respect to her civil status and birth date, the COMELEC First Division held that these are not material representations that could affect her qualifications or eligibility, thus cancellation of CoC on these grounds is not warranted.

The COMELEC First Division, however, found that Reyes committed false material representation with respect to her citizenship and residency. **Based on the newly discovered evidence submitted by Tan, the COMELEC First Division found that Reyes was a holder of a US passport, which she continued to use until June 30, 2012;** she also failed to establish that she had applied for repatriation under RA 9225 by taking the required Oath of Allegiance and executing an Affidavit of Renunciation

of her American Citizenship. Based on these findings, the COMELEC First Division ruled the Reyes remains to be an American citizen, and thus, is ineligible to run and hold any elective office.

On the issue of her residency in Brgy. Lupac, Boac, Marinduque, the COMELEC First Division found that Reyes did not regain her domicile of origin in Boac, Marinduque after she lost it **when she became a naturalized US citizen**; that Reyes had not shown that she had re-acquired her Filipino citizenship under RA 9225, there being no proof that she had renounced her US citizenship; thus, she has not abandoned her domicile of choice in America. Citing *Japzon v. Commission on Elections,*[13] the COMELEC First Division held that a Filipino citizen who becomes naturalized elsewhere effectively abandons his domicile of origin. Upon re-acquisition of Filipino citizenship, he must still show that he chose to establish his domicile in the Philippines by positive acts and the period of his residency shall be counted from the time he made it his domicile of choice.

Finally, the COMELEC First Division disregarded Reyes' proof that she met the one-year residency requirement when she served as Provincial Administrator of the province of Marinduque from January 18, 2011 to July 13, 2011 as it is not sufficient to satisfy the one-year residency requirement.

On April 8, 2013, Reyes filed her motion for reconsideration. Attached to the motion were an Affidavit of Renunciation of Foreign Citizenship dated September 21, 2012 and a Voter Certification in Boac, Marinduque dated April 17, 2012. In her Motion, Reyes admitted that she was married to an American citizen named Saturnino S. Ador Dionisio in 1997 and thus, she acquired dual citizenship through marriage to an American citizen.

D. *The COMELEC en banc Ruling*

On **May 14, 2013**, the COMELEC *en banc* promulgated its Resolution denying Reyes' motion for reconsideration and affirming the ruling of the COMELEC First Division on the ground that the former's motion was a mere rehash of the arguments she raised against the First Division ruling.

D-a. *Commissioner Lim's Concurring Opinion*

Commissioner Lim concurred in the result and held that Reyes failed to comply with twin requirements of RA 9225; she belatedly filed her Affidavit of Renunciation of Foreign Citizenship but failed to submit an Oath of Allegiance. She also failed to prove that she complied with the one-

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[13] G.R. No. 180088, January 19, 2009, 576 SCRA 331.

year residency requirement for lack of evidence of any overt or positive act that she had established and maintained her residency in Boac, Marinduque.

D-b. *Chairman Brillantes' Dissenting Opinion*

Chairman Brillantes dissented from the majority and held that Tan *failed to offer substantial evidence to prove that Reyes lost her Filipino citizenship*. He noted that the internet article by a certain Eli Obligacion showing that Reyes used a US passport on June 30, 2012 is hearsay while the purported copy of the BID certification is merely a photocopy and not even a certified true copy of the original, thus similarly inadmissible as evidence. Chairman Brillantes also emphasized that *a petition to deny due course under Section 78 of the Omnibus Election Code (OEC) cannot be a pre-election substitute for a quo warranto proceeding*. Under prevailing laws, there remains to be no pre-election legal remedy to question the eligibility or lack of qualification of a candidate. Chairman Brillantes was of the view that *a petition to deny due course tackles exclusively the issue of deliberate misrepresentation over a qualification*, and not the lack of qualification *per se* which is the proper subject of a *quo warranto* proceeding.

Finally, he opined that the issues pertaining to Reyes' residence and citizenship requires exhaustive presentation and examination of evidence that are *best addressed in a full blown quo warranto proceeding* rather than the summary proceedings in the present case.

IV. EVENTS SUBSEQUENT TO THE COMELEC DECISION

A. On **May 18, 2013**, **the Marinduque PBOC proclaimed Reyes** as the duly elected member of the House of Representatives for Marinduque, having garnered the highest number of votes in the total of 52, 209 votes.

B. On **June 5, 2013**, the COMELEC *en banc* issued a **Certificate of Finality** declaring its May 14, 2013 Resolution final and executory citing paragraph b, Section 13, Rule 18 of the COMELEC Rules of Procedure in relation to paragraph 2, Section 8, of Resolution No. 9523 which provides that **a decision or resolution of the Commission *en banc*** in Special Actions and Special Cases **shall become final and executory five (5) days after its promulgation** unless a restraining order is issued by the Supreme Court.

C. On **June 7, 2013**, Reyes took her **oath of office** before House Speaker Rep. Feliciano R. Belmonte, Jr.

V. THE PETITION BEFORE THIS COURT

A. *Positions and Arguments*

In support of her petition before this Court, Reyes submits the following positions and arguments:

(1) COMELEC has been ousted of jurisdiction when she was duly proclaimed the winner for the position of Representative of the lone district of Marinduque;

(2) COMELEC violated her right to due process when it took cognizance of the documents submitted by Tan that were not testified to, offered and admitted in evidence without giving her the opportunity to question the authenticity of these documents as well as present controverting evidence;

(3) COMELEC gravely erred when it declared that petitioner is not a Filipino citizen and did not meet the one year residency requirement despite the finding that he assumed and held office as provincial administrator;

(4) COMELEC gravely abused its discretion in enforcing the provision of RA 9225 insofar as it adds to the qualifications of Members of the House of Representatives other than those enumerated in the Constitution.

B. *The Issues Raised*

As presented to this Court, the petition raised the following issues:

(1) Whether or not the COMELEC is ousted of jurisdiction over the petition who is a duly proclaimed winner and who has already taken her oath of office for the position of Member, House of Representatives?

(2) Whether or not the COMELEC gravely abused its discretion when it took cognizance of Tan's newly discovered evidence without having been testified to, as well as offered and admitted in evidence, in violation of Reyes' right to due process?

(3) Whether or not the COMELEC gravely abused its discretion when it declared that Reyes is not a Filipino citizen and did not

meet the one-year residency requirement for the position of Member of the House of Representatives?

(4) Whether or not COMELEC gravely abused its discretion when, by enforcing RA 9225, it imposed additional qualifications to the qualifications of a Member of the House of Representatives under Section 6, Art. VI of the Constitution?

How the public respondent COMELEC views the issues presented, particularly the question of jurisdiction and grave abuse of discretion are presently unknown elements in these proceedings as the COMELEC has not been heard on the case. To be sure, it should have a say, as a named respondent, especially on the matter of jurisdiction.

VI. THE MAJORITY RULING

On the issue of the COMELEC's jurisdiction

Without the benefit of full blown arguments by the parties, the majority ruling ruled on the merits of the jurisdictional issue and held that the COMELEC has jurisdiction for the following reasons:

First, the HRET does not acquire jurisdiction over the issue of Reyes' qualifications and the assailed COMELEC Resolutions ***unless a petition is filed with the tribunal***.

Second, the jurisdiction of the HRET begins only after the candidate is considered a Member of the House of Representatives. A candidate is considered a Member of the House of Representatives with the concurrence of three requisites: (a) a valid proclamation; (b) a proper oath; and (c) assumption of office.

It went on to state that Reyes cannot be considered a Member of the House of Representatives because she had not yet assumed office; she can only do so on June 30, 2013. It pointed out, too, that *before Reyes' proclamation on May 18, 2013,* the COMELEC *en banc* had already finally disposed of the issue of Reyes US citizenship and lack of residency; thus, there was no longer any pending case at that time. In these lights, it held that COMELEC continued to have jurisdiction.

On the issue of admissibility of the evidence presented and due process

The majority emphasized that the COMELEC is not strictly bound to adhere to the technical rules of evidence. Since the proceedings to deny due course or to cancel a CoC are summary in nature, then the newly discovered evidence was properly admitted by the COMELEC. Also, there was no denial of due process since Reyes was given every opportunity to argue her case before the COMELEC.

On the issue of citizenship

Again ruling on the merits, the majority upheld the COMELEC's finding that based on the Tan's newly discovered evidence, Reyes is an American citizen and thus is ineligible to run and hold any elective office. The majority likewise held that the burden of proof had been shifted to Reyes to prove that: (1) she is a natural-born Filipino citizen, and that (2) she re-acquired such status by properly complying with the requirements of RA 9225, and that Reyes had failed to substantiate that she is a natural born Filipino citizen and complied with the requirements of RA 9925. It emphasized that Reyes inexplicably failed to submit an Oath of Allegiance despite belatedly filing an Oath of Renunciation and that her oath that she took in connection with her appointment as Provincial Administrator does not suffice to satisfy the requirements of RA 9225.

On the issue of residency

The majority similarly affirmed the COMELEC's ruling that Reyes had not abandoned her domicile of choice in the United States and thus did not satisfy the one-year Philippine residency requirement. It held that Reyes effectively abandoned her domicile of origin in Boac, Marinduque when she became a naturalized US citizen. In the absence of proof that she had renounced her American citizenship, she cannot be considered to have abandoned her domicile of choice in the US. The majority also noted that Reyes' service as Provincial Administrator from January 18, 2011 to July 13, 2011 is not sufficient to prove her one-year residency in Boac, Marinduque.

VII. COMMENTS ON THE MAJORITY'S RULING

The majority's unusual approach and strained rulings that already touched on the merits of substantial issues raised should, at the very least, not be allowed to stand without comments. I call these "comments" as a "refutation" implies a consideration on the merits of properly submitted and debated issues, which did not happen in this case.

A. *No basis exists to DISMISS the petition outright.*

Section 6 of Rule 64 of the Rules of Court[14] merely requires that the petition be sufficient in form and substance to justify an order from the Court to act on the petition and to require the respondents to file their comments. The same rule also provides that the Court may dismiss the petition outright (as the majority did in the present case) if it was filed manifestly **for delay or if the questions raised are too unsubstantial to warrant further proceedings**.

In the present case, the petition is indisputably sufficient in form and substance; no issue on this point was even raised. Thus, the question before the Court – if Rule 64, Section 6 were to be followed – is whether the issues raised by Reyes were too unsubstantial to warrant further proceedings.

I submit that the issues raised cannot be unsubstantial as they involve crucial **issues of jurisdiction and due process**.

The due process issue, of course, pertained to the assailed COMELEC ruling that admittedly can be evaluated based on the records. The matter of evaluation, however, is not simply a matter of doing it; it is the very problem that I raise because it must be a meaningful one that fully appreciates the parties' positions, particularly in a situation where the petition raised arguments that are not without their merits. **In this situation, the Court cannot simply go through the motions of evaluation and then simply strike out the petitioner's positions.** The Court's role as adjudicator and the demands of basic fairness require that we should fully hear the parties and rule based on our appreciation of the merits of their positions in light of what the law and established jurisprudence require.

a. **The Due Process Component**

The determination of the merits of the petitioner's claim point us, at the very least, to the need to consider whether evidence attributed to a person who is not before the Court and whose statement cannot be confirmed for the genuineness, accuracy and truth of the basic fact sought to be established in the case, should be taken as "truth." Even casting technical rules of evidence aside, common sense and the minimum sense of fairness dictate that an article in the internet cannot simply be taken to be evidence of the truth of what it says, nor can photocopies of documents not shown to be genuine be taken as proof of the "truth." To accept these materials as statements of "truth" is to be partisan and to deny the petitioner her right to

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[14] Section 6 of Rule 64 of the Rules of Court states:
Section 6. *Order to comment*. — If the Supreme Court finds the petition sufficient in form and substance, it shall order the respondents to file their comments on the petition within ten (10) days from notice thereof; otherwise, the Court may dismiss the petition outright. The Court may also dismiss the petition if it was filed manifestly for delay or the questions raised are too unsubstantial to warrant further proceedings. (n)

both procedural and substantive due process. **Again, at the very least, further inquiry should have been made before there was the judgment.**

Some, to be sure, may label the denial of further inquiry to lack of prudence; **others, not so charitably minded, may however refer to this as partisanship.**

b. **The Jurisdictional Component.**

The jurisdictional component of the petition is interesting because it involved **matters that were not covered by the assailed COMELEC rulings** for the simple reason that **they were intervening events** that transpired outside (although related with) the assailed rulings. In fact, they involved questions of fact and law separate from those of the assailed COMELEC rulings. Yet, the majority, **in its rush to judgment**, lumped them together with the assailed rulings under the dismissive phrase "did not commit any grave abuse of discretion" in the dispositive portion of its ruling. Such was the haste the majority exhibited in the desire to pronounce swift and dismissive judgment. **I can only surmise that the majority might have considered the jurisdictional issues raised "too insubstantial to warrant further proceedings."**

Is this still lack of prudence?

Reyes' proclamation divested the COMELEC of jurisdiction over her qualifications in favor of the HRET

The profound effect of the majority's ruling on HRET jurisdiction and on jurisprudence render comments on this point obligatory, if only to show that the matter is not insubstantial and should further be explored by the Court.

The majority held that the COMELEC still has jurisdiction because **the HRET does not acquire jurisdiction over the issue of the petitioner's qualifications, as well as over the assailed resolutions unless a petition is duly filed.** The *ponencia* emphasizes that Reyes has not averred that she has filed such action.

This line of thought is, to say the least, confusing, particularly on the point of why Reyes who has garnered the majority of the votes cast in Marinduque, who has been proclaimed pursuant to this electoral mandate, and who has since taken her oath of office, would file a petition, either of protest or *quo warranto*, before the HRET. Why she would file a petition for certiorari before this Court may be easier to understand – the COMELEC, despite her proclamation and oath, has issued an order

mandating her disqualification executory; she may merely want to halt the enforcement of this COMELEC order with the claim that the arena for her election and qualification has shifted now to the HRET and is no longer with the COMELEC.

In any case, to stick to election law basics, the matter of jurisdiction between the COMELEC and the HRET has always constituted a dichotomy; the relationship between the COMELEC and the HRET in terms of jurisdiction is not an appellate one but is mutually exclusive.

This mutually exclusive jurisdictional relationship is, as a rule, sequential. This means that the COMELEC's jurisdiction ends when the HRET's jurisdiction begins. Thus, there is no point in time, when a vacuum in jurisdiction would exist involving congressional candidates. This jurisdiction, of course, refers to **jurisdiction over the subject matter**, which no less than the Philippine Constitution governs. Under Section 17, Article VI, the subject matter of HRET's jurisdiction is the "election, returns, and qualifications of Members of the House of Representatives."

Where one jurisdiction ends and the other begins, is a matter that jurisprudence appears to have settled, but is nevertheless an issue that the Court should perhaps continue to examine and re-examine because of the permutation of possible obtaining situations – which, to my mind, translates to the existence of a critical issue that should be ventilated before this Court if it is to make any definitive ruling on any given situation.

I submit on this point that the **proclamation** of the winning candidate is the **operative fact** that triggers the jurisdiction of the HRET over election contests relating to the winning candidate's election, return and qualifications. In other words, the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation and the party questioning the qualifications of the winning candidate should now present his or her case in a proper proceeding (i.e. *quo warranto)* before the HRET who, by constitutional mandate, has the sole jurisdiction to hear and decide cases involving the election, returns and qualification of members of the House of Representatives.

The Court has interestingly rendered various rulings on the points which all point to the statement above. In *Limkaichong v. Comelec,*[15] the Court pointedly held that the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation.[16]

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[15] G.R. Nos. 178831-32, 179120, 179132-33 & 179240-41, April 1, 2009, 583 SCRA 1.

[16] Id., "We do not agree. The Court has invariably held that once a winning candidate **has been proclaimed**, **taken his oath**, and **assumed office** as a Member of the House of

The Court speaking through no less than **Associate Justice Roberto A. Abad** in the recent case of *Jalosjos, Jr. v Commission on Elections*[17] held that the **settled rule is that "the proclamation of a congressional candidate following the election divests COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representative in favor of the HRET"**[18]

Based on these considerations, it appears clear that any ruling from this Court – as the majority ruled – that the COMELEC retains jurisdiction over disputes relating to the election, returns and qualifications of the proclaimed representative **who has been proclaimed but not yet assumed office** is a major retrogressive jurisprudential development, in fact, a complete turnaround from the Court's prevailing jurisprudence on the matter; **such rule – if it becomes established – can very well emasculate the HRET**.

Thus, the Court should now fully hear this matter, instead of dismissively ruling on a new petition where the respondent side has not been fully heard.

Representatives, **the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins**. **It follows then that the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation. The party questioning his qualification should now present his case in a proper proceeding before the HRET, the constitutionally mandated tribunal to hear and decide a case involving a Member of the House of Representatives with respect to the latter's election, returns and qualifications.** The use of the word "sole" in Section 17, Article VI of the Constitution and in Section 250 of the OEC underscores the exclusivity of the Electoral Tribunals' jurisdiction over election contests relating to its members."

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"Accordingly, after the proclamation of the winning candidate in the congressional elections, the remedy of those who may assail one's eligibility/ineligibility/qualification/disqualification is to file before the HRET a petition for an election protest, or a petition for *quo warranto,* within the period provided by the HRET Rules. In *Pangilinan v. Commission on Elections* we ruled that where the candidate has already been proclaimed winner in the congressional elections, the remedy of petitioner is to file an electoral protest with the Electoral Tribunal of the House of Representatives."

[17] G.R. Nos. 192474, 192704, 193566, June 26, 2012.

[18] Id., "While the Constitution vests in the COMELEC the power to decide all questions affecting elections, such power is not without limitation. It does not extend to contests relating to the election, returns, and qualifications of members of the House of Representatives and the Senate. The Constitution vests the resolution of these contests solely upon the appropriate Electoral Tribunal of the Senate or the House of Representatives.

The Court has already settled the question of when the jurisdiction of the COMELEC ends and when that of the HRET begins. The proclamation of a congressional candidate following the election divests COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representative in favor of the HRET.

> Here, when the COMELEC En Banc issued its order dated June 3, 2010, Jalosjos had already been proclaimed on May 13, 2010 as winner in the election. Thus, the COMELEC acted without jurisdiction when it still passed upon the issue of his qualification and declared him ineligible for the office of Representative of the Second District of Zamboanga Sibugay.

The ponencia's holding on the COMELEC's jurisdiction vis-à-vis the HRET is inconsistent with the HRET Rules

The view that the proclamation of the winning candidate is the operative fact that triggers the jurisdiction of the HRET is also supported by the HRET Rules. They state:

> **RULE 14.** *Jurisdiction.* – The Tribunal is the sole judge of all contests relating to the election, returns, and qualifications of the Members of the House of Representatives.
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> **RULE 15.** *How Initiated.* – An election contest is initiated by the filing of a verified petition of protest or a verified petition for quo warranto against a Member of the House of Representatives. An election protest shall not include a petition for quo warranto. Neither shall a petition for quo warranto include an election protest.
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> ***RULE 16.*** *Election Protest.* – ***A*** **verified petition contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate** who has duly filed a certificate of candidacy and has been voted for the same office, **within fifteen (15) days after the proclamation of the winner.** The party filing the protest shall be designated as the protestant while the adverse party shall be known as the protestee. x x x
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> **RULE 17.** *Quo Warranto.* – **A verified petition for quo warranto contesting the election of a Member of the House of Representatives** on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any registered voter of the district concerned **within fifteen (15) days from the date of the proclamation of the winner.** The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent[.]

Based on the above Rules, it appears clear that as far as the HRET is concerned, the **proclamation of the winner** in the congressional elections serves as the **reckoning point** as well as the trigger that brings any contests relating to his or her election, return and qualifications within its sole and exclusive jurisdiction.

In the context of the present case, by holding that the COMELEC retained jurisdiction (because Reyes, although a proclaimed winner, has not yet assumed office), the majority effectively emasculates the HRET of its jurisdiction as it allows the filing of an election protest or a petition for *quo warranto* only after the assumption to office by the candidate (*i.e*, on June 30 in the usual case). To illustrate using the dates of the present case, any election protest or a petition for *quo warranto* filed after June 30 or more

than fifteen (15) days from Reyes' proclamation on May 18, 2013, shall certainly be dismissed outright by the HRET for having been filed out of time under the HRET rules.

Did the COMELEC gravely abuse its discretion when it declared its May 14, 2013 Resolution final and executory?

By the petitioner's theory, the COMELEC *en banc's* May 14, 2013 Resolution (cancelling Reyes' CoC) did not attain finality because Reyes' proclamation on May 18, 2013 divested the COMELEC of its jurisdiction over matters pending before it relating to Reyes' eligibility. Two material records are critical on this point. **First**, the fact of proclamation on May 18, 2013 which came one (1) day ahead of the May 19, 2013 deadline for the finality of the May 14, 2013 Resolution pursuant to the COMELEC Rules of Procedure. The **second** is the COMELEC order of June 5, 2013 which declared its resolution of May 14, 2013 final and executory.

How these instruments will co-exist and be given weight in relation with one another is a matter that, at this point and in the absence of research, deliberation, debate and discussion may not be easily be made. **The Court, to be sure, would want to hear the HRET, the COMELEC and the Office of the Solicitor General, on this point. Of course, this hearing and debate will not take place under the hasty dismissive action the majority made.**

Did the COMELEC gravely abuse its discretion in the appreciation and evaluation of the evidence leading it to erroneously conclude that Reyes is not a natural born Filipino citizen and that she had abandoned and lost her domicile of origin when she became a naturalized American citizen

As a general rule, the Court does not ordinarily review the COMELEC's appreciation and evaluation of evidence. However, exceptions to this rule have been established and consistently recognized, among others, when the COMELEC's appreciation and evaluation of evidence are so grossly unreasonable as to turn into an error of jurisdiction. In these instances, the Court is compelled by its bounden constitutional duty to intervene and correct the COMELEC's error.[19]

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[19] *Sabili v. Commission on Elections*, G.R. No. 193261, April 24, 2012.

It is also basic in the law of evidence that one who alleges a fact has the burden of proving it. In administrative cases, the quantum of proof required is substantial evidence.[20] In the present case, the majority obviously believed, together with the COMELEC, that Tan did overcome this burden and that his documentary evidence he submitted established that Reyes is not a Filipino citizen. A major clash between the parties exists, of course, on this point as Reyes, as expressed in her petition, is of the completely opposite view. Even a quick look at Tan's evidence, however, indicates that Reyes' view is not without its merits and should not simply be dismissively set aside.

First, Tan submitted an article published online (**blog article**) written by one Eli J. Obligacion (*Obligacion*) entitled "Seeking and Finding the Truth About Regina O. Reyes." This printed blog article stated that the author had obtained records from the BID stating that Reyes is an American citizen; that she is the holder of a US passport and that she has been using the same since 2005.

How the law on evidence would characterize Obligacion's blog article or, for that matter, any similar newspaper article, is not hard for a law student answering the Bar exam to tackle: the article is double hearsay or hearsay evidence that is twice removed from being admissible as it was offered to prove its contents (that Reyes is an American citizen) without any other competent and credible evidence to corroborate them. Separately of course from this consideration of admissibility is the question of probative value. On top of these underlying considerations is the direct and frontal question: did the COMELEC gravely abuse its discretion when it relied on this piece of evidence to conclude that Reyes is not a Filipino citizen?

Second, Tan also submitted a **photocopy** of a "**certification**" issued by one Simeon L. Sanchez of the BID showing the travel records of Reyes from February 15, 2000 to June 30, 2012 and that she is a holder of US Passport No. 306278853. This photocopy also indicates in some entries that Reyes is an American while other entries denote that she is Filipino. The same questions of admissibility and probative value of evidence arise, together with the direct query on the characterization of the COMELEC action since the COMELEC concluded on the basis of these pieces of evidence that Reyes is not a Filipino citizen because it is not only incompetent but also lacks probative value as evidence.

Contributory to the possible answer is the ruling of this Court that a "certification" is not a certified copy and is not a document that proves that a party is not a Filipino citizen.[21]

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[20] *Matugas v. Commission on Elections*, G.R. No. 151944, January 20, 2004, 420 SCRA 365.

[21] See *Matugas v. Commission on Elections*, ibid, where the Court held:

Interestingly, in its March 27, 2013 Resolution that the petitioner now also assails, the COMELEC First Division ruled:

> Due to petitioner's submission of newly-discovered evidence thru a Manifestation dated February 7, 2013, however, establishing the fact that respondent is a holder of an American passport which she continues to use until June 30, 2012, petitioner was able to substantiate his allegations. **The burden now shifts to respondent to present substantial evidence to prove otherwise.** This, the respondent utterly failed to do, leading to the conclusion inevitable that respondent falsely misrepresented in her CoC that she is a natural-born Filipino citizen. Unless and until she can establish that she had availed of the privileges of RA 9225 by becoming a dual Filipino-American citizen, and thereafter, made a valid sworn renunciation of her American citizenship, she remains to be an American citizen and is, therefore, ineligible to run for and hold any elective public office in the Philippines.[22]

This ruling, undeniably, opens for Reyes the argument that in the absence of sufficient proof (*i.e*, other than a photocopy of a "certification") that she is not a natural born Filipino citizen, no burden of evidence shifts to her to prove anything, particularly the fact that she is not an American citizen. Considering that Tan might have also failed to prove by substantial evidence his allegation that Reyes is an American citizen, the burden of evidence also cannot be shifted to the latter to prove that she had availed of the privileges of RA 9225 in order to re-acquire her status as a natural born Filipino citizen.

It ought to be considered, too, that in the absence of sufficient proof that Reyes lost her Filipino citizenship, the twin requirements under RA 9225 for re-acquisition of Filipino citizenship should not apply to her. Of course, Reyes admitted in her MR before the COMELEC that she is married to an American citizen. This admission, however, leads only to further arguments on how her admitted marriage affected her citizenship.

"**Furthermore, Section 7, Rule 130 of the Rules of Court states that when the original of a document is in the custody of a public officer or is recorded in a public office, as in this case, the contents of said document may be proved by a certified copy issued by the public officer in custody thereof.** The subject letter-inquiry, which contains the notation, appears to be a mere photocopy, not a certified copy.

The other document relied upon by petitioner is the *Certification* dated 1 September 2000 issued by the BID. Petitioner submits that private respondent has declared that he is an American citizen as shown by said *Certification* and, under Section 26, Rule 130 of the Rules of Court, such declaration may be given in evidence against him.

The rule cited by petitioner does not apply in this case because the rule pertains to the admissibility of evidence. There is no issue here as to the admissibility of the BID *Certification*; the COMELEC did not hold that the same was inadmissible. **In any case, the BID *Certification* suffers from the same defect as the notation from the supposed US Embassy official. Said *Certification* is also a photocopy, not a certified copy."**

Moreover, the certification contains inconsistent entries regarding the "nationality" of private respondent. While some entries indicate that he is "American," other entries state that he is "Filipino."

[22] *Rollo*, p. 48.

Jurisprudence is not lacking on this point as in *Cordora v. Comelec*,[23] the Court held that the twin requirements of RA 9225 does not apply to a candidate who is a natural born Filipino citizen who did not subsequently become a naturalized citizen of another country, *viz.:*

> We have to consider the present case in consonance with our rulings in *Mercado v. Manzano Valles v. COMELEC*, and *AASJS v. Datumanong. Mercado* and *Valles* involve similar operative facts as the present case. Manzano and Valles, like Tambunting, possessed dual citizenship by the circumstances of their birth. Manzano was born to Filipino parents in the United States which follows the doctrine of *jus soli*. Valles was born to an Australian mother and a Filipino father in Australia. Our rulings in *Manzano* and *Valles* stated that dual citizenship is different from dual allegiance both by cause and, for those desiring to run for public office, by effect. Dual citizenship is involuntary and arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. Thus, like any other natural-born Filipino, it is enough for a person with dual citizenship who seeks public office to file his certificate of candidacy and swear to the oath of allegiance contained therein. Dual allegiance, on the other hand, is brought about by the individual's active participation in the naturalization process. *AASJS* states that, under R.A. No. 9225, a Filipino who becomes a naturalized citizen of another country is allowed to retain his Filipino citizenship by swearing to the supreme authority of the Republic of the Philippines. The act of taking an oath of allegiance is an implicit renunciation of a naturalized citizen's foreign citizenship.
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> R.A. No. 9225, or the Citizenship Retention and Reacquisition Act of 2003, was enacted years after the promulgation of *Manzano* and *Valles*. The oath found in Section 3 of R.A. No. 9225 reads as follows:
>
> 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 impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.
>
> In Sections 2 and 3 of R.A. No. 9225, the framers were not concerned with dual citizenship *per se*, but with the status of naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Section 5(3) of R.A. No. 9225 states that naturalized citizens who reacquire Filipino citizenship and desire to run for elective public office in the Philippines shall "meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of filing 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" aside from the oath of allegiance prescribed in Section 3 of R.A. No. 9225. The twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship served as the bases for our recent

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[23] G.R. No. 176947, 19 February 2009, 580 SCRA 12.

> rulings in *Jacot v. Dal and COMELEC, Velasco v. COMELEC,* and *Japzon v. COMELEC*, all of which involve natural-born Filipinos who later became naturalized citizens of another country and thereafter ran for elective office in the Philippines. **In the present case, Tambunting, a natural-born Filipino, did not subsequently become a naturalized citizen of another country. Hence, the twin requirements in R.A. No. 9225 do not apply to him.**

As to the issue of Reyes' residency in Boac, Marinduque, the COMELEC First Division as affirmed by the COMELEC *en banc* held:

> Accordingly, the more appropriate issue is whether respondent had regained her domicile of origin in the Municipality of Boac, Marinduque after she lost the same when she became a naturalized American citizen.
>
> x x x x
>
> Thus, a Filipino citizen who becomes naturalized elsewhere effectively abandons his domicile of origin. Upon re-acquisition of Filipino citizenship pursuant to RA9225, he must still show that he chose to establish his domicile in the Philippines through positive acts, and the period of his residency shall be counted from the time he made it his domicile of choice.
>
> In this case, there is no showing that whatsoever that respondent had already re-acquired her Filipino citizenship pursuant to RA 9225 so as to conclude that she has regained her domicile in the Philippines. There being no proof that respondent had renounced her American citizenship, it follows that she has not abandoned her domicile of choice in the USA.
>
> The only proof presented by respondent to show that she has met the one-year residency requirement of the law and never abandoned her domicile of origin in Boac, Marinduque is her claim that she served as Provincial Administrator of the province from January 18, 2011 to July 13, 2011. But such fact alone is not sufficient to prove her one-year residency. For, respondent has never regained her domicile in Marinduque as she remains to be an American citizen. No amount of her stay in the said locality can substitute the fact that she has not abandoned her domicile of choice in the USA.[24]

This COMELEC action again opens questions about its appreciation and evaluation of the evidence and whether it overstepped the limits of its discretion to the point of being grossly unreasonable, if indeed the above-cited findings and conclusions have no basis in fact and in law.

To begin with, the evidence submitted by Tan, even assuming that it is admissible, arguably does not prove that Reyes was a naturalized American citizen. At best, the submitted evidence could only show that Reyes was the

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[24] *Rollo*, pp. 48-50.

holder of a US passport. In *Aznar v. Comelec,*[25] the Court ruled that the mere fact that respondent Osmena was a holder of a certificate stating that he is an American did not mean that he is no longer a Filipino, and that an application for an alien certificate of registration did not amount to a renunciation of his Philippine citizenship. In the present case, the fact that Reyes is a holder of a US passport does not portend that she is no longer a natural born Filipino citizen or that she had renounced her Philippine citizenship. In addition, how the COMELEC arrived at a conclusion that Reyes is naturalized American citizen can be seen as baffling as it did not appear to have provided any factual basis for this conclusion.

VIII. CONCLUSIONS

All told, the COMELEC does not appear to have an airtight case based on substantial evidence on the citizenship and residence issues, and much less a similar case on the jurisdictional issue, to justify a **VERY PROMPT OUTRIGHT DISMISSAL ACTION** from this Court. Bolstering this view is that petitioner Reyes is not lacking in arguably meritorious positions to support her cause, even if only to the extent of being fully heard by this Court.

If this Court is indeed **SERIOUS IN ADMINISTERING JUSTICE** or at least to **BE SEEN TO BE ADMINISTERING JUSTICE** in the way described in the speeches of many a Justice of this Court, it should not deliver the kind of **hasty** and imprudent action that it did in this case. The proper course of action, if the Court indeed honestly wants to achieve this objective in the present case, is to require the COMELEC to **COMMENT** on the petition and to decide matters from that point.

ARTURO D. BRION
Associate Justice

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[25] G.R. No. 83820, May 25, 1990, 185 SCRA 703.