Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. 120295 June 28, 1996

JUAN G. FRIVALDO, petitioner,
vs.
COMMISSION ON ELECTIONS, and RAUL R. LEE, respondents.

G.R. No. 123755 June 28, 1996

RAUL R. LEE, petitioner,
vs.
COMMISSION ON ELECTIONS and JUAN G. FRIVALDO, respondents.

PANGANIBAN, *J.:p*

The ultimate question posed before this Court in these twin cases is: Who should be declared the rightful governor of Sorsogon -

(i) Juan G. Frivaldo, who unquestionably obtained the highest number of votes in three successive elections but who was twice declared by this Court to be disqualified to hold such office due to his alien citizenship, and who now claims to have re-assumed his lost Philippine citizenship thru repatriation;

(ii) Raul R. Lee, who was the second placer in the canvass, but who claims that the votes cast in favor of Frivaldo should be considered void; that the electorate should be deemed to have intentionally thrown away their ballots; and that *legally*, he secured the most number of *valid* votes; or

(iii) The incumbent Vice-Governor, Oscar G. Deri, who obviously was not voted directly to the position of governor, but who according to prevailing jurisprudence should take over the said post inasmuch as, by the ineligibility of Frivaldo, a "permanent vacancy in the contested office has occurred"?

In ruling for Frivaldo, the Court lays down new doctrines on repatriation, clarifies/reiterates/amplifies existing jurisprudence on citizenship and elections, and upholds the superiority of substantial justice over pure legalisms.

G.R. No. 123755

This is a special civil action under Rules 65 and 58 of the Rules of Court for *certiorari* and preliminary injunction to review and annul a Resolution of the respondent Commission on Elections (Comelec), First

Division,[1] promulgated on December 19, 1995[2] and another Resolution of the Comelec *en banc* promulgated February 23, 1996[3] denying petitioner's motion for reconsideration.

The Facts

On March 20, 1995, private respondent Juan G. Frivaldo filed his Certificate of Candidacy for the office of Governor of Sorsogon in the May 8, 1995 elections. On March 23, 1995, petitioner Raul R. Lee, another candidate, filed a petition[4] with the Comelec docketed as SPA No. 95-028 praying that Frivaldo "be disqualified from seeking or holding any public office or position by reason of not yet being a citizen of the Philippines", and that his Certificate of Candidacy be canceled. On May 1, 1995, the Second Division of the Comelec promulgated a Resolution[5] granting the petition with the following disposition[6]:

WHEREFORE, this Division resolves to GRANT the petition and declares that respondent is DISQUALIFIED to run for the Office of Governor of Sorsogon on the ground that he is NOT a citizen of the Philippines. Accordingly, respondent's certificate of candidacy is canceled.

The Motion for Reconsideration filed by Frivaldo remained unacted upon until after the May 8, 1995 elections. So, his candidacy continued and he was voted for during the elections held on said date. On May 11, 1995, the Comelec *en banc*[7] affirmed the aforementioned Resolution of the Second Division.

The Provincial Board of Canvassers completed the canvass of the election returns and a Certificate of Votes[8] dated May 27, 1995 was issued showing the following votes obtained by the candidates for the position of Governor of Sorsogon:

Antonio H. Escudero, Jr. 51,060

Juan G. Frivaldo 73,440

Raul R. Lee 53,304

Isagani P. Ocampo 1,925

On June 9, 1995, Lee filed in said SPA No. 95-028, a (supplemental) petition[9] praying for his proclamation as the duly-elected Governor of Sorsogon.

In an order[10] dated June 21, 1995, but promulgated according to the petition "only on June 29, 1995," the Comelec *en banc* directed "the Provincial Board of Canvassers of Sorsogon to reconvene for the purpose of proclaiming candidate Raul Lee as the winning gubernatorial candidate in the province of Sorsogon on June 29, 1995 . . ." Accordingly, at 8:30 in the evening of June 30, 1995, Lee was proclaimed governor of Sorsogon.

On July 6, 1995, Frivaldo filed with the Comelec a new petition,[11] docketed as SPC No. 95-317, praying for the annulment of the June 30, 1995 proclamation of Lee and for his own proclamation. He alleged that on June 30, 1995, at 2:00 in the afternoon, he took his oath of allegiance as a citizen of the Philippines after "his petition for repatriation under P.D. 725 which he filed with the Special Committee on Naturalization in September 1994 had been granted". As such, when "the said order (dated June 21,

1995) (of the Comelec) . . . was released and received by Frivaldo on June 30, 1995 at 5:30 o'clock in the evening, there was no more legal impediment to the proclamation (of Frivaldo) as governor . . ." In the alternative, he averred that pursuant to the two cases of *Labo vs*. *Comelec*,[12] the Vice-Governor - not Lee - should occupy said position of governor.

On December 19, 1995, the Comelec First Division promulgated the herein assailed Resolution[13] holding that Lee, "not having garnered the highest number of votes," was not legally entitled to be proclaimed as duly-elected governor; and that Frivaldo, "having garnered the highest number of votes, and . . . having reacquired his Filipino citizenship by repatriation on June 30, 1995 under the provisions of Presidential Decree No. 725 . . . (is) qualified to hold the office of governor of Sorsogon"; thus:

PREMISES CONSIDERED, the Commission (First Division), therefore RESOLVES to GRANT the Petition.

Consistent with the decisions of the Supreme Court, the proclamation of Raul R. Lee as Governor of Sorsogon is hereby ordered annulled, being contrary to law, he not having garnered the highest number of votes to warrant his proclamation.

Upon the finality of the annulment of the proclamation of Raul R. Lee, the Provincial Board of Canvassers is directed to immediately reconvene and, on the basis of the completed canvass, proclaim petitioner Juan G. Frivaldo as the duly elected Governor of Sorsogon having garnered the highest number of votes, and he having reacquired his Filipino citizenship by repatriation on June 30, 1995 under the provisions of Presidential Decree No. 725 and, thus, qualified to hold the office of Governor of Sorsogon.

Conformably with Section 260 of the Omnibus Election Code (*B.P. Blg. 881*), the Clerk of the Commission is directed to notify His Excellency the President of the Philippines, and the Secretary of the Sangguniang Panlalawigan of the Province of Sorsogon of this resolution immediately upon the due implementation thereof.

On December 26, 1995, Lee filed a motion for reconsideration which was denied by the Comelec *en banc* in its Resolution [14] promulgated on February 23, 1996. On February 26, 1996, the present petition was filed. Acting on the prayer for a temporary restraining order, this Court issued on February 27, 1996 a Resolution which *inter alia* directed the parties "to maintain the *status quo* prevailing prior to the filing of this petition."

The Issues in G.R. No. 123755

Petitioner Lee's "position on the matter at hand may briefly be capsulized in the following propositions"[15]:

First -- The initiatory petition below was so far insufficient in form and substance to warrant the exercise by the COMELEC of its jurisdiction with the result that, in effect, the COMELEC acted without jurisdiction in taking cognizance of and deciding said petition;

Second -- The judicially declared disqualification of respondent was a continuing condition and rendered him ineligible to run for, to be elected to and to hold the Office of Governor;

Third -- The alleged repatriation of respondent was neither valid nor is the effect thereof retroactive as to cure his ineligibility and qualify him to hold the Office of Governor; and

Fourth -- Correctly read and applied, the Labo Doctrine fully supports the validity of petitioner's proclamation as duly elected Governor of Sorsogon.

G.R. No. 120295

This is a petition to annul three Resolutions of the respondent Comelec, the first two of which are also at issue in G.R. No. 123755, as follows:

1. Resolution[16] of the Second Division, promulgated on May 1, 1995, disqualifying Frivaldo from running for governor of Sorsogon in the May 8, 1995 elections "on the ground that he is not a citizen of the Philippines";

2. Resolution[17] of the Comelec *en banc*, promulgated on May 11, 1995; and

3. Resolution[18] of the Comelec *en banc*, promulgated also on May 11, 1995 suspending the proclamation of, among others, Frivaldo.

The Facts and the Issue

The facts of this case are essentially the same as those in G.R. No. 123755. However, Frivaldo assails the above-mentioned resolutions on a different ground: that under Section 78 of the Omnibus Election Code, which is reproduced hereinunder:

Sec. 78. *Petition to deny due course or to cancel a certificate of candidacy*. -- A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and *shall be decided*, after notice and hearing, *not later than fifteen days before the election*. (Emphasis supplied.)

the Comelec had no jurisdiction to issue said Resolutions because they were not rendered "within the period allowed by law" *i.e.*, "not later than fifteen days before the election."

Otherwise stated, Frivaldo contends that the failure of the Comelec to act on the petition for disqualification within the period of fifteen days prior to the election as provided by law is a jurisdictional defect which renders the said Resolutions null and void.

By Resolution on March 12, 1996, the Court consolidated G.R. Nos. 120295 and 123755 since they are intimately related in their factual environment and are identical in the ultimate question raised, *viz.*, who should occupy the position of governor of the province of Sorsogon.

On March 19, 1995, the Court heard oral argument from the parties and required them thereafter to file simultaneously their respective memoranda.

The Consolidated Issues

From the foregoing submissions, the consolidated issues may be restated as follows:

1. Was the repatriation of Frivaldo valid and legal? If so, did it seasonably cure his lack of citizenship as to qualify him to be proclaimed and to hold the Office of Governor? If not, may it be given retroactive effect? If so, from when?

2. Is Frivaldo's "judicially declared" disqualification for lack of Filipino citizenship a continuing bar to his eligibility to run for, be elected to or hold the governorship of Sorsogon?

3. Did the respondent Comelec have jurisdiction over the initiatory petition in SPC No. 95-317 considering that said petition is not "a pre-proclamation case, an election protest or a *quo warranto* case"?

4. Was the proclamation of Lee, a runner-up in the election, valid and legal in light of existing jurisprudence?

5. Did the respondent Commission on Elections exceed its jurisdiction in promulgating the assailed Resolutions, all of which prevented Frivaldo from assuming the governorship of Sorsogon, considering that they were not rendered within the period referred to in Section 78 of the Omnibus Election Code, *viz*., "not later than fifteen days before the elections"?

The First Issue: *Frivaldo's Repatriation*

The validity and effectivity of Frivaldo's repatriation is the *lis mota*, the threshold legal issue in this case. All the other matters raised are secondary to this.

The Local Government Code of 1991[19] expressly requires Philippine citizenship as a qualification for elective local officials, including that of provincial governor, thus:

Sec. 39. *Qualifications*. -- (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

(b) Candidates for the position of governor, vice governor or member of the sangguniang panlalawigan, or mayor, vice mayor or member of the sangguniang panlungsod of highly urbanized cities must be at least twenty-three (23) years of age on election day.

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Inasmuch as Frivaldo had been declared by this Court[20] as a non-citizen, it is therefore incumbent upon him to show that he has reacquired citizenship; in fine, that he possesses the qualifications prescribed under the said statute (R.A. 7160).

Under Philippine law,[21] citizenship may be reacquired by direct act of Congress, by naturalization or by repatriation. Frivaldo told this Court in G.R. No. 104654[22] and during the oral argument in this case that he tried to resume his citizenship by *direct act of Congress*, but that the bill allowing him to do so "failed to materialize, notwithstanding the endorsement of several members of the House of Representatives" due, according to him, to the "maneuvers of his political rivals." In the same case, his attempt at *naturalization* was rejected by this Court because of jurisdictional, substantial and procedural defects.

Despite his lack of Philippine citizenship, Frivaldo was overwhelmingly elected governor by the electorate of Sorsogon, with a margin of 27,000 votes in the 1988 elections, 57,000 in 1992, and 20,000 in 1995 over the same opponent Raul Lee. Twice, he was judicially declared a non-Filipino and thus twice disqualified from holding and discharging his popular mandate. Now, he comes to us a third time, with a fresh vote from the people of Sorsogon and a favorable decision from the Commission on Elections to boot. Moreover, he now boasts of having successfully passed through the third and last mode of reacquiring citizenship: by repatriation under P.D. No. 725, with no less than the Solicitor General himself, who was the prime opposing counsel in the previous cases he lost, this time, as counsel for co-respondent Comelec, arguing the validity of his cause (in addition to his able private counsel Sixto S. Brillantes, Jr.). That he took his oath of allegiance under the provisions of said Decree at 2:00 p.m. on June 30, 1995 is not disputed. Hence, he insists that he -- not Lee -- should have been proclaimed as the duly-elected governor of Sorsogon when the Provincial Board of Canvassers met at 8:30 p.m. on the said date since, clearly and unquestionably, he garnered the highest number of votes in the elections and since at that time, he already reacquired his citizenship.

En contrario, Lee argues that Frivaldo's repatriation is tainted with serious defects, which we shall now discuss *in seriatim*.

First, Lee tells us that P.D. No. 725 had "been effectively repealed", asserting that "then President Corazon Aquino exercising legislative powers under the Transitory Provisions of the 1987 Constitution, forbade the grant of citizenship by Presidential Decree or Executive Issuances as the same poses a serious and contentious issue of policy which the present government, in the exercise of prudence and sound discretion, should best leave to the judgment of the first Congress under the 1987 Constitution", adding that in her memorandum dated March 27, 1987 to the members of the Special Committee on Naturalization constituted for purposes of Presidential Decree No. 725, President Aquino directed them "to cease and desist from undertaking any and all proceedings within your functional area of responsibility as defined under Letter of Instructions (LOI) No. 270 dated April 11, 1975, as amended."[23]

This memorandum dated March 27, 1987[24] cannot by any stretch of legal hermeneutics be construed as a law sanctioning or authorizing a repeal of P.D. No. 725. Laws are repealed only by subsequent ones [25] and a repeal may be express or implied. It is obvious that *no express repeal* was made because then President Aquino in her memorandum -- based on the copy furnished us by Lee -- did not

categorically and/or impliedly state that P.D. 725 was being repealed or was being rendered without any legal effect. In fact, she did not even mention it specifically by its number or text. On the other hand, it is a basic rule of statutory construction that *repeals by implication* are not favored. An implied repeal will not be allowed "unless it is convincingly and unambiguously demonstrated that the two laws are clearly repugnant and patently inconsistent that they cannot co-exist".[26]

The memorandum of then President Aquino cannot even be regarded as a legislative enactment, for not every pronouncement of the Chief Executive even under the Transitory Provisions of the 1987 Constitution can nor should be regarded as an exercise of her law-making powers. At best, it could be treated as an executive policy addressed to the Special Committee to halt the acceptance and processing of applications for repatriation pending whatever "judgment the first Congress under the 1987 Constitution" might make. In other words, the former President did not repeal P.D. 725 but left it to the first Congress -- once created -- to deal with the matter. If she had intended to repeal such law, she should have unequivocally said so instead of referring the matter to Congress. The fact is she carefully couched her presidential issuance in terms that clearly indicated the intention of "the present government, in the exercise of prudence and sound discretion" to leave the matter of repeal to the new Congress. Any other interpretation of the said Presidential Memorandum, such as is now being proffered to the Court by Lee, would visit unmitigated violence not only upon statutory construction but on common sense as well.

Second, Lee also argues that "serious congenital irregularities flawed the repatriation proceedings," asserting that Frivaldo's application therefor was "filed on June 29, 1995 . . . (and) was approved in just one day or on June 30, 1995 . . .", which "prevented a judicious review and evaluation of the merits thereof." Frivaldo counters that he filed his application for repatriation with the Office of the President in Malacañang Palace on August 17, 1994. This is confirmed by the Solicitor General. However, the Special Committee was reactivated only on June 8, 1995, when presumably the said Committee started processing his application. On June 29, 1995, he filled up and re-submitted the FORM that the Committee required. Under these circumstances, it could not be said that there was "indecent haste" in the processing of his application.

Anent Lee's charge that the "sudden reconstitution of the Special Committee on Naturalization was intended solely for the personal interest of respondent,"[27] the Solicitor General explained during the oral argument on March 19, 1996 that such allegation is simply baseless as there were many others who applied and were considered for repatriation, a list of whom was submitted by him to this Court, through a Manifestation[28] filed on April 3, 1996.

On the basis of the parties' submissions, we are convinced that the presumption of regularity in the performance of official duty and the presumption of legality in the repatriation of Frivaldo have not been successfully rebutted by Lee. The mere fact that the proceedings were speeded up is by itself not a ground to conclude that such proceedings were necessarily tainted. After all, the requirements of repatriation under P.D. No. 725 are not difficult to comply with, nor are they tedious and cumbersome. In fact, P.D.725[29] itself requires very little of an applicant, and even the rules and regulations to implement the said decree were left to the Special Committee to promulgate. This is not unusual since,

unlike in naturalization where an alien covets a *first-time* entry into Philippine political life, in repatriation the applicant is a former natural-born Filipino who is merely seeking to reacquire his previous citizenship. In the case of Frivaldo, he was undoubtedly a natural-born citizen who openly and faithfully served his country and his province prior to his naturalization in the United States -- a naturalization he insists was made necessary only to escape the iron clutches of a dictatorship he abhorred and could not in conscience embrace -- and who, after the fall of the dictator and the re-establishment of democratic space, wasted no time in returning to his country of birth to offer once more his talent and services to his people.

So too, the fact that ten other persons, as certified to by the Solicitor General, were granted repatriation argues convincingly and conclusively against the existence of favoritism vehemently posited by Raul Lee. At any rate, any contest on the legality of Frivaldo's repatriation should have been pursued before the Committee itself, and, failing there, in the Office of the President, pursuant to the doctrine of exhaustion of administrative remedies.

Third, Lee further contends that assuming the assailed repatriation to be valid, nevertheless it could only be effective as at 2:00 p.m. of June 30, 1995 whereas the citizenship qualification prescribed by the Local Government Code "must exist on the date of his election, if not when the certificate of candidacy is filed," citing our decision in G.R. 104654[30] which held that "both the Local Government Code and the Constitution require that only Philippine citizens *can run and be elected to public office*." Obviously, however, this was a mere *obiter* as the only issue in said case was whether Frivaldo's naturalization was valid or not -- and NOT the effective date thereof. Since the Court held his naturalization to be invalid, then the issue of when an aspirant for public office should be a citizen was NOT resolved at all by the Court. Which question we shall now directly rule on.

Under Sec. 39 of the Local Government Code, "(a)n elective local official must be:

* a citizen of the Philippines;

* a registered voter in the barangay, municipality, city, or province . . . where he intends to be elected;

* a resident therein for at least one (1) year immediately preceding the day of the election;

* able to read and write Filipino or any other local language or dialect.

* In addition, "candidates for the position of governor . . . must be at least twenty-three (23) years of age on election day.

From the above, it will be noted that the law does not specify any particular date or time when the candidate must possess citizenship, unlike that for residence (which must consist of at least *one year's residency immediately preceding* the day of election) and age (at least twenty three years of age *on election day*).

Philippine citizenship is an indispensable requirement for holding an elective public office,[31] and the purpose of the citizenship qualification is none other than to ensure that no alien, *i.e.*, no person owing

allegiance to another nation, shall govern our people and our country or a unit of territory thereof. Now, an official begins to govern or to discharge his functions only upon his proclamation *and* on the day the law mandates his term of office to begin. Since Frivaldo re-assumed his citizenship on June 30, 1995 -- the very day[32] the term of office of governor (and other elective officials) began -- he was therefore already qualified to be proclaimed, to hold such office and to discharge the functions and responsibilities thereof as of said date. In short, at that time, he was already qualified to govern his native Sorsogon. This is the liberal interpretation that should give spirit, life and meaning to our law on qualifications consistent with the purpose for which such law was enacted. So too, even from a *literal* (as distinguished from *liberal*) construction, it should be noted that Section 39 of the Local Government Code speaks of "*Qualifications*" of "ELECTIVE OFFICIALS", *not of candidates*. Why then should such qualification be required at the time of election or at the time of the filing of the certificates of candidacies, as Lee insists? Literally, such qualifications -- unless otherwise expressly conditioned, as in the case of age and residence -- should thus be possessed when the "elective [or elected] official" begins to govern, *i.e*., at the time he is proclaimed *and* at the start of his term -- in this case, on June 30, 1995. Paraphrasing this Court's ruling in *Vasquez vs*. *Giap and Li Seng Giap & Sons*, [33] if the purpose of the citizenship requirement is to ensure that our people and country do not end up being governed by aliens, *i.e*., persons owing allegiance to another nation, that aim or purpose would *not be thwarted but instead achieved* by construing the citizenship qualification as applying to the time of proclamation of the elected official and at the start of his term.

But perhaps the more difficult objection was the one raised during the oral argument[34] to the effect that the citizenship qualification should be possessed at the time the candidate (or for that matter the elected official) registered as a voter. After all, Section 39, apart from requiring the official to be a citizen, also specifies as another item of qualification, that he be a "registered voter". And, under the law[35] a "voter" must be a citizen of the Philippines. So therefore, Frivaldo could not have been a voter -- much less a *validly* registered one -- if he was not a citizen at the time of such registration.

The answer to this problem again lies in discerning the purpose of the requirement. If the law intended the *citizenship* qualification to be possessed prior to election consistent with the requirement of being a registered voter, then it would not have made citizenship a SEPARATE qualification. The law abhors a redundancy. It therefore stands to reason that the law intended CITIZENSHIP to be a qualification distinct from being a VOTER, even if being a voter presumes being a citizen first. It also stands to reason that the voter requirement was included as another qualification (aside from "citizenship"), not to reiterate the need for nationality but to require that the official be registered as a voter IN THE AREA OR TERRITORY he seeks to govern, *i.e*., the law states: "a registered voter in the barangay, municipality, city, or province . . . where he intends to be elected." It should be emphasized that the Local Government Code requires an elective official to be a *registered voter*. It does not require him to vote *actually*. Hence, registration -- not the actual voting -- is the core of this "qualification". In other words, the law's purpose in this second requirement is to ensure that the prospective official is actually registered in the area he seeks to govern -- *and not anywhere else*.

Before this Court, Frivaldo has repeatedly emphasized -- and Lee has not disputed -- that he "was and is a registered voter of Sorsogon, and his registration as a voter has been sustained as valid by judicial declaration . . . In fact, he cast his vote in his precinct on May 8, 1995."[36]

So too, during the oral argument, his counsel steadfastly maintained that "Mr. Frivaldo has always been a registered voter of Sorsogon. He has voted in 1987, 1988, 1992, then he voted again in 1995. In fact, his eligibility as a voter was questioned, but the court dismissed (*sic*) his eligibility as a voter and he was allowed to vote as in fact, he voted in all the previous elections including on May 8, 1995."[3] 7

It is thus clear that Frivaldo is a *registered voter in the province* where he intended to be elected.

There is yet another reason why the prime issue of *citizenship* should be reckoned from the date of proclamation, not necessarily the date of election or date of filing of the certificate of candidacy. Section 253 of the Omnibus Election Code [38] gives any voter, presumably including the defeated candidate, the opportunity to question the ELIGIBILITY (or the disloyalty) of a candidate. This is the only provision of the Code that authorizes a remedy on how to contest before the Comelec an incumbent's ineligibility arising from failure to meet the qualifications enumerated under Sec. 39 of the Local Government Code. Such remedy of *Quo Warranto* can be availed of "within ten days after proclamation" of the winning candidate. Hence, it is *only at such time* that the issue of ineligibility may be taken cognizance of by the Commission. And since, at the very moment of Lee's proclamation (8:30 p.m., June 30, 1995), Juan G. Frivaldo was already and indubitably a citizen, having taken his oath of allegiance earlier in the afternoon of the same day, then he should have been the candidate proclaimed as he unquestionably garnered the highest number of votes in the immediately preceding elections and such oath had already cured his previous "judicially-declared" alienage. Hence, at such time, he was no longer ineligible.

But to remove all doubts on this important issue, we also hold that the repatriation of Frivaldo RETROACTED to the date of the filing of his application on August 17, 1994.

It is true that under the Civil Code of the Philippines, [39] "laws shall have no retroactive effect, unless the contrary is provided." But there are settled exceptions[40] to this general rule, such as when the statute is CURATIVE or REMEDIAL in nature or when it CREATES NEW RIGHTS.

According to Tolentino,[41] curative statutes are those which undertake to cure errors and irregularities, thereby validating judicial or administrative proceedings, acts of public officers, or private deeds and contracts *which otherwise would not produce their intended consequences by reason of some statutory disability or failure to comply with some technical requirement*. They operate on conditions already existing, and are necessarily retroactive in operation. Agpalo,[42] on the other hand, says that curative statutes are "healing acts . . . curing defects and adding to the means of enforcing existing obligations . . . (and) are intended to supply defects, abridge superfluities in existing laws, and curb certain evils. . . . By their very nature, curative statutes are retroactive . . . (and) reach back to past events to correct errors or irregularities and to render valid and effective attempted acts which would be otherwise ineffective for the purpose the parties intended."

On the other hand, remedial or procedural laws, *i.e.*, those statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of such rights, ordinarily do not come within the legal meaning of a retrospective law, nor within the general rule against the retrospective operation of statutes.[43]

A reading of P.D. 725 immediately shows that it creates a new right, and also provides for a new remedy, thereby filling certain voids in our laws. Thus, in its preamble, P.D. 725 expressly recognizes the plight of "many Filipino women (who) had lost their Philippine citizenship by marriage to aliens" and who could not, under the existing law (C.A. No. 63, as amended) avail of repatriation until "after the death of their husbands or the termination of their marital status" and who could neither be benefitted by the 1973 Constitution's new provision allowing "a Filipino woman who marries an alien to retain her Philippine citizenship . . ." because "such provision of the new Constitution does not apply to Filipino women who had married aliens before said constitution took effect." Thus, P.D. 725 granted a *new right* to these women -- the right to re-acquire Filipino citizenship even during their marital coverture, which right did not exist prior to P.D. 725. On the other hand, said statute also provided a *new remedy* and a *new right* in favor of other "natural born Filipinos who (had) lost their Philippine citizenship but now desire to re-acquire Philippine citizenship", because prior to the promulgation of P.D. 725 such former Filipinos would have had to undergo the tedious and cumbersome process of naturalization, but with the advent of P.D. 725 they could now re-acquire their Philippine citizenship under the simplified procedure of repatriation.

The Solicitor General[44] argues:

By their very nature, curative statutes are retroactive, (DBP vs. CA, 96 SCRA 342), since they are intended to supply defects, abridge superfluities in existing laws (Del Castillo vs. Securities and Exchange Commission, 96 Phil. 119) and curb certain evils (Santos vs. Duata, 14 SCRA 1041).

In this case, P.D. No. 725 was enacted to cure the defect in the existing naturalization law, specifically C.A. No. 63 wherein married Filipino women are allowed to repatriate only upon the death of their husbands, and natural-born Filipinos who lost their citizenship by naturalization and other causes faced the difficulty of undergoing the rigid procedures of C.A. 63 for reacquisition of Filipino citizenship by naturalization.

Presidential Decree No. 725 provided a remedy for the aforementioned legal aberrations and thus its provisions are considered essentially remedial and curative.

In light of the foregoing, and prescinding from the wording of the preamble, it is unarguable that the legislative intent was precisely to give the statute retroactive operation. "(A) retrospective operation is given to a statute or amendment where the intent that it should so operate clearly appears from a consideration of the act as a whole, or from the terms thereof."[45] It is obvious to the Court that the statute was meant to "reach back" to those persons, events and transactions not otherwise covered by prevailing law and jurisprudence. And inasmuch as it has been held that citizenship is a political and civil right equally as important as the freedom of speech, liberty of abode, the right against unreasonable searches and seizures and other guarantees enshrined in the Bill of Rights, therefore the legislative

intent to give retrospective operation to P.D. 725 must be given the fullest effect possible. "(I)t has been said that *a remedial statute must be so construed as to make it effect the evident purpose for which it was enacted*, so that if *the reason of the statute extends to past transactions*, as well as to those in the future, then it will be so applied although the statute does not in terms so direct, unless to do so would impair some vested right or violate some constitutional guaranty."[46] This is all the more true of P.D. 725, which did not specify any restrictions on or delimit or qualify the right of repatriation granted therein.

At this point, a valid question may be raised: How can the retroactivity of P.D. 725 benefit Frivaldo considering that said law was enacted on June 5, 1975, while Frivaldo lost his Filipino citizenship much later, on January 20, 1983, and applied for repatriation even later, on August 17, 1994?

While it is true that the law was already in effect at the time that Frivaldo became an American citizen, nevertheless, it is not only the law itself (P.D. 725) which is to be given retroactive effect, but even the repatriation granted under said law to Frivaldo on June 30, 1995 is to be deemed to have retroacted to the date of his application therefor, August 17, 1994. The reason for this is simply that if, as in this case, it was the intent of the legislative authority that the law should apply to *past* events -- *i.e*., situations and transactions *existing even before the law came into being* -- in order to benefit the greatest number of former Filipinos possible thereby enabling them to enjoy and exercise the constitutionally guaranteed right of citizenship, and such legislative intention is to be given the fullest effect and expression, then *there is all the more reason to have the law apply in a retroactive or retrospective manner to situations, events and transactions subsequent to the passage of such law*. That is, the repatriation granted to Frivaldo on June 30, 1995 can and should be made to take effect as of date of his application. As earlier mentioned, there is nothing in the law that would bar this or would show a contrary intention on the part of the legislative authority; and there is no showing that damage or prejudice to anyone, or anything unjust or injurious would result from giving retroactivity to his repatriation. Neither has Lee shown that there will result the impairment of any contractual obligation, disturbance of any vested right or breach of some constitutional guaranty.

Being a former Filipino who has served the people repeatedly, Frivaldo deserves a liberal interpretation of Philippine laws and whatever defects there were in his nationality should now be deemed mooted by his repatriation.

Another argument for retroactivity to the date of filing is that it would prevent prejudice to applicants. If P.D. 725 were not to be given retroactive effect, and the Special Committee decides not to act, *i.e*., to delay the processing of applications for any substantial length of time, then the former Filipinos who may be stateless, as Frivaldo -- having already renounced his American citizenship -- was, may be prejudiced for causes outside their control. This should not be. In case of doubt in the interpretation or application of laws, it is to be presumed that the law-making body intended right and justice to prevail.[4] 7

And as experience will show, the Special Committee was able to process, act upon and grant applications for repatriation within relatively short spans of time after the same were filed.[48] The fact that such interregna were relatively insignificant minimizes the likelihood of prejudice to the

government as a result of giving retroactivity to repatriation. Besides, to the mind of the Court, direct prejudice to the government is possible only where a person's repatriation has the effect of wiping out a liability of his to the government arising in connection with or as a result of his being an alien, and accruing only during the interregnum between application and approval, a situation that is not present in the instant case.

And it is but right and just that the mandate of the people, already twice frustrated, should now prevail. Under the circumstances, there is nothing unjust or iniquitous in treating Frivaldo's repatriation as having become effective as of the date of his application, *i.e*., on August 17, 1994. This being so, all questions about his possession of the nationality qualification -- whether at the date of proclamation (June 30, 1995) or the date of election (May 8, 1995) or date of filing his certificate of candidacy (March 20, 1995) would become moot.

Based on the foregoing, any question regarding Frivaldo's status as a registered voter would also be deemed settled. Inasmuch as he is considered as having been repatriated -- *i.e*., his Filipino citizenship restored -- as of August 17, 1994, his previous registration as a voter is likewise deemed validated as of said date.

It is not disputed that on January 20, 1983 Frivaldo became an American. Would the retroactivity of his repatriation not effectively give him dual citizenship, which under Sec. 40 of the Local Government Code would disqualify him "from running for any elective local position?"[49] We answer this question in the negative, as there is cogent reason to hold that Frivaldo was really STATELESS at the time he took said oath of allegiance and even before that, when he ran for governor in 1988. In his Comment, Frivaldo wrote that he "had long renounced and had long abandoned his American citizenship -- long before May 8, 1995. At best, Frivaldo was stateless in the interim -- when he abandoned and renounced his US citizenship but before he was repatriated to his Filipino citizenship."[50]

On this point, we quote from the assailed Resolution dated December 19, 1995:[51]

By the laws of the United States, petitioner Frivaldo lost his American citizenship when he took his oath of allegiance to the Philippine Government when he ran for Governor in 1988, in 1992, and in 1995. Every certificate of candidacy contains an oath of allegiance to the Philippine Government."

These factual findings that Frivaldo has lost his foreign nationality long before the elections of 1995 have not been effectively rebutted by Lee. Furthermore, it is basic that such findings of the Commission are conclusive upon this Court, absent any showing of capriciousness or arbitrariness or abuse.[52]

The Second Issue: *Is Lack of Citizenship a Continuing Disqualification?*

Lee contends that the May 1, 1995 Resolution [53] of the Comelec Second Division in SPA No. 95-028 as affirmed *in toto* by Comelec *En Banc* in its Resolution of May 11, 1995 "became final and executory after five (5) days or on May 17, 1995, no restraining order having been issued by this Honorable Court.[54] Hence, before Lee "was proclaimed as the elected governor on June 30, 1995, there was already

a final and executory judgment disqualifying" Frivaldo. Lee adds that this Court's two rulings (which Frivaldo now concedes were legally "correct") declaring Frivaldo an alien have also become final and executory way before the 1995 elections, and these "judicial pronouncements of his political status as an American citizen absolutely and for all time disqualified (him) from running for, and holding any public office in the Philippines."

We do not agree.

It should be noted that our first ruling in G.R. No. 87193 disqualifying Frivaldo was rendered in connection with the 1988 elections while that in G.R. No. 104654 was in connection with the 1992 elections. That he was disqualified for such elections is final and can no longer be changed. In the words of the respondent Commission (Second Division) in its assailed Resolution:[55]

The records show that the Honorable Supreme Court had decided that Frivaldo was not a Filipino citizen and thus disqualified for the purpose of the 1988 and 1992 elections. However, there is no record of any "final judgment" of the disqualification of Frivaldo as a candidate for the May 8, 1995 elections. What the Commission said in its Order of June 21, 1995 (*implemented on June 30, 1995*), directing the proclamation of Raul R. Lee, was that Frivaldo was not a Filipino citizen "*having been declared by the Supreme Court in its Order dated March 25, 1995, not a citizen of the Philippines*." This declaration of the Supreme Court, however, was in connection with the 1992 elections.

Indeed, decisions declaring the acquisition or denial of citizenship cannot govern a person's future status with finality. This is because a person may subsequently reacquire, or for that matter lose, his citizenship under any of the modes recognized by law for the purpose. Hence, in *Lee vs. Commissioner of Immigration*,[56] we held:

Everytime the citizenship of a person is material or indispensable in a judicial or administrative case, whatever the corresponding court or administrative authority decides therein as to such citizenship is generally not considered *res judicata*, hence it has to be threshed out again and again, as the occasion demands.

The Third Issue: *Comelec's Jurisdiction Over The Petition in SPC No. 95-317*

Lee also avers that respondent Comelec had no jurisdiction to entertain the petition in SPC No. 95-317 because the only "possible types of proceedings that may be entertained by the Comelec are a pre-proclamation case, an election protest or a *quo warranto* case". Again, Lee reminds us that he was proclaimed on June 30, 1995 but that Frivaldo filed SPC No. 95-317 questioning his (Lee's) proclamation only on July 6, 1995 -- "beyond the 5-day reglementary period." Hence, according to him, Frivaldo's "recourse was to file either an election protest or a *quo warranto* action."

This argument is not meritorious. The Constitution[57] has given the Comelec ample power to "exercise exclusive original jurisdiction over all contests relating to the elections, returns and qualifications of all elective . . . provincial . . . officials." Instead of dwelling at length on the various petitions that Comelec, in the exercise of its constitutional prerogatives, may entertain, suffice it to say that this Court has

invariably recognized the Commission's authority to hear and decide petitions for annulment of proclamations -- of which SPC No. 95-317 obviously is one.[58] Thus, in *Mentang vs*. *COMELEC*,[59] we ruled:

The petitioner argues that after proclamation and assumption of office, a pre-proclamation controversy is no longer viable. Indeed, we are aware of cases holding that pre-proclamation controversies may no longer be entertained by the COMELEC after the winning candidate has been proclaimed. (*citing* Gallardo vs. Rimando, 187 SCRA 463; Salvacion vs. COMELEC, 170 SCRA 513; Casimiro vs. COMELEC, 171 SCRA 468.) This rule, however, is premised on an assumption that the proclamation is no proclamation at all and the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to make such declaration of nullity. (*citing* Aguam vs. COMELEC, 23 SCRA 883; Agbayani vs. COMELEC, 186 SCRA 484.)

The Court however cautioned that such power to annul a proclamation must "be done within ten (10) days following the proclamation." Inasmuch as Frivaldo's petition was filed only six (6) days after Lee's proclamation, there is no question that the Comelec correctly acquired jurisdiction over the same.

The Fourth Issue: *Was Lee's Proclamation Valid?*

Frivaldo assails the validity of the Lee proclamation. We uphold him for the following reasons:

First. To paraphrase this Court in *Labo vs*. *COMELEC*,[60] "the fact remains that he (Lee) was not the choice of the sovereign will," and in *Aquino vs*. *COMELEC*,[61] Lee is "a second placer, . . . just that, a second placer."

In spite of this, Lee anchors his claim to the governorship on the pronouncement of this Court in the aforesaid Labo[62] case, as follows:

The rule would have been different if the electorate fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety, would nonetheless cast their votes in favor of the ineligible candidate. In such case, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case, the eligible candidate obtaining the next higher number of votes may be deemed elected.

But such holding is qualified by the next paragraph, thus:

But this is not the situation obtaining in the instant dispute. It has not been shown, and none was alleged, that petitioner Labo was notoriously known as an ineligible candidate, much less the electorate as having known of such fact. On the contrary, petitioner Labo was even allowed by no less than the Comelec itself in its resolution dated May 10, 1992 to be voted for the office of the city Payor as its resolution dated May 9, 1992 denying due course to petitioner Labo's certificate of candidacy had not yet become final and subject to the final outcome of this case.

The last-quoted paragraph in *Labo*, unfortunately for Lee, is the ruling appropriate in this case because Frivaldo was in 1995 in an identical situation as Labo was in 1992 when the Comelec's cancellation of his

certificate of candidacy was not yet final on election day as there was in both cases a pending motion for reconsideration, for which reason Comelec issued an (omnibus) resolution declaring that Frivaldo (like Labo in 1992) and several others can still be voted for in the May 8, 1995 election, as in fact, he was.

Furthermore, there has been no sufficient evidence presented to show that the electorate of Sorsogon was "fully aware in fact and in law" of Frivaldo's alleged disqualification as to "bring such awareness within the realm of notoriety;" in other words, that the voters intentionally wasted their ballots knowing that, in spite of their voting for him, he was ineligible. If *Labo* has any relevance at all, it is that the vice-governor -- and not Lee -- should be pro- claimed, since in losing the election, Lee was, to paraphrase *Labo* again, "obviously not the choice of the people" of Sorsogon. This is the emphatic teaching of *Labo*:

The rule, therefore, is: the ineligibility of a candidate receiving majority votes does not entitle the eligible candidate receiving the next highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed elected to the office.

Second. As we have earlier declared Frivaldo to have seasonably reacquired his citizenship and inasmuch as he obtained the highest number of votes in the 1995 elections, he -- not Lee -- should be proclaimed. Hence, Lee's proclamation was patently erroneous and should now be corrected.

The Fifth Issue: *Is Section 78 of the Election Code Mandatory?*

In G.R. No. 120295, Frivaldo claims that the assailed Resolution of the Comelec (Second Division) dated May 1, 1995 and the confirmatory *en banc* Resolution of May 11, 1995 disqualifying him for want of citizenship should be annulled because they were rendered beyond the fifteen (15) day period prescribed by Section 78, of the Omnibus Election Code which reads as follows:

Sec. 78. *Petition to deny due course or to cancel a certificate of candidacy*. -- A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided after notice and hearing, *not later than fifteen days before the election*. (Emphasis supplied.)

This claim is now moot and academic inasmuch as these resolutions are deemed superseded by the subsequent ones issued by the Commission (First Division) on December 19, 1995, affirmed *en banc*[63] on February 23, 1996; which both upheld his election. At any rate, it is obvious that Section 78 is merely directory as Section 6 of R.A. No. 6646 authorizes the Commission to try and decide petitions for disqualifications even after the elections, thus:

Sec. 6. *Effect of Disqualification Case*. -- Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. *If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the*

trial and hearing of the action, inquiry or protest and upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. (emphasis supplied)

Refutation of Mr. Justice Davide's Dissent

In his dissenting opinion, the esteemed Mr. Justice Hilario G. Davide, Jr. argues that President Aquino's memorandum dated March 27, 1987 should be viewed as a suspension (not a repeal, as urged by Lee) of P.D. 725. But whether it decrees a suspension or a repeal is a purely academic distinction because the said issuance is not a statute that can amend or abrogate an existing law. The existence and subsistence of P.D. 725 were recognized in the first Frivaldo case;[64] *viz*., "(u)nder CA No. 63 as amended by CA No. 473 and *P.D. No. 725*, Philippine citizenship maybe reacquired by . . . repatriation". He also contends that by allowing Frivaldo to register and to remain as a registered voter, the Comelec and in effect this Court abetted a "mockery" of our two previous judgments declaring him a non-citizen. We do not see such abetting or mockery. The retroactivity of his repatriation, as discussed earlier, legally cured whatever defects there may have been in his registration as a voter for the purpose of the 1995 elections. Such retroactivity did not change his disqualifications in 1988 and 1992, which were the subjects of such previous rulings.

Mr. Justice Davide also believes that *Quo Warranto* is not the sole remedy to question the ineligibility of a candidate, citing the Comelec's authority under Section 78 of the Omnibus Election Code allowing the denial of a certificate of candidacy on the ground of a false material representation therein as required by Section 74. Citing Loong, he then states his disagreement with our holding that Section 78 is merely directory. We really have no quarrel. Our point is that Frivaldo was in error in his claim in G.R. No. 120295 that the Comelec Resolutions promulgated on May 1, 1995 and May 11, 1995 were invalid because they were issued "not later than fifteen days before the election" as prescribed by Section 78. In dismissing the petition in G.R. No. 120295, we hold that the Comelec did not commit grave abuse of discretion because "Section 6 of R.A. 6646 authorizes the Comelec to try and decide disqualifications even after the elections." In spite of his disagreement with us on this point, *i.e*., that Section 78 "is merely directory", we note that just like us, Mr. Justice Davide nonetheless votes to "DISMISS G.R. No. 120295". One other point. *Loong*, as quoted in the dissent, teaches that a petition to deny due course under Section 78 must be *filed* within the *25-day* period prescribed therein. The present case however deals with the period during which the Comelec may *decide* such petition. And we hold that it may be decided even after the *fifteen day* period mentioned in Section 78. Here, we rule that a decision *promulgated* by the Comelec even after the elections is valid but *Loong* held that a petition *filed* beyond the 25-day period is out of time. There is no inconsistency nor conflict.

Mr. Justice Davide also disagrees with the Court's holding that, given the unique factual circumstances of Frivaldo, repatriation may be given retroactive effect. He argues that such retroactivity "dilutes" our holding in the first Frivaldo case. But the first (and even the second Frivaldo) decision did not directly involve repatriation as a mode of acquiring citizenship. If we may repeat, there is no question that Frivaldo was not a Filipino for purposes of determining his qualifications in the 1988 and 1992 elections.

That is settled. But his supervening repatriation has changed his political status -- not in 1988 or 1992, but only in the 1995 elections.

Our learned colleague also disputes our holding that Frivaldo was stateless prior to his repatriation, saying that "informal renunciation or abandonment is not a ground to lose American citizenship". Since our courts are charged only with the duty of determining who are Philippine nationals, we cannot rule on the legal question of who are or who are not Americans. It is basic in international law that a State determines ONLY those who are its own citizens -- not who are the citizens of other countries.[65] The issue here is: the Comelec made a finding of fact that Frivaldo was stateless and such finding has not been shown by Lee to be arbitrary or whimsical. Thus, following settled case law, such finding is binding and final.

The dissenting opinion also submits that Lee who lost by chasmic margins to Frivaldo in all three previous elections, should be declared winner because "Frivaldo's ineligibility for being an American was publicly known". First, there is absolutely no empirical evidence for such "public" knowledge. Second, even if there is, such knowledge can be true*post facto* only of the last two previous elections. Third, even the Comelec and now this Court were/are still deliberating on his nationality before, during and after the 1995 elections. How then can there be such "public" knowledge?

Mr. Justice Davide submits that Section 39 of the Local Government Code refers to the qualifications of *elective*local officials, *i.e*., candidates, and not *elected* officials, and that the citizenship qualification [under par. (a) of that section] must be possessed by candidates, not merely at the commencement of the term, but by election day at the latest. We see it differently. Section 39, par. (a) thereof speaks of "elective local official" while par. (b) to (f) refer to "candidates". If the qualifications under par. (a) were intended to apply to "candidates" and not elected officials, the legislature would have said so, instead of differentiating par. (a) from the rest of the paragraphs. Secondly, if Congress had meant that the citizenship qualification should be possessed at election day or prior thereto, it would have specifically stated such detail, the same way it did in pars. (b) to (f) far other qualifications of candidates for governor, mayor, etc.

Mr. Justice Davide also questions the giving of retroactive effect to Frivaldo's repatriation on the ground, among others, that the law specifically provides that it is only after taking the oath of allegiance that applicants shall be deemed to have reacquired Philippine citizenship. We do not question what the provision states. We hold however that the provision should be understood thus: *that after taking the oath of allegiance the applicant is deemed to have reacquired Philippine citizenship, which reacquisition (or repatriation) is deemed for all purposes and intents to have retroacted to the date of his application therefor*.

In any event, our "so too" argument regarding the literal meaning of the word "elective" in reference to Section 39 of the Local Authority Code, as well as regarding Mr. Justice Davide's thesis that the very wordings of P.D. 725 suggest non-retroactivity, were already taken up rather extensively earlier in this Decision.

Mr. Justice Davide caps his paper with a clarion call: "This Court must be the first to uphold the Rule of Law." We agree -- we must all follow the rule of law. But that is NOT the issue here. The issue is *how* should the *law* be interpreted and applied in this case so it can be followed, so it can rule!

At balance, the question really boils down to a choice of philosophy and perception of how to interpret and apply laws relating to elections: literal or liberal; the letter or the spirit, the naked provision or its ultimate purpose; legal syllogism or substantial justice; in isolation or in the context of social conditions; harshly against or gently in favor of the voters' obvious choice. In applying election laws, it would be far better to err in favor of popular sovereignty than to be right in complex but little understood legalisms. Indeed, to inflict a thrice rejected candidate upon the electorate of Sorsogon would constitute unmitigated judicial tyranny and an unacceptable assault upon this Court's conscience.

E P I L O G U E

In sum, we rule that the citizenship requirement in the Local Government Code is to be possessed by an elective official at the latest as of the time he is proclaimed *and* at the start of the term of office to which he has been elected. We further hold P.D. No. 725 to be in full force and effect up to the present, not having been suspended or repealed expressly nor impliedly at any time, and Frivaldo's repatriation by virtue thereof to have been properly granted and thus valid and effective. Moreover, by reason of the remedial or curative nature of the law granting him a new right to resume his political status and the legislative intent behind it, as well as his unique situation of having been forced to give up his citizenship and political aspiration as his means of escaping a regime he abhorred, his repatriation is to be given retroactive effect as of the date of his application therefor, during the pendency of which he was stateless, he having given up his U.S. nationality. Thus, in contemplation of law, he possessed the vital requirement of Filipino citizenship as of the start of the term of office of governor, and should have been proclaimed instead of Lee. Furthermore, since his reacquisition of citizenship retroacted to August 17, 1994, his registration as a voter of Sorsogon is deemed to have been validated as of said date as well. The foregoing, of course, are precisely consistent with our holding that lack of the citizenship requirement is not a continuing disability or disqualification to run for and hold public office. And once again, we emphasize herein our previous rulings recognizing the Comelec's authority and jurisdiction to hear and decide petitions for annulment of proclamations.

This Court has time and again liberally and equitably construed the electoral laws of our country to give fullest effect to the manifest will of our people,[66] for in case of doubt, political laws must be interpreted to give life and spirit to the popular mandate freely expressed through the ballot. Otherwise stated, legal niceties and technicalities cannot stand in the way of the sovereign will. Consistently, we have held:

. . . (L)aws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections (citations omitted).[67]

The law and the courts must accord Frivaldo every possible protection, defense and refuge, in deference to the popular will. Indeed, this Court has repeatedly stressed the importance of giving effect to the sovereign will in order to ensure the survival of our democracy. In any action involving the possibility of

a reversal of the popular electoral choice, this Court must exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority. To successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the ineligibility is so patently antagonistic[68] to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people, would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote. In this undertaking, Lee has miserably failed.

In Frivaldo's case. it would have been technically easy to find fault with his cause. The Court could have refused to grant retroactivity to the effects of his repatriation and hold him still ineligible due to his failure to show his citizenship at the time he registered as a voter before the 1995 elections. Or, it could have disputed the factual findings of the Comelec that he was stateless at the time of repatriation and thus hold his consequent dual citizenship as a disqualification "from running for any elective local position." But the real essence of justice does not emanate from quibblings over patchwork legal technicality. It proceeds from the spirit's gut consciousness of the dynamic role of law as a brick in the ultimate development of the social edifice. Thus, the Court struggled against and eschewed the easy, legalistic, technical and sometimes harsh anachronisms of the law in order to evoke substantial justice in the larger social context consistent with Frivaldo's unique situation approximating venerability in Philippine political life. Concededly, he sought American citizenship only to escape the clutches of the dictatorship. At this stage, we cannot seriously entertain any doubt about his loyalty and dedication to this country. At the first opportunity, he returned to this land, and sought to serve his people once more. The people of Sorsogon overwhelmingly voted for him three times. He took an oath of allegiance to this Republic every time he filed his certificate of candidacy and during his failed naturalization bid. And let it not be overlooked, his demonstrated tenacity and sheer determination to re-assume his nationality of birth despite several legal set-backs speak more loudly, in spirit, in fact and in truth than any legal technicality, of his consuming intention and burning desire to re-embrace his native Philippines even now at the ripe old age of 81 years. Such loyalty to and love of country as well as nobility of purpose cannot be lost on this Court of justice and equity. Mortals of lesser mettle would have given up. After all, Frivaldo was assured of a life of ease and plenty as a citizen of the most powerful country in the world. But he opted, nay, single-mindedly insisted on returning to and serving once more his struggling but beloved land of birth. He therefore deserves every liberal interpretation of the law which can be applied in his favor. And in the final analysis, over and above Frivaldo himself, the indomitable people of Sorsogon most certainly deserve to be governed by a leader of their overwhelming choice.

WHEREFORE, in consideration of the foregoing:

(1) The petition in G.R. No. 123755 is hereby DISMISSED. The assailed Resolutions of the respondent Commission are AFFIRMED.

(2) The petition in G.R. No. 120295 is also DISMISSED for being moot and academic. In any event, it has no merit.

No costs.

SO ORDERED.

Padilla, Regalado, Romero, Bellosillo, Francisco, Hermosisima, Jr. and Torres, Jr., JJ., concur.

Melo, Vitug and Kapunan, JJ., concurs in the result.

Narvasa, C.J. and Mendoza, J., took no part.

Separate Opinions

PUNO, *J.,* concurring:

I concur with the path-breaking *ponencia* of Mr. Justice Panganiban which is pro-people and pierces the myopia of legalism. Upholding the sovereign will of the people which is the be-all and the end-all of republicanism, it rests on a foundation that will endure time and its tempest.

The sovereignty of our people is the *primary postulate* of the 1987 Constitution. For this reason, it appears as the*first* in our declaration of principles and state policies. Thus, section 1 of Article II of our fundamental law proclaims that "[t]he Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them." The same principle served as the bedrock of our 1973 and 1935 Constitutions.[1] It is one of the few principles whose truth has been cherished by the Americans as self-evident. Section 4, Article IV of the U.S. Constitution makes it a duty of the Federal government to guarantee to every state a "republican form of government." With understandable fervor, the American authorities imposed republicanism as the cornerstone of our 1935 Constitution then being crafted by its Filipino framers.[2]

Borne out of the 1986 people power EDSA revolution, our 1987 Constitution is more people-oriented. Thus, section 4 of Article II provides as a state policy that the prime duty of the Government is "to serve and protect the people." Section 1, Article XI also provides that ". . . public officers . . . must at all times be accountable to the people . . ." Sections 15 and 1 of Article XIII define the role and rights of people's organizations. Section 5(2) of Article XVI mandates that "[t]he state shall strengthen the patriotic spirit and nationalist consciousness of the military, and respect for people's rights in the performance of their duty." And section 2 of Article XVII provides that "amendments to this Constitution may likewise be directly proposed by the people through initiative . . ." All these provisions and more are intended to breathe more life to the sovereignty of our people.

To be sure, the sovereignty of our people is not a kabalistic principle whose dimensions are buried in mysticism. Its metes and bounds are familiar to the framers of our Constitutions. They knew that in its broadest sense, sovereignty is meant to be supreme, the *jus summi imperu*, the *absolute right to govern*.[3] Former Dean Vicente Sinco[4] states that an essential quality of sovereignty is legal

omnipotence, *viz*.: "Legal theory establishes certain essential qualities inherent in the nature of sovereignty. The first is legal omnipotence. This means that the sovereign is legally omnipotent and absolute in relation to other legal institutions. It has the power to determine exclusively its legal competence. Its powers are original, not derivative. *It is the sole judge of what it should do at any given time*."[5] Citing Barker,[6] he adds that a more amplified definition of sovereignty is that of "*a final power of final legal adjustment of all legal issues*." The U.S. Supreme Court expressed the same thought in the landmark case of *Yick Wo v. Hopkins*,[7] where it held that ". . . *sovereignty itself is, of course, not subject to law*, for it is the author and source of law; but in our system, while sovereign powers are *delegated* to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts."

In our Constitution, the people established a representative democracy as distinguished from a pure democracy. Justice Isagani Cruz explains:[8]

xxx xxx xxx

A republic is a representative government, a government run by and for the people. It is not a pure democracy where the people govern themselves directly. The essence of republicanism is representation and renovation, the selection by the citizenry of a corps of public functionaries who derive their mandate from the people and act on their behalf, serving for a limited period only, after which they are replaced or retained, at the option of their principal. *Obviously, a republican government is a responsible government whose officials hold and discharge their position as a public trust and shall, according to the Constitution, "at all times be accountable to the people" they are sworn to serve*. *The purpose of a republican government it is almost needless to state, is the promotion of the common welfare according to the will of the people themselves*.

I appreciate the vigorous dissent of Mr. Justice Davide. I agree that sovereignty is *indivisible* but it need not always be *exercised* by the people together, all the time.[9] For this reason, the Constitution and our laws provide when the entire electorate or only some of them can elect those who make our laws and those who execute our laws. Thus, the entire electorate votes for our senators but only our district electorates vote for our congressmen, only our provincial electorates vote for the members of our provincial boards, only our city electorates vote for our city councilors, and only our municipal electorates vote for our councilors. Also, the entire electorate votes for our President and Vice-President but only our provincial electorates vote for our governors, only our city electorates vote for our mayors, and only our municipal electorates vote for our mayors. By defining and delimiting the classes of voters who can exercise the sovereignty of the people in a given election, it cannot be claimed that said sovereignty has been fragmented.

It is my respectful submission that the issue in the case at bar is not whether the people of Sorsogon should be given the *right to defy the law* by allowing Frivaldo to sit as their governor. Rather, the issue is: whether the *will of the voters* of Sorsogon clearly choosing Frivaldo as governor ought to be given a *decisive value* considering the *uncertainty of the law* on when a candidate ought to satisfy the qualification of citizenship. The uncertainty of law and jurisprudence, both here and abroad, on this legal

issue cannot be denied. In the United States, [10] there are two (2) principal schools of thought on the matter. One espouses the view that a candidate must possess the qualifications for office at the time of his election. The other ventures the view that the candidate should satisfy the qualifications at the time he assumes the powers of the office. I am unaware of any Philippine decision that has squarely resolved this difficult question of law. The *ponencia* of Mr. Justice Panganiban adhered to the second school of thought while Mr. Justice Davide dissents.

I emphasize the honest-to-goodness difference in interpreting our law on the matter for this is vital to dispel the fear of Mr. Justice Davide that my opinion can bring about ill effects to the State. Mr. Justice Davide's fear is based on the *assumption* that Frivaldo continues to be disqualified and we cannot allow him to sit as governor without transgressing the law. I do not concede this assumption for as stressed above, courts have been sharply divided by this mind boggling issue. Given this schism, I do not see how we can derogate on the sovereignty of the people by according more weight to the votes of the people of Sorsogon.

Mr. Justice Davide warns that should the people of Batanes stage a rebellion, we cannot prosecute them "because of the doctrine of people's sovereignty." With due respect, the analogy is not appropriate. In his hypothetical case, rebellion is *concededly* a crime, a violation of Article 134 of the Revised Penal Code, an offense against the sovereignty of our people. *In the case at bar, it cannot be held with certitude that the people of Sorsogon violated the law by voting for Frivaldo as governor*. Frivaldo's name was in the list of candidates allowed by COMELEC to run for governor. At that time too, Frivaldo was taking all steps to establish his Filipino citizenship. And even our jurisprudence has not settled the issue when a candidate should possess the qualification of citizenship. Since the meaning of the law is arguable then and now, I cannot imagine how it will be disastrous for the State if we tilt the balance in the case at bar in favor of the people of Sorsogon.

In sum, I respectfully submit that the sovereign will of our people should be resolutory of the case at bar which is one of its kind, unprecedented in our political history. For three (3) times, Frivaldo ran as governor of the province of Sorsogon. For two (2) times, he was disqualified on the ground of citizenship. The people of Sorsogon voted for him as their governor despite his disqualification. The people never waffled in their support for Frivaldo. In 1988, they gave him a winning margin of 27,000; in 1992, they gave him a winning spread of 57,000; in 1995, he posted a margin of 20,000. Clearly then, Frivaldo is the overwhelming choice of the people of Sorsogon. In election cases, we should strive to align the will of the legislature as expressed in its law with the will of the sovereign people as expressed in their ballots. For law to reign, it must respect the will of the people. For in the eloquent prose of Mr. Justice Laurel, ". . . an enfranchised citizen is a particle of popular sovereignty and is the ultimate source of established authority."[11] The choice of the governed on who shall be their governor merits the highest consideration by all agencies of government. In cases where the sovereignty of the people is at stake, we must not only be legally right but also politically correct. We cannot fail by making the people succeed.

DAVIDE, JR., *J.,* dissenting:

After deliberating on the re-formulated issues and the conclusions reached by my distinguished colleague, Mr. Justice Artemio V. Panganiban, I find myself unable to join him.

I

I agree with petitioner Lee that Frivaldo's repatriation was void, but not on the ground that President Corazon C. Aquino's 27 March 1987 memorandum "effectively repealed" P.D. No. 725. In my view, the said memorandum only *suspended* the implementation of the latter decree by *divesting* the Special Committee on Naturalization of its authority to further act on grants of citizenship under LOI No. 270, as amended, P.D. No. 836, as amended; P.D. No. 1379; and "any other related laws, orders, issuances and rules and regulations." A reading of the last paragraph of the memorandum can lead to no other conclusion, thus:

In view of the foregoing, you as Chairman and members of the Special Committee on Naturalization, are hereby directed to cease and desist from undertaking any and all proceedings within your functional area of responsibility, as defined in Letter of Instruction No. 270 dated April 11, 1975, as amended, Presidential Decree No. 836 dated December 3, 1975, as amended, and Presidential Decree No. 1379 dated May 17, 1978, relative to the grant of citizenship under the said laws, *and any other related laws, orders, issuances and rules and regulations*. (emphasis supplied)

It is self-evident that the underscored clause can only refer to those related to LOI No. 270, P.D. No. 836, and P.D. No. 1379. There is no doubt in my mind that P.D. No. 725 is one such "related law" as it involves the reacquisition of Philippine citizenship by repatriation and *designates* the Special Committee on Naturalization created under LOI No. 270 to receive and act on (*i.e.*, approve or disapprove) applications under the said decree. The power of President Aquino to suspend these issuances by virtue of the 27 March 1987 memorandum is beyond question considering that under Section 6, Article XVIII of the 1987 Constitution, she exercised legislative power until the Congress established therein convened on the fourth Monday of July 1987.

I disagree with the view expressed in the *ponencia* that the memorandum of 27 March 1987 was merely a declaration of "executive policy," and not an exercise of legislative power. LOI No. 270, P.D. No. 836, P.D. No. 1379 and "any other related laws," such as P.D. No. 725, were issued by President Ferdinand E. Marcos in the exercise of his legislative powers -- not executive power. These laws relate to the acquisition (by naturalization) and reacquisition (by repatriation) of Philippine citizenship, and in light of Sections 1(4) and 3, Article IV of the 1987 Constitution (naturalization and reacquisition of Philippine citizenship shall be in accordance with law), it is indubitable that these subjects are a matter of legislative prerogative. In the same vein, the creation of the Special Committee on Naturalization by LOI No. 270 and the conferment of the power to accept and act on applications under P.D. No. 725 are clearly *legislative acts*.

Accordingly, the *revocation* of the cease and desist order and the *reactivation* or *revival* of the Committee can be done only by legislative fiat, *i.e.*, by Congress, since the President had long lost his authority to exercise "legislative power." Considering that Congress has not seen it fit to do so, the President cannot, in the exercise of executive power, lift the cease and desist order nor

reactivate/reconstitute/revive the Committee. A *multo fortiori*, the Committee cannot validly accept Frivaldo's application for repatriation and approve it.

II

Even assuming *arguendo* that Frivaldo's repatriation is valid, it did not "cure his lack of citizenship." I depart from the view in the *ponencia* that Section 39 of the Local Government Code of 1991 does not specify the time when the citizenship requirement must be met, and that being the case, then it suffices that citizenship be possessed upon commencement of the term of the office involved; therefore, since Frivaldo "re-assumed" his Philippine citizenship at 2:00 p.m. on 30 June 1995 and the term of office of Governor commenced at 12:00 noon of that day, he had, therefore, complied with the citizenship requirement.

In the first place, Section 39 actually prescribes the qualifications of *elective* local officials and not those of an *elected* local official. These adjectives are not synonymous, as the *ponencia* seems to suggest. The first refers to the nature of the office, which requires the process of voting by the electorate involved; while the second refers to a victorious candidate for an elective office. The section unquestionably refers to *elective* -- not *elected* -- local officials. It falls under Title Two entitled *ELECTIVE OFFICIALS*; under Chapter 1 entitled *Qualifications and Election*; and paragraph (a) thereof begins with the phrase "An *elective local official*," while paragraphs (b) to (f) thereof speak of candidates. It reads as follows:

Sec. 39. *Qualifications*. -- (a) An *elective local official* must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

(b) *Candidates* for the position of governor, vice governor or member of the sangguniang panlalawigan, or mayor, vice mayor or member of the sangguniang panlungsod of highly urbanized cities must be at least twenty-three (23) years of age on election day.

(c) *Candidates* for the position of mayor or vice mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day.

(d) *Candidates* for the position of member of the sangguniang panlungsod or sangguniang bayan must be at least eighteen (18) years of age on election day.

(e) *Candidates* for the position of punong barangay or member of the sangguniang barangay must be at least eighteen (18) years of age on election day.

(f) *Candidates* for the sangguniang kabataan must be at least fifteen (15) years of age but not more than twenty-one (21) years of age on election day (emphasis supplied)

It is thus obvious that Section 39 refers to no other than the *qualifications of candidates for elective local offices* and their *election*. Hence, in no way may the section be construed to mean that possession of

qualifications should be reckoned from the commencement of the term of office of the elected candidate.

For another, it is not at all true that Section 39 does not specify the time when the citizenship requirement must be possessed. I submit that the requirement must be satisfied, or that Philippine citizenship must be possessed, not merely at the commencement of the term, but at an earlier time, the latest being election day itself. Section 39 is not at all ambiguous nor uncertain that it meant this to be, as one basic qualification of an elective local official is that he be "A REGISTERED VOTER IN THE BARANGAY, MUNICIPALITY, CITY OR PROVINCE . . . WHERE HE INTENDS TO VOTE." This simply means that he possesses all the qualifications to exercise the right of suffrage. The fundamental qualification for the exercise of this sovereign right is the possession of Philippine citizenship. No less than the Constitution makes it the first qualification, as Section 1, Article V thereof provides:

Sec. 1. *Suffrage may be exercised by all citizens of the Philippines* not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. . . . (emphasis supplied)

And Section 117 of the Omnibus Election Code of the Philippines (B.P. Blg. 881) expressly provides for the qualifications of a voter. Thus:

Sec. 117 *Qualifications of a voter*. -- *Every citizen of the Philippines*, not otherwise disqualified by law, eighteen years of age or over, who shall have resided in the Philippines for one year and in the city or municipality wherein he proposes to vote for at least six months immediately preceding the election, may be a registered voter. (emphasis supplied)

It is undisputed that this Court twice voided Frivaldo's election as Governor in the 1988 and 1992 elections on the ground that for lack of Philippine citizenship -- he being a naturalized citizen of the United States of America -- he was DISQUALIFIED to be elected as such and to serve the position (Frivaldo vs. Commission on Elections, 174 SCRA 245 [1989]; Republic of the Philippines vs. De la Rosa, 232 SCRA 785 [1994]). This disqualification inexorably nullified Frivaldo's registration as a voter and declared it void *ab initio*. Our judgments therein were self-executory and no further act, *e.g.*, a COMELEC order to cancel his registration as a voter or the physical destruction of his voter's certificate, was necessary for the ineffectivity. Thus, he was never considered a registered voter for the elections of May 1992, and May 1995, as there is no showing that Frivaldo registered anew as a voter for the latter elections. Even if he did -- in obvious defiance of his decreed disqualification -- this did not make him a Filipino citizen, hence it was equally void *ab initio*. That he filed his certificate of candidacy for the 1995 elections and was even allowed to vote therein were of no moment. Neither act made him a Filipino citizen nor nullified the judgments of this Court. On the contrary, said acts made a mockery of our judgments. For the Court now to validate Frivaldo's registration as a voter despite the judgments of disqualification is to modify the said judgments by making their effectivity and enforceability dependent on a COMELEC order cancelling his registration as a voter, or on the physical destruction of his certificate of registration as a voter which, of course, was never our intention. Moreover, to sanction Frivaldo's

registration as a voter would be to sacrifice substance in favor of form (the piece of paper that is the book of voters or list of voters or voter's ID), and abet the COMELEC's incompetence in failing to cancel Frivaldo's registration and allowing him to vote.

The second reason in the *ponencia* as to why the citizenship disqualification should be reckoned not from the date of the election nor the filing of the certificate of candidacy, but from the date of proclamation, is that the only available remedy to question the ineligibility (or disloyalty) of a candidate is a petition for *quo warranto* which, under Section 253 of the Omnibus Election Code, may be filed only within ten days from proclamation and not earlier.

I beg to differ.

Clearly, *quo warranto* is not the sole remedy available to question a candidate's ineligibility for public office. Section 78 of the Omnibus Election Code allows the filing of a petition to deny due course to or cancel the certificate of candidacy on the ground that any material representation contained therein, as required by Section 74, is false. Section 74, in turn, requires that the person filing the certificate of candidacy must state, *inter alia*, that *he is eligible for the office*, which means that he has all the qualifications (including, of course, fulfilling the citizenship requirement) and none of the disqualifications as provided by law. The petition under Section 78 may be filed *at any time not later than 25 days from the filing of the certificate of candidacy*. The section reads in full as follows:

Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy*. -- A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

This remedy was recognized in *Loong vs*. *Commission on Elections* (216 SCRA 760, 768 [1992]), where this Court held:

Thus, if a person qualified to file a petition to disqualify a certain candidate fails to file the petition within the 25-day period Section 78 of the Code for whatever reasons, the election laws do not leave him completely helpless as he has another chance to raise the disqualification of the candidate by filing a petition for *quo warranto* within ten (10) days from the proclamation of the results of the election, as provided under Section 253 of the Code. Section 1, Rule 21 of the Comelec Rules of Procedure similarly provides that any voter contesting the election of any regional, provincial or city official on the ground of ineligibility or of disloyalty to the Republic of the Philippines may file a petition for *quo warranto* with the Electoral Contest Adjudication Department. The petition may be filed within ten (10) days from the date the respondent is proclaimed (Section 2).

Likewise, Rule 25 of the Revised COMELEC Rules of Procedure allows the filing of a petition for disqualification on the ground of failure to possess all the qualifications of a candidate as provided by

the Constitution or by existing laws, "any day after the last day for filing of certificates of candidacy but not later than the date of proclamation." Sections 1 and 3 thereof provide:

Rule 25 -- Disqualification of Candidates

Sec. 1. *Grounds for Disqualification*. Any candidate who does not possess all the qualifications of a candidate as provided for by the Constitution or by existing law or who commits any act declared by law to be grounds for disqualification may be disqualified from continuing as a candidate.

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Sec. 3. *Period to File Petition*. The petition shall be filed any day after the last day for filing of certificates of candidacy *but not later than the date of proclamation*.

While the validity of this rule insofar as it concerns petitions for disqualification on the ground of lack of all qualifications may be doubtful, its invalidity is not in issue here.

In this connection, it would seem appropriate to take up the last issue grappled within the *ponencia*, *viz*., is Section 78 of the Omnibus Election Code mandatory? The answer is provided in *Loong*.

We also do not find merit in the contention of respondent Commission that in the light of the provisions of Sections 6 and 7 of Rep. Act No. 6646, a petition to deny due course to or cancel a certificate of candidacy may be filed even beyond the 25-day period prescribed by Section 78 of the Code, as long as it is filed within a *reasonable time* from the discovery of the ineligibility.

Sections 6 and 7 of Rep. Act No. 6646 are here re-quoted:

Sec. 6. *Effect of Disqualification case*. Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

Sec. 7. *Petition to Deny Due Course To or Cancel a Certificate of Candidacy*. The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Blg. 881.

It will be noted that nothing in Sections 6 or 7 modifies or alters the 25- day period prescribed by Section 78 of the Code for filing the appropriate action to cancel a certificate of candidacy on account of any false representation made therein. On the contrary, said Section 7 affirms and reiterates Section 78 of the Code.

We note that Section 6 refers only to the *effects* of a disqualification case which may be based on grounds other than that provided under Section 78 of the Code. But Section 7 of Rep. Act No. 6646 also

makes the effects referred to in Section 6 applicable to disqualification cases filed under Section 78 of the Code. Nowhere in Sections 6 and 7 of Rep. Act No. 6646 is mention made of the period within which these disqualification cases may be filed. This is because there are provisions in the Code which supply the periods within which a petition relating to disqualification of candidates must be filed, such as Section 78, already discussed, and Section 253 on petitions for *quo warranto*.

I then disagree with the asseveration in the *ponencia* that Section 78 is merely directory because Section 6 of R.A. No. 6646 authorizes the COMELEC to try and decide petitions for disqualification even after elections. I submit that Section 6 refers to disqualifications under Sections 12 and 68 of the Omnibus Election Code and consequently modifies Section 72 thereof. As such, the proper court or the COMELEC are granted the authority to continue hearing the case after the election, and during the pendency of the case, suspend the proclamation of the victorious candidate, if the evidence against him is strong. Sections 12, 68, and 72 of the Code provide:

Sec. 12. *Disqualifications*. Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.

The disqualifications to be a candidate herein provided shall be deemed removed upon declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.

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Sec. 68. *Disqualifications*. Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws. (Sec. 25, 1971 EC)

Sec. 72. *Effects of disqualification cases and priority*. The Commission and the courts shall give priority to cases of disqualification by reason of violation of this Act to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought.

Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. Nevertheless, if for any reason, a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, his violation of the provisions of the preceding sections shall not prevent his proclamation and assumption to office.

III

Still assuming that the repatriation is valid, I am not persuaded by the arguments in support of the thesis that Frivaldo's repatriation may be given retroactive effect, as such goes against the spirit and letter of P.D. No. 725. The spirit adheres to the principle that acquisition or re-acquisition of Philippine citizenship is not a right, but a mere privilege. Before the advent of P.D. No. 725, only the following could apply for repatriation: (a) Army, Navy, or Air Corps deserters; and (b) a woman who lost her citizenship by reason of her marriage to an alien after the death of her spouse (Section 2[2], C.A. No. 63). P.D. NO. 725 expanded this to include Filipino women who lost their Philippine citizenship by marriage to aliens even before the death of their alien husbands, or the termination of their marital status and to natural-born Filipino citizens who lost their Philippine citizenship but subsequently desired to reacquire the latter.

Turning now to the letter of the law, P.D. No. 725 expressly provides that repatriation takes effect only after taking the oath of allegiance to the Republic of the Philippines, thus:

. . . may reacquire Philippine citizenship . . . by applying with the Special Committee on Naturalization created by Letter of Instruction No. 270, *and, if their applications are approved, taking the necessary oath of allegiance to the Republic of the Philippines*, AFTER WHICH THEY SHALL BE DEEMED TO HAVE REACQUIRED PHILIPPINE CITIZENSHIP. (emphasis and capitalization supplied)

Clearly then, the steps to reacquire Philippine citizenship by repatriation under the decree are: (1) filing the application; (2) action by the committee; and (3) taking of the oath of allegiance if the application is approved. It is only UPON TAKING THE OATH OF ALLEGIANCE that the applicant is deemed *ipso jure* to have reacquired Philippine citizenship. If the decree had intended the oath taking to retroact to the date of the filing of the application, then it should not have explicitly provided otherwise.

This theory in the *ponencia* likewise dilutes this Court's pronouncement in the first *Frivaldo* case that what reacquisition of Filipino citizenship requires is an act "formally rejecting [the] adopted state and reaffirming . . . allegiance to the Philippines." That act meant nothing less than taking of the oath of allegiance to the Republic of the Philippines. If we now take this revision of doctrine to its logical end, then it would also mean that if Frivaldo had chosen and reacquired Philippine citizenship by naturalization or through Congressional action, such would retroact to the filing of the petition for naturalization or the bill granting him Philippine citizenship. This is a proposition which both the first and second Frivaldo cases soundly rejected.

The other reason adduced in the *ponencia* in support of the proposition that P.D. No. 725 can be given retroactive effect is its alleged curative or remedial nature.

Again, I disagree. In the first place, by no stretch of legal hermeneutics may P.D. No. 725 be characterized as a curative or remedial statute:

Curative or remedial statutes are healing acts. They are remedial by curing defects and adding to the means of enforcing existing obligations. The rule in regard to curative statutes is that if the thing omitted or failed to be done, and which constitutes the defect sought to be removed or made harmless, is something the legislature might have dispensed with by a previous statute, it may do so by a subsequent one.

Curative statutes are intended to supply defects, abridge superfluities in existing laws, and curb certain evils. They are intended to enable a person to carry into effect that which they have designed and intended, but has failed of expected legal consequence by reason of some statutory disability or irregularity in their own action. They make valid that which, before the enactment of the statute, was invalid. (RUBEN E. AGPALO, Statutory Construction, Second ed. [1990], 270-271, citations omitted).

P.D. No. 725 provides for the reacquisition of Philippine citizenship lost through the marriage of a Filipina to an alien and through naturalization in a foreign country of natural-born Filipino citizens. It involves then the substantive, nay primordial, right of citizenship. To those for whom it is intended, it means, in reality, the acquisition of "*a new right*," as the *ponencia* cannot but concede. Therefore, it may not be said to merely remedy or cure a defect considering that one who has lost Philippine citizenship does not have the right to reacquire it. As earlier stated, the Constitution provides that citizenship, once lost, may only be reacquired in the manner provided by law. Moreover, it has also been observed that:

The idea is implicit from many of the cases that *remedial statutes are statutes relating to procedure and not substantive rights*. (Sutherland, Statutory Construction, Vol. 3, Third ed. [1943], §5704 at 74, citations omitted).

If we grant for the sake of argument, however, that P.D. No. 725 is curative or remedial statute, it would be an inexcusable error to give it a retroactive effect since it explicitly provides the date of its effectivity. Thus:

This Decree shall take effect immediately.

Done in the city of Manila, this 5th day of June, in the year of Our Lord, nineteen hundred and seventy five.

Nevertheless, if the retroactivity is to relate only to the reacquisition of Philippine citizenship, then nothing therein supports such theory, for as the decree itself unequivocally provides, it is only after *taking the oath of allegiance to the Republic of the Philippines that the applicant* is DEEMED TO HAVE REACQUIRED PHILIPPINE CITIZENSHIP.

IV

Assuming yet again, for the sake of argument, that taking the oath of allegiance retroacted to the date of Frivaldo's application for repatriation, the same could not be said insofar as it concerned the United States of America, of which he was a citizen. For under the laws of the United States of America, Frivaldo remained an American national until he renounced his citizenship and allegiance thereto at 2:00 p.m. on 30 June 1995, when he took his oath of allegiance to the Republic of the Philippines. Section 401 of the Nationality Act of 1940 of the United States of America provides that a person who is a national of the United States of America, whether by birth or naturalization, loses his nationality by, *inter alia*, "(b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state" (SIDNEY KANSAS, U.S. Immigration Exclusion and Deportation and Citizenship of the United States of America, Third ed., [1948] 341-342). It follows then that on election day and until the hour of the commencement of the term for which he was elected - noon of 30 June 1995 as per Section 43 of the Local Government Code - Frivaldo possessed dual citizenship, *viz*., (a) as an American citizen; and (b) as a Filipino citizen through the adoption of the theory that the effects of his taking the oath of allegiance were retrospective. Hence, he was disqualified to run for Governor for yet another reason: possession of dual citizenship, in accordance with Section 40 (d) of the Local Government Code.

V

The assertion in the *ponencia* that Frivaldo may be considered STATELESS on the basis of his claim that he "had long renounced and had long abandoned his American citizenship - long before May 8, 1985" - is untenable, for the following reasons: first, it is based on Frivaldo's unproven, self-serving allegation; second, informal renunciation or abandonment is not a ground to lose American citizenship; and third, simply put, never did the status of a STATELESS person attach to Frivaldo.

Statelessness may be either *de jure*, which is the status of individuals stripped of their nationality by their former government without having an opportunity to acquire another; or *de facto*, which is the status of individuals possessed of a nationality whose country does not give them protection outside their own country, and who are commonly, albeit imprecisely, referred to as refugees (JORGE R. COQUIA, et al., Conflict of Laws Cases, Materials and Comments, 1995 ed., 290).

Specifically, under Chapter 1, Article 1 of the United Nations Convention Regarding the Status of Stateless Persons (Philippine Treaty Series, Compiled and Annotated by Haydee B. Yorac, vol. III, 363), a stateless person is defined as "a person who is not considered as a national by any State under the operation of its law." However, it has not been shown that the United States of America ever ceased to consider Frivaldo its national at any time before he took his oath of allegiance to the Republic of the Philippines on 30 June 1995.

VI

Finally, I find it in order to also express my view on the concurring opinion of Mr. Justice Reynato S. Puno. I am absolutely happy to join him in his statement that "[t]he sovereignty of our people is the primary postulate of the 1987 Constitution" and that the said Constitution is "more people-oriented," "borne [as it is] out of the 1986 people power EDSA revolution." I would even go further by saying that this Constitution is *pro-God* (Preamble), *pro-people* (Article II, Sections 1, 3, 4, 5, 9, 15, 16; Article XI,

Section 1, Article XII, Sections 1, 6; Article XIII, Sections 1, 11, 15, 16, 18; Article XVI, Sections 5(2), 6), *pro-Filipino* (Article XII, Sections 1, 2, 10, 11, 12, 14; Article XIV, Sections 1, 4(2), 13; Article XVI, Section 11), *pro-poor* (Article II, Sections 9, 10, 18, 21; Article XII, Sections 1, 2(3); Article XIII, Sections 1, 3, 4, 5, 6, 7, 9, 10, 11, 13), *pro-life* (Article II, Section 12), and *pro-family* (Article II, Section 12; Article XV).

Nevertheless, I cannot be with him in carrying out the principle of sovereignty beyond what I perceive to be the reasonable constitutional parameters. The doctrine of people's sovereignty is founded on the principles of democracy and republicanism and refers exclusively to the sovereignty of the people of the Philippines. Section 1 of Article II is quite clear on this, thus:

Sec. 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

And the Preamble makes it clear when it solemnly opens it with a clause "We, *the sovereign Filipino people* . . ." Thus, this *sovereignty* is an attribute of the Filipino people as *one people*, *one body*.

That sovereign power of the Filipino people cannot be fragmentized by looking at it as the supreme authority of the people of any of the political subdivisions to determine their own destiny; neither can we convert and treat every fragment as the whole. In such a case, this Court would provide the formula for the division and destruction of the State and render the Government ineffective and inutile. To illustrate the evil, we may consider the enforcement of laws or the pursuit of a national policy by the executive branch of the government, or the execution of a judgment by the courts. If these are opposed by the overwhelming majority of the people of a certain province, or even a municipality, it would necessarily follow that the law, national policy, or judgment must not be enforced, implemented, or executed in the said province or municipality. More concretely, if, for instance, the vast majority of the people of Batanes rise publicly and take up arms against the Government for the purpose of removing from the allegiance to the said Government or its laws, the territory of the Republic of the Philippines or any part thereof, or any body of land, naval, or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives, then those who did so -- and which are composed of the vast majority of the people of Batanes -- a political subdivision -- cannot be prosecuted for or be held guilty of rebellion in violation of Article 134 of the Revised Penal Code because of the doctrine of peoples' sovereignty. Indeed, the expansion of the doctrine of sovereignty by investing upon the people of a mere political subdivision that which the Constitution places in the entire Filipino people, may be disastrous to the Nation.

So it is in this case if we follow the thesis in the concurring opinion. Thus, simply because Frivaldo had obtained a margin of 20,000 votes over his closest rival, Lee, *i.e.*, a vast majority of the voters of Sorsogon had expressed their sovereign will for the former, then this Court must yield to that will and must, therefore, allow to be set aside, for Frivaldo, not just the laws on qualifications of candidates and elective officials and naturalization and reacquisition of Philippine citizenship, but even the final and binding decisions of this Court affecting him.

This Court must be the first to uphold the Rule of Law. I vote then to DISMISS G.R. No. 120295 and GRANT G.R. No. 123755.

Separate Opinions

PUNO, *J.,* concurring:

I concur with the path-breaking *ponencia* of Mr. Justice Panganiban which is pro-people and pierces the myopia of legalism. Upholding the sovereign will of the people which is the be-all and the end-all of republicanism, it rests on a foundation that will endure time and its tempest.

The sovereignty of our people is the *primary postulate* of the 1987 Constitution. For this reason, it appears as the*first* in our declaration of principles and state policies. Thus, section 1 of Article II of our fundamental law proclaims that "[t]he Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them." The same principle served as the bedrock of our 1973 and 1935 Constitutions.[1] It is one of the few principles whose truth has been cherished by the Americans as self-evident. Section 4, Article IV of the U.S. Constitution makes it a duty of the Federal government to guarantee to every state a "republican form of government." With understandable fervor, the American authorities imposed republicanism as the cornerstone of our 1935 Constitution then being crafted by its Filipino framers.[2]

Borne out of the 1986 people power EDSA revolution, our 1987 Constitution is more people-oriented. Thus, section 4 of Article II provides as a state policy that the prime duty of the Government is "to serve and protect the people." Section 1, Article XI also provides that ". . . public officers . . . must at all times be accountable to the people . . ." Sections 15 and 1 of Article XIII define the role and rights of people's organizations. Section 5(2) of Article XVI mandates that "[t]he state shall strengthen the patriotic spirit and nationalist consciousness of the military, and respect for people's rights in the performance of their duty." And section 2 of Article XVII provides that "amendments to this Constitution may likewise be directly proposed by the people through initiative . . ." All these provisions and more are intended to breathe more life to the sovereignty of our people.

To be sure, the sovereignty of our people is not a kabalistic principle whose dimensions are buried in mysticism. Its metes and bounds are familiar to the framers of our Constitutions. They knew that in its broadest sense, sovereignty is meant to be supreme, the *jus summi imperu*, the *absolute right to govern*.[3] Former Dean Vicente Sinco[4] states that an essential quality of sovereignty is legal omnipotence, *viz*.: "Legal theory establishes certain essential qualities inherent in the nature of sovereignty. The first is legal omnipotence. This means that the sovereign is legally omnipotent and absolute in relation to other legal institutions. It has the power to determine exclusively its legal competence. Its powers are original, not derivative. *It is the sole judge of what it should do at any given time*."[5]Citing Barker,[6] he adds that a more amplified definition of sovereignty is that of "*a final power of final legal adjustment of all legal issues*." The U.S. Supreme Court expressed the same thought in the landmark case of *Yick Wo v. Hopkins*,[7] where it held that ". . . *sovereignty itself is, of course, not subject to law*, for it is the author and source of law; but in our system, while sovereign powers are *delegated* to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts."

In our Constitution, the people established a representative democracy as distinguished from a pure democracy. Justice Isagani Cruz explains:[8]

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A republic is a representative government, a government run by and for the people. It is not a pure democracy where the people govern themselves directly. The essence of republicanism is representation and renovation, the selection by the citizenry of a corps of public functionaries who derive their mandate from the people and act on their behalf, serving for a limited period only, after which they are replaced or retained, at the option of their principal. *Obviously, a republican government is a responsible government whose officials hold and discharge their position as a public trust and shall, according to the Constitution, "at all times be accountable to the people" they are sworn to serve*. *The purpose of a republican government it is almost needless to state, is the promotion of the common welfare according to the will of the people themselves*.

I appreciate the vigorous dissent of Mr. Justice Davide. I agree that sovereignty is *indivisible* but it need not always be *exercised* by the people together, all the time.[9] For this reason, the Constitution and our laws provide when the entire electorate or only some of them can elect those who make our laws and those who execute our laws. Thus, the entire electorate votes for our senators but only our district electorates vote for our congressmen, only our provincial electorates vote for the members of our provincial boards, only our city electorates vote for our city councilors, and only our municipal electorates vote for our councilors. Also, the entire electorate votes for our President and Vice-President but only our provincial electorates vote for our governors, only our city electorates vote for our mayors, and only our municipal electorates vote for our mayors. By defining and delimiting the classes of voters who can exercise the sovereignty of the people in a given election, it cannot be claimed that said sovereignty has been fragmented.

It is my respectful submission that the issue in the case at bar is not whether the people of Sorsogon should be given the *right to defy the law* by allowing Frivaldo to sit as their governor. Rather, the issue is: whether the *will of the voters* of Sorsogon clearly choosing Frivaldo as governor ought to be given a *decisive value* considering the *uncertainty of the law* on when a candidate ought to satisfy the qualification of citizenship. The uncertainty of law and jurisprudence, both here and abroad, on this legal issue cannot be denied. In the United States, [10] there are two (2) principal schools of thought on the matter. One espouses the view that a candidate must possess the qualifications for office at the time of his election. The other ventures the view that the candidate should satisfy the qualifications at the time he assumes the powers of the office. I am unaware of any Philippine decision that has squarely resolved this difficult question of law. The *ponencia* of Mr. Justice Panganiban adhered to the second school of thought while Mr. Justice Davide dissents.

I emphasize the honest-to-goodness difference in interpreting our law on the matter for this is vital to dispel the fear of Mr. Justice Davide that my opinion can bring about ill effects to the State. Mr. Justice Davide's fear is based on the *assumption* that Frivaldo continues to be disqualified and we cannot allow him to sit as governor without transgressing the law. I do not concede this assumption for as stressed

above, courts have been sharply divided by this mind boggling issue. Given this schism, I do not see how we can derogate on the sovereignty of the people by according more weight to the votes of the people of Sorsogon.

Mr. Justice Davide warns that should the people of Batanes stage a rebellion, we cannot prosecute them "because of the doctrine of people's sovereignty." With due respect, the analogy is not appropriate. In his hypothetical case, rebellion is *concededly* a crime, a violation of Article 134 of the Revised Penal Code, an offense against the sovereignty of our people. *In the case at bar, it cannot be held with certitude that the people of Sorsogon violated the law by voting for Frivaldo as governor*. Frivaldo's name was in the list of candidates allowed by COMELEC to run for governor. At that time too, Frivaldo was taking all steps to establish his Filipino citizenship. And even our jurisprudence has not settled the issue when a candidate should possess the qualification of citizenship. Since the meaning of the law is arguable then and now, I cannot imagine how it will be disastrous for the State if we tilt the balance in the case at bar in favor of the people of Sorsogon.

In sum, I respectfully submit that the sovereign will of our people should be resolutory of the case at bar which is one of its kind, unprecedented in our political history. For three (3) times, Frivaldo ran as governor of the province of Sorsogon. For two (2) times, he was disqualified on the ground of citizenship. The people of Sorsogon voted for him as their governor despite his disqualification. The people never waffled in their support for Frivaldo. In 1988, they gave him a winning margin of 27,000; in 1992, they gave him a winning spread of 57,000; in 1995, he posted a margin of 20,000. Clearly then, Frivaldo is the overwhelming choice of the people of Sorsogon. In election cases, we should strive to align the will of the legislature as expressed in its law with the will of the sovereign people as expressed in their ballots. For law to reign, it must respect the will of the people. For in the eloquent prose of Mr. Justice Laurel, ". . . an enfranchised citizen is a particle of popular sovereignty and is the ultimate source of established authority."[11] The choice of the governed on who shall be their governor merits the highest consideration by all agencies of government. In cases where the sovereignty of the people is at stake, we must not only be legally right but also politically correct. We cannot fail by making the people succeed.

DAVIDE, JR., *J.,* dissenting:

After deliberating on the re-formulated issues and the conclusions reached by my distinguished colleague, Mr. Justice Artemio V. Panganiban, I find myself unable to join him.

I

I agree with petitioner Lee that Frivaldo's repatriation was void, but not on the ground that President Corazon C. Aquino's 27 March 1987 memorandum "effectively repealed" P.D. No. 725. In my view, the said memorandum only *suspended* the implementation of the latter decree by *divesting* the Special Committee on Naturalization of its authority to further act on grants of citizenship under LOI No. 270, as amended, P.D. No. 836, as amended; P.D. No. 1379; and "any other related laws, orders, issuances and rules and regulations." A reading of the last paragraph of the memorandum can lead to no other conclusion, thus:

In view of the foregoing, you as Chairman and members of the Special Committee on Naturalization, are hereby directed to cease and desist from undertaking any and all proceedings within your functional area of responsibility, as defined in Letter of Instruction No. 270 dated April 11, 1975, as amended, Presidential Decree No. 836 dated December 3, 1975, as amended, and Presidential Decree No. 1379 dated May 17, 1978, relative to the grant of citizenship under the said laws, *and any other related laws, orders, issuances and rules and regulations*. (emphasis supplied)

It is self-evident that the underscored clause can only refer to those related to LOI No. 270, P.D. No. 836, and P.D. No. 1379. There is no doubt in my mind that P.D. No. 725 is one such "related law" as it involves the reacquisition of Philippine citizenship by repatriation and *designates* the Special Committee on Naturalization created under LOI No. 270 to receive and act on (*i.e.*, approve or disapprove) applications under the said decree. The power of President Aquino to suspend these issuances by virtue of the 27 March 1987 memorandum is beyond question considering that under Section 6, Article XVIII of the 1987 Constitution, she exercised legislative power until the Congress established therein convened on the fourth Monday of July 1987.

I disagree with the view expressed in the *ponencia* that the memorandum of 27 March 1987 was merely a declaration of "executive policy," and not an exercise of legislative power. LOI No. 270, P.D. No. 836, P.D. No. 1379 and "any other related laws," such as P.D. No. 725, were issued by President Ferdinand E. Marcos in the exercise of his legislative powers -- not executive power. These laws relate to the acquisition (by naturalization) and reacquisition (by repatriation) of Philippine citizenship, and in light of Sections 1(4) and 3, Article IV of the 1987 Constitution (naturalization and reacquisition of Philippine citizenship shall be in accordance with law), it is indubitable that these subjects are a matter of legislative prerogative. In the same vein, the creation of the Special Committee on Naturalization by LOI No. 270 and the conferment of the power to accept and act on applications under P.D. No. 725 are clearly *legislative acts*.

Accordingly, the *revocation* of the cease and desist order and the *reactivation* or *revival* of the Committee can be done only by legislative fiat, *i.e.*, by Congress, since the President had long lost his authority to exercise "legislative power." Considering that Congress has not seen it fit to do so, the President cannot, in the exercise of executive power, lift the cease and desist order nor reactivate/reconstitute/revive the Committee. A *multo fortiori*, the Committee cannot validly accept Frivaldo's application for repatriation and approve it.

II

Even assuming *arguendo* that Frivaldo's repatriation is valid, it did not "cure his lack of citizenship." I depart from the view in the *ponencia* that Section 39 of the Local Government Code of 1991 does not specify the time when the citizenship requirement must be met, and that being the case, then it suffices that citizenship be possessed upon commencement of the term of the office involved; therefore, since Frivaldo "re-assumed" his Philippine citizenship at 2:00 p.m. on 30 June 1995 and the term of office of Governor commenced at 12:00 noon of that day, he had, therefore, complied with the citizenship requirement.

In the first place, Section 39 actually prescribes the qualifications of *elective* local officials and not those of an *elected* local official. These adjectives are not synonymous, as the *ponencia* seems to suggest. The first refers to the nature of the office, which requires the process of voting by the electorate involved; while the second refers to a victorious candidate for an elective office. The section unquestionably refers to *elective* -- not *elected* -- local officials. It falls under Title Two entitled *ELECTIVE OFFICIALS*; under Chapter 1 entitled *Qualifications and Election*; and paragraph (a) thereof begins with the phrase "An *elective local official*," while paragraphs (b) to (f) thereof speak of candidates. It reads as follows:

Sec. 39. *Qualifications*. -- (a) An *elective local official* must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

(b) *Candidates* for the position of governor, vice governor or member of the sangguniang panlalawigan, or mayor, vice mayor or member of the sangguniang panlungsod of highly urbanized cities must be at least twenty-three (23) years of age on election day.

(c) *Candidates* for the position of mayor or vice mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day.

(d) *Candidates* for the position of member of the sangguniang panlungsod or sangguniang bayan must be at least eighteen (18) years of age on election day.

(e) *Candidates* for the position of punong barangay or member of the sangguniang barangay must be at least eighteen (18) years of age on election day.

(f) *Candidates* for the sangguniang kabataan must be at least fifteen (15) years of age but not more than twenty-one (21) years of age on election day (emphasis supplied)

It is thus obvious that Section 39 refers to no other than the *qualifications of candidates for elective local offices* and their *election*. Hence, in no way may the section be construed to mean that possession of qualifications should be reckoned from the commencement of the term of office of the elected candidate.

For another, it is not at all true that Section 39 does not specify the time when the citizenship requirement must be possessed. I submit that the requirement must be satisfied, or that Philippine citizenship must be possessed, not merely at the commencement of the term, but at an earlier time, the latest being election day itself. Section 39 is not at all ambiguous nor uncertain that it meant this to be, as one basic qualification of an elective local official is that he be "A REGISTERED VOTER IN THE BARANGAY, MUNICIPALITY, CITY OR PROVINCE . . . WHERE HE INTENDS TO VOTE." This simply means that he possesses all the qualifications to exercise the right of suffrage. The fundamental qualification for the exercise of this sovereign right is the possession of Philippine citizenship. No less than the Constitution makes it the first qualification, as Section 1, Article V thereof provides:

Sec. 1. *Suffrage may be exercised by all citizens of the Philippines* not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. . . . (emphasis supplied)

And Section 117 of the Omnibus Election Code of the Philippines (B.P. Blg. 881) expressly provides for the qualifications of a voter. Thus:

Sec. 117 *Qualifications of a voter*. -- *Every citizen of the Philippines*, not otherwise disqualified by law, eighteen years of age or over, who shall have resided in the Philippines for one year and in the city or municipality wherein he proposes to vote for at least six months immediately preceding the election, may be a registered voter. (emphasis supplied)

It is undisputed that this Court twice voided Frivaldo's election as Governor in the 1988 and 1992 elections on the ground that for lack of Philippine citizenship -- he being a naturalized citizen of the United States of America -- he was DISQUALIFIED to be elected as such and to serve the position (Frivaldo vs. Commission on Elections, 174 SCRA 245 [1989]; Republic of the Philippines vs. De la Rosa, 232 SCRA 785 [1994]). This disqualification inexorably nullified Frivaldo's registration as a voter and declared it void *ab initio*. Our judgments therein were self-executory and no further act, *e.g.*, a COMELEC order to cancel his registration as a voter or the physical destruction of his voter's certificate, was necessary for the ineffectivity. Thus, he was never considered a registered voter for the elections of May 1992, and May 1995, as there is no showing that Frivaldo registered anew as a voter for the latter elections. Even if he did -- in obvious defiance of his decreed disqualification -- this did not make him a Filipino citizen, hence it was equally void *ab initio*. That he filed his certificate of candidacy for the 1995 elections and was even allowed to vote therein were of no moment. Neither act made him a Filipino citizen nor nullified the judgments of this Court. On the contrary, said acts made a mockery of our judgments. For the Court now to validate Frivaldo's registration as a voter despite the judgments of disqualification is to modify the said judgments by making their effectivity and enforceability dependent on a COMELEC order cancelling his registration as a voter, or on the physical destruction of his certificate of registration as a voter which, of course, was never our intention. Moreover, to sanction Frivaldo's registration as a voter would be to sacrifice substance in favor of form (the piece of paper that is the book of voters or list of voters or voter's ID), and abet the COMELEC's incompetence in failing to cancel Frivaldo's registration and allowing him to vote.

The second reason in the *ponencia* as to why the citizenship disqualification should be reckoned not from the date of the election nor the filing of the certificate of candidacy, but from the date of proclamation, is that the only available remedy to question the ineligibility (or disloyalty) of a candidate is a petition for *quo warranto* which, under Section 253 of the Omnibus Election Code, may be filed only within ten days from proclamation and not earlier.

I beg to differ.

Clearly, *quo warranto* is not the sole remedy available to question a candidate's ineligibility for public office. Section 78 of the Omnibus Election Code allows the filing of a petition to deny due course to or

cancel the certificate of candidacy on the ground that any material representation contained therein, as required by Section 74, is false. Section 74, in turn, requires that the person filing the certificate of candidacy must state, *inter alia*, that *he is eligible for the office*, which means that he has all the qualifications (including, of course, fulfilling the citizenship requirement) and none of the disqualifications as provided by law. The petition under Section 78 may be filed *at any time not later than 25 days from the filing of the certificate of candidacy*. The section reads in full as follows:

Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy*. -- A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

This remedy was recognized in *Loong vs*. *Commission on Elections* (216 SCRA 760, 768 [1992]), where this Court held:

Thus, if a person qualified to file a petition to disqualify a certain candidate fails to file the petition within the 25-day period Section 78 of the Code for whatever reasons, the election laws do not leave him completely helpless as he has another chance to raise the disqualification of the candidate by filing a petition for *quo warranto* within ten (10) days from the proclamation of the results of the election, as provided under Section 253 of the Code. Section 1, Rule 21 of the Comelec Rules of Procedure similarly provides that any voter contesting the election of any regional, provincial or city official on the ground of ineligibility or of disloyalty to the Republic of the Philippines may file a petition for *quo warranto* with the Electoral Contest Adjudication Department. The petition may be filed within ten (10) days from the date the respondent is proclaimed (Section 2).

Likewise, Rule 25 of the Revised COMELEC Rules of Procedure allows the filing of a petition for disqualification on the ground of failure to possess all the qualifications of a candidate as provided by the Constitution or by existing laws, "any day after the last day for filing of certificates of candidacy but not later than the date of proclamation." Sections 1 and 3 thereof provide:

Rule 25 -- Disqualification of Candidates

Sec. 1. *Grounds for Disqualification*. Any candidate who does not possess all the qualifications of a candidate as provided for by the Constitution or by existing law or who commits any act declared by law to be grounds for disqualification may be disqualified from continuing as a candidate.

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Sec. 3. *Period to File Petition*. The petition shall be filed any day after the last day for filing of certificates of candidacy *but not later than the date of proclamation*.

While the validity of this rule insofar as it concerns petitions for disqualification on the ground of lack of all qualifications may be doubtful, its invalidity is not in issue here.

In this connection, it would seem appropriate to take up the last issue grappled within the *ponencia*, *viz*., is Section 78 of the Omnibus Election Code mandatory? The answer is provided in *Loong*.

We also do not find merit in the contention of respondent Commission that in the light of the provisions of Sections 6 and 7 of Rep. Act No. 6646, a petition to deny due course to or cancel a certificate of candidacy may be filed even beyond the 25-day period prescribed by Section 78 of the Code, as long as it is filed within a *reasonable time* from the discovery of the ineligibility.

Sections 6 and 7 of Rep. Act No. 6646 are here re-quoted:

Sec. 6. *Effect of Disqualification case*. Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

Sec. 7. *Petition to Deny Due Course To or Cancel a Certificate of Candidacy*. The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Blg. 881.

It will be noted that nothing in Sections 6 or 7 modifies or alters the 25- day period prescribed by Section 78 of the Code for filing the appropriate action to cancel a certificate of candidacy on account of any false representation made therein. On the contrary, said Section 7 affirms and reiterates Section 78 of the Code.

We note that Section 6 refers only to the *effects* of a disqualification case which may be based on grounds other than that provided under Section 78 of the Code. But Section 7 of Rep. Act No. 6646 also makes the effects referred to in Section 6 applicable to disqualification cases filed under Section 78 of the Code. Nowhere in Sections 6 and 7 of Rep. Act No. 6646 is mention made of the period within which these disqualification cases may be filed. This is because there are provisions in the Code which supply the periods within which a petition relating to disqualification of candidates must be filed, such as Section 78, already discussed, and Section 253 on petitions for *quo warranto*.

I then disagree with the asseveration in the *ponencia* that Section 78 is merely directory because Section 6 of R.A. No. 6646 authorizes the COMELEC to try and decide petitions for disqualification even after elections. I submit that Section 6 refers to disqualifications under Sections 12 and 68 of the Omnibus Election Code and consequently modifies Section 72 thereof. As such, the proper court or the COMELEC are granted the authority to continue hearing the case after the election, and during the pendency of the case, suspend the proclamation of the victorious candidate, if the evidence against him is strong. Sections 12, 68, and 72 of the Code provide:

Sec. 12. *Disqualifications*. Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.

The disqualifications to be a candidate herein provided shall be deemed removed upon declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.

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Sec. 68. *Disqualifications*. Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws. (Sec. 25, 1971 EC)

Sec. 72. *Effects of disqualification cases and priority*. The Commission and the courts shall give priority to cases of disqualification by reason of violation of this Act to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought.

Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. Nevertheless, if for any reason, a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, his violation of the provisions of the preceding sections shall not prevent his proclamation and assumption to office.

III

Still assuming that the repatriation is valid, I am not persuaded by the arguments in support of the thesis that Frivaldo's repatriation may be given retroactive effect, as such goes against the spirit and letter of P.D. No. 725. The spirit adheres to the principle that acquisition or re-acquisition of Philippine citizenship is not a right, but a mere privilege. Before the advent of P.D. No. 725, only the following could apply for repatriation: (a) Army, Navy, or Air Corps deserters; and (b) a woman who lost her citizenship by reason of her marriage to an alien after the death of her spouse (Section 2[2], C.A. No. 63). P.D. NO. 725 expanded this to include Filipino women who lost their Philippine citizenship by marriage to aliens even

before the death of their alien husbands, or the termination of their marital status and to natural-born Filipino citizens who lost their Philippine citizenship but subsequently desired to reacquire the latter.

Turning now to the letter of the law, P.D. No. 725 expressly provides that repatriation takes effect only after taking the oath of allegiance to the Republic of the Philippines, thus:

. . . may reacquire Philippine citizenship . . . by applying with the Special Committee on Naturalization created by Letter of Instruction No. 270, *and, if their applications are approved, taking the necessary oath of allegiance to the Republic of the Philippines*, AFTER WHICH THEY SHALL BE DEEMED TO HAVE REACQUIRED PHILIPPINE CITIZENSHIP. (emphasis and capitalization supplied)

Clearly then, the steps to reacquire Philippine citizenship by repatriation under the decree are: (1) filing the application; (2) action by the committee; and (3) taking of the oath of allegiance if the application is approved. It is only UPON TAKING THE OATH OF ALLEGIANCE that the applicant is deemed *ipso jure* to have reacquired Philippine citizenship. If the decree had intended the oath taking to retroact to the date of the filing of the application, then it should not have explicitly provided otherwise.

This theory in the *ponencia* likewise dilutes this Court's pronouncement in the first *Frivaldo* case that what reacquisition of Filipino citizenship requires is an act "formally rejecting [the] adopted state and reaffirming . . . allegiance to the Philippines." That act meant nothing less than taking of the oath of allegiance to the Republic of the Philippines. If we now take this revision of doctrine to its logical end, then it would also mean that if Frivaldo had chosen and reacquired Philippine citizenship by naturalization or through Congressional action, such would retroact to the filing of the petition for naturalization or the bill granting him Philippine citizenship. This is a proposition which both the first and second Frivaldo cases soundly rejected.

The other reason adduced in the *ponencia* in support of the proposition that P.D. No. 725 can be given retroactive effect is its alleged curative or remedial nature.

Again, I disagree. In the first place, by no stretch of legal hermeneutics may P.D. No. 725 be characterized as a curative or remedial statute:

Curative or remedial statutes are healing acts. They are remedial by curing defects and adding to the means of enforcing existing obligations. The rule in regard to curative statutes is that if the thing omitted or failed to be done, and which constitutes the defect sought to be removed or made harmless, is something the legislature might have dispensed with by a previous statute, it may do so by a subsequent one.

Curative statutes are intended to supply defects, abridge superfluities in existing laws, and curb certain evils. They are intended to enable a person to carry into effect that which they have designed and intended, but has failed of expected legal consequence by reason of some statutory disability or irregularity in their own action. They make valid that which, before the enactment of the statute, was invalid. (RUBEN E. AGPALO, Statutory Construction, Second ed. [1990], 270-271, citations omitted).

P.D. No. 725 provides for the reacquisition of Philippine citizenship lost through the marriage of a Filipina to an alien and through naturalization in a foreign country of natural-born Filipino citizens. It involves then the substantive, nay primordial, right of citizenship. To those for whom it is intended, it means, in reality, the acquisition of "*a new right*," as the *ponencia* cannot but concede. Therefore, it may not be said to merely remedy or cure a defect considering that one who has lost Philippine citizenship does not have the right to reacquire it. As earlier stated, the Constitution provides that citizenship, once lost, may only be reacquired in the manner provided by law. Moreover, it has also been observed that:

The idea is implicit from many of the cases that *remedial statutes are statutes relating to procedure and not substantive rights*. (Sutherland, Statutory Construction, Vol. 3, Third ed. [1943], §5704 at 74, citations omitted).

If we grant for the sake of argument, however, that P.D. No. 725 is curative or remedial statute, it would be an inexcusable error to give it a retroactive effect since it explicitly provides the date of its effectivity. Thus:

This Decree shall take effect immediately.

Done in the city of Manila, this 5th day of June, in the year of Our Lord, nineteen hundred and seventy five.

Nevertheless, if the retroactivity is to relate only to the reacquisition of Philippine citizenship, then nothing therein supports such theory, for as the decree itself unequivocally provides, it is only after *taking the oath of allegiance to the Republic of the Philippines that the applicant* is DEEMED TO HAVE REACQUIRED PHILIPPINE CITIZENSHIP.

IV

Assuming yet again, for the sake of argument, that taking the oath of allegiance retroacted to the date of Frivaldo's application for repatriation, the same could not be said insofar as it concerned the United States of America, of which he was a citizen. For under the laws of the United States of America, Frivaldo remained an American national until he renounced his citizenship and allegiance thereto at 2:00 p.m. on 30 June 1995, when he took his oath of allegiance to the Republic of the Philippines. Section 401 of the Nationality Act of 1940 of the United States of America provides that a person who is a national of the United States of America, whether by birth or naturalization, loses his nationality by, *inter alia*, "(b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state" (SIDNEY KANSAS, U.S. Immigration Exclusion and Deportation and Citizenship of the United States of America, Third ed., [1948] 341-342). It follows then that on election day and until the hour of the commencement of the term for which he was elected - noon of 30 June 1995 as per Section 43 of the Local Government Code - Frivaldo possessed dual citizenship, *viz*., (a) as an American citizen; and (b) as a Filipino citizen through the adoption of the theory that the effects of his taking the oath of allegiance were retrospective. Hence, he was disqualified to run for Governor for yet another reason: possession of dual citizenship, in accordance with Section 40 (d) of the Local Government Code.

V

The assertion in the *ponencia* that Frivaldo may be considered STATELESS on the basis of his claim that he "had long renounced and had long abandoned his American citizenship - long before May 8, 1985" - is untenable, for the following reasons: first, it is based on Frivaldo's unproven, self-serving allegation; second, informal renunciation or abandonment is not a ground to lose American citizenship; and third, simply put, never did the status of a STATELESS person attach to Frivaldo.

Statelessness may be either *de jure*, which is the status of individuals stripped of their nationality by their former government without having an opportunity to acquire another; or *de facto*, which is the status of individuals possessed of a nationality whose country does not give them protection outside their own country, and who are commonly, albeit imprecisely, referred to as refugees (JORGE R. COQUIA, et al., Conflict of Laws Cases, Materials and Comments, 1995 ed., 290).

Specifically, under Chapter 1, Article 1 of the United Nations Convention Regarding the Status of Stateless Persons (Philippine Treaty Series, Compiled and Annotated by Haydee B. Yorac, vol. III, 363), a stateless person is defined as "a person who is not considered as a national by any State under the operation of its law." However, it has not been shown that the United States of America ever ceased to consider Frivaldo its national at any time before he took his oath of allegiance to the Republic of the Philippines on 30 June 1995.

VI

Finally, I find it in order to also express my view on the concurring opinion of Mr. Justice Reynato S. Puno. I am absolutely happy to join him in his statement that "[t]he sovereignty of our people is the primary postulate of the 1987 Constitution" and that the said Constitution is "more people-oriented," "borne [as it is] out of the 1986 people power EDSA revolution." I would even go further by saying that this Constitution is *pro-God* (Preamble), *pro-people* (Article II, Sections 1, 3, 4, 5, 9, 15, 16; Article XI, Section 1, Article XII, Sections 1, 6; Article XIII, Sections 1, 11, 15, 16, 18; Article XVI, Sections 5(2), 6), *pro-Filipino* (Article XII, Sections 1, 2, 10, 11, 12, 14; Article XIV, Sections 1, 4(2), 13; Article XVI, Section 11), *pro-poor* (Article II, Sections 9, 10, 18, 21; Article XII, Sections 1, 2(3); Article XIII, Sections 1, 3, 4, 5, 6, 7, 9, 10, 11, 13), *pro-life* (Article II, Section 12), and *pro-family* (Article II, Section 12; Article XV).

Nevertheless, I cannot be with him in carrying out the principle of sovereignty beyond what I perceive to be the reasonable constitutional parameters. The doctrine of people's sovereignty is founded on the principles of democracy and republicanism and refers exclusively to the sovereignty of the people of the Philippines. Section 1 of Article II is quite clear on this, thus:

Sec. 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

And the Preamble makes it clear when it solemnly opens it with a clause "We, *the sovereign Filipino people* . . ." Thus, this *sovereignty* is an attribute of the Filipino people as *one people*, *one body*.

That sovereign power of the Filipino people cannot be fragmentized by looking at it as the supreme authority of the people of any of the political subdivisions to determine their own destiny; neither can we convert and treat every fragment as the whole. In such a case, this Court would provide the formula for the division and destruction of the State and render the Government ineffective and inutile. To illustrate the evil, we may consider the enforcement of laws or the pursuit of a national policy by the executive branch of the government, or the execution of a judgment by the courts. If these are opposed by the overwhelming majority of the people of a certain province, or even a municipality, it would necessarily follow that the law, national policy, or judgment must not be enforced, implemented, or executed in the said province or municipality. More concretely, if, for instance, the vast majority of the people of Batanes rise publicly and take up arms against the Government for the purpose of removing from the allegiance to the said Government or its laws, the territory of the Republic of the Philippines or any part thereof, or any body of land, naval, or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives, then those who did so -- and which are composed of the vast majority of the people of Batanes -- a political subdivision -- cannot be prosecuted for or be held guilty of rebellion in violation of Article 134 of the Revised Penal Code because of the doctrine of peoples' sovereignty. Indeed, the expansion of the doctrine of sovereignty by investing upon the people of a mere political subdivision that which the Constitution places in the entire Filipino people, may be disastrous to the Nation.

So it is in this case if we follow the thesis in the concurring opinion. Thus, simply because Frivaldo had obtained a margin of 20,000 votes over his closest rival, Lee, *i.e*., a vast majority of the voters of Sorsogon had expressed their sovereign will for the former, then this Court must yield to that will and must, therefore, allow to be set aside, for Frivaldo, not just the laws on qualifications of candidates and elective officials and naturalization and reacquisition of Philippine citizenship, but even the final and binding decisions of this Court affecting him.

This Court must be the first to uphold the Rule of Law. I vote then to DISMISS G.R. No. 120295 and GRANT G.R. No. 123755.

1 Composed of Pres. CoFootnotesmm. Regalado E. Maambong, *ponente*; Comm. Graduacion A.R. Claravall, concurring, and Comm. Julio F. Desamito, dissenting.

2 In SPC No. 95-317, entitled Juan G. Frivaldo, petitioner, vs. Raul R. Lee, respondent; *rollo*, pp. 110-129.

3 Signed by Chairman Bernardo P. Pardo, Comms. Regalado E. Maambong, Remedios A. Salazar-Fernando, Manolo B. Gorospe and Teresita Dy-Liaco Flores. Chairman Pardo certified that "Commissioner Julio F. Desamito was on official travel at the time of the deliberation and resolution of this case. However, the Commission has reserved to Comm. Desamito the right to submit a dissenting opinion." *Rollo*, pp. 159-171.

4 *Rollo*, pp. 46-49.

5 *Rollo*, pp. 50-55. The Second Division was composed of Pres. Comm. Remedios A. Salazar-Fernando, *ponente*; Comm. Teresita Dy-Liaco Flores, concurring, and Comm. Manolo B. Gorospe ("on official business").

6 Frivaldo was naturalized as an American citizen on January 20, 1983. In G.R. No. 87193, Frivaldo vs. Commission on Elections, 174 SCRA 245 (June 23, 1989), the Supreme Court, by reason of such naturalization, declared Frivaldo "not a citizen of the Philippines and therefore DISQUALIFIED from serving as Governor of the Province of Sorsogon." On February 28, 1992, the Regional Trial Court of Manila granted the petition for naturalization of Frivaldo. However, the Supreme Court in G.R. No. 104654, Republic of the Philippines vs. De la Rosa, et al., 232 SCRA 785 (June 6, 1994), overturned this grant, and Frivaldo was "declared not a citizen of the Philippines" and ordered to vacate his office. On the basis of this latter Supreme Court ruling, the Comelec disqualified Frivaldo in SPA No. 95-028.

7 Signed by Chairman Bernardo P. Pardo and the six incumbent commissioners, namely, Regalado E. Maambong, Remedios A. Salazar-Fernando, Manolo B. Gorospe, Graduacion A. Reyes-Claravall, Julio F. Desamito and Teresita Dy-Liaco Flores; *rollo*, pp. 56-57.

8 *Rollo*, p. 60.

9 *Rollo*, pp. 61-67.

10 *Rollo*, pp. 86-87. The Comelec considered the votes cast for Frivaldo as "stray votes", and thus Lee was held as having garnered the "highest number of votes."

11 *Rollo*, pp. 88-97. This is the forerunner of the present case.

12 211 SCRA 297 (July 3, 1992) and 176 SCRA 1 (August 1, 1989).

13 *Rollo*, pp. 110-128.

14 *Rollo*, pp. 159-170.

15 *Rollo*, pp. 16-17; petition, pp. 14-15.

16 *Rollo*, pp. 10-15. This is the same resolution referred to in footnote no. 5.

17 *Rollo*, pp. 16-17. This is the same resolution referred to in footnote no. 7.

18 *Rollo*, pp. 18-21. This is signed also by the Chairman and the six other Comelec Commissioners.

19 Republic Act No. 7160.

20 *See* footnote no. 6, *supra*.

21 In debunking Frivaldo's claim of citizenship, this Court in G.R. No. 87193, *supra*, p. 254, observed that "(i)f he (Frivaldo) really wanted to disavow his American citizenship and reacquire Philippine citizenship, petitioner should have done so in accordance with the laws of our country. Under C.A. No. 63 as

amended by C.A. No. 473 and P.D. 725, Philippine citizenship may be reacquired by direct act of Congress, by naturalization, or by repatriation."

22 *Supra*, p. 794.

23 Petition, p. 27; *rollo*, p. 29.

24 The full text of said memorandum reads as follows:

MEMORANDUM

TO : The Solicitor General

The Undersecretary of Foreign Affairs

The Director-General

National Intelligence Coordinating Agency

The previous administration's practice of granting citizenship by Presidential Decree or any other executive issuance, and the derivative administrative authority thereof, poses a serious and contentious issue of policy which the present government, in the exercise of prudence and sound discretion, should best leave to the judgment of the first Congress under the 1987 Constitution.

In view of the foregoing, you as Chairman and members of the Special Committee on Naturalization, are hereby directed to cease and desist from undertaking any and all proceedings within your functional area of responsibility, as defined in Letter of Instructions No. 270 dated April 11, 1975, as amended, Presidential Decree No. 836 dated December 3, 1975, as amended, and Presidential Decree No. 1379 dated May 17, 1978, relative to the grant of citizenship under the said laws, and any other related laws, orders, issuances and rules and regulations.

(Sgd.) Corazon C. Aquino

Manila, March 27, 1987.

25 Art. 7, Civil Code of the Philippines.

26 *Cf.* Ty, et al. vs. Trampe, et al., G.R. No. 117577 (December 1, 1995).

27 Petition, p. 28; *rollo*, p. 30.

28 The aforesaid Manifestation reads as follows:

M A N I F E S T A T I O N

The Solicitor General, as Chairman of the Special Committee on Naturalization, hereby manifests that the following persons have been repatriated by virtue of Presidential Decree No. 725, since June 8, 1995:

1. Juan Gallanosa Frivaldo R-000900

2. Manuel Reyes Sanchez 901

3. Ma. Nelly Dessalla Ty 902

4. Terry Herrera and

Antonio Ching 903

5. Roberto Salas Benedicto 904

6. Winthrop Santos Liwag 905

7. Samuel M. Buyco 906

8. Joselito Holganza Ruiz 907

9. Samuel Villanueva 908

10. Juan Leonardo Collas, Jr. 909

11. Felicilda Otilla Sacnanas-Chua 910

29 The text of P.D. 725 is reproduced below:

PRESIDENTIAL DECREE No. 725

PROVIDING FOR REPATRIATION OF FILIPINO WOMEN WHO HAD LOST THEIR PHILIPPINE CITIZENSHIP BY MARRIAGE TO ALIENS AND OF NATURAL BORN FILIPINOS.

WHEREAS, there are many Filipino women who had lost their Philippine citizenship by marriage to aliens;

WHEREAS, while the new Constitution allows a Filipino woman who marries an alien to retain her Philippine citizenship unless by her act or omission, she is deemed under the law to have renounced her Philippine citizenship, such provision of the new Constitution does not apply to Filipino women who had married aliens before said constitution took effect;

WHEREAS, the existing law (C.A. No. 63, as amended) allows the repatriation of Filipino women who lost their citizenship by reason of their marriage to aliens only after the death of their husbands or the termination of their marital status; and

WHEREAS, there are natural born Filipinos who have lost their Philippine citizenship but now desire to re-acquire Philippine citizenship;

Now, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby decree and order that: (1) Filipino women who lost their

Philippine citizenship by marriage to aliens; and (3) natural born Filipinos who have lost their Philippine citizenship may reacquire Philippine citizenship through repatriation by applying with the Special Committee on Naturalization created by Letter of Instructions No. 270, and, if their applications are approved, taking the necessary oath of allegiance to the Republic of the Philippines, after which they shall be deemed to have reacquired Philippine citizenship. The Commission on Immigration and Deportation shall thereupon cancel their certificate of registration.

The aforesaid Special Committee is hereby authorized to promulgate rules and regulations and prescribe the appropriate forms and the required fees for the effective implementation of this Decree.

This Decree shall take effect immediately.

Done in the City of Manila, this 5th day of June, in the year of Our Lord, nineteen hundred and seventy-five.

30 *See* footnote no. 6, *supra*.

31 *Cf.* Labo, Jr. vs. Comelec, 211 SCRA 297 (July 3, 1992).

32 The term of office of all local elective officials elected after the effectivity of this Code shall be three (3) years, starting from noon of June 30, 1992 or such date as may be provided for by law, . . ." Sec. 43, Local Government Code.

33 96 Phil. 447, 453 (1955).

34 The following are excerpts from the transcript of stenographic notes of the oral argument held on March 19, 1996:

JUSTICE PANGANIBAN: Mr. Counsel, it is your position then that the candidate should be a citizen at the time of proclamation?

ATTY. BRILLANTES: Yes, Your Honor, it is required that he must be a citizen at the time of proclamation and not only that, at the time that he assumes the office he must have the continuing qualification as a citizen.

JUSTICE PANGANIBAN: Should that not be reckoned from the time of filing of certificate of candidacy or at least the day of the election?

ATTY. BRILLANTES: Yes, Your Honor, there are positions taken that it should be reckoned from the date of certificate of candidacy as in the case of qualification for Batasang Pambansa before under B.P. 53 - it says that for purposes of residence it must be reckoned . . . from the time of the filing of the certificate, for purposes of age, from the time of the date of the election. But when we go over all the provisions of law under current laws, Your Honor, there is no qualification requirement insofar as citizenship is concern(ed) as to when, as to when you should be a citizen of the Philippines and we say that if there is no provision under any existing law which requires that you have to be a citizen of the Philippines on the date of the filing or on the date of election then it has to be equitably interpreted to mean that if you

are already qualified at the time that the office is supposed to be assumed then you should be allowed to assume the office.

JUSTICE PANGANIBAN: Is it not also true that under the Local Autonomy Code the candidate should also be a registered voter and to be a registered voter one must be a citizen?

ATTY. BRILLANTES: Yes, Your Honor, in fact, Mr. Frivaldo has always been a registered voter of Sorsogon. He has voted in 1987, 1988, 1992, then he voted again in 1995. In fact, his eligibility as a voter was questioned but the Court dismissed (*sic*) his eligibility as a voter and he was allowed to vote as in fact, he voted in all the previous elections including on May 8, 1995.

JUSTICE PANGANIBAN: But the fact that he voted does not make him a citizen. The fact is, he was declared not a citizen by this Court twice.

ATTY. BRILLANTES: That is true, Your Honor, we admit that he has been twice declared not citizen and we admit the ruling of the Supreme Court is correct but the fact is, Your Honor, the matter of his eligibility to vote as being a registered voter was likewise questioned before the judiciary. There was a ruling by the Municipal Court, there was a ruling by the Regional Trial Court and he was sustained as a valid voter, so he voted.

JUSTICE PANGANIBAN: I raised this question in connection with your contention that citizenship should be determined as of the time of proclamation and not as of the time of the election or at the time of the filing of the certificate of candidacy.

ATTY. BRILLANTES: That is true, Your Honor.

JUSTICE PANGANIBAN: And is it your contention that under the law, particularly the Local Autonomy Code, the law does not specify when citizenship should be possessed by the candidate, is that not correct?

ATTY. BRILLANTES: That is right, Your Honor, there is no express provision.

JUSTICE PANGANIBAN: I am also asking you that under the Local Autonomy Code the candidate for governor or for other local positions should be a voter and to be a voter one must be a citizen?

ATTY. BRILLANTES: That is right, Your Honor, but the fact of voting is not an issue here because he was allowed to vote and he did in fact vote and in fact, he was a registered voter. (TSN, March 19, 1996.)

35 Section 117, Batas Pambansa Blg. 881, otherwise known as "The Omnibus Election Code of the Philippines", as amended, provides for the various qualifications of voters, one of which is Filipino citizenship.

36 Comment, p. 11; *rollo*, p. 259.

37 *See* footnote no. 33.

38 Section 253 reads as follows:

Sec. 253. *Petition for quo warranto*. -- Any voter contesting the election of any member of the Congress, regional, provincial, or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for *quo warranto* with the Commission within ten days after the proclamation of the results of the election. (Art. XIV, Sec. 60, BP 697; Art. XVIII, Sec. 189, par. 2, 1978 EC).

Any voter contesting the election of any municipal or barangay officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for *quo warranto* with the regional trial court or metropolitan or municipal trial court, respectively, within ten days after the proclamation of the results of the election. (Art. XVIII, Sec. 189, par. 2, 1978 EC).

39 Art. 4, New Civil Code. *See also* Gallardo vs. Borromeo, 161 SCRA 500 (May 25, 1988), and Nilo vs. Court of Appeals, 128 SCRA 519 (April 2, 1984).

40 Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. I, 1990 ed., p. 23 states:

Exceptions to Rule. -- Statutes can be given retroactive effect in the following cases: (1) when the law itself so expressly provides, (2) in case of remedial statutes, (3) in case of curative statutes, (4) in case of laws interpreting others, and (5) in case of laws creating new rights.

41 *Id*., p. 25.

42 Agpalo, *Statutory Construction*, 1990 ed., pp. 270-271.

43 73 Am Jur 2d, Sec. 354, p. 489, cited in Castro vs. Sagales, 94 Phil. 208, 210 (1953).

44 Memorandum, p. 9.

45 73 Am Jur 2d, Sec. 351, p. 488.

46 73 Am Jur 2d, Sec. 354, p. 490; emphasis supplied.

47 Art. 10, Civil Code of the Philippines.

48 Based on the "Corrected Compliance" dated May 16, 1996 filed by the Solicitor General, it appears that, excluding the case of Frivaldo, the longest interval between date of filing of an application for repatriation and its approval was three months and ten days; the swiftest action was a same-day approval.

49 Sec. 40. *Disqualifications*. -- The following persons are disqualified from running for any elective local position:

xxx xxx xxx

(d) Those with dual citizenship;"

50 p. 11; *rollo*, p. 259.

51 Resolution, p. 12; *rollo*, p. 121.

52 *Cf.* Navarro vs. Commission on Elections, 228 SCRA 596 (December 17, 1993); Arao vs. Commission on Elections, 210 SCRA 290 (June 23, 1992).

53 The dispositive portion of said Resolution reads:

WHEREFORE, this Division resolves to GRANT the petition and declares that respondent is DISQUALIFIED to run for the office of Provincial Governor of Sorsogon on the ground that he is not a citizen of the Philippines. Accordingly respondent's certificate of candidacy is cancelled.

54 Petition, p. 19; *rollo*, p. 21.

55 Resolution promulgated on December 19, 1995, p. 7; *rollo*, p. 116.

56 42 SCRA 561, 565 (December 20, 1971), *citing* Moy Ya Lim Yao vs. Commissioner of Immigration, L-21289, October 4, 1971.

57 Art. IX, Sec. 2.

58 SPC No. 95-317 is entitled "Annulment of Proclamation" and contains the following prayer:

WHEREFORE, it is most respectfully prayed of this Honorable Commission that after due notice and hearing an Oder (*sic*) /Resolution/Decision be issued as follows:

a) Annulling/setting aside the 30 June 1995 proclamation of respondent as the duly election (*sic*), Governor of Sorsogon for being contrary to law;

b) Ordering the proclamation of the petitioner as duly elected governor of Sorsogon;

xxx xxx xxx

59 229 SCRA 666, 674 (February 4, 1994).

60 211 SCRA 297, 309 (July 3, 1992).

61 G.R. No. 120265, September 18, 1995.

62 *Supra*, at p. 312.

63 *See* footnotes 2 and 3.

64 174 SCRA 245, 254 (June 23, 1959).

65 Salonga and Yap, *Public International Law*, 1966 ed., p. 239.

66 In *Espinosa vs*. *Aquino*, (Electoral Case No. 9, Senate Electoral Tribunal [SET]), the election of the late Senator Benigno S. Aquino, Jr. was upheld, despite his not being of the required age on the day of the election, although he celebrated his thirty-fifth birthday before his proclamation. Much later, in 1990, this Court held in *Aznar vs*. *Comelec* (185 SCRA 703, May 25, 1990) that even if Emilio "Lito" Osmeña held an Alien Certificate of Registration as an American citizen, he was still not disqualified from occupying the local elective post of governor, since such certificate did not preclude his being "*still* a Filipino." The holding in *Aquino* was subsequently nullified by the adoption of the 1987 Constitution (Art. VI, Sec. 3), which specified that the age qualification must be possessed on the day of the elections, and not on the day of the proclamation of the winners by the board of canvassers. On the other hand, Sec. 40 of Republic Act No. 7160 (Local Government Code of 1991) which took effect on January 1, 1992, provides that those with dual citizenship are disqualified from running for any elective local position, and effectively overturns the ruling in *Aznar*. But the point is that to the extent possible, and unless there exist provisions to the contrary, the laws have always been interpreted to give fullest effect to the political will.

67 Benito vs. Commission on Elections, 235 SCRA 436, 442 (August 17, 1994).

68 This antagonism was clearly present in the two earlier cases involving Frivaldo. *See* footnote no. 6.

PUNO, J., concurring:

1 The 1987 Constitution added the word "democratic" in the statement of the principle.

2 Section 24(a) of the Tydings-McDuffie Law which authorized the Filipino people to draft a Constitution in 1934 required that the "constitution formulated and drafted shall be republican in form."

This Court has observed that even before the Tydings-McDuffie Law, the Philippine Bill and the Jones Law have ". . . extended the powers of a republican form of government modeled after that of the United States to the Philippines." Roa v. Collector of Customs, 23 Phil. 315, 340 [1912], Severino v. Gov. General, 16 Phil. 366, 383 [1910], US v. Bull, 15 Phil. 7, 27 [1910].

3 Words and Phrases, Vol. 39 A., p. 68 *citing* Cherokee Nation v. Southern Kan. R. Co., 33 F. 900, 906.

4 Dean of the UP College of Law; later President of U.P., and Delegate to the 1971 Constitutional Convention.

5 Since, Philippine Political Law, Principles and Concepts, 1954, ed., p. 22.

6 Barker, Principles of Social and Political Theory, p. 59 (1952 ed.).

7 118 US 356.

8 Cruz, Philippine Political Law, p. 49, [1991 ed.].

9 Sinco, *op*. *cit*., pp. 23-24.

10 3 AM JUR 2d 889-890; 63 AM JUR 2d 653; 67 CSJ 926.

11 Moya v. del Fierro, 69 Phil. 199.