

CASE NOTE

THE *POE* CASES: PREVENTING STATELESSNESS FOR FOUNDINGS IN THE PHILIPPINES

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I THE LAW

Philippine Senator, Grace Poe, is a foundling. Due to her status as a foundling, the question of whether Senator Poe was a natural-born citizen was raised in the Supreme Court of the Philippines (‘the Supreme Court’), as the Philippine Constitution provides that only natural-born citizens may run for national government offices.¹ Natural-born citizens are those who are citizens of the Republic of the Philippines (‘the Philippines’) from birth without having to perform any act to acquire or perfect their Philippine citizenship.² Hence, the status of Senator Poe’s citizenship was crucial in determining whether she could run for national office.

The Supreme Court promulgated two decisions in her favour, both dealing, for the first time, with the status of foundlings.

In *Poe-Llamanzares v Commission on Elections*,³ the Supreme Court, with a 9:6 vote, reversed the decision of the Commission on Elections (‘COMELEC’) to

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¹ See art VI, s 3 of the *Constitution of the Republic of the Philippines* (‘Philippine Constitution’) which provides:

No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

Cf art VII, s 2 which provides:

No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election and a resident of the Philippines for at least ten years immediately preceding such election.

² *ibid* art IV, s 2 provides:

Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

³ *Poe-Llamanzares v Commission on Elections* (Supreme Court of the Philippines, GR No 221697/221698-700, 8 March 2016) 782 Phil 292 (‘*Poe-Llamanzares*’).

cancel Poe's certificate of candidacy and held that she was qualified to be a candidate for President in the 2016 national elections. Months after, in *David v Senate Electoral Tribunal* ('David'),⁴ the Court, with a 9:3 vote, upheld the decision of the Senate Electoral Tribunal ('SET'), holding that Poe was a natural-born citizen qualified to hold office as a senator of the Republic.

II BACKGROUND

Senator Poe was abandoned at the Parish Church of Jaro, the City of Iloilo, as an infant. Edgardo Militar found her outside the church and turned her over to his brother, Emiliano Militar, who then reported to the Office of the Local Civil Registrar that the infant was found on 6 September 1968. She was given the name Mary Grace Natividad Contreras Militar.

Senator Poe was then adopted by spouses Ronald Allan Poe and Jesusa Sonora Poe (movie actors, Fernando Poe Jr and Susan Roces). The municipal trial court that heard the petition for adoption ordered a change in Senator Poe's name to Mary Grace Natividad *Sonora Poe*.⁵ A new birth certificate was issued for Mary Grace Natividad Sonora Poe with her adopted parents named as her father and mother with her citizenship being labeled as 'Filipino'.⁶

On 27 July 1991, Senator Poe married Teodoro Misael Daniel V Llamanzares, both an American and Filipino national since birth. On 29 July 1991, Senator Poe moved to the United States of America ('the United States') with her husband and was naturalised and granted American citizenship on 18 October 2001. To acquire American citizenship, Senator Poe took an oath of allegiance to the United States which contained the phrase:⁷

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen ...

Senator Poe returned to the Philippines when her father was hospitalised and slipped into a coma. After he passed away, Senator Poe stayed in the Philippines to attend her father's funeral and settle his estate. After Senator Poe consulted with her children, they all agreed to return to the Philippines to support Poe's mother.

On 7 July 2006, Senator Poe took the Oath of Allegiance to the Republic of the Philippines. Thereafter, she filed a Petition Under Oath to Re-Acquire/Retain Philippine Citizenship, which was granted.

III POE-LLAMANZARES V COMMISSION ON ELECTIONS

When Grace Poe filed her certificate of candidacy for President on 15 October 2015, a petition was filed by a private citizen to have it cancelled on the ground that she did not satisfy the citizenship requirements of the Constitution. The

⁴ *David v Senate Electoral Tribunal* (Supreme Court of the Philippines, GR No 221548, 20 September 2016) 796 Phil 529 ('David').

⁵ *ibid* 451.

⁶ 'Timeline: Grace Poe's Citizenship, Residency' *Rappler* (online, 4 September 2015) <<https://www.rappler.com/nation/elections/104731-grace-poe-citizenship-residency-timeline-arguments>>, archived at <<https://perma.cc/Q5CW-HW78>>.

⁷ 'The Oath of Allegiance' *US Citizenship and Immigration Services* (Web Page, 16 September 2021) <<https://www.uscis.gov/sites/default/files/document/n-400-topic-exercises/The-Oath-Of-Allegiance.pdf>>, archived at <<https://perma.cc/23J2-23FR>>.

COMELEC ruled against Poe. Three other petitions from private citizens were filed to disqualify Poe from the election on the same ground. The COMELEC decided these petitions against Poe as well.⁸

Poe brought the COMELEC rulings to the Supreme Court which reversed the COMELEC decisions, holding that she satisfied the citizenship requirements and was qualified to be a candidate for President in the May 2016 elections.

The challenge to Poe's citizenship rested on the fact that foundlings are not expressly mentioned as citizens in any of the Philippines' three Constitutions.⁹ On this point, the majority of the Supreme Court held that '[a]s a matter of law, foundlings are, as a class, natural-born citizens. While the 1935 Constitution's enumeration is silent as to foundlings, there is no restrictive language which would definitely exclude foundlings either.'¹⁰ The Court examined the intent of the framers of the Constitution and found that there was an attempt to include foundlings in the enumeration of who are considered natural-born citizens under the Constitution. This was not carried out, 'not because there was any objection to the notion that persons of "unknown parentage" are not citizens but only because their number was not enough to merit specific mention'.¹¹

The Court added that it could not discern any 'intent or language permitting discrimination against foundlings' and instead found that all three Constitutions guarantee the basic right to equal protection of the laws and exhort the State to render social justice. It cited provisions in the present Constitution that do not show any intent to discriminate against foundlings 'on account of their unfortunate status'.¹²

IV DAVID V SENATE ELECTORAL TRIBUNAL

Prior to running as a presidential candidate in the 2016 elections, Grace Poe's citizenship was already questioned in the earlier case of *David* when she decided to file her candidacy for a senatorial seat during the 2013 elections.

On 27 September 2012, Grace Poe executed a Certificate of Candidacy to run for senator, which was submitted to the Commission on Elections on 2 October 2012. She won and was declared as senator-elect on 16 May 2013.

Rizalito Y David, a losing candidate in the 2013 Senatorial Elections, filed before the SET a Petition for *Quo Warranto* on 6 August 2015. He contested the

⁸ This portion of text is reproduced from Dante Gatmaytan, 'Philippine Supreme Court: Foundlings are Natural Born Citizens; May Run for President' (International Journal of Constitutional Law Blog, 16 March 2016) <<http://www.iconnectblog.com/2016/03/philippine-supreme-court-foundlings-are-natural-born-citizens-may-run-for-president>>, archived at <<https://perma.cc/R5M2-7TG6>>. For an extended, if whimsical, treatment of the case, see Dante Gatmaytan, 'Hard Cases Make Bad Movies: The Candidates Poe and Philippine Citizenship Law as Screenplay' (2021) 94(1) Philippine Law Journal 493.

⁹ The Republic of the Philippines ('the Philippines') has had three Constitutions since 1995; the 1935 *Constitution* (required by the United States of America before it was granted independence), the 1973 *Commonwealth Constitution* (a version designed during the term of Ferdinand Marcos) and the 1987 *Freedom Constitution* (written after Marcos was deposed in 1986).

¹⁰ *Poe-Llamanzares v Commission on Elections* (n 3).

¹¹ *ibid.*

¹² *ibid.*

election of Senator Poe for failing to ‘comply with the citizenship and residency requirements mandated by the 1987 Constitution’.¹³

The Court sided with the SET, saying that the pre-eminent consideration in reading the Constitution is the people’s consciousness: that is, their popular, rather than technical legal understanding.

The Court proceeded to explain its approach to interpreting the Constitution:

On an initial level, a plain textual reading readily identifies the specific provision, which principally governs: the Constitution’s actual definition, in Article IV, Section 2, of ‘natural-born citizens’. This definition must be harmonized with Section 1’s enumeration, which includes a reference to parentage. These provisions must then be appreciated in relation to the factual milieu of this case. The pieces of evidence before the Senate Electoral Tribunal, admitted facts, and uncontroverted circumstances adequately justify the conclusion of private respondent’s Filipino parentage.

On another level, the assumption should be that foundlings are natural-born unless there is substantial evidence to the contrary. This is necessarily engendered by a complete consideration of the whole Constitution, not just its provisions on citizenship. This includes its mandate of defending the well-being of children, guaranteeing equal protection of the law, equal access to opportunities for public service, and respecting human rights, as well as its reasons for requiring natural-born status for select public offices. Moreover, this is a reading validated by contemporaneous construction that considers related legislative enactments, executive and administrative actions, and international instruments.¹⁴

Aside from the interpretation of the Constitution, the Court’s decision in the case of *David* was permeated with concepts of equality and justice. The Court held that concluding that foundlings are not natural-born Filipino citizens is tantamount to permanently discriminating against foundling citizens.¹⁵ They stated: ‘To hold ... that [a] private respondent is stateless is not only to set a dangerous and callous precedent. It is to make this Court an accomplice to injustice.’¹⁶

In conclusion, the Supreme Court said:

Equality, the recognition of the humanity of every individual, and social justice are the bedrocks of our constitutional order. By the unfortunate fortuity of the inability or outright irresponsibility of those who gave them life, foundlings are compelled to begin their very existence at a disadvantage. Theirs is a continuing destitution that can never be truly remedied by any economic relief.

If we are to make the motives of our Constitution true, then we an [sic] never tolerate an interpretation that condemns foundlings to an even greater misfortune because of their being abandoned. The Constitution cannot be rendered inert and meaningless for them by mechanical judicial fiat.¹⁷

V COMMENTS

Both Supreme Court decisions favoured Senator Poe, veering away from an interpretation of treating a constitutional ambiguity (the lack of reference to the status of foundlings) as that which would sanction discrimination. *David* was clear

¹³ *David v SET* (n 4).

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ *ibid.*

that this would be an injustice and that the Court is not in the business of reifying discriminatory classes based on circumstances of birth.¹⁸

The Supreme Court's conclusion that Senator Poe is a natural-born citizen is supported not only by a compassionate reading of the Constitution but is also supported by a legal scaffolding that has always treated foundlings as Filipinos.

The Supreme Court's interpretation was also supported by the laws and acts of the executive branch of government. Among other laws, the Court cited the *Juvenile Justice and Welfare Act of 2006* (which declares a policy protecting the best interests of the child),¹⁹ as well as the *Domestic Adoption Act of 1998*²⁰ and the *Inter-Country Adoption Act of 1995*²¹ which include 'foundlings' among those who are 'Filipino children'.

VI RECENT DEVELOPMENTS

In 2022, President Rodrigo Duterte signed the *Foundling Recognition and Protection Act of 2022* ('the Act').²² Among other provisions, the Act provides for the registration of foundlings²³ and the rights of the biological parents.²⁴ It also removes criminal liability for parents who relinquish their infants.²⁵

The Act also addresses some of the issues raised by Senator Poe's candidacy for national office, as the following sections show:²⁶

Definition of Foundling.

For [the] purposes of this Act, a foundling shall be a deserted or abandoned child or infant with unknown facts of birth and parentage. This shall also include those who have been duly registered as a foundling during her or his infant childhood, but have reached the age of majority without benefitting from adoption procedures upon the passage of this law.

The Act provides a statutory presumption that foundlings are natural-born citizens:

Citizenship Status of a Foundling Found in the Philippines and/or in Philippine Embassies, Consulates and Territories Abroad.

A foundling found in the Philippines and/or in Philippine embassies, consulates and territories abroad is presumed a natural-born Filipino citizen regardless of the status or circumstances of birth. As a natural-born citizen of the Philippines, a foundling is accorded with rights and protections at the moment of birth equivalent to those belonging to such class of citizens whose citizenship does not need perfection or any further act.

The presumption of natural-born status of a foundling may not be impugned in any proceeding unless substantial proof of foreign parentage is shown. The natural-born status of a foundling shall not also be affected by the fact that the birth certificate

¹⁸ *ibid.*

¹⁹ *Juvenile Justice and Welfare Act of 2006*, Rep Act No 9344, s 2(b) (Philippines).

²⁰ *Domestic Adoption Act of 1998*, Rep Act No 8552, s 5 (Philippines).

²¹ Section 2 of the *Inter-Country Adoption Act of 1995*, Rep Act No 8043 (Philippines) uses the term 'abandoned child' to refer to foundlings.

²² *Foundling Recognition and Protection Act of 2022*, Rep Act No 11767 (Philippines).

²³ *ibid* s 10.

²⁴ *ibid* s 12.

²⁵ *ibid* s 13.

²⁶ *ibid* s 3.

was simulated, or that there was absence of a legal adoption process, or that there was inaction or delay in reporting, documenting, or registering a foundling.²⁷

There are other indications of State concern for foundlings. President Duterte also signed the *Domestic Administrative Adoption and Alternative Child Care Act of 2022*,²⁸ providing for alternative care, custody and adoption policies.²⁹

Foundlings are among the abandoned children³⁰ who may be adopted. This act adopts a similar definition of foundlings to that of the *Foundling Recognition and Protection Act of 2022*. Section 4(u) provides:

[A] [f]oundling refers to a deserted or abandoned child of unknown parentage and whose date or circumstances of birth on Philippine territory are unknown and undocumented. This shall also include those with the above circumstances of birth during their infancy and/or childhood, and have reached the age of majority without benefitting from adoption procedures ...³¹

VII CONCLUSION

In the *Poe* cases, the Supreme Court chose to end ‘the plight of a defenseless class which suffers from a misfortune not of their own making’³² by holding that foundlings are natural-born citizens of the Philippines. Hence, they can no longer be treated as naturalised citizens of the Philippines, or worse, as stateless persons. With this finding, foundlings are, by constitutional interpretation, not barred from running for national offices or enjoying other rights of natural-born citizens.

A contrary ruling from the Supreme Court in the *Poe* cases would have had adverse effects on thousands of foundlings, dooming them to statelessness and barring them from national public office. Notably, figures show that as of December 2021, there are at least 6,580 ‘certificates of foundling’ in the Philippines.³³ There were also 1,473 foundlings who are legally available for adoption from 2009 to October 2021, according to the Department of Social Welfare and Development.³⁴

Remarkably, the struggles of Senator Poe as a foundling and the decisions of the Supreme Court in the *Poe* cases were crucial in the creation and passage of the *Foundling Recognition and Protection Act* in May 2022³⁵ and the act’s

²⁷ *ibid* s 5.

²⁸ *Domestic Administrative Adoption and Alternative Child Care Act of 2022*, Rep Act No 11642 (Philippines) (*‘Domestic Administrative Adoption and Alternative Child Care Act’*).

²⁹ *ibid* s 2(2).

³⁰ Section 4(a) of the *Domestic Administrative Adoption and Alternative Child Care Act* includes foundlings in its definition of ‘abandoned child’:

Abandoned child refers to a child who has no proper parental care or guardianship, a foundling, or one who has been deserted by one’s parents for a period of at least three (3) continuous months, and has been declared as such by the NACC ...

The NACC is the National Authority for Child Care.

³¹ *ibid* s 4(u).

³² *Poe-Llamanzares v Commission on Elections* (n 3).

³³ Christia Marie Ramos, ‘Senate Approves Bill for Foundlings’, *Inquirer* (online, 31 January 2022) <<https://newsinfo.inquirer.net/1547860/fwd-senate-approves-bill-for-foundlings>>, archived at <<https://perma.cc/J2BZ-V5TH>>.

³⁴ *ibid*.

³⁵ Hannah Torrezoga, ‘Hontiveros Hails Approval of Rules and Regulations for Foundling Law’, *Manila Bulletin* (online, 9 September 2022) <<https://mb.com.ph/2022/09/09/hontiveros-hails>>.

implementation of rules and regulations in September 2022.³⁶ As stated by Senator Grace Poe, co-author of the bill in the Senate, the passage of the act was a victory that ensured ‘abandoned children [would enjoy] equal treatment and every available service due [to] them’.³⁷

The new law follows the path created by the Supreme Court in its decisions as it provides that foundlings found in the Philippines, and at Philippine embassies, consulates and territories are presumed to be natural-born citizens,³⁸ which ensures that foundlings will not fade back to being ‘legally invisible’³⁹ nor endure discrimination under the law due to their being foundlings.

approval-of-rules-and-regulations-for-foundling-law>, archived at <<https://perma.cc/P6JJ-645H>>.

³⁶ Paolo Romero, ‘IRR for Foundlings Law Signed’, *Philippine Star* (online, 11 September 2022) <<https://www.philstar.com/headlines/2022/09/11/2208822/irr-foundlings-law-signed>>, archived at <<https://perma.cc/VY2V-MLVA>>.

³⁷ *ibid.*

³⁸ *Foundling Recognition and Protection Act* (n 22) s 5.

³⁹ *Poe-Llamanzares v Commission on Elections* (n 3).