EN BANC

ATTY. ROMULO B. MACALINTAL,
Petitioner,

- versus -

COMMISSION ON ELECTIONS, HON. ALBERTO ROMULO, in his official capacity as Executive Secretary, and HON. EMILIA T. BONCODIN, Secretary of the Department of Budget and Management,
Respondents.

G.R. No. 157013

Members:

DAVIDE, JR., ***C.J***.
BELLOSILLO,
PUNO,
VITUG,
PANGANIBAN,
QUISUMBING,*
YNARES-SANTIAGO,
SANDOVAL-GUTIERREZ,**
CARPIO,
AUSTRIA-MARTINEZ,
CORONA,
CARPIO-MORALES,
CALLEJO, SR.,
AZCUNA, and
TINGA, ***JJ***.

Promulgated:
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x - x

D E C I S I O N

AUSTRIA-MARTINEZ, *J*.:

Before the Court is a petition for certiorari and prohibition filed by Romulo B. Macalintal, a member of the Philippine Bar, seeking a declaration that certain provisions of Republic Act No. 9189 (*The Overseas Absentee Voting Act of 2003*)[1[1]] suffer from constitutional infirmity. Claiming that he has actual and material legal interest in the subject matter of this case in seeing to it that public funds are properly and lawfully used and appropriated, petitioner filed the instant petition as a taxpayer and as a lawyer.

The Court upholds the right of petitioner to file the present petition.

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* On Leave
** On Official Leave

1[1] President Gloria Macapagal-Arroyo approved the law on 13 February 2003. It was published in the 16 February 2003 of *Today* and *Daily Tribune*.

R.A. No. 9189, entitled, "*An Act Providing for A System of Overseas Absentee Voting by Qualified Citizens of the Philippines Abroad, Appropriating Funds Therefor, and for Other Purposes*," appropriates funds under Section 29 thereof which provides that a supplemental budget on the General Appropriations Act of the year of its enactment into law shall provide for the necessary amount to carry out its provisions. Taxpayers, such as herein petitioner, have the right to restrain officials from wasting public funds through the enforcement of an unconstitutional statute.[2[2]] The Court has held that they may assail the validity of a law appropriating public funds[3[3]] because expenditure of public funds by an officer of the State for the purpose of executing an unconstitutional act constitutes a misapplication of such funds.[4[4]]

The challenged provision of law involves a public right that affects a great number of citizens. The Court has adopted the policy of taking jurisdiction over cases whenever the petitioner has seriously and convincingly presented an issue of transcendental significance to the Filipino people. This has been explicitly pronounced in *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. vs. Tan,*[5[5]] where the Court held:

> Objections to taxpayers' suit for lack of sufficient personality standing, or interest are, however, in the main procedural matters. Considering the importance to the public of the cases at bar, and in keeping with the Court's duty, under the 1987 Constitution, to determine whether or not the other branches of government have kept themselves within the limits of the Constitution and the laws and that they have not abused the discretion given to them, the Court has brushed aside technicalities of procedure and has taken cognizance of these petitions.[6[6]]

Indeed, in this case, the Court may set aside procedural rules as the constitutional right of suffrage of a considerable number of Filipinos is involved.

The question of propriety of the instant petition which may appear to be visited by the vice of prematurity as there are no ongoing proceedings in any tribunal, board or before a government official exercising judicial, quasi-judicial or ministerial functions as required by Rule 65 of the Rules of Court, dims in light of the importance of the constitutional issues raised by the petitioner. In *Tañada vs. Angara,*[7[7]] the Court held:

> In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. "The question thus posed is judicial rather than political. The duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld." Once a "controversy as to the application or interpretation of

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2[2] PHILCONSA vs. Mathay, 124 Phil. 890 (1966); 18 SCRA 300, 306.

3[3] *Id*., citing PHILCONSA vs. Gimenez, 122 Phil. 894 (1965).

4[4] Sanidad vs. COMELEC, L-44640, 12 October 1976, 73 SCRA 333, 358-359 citing Pascual vs. Secretary of Public Works, 110 Phil. 331 (1960).

5[5] G.R. No. 81311, 30 June 1988, 163 SCRA 371, 378.

6[6] *Id*., p. 378 cited in Tatad vs. The Secretary of the Department of Energy, 346 Phil. 321, 359 (1997).

7[7] 338 Phil. 546, 574 (1997).

> constitutional provision is raised before this Court (as in the instant case), it becomes a legal issue which the Court is bound by constitutional mandate to decide."

In another case of paramount impact to the Filipino people, it has been expressed that it is illogical to await the adverse consequences of the law in order to consider the controversy actual and ripe for judicial resolution.[8][8] In yet another case, the Court said that:

> . . . despite the inhibitions pressing upon the Court when confronted with constitutional issues, it will not hesitate to declare a law or act invalid when it is convinced that this must be done. In arriving at this conclusion, its only criterion will be the Constitution and God as its conscience gives it in the light to probe its meaning and discover its purpose. Personal motives and political considerations are irrelevancies that cannot influence its decisions. Blandishment is as ineffectual as intimidation, for all the awesome power of the Congress and Executive, the Court will not hesitate "to make the hammer fall heavily," where the acts of these departments, or of any official, betray the people's will as expressed in the Constitution . . .[9][9]

The need to consider the constitutional issues raised before the Court is further buttressed by the fact that it is now more than fifteen years since the ratification of the 1987 Constitution requiring Congress to provide a system for absentee voting by qualified Filipinos abroad. Thus, strong reasons of public policy demand that the Court resolves the instant petition[10][10] and determine whether Congress has acted within the limits of the Constitution or if it had gravely abused the discretion entrusted to it.[11][11]

The petitioner raises three principal questions:

> A. Does Section 5(d) of Rep. Act No. 9189 allowing the registration of voters who are immigrants or permanent residents in other countries by their mere act of executing an affidavit expressing their intention to return to the Philippines, violate the residency requirement in Section 1 of Article V of the Constitution?
>
> B. Does Section 18.5 of the same law empowering the COMELEC to proclaim the winning candidates for national offices and party list representatives including the President and the Vice-President violate the constitutional mandate under Section 4, Article VII of the Constitution that the winning candidates for President and the Vice-President shall be proclaimed as winners by Congress?

8[8] Separate Opinion of Kapunan, *J.* in Cruz vs. Secretary of Environment and Natural Resources, G.R. No. 135385, 6 December 2000, 347 SCRA 128, 256.

9[9] Luz Farms vs. Secretary of the Department of Agrarian Reform, G.R. No. 86889, 4 December 1990, 192 SCRA 51, 58-59.

10[10] *See:* Gonzales vs. COMELEC, G.R. No. 27833, 18 April 1969, 27 SCRA 835.

11[11] Kilosbayan, Inc. vs. Guingona, Jr. 232 SCRA 110 (1994) and Basco vs. Phil. Amusements and Gaming Corporation, 197 SCRA 52 (1991).

C. May Congress, through the Joint Congressional Oversight Committee created in Section 25 of Rep. Act No. 9189, exercise the power to review, revise, amend, and approve the Implementing Rules and Regulations that the Commission on Elections shall promulgate without violating the independence of the COMELEC under Section 1, Article IX-A of the Constitution?

The Court will resolve the questions in seriatim.

A. ***Does Section 5(d) of Rep. Act No. 9189 violate Section 1, Article V of the 1987 Constitution of the Republic of the Philippines?***

Section 5(d) provides:

Sec. 5. *Disqualifications.* – The following shall be disqualified from voting under this Act:

. . . . . .

d) An immigrant or a permanent resident who is recognized as such in the host country, unless he/she executes, upon registration, an affidavit prepared for the purpose by the Commission declaring that he/she shall resume actual physical permanent residence in the Philippines not later than three (3) years from approval of his/her registration under this Act. Such affidavit shall also state that he/she has not applied for citizenship in another country. Failure to return shall be cause for the removal of the name of the immigrant or permanent resident from the National Registry of Absentee Voters and his/her permanent disqualification to vote *in absentia.*

Petitioner posits that Section 5(d) is unconstitutional because it violates Section 1, Article V of the 1987 Constitution which requires that the voter must be a resident in the Philippines for at least one year and in the place where he proposes to vote for at least six months immediately preceding an election. Petitioner cites the ruling of the Court in *Caasi vs. Court of Appeals*[12[12]] to support his claim. In that case, the Court held that a "green card" holder immigrant to the United States is deemed to have abandoned his domicile and residence in the Philippines.

Petitioner further argues that Section 1, Article V of the Constitution does not allow provisional registration or a promise by a voter to perform a condition to be qualified to vote in a political exercise;[13[13]] that the legislature should not be allowed to circumvent the requirement of the Constitution on the right of suffrage by providing a condition thereon which in effect amends or alters the aforesaid residence requirement to qualify a Filipino abroad to vote.[14[14]] He claims that the right of suffrage should not be granted to anyone who, on the date of the election, does not possess the qualifications provided for by Section 1, Article V of the Constitution.

Respondent COMELEC refrained from commenting on this issue.

12[12] G.R. No. 88831, 8 November 1990, 191 SCRA 229.

13[13] Petition, p. 7.

14[14] *Id*., p. 9.

15[15]

In compliance with the Resolution of the Court, the Solicitor General filed his comment for all public respondents. He contraposes that the constitutional challenge to Section 5(d) must fail because of the absence of clear and unmistakable showing that said provision of law is repugnant to the Constitution. He stresses: All laws are presumed to be constitutional; by the doctrine of separation of powers, a department of government owes a becoming respect for the acts of the other two departments; all laws are presumed to have adhered to constitutional limitations; the legislature intended to enact a valid, sensible, and just law.

In addition, the Solicitor General points out that Section 1, Article V of the Constitution is a *verbatim* reproduction of those provided for in the 1935 and the 1973 Constitutions. Thus, he cites *Co vs. Electoral Tribunal of the House of Representatives*[16][16] wherein the Court held that the term "residence" has been understood to be synonymous with "domicile" under both Constitutions. He further argues that a person can have only one "domicile" but he can have two residences, one permanent (the domicile) and the other temporary;[17][17] and that the definition and meaning given to the term *residence* likewise applies to absentee voters. Invoking *Romualdez-Marcos vs. COMELEC*[18][18] which reiterates the Court's ruling in *Faypon vs. Quirino,*[19][19] the Solicitor General maintains that Filipinos who are immigrants or permanent residents abroad may have in fact never abandoned their Philippine domicile.[20][20]

Taking issue with the petitioner's contention that "green card" holders are considered to have abandoned their Philippine domicile, the Solicitor General suggests that the Court may have to discard its ruling in *Caasi vs. Court of Appeals*[21][21] in so far as it relates to immigrants and permanent residents in foreign countries who have executed and submitted their affidavits conformably with Section 5(d) of R.A. No. 9189. He maintains that through the execution of the requisite affidavits, the Congress of the Philippines with the concurrence of the President of the Republic had in fact given these immigrants and permanent residents the opportunity, pursuant to Section 2, Article V of the Constitution, to manifest that they had in fact never abandoned their Philippine domicile; that indubitably, they would have formally and categorically expressed the requisite intentions, i.e., "*animus manendi"* and *"animus revertendi*;*"* that Filipino immigrants and permanent residents abroad possess the unquestionable right to exercise the right of suffrage under Section 1, Article V of the Constitution upon approval of their registration, conformably with R.A. No. 9189.[22][22]

The seed of the present controversy is the interpretation that is given to the phrase, "qualified citizens of the Philippines abroad" as it appears in R.A. No. 9189, to wit:

> SEC. 2. *Declaration of Policy*. – It is the prime duty of the State to provide a system of honest and orderly overseas absentee voting that upholds the secrecy and sanctity of the ballot. Towards this end, the State ensures equal opportunity to

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15[15] Per Comment and Memorandum filed by Atty. Jose P. Balbuena, Director IV, Law Department, COMELEC.
16[16] 199 SCRA 692, 713 (1991).
17[17] Comment, p. 9 citing Joaquin G. Bernas, *Today*, 5 February 2003.
18[18] 318 Phil. 329 (1995); 248 SCRA 300.
19[19] 96 Phil. 294 (1954).
20[20] Comment, pp. 11-12.
21[21] Caasi Case, *supra*.
22[22] Comment, p. 13.

all **qualified citizens of the Philippines abroad** in the exercise of this fundamental right.

SEC. 3. *Definition of Terms*. – For purposes of this Act:

a) *"Absentee Voting"* refers to the process by which **qualified citizens of the Philippines abroad,** exercise their right to vote;

. . . (Emphasis supplied)

f) *"Overseas Absentee Voter"* refers to **a citizen of the Philippines who is qualified to register and vote** under this Act, not otherwise disqualified by law, who is abroad on the day of elections. (Emphasis supplied)

SEC. 4. *Coverage*. – **All citizens of the Philippines abroad, who are not otherwise disqualified by law**, at least eighteen (18) years of age on the day of elections, may vote for president, vice-president, senators and party-list representatives. (Emphasis supplied)

in relation to Sections 1 and 2, Article V of the Constitution which read:

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. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage.

SEC. 2. **The Congress shall provide** a system for securing the secrecy and sanctity of the ballot as well as **a system for absentee voting by qualified Filipinos abroad**.

. . . . . (Emphasis supplied)

Section 1, Article V of the Constitution specifically provides that suffrage may be exercised by (1) all citizens of the Philippines, (2) not otherwise disqualified by law, (3) at least eighteen years of age, (4) who are residents in the Philippines for at least one year and in the place where they propose to vote for at least six months immediately preceding the election. Under Section 5(d) of R.A. No. 9189, one of those disqualified from voting is an immigrant or permanent resident who is recognized as such in the host country unless he/she executes an affidavit declaring that he/she shall resume actual physical permanent residence in the Philippines not later than three years from approval of his/her registration under said Act.

Petitioner questions the rightness of the mere act of execution of an affidavit to qualify the Filipinos abroad who are immigrants or permanent residents, to vote. He focuses solely on Section 1, Article V of the Constitution in ascribing constitutional infirmity to Section 5(d) of R.A.

No. 9189, totally ignoring the provisions of Section 2 empowering Congress to provide a system for absentee voting by qualified Filipinos abroad.

A simple, cursory reading of Section 5(d) of R.A. No. 9189 may indeed give the impression that it contravenes Section 1, Article V of the Constitution. Filipino immigrants and permanent residents overseas are perceived as having left and abandoned the Philippines to live permanently in their host countries and therefore, a provision in the law enfranchising those who do not possess the residency requirement of the Constitution by the mere act of executing an affidavit expressing their intent to return to the Philippines within a given period, risks a declaration of unconstitutionality. However, the risk is more apparent than real.

The Constitution is the fundamental and paramount law of the nation to which all other laws must conform and in accordance with which all private rights must be determined and all public authority administered.[23][23] Laws that do not conform to the Constitution shall be stricken down for being unconstitutional.

Generally, however, all laws are presumed to be constitutional. In *Peralta vs. COMELEC*, the Court said:

> . . . An act of the legislature, approved by the executive, is presumed to be within constitutional limitations. The responsibility of upholding the Constitution rests not on the courts alone but on the legislature as well. The question of the validity of every statute is first determined by the legislative department of the government itself.[24][24]

Thus, presumption of constitutionality of a law must be overcome convincingly:

> . . . To declare a law unconstitutional, the repugnancy of that law to the Constitution must be clear and unequivocal, for even if a law is aimed at the attainment of some public good, no infringement of constitutional rights is allowed. To strike down a law there must be a clear showing that what the fundamental law condemns or prohibits, the statute allows it to be done.[25][25]

As the essence of R.A. No. 9189 is to enfranchise overseas qualified Filipinos, it behooves the Court to take a holistic view of the pertinent provisions of both the Constitution and R.A. No. 9189. It is a basic rule in constitutional construction that the Constitution should be construed as a whole. In *Chiongbian vs. De Leon,*[26][26] the Court held that a constitutional provision should function to the full extent of its substance and its terms, not by itself alone, but in conjunction with all other provisions of that great document. Constitutional provisions are mandatory in character unless, either by express statement or by necessary implication, a different intention is

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23[23] Manila Prince Hotel vs. GSIS, 335 Phil. 82, 101 (1997).

24[24] L-47771, 11 March 1978, 82 SCRA 30, 55 citing People vs. Vera, 65 Phil. 56, 95 (1937).

25[25] Salas vs. Hon. Jarencio, 150-B Phil. 670, 690 (1972) citing Morfe vs. Mutuc, G.R. No. L-20387, 31 January 1968, 22 SCRA 424.

26[26] 82 Phil. 771, 775 (1949).

manifest.[27][27] The intent of the Constitution may be drawn primarily from the language of the document itself. Should it be ambiguous, the Court may consider the intent of its framers through their debates in the constitutional convention.[28][28]

R.A. No. 9189 was enacted in obeisance to the mandate of the first paragraph of Section 2, Article V of the Constitution that Congress shall provide a system for voting by qualified Filipinos abroad. It must be stressed that Section 2 does not provide for the parameters of the exercise of legislative authority in enacting said law. Hence, in the absence of restrictions, Congress is presumed to have duly exercised its function as defined in Article VI (The Legislative Department) of the Constitution.

To put matters in their right perspective, it is necessary to dwell first on the significance of absentee voting. The concept of absentee voting is relatively new. It is viewed thus:

> The method of absentee voting has been said to be completely separable and distinct from the regular system of voting, and to be a new and different manner of voting from that previously known, and an exception to the customary and usual manner of voting. *The right of absentee and disabled voters to cast their ballots at an election is* ***purely statutory***; absentee voting was unknown to, and not recognized at, the common law.
>
> Absentee voting is an outgrowth of modern social and economic conditions devised to accommodate those engaged in military or civil life whose duties make it impracticable for them to attend their polling places on the day of election, and ***the privilege of absentee voting may flow from constitutional provisions*** *or be conferred by statutes*, existing in some jurisdictions, which provide in varying terms for the casting and reception of ballots by soldiers and sailors or other qualified voters absent on election day from the district or precinct of their residence.
>
> Such statutes are regarded as conferring a privilege and not a right, or an absolute right. **When the legislature chooses to grant the right by statute, it must operate with equality among all the class to which it is granted; but statutes of this nature may be limited in their application to particular types of elections.** ***The statutes should be construed in the light of any constitutional provisions affecting registration and elections*****,** and with due regard to their texts prior to amendment and to predecessor statutes and the decisions thereunder; ***they should also be construed in the light of the circumstances under which they were enacted***; and so as to carry out the objects thereof, if this can be done without doing violence to their provisions and mandates. Further, ***in passing on statutes regulating absentee voting, the court should look to the whole and every part of the election laws, the intent of the entire plan, and reasons and spirit of their adoption, and try to give effect to every portion thereof***.[29][29] (Emphasis supplied)

27[27] Separate opinion of Vitug, *J.* in Romualdez-Marcos vs. COMELEC, *supra*, p. 387, citing Marcelino vs. Cruz, Jr., L-42428, 18 March 1983, 121 SCRA 51.

28[28] Luz Farms vs. Secretary of the Department of Agrarian Reform, *supra*, p. 56.

29[29] 29 C.J.S. 575-577.

Ordinarily, an absentee is not a resident and vice versa; a person cannot be at the same time, both a resident and an absentee.[30[30]] However, under our election laws and the countless pronouncements of the Court pertaining to elections, an absentee remains attached to his *residence* in the Philippines as residence is considered synonymous with *domicile.*

In *Romualdez-Marcos,*[31[31]] the Court enunciated:

> Article 50 of the Civil Code decrees that "[f]or the exercise of civil rights and the fulfillment of civil obligations, the domicile of natural persons is their place of habitual residence." In *Ong vs. Republic,* this court took the concept of domicile to mean an individual's "permanent home," "a place to which, whenever absent for business or for pleasure, one intends to return, and depends on facts and circumstances in the sense that they disclose intent." Based on the foregoing, domicile includes the twin elements of "the fact of residing or physical presence in a fixed place" and *animus manendi*, or the intention of returning there permanently.
>
> Residence, in its ordinary conception, implies the factual relationship of an individual to a certain place. It is the physical presence of a person in a given area, community or country. The essential distinction between residence and domicile in law is that residence involves the intent to leave when the purpose for which the resident has taken up his abode ends. One may seek a place for purposes such as pleasure, business, or health. If a person's intent be to remain, it becomes his domicile; if his intent is to leave as soon as his purpose is established it is residence. It is thus, quite perfectly normal for an individual to have different residences in various places. However, *a person can only have a single domicile, unless, for various reasons, he successfully abandons his domicile in favor of another domicile of choice*. In *Uytengsu vs. Republic,* we laid this distinction quite clearly:
>
> > "There is a difference between domicile and residence. 'Residence' is used to indicate a place of abode, whether permanent or temporary; 'domicile' denotes a fixed permanent residence to which, when absent, one has the intention of returning. A man may have a residence in one place and a domicile in another. *Residence is not domicile, but domicile is residence coupled with the intention to remain for an unlimited time.* A man can have but one domicile for the same purpose at any time, but he may have numerous places of residence. His place of residence is generally his place of domicile, but it is not by any means necessarily so since no length of residence without intention of remaining will constitute domicile."
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> For political purposes the concepts of residence and domicile are dictated by the peculiar criteria of political laws. As these concepts have evolved ***in our election law, what has clearly and unequivocally emerged is the fact that***

30[30] 1 WORDS AND PHRASES 264 citing Savant vs. Mercadal, 66 So. 961, 962, 136 La. 248.

31[31] 318 Phil. 329 (1995); 248 SCRA 300.

residence for election purposes is used synonymously with domicile.[32[32]] (Emphasis supplied)

Aware of the domiciliary legal tie that links an overseas Filipino to his residence in this country, the framers of the Constitution considered the circumstances that impelled them to require Congress to establish a system for overseas absentee voting, thus:

> MR. OPLE. With respect to Section 1, it is not clear whether the right of suffrage, which here has a residential restriction, is not denied to citizens temporarily residing or working abroad. Based on the statistics of several government agencies, there ought to be about two million such Filipinos at this time. Commissioner Bernas had earlier pointed out that these provisions are really lifted from the two previous Constitutions of 1935 and 1973, with the exception of the last paragraph. They could not therefore have foreseen at that time the phenomenon now described as the Filipino labor force explosion overseas.
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> According to government data, there are now about 600,000 contract workers and employees, and although the major portions of these expatriate communities of workers are to be found in the Middle East, they are scattered in 177 countries in the world.
>
> In a previous hearing of the Committee on Constitutional Commissions and Agencies, the Chairman of the Commission on Elections, Ramon Felipe, said that there was no insuperable obstacle to making effective the right of suffrage for Filipinos overseas. Those who
> have adhered to their Filipino citizenship notwithstanding strong temptations are exposed to embrace a more convenient foreign citizenship. And those who on their own or under pressure of economic necessity here, find that they have to detach themselves from their families to work in other countries with definite tenures of employment. Many of them are on contract employment for one, two, or three years. They have no intention of changing their residence on a permanent basis, but are technically disqualified from exercising the right of suffrage in their countries of destination by the residential requirement in Section 1 which says:
>
> > Suffrage shall be exercised by all citizens of the Philippines not otherwise disqualified by law, who are eighteen years of age or over, 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 preceding the election.
>
> I, therefore, ask the Committee whether at the proper time they might entertain an amendment that will make this exercise of the right to vote abroad for Filipino citizens an effective, rather than merely a nominal right under this proposed Constitution.

32[32] *Id*., pp. 323-324.

FR. BERNAS. Certainly, the Committee will consider that. But more than just saying that, I would like to make a comment on the meaning of "residence" in the Constitution because I think it is a concept that has been discussed in various decisions of the Supreme Court, particularly in the case of *Faypon vs. Quirino,* a 1954 case which dealt precisely with the meaning of "residence" in the Election Law. Allow me to quote:

> A citizen may leave the place of his birth to look for greener pastures, as the saying goes, to improve his lot and that, of course, includes study in other places, practice of his avocation, reengaging in business. When an election is to be held, the citizen who left his birthplace to improve his lot may decide to return to his native town, to cast his ballot, but for professional or business reasons, or for any other reason, he may not absent himself from the place of his professional or business activities.
>
> So, they are here registered as voters as he has the qualifications to be one, and is not willing to give up or lose the opportunity to choose the officials who are to run the government especially in national elections. Despite such registration, the *animus revertendi* to his home, to his domicile or residence of origin has not forsaken him.

This may be the explanation why the registration of a voter in a place other than his residence of origin has not been deemed sufficient to consider abandonment or loss of such residence of origin.

In other words, "residence" in this provision refers to two residence qualifications: "residence" in the Philippines and "residence" in the place where he will vote. As far as residence in the Philippines is concerned, the word "residence" means domicile, but as far as residence in the place where he will actually cast his ballot is concerned, the meaning seems to be different. He could have a domicile somewhere else and yet he is a resident of a place for six months and he is allowed to vote there. So that there may be serious constitutional obstacles to absentee voting, **unless the vote of the person who is absent is a vote which will be considered as cast in the place of his domicile**.

MR. OPLE. Thank you for citing the jurisprudence.

It gives me scant comfort thinking of about two million Filipinos who should enjoy the right of suffrage, at least a substantial segment of these overseas Filipino communities. The Committee, of course, is aware that when this Article of the Constitution explicitly and unequivocally extends the right of effective suffrage to Filipinos abroad, this will call for a logistical exercise of global proportions. In effect, this will require budgetary and administrative commitments on the part of the Philippine government, mainly through the COMELEC and the Ministry of Foreign Affairs, and perhaps, a more extensive elaboration of this mechanism that will be put in place to make effective the right to vote. Therefore, ***seeking shelter in some wise jurisprudence of the past may not be sufficient to meet the demands***

> ***of the right of suffrage for Filipinos abroad*** that I have mentioned. But I want to thank the Committee for saying that an amendment to this effect may be entertained at the proper time. . . . . [33[33]] (Emphasis supplied)

Thus, the Constitutional Commission recognized the fact that while millions of Filipinos reside abroad principally for economic reasons and hence they contribute in no small measure to the economic uplift of this country, their voices are marginal insofar as the choice of this country's leaders is concerned.

The Constitutional Commission realized that under the laws then existing and considering the novelty of the system of absentee voting in this jurisdiction, vesting overseas Filipinos with the right to vote would spawn constitutional problems especially because the Constitution itself provides for the residency requirement of voters:

> MR. REGALADO. Before I act on that, may I inquire from Commissioner Monsod if the term "absentee voting" also includes transient voting; meaning, those who are, let us say, studying in Manila need not go back to their places of registration, for instance, in Mindanao, to cast their votes.
>
> MR. MONSOD. I think our provision is for absentee voting by Filipinos abroad.
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> MR. REGALADO. How about those people who cannot go back to the places where they are registered?
>
> MR. MONSOD. Under the present Election Code, there are provisions for allowing students and military people who are temporarily in another place to register and vote. I believe that those situations can be covered by the Omnibus Election Code. ***The reason we want absentee voting to be in the Constitution as a mandate to the legislature is that there could be inconsistency on the residence rule if it is just a question of legislation by Congress. So, by allowing it and saying that this is possible, then legislation can take care of the rest***.[34[34]] (Emphasis supplied)

Thus, Section 2, Article V of the Constitution came into being to remove any doubt as to the inapplicability of the residency requirement in Section 1. It is precisely to avoid any problems that could impede the implementation of its pursuit to enfranchise the largest number of qualified Filipinos who are not in the Philippines that the Constitutional Commission explicitly mandated Congress to provide a system for overseas absentee voting.

The discussion of the Constitutional Commission on the effect of the residency requirement prescribed by Section 1, Article V of the Constitution on the proposed system of absentee voting for qualified Filipinos abroad is enlightening:

33[33] II RECORD OF THE CONSTITUTIONAL COMMISSION, pp. 11-12 (19 July 1986).

34[34] *Id*., p. 33.

MR. SUAREZ. May I just be recognized for a clarification. There are certain qualifications for the exercise of the right of suffrage like having resided in the Philippines for at least one year and in the place where they propose to vote for at least six months preceding the elections. What is the effect of these mandatory requirements on the matter of the exercise of the right of suffrage by the absentee voters like Filipinos abroad?

THE PRESIDENT. Would Commissioner Monsod care to answer?

MR. MONSOD. I believe the answer was already given by Commissioner Bernas, that the domicile requirements as well as the qualifications and disqualifications would be the same.

THE PRESIDENT. Are we leaving it to the legislature to devise the system?

FR. BERNAS. I think there is a very legitimate problem raised there.

THE PRESIDENT. Yes.

MR. BENGZON. I believe Commissioner Suarez is clarified.

FR. BERNAS. But I think it should be further clarified with regard to the residence requirement or the place where they vote in practice; the understanding is that it is flexible. For instance, one might be a resident of Naga or domiciled therein, but he satisfies the requirement of residence in Manila, so he is able to vote in Manila.

MR. TINGSON. Madam President, may I then suggest to the Committee to change the word "Filipinos" to QUALIFIED FILIPINO VOTERS. Instead of "VOTING BY FILIPINOS ABROAD," it should be QUALIFIED FILIPINO VOTERS. If the Committee wants QUALIFIED VOTERS LIVING ABROAD, would that not satisfy the requirement?

THE PRESIDENT. What does Commissioner Monsod say?

MR. MONSOD. Madam President, I think I would accept the phrase "QUALIFIED FILIPINOS ABROAD" because "QUALIFIED" would assume that he has the qualifications and none of the disqualifications to vote.

MR. TINGSON. That is right. So does the Committee accept?

FR. BERNAS. "QUALIFIED FILIPINOS ABROAD"?

THE PRESIDENT. Does the Committee accept the amendment?

MR. REGALADO. Madam President.

THE PRESIDENT. Commissioner Regalado is recognized.

MR. REGALADO. When Commissioner Bengzon asked me to read my proposed amendment, I specifically stated that the National Assembly shall prescribe a system which will enable qualified citizens, temporarily absent from the Philippines, to vote. According to Commissioner Monsod, the use of the phrase "absentee voting" already took that into account as its meaning. That is referring to qualified Filipino citizens temporarily abroad.

MR. MONSOD. Yes, we accepted that. I would like to say that **with respect to registration we will leave it up to the legislative assembly, for example, to require where the registration is. If it is, say, members of the diplomatic corps who may be continuously abroad for a long time, perhaps, there can be a system of registration in the embassies**. However, we do not like to preempt the legislative assembly.

THE PRESIDENT. Just to clarify, Commissioner Monsod's amendment is only to provide a system.

MR. MONSOD. Yes.

THE PRESIDENT. The Commissioner is not stating here that he wants new qualifications for these absentee voters.

MR. MONSOD. That is right. They must have the qualifications and none of the disqualifications.

THE PRESIDENT. It is just to devise a system by which they can vote.

MR. MONSOD. That is right, Madam President.[35[35]] (Emphasis supplied)

Clearly therefrom, the intent of the Constitutional Commission is to entrust to Congress the responsibility of devising a system of absentee voting. The qualifications of voters as stated in Section 1 shall remain except for the residency requirement. This is in fact the reason why the Constitutional Commission opted for the term *qualified Filipinos abroad* with respect to the system of absentee voting that Congress should draw up. As stressed by Commissioner Monsod, by the use of the adjective *qualified* with respect to Filipinos abroad, the assumption is that they have the "qualifications and none of the disqualifications to vote." In fine-tuning the provision on absentee voting, the Constitutional Commission discussed how the system should work:

MR. SUAREZ. For clarification purposes, we just want to state for the record that in the case of qualified Filipino citizens residing abroad and exercising their right of suffrage, *they can cast their votes for the candidates in the place where they were registered to vote in the Philippines.* So as to avoid any complications, for example, if they are registered in Angeles City, they could not vote for a mayor in Naga City.

35[35] *Id*., pp. 34-35.

In other words, if that qualified voter is registered in Angeles City, then he can vote only for the local and national candidates in Angeles City. I just want to make that clear for the record.

MR. REGALADO. Madam President.

THE PRESIDENT. What does Commissioner Regalado say?

MR. REGALADO. I just want to make a note on the statement of Commissioner Suarez that this envisions Filipinos residing abroad. The understanding in the amendment is that the Filipino is temporarily abroad. *He may not be actually residing abroad; he may just be there on a business trip*. It just so happens that the day before the elections he has to fly to the United States, so he could not cast his vote. He is temporarily abroad, but not residing there. He stays in a hotel for two days and comes back. **This is not limited only to Filipinos temporarily residing abroad. But *as long as he is temporarily abroad on the date of the elections, then he can fall within the prescription of Congress in that situation*.**

MR. SUAREZ. I thank the Commissioner for his further clarification. Precisely, we need this clarification on record.

MR. MONSOD. Madam President, ***to clarify what we mean by "temporarily abroad," it need not be on very short trips***. One can be abroad on a treaty traders visa. Therefore, when we talk about registration, it is possible that his residence is in Angeles and he would be able to vote for the candidates in Angeles, but ***Congress or the Assembly may provide the procedure for registration, like listing one's name, in a registry list in the embassy abroad***. That is still possible under the system.

FR. BERNAS. Madam President, just one clarification if Commissioner Monsod agrees with this.

Suppose we have a situation of a child of a diplomatic officer who reaches the voting age while living abroad and he has never registered here. Where will he register? Will he be a registered voter of a certain locality in the Philippines?

MR. MONSOD. Yes, it is possible that the system will enable that child to comply with the registration requirements in an embassy in the United States and his name is then entered in the official registration book in Angeles City, for instance.

FR. BERNAS. In other words, he is not a registered voter of Los Angeles, but a registered voter of a locality here.

MR. MONSOD. That is right. He does not have to come home to the Philippines to comply with the registration procedure here.

FR. BERNAS. So, he does not have to come home.

MR. BENGZON. Madam President, the Floor Leader wishes to inquire if there are more clarifications needed from the body.

Also, the Floor Leader is happy to announce that there are no more registered Commissioners to propose amendments. So I move that we close the period of amendments. [36[36]] (Emphasis supplied)

It is clear from these discussions of the members of the Constitutional Commission that they intended to enfranchise as much as possible *all* Filipino citizens abroad who have not abandoned their domicile of origin. The Commission even intended to extend to young Filipinos who reach voting age abroad whose parents' domicile of origin is in the Philippines, and consider them qualified as voters for the first time.

It is in pursuance of that intention that the Commission provided for Section 2 immediately after the residency requirement of Section 1. By the doctrine of necessary implication in statutory construction, which may be applied in construing constitutional provisions,[37[37]] the strategic location of Section 2 indicates that *the Constitutional Commission provided for an exception to the actual residency requirement of Section 1* with respect to qualified Filipinos abroad. The same Commission has in effect declared that qualified Filipinos who are not in the Philippines may be allowed to vote even though they do not satisfy the residency requirement in Section 1, Article V of the Constitution.

That Section 2 of Article V of the Constitution is an exception to the residency requirement found in Section 1 of the same Article was in fact the subject of debate when Senate Bill No. 2104, which became R.A. No. 9189, was deliberated upon on the Senate floor, thus:

Senator Arroyo. Mr. President, this bill should be looked into in relation to the constitutional provisions. I think the sponsor and I would agree that the Constitution is supreme in any statute that we may enact.

Let me read Section 1, Article V, of the Constitution entitled, "Suffrage." It says:

> Section 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.

Now, Mr. President, the Constitution says, "who shall have resided in the Philippines." They are permanent immigrants. They have changed residence so they are barred under the Constitution. This is why I asked whether this committee amendment which in fact does not alter the original text of the bill will have any effect on this?

36[36] *Id*., pp. 35-36.

37[37] Marcelino vs. Cruz, 121 SCRA 51, 56.

Senator Angara. Good question, Mr. President. And this has been asked in various fora. This is in compliance with the Constitution. One, the interpretation here of "residence" is synonymous with "domicile."

As the gentleman and I know, Mr. President, "domicile" is the intent to return to one's home. ***And the fact that a Filipino may have been physically absent from the Philippines and may be physically a resident of the United States, for example, but has a clear intent to return to the Philippines, will make him qualified as a resident of the Philippines under this law***.

This is consistent, Mr. President, with the constitutional mandate that we – that Congress – must provide a franchise to overseas Filipinos.

If we read the Constitution and the suffrage principle literally as demanding physical presence, then there is no way we can provide for offshore voting to our offshore kababayan, Mr. President.

Senator Arroyo. Mr. President, when the Constitution says, in Section 2 of Article V, it reads: "The Congress shall provide a system for securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad."

The key to this whole exercise, Mr. President, is "qualified." In other words, anything that we may do or say in granting our compatriots abroad must be anchored on the proposition that they are qualified. Absent the qualification, they cannot vote. And "residents" **(sic)** ***is a qualification***.

I will lose votes here from permanent residents so-called "green-card holders", but the Constitution is the Constitution. We cannot compromise on this. The Senate cannot be a party to something that would affect or impair the Constitution.

Look at what the Constitution says – "In the place wherein they propose to vote for at least six months immediately preceding the election."

Mr. President, all of us here have run (sic) for office.

I live in Makati. My neighbor is Pateros where Senator Cayetano lives. We are separated only by a creek. But one who votes in Makati cannot vote in Pateros unless he resides in Pateros for six months. That is how restrictive our Constitution is. I am not talking even about the Election Code. I am talking about the Constitution.

As I have said, if a voter in Makati would want to vote in Pateros, yes, he may do so. But he must do so, make the transfer six months before the election, otherwise, he is not qualified to vote.

That is why I am raising this point because I think we have a fundamental difference here.

Senator Angara. It is a good point to raise, Mr. President. But it is a point already well-debated even in the constitutional commission of 1986. ***And the reason Section 2 of Article V was placed immediately after the six-month/one-year residency requirement is to demonstrate unmistakably that Section 2 which authorizes absentee voting is an exception to the six-month/one-year residency requirement***. That is the first principle, Mr. President, that one must remember.

The second reason, Mr. President, is that under our jurisprudence – and I think this is so well-entrenched that one need not argue about it – *"residency" has been interpreted as synonymous with "domicile*."

But the third more practical reason, Mr. President, is, if we follow the interpretation of the gentleman, then it is legally and constitutionally impossible to give a franchise to vote to overseas Filipinos who do not physically live in the country, which is quite ridiculous because that is exactly the whole point of this exercise – to enfranchise them and empower them to vote. [38[38]] (Emphasis supplied)

Accordingly, Section 4 of R.A. No. 9189 provides for the coverage of the absentee voting process, to wit:

SEC. 4. *Coverage*. – All citizens of the Philippines abroad, who are not otherwise disqualified by law, at least eighteen (18) years of age on the day of elections, may vote for president, vice-president, senators and party-list representatives.

which does not require physical residency in the Philippines; and Section 5 of the assailed law which enumerates those who are disqualified, to wit:

SEC. 5. *Disqualifications*. – The following shall be disqualified from voting under this Act:

a) Those who have lost their Filipino citizenship in accordance with Philippine laws;

b) Those who have expressly renounced their Philippine citizenship and who have pledged allegiance to a foreign country;

c) Those who have committed and are convicted in a final judgment by a court or tribunal of an offense punishable by imprisonment of not less than one (1) year, including those who have committed and been found guilty of Disloyalty as defined under Article 137 of the *Revised Penal Code*, such disability not having been removed by plenary pardon or amnesty: *Provided*, *however*, That any person disqualified to vote under this subsection shall automatically acquire the right to vote upon expiration of five (5) years after service of sentence; *Provided*, *further*, That the Commission may take cognizance of final judgments issued by foreign

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38[38] TRANSCRIPTS OF SENATE PROCEEDINGS (1 October 2002), pp. 10-12.

courts or tribunals only on the basis of reciprocity and subject to the formalities and processes prescribed by the *Rules of Court* on execution of judgments;

d) An immigrant or a permanent resident who is recognized as such in the host country, unless he/she executes, upon registration, an affidavit prepared for the purpose by the Commission declaring that he/she shall resume actual physical permanent residence in the Philippines not later than three (3) years from approval of his/her registration under this Act. Such affidavit shall also state that he/she has not applied for citizenship in another country. Failure to return shall be cause for the removal of the name of the immigrant or permanent resident from the National Registry of Absentee Voters and his/her permanent disqualification to vote *in absentia*.

e) Any citizen of the Philippines abroad previously declared insane or incompetent by competent authority in the Philippines or abroad, as verified by the Philippine embassies, consulates or foreign service establishments concerned, unless such competent authority subsequently certifies that such person is no longer insane or incompetent.

As finally approved into law, Section 5(d) of R.A. No. 9189 specifically disqualifies an *immigrant* or *permanent resident* who is "recognized as such in the host country" because immigration or permanent residence in another country implies renunciation of one's residence in his country of origin. However, same Section allows an immigrant and permanent resident abroad to register as voter for as long as he/she executes an affidavit to show that he/she has not abandoned his domicile in pursuance of the constitutional intent expressed in Sections 1 and 2 of Article V that "*all* citizens of the Philippines not otherwise disqualified by law" must be entitled to exercise the right of suffrage and, that Congress must establish a system for absentee voting; for otherwise, if actual, physical residence in the Philippines is required, there is no sense for the framers of the Constitution to mandate Congress to establish a system for absentee voting.

Contrary to the claim of petitioner, the execution of the affidavit itself is not the enabling or enfranchising act. The affidavit required in Section 5(d) is not only proof of the intention of the immigrant or permanent resident to go back and resume residency in the Philippines, but more significantly, it serves as an explicit expression that he had not in fact abandoned his domicile of origin. Thus, it is not correct to say that the execution of the affidavit under Section 5(d) violates the Constitution that proscribes "provisional registration or a promise by a voter to perform a condition to be qualified to vote in a political exercise."

To repeat, the affidavit is required of immigrants and permanent residents abroad because by their status in their host countries, they are presumed to have relinquished their intent to return to this country; thus, without the affidavit, the presumption of abandonment of Philippine domicile shall remain.

Further perusal of the transcripts of the Senate proceedings discloses another reason why the Senate required the execution of said affidavit. It wanted the affiant to exercise the option to return or to express his intention to return to his domicile of origin and not to preempt that choice by legislation. Thus:

Senator Villar. Yes, we are going back.

It states that: "For Filipino immigrants and those who have acquired permanent resident status abroad," a requirement for the registration is the submission of "a Sworn Declaration of Intent to Return duly sworn before any Philippine embassy or consulate official authorized to administer oath…"

Mr. President, may we know the rationale of this provision? Is the purpose of this Sworn Declaration to include only those who have the intention of returning to be qualified to exercise the right of suffrage? What if the Filipino immigrant has no purpose of returning? Is he automatically disbarred from exercising this right to suffrage?

Senator Angara. The rationale for this, Mr. President, is that we want to be expansive and all-inclusive in this law. That *as long as he is a Filipino, no matter whether he is a green-card holder in the U.S. or not, he will be authorized to vote.* But if he is already a green-card holder, that means he has acquired permanent residency in the United States, then he must indicate an intention to return. This is what makes for the definition of "domicile." And to acquire the vote, we thought that we would require the immigrants and the green-card holders . . . Mr. President, the three administration senators are leaving, maybe we may ask for a vote *[Laughter].*

Senator Villar. For a *merienda,* Mr. President.

Senator Angara. Mr. President, going back to the business at hand. The rationale for the requirement that an immigrant or a green-card holder should file an affidavit that he will go back to the Philippines is that, if he is already an immigrant or a green-card holder, that means he may not return to the country any more and that contradicts the definition of "domicile" under the law.

***But what we are trying to do here, Mr. President, is really provide the choice to the voter*.** The voter, after consulting his lawyer or after deliberation within the family, may decide "No, I think we are risking our permanent status in the United States if we file an affidavit that we want to go back." ***But we want to give him the opportunity to make that decision. We do not want to make that decision for him*.**[39[39]] (Emphasis supplied)

The jurisprudential declaration in *Caasi vs. Court of Appeals* that green card holders are disqualified to run for any elective office finds no application to the present case because the *Caasi* case did not, for obvious reasons, consider the absentee voting rights of Filipinos who are immigrants and permanent residents in their host countries.

In the advent of *The Overseas Absentee Voting Act of 2003 or R.A. 9189*, they may still be considered as a "qualified citizen of the Philippines abroad" upon fulfillment of the requirements of registration under the new law for the purpose of exercising their right of suffrage.

39[39] Transcripts of Senate Proceedings (6 August 2002), pp. 30-31.

It must be emphasized that Section 5(d) does not only require an affidavit or a promise to "resume actual physical permanent residence in the Philippines not later than three years from approval of his/her registration," the Filipinos abroad must also declare that they have not applied for citizenship in another country. Thus, they must return to the Philippines; otherwise, their failure to return "shall be cause for the removal" of their names
"from the National Registry of Absentee Voters and his/her permanent disqualification to vote *in absentia."*

Thus, Congress crafted a process of registration by which a Filipino voter permanently residing abroad who is at least eighteen years old, not otherwise disqualified by law, *who has not relinquished Philippine citizenship* and who has not actually abandoned his/her intentions to return to his/her domicile of origin, the Philippines, is allowed to register and vote in the Philippine embassy, consulate or other foreign service establishments of the place which has jurisdiction over the country where he/she has indicated his/her address for purposes of the elections, while providing for safeguards to a clean election.

Thus, Section 11 of R.A. No. 9189 provides:

> SEC. 11. Procedure for Application to Vote in Absentia. –
>
> 11.1. Every qualified citizen of the Philippines abroad whose application for registration has been approved, including those previously registered under Republic Act No. 8189, shall, in every national election, file with the officer of the embassy, consulate or other foreign service establishment authorized by the Commission, a sworn written application to vote in a form prescribed by the Commission. The authorized officer of such embassy, consulate or other foreign service establishment shall transmit to the Commission the said application to vote within five (5) days from receipt thereof. The application form shall be accomplished in triplicate and submitted together with the photocopy of his/her overseas absentee voter certificate of registration.
>
> 11.2. Every application to vote in *absentia* may be done personally at, or by mail to, the embassy, consulate or foreign service establishment, which has jurisdiction over the country where he/she has indicated his/her address for purposes of the elections.
>
> 11.3. Consular and diplomatic services rendered in connection with the overseas absentee voting processes shall be made available at no cost to the overseas absentee voter.

Contrary to petitioner's claim that Section 5(d) circumvents the Constitution, Congress enacted the law prescribing a system of overseas absentee voting in compliance with the constitutional mandate. Such mandate expressly requires that Congress provide a system of *absentee voting* that necessarily presupposes that the "qualified citizen of the Philippines abroad" is not physically present in the country. The provisions of Sections 5(d) and 11 are components of the system of overseas absentee voting established by R.A. No. 9189. The qualified Filipino abroad who executed the affidavit is deemed to have retained his domicile in the Philippines. He is presumed not to have lost his domicile by his physical absence from this country. His having

become an immigrant or permanent resident of his host country does not necessarily imply an abandonment of his intention to return to his domicile of origin, the Philippines. Therefore, under the law, he must be given the opportunity to express that he has not actually abandoned his domicile in the Philippines by executing the affidavit required by Sections 5(d) and 8(c) of the law.

Petitioner's speculative apprehension that the implementation of Section 5(d) would affect the credibility of the elections is insignificant as what is important is to ensure that all those who possess the qualifications to vote on the date of the election are given the opportunity and permitted to freely do so. The COMELEC and the Department of Foreign Affairs have enough resources and talents to ensure the integrity and credibility of any election conducted pursuant to R.A. No. 9189.

As to the eventuality that the Filipino abroad would renege on his undertaking to return to the Philippines, the penalty of perpetual disenfranchisement provided for by Section 5(d) would suffice to serve as deterrence to non-compliance with his/her undertaking under the affidavit.

Petitioner argues that should a sizable number of "immigrants" renege on their promise to return, the result of the elections would be affected and could even be a ground to contest the proclamation of the winning candidates and cause further confusion and doubt on the integrity of the results of the election. Indeed, the probability that after an immigrant has exercised the right to vote, he shall opt to remain in his host country beyond the third year from the execution of the affidavit, is not farfetched. However, it is not for this Court to determine the wisdom of a legislative exercise. As expressed in *Tañada vs. Tuvera*,[40[40]] the Court is not called upon to rule on the wisdom of the law or to repeal it or modify it if we find it impractical.

Congress itself was conscious of said probability and in fact, it has addressed the expected problem. Section 5(d) itself provides for a deterrence which is that the Filipino who fails to return as promised stands to lose his right of suffrage. Under Section 9, should a registered overseas absentee voter fail to vote for two consecutive national elections, his name may be ordered removed from the National Registry of Overseas Absentee Voters.

Other serious legal questions that may be raised would be: what happens to the votes cast by the qualified voters abroad who were not able to return within three years as promised? What is the effect on the votes cast by the non-returnees in favor of the winning candidates? The votes cast by qualified Filipinos abroad who failed to return within three years shall not be invalidated because they were qualified to vote on the date of the elections, but their failure to return shall be cause for the removal of the names of the immigrants or permanent residents from the National Registry of Absentee Voters and their permanent disqualification to vote *in absentia*.

In fine, considering the underlying intent of the Constitution, the Court does not find Section 5(d) of R.A. No. 9189 as constitutionally defective.

B. ***Is Section 18.5 of R.A. No. 9189 in relation to Section 4 of the same Act in contravention of Section 4, Article VII of the Constitution?***

40[40] 146 SCRA 446, 454 (1986) cited in Garcia vs. Corona, 321 SCRA 218 (1999) and Pagpalain Haulers, Inc. vs. Trajano, 310 SCRA 354 (1999).

Section 4 of R.A. No. 9189 provides that the overseas absentee voter may vote for president, vice-president, senators and party-list representatives.

Section 18.5 of the same Act provides:

> SEC. 18. *On-Site Counting and Canvassing*. –
>
> . . . . . .
>
> 18. 5 The canvass of votes shall not cause the delay of the proclamation of a winning candidate if the outcome of the election will not be affected by the results thereof. Notwithstanding the foregoing, **the Commission is empowered to order the proclamation of winning candidates** despite the fact that the scheduled election has not taken place in a particular country or countries, if the holding of elections therein has been rendered impossible by events, factors and circumstances peculiar to such country or countries, in which events, factors and circumstances are beyond the control or influence of the Commission. (Emphasis supplied)

Petitioner claims that the provision of Section 18.5 of R.A. No. 9189 empowering the COMELEC to order the proclamation of winning candidates insofar as it affects the canvass of votes and proclamation of winning candidates for president and vice-president, is unconstitutional because it violates the following provisions of paragraph 4, Section 4 of Article VII of the Constitution:

> SEC. 4 . . .
>
> The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all the certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.
>
> The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.
>
> The Congress shall promulgate its rules for the canvassing of the certificates.
>
> . . .

which gives to Congress the duty to canvass the votes and proclaim the winning candidates for president and vice-president.

The Solicitor General asserts that this provision must be harmonized with paragraph 4, Section 4, Article VII of the Constitution and should be taken to mean that COMELEC can only proclaim the winning Senators and party-list representatives but not the President and Vice-President.[41][41]

Respondent COMELEC has no comment on the matter.

Indeed, the phrase, *proclamation of winning candidates*, in Section 18.5 of R.A. No. 9189 is far too sweeping that it necessarily includes the proclamation of the winning candidates for the presidency and the vice-presidency.

Section 18.5 of R.A. No. 9189 appears to be repugnant to Section 4, Article VII of the Constitution only insofar as said Section totally disregarded the authority given to Congress by the Constitution to proclaim the winning candidates for the positions of president and vice-president.

In addition, the Court notes that Section 18.4 of the law, to wit:

> 18.4. . . . Immediately upon the completion of the canvass, the chairman of the Special Board of Canvassers shall transmit via facsimile, electronic mail, or any other means of transmission equally safe and reliable the Certificates of Canvass and the Statements of Votes **to the Commission**, . . . [Emphasis supplied]

clashes with paragraph 4, Section 4, Article VII of the Constitution which provides that the returns of every election for President and Vice-President shall be certified by the board of canvassers to Congress.

Congress could not have allowed the COMELEC to usurp a power that constitutionally belongs to it or, as aptly stated by petitioner, to encroach "on the power of Congress to canvass the votes for president and vice-president and the power to proclaim the winners for the said positions." The provisions of the Constitution as the fundamental law of the land should be read as part of *The Overseas Absentee Voting Act of 2003* and hence, the canvassing of the votes and the proclamation of the winning candidates for president and vice-president for the entire nation must remain in the hands of Congress.

C. ***Are Sections 19 and 25 of R.A. No. 9189 in violation of Section 1, Article IX-A of the Constitution?***

Petitioner avers that Sections 19 and 25 of R.A. No. 9189 violate Article IX-A (Common Provisions) of the Constitution, to wit:

> Section 1. The Constitutional Commissions, which shall be **independent**, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit. (Emphasis supplied)

41[41] Comment, p. 15.

He submits that the creation of the Joint Congressional Oversight Committee with the power to review, revise, amend and approve the Implementing Rules and Regulations promulgated by the COMELEC, R.A. No. 9189 intrudes into the independence of the COMELEC which, as a constitutional body, is not under the control of either the executive or legislative departments of government; that only the COMELEC itself can promulgate rules and regulations which may be changed or revised only by the majority of its members; and that should the rules promulgated by the COMELEC violate any law, it is the Court that has the power to review the same via the petition of any interested party, including the legislators.

It is only on this question that respondent COMELEC submitted its Comment. It agrees with the petitioner that Sections 19 and 25 of R.A. No. 9189 are unconstitutional. Like the petitioner, respondent COMELEC anchors its claim of unconstitutionality of said Sections upon Section 1, Article IX-A of the Constitution providing for the independence of the constitutional commissions such as the COMELEC. It asserts that its power to formulate rules and regulations has been upheld in *Gallardo vs. Tabamo, Jr.*[42[42]] where this Court held that the power of the COMELEC to formulate rules and regulations is implicit in its power to implement regulations under Section 2(1) of Article IX-C[43[43]] of the Constitution. COMELEC joins the petitioner in asserting that as an independent constitutional body, it may not be subject to interference by any government instrumentality and that only this Court may review COMELEC rules and only in cases of grave abuse of discretion.

The COMELEC adds, however, that another provision, *vis-à-vis* its rule-making power, to wit:

> SEC. 17. *Voting by Mail.* –
>
> 17.1. For the May, 2004 elections, the Commission shall authorize voting by mail in not more than three (3) countries, **subject to the approval of the Congressional Oversight Committee.** Voting by mail may be allowed in countries that satisfy the following conditions:
>
> a) Where the mailing system is fairly well-developed and secure to prevent occasion for fraud;
>
> b) Where there exists a technically established identification system that would preclude multiple or proxy voting; and
>
> c) Where the system of reception and custody of mailed ballots in the embassies, consulates and other foreign service establishments concerned are adequate and well-secured.
>
> **Thereafter, voting by mail in any country shall be allowed only upon review and approval of the Joint Congressional Oversight Committee.**

42[42] G.R. No. 104848, 29 January 1993, 218 SCRA 253.

43[43] SEC. 2. The Commission on Elections shall exercise the following powers and functions:
(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.
. . .

. . . . . (Emphasis supplied)

is likewise unconstitutional as it violates Section 1, Article IX-A mandating the independence of constitutional commissions.

The Solicitor General takes exception to his prefatory statement that the constitutional challenge must fail and agrees with the petitioner that Sections 19 and 25 are invalid and unconstitutional on the ground that there is nothing in Article VI of the Constitution on Legislative Department that would as much as imply that Congress has concurrent power to enforce and administer election laws with the COMELEC; and by the principles of *exclusio unius est exclusio alterius* and *expressum facit cessare tacitum,* the constitutionally enumerated powers of Congress circumscribe its authority to the exclusion of all others.

The parties are unanimous in claiming that Sections 19, 25 and portions of Section 17.1 are unconstitutional. Thus, there is no actual issue forged on this question raised by petitioner.

However, the Court finds it expedient to expound on the role of Congress through the Joint Congressional Oversight Committee (JCOC) *vis-à-vis* the independence of the COMELEC, as a constitutional body.

R.A. No. 9189 created the JCOC, as follows:

> SEC. 25. *Joint Congressional Oversight Committee.* – A Joint Congressional Oversight Committee is hereby created, composed of the Chairman of the Senate Committee on Constitutional Amendments, Revision of Codes and Laws, and seven (7) other Senators designated by the Senate President, and the Chairman of the House Committee on Suffrage and Electoral Reforms, and seven (7) other Members of the House of Representatives designated by the Speaker of the House of Representatives: *Provided,* That, of the seven (7) members to be designated by each House of Congress, four (4) should come from the majority and the remaining three (3) from the minority.
>
> **The Joint Congressional Oversight Committee shall have the power to monitor and evaluate the implementation of this Act. It shall review, revise, amend and approve the Implementing Rules and Regulations promulgated by the Commission.** (Emphasis supplied)
>
> SEC. 19. *Authority of the Commission to Promulgate Rules*. – The Commission shall issue the necessary rules and regulations to effectively implement the provisions of this Act within sixty (60) days from the effectivity of this Act. **The Implementing Rules and Regulations shall be submitted to the Joint Congressional Oversight Committee created by virtue of this Act for prior approval**.
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> . . . . . (Emphasis supplied)

Composed of Senators and Members of the House of Representatives, the Joint Congressional Oversight Committee (JCOC) is a purely legislative body. There is no question that the authority of

Congress to "monitor and evaluate the implementation" of R.A. No. 9189 is geared towards possible amendments or revision of the law itself and thus, may be performed in aid of its legislation.

However, aside from its monitoring and evaluation functions, R.A. No. 9189 gives to the JCOC the following functions: (a) to "review, revise, amend and approve the Implementing Rules and Regulations" (IRR) promulgated by the COMELEC [Sections 25 and 19]; and (b) subject to the approval of the JCOC [Section 17.1], the voting by mail in not more than three countries for the May 2004 elections and in any country determined by COMELEC.

The ambit of legislative power under Article VI of the Constitution is circumscribed by other constitutional provisions. One such provision is Section 1 of Article IX-A of the 1987 Constitution ordaining that constitutional commissions such as the COMELEC shall be "independent."

Interpreting Section 1, Article X of the 1935 Constitution providing that there shall be an *independent* COMELEC, the Court has held that "[w]hatever may be the nature of the functions of the Commission on Elections, the fact is that the framers of the Constitution wanted it to be independent from the other departments of the Government."[44][44] In an earlier case, the Court elucidated:

> The Commission on Elections is a constitutional body. It is intended to play a distinct and important part in our scheme of government. In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of a less responsible organization. The Commission may err, so may this court also. *It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created – free, orderly and honest elections.* We may not agree fully with its choice of means, but unless these are clearly illegal or constitute gross abuse of discretion, this court should not interfere. Politics is a practical matter, and political questions must be dealt with realistically – not from the standpoint of pure theory. The Commission on Elections, because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions. [45][45] (Emphasis supplied)

The Court has no general powers of supervision over COMELEC which is an independent body "except those specifically granted by the Constitution," that is, to review its decisions, orders and rulings.[46][46] In the same vein, it is not correct to hold that because of its recognized extensive legislative power to enact election laws, Congress may intrude into the independence of the COMELEC by exercising supervisory powers over its rule-making authority.

By virtue of Section 19 of R.A. No. 9189, Congress has empowered the COMELEC to "issue the necessary rules and regulations to effectively implement the provisions of this Act within sixty

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44[44] Nacionalista Party vs. Bautista, 85 Phil. 101, 107 (1949).

45[45] Sumulong vs. Commission on Elections, 73 Phil. 288, 294-295 (1941), cited in Espino vs. Zaldivar, 129 Phil. 451, 474 (1967).

46[46] Nacionalista Party vs. De Vera, 85 Phil. 126, 129 (1949).

days from the effectivity of this Act." This provision of law follows the usual procedure in drafting rules and regulations to implement a law – the legislature grants an administrative agency the authority to craft the rules and regulations implementing the law it has enacted, in recognition of the administrative expertise of that agency in its particular field of operation.[47][47] Once a law is enacted and approved, the legislative function is deemed accomplished and complete. The legislative function may spring back to Congress relative to the same law only if that body deems it proper to review, amend and revise the law, but certainly not to approve, review, revise and amend the IRR of the COMELEC.

By vesting itself with the powers to approve, review, amend, and revise the IRR for *The Overseas Absentee Voting Act of 2003,* Congress went beyond the scope of its constitutional authority. Congress trampled upon the constitutional mandate of independence of the COMELEC. Under such a situation, the Court is left with no option but to withdraw from its usual reticence in declaring a provision of law unconstitutional.

The second sentence of the first paragraph of Section 19 stating that "[t]he Implementing Rules and Regulations shall be submitted to the Joint Congressional Oversight Committee created by virtue of this Act for prior approval," and the second sentence of the second paragraph of Section 25 stating that "[i]t shall review, revise, amend and approve the Implementing Rules and Regulations promulgated by the Commission," whereby Congress, in both provisions, arrogates unto itself a function not specifically vested by the Constitution, should be stricken out of the subject statute for constitutional infirmity. Both provisions brazenly violate the mandate on the independence of the COMELEC.

Similarly, the phrase, "subject to the approval of the Congressional Oversight Committee" in the first sentence of Section 17.1 which empowers the Commission to authorize voting by mail in not more than three countries for the May, 2004 elections; and the phrase, "only upon review and approval of the Joint Congressional Oversight Committee" found in the second paragraph of the same section are unconstitutional as they require review and approval of voting by mail in any country after the 2004 elections. Congress may not confer upon itself the authority to approve or disapprove the countries wherein voting by mail shall be allowed, as determined by the COMELEC pursuant to the conditions provided for in Section 17.1 of R.A. No. 9189.[48][48] Otherwise, Congress would overstep the bounds of its constitutional mandate and intrude into the independence of the COMELEC.

During the deliberations, all the members of the Court agreed to adopt the separate opinion of Justice Reynato S. Puno as part of the ponencia on the unconstitutionality of Sections

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47[47] In *Grego vs. COMELEC* (340 Phil. 591, 606 [1997]), the Court said: "The COMELEC as an administrative agency and a specialized constitutional body charged with the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall, has more than enough expertise in its field that its findings or conclusions are generally respected and even given finality."

48[48] SEC. 17. *Voting by Mail.* –

17.1 . . . Voting by mail may be allowed in countries that satisfy the following conditions:

a) Where the mailing system is fairly well-developed and secure to prevent occasion for fraud;

b) Where there exists a technically established identification system that would preclude multiple or proxy voting; and,

c) Where the system of reception and custody of mailed ballots in the embassies, consulates and other foreign service establishments concerned are adequate and well-secured.

17.1, 19 and 25 of R.A. No. 9189 insofar as they relate to the creation of and the powers given to the Joint Congressional Oversight Committee.

WHEREFORE, the petition is **partly GRANTED**. The following portions of R.A. No. 9189 are declared **VOID** for being **UNCONSTITUTIONAL**:

a) The phrase in the first sentence of the first paragraph of Section 17.1, to wit: ***"subject to the approval of the Joint Congressional Oversight Committee***;"

b) The portion of the last paragraph of Section 17.1, to wit: ***"only upon review and approval of the Joint Congressional Oversight Committee***;"

c) The second sentence of the first paragraph of Section 19, to wit: ***"The Implementing Rules and Regulations shall be submitted to the Joint Congressional Oversight Committee created by virtue of this Act for prior approval***;" and

d) The second sentence in the second paragraph of Section 25, to wit: ***"It shall review, revise, amend and approve the Implementing Rules and Regulations promulgated by the Commission***" of the same law;

for being repugnant to Section 1, Article IX-A of the Constitution mandating the independence of constitutional commission, such as COMELEC.

The constitutionality of Section 18.5 of R.A. No. 9189 is **UPHELD** with respect only to the authority given to the COMELEC to proclaim the winning candidates for the Senators and party-list representatives but not as to the power to canvass the votes and proclaim the winning candidates for President and Vice-President which is lodged with Congress under Section 4, Article VII of the Constitution.

The constitutionality of Section 5(d) is **UPHELD**.

Pursuant to Section 30 of R.A. No. 9189, the rest of the provisions of said law continues to be in full force and effect.

SO ORDERED.

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

WE CONCUR:

HILARIO G. DAVIDE, JR.
Chief Justice

JOSUE N. BELLOSILLO
Associate Justice

REYNATO S. PUNO
Associate Justice

JOSE C. VITUG
Associate Justice

ARTEMIO V. PANGANIBAN
Associate Justice

(On Leave)
LEONARDO A. QUISUMBING
Associate Justice

CONSUELO YNARES-SANTIAGO
Associate Justice

(On Official Leave)
ANGELINA SANDOVAL-GUTIERREZ
Associate Justice

ANTONIO T. CARPIO
Associate Justice

RENATO C. CORONA
Associate Justice

CONCHITA CARPIO-MORALES
Associate Justice

ROMEO J. CALLEJO, SR.
Associate Justice

ADOLFO S. AZCUNA
Associate Justice

DANTE O. TINGA
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

HILARIO G. DAVIDE, JR.
Chief Justice