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WHEREFORE, the Petition is partly *GRANTED* and the assailed Decision *MODIFIED*. The award of moral damages is increased to ₱100,000. No pronouncement as to costs.

SO ORDERED.

Puno (Chairman), Corona, and *Carpio Morales, JJ.,* concur.

Sandoval-Gutierrez, J., on official leave.

EN BANC

[G.R. No. 157013. July 10, 2003]

ATTY. ROMULO B. MACALINTAL, *petitioner, vs.* **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.*

SYNOPSIS

Petitioner Romulo B. Macalintal, a member of the Philippine Bar, sought to declare certain provisions of Republic Act 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" as unconstitutional. Petitioner contended 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 cited the ruling of the Court in *Caasi vs. Court of Appeals* 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.

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The Supreme Court upheld the constitutionality of Section 5(d) of R.A. No. 9189. According to the Court, Section 2 of Article V of the Constitution is an exception to the residency requirement found in Section 1 of the same Article. Ordinarily, an absentee is not a resident and vice versa; a person cannot be at the same time, both a resident and an absentee. However, under existing 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. 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, 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 Court, however, declared certain provisions of the law unconstitutional, namely, portions of Secs. 17.1, 19 and 25, as they trampled on the constitutional mandate of independence of the Commission on Elections. The Court also upheld Section 18.5 of R.A. No. 9189 with respect only to the authority given to the COMELEC to proclaim the winning candidates for 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 Court likewise upheld Sec. 5 (d) of the law. It also declared that pursuant to Sec. 30 of the law the rest of the provision of said law continues to be in full force and effect.

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; RIGHT OF PETITIONER TO FILE PRESENT PETITION, UPHELD; THE CHALLENGED PROVISION OF LAW INVOLVES A PUBLIC RIGHT THAT AFFECTS A GREAT NUMBER OF CITIZENS AND AN ISSUE OF TRANSCENDENTAL SIGNIFICANCE TO THE FILIPINO

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PEOPLE.— The Court upholds the right of petitioner to file the present petition. 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. The Court has held that they may assail the validity of a law appropriating public funds 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. 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,* 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. 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.

2. ID.; ELECTION LAWS; THE OVERSEAS ABSENTEE VOTING ACT OF 2003 (REPUBLIC ACT NO. 9189); ENACTED IN OBEISANCE TO THE MANDATE OF THE CONSTITUTION THAT CONGRESS SHALL PROVIDE A SYSTEM FOR VOTING BY QUALIFIED FILIPINOS ABROAD.— 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.

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It is a basic rule in constitutional construction that the Constitution should be construed as a whole. In *Chiongbian vs. De Leon*, 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 manifest. 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. 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.

3. ID.; ID.; ID.; SECTION 2, ARTICLE V OF THE CONSTITUTION CAME INTO BEING TO REMOVE DOUBT AS TO THE INAPPLICABILITY OF THE RESIDENCY REQUIREMENT IN SECTION 1.— Ordinarily, an absentee is not a resident and vice versa; a person cannot be at the same time, both a resident and an absentee. 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*. 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, 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

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because the Constitution itself provides for the residency requirement of voters. 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.

4. ID.; ID.; ID.; SECTION 2 OF ARTICLE V OF THE CONSTITUTION IS AN EXCEPTION TO THE RESIDENCY REQUIREMENT FOUND IN SECTION 1 OF THE SAME ARTICLE.— 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, 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.

5. ID.; ID.; ID.; EXECUTION OF REQUIRED AFFIDAVIT IS NOT THE ENABLING OR ENFRANCHISING ACT; AFFIDAVIT MERELY SERVES AS AN EXPLICIT EXPRESSION THAT QUALIFIED ABSENTEE HAD NOT IN FACT ABANDONED HIS OR HER DOMICILE OF ORIGIN.— Section 4 of R.A. No. 9189 provides for the coverage of the absentee voting process.

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Which does not require physical residency in the Philippines; and Section 5 of the assailed law which enumerates those who are disqualified. 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.

6. **ID.; ID.; ID.; THE JURISPRUDENTIAL DECLARATION IN *CAASI VS. COURT OF APPEALS* FINDS NO APPLICATION TO THE PRESENT CASE BECAUSE IT DID NOT, FOR OBVIOUS REASONS, CONSIDER THE ABSENTEE VOTING RIGHTS OF FILIPINOS WHO ARE IMMIGRANTS AND PERMANENT RESIDENTS IN THEIR HOST COUNTRIES.**— The jurisprudential declaration in *Caasi vs. Court of Appeals* that green card holders are disqualified to run for any elective

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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. 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*."

7. **ID.; ID.; ID.; ABSENTEE VOTING PRESUPPOSES THAT THE "QUALIFIED CITIZEN OF THE PHILIPPINES ABROAD" IS NOT PHYSICALLY PRESENT IN THE COUNTRY; REQUIRED AFFIDAVIT GIVES THE ABSENTEE AN OPPORTUNITY TO EXPRESS THAT HE HAS NOT ACTUALLY ABANDONED HIS DOMICILE IN THE PHILIPPINES.**— 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.

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8. ID.; ID.; ID.; BY VESTING ITSELF WITH THE POWERS TO APPROVE, REVIEW, AMEND AND REVISE THE IMPLEMENTING RULES AND REGULATIONS FOR THE OVERSEAS ABSENTEE VOTING ACT OF 2003, CONGRESS WENT BEYOND THE SCOPE OF ITS CONSTITUTIONAL AUTHORITY AND TRAMPLED UPON THE CONSTITUTIONAL MANDATE OF INDEPENDENCE OF THE COMMISSION ON ELECTIONS.— 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. 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 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. 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.

9. ID.; ID.; ID.; PROVISION REQUIRING REVIEW AND APPROVAL BY JOINT CONGRESSIONAL OVERSIGHT COMMITTEE OF VOTING BY MAIL IN ANY COUNTRY AFTER THE 2004 ELECTIONS DECLARED UNCONSTITUTIONAL; SAID

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POWER UNDERMINES THE INDEPENDENCE OF THE COMMISSION ON ELECTIONS.— 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. Otherwise, Congress would overstep the bounds of its constitutional mandate and intrude into the independence of the COMELEC.

BELLOSILLO, *J.*, *separate concurring opinion*:

1. POLITICAL LAW; ELECTION LAWS; OVERSEAS ABSENTEE VOTING ACT OF 2003 (REPUBLIC ACT NO. 9189); MERE ACQUISITION OF AN IMMIGRANT OR PERMANENT RESIDENT STATUS BY A FILIPINO CITIZEN IN A FOREIGN COUNTRY DOES NOT *IPSO JURE* RESULT IN THE AUTOMATIC SEVERANCE OF HIS DOMICILIARY LINK TO THE PHILIPPINES, NOR THE ACQUISITION OF A NEW DOMICILE OF CHOICE.— It has been suggested by certain quarters that all Filipino citizens who are *immigrants* and *permanent residents* abroad are considered to have abandoned their Philippine domicile and therefore cannot vote in Philippine elections, since they are not within the constitutional contemplation of "qualified Filipinos abroad" who are eligible to vote. In this jurisdiction, it is well settled that "domicile" and "residence" as used in election laws are synonymous terms which import not only an intention to reside in a fixed place but also personal presence in that place coupled with conduct indicative of that intention. Domicile is a question of intention and circumstances. There are three (3) rules that must be observed in the consideration of circumstances: *first,* that a man must have a residence or domicile somewhere; *second,* domicile is not easily lost, once established it is retained until

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a new one is acquired; and *third*, a man can have but one residence or domicile at a time. The principal elements of domicile, *i.e.*, *physical presence* in the locality involved and *intention* to adopt it as a domicile, must concur in order to establish a new domicile. *No change of domicile will result if either of these elements is absent.* Intention to acquire a domicile without actual residence in the locality does not result in the acquisition of domicile, *nor does the fact of physical presence without intention.* The mere acquisition of an *immigrant* or *permanent resident* status by a Filipino citizen in a foreign country does not *ipso jure* result in the automatic severance of his domiciliary link to the Philippines, nor the acquisition of a new domicile of choice.

2. ID.; ID.; ID.; ACTUAL AND PHYSICAL RESIDENCE ABROAD SHOULD NOT AUTOMATICALLY BE EQUATED WITH ABANDONMENT OF PHILIPPINE DOMICILE.— The *diaspora* of Filipinos in foreign lands started in the wake of the bludgeoning economic crisis in the 80's and its resulting acute shortage of employment opportunities. This phenomenon has continued to the present day as the steadily rising cost of living and intermittent economic crises — worldwide in their effects — weighed most heavily on the ordinary Filipino. He does not have much choice: leave or starve. The lure of the proverbial greener pastures in foreign lands is certainly a potent incentive for an exodus. In most cases, the decision to migrate is borne out of the dire necessities of life rather than a conscious desire to abandon the land of birth. Most *immigrants* and *permanent residents* remain bound very strongly by intimate ties of filial, racial, cultural and social relationships with the Philippines. They travel back periodically to be with their friends and loved ones; some even own, maintain and manage their properties here; and, they continue to show keen interest in, and keep themselves abreast with, political and social developments in the country through the mass media. They make significant contributions to the nation, through their regular dollar remittances that have tremendously shored up our sagging national economy. In the face of these realities, I am convinced more than ever that actual and physical residence abroad should not automatically be equated with abandonment of Philippine domicile. The circumstances enumerated in the immediately preceding paragraph are valid *indicia* of *animus*

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manendi (intent to remain) and *animus revertendi* (intent to return), which should not simply be brushed aside in determining whether the right to vote should be denied the *immigrants* and *permanent residents*. Indeed, there is no rhyme nor reason to unduly marginalize this class of Filipinos.

3. ID.; ID.; ID.; THE EXECUTION OF THE REQUIRED AFFIDAVIT IS AN AFFIRMATION ON THE PART OF THE IMMIGRANT OR PERMANENT RESIDENT THAT HIS STAY ABROAD SHOULD NOT BE CONSTRUED AS RELINQUISHMENT OF HIS OLD DOMICILE.— It is significant to stress, however, that Sec. 5, par. (d), of the *Absentee Voting Law* in fact disqualifies *immigrants* and *permanent residents* from voting as a general rule. This is precisely in recognition of the fact that their status as such may indeed be a badge of their intent to abandon their Philippine domicile and settle permanently in their host country. But at the same time, the legislature provided for a mechanism in the law for ascertaining real intent: an *immigrant* or *permanent resident* who wishes to exercise his right of suffrage is required as a condition *sine qua non* to execute an affidavit declaring that he shall resume actual, physical and permanent residence in the Philippines not later than three (3) years from his registration under the law; and that he has not applied for citizenship in another country. The law in effect draws a distinction between two (2) classes of *immigrants* or *permanent residents* — those who have renounced their old domicile in the Philippines, and those who still consider the Philippines as their domicile of origin. *The execution of the affidavit is an affirmation on the part of the immigrant or permanent resident that his stay abroad should not be construed as a relinquishment of his old domicile.*

4. ID.; ID.; ID.; THE LAW CONTAINS PROPER AND ADEQUATE SAFEGUARDS AGAINST MISUSE OR ABUSE OF THE PRIVILEGE; ABSOLUTE DISQUALIFICATION OF FILIPINO IMMIGRANTS AND PERMANENT RESIDENTS, WITHOUT DISTINCTION, FROM PARTICIPATING IN THE PHILIPPINE ELECTORAL PROCESS WOULD RESULT, AS IN THE PAST, IN A MASSIVE DISENFRANCHISEMENT OF QUALIFIED VOTERS.— I am not unaware of the possibility that the immigrant or permanent resident may renege on his undertaking in the affidavit to resume actual, physical and permanent residence in the Philippines. But the law contains proper and

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adequate safeguards against the misuse or abuse of this privilege, *i.e.*, his name will be purged from the *National Registry of Absentee Voters* and he will be permanently disqualified from voting *in absentia.* As a closing observation, I wish to emphasize that the absolute disqualification of Filipino *immigrants* and *permanent residents,* without distinction, from participating in the Philippine electoral process would invariably result, as in the past, in a massive disenfranchisement of qualified voters. It would be self-defeating in the extreme if the *Absentee Voting Law* would founder on the rock by reason of an unduly restrictive and decidedly unrealistic interpretation given by the minority on the residency requirement in the Constitution.

VITUG, *J.*, *separate opinion:*

1. POLITICAL LAW; ELECTION LAWS; THE OVERSEAS ABSENTEE VOTING ACT OF 2003 (REPUBLIC ACT NO. 9189); THE INDICATORS USED BY THE LEGISLATURE ARE REASONABLE GAUGES TO ESTABLISH THE INTENTION OF THE IMMIGRANT NOT TO ABANDON HIS PHILIPPINE DOMICILE; THE FACT THAT IMMIGRANT HAS NOT RELINQUISHED HIS PHILIPPINE CITIZENSHIP SHOULD HELP REMOVE ANY LINGERING DOUBT ON HIS PREFERRED STATUS.— The law must have recognized that *animus manendi* and *animus non revertendi,* being processes of the mind and incapable of a definitive determination, could only be discerned from perceivable circumstances. So also, Republic Act No. 9189 or the "Overseas Absentee Voting Act of 2003," disqualifies an "immigrant or a permanent resident who is recognized as such in the host country" to vote under the Act on the premise that such a circumstance can be a cogent indication of the holder's intention to abandon his old domicile and establish a new one. But, in much the same vein, the law acknowledges that the immigrant or permanent resident may still be qualified to vote, provided "he executes, upon registration, an affidavit prepared for the purpose by the Commission on Elections declaring that he shall resume actual physical permanent residence in the Philippines not later than three (3) years from approval of his registration under (the) Act." The affidavit shall additionally confirm that he has not applied for citizenship in another country. I am convinced that these indicators used by the legislature are reasonable

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gauges to establish the intention of the immigrant not to abandon his Philippine domicile. The fact that he has not relinquished his Philippine citizenship should help remove any lingering doubt on his preferred status. After all, the right of suffrage, now widely considered to be an innate right of every national, is a basic and perhaps the most outstanding mark of citizenship.

2. ID.; ID.; ID.; THE POWER GIVEN TO THE COMMISSION ON ELECTIONS BY SECTION 18.5 OF THE REPUBLIC ACT NO. 9189 SHOULD BE UNDERSTOOD TO BE LIMITED ONLY TO THE PROCLAMATION OF WINNING CANDIDATES FOR THE POSITIONS OF SENATORS AND PARTY-LIST REPRESENTATIVES.— Section 4 of the Act allows all qualified Filipinos abroad to vote for President, Vice-President, Senators and party-list representatives. In relation to this, Section 18.5 empowers the Commission on Election to order the proclamation of winning candidates. Since it is Congress which has been granted by the Constitution the authority and duty to canvass the votes and proclaim the winning candidates for president and vice-president, I echo the sentiment of my colleagues that the power given to COMELEC by Section 18.5 of R.A. 9189 should be understood to be limited only to the proclamation of winning candidates for the positions of senators and party-list representatives. The election returns for the positions of president and vice-president should then be certified by the Board of Canvassers to Congress and not to COMELEC as provided for in Section 18.4 of the Act.

3. ID.; ID.; ID.; THE ROLE OF THE JOINT CONGRESSIONAL OVERSIGHT COMMITTEE MUST BE UNDERSTOOD AS BEING LIMITED ONLY TO THE MONITORING AND EVALUATION OF THE IMPLEMENTATION OF THE ACT PURSUANT TO THE POWER OF CONGRESS TO CONDUCT INQUIRIES IN AID OF LEGISLATION.— R.A. 9189 creates a Joint Congressional Oversight Committee (JCOC) composed of Senators and Members of the House of Representatives, empowered to "review, revise, amend and approve the Implementing Rules and Regulations (IRR) promulgated by the COMELEC," and to approve the voting by mail in not more than three (3) countries for the May 2004 elections and in any country determined by COMELEC. The Court here finds unanimity in holding that Congress, by vesting itself with the aforesaid powers, has gone beyond the scope of its

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constitutional authority. It is a pronouncement that, in my view, can hardly be susceptible to challenge. The Constitution ordains that constitutional commissions such as the COMELEC shall be independent. The COMELEC has the constitutional authority to "enforce and administer all laws and regulations relative to the conduct of an election" and to promulgate its rules of procedure. The role therefore of the JCOC must be understood as being limited only to the monitoring and evaluation of the implementation of the Act pursuant to the power of Congress to conduct inquiries in aid of legislation.

PANGANIBAN, *J.*, *separate opinion*:

1. CONSTITUTIONAL LAW; SUFFRAGE; REASON FOR RESIDENCE REQUIREMENT.— I believe that, traditionally, the law requires residence because presence in a certain locality enables a person to know the needs and the problems of that area. Equally important, it also makes one become acquainted with the candidates — their qualifications, suitability for a particular office and platform of government. Thus, the fundamental law requires, not just that there be a minimum of one-year residence in the country, but also that six months of that period be spent in the place where the ballot is to be cast. Such detailed requirement will hopefully give the voters sufficient knowledge about a specific town as to help them choose its local officials wisely, quite apart from understanding enough of the entire country so as to prepare to vote sagaciously for national leaders. Although the foregoing discussions were used to justify the residence requirement *vis-à-vis candidates* for elective public offices, I believe that their rationale can easily and analogically fit the needs of *voters* as well.

2. ID.; ID.; ACTUAL PRESENCE IN THE PHILIPPINES IS NO LONGER INDISPENSABLE TO MAKE DISCERNING FILIPINOS KNOW THE PROBLEMS OF THEIR COUNTRY AND TO DECIDE WHO AMONG THE CANDIDATES FOR NATIONAL POSITIONS DESERVE THEIR MANDATE.— The defining essence of my position is this: in the midst of the now available e-age communications facilities, actual presence in the Philippines is no longer indispensable to make discerning Filipinos know the problems of their country and to decide who among candidates for national positions deserve their mandate. Indeed, the Information Age has given overseas Filipinos

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convenient means to inform themselves of our country's needs, as well as of the suitability of candidates for national offices. After all, many of them live abroad, not because they want to abandon their land of birth, but because they have been constrained to do so by economic, professional, livelihood and other pressing pursuits. Ineluctably, they remit their hard-earned money to help their relatives here and their country as a whole. Verily, their easy access to Philippine mass media keep them constantly aware of happenings in their native country. National dailies and other periodicals are sold regularly in Filipino enclaves in foreign shores. Several local and community publications in these areas cater mainly to Filipino expatriates, publishing news and opinions not only about their alien neighborhoods, but also quite extensively about their homeland.

3. ID.; ID.; IT WOULD BE THOROUGHLY UNREASONABLE TO EXPECT FOREIGN-BASED FILIPINOS TO COME BACK TO THE PHILIPPINES FOR ONE YEAR EVERY THREE YEARS AND ABANDON THEIR JOBS JUST TO BE ABLE TO COMPLY LITERALLY WITH THE RESIDENTIAL REQUIREMENT OF SUFFRAGE.— The e-age has opened windows to the Philippines in a pervasive and thorough manner, such that actual presence in the country is no longer needed to make an intelligent assessment of whom to vote for as our national leaders. I make this emphasis on *national* officials, because the Absentee Voting Law allows overseas voting only for President, Vice President, senators and party-list representatives. This distinction is important, because the information available through websites and other modern media outlets is addressed mainly to national concerns. To insist that only those who can demonstrate actual physical residence in the country for one year — or only those who have complied with the more difficult-to-understand concept of domicile — would be entitled to vote would be to cling adamantly and unreasonably to a literal interpretation of the Constitution without regard for its more liberating spirit or rationale. Such insistence would result in rendering inutile any meaningful effort to accord suffrage to Filipinos abroad. Such proposition would make the constitutional interpretation anachronous in the face of the refreshing and pulsating realities of the world. In my view, it would be thoroughly unreasonable to expect foreign-based Filipinos to come back here for one year every three years and abandon their jobs just to be able to comply literally with the residential requirement of suffrage.

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CARPIO, *J.*, *concurring opinion*:

1. CONSTITUTIONAL LAW; SUFFRAGE; TO REQUIRE ABSENTEE VOTERS TO COMPLY WITH THE DOUBLE RESIDENCY REQUIREMENT IS TO IMPOSE AN IMPRACTICAL AND EVEN IMPOSSIBLE CONDITION TO THE EXERCISE OF THE CONSTITUTIONAL RIGHT TO VOTE.— To require absentee voters to comply with the double residency requirement is to impose an impractical and even an impossible condition to the exercise of the constitutional right to vote. *In the first place, the second residency requirement of establishing residence in a locality in the Philippines where the voters propose to vote is impossible to comply since overseas Filipinos will obviously not vote in any locality in the Philippines.* Imposing the double residency requirement makes the absentee voting an empty right of overseas Filipinos. Certainly, the wise framers of the Constitution were incapable of such absurd scheme.

2. ID.; ID.; THE CONCEPT OF ABSENTEE VOTING NEGATES A RESIDENCY REQUIREMENT IN THE COUNTRY OF CITIZENSHIP OF THE VOTER; BY DEFINITION AN ABSENTEE VOTER IS A NON-RESIDENT VOTER.— *The concept of absentee voting negates a residency requirement in the country of citizenship of the voter. By definition, an absentee voter is a non-resident voter.* Obviously, the double residency requirement in Section 1 of Article V applies only to resident or non-absentee Filipino voters. To impose the double residency requirement on absentee Filipino voters is an egregious anomaly for it will require absentee Filipino voters to comply with the same residency requirement imposed on resident or non-absentee Filipino voters. If absentee Filipino voters are required to reside in the Philippines just like resident or non-absentee Filipino voters, why create an absentee voting system for overseas Filipinos in the first place? Applying the double residency requirement on absentee voters will render the provision on absentee voting in Section 2 a surplusage, a constitutional mandate devoid of meaning. Even without the absentee voting provision in Section 1, Congress can validly enact a law allowing resident or non-absentee Filipino voters - those who comply with the double residency requirement - to vote abroad in Philippine embassies or consulates. There is no constitutional prohibition on registered Filipino voters who comply with the double residency requirement to cast their

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ballots at a Philippine embassy or consulate abroad where they happen to be on election day. If the absentee voting system in Section 2 were for the benefit only of resident or non-absentee Filipinos, then there would be no need to provide for it in the Constitution.

3. **ID.; ID.; THE FRAMERS OF THE 1987 CONSTITUTION INTENDED THE ABSENTEE VOTING PROVISION AS AN EXCEPTION TO THE DOUBLE RESIDENCY REQUIREMENT.**— The framers of the 1987 Constitution specifically introduced the absentee voting provision in Section 2 precisely to enfranchise overseas Filipinos who do not comply with the double residency requirement in Section 1. Without the absentee voting provision in Section 2, Congress could not validly enact a law enfranchising overseas Filipinos who do not comply with the double residency requirement. As succinctly explained by Commissioner Christian Monsod during the deliberations in the Constitutional Commission. The framers of the Constitution intended the absentee voting provision as an *exception* to the double residency requirement.

4. **ID.; ID.; THERE IS NO CONSTITUTIONAL PROVISION AGAINST THE ENACTMENT OF LEGISLATION PRESCRIBING THE REACQUISITION OF DOMICILE OR RESIDENCE IN THE PHILIPPINES, JUST AS THERE IS NO CONSTITUTIONAL PROVISION AGAINST THE ENACTMENT OF LEGISLATION PRESCRIBING THE REACQUISITION OF PHILIPPINE CITIZENSHIP.**— The question of how a Filipino, who has become a permanent resident or immigrant in a foreign country, may reacquire his domicile or residence in the Philippines is a matter for ordinary legislation. The reacquisition of the Philippine domicile or residence that a Filipino had lost is within the power of Congress to legislate. The Constitution does not define what domicile or residence means. There is also no constitutional prohibition against the enactment of legislation prescribing the reacquisition of domicile or residence in the Philippines, just as there is no constitutional prohibition against the enactment of legislation prescribing the reacquisition of Philippine citizenship. Thus, RA No. 8171 allows a former natural-born Filipino who became a foreigner to reacquire Philippine citizenship by filing a simplified administrative petition and taking an oath of allegiance

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to the Philippines. Section 5(d) of RA No. 9189, which prescribes the reacquisition of residence by a Filipino through the execution of an affidavit stating he is resuming residence in the Philippines, is similarly well within the power of Congress to enact and is thus constitutional.

5. ID.; ID.; THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS REQUIRES THE PHILIPPINES TO RESPECT THE PEOPLE'S RIGHT OF SUFFRAGE "WITHOUT UNREASONABLE RESTRICTIONS"; TO REQUIRE OVERSEAS FILIPINOS TO RETURN WITHIN 12 MONTHS SO THEY MAY VOTE ABROAD AS ABSENTEE VOTERS IS PLAINLY AN UNREASONABLE RESTRICTION OUTLAWED BY THE COVENANT.— The right of suffrage is the cornerstone of a representative government like that established in the 1987 Constitution. A representative government is legitimate when those represented elect their representatives in government. The consent of the governed is what stamps legitimacy on those who govern. This consent is expressed through the right of suffrage. It is a precious right for which many have fought and died so that others may freely exercise it. A government that denies such right on flimsy or meaningless grounds does so at its peril. The International Covenant on Civil and Political Rights, to which the Philippines is a signatory, requires the Philippines to respect the people's right of suffrage "*without unreasonable restrictions*." The Philippines is duty bound under international law to comply in *good faith* with its treaty obligations under the Covenant. To require overseas Filipinos to return to the Philippines twice within 12 months so they may vote abroad as absentee voters is plainly an unreasonable restriction outlawed by the Covenant. When the framers of the Constitution introduced absentee voting in Section 2 of Article V, they were aware of the country's obligations under the Covenant. In their discussions on the death penalty, human rights and the Bill of Rights, the framers of the Constitution often referred to the country's obligations under the Covenant. It is inconceivable that the framers intended overseas Filipinos to comply with the double residency requirement, an unreasonable restriction that would patently violate Article 25 of the Covenant and practically negate the overseas Filipinos' right of suffrage.

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CARPIO MORALES, *J.*, *separate opinion*:

1. POLITICAL LAW; ELECTION LAWS; THE OVERSEAS ABSENTEE VOTING ACT OF 2003 (REPUBLIC ACT NO. 9189); THE REQUIRED AFFIDAVIT EXECUTED IN ACCORDANCE WITH THE LAW BY A FILIPINO IMMIGRANT OR PERMANENT RESIDENT OF ANOTHER COUNTRY EXPRESSING HIS INTENT TO RESUME PHYSICAL PERMANENT RESIDENCE IN THE PHILIPPINES IS AN ELOQUENT PROOF OF HIS INTENTION NOT TO ABANDON HIS DOMICILE OF ORIGIN IN THE PHILIPPINES.— It is my view that the affidavit executed in accordance with Section 5(d) of R.A. 9189 by a Filipino immigrant or permanent resident of another country expressing his intent to resume physical permanent residence in the Philippines is an eloquent proof of his intention not to abandon his domicile of origin in the Philippines. It is a statement under oath of what a Filipino seeks to do for the future of his membership in a political community. Why should this affidavit be discredited on the mere speculation that the immigrant might not fulfill his undertaking to return to the Philippines for good? If Filipinos who are temporarily residing in foreign countries are accorded full faith and credit as to their domiciliary ties no matter how indefinite their absence from the Philippines, what more in the case of Filipino immigrants who have formally declared their intent to settle in their homeland? While he may have stayed on a more or less permanent basis in the host country which conferred on him the status of an immigrant and may be animated with all the desire to remain there, until and unless a Filipino immigrant had categorically expressed by words or by deeds his intent to no longer return to his domicile of origin, no conclusion can be reached as to a change in domicile from one of origin to one of choice, hence, the old domicile subsists. For at the core of every Filipino immigrant's being is the fact of his Philippine citizenship. He is, after all, still a Filipino.

2. ID.; ID.; ID.; UNTIL THE OPPORTUNITY TO EXECUTE THE REQUIRED AFFIDAVIT HAS BEEN TOTALLY FOREGONE BY A FILIPINO IMMIGRANT, IN THE ABSENCE OF ANY CONCLUSIVE EVIDENCE OF HIS ACQUISITION OF A NEW DOMICILE, THE FILIPINO IMMIGRANT'S DOMICILE OF ORIGIN IS INTACT, HIS PRESENCE ABROAD AND HIS

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DESIRE TO REMAIN THEREIN NOTWITHSTANDING.— The acquisition of a new domicile must be *completely perfected* by a concurrence of the factum of removal to a new locality, the animus to remain there, *and* abandonment of and intent not to return to the former domicile, for if there is a purpose to return, whether secret or open, no loss or change of domicile will result. Two types of Filipino immigrants must then be distinguished. The first, a Filipino who has opted not to execute the required affidavit under Section 5(d) of R.A. 9189, is clearly disqualified to exercise suffrage for he has manifested the *animus non revertendi* with respect to his domicile in the Philippines, thereby effectuating his acquisition of a new domicile. The second, a Filipino who declares his wish to be reunited with his homeland has, without doubt, shown that his residence of origin remained unchanged and so he is entitled to vote under the Overseas Absentee Voting Law. Therefore, until that opportunity to execute the affidavit has been totally foregone by a Filipino immigrant, in the absence of any conclusive evidence of his acquisition of a new domicile, the Filipino immigrant's domicile of origin is intact, his presence abroad and his desire to remain therein notwithstanding.

AZCUNA, *J.*, *concurring opinion:*

1. **POLITICAL LAW; ELECTION LAWS; THE OVERSEAS ABSENTEE VOTING ACT OF 2003 (REPUBLIC ACT NO. 9189); THE ABANDONMENT OF THE PRESENT DOMICILE OF CHOICE, BY THE EXECUTION OF THE AFFIDAVIT, OPERATES TO REVIVE THE DOMICILE OF ORIGIN TO REPLACE IT BECAUSE OF THE PRINCIPLE THAT NO PERSON CAN BE WITHOUT A DOMICILE AT ANYTIME.**— Petitioner contends that Filipinos who establish permanent residence abroad have thereby abandoned their Philippine domicile of origin and replaced it with a domicile of choice in a foreign country. This may indeed be true, but with the execution of the affidavit provided for under Section 5 (d) aforementioned, the affiant expressly states an abandonment of said domicile of choice. The legal effect of this expression is to revive the domicile of origin. For unlike a domicile of choice, which requires both intention and physical presence to be established or maintained, the domicile of origin can be revived by an intention properly expressed. Thus, the abandonment

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of the present domicile of choice, by the execution of the affidavit, operates to revive the domicile of origin to replace it, because of the principle that no person can be without a domicile at any time.

2. ID.; ID.; ID.; THROUGH THE EXECUTION OF THE REQUIRED AFFIDAVIT, THE AFFIANT DOES THE OPERATIVE ACT THAT MAKES HIM ONCE MORE A PHILIPPINE DOMICILIARY; THE REQUIREMENT OF RESUMING ACTUAL PHYSICAL PRESENCE WITHIN THREE (3) YEARS IS ONLY TEST OF SUCH INTENTION, BUT IS NOT NEEDED TO EFFECT CHANGE OR REVERSION OF DOMICILE.— The moment a foreign domicile is abandoned, the native domicile is reacquired. When a person abandons his domicile of choice, his domicile of origin immediately reverts and remains until a new domicile of choice is established. On the abandonment of a domicile of choice, the domicile of origin immediately reverts, without regard to any definite intent to return to such original domicile, provided there is a definite intent finally to abandon the acquired domicile of choice. Through the execution of the affidavit, the affiant does the operative act that makes said affiant once more a Philippine domiciliary. The requirement of resuming actual physical presence within three (3) years is only a test of such intention, but is not needed to effect the change or reversion of domicile. If the affiant does not resume the residence physically within said period, then the intent expressed in the affidavit is defective and the law will deem it inoperative, thereby allowing removal of affiant's name from the National Registry of Absentee Voters.

PUNO, *J.*, *concurring and dissenting opinion*:

1. POLITICAL LAW; ELECTION LAWS; THE OVERSEAS ABSENTEE VOTING ACT OF 2003 (REPUBLIC ACT NO. 9189); THE MAJORITY ERRED IN RULING THAT SECTION 2 OF ARTICLE V OF THE CONSTITUTION DISPENSED WITH THE RESIDENCE REQUIREMENTS PROVIDED UNDER SECTION 1 OF THE SAME ARTICLE.— *The intent of the members of the Constitutional Commission to apply the residence requirements to absentee voters is evident from its deliberations.* They precisely used the phrase "QUALIFIED FILIPINOS ABROAD" to stress that the absentee voter must

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have all the qualifications in Section 1, Article VI of the Constitution. In the course of the deliberations, Fr. Bernas perceived a problem that may arise from the meaning of the second residence requirement on the place of registration and voting. As noted, a qualified voter normally registers and votes in the place where he is domiciled or has resided for six months. Fr. Bernas feared that the second residence requirement may pose a constitutional obstacle 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.*" Following the observation of Father Bernas and to obviate the constitutional problem, the members of the Constitutional Commission then discussed the *system of registration of qualified Filipinos* abroad who will be allowed to vote. It was agreed that their registration abroad would be considered as registration in a particular locality in the Philippines where he is domiciled, and the vote cast abroad would be considered cast in that particular locality. It is crystal clear from the deliberations, that the *majority* erred in ruling that Section 2 of Article V of the Constitution *dispensed* with the residence requirements provided under Section 1 of the same Article.

2. ID.; ID.; ID.; AN "IMMIGRANT" OR A "PERMANENT RESIDENT" OF A FOREIGN COUNTRY IS DEEMED TO HAVE ABANDONED HIS DOMICILE IN THE PHILIPPINES.— In *Romualdez-Marcos v. COMELEC,* we ruled that *domicile of origin* is not easily lost. *To successfully effect a change of domicile*, one must demonstrate an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one; and acts which correspond with purpose. *This change of domicile is effected by a Filipino who becomes an "immigrant" or a "permanent resident" of a foreign country*. Thus, we held in *Caasi v. Court of Appeals*, *viz:* Miguel's application for immigrant status and permanent residence in the U.S. and his possession of a green card attesting to such status are conclusive proof that he is a permanent resident of the U.S. despite his occasional visits to the Philippines. The waiver of such immigrant status should be as indubitable as his application for it. Absent clear evidence that he made an irrevocable waiver of that status or that he surrendered his green card to the appropriate U.S. authorities before he ran

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for mayor. . . The doctrine in *Caasi* is by no means new. Our election laws have continuously regarded "immigrants" or "permanent residents" of a foreign country to have lost their domiciles in the Philippines and hence are not qualified to run for public office. *There is no reason not to apply the Caasi ruling in disputes involving the qualification of voters.* In essence, both cases concern fulfillment of the residence requirements. Section 5(d) of Rep. Act No. 9189 itself reinforces the applicability of the *Caasi* doctrine. As observed by the majority, Rep. Act No. 9189 disqualifies an immigrant or a permanent resident who is recognized as such in another country "because immigration or permanent residence in another country implies renunciation of one's residence in his country of origin."

3. ID.; ID.; ID.; THE MAJORITY RULING ON THE NATURE OF THE AFFIDAVIT TO BE EXECUTED BY AN "IMMIGRANT" OR A "PERMANENT RESIDENT" IS INCONSISTENT.— I submit that the *majority ruling* on the nature of the affidavit to be executed by an "immigrant" or a "permanent resident" is *inconsistent*. On one hand, it *theorizes* that the act "serves as an explicit expression that he had not in fact abandoned his domicile of origin." This concedes that while an "immigrant" or a "permanent resident" has acquired a new domicile in a foreign country by virtue of his status as such, Rep. Act No. 9189 would consider him not to have abandoned his domicile in the Philippines. On the other hand, the majority also *theorizes* that the affidavit constitutes an "express waiver of his status as an immigrant or permanent resident," and upon fulfillment of the requirements of registration, "he may still be considered as a 'qualified citizen of the Philippines abroad' for purposes of exercising his right of suffrage." This presupposes that the "immigrant" or "permanent resident" abandoned his domicile in the Philippines, but seeks to reacquire this domicile by the execution of the affidavit. *The first theory is untenable.* Its inevitable result would be the establishment of two domiciles, *i.e.*, domicile in the Philippines and domicile in a foreign country where he is considered an "immigrant" or a "permanent resident." This ruling will contravene the principle in private international law that a person can be domiciled only in one place at a given time. *The second theory is equally untenable.* A person who has abandoned his domicile of origin by establishing a domicile of choice cannot just revert back to his domicile of origin. He

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must satisfy the same requisites for acquiring a new domicile, *i.e.,* an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one; and acts which correspond with the purpose. An existing domicile cannot be lost by abandonment alone, even if there is an intent to acquire a new one; the existing domicile continues until a new one is in fact gained. To abandon domicile, a person must choose a new domicile, actually reside in the place chosen, and intend that it be the principal and permanent residence. That is, there can be no change of domicile without the concurrence of act and intent.

4. ID.; ID.; ID.; THE REQUIRED AFFIDAVIT MERELY PROVES THE INTENT TO RETURN BUT NOT THE OTHER REQUISITES FOR RE-ACQUIRING THE DOMICILE OF ORIGIN; WHAT MAKES THE INTENT EXPRESSED IN THE AFFIDAVIT EFFECTIVE AND OPERATIVE IS THE FULFILLMENT OF THE PROMISE TO RETURN TO THE PHILIPPINES AND UNTIL THEN, THE ABSENTEE DOES NOT POSSESS THE NECESSARY REQUISITES AND THEREFORE, CANNOT BE CONSIDERED A QUALIFIED VOTER.— *With due respect, I submit that the affidavit merely proves the intent to return but not the other requisites for reacquiring the domicile of origin.* Intent, which is not coupled with actual physical transfer, is not sufficient either to abandon the former domicile or to establish a new domicile. Thus, the view that domicile could be established as soon as the old is abandoned even though the person has not yet arrived at the new domicile, has not been accepted. To stress, the burden of establishing a change in domicile is upon the party who asserts it. A person's declarations as to what he considers his home, residence, or domicile are generally admissible "as evidence of his attitude of mind." However, whatever the context, "their accuracy is suspect because of their self-serving nature, particularly when they are made to achieve some legal objective." In the case at bar, the burden rests on an "immigrant" or a "permanent resident" to prove that he has abandoned his domicile in the foreign country and reestablished his domicile in the Philippines. A self-serving affidavit will not suffice, especially when what is at stake is a very important privilege as the right of suffrage. I respectfully submit that what makes the intent expressed in the affidavit effective and operative is the fulfillment of the

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promise to return to the Philippines. Physical presence is not a mere test of intent but the "*principal confirming evidence* of the intention of the person." Until such promise is fulfilled, he continues to be a domiciliary of another country. Until then, he does not possess the necessary requisites and therefore, cannot be considered a qualified voter.

5. **ID.; ID.; ID.; COUNTING THE VOTES OF IMMIGRANTS OR PERMANENT RESIDENTS WHO FAIL TO RETURN TO THE PHILIPPINES WILL DILUTE THE VALID VOTES OF FULLY QUALIFIED ELECTORS; MAY RESULT IN THE ANOMALY WHERE THE HIGHEST PUBLIC OFFICIALS OF THE LAND WILL OWE THEIR ELECTION TO "IMMIGRANTS" OR "PERMANENT RESIDENTS" WHO FAILED TO FULFILL THEIR PROMISE TO RETURN TO THE COUNTRY OR WHO REPUDIATED THEIR DOMICILE HERE.**— The only consequence imposed by Rep. Act No. 9189 to an "immigrant" or a "permanent resident" who does not fulfill his promise to return to the Philippines is the removal of his name from the National Registry of Absentee Voters and his permanent disqualification to vote *in absentia. But his vote would be counted and accorded the same weight as that cast by bona fide qualified Filipino voters. I respectfully submit that this scheme diminishes the value of the right of suffrage as it dilutes the right of qualified voters to the proportionate value of their votes.* The one person, one vote principle is sacrosanct in a republican form of government. The challenged provision which allows the value of the valid votes of qualified voters to be diminished by the invalid votes of disqualified voters violates the sovereignty of our people. *The validation by the majority of this unconstitutional provision may result in the anomaly where the highest public officials of our land will owe their election to "immigrants" or "permanent residents" who failed to fulfill their promise to return to our country or who repudiated their domicile here.*

6. **ID.; ID.; ID.; SECTION 18.5 OF REPUBLIC ACT NO. 9189 EMPOWERING THE COMMISSION ON ELECTIONS TO PROCLAIM THE WINNING CANDIDATES SHOULD BE CONSTRUED AS LIMITED TO THE POSITIONS OF SENATORS AND PARTY LIST REPRESENTATIVES.**— On its face, Section 18.5 of Rep. Act No. 9189 appears to be repugnant to Section 4, Article VII of the 1987 Constitution. It

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gives the impression that Congress abdicated to COMELEC its constitutional duty to canvass and proclaim the winning candidates for President and Vice-President. I agree with the majority that the impugned provision should be given a reasonable interpretation that would save it from a constitutional infirmity. To be sure, Congress could have not allowed the COMELEC to exercise a power exclusively bestowed upon it by the Constitution. Thus, Section 18.5 of Rep. Act No. 9189 empowering the COMELEC to proclaim the winning candidates should be construed as limited to the positions of Senators and party-list representatives.

7. **ID.; ID.; ID.; THE LEGISLATIVE VETO POWER OR CONGRESSIONAL OVERSIGHT POWER OVER THE AUTHORITY OF THE COMMISSION ON ELECTIONS TO ISSUE RULES AND REGULATIONS IN ORDER TO ENFORCE ELECTION LAWS IS UNCONSTITUTIONAL; THE POWER TO PROMULGATE RULES AND REGULATIONS IN ORDER TO ADMINISTER ELECTION LAWS HAS BEEN VESTED EXCLUSIVELY BY THE 1987 CONSTITUTION TO THE COMMISSION AND IT CANNOT BE TRENCHED UPON BY CONGRESS IN THE EXERCISE OF ITS OVERSIGHT POWERS.**— The Constitution divided the powers of our government into three categories, legislative, executive, and judicial. Although not "hermetically sealed" from one another, the powers of the three branches are functionally identifiable. In this respect, legislative power is generally exercised in the enactment of the law; executive power, in its execution; and judicial power, in its interpretation. In the absence of specific provision in the Constitution, it is fundamental under the principle of separation of powers that one branch cannot exercise or share the power of the other. In addition, our Constitution created *other offices* aside from the executive, the legislative and the judiciary and defined their powers and prerogatives. Among these bodies especially created by the Constitution itself is the COMELEC. *The COMELEC occupies a distinct place in our scheme of government.* As the constitutional body charged with the administration of our election laws, it is endowed with independence in the exercise of *some* of its powers and the discharge of its responsibilities. *The power to promulgate rules and regulations in order to administer our election laws belongs to this category of powers as this has been vested*

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exclusively by the 1987 Constitution to the COMELEC. It cannot be trenched upon by Congress in the exercise of its oversight powers.

8. ID.; ID.; ID.; SECTION 17.1 OF REPUBLIC ACT NO. 9189 IS UNCONSTITUTIONAL FOR IT ALLOWS CONGRESS TO NEGATE THE EXCLUSIVE POWER OF THE COMMISSION ON ELECTIONS TO ADMINISTER AND ENFORCE ELECTION LAWS AND REGULATIONS GRANTED BY THE CONSTITUTION ITSELF; SAID POWER IS EXCLUSIVE AND IS NOT MEANT TO BE SHARED BY ANY OTHER BRANCH OR AGENCY OF THE GOVERNMENT.— *I join the majority* in holding that Section 17.1 of Rep. Act No. 9189 is *unconstitutional* for it allows Congress to negate the *exclusive* power of the COMELEC to administer and enforce election laws and regulations granted by the Constitution itself. This is not to maintain that the Implementing Rules and Regulations promulgated by the COMELEC, or the system it devised to implement voting by mail cannot be challenged. If they are illegal or constitute grave abuse of discretion, the courts can strike them down in an appropriate case. This power is vested to the courts under Section 1, Article VIII of the Constitution defining the scope of judicial power, and more specifically under Section 5, Article VIII empowering this Court to review, revise, reverse, modify or affirm on appeal or *certiorari*, "all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question." Again, this power is exclusive and is not meant to be shared by any other branch or agency of the government.

YNARES-SANTIAGO, *J.*, *concurring and dissenting opinion*:

1. POLITICAL LAW; ELECTION LAWS; THE OVERSEAS ABSENTEE VOTING ACT OF 2003 (REPUBLIC ACT NO. 9189); GRANTS THE RIGHT OF SUFFRAGE TO A CATEGORY OF VOTERS WHO DO NOT POSSESS THE CONSTITUTIONAL REQUIREMENT OF RESIDENCE; THE MAJORITY OPINION OVERLOOKED THE FACT THAT WHILE SECTION 2, ARTICLE V OF THE CONSTITUTION PROVIDES A SYSTEM FOR ABSENTEE VOTING, ANY ABSENTEE WHO VOTES MUST FIRST MEET THE

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QUALIFICATIONS FOUND IN SECTION 1 OF THE SAME ARTICLE.— I am constrained to dissent from the majority opinion because R.A. 9189 grants the right of suffrage to a category of voters who do not possess the constitutional requirement of residence. These are men and women who are *still* Filipino citizens but who have voluntarily and unambiguously chosen actual, physical, and permanent residence in a foreign country. In other words, the questioned law allows non-residents to vote. As phrased, Section 5 (d) of R.A. 9189 grants to Filipinos who are immigrants or permanent residents of another country, and who are considered as such by their host country, the option to exercise their right of suffrage. Proponents of R.A. 9189 are trying to construe Section 2 of Article V of the Constitution as a *proviso* which expands and enlarges the scope of the preceding section. They overlook the fact that while Section 2 provides a system for absentee voting, any absentee who votes must first meet the qualifications found in Section 1 of the same article.

2. ID.; ID.; ID.; SINCE THE PROVISION ON ABSENTEE VOTING IN REPUBLIC ACT NO. 9189 NEITHER LIMITS NOR ENLARGES A PROVISION OF WHICH IT IS A PART, THE PHRASE "QUALIFIED FILIPINOS ABROAD" CAN BE INTERPRETED ONLY TO MEAN THAT THOSE WHO ARE QUALIFIED TO VOTE UNDER SECTION 1, ARTICLE 4 OF THE CONSTITUTION MAY BECOME THE ABSENTEE VOTERS AND MUST, THEREFORE, POSSESS ON ELECTION DAY THE CONSTITUTIONAL REQUIREMENTS AS TO CITIZENSHIP, AGE AND RESIDENCE.— As stated by the petitioner, if the framers of the Constitution intended to make Section 2 of Article V a *proviso* or exception to its first section, they should have added it to the latter. The Constitution does not make the absentee voting provision a mere *proviso* of the first section on residence qualifications. Together with the system which secures the secrecy and sanctity of the ballot, the provision on absentee voting is an entirely distinct and separate section which allows only those qualified under Section 1 to take advantage of the privilege under Section 2. The office of a *proviso* is to limit the application of a section or provision or to qualify or restrain its generality. However, a *proviso* may also enlarge what otherwise is a phrase of limited import had there been no *proviso* qualifying it. Since the provision on

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absentee voting in R.A. 9189 neither limits nor enlarges a provision of which it is a part, the phrase "*qualified* Filipinos abroad" can be interpreted only to mean that those who are qualified to vote under the preceding section may become absentee voters. They must possess on election day the constitutional requirements as to citizenship, age and residence.

3. **ID.; ID.; ID.; MADAM JUSTICE YNARES-SANTIAGO DOES NOT AGREE WITH THE MAJORITY'S BELIEF THAT THE POSITION OF ARTICLE V, SECTION 2 OF THE CONSTITUTION IS INDICATIVE OF AN INTENT TO MAKE IT APPEAR TO BE AN EXCEPTION TO THE RESIDENCE REQUIREMENT PROVIDED IN SECTION 1 OF THE SAME ARTICLE.**— It is submitted that a valid and very real distinction exists between either of these two groups of Filipinos, on the one hand, and those Filipinos who are permanent residents or immigrants in their host countries, on the other. The key difference lies in the change of permanent residence or lack thereof, for the framers of our Constitution clearly intended that Filipinos who had taken up permanent residence in their host countries would be excluded from the benefits of absentee voting. No other interpretation can be supported by the records at hand. It is clear that the Constitutional Commission did not intend to make absentee voters an exception to the general rule on residence in the exercise of the right of suffrage. We do not agree with the majority's belief that the position of Article V, Section 2 of the Constitution is indicative of an intent to make it appear to be an exception to the residence requirement provided for in the section immediately preceding it. As earlier stated, Section 2 is not a *proviso* of Section 1. It is patent from the excerpts of the deliberations by members of the constitutional commissions that the Commissioners took pains to ensure that the reasoning behind Article V, Section 2 of the Constitution would not be misunderstood. They never intended to accord a special status nor give special consideration to Filipinos who have become permanent residents of their host countries. These necessarily include immigrants.

4. **ID.; ID.; ID.; "ABSENTEE" REFERS TO THOSE PEOPLE WHOSE INTENT TO RETURN HOME AND FORSAKE THE FOREIGN COUNTRY IS CLEAR; IT CANNOT REFER TO IMMIGRANTS AND A MERE PROMISE TO RETURN HOME WITHIN THREE YEARS FROM VOTING IS NO PROOF OF INTENT TO**

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RETURN TO A PERMANENT RESIDENCE.— I beg to differ from the conclusion in the majority opinion which states that an absentee remains attached to his residence in the Philippines because "residence" is synonymous with "domicile." "Absentee" has to be qualified. It refers only to those people residing abroad whose intent to return home and forsake the foreign country is clear. It cannot refer to immigrants. A mere promise to return home within three years from voting is no proof of intent to return to a permanent residence. The sanction for its enforcement is so feeble that the promise will be an empty one. As earlier stated, an immigrant gives up many things, including the right or opportunity of voting in the Philippines, when he moves with his family abroad. A sanction of future disenfranchisement would not bother him in the least bit. In the meantime, the immigrant vote in closely contested cases may have elected the President, a Senator or a Congressman. Unqualified voters will have swung the elections. In the same way that a counterfeit coin drives away or results in the hoarding of genuine or good coins, the votes of non-qualified persons will not only weaken or nullify the value of the good votes but may make an election itself sham and meaningless.

SANDOVAL-GUTIERREZ, *J.*, *concurring and dissenting opinion:*

1. POLITICAL LAW; ELECTION LAWS; THE OVERSEAS ABSENTEE VOTING ACT OF 2003 (REPUBLIC ACT NO. 9189); RESIDENCE FOR VOTING IS NOT WHOLLY A QUESTION OF INTENTION, BUT IS A QUESTION OF FACT AND INTENTION.— No person has more than one domicile at a time. A Filipino immigrant, by his permanent residency in the host country, loses the Philippines as his domicile. He cannot reacquire it by the mere act of executing an affidavit expressing his intention to return to the Philippines at some future time. *Residence for voting is not wholly a question of intention, but it is a question of fact and intention.* Unless his intention is fortified by the *concurrent act* of reestablishing the Philippines as his domicile, he cannot be considered a qualified voter under the Philippine Constitution.

2. ID.; ID.; ID.; THE INTENTION OF THE FRAMERS TO LIMIT THE PHRASE "QUALIFIED FILIPINOS ABROAD" TO FILIPINOS TEMPORARILY RESIDING ABROAD IS CLEAR

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AND UNMISTAKABLE; A LAW, SUCH AS REPUBLIC ACT NO. 9189 WHICH EXPANDS THE MEANING AS TO INCLUDE THOSE OTHERWISE NOT COVERED THROUGH THE MERE IMPOSITION OF CERTAIN REQUIREMENTS, "RISKS A DECLARATION OF UNCONSTITUTIONALITY".— *There is no dispute that the 1987 Constitution denies to Filipino immigrants the right of suffrage.* The Framers had no choice, they had to maintain consistency among the provisions of the Constitution. Section 1, Article V prescribes *residency* in the Philippines as one of the qualifications for the exercise of the right of suffrage. Initially, this was perceived as an obstacle to the incorporation of the constitutional provision requiring Congress to provide for a system of absentee voting by "qualified Filipinos abroad." However, the Framers resorted to the legal connotation of the term "residence." They emphasized that "residence" is to be understood not in its common acceptance as referring to "dwelling" or "habitation," but rather to "domicile" or "legal residence," that is, *the "place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain."* Thus, as long as the Filipino abroad maintains his domicile in the Philippines, he is considered a qualified voter under the Constitution. *Significantly, at the early stage of the deliberation, the Framers made it clear that the term "qualified Filipinos abroad" refers only to those whose presence in the foreign country is only "temporary" and whose domicile is still the Philippines – thus, definitely excluding immigrants or permanent residents of a foreign country.* Let me quote the Records of the Constitutional Commission. The intention of the Framers to limit the phrase "qualified Filipinos abroad" to Filipinos *temporarily* residing abroad is clear and unmistakable. Therefore, a law, such as R.A. No. 9189, which expands the meaning as to include those otherwise not covered (such as Filipino immigrants or permanent residents of foreign countries), through the mere imposition of certain requirements, "risks a declaration of unconstitutionality."

3. ID.; ID.; ID.; TO RULE THAT A SWORN DECLARATION OF INTENTION IS SUFFICIENT TO ACQUIRE A VOTING RESIDENCE IS TO ESTABLISH A BAD PRECEDENT CONSIDERING THAT THE VOTERS CAN CHOOSE THE

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PLACE WHERE THEY WANT TO VOTE BY SIMPLY SWEARING THAT THEY INTEND TO PERMANENTLY RESIDE THEREIN.— Mere declaration that he intends to resume actual physical permanent residence in the Philippines does not have the effect of conferring upon the immigrant the necessary qualification of "residency" here. To reiterate, residence for voting is not wholly a question of intention, it is a question of fact and intention. *A voter's statements, declarations, or testimony with respect to his intention is not controlling, but must be taken in connection with his acts and conduct.* Hence, the right to vote in a certain place or precinct requires the occurrence of two things, the act of residing coupled with the intention to do so. In order to constitute a residence for voting purposes, there must be the intention to reside there for voting purposes, and that intention must be accompanied by acts of living, dwelling, lodging, or residing reasonably sufficient to establish that it is the real and actual residence of the voter. *To rule that a sworn declaration of intention is sufficient to acquire a voting residence is to establish a bad precedent considering that voters can choose the place where they want to vote simply by swearing that they intend to permanently reside therein.*

4. ID.; ID.; ID.; AN IMMIGRANT'S PLAIN DECLARATION OF HIS INTENTION CANNOT PREVAIL OVER THE ACTUAL FACTS SURROUNDING HIS RESIDENCE.— The majority rules that the affidavit required in Section 5 (d) "serves as an explicit expression that the immigrant had not in fact abandoned his domicile of origin." Again, I cannot subscribe to this view. An immigrant's plain declaration of his intention cannot prevail over the actual facts surrounding his residency. Conduct has greater evidential value than a declaration. The fact that a person obtains an immigrant's visa, and not a visitor's or tourist's visa, plainly shows that his entrance in the foreign country is for a permanent purpose. Indeed, declarations are always subject to the infirmity of any self-serving declaration and maybe contradicted by inconsistent acts. When in conflict with the facts, a declared intention to acquire a domicile (or to maintain the domicile of origin) has little weight. Besides, to admit the immigrant's representation that he has not abandoned his Philippine domicile despite his immigrant status is to tolerate what we proscribed in *Caasi vs. Court of Appeals*, thus: "In

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other words, he would have this Court believe that he applied for immigration to the U.S. under false pretenses; that all this time he only had one foot in the United States but kept his other foot in the Philippines. Even if that were true, this Court will not allow itself to be a party to his duplicity by permitting him to benefit from it and giving him the best of both worlds so to speak." Honoring our countrymen's sworn declarations to resume permanent residency in the Philippines, notwithstanding their immigrant status and the host country's continuous recognition of them as such, does not speak well of Filipino values. In effect, it encourages duplicitous or deceptive conduct among our countrymen. We should not allow such acts to be done behind the host country's back.

5. ID.; ID.; ID.; ASSAILED PROVISION MAY ONLY BE AN AVENUE FOR FRAUD.— Another ground why I cannot join the majority is the great probability that the assailed provision may only be an avenue for election fraud. Reality wise, our country is yet to achieve a truly clean and honest election. To grant the right of suffrage to the vast number of immigrants in foreign countries where we cannot enforce our laws with the same efficacy as within our territory, is to endanger our citizens' constitutional right to an undefiled suffrage. Paramount in the preservation of the principles of democratic government is the observance of precautionary requirements designed to insure the sanctity of the ballot. Consequently, it is imperative that our elections are not tainted with fraud. This cannot be achieved unless we impose stricter terms on the grant of the right of suffrage to absentee citizens. Significantly, the only sanction imposed by Section 5(d) upon an immigrant who fails to perform his promise to resume permanent residency in the Philippines within the prescribed period is that his name will be stricken from the National Registry of Absentee Voters and he will be permanently disqualified to vote *in absentia. What a punishment for someone who made a mockery of the election process! This punitive measure is virtually meaningless. It cannot undo the result of an election nor can it discipline or daunt immigrant voters.*

6. ID.; ID.; ID.; SECTION 5 (d) OF REPUBLIC ACT NO. 9189 IS UNCONSTITUTIONAL FOR IT DIMINISHES THE "RESIDENCY REQUIREMENT" OF THE CONSTITUTION BY INCLUDING WITHIN THE PHRASE "QUALIFIED FILIPINOS

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ABROAD" IMMIGRANTS AND PERMANENT RESIDENTS OF FOREIGN COUNTRIES; SAID PROVISION DEFIES THE CLEAR INTENTION OF THE CONSTITUTION TO LIMIT THE APPLICATION OF THE ABSENTEE VOTING LAW TO FILIPINOS WHO ARE "TEMPORARILY ABROAD."— Let it be stressed that where the Constitution fixes the qualifications of voters, these qualifications cannot be increased, diminished or changed by legislative enactment, unless the power to do so is expressly granted, or necessarily implied. The inclusion of the residency requirement in the Constitution is not without reason. It constitutes an invaluable protection against fraud and further affords some surety that the elector has in fact become a member of the community and that, as such, he has a common interest in all matters pertaining to its government, and is therefore more likely to exercise his right intelligently. The specification in the Constitution is an implied prohibition against interference. It is not competent for Congress to diminish or alter such qualification. Section 5(d) of R.A. No. 9189 is unconstitutional for it diminishes the "residency requirement" of the Constitution *by including within the phrase "qualified Filipinos abroad" immigrants and permanent residents of foreign countries.* It defies the clear intent of the Constitution to limit the application of the absentee voting law to Filipinos who are "temporarily abroad." Thus, as statutes which purport to modify constitutionally fixed qualifications are void, so must Section 5(d) of R.A. No. 9189 suffer the same fate.

CALLEJO, SR., *J.,* *concurring and dissenting opinion:*

1. CONSTITUTIONAL LAW; SUFFRAGE; MR. JUSTICE CALLEJO DOES NOT SUBSCRIBE TO THE VIEW THAT SECTION 2 OF ARTICLE V OF THE CONSTITUTION WAS INTENDED BY THE FRAMERS TO BE AN EXCEPTION TO THE RESIDENCE QUALIFICATION REQUIREMENT PRESCRIBED IN THE SECTION 1 OF THE SAME ARTICLE.—Section 1, Article V which prescribes the qualifications of voters as to citizenship, age and residence is clear and unambiguous. On the other hand, Section 2 of the same article authorizes Congress to provide a system to facilitate absentee voting by qualified Filipinos abroad. I do not subscribe to the view that Section 2 was intended by the framers to be an exception to the residence

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qualification requirement prescribed in the section immediately preceding it. Basic is the rule in statutory construction that the Constitution should be construed in such a manner as to give effect to each and every part of the entire instrument. Courts should lean in favor of a construction that will harmonize every provision of the Constitution rather than one which raises conflict between its provisions, or render inutile any portion thereof. Section 2 can and must be construed to contemplate within its terms the enfranchisement only of Filipinos who possess all the prerequisite qualifications specified under Section 1, but who are abroad and cannot exercise their right to vote in the Philippines on the day of the election. Even from a cursory examination of the proceedings of the Constitutional Commission which drafted the 1987 Constitution, the foregoing intendment is made crystal clear.

2. **ID.; ID.; DISTINCTION BETWEEN "RESIDENCE" AND "DOMICILE."**— For many legal purposes, there is a clear distinction between "residence" and "domicile." "Residence" means living in a particular locality, and simply requires bodily presence as an inhabitant in a given place, while "domicile" means living in that locality with intent to make it a fixed and permanent home. "Residence" denotes that a person dwells in a given place but "domicile" is a person's legal home, or a place where the law presumes a person has the intention of permanently residing although he may be absent from it. "Domicile" then is a matter of intention while "residence" is a physical fact. Hence, a person may have two places of "residence" but only one "domicile." "Residence," however, for the purpose of voting, is to be understood not in its common acceptation as referring to "dwelling" or "habitation," but rather to "domicile" or legal residence, that is, "the place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain (*animus manendi*)." In determining a person's "residence" for voting purposes, the following rules are well-established: (a) A person must have a residence or domicile somewhere; (b) Where once established, it remains until a new one is acquired; and (c) A person can have but one domicile at a time.

3. **ID.; ID.; A FILIPINO "IMMIGRANT" OR "PERMANENT RESIDENT," AS THE VERY DESIGNATION OF THE STATUS**

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CLEARLY IMPLIES, IS A FILIPINO WHO HAS ABANDONED HIS PHILIPPINE RESIDENCE OR DOMICILE, WITH THE INTENTION OF RESIDING PERMANENTLY IN HIS HOST COUNTRY.— Clearly, for voting purposes, one cannot have a residence or be domiciled in two places at the same time, for the right to vote in a certain place or precinct requires the concurrence of two things: the act of residing coupled with the intention to do so. *Accordingly, in order to work a change of residence for voting, there must be an actual removal, an actual change of domicile, corresponding with a bona fide intention of abandoning the former place of residence and establishing a new one.* Hence, an absence for months or even years, if all the while the party intended it as a mere temporary arrangement, to be followed by a resumption of his former residence, will not be an abandonment of such residence or deprive him of his right to vote thereat, the test being the presence or absence of the *animus revertendi. Such is the case of overseas Filipino workers who, on account of the nature or exigencies of their work, fail to be physically present for some time in the Philippines but are not deemed to have abandoned their Philippine domicile by virtue of their intent to resume residency in the Philippines upon the termination of their employment contracts.* However, the same cannot be said of Filipinos who, while maintaining their Filipino citizenship, have in the meantime acquired the status of immigrants or permanent residents of their respective host countries. An immigrant, as defined in law, is a person who removes into a country for the purpose of permanent residence. Therefore, a Filipino "immigrant" or "permanent resident," as the very designation of his status clearly implies, is a Filipino who has abandoned his Philippine residence or domicile, with the intention of residing permanently in his host country. Thenceforward, he acquires a new residence in his host country and is deemed to have abandoned his Philippine domicile. *It has been held that where a voter abandons his residence in a state and acquires one in another state, although he afterward changes his intention and returns, he cannot again vote in the state of his former residence or domicile until he has regained his residence by remaining in the jurisdiction for the statutory period.*

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4. ID.; ID.; WHILE INTENTION IS AN IMPORTANT FACTOR TO BE CONSIDERED IN DETERMINING WHETHER OR NOT A RESIDENCE HAS BEEN ACQUIRED, INTENTION ALONE IS INSUFFICIENT TO ESTABLISH A RESIDENCE FOR VOTING PURPOSES.— With due respect to the majority, I do not subscribe to the view that the execution of the affidavit required under Section 5 (d) is eloquent proof of the fact that the Filipino immigrant has not abandoned his Philippine domicile, as evinced by his intention to go back and resume residency in the Philippines, which thus entitles him to exercise the right of suffrage pursuant to the constitutional intent expressed in Section 2, in relation to Section 1, Article V of our Constitution. The majority view, I humbly submit, is *non-sequitur* for it is well-entrenched that while intention is an important factor to be considered in determining whether or not a residence has been acquired, intention alone is insufficient to establish a residence for voting purposes. *Hence, a mere intention to remove, not consummated, can neither forfeit the party's old domicile nor enable him to acquire a new one. And the fact that a person intends to remove at a future time does not of itself defeat his residence before the actually does remove.*

5. POLITICAL LAW; ELECTION LAWS; THE OVERSEAS ABSENTEE VOTING ACT OF 2003 (REPUBLIC ACT NO. 9189); SECTION 5 (d) THEREOF IS VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION.— I believe that the provision is violative of the "equal protection" clause of the Constitution. While it allows a Filipino permanently residing in a foreign country to vote on the mere pledge that he will again permanently reside in this country within three years from his voting in the elections, a Filipino permanently residing in the Philippines but for less than one year or, in the place where he proposes to vote, for less than six months is not allowed to vote. The voter classification sought to be effected by Section 5(d) does not rest on substantial distinctions for it unduly favors and extends the privilege of the elective franchise to Filipino citizens who do not in any way comply with the residency requirement prescribed by our Constitution, while withholding the same privilege to those who are and have been permanent residents of the Philippines, albeit not in the locality or precinct where they intend to vote.

6. ID.; ID.; ID.; SECTION 18.5 THEREOF DOES NOT PASS THE TEST OF CONSTITUTIONALITY.— It is clear from the Article

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VII, Section 4, paragraph 4 of the 1987 Constitution that the power to canvass the votes of the electorate for president and vice-president is lodged with Congress. This includes, by express mandate of the Constitution, the duty to proclaim the winning candidates in such election. As pointed out in the majority opinion the phrase *proclamation of winning candidates* used in the assailed statute is a sweeping statement, which thus includes even the winning candidates for the presidency and vice-presidency. Following a basic principle in statutory construction, *generali dictum genaliter est interpretandum* (a general statement is understood in a general sense), the said phrase cannot be construed otherwise. To uphold the assailed provision of Rep. Act No. 9189 would in effect be sanctioning the grant of a power to the COMELEC, which under the Constitution, is expressly vested in Congress; it would validate a course of conduct that the fundamental law of the land expressly forbids.

APPEARANCES OF COUNSEL

Pete Quirino-Cuadra and Sixto S. Brilliante, Jr. for petitioner.

Henry S. Rojas for Movant-Intervenor.

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] 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.

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[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*.

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

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] The Court has held that they may assail the validity of a law appropriating public funds[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]

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] 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

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

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

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

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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]

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] 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 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] In yet another case, the Court said that:

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

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

[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.

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. . . 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]

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] and determine whether Congress has acted within the limits of the Constitution or if it had gravely abused the discretion entrusted to it.[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?

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

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

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

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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] 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.

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

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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] 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] 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.[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] wherein the Court held that the term "residence" has been understood to be synonymous with

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[13] Petition, p. 7.

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

[15] Per Comment and Memorandum filed by Atty. Jose P. Balbuena, Director IV, Law Department, COMELEC.

[16] 199 SCRA 692, 713 (1991).

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"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] and that the definition and meaning given to the term *residence* likewise applies to absentee voters. Invoking *Romualdez-Marcos vs. COMELEC*[18] which reiterates the Court's ruling in *Faypon vs. Quirino,*[19] the Solicitor General maintains that Filipinos who are immigrants or permanent residents abroad may have in fact never abandoned their Philippine domicile.[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] 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]

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[17] Comment, p. 9 citing Joaquin G. Bernas, *Today*, 5 February 2003.

[18] 318 Phil. 329 (1995); 248 SCRA 300.

[19] 96 Phil. 294 (1954).

[20] Comment, pp. 11-12.

[21] Caasi Case, *supra*.

[22] Comment, p. 13.

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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 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;

. . . (Italics 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. (Italics 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. (Italics 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.*

. . . . . (Italics supplied)

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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] Laws that do not conform to the Constitution shall be stricken down for being unconstitutional.

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

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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]

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]

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] 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 manifest.[27] The intent of

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

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

[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.

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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]

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.
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> 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.
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> Such statutes are regarded as conferring a privilege and not a right, or an absolute right. *When the legislature chooses to grant*

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

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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] (Italics supplied)

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] 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] 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

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

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

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

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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."

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 residence for election purposes is used synonymously with domicile.***[32] (Emphasis and italics 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

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

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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.

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.

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

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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

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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] (Emphasis and Italics 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.

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

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

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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] (Emphasis and Italics 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:

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.

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

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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.

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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] (Italics 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.

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.

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

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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.

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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] (Emphasis and Italics 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] 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.

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

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

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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?

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

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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

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— *to enfranchise them and empower them to vote.*[38] (Emphasis and italics 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 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

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

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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."

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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

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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] (Emphasis and italics 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.

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

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

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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

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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] 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.

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[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).

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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?***

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

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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. (Italics 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

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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]

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*, . . . [Italics 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.

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[41] Comment, p. 15.

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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. (Italics supplied)

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] where this Court held that the power of the COMELEC to formulate rules and regulations is impiicit in its power to implement regulations under Section

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

[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.

. . . . . .

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2(1) of Article IX-C[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.*
>
> . . . . . (Italics 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*,

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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. (Italics 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.*

. . . . . (Italics 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

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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] 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

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

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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] (Italics 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] 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 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] 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.

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

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

[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."

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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] Otherwise, Congress would overstep the bounds of its

[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;

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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 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

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.

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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.

Davide, Jr., C.J. and *Corona, J.*, concur.

Bellosillo, J., see concurring opinion.

Vitug and Panganiban, JJ., see separate opinion.

Carpio, Carpio Morales, and Azcuna, JJ., see concurring opinion.

Puno, Ynares-Santiago, and Callejo, Sr., JJ., see concurring and dissenting opinion.

Sandoval-Gutierrez, J., official leave and left her concurring and dissenting opinion.

Tinga, J., no part.

Quisumbing J., on leave.

BELLOSILLO, *J.*, *separate opinion:*

The concept of absentee voting exudes an arresting charm of novelty and importance. For the first time in our checkered political history, we are expanding the frontiers of our electoral process — warily treading into a veritable *terra incognita*. The *Absentee Voting Law*[1] empowers citizens, hitherto outside the reaches of the ballot, to assert their sovereign will and dictate the national destiny. It caters to their fundamental yearning for some measure of participation in the process of reaching fateful decisions for their country, although they may be at some distant shores.

[1] RA 9189, An Act Providing for a System of Overseas Absentee Voting by Qualified Citizens of the Philippines Abroad, Appropriating Funds Therefor, and for Other Purposes.

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I concur with the collective wisdom of the majority. I wish however to express my views on the pivotal issue of whether Sec. 5, par. (d), of the *Absentee Voting Law* — 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 — violates the residency requirement in Sec. 1, Art. V, 1987 Constitution.

The fundamental law mandates —

ARTICLE V

SUFFRAGE

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

Section 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* . x x x (italics supplied).

On the other hand, Sec. 5, par. (d), of the *Absentee Voting Law*, the restless battleground of passionate advocacy, provides —

Sec. 5. Disqualifications. — The following shall be disqualified from voting under this Act: x x x 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* (italics *supplied*).

It has been suggested by certain quarters that all Filipino citizens who are *immigrants* and *permanent residents* abroad

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are considered to have abandoned their Philippine domicile and therefore cannot vote in Philippine elections, since they are not within the constitutional contemplation of "qualified Filipinos abroad" who are eligible to vote.

In this jurisdiction, it is well settled that "domicile" and "residence" as used in election laws are synonymous terms which import not only an intention to reside in a fixed place but also personal presence in that place coupled with conduct indicative of that intention.[2] Domicile is a question of intention and circumstances. There are three (3) rules that must be observed in the consideration of circumstances: *first*, that a man must have a residence or domicile somewhere; *second*, domicile is not easily lost, once established it is retained until a new one is acquired; and *third*, a man can have but one residence or domicile at a time.[3] The principal elements of domicile, *i.e.*, *physical presence* in the locality involved and *intention* to adopt it as a domicile, must concur in order to establish a new domicile. *No change of domicile will result if either of these elements is absent.* Intention to acquire a domicile without actual residence in the locality does not result in the acquisition of domicile, *nor does the fact of physical presence without intention.*[4]

The mere acquisition of an *immigrant* or *permanent resident* status by a Filipino citizen in a foreign country does not *ipso jure* result in the automatic severance of his domiciliary link to the Philippines, nor the acquisition of a new domicile of choice.

Different jurisdictions vary in their legal characterization of the terms *immigrant* and *permanent resident*, with dissimilar requirements, conditions and restrictions for the acquisition and maintenance of those statuses. Territories with conservative policies on immigration tend to be restrictive and exclusive,

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[2] *Romualdez v. RTC-Br. 7, Tacloban City*, G.R. No. 104960, 14 September 1993, 226 SCRA 408.

[3] *Domino v. COMELEC*, G.R. No. 134015, 19 July 1999, 310 SCRA 546, 568.

[4] *Id.*, at p. 569.

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especially on matters relating to residency (or domiciliary); while more open societies tend to be liberal and inclusive.

To illustrate: In the United States, an overwhelming majority of our compatriots are now enjoying the rights and privileges of *permanent residents* and *immigrants*. The U.S. *Immigration and Nationality Act* defines the term *permanent* as "a relationship of continuing and lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law;"[5] and *residence* as "a place of general abode; and the place of general abode of a person means his principal, actual dwelling place in fact, *without regard to intent*."[6]

Thus, considering that intent is not necessary in establishing permanent residency in the U.S., it is entirely possible for a Filipino citizen to be a *permanent resident* in the U.S., *i.e.*, the U.S. may be his general place of abode, "his principal, actual dwelling place in fact," for an indefinite period of time, without however abandoning his Philippine domicile to which he intends to return later.

Immigrants, on the other hand, have been loosely defined as referring to "every alien in the United States, except an alien who is within one of the non-immigrant aliens enumerated in the *Immigration and Nationality Act of the United States*."[7] They are classified into the *non-quota immigrants* and the *quota immigrants*. The *quota immigrants* may fall in either of two (2) categories: the *family-based preferences* and the *employment-based preferences*.

Particularly interesting is the last mentioned category, the *employment-based preferences*. These *immigrants* are conferred the status as such on the basis of their occupational

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[5] 8 U.S.C. § 1101(a)(31).

[6] 8 U.S.C. § 1101(a)(33).

[7] 8 U.S.C. § 1101(a)(15).

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skills and the employment demands in the host country. To this class belongs the professionals, investors, managers and executives, skilled workers, health workers, professors and researchers. Many Filipino citizens fall under this category, and most of them opt for immigrant status *solely for the purpose of securing permanent employment in the U.S.*, and intend to return to the Philippines after their purpose is accomplished.

The *diaspora* of Filipinos in foreign lands started in the wake of the bludgeoning economic crisis in the 80's and its resulting acute shortage of employment opportunities. This phenomenon has continued to the present day as the steadily rising cost of living and intermittent economic crises — worldwide in their effects — weighed most heavily on the ordinary Filipino. He does not have much choice: leave or starve. The lure of the proverbial greener pastures in foreign lands is certainly a potent incentive for an exodus.

In most cases, the decision to migrate is borne out of the dire necessities of life rather than a conscious desire to abandon the land of birth. Most *immigrants* and *permanent residents* remain bound very strongly by intimate ties of filial, racial, cultural and social relationships with the Philippines. They travel back periodically to be with their friends and loved ones; some even own, maintain and manage their properties here; and, they continue to show keen interest in, and keep themselves abreast with, political and social developments in the country through the mass media. They make significant contributions to the nation, through their regular dollar remittances that have tremendously shored up our sagging national economy.

In the face of these realities, I am convinced more than ever that actual and physical residence abroad should not automatically be equated with abandonment of Philippine domicile. The circumstances enumerated in the immediately preceding paragraph are valid *indicia* of *animus manendi* (intent to remain) and *animus revertendi* (intent to return), which should not simply be brushed aside in determining whether the right to vote should be denied the *immigrants* and *permanent residents*. Indeed,

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there is no rhyme nor reason to unduly marginalize this class of Filipinos.

It is significant to stress, however, that Sec. 5, par. (d), of the *Absentee Voting Law* in fact disqualifies *immigrants* and *permanent residents* from voting as a general rule. This is precisely in recognition of the fact that their status as such may indeed be a badge of their intent to abandon their Philippine domicile and settle permanently in their host country. But at the same time, the legislature provided for a mechanism in the law for ascertaining real intent: an *immigrant* or *permanent resident* who wishes to exercise his right of suffrage is required as a condition *sine qua non* to execute an affidavit declaring that he shall resume actual, physical and permanent residence in the Philippines not later than three (3) years from his registration under the law; and that he has not applied for citizenship in another country.

The law in effect draws a distinction between two (2) classes of *immigrants* or *permanent residents* — those who have renounced their old domicile in the Philippines, and those who still consider the Philippines as their domicile of origin. *The execution of the affidavit is an affirmation on the part of the immigrant or permanent resident that his stay abroad should not be construed as a relinquishment of his old domicile.*

I am not unaware of the possibility that the immigrant or permanent resident may renege on his undertaking in the affidavit to resume actual, physical and permanent residence in the Philippines. But the law contains proper and adequate safeguards against the misuse or abuse of this privilege, *i.e.*, his name will be purged from the *National Registry of Absentee Voters* and he will be permanently disqualified from voting *in absentia.*

As a closing observation, I wish to emphasize that the absolute disqualification of Filipino *immigrants* and *permanent residents*, without distinction, from participating in the Philippine electoral process would invariably result, as in the past, in a massive disenfranchisement of qualified voters. It would be self-defeating

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in the extreme if the *Absentee Voting Law* would founder on the rock by reason of an unduly restrictive and decidedly unrealistic interpretation given by the minority on the residency requirement in the Constitution.

I vote to sustain the constitutionality of Sec. 5, par. (d), of RA 9189, and on the other hand, to declare unconstitutional Sec. 18.5 of the same law insofar as it authorizes COMELEC to proclaim the winning candidates for President and Vice-President it being clearly violative of Sec. 4, Art. VII, of the Constitution, as well as Secs. 17.1, 19 and 25 of RA 9189 insofar as they subject COMELEC implementing rules and regulations to review and approval by the Joint Congressional Oversight Committee for being likewise violative of Sec. 1, Art. IX-A of the Constitution.

SEPARATE OPINION

VITUG, *J.*:

Indeed, the mandate of the Constitution is explicit — one must be a resident in order to vote in the country's elections.[1] But, equally compelling is its other provision that directs Congress to adopt a system that would allow absentee voting by qualified Filipinos abroad.[2] The deliberations by members of the Constitutional Commission on the subject are instructive.[3]

"MR. SUAREZ. May I just be recognized for a clarification. There are certain qualifications for the exercise of the right of suffrage like having

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[1] Section 1, Article V of the 1987 Constitution provides:

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.

[2] Section 2, Article V, of the 1987 Constitution.

[3] II Record of the Constitutional Commission, pp. 34-35.

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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 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?

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"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 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.

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"*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." (italics supplied)

In election cases, the Court, more than once, has treated residence and domicile as being synonymous terms. In *Romualdez vs. Regional Trial Court of Tacloban*,[4] this Court has said:

"The term 'residence' as used in the election law is synonymous with 'domicile,' which imports not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. 'Domicile' denotes a fixed permanent residence to which when absent for business or pleasure, or for like reasons, one intends to return. . . . Residence thus acquired, however, may be lost by adopting another choice of domicile. In order, in turn, to acquire a new domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. In other words, there must basically be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual."

The instant controversy primarily revolves on the issue of whether or not an immigrant or a permanent resident in another country should be considered to have lost his status as a Philippine resident and must thus be barred from participating in the national elections. It is well to recall that, in acquiring a new domicile, there must be a concurrence of *animus manendi* and *animus*

[4] G.R. No. 104960, 14 September 1993, 226 SCRA 408.

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non revertendi. Intention is always crucial. Thus, the Court, in *Romualdez vs. Regional Trial Court of Tacloban*[5] and *Romualdez-Marcos vs. Commission on Elections (COMELEC)*,[6] has delved in detail into the intention of the parties to determine the question of domicile.

It is to be conceded that for quite sometime now, economic crises have forced millions of Filipinos to leave their homes to work and live in foreign shores. To most, it has not been a decision to uproot themselves, let alone completely sever their ties, from the country of birth. It is not at all farfetched for emigrating countrymen, when conditions warrant, to get right back home. I am not prepared to say that their immigrant status abroad is necessarily proof of an intention to discard and to abandon the domicile of origin.

Caasi vs. Court of Appeals,[7] disqualifying a "green card holder" (an immigrant of the United States) from running for a local public office, was predicated on Section 68 of the Omnibus Election Code of the Philippines. This law disallows any person who is a permanent resident of, or an immigrant to, a foreign country to run for an elective public office, unless he shall have "waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws." No such express disqualification, however, exists for the exercise of the right to vote. The reason for the disqualification with respect to elective officials, I take it, proceeds from an assumption that "resident aliens of a foreign country are incapable of such entire devotion to the interest and welfare of their homeland for, with one eye on their public duties here, they must keep another eye on their duties under the laws of the foreign country of their choice in order to preserve their status as permanent residents thereof."[8]

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[5] *Supra*.

[6] 318 Phil. 329.

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

[8] *Caasi v. Court of Appeals, supra*, p. 236.

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The danger does not hold true with respect to immigrants abroad who would simply be discharging their right and duty to cast a vote for their candidate of choice.

The law must have recognized that *animus manendi* and *animus non revertendi*, being processes of the mind and incapable of a definitive determination, could only be discerned from perceivable circumstances. So also, Republic Act No. 9189 or the "Overseas Absentee Voting Act of 2003," disqualifies an "immigrant or a permanent resident who is recognized as such in the host country" to vote under the Act[9] on the premise that such a circumstance can be a cogent indication of the holder's intention to abandon his old domicile and establish a new one. But, in much the same vein, the law acknowledges that the immigrant or permanent resident may still be qualified to vote, provided "he executes, upon registration, an affidavit prepared for the purpose by the Commission on Elections declaring that he shall resume actual physical permanent residence in the Philippines not later than three (3) years from approval of his registration under (the) Act." The affidavit shall additionally confirm that he has not applied for citizenship in another country.[10] I am convinced that these indicators used by the legislature are reasonable gauges to establish the intention of the immigrant not to abandon his Philippine domicile. The fact that he has not relinquished his Philippine citizenship should help remove any lingering doubt on his preferred status. After all, the right of suffrage, now widely considered to be an innate right of every national, is a basic and perhaps the most outstanding mark of citizenship.

Section 4 of the Act allows all qualified Filipinos abroad to vote for President, Vice-President, Senators and party-list representatives. In relation to this, Section 18.5 empowers the Commission on Election to order the proclamation of winning

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[9] Section 5 (d), RA No. 9189.

[10] *Id.*

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candidates.[11] Since it is Congress which has been granted by the Constitution[12] the authority and duty to canvass the votes and proclaim the winning candidates for president and vice-president, I echo the sentiment of my colleagues that the power given to COMELEC by Section 18.5 of R.A. 9189 should be understood to be limited only to the proclamation of winning candidates for the positions of senators and party-list representatives. The election returns for the positions of president and vice-president should then be certified by the Board of Canvassers to Congress and not to COMELEC as provided for in Section 18.4 of the Act.[13]

R.A. 9189 creates a Joint Congressional Oversight Committee (JCOC) composed of Senators and Members of the House of Representatives, empowered to "review, revise, amend and approve the Implementing Rules and Regulations (IRR) promulgated by the COMELEC,"[14] and to approve the voting by mail in not more than three (3) countries for the May 2004

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[11] Section 18. On-Site Counting and Canvassing —

x x x x x x x x x

18.5 The canvass of votes shall not cause 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, and which events, factors and circumstances are beyond the control or influence of the Commission.

[12] Section 4, Article VII of the 1987 Constitution.

[13] Section 18.4 . x x x. 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 . x x x.

[14] Sections 19 and 25, R.A. 9189.

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elections and in any country determined by COMELEC.[15] The Court here finds unanimity in holding that Congress, by vesting itself with the aforesaid powers, has gone beyond the scope of its constitutional authority. It is a pronouncement that, in my view, can hardly be susceptible to challenge. The Constitution ordains that constitutional commissions such as the COMELEC shall be independent.[16] The COMELEC has the constitutional authority to "enforce and administer all laws and regulations relative to the conduct of an election"[17] and to promulgate its rules of procedure.[18] The role therefore of the JCOC must be understood as being limited only to the monitoring and evaluation of the implementation of the Act[19] pursuant to the power of Congress to conduct inquiries in aid of legislation.[20]

In view whereof, I vote to uphold the constitutionality of Republic Act No. 9189 allowing absentee voting in the manner expressed therein, but that, as regards Sections 17.1, 19 and 25, I share the unanimous conclusion reached by my colleagues declaring portions thereof as being unconstitutional.

SEPARATE OPINION

PANGANIBAN, *J.*:

"Constitutions are designed to meet not only the vagaries of contemporary events. They should be interpreted to cover even future and unknown circumstances. It is to the credit of its drafters that a Constitution can withstand the assaults of bigots and infidels, but

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[15] Section 17.1, R.A. 9189.

[16] Section 1, Article IX-A of the 1987 Constitution.

[17] Section 2 (1), Article IX-C of the 1987 Constitution.

[18] Section 3, Article IX-C of the 1987 Constitution.

[19] Section 25, R.A. 9189.

x x x x x x x x x

The Joint Congressional Oversight Committee shall have the power to monitor and evaluate the implementation of this Act. x x x.

[20] Section 21, Article VI of the 1987 Constitution.

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at the same time bend with the refreshing winds of change necessitated by unfolding events."[1]

The deliberations on this case have been blessed with extensive and exhaustive discussions by the Justices. The *ponencia* itself as well as the separate, the concurring and the dissenting opinions ably written by my esteemed colleagues scrutinized its many aspects and ramifications. Their thoroughness and scholarship helped distill the issues and enabled the Court to arrive at an informed judgment.

It is quite clear that there is unanimity of opinion in declaring unconstitutional those portions of RA 9189 (1) granting Congress oversight powers over the Comelec Implementing Rules and Regulations (IRR); and (2) giving Comelec authority to proclaim presidential and vice-presidential winners — a power expressly lodged in Congress by the Constitution.

Obviously, however, there is diversity of opinion on the question of whether Filipinos, who have become permanent foreign residents, may be allowed to vote after executing an affidavit showing an intent to reside in the Philippines within three years therefrom.

I will no longer belabor the penetrating legal pros and contras discussed by the justices in connection with this important issue. Let me just add one more point in favor of the constitutionality of the aforementioned provision in Section 5(d) of RA 9189.[2]

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[1] *Tañada v. Angara*, 272 SCRA 18, 64, May 2, 1997, per Panganiban, *J.*

[2] §5(d) of RA 9189 states:

"The following shall be disqualified from voting under this Act:

x x x x x x x x x

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*."

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It is a point that is borne, not of strict legalese, but of practical common sense that even lay persons will understand.[3] The Information Age has shrunk the world, enabled Filipinos abroad to keep abreast with current events in our country, and thus empowered them to be able to vote wisely for our national leaders.

Qualifications of Voters

Let me start my explanation of my position by recalling that our Constitution[4] requires voters to possess, on the day of the election, a minimum of three qualities or attributes relating to (1) citizenship, (2) age and (3) residence. In addition, our

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[3] I have always believed that the Constitution should, as much as possible, be interpreted in the sense understood by ordinary citizens. Thus, in my first opinion as a member of the Court, I wrote in my Dissent in *Marcos v. Comelec*, 255 SCRA *xi*, *xv*, October 25, 1995, the following:

> "The Constitution is the most basic law of the land. It enshrines the most cherished aspirations and ideals of the population at large. It is not a document reserved only for scholarly disquisitions by the most eminent legal minds of the land. The Constitution is not intended for lawyers to quibble over [or] to define legal niceties and articulate nuances about, in the ascertainment of its import. Its contents and words should be interpreted in the sense understood by the ordinary men and women who place their lives on the line in its defense, and who pin their hopes for a better life on its fulfillment."

See also J.M. Tuazon & Co., Inc. v. Land Tenure Administration, 31 SCRA 413, 423, February 18, 1970, per Fernando, *J.*, in which the Court declared that "the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use."

[4] § 1 of Art. V of the Constitution provides:

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

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fundamental law says that the citizen must "not otherwise be disqualified by law" from voting.

On the *first*, only those who owe allegiance to a country have the right to select its leaders and determine its destiny. This is a worldwide phenomenon. Thus, only Filipinos may vote in the Philippines; aliens cannot. By the same token, only Americans may vote in America,[5] and only Indians may vote in India.[6]

The *second* qualification, age, assures that only those who have reached the natural mental maturity are enfranchised to choose independently and sensibly. Hence, only those who have reached 18, the age of majority, are allowed to vote; only those capacitated by the law to enter into binding obligations and contracts[7] are allowed to elect the persons who would make and execute the law.

On the *third*, residence of at least one year in the Philippines — of which six months must be in the place where the ballot is cast — is required of voters. In our case today, this residence requirement is the crux or centerpoint. *I respectfully submit that to understand how to interpret this qualification in relation to the Overseas Absentee Voting Law, it is necessary to inquire into the reason for requiring it as a condition for suffrage*. Why does the Constitution insist on residence as a prerequisite to voting?

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[5] http://bensguide.gpo.gov/3-5/citizenship/responsibilities.html

[6] http://www.eci.gov.in/infoeci/elec_sys/elecsys_fs.htm

[7] The Family Code of the Philippines as amended by RA 6809 states:

"ART. 234. Emancipation takes place by the attainment of majority. Unless otherwise provided, majority commences at the age of eighteen years.

"ART. 236. Emancipation shall terminate parental authority over the person and property of the child who shall then be qualified and responsible for all acts of civil life, save the exceptions established by existing laws in special cases."

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Reason for
Residence Requirement

I believe that, traditionally, the law requires residence[8] because presence in a certain locality enables a person to know the needs and the problems of that area. Equally important, it also makes one become acquainted with the candidates — their qualifications, suitability for a particular office and platform of government.

Thus, the fundamental law requires, not just that there be a minimum of one-year residence in the country, but also that six months of that period be spent in the place where the ballot is to be cast. Such detailed requirement will hopefully give the voters sufficient knowledge about a specific town as to help them choose its local officials wisely, quite apart from understanding enough of the entire country so as to prepare them to vote sagaciously for national leaders.

The Supreme Court had occasions to discuss this common-sense reason for the residence requirement, in this wise:

"We stress that the residence requirement is rooted in the desire that officials of districts or localities be acquainted not only with the metes and bounds of their constituencies but, more important, with the constituents themselves — their needs, difficulties, aspirations, potentials for growth and development, and all matters vital to their common welfare. The requisite period would give candidates the opportunity to be familiar with their desired constituencies, and likewise for the electorate to evaluate the former's qualifications and fitness for the offices they seek."[9]

"[T]he purpose of the residency requirement [is] to ensure that the person elected is familiar with the needs and problems of his constituency[.]"[10]

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[8] I will no longer take up the question of whether residence should be equated with domicile, or the impact of this equation, as these matters are already adequately discussed in the Opinions of my colleagues.

[9] *Torayno Sr. v. Commission on Elections*, 337 SCRA 574, 587, August 9, 2000, per Panganiban, *J.*

[10] *Perez v. Commission on Elections*, 375 Phil. 1106, 1119, October 28, 1999, per Mendoza, *J.* See also *Aquino v. Commission on Elections*, 248 SCRA 400, September 18, 1995.

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Although the foregoing discussions were used to justify the residence requirement *vis-à-vis candidates* for elective public offices, I believe that their rationale can easily and analogically fit the needs of *voters* as well.

The Essence of My Opinion

The defining essence of my position is this: in the midst of the now available e-age communications facilities, actual presence in the Philippines is no longer indispensable to make discerning Filipinos know the problems of their country and to decide who among candidates for national positions deserve their mandate.

Indeed, the Information Age has given overseas Filipinos convenient means to inform themselves of our country's needs, as well as of the suitability of candidates for national offices. After all, many of them live abroad, not because they want to abandon their land of birth, but because they have been constrained to do so by economic, professional, livelihood and other pressing pursuits. Ineluctably, they remit their hard-earned money to help their relatives here and their country as a whole.

Verily, their easy access to Philippine mass media keep them constantly aware of happenings in their native country. National dailies and other periodicals are sold regularly in Filipino enclaves in foreign shores. Several local and community publications in these areas cater mainly to Filipino expatriates, publishing news and opinions not only about their alien neighborhoods, but also quite extensively about their homeland.[11]

So, too, Philippine news and magazine-type broadcasts are available to overseas Filipinos on a daily basis over cable television, giving them the feeling and the and intellectual status of being home. Interactive TV talk shows are now routinely participated in via long distance phones and cell phone text messages by people everywhere. Even more conveniently

[11] For instance, the *Filipino Reporter*, published in the East Coast of the US, has successfully done this service for over 30 years now.

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available are the websites of major dailies. Whatever news and views they print locally are instantly accessible everywhere on earth via the Internet.

Truly, the e-age has opened windows to the Philippines in a pervasive and thorough manner, such that actual presence in the country is no longer needed to make an intelligent assessment of whom to vote for as our national leaders.

I make this emphasis on *national* officials, because the Absentee Voting Law allows overseas voting only for President, Vice President, senators and party-list representatives.[12] This distinction is important, because the information available through websites and other modern media outlets is addressed mainly to national concerns.

To insist that only those who can demonstrate actual physical residence in the country for one year — or only those who complied with the more difficult-to-understand concept of domicile — would be entitled to vote would be to cling adamantly and unreasonably to a literal interpretation of the Constitution without regard for its more liberating spirit or rationale. Such insistence would result in rendering inutile any meaningful effort to accord suffrage to Filipinos abroad.[13] Such proposition would make the constitutional interpretation anachronous in the face of the refreshing and pulsating realities of the world. In my view, it would be thoroughly unreasonable to expect foreign-based Filipinos to come back here for one year every three years and abandon their jobs just to be able to comply literally with the residential requirement of suffrage.

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[12] The Absentee Voting Law (RA 9189) states:

"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."

[13] Overseas voting is mandated by §2 of Art. V of the Constitution as follows:

"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."

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On the other hand, the advances of science and technology — especially in the fields of computerization, miniaturization, digitization, satellite communications and fiber optics — has so expanded the capabilities of our brothers and sisters abroad as to enable them to understand our national needs, without having to sit back and stay here for one continuous year. They are now able to help us bridge those needs, not only by remitting their hard-earned currency, but also by assisting locally based Filipinos to choose national leaders who will steer the country in the perilous new paths of development and peace.

Conclusion

In sum, I respectfully submit that physical presence in the country is no longer indispensable to arm Filipinos abroad with sufficient information to enable them to vote intelligently. The advent of the Information Age and the globalization of knowledge have empowered them to know enough about the Philippines to enable them to choose our national officials prudently and, in the process, to have a significant voice in the governance of the country they love and cherish.

I maintain that the constitutional provision on voter residence — like every other law — must be interpreted "not by the letter that killeth but by the spirit that giveth life." As heralded by the quotation from *Tañada v. Angara,* cited at the opening of this Opinion, our Constitution should be construed so it may "bend with the refreshing winds of change necessitated by unfolding events."

Finally, may I stress that when the reason for the law is accomplished, then the law itself is fulfilled. Since the law requiring residence is accomplished by the globalization of information, then the law itself is fulfilled. It is time to empower our overseas brothers and sisters to participate more actively in nation building by allowing them to help elect our national leaders.

WHEREFORE, I vote to uphold the constitutionality of Section 5 (d) of RA 9189. I also vote to declare as unconstitutional

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portions of Section 18.5 thereof insofar as they authorize Comelec to proclaim presidential and vice-presidential winners; and of Sections 17.1, 19 and 25 insofar as they subject to congressional oversight, review and approval the implementation of voting by mail and the Implementing Rules and Regulations of Comelec.

CONCURRING OPINION

CARPIO, *J.*:

The case before this Court is historic and momentous. Historic because the right of suffrage, which through the centuries painstakingly evolved into universal right,[1] stands at the crossroads in this country. Should the right of suffrage continue its march forward and reach overseas Filipinos, or should this Court turn back this historic march here at our gates?

Momentous because ***the core issue is the enfranchisement or disenfranchisement of some 7 million overseas Filipinos.*** The annual contribution of these overseas Filipinos to the national economy, in terms of hard-earned foreign exchange remitted through the banking system, equals almost 50 percent of the country's national budget.[2] The total remittances, recorded and unrecorded, of overseas Filipinos may even reach 18 percent of GNP, almost the same percentage that agriculture at 20 percent contributes to the GNP.[3]

The nation has hailed the overseas Filipinos as the modern-day heroes and saviors of the economy. Their blood, toil, tears and sweat have propped up the Philippine peso through all the recurring financial crises that have battered the nation. Although scattered in foreign lands across the globe, these overseas Filipinos

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[1] Article 25, International Covenant on Civil and Political Rights.

[2] In 2002, overseas Filipino workers officially remitted US$7.17 billion to the Philippines (*www.bsp.gov.ph/statistics/spei/tab11.htm*). At ₱53 to US$1, this is equivalent to ₱380 billion, almost 50 percent of the 2002 national budget of ₱780.8 billion (RA No. 9162).

[3] Rep. Loretta Ann P. Rosales, Empowering Seven Million Migrant Filipinos for the Next Millennium, 10 May 1999, *www.philsol.nl/F-Rosales-may99.htm.*

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keep abreast with developments in the Philippines through the Internet,[4] cable and satellite TV, and even texting.

In recognition of the immense contribution of overseas Filipinos to the nation, the framers of the 1987 Constitution introduced the absentee voting system, novel in this country, ***purposely*** to enfranchise the overseas Filipinos. Commissioner Blas Ople, the former Minister of Labor who started deploying abroad large numbers of Filipino workers, triggered the introduction of the absentee voting with this discourse during the deliberations of the Constitutional Commission:

MR. OPLE: x x x x x x x x x

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 to 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.

x x x x x x x x x

[4] All the major newspapers in the Philippines are posted daily in the Internet.

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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.***[5] (Emphasis and italics supplied)

From the start, the framers of the Constitution knew that the absentee voting system for overseas Filipinos would have to be an ***exception*** to the double residency requirement in Section 1, Article V of the Constitution. This was the basic premise for introducing an express provision on absentee voting in the Constitution. Unless there is such an exception in the Constitution itself, overseas Filipinos could never vote as absentee voters in view of the double residency requirement in Section 1. Because of this double residency requirement, Congress could not enfranchise through ordinary legislation overseas Filipinos who do not comply with the double residency requirement.

Thus, the framers of the Constitution, by an overwhelming vote of 28 in favor and only one against, approved Section 2, Article V of the Constitution, as follows:

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.* (Italics supplied)

After sixteen long years of debates, Congress finally enacted RA No. 9189 (the *Overseas Absentee Voting Act of 2003*),

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[5] Record of the Constitutional Commission, Vol. II, pp. 11-12 (19 July 1986).

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precisely to implement the constitutional mandate to enfranchise overseas Filipinos. Petitioner now asks the Court to strike down this law as unconstitutional mainly because it enfranchises overseas Filipinos who do not comply with the double residency requirement in Section 1, Article V of the 1987 Constitution, as follows:

> 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. (Italics supplied)

Like the 1973 Constitution, Section 1, Article V of the 1987 Constitution imposes a ***double residency requirement*** before a Filipino 18 years or over may exercise the right to vote, namely: (1) one year residence in the Philippines; and (2) six months residence in the locality in the Philippines where he proposes to vote.

The threshold issue is whether overseas Filipinos should comply with the double residency requirement in Section 1 of Article V to vote under the absentee voting system in Section 2 of the same Article. ***Stated another way, the issue is whether overseas Filipinos, many of whom are not registered voters in the Philippines, should come home twice to the Philippines just so they could vote in a foreign country as absentee Filipino voters. The first time they should come home is one year before the elections to establish residence in the Philippines. The second time is six months before the elections to establish residence in the locality in the Philippines where they propose to vote.***

Did the framers of the 1987 Constitution intend to inflict on overseas Filipinos such a burdensome requirement as an essential feature of the absentee voting system in Section 2 of Article V? To require absentee voters to comply with the double residency requirement is to impose an impractical and even an impossible

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condition to the exercise of the constitutional right to vote. ***In the first place, the second residency requirement of establishing residence in a locality in the Philippines where the voters propose to vote is impossible to comply since overseas Filipinos will obviously not vote in any locality in the Philippines.*** Imposing the double residency requirement makes the absentee voting an empty right of overseas Filipinos. Certainly, the wise framers of the Constitution were incapable of such absurd scheme.

If the framers of the Constitution did not intend such an absurd requirement, should this Court now impose such absurdity on overseas Filipinos? How many overseas Filipinos would comply with the double residency requirement just to vote in Presidential and Senatorial elections? How much will overseas Filipinos spend just to come home twice within 12 months just so they could vote when they go back abroad?

The concept of absentee voting negates a residency requirement in the country of citizenship of the voter. By definition, an absentee voter is a non-resident voter. Obviously, the double residency requirement in Section 1 of Article V applies only to resident or non-absentee Filipino voters. To impose the double residency requirement on absentee Filipino voters is an egregious anomaly for it will require absentee Filipino voters to comply with the same residency requirement imposed on resident or non-absentee Filipino voters. If absentee Filipino voters are required to reside in the Philippines just like resident or non-absentee Filipino voters, why create an absentee voting system for overseas Filipinos in the first place? Applying the double residency requirement on absentee voters will render the provision on absentee voting in Section 2 a surplusage, a constitutional mandate devoid of meaning.

Even without the absentee voting provision in Section 1, Congress can validly enact a law allowing resident or non-absentee Filipino voters — those who comply with the double residency requirement — to vote abroad in Philippine embassies or consulates. There is no constitutional prohibition on registered Filipino voters who comply with the double residency requirement

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to cast their ballots at a Philippine embassy or consulate abroad where they happen to be on election day. If the absentee voting system in Section 2 were for the benefit only of resident or non-absentee Filipinos, then there would be no need to provide for it in the Constitution.

The framers of the 1987 Constitution specifically introduced the absentee voting provision in Section 2 precisely to enfranchise overseas Filipinos who do not comply with the double residency requirement in Section 1. Without the absentee voting provision in Section 2, Congress could not validly enact a law enfranchising overseas Filipinos who do not comply with the double residency requirement. As succinctly explained by Commissioner Christian Monsod during the deliberations in the Constitutional Commission:

MR. MONSOD: x x x *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.*[6]

Evidently, the framers of the Constitution intended the absentee voting provision as an ***exception*** to the double residency requirement.

The question of how a Filipino, who has become a permanent resident or immigrant in a foreign country, may reacquire his domicile or residence in the Philippines is a matter for ordinary legislation. The reacquisition of the Philippine domicile or residence that a Filipino had lost is within the power of Congress to legislate. The Constitution does not define what domicile or residence means. There is also no constitutional prohibition against the enactment of legislation prescribing the reacquisition of domicile or residence in the Philippines, just as there is no constitutional prohibition against the enactment of legislation prescribing the reacquisition of Philippine citizenship.

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[6] Record of the Constitutional Commission, Vol. II, p. 33 (19 July 1986).

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Thus, RA No. 8171[7] allows a former natural-born Filipino who became a foreigner to reacquire Philippine citizenship by filing a simplified administrative petition and taking an oath of allegiance to the Philippines. Section 5(d) of RA No. 9189, which prescribes the reacquisition of residence by a Filipino through the execution of an affidavit stating he is resuming residence in the Philippines, is similarly well within the power of Congress to enact and is thus constitutional.

While the absentee voting system is new in this country, it is well established in other countries. In the United States, all U.S. citizens 18 years or over who reside outside the United States during an election are eligible to vote as absentee voters.[8] The trend in the United States is to allow "no-excuse" absentee voting,[9] that is, a qualified or registered voter may avail of absentee voting for any reason. Absentee voting is understood in other jurisdictions as voting by a qualified or registered voter without ***any*** residency requirement. In the present case, petitioner wants a ***double*** residency requirement imposed on absentee Filipino voters.

The right of suffrage is the cornerstone of a representative government like that established in the 1987 Constitution. A representative government is legitimate when those represented elect their representatives in government. The consent of the governed is what stamps legitimacy on those who govern. This consent is expressed through the right of suffrage. It is a precious right for which many have fought and died so that others may freely exercise it. A government that denies such right on flimsy or meaningless grounds does so at its peril.

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[7] An Act Providing for the Repatriation of Filipino Women Who Have Lost their Philippine Citizenship by Marriage to Aliens and of Natural-Born Filipinos.

[8] FAQs on Uniformed and Overseas Citizens Absentee Voting Act, *www.fvap.gov/quest.html*.

[9] A Guide to Absentee Voting in Maine, *www.state.me.us/sos/cec/elec/absentee03.hm*; Absentee Voting in Florida, *www.bayvotes.org/absentee.htm*; Voting Absentee in North Dakota, *www.state.nd.us/sec/voting_absentee.htm*; No Excuse Absentee Voting in North Carolina, *www.msweb03.co.wake.nc.us/bordelec/absentee.htm*.

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The International Covenant on Civil and Political Rights, to which the Philippines is a signatory, requires the Philippines to respect the people's right of suffrage "***without unreasonable restrictions***." Thus, Article 25 of the Covenant provides:

Article 25. Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and ***without unreasonable restrictions***;

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) ***To vote*** and to be elected ***at genuine periodic elections which shall be by universal and equal suffrage*** and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

x x x x x x x x x. (Emphasis and italics supplied)

The Philippines is duty bound under international law to comply in ***good faith*** with its treaty obligations under the Covenant. To require overseas Filipinos to return to the Philippines twice within 12 months so they may vote abroad as absentee voters is plainly an unreasonable restriction outlawed by the Covenant.

When the framers of the Constitution introduced absentee voting in Section 2 of Article V, they were aware of the country's obligations under the Covenant. In their discussions on the death penalty, human rights and the Bill of Rights, the framers of the Constitution often referred to the country's obligations under the Covenant.[10] It is inconceivable that the framers intended overseas Filipinos to comply with the double residency requirement, an unreasonable restriction that would patently violate Article 25 of the Covenant and practically negate the overseas Filipinos' right of suffrage.

There are some 40 countries in the world, including our Asean neighbors Indonesia and Thailand, which grant their overseas

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[10] Record of the Constitutional Commission, Vol. 1, No. 32, 17 July 1986; Vol. 2, No. 43, 30 July 1986; Vol. 3, No. 66, 26 August 1986; Vol. 3, No. 67, 27 August 1986; Vol. 4, No. 68, 28 August 1986; Vol. 4, No. 69, 29 August 1986.

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citizens the right to vote while residing abroad.[11] The inexorable direction of history is to bestow on every person the right to vote wherever he may be in this global village. Modern technology and telecommunications are making this happen even now.[12] Those who insist on the double residency requirement as an essential condition for absentee voting by overseas Filipinos are turning back in vain the clock of history.

The framers of the Constitution expressly mandated Congress to enact an absentee voting law to enfranchise overseas Filipinos. Congress has enacted such a law after a long and difficult struggle by overseas Filipinos who patiently waited for 16 years for the enactment of the law. That struggle is now part of the world history of the evolution of the right of suffrage as a universal right. No frivolous, absurd or impractical conditions should stand in the way of enfranchising overseas Filipinos whose contribution to the national economy is immeasurable.

Like the framers of the 1987 Constitution and the members of Congress, I vote to enfranchise our 7 million overseas Filipinos. This is an explicit constitutional mandate that the Court, like Congress, must honor and respect. I therefore concur entirely with the *ponencia* of Justice Ma. Alicia Austria-Martinez.

SEPARATE OPINION

CARPIO MORALES, *J.*:

In the assault against the validity of certain provisions of the newly enacted Republic Act No. 9189 or The Overseas Absentee Voting Act of 2003, the pivotal issue centers on the constitutionality of the grant, under Section 5(d) of the law, of voting rights to Filipino immigrants or permanent residents in

[11] Petition Letter of Overseas Filipinos to the Philippine Government on the Right to Vote, *www.philsol.nl/ofw/pettion.htm*.

[12] In the 2004 U.S. Presidential elections, there will be voting through the Internet under the initiative called SERVE (Secure Electronic Registration and Voting Experiment). This will allow an eligible U.S. citizen to vote from any Windows-based computer with Internet access, *anywhere in the world www.servusa.gov/public/aqca.aspx*.

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foreign countries, conditioned on their execution of an affidavit declaring that they shall resume actual physical permanent residence in the Philippines within three years from the approval of their registration as absentee voters.

The controversy arises because the Constitution prescribes, among other requirements for the exercise of suffrage, that a Filipino citizen must have resided in the Philippines for at least one year and in the place where he is to vote for at least six months immediately preceding the election.[1]

Residence for purposes of ascertaining the right to vote and be voted for in public office has been jurisprudentially interpreted to mean domicile which is an individual's permanent home or the place to which, whenever absent for business or pleasure, one intends to return, the domicile of a person being dependent on facts and circumstances disclosing intent.[2]

While there is no question that Filipinos who are temporarily abroad for various reasons are still qualified to vote for they still retain their domicile in the Philippines, immigrants are generally deemed to be permanent settlers of the country where they are such,[3] thereby giving rise to the conclusion that they have relocated their domicile elsewhere.

Republic Act No. 9189 was passed by mandate of the Constitution that "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"[4] but this did not exempt the mechanics for absentee voting from the reach of the basic requirements imposed by the Constitution on suffrage. It is clear from the deliberations of the members of the Constitutional Commission that their intent was to limit absentee voting to Filipinos abroad who have all the qualifications and

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[1] CONSTITUTION, Article V, Section 1.

[2] *Ong vs. Republic*, 19 SCRA 966 [1967].

[3] Black's *Law Dictionary*, 7th Edition.

[4] CONSTITUTION, Article V, Section 2.

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none of the disqualifications of a voter, including the residency requirement.

A Filipino who is or has already become an immigrant or permanent resident in another country can, I am convinced, by a mere sworn undertaking to return to the Philippines for the purpose of establishing permanent residence here within the statutorily fixed three-year period, be allowed by law to vote in Philippine elections without transgressing the rules laid down by the Constitution on suffrage. For a Filipino immigrant or permanent resident of a foreign country unquestionably has the Philippines as his domicile of origin, that which he acquires at birth and is the domicile of his parents or of the person or persons upon whom he was legally dependent at the time of his birth.[5] A domicile, once acquired, whether by origin or choice, continues until a new domicile is actually acquired.[6] *And to acquire a new domicile by choice,* the following must concur: (1) residence or bodily presence in the new locality; (2) an intention to remain there (*animus manendi*); and (3) an intention to abandon the old domicile (*animus non revertendi*).[7]

It is my view that the affidavit executed in accordance with Section 5(d) of R.A. 9189 by a Filipino immigrant or permanent resident of another country expressing his intent to resume physical permanent residence in the Philippines is an eloquent proof of his intention not to abandon his domicile of origin in the Philippines. It is a statement under oath of what a Filipino seeks to do for the future of his membership in a political community. Why should this affidavit be discredited on the mere speculation that the immigrant might not fulfill his undertaking to return to the Philippines for good? If Filipinos who are temporarily residing in foreign countries are accorded full faith and credit as to their domiciliary ties no matter how indefinite their absence from the Philippines, what more in the case of

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[5] 25 Am Jur 2d, Domicil § 13.

[6] 28 C.J.S. 30.

[7] *Romualdez vs. RTC, Br. 7, Tacloban City*, 226 SCRA 408 [1993].

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Filipino immigrants who have formally declared their intent to settle in their homeland?

While he may have stayed on a more or less permanent basis in the host country which conferred on him the status of an immigrant and may be animated with all the desire to remain there, until and unless a Filipino immigrant had categorically expressed by words or by deeds his intent to no longer return to his domicile of origin, no conclusion can be reached as to a change in domicile from one of origin to one of choice, hence, the old domicile subsists. For at the core of every Filipino immigrant's being is the fact of his Philippine citizenship. He is, after all, still a Filipino.

The acquisition of a new domicile must be *completely perfected* by a concurrence of the factum of removal to a new locality, the animus to remain there, *and* abandonment of and intent not to return to the former domicile, for if there is a purpose to return, whether secret or open, no loss or change of domicile will result.[8]

Two types of Filipino immigrants must then be distinguished. The first, a Filipino who has opted not to execute the required affidavit under Section 5(d) of R.A. 9189, is clearly disqualified to exercise suffrage for he has manifested the *animus non revertendi* with respect to his domicile in the Philippines, thereby effectuating his acquisition of a new domicile. The second, a Filipino who declares his wish to be reunited with his homeland has, without doubt, shown that his residence of origin remained unchanged and so he is entitled to vote under the Overseas Absentee Voting Law. Therefore, until that opportunity to execute the affidavit has been totally foregone by a Filipino immigrant, in the absence of any conclusive evidence of his acquisition of a new domicile, the Filipino immigrant's domicile of origin is intact, his presence abroad and his desire to remain therein notwithstanding.

I, therefore, vote in favor of the constitutionality of Section 5(d) of R.A. 9189. I vote to declare as unconstitutional parts

[8] 28 C.J.S. 31.

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of Section 18.5 of the subject law insofar as they authorize COMELEC to proclaim presidential and vice-presidential winners; and of Sections 17.1, 19 and 25 insofar as they are subject to congressional oversight, review and approval the implementation of voting by mail and the Implementing Rules and Regulations of COMELEC.

CONCURRING OPINION

AZCUNA, *J.*:

I concur with the *ponencia*, but wish to state an additional basis to sustain Section 5 (d) of Republic Act No. 9189, which provides:

> Sec. 5. *Disqualifications.* — The following shall be disqualified from voting under this Act:
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> x x x x x x x x x
>
> 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 contends that Filipinos who establish permanent residence abroad have thereby abandoned their Philippine domicile of origin and replaced it with a domicile of choice in a foreign country. This may indeed be true, but with the execution of the affidavit provided for under Section 5 (d) aforementioned, the affiant expressly states an abandonment of said domicile of choice. The legal effect of this expression is to revive the domicile of origin. For unlike a domicile of choice, which requires both intention and physical presence to be established or maintained, the domicile of origin can be revived by an intention properly

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expressed. Thus, the abandonment of the present domicile of choice, by the execution of the affidavit, operates to revive the domicile of origin to replace it, because of the principle that no person can be without a domicile at any time.

The moment a foreign domicile is abandoned, the native domicile is reacquired.[1]

When a person abandons his domicile of choice, his domicile of origin immediately reverts and remains until a new domicile of choice is established.[2]

On the abandonment of a domicile of choice, the domicile of origin immediately reverts, without regard to any definite intent to return to such original domicile, provided there is a definite intent finally to abandon the acquired domicile of choice.[3]

Through the execution of the affidavit, the affiant does the operative act that makes said affiant once more a Philippine domiciliary. The requirement of resuming actual physical presence within three (3) years is only a test of such intention, but is not needed to effect the change or reversion of domicile. If the affiant does not resume the residence physically within said period, then the intent expressed in the affidavit is defective and the law will deem it inoperative, thereby allowing removal of affiant's name from the National Registry of Absentee Voters.

CONCURRING AND DISSENTING OPINION

PUNO, *J.*:

With all due respect, I would like to offer my humble views on the constitutional issues presented by the petitioner, *viz*:

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

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[1] STORY, *CONFLICT OF LAWS*, Secs. 47, 48.

[2] KENNAN, *A TREATISE ON RESIDENCE AND DOMICILE*, Sec. 191.

[3] *Annot.*, 5 ALR 300 (1920).

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an affidavit expressing their intention to return to the Philippines, violate the residency requirement in Section 1 of Article IV 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 Vice-President shall be proclaimed as winners by Congress?

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?

To start off, let me stress the significance of the case at bar. Rep. Act No. 9189,[1] otherwise known as "The Overseas Absentee Voting Act of 2003" is a historic attempt to translate to reality a long awaited dream: the enfranchisement of millions of overseas Filipinos. Undoubtedly, the efforts of Congress to give flesh to Section 2, Article V of the 1987 Constitution mandating it to devise "a system for absentee voting for qualified Filipinos abroad," deserves the highest commendation. However, Rep. Act No. 9189 poses far reaching constitutional issues that merit more than an invocation of abstract legal principles or a simplistic construction of the Constitution. For one, the petition affects the value of the right of suffrage, a right that is the cornerstone of our democratic government. It is the responsibility of this Court to strike a balance between the need to expand the right of suffrage in favor of those who cannot

[1] "An Act Providing for A System of Overseas Absentee Voting by Qualified Citizens of the Philippines Abroad, Appropriating Funds Therefor, and for Other Purposes." Rep. Act No. 9189 was signed into law by President Gloria Macapagal Arroyo on February 13, 2003, and was published on February 16, 2003 at *Daily Tribune* and *Today*.

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exercise it and the need to prevent the dilution of the right of suffrage of those already exercising it. For another, the petition compels this Court to define the extent and the limits of Congress' oversight powers or legislative veto over "subordinate legislations" or the rules and regulations promulgated by administrative agencies of government. Undoubtedly, this oversight power is indispensable for Congress to discharge its broad power to legislate. Thus, it again behooves this Court to draw the precise parameters of the oversight power sought to be exercised by Congress to preserve the delicate balance of powers allocated to the different branches of our government in the Constitution.

Prescinding from these premises, let me discuss the issues in *seriatim*.

A.

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

Petitioner submits that Section 5, par. (d) of Rep. Act No. 9189 is *unconstitutional* for it allows *immigrants or permanent residents of foreign countries* to vote for President, Vice-President, Senators, and party-list representatives by mere execution of an affidavit stating that: (a) he shall resume actual, physical, permanent residence in the Philippines not later than three (3) years from approval of his registration; and (b) that he has not applied for citizenship in another country, *viz*:

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

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immigrant or permanent resident front the National Registry of Absentee Voters and his/her permanent disqualification to vote in absentia. (*italics ours*)

Petitioner also contends that section 2, Article V of the 1987 Constitution[2] limits the authority of Congress to provide a system for absentee voting to those Filipinos who are *temporarily absent* in the Philippines but otherwise satisfy the requirements under Section 1 thereof, including the one year residence in the Philippines and six months residence in the place where they propose to vote.[3]

Citing our ruling in *Caasi v. Court of Appeals*,[4] the petitioner avers that a Filipino who is an acknowledged immigrant or permanent resident of a foreign country does not possess the necessary residence requirements as he is deemed to have already abandoned his domicile in the Philippines. He alleges that the challenged provision amends or alters the residence requirements by granting "*conditional*" residence qualification to an immigrant or permanent resident or through the execution of an affidavit.[5]

The *majority*, thru our esteemed colleague, Madam Justice Martinez, rules that Section 2, Article V of the 1987 Constitution

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[2] "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.

The Congress shall also design a procedure for the disabled and the illiterates to vote without the assistance of other persons. Until then, they shall be allowed to vote under existing laws and such rules as the Commission on Elections may promulgate to protect the secrecy of the ballot."

[3] 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."

[4] 191 SCRA 229 (1990).

[5] Petition, pp. 7-9.

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mandating Congress to devise a system for overseas absentee voting *operates as an exception* to the residence requirements as the members of the Constitutional Commission manifested a clear intent "to enfranchise as much as possible all Filipino citizens abroad who have not abandoned their domicile of origin," *viz*:[6]

> By the doctrine of necessary implication in statutory construction, which may be applied in construing constitutional provisions, 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 residency requirement in Section 1, Article V of the Constitution.[7] (*italics ours*)

The majority further holds that 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."[8]

The majority affirms our ruling in *Caasi v. Court of Appeals*[9] that an immigrant or permanent resident of a foreign country is deemed to have relinquished his residence in his country of origin. However, it rules that this *presumption is overturned by the execution of the affidavit* required under the challenged provision of Rep. Act No. 9189. Allegedly, the affidavit is an explicit expression that an immigrant or permanent resident has not relinquished his domicile in the Philippines, to wit:

> 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 residence in the Philippines,

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[6] Decision, p. 22.

[7] *Id.*

[8] *Id.* at 26.

[9] *Supra* note 4.

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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.[10] (*italics ours*)

The majority further rules that "the act of the immigrant or permanent resident in executing an affidavit pursuant to Section 5(d) may be considered as an *express waiver* of his status as an immigrant or permanent resident." *Thus, the majority concludes that Section 5(d) of Rep. Act No. 9189 is not unconstitutional.*

With all due respect, *I disagree with the majority.* But before discussing the reasons for my dissent, let me put the issue in its proper historical perspective.

Suffrage is an attribute of citizenship[11] and is ancillary to the principle of republicanism enshrined in Section 1, Article II of the 1987 Constitution.[12] The right of suffrage, however, is not absolute. No political system in the whole world has literally practiced "universal" suffrage, even among its citizens.[13] The scarlet history of the right of suffrage shows that restrictions have always been imposed on its exercise.

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[10] Decision, p. 26.

[11] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary* 582 (1996).

[12] "Sovereignty resides in the people and all government authority emanates from them."

[13] Brent & Levinson, *Process of Constitutional Democracy: Cases and Materials* 1053 (1992).

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In England, for instance, suffrage originated as a political privilege granted to land owners by the monarchs.[14] The grant arose from the theory that in the formation of the state, the people agreed to surrender to the King all political sovereignty. In return, the King extended suffrage to the freeholders as a vested right. The origin and character of suffrage in England is chronicled by Chief Justice Holt in *Ashby v. White, et al.*,[15] *viz*:

> The election of knights belongs to the freeholders of the counties, and it is an original right vested in and inseparable from the freehold, and can be no more severed from the freehold than the freehold itself can be taken away. Before the statute of 8 Hen. 6, ch. 7, any man that had a freehold, though never so small, had a right of voting; but by that statute the right of election is confined to such persons as have lands or tenements to the yearly value of forty shillings at least, because, as the statute says, of the tumults and disorders which happened at elections by the excessive and outrageous number of electors; but still the right of election is an original incident to and inseparable from freehold. As for citizens and burgesses, they depend on the same rights as the knights of shires differ only as to the tenure; but the right and manner of their election is on the same foundation.[16]

The economic theory of suffrage is also evident in the early history of the United States. The 1787 U.S. Constitution, as originally adopted, did not expressly provide the right to vote.[17] The States were left to determine who should have the right to vote in national as well as local elections. Most States restricted the right of suffrage to white males over twenty-one years of age *with a certain amount of property*.[18]

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[14] McCrary on Elections 10 (1897).

[15] 2 Ld. Raymond, 938 (1 Smith's Leading Cases, p. 472), cited in McCrary, *id.* at 9.

[16] *Id.* at 10.

[17] Lieberman, *The Evolving Constitution* 563.

[18] *Id.*

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Other States also required religious,[19] literacy, and moral qualifications.[20]

Some legal scholars, however, contend that the right of suffrage is presumed from the provision of the Constitution guaranteeing each state a "republican form of government."[21] Veering away from the economic theory of suffrage prevalent in England, these scholars argue that in forming the state, the people did not give up all their sovereign powers but merely delegated the exercise of these powers to some chosen representatives. The right of suffrage is one of these delegated powers, *viz*:

> The people, in their original sovereign character are the fountainhead of governmental authority, and all the powers necessary to be exercised in the continued administration of a representative government originated and are delegated by exertion of their sovereign will. These propositions, founded on necessity, and illustrated by long continued practice, have become the received doctrines of the American people . . . The people, in clothing a citizen with the elective franchise for the purpose of securing a consistent and perpetual administration of the government they ordain, charge him with the performance of a duty in the nature of a public trust, and in that respect constitute him a representative of the whole people. This duty requires that the privilege thus bestowed should be exercised, not exclusively for the benefit of the citizen or class of citizens professing it, but in good faith and with an intelligent zeal for the general benefit and welfare of the State. . .[22]

As a privilege delegated by the people, a citizen acquires no indefeasible right to the continuous exercise or enjoyment of the right of suffrage. "The people of the State, in the exercise

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[19] The last survival of religious test appears in the Constitution of South Carolina (Article XIII), in force from 1778 to 1790, limiting suffrage "to every free white man who acknowledges the being of a God, and believes in a future state of rewards and punishments." *See* McCrary on Elections, *supra* note 14, f.n. 7 at 5 (1897).

[20] *Id.* at 3.

[21] Lieberman, *supra* note 17.

[22] *United States v. Cruikshank*, 92 U.S. 542.

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of their sovereign power, may disqualify, suspend or entirely withdraw it from any citizen or class of them, providing always that representation of the people, the essential characteristics of a republican government, be not disregarded or abandoned."[23]

Following the shift in its theoretical basis, the right of suffrage was extended to broader classes of citizens. In 1870, the Fifteenth Amendment was enacted prohibiting the federal government and the states from discriminating on the basis of "race, color or previous conditions of servitude." In 1920, the Nineteenth Amendment was ratified providing that the right of citizens to vote "shall not be denied or abridged by the United States or by any State on account of sex." In 1964, the Twenty-fourth Amendment was adopted providing that the right of any citizen to vote for President, Vice-President or members of Congress "shall not be denied or abridged by the United States or any State, by reason of failure to pay any poll tax or other tax." In 1971, the Twenty-sixth Amendment was passed providing that the right of any citizen eighteen years or older to vote "shall not be denied or abridged by the United States or by any State on account of age."

In our jurisdiction, the right of suffrage has *evolved* from a mere *statutory right to a constitutional right*. Our first election law was Act No. 1582, which took effect on January 15, 1907. We had no elections during the Spanish occupation of the country.

Like its foreign counterparts, the qualifications for the exercise of the right of suffrage set in Section 14 of Act No. 1582 were elitist and gender-biased. The right of suffrage was limited to male citizens twenty-three years of age or over with legal residence for a period of six months immediately preceding the election in the municipality in which they exercise the right of suffrage. Women were not allowed to vote for they were regarded as mere extensions of the personality of their husbands or fathers, and that they were not fit to participate in the affairs

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[23] *Id.*

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of government.[24] But even then, not all male citizens were deemed to possess significant interests in election and the ability to make intelligent choices. Thus, only those falling under any of the following three classes were allowed to vote: (a) those who, prior to the August 13, 1898, held office of municipal captain, *governadorcillo, alcalde*, lieutenant, *cabeza de barangay*, or member of any *ayuntamiento*; (b) those who own real property with the value of five hundred pesos or who annually pay thirty pesos or more of the established taxes; or (c) those who speak, read and write English or Spanish.

But apart from possessing the necessary qualifications, a voter must not suffer from any disqualification. We elaborated the reasons for setting disqualifications for the exercise of the right of suffrage in *People v. Corral*,[25] *viz*:

> The modern conception of suffrage is that voting is a function of government. The right to vote is not a natural right but it is a right created by law. Suffrage is a privilege granted by the State to such persons or classes as are most likely to exercise it for the public good. In the early stages of the evolution of the representative system of government, the exercise of the right of suffrage was limited to a small portion of the inhabitants. But with the spread of democratic ideas, the enjoyment of the franchise in the modern states has come to embrace the mass of the adult male population. For reasons of public policy, certain classes of persons are excluded from the franchise. Among the generally excluded classes are minors, idiots, paupers, and convicts.
>
> The right of the State to deprive persons of the right of suffrage by reason of their having been convicted of crime, is beyond question. "The manifest purpose of such restrictions upon this right is to preserve the purity of elections. The presumption is that one rendered infamous by conviction of felony, or other base offenses indicative

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[24] The exclusion of women originated in the common-law idea of the merger of a married woman's existence in that of her husband, and her unfitness by nature for the occupation of civil life. *See* Cooley on Const. Limitation at 38.

[25] 62 Phil. 945 (1936).

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of moral turpitude, is unfit to exercise the privilege of suffrage or to hold office. The exclusion must for this reason be adjudged a mere disqualification, imposed for protection and not for punishment, the withholding of a privilege and not the denial of a personal right."[26]

On November 9, 1933, the Philippine Legislature enacted Act No. 4122 extending the right of suffrage to Filipino women starting January 1, 1935. However, before they could exercise their new right, the 1935 Constitution was adopted, once again, limiting the right of suffrage to male citizens, *viz*:

> Suffrage may be exercised by male citizens of the Philippines not otherwise disqualified by law, who are twenty-one years of age or over and are able to read and write, and who shall have resided in the Philippines for one year and in the municipality wherein they propose to vote for at least six months preceding the election. The National Assembly shall extend the right of suffrage to women, if in a plebiscite which shall be held for that purpose within two years after the adoption of this Constitution, not less than three hundred thousand women possessing the necessary qualifications shall vote affirmatively on the question.

During the deliberations of the Constitutional Convention, it was conceded that Filipino women were capable of exercising the right of suffrage. Their right, however, was opposed on the following grounds: (1) there was no popular demand for suffrage by Filipino women themselves; (2) woman suffrage would only disrupt family unity; and (3) it would plunge women into the quagmire of politics, dragging them from the pedestal of honor in which they had theretofore been placed.[27] Thus, in its report to the President of the Convention on September 24, 1934, the Committee on Suffrage said:

> The committee refrains from stating in this report the reasons on which it bases its decision to withdraw the right of suffrage from the women and will merely say that the principal idea in the minds of the members not in favor of extending suffrage to women was that the sweet womanliness of the Philippine women should be

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[26] *Id.* at 948, citations omitted.

[27] I Aruego, *The Framing of the Philippine Constitution* 217 (1936).

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projected from political strife and passion in order that sweet home may not lose any of its sweetness.[28]

The proponents of woman suffrage in reply argued that it would be unfair to deprive Filipino women of the right of suffrage already granted to them by the legislature without giving them the chance to prove whether they deserved it or not. They also submitted that the right would make them more interested in the management of the affairs of government and that "it was necessary as a matter of justice to extend the frontiers of our democracy to our women who had labored hard side by side with our men for the progress and development of the country."[29] In a last ditch attempt to save the cause of woman suffrage, women leaders distributed a petition to individual delegates that reads:

> We, the undersigned, duly elected representatives of women who believe in the justice and wisdom of the enfranchisement of the Filipino women, protest most solemnly against women being deprived of the vote in the Constitution of the Commonwealth and against any change in the existent Law, No. 4112, passed by the Ninth Philippine Legislature on November ninth, 1933, and signed by Governor-General Frank Murphy on December seventh, 1934.
>
> We call the attention of the Constitutional Assembly and the Legislature to the plea for liberty made before the Congress and the President of United States for thirty-seven years by the Filipinos; a plea based on the fact that we are a liberty-loving people equipped and capable of self-government. Such government cannot exist "half-slave and half-free." The women of this Christian land, serene in the knowledge that in peace or war they have never failed their men or their country, in this crucial hour of the realization of the sacrifice and devotion of the years, insist upon their political recognition and their share in the triumph of the cause of liberty.
>
> It is not a matter of plebiscite nor specific numbers. It is a right earned, deserved and therefore claimed. It is not a matter of sex. In

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[28] *Id.* at 216.

[29] *Id.* at 217.

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a democratic government all qualified citizens, men and women alike, can and should make their valuable contribution in deciding what their community will undertake to do through its government, by what means, and through what officials.

Under the law women suffer penalties, are summoned before the courts by law — laws they have had no voice in making — and pay taxes. "Taxation without representation is tyranny" and more so in 1934 than in 1776.

So confident of the unalterable righteousness of this cause, to you, gentlemen of the Constitutional Assembly, we appeal for justice believing and knowing that our cause is a just one, and that our rights have been won thru years of sacrifice, devotion and service to our common cause — the cause of men and women alike — the welfare and progress of our native land — the Philippines.[30]

In the end, a compromise was reached limiting the right of suffrage to male citizens and leaving the issue of women suffrage for the women to decide. In the plebiscite held on April 30, 1937, more than three hundred thousand women voted for woman suffrage. Thenceforth, Filipino women were allowed to vote, thus, paving the way for women participation in the government.

To broaden the mass base of voters, the *1935 Constitution* lowered the age requirement from 23 years to 21 years. The literacy requirement was also relaxed. It is to be noted that from the opening days of the Convention, there was a prevalent sentiment among the delegates to bar illiterates from exercising the right of suffrage. It was proposed that only those who can read and write English, Spanish, or other local dialects should be allowed to vote. This proposal was defeated for the drafters felt that while the ability to read and write was necessary,[31] the specification of any language or dialect would be discriminatory against the Mohammedans:

It is discriminatory against a respectable minority of the population of the Philippines. It would serve to discriminate against the

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[30] *Id.* at 218-219.

[31] *Id.* at 225.

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Mohammedan population of the Philippines for which I am one of the humble representatives. It is the opinion of this Convention, I think, to emancipate, to enfranchise our backward elements, especially the Mohammedan population. And you would like to curtail that right and that privilege by inserting a provision that only those who can read and write either English, Spanish, or any of the local dialects shall be allowed to vote. This amendment would preclude the Mohammedans because their Arabic writing is not included under local dialects. Because when you say, local dialects, you refer to the dialect and not to the system of writing. The system of writing is either Arabic or Roman. In view of this fact, Mr. President, I hope that you will be liberal and tolerant enough to reject this proposed amendment because it is unnecessary and because it is discriminatory.[32]

Furthermore, the 1935 Constitution removed the property qualifications under Act No. 1582. We explained the reason for this removal in *Maquera v. Borra*,[33] *viz*:

. . . property qualifications are inconsistent with the nature and essence of the republican system ordained in our constitution and the principle of social justice underlying the same, for said political system is premised upon the tenet that sovereignty resides in the people and all government authority emanates from them, and this, in turn, implies necessarily that the right to vote and to be voted for shall not be dependent upon the wealth of the individual concerned, whereas social justice presupposes equal opportunity for all, rich and poor alike, and that, accordingly, no person shall by reason of poverty, be denied the chance to be elected to the public office. . .[34]

In sum, the 1935 Constitution gave a constitutional status to the right of suffrage. Thus, suffrage is not anymore a privilege granted by the legislature, but a right granted by the sovereign people to a definite portion of the population possessing certain qualifications. To be sure, the right of suffrage was still subject

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[32] *Id.* at 225-226.

[33] 15 SCRA 7 (1965).

[34] *Id.* at 9.

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to regulation by the legislature but only in accordance with the terms of the Constitution.

The march towards liberalization of the right of suffrage continued with the *1973 Constitution*. The literacy requirement was removed while the age bar was further lowered from 21 years to 18 years. Thus, Section 1, Article VI of the 1973 Constitution reads:

> *Section 1. Suffrage shall be exercised by 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. No literacy, property or other substantive requirement shall be imposed on the exercise of suffrage. The National Assembly shall provide a system for the purpose of securing the secrecy and sanctity of the vote.* (*italics ours*)

The rationale for these changes was expressed in the Explanatory Note of Resolution No. 03 of the Committee on Suffrage and Electoral Reforms, *viz*:

> In keeping with the trend for the broadening of the electoral base already begun with the lowering of the voting age to 18 and in keeping with the committee's desire to continue the alienation and exclusion of millions of citizens from the political system and from participation in the political life in the country, the requirement of literacy for voting has been eliminated. It is noted that there are very few countries left in the world where literacy remains a condition for voting. There is no Southeast Asian country that imposes this requirement. The United States Supreme Court only a few months ago declared unconstitutional any state law that would continue to impose this requirement for voting.
>
> Although there were more resolutions submitted proposing the increase of educational requirements for voting than those advocating the elimination of the literacy requirement, the committee felt that favoring the elimination of the requirement would be more in keeping with its objective and that of the Constitutional Convention encouraging popular participation and equalizing the privileges and rights of the people. . .

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According to the Bureau of Census and Statistics, the projection for the population of the Philippines over 18 years old for 1970 is 17,659,000. Of this, 12,384,000 are considered literates. However, the same Bureau admitted that there is no real scientific literacy test in counting literates. All that is done is to ask each member of the population the question whether he is able to read and write and to take his answer at its face value.

These circumstances plus the well-known practice in all elections in which political leaders spend their time in the barrios showing the prospective voters to write the name of the candidates instead of explaining the political issues to them, strengthened the conviction of the committee that present literacy requirement is more of a joke, and worse, a deterrent to intelligent discussions of the issues. Finally, the committee took note of the convincing argument that the requirement to read and write was written into our constitution at a time when the only medium of information was the printed word and even the public meetings were not as large and successful because of the absence of amplifying equipment. It is a fact that today the vast majority of the population learn about national matters much more from the audio-visual media, namely, radio and television, and public meetings have become much more effective since the advent of amplifying equipment.

In addition, the 1973 Constitution provided that no property or other substantive requirement shall be imposed on the exercise of suffrage.

The *1987 Constitution* further liberalized the right of suffrage. *For the first time*, it required Congress to provide a system for absentee voting by qualified Filipinos abroad and to design a procedure for the disabled and the illiterates to vote without assistance from other persons. *Be that as it may, four qualifications existing since the 1935 Constitution were retained*: *(1)* Filipino citizenship; *(2)* age; (3) one year residence in the Philippines; and *(4)* six months residence in the place where the voter proposes to vote. *The wisdom of these four qualifications has not been questioned at any given time in the history of our suffrage. It is easy to see the reason.* Suffrage is a political right appertaining to *citizenship*. Each individual qualified to vote is a particle of popular sovereignty,

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hence, the right of suffrage cannot be extended to non-citizens. As an attribute of citizenship, suffrage is reserved exclusively to Filipinos whose allegiance to the country is undivided.[35]

It is also conceded that the right of suffrage can be exercised only by persons of a certain *age*. Nobody could doubt the reason for preventing minors from taking part in the political exercise. Voting is an act of choice and involves prescience. It requires not only a familiarity of political realities but also the maturity to make reasoned choices out of these realities.[36]

But citizenship and age requirements are not enough. For the vote to be more meaningful as an expression of sovereignty, the voter must possess more than a passing acquaintance with the problems and prospects of the country. Thus, *residence* is imposed as a qualification "to exclude a stranger and a newcomer, unacquainted with the conditions and needs of the community and not identified with the latter."[37] The residence requirement is also necessary for administrative purposes such as the preparation of accurate list of voters.[38]

I now come to the case at bar. The *first issue* is whether Section 5(d) of Rep. Act No. 9189 extending the right of suffrage to Filipinos who are "immigrants" or "permanent residents" of foreign countries is unconstitutional. To resolve this issue, the following need to be addressed: (1) whether Section 2, Article V of the Constitution *dispenses* with the residence requirements prescribed in Section 1 thereof; (2) whether an "immigrant" or a "permanent resident" satisfies the residence requirements; (3) whether the execution of an affidavit is sufficient proof of non-abandonment of residence in the Philippines; and (4) whether the *system* provided in Section 5(d) of Rep. Act No. 9189 will *dilute* the right of suffrage of other Filipino voters

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[35] Laurel, *Philippine Law on Elections* 2 (1940).

[36] *Id.* at 16.

[37] *Gallego v. Vera*, 73 Phil. 453, 459 (1941).

[38] *Supra* note 13 at 1066-1067.

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who possess the full residence qualifications under Section 1, Article VI of the Constitution.

(1) Whether Section 2 of Article V dispenses with the residence requirements prescribed in Section 1 of the same Article.

Section 1, Article V of the 1987 Constitution prescribes *two residence* qualifications: (a) one year residence in the Philippines; and (2) six months residence in the locality where the voter proposes to vote.

In its ordinary conception, residence connotes the actual relationship of an individual to a specific place. To be a resident, physical presence of a person in a given area, community or country is required.[39] *Even before the adoption of the 1935 Constitution*, jurisprudence has equated the *first residence requirement* (one year residence in the Philippines) with *domicile* or legal residence.[40] *Domicile* in turn has been defined as an individual's *permanent home* or "the 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."[41] The domicile of a person is determined by the concurrence of the following *elements*: (1) the fact of residing or physical presence in a fixed place; and (2) *animus manendi,* or the intention of returning there permanently.[42] The mere absence of an individual from his permanent residence without the intention to abandon it does not result in a loss or change of domicile.[43]

The *second residence requirement* (six months residence in the place the voter proposes to vote) refers to *either* the

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[39] *Romualdez-Marcos v. Commission on Elections*, 248 SCRA 300, 323 (1995).

[40] See *Nuval v. Guray*, 52 Phil. 645 (1928).

[41] *Ong v. Republic*, 19 SCRA 966, 969 (1967).

[42] *Supra* note 39.

[43] *Id.* at 325.

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voter's domicile *or* to his temporary residence.[44] A voter who is domiciled in a particular locality but has resided for six months in another locality may register and vote in either locality, but not in both. To be sure, a person fulfilling the first residence requirement also fulfills the second so long as the voter registers in his established domicile. *The second residence requirement is relevant for two purposes*: (1) the determination of the place where the voter will register, and (2) the determination of the place where the voter will vote. It ought to be noted that as a general rule, a person should register and vote in the place where he has established his domicile or the place where he has resided for six months.

The intent of the members of the Constitutional Commission to apply the residence requirements to absentee voters is evident from its deliberations. They precisely used the phrase "QUALIFIED FILIPINOS ABROAD" to stress that the absentee voter must have all the qualifications in Section 1, Article VI of the Constitution, *viz*:

> 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?
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> FR. BERNAS. I think there is a very legitimate problem raised there.
>
> THE PRESIDENT. Yes.

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[44] II Bernas, *Constitutional Rights and Demands: Notes and Cases*, 558 (1991).

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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 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 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.

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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.[45]

In the course of the deliberations, Fr. Bernas perceived a problem that may arise from the meaning of the second residence requirement on the place of registration and voting. As noted, a qualified voter normally registers and votes in the place where he is domiciled or has resided for six months. Fr. Bernas feared that the second residence requirement may pose a constitutional obstacle 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,*" *viz*:

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 the 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.

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 found in the Middle East, they are scattered in 177 countries in the world.

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[45] II Records at 34-35.

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In previous hearings 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 detached 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 residential requirement in Section 1 . . .

. . . . . .

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.

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. . .

. . . . . .

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 the residence in the Philippines is concerned, the word "residence" means domicile, but as far as residence 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 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.*[46] (*italics supplied*)

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[46] *Id.* at 11-12.

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Following the observation of Father Bernas and to obviate the constitutional problem, the members of the Constitutional Commission then discussed the *system of registration* of *qualified Filipinos* abroad who will be allowed to vote. It was agreed that their registration abroad would be considered as registration in a particular locality in the Philippines where he is domiciled, and the vote cast abroad would be considered cast in that particular locality, to wit:

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 or 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 that 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 this 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

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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.[47] (*italics ours*)

It is crystal clear from the foregoing deliberations, that the *majority erred* in ruling that Section 2 of Article V of the Constitution *dispensed* with the residence requirements provided under Section 1 of the same Article.

(2) Whether an "immigrant" or a "permanent resident" of a foreign country has lost his domicile in the Philippines.

The next question is whether an "immigrant" or a "permanent resident" of a foreign country has abandoned his domicile in the Philippines. I respectfully submit that he has.

There are *three classes of domicile*, namely: domicile of origin, domicile of choice, and domicile by operation of law. *At any given point, a person can only have one domicile.*

Domicile of origin is acquired by every person at birth and continues until replaced by the acquisition of another domicile. More specifically, it is the domicile of the child's parents or of the persons upon whom the child is legally dependent at birth. Although also referred to as domicile of birth, domicile of origin is actually the domicile of one's parents at the time of birth and may not necessarily be the actual place of one's birth.[48] *Domicile of choice* is a domicile chosen by a person to replace his or her former domicile. An adult may change domicile at

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[47] II RECORDS at 35-36.

[48] 25 Am Jur 2d, Domicil § 11 at 13.

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will. The choice involves an exercise of free will and presumes legal capacity to make a choice. While intention is a principal feature on domicile of choice, a mere intention without the fact of actual presence in the locality cannot bring about the acquisition of a new domicile. Domicile of choice generally consists of a bodily presence in a particular locality and a concurrent intent to remain there permanently or at least indefinitely.[49] *Domicile by operation of law* is a domicile that the law attributes to a person independent of a person's residence or intention. It applies to infants, incompetents, and other persons under disabilities that prevent them from acquiring a domicile of choice.[50]

In *Romualdez-Marcos v. COMELEC*,[51] we ruled that *domicile of origin* is not easily lost. *To successfully effect a change of domicile*, one must demonstrate an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one; and acts which correspond with purpose.[52] *This change of domicile is effected by a Filipino who becomes an "immigrant" or a "permanent resident" of a foreign country.* Thus, we held in *Caasi v. Court of Appeals*,[53] *viz*:

> Miguel's application for immigrant status and permanent residence in the U.S. and his possession of a green card attesting to such status are conclusive proof that he is a permanent resident of the U.S. despite his occasional visits to the Philippines. The waiver of such immigrant status should be as indubitable as his application for it. Absent clear evidence that he made an irrevocable waiver of that status or that he surrendered his green card to the appropriate U.S. authorities before he ran for mayor. . .[54]

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[49] *Id.* at § 12.

[50] *Id.* at § 13.

[51] *Supra* note 39.

[52] *Id.* at 331.

[53] *Supra* note 4.

[54] *Id.* at 237.

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The doctrine in *Caasi* is by no means new. Our election laws have continuously regarded "immigrants" or "permanent residents" of a foreign country to have lost their domiciles in the Philippines and hence are not qualified to run for public office.[55] *There is no reason not to apply the Caasi ruling in disputes involving the qualification of voters.* In essence, both cases concern fulfillment of the residence requirements.

Section 5(d) of Rep. Act No. 9189 itself reinforces the applicability of the *Caasi* doctrine. As observed by the majority, Rep. Act No. 9189 disqualifies an immigrant or a permanent resident who is recognized as such in another country "because immigration or permanent residence in another country implies renunciation of one's residence in his country of origin."[56]

We now slide to the legal significance of the affidavit to be executed by "immigrants" or "permanent residents" to remove them from the class of disqualified voters.

3. *Whether the execution by an immigrant or a permanent resident of the affidavit under Section 5(d) of Rep. Act No. 9189 is sufficient proof of non-abandonment of residence in the Philippines.*

Again, with due respect, I submit that the *majority ruling* on the nature of the affidavit to be executed by an "immigrant" or a "permanent resident" is *inconsistent*. On one hand, it *theorizes* that the act "serves as an explicit expression that he had not in fact abandoned his domicile of origin."[57] This concedes that while an "immigrant" or a "permanent resident" has acquired a new domicile in a foreign country by virtue of his status as such, Rep. Act No. 9189 would consider him not to have abandoned his domicile in the Philippines. On the other hand, the majority also *theorizes* that the affidavit constitutes an

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[55] *See for instance*, Rep. Act No. 7160, Section 40 (f); B.P. Blg. 52, Sec. 4; B.P. Blg. 881, Sec. 68.

[56] Decision, p. 25.

[57] *Id.* at 26.

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"express waiver of his status as an immigrant or permanent resident," and upon fulfillment of the requirements of registration, "he may still be considered as a 'qualified citizen of the Philippines abroad' for purposes of exercising his right of suffrage."[58] This presupposes that the "immigrant" or "permanent resident" abandoned his domicile in the Philippines, but seeks to reacquire this domicile by the execution of the affidavit.

The first theory is untenable. Its inevitable result would be the establishment of two domiciles, *i.e.*, domicile in the Philippines and domicile in a foreign country where he is considered an "immigrant" or a "permanent resident." This ruling will contravene the principle in private international law that a person can be domiciled only in one place at a given time.[59]

The second theory is equally untenable. A person who has abandoned his domicile of origin by establishing a domicile of choice cannot just revert back to his domicile of origin.[60] He must satisfy the same requisites for acquiring a new domicile, *i.e.*, an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one; and acts which correspond with the purpose. An existing domicile cannot be lost by abandonment alone, even if there is an intent to acquire a new one; the existing domicile continues until a new one is in fact gained. To abandon domicile, a person must choose a new domicile, actually reside in the place chosen, and intend that it be the principal and permanent residence. That is, there can be no change of domicile without the concurrence of act and intent.[61]

The doctrine established in England that the domicile of origin is revived upon the abandonment of a domicile of choice has long been rejected in the United States.[62] Even

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[58] *Id.* at 28.

[59] I Restatement of Law (Conflict of Laws) 2d, p. 47 (1971).

[60] I Beale, *A Treatise on the Conflict of Laws* 183 (1935).

[61] 25 Am Jur 2d, Section 15 at 16.

[62] Scoles, *et al.*, *Conflict of Laws*, 3rd ed., p. 268 (2000).

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in England, "the mobility of modern society has fostered both criticism of the rule and recommendation for its change."[63] Thus, the *prevailing view* at present is that if a domicile of choice is abandoned without acquiring a new domicile of choice, "the domicil[e] of origin is *not* thereby *revived*, but the last domicil[e] of choice continues to be the domicil[e]."[64]

In his Separate Opinion, our esteemed colleague, Mr. Justice Azcuna, opines that the execution of the affidavit is the *operative act that revives* the domicile of origin, and "the requirement of resuming actual physical presence within three (3) years is only a *test* of such intention." He further opines that "if the affiant does not resume the residence physically within said period, then the intent expressed in the affidavit is *defective* and the law will deem it *inoperative*."

With due respect, I submit that the affidavit merely proves the intent to return but not the other requisites for reacquiring the domicile of origin. Intent, which is not coupled with actual physical transfer, is not sufficient either to abandon the former domicile or to establish a new domicile.[65] Thus, the view that domicile could be established as soon as the old is abandoned even though the person has not yet arrived at the new domicile, has not been accepted. In his *latest work* on the subject, Scoles, an acknowledged expert in Conflict of Laws stated as follows:

> The element of *physical presence is essential* to confirm the requisite attitude of mind contemplated by the concept of domicile. As a consequence, a person who is to acquire a domicile of choice at a place must actually be present at that place during the time in which the intention to make it his home exists. For most people, intention is confirmed by the physical presence of considerable duration looking toward an indefinite period of time. However, in

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[63] *Id.* at 269. *See* Graveson, *Reform of the Law of Domicile*, 70 L.Q. Rev. 492 (1954); Atkin, *The Domicile Act of 1976*, 7 N.Z.U. L. Rev. 286 (1977); Rafferty, *Domicile, The Need for Reform*, Man. L.J. 203 (1977).

[64] *Supra* note 59 at 78.

[65] *Id.* at 62-65.

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light of the function that domicile serves, *i.e.*, to identify a settled relationship with a place for a particular legal purpose, it is sometimes necessary to make a determination when the physical presence has been very brief. Consequently, no particular length of time is necessary in order to satisfy the requirement of physical presence if that stay at a place verifies the intention to make it a home.

. . . . . .

In the case of the individual who has clearly manifested an intention to change a new home and center of social activities, the question sometimes arises why that person's domicile should not change as soon as the old is abandoned eventhough the individual has not yet arrived at the new. Although this has sometimes been suggested as a possibility, *it is contrary to the clear weight of authority, probably because physical presence is ordinarily the principal confirming evidence of the intention of the person.*[66] (*italics ours*)

Beale, another acknowledged expert on the subject, shares the same view, *viz*:

One or two authorities under special circumstances have held that a domicil[e] might be acquired in a certain place while the person is on his way toward the place with an intent to live there and during his journey toward that place, although he had not yet actually reached that place. In two taxation cases in Massachusetts, where upon the taxing day the person in question was actually on his journey from a former residence in the state to an intended second residence, whether in the same state or in another state, he was held to be taxable in the second residence in the ground that under those peculiar circumstances his domicil[e] would shift at the moment of abandoning the first residence. These, however, were disapproved and overruled. In one other case, a similar intimation has been made. In Matter of Grant, it appeared that a decedent had left a United States reservation in the State of New York with intention to go to the District of Columbia, and there establish his residence, but he had died en route. Fowler, Surrogate, intimated that he was already domiciled in the District of Columbia. It is not too much to say, however, *that there is absolutely no good authority for the opinion thus expressed, and that it is legally impossible for a man to acquire a domicil[e] before he is present at the place where the domicil[e] is established.*[67] (*italics ours*)

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[66] Scoles, *et al.*, *supra* note 62 at 248-249.

[67] I Beale, *supra* note 60 at 182.

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Beale also states that with the *rejection* of the English "automatic reversion" doctrine, physical presence is required before the person can reacquire his domicile of origin, *viz*:

> The doctrine in England is that the domicil[e] of origin revives upon the abandonment of a domicil[e] of choice. . . Inspite of a few English cases to the contrary, this has become thoroughly established as the doctrine of the English courts, the court being especially emphatic in cases where a person has left his domicil[e] of choice without intent to return and has started to return to his domicil[e] of origin. Here, evidence must of course be introduced to show a definitive abandonment of domicil[e] of choice by actually leaving the country without intent to return. The English doctrine has been approved in this country in several cases, in most of which the approval was a mere dictum, but in the United States, generally, the opposite view is held, and upon the abandonment of a domicil[e] of choice there is no change of domicil[e] until a new domicil[e] is obtained. . .
>
> On the other hand, a few American cases follow the English decision in so far as to declare that a domicil[e] of origin revives when a person having abandoned a domicil[e] of choice is on his way to make a home at his domicil[e] of origin, but *the better opinion in this country does not allow the reacquisition of the domicil[e] of origin until the fact of presence at the place of domicil[e] of origin exists, as well as the intent to return there.*[68] (*italics ours*)

To stress, the burden of establishing a change in domicile is upon the party who asserts it.[69] A person's declarations as to what he considers his home, residence, or domicile are generally admissible "as evidence of his attitude of mind."[70] However, whatever the context, "their accuracy is suspect because of their self-serving nature, particularly when they are made to achieve some legal objective."[71]

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[68] *Id.* at 183-184.

[69] *Supra* note 59 at 81.

[70] *Id.* at 82.

[71] *Id.*

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In the case at bar, the burden rests on an "immigrant" or a "permanent resident" to prove that he has abandoned his domicile in the foreign country and reestablished his domicile in the Philippines. A self-serving affidavit will not suffice, especially when what is at stake is a very important privilege as the right of suffrage. I respectfully submit that what makes the intent expressed in the affidavit effective and operative is the fulfillment of the promise to return to the Philippines. Physical presence is not a mere test of intent but the "*principal confirming evidence* of the intention of the person."[72] Until such promise is fulfilled, he continues to be a domiciliary of another country. Until then, he does not possess the necessary requisites and therefore, cannot be considered a qualified voter.

(4) Whether counting the votes of immigrants or permanent residents who fail to return to the Philippines will dilute the valid votes of our fully qualified electors.

The only consequence imposed by Rep. Act No. 9189 to an "immigrant" or a "permanent resident" who does not fulfill his promise to return to the Philippines is the removal of his name from the National Registry of Absentee Voters and his permanent disqualification to vote *in absentia*. *But his vote would be counted and accorded the same weight as that cast by bona fide qualified Filipino voters. I respectfully submit that this scheme diminishes the value of the right of suffrage as it dilutes the right of qualified voters to the proportionate value of their votes.* The one person, one vote principle is sacrosanct in a republican form of government. The challenged provision which allows the value of the valid votes of qualified voters to be diminished by the invalid votes of disqualified voters violates the sovereignty of our people. *The validation by the majority of this unconstitutional provision may result in the anomaly where the highest public officials of our land will owe their election to "immigrants" or "permanent residents" who failed to fulfill their promise to return to our country or who repudiated their domicile here.*

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[72] Scoles, *et al.*, *supra* note 62 at 249.

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The majority downplays the effect of the challenged provision on those who are already qualified prior to the enactment of Rep. Act No. 9189. It is opined that the removal of an "immigrant" or a "permanent resident" from the list of the National Registry of Absentee Voters and his permanent disqualification "would suffice to serve as deterrence to non-compliance with his/her undertaking under the affidavit." The majority misses the point. Without Section 5(d) of Rep. Act No. 9189, an "immigrant" or a "permanent resident" has no right to vote. Thus, even assuming that he becomes qualified after executing the affidavit, he does not stand to lose anything when he is subsequently disqualified for his failure to comply with his undertaking under the affidavit. He will just return to his original status.

B.

Is Section 18.5 of Rep. Act No. 9189 in relation to section 4 of the same Act in contravention of Section 4, Article VII of the Constitution?

Petitioner contends that Section 18.5 in relation to Section 4 of Rep. Act No. 9189 violates Section 4, Article VII of the 1987 Constitution giving Congress the power to canvass the votes and proclaim the winning candidates for President and Vice-President, *viz*:

. . . . . .

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 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

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number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Congress, voting separately.

The Congress shall promulgate its rules for the canvassing of the certificates.

. . . . . .

Section 4 of Rep. Act No. 9189 allows all qualified Filipinos overseas to vote for President, Vice-President, Senators and party-list representatives while Section 18.5 thereof empowers the COMELEC to order the proclamation of winning candidates, *viz*:

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 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.

On its face, Section 18.5 of Rep. Act No. 9189 appears to be repugnant to Section 4, Article VII of the 1987 Constitution. It gives the impression that Congress abdicated to COMELEC its constitutional duty to canvass and proclaim the winning candidates for President and Vice-President. I agree with the majority that the impugned provision should be given a reasonable interpretation that would save it from a constitutional infirmity. To be sure, Congress could have not allowed the COMELEC to exercise a power exclusively bestowed upon it by the Constitution. Thus, Section 18.5 of Rep. Act No. 9189 empowering the COMELEC to proclaim the winning candidates should be construed as limited to the positions of Senators and party-list representatives. In like manner, I agree with the majority that Section 18.4 of Rep. Act No. 9189 which provides:

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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*, . . . (italics supplied)

should be construed in harmony with Section 4, Article VII of the 1987 Constitution. Hence, with respect to the position of the President and the Vice-President, the Certificates of Canvass and the Statements of Votes must be submitted to Congress and directed to the Senate President.

C.

Does Congress, through the Joint Congressional Oversight Committee created in Section 25 of Rep. Act No. 9189, have 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?

Both the Commission on Elections (COMELEC) and the Office of the Solicitor General (OSG) agree with the petitioner that Sections 19 and 25 of Rep. Act No. 9189 are unconstitutional on the ground that they violate the independence of the COMELEC.[73] The impugned provisions require the public respondent COMELEC to submit its Implementing Rules and Regulations to the Joint Congressional Oversight Committee for review, revision, amendment, or approval, *viz*:

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 effectivity of this Act. *The Implementing Rules and Regulations shall be submitted to the Joint Oversight Committee created by virtue of this Act for prior approval.*

In the formulation of the rules and regulations, the Commission shall coordinate with the Department of Foreign Affairs, Department

[73] Memorandum of Public Respondent COMELEC, p. 7.

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of Labor and Employment, Philippine Overseas Employment Administration, Overseas Workers' Welfare Administration and the Commission on Filipino Overseas. Non-government organizations and accredited Filipino organizations or associations abroad shall be consulted.

. . . . . .

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.* (*italics supplied*)

Public respondents aver that as an independent constitutional body, the COMELEC is not under the control of the executive or the legislative[74] in the performance of its constitutional function to "enforce and administer all laws and regulations relative to the conduct of an election."[75] Public respondent COMELEC asserts that its right to formulate rules and regulations flows from its power to enforce and administer election laws and regulations.[76] This power is exclusive and its exercise is not subject to the review, revision, or approval of Congress.[77] The

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[74] Citing *Lucman v. Dimaporo*, G.R. No. 31558, May 29, 1970; *Ticzon v. COMELEC*, G.R. No. 52451, March 31, 1981; *Pangarungan v. COMELEC*, G.R. No. 107435, December 11, 1992.

[75] 1987 Constitution, Article IX-C, Section 2.

[76] Citing *Gallardo v. Tabamo, Jr.*, 218 SCRA 253 (1993).

[77] *Ibid.*

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Solicitor General shares the same view that the role of the legislature ends with the finished task of legislation.[78] He opines that nothing in Article VI of the 1987 Constitution suggests that Congress is empowered to enforce and administer election laws concurrent with the COMELEC.[79]

Along the same lines, public respondent COMELEC assails Section 17.1 of Rep. Act No. 9189 subjecting the implementation of voting by mail to prior review and approval of the Joint Oversight Committee. It maintains that the development of a system for voting by mail involves the "administration of election laws" and falls squarely within its exclusive functions.[80] Section 17.1 of Rep. Act No. 9189 reads:

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 of 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 Oversight Committee.* (*italics supplied*)

The majority sustains the petitioner as it holds that "[b]y vesting itself with the powers to approve, review, amend and

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[78] OSG Memorandum, p. 18.

[79] *Id.* at 17.

[80] Memorandum of Public Respondent COMELEC, p. 5.

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revise the IRR for *The Overseas Voting Act of 2003*, Congress went beyond the scope of its constitutional authority. Congress trampled upon the constitutional mandate of independence of the COMELEC."

I agree with the majority but wish to add my humble thoughts on this all important constitutional issue — the extent of the exercise by Congress of its oversight powers in the implementation of Rep. Act No. 9189. The resolution of the issue entails a two-tiered discussion of the following: (1) whether Congress has oversight functions over constitutional bodies like the COMELEC; and (2) assuming that it has, whether Congress exceeded the permissible exercise of its oversight functions.

Before proceeding, we must focus on the exact place of the power of congressional oversight in our constitutional canvass. This will involve an exposition of two principles basic to our constitutional democracy: separation of powers and checks and balances.

Separation of powers and checks and balances

The principle of separation of powers prevents the *concentration* of legislative, executive, and judicial powers to a single branch of government by deftly allocating their exercise to the three branches of government. This principle dates back from the time of *Aristotle*[81] but the "*modern*" concept owes its origin in the seventeenth and eighteenth century writings of political philosophers including *Locke* and *Montesquieu.* Their writings were mainly reactions to the ruinous struggle for power by the monarchs and the parliaments in Western Europe.[82]

In his *Second Treatise of Civil Government*,[83] John Locke advocated the proper division of the legislative, executive and

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[81] Ogg & Ray, Introduction to American Government, 10th ed., p. 28 (1951).

[82] Nowak, *et al.*, *Constitutional Law*, 3rd ed., p. 121 (1986).

[83] J. Locke, *Second Treatise of Government* (Machperson, ed. 1980).

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federative powers of the commonwealth. He defined *legislative power* as "that which has a right to direct how the force of the commonwealth shall be employed for preserving the community and the members of it."[84] He viewed *executive power* as involving "the execution of the municipal laws of the society within its self, [and] upon all that are parts of it"[85] and *federative power* as concerned with "the management of the security and interest of the public without" including "the power of war and peace, leagues and alliances, and all the transactions, with all persons and communities without the commonwealth."[86]

Locke expostulated that executive powers should not be placed in one person or group of persons exercising legislative power because "it may be too great a temptation to human frailty, apt to grasp at power, for the same persons, who have the power to execute them, whereby they may exempt themselves from obedience to the laws they make, and suit the law, both in its making, and execution, to their own private advantage, and thereby come to have a distinct interest from the rest of the community, contrary to the end of society and government."[87] But while the executive and the federative are two distinct powers, Locke conceded that they are intricately related and thus may be exercised by the same persons.[88]

Locke mothered the modern idea of division of power but it was Montesquieu who refined the concept. In his famed

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[84] § 143, *Id.* at 75.

[85] § 145, *Id.* at 76.

[86] § 146, *Id.*

[87] § 143, *Id.* at 75-76.

[88] § 148, *Id.* at 77. "Though, as I said, the executive and federative powers of every community be really distinct in themselves, yet they are hardly to be separated, and placed at the same time, in the hands of distinct persons: for both of them requiring the force of the society for their exercise, it is almost impracticable to place the force of the commonwealth in distinct, and not subordinate hands; or that the executive and federative power should be placed in persons, that might act separately, whereby the force of the public would be under different commands: which would be apt some time or other to cause disorder and ruin."

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treatise, *The Spirit of the Laws*,[89] Montesquieu authoritatively analyzed the nature of executive, legislative and judicial powers and with a formidable foresight counselled that any combination of these powers would create a system with an inherent tendency towards tyrannical actions, thus:

> In every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law. By virtue of the legislative power, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other, simply the executive power of the state.
>
> The political liberty of the subject is a tranquility of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.
>
> When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.
>
> Again, there is no liberty, if the judiciary power be not separated from the legislative and the executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.
>
> There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and that of trying the causes of individuals."[90]

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[89] Montesquieu, *The Spirit of the Laws* (trans. by Thomas Nugent, 1949).

[90] *Id.* at 151-152.

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At the time of the *American Revolution*, the more influential political leaders in the new states subscribed to Montesquieu's concept of separation of powers.[91] Some constitutions of the early state governments even referred to the principle. But the concept espoused at that particular time was a lot different. As then understood, separation of powers requires a watertight compartmentalization of the executive, judicial, and legislative functions and permits no sharing of government powers between and among the three branches of government. The Massachusetts Constitution of 1780, for instance, provides:

> In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them: to the end that it may be a government of laws and not of men.[92]

The *1787 U.S. Constitution* did not contain a similar provision like that found in the Massachusetts Constitution or any principle proclaiming the adherence of the Framers to the principle of separation of powers. But legal scholars are of the view that the Framers essentially followed Montesquieu's recommendation for the division of powers, noting that the U.S. Constitution vests "all legislative powers" in the Congress of the United States,[93] the "executive power" in the President,[94] and the "judicial power" in one Supreme Court and in such inferior courts as Congress may provide.[95]

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[91] Nowak, *et al.*, *supra* note 82.

[92] Article XXX of the Constitution of the Commonwealth of Massachusetts (1780). See Jaffe, *Administrative Law: Cases and Materials*, p. 31 (1976).

[93] Article I, Section 1. "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

[94] Article II, Section 1. "The executive power shall be vested in a President of the United States of America. . ."

[95] Article III, Sec. 1. "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from to time ordain and establish . . ."

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These legal scholars also note that the U.S. Constitution allows the "sharing" of the three great powers between and among the three branches. The President, for instance, shares in the exercise of legislative power through his veto power, and the courts through their power to make rules of judicial procedure and especially through their right to interpret laws and invalidate them as unconstitutional. Congress shares in the exercise of executive power through its confirmation of appointments and assent to treaties, and in the judicial power through its power to create inferior courts and regulate the number and pay of judges.[96] Thus, they postulate that the Framers established a government guided not by strict separation of powers but one of *checks and balances* to prevent the separate branches from "running wild" and to avert deadlocks and breakdowns, *viz*:

> The Framers expected the branches to battle each other to acquire and defend power. To prevent the supremacy of one branch over any other in these battles, powers were mixed; each branch was granted important power over the same area of activity. The British and Conference experience has led the Framers to avoid regarding controversy between the branches as a conflict between good and evil or right or wrong, requiring definitive, institutionally permanent resolution. Rather, they viewed such conflict as an expression of the aggressive and perverse part of human nature that demanded outlet but has to be kept from finding lasting resolution so that liberty could be reserved.[97]

Even then, some legal luminaries were of the view that the concept of checks and balances is diametrically opposed to the principle of separation of powers. James Madison, however, explained that Montesquieu's concept of separation of powers did not require a strict division of functions among the three branches of government. Madison defended the Constitution as having sufficient division of functions among the three branches

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[96] *Supra* note 81 at 28-29.

[97] A. Sofaer, *War, Foreign Affairs, and Constitutional Power: The Origins* 60 (1976).

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of government to avoid the consolidation of power in any one branch and also stressed that a rigid segregation of the three branches would undermine the purpose of the separation doctrine.[98] He noted that unless the three branches "be so far connected and blended as to give to each a constitutional control over the others, the degree of separation which the maxim requires as essential to a free government, can never in practice be duly maintained."[99] Madison's view has since then been the accepted interpretation of the concept of separation of powers under the Constitution. Thus, in *Youngstown Sheet & Tube Co. v. Sawyer*,[100] the U.S. Supreme Court held that "[I]n designing the structure of our Government and dividing and allocating the sovereign power among the three co-equal branches, the Framers of the Constitution sought to provide a comprehensive system but the separate powers were not intended to operate with absolute independence." In *Buckley v. Valeo*,[101] the Court ruled that the Constitution by no means contemplates total separation of each of these essential branches of government and the framers viewed the principle of separation of powers as a vital check against tyranny. It likewise warned that the "hermetic sealing off of the three branches of Government from one another would preclude the establishment of a Nation capable of governing itself effectively."[102] Thus, in *Nixon v. Administrator of General Services*,[103] the Court rejected the "archaic view of separation of powers as requiring three airtight departments of government." In determining whether an act disrupts the proper balance between the coordinate branches, the Court suggested that *the proper inquiry should focus on*

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[98] J. Madison, *The Federalist No. 47* at 302–303 (new American Library Ed. 1961).

[99] J. Madison, *The Federalist No. 48* at 343 (B. Wright Ed. 1961).

[100] 343 US 579, 635 (1952).

[101] 424 US 1 (1976).

[102] *Id.* at 121.

[103] 433 US 425, 433 (1977).

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the extent to which it prevents the other branch from accomplishing its constitutionally assigned functions.[104]

In this jurisdiction, our adherence to the principle of separation powers was succinctly discussed by Justice Laurel in *Angara v. Electoral Commission*[105] decided in 1936, less than a year after the effectivity of the 1935 Constitution. Justice Laurel emphasized that "[T]he separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution."[106] Thus:

> Each department of the government has exclusive cognizance of the matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. For example, the Chief Executive under our Constitution is so far made a check on the legislative power that this assent is required in the enactment of laws. This, however, is subject to the further check that a bill may become a law notwithstanding the refusal of the President to approve it, by a vote of two-thirds or three-fourths, as the case may be, of the National Assembly. The President has also the right to convene the Assembly in special session whenever he chooses. On the other hand, the National Assembly operates as a check on the Executive in the sense that its consent though its Commission on Appointments is necessary in the appointment of certain officers; and the concurrence of a majority of all its members is essential to the conclusion of treaties. Furthermore, in its power to determine what courts other than the Supreme Court shall be established, to define their jurisdiction and to appropriate funds for their support, the National Assembly controls the judicial department to a certain extent. The Assembly also exercises the judicial power of trying impeachments. And the judiciary in turn,

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[104] *Id.*

[105] 63 Phil. 139 (1936).

[106] *Id.* at 156.

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with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.[107]

In *Planas v. Gil,*[108] Justice Laurel further discussed the intricate interplay of the principle of separation of powers and checks and balances, *viz*:

> The classical separation of governmental powers, whether viewed in the light of political philosophy of Aristotle, Locke or Montesquieu, or to the postulations of Mabini, Madison, or Jefferson, is a relative theory of government. There is more truism and actuality in interdependence than in independence and separation of powers, for as observed by Justice Holmes in a case of Philippine origin, we cannot lay down "with mathematical precision and divide the branches in watertight compartments" not only because "the ordinances of the Constitution do not establish and divide fields of black and white" but also because "even more specific to them are found to terminate in a penumbra shading gradually from one extreme to the other."[109]

It is *now beyond debate* that the principle of separation of powers (1) allows the "*blending*" of some of the executive, legislative, or judicial powers in one body; (2) does not prevent one branch of government from *inquiring* into the affairs of the other branches to maintain the balance of power; (3) *but ensures that there is no encroachment on matters within the exclusive jurisdiction of the other branches.*

For its part, *this Court* checks the exercise of power of the other branches of government through judicial review. It is the final arbiter of disputes involving the proper allocation and exercise of the different powers under the Constitution. Thus:

> The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The

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[107] *Id.* at 156-157.

[108] 67 Phil. 62 (1939).

[109] *Id.* at 73-74.

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Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.[110]

The power of judicial review is, however, limited to "actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented," for "any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions of wisdom, justice or expediency of legislation."[111] Courts are also enjoined to accord the presumption of constitutionality to legislative enactments, "not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government."[112]

The role of the judiciary in mapping the metes and bounds of powers of the different branches of government was redefined in the 1987 Constitution which *expanded the jurisdiction of this Court* to include the determination of "grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[113]

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[110] *Angara v. Electoral Commission, supra* note 33.

[111] *Id.*

[112] *Id.*

[113] 1987 Const., Article VIII, Sec. 1. In *Sinon v. Civil Service Commission*, 215 SCRA 410 (1992), the Court defined grave abuse of discretion as "such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount

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The expansion was made because of the dissatisfaction with the practice of this Court in frequently invoking the "political question"[114] doctrine during the period of martial law to dodge its duty.[115] Be that as it may, the expanded power "definitely does not do away with the political question doctrine itself."[116]

Thus, in *Marcos v. Manglapus,*[117] the Court held:

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to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility."

[114] The accepted meaning of "political question" is that "where the matter involved is left to a decision by the people acting in their sovereign capacity or to the sole determination by either or both the legislative or executive branch of the government, it is beyond judicial cognizance. Thus it was that in suits where the party proceeded against was either the President or Congress, or any of its branches for that matter, the courts refused to act." See *Aquino v. Ponce Enrile*, 59 SCRA 183, 196 (1974).

[115] I RECORDS at 434.

[116] I RECORDS at 443. Pertinent part of the deliberation of the delegates of the Constitutional Commission are hereto quoted, *viz*:

FR. BERNAS. . . . On another point, is it the intention of Section 1 to do away with the political question doctrine?

MR. CONCEPCION. No.

FR. BERNAS. It is not.

MR. CONCEPCION. No because whenever there is an abuse of discretion, amounting to lack of jurisdiction. . .

FR. BERNAS. So, I am satisfied with the answer that it is not intended to do away with the political question doctrine.

MR. CONCEPCION. No certainly not.

When this provision was originally drafted, it sought to define what is judicial power. But the Gentleman will notice it says, "judicial power includes" and the reason being that the definition that we might make may not cover all possible areas.

FR. BERNAS. So it is not an attempt to solve the problems arising from political question doctrine.

MR. CONCEPCION. It definitely does not eliminate the fact that truly political questions are beyond the pale of judicial power.

[117] 177 SCRA 668 (1989).

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Under the Constitution, judicial power includes the duty to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. [Art. VIII, Sec. 1.] Given this wording, we cannot agree with the Solicitor General that the issue constitutes a political question which is beyond the jurisdiction of the Court to decide.

The present Constitution limits resort to the political question doctrine and broadens the scope of judicial inquiry into areas which the Court, under previous constitutions, would have normally left to the political departments to decide. But nonetheless there remain issues beyond the Court's jurisdiction the determination of which is exclusively for the President, for Congress or for the people themselves through a plebiscite or referendum. We cannot, for example, question the President's recognition of a foreign government, no matter how premature or improvident such action may appear. We cannot set aside a presidential pardon though it may appear to us that the beneficiary is totally undeserving of the grant. Nor can we amend the Constitution under the guise of resolving a dispute brought before us because the power is reserved to the people.[118]

Since then, the Court has used its expanded power to check acts of the House of Representatives,[119] the President,[120] and even of independent bodies such as the Electoral Tribunal,[121] the Commission on Elections[122] and the Civil Service Commission.[123]

Congress checks the other branches of government primarily through its law making powers. Congress can create administrative agencies, define their powers and duties, fix the terms of officers and their compensation.[124] It can also create

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[118] *Id.* at 695-696.

[119] *Bondoc v. Pineda*, 201 SCRA 792 (1991).

[120] *Supra* note 39.

[121] *Lerias v. HRET*, 202 SCRA 808 (1991).

[122] *Mogueis, Jr. v. COMELEC*, 104 SCRA 576 (1981).

[123] *Dario v. Mison*, 176 SCRA 84 (1989).

[124] Rivera, *Law of Public Administration* 175 (1956).

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courts, define their jurisdiction and reorganize the judiciary so long as it does not undermine the security of tenure of its members.[125] *The power of Congress does not end with the finished task of legislation. Concomitant with its principal power to legislate is the auxiliary power to ensure that the laws it enacts are faithfully executed.* As well stressed by one scholar, the legislature "fixes the main lines of substantive policy and is entitled to see that administrative policy is in harmony with it; it establishes the volume and purpose of public expenditures and ensures their legality and propriety; it must be satisfied that internal administrative controls are operating to secure economy and efficiency; and it informs itself of the conditions of administration of remedial measure."[126]

Concept and bases of congressional oversight

Broadly defined, the *power of oversight* embraces all activities undertaken by Congress to enhance its understanding of and influence over the *implementation* of legislation it has enacted.[127] Clearly, oversight concerns *post-enactment* measures undertaken by Congress: (a) to monitor bureaucratic compliance with program objectives, (b) to determine whether agencies are properly administered, (c) to eliminate executive waste and dishonesty, (d) to prevent executive usurpation of legislative authority, and (d) to assess executive conformity with the congressional perception of public interest.[128]

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[125] 1987 Const., Art. VIII.

"Sec. 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts but may not deprive the Supreme Court of its jurisdiction over cases in Section 5 thereof.

No law shall be passed reorganizing the judiciary when it undermines the security of tenure of its members."

[126] White, *Introduction to the Study of Public Administration* 592 (1948).

[127] Javits & Klein, *Congressional Oversight and The Legislative Veto: A Constitutional Analysis*, 52 NYU Law Rev. 455, 460 (1977).

[128] *Id.* at 461.

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The power of oversight has been held to be intrinsic in the grant of legislative power itself and integral to the checks and balances inherent in a democratic system of government.[129] Among the most quoted justifications for this power are the writings of John Stuart Mill and Woodrow Wilson. In his *Consideration of Representative Government*,[130] Mill wrote that the duty of the legislature is "to watch and control the government; to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which any one considers objectionable; and to censure them if found condemnable."[131] Wilson went one step farther and opined that the legislature's informing function should be preferred to its legislative function. He emphasized that "[E]ven more important than legislation is the instruction and guidance in political affairs which the people might receive from a body which kept all national concerns suffused in a broad daylight of discussion."[132]

Over the years, Congress has invoked its oversight power with increased frequency *to check the perceived "exponential accumulation of power" by the executive branch.*[133] By the beginning of the *20th century*, Congress has delegated an enormous amount of legislative authority to the executive branch and the administrative agencies. *Congress, thus, uses its oversight power to make sure that the administrative agencies perform their functions within the authority delegated to them.*[134]

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[129] Hearings of the Subcommittee on Rules & Organizations of the House Committee on Rules, June 15, 1999 <http://www.house.gov/search97cgi/s97=cg...ction>

[130] Mill, *Considerations on Representative Democracy* (1947).

[131] *Id.*

[132] Wilson, "*Committee or Cabinet Government?*," III Overland Monthly 275 (1884), quoted in Gross, *The Legislative Struggle: A Study in Social Combat* 137 (1953).

[133] Javits & Klein, *supra* note 127 at 459-460.

[134] *Id.* at 460.

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The oversight power has also been used to ensure the accountability of *regulatory commissions* like the Securities and Exchange Commission and the Federal Reserve Board, often referred to as representing a "headless fourth branch of government."[135] Unlike other ordinary administrative agencies, these bodies are independent from the executive branch and are outside the executive department in the discharge of their functions.[136]

Categories of congressional oversight functions

The acts done by Congress purportedly in the exercise of its oversight powers may be divided into *three categories*, namely: *scrutiny, investigation* and *supervision*.[137]

a. Scrutiny

Congressional *scrutiny* implies a lesser intensity and continuity of attention to administrative operations.[138] Its *primary purpose* is to determine economy and efficiency of the operation of government activities. In the exercise of legislative scrutiny, Congress may request *information and report* from the other branches of government. It can give recommendations or pass resolutions for consideration of the agency involved.

Legislative scrutiny is based primarily on the power of appropriation of Congress. Under the Constitution, the "power of the purse" belongs to Congress.[139] The President may propose the budget, but still, Congress has the final say on appropriations. Consequently, administrative officials appear every year before the appropriation committees of Congress to report and submit

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[135] Strauss, *The Place of Agencies in Government: Separation of Powers and the Fourth Branch*, 84 Columbia Law Rev. 573, 583 (1984).

[136] Martin, *The Legislative Veto and the Responsible Exercise of Congressional Power*, 68 Va. L. Rev. 253, 264 (1982).

[137] Gross, *supra* note 132.

[138] *Ibid.*

[139] *Philippine Constitution Association v. Enriquez*, 235 SCRA 506 (1994).

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a budget estimate and a program of administration for the succeeding fiscal year. During budget hearings, administrative officials defend their budget proposals.

The power of appropriation carries with it the power to specify the project or activity to be funded.[140] Hence, the holding of *budget hearing* has been the usual means of reviewing policy and of auditing the use of previous appropriation to ascertain whether they have been disbursed for purposes authorized in an appropriation act. The consideration of the budget is also an opportunity for the lawmakers to express their confidence in the performance of a Cabinet Secretary or to manifest their disgust or disfavor of the continuance in office of a bureaucrat.[141] Congress can even curtail the activities of the administrative agencies by denial of funds.[142] In the United States, for instance, Congress brought to end the existence of the Civilian Conservation Corps, the National Youth Administration and the National Resources Planning Board, simply by denying them any appropriation.[143]

But legislative scrutiny does not end in budget hearings. Congress can ask the heads of departments to appear before and be heard by either House of Congress on any matter pertaining to their departments. Section 22, Article VI of the 1987 Constitution provides:

> The heads of departments may, upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. Written questions shall be submitted to the President of the Senate or the Speaker of the House of Representatives at least three days before their scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the

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[140] *Id.* at 522.

[141] Rivera, *supra* note 124 at 177-178.

[142] *Supra* note 81 at 304.

[143] *Ibid.*

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security of the State or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session.

This provision originated from the Administrative Code[144] *and was later elevated to the level of a constitutional provision due to its "great value in the work of the legislature."*[145] In drafting the 1935 Constitution, some delegates opposed the provision arguing that it is a feature of a parliamentary system and its adoption would make our government a "hybrid system."[146] But mainly attacked was the provision authorizing the department secretaries on their own initiative to appear before the legislature, with the right to be heard on any matter pertaining to their departments. It was pointed out that this would "give a chance to the department secretaries to lobby for items in the appropriation bill or for provisions of other bills in which they had special interest, permitting them to bear influence and pressure upon Members of the law-making body, in violation of the principle of separation of powers underlying the Constitution."[147] Despite the objections, the provision was adopted to "prevent the raising of any question with respect to the constitutionality of the practice" and "to make open and public the relations between the legislative and the executive departments."[148] As incorporated in the *1935 Constitution,* the provision reads:

The heads of departments upon their own initiative or upon the request of the National Assembly on any matter pertaining to their

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[144] "The Secretaries may be called, and shall be entitled to be heard, by either of the two Houses of the Legislature, for the purpose of reporting on matters pertaining to their Departments, unless the public interest shall require otherwise and the Governor-General shall so state in writing." *See* I Aruego, *supra* note 27 at 448.

[145] *Id.*

[146] *Id.* at 448-449.

[147] *Id.*

[148] *Id.* at 449.

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departments unless the public interest shall require otherwise and the President shall state so in writing.[149]

The whole tenor of the provision was *permissive*: the department heads could appear but the legislative was not obliged to entertain them; reciprocally, the legislature could request their appearance but could not oblige them especially if the President objected.[150] *The rule radically changed,* however, with the adoption of the *1973 Constitution*, establishing a parliamentary system of government. In a parliamentary system, the administration is responsible to the Parliament and hence, the Prime Minister and the Cabinet Members may be "required to appear and answer questions and interpellations" to give an account of their stewardship during a "question hour," *viz*:

> Sec. 12 (1) There shall be a question hour at least once a month or as often as the Rules of the Batasang Pambansa may provide, which shall be included in its agenda, during which the Prime Minister, the Deputy Prime Minister or any Minister may be required to appear and answer questions and interpellations by Members of the Batasang Pambansa. Written questions shall be submitted to the Speaker at least three days before a scheduled question hour. Interpellations shall not be limited to the written questions, but may cover matters related thereto. The agenda shall specify the subjects of the question hour. When the security of the State so requires and the President so states in writing, the question hour shall be conducted in executive session.

The "question hour" was retained despite the reversion to the presidential system in 1981. During the deliberations of the *1987 Constitution*, the report of the legislative committee called for the adoption of the "question hour" for the following reasons:

> . . . Its purposes are to elicit concrete information from the administration, to request its intervention, and when necessary, to expose abuses and seek redress. The procedure provides the

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[149] 1935 Const., Art. VI, Sec. 10.

[150] Bernas, *supra* note 11 at 682.

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opposition with a means of discovering the government's weak points and because of the publicity it generates, it has a salutary influence on the administration. On the whole, because of the detailed facts elicited during the interpellation or in the written answers, it will help members to understand the complicated subject matter of bills and statutory measures laid before the Assembly. It may be added that the popularity of this procedure can be attributed to the fact that in making use of his right to ask questions, the member is a completely free agent of the people. The only limits on his actions are the rules governing the admissibility of questions concerned with matters of form and not with the merits of the issue at hand. The fact that we also impose a time limit means that the government is obliged to furnish the information asked for and this obligation is what gives the procedure its real strength. . . .[151]

This proposal was vigorously opposed on the ground of separation of powers. CONCOM Delegate Christian Monsod pointed out that the provision was historically intended to apply to members of the legislature who are in the executive branch typical in a parliamentary form of government. In fine, the "question hour" was conducted on a peer basis. But since the delegates decided to adopt a presidential form of government, cabinet members are purely alter egos of the President and are no longer members of the legislature. To require them to appear before the legislators and account for their actions "puts them on unequal terms with the legislators" and "would violate the separation of powers of the executive and the legislative branches."[152] Delegate Monsod, however, recognized that a mechanism should be adopted where Cabinet members may be summoned and may, even on their own initiative, appear before the legislature. This, he said, would promote coordination without subordinating one body to another. He thus suggested that the original tenor of the provision in the 1935 Constitution be retained.[153]

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[151] II RECORD 46.

[152] *Id.* at 133.

[153] *Id.*

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After much deliberation, delegate Monsod's suggestion prevailed. Thus, the President may or may not consent to the appearance of the heads of departments; and even if he does, he may require that the appearance be in executive session. Reciprocally, Congress may refuse the initiative taken by a department secretary.

Likewise, Congress exercises legislative scrutiny thru its power of confirmation. Section 18, Article VI of the 1987 Constitution provides for the organization of a Commission on Appointments consisting of the President of the Senate as *ex oficio* Chairman, twelve Senators and twelve members of the House of Representatives, elected by each House on the basis of proportional representation from the political parties or organizations registered under the party-list system. Consent of the Commission on Appointments is needed for the nominees of the President for the following positions: (a) heads of executive departments, (b) ambassadors, other public ministers and consuls, (c) officers of the armed forces from the rank of colonel or naval captain, and (d) other officers whose appointments are vested with the President under the Constitution.[154]

Through the power of confirmation, Congress shares in the appointing power of the executive. Theoretically, it is intended to lessen political considerations in the appointment of officials in sensitive positions in the government. It also provides Congress an opportunity to find out whether the nominee possesses the necessary qualifications, integrity and probity required of all public servants.

In the United States, apart from the appropriation and confirmation powers of the U.S. Congress, legislative scrutiny finds expression in the Legislative Reorganization Act of 1946 charging all House and Senate Standing Committees with continuous vigilance over the execution of any and all laws falling within their respective jurisdictions "with a view to determining its economy and efficiency."[155] Pursuant to this

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[154] 1987 Const., Art. VII, Sec. 16.

[155] Gross, *supra* note 132 at 138.

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law, each committee was authorized to hire a certain number of staff employees. All Senate committees were likewise given the power to subpoena witnesses and documents.[156]

b. Congressional investigation

While congressional scrutiny is regarded as a passive process of looking at the facts that are readily available, *congressional investigation involves a more intense digging of facts.*[157] The power of Congress to conduct investigation is recognized by the 1987 Constitution under Section 21, Article VI, *viz*:

> The Senate or the House of Representatives or any of its respective committee may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

But even in the absence of an express provision in the Constitution, congressional investigation has been held to be an essential and appropriate auxiliary to the legislative function. In the United States, the lack of a constitutional provision specifically authorizing the conduct of legislative investigations did not deter its Congresses from holding investigation on suspected corruption, mismanagement, or inefficiencies of government officials. Exercised first in the failed St. Clair expedition in 1792, the power to conduct investigation has since been invoked in the Teapot Dome, Watergate, Iran-Contra, and Whitewater controversies.[158] Subsequently, in a series of decisions, the Court recognized "the danger to effective and honest conduct of the Government if the legislative power to probe corruption in the Executive branch were unduly unhampered."[159]

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[156] *Id.*

[157] *Id.*

[158] Investigative Oversight: An Introduction to the Law, Practice and Procedure of Congressional Inquiry, CRS Report for Congress, April 7, 1995 <http://wwws.house.gov/search97/cgi/s97/_ction> last accessed on May 24, 2003.

[159] *Watkins v. United States*, 354 U.S. 178, 194-195 (1957).

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In *Eastland v. United States Servicemen's Fund*,[160] the U.S. Supreme Court ruled that the scope of the congressional power of inquiry "is *penetrating and far-reaching* as the potential power to enact and appropriate under the Constitution."[161] It encompasses everything that concerns the administration of existing laws as well as proposed or possibly needed statutes.[162] In the exercise of this power, congressional inquiries can reach all sources of information and in the absence of countervailing constitutional privilege or self-imposed restrictions upon its authority, Congress and its committees, have virtually, plenary power to compel information needed to discharge its legislative functions from executive agencies, private persons and organizations. Within certain constraints, the information so obtained may be made public.[163] In *McGrain v. Daugherty*,[164] it held that "a legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to effect change."[165] But while the congressional power of inquiry is broad, it is not unlimited. No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of Congress."[166] Moreover, an investigating committee has only the power to inquire into matters within the scope of the authority delegated to it by its parent body.[167] But once its jurisdiction and authority, and the pertinence of the matter under inquiry to its area of authority are established, a committee's investigative purview is substantial and wide-ranging.[168]

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[160] 421 U.S. 491 (1975).

[161] *Id.* at 504.

[162] *Supra* note 159 at 187.

[163] *Supra* note 158.

[164] 272 U.S. 135 (1927).

[165] *Id.*

[166] *Kilbourn v. Thomson*, 103 U.S. 168, 204 (1880).

[167] *United States v. Rumely*, 345 U.S. 41 (1953).

[168] *Wilkinson v. United States*, 365 U.S. 408-409 (1961).

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American jurisprudence upholding the inherent power of Congress to conduct investigation has been adopted in our jurisdiction in Arnault v. Nazareno,[169] decided in 1950, when no provision yet existed granting Congress the power to conduct investigation. In the said case, the Senate passed Resolution No. 8 creating a special committee to investigate the Buenavista and the Tambobong Estates Deal wherein the government was allegedly defrauded ₱5,000,000.00. The special committee examined various witnesses, among whom was Jean L. Arnault. Due to the refusal of Arnault to answer a question which he claimed to be "self-incriminatory," [170] the Senate passed a resolution citing Arnault in contempt. The Senate committed him to the custody of the Sergeant-at-Arms and ordered his imprisonment until he shall have answered the question. Arnault filed a petition before this Court contending that (a) the Senate has no power to punish him for contempt; (b) the information sought to be obtained by the Senate is immaterial and will not serve any intended or purported legislation; and (c) the answer required of him will incriminate him.

Upholding the power of the Senate to punish Arnault for contempt, the Court ruled as follows:

Although there is no provision in the Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, such power is so far incidental to the legislative function as to be implied. In other words, the power of inquiry — with process to enforce it — is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information — which is not frequently true — recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often unavailing, and also that

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[169] 87 Phil. 29 (1950).

[170] *Id.* at 42. The question involved the identity of the person to whom Arnault allegedly gave the amount of ₱440,000.00.

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information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed. . . The fact that the Constitution expressly gives the Congress the power to punish its Members for disorderly behaviour, does not by necessary implication exclude the power to punish for contempt any other person.[171]

The Court further ruled that the power of the Senate to punish a witness for contempt does not terminate upon the adjournment of the session.[172] It held that the investigation was within the power of the Senate since the "transaction involved a questionable and allegedly unnecessary and irregular expenditure of no less than ₱5,000,000.00 of public funds, of which the Congress is the constitutional guardian."[173] The investigation was also found

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[171] *Id.* at 45.

[172] *Id.* at 63. The Court opined: "By refusing to answer the question, the witness has obstructed the performance by the Senate of its legislative function, and the Senate has the power to remove the obstruction by compelling the witness to answer the questions thru restraint of his liberty until he shall have answered them. That power subsists as long as the Senate, which is a continuing body, persists in performing the particular legislative function involved. To hold that it may punish the witness for contempt only during the session in which the investigation was begun, would be to recognize the right of the Senate to perform its function but at the same time to deny it an essential and appropriate means for its performance. Aside from this, if we should hold that the power to punish for contempt terminates upon the adjournment of the session, the Senate would have to resume the investigation at the next and succeeding sessions and repeat the contempt proceedings against the witness until the investigation is completed — an absurd, unnecessary, and vexatious procedure, which should be avoided."

[173] *Id.* at 46-47. One bill prohibits the Secretary of Justice or any other department head from discharging functions and exercising powers other than those attached to his office, without previous congressional authorization. Another prohibits brothers and near relatives of any President of the Philippines from intervening directly or indirectly and in whatever capacity in transactions in which the Government is a party, more particularly where the decision lies in the hands of the executive or administrative officers who are appointees of the President. Finally, one bill provides that purchases of the Rural Progress Administration of big landed estates at the price of ₱100,000.00 or more, and loans guaranteed by the Government involving ₱100,000.00 or more, shall not become effective without previous congressional confirmation.

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to be "in aid of legislation." As result of the yet unfinished investigation, the Court noted that the investigating committee has recommended, and the Senate has approved three bills.[174]

The Court further held that once an inquiry is *admitted or established* to be within the jurisdiction of a legislative body to make, the investigating committee has the power to require a witness to answer any question pertinent to that inquiry, subject to his constitutional right against self-incrimination. The inquiry must be material or necessary to the exercise of a power in it vested by the Constitution. Hence, a witness can not be coerced to answer a question that obviously has no relation to the subject of the inquiry. But the Court explained that "the materiality of the question must be determined by its direct relation to the subject of the inquiry and not by its indirect relation to any proposed or possible legislation." The reason is that the necessity or lack of necessity for legislative action and the form and character of the action itself are determined by the sum total of the information to be gathered as a result of the investigation, and not by a fraction of such information elicited from a single question.[175]

Finally, the Court ruled that the ground on which Arnault invoked the right against self-incrimination "is too shaky, infirm, and slippery to afford him safety."[176] It noted that since Arnault himself said that the transaction was legal, and that he gave the ₱440,000.00 to a representative of Burt in compliance with the latter's verbal instruction, there is therefore no basis upon which to sustain his claim that to reveal the name of that person would incriminate him.[177] It held that it is not enough for the witness to say that the answer will incriminate him for he is not the sole judge of his liability, thus:

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[174] *Id.*

[175] *Id.* at 48.

[176] *Id.* at 64.

[177] *Id.* at 65.

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. . . [T]he danger of self-incrimination must appear reasonable and real to the court, from all the circumstances and from the whole case, as well as from his general conception of the relations of the witness . . . The fact that the testimony of the witness may tend to show that he has violated the law is not sufficient to entitle him to claim the protection of the constitutional provision against self-incrimination, unless he is at the same time liable to prosecution and punishment for such violation. The witness cannot assert his privilege by reason of some fanciful excuse, for protection against an imaginary danger, or to secure immunity to a third person.[178]

As now contained in the 1987 Constitution, the power of Congress to investigate is circumscribed by *three limitations*, namely: (a) it must be in aid of its legislative functions, (b) it must be conducted in accordance with duly published rules of procedure, and (c) the persons appearing therein are afforded their constitutional rights.

In *Bengzon, Jr. v. Senate Blue Ribbon Committee*,[179] this Court held that the senate committee exceeded the permissible exercise of legislative investigation. The case started with a speech by Senator Enrile suggesting the need to determine possible violation of law in the alleged transfer of some properties of former Ambassador Benjamin "Kokoy" Romualdez to the Lopa Group of Companies. The Senate Blue Ribbon Committee decided to investigate the transaction purportedly *in aid of legislation.* When the Blue Ribbon Committee summoned the petitioners to appear, they asked this Court for a restraining order on the ground, among others, that the investigation was not in aid of legislation and that their appearance before the investigating body could prejudice their case before the *Sandiganbayan.* Ruling in favor of the petitioner, we held as follows:

Verily, the speech of Senator Enrile contained no suggestion of contemplated legislation; he merely called upon the Senate to look into a possible violation of Sec. 5 of RA No. 3019, otherwise known

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[178] *Id.* at 66.

[179] 203 SCRA 767 (1991).

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as "The Anti-Graft and Corrupt Practices Act." In other words, the purpose of the inquiry to be conducted by respondent Blue Ribbon Committee was to find out whether or not the relatives of President Aquino, particularly, Mr. Ricardo Lopa, had violated the law in connection with the alleged sale of the 36 or 39 corporations belonging to Benjamin "Kokoy" Romualdez to the Lopa Group. There appears to be, therefore, no intended legislation involved.

The conduct of legislative investigation is also subject to the rules of each House. In the House of Representatives,[180] an inquiry may be initiated or conducted by a committee *motu proprio* on any matter within its jurisdiction upon a majority vote of all its Members[181] or upon order of the House of Representatives[182] through:

(1) the referral of a privilege speech containing or conveying a request or demand for the conduct of an inquiry, to the appropriate committee, upon motion of the Majority Leader or his deputies; or

(2) the adoption of a resolution directing a committee to conduct an inquiry reported out by the Committee on Rules after making a determination on the necessity and propriety of the conduct of an inquiry by such committee: *Provided*, That all resolutions directing any committee to conduct an inquiry shall be referred to the Committee on Rules; or

(3) the referral by the Committee on Rules to the appropriate committee, after making a determination on the necessity and propriety of the conduct of inquiry by such committee, of a petition filed or information given by a Member of the House requesting such inquiry and endorsed by the Speaker: *Provided*, That such petition or information shall be given under oath, stating the facts upon which it is based, and accompanied by supporting affidavits.[183]

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[180] House Rules and Procedure Governing Inquiries in Aid of Legislation, adopted on August 28, 2001.

[181] *Id.* at Section 1 (a).

[182] *Id.* at Section 1 (b).

[183] *Id.* at Section 1(b.1) to (b.4).

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The committee to which a privilege speech, resolution, petition or information requesting an inquiry is referred may constitute and appoint sub-committees composed of at least one-third (1/3) of the committee for the purpose of performing any and all acts which the committee as a whole is authorized to perform, except to punish for contempt. In case a privilege speech is referred to two or more committees, a joint inquiry by the said committees shall be conducted. The inquiries are to be held in public except when the committee or sub-committee deems that the examination of a witness in a public hearing may endanger national security. In which case, it shall conduct the hearing in an executive session.[184]

The Rules further provide that "the filing or pendency of a case before any court, tribunal or quasi-judicial or administrative bodies shall not stop or abate any inquiry conducted to carry out a specific legislative purpose."[185] In exercise of congressional inquiry, the committee has the power "to issue *subpoena* and *subpoena duces tecum* to a witness in any part of the country, signed by the chairperson or acting chairperson and the Speaker or acting Speaker."[186] Furthermore, the committee may, by a vote of two-thirds (2/3) of all its members constituting a quorum, punish for contempt any person who: (a) refuses, after being duly summoned, to obey such summons without legal excuse; (b) refuses to be sworn or placed under affirmation; (c) refuses to answer any relevant inquiry; (d) refuses to produce any books, papers, documents or records that are relevant to the inquiry and are in his/her possession; (e) acts in a disrespectful manner towards any member of the Committee or commits misbehavior in the presence of the committee; or (f) unduly interferes in the conduct of proceedings during meetings.[187]

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[184] *Id.* at Section 3.

[185] *Id.* at Section 1.

[186] *Id.* at Section 7.

[187] *Id.* at Section 9.

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Nevertheless, any person called to be a witness may be represented by a counsel[188] and is entitled to all rights including the right against self-incrimination.[189]

c. Legislative supervision

The third and *most encompassing* form by which Congress exercises its oversight power is thru legislative *supervision*. "Supervision" connotes a continuing and informed awareness on the part of a congressional committee regarding *executive operations* in a given administrative area.[190] While both congressional scrutiny and investigation involve inquiry into *past executive branch* actions in order to influence future executive branch performance, *congressional supervision allows Congress to scrutinize the exercise of delegated law-making authority, and permits Congress to retain part of that delegated authority.*

Congress exercises supervision over the executive agencies through its veto power. It typically utilizes veto provisions when granting the President or an executive agency the power to promulgate regulations with the force of law. These provisions require the President or an agency to present the proposed regulations to Congress, which retains a "right" to approve or disapprove any regulation before it takes effect. Such legislative veto provisions usually provide that a proposed regulation will become a law after the expiration of a certain period of time, only if Congress does not affirmatively disapprove of the regulation in the meantime. Less frequently, the statute provides that a proposed regulation will become law if Congress affirmatively approves it.[191]

The *legislative veto* was developed *initially* in response to the problems of reorganizing the U.S. Government structure

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[188] *Id.* at Section 6.

[189] *Id.* at Section 7.

[190] Gross, *supra* note 132 at 137.

[191] Nowak, *et al.*, *supra* note 82 at 256.

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during the Great Depression in early 20th century. When U.S. President Hoover requested authority to reorganize the government in 1929, he coupled his request with a proposal for legislative review. He proposed that the Executive "should act upon approval of a joint Committee of Congress or with the reservation of power of revision by Congress within some limited period adequate for its consideration."[192] Congress followed President Hoover's suggestion and authorized reorganization subject to legislative review.[193] Although the reorganization authority reenacted in 1933 did not contain a legislative veto provision, the provision returned during the Roosevelt administration and has since been renewed several times.[194] Over the years, the provision was used extensively. Various American Presidents submitted to Congress some 115 Reorganization Plans, 23 of which were disapproved pursuant to legislative veto provisions.[195]

During World War II, Congress and the President applied the legislative veto procedure to resolve the delegation problem involving national security and foreign affairs. The legislative veto offered the means by which Congress could confer additional authority to the President while preserving its own constitutional role. During this period, Congress enacted over 30 statutes conferring powers on the Executive with legislative veto provisions.[196]

After World War II, legislative veto provisions have been inserted in laws delegating authority in new areas of governmental involvement including the space program, international agreements on nuclear energy, tariff arrangements, and

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[192] *Public Papers of the Public Papers of the Presidents*, Herbert Hoover, 1929, p. 432 (1974).

[193] Act of June 30, 1932, § 407, 47 Stat 414.

[194] *See* 462 US 919, 969 (1983), 77 L Ed 2d 317, 356. (White, *J.*, dissenting).

[195] *Id.*

[196] *Id.*

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adjustment of federal pay rates.[197] It has also figured prominently in resolving a series of major constitutional disputes between the President and Congress over claims of the President to broad impoundment, war and national emergency powers.[198] Overall, 295 congressional veto-type procedures have been inserted in 196 different statutes since 1932 when the first veto provision was enacted into law.[199]

Supporters of legislative veto stress that it is necessary to maintain the balance of power between the legislative and the executive branches of government as it offers lawmakers a way to delegate vast power to the executive branch or to independent agencies while retaining the option to cancel particular exercise of such power without having to pass new legislation or to repeal existing law.[200] They contend that this arrangement promotes democratic accountability as it provides legislative check on the activities of unelected administrative agencies.[201] One proponent thus explains:

> It is too late to debate the merits of this delegation policy: the policy is too deeply embedded in our law and practice. It suffices to say that the complexities of modern government have often led Congress — whether by actual or perceived necessity — to legislate by declaring broad policy goals and general statutory standards, leaving the choice of policy options to the discretion of an executive officer. Congress articulates legislative aims, but leaves their implementation to the judgment of parties who may or may not have participated in or agreed with the development of those aims.

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[197] *Id.* at 970; *Id.* at 357.

[198] *Id.*; *Id.*

[199] From 1932 to 1939, five statutes were effected; from 1940-1949, nineteen (19) statutes; between 1950-1959, thirty-four (34) statutes; from 1960-1969, forty-nine (49); and from 1970–1975, at least one hundred sixty-three (163) such provisions were included in eighty-nine (89) laws. See Abourezk, *The Congressional Veto: A Contemporary Response to Executive Encroachment on Legislative Prerogatives*, 52 Ind L Rev 323, 324 (1977).

[200] Tribe, I *American Constitutional Law* 142 (2000).

[201] *Id.*

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Consequently, absent safeguards, in many instances the reverse of our constitutional scheme could be effected: Congress proposes, the Executive disposes. One safeguard, of course, is the legislative power to enact new legislation or to change existing law. But without some means of overseeing post enactment activities of the executive branch, Congress would be unable to determine whether its policies have been implemented in accordance with legislative intent and thus whether legislative intervention is appropriate.[202]

Its opponents, however, *criticize the legislative veto* as undue encroachment upon the executive prerogatives. They urge that any post-enactment measures undertaken by the legislative branch should be limited to scrutiny and investigation; any measure beyond that would undermine the separation of powers guaranteed by the Constitution.[203] They contend that legislative veto constitutes an impermissible evasion of the President's veto authority and intrusion into the powers vested in the executive or judicial branches of government.[204] Proponents counter that legislative veto enhances separation of powers as it prevents the executive branch and independent agencies from accumulating too much power.[205] They submit that reporting requirements and congressional committee investigations allow Congress to scrutinize only the exercise of delegated law-making authority. They do not allow Congress to review executive proposals before they take effect and they do not afford the opportunity for ongoing and binding expressions of congressional intent.[206] In contrast, legislative veto permits Congress to participate prospectively in the approval or disapproval of "*subordinate law*" or those enacted by the executive branch

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[202] Javits and Klein, *supra* note 127 at 460.

[203] Bruff & Gellhorn, *Congressional Control of Administrative Regulation: A Study of Legislative Vetoes*, 90 Harv L Rev 1369, 1373 (1977).

[204] *Id.* See also Stewart, *Constitutionality of Legislative Veto*, 13 Harv L J. Legis 593 (1976).

[205] Abourezk, *supra* note 199 at 327.

[206] Javits & Klein, *supra* note 127 at 461-462.

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pursuant to a delegation of authority by Congress. They further argue that legislative veto "is a necessary response by Congress to the accretion of policy control by forces outside its chambers." In an era of delegated authority, they point out that legislative veto "is the most efficient means Congress has yet devised to retain control over the evolution and implementation of its policy as declared by statute."[207]

In *Immigration and Naturalization Service v. Chadha*,[208] the U.S. Supreme Court resolved the validity of legislative veto provisions. The case arose from the order of the immigration judge suspending the deportation of Chadha pursuant to § 244(c)(1) of the Immigration and Nationality Act. The United States House of Representatives passed a resolution vetoing the suspension pursuant to § 244(c)(2) authorizing either House of Congress, by resolution, to invalidate the decision of the executive branch to allow a particular deportable alien to remain in the United States. The immigration judge reopened the deportation proceedings to implement the House order and the alien was ordered deported. The Board of Immigration Appeals dismissed the alien's appeal, holding that it had no power to declare unconstitutional an act of Congress. The United States Court of Appeals for Ninth Circuit held that the House was without constitutional authority to order the alien's deportation and that § 244(c)(2) violated the constitutional doctrine on separation of powers.

On appeal, the U.S. Supreme Court declared § 244(c)(2) unconstitutional. But the Court shied away from the issue of separation of powers and instead held that the provision violates the presentment clause and bicameralism. It held that the one-house veto was essentially legislative in purpose and effect. As such, it is subject to the procedures set out in Article I of the Constitution requiring the passage by a majority of both Houses and presentment to the President. Thus:

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[207] *Id.*

[208] 462 US 919 (1983), 77 L Ed 2d 317.

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Examination of the action taken here by one House pursuant to § 244(c)(2) reveals that it was essentially legislative in purpose and effect. In purporting to exercise power defined in Art I, § 8, cl 4, to "establish a uniform Rule of Naturalization," the House took action that had the purpose and effect of altering the legal rights, duties, and relations of persons, including the Attorney General, Executive Branch officials and Chadha, all outside the Legislative Branch. Section 244(c)(2) purports to authorize one House Congress to require the Attorney General to deport an individual alien whose deportation otherwise would be canceled under § 244. The one-House veto operated in these cases to overrule the Attorney General and mandate Chadha's deportation; absent the House action, Chadha would remain in the United States. Congress has acted and its action altered Chadha's status.

The legislative character of the one-House veto in these cases is confirmed by the character of the congressional action it supplants. Neither the House of Representatives nor the Senate contends that, absent the veto provision in § 244(c)(2), either of them, or both of them acting together, could effectively require the Attorney General, in exercise of legislatively delegated authority, had determined the alien should remain in the United States. Without the challenged provision in § 244(c)(2), this could have been achieved, if at all, only by legislation requiring deportation. Similarly, a veto by one House of Congress under § 244(c)(2) cannot be justified as an attempt at amending the standards set out in § 244(a)(1), or as a repeal of § 244 as applied to Chadha. Amendment and repeal of statutes, no less than enactment, must conform with Art I.

The nature of the decision implemented by one-House veto in these cases further manifests its legislative character. After long experience with the clumsy, time-consuming private bill procedure, Congress made a deliberate choice to delegate to the Executive Branch, and specifically to the Attorney General, the authority to allow deportable aliens to remain in this country in certain specified circumstances. It is not disputed that this choice to delegate authority is precisely the kind of decision that can be implemented only in accordance with the procedures set out in Art I. Disagreement with the Attorney General's decision on Chadha's deportation — that is, Congress' decision to deport Chadha — no less than Congress' original choice to delegate to the Attorney General the authority to make decision, involves determinations of policy that Congress can implement in only one way; bicameral passage followed by

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presentment to the President. Congress must abide by its delegation of authority until that delegation is legislatively altered or revoked.[209]

Two weeks after the *Chadha* decision, the Court upheld, in memorandum decision, two lower court decisions invalidating the legislative veto provisions in the Natural Gas Policy Act of 1978[210] and the Federal Trade Commission Improvement Act of 1980.[211] Following this precedence, lower courts invalidated statutes containing legislative veto provisions although some of these provisions required the approval of both Houses of Congress and thus met the bicameralism requirement of Article I. Indeed, some of these veto provisions were not even exercised.[212]

Given the concept and configuration of the power of congressional oversight, the *next level of inquiry* is whether congress exceeded its permissible exercise in the case at bar. But before proceeding, a discussion of the *nature and powers of the Commission on Elections* as provided in the 1987 Constitution is decisive to the issue.

Congressional Oversight and COMELEC

The Commission on Elections (COMELEC) is a constitutional body *exclusively* charged with the enforcement and administration

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[209] *Id.* at 952-955.

[210] *Consumer Energy v. Federal Energy Regulation Commission*, 673 F.2d 425 (D.C.Cir. 1982), affirmed sub nom., *Process Gas Consumers Group v. Consumers Energy Council of America*, 463 U.S. 1216, 103 S.Ct. 3556, 77 L.Ed.2d 1402 (1983), rehearing denied 463 U.S. 1250, 104 S.Ct. 40, 77 L.Ed.2d 1457 (1983).

[211] *Consumers Union of the United States, Inc. v. Federal Trade Commission*, 691 F.2d 575 (D.C.Cir. 1982), affirmed sub nom., *Process Gas Consumers Group v. Consumers Energy Council of America*, 463 U.S. 1216, 103 S.Ct. 3556, 77 L.Ed.2d 1402.

[212] *Equal Opportunity Commission v. Allstate Insurance Company*, 57 F.Supp. 1224, 104 S.Ct. 3499, 82 L.Ed 2d 810 (1984), case remanded 740 F.2d 966 (5th Cir. 1984), *Equal Opportunity Commission v. The Hernando Bank, Inc.*, 724 F.2d 1188 (5th Cir. 1984).

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of "all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall,"[213] and is invested with the power to decide all questions affecting elections save those involving the right to vote.[214]

Given its important role in preserving the sanctity of the right of suffrage,[215] the COMELEC was *purposely constituted* as a body *separate* from the executive, legislative, and judicial branches of government.[216] *Originally*, the power to enforce our election laws was vested with the President and exercised through the Department of the Interior. According to Dean Sinco,[217] however, the *view ultimately emerged* that an *independent body* could better protect the right of suffrage of our people. Hence, the enforcement of our election laws, while an executive power, was transferred to the COMELEC.

The *shift to a modified parliamentary system* with the adoption of the 1973 Constitution *did not alter the character of COMELEC as an independent body*.[218] Indeed, a "definite tendency to *enhance and invigorate* the role of the Commission on Elections as the independent constitutional body charged with the safeguarding of free, peaceful and honest elections" has been observed.[219] The 1973 Constitution *broadened* the power of the COMELEC by making it the *sole judge* of all election contests relating to the election, returns and qualifications of members of the national legislature and elective provincial and city officials.[220] Thus, the COMELEC was given *judicial power* aside from its traditional administrative and executive functions.

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[213] 1987 Constitution, Article IX-C, Sec. 2 (1).

[214] *Id.* at Sec. 2 (3).

[215] *Sumulong v. COMELEC*, 73 Phil. 288, 294 (1941).

[216] *Nacionalista Party v. Bautista*, 85 Phil. 101, 106-107 (1949).

[217] Philippine Political Law 383-386 (1962).

[218] 1973 Constitution, Article XII-C.

[219] *Aratuc v. COMELEC*, 88 SCRA 251, 270 (1979).

[220] 1973 Const., Art. XII-C, Sec. 2.

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The trend towards strengthening the COMELEC continued with the 1987 Constitution. Today, the COMELEC enforces and administers all laws and *regulations* relative to the conduct of elections, plebiscites, initiatives, referenda and recalls. Election contests involving regional, provincial and city elective officials are under its exclusive original jurisdiction while all contests involving elective municipal and *barangay* officials are under its appellate jurisdiction.[221]

Several safeguards have been put in place to protect the independence of the COMELEC from unwarranted encroachment by the other branches of government. While the President appoints the Commissioners with the concurrence of the Commission on Appointments, the Commissioners are not accountable to the President in the discharge of their functions. They have a fixed tenure and are removable only by impeachment.[222] To ensure that not all Commissioners are appointed by the same President at any one time, a staggered system of appointment was devised. Thus, of the Commissioners first appointed, three shall hold office for seven years, three for five years, and the last three for three years.[223] Reappointment and temporary designation or appointment is prohibited.[224] In case of vacancy, the appointee shall only serve the unexpired term of the predecessor.[225] The COMELEC is likewise granted the power to promulgate its own rules of procedure,[226] and to appoint its own officials and employees in accordance with Civil Service laws.[227]

The COMELEC exercises quasi-judicial powers but it is not part of the judiciary. This Court has no general power

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[221] 1987 Const., Art. IX-C, Sec. 2.

[222] *Id.* at Art. XI-A, Sec. 2.

[223] *Id.* at Art. IX-C, Sec. 1 (2).

[224] *Ibid.*

[225] *Ibid.*

[226] 1987 Const., Art. IX-A, Sec. 6.

[227] *Id.* at Art. IX, Sec. 8.

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of supervision over the Commission on Elections except those specifically granted by the Constitution.[228] As such, the Rules of Court are not applicable to the Commission on Elections.[229] In addition, the decisions of the COMELEC are reviewable only by petition for *certiorari* on grounds of grave abuse of discretion,[230] *viz*:

> Conceived by the charter as the effective instrument to preserve the sanctity of popular suffrage, endowed with independence and all the needed concomitant powers, it is but proper that the Court should accord the greatest measure of presumption of regularity to its course of action and choice of means in performing its duties, to the end that it may achieve its designed place in the democratic fabric of our government. Ideally, its members should be free from all suspicions of partisan inclinations, but the fact that actually some of them have had stints in the arena of politics should not, unless the contrary is shown, serve as basis for denying to its actuations the respect and consideration that the Constitution contemplates should be accorded to it, in the same manner that the Supreme Court itself which from time to time may have members drawn from the political ranks or even from the military is at all times deemed insulated from every degree or form of external pressure and influence as well as improper internal motivations that could arise from such background or orientation.
>
> We hold, therefore, that under the existing constitutional and statutory provisions, the *certiorari* jurisdiction of the Court over orders, rulings and decisions of the Comelec is not as broad as it used to be and should be confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process.[231]

The COMELEC is, however, *subject to congressional scrutiny* especially during budget hearings. But Congress cannot abolish the COMELEC as it can in case of other agencies

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[228] *Nacionalista Party v. De Vera*, 85 Phil. 126 (1949).

[229] *Id.* at 130.

[230] 1987 Const., Art. IX-A, Sec. 7.

[231] *Aratuc v. COMELEC*, 88 SCRA 251, 271-272 (1979).

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under the executive branch. The reason is obvious. The COMELEC is not a mere creature of the legislature; it owes its origin from the Constitution. Furthermore, the salary of the Chairman and the Commissioners cannot be decreased during their tenure.[232] Enjoying fiscal autonomy, the COMELEC has a wider discretion in the disbursement and allocation of approved appropriations. To safeguard the COMELEC from undue legislative interference, the 1987 Constitution provides that its approved annual appropriations are to be automatically and regularly released.[233] Also, Congress has no power to call the commissioners of the COMELEC to a question hour. The Constitution provides that the question hour is limited to heads of departments under the Executive branch, and the deliberations during the drafting of the 1987 Constitution clearly reflect this sentiment. Be that as it may, the COMELEC is mandated to "submit to the President and the Congress a comprehensive report on the conduct of each election, plebiscite, initiative, referendum and recall."[234] This provision allows Congress to review and assess the effectivity of election laws and if necessary, enact new laws or amend existing statutes.

Be that as it may, I respectfully submit that the legislative veto power or congressional oversight power over the authority of COMELEC to issue rules and regulations in order to enforce election laws is unconstitutional.

As aforediscussed, the Constitution divided the powers of our government into three categories, legislative, executive, and judicial. Although not "hermetically sealed" from one another, the powers of the three branches are functionally identifiable. In this respect, legislative power is generally exercised in the enactment of the law; executive power, in its execution; and judicial power, in its interpretation. In the absence of specific provision in the Constitution, it is fundamental under the principle of separation of powers that one branch cannot exercise or share the power of the other.

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[232] 1987 Const., Art. IX, Sec. 3.

[233] *Id.* at Art. IX, Sec. 5.

[234] *Id.* at Art. IX-C, Sec. 2 (9).

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In addition, our Constitution created *other offices* aside from the executive, the legislative and the judiciary and defined their powers and prerogatives. Among these bodies especially created by the Constitution itself is the COMELEC.

The COMELEC occupies a distinct place in our scheme of government. As the constitutional body charged with the administration of our election laws, it is endowed with independence in the exercise of *some* of its powers and the discharge of its responsibilities. *The power to promulgate rules and regulations in order to administer our election laws belongs to this category of powers as this has been vested exclusively by the 1987 Constitution to the COMELEC. It cannot be trenched upon by Congress in the exercise of its oversight powers.*

In *Gallardo v. Tabamo, Jr.*,[235] this Court traced the *origin* of COMELEC's power to promulgate rules and regulations. *It was initially a statutory grant.* Both the 1935 and the 1973 Constitutions did not explicitly grant the COMELEC the power to promulgate rules and regulations. The power was vested by Congress to the COMELEC in the Omnibus Election Code,[236] *viz*:

Sec. 52. Powers and functions of the Commission on Elections. — In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have the exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, and shall:

. . . . . .

(c) Promulgate rules and regulations implementing the provisions of this Code or other laws which the Commission is required to enforce and administer.

. . . . . .

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[235] 218 SCRA 253 (1993).

[236] B.P. Blg. 881, Section 52 (c).

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This *statutory power was elevated to a constitutional status* with the insertion of the word "regulations" in Section 2(1) of Article IX-C of the 1987 Constitution, *viz*:

> While under the 1935 Constitution it had "exclusive charge of the enforcement and administration of all laws relative to the conduct of elections," exercised "all other functions . . . conferred upon it by law" and had the power to deputize all law enforcement agencies and instrumentalities of the Government for the purpose of insuring free, orderly and honest elections, and under the 1973 Constitution it had, *inter alia*, the power to (a) "[E]nforce and administer all laws relative to the conduct of elections" (b) "[D]eputize, with the consent or at the instance of the Prime Minister, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the purpose of ensuring free, orderly, and honest elections," and (c) "[P]erform such other functions as may be provided by law," it was not expressly vested with the power to promulgate regulations relative to the conduct of an election. That power could only originate from a special law enacted by Congress; this is the necessary implication of the above constitutional provision authorizing the Commission to "[P]erform such other functions as may be provided by law."
>
> The present Constitution, however, implicitly grants the Commission the power to promulgate such rules and regulations. The pertinent portion of Section 2 of Article IX-C thereof reads as follows:
>
> "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." (*italics supplied*)
>
> x x x x x x x x x
>
> The word regulations is not found in either the 1935 or 1973 Constitutions. It is thus clear that its incorporation into the present Constitution took into account the Commission's power under the Omnibus Election Code (Batas Pambansa Blg. 881), which was already in force when the said Constitution was drafted and ratified, to:
>
> x x x x x x x x x

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"Promulgate rules and regulations implementing the provisions of this Code or other laws which the Commission is required to enforce and administer. . . ."

Hence, the present Constitution upgraded to a constitutional status the aforesaid statutory authority to grant the Commission broader and more flexible powers to effectively perform its duties and to insulate it further from legislative intrusions. Doubtless, if its rule-making power is made to depend on statutes, Congress may withdraw the same at any time. Indeed, the present Constitution envisions a truly independent Commission on Elections committed to ensure free, orderly, honest, peaceful and credible elections, and to serve as the guardian of the people's sacred right of suffrage — the citizenry's vital weapon in effecting a peaceful change of government and in achieving and promoting political stability.[237]

The elevation of the COMELEC's power to promulgate rules and regulations in the 1987 Constitution is suffused with significance. Heretofore, it was Congress that granted COMELEC the power to promulgate rules and regulations, and hence, Congress can withdraw or restrict it by the exercise of its veto or oversight power. Under the 1987 Constitution, the power to promulgate rules and regulations has been directly granted by the Constitution and no longer by Congress. Undoubtedly, the power was granted to COMELEC to strengthen its independence, hence, its exercise is beyond invasion by Congress. Under any lens, Sections 19 and 25 of Rep. Act No. 9189 constitute undue restrictions on the constitutional power of the COMELEC to promulgate rules and regulations for such rules are made subject to the prior review and approval of Congress. The impugned provisions can result in the denial of this constitutionally conferred power because Congress can veto the rules and regulations the COMELEC has promulgated. Thus, I respectfully submit that Sections 19 and 25 of Rep. Act No. 9189 granting Congress the power to review, revise, amend and approve the implementing rules and regulations of the COMELEC, otherwise known as subordinate legislations in other countries, are unconstitutional.

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[237] *Gallardo v. Tabamo, Jr., supra* note 235 at 263-264.

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I now come to Section 17.1 of Rep. Act No. 9189 which provides:

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:

(d) Where the mailing system is fairly well-developed and secure to prevent occasion of fraud;

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

(f) 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 Oversight Committee.* (*italics supplied*)

From the law itself, it is clear that Congress has already set the necessary *standards* to guide the COMELEC in identifying the countries where voting by mail may be allowed, *viz*: (1) the countries must have a mailing system which is fairly developed and secure to prevent occasion of fraud; (2) there exists a technically established identification that would preclude multiple or proxy voting; and (3) 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.

Since the legislative standards have been defined, all that remains is their *enforcement*. Our *Constitution has specifically given* the COMELEC the power to enforce and administer all laws and regulations relative to the conduct of an election. *The power is exclusive and it ought to be self-evident that it cannot be subject to review and revision or veto by Congress in the exercise of its oversight power*. Again, the

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reason for the exclusivity is to insulate COMELEC from the virus of partisan politics. In the exercise of this exclusive power, the Commission must be accorded considerable latitude. Unless the means and methods adopted by COMELEC are clearly illegal or constitute grave abuse of discretion, they should not be interfered with.[238] Thus:

> There are no ready-made formulas for solving public problems. Time and experience are necessary to evolve patterns that will serve the ends of good government. In the matter of the administration of the laws relative to the conduct of elections, as well as in the appointment of election inspectors, we must not by any excessive zeal take away from the Commission on Elections the initiative which by constitutional and legal mandates properly belongs to it. Due regard to the independent character of the Commission, as ordained in the Constitution, requires that the power of this court to review the acts of that body should, as a general proposition, be used sparingly, but firmly in appropriate cases. We are not satisfied that the present suit is one of such cases.[239]

I join the majority in holding that Section 17.1 of Rep. Act No. 9189 is *unconstitutional* for it allows Congress to negate the *exclusive* power of the COMELEC to administer and enforce election laws and regulations granted by the Constitution itself.

This is not to maintain that the Implementing Rules and Regulations promulgated by the COMELEC, or the system it devised to implement voting by mail cannot be challenged. If they are illegal or constitute grave abuse of discretion, the courts can strike them down in an appropriate case. This power is vested to the courts under Section 1, Article VIII of the Constitution defining the scope of judicial power, and more specifically under Section 5, Article VIII empowering this Court to review, revise, reverse, modify or affirm on appeal or *certiorari*, "all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in

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[238] *Maruhom v. COMELEC*, 473 SCRA 331 (2000).

[239] *Sumulong v. COMELEC*, 73 Phil. 288, 296 (1941).

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question." Again, this power is exclusive and is not meant to be shared by any other branch or agency of the government.

In sum, it is my humble view that in the case at bar, Congress exceeded the permissible exercise of its oversight powers for the following reasons: (1) it restricts the COMELEC's constitutional grant of power to promulgate rules and regulations; and (2) it invades COMELEC's exclusive constitutional domain to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

I wish to stress, however, *that granting the petition will not invalidate the entire Rep. Act No. 9189*. It does not also mean that all overseas Filipinos cannot vote. The law affects two classes of overseas Filipinos: (1) those who remain a domiciliary of the Philippines but were absent at the time of the elections either briefly or for a long time; and (2) those who are now considered domiciled in foreign countries. To the first class of overseas Filipinos belong the contract workers, students, members of the diplomatic corps and their families, businessmen, and the like. To the second class belong Filipinos who are considered immigrants or permanent residents of foreign countries. The constitutional challenge in the case at bar appertains *only* to the inclusion of the second category of overseas Filipinos in the coverage of Rep. Act No. 9189. Likewise, the challenge on the exercise of Congressional oversight power over the COMELEC does not taint the core of the law. It merely affects the procedure in adopting the mechanisms to implement the law. It cannot void the whole law.

IN VIEW OF THE FOREGOING, I *dissent* from the majority's ruling *upholding the constitutionality of Section 5 (d) of Rep. Act No. 9189*, which allows an immigrant or a permanent resident of a foreign country to vote for President, Vice-President, Senators and Party-List Representatives after executing the required affidavit. *I concur*, however, with the majority's ruling *upholding the constitutionality of Section 18.5 of Rep. Act No. 9189* with respect to the authority given to the COMELEC to proclaim the winning candidates for Senators

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and Party-List Representatives but not as to the power to canvass the votes and proclaim the winning candidates for President and Vice-President. I also *concur* with the majority with respect to the *unconstitutionality of Sections 17.1, 19 and 25 of Rep. Act No. 9189* subjecting the implementation of voting by mail, and the Implementing Rules and Regulations of Rep. Act No. 9189 to be promulgated by COMELEC, to prior review and approval by Congress.

I so vote.

CONCURRING AND DISSENTING OPINION

YNARES-SANTIAGO, *J.*:

R.A. 9189, otherwise known as the Overseas Absentee Voting Act of 2003, has spurred quite a debate among various sectors of Philippine society, both locally and abroad. Scholarly arguments on the fine legal points of the issues presented by this disputed law have been presented by sides both for and against it, saddled, unfortunately, with a heavy dose of bitter emotion.

The paramount consideration in any legal debate over this contentious piece of legislation is its constitutional validity. Significantly, the short article on suffrage in the Constitution concentrates on who may exercise the right to vote.[1] The Constitution underscores three categories on the qualifications required of voters — citizenship, age and residence.[2] Congress is authorized to limit the number of citizens who may exercise the right to vote by prescribing reasonable disqualifications. It

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[1] Constitution, Art. V, Secs. 1 and 2. In addition to qualifications, Article V also calls for a system which insures the secrecy and sanctity of the ballot.

[2] Constitution, Art. V, Sec. 1 provides: "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."

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is elementary, however, that Congress cannot expand the right of suffrage by including those who do not possess the constitutional requirements. To do so would defeat the very purpose why qualifications are singled out for constitutional attention. The sovereign will has determined that only those with the requisite citizenship, age, and residence may vote. Congress cannot water down or change the constitutional requirements.

The controversial issue in this case revolves around the constitutional provision on absentee voting which states:

> 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.[3]

I am constrained to dissent from the majority opinion because R.A. 9189 grants the right of suffrage to a category of voters who do not possess the constitutional requirement of residence. These are men and women who are *still* Filipino citizens but who have voluntarily and unambiguously chosen actual, physical, and permanent residence in a foreign country. In other words, the questioned law allows non-residents to vote.

As phrased, Section 5 (d) of R.A. 9189 grants to Filipinos who are immigrants or permanent residents of another country, and who are considered as such by their host country, the option to exercise their right of suffrage. This would be accomplished by the mere expedient of:

1. Registering as voters.
2. Execution of an affidavit declaring that:

a. She shall resume actual physical permanent residence in the Philippines not later than three (3) years from approval of her registration;

b. She has not applied for citizenship in another country.

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[3] Constitution, Art. V, Sec. 2, first paragraph.

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Proponents of R.A. 9189 are trying to construe Section 2 of Article V of the Constitution as a *proviso* which expands and enlarges the scope of the preceding section. They overlook the fact that while Section 2 provides a system for absentee voting, any absentee who votes must first meet the qualifications found in Section 1 of the same article.

As stated by the petitioner,[4] if the framers of the Constitution intended to make Section 2 of Article V a *proviso* or exception to its first section, they should have added it to the latter.

Section 1 would have incorporated as its last clause the following *proviso*:

Provided, the Congress shall provide a system for absentee voting by Filipino citizens who are residing abroad.

The Constitution does not make the absentee voting provision a mere *proviso* of the first section on residence qualifications. Together with the system which secures the secrecy and sanctity of the ballot, the provision on absentee voting is an entirely distinct and separate section which allows only those qualified under Section 1 to take advantage of the privilege under Section 2.

The office of a *proviso* is to limit the application of a section or provision or to qualify or restrain its generality.[5] However, a *proviso* may also enlarge what otherwise is a phrase of limited import had there been no *proviso* qualifying it.[6]

Since the provision on absentee voting in R.A. 9189 neither limits nor enlarges a provision of which it is a part, the phrase "*qualified* Filipinos abroad" can be interpreted only to mean that those who are qualified to vote under the preceding section

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[4] Memorandum for Petitioner, p. 6.

[5] *U.S. v. Sto. Niño*, 13 Phil. 141 (1909); *Arenas v. City of San Carlos*, G.R. No. L-34024, 5 April 1978, 82 SCRA 318.

[6] *U.S. v. Sto. Niño, supra*; *Commissioner of Internal Revenue v. Filipinas Compania de Seguros*, 107 Phil. 1055 (1960).

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may become absentee voters. They must possess on election day the constitutional requirements as to citizenship, age and residence.

Proponents of R.A. 9189 try to go around the statute's constitutional infirmity by giving the word "resident" or "resided" a labored and far-fetched meaning. They use the fanciful interpretation that immigrants who have moved lock, stock, and barrel to permanently live in another country are still domiciled in the Philippines.

The tens, if not hundreds of millions of overseas Chinese who have migrated to other lands may be cited as examples. Even after living in their countries of choice for two or three generations, they maintain their Chinese identities through clannishness and language. They take pride in the slow emergence of the old country into a democratic and powerful economic force in world affairs. By no stretch of legal fiction, however, can they be deemed residents of mainland China. They have chosen to live in adopted homelands, have become integral and, many times, leading members of their communities, and will be buried there when the time comes. Unless the Chinese basic law allows non-residents to vote in China, they cannot vote there. A similar diaspora caused by economic, population, and other pressures has led millions of Filipinos to move to other countries. Considering the constitutional provision on who may vote in Philippine elections, a distinction has to be made between those temporarily living and working abroad and those who have opted to permanently reside there. This Court must hew to reality. It should not engage in fanciful or strained interpretations to try to pass off as Philippine residents the more than 2,000,000 immigrants who have chosen to permanently reside in other countries. Only a constitutional amendment, not an enactment of Congress, can lift the consequences of the distinction.

It is well-settled that in election law, the terms "residence" and "domicile" are used interchangeably.[7] Having in mind the

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[7] *Romualdez-Marcos v. COMELEC*, G.R. No. 119976, 18 September 1995, 248 SCRA 300.

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meaning of these terms as they are understood in jurisprudence, we can close our eyes and easily conclude that the exercise of the right of suffrage by Filipinos who are immigrants and permanent residents abroad is warranted and that the process provided for in R.A. 9189 is sound. Unfortunately, such a conclusion would be erroneous.

"Domicile" denotes a fixed permanent residence to which when absent for business or pleasure, or for like reasons, one intends to return.[8] On the other hand, we have held that the residence of a person must be his personal, actual or physical habitation or his actual residence or abode. *It does not mean fixed permanent residence* to which when absent, one has the intention of returning.[9] This last, of course, refers to the *animus revertendi* which is determinative of domicile.

We must define another term: immigrant. According to *Caasi v. CA*,[10] an immigrant is a person who removes into a country for the purpose of *permanent residence*.[11] This is why it was held therein that, having taken up such permanent residence in a country other than the Philippines, the immigrant abandons his domicile and residence in the Philippines.

In its common usage "immigrant" is one who comes to settle in a country which is not one's own. "Immigration" is entrance into a country for the purpose of settling there. "Migrate" means to move from one place of abode to another; to leave one's country to settle in another.[12]

There is always the concept of permanent movement inherent in the word "immigration." From as early as 1572 to the present,

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[8] *Romualdez v. Regional Trial Court*, G.R. No. 104960, 14 September 1993, 226 SCRA 408, cited in *Papandayan v. COMELEC*, G.R. No. 147909, 16 April 2002.

[9] *Baritua v. Court of Appeals*, G.R. No. 100748, 3 February 1997, 267 SCRA 331.

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

[11] Citing 3 C.J.S. § 76.

[12] Oxford Universal Dictionary, Vol. I, pp. 961 and 1249.

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the meaning of "settle" has been to fix or establish permanently one's abode, residence, *etc.*[13]

Taking these definitions into account, we must now turn to the first tool we have to aid us in our quest to understand this vague provision of our fundamental law; the proceedings and debates of the 1986 Constitutional Commission. It can be seen from the records thereof that only Filipino citizens temporarily residing abroad can avail of the option to vote as absentee voters.

With all due respect, it is not accurate to conclude that the debates, interpellations, and opinions on absentee voting expressed in the records of the Constitutional Commission easily and unequivocally show that Congress is empowered to enact a law allowing immigrants to continue to vote in Philippine elections. Much less is there any room for interpretation that an immigrant who makes the facile promise to return and permanently reside in the Philippines not later than three years from voting, may be deemed a permanent resident or domiciled both in this country and in the city or municipality where he will vote.

During the deliberations on the subject provision, Commissioner Blas Ople had this to say:

> 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 . . . (Italics supplied)[14]

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[13] *Id.*, at p. 1855, Vol. II.

[14] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 11.

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In response to an interpellation by Commissioner Ople, Commissioner Joaquin Bernas, *S.J.*, made the following remarks:

> In other words, "residency" 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 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. (Italics supplied)[15]

When Commissioner Christian Monsod and several others proposed amendments, Commissioner Bernas made a clarification as to whom the term "Filipinos" referred to in the draft provision on absentee voting, applies:

> FR. BERNAS: In other words, these Filipinos must at least be domiciled in the Philippines.
>
> MR. MONSOD: Yes.
>
> FR. BERNAS: That is why we do not use the word "ABROAD" because they must be domiciled in the Philippines.[16]

When the term "absentee voting" was introduced into the provision, Commissioner Florenz Regalado made sure that the provision's intended meaning was not lost:

> 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.*

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[15] *Id.*

[16] *Id.*., at 34.

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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. (Italics supplied)[17]

Ultimately, the Commissioners' deliberations and debates left little doubt as to who will be allowed to exercise the option to vote as an absentee voter. We can glean as much from the following exchange:

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 on record.

MR. MONSOD: Madam President, to clarify what we mean by temporarily 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 this system. (Italics supplied)[18]

To my mind, the Constitutional Commission envisioned two different groups of people as the beneficiaries of this provision:

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[17] *Id.*, at 35.

[18] *Id.*: Italics supplied.

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1. Qualified Filipinos *temporarily residing* abroad — citizens who belong to this category reside abroad for extended periods of time without intending to make their host countries their permanent residence. This would include Overseas Filipino Workers (OFW's) with fixed periods of employment, students studying abroad, holders of treaty trader's visas, or seamen away from the Philippines for extended periods. The Department of Foreign Affairs has tabulated the majority of the 5,488,167 Filipinos living abroad as falling under this category.[19]

2. Qualified Filipinos *temporarily* abroad, but not residing therein — this contemplates a situation wherein the temporary absence from the Philippines is not coupled with any temporary residence in a foreign country at all. This would include Filipinos, who just so happen to be absent from the Philippines for brief periods of time, but including election day itself, usually because they have flown to foreign countries for short trips.

It is submitted that a valid and very real distinction exists between either of these two groups of Filipinos, on the one hand, and those Filipinos who are permanent residents or immigrants in their host countries, on the other. The key difference lies in the change of permanent residence or lack thereof, for the framers of our Constitution clearly intended that Filipinos who had tåken up permanent residence in their host countries would be excluded from the benefits of absentee voting. No other interpretation can be supported by the records at hand.

It is clear that the Constitutional Commission did not intend to make absentee voters an exception to the general rule on residence in the exercise of the right of suffrage. We do not agree with the majority's belief that the position of Article V, Section 2 of the Constitution is indicative of an intent to make it appear to be an exception to the residence requirement provided

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[19] Estimated Number of Overseas Filipino Workers (OFWS) and Overseas Filipinos, Memorandum for the Petitioner, Annex "B".

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for in the section immediately preceding it. As earlier stated, Section 2 is not a *proviso* of Section 1. The following discussions are enlightening:

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 election. What is the effect of these mandatory requirements on the matter of the exercise on 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*.

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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.[20]

It is patent from the foregoing excerpts that the Commissioners took pains to ensure that the reasoning behind Article V, Section 2 of the Constitution would not be misunderstood. They never intended to accord a special status nor give special consideration to Filipinos who have become permanent residents of their host countries. These necessarily include immigrants.

Juxtaposing these definitions found in our jurisprudence with the evident intent of the framers of our Constitution, it is plain to see that Section 5 (d) of R.A. 9189, in its current form is

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[20] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 34-35.

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unconstitutional. It seeks to grant the benefits of absentee voting to those for whom it was never intended: Filipinos who are permanent residents, necessarily including immigrants, of countries other than their own.

The majority claims that striking down Section 5 (d) of R.A. 9189 would deprive Filipinos abroad of a very important choice. On the one hand, they can waive their right to vote and continue to enjoy their status as immigrants or permanent residents of their host country. On the other, they can manifest their intent to return to the Philippines in a sworn statement within 3 years from the approval of their registration as absentee voters. This is, of course, a superfluous exercise. What needs to be decided? "These immigrants and permanent resident of their host countries have *already made their choice*. They decided to move on to "greener pastures" rather than to cast their lot here with their countrymen.

The long lines of applicants patiently and meekly waiting for months or years to be granted immigrant visas by foreign embassies is strongly indicative of their determination to permanently reside abroad. Granted, they had very good reasons, even downright pressing or urgent ones, to leave their homes for cold, far-off lands. However, they made their choices willingly and, undoubtedly, with full knowledge that they sacrifice some of their rights and privileges as citizens and residents of our republic.

We know all too well the sacrifices our overseas brothers and sisters have endured to make better lives for themselves and their families, and if they are happy where they are, then we are genuinely happy for them. The sincerity of their concern for the motherland, as well as the nobility of their sentiments, have never been in question. However, if they feel they *have* to manifest such concern for the welfare of their country by casting their votes in our country's elections, then they should do what the Constitution commands. They should come home.

I also take issue with the majority's claim that the threat of disenfranchisement will be a sufficient deterrent against the possibility of any absentee voter reneging on his promise to

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return to the Philippines within 3 years from registration as an absentee voter. However, as I mentioned above, is it not conceivable that these immigrants or permanent residents of their host countries *knew* fully well that they would never again be able to exercise the right of suffrage when they sought permanent residence abroad? If they were willing to sacrifice the exercise of this right then, what is to stop them from doing so in the future? Not much, for if they register as absentee voters and participate in our electoral process, they have nothing to lose. They can decide to hold true to their oath and come home to permanently reside here within three years of their registration as absentee voters. Alternatively, they can vote during the elections and never set foot on Philippine soil ever again. What will they lose by exercising this second option? They risk losing the right to vote in Philippine elections; a right which they forfeited a long time ago.

It is unfortunate that R.A. 9189, in its present form, is saddled with so many infirmities. Sadder still is the fact these problems could have been avoided at the drafting stage. Evidently, these issues were brought to the attention of the Senate by Senator Joker Arroyo, as far back as the period for committee amendments. Although the eminent Senator's remarks were originally in response to the proposal to provide for voter registration by mail, his parting words on the subject for his colleagues in the Senate capture the true intent behind the Constitutional provision on absentee voting. Fortunately, the Record of Senate has chronicled them for posterity, thus:

> Now my concern here is this; that while we would like absentee voting, we do not want the process to be used by some enterprising people to alter the vote. What am I trying to say? All our compatriots abroad, well, they cannot be bought. They will vote honestly. *The question is, just like here, after casting their votes, will the results be honest and reflective of the honest vote made by the absentee voters?* That is really the question.
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> In our over eagerness to follow the Constitutional provision, we find gaps in the process. So I agree with Senator Angara when I

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say that the registration must be here, they must first register, and it is not really that difficult because they come home every now and then. These are Filipinos who come every now and then. But for Filipinos, for instance, who have lived 20 years abroad, is that difficult to figure out?

Must we really solicit and ask them to vote when they have lived there already for 20 years? We have dual citizenship. While we grant them the dual citizenship, fine. But for a person who has been there for 20 years and has not even come back here, that is too much.

It is like that. How can we grant the right to vote to those who do not care to come home and visit? Come home and visit, then they get the right to vote. But if they do not even visit and then they will say they will file their application to vote, having grown up all these years in the United States, how is that? I mean, these are the things that we have to consider because I, for one, cannot go against the Constitutional command because that is what the Constitution says — we must provide for absentee voting.

So, the proposition that I have offered is that *when they come home, it is very easy. They just go up to the election registrar; they register there.* They do not even have to ask so many questions. But at least, they are thumbmarked, their signatures are there, then the details are there.

These are the things. Because, Mr. President, *if some of our overseas brothers commit election crimes abroad, they cannot be prosecuted in the Philippines.* Let us face that. Why? Because all they have to do is not come home. Then we will have another Mark Jimenez, perhaps, I do not know. But when they come here and register, there is a certain attachment to us, and it is not too difficult.

Look at our overseas workers, for instance, in the Middle East. Everyday, we go to the airport and we see their groups of overseas workers coming home.

So, all we are telling them is: "All right, you go to your respective towns. When you go there, just spend 15 minutes."

Mr. President, if these overseas workers or compatriots of ours do not want to go there and spend 15 minutes, how can we give them the right to vote? I mean, there must also be some external manifestation on the part of our overseas friends that they do want to vote. And they do so because they take time, they take pains to

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register. If they do not want to take time and pains to register, they just say: "Oh, no. We give you money there, so you better give us the ballots." I mean, it is not fair.

What we want is to fashion a bill that would also show that the overseas voter has some attachment to the Philippines. (Italics supplied).[21]

Jurisprudence has developed the concepts of "residence" and "domicile" in situations where the two are in different places but both are within the Philippines.[22] A young man leaves his hometown to study in the city. He sets up a residence for education purposes. When he gets married and raises a family, he may build his residence in another place. His work may take him to different places and he establishes a new residence each time he and his family move. He may have cast his vote in any of the various places where he has resided. However, in later life he decides to run for public office in his hometown where he has not resided for forty (40) years. His hometown is still deemed to be his domicile or permanent residence. The key element in determining one's domicile or permanent residence is the *declared and provable* or easily proved intent to make it one's fixed and permanent place of abode or home.[23]

For immigrants, the manifest intent is the will, animus, volition, plan, and intendment to establish permanent residence in another country. The process a man goes through before he is given immigrant status is so arduous and formidable that there can be no doubt as to his animus. The fact that he is leaving the Philippines, with all the emotional connotations of departure, to

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[21] S. No. 2104 on Second Reading, October 9, 2002, Records of the Senate, pp. 90-92.

[22] *Faypon v. Quirino*, 96 Phil. 294 (1954); *Nuval v. Guray*, 52 Phil. 645 (1928); *Koh v. Court of Appeals*, G.R. No. L-40428, 17 December 1975, 70 SCRA 305; *Caraballo v. Republic*, 114 Phil. 991 (1962); *Fule v. Court of Appeals*, G.R. Nos. L-40502 & 42670, 29 November 1976, 74 SCRA 199.

[23] *Id.*

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settle in another country proves intent. Far from returning to the Philippines, his more likely and provable intent is a desire to eventually get citizenship papers in his adopted country.

Conversely, the cases where Filipinos may have resided in foreign countries but whose domicile was still somewhere in the Philippines clearly show not only the intent to return home, but the likelihood or inevitably of having to come home and not stay permanently in any adopted country.

The decisions in *Philip G. Romualdez v. Regional Trial Court, et al.*[24] and *Imelda Romualdez-Marcos v. Commission on Elections, et al.*[25] illustrate the distinction between temporary residence in a foreign country and domicile in one's homeland.

The petitioners in the *Romualdez* cases never chose to be residents in the United States. They were forced to flee because of the political upheaval known as EDSA 1. Philip Romualdez tried to return around one year after his forced flight abroad. He had already booked a flight but it was aborted because he was not welcome at that time in the Philippines. On September 25, 1991, he received a letter from the U.S. Immigration and Naturalization Service that he must leave that country on or before August 23, 1992 or be deported. The concepts of residence, domicile and *animus manendi* coupled with *animus non revertendi* are discussed in these cases, but there can be no mistaking the facts of the cases as entirely different from those of immigrants.

Mrs. Marcos and her family were also forced to flee. Throughout their residence abroad, they strove to return to the Philippines. They filed a case against the Secretary of Foreign Affairs, the Executive Secretary and other top officials to compel the issuance of new passports and permission to come home.[26]

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[24] *Supra*, note 8.

[25] *Supra*, note 7.

[26] *Marcos, et al. v. Hon. Raul Manglapus, et al.*, G.R. No. 88211, 15 September 1989, 177 SCRA 668.

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The rulings on domicile and residence in the above and similar cases cannot be used to justify the validity of R.A. 9189. They do not refer to immigrants.

I also disagree with the majority view that perhaps it is time to reconsider the doctrine in *Caasi v. Court of Appeals*[27] and reverse it. It is sound doctrine and should be strengthened instead of being overturned.

I beg to differ from the conclusion in the majority opinion which states that an absentee remains attached to his residence in the Philippines because "residence" is synonymous with "domicile."

"Absentee" has to be qualified. It refers only to those people residing abroad whose intent to return home and forsake the foreign country is clear. It cannot refer to immigrants. A mere promise to return home within three years from voting is no proof of intent to return to a permanent residence. The sanction for its enforcement is so feeble that the promise will be an empty one. As earlier stated, an immigrant gives up many things, including the right or opportunity of voting in the Philippines, when he moves with his family abroad. A sanction of future disenfranchisement would not bother him in the least bit. In the meantime, the immigrant vote in closely contested cases may have elected the President, a Senator or a Congressman. Unqualified voters will have swung the elections. In the same way that a counterfeit coin drives away or results in the hoarding of genuine or good coins,[28] the votes of non-qualified persons will not only weaken or nullify the value of the good votes but may make an election itself sham and meaningless.

The majority opinion cites the case of *Romualdez-Marcos v. COMELEC*[29] as an example of an absentee abroad whose

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[27] *Supra*, note 10.

[28] Greshams Law, *Webster's Seventh New Collegiate Dictionary*, p. 367.

[29] *Supra*.

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permanent residence is her hometown in Leyte. Mrs. Marcos never chose to live abroad. She was compelled by over-powering circumstances to flee to Hawaii. She and her family showed clearly the intent to return home. Her case would be the weakest precedent for allowing immigrants to vote in the Philippines. She was not an immigrant.

With all due respect, the argument voiced in Congress that the affidavit-promise to return home within three years gives the immigrant that choice without Congress making the decision for him is deceptive and unsound. As earlier stated, the immigrant *has already made his choice to change domicile* when he migrated abroad. If he later returns to the Philippines, the choice is an entirely new one. It assumes force and effect only when the immigrant actually comes back home, tears up his green card and sets up domicile anew in the Philippines.

However, I agree with the majority opinion that certain provisions of R.A. 9189 are unconstitutional, to wit:

1. Section 17.1 of R.A. 9189, insofar as it provides that voting by mail shall be subject to the review and approval of the Joint Congressional Oversight Committee.

2. Section 18.5 of R.A. 9189, insofar as it empowers COMELEC to order the proclamation of the winning candidates for President and Vice-President where delays in the canvass of overseas votes will not affect the results of the election, considering that only Congress can proclaim the winning President and Vice-President.[30]

3. Sections 19 and 25 of R.A. 9189, insofar as they provide that the Implementing Rules and Regulations to be issued by the COMELEC are subject to the review, revision, amendment and approval of the Joint Congressional Oversight Committee.

I have discussed at length the invalidity of the provision which converts a disqualified immigrant into a qualified overseas voter

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[30] Constitution, Art. VII, Sec. 4 (4).

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by the simple expedient of executing an affidavit promising to return to the Philippines within three years from voting. It is beyond comprehension how a mere promise of a future act, which is more likely to be violated than obeyed, transforms a disqualification into a qualification.

Ascertaining, after three years, who complied with the promise and who violated it presents an administrative nightmare. I submit that the valid system is to allow overseas voting only for those Filipinos who have to return home or most probably return home because of the nature of their work abroad.

In the debates over specific provisions of R.A. 9189, we tend to overlook that the entire law has been hurriedly drafted in a form which violates the principal mandate of the Constitution on suffrage. The sovereign people have ordered Congress to provide a system which secures the sanctity and secrecy of the ballot.[31] Instead of securing the sanctity and secrecy of the ballot, R.A. 9189 does the opposite.

The unconstitutional sections of the law have been discussed at length. The majority opinion calls for a "holistic" view of the law.

Careful observers of R.A. 9189 indicate that such a "holistic" view strengthens the invalid and highly unrealistic aspects of the entire statute.[32] It does not make sense and it is highly improbable that permanent residents abroad will visit our embassies to execute affidavits promising to return here simply to exercise the right to vote *in absentia* in Philippine elections.

How will our embassies and consulates in the one hundred seventy eight (178) countries, island nations, and city states in

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[31] Constitution, Art. V, Sec. 2.

[32] Belinda A. Aquino, Professor of Political Science and Asian Studies at the University of Hawaii and Director of its Center for Philippine Studies has published her observations in the *Philippine Inquirer*, June 8, 2003 issue, page "A-9".

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the DFA list comply with their election duties within the impossibly short period provided by the law.[33]

How will the identities of millions of overseas Filipinos be ascertained, the temporary separated from permanent residents, their passports be examined, and their affidavits of promise to return be verified and transmitted to the thousands of precincts where the sanctions on violated promises have to be enforced. How can embassies and consulates publicize the requirements for registration at least six months before October 31, 2003 in the one hundred seventy eight (178) countries, island nations, and city states where overseas Filipinos are found?[34] How can they conduct exclusion and inclusion proceedings?

Despite all-out efforts of COMELEC, it has not solved the serious problem of *dagdag bawas* within the Philippines. Under the loose provisions of R.A. 9189, *dagdag bawas* is encouraged without fear of discovery, correction, and punishment of guilty parties residing abroad.

A new and entirely efficient system for ferreting out and punishing election offenses must go with the law. Only a few obvious offenses have to be cited. Among them are padded registration lists, accreditation of unqualified voters, vote-buying and vote-selling, bribery, wagering on the results of elections, double registration and multiple voting by one person, appreciation of torn, defaced, or invalid ballots, solicitation of votes and unlawful electioneering, rigging or tampering with the canvass and transmission of results, and a long list of other violations of election laws.

As observed by Professor Belinda A. Aquino,[35] "to rush this experiment simply to keep up with the May 2003 elections, with some political calculations of its advantages to certain

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[33] Memorandum for Petitioner, Annex "B".

[34] *Id.*

[35] *Supra*, note 32.

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candidates would be creating a disservice to the Filipino overseas communities which the Voting Act has empowered to become full participants in the electoral process."

In closing, I invite attention to the exchange between Senator Joker Arroyo and Senator Edgardo Angara on the Senate Floor, where Senator Arroyo asked: Who could possibly take advantage of the expeditious handling of Senate Bill No. 2104, what we now know as R.A. 9189? Evidently, the two senators agreed that it was the administration that stood to gain the most.[36] It is hoped that this perceived benefit was not the reason behind the hasty enactment of the law in its current, constitutionally infirm state. However, one cannot help but wonder if the concerns and aspirations of millions of our brothers and sisters abroad were truly served by the passage of the Overseas Absentee Voting Act of 2003. The entirety of R.A. 9189 has to be re-examined. For purposes of this petition, however, I limit my opinion to the five sections of the law outlined above.

WHEREFORE, I view of the foregoing, I *DISSENT* from the majority opinion insofar as it upholds the constitutionality of Section 5 (d) of Republic Act No. 9189, and I vote that said Section 5(d) be declared *UNCONSTITUTIONAL*. However, I *CONCUR* with the majority opinion insofar as it declares *UNCONSTITUTIONAL* the portion of Section 17.1 which empowers the Joint Congressional Oversight Committee to review and approve voting by mail; and the portions of Sections 19 and 25 which empower the Joint Congressional Oversight Committee to review, revise, amend and approve the Implementing Rules and Regulations to be promulgated by the Commission on Elections. I also *CONCUR* with the majority opinion that Section 18.5, insofar as it empowers the Commission on Elections to proclaim the winning candidates for President and Vice-President, is *UNCONSTITUTIONAL*.

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[36] *Supra*, note 21.

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CONCURRING AND DISSENTING OPINION

SANDOVAL-GUTIERREZ, *J.*:

No person has more than one domicile at a time.[1] A Filipino immigrant, by his permanent residency in the host country, loses the Philippines as his domicile.[2] He cannot reacquire it by the mere act of executing an affidavit expressing his intention to return to the Philippines at some future time. *Residence for voting is not wholly a question of intention, but it is a question of fact and intention.*[3] Unless his intention is fortified by the *concurrent act* of reestablishing the Philippines as his domicile, he cannot be considered a qualified voter under the Philippine Constitution.

With the foregoing premise in mind, I find myself unable to agree with the majority's ruling that Section 5(d) of Republic Act No. 9189 (The Overseas Absentee Voting Act of 2003) is constitutional. For easy reference, let me quote the assailed provision, thus:

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

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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

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[1] 25 Am Jur 2d § 8 citing *In re Marriage of Tucker* (4th Dist) 226 Cal App 3d 1249, 277 Cal Rptr 403, 91 CDOS 572, 91 Daily Journal DAR 843 review den (Cal) 1991 Cal LEXIS 1415; *Wilson vs. Butler* (La App 1st Cir) 513 So 2d 304; *George H. & . & Irene L. Walker Home for Children vs. Town of Franklin*, 416 Mass 291, 621 NE2d 376.

[2] *Caasi vs. Court of Appeals*, G.R. No. 88831, November 8, 1990, 191 SCRA 229.

[3] *Pope vs. Howle*, 149 So 222, 227 Ala. 154; *Bullington vs. Grabow*, 88 Colo. 561; *Barret vs. Parks*, 180 S.W. 2d 665, 352 Mo. 974.

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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."

R.A. No. 9189 has been enacted pursuant to Section 2, Article V of the 1987 Constitution requiring Congress to provide "a system for absentee voting by qualified Filipinos abroad." In enacting the law, Congress granted the right of suffrage to Filipino immigrants or permanent residents of foreign countries on the condition that they shall execute an affidavit declaring their intention to resume permanent residency in the Philippines. The rationale, according to Senator Edgardo Angara, is that Congress wants the law to be "expansive" and "all-inclusive."

The validity of the above-quoted provision depends on whether it conforms faithfully to the mandate of the Constitution. Does *it carry out the true intent of the Constitution*? In various jurisdictions where absentee laws exist, statutes are construed in the light of constitutional provisions affecting elections and registrations.[4] In said jurisdictions, the constitutionality of absentee voting laws has been upheld or denied based on constitutional requirements relating to the residence of voters, the necessity of their personal appearance at the polls, the mechanics of voting, including the place and method of casting the ballot and the counting and canvassing and other treatment of the ballots by the election officials.[5]

There is no dispute that the 1987 Constitution denies to Filipino immigrants the right of suffrage. The Framers had no choice, they had to maintain consistency among the provisions of the Constitution. Section 1, Article V prescribes *residency* in the Philippines as one of the qualifications for the exercise of the right of suffrage. Initially, this was perceived as an obstacle to the incorporation of the constitutional provision

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[4] *State ex rel v. Whitley vs. Rinehart*, 192 So. 192 819, 140 Fla. 645; *Maddox vs. Board of State Canvasser*, 149 P. 2d 112, 116 Mont. 217.

[5] 26 Am Jur 2d § 356.

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requiring Congress to provide for a system of absentee voting by "qualified Filipinos abroad."[6] However, the Framers resorted to the legal connotation of the term "residence." They emphasized that "residence" is to be understood not in its common acceptance as referring to "dwelling" or "habitation," but rather to "domicile" or "legal residence," that is, *the "place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain."*[7] Thus, as long as the Filipino abroad maintains his domicile in the Philippines, he is considered a qualified voter under the Constitution. *Significantly, at the early stage of the deliberation, the Framers made it clear that the term "qualified Filipinos abroad" refers only to those whose presence in the foreign country is only "temporary" and whose domicile is still the Philippines — thus, definitely excluding immigrants or permanent residents of a foreign country.* Let me quote the Records of the Constitutional Commission, thus:

"MR. RODRIGO. Before we vote, Madame President, I just want to ask if the word 'Filipinos' is a general term. Does this refer to Filipinos who are qualified voters?

THE PRESIDENT. Yes, of course.

FR. BERNAS. Yes, that is the understanding.

MR. RODRIGO. Should we not spell it out in the provision or is it already understood?

FR. BERNAS. It is already understood?

THE PRESIDENT. Is there any objection to the proposed amendment on lines 15 and 16?

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[6] Section 2, Article V of the 1987 Constitution reads:

"Sec. 2. The Congress shall provide a system for securing the secrecy and sanctity of the ballots as well as a system for absentee voting by qualified Filipinos abroad."

[7] *Coquilla vs. Commission on Elections*, G.R. No. 151914, July 31, 2002.

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FR. BERNAS. In other words, these Filipinos must at least be domiciled in the Philippines.

MR. MONSOD. Yes.

FR. BERNAS. That is why we do not use the word 'ABROAD' because they must be domiciled in the Philippines.

MR. MONSOD. That is why we are not repeating many of the basic things such as qualifications, disqualifications and domicile requirements.

MR. SUAREZ. Madame President.

THE PRESIDENT. Commissioner Suarez is recognized.

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 election. 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 here 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 satisifies the requirement of residence in Manila, so he is able to vote in Manila.

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MR. TINGSON. Madame 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. Madame 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.*

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MR. SUAREZ. Madame President, may I be recognized for clarification.

THE PRESIDENT. Commissioner Suarez is recognized.

MR. SUAREZ. For clarification purposes, we just want to state for the record that in the case of qualified Filipino citizens residng abroad and exercising their right of suffrage, they can cast their votes for the candidiates 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.

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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. Madame 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."[8]

The intention of the Framers to limit the phrase "qualified Filipinos abroad" to Filipinos *temporarily* residing abroad is clear and unmistakable. Therefore, a law, such as R.A. No. 9189, which expands the meaning as to include those otherwise not covered (such as Filipino immigrants or permanent residents of foreign countries), through the mere imposition of certain requirements, "risks a declaration of unconstitutionality."

My reservation to join the majority springs from my negative stand to the query — *Is the mere execution of an affidavit by a Filipino immigrant declaring that he shall resume actual physical permanent residence in the Philippines not later than three (3) years from approval of his registration under R.A. No. 9189* ***sufficient*** *to consider him a resident or domiciliary of the Philippines?*

It is a fundamental legal rule that all persons must always have a domicile somewhere.[9] Equally fundamental is the principle

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[8] RECORDS OF THE CONSTITUTIONAL COMMISSION, VOL. 11, July 19, 1986 at 34-35.

[9] 25 Am Jur 2d § 8.

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that no person has more than one domicile at a time.[10] A person is considered to have abandoned his domicile if he chooses a new domicile, actually resides in the place chosen, and intends that it be the principal and permanent residence.[11] In *Caasi vs. Court of Appeals*,[12] we ruled that the immigration of a Filipino to United States by virtue of a "green card," which entitles him to reside permanently in that country, constitutes abandonement of domicile in the Philippines, thus:

"Despite his vigorous disclaimer, Miguel's immigration to the United States in 1984 constituted an abandonment of his domicile and residence in the Philippines. For he did not go to the United States merely to visit his children or his doctor there; *he entered in the United States with the intention to live there permanently as evidenced by his application for an immigrant's (not a visitor's or tourist's) visa. Based on that application of his, he was issued by the U.S. Government the requisite green card or authority to reside there permanently.*

"*Immigration is the removing into one place from another; the act of immigrating; the entering into a country with the intention of residing in it.*

"*An immigrant is a person who moves into a country for the purpose of permanent residence. x x x.*"

There being an abandonment of the Philippine domicile, the only way for an immigrant to satisfy the "residency" requirement to enable him to exercise his right of suffrage is to *reacquire or reestablish* his domicile in this country. It is an established rule that "*where a voter abandons his residence in a state and acquires one in another state, he cannot again vote in the state of his former residence until he has qualified by a new period of residence.*"[13] In short, for an

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[10] *Id.*

[11] *Perito vs. Perito*, (Alaska) 756 P2d 895.

[12] *Supra.*

[13] *Nuval vs. Guray*, G.R. No. 30241, December 29, 1928, 52 Phil. 645.

"Since Norberto Guray abandoned his first residence in the municipality of Luna and acquired another in Balaoan, in order to

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immigrant to reestablish his domicile in the Philippines, he must again reside in this country with the intention to remain here and abandon his old domicile in the foreign land. *The waiver of his immigrant status should be indubitable as his application for it.*

Mere declaration that he intends to resume actual physical permanent residence in the Philipines does not have the effect of conferring upon the immigrant the necessary qualification of "residency" here. To reiterate, residence for voting is not wholly a question of intention, it is a question of fact and intention.[14] *A voter's statements, declarations, or testimony with respect to his intention is not controlling, but must be taken in connection with his acts and conduct.*[15] Hence, the right to vote in a certain place or precinct requires the occurrence of two things, the act of residing coupled with the intention to do so.[16] In order to constitute a residence for voting purposes, there must be the intention to reside there for voting purposes, and that intention must be accompanied by acts of living, dwelling, lodging, or residing reasonably sufficient to establish that it is the real and actual residence of the voter. *To rule that a sworn declaration of intention is sufficient*

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vote and be a candidate in the municipality of Luna, he needed to reacquire residence in the latter municipality for the length of time prescribed by the law, and for such purpose, he needed not only the intention to do so, but his personal presence in said municipality."

An intention to return to a former domicile developed after a new domicile has been acquired does not, in itself, affect the acquisition of a new domicile, since *the same principles* outlined in the preceding sections *apply to the reacquisition of the old domicile after abandonment or removal.* (25 Am Jur § 19)

[14] *Supra.*

[15] 29 C.J.S. § 19, citing *People v. ex rel. Moran vs. Teolis*, 169 N.E. 2d 232, 20 Ill. 2d 95, *Coffey vs. Board of Election Com'rs of East St. Louis*, 31 N.E. 2d 588, 375 Ill. 385; *Park vs. Hood*, 27 N.E. 2d 838, 374 Ill. 36; *Brownlee vs. Duguid*, 178 N.E. 174, 93 Ind. App. 266.

[16] *Brownlee vs. Duguid, id.*

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to acquire a voting residence is to establish a bad precedent considering that voters can choose the place where they want to vote simply by swearing that they intend to permanently reside therein.

Perhaps the majority would assert that such intention is accompanied by the immigrant's act of resuming actual physical permanent residence in the Philippines not later than three (3) years from the approval of his registration under R.A. No. 9189. Such *future* act cannot change the immigrant's present domicile. Not only because it is yet to happen, hence, doubtful and uncertain, but also because it is a setttled principle that a voter must posses all the qualifications to vote at least on the date of the election. *Only persons who possess or will possess on the day of the election the constitutional and statutory qualifications of voters are entitled to apply to the registrars for the registration of their names in the voting lists.*[17] To say otherwise is to authorize a person to vote in an election subject to future acquisition of the necessary qualifications for the exercise of the right of suffrage. To be granted such right before one can even qualify as a voter contravenes one of the most basic principles in the election law.

The majority rules that the affidavit required in Section 5 (d) "serves as an explicit expression that the immigrant had not in fact abandoned his domicile of origin."[18] Again, I cannot subscribe to this view. An immigrant's plain declaration of his intention cannot prevail over the actual facts surrounding his residency. Conduct has greater evidential value than a declaration. The fact that a person obtains an immigrant's visa, and not a visitor's or tourist's visa, plainly shows that his entrance in the foreign country is for a permanent purpose.

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[17] *Mitchell vs. Wright,* D.C. Ala., 69 F. Supp. 698; *Cornelius vs. Pruet*, 85 So. 430, 204 Ala. 189; *In re Ray*, 56 A. 2d 761, 26 N.J. Misc. 56; *Appeal of Stokes*, 16 Pa. Dist. & Co. 486; *State ex rel. Willhide vs. King*, 30 S.E. 2d 234, 126 W. Va. 785.

[18] Decision at 26.

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Indeed, declarations are always subject to the infirmity of any self-serving declaration and maybe contradicted by inconsistent acts.[19] When in conflict with the facts, a declared intention to acquire a domicile (or to maintain the domicile of origin) has little weight.[20]

Besides, to admit the immigrant's representation that he has not abandoned his Philippine domicile despite his immigrant status is to tolerate what we prescribed in *Caasi vs. Court of Appeals*,[21] thus:

"In other words, he would have this Court believe that he applied for immigration to the U.S. under false pretenses; that all this time he only had one foot in the United States but kept his other foot in the Philippines. Even if that were true, this Court will not allow itself to be a party to his duplicity by permitting him to benefit from it and giving him the best of both worlds so to speak."

Honoring our countrymen's sworn declarations to resume permanent residency in the Philippines, notwitstanding their immigrant status and the host country's continuous recognition of them as such, does not speak well of Filipino values. In effect, it encourages duplicitous or deceptive conduct among our countrymen. We should not allow such acts to be done behind the host country's back.

Another ground why I cannot join the majority is the great probability that the assailed provision may only be an avenue for election fraud. Reality wise, our country is yet to achieve a truly clean and honest election. To grant the right of suffrage to the vast number of immigrants in foreign countries where we cannot enforce our laws with the same efficacy as within

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[19] *District of Columbia vs. Murphy*, 314 US 441, 86 L Ed 329, 62 S Ct 303.

[20] *Texas vs. Florida*, 306 US 398, 83 L Ed 817, 59 S Ct 563, 121 ALR 1179; *Penn Mut. Life Ins. Co. vs. Fields* (DC Cal) 81 F Supp 54; *Ashton vs. Ashton*, 197 Okla 241, 169 P 2d 565; *Stalmaker vs. State*, 186 W Va 233, 412 SE2d 231.

[21] *Supra.*

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our territory, is to endanger our citizens' constitutional right to an undefiled suffrage.

Paramount in the preservation of the principles of democratic government is the observance of precautionary requirements designed to insure the sanctity of the ballot. Consequently, it is imperative that our elections are not tainted with fraud. This cannot be achieved unless we impose stricter terms on the grant of the right of suffrage to absentee citizens. Significantly, the only sanction imposed by Section 5(d) upon an immigrant who fails to perform his promise to resume permanent residency in the Philippines within the prescribed period is that his name will be stricken from the National Registry of Absentee Voters and he will be permanently disqualified to vote *in absentia. What a punishment for someone who made a mockery of the election process! This punitive measure is virtually meaningless. It cannot undo the result of an election nor can it discipline or daunt immigrant voters.*

While the policy behind absentee voting is unquestionably good, statutes governing it should comply with the constitutional requirement that they should secure the purity of elections and the guarding against abuses of the elective franchise. Indeed, the vital considerations of the absentee voting legislations are the preservation of the enfranchisement of qualified voters and the secrecy of the ballot, together with the prevention of fraud and the achievement of a reasonably prompt determination of the election results. Unless such considerations are fully taken into account by the legislative body, the absentee voting statute will definitely be vulnerable to being declared unconstitutional.

In fine, let it be stressed that where the Constitution fixes the qualifications of voters, these qualifications cannot be increased, diminished, or changed by legislative enactment, unless the power to do so is expressly granted, or necessarily implied.[22] The inclusion of the residency requirement in the Constitution is not without reason. It constitutes an invaluable protection against fraud and further affords some surety that the elector

[22] 29 C.J.S. § 13.

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has in fact become a member of the community and that, as such, he has a common interest in all matters pertaining to its government, and is therefore more likely to exercise his right intelligently.[23] The specification in the Constitution is an implied prohibition against interference.[24] It is not competent for Congress to diminish or alter such qualification.

Section 5(d) of R.A. No. 9189 is unconstitutional for it diminishes the "residency requirement" of the Constitution *by including within the phrase "qualified Filipinos abroad" immigrants and permanent residents of foreign countries.* It defies the clear intent of the Constitution to limit the application of the absentee voting law to Filipinos who are "temporarily abroad." Thus, as statutes which purport to modify constitutionally fixed qualifications are void,[25] so must Section 5(d) of R.A. No. 9189 suffer the same fate.

WHEREFORE, I vote to grant the petition. I *dissent* insofar as the majority declared Section 5(d) of R.A. No. 9189 CONSTITUTIONAL. However, I *concur* with its pronouncement that the portions of Sections 17.1, 18.5, 19 and 25 of R.A. No. 9189 are UNCONSTITUTIONAL.

CONCURRING AND DISSENTING OPINION

CALLEJO, SR., *J.:*

I concur with the majority opinion and the concurring and dissenting opinion of Mr. Justice Reynato S. Puno that Sections 18.5,19 and 25 of Republic Act No. 9189 are unconstitutional; hence, null and void. However, I dissent with the majority opnion that Section 5 (d) of Republic Act No. 9189 is constitutional.

The present petition assails the constitutionality of certain provisions of Republic Act No. 9189 (otherwise known as AN

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[23] *New York Election Law*, Abrahams, 1950 at 27.

[24] De Leon, De Leon, Jr. *The Law on Public Officers and Election Law*, 2000 Ed., at 488.

[25] *State ex rel. Palagi vs. Regan*, 126 P. 2d 818, 113 Mont. 343.

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ACT PROVIDING FOR A SYSTEM OF OVERSEAS ABSENTEE VOTING BY QUALIFIED CITIZENS OF THE PHILIPPINES ABROAD, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES), which was enacted to implement the first paragraph of Section 2, Article V of our Constitution, to wit:

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.

. . . . . .

Foremost among the assailed provisions of the aforesaid act is Section 5(d):

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

. . . . . .

d) An immigrant or permanent resident who is recognized as such in the host country, unless he/she executes, upon registration, and 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 retun shall be cause for the removal of the name of the immigrant or permanent resident form the National Registry of Absentee Voters and his/her permanent disqualification to vote *in absentia.*

. . . . . .

The petitioner posits the view that the provision is in direct contravention of Section 1, Article V of our Constitution, which reads:

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 elction. No literacy, property,

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or other substantive requirement shall be imposed on the exercise of suffrage.

I agree with the petitioner.

Section 1, Article V which prescribes the qualifications of voters as to citizenship, age and residence is clear and unambiguous. On the other hand, Section 2 of the same article authorizes Congress to provide a system to facilitate absentee voting by qualified Filipinos abroad. I do not subscribe to the view that Section 2 was intended by the framers to be an exception to the residence qualification requirement prescribed in the section immediately preceding it. Basic is the rule in statutory construction that the Constitution should be construed in such a manner as to give effect to each and every part of the entire instrument. Courts should lean in favor of a construction that will harmonize every provision of the Constitution rather than one which raises conflict between its provisions, or render inutile any portion thereof.[1] Section 2 can and must be construed to contemplate within its terms the enfranchisement only of Filipinos who possess all the prerequisite qualifications specified under Section 1, but who are abroad and cannot exercise their right to vote in the Philippines on the day of the election. Even from a cursory examination of the proceedings of the Constitutional Commission which drafted the 1987 Constitution, the foregoing intendment is made crystal clear. Thus:

MR. RODRIGO. Before we vote, Madam President, I just want to ask if the word "Filipinos" is a general term. *Does this refer to Filipinos who are qualified voters?*

THE PRESIDENT. *Yes, of course.*

FR. BERNAS. *Yes, that is the understanding.*

MR. RODRIGO. Should we not spell it out in the provision or is it already understood?

FR. BERNAS. It is already understood.

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[1] *Lambeen v. Bell,* 18 Colo. 346.

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THE PRESIDENT. Is there any objection to the proposed amendments on lines 15 and 16?

FR. BERNAS. *In other words, these Filipinos must at least be domiciled in the Philippines.*

MR. MONSOD. *Yes.*

FR. BERNAS. That is why we do not use the word "ABROAD" because they must be domiciled in the Philippines.

MR. MONSOD. *That is why we are not repeating many of the basic things such as qualifications, disqualifications and domicile requirements.*

MR. SUAREZ. Madam President.

THE PRESIDENT. Commissioner Suarez is recognized.

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 election. 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

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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 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.

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MR. MONSOD. That is right, Madam President.[2]

. . . . . .

It is irrefragable from the foregoing deliberations of the members of the Constitutional Commission that Section 2, Article V encompasses within its terms Filipino citizens who, *during election time*, ***are temporarily abroad but who possess all the mandatory qualifications for enfranchisement outlined under Section 1, Article V of the 1987 Constitution***. It is also clear that Section 2, Article V was enacted merely to allow Congress to devise a system by which this class of Filipinos abroad may be allowed to exercise their political right to vote in their homeland on the day of the election.

From a reading of Section 1, Article V of the 1987 Constitution, it is very explicit that the requirements therein prescribed is enjoined to be possessed by a voter *immediately preceding the election*. In other words, the right of suffrage can not be granted to anyone who, *on the date of the election*, does not possess any of the qualifications as provided therein.

In light of the issue raised in the present controversy, it becomes necessary to look into the denotation of "residence" and/or "domicile" as a voting qualification.

For many legal purposes, there is a clear distinction between "residence" and "domicile." "Residence" means living in a particular locality, and simply requires bodily presence as an inhabitant in a given place, while "domicile" means living in that locality with intent to make it a fixed and permanent home.[3] "Residence" denotes that a person dwells in a given place but "domicile" is a person's legal home, or a place where the law presumes a person has the intention of permanently residing although he may be absent from it.[4] "Domicile" then is a matter

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[2] Record of the Constitutional Commission, Volume II, 19 July 1986, pp. 34-35.

[3] 37 Words and Phrases 339 citing *Foote v. Foote*, 77 N.Y.S.2d 60, 65, 192 Misc. 270.

[4] *Ibid.*, citing *Carlson v. District Court or City and Country of Denver*, 180 P.2d 525, 529, 116 Colo. 330.

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of intention while "residence" is a physical fact.[5] Hence, a person may have two places of "residence" but only one "domicile."[6]

"Residence," however, for the purpose of voting, is to be understood not in its common acceptation as referring to "dwelling" or "habitation," but rather to "domicile" or legal residence, that is "the place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain (*animus manendi*)."[7] In determining a person's "residence" for voting purposes, the following rules are well-established:

(a) A person must have a residence or domicile somewhere;
(b) Where once established, it remains until a new one is acquired; and,
(c) A person can have but one domicile at a time.[8]

Clearly, for voting purposes, one cannot have a residence or be domiciled in two places at the same time,[9] for the right to vote in a certain place or precinct requires the concurrence of two things; the act of residing coupled with the intention to do so.[10] ***Accordingly, in order to work a change of residence for voting, there must be an actual removal, an actual change of domicile, corresponding with a bona fide intention of abandoning the former place of residence and establishing a new one.***[11] Hence, an absence for months or even years,

[5] *Ibid.*, citing *Robinson v. Robinson,* 67 A.2d 273, 275, 362 Pa. 128.

[6] *Ibid.*, citing *Foote v. Foote,* 77 N.Y.S.2d 60, 65, 192 Misc. 270.

[7] *Coquilla v. COMELEC,* G.R. No. 151914, July 31, 2002.

[8] 29 C.J.S. § 19; *Alcantara v. The Secretary of the Interior,* 61 Phil. 459, 465 (1935).

[9] *Anderson v. Pifer,* 315 Ill. 164; 146 N.E. 171.

[10] 29 C.J.S. 19 citing Ind.— *Brownlee v. Duguid,* 178 N.E. 174, 93 Ind. App. 266.

[11] 25 Am. Jur. 2d § 69 citing *People v. Turpin,* 49 Colo. 234, 112 P 539; *State ex rel. Parker v. Corcoran,* 155 Kan 714, 128 P2d 999, 142 ALR 423.

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if all the while the party intended it as a mere temporary arrangement, to be followed by a resumption of his former residence, will not be an abandonment of such residence or deprive him of his right to vote thereat, the test being the presence or absence of the *animus revertendi*.[12] ***Such is the case of overseas Filipino workers who, on account of the nature or exigencies of their work, fail to be physically present for some time in the Philippines but are not deemed to have abandoned their Philippine domicile by virtue of their intent to resume residency in the Philippines upon the termination of their employment contracts.***

However, the same cannot be said of Filipinos who, while maintaining their Filipino citizenship, have in the meantime acquired the status of immigrants or permanent residents of their respective host countries. An immigrant, as defined in law, is a person who removes into a country for the purpose of permanent residence.[13] Therefore, a Filipino "immigrant" or "permanent resident," as the very designation of his status clearly implies, is a Filipino who has abandoned his Philippine residence or domicile, with the intention of residing permanently in his host country. Thenceforward, he acquires a new residence in his host country and is deemed to have abandoned his Philippine domicile. ***It has been held that where a voter abandons his residence in a state and acquires one in another state, although he afterward changes his intention and returns, he cannot again vote in the state of his former residence or domicile until he has regained his residence by remaining in the jurisdiction for the statutory period.***[14]

With due respect to the majority, I do not subscribe to the view that the execution of the affidavit required under Section 5(d) is eloquent proof of the fact that the Filipino immigrant

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[12] 29 C.J.S. 21 citing *Mitchell v. Kinney*, 5 So.2d 788, 242 Ala. 196.

[13] 3 C.J.S. §75; *Caasi v. Court of Appeals*, 191 SCRA 229, 234 (1990).

[14] 29 C.J.S. §21, citing *Woods v. Blair*, 300 S.W. 597, 222 Ky. 201; *Siler v. Brown*, 284 S.W. 997, 215 Ky. 199.

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has not abandoned his Philippine domicile, as evinced by his intention to go back and resume residency in the Philippines, which thus entitles him to exercise the right of suffrage pursuant to the constitutional intent expressed in Section 2, in relation to Section 1, Article V of our Constitution. The majority view, I humbly submit, is *non-sequitur* for it is well-entrenched that while intention is an important factor to be considered in determining whether or not a residence has been acquired, intention alone is insufficient to establish a residence for voting purposes.[15] ***Hence, a mere intention to remove, not consummated, can neither forfeit the party's old domicile nor enable him to acquire a new one.***[16] ***And the fact that a person intends to remove at a future time does not of itself defeat his residence before he actually does remove.***[17]

I am in complete accord with the petitioner's position that Section 5(d) of Rep. Act No. 9189 virtually enfranchises a voter who, on the date of the election, does not possess the *residency requirement* as ordained under Section 1, Article V of the 1987 Constitution. Indeed, the undertaking required of an immigrant/permanent resident under the aforesaid section, "that he/she shall resume actual physical permanent residence in the Philippines not later than three (3) years from the approval of his/her registration," is *ipso facto* an admission that he/she is not an actual resident of the Philippines and does not, therefore, possess the residency requirement on the date of the election but merely promises to possess the same within three (3) years from registration. Consequently, Section 5 (d), which in effect attempts to permit non-residents to exercise the right of suffrage, in direct contravention of the constitutional

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[15] 25 Am. Jur. 2d §67 citing *Felker v. Henderson*, 78 NH 509, 102 A 623; *Nelson v. Gass*, 27 ND 357, 146 NW 537.

[16] 25 Am. Jur. 2d §69 citing *People v. Turpin*, 49 Colo. 234, 112 P 539.

[17] *Ibid.*, *Kreitz v. Behrensmeyer*, 125 Ill. 141, 17 NE 232; *White v. Slama*, 89 Neb. 65, 130 N.W. 978.

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prescription in Section 1, Article V, must be stricken from Rep. Act No. 9189 as an invalid and unconstitutional provision.[18]

Section 5(d) is vulnerable for another cogent reason. I believe that the provision is violative of the "equal protection" clause of the Constitution. While it allows a Filipino permanently residing in a foreign country to vote on the mere pledge that he will again permanently reside in this country within three (3) years from his voting in the elections, a Filipino permanently residing in the Philippines but for less than one year or, in the place where he proposes to vote, for less than six months is not allowed to vote.[19] The voter classification sought to be effected by Section 5(d) does not rest on substantial distinctions[20] for it unduly favors and extends the privilege of the elective franchise to Filipino citizens who do not in any way comply with the residency requirement prescribed by our Constitution, while withholding the same privilege to those who are and have been permanent residents of the Philippines, albeit not in the locality or precinct where they intend to vote.

While it is to be conceded that every law has in its favor the presumption of constitutionality,[21] this presumption is not by any means conclusive and in fact may be rebutted, as in the

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[18] 29 C.J.S. 19; *Thomas v. Macklen*, 195 S.E. 539, 186 S.C. 290.

[19] Section 1, Article V of the 1987 Philippine Constitution.

Section 9 of R.A. 8189, otherwise known as AN ACT PROVIDING FOR A GENERAL REGISTRATION OF VOTERS, ADOPTING A SYSTEM OF CONTINUING REGISTRATION, PRESCRIBING THE PROCEDURES THEREOF AND AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR, provides that:

> Sec. 9. *Who May Register.*— All citizens of the Philippines not otherwise disqualified by law who are at least eighteen (18) years of age and who shall have resided in the Philippines for at least one (1) year and in the place wherein they propose to vote for at least six (6) months immediately preceding the election, may register as a voter.

[20] *Tiu v. Court of Appeals*, 301 SCRA 278, 289 (1999).

[21] *Estrada v. Sandiganbayan*, 369 SCRA 394, 430-431 (2001).

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instant case where Section 5(d) has been sufficiently shown to be in utter disregard of a specific provision of the Constitution. This Court once held that courts should not follow the path of least resistance by simply presuming the constitutionality of a law when it is questioned. On the contrary, they should probe the issue more deeply, to relieve the abscess and so heal the wound or excise the affliction. Judicial power authorizes this, and when the exercise is demanded, there should be no shirking of the task for fear of retaliation, or loss of favor, or popular censure, or any other similar inhibition unworhty of the bench, especially this Court.[22]

I concur with the majority opinion that Section 18.5 of Rep. Act No. 9189 does not pass the test of constitutionality.

The assailed provision empowers the COMELEC "to order the proclamation of *winning candidates* presumably including the President and Vice-President despite the fact that the scheduled elections has not taken place in a particular country or countries, if the holding of election therein has been rendered impossible by events, factors and circumstances peculiar to such country or countries, and which events, factors and circumstances are beyond the control or influence of the Commission." However, according to Article VII, Section 4, paragraph 4 of the 1987 Constitution:

> 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 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 (Italics supplied).

It is clear from the foregoing that the power to canvass the votes of the electorate for president and vice-president is lodged

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[22] *Ynot v. Intermediate Appellate Court,* 148 SCRA 659, 666 (1987).

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with Congress. This includes, by express mandate of the Constitution, the duty to proclaim the winning candidates in such election.

As pointed out in the majority opinion the phrase *proclamation of winning candidates* used in the assailed statute is a sweeping statement, which thus includes even the winning candidates for the presidency and vice-presidency.[23] Following a basic principle in statutory construction, *generali dictum genaliter est interpretandum* (a general statement is understood in a general sense), the said phrase cannot be construed otherwise. To uphold the assailed provision of Rep Act No. 9189 would in effect be sanctioning the grant of a power to the COMELEC, which under the Constitution, is expressly vested in Congress; it would validate a course of conduct that the fundamental law of the land expressly forbids.

It has been said that in determing the constitutionality of the exercise of power by a department, the question to be asked is not whether the power is essentially legislative, executive or judicial, *but whether it has been specifically vested in it by the Constitution*, or properly incidental to the performance of the functions of that department.[24] In this case, the power sought to be granted to the COMELEC is expressly granted to Congress, and Congress alone. It could not have been the intention of our legislators to indicate their constitutionally-mandated duty to the COMELEC. Congress could not have meant to allow the COMELEC to arrogate a power that rightly belongs to it under the Constitution.

WHEREFORE, in the light of the foregoing, I vote to *GRANT* the petition to declare *NULL AND VOID* for being *UNCONSTITUTIONAL*:

a. Section 5(d) of Republic Act No. 9189 for violation of Section 1, Article V of the Constitution which allows an immigrant

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[23] Decision, p. 34.

[24] *Luzon Stevedoring Corporation v. Social Security Commission,* 34 SCRA 178 (1970). (Italics supplied).

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or permanent resident in a foreign country, to vote for President, Vice-President, Senators and Party Lists representatives after executing the required affidavit;

b. That portion of Section 18.5 of Republic Act No. 9189 empowering the COMELEC to order the proclamation of winning candidates without qualification as it pertains or affects the canvass of votes and proclamation of winning candidates for president and vice-president for being violative of paragraph 4, Section VII of the 1987 Constitution.

c. Sections 19 and 25 of Republic Act No. 9189 for violation of Section 1, Article IX-A of the 1987 Constitution in relation to Section 2, Article IX-C of the same Charter.

SECOND DIVISION

[A.M. No. P-03-1709. July 11, 2003]

(Formerly A.M. No. OCA IPI No. 01-1054-P)

EDNA B. DAVID, *complainant, vs.* **ANGELINA C. RILLORTA, Stenographer and Officer-in-Charge, Regional Trial Court, Branch 21, Santiago City,** *respondent.*

SYNOPSIS

Complainant, an employee of the Great Domestic Insurance Company of the Philippines, Inc., a surety company, inadvertently brought home a record of a criminal case pending before the Regional Trial Court of Santiago City, Isabela, where respondent is the stenographer and officer-in-charge. Complainant returned the record to respondent the following morning, but respondent lost no time in berating her "like a child." Even as the latter apologized, the former humiliated