

TO : President, Second Constitutional  
Convention

DATE: 7-8-85

FROM: Legal Counsel

RE : Vested Rights Gained by Aliens  
Opinion No. 27

You have requested that we provide you with a copy of a legal decision concerning an alien who was permitted to vote thereby gaining certain vested rights akin to citizenship.

Attached please find a 1980 decision by Judge Alfred Laureta, his decision on the motion to reconsider his order and the 1982 opinion of the Court of Appeals.

The holding in Pangilinan et al. v. Castro et al., is that under the unusual circumstances of this case, the Department of Immigration was bound by the Election Board's determination that Mr. Pangilinan, et al., met the constitutional requirements for citizenship. The court reasoned that it was the function of the Election Board to identify those persons qualified for citizenship. The Election Board was performing the same task as was later performed by the Department of Immigration under the same constitutional standards, and that for the purpose of identifying citizens, the Department of Immigration was the successor agency to the Election Board.

The court was aware that various departments within government duplicate each other's work in the performance of their duties. One agency's consideration of an issue may have been determined by another agency that came to a different conclusion. As long as one agency's purpose differs with a sister agency's purpose, and different criteria is used, a decision of one is not necessarily binding on the other. In the Pangilinan case, however, both agencies were applying the same constitutional criteria for citizenship.

Although this action began in the U.S. District Court in 1979, no final decision has been made as the U.S. Attorney is attempting to intervene and further legal arguments are scheduled for this next

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week. However, it seems clear that the named plaintiffs in the class action are considered to be interim U.S. citizens and will become U.S. citizens upon termination of the trustee status.

From the Pangilinan case, it would be very difficult for us to point out areas in which an alien may possibly obtain undeserved rights through error of the legislature or some other governmental agency. Certainly any "loop-holes" in the laws or regulations should be closed by legislation rather than by constitutional amendment.

ERIC S. SMITH  
Assistant Attorney General