

“ALL CITIZENS ARE CREATED EQUAL”

**SUMMARY OF THE SUPREME COURT RULING IN FAVOUR OF FRANCISO DE
NARVAEZ’S ELIGIBILITY AS GUBERNATORIAL CANDIDATE**

The decision by the Supreme Court of the province of Buenos Aires to enable Francisco de Narváez to run for governor in 2007 is a significant precedent in his struggle to uphold his political rights as an Argentine citizen. Following are excerpts of the Supreme Court's ruling that will shed light on the grounds for Francisco’s eligibility.

- 1) Justice Kogan, currently Chief Justice of the Supreme Court, upheld the following position: "Why should there be an assumption, absent evidence to the contrary, that only a person born within national territory, or born abroad to national citizens, is a better guardian of security, and that, instead, we should exclude someone who conscientiously, of their own accord, decides to resign their citizenship of origin to embrace Argentine citizenship? What reasonable grounds are there for such difference? Why should we favour chance over self-determination?"

- 2) In his vote, Justice Dominguez upheld, “Regarding access to gubernatorial or vice gubernatorial office, Article 121 of the provincial Constitution must be construed in a manner not contrary to the transcribed rules; otherwise, we would be admitting the existence of first-class Argentines (“citizens” according to International Agreements), namely natural born citizens and citizens by option, and second-class Argentines, i.e. naturalized citizens, as in the case of the challenged political candidate.” In other words, there is no room in the Constitution for a differentiation between first-class and second-class citizens.

- 3) Justice Hitters's vote brings a substantive difference to the fore: "It should be noted that, in this case, we are not faced with a dichotomy between nationals and aliens, but between "natural born" and "naturalized" nationals (the appellant has right fully on his side in this regard). "Naturalized" nationals are denied the possibility to access public office admitted to "natural born" nationals, despite the further fact that the candidate is a long-term resident in our country and has developed his business here." In this regard, Justice Domínguez argues as follows: "Under such assumptions, [the candidate] would be discriminated against for his "naturalized" Argentine status, that is, not for being an Argentine national, but for the origin of his nationality (cf. Supreme Court of Argentina; Rulings 327:5134, November 16th 2004).
- 4) It should be noted that in the case under review, the differentiation is not exactly among people of different nationality, but among people of equal nationality born in different places, i.e. natural born versus naturalized Argentines. This means that the differentiation parameter under dispute is not the one explicitly authorized in the previously cited Article 23.2 of the American Convention on human Rights (Pact of *San José*, Costa Rica), as per Justice Hitters' vote. The foregoing means that there are no grounds for discrimination on the basis of birthplace, but on the basis of nationality (and Francisco's nationality *is* Argentine).
- 5) Justice Hitters's vote lays direct emphasis on Francisco's political rights: "Thus, in my opinion, in this day and age, and given this specific case background, demanding that the Governor of the Province of Buenos Aires be born within Argentine territory, or to native born citizens (Article 121, Paragraph 1, Provincial Constitution) is not a reasonable restriction on political eligibility rights, since it enshrines an unjustified differentiation which is detrimental to naturalized Argentines that meet all other eligibility conditions to be capably

represent their constituents' interests (Articles 5, 14, 16, 28, 121 of the National Constitution; Articles 1, 2, 23, 24, 29 of the American Convention on Human Rights; Articles 2 and 25 of the International Covenant on Civil and Political Rights). Explicit reference is made to the fact that international covenants on human rights are binding and have constitutional status as from 1994.

- 6) Justice Hitters's vote lays the burden of proof on the advocates of the validity of such differentiation, who shall have to demonstrate the need of such demand in a conclusive manner: "In view of such explicit tenets [in reference to Article 23 of the American Convention on Human Rights and Article 25 of the International Covenant on Civil and Political Rights], a piece of legislation as is Article 177 of the Constitution of the Province of Buenos Aires, setting forth that, regarding access to certain public office duties, there are first-class Argentines ('citizens' as defined in covenants), namely natural born Argentines and Argentines by option, as opposed to second-class Argentines, namely naturalized Argentines as is the plaintiff, is affected by an assumption of unconstitutionality that could only be upheld by conclusive evidence of substantial provincial interests that may justify it".

- 7) Finally, Justice Hitters' vote safeguards equality under the law and full-fledged political rights: "All citizens shall be entitled, without any of the differentiations set forth in Article 2 [including differentiations based upon a candidate's national origin], and without undue restrictions, to the following rights and opportunities: ... b) to vote and be elected in ballots on a periodical basis...".