

## MARIZ LINDSEY TAN GANA-CARAIT Y VILLEGAS, PETITIONER, VS. COMMISSION ON ELECTIONS, ROMMEL MITRA LIM, AND DOMINIC P. NUÑEZ, RESPONDENTS.

*G.R. No. 257453. August 09, 2022*

Ponente: ROSARIO, J.

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### ROSARIO, J.:

This resolves the Petition for Certiorari and Prohibition (With Prayer for the Immediate Issuance of a Temporary Restraining Order [TRO] and/or Status Quo Ante Order and/or Writ of Preliminary Injunction),[1] under Rule 64, in relation to Rule 65 of the Rules of Court, filed by petitioner Mariz Lindsey Tan Villegas Gana-Carait (petitioner). The petition assails the Resolution[2] dated 23 September 2021 of public respondent Commission on Elections (COMELEC) En Banc, which denied petitioner's Motion for Partial Reconsideration[3] of the COMELEC First Division's Resolution[4] dated 27 February 2019. Said resolutions denied the petition for disqualification filed by private respondent Rommel Mitra Lim (respondent Lim), but granted the petition to deny due course to or cancel certificate of candidacy (CoC) filed by private respondent Dominic P. Nuñez (respondent Nuñez).

On 17 October 2018, petitioner filed her CoC[5] as Member of Sangguniang Panlungsod of the Lone District of Biñan, Laguna, for the 13 May 2019 National and Local Elections (NLE).[6]

On 22 October 2018, respondent Lim filed a petition for disqualification against petitioner before the COMELEC.[7] Respondent Lim claimed that petitioner acquired United States (US) citizenship and sought election to public office without making a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath.[8] Respondent Lim likewise alleged that petitioner's application for and use of a US passport negated her claim that she was a Filipino citizen at the time she filed her CoC.[9]

Subsequently, on 6 November 2018, respondent Nuñez likewise filed, before the COMELEC, a petition to deny due course to or cancel the certificate of candidacy of petitioner.[10] Respondent Nuñez claimed that petitioner may not be considered a Filipino citizen or, at the very least, she is a dual citizen, because she uses a US passport.[11] Respondent Nuñez concluded that petitioner's representations in her CoC that she is a Filipino citizen and eligible to run for public office are therefore false.[12]

On 3 December 2018, petitioner filed her answers to the foregoing petitions, claiming that: (1) she did not commit any material representation in her CoC since there was no deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible; (2) she is a dual citizen and she is not precluded from seeking an elective position; (3) dual allegiance is unlike dual citizenship, and it is the former that is proscribed by law; (4) since there is no voluntary or positive act on her part in acquiring her US citizenship, she being born in the US, the provisions of Republic Act (R.A.) No. 9225, otherwise known as the Citizenship Retention and Re-acquisition Act of 2003 (R.A. 9225), is not applicable to her; (5) possession of an American passport of a dual citizen is not a

basis for disqualification; and (6) the COMELEC cannot, as yet, decide on her qualifications since it is an issue that is undecided or undetermined by the proper authority.[13]

On 7 December 2018, petitioner filed a motion for consolidation of the petitions as both pertained to the same subject matter and prayed for identical reliefs.[14]

After the conduct of preliminary conference in both cases, and after the submission of the parties' memoranda and formal offer of documentary exhibits,[15] the COMELEC First Division issued its Resolution[16] dated 27 February 2019, denying the petition for disqualification, but granting the petition to deny due course to or cancel petitioner's certificate of candidacy.

The COMELEC First Division found that petitioner was born on 25 June 1991 in Makati City to a father who is a Filipino citizen, and a mother who is an American citizen.[17] It was likewise found that, prior to 2012, petitioner acquired American citizenship as evidenced by the Consular Report of Birth Abroad of a Citizen of the United States of America (CRBA), and obtained her US passport.[18] In addition, petitioner ran and won as Barangay Kagawad of Barangay San Vicente, Biñan City, Laguna in the 2013 Barangay Elections, and as Member of the Sangguniang Panlungsod of the same city in the 2016 NLE. As previously stated, she filed her CoC as member of the Sangguniang Panlungsod of Biñan City, Laguna in connection with the 2019 May NLE.[19] Further, the COMELEC First Division found that, from the time her US passport was issued in 2010 up to 2018, petitioner used her US passport to travel to and from the US and the Philippines, and vice versa.[20]

In relation to the foregoing factual findings, the COMELEC First Division concluded that petitioner is a dual citizen, having been born to a Filipino father, and with the CRBA strongly indicating that she is likewise a US citizen.[21] The COMELEC First Division's resolution noted that under Section 2705(2), Title 22 of the United States Code, a CRBA issued by a consular office shall have the same force and effect as proof of US citizenship as certificates of naturalization or of citizenship issued by the Attorney General or a court having naturalization jurisdiction.[22] The resolution likewise noted the lack of evidence to show that petitioner renounced any of her citizenships, and thus, she was a dual citizen at the time of the filing of her CoC for the 2019 May NLE.[23]

The COMELEC First Division further ruled that, while the allegation of disqualification must fail, with petitioner being a dual citizen and there being no proof that she took an oath of allegiance to the US,[24] petitioner still committed material misrepresentation in her CoC when she stated therein that she was eligible to run for public office.[25] The COMELEC First Division reasoned that: (1) R.A. 9225, in relation to the case of *Cordora v. COMELEC* (*Cordora*),[26] applies to petitioner because she is a natural-born citizen of the Philippines who became a citizen of the US after the effectivity of R.A. 9225; (2) petitioner is not a dual citizen at birth but a dual citizen by naturalization since there was a positive act that was done in acquiring her US citizenship, citing Act 322 of the United States Immigration Nationality Act (INA) which states that "a parent who is a citizen of the United States x x x may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under Section 320", and noting that such is a positive act of applying for naturalization; (3) even if Act 320 of the INA provides for automatic citizenship to those children born outside the US and residing permanently in the US, acquisition of US citizenship is still subject to conditions that require a positive act to be done for the acquisition of US citizenship; and (4) the CRBA attached to the records expressly states that petitioner "acquired United States Citizenship at birth as established by documentary evidence presented to the Consular Service of the United States at Manila, Philippines on August 23, 2004." [27] The COMELEC First Division ratiocinated that, being thus a dual citizen by naturalization, and with R.A. 9225 being applicable to her, petitioner should have complied with the twin requirements under the said law, specifically the taking of an oath of allegiance and the renunciation of her foreign citizenship, before she vied for an elective office.[28]

As it was shown in the records that petitioner did not comply with such, and having concluded that she is not eligible to run for public office, the COMELEC First Division disposed as follows:

WHEREFORE, premises considered, the Petition is GRANTED. Respondent MARIZ LINDSEY VILLEGAS TAN GANA-CARAIT's Certificate of Candidacy for Member, Sangguniang Panlungsod of Biñan City, Laguna for the May 2019 National and Local Elections is hereby CANCELLED. The votes cast in her favor will be considered stray.

SO ORDERED.[29] (Emphases in the original)

On 5 March 2019, petitioner filed a Motion for Partial Reconsideration,[30] which was denied by the COMELEC En Banc in its 23 September 2021 Resolution (COMELEC En Banc Resolution),[31] thus:

WHEREFORE, premises considered, the Commission (En Banc) RESOLVES to DENY the Motion for Partial Reconsideration for lack of merit, and accordingly AFFIRMS the challenged Resolution dated 27 February 2019 of the Commission (First Division).

SO ORDERED.[32] (Emphases in the original)

According to the COMELEC En Banc, petitioner's failure to comply with the requirements of R.A. 9225 rendered her ineligible to run for elective office and, thus, she committed material misrepresentations in her CoC when she stated therein that she was eligible to run for election.[33]

Hence, this petition.

Petitioner argues that the COMELEC En Banc committed grave abuse of discretion amounting to lack or excess of jurisdiction when it affirmed the COMELEC First Division's findings that she is a dual citizen by naturalization, and in holding that, under R.A. No. 9225, she is required to comply with the twin requirements of taking an oath of allegiance to the Republic of the Philippines and renouncing her US citizenship.[34]

Petitioner claims, among others, that: (1) while the COMELEC En Banc may be correct in stating that she is a dual citizen as evidenced by the CRBA, there is no factual or legal basis to say that she is a dual citizen by naturalization and not by birth;[35] (2) the mere fact that a natural-born Filipino subsequently acquires foreign citizenship does not automatically mean he/she falls under the application of R.A. 9225,[36] as the said law contemplates natural-born Filipinos who became foreign citizens through the process of naturalization;[37] (3) she is not a dual citizen by naturalization as she was considered a US citizen at birth and did not have to perform any action to acquire her Philippine and US citizenships;[38] (4) the records are bereft of any evidence showing that she voluntarily performed any action to acquire US citizenship;[39] (5) naturalization involves a tedious process that is resorted to only if one is not a US citizen by birth or if the applicant did not acquire or derive US citizenship from his or her parents automatically after birth;[40] and (6) even if the CRBA expressly states the words "acquired United States Citizenship at birth as established by documentary evidence presented to the Consular Service of the United States at Manila, Philippines," the act of presenting the documents as mentioned therein cannot be deemed tantamount to naturalization, which is a different process altogether.[41]

In its Comment[42] (with Opposition to Petitioner's Application for Writ of Preliminary Injunction and/or Temporary Restraining Order and/or Status Quo Ante Order), the COMELEC insisted that petitioner acquired her dual citizenship through positive act[43] since she acquired the same upon her application for US citizenship.[44] Being a natural-born citizen of the Philippines, who after the effectivity of the law in 2003 became a US citizen on 23 August 2004, petitioner is covered by Section 3 of R.A. 9225 and is required not only to take her oath of allegiance to the Republic of the Philippines, but also to personally renounce her foreign citizenship in order to qualify as a candidate for public office.[45]

The COMELEC also argued that it did not act with grave abuse of discretion in cancelling and denying due course to petitioner's CoC for the 2019 NLE as it correctly found that petitioner made a material misrepresentation that she was eligible to run for public office.[46] Respondent COMELEC opposed petitioner's applications for a temporary restraining order/status quo ante order/writ of preliminary injunction on the ground that no clear and unmistakable right pertains to petitioner as it is her eligibility to be elected as a member of Sangguniang Panlungsod which is the very issue at hand.[47]

#### The Court's Ruling

The COMELEC En Banc Resolution has not become final, in light of the timely filing of the petition.

At the outset, the Court notes the COMELEC's issuance of a Certificate of Finality[48] dated 13 December 2021, declaring its En Banc resolution final and executory. An Entry of Judgment[49] dated 13 December 2021 and a Writ of Execution[50] dated 31 January 2022 were likewise issued by the COMELEC.

It should be noted, however, that the petition was timely filed within the 30-day period after notice,[51] as provided under Section 3 of Rule 64 of the Rules of Court, thus:

Section 3. Time to file petition. — The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial. (n) (Underscoring supplied)

The aforementioned 30-day period is a reflection of Section 7, Article IX of the 1987 Constitution, which states that:

SECTION 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof. (Underscoring supplied)

It is clear from the foregoing that the Constitution and, by extension, Rule 64 of the Rules of Court, both provide for a remedy by which an aggrieved party may question the decision or ruling of the COMELEC. Such remedy is in the form of a petition for certiorari which may be filed within a 30-day period from notice of the decision or ruling being challenged.

Despite this, the Court is likewise aware that, in contrast to the mandate of the Constitution and the Rules of Court, Section 1, Rule 37, Part VII of the COMELEC Rules of Procedure (COMELEC Rules) reckons the 30-day period from promulgation, instead of from notice:

Section 1. Petition for Certiorari; and Time to File. - Unless otherwise provided by law, or by any specific provisions in these Rules, any decision, order or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from its promulgation. (Underscoring supplied)

More importantly, Section 3 of the same Rule declares that decisions in petitions to cancel certificates of candidacy, among others, become final and executory after the lapse of five days from promulgation, unless

restrained by the Court:

Sec. 3. Decisions Final After Five Days. - Decisions in pre-proclamation cases and petitions to deny due course to or cancel certificates of candidacy, to declare a candidate as nuisance candidate or to disqualify a candidate, and to postpone or suspend elections shall become final and executory after the lapse of five (5) days from their promulgation, unless restrained by the Supreme Court. (Underscoring supplied)

The said provision appears to be echoed by Section 8 of Rule 23, Part V of the same COMELEC Rules, as amended by Resolution No. 9523,[52] which states:

Section 8. Effect if Petition Unresolved. - If a Petition to Deny Due Course to or Cancel a Certificate of Candidacy is unresolved by final judgment on the day of elections, the petitioner may file a motion with the Division or Commission En Banc, as may be applicable, to suspend the proclamation of the candidate concerned, provided that the evidence for the grounds for denial to or cancel certificate of candidacy is strong. For this purpose, at least three (3) days prior to any election, the Clerk of the Commission shall prepare a list of pending cases and furnish all Commissioners copies of the said list.

A Decision or Resolution is deemed final and executory if, in case of a Division ruling, no motion for reconsideration is filed within the reglementary period, or in cases of rulings of the Commission En Banc, no restraining order is issued by the Supreme Court within five (5) days from receipt of the decision or resolution. (Underscoring supplied)

Taking all of the above provisions together, We find that there is a need to harmonize the COMELEC Rules with the Rules of Court and the Constitution. Despite the clear and express provisions therein, COMELEC Rules are mere procedural, which, as such, must always yield to substantive law. As We declared in *Treyes v. Larlar*:<sup>[53]</sup>

By this Decision now, the Court so holds, and firmly clarifies, that the latter formulation is the doctrine which is more in line with substantive law, i.e., Article 777 of the Civil Code is clear and unmistakable in stating that the rights of succession are transmitted from the moment of the death of the decedent even prior to any judicial determination of heirship. As a substantive law, its breadth and coverage cannot be restricted or diminished by a simple rule in the Rules.

To be sure, the Court stresses anew that rules of procedure must always yield to substantive law. The Rules are not meant to subvert or override substantive law. On the contrary, procedural rules are meant to operationalize and effectuate substantive law.<sup>[54]</sup> (Citation omitted, underscoring supplied)

As such, the COMELEC Rules cannot be allowed to, in effect, override the substantive law, especially the Constitution. The COMELEC Rules cannot be applied in a way that would shorten the period provided by the Constitution to aggrieved parties within which to question the adverse decision or ruling of the COMELEC.

In line with the foregoing, and as aptly pointed out by Justice Alfredo Benjamin S. Caguioa (Justice Caguioa),<sup>[55]</sup> the proper way of harmonizing Section 8, Rule 23 of the COMELEC Rules with Article IX of the 1987 Constitution and Rule 64 of the Rules of Court is to understand it to mean that decisions and resolutions of the COMELEC En Banc, in the absence of a restraining order from the Court issued within five days from receipt, are rendered only executory — but not final. Hence, despite COMELEC's issuance of the Certificate of Finality and Entry of Judgment, We find that the COMELEC En Banc Resolution did not actually attain finality, and as such, may be the subject of the instant petition, and may be addressed by the Court.

The instant case falls under the exception to the mootness doctrine.

The Court likewise notes that petitioner's relevant term of public office has officially ended. As stated in Section 43, Chapter I, Title II of Republic Act No. 7160,<sup>[56]</sup> the term of office of all elective officials elected after the

effectivity of said law shall be three years, starting from noon of 30 June 1992 or such date as may be provided for by law. As such, petitioner, being elected to office after the 13 May 2019 National and Local Elections, has a term of office that began at noon of 30 June 2019, and ended at noon of 30 June 2022. Clearly, such date has already passed, and thus, the petitioner's term of office, relevant to the instant case, has already ended.

In the case of *Gunsi, Sr. v. COMELEC (Gunsi)*,<sup>[57]</sup> a case emanating from a petition for the denial of due course to or cancellation of the CoC, We previously held that the expiration of the term of office is a supervening event that rendered the case moot and academic. As discussed in *Gunsi*:

At the outset, [W]e note that the term of office of Mayor of South Upi, Maguindanao, for which position *Gunsi* was disqualified by the COMELEC to run as a candidate had long expired on June 30, 2007 following the last elections held on May 14 of the same year. The expiration of term, therefore, is a supervening event which renders this case moot and academic.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness.

The rule, however, admits of exceptions. Thus, courts may choose to decide cases otherwise moot and academic if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; or fourth, the case is capable of repetition yet evasive of review.<sup>[58]</sup> (Citations omitted, underscoring supplied)

We clarified in *Gunsi* that there are exceptions to the mootness doctrine, and We find that the instant case falls under one of the cited exceptions since the issue in this case is capable of repetition yet evasive of review.

In the face of such exception, the mootness of a case is set aside so the Court can resolve the legal issues raised therein due to the susceptibility of their recurrence. We declared in the case of *Integrated Bar of the Philippines v. Atienza*,<sup>[59]</sup> viz.:

The Court shall first resolve the preliminary issue of mootness.

Undoubtedly, the petition filed with the appellate court on June 21, 2006 became moot upon the passing of the date of the rally on June 22, 2006.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness. However, even in cases where supervening events had made the cases moot, this Court did not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench, bar and public. Moreover, as an exception to the rule on mootness, courts will decide a question otherwise moot if it is capable of repetition, yet evading review.

In the present case, the question of the legality of a modification of a permit to rally will arise each time the terms of an intended rally are altered by the concerned official, yet it evades review, owing to the limited time in processing the application where the shortest allowable period is five days prior to the assembly. The susceptibility of recurrence compels the Court to definitively resolve the issue at hand.<sup>[60]</sup> (Citation omitted, underscoring supplied)

The main issue in this case is the petitioner's status – whether she is a US citizen by birth or by naturalization. While the term of office relevant to the instant case has already terminated, such question on petitioner's status will remain an issue, as the petitioner, in the exercise of her political right, may decide to run again for public office, and thus, file a certificate of candidacy. In such situation, petitioner will again be plagued by the same

issues if they remain unresolved. As succinctly pointed out by Justice Marvic M.V.F. Leonen,[61] there is indeed a need to clarify the issue surrounding petitioner's citizenship in relation to her eligibility to run for public office, as this issue is of distinct public importance, and one capable of repetition yet evading review.

Thus, We find it necessary to resolve the legal issue in this case, especially considering that there is clear basis to grant this petition on the merits.

R.A. 9225 is applicable only to dual citizens by naturalization and not to dual citizens by birth.

As was made clear in *De Guzman v. COMELEC*,[62] R.A. 9225 covers two categories of individuals, thus:

R.A. No. 9225 was enacted to allow re-acquisition and retention of Philippine citizenship for: 1) natural-born citizens who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country; and 2) natural-born citizens of the Philippines who, after the effectivity of the law, become citizens of a foreign country. The law provides that they are deemed to have re-acquired or retained their Philippine citizenship upon taking the oath of allegiance.[63] (Underscoring supplied)

R.A. 9225 particularly applies to natural-born Filipinos who lost their Filipino citizenship through the process of naturalization. Essentially, both classes of individuals mentioned in R.A. 9225 refer to those who have undergone the process of naturalization. As held in *Tan v. Crisologo*: [64]

R.A. No. 9225 was enacted to allow natural-born Filipino citizens, who lost their Philippine citizenship through naturalization in a foreign country, to expeditiously reacquire Philippine citizenship.[65] (Emphases and underscoring supplied)

Thus, the coverage of R.A. 9225 includes only those natural-born Filipinos who acquired foreign citizenship through the process of naturalization. Similarly, the provisions of R.A. 9225 on the required oath of allegiance under Section 3,[66] and the personal and sworn renunciation of any and all foreign citizenship under its Section 5(2)[67] apply only to dual citizens by naturalization and not to dual citizens by birth. This is confirmed by the case of *Maquiling v. COMELEC (Maquiling)*,[68] which states:

Arnado's category of dual citizenship is that by which foreign citizenship is acquired through a positive act of applying for naturalization. This is distinct from those considered dual citizens by virtue of birth, who are not required by law to take the oath of renunciation as the mere filing of the certificate of candidacy already carries with it an implied renunciation of foreign citizenship. Dual citizens by naturalization, on the other hand, are required to take not only the Oath of Allegiance to the Republic of the Philippines but also to personally renounce foreign citizenship in order to qualify as a candidate for public office.[69] (Citations omitted, underscoring supplied)

Records show that petitioner was a dual citizen at the time she filed her CoC for the May 2019 NLE, being both a US citizen and a natural born Filipino. The pivotal issue however is whether petitioner acquired her US citizenship—and therefore her status as a dual citizen—by birth or through naturalization. If by birth, petitioner need not renounce her US citizenship or pledge allegiance to the Republic of the Philippines to qualify as a candidate for public office as required by Sections 3 and 5(2) of R.A. 9225. Otherwise, if her dual citizenship proceeded from naturalization, petitioner must perform the twin requirement of renunciation and the taking of an oath under R.A. 9225.

The COMELEC First Division ruled that petitioner "is not a dual citizen at birth but a dual citizen by naturalization since there was a positive act that was done in acquiring her US citizenship"[70] which was the submission of the necessary documents to obtain US citizenship. It cited Act 322 of the INA,[71] and highlighted

the portion of the CRBA which states that petitioner "acquired United States citizenship at birth as established by documentary evidence presented to the Consular Service of the United States at Manila, Philippines on August 23, 2004".[72] For its part, the COMELEC En Banc sustained the finding of the COMELEC First Division that petitioner is a dual citizen by naturalization and her failure to comply with the requirements of R.A. 9225 rendered her ineligible to run for elective office.[73]

Petitioner is a dual citizen by birth,  
and not by naturalization.

We find that the COMELEC En Banc's conclusion that petitioner is a dual citizen by naturalization is manifestly erroneous.

First. Philippine courts do not take judicial notice of foreign judgments and laws, and these must be proven as fact under the rules on evidence.[74] Having cited Act 322 of the United States INA in its argument that petitioner is not a dual citizen at birth but a dual citizen by naturalization, respondents Lim and Nuñez should have proven such foreign law pursuant to the relevant provisions of the Rules of Court. The COMELEC First Division should not have taken judicial notice of this law, much less made an attempt to analyze and apply the same.

Second. As furthermore pointed out by Justice Caguioa,[75] the cited portions of the INA, which refers to automatic citizenship of a child upon the application of his or her American citizen parent, even supports the conclusion that, if, indeed, some positive acts were performed in the acquisition of petitioner's US citizenship, the same could not have been performed by her but rather, by her American parent. Notably, the records are bereft of any evidence which would indicate to the slightest degree that petitioner petitioned to acquire her US citizenship or that she went through the pertinent naturalization process. Again, respondents Lim and Nuñez had the burden of proving such allegations before the COMELEC.

Third. As also elucidated by Justice Amy C. Lazaro-Javier (Justice Lazaro- Javier),[76] Black's Law Dictionary defines naturalization as "the act of adopting a foreigner and clothing him [or her] the privileges of a native citizen." [77] In *Garcia v. Recio*,[78] the Court defined naturalization as a legal act of adopting an alien and clothing him [or her] with the political and civil rights belonging to a citizen. It implies the renunciation of a former nationality and the fact of entrance into a similar relation towards a new body politic. Therefore, naturalization is a process through which a State confers an outsider, i.e., a non-citizen/alien/foreigner, with rights enjoyed by its citizens. Based on the definition of naturalization, an insider, i.e., a citizen, is disqualified from undergoing naturalization proceedings. In this regard, the Court recognizes that naturalization is superfluous for persons who are already citizens of a particular State[79] and that it is absurd for a State to issue a certificate of naturalization to its own citizens.[80]

Thus, the Court finds that petitioner, as shown by evidence, never underwent such process. The CRBA document itself, which was used by the COMELEC En Banc as basis to declare that petitioner was a naturalized dual citizen, actually proves the opposite. Interestingly, this CRBA was presented before, and was considered by, the COMELEC,[81] yet the latter chose to ignore the literal contents of the same.

As explained by Justices Caguioa[82] and Lazaro-Javier,[83] the very language of the CRBA shows that petitioner's US citizenship was acquired at birth, as it literally states: "acquired United States Citizenship at birth," and that documentary evidence was presented merely to establish such fact. Being a citizen of the US at birth, it would be absurd to construe petitioner's submission of documents to the Consular Service of the US to be akin to one's availment of the naturalization process for the purpose of becoming an American citizen, when she, herself has already been one since her birth.

Our previous ruling in the case of Cordora,[84] which had a similar factual backdrop, is applicable to the case at hand, thus:

Tambunting does not deny that he is born of a Filipino mother and an American father. Neither does he deny that he underwent the process involved in INS Form I-130 (Petition for Relative) because of his father's citizenship. Tambunting claims that because of his parents' differing citizenships, he is both Filipino and American by birth. Cordora, on the other hand, insists that Tambunting is a naturalized American citizen.

We agree with Commissioner Sarmiento's observation that Tambunting possesses dual citizenship. Because of the circumstances of his birth, it was no longer necessary for Tambunting to undergo the naturalization process to acquire American citizenship. The process involved in INS Form I-130 only served to confirm the American citizenship which Tambunting acquired at birth. The certification from the Bureau of Immigration which Cordora presented contained two trips where Tambunting claimed that he is an American. However, the same certification showed nine other trips where Tambunting claimed that he is Filipino. Clearly, Tambunting possessed dual citizenship prior to the filing of his certificate of candidacy before the 2001 elections. The fact that Tambunting had dual citizenship did not disqualify him from running for public office.[85] (Emphasis supplied)

As in the Cordora case, petitioner, because of the circumstances of her birth, need not go through the process of naturalization to acquire US citizenship, and per the CRBA, the process to obtain the same was merely to confirm such US citizenship.[86]

Petitioner need not perform the twin requirements of Sections 3 and 5(2) of R.A. 9225.

Considering that petitioner is a dual citizen by birth, not a dual citizen by naturalization, it was not incumbent upon her to perform the twin requirements of Sections 3 and 5(2) of R.A. 9225.

Notably, as pointed out by Justice Caguioa,[87] the COMELEC's Comment, through the Office of the Solicitor General (OSG), seemingly backpedals from its conclusion that petitioner was naturalized as an American citizen, and clarifies that, although its assailed resolutions use the term "naturalization," the same was meant to describe the "voluntariness of the process and not the naturalization process per se." [88] It concludes that some positive act of applying for approval of petitioner's US citizenship and obtaining her CRBA was performed, and that she appears to have been aware of the same.

Assuming arguendo that petitioner was indeed aware that some act was performed to obtain the CRBA or establish her US citizenship, the same does not suffice to place her within the coverage of R.A. 9225. As held in a plethora of cases,[89] the law applies only to natural-born Filipinos who became citizens of a foreign country specifically by naturalization. COMELEC concludes that petitioner falls under the second category because she acquired her US citizenship after the passage of R.A. 9225 on 23 August 2004 (the date when the CRBA was issued). While the second category does not speak of "naturalization," jurisprudence is settled that R.A. 9225 covers only natural-born Filipinos who later became naturalized citizens of a foreign country, either before or after the passage of R.A. 9225.[90]

The OSG, in arguing that R.A. 9225 covers any acquisition of foreign citizenship through the performance of any positive act, regardless of who performed the same and if the candidate went through naturalization, cites Maquiling[91] and submits that "dual citizenship, in the context of election laws, has two categories: a) dual citizenship through performance of positive act/s; and b) dual citizens by virtue of birth,"[92] and that petitioner falls under the first category.

A full and plain reading, however, of Maquiling readily refutes the OSG's proposition. Maquiling pertinently held:

Arnado's category of dual citizenship is that by which foreign citizenship is acquired through a positive act of applying for naturalization. This is distinct from those considered dual citizens by virtue of birth, who are not required by law to take the oath of renunciation as the mere filing of the certificate of candidacy already carries with it an implied renunciation of foreign citizenship. Dual citizens by naturalization, on the other hand, are required to take not only the Oath of Allegiance to the Republic of the Philippines but also to personally renounce foreign citizenship in order to qualify as a candidate for public office.[93] (emphases supplied)

Indeed, R.A. 9225 covers only natural-born Filipinos who personally and voluntarily become naturalized foreign citizens, thereby possessing simultaneously two or more citizenships and allegiances. It is not concerned with dual citizenships acquired upon birth or due to the circumstances of one's birth, which are involuntary and a product of the concurrent application of different laws of two or more states.[94] Indeed, in *Cordora*, although Tambunting's American father performed the positive act of petitioning Tambunting under American laws, the Court nevertheless held that he did not acquire his foreign citizenship through naturalization and, thus, R.A. 9225 does not apply to him.

Petitioner did not commit false material representation in her CoC; thus, the COMELEC committed grave abuse of discretion in cancelling the same.

As previously discussed, petitioner is not covered by the twin requirements of R.A. 9225, being that she is not a naturalized US citizen. Thus, her non-compliance with the same does not, in any way, affect her candidacy, or her declaration in her CoC that she was eligible to run for the public office.

Even on the assumption that petitioner violated Section 5 of R.A. 9225 for failing to renounce her American citizenship, the same does not render her ineligible for the office sought and therefore, cannot be a ground to cancel her CoC.

Specifically, the failure to renounce foreign citizenship as required by Section 5(2),[95] R.A. 9225 does not affect even a naturalized person's status as a Filipino citizen, which is retained or reacquired upon the taking of the oath of allegiance under R.A. 9225—the same oath contained in the CoC.[96] Such failure merely maintains his status as a dual citizen. The requirement to renounce foreign citizenship, and therefore have full and sole allegiance to the Republic of the Philippines, is merely a condition imposed upon the exercise by a naturalized dual citizen of his political right to seek elective public office, but not upon his status as a Filipino citizen. This is clear from the language of Section 5.

Commonwealth Act No. 63[97] enumerates the acts by which a Filipino citizen may lose his citizenship, none of which pertains to failure to renounce foreign citizenship.

Indeed, failure to renounce foreign citizenship under R.A. 9225 and thereby remaining a dual citizen having dual allegiances does not appear to be an ineligibility, as it presupposes that the candidate is a Filipino citizen. If at all, the same is a disqualification under Section 40 of the Local Government Code (LGC),[98] and thus, the proper subject of a petition for disqualification. On this note, it bears to point out that a petition for disqualification was filed against petitioner, but the same was dismissed and does not appear to have been appealed.

Hence, even assuming *arguendo* that petitioner is covered by, and violated Section 5, she thereby remained in

possession of the qualification of being a Filipino citizen under Section 39 of the LGC. Thus, she could not be said to have made a false representation when she declared in her CoC that she was eligible to run for the subject office.

In line with all of the foregoing, the Court finds that the COMELEC En Banc gravely abused its discretion in issuing the COMELEC En Banc Resolution, and in cancelling petitioner's CoC.

With the issuance of this resolution, which already resolves the case upon the merits, We deem it unnecessary to address the prayer for temporary restraining order / status quo ante order / writ of preliminary injunction.

WHEREFORE, the Petition for Certiorari is GRANTED. The Resolution dated 23 September 2021 of the Commission on Elections En Banc and the Resolution dated 27 February 2019 of the Commission on Elections First Division are ANNULLED and SET ASIDE.

The Certificate of Finality dated 13 December 2021, the Entry of Judgment dated 13 December 2021, and the Writ of Execution dated 31 January 2022 issued by the COMELEC En Banc, in relation to the Resolution dated 23 September 2021, are likewise CANCELLED and SET ASIDE.

Accordingly, the Petition to Deny Due Course to or Cancel Certificate of Candidacy dated 6 November 2018, filed by private respondent Dominic P. Nuñez against petitioner Mariz Lindsey Tan Villegas Gana-Carait, docketed as SPA Case No. 18-126 (DC), is DISMISSED.

### SO ORDERED.

Gesmundo, C.J., Hernando, Zalameda, Gaerlan, J. Lopez, Dimaampao, Marquez, and Singh, JJ., concur.

Leonen, SAJ., see separate concurring opinion.

Caguioa, J., see separate concurring.

Lazaro-Javier, J., please see concurrence.

Inting,[\*] and Kho, Jr.,[\*\*\*] JJ., no part.

M. Lopez, J.,[\*\*] on official leave.

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[\*] No part.

[\*\*] On official leave.

[\*\*\*] No part.

[1] Rollo, pp. 5-34.

[2] Id. at 35-39; signed by Chairman Sheriff M. Abas and by Commissioners Ma. Rowena Amelia V. Guanzon Socorro B. Inting, and Marlon S. Casquejo, with dissenting opinions from Commissioners Antonio T. Kho, Jr. (now a Member of this Court), and Aimee P. Ferolino

[3] Id. at 68-83.

[4] Id. at 50-67-A; signed by Presiding Commissioner Al A. Parreño, and Commissioners Ma. Rowena Amelia V. Guanzon and Marlon S. Casquejo.

[5] Id. at 227.

[6] Id. at 10.

[7] Id.; (docketed as SPA Case No. 18-057 [DC]).

[8] Id. at 11.

[9] Id.

[10] Id.; (docketed as SPA Case No. 18-126 [DC])

[11] Id.

[12] Id.

[13] Id. at 53-54.

[14] Id. at 36.

[15] Id. at 12.

[16] Id. at 50-67-A.

[17] Id. at 51.

[18] Id.

[19] Id.

[20] Id.

[21] Id. at 56.

[22] Id.

[23] Id.

[24] Id. at 61.

[25] Id. at 67.

[26] 599 Phil. 168 (2009).

[27] Rollo, p. 64-66.

[28] Id. at 67.

[29] Id.

[30] Id. at 68-83.

[31] Id. at 35-49.

[32] Id. at 38.

[33] Id. at 38.

[34] Id. at 13-14.

[35] Id. at 15.

[36] Id.

[37] Id. at 16.

[38] Id. at 16-17.

[39] Id. at 17.

[40] Id.

[41] Id. at 18.

[42] Id. at 115-144.

[43] Id. at 124-127.

[44] Id.

[45] Id. at 128-131.

[46] Id. at 131-135.

[47] Id. at 138.

[48] Id. at 151-154.

[49] Id. at 155-156.

[50] Id. at 166-170.

[51] Id. at 1 and 5.

[52] IN THE MATTER OF THE AMENDMENT TO RULES 23, 24 AND 25 OF THE COMELEC RULES OF PROCEDURE FOR PURPOSES OF THE 13 MAY 2013 NATIONAL, LOCAL AND ARMM ELECTIONS AND SUBSEQUENT ELECTIONS. Approved September 25, 2012.

[53] G.R. No. 232579, 8 September 2020.

[54] Id.

[55] Separate Concurring Opinion, J. Caguioa, p. 4.

[56] AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991. Approved October 10, 1991.

[57] 599 Phil. 223 (2009).

[58] Id. at 229.

[59] 627 Phil. 331 (2010).

[60] Id. at 336.

[61] Concurring Opinion, J. Leonen, p. 8.

[62] 607 Phil. 810 (2009).

[63] Id. at 817.

[64] 820 Phil. 611 (2017).

[65] Id. at 620.

[66] R.A. 9225, Section 3 states:

Section 3. Retention of Philippine Citizenship - Any provision of law to the contrary notwithstanding, natural-born citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to

have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

"I \_\_\_\_\_, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I imposed this obligation upon myself voluntarily without mental reservation or purpose of evasion."

Natural born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

[67] R.A. 9225, Section 5(2) states:

Section 5. Civil and Political Rights and Liabilities - Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

x x x x(2) Those seeking elective public in the Philippines shall meet the qualification for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath; 58 709 Phil. 408 (2013).

[68] 709 Phil. 408 (2031).

[69] Id. at 438.

[70] Rollo, p. 65.

[71] Id.

[72] Id. at 66.

[73] Id. at 38.

[74] See *Arreza v. Toyo*, G.R. No. 213198, July 1, 2019, 906 SCRA 588.

[75] Separate Concurring Opinion, J. Caguioa, p. 10.

[76] Concurrence, J. Lazaro-Javier, p. 2.

[77] BLACK'S LAW DICTIONARY, p. 1178 (1968)

[78] 418 Phil. 723 (2001).

[79] See *Lam Swee Sang v. Commonwealth of the Philippines*, 73 Phil. 309 (1941).

[80] Id.

[81] Rollo, p. 37 and 43.

[82] Separate Concurring Opinion, J. Caguioa, p. 11.

[83] Concurrence, J. Lazaro-Javier, p. 3.

[84] *Supra* note 26.

[85] Id. at 175-176.

[86] Separate Concurring Opinion, J. Caguioa, p. 11.

[87] Separate Concurring Opinion, J. Caguioa, 12.

[88] Rollo, p. 126.

[89] See Cordora, supra note 26 at 180; De Guzman v. COMELEC, 607 Phil. 810, 819 (2009) Jacot v. Dal, 592 Phil. 661, 671 (2008).

[90] Id.

[91] Supra note 68.

[92] Rollo, p. 123.

[93] Maquilung v. COMELEC, 709 Phil. 408, 438, (2013).

[94] See Cordora v. COMELEC, supra note 26 at 176-177.

[95] Section 5. Civil and Political Rights and Liabilities - x x x (2) Those seeking elective public in the Philippines shall meet the qualification for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;

[96] See De Guzman v. COMELEC, supra note 62 at 821.

[97] AN ACT PROVIDING FOR THE WAYS IN WHICH PHILIPPINE CITIZENSHIP MAY BE LOST OR REACQUIRED. Approved, October 21, 1936. SECTION 1. How citizenship may be lost. — A Filipino citizen may lose his citizenship in any of the following ways and/or events:

- (1) By naturalization in a foreign country;
- (2) By express renunciation of citizenship;
- (3) By subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining twenty-one years of age or more;
- (4) By accepting commission in the military, naval or air service of a foreign country;
- (5) By cancellation of the certificate of naturalization;
- (6) By having been declared, by competent authority, a deserter of the Philippine army, navy or air corps in time of war, unless subsequently a plenary pardon or amnesty has been granted; and
- (7) In the case of a woman, upon her marriage to a foreigner if, by virtue of the law in force in her husband's country, she acquires his nationality.

[98] SECTION 40. Disqualifications. - The following persons are disqualified from running for any elective local position:

x x x (d) Those with dual citizenship;

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## CONCURRING OPINION

**LEONEN, J.:**

I concur. The requirements of Republic Act No. 9225 do not apply to dual citizens by reason of birth. Despite the mootness of the issue on petitioner's eligibility for public office, I join the ponente's interpretation of the rules regarding dual citizens seeking elected public positions, as this issue is capable of repetition yet evading review. In addition, I join my colleagues' discussion on harmonizing the provisions regarding the allowable period for

seeking review of resolutions issued by the Commission on Elections.

For resolution is the Petition for Certiorari[1] filed by Mariz Lindsey Tan Gana-Carait (Gana-Carait) assailing the Resolution of the Commission on Elections En Banc, which affirmed the First Division's finding that Gana-Carait materially misrepresented her eligibility to run as a member of the Sangguniang Panlungsod of Biñan City, Laguna.[2]

The case originated from a petition for disqualification filed by Rommel Mitra Lim (Lim) before the Commission on Elections against Gana-Carait based on her dual citizenship. Lim cited Gana-Carait's failure to renounce her United States citizenship as well as her repeated travels using her United States passport as basis for her supposed disqualification.[3]

Dominic Nuñez (Nuñez) also brought a separate petition for the cancellation of or denial of due course to Gana-Carait's certificate of candidacy because of her alleged misrepresentation of her eligibility to run for public office. Nuñez argued that Gana-Carait's dual citizenship made her ineligible for public office when she failed to renounce her foreign citizenship and take a concurrent oath of allegiance to the Republic of the Philippines, as required by Republic Act No. 9225.[4]

In Gana-Carait's Answers to both petitions, she argued that her dual citizenship did not preclude her from running for public office because: (1) dual citizenship is not a ground for disqualification, unlike dual allegiance; and (2) her acquisition of United States citizenship by reason of her birth did not involve any voluntary act on her part, which placed her beyond the scope of Republic Act No. 9225.

The Commission on Elections First Division consolidated both petitions and dismissed the petition for disqualification, but granted the petition for cancellation of Gana-Carait's certificate of candidacy. It held that Gana-Carait acquired her dual citizenship by way of "a positive act" when her parents presented documentary requirements to the United States Consular Service for the issuance of her Consular Report of Birth Abroad. The First Division then construed the text of Act 320 and 322 of the United States Immigration Nationality Act as both requiring "a positive act" to acquire United States citizenship, and thus, tantamount to naturalization.[5] Without renunciation of her foreign citizenship and an oath of allegiance to the Republic of the Philippines, the First Division deemed Gana-Carait ineligible to run for public office.[6]

Gana-Carait moved for partial reconsideration of the First Division's Resolution, but was denied relief by the Commission on Elections En Banc. Instead, the Commission En Banc affirmed Republic Act No. 9225's applicability to Gana-Carait as a dual citizen by reason of naturalization. Since Gana-Carait did not renounce her United States citizenship and take an oath of allegiance, the Commission En Banc deemed her certificate of candidacy to have falsely declared her eligibility to run for public office.[7]

Thus, petitioner Gana-Carait sought recourse before this Court, and argued that the Commission on Elections En Banc committed grave abuse of discretion amounting to lack or excess of jurisdiction when it deemed her a naturalized dual citizen, despite there being no evidence of her having undergone the lengthy process of naturalization, or of her acquisition of either Philippine or United States citizenship through any positive act.[8]

Public respondent Commission on Elections counters that petitioner acquired United States citizenship by filing an application, which amounted to a positive act. It argues that this act of applying for United States citizenship placed petitioner within the scope of Republic Act No. 9225. Thus, petitioner's certificate of candidacy was validly cancelled when she failed to comply with the requirements for full exercise of civil and political rights at the time of the certificate's filing.[9]

I join the ponente's position that Republic Act No. 9225 does not apply to petitioner Gana-Carait because she is a

dual citizen of both the Philippines and the United States by reason of birth, and not by naturalization. Similarly, I concur with the majority's finding that the Resolution of the Commission on Elections En Banc had not yet attained finality upon the timely filing of the Petition under Rule 64, in relation to Rule 65, of the Rules of Court. These matters are proper for resolution on the merits, despite their mootness, as they are capable of repetition yet evading review.

The ponencia correctly reasons that Republic Act No. 9225's requirements do not apply to petitioner. *De Guzman v. COMELEC*[10] discusses the purpose of Republic Act No. 9225 in providing means for the "re-acquisition and retention of Philippine citizenship" of natural-born Filipino citizens who have lost such citizenship through naturalization.

R.A. No. 9225 was enacted to allow re-acquisition and retention of Philippine citizenship for: 1) natural-born citizens who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country; and 2) natural-born citizens of the Philippines who, after the effectivity of the law, become citizens of a foreign country. The law provides that they are deemed to have re-acquired or retained their Philippine citizenship upon taking the oath of allegiance.[11] (Emphasis supplied, citation omitted)

This reflects *Calilung v. Datumanong*,[12] which clarified that Republic Act No. 9225 facilitates the re-acquisition or retention of Philippine citizenship by requiring an oath of allegiance from a natural-born Philippine citizen who was subsequently naturalized to foreign citizenship.

From the above excerpts of the legislative record, it is clear that the intent of the legislature in drafting Rep. Act No. 9225 is to do away with the provision in Commonwealth Act No. 63 which takes away Philippine citizenship from natural-born Filipinos who become naturalized citizens of other countries. What Rep. Act No. 9225 does is allow dual citizenship to natural-born Filipino citizens who have lost Philippine citizenship by reason of their naturalization as citizens of a foreign country. On its face, it does not recognize dual allegiance. By swearing to the supreme authority of the Republic, the person implicitly renounces his foreign citizenship. Plainly, from Section 3, Rep. Act No. 9225 stayed clear out of the problem of dual allegiance and shifted the burden of confronting the issue of whether or not there is dual allegiance to the concerned foreign country. What happens to the other citizenship was not made a concern of Rep. Act No. 9225.[13] (Emphasis supplied, citation omitted)

Further, *Cordora v. Tambunting*[14] distinguished between dual citizenship and dual allegiance, while pertinently discussing Republic Act No. 9225's applicability to naturalized dual citizens because of the implications that naturalization may have on a person's allegiance:

We have to consider the present case in consonance with our rulings in *Mercado v. Manzano*, *Valles v. COMELEC*, and *[Calilung] v. Datumanong*. *Mercado* and *Valles* involve similar operative facts as the present case. *Manzano* and *Valles*, like *Tambunting*, possessed dual citizenship by the circumstances of their birth. *Manzano* was born to Filipino parents in the United States which follows the doctrine of *jus soli*. *Valles* was born to an Australian mother and a Filipino father in Australia. Our rulings in *Manzano* and *Valles* stated that dual citizenship is different from dual allegiance both by cause and, for those desiring to run for public office, by effect. Dual citizenship is involuntary and arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. Thus, like any other natural-born Filipino, it is enough for a person with dual citizenship who seeks public office to file his certificate of candidacy and swear to the oath of allegiance contained therein. Dual allegiance, on the other hand, is brought about by the individual's active participation in the naturalization process. *[Calilung]* states that, under R.A. No. 9225, a Filipino who becomes a naturalized citizen of another country is allowed to retain [their] Filipino citizenship by swearing to the supreme authority of the Republic of the Philippines. The act of taking an oath of allegiance is an implicit renunciation of a naturalized citizen's foreign citizenship.

....

In Sections 2 and 3 of R.A. No. 9225, the framers were not concerned with dual citizenship per se, but with the status of naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Section 5(3) of R.A. No. 9225 states that naturalized citizens who reacquire Filipino citizenship and desire to run for elective public office in the Philippines shall "meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of filing the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath" aside from the oath of allegiance prescribed in Section 3 of R.A. No. 9225. The twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship served as the bases for our recent rulings in *Jacot v. Dal* and *COMELEC, Velasco v. COMELEC*, and *Japzon v. COMELEC*, all of which involve natural-born Filipinos who later became naturalized citizens of another country and thereafter ran for elective office in the Philippines. In the present case, *Tambunting*, a natural-born Filipino, did not subsequently become a naturalized citizen of another country. Hence, the twin requirements in R.A. No. 9225 do not apply to him.[15] (Emphasis supplied, citations omitted)

Thus, dual citizenship per se will not prohibit a person from running for public office. Rather, *Mercado v. Manzano*,[16] as cited by *Cordora*, clarifies that dual citizenship, as a ground for disqualification, must be understood as the possession of dual allegiance through a voluntary act, such as naturalization.

Invoking the maxim *dura lex sed lex*, petitioner, as well as the Solicitor General, who sides with him in this case, contends that through §40(d) of the Local Government Code, Congress has "command[ed] in explicit terms the ineligibility of persons possessing dual allegiance to hold local elective office."

To begin with, dual citizenship is different from dual allegiance. The former arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. For instance, such a situation may arise when a person whose parents are citizens of a state which adheres to the principle of *jus sanguinis* is born in a state which follows the doctrine of *jus soli*. Such a person, *ipso facto* and without any voluntary act on his part, is concurrently considered a citizen of both states. Considering the citizenship clause (Art. IV) of our Constitution, it is possible for the following classes of citizens of the Philippines to possess dual citizenship:

- (1) Those born of Filipino fathers and/or mothers in foreign countries which follow the principle of *jus soli*;
- (2) Those born in the Philippines of Filipino mothers and alien fathers if by the laws of their fathers' country such children are citizens of that country;
- (3) Those who marry aliens if by the laws of the latter's country the former are considered citizens, unless by their act or omission they are deemed to have renounced Philippine citizenship.

There may be other situations in which a citizen of the Philippines may, without performing any act, be also a citizen of another state; but the above cases are clearly possible given the constitutional provisions on citizenship.

Dual allegiance, on the other hand, refers to the situation in which a person simultaneously owes, by some positive act, loyalty to two or more states. While dual citizenship is involuntary, dual allegiance is the result of an individual's volition.

....

Clearly, in including §5 in Article IV on citizenship, the concern of the Constitutional Commission was not with dual citizens per se but with naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Hence, the phrase "dual citizenship" in R.A. No. 7160, §40(d) and in R.A. No. 7854, §20 must be understood as referring to "dual allegiance." Consequently, persons with mere dual citizenship do not fall under this disqualification. Unlike those with dual allegiance, who must, therefore, be subject to strict process

with respect to the termination of their status, for candidates with dual citizenship, it should suffice if, upon the filing of their certificates of candidacy, they elect Philippine citizenship to terminate their status as persons with dual citizenship considering that their condition is the unavoidable consequence of conflicting laws of different states. As Joaquin G. Bernas, one of the most perceptive members of the Constitutional Commission, pointed out: "[D]ual citizenship is just a reality imposed on us because we have no control of the laws on citizenship of other countries. We recognize a child of a Filipino mother. But whether or not she is considered a citizen of another country is something completely beyond our control." [17] (Emphasis supplied, citations omitted)

Therefore, it is the manner by which a Philippine citizen procures their second foreign citizenship that determines the applicability of Republic Act No. 9225's prerequisites for candidacy. As aptly found by the ponencia, petitioner never underwent the process of naturalization or committed any voluntary act to acquire her United States citizenship. Rather, petitioner possessed dual citizenship by birth, [18] which was merely affirmed by the issuance of her Consular Report of Birth Abroad. I join the ponencia's position that petitioner did not make any material misrepresentation in her certificate of candidacy because Republic Act No. 9225 did not require her to renounce her United States citizenship or to take a separate oath of allegiance in order to run for public office. [19]

As to the propriety of petitioner's procedural recourse, I concur that the Resolution of the Commission on Elections En Banc had not yet attained finality at the time petitioner filed her Petition for Certiorari. The ponencia's discussion on this matter eruditely harmonized the rules of procedure and the constitutional provisions defining the periods for questioning the Commission's decisions, orders, and rulings. [20]

Likewise, I agree that the remedies available under Rule 47 and Rule 65 are similar in that both are capable of annulling an assailed judgment, final order or resolution that has attained finality. The ponencia did well to distinguish the grounds available in the present Rule 65 Petition, as opposed to a Rule 47 Petition, which I reiterate here.

Mercury Drug Corporation v. Spouses Huang, [21] citing Yu v. Reyes-Carpio, [22] recognizes that judgments rendered with grave abuse of discretion are a form of void judgment, in that they have no force and effect. [23] However, Imperial v. Armes, [24] which also cites Yu, distinguished void judgments from judgments rendered with grave abuse of discretion amounting to lack or excess of jurisdiction, and emphasized the difference between rules for seeking relief under either procedural vehicle:

A judgment rendered without jurisdiction is a void judgment. This want of jurisdiction may pertain to lack of jurisdiction over the subject matter or over the person of one of the parties.

A void judgment may also arise from the tribunal's act constituting grave abuse of discretion amounting to lack or excess of jurisdiction. In Yu v. Judge Reyes-Carpio, we explained —

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. "x x x [T]he use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void" x x x.

In Guevarra v. Sandiganbayan, Fourth Division, we further explained —

x x x However, if the Sandiganbayan acts in excess or lack of jurisdiction, or with grave abuse of discretion amounting to excess or lack of jurisdiction in dismissing a criminal case, the dismissal is null and void. A tribunal acts without jurisdiction if it does not have the legal power to determine the case; there is excess of jurisdiction where a tribunal, being clothed with the power to determine the case, oversteps its authority as determined by law. A void judgment or order has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent. Such judgment or order may be resisted in any action or proceeding whenever it is involved. x x x

To give flesh to these doctrines, the Rules of Court, particularly the 1997 Revised Rules on Civil Procedure, provides for a remedy that may be used to assail a void judgment on the ground of lack of jurisdiction. Rule 47 of the Rules of Court states that an action for the annulment of judgment may be filed before the CA to annul a void judgment of regional trial courts even after it has become final and executory. If the ground invoked is lack of jurisdiction, which we have explained as pertaining to both lack of jurisdiction over the subject matter and over the person, the action for the annulment of the judgment may be filed at any time for as long as estoppel has not yet set in. In cases where a tribunal's action is tainted with grave abuse of discretion, Rule 65 of the Rules of Court provides the remedy of a special civil action for certiorari to nullify the act.[25] (Emphasis supplied, citations omitted)

Here, the ponencia succinctly discussed the procedural recourse available under Rule 65, as availed of by petitioner. The Rule 65 Petition adequately raised and proved how the Commission on Elections committed grave abuse of discretion, amounting to lack or excess of jurisdiction, when it denied due course to petitioner's certificate of candidacy despite there being no basis to do so. The assailed Resolutions are, therefore, a nullity, producing no force and effect.

Finally, I join the ponencia in reasoning that the mootness of the issue surrounding petitioner's certificate of candidacy should not prohibit this Court from resolving the same, as it affects a matter of public importance and resolves an issue "capable of repetition yet evading review." [26] *Timbol v. Commission on Elections*, [27] citing *Dela Camara v. Enage*, [28] sanctions a ruling on a case's merits despite its mootness in order to set "controlling and authoritative doctrines." [29]

ACCORDINGLY, I vote to GRANT the Petition and to REVERSE and SET ASIDE the September 23, 2021 Resolution of the Commission on Elections En Banc and the February 27, 2019 Resolution of the Commission on Elections First Division.

Likewise, I vote that the November 6, 2018 Petition to Deny Due Course to or Cancel Certificate of Candidacy filed by private respondent Dominic P. Nuñez against petitioner Mariz Lindsey Tan Gana-Carait, docketed as SPA Case No. 18-126 (DC) be DISMISSED.

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[1] Filed under Rule 65, pursuant to Rule 64.

[2] Ponencia, p. 2.

[3] Id.

[4] Id.

[5] Id. at 4.

[6] Id. at 5.

[7] Id.

[8] Id. at 6.

[9] Ponencia, pp. 6-7.

[10] 607 Phil. 810 (2009) [Per J. Ynares-Santiago, En Banc].

[11] Id. at 817.

- [12] 551 Phil. 110 (2007) [Per J. Quisumbing, En Banc].
- [13] Id. at 117-118.
- [14] 599 Phil. 168 (2009) [Per J. Carpio, En Banc].
- [15] Id. at 179-180.
- [16] 367 Phil. 132 (1999) [Per J. Mendoza, En Banc].
- [17] Id. at 144-147.
- [18] Ponencia, pp. 14-15.
- [19] Id. at 17.
- [20] Id. at 9.
- [21] 552 Phil. 496 (2007) [Per CJ Puno, First Division].
- [22] 667 Phil. 474 (2011) [Per J. Velasco, Jr., First Division].
- [23] Mercury Drug Corporation v. Spouses Huang, 817 Phil. 434 (2017) [Per J. Leonen, Third Division].
- [24] 804 Phil. 439 (2017) [Per J. Jardeleza, Third Division].
- [25] Id. at 459-460.
- [26] Timbol v. Commission on Elections, 754 Phil. 578, 585 (2015) [Per J. Leonen En Banc].
- [27] 754 Phil. 578 (2015) [Per J. Leonen, En Banc].
- [28] 148-B Phil. 502, 504 (1971) [Per J. Fernando, En Banc].
- [29] Timbol v. Commission on Elections, 754 Phil. 578, 585 (2015) [Per J. Leonen, En Banc].

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### SEPARATE CONCURRING OPINION

#### CAGUIOA, J.:

The ponencia grants the Petition for Certiorari and Prohibition (With Prayer for the Immediate Issuance of a Temporary Restraining Order [TRO] and/or Status Quo Ante Order and/or Writ of Preliminary Injunction)[1] (Petition), and annuls and sets aside the assailed Resolutions dated September 23, 2021[2] of the Commission on Elections (COMELEC) En Banc (assailed COMELEC En Banc Resolution) and February 27, 2019[3] of the COMELEC First Division in SPA No. 18-057 (DC) and SPA No. 18-126 (DC). Accordingly, it dismisses the Petition to Deny Due Course to or Cancel the Certificate of Candidacy (CoC) (Section 78 Petition) filed against petitioner Mariz Lindsey Tan Gana-Carait (Carait).[4]

I concur. I write this Separate Opinion to stress that:

- 1) The assailed COMELEC En Banc Resolution did not attain finality in light of the timely filing of the present Petition under Rule 64 in relation to Rule 65 of the Rules of Court (Rules);
- 2) It is proper to resolve the case on its merits considering that: a) the failure to attach a copy of the Consular Report of Birth Abroad of a Citizen of the United States of America (CRBA) is not fatal and the records are sufficient to support a conclusion on the merits, b) the issues raised are proper in an action under Rule 64 in

relation to Rule 65 of the Rules, and c) it involves novel and important issues greatly bearing on our immigration and election laws;

3) On the merits, the conclusion of the COMELEC that Carait acquired her American citizenship through naturalization lacks any basis in law and the evidence presented;

4) The twin requirements to run for public office under Republic Act No. (R.A.) 9225[5] or the Citizenship Retention and Re-acquisition Act of 2003 apply only to natural-born Filipinos who subsequently became foreign citizens through the process of naturalization. Carait, having acquired her United States (US) citizenship by reason of her birth, is not covered by said law; and

5) The COMELEC committed grave abuse of discretion in cancelling Carait's CoC because she is not guilty of false representation of her eligibility thereon as she possesses the qualification of being a Filipino citizen under Section 39[6] of R.A. 7160[7] or the Local Government Code of 1991 (LGC).

The assailed COMELEC En Banc  
Resolution did not attain finality  
because the present Rule 64 petition  
was timely filed with the Court.

At the outset, it bears stressing that, despite the COMELEC's issuance of a Certificate of Finality and Entry of Judgment, both dated December 13, 2021 and Writ of Execution dated January 31, 2022,[8] the assailed COMELEC En Banc Resolution had not attained finality.

Records show that the Petition before the Court was timely filed. Carait received the notice of denial by the COMELEC En Banc of her Motion for Reconsideration on October 6, 2021,[9] She filed the present Petition before the Court on October 12, 2021.[10] This filing is in accordance with the period laid down in Rule 64 of the Rules, the relevant portion of which provides:

#### RULE 64

Review of Judgments and Final Orders or Resolutions of the  
Commission on Elections and the Commission on Audit  
x x x x

SEC. 2. Mode of review. — A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, except as hereinafter provided. (n)

SEC. 3. Time to file petition. — The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial. (n)

Significantly, Rule 64 merely mirrors the period fixed under Section 7, Article IX of the 1987 Constitution, thus:

Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme

Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof. (Emphasis and italics supplied)

Thus, the Constitution affords aggrieved parties thirty (30) days to elevate to the Court decisions, orders or rulings of the COMELEC, via a petition for certiorari.

On the other hand, Section 8, Rule 23 of the COMELEC Rules of Procedure (COMELEC Rules), as amended by Resolution No. 9523[11] provides that decisions and resolutions of the COMELEC En Banc are deemed final and executory if no restraining order is issued by the Court within five (5) days from receipt of such decision or resolution, thus:

Section 8. Effect if Petition Unresolved. — x x x

A Decision or Resolution is deemed final and executory if, in case of a Division ruling, no motion for reconsideration is filed within the reglementary period, or in cases of rulings of the Commission En Banc, no restraining order is issued by the Supreme Court within five (5) days from receipt of the decision or resolution.

Only by its own Rules of Procedure does the COMELEC treat as "final and executory" its En Banc decisions and resolutions when no restraining order is issued by the Court within five (5) days from receipt thereof.

Thus, in the present case, even as the assailed COMELEC En Banc Resolution was elevated to the Court within the thirty (30)-day period fixed under the Constitution, the COMELEC nevertheless proceeded to issue a Certificate of Finality, Entry of Judgment and Writ of Execution of said Resolution.

Notwithstanding these issuances and the COMELEC Rules, as mentioned, the assailed COMELEC En Banc Resolution has not attained finality for the simple reason that the same was assailed timely by Carait with the Court. To stress, the COMELEC Rules are merely procedural and remedial in nature. They cannot, in any way, alter or supersede the clear language of the Constitution, or the Rules, which, to repeat, give aggrieved parties a period of thirty (30) days to bring before the Court, on certiorari, the COMELEC En Banc decisions and resolutions.

I submit that the proper way of harmonizing Section 8, Rule 23 of the COMELEC Rules with Article IX of the Constitution and Rule 64 of the Rules is to understand it to mean that decisions and resolutions of the COMELEC En Banc, in the absence of a restraining order from the Court issued within five (5) days from receipt, are rendered only executory — but not final. Hence, in the present case, the assailed COMELEC En Banc Resolution is merely executory, not final, and there is therefore no need for the Court to carve out an exception to the rule on immutability of judgments before it can resolve the case on its merits.

It is proper for the Court to resolve the case on its merits, instead of dismissing the same for technicalities, because: a) the failure to attach a copy of the CRBA is not fatal and the records are sufficient to support a conclusion on the merits, b) the issues raised are proper in an action under Rule 64 in relation to Rule 65, and c) the case involves novel and important issues greatly bearing on our immigration and election laws.

During the deliberations for the present case, it was raised that Carait's failure to attach to the Petition the CRBA

which may show that she was conferred US citizenship upon birth, renders the Petition dismissible, pursuant to Sections 5 and 6 of the Rules.

As stated at the outset, I disagreed with this posture.

Not all pleadings and records are required to be attached to a petition — only such as would give the reviewing body enough documentary and evidentiary bases to resolve the issues and ultimately the case before it.[12] In *Air Philippines Corp. v. Zamora*,<sup>[13]</sup> the Court laid down "guideposts" in determining the necessity of attaching pleadings and portions of the records in a Rule 65 petition, thus:

First, not all pleadings and parts of case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition.

Second, even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also be found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.

Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits.<sup>[14]</sup> (Emphasis supplied)

In an abundance of cases strikingly similar to this one,<sup>[15]</sup> the Court had excused the failure of parties to attach copies of the material records of the case as the same were already reflected or substantially summarized in the assailed decisions, certified true copies of which were properly annexed to the petitions. The Court had cautioned in these cases against overzealousness in the enforcement of technical rules at the expense of a just resolution of the cases,<sup>[16]</sup> stressing the oft-repeated rule that cases should be determined on the merits rather than on technicality or some procedural imperfection so that the ends of justice could be better served.<sup>[17]</sup>

In *Spouses Cordero v. Octaviano*,<sup>[18]</sup> the Court found that the Court of Appeals (CA) grossly erred in dismissing the petition for, among other technicalities, its failure to annex material parts of the records when the attached decisions of the trial courts substantially summarized the contents of the omitted documents. In *Galvez v. Court of Appeals, et al.*,<sup>[19]</sup> the Court extensively discussed related jurisprudence, concluding thus:

The foregoing rulings show that the mere failure to attach copies of the pleadings and other material portions of the record as would support the allegations of the petition for review is not necessarily fatal as to warrant the outright denial of due course when the clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the RTC, and other attachments of the petition sufficiently substantiate the allegations.<sup>[20]</sup>

In all of the above, the Court remanded the cases to the CA and directed it to give due course to the petition for resolution on the merits.

Here, the CRBA, which appears vital to the case, is cited, mentioned and quoted repeatedly in the assailed COMELEC Resolutions dated September 23, 2021 and February 27, 2019 in SPA No. 18-057 (DC) and SPA No. 18-126 (DC), certified true copies<sup>[21]</sup> of which are duly attached to the Petition. Additionally, the same was quoted verbatim in the Separate Dissenting Opinions of then Commissioner, now Associate Justice of the Court, Antonio T. Kho, Jr. (J. Kho)<sup>[22]</sup> and Commissioner Aimee P. Ferolino (Comm. Ferolino),<sup>[23]</sup> which are likewise part of the case rollo. Thus, a simple application of the foregoing jurisprudence shows that the records of the present case are enough for the Court to rule on the main issues presented.

Likewise brought to the fore during the case deliberations is the correctness of the issues raised in the present Rule 64 Petition, specifically that, as the Court does not re-evaluate findings of fact of the COMELEC in a Rule 64 action, the main issue raised in the Petition — whether Carait became a US citizen, in addition to being a Filipino citizen, by birth or by virtue of the positive act of presenting documentary evidence before the Consular Service of the US in the Philippines — is improper.

Contrarily, I submit that the issues raised are proper.

First, while the COMELEC's findings of facts are generally accorded respect in a Rule 64 action (in relation to Rule 65) in due deference to the COMELEC's relevant expertise, the same are not infallible and may be set aside when they fail the test of arbitrariness, or upon proof of grave abuse of discretion.[24] To stress, unlike in a Rule 45 action, questions of facts are not proscribed in Rules 64 and 65 actions, so that the Court, in determining whether or not the COMELEC had gravely abused its discretion, can examine the parties' submissions, as it had done so in a plethora of cases.[25] In *Mitra v. COMELEC, et al.*,[26] the Court struck down the COMELEC's argument that it overstepped its certiorari jurisdiction in taking cognizance of factual issues raised in the Rule 64 petition, ruling that the argument confuses Rule 45 actions with those under Rules 64 and 65.[27]

Indeed, factual findings of the COMELEC will be set aside when found to be unsupported by any evidence or substantial evidence.[28] In such cases, the Court is not only obliged, but has the constitutional duty to set aside such findings for lack of jurisdiction.[29]

Moreover, a perusal of the records shows that questions of law are raised in the main, the settlement of which requires no re-evaluation of the probative value of the evidence presented. Rather, what is demanded is the proper appreciation of the relevant facts which are largely uncontested. As the ponencia properly holds, the pivotal issue is whether Carait acquired her US citizenship — and therefore her status as a dual citizen — by birth or through naturalization.[30] This is a legal question which then bears on the ultimate legal issue of whether she committed false material representation when she claimed in her CoC that she was eligible to run for elective office despite her failure to renounce her American citizenship in accordance with the requirements of R.A. 9225.

In any case, even if we were to gratuitously assume that the Court is called upon by the Petition to take another look at the factual issues, the Court has the prerogative to call upon the parties to submit additional evidence should it determine the same to be necessary, as I had earlier suggested for the Court to merely order the submission of the CRBA for a more judicious resolution of the case.

All told, any premium placed on technicalities at the expense of a just resolution of the case is misplaced, especially considering the novel and important issues raised therein, which bear on the import of our election and immigration laws on the different modes of acquiring foreign citizenship by natural-born Filipinos pursuant to foreign laws. It likewise bears mentioning that the dismissal of the Petition necessarily leads to the reversal of the will of the electorate in the Lone District of Biñan, Laguna which elected Carait into office in the 2019 National and Local Elections (2019 NLE). To my mind, this circumstance, alone, already merits a thorough look at the records and a resolution of the case on its merits.

Carait did not acquire her dual citizenship through naturalization.

The COMELEC granted the Section 78 Petition filed by private respondent Dominic P. Nuñez (Nuñez) and cancelled Carait's CoC for her alleged false representation that she is eligible to run for Member of the Sangguniang Panlungsod of the Lone District of Biñan, Laguna, when she is not, as she failed to comply with the twin requirements to run for public office under R.A. 9225 of: (1) taking an Oath of Allegiance to the Republic of

the Philippines, and (2) renouncing her foreign citizenship.[31]

Indeed, Carait does not appear to deny that she did not comply with the mentioned requirements prior to the filing of her CoC on October 17, 2018. What she posits, instead, is that R.A. 9225 does not apply to her.

The coverage of R.A. 9225, as well as the twin requirements to run for public office thereunder, are provided in Sections 3 and 5 of the law:

SECTION 3. Retention of Philippine Citizenship. — Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

"I \_\_\_\_\_, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines, and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion."

Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

x x x x

SECTION 5. Civil and Political Rights and Liabilities. — Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

x x x x

(2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;

x x x x (Emphasis supplied)

In concluding that Carait is covered by R.A. 9225, the COMELEC First Division found that she falls under the second category of natural-born Filipinos covered by R.A. 9225, pursuant to the case of *De Guzman v. COMELEC, et al.*[32] (*De Guzman*) and that she was not a dual citizen by birth but a dual citizen by naturalization since there was a positive act that was done in acquiring her US citizenship.[33]

On the other hand, Carait contends that the law does not apply to her because she did not acquire her US citizenship through naturalization. Rather, she is a dual citizen by birth, having performed no positive act to acquire her foreign citizenship. She further contends that the COMELEC's finding that she acquired her American citizenship by naturalization is baseless.

At the outset, the following are the uncontroverted facts:

- 1) Carait was born on June 25, 1991 in Makati City to a father who is a Filipino citizen, and a mother who is an American citizen;[34]
- 2) there is, in the COMELEC case records, a CRBA issued on August 23, 2004 by Vice Consul Catherine Graham which states that Carait "acquired United States citizenship at birth as established by documentary evidence presented to the Consular Service of the United States at Manila, Philippines on August 23,

2004;"[35] and

3) Carait did not make a personal and sworn renunciation of her foreign citizenship prior to filing her CoC for the 2019 NLE.[36]

To support its conclusion that Carait underwent naturalization, the COMELEC First Division cited Section 322 of the United States Immigration and Nationality Act[37] (INA) which states that "a parent who is a citizen of the United States x x x may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under Section 320." [38] It further delved on the other provisions of the INA and concluded that a condition to acquire the "automatic [US] citizenship" is that the child must have been admitted to the US as a lawful permanent resident status, which, again, requires some positive act to obtain.[39] Finally, the COMELEC First Division referred to the CRBA which states that Carait "acquired United States citizenship at birth as established by documentary evidence presented to the Consular Service of the United States at Manila, Philippines on August 23, 2004." [40] It ruled that on the basis of the express language of the CRBA, "documentary evidence was presented to establish and acquire [Carait's] United States citizenship." [41] It then finally concluded that "[t]his is a clear indicia that there is a positive act on the part of [Carait] to acquire foreign citizenship which militates against her claim of dual citizenship by birth." [42]

The COMELEC's conclusion is patently and egregiously erroneous. From the records, Carait did not acquire her dual citizenship through naturalization.

First, as astutely pointed out by J. Kho in his Dissenting Opinion, the COMELEC First Division's reference to the INA is mistaken as the same does not appear to have been proven in accordance with the Rules. The Court cannot take judicial notice of foreign laws, which must be presented as public documents of a foreign country and be evidenced by an official publication thereof, pursuant to Rule 132 of the Rules.[43]

Second, a reading of the cited portions of the INA, which refers to automatic citizenship of a child upon the application of his or her American citizen parent, even further bolsters the conclusion that, if, indeed, some positive acts were performed in the acquisition of Carait's American citizenship, the same could not have been performed by her but rather, by her American parent.

Third, the records are bereft of any evidence which would indicate to the slightest degree that Carait petitioned to acquire her US citizenship or that she went through the pertinent naturalization process. To stress, private respondents herein had the burden of proving their allegations before the COMELEC, having filed the petitions for disqualification and for cancellation of Carait's CoC.

Fourth, the categorical language of the CRBA — the sole pertinent evidence presented — shows that her American citizenship was acquired at birth and that documentary evidence was presented merely to establish this fact. The CRBA is very clear on this point and it is curious how both the COMELEC First Division and En Banc completely ignored the portion of the document that literally and unequivocally states that Carait "acquired United States Citizenship at birth." [44]

Carait, as well as the Separate Dissenting Opinion[45] of Comm. Ferolino, submits that the present case is similar to *Cordora v. COMELEC, et al.*[46] (*Cordora*). In *Cordora*, the candidate, Gustavo Tambunting (Tambunting), like Carait, was born to Filipino and American parents. Tambunting's American father petitioned him through INS Form I-130 (Petition for Relative) as a result of which he was issued a Certification of Citizenship and an American passport. The Court held that Tambunting did not need to go through naturalization process to acquire American citizenship because of the circumstances of his birth and that the process involved in INS Form I-130 only served to confirm his American citizenship acquired at birth, thus:

We agree with Commissioner Sarmiento's observation that Tambunting possesses dual citizenship. Because of the circumstances of his birth, it was no longer necessary for Tambunting to undergo the naturalization process to acquire American citizenship. The process involved in INS Form I-130 only served to confirm the American citizenship which Tambunting acquired at birth. The certification from the Bureau of Immigration which Cordora presented contained two trips where Tambunting claimed that he is an American. However, the same certification showed nine other trips where Tambunting claimed that he is Filipino. Clearly, Tambunting possessed dual citizenship prior to the filing of his certificate of candidacy before the 2001 elections. The fact that Tambunting had dual citizenship did not disqualify him from running for public office.[47]

Applying Cordora here, Carait, because of the circumstances of her birth (i.e., that she is born to an American mother and a Filipino father), did not need to go through the process of naturalization to acquire her US citizenship. Indeed, per the categorical language of her CRBA — the only evidence on record tending to prove the mode by which she acquired her US citizenship — the same was "acquired at birth." Further, the CRBA and the process through which it was obtained, merely served to confirm such US citizenship.

The twin requirements to run for public office under R.A. 9225 apply only to natural-born Filipinos who acquired foreign citizenships through naturalization and not to those who acquired the same at birth or by reason of the circumstances of their birth.

In its Comment,[48] the COMELEC, through the Office of the Solicitor General (OSG), seemingly backpedals from the First Division's and En Banc's conclusions that Carait was naturalized as an American citizen and clarifies that, although its assailed Resolutions use the term "naturalization," the same was meant to describe the "voluntariness of the process and not the naturalization process per se." [49] It concludes that some positive act of applying for approval of Carait's American citizenship and obtaining her CRBA was performed and that Carait appears to have been aware of the same.[50]

Assuming arguendo that Carait was, indeed, aware that some act was performed to obtain the CRBA or establish her American citizenship, the same does not suffice to place her within the coverage of R.A. 9225. As held in a plethora of cases, the law applies only to natural-born Filipinos who became citizens of a foreign country specifically by naturalization.[51]

In *De Guzman*, the Court dissected R.A. 9225 and held that the law contemplates two (2) classes of natural-born Filipinos, thus:

R.A. No. 9225 was enacted to allow re-acquisition and retention of Philippine citizenship for: 1) natural-born citizens who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country; and 2) natural-born citizens of the Philippines who, after the effectivity of the law, become citizens of a foreign country. The law provides that they are deemed to have re-acquired or retained their Philippine citizenship upon taking the oath of allegiance.[52]

The COMELEC concludes that Carait falls under the second category because she acquired her US citizenship after the passage of R.A. 9225 on August 23, 2004 (the date when the CRBA was issued). While the second category does not speak of "naturalization," jurisprudence is settled that R.A. 9225 covers only natural-born Filipinos who later became naturalized citizens of a foreign country, either before or after the passage of R.A. 9225.[53] The distinction between the two categories laid down in *De Guzman* lies not on whether naturalization was undertaken to obtain the foreign citizenship but rather, on whether the Filipino citizenship was lost upon such

naturalization prior to the passage of R.A. 9225, by virtue of Commonwealth Act No. (C.A.) 63,[54] which provides:

SECTION 1. How citizenship may be lost. — A Filipino citizen may lose his citizenship in any of the following ways and/or events:

(1) By naturalization in a foreign country;

x x x x (Emphasis supplied)

In other words, R.A. 9225 is meant to avert the effects of Section 1(1) of C.A. 63 by allowing the retention and re-acquisition of Filipino citizenship, after naturalization in a foreign country, by taking the oath of allegiance to the Republic of the Philippines.[55] In *AASJS (Advocates and Adherents of Social Justice for School Teachers and Allied Workers) v. Datumanong*[56] (*AASJS*), the Court, after referring to the Congressional deliberations on R.A. 9225, explained thus:

From the above excerpts of the legislative record, it is clear that the intent of the legislature in drafting Rep. Act No. 9225 is to do away with the provision in Commonwealth Act No. 63 which takes away Philippine citizenship from natural-born Filipinos who become naturalized citizens of other countries. What Rep. Act No. 9225 does is allow dual citizenship to natural-born Filipino citizens who have lost Philippine citizenship by reason of their naturalization as citizens of a foreign country. x x x[57]

Hence, both categories of Filipinos under R.A. 9225 contemplate naturalized dual citizens. Necessarily, likewise, the twin requirements to run for public office under Sections 3 and 5 of the law apply only to natural-born Filipinos who have been so naturalized as foreign citizens, as categorically ruled in several cases.[58]

The OSG, in arguing that R.A. 9225 covers any acquisition of foreign citizenship through the performance of any positive act (regardless of who performed the same and if the candidate went through naturalization), cites *Maquiling v. COMELEC et al.*[59] (*Maquiling*) and submits that "dual citizenship, in the context of election laws, has two categories: (a) dual citizenship through performance of positive act/s; and (b) dual citizens by virtue of birth,"[60] and that Carait falls under the first category.

A full and plain reading, however, of *Maquiling* readily refutes the OSG's proposition. *Maquiling* pertinently held:

Arnado's category of dual citizenship is that by which foreign citizenship is acquired through a positive act of applying for naturalization. This is distinct from those considered dual citizens by virtue of birth, who are not required by law to take the oath of renunciation as the mere filing of the certificate of candidacy already carries with it an implied renunciation of foreign citizenship. Dual citizens by naturalization, on the other hand, are required to take not only the Oath of Allegiance to the Republic of the Philippines but also to personally renounce foreign citizenship in order to qualify as a candidate for public office.[61] (Emphasis supplied)

Indeed, R.A. 9225 covers only natural-born Filipinos who personally and voluntarily become naturalized foreign citizens, thereby possessing simultaneously two or more citizenships and allegiances. It is not concerned with dual citizenships acquired upon birth or due to the circumstances of one's birth, which are involuntary and a product of the concurrent application of different laws of two or more states.[62] Indeed, in *Cordora*, although *Tambunting's* American father performed the positive act of petitioning *Tambunting* under American laws, the Court nevertheless held that he did not acquire his foreign citizenship through naturalization and, thus, R.A. 9225 does not apply to him.

The emphasis on naturalization can be better understood when viewed in the context that, ultimately, R.A. 9225 is concerned not with dual citizenship per se, but with the status of naturalized Filipinos having dual allegiance.[63]

AASJS quoted the pertinent legislative deliberations, thus:

Rep. Locsin underscored that the measure does not seek to address the constitutional injunction on dual allegiance as inimical to public interest. He said that the proposed law aims to facilitate the reacquisition of Philippine citizenship by speedy means. However, he said that in one sense, it addresses the problem of dual citizenship by requiring the taking of an oath. He explained that the problem of dual citizenship is transferred from the Philippines to the foreign country because the latest oath that will be taken by the former Filipino is one of allegiance to the Philippines and not to the United States, as the case may be. He added that this is a matter which the Philippine government will have no concern and competence over

x x x x

Rep. Locsin further pointed out that the problem of dual allegiance is created wherein a natural-born citizen of the Philippines takes an oath of allegiance to another country and in that oath says that he abjures and absolutely renounces all allegiance to his country of origin and swears allegiance to that foreign country. The original Bill had left it at this stage, he explained. In the present measure, he clarified, a person is required to take an oath and the last he utters is one of allegiance to the country. He then said that the problem of dual allegiance is no longer the problem of the Philippines but of the other foreign country. x x x[64] (Additional emphasis supplied)

From the excerpt, the oath requirement under Section 3 is meant to address the problem of dual allegiance which is created when "a natural-born citizen of the Philippines takes an oath of allegiance to another country and x x x renounces all allegiance to his country of origin x x x." [65] The taking of the oath of allegiance under Section 3 is an implicit renunciation of foreign citizenship [66] and transfers the problem of dual allegiance to the concerned foreign country.

The state policy against dual allegiance is etched in Section 5, [67] Article IV of the Constitution, which must be read alongside disqualification laws such as Section 5 of R.A. 9225. In Cordora, the Court, citing the landmark cases of Mercado v. Manzano [68] and Valles v. COMELEC, [69] discussed dual allegiance and dual citizenship in relation to R.A. 9225, thus:

x x x Our rulings in Manzano and Valles stated that dual citizenship is different from dual allegiance both by cause and, for those desiring to run for public office, by effect. Dual citizenship is involuntary and arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. Thus, like any other natural-born Filipino, it is enough for a person with dual citizenship who seeks public office to file his certificate of candidacy and swear to the oath of allegiance contained therein. Dual allegiance, on the other hand, is brought about by the individual's active participation in the naturalization process. AASJS states that, under R.A. No. 9225, a Filipino who becomes a naturalized citizen of another country is allowed to retain his Filipino citizenship by swearing to the supreme authority of the Republic of the Philippines. The act of taking an oath of allegiance is an implicit renunciation of a naturalized citizen's foreign citizenship.

x x x x

In Sections 2 and 3 of R.A. No. 9225, the framers were not concerned with dual citizenship per se, but with the status of naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Section 5(3) of R.A. No. 9225 states that naturalized citizens who reacquire Filipino citizenship and desire to run for elective public office in the Philippines shall "meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of filing the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath" aside from the oath of allegiance prescribed in Section 3 of R.A. No. 9225. x x x [70]

In sum, R.A. 9225 and its twin requirements to run for public office apply only to natural-born Filipinos who became naturalized foreign citizens and had thereby sworn allegiance to the concerned foreign state. There being no proof showing that Carait became an American citizen through the process of naturalization, these requirements cannot apply to her.

Carait did not commit false material representation in her CoC, hence, the COMELEC committed grave abuse of discretion in cancelling the same.

To recall, the COMELEC cancelled the CoC of Carait after finding that she misrepresented therein that she is eligible to run for the subject local office when she is not.[71] In finding that she is not so eligible, the COMELEC referred to the qualifications for an elective local office under Section 39[72] of the LGC, specifically that "[a]n elective local official must be a citizen of the Philippines x x x." [73] It then concluded that Carait's failure to comply with the twin requirements of R.A. 9225 renders her ineligible to run for elective office.[74]

The conclusion is egregiously wrong.

First, as earlier discussed, based on the evidence presented and the applicable law, Carait is not covered by the twin requirements of R.A. 9225, being that she is not a naturalized US citizen. Hence, her non-compliance with the law does not taint her candidacy in any way.

Second, even on the assumption that Carait violated Section 5 of R.A. 9225 for failing to renounce her American citizenship, the same does not render her ineligible for the office sought and therefore, cannot be a ground to cancel her CoC. As the COMELEC itself properly rules, a petition to deny due course to or cancel CoC under Section 78 of the OEC in relation to Section 74, specifically the required declaration that the candidate is "eligible" for the office sought, must be read in relation to the constitutional and statutory provisions on qualifications for public office.[75] For Carait's case, the COMELEC properly referenced Section 39. However, nothing under Section 39 is affected by Carait's alleged failure to comply with Section 5 of R.A. 9225.

Specifically, the failure to renounce foreign citizenship as required by Section 5 of R.A. 9225 does not affect a naturalized person's status as a Filipino citizen, which is retained or reacquired upon the taking of the oath of allegiance under R.A. 9225 — the same oath contained in the CoC.[76] Such failure merely maintains his or her status as a dual citizen. The requirement to renounce foreign citizenship, and therefore have full and sole allegiance to the Republic of the Philippines; is merely a condition imposed upon the exercise of a naturalized dual citizen's political right to seek elective public office, but not upon one's status as a Filipino citizen. This is clear from the language of Section 5.

Section 1[77] of C.A. 63 enumerates the acts by which a Filipino citizen may lose his citizenship, none of which pertains to failure to renounce foreign citizenship.

Indeed, failure to renounce foreign citizenship under R.A. 9225 and thereby remaining a dual citizen having dual allegiances does not appear to be an ineligibility, as it presupposes that the candidate is a Filipino citizen. Rather, the same is a disqualification under Section 40[78] of the LGC, and thus, the proper subject of a petition for disqualification. On this note, it bears to point out that a petition for disqualification was filed against Carait and consolidated with the Section 78 action before the COMELEC, but the same was dismissed and does not appear to have been appealed.

Hence, even assuming *arguendo* that Carait is covered by, and violated Section 5, she thereby remained in possession of the qualification of being a Filipino citizen under Section 39 of the LGC. When she declared that

she was eligible to run for the subject office in her CoC, she cannot be said to have made a false representation.

Additionally, the assailed Resolutions are completely bereft of any finding that there was a deliberate attempt to mislead, misinform, or hide the alleged fact of Carait's ineligibility — an essential requisite for a Section 78 petition to prosper.[79]

All told, I submit that the assailed COMELEC En Banc Resolution has not attained finality as the same was timely assailed within the period fixed under the Constitution. Further, it is proper for the Court to rule on the merits of the case as the records are enough to resolve the same and that proper issues were raised therein.

The ruling on the merits is even more crucial when considering the exceptional issues raised and their impact on our election vis-a-vis immigration laws, as well as the fact that the Petition's outright dismissal necessarily leads to the reversal of the will of the electorate due to mere technicalities.

On the merits, I agree with the ponencia that the COMELEC gravely abused its discretion in cancelling Carait's CoC due to her alleged false representation in her CoC that she is eligible for the office sought. Her failure to comply with the requirements of R.A. 9225 to run for public office does not render her ineligible because a) she is not covered by R.A. 9225 as she did not acquire her American citizenship through naturalization and b) even on the assumption that she is so covered, her non-renunciation of her American citizenship as required under Section 5 does not divest her of her status as a Filipino citizen and therefore, she remains in full possession of the qualifications for the subject office under Section 39 of the LGC.

For the above reasons, I vote to GRANT the Petition.

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[\*] Also Dominic P. Nunez in some parts of the rollo.

[1] Rollo, pp. 5-34.

[2] Id. at 35-39.

[3] Id. at 50-67-A.

[4] Ponencia, p. 19.

[5] AN ACT MAKING THE CITIZENSHIP OF PHILIPPINE CITIZENS WHO ACQUIRE FOREIGN CITIZENSHIP PERMANENT, AMENDING FOR THE PURPOSE COMMONWEALTH ACT NO. 63, AS AMENDED AND FOR OTHER PURPOSES, approved on August 29, 2003.

[6] SEC. 39. Qualifications. — (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sanggunian" panlalawigan, sanggun.ang panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

(b) Candidates for the position of governor, vice-governor, or member of the sanggunian" panlalawigan, or mayor, vice-mayor or member of the sangguniang panlungsod of highly urbanized cities must be at least twenty-three (23) years of age on election day.

(c) Candidates for the position of mayor or vice-mayor of independent component cities component cities, or municipalities must be at least twenty-one (21) years of age on election day

(d) Candidates for the position of member of the sangguniang panlungsod or sangguniang bayan must be at least eighteen (18) years of age on election day.

(e) Candidates for the position of punong barangay or member of the sangguniang barangay must be at least eighteen (18) years of age on election day.

(f) Candidates for the sangguniang kabataan must be at least fifteen (15) years of age but not more than twenty-one (21) years of age on election day.

[7] AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991, approved on October 10 1991.

[8] See ponencia, p. 7.

[9] Rollo, pp. 6 and 8.

[10] Id. at 1 and 5.

[11] IN THE MATTER OF THE AMENDMENT TO RULES 23, 24, AND 25 OF THE COMELEC RULES OF PROCEDURE FOR PURPOSES OF THE 13 MAY 2013 NATIONAL, LOCAL AND ARMM ELECTIONS AND SUBSEQUENT ELECTIONS, promulgated on September 25, 2012.

[12] See *Air Philippines Corp. v. Zamora*, 529 Phil. 718 (2006).

[13] Id.

[14] Id. at 728. Citations omitted.

[15] See *Air Philippines Corp. v. Zamora*, supra note 12. See also *Spouses Cordero v. Octaviano*, G.R. No. 241385, July 7, 2020 accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66490>>; *Galvez v. Court of Appeals, et al.*, 708 Phil. 9 (2013); *San Miguel Corp. v. Aballa*, 500 Phil. 170 (2005); and *Cusi-Hernandez v. Spouses Diaz*, 390 Phil. 1245 (2000).

[16] See *Galvez v. Court of Appeals, et al.*, id. at 22 and *Air Philippines Corp. v. Zamora*, supra note 12, at 728.

[17] See *Air Philippines Corp. v. Zamora*, id.

[18] Supra note 15.

[19] Supra note 15.

[20] Id. at 19.

[21] Rollo, pp. 35-39 and 50-67-A.

[22] Id. at 44-49.

[23] Id. at 40-43.

[24] *Basarte v. COMELEC*, 551 Phil. 76, 85 (2007).

[25] See *Mitra v. COMELEC, et al.*, 648 Phil. 165 (2010); *Domalanta v. COMELEC*, 390 Phil. 46 (2000); *Varias v. COMELEC, et al.*, 631 Phil. 213 (2010); and *Dano v. COMELEC, et al.*, 794 Phil. 573 (2016).

[26] Id.

[27] Id. at 183.

[28] See *J. Brion, Concurring Opinion in Dano v. COMELEC, et al.*, supra note 25, at 603.

[29] Id.

[30] Ponencia, p. 11.

[31] Rollo, p. 67.

[32] 607 Phil. 810 (2009).

[33] Rollo, pp. 64-65.

[34] Id. at 10.

[35] Id. at 56.

[36] Id. at 11.

[37] IMMIGRATION AND NATIONALITY ACT, as amended through P.L. 117-103, enacted on March 15, 2022. Accessed at < <https://www.govinfo.gov/content/pkg/COMPS-1376/pdf/COMPS-1376.pdf>>

[38] Rollo, p. 65.

[39] Id. at 65-66.

[40] Id. at 66. Additional emphasis supplied; underscoring omitted.

[41] Id.

[42] Id.

[43] Maquiling v. COMELEC. et al., 713 Phil. 178, 188 (2013).

[44] Rollo, p. 56.

[45] Id. at 40-43.

[46] 599 Phil. 168 (2009).

[47] Id. at 175-176. Citation omitted.

[48] Rollo, pp. 115-144.

[49] Id. at 126.

[50] Id. at 126-127.

[51] See De Guzman v. COMELEC, et al., supra note 32; Maquiling v. COMELEC, et al., 709 Phil. 408 (2013); AASJS (Advocates and Adherents of Social Justice for School Teachers and Allied Workers) v. Datumanong, 551 Phil. 110 (2007) and Cordora v. COMELEC, et al., supra note 46.

[52] De Guzman v. COMELEC. et al., id. at 817. Citation omitted.

[53] See AASJS (Advocates and Adherents of Social Justice for School Teachers and Allied Workers) v. Datumanong, supra note 51; Cordora v. COMELEC, et al., supra note 46; De Guzman v. COMELEC, et al., supra note 32 and Jacot v. Dal, et al., 592 Phil. 661 (2008).

[54] AN ACT PROVIDING FOR THE WAYS IN WHICH PHILIPPINE CITIZENSHIP MAY BE LOST OR REACQUIRED, approved on October 21, 1936.

[55] See AASJS (Advocates and Adherents of Social Justice for School Teachers and Allied Workers) v. Datumanong, supra note 51, at 117-118.

[56] Supra note 51.

[57] Id. at 117-118. Citation omitted.

[58] See *Jacot v. Dal, et al.*, supra note 53; *De Guzman v. COMELEC, et al.*, supra note 32 and *Maquiling v. COMELEC, et al.*, supra note 51.

[59] Id.

[60] Rollo, p. 123.

[61] *Maquiling v. COMELEC, et al.*, supra note 51, at 438. Citation omitted.

[62] See *Cordora v. COMELEC, et al.*, supra note 46, at 176.

[63] AASJS (Advocates and Adherents of Social Justice for School Teachers and Allied Workers) *Datumanong*, supra note 51, at 118 and *Cordora v. COMELEC, et al.*, supra note 46, at 180.

[64] AASJS (Advocates and Adherents of Social Justice for School Teachers and Allied Workers) *v. Datumanong*, id. at 116-117. Citation omitted.

[65] Id. at 117.

[66] As concluded likewise in AASJS (Advocates and Adherents of Social Justice for School Teachers and Allied Workers) *v. Datumanong*, supra note 51 and *Cordora v. COMELEC, et al.*, supra note 46.

[67] Sec. 5. Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law.

[68] 367 Phil. 132 (1999).

[69] 392 Phil. 327 (2000).

[70] *Cordora v. COMELEC, et al.*, supra note 46, at 179-180. Citation omitted

[71] Rollo, p. 67.

[72] SEC. 39. Qualifications. – (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the Sangguniang Panlalawigan, Sangguniang Panlungsod, or Sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect. (Emphasis supplied)

[73] Rollo, p. 63.

[74] Id. at 67.

[75] See *Fermin v. COMELEC*, G.R. Nos. 179695 and 182369, December 18, 2008, 574 SCRA 782, 792-793.

[76] See *De Guzman v. COMELEC, et al.*, supra note 32, at 821.

[77] SEC. 1. How citizenship may be lost. — A Filipino citizen may lose his citizenship in any of the following ways and/or events:

- (1) By naturalization in a foreign country;
- (2) By express renunciation of citizenship.
- (3) By subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining twenty-one years of age or more;
- (4) By accepting commission in the military, naval or air service of a foreign country;
- (5) By cancellation of the certificate of naturalization;

(6) By having been declared, by competent authority, a deserter of the Philippine army, navy or air corps in time of war, unless subsequently a plenary pardon or amnesty has been granted; and

(7) In the case of a woman, upon her marriage to a foreigner if, by virtue of the law in force in her husband's country, she acquires his nationality.

[78] SEC. 40. Disqualifications. — The following persons are disqualified from running for any elective local position:

x x x x

(d) Those with dual citizenship;

[79] See *Mitra v. COMELEC, et al.*, 636 Phil. 753, 780 (2010).

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## CONCURRENCE

### LAZARO-JAVIER, J.:

I concur.

Petitions[1] for disqualification were filed against Mariz Lindsey Tan Gana-Carait y Villegas (Gana-Carait) for acquiring American citizenship without renouncing it prior to seeking an elective post in the 2019 National and Local Elections (2019 NLE).[2] Inter alia, private respondents alleged that Gana-Carait applied for and used an American passport to travel to and from the Philippines and the United States.[3] They asserted that these acts negated Gana-Carait's claim that she was a Filipino citizen when she filed her Certificate of Candidacy (CoC).[4] Thus, her representation in her CoC that she is a Filipino citizen eligible to run for public office is false.[5]

Gana-Carait countered that she did not commit any material misrepresentation in her CoC because as a "dual citizen," she is not precluded from seeking elective office. She did not have to perform any voluntary or positive act for the acquisition of her American citizenship because she was born in the United States.[6] Accordingly, Republic Act No. (RA) 9225[7] is not applicable to her. Her possession of an American passport is not a basis for disqualification.[8]

The Commission on Elections (COMELEC) First Division found that Gana-Carait was born in the Philippines in 1991 and that she acquired American citizenship as evidenced by a Consular Report of Birth Abroad of a Citizen of the United States of America (CRBA). She also obtained an American passport, which she used between 2010 and 2018.[9]

The COMELEC concluded that Gana-Carait is a "dual citizen" who committed a material misrepresentation in her CoC because she declared that she was eligible to run for public office.[10] As a natural-born Filipino citizen who became an American citizen via naturalization after the effectivity of RA 9225, she had to comply with the twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship at the time of filing of her CoC.[11] Because the records showed that she failed to comply with the twin requirements, the COMELEC First Division cancelled her CoC for the 2019 NLE.[12] The COMELEC En Banc subsequently affirmed under Resolution dated September 23, 2021.[13]

Notably, the COMELEC considered Gana-Carait a "dual citizen" by naturalization because she executed a positive act to acquire her American Citizenship, i.e., her CRBA indicated that she submitted documentary evidence to the Consular Service of the United States of America in Manila.[14] Further, Act 322 of the United States Immigration and Nationality Act[15] characterized her acquisition of American citizenship as a

"naturalization." [16]

Black's Law Dictionary defines naturalization as "the act of adopting a foreigner and clothing him or her the privileges of a native citizen." [17] In *Garcia v. Recio*, [18] the Court defined naturalization as a legal act of adopting an alien and clothing him or her with the political and civil rights belonging to a citizen. It implies the renunciation of a former nationality and the fact of entrance into a similar relation towards a new body politic.

Therefore, naturalization is a process through which a State confers on an outsider, i.e., a non-citizen/alien/foreigner, with rights enjoyed by its citizens. Based on the definition of naturalization, an insider, i.e., a citizen, is disqualified from undergoing naturalization proceedings. In this regard, the Court recognizes that naturalization is superfluous for persons who are already citizens of a particular State [19] and that it is absurd for a State to issue a certificate of naturalization to its own citizens. [20]

As for Gana-Carait, it can hardly be said that the CRBA amounts to an act of naturalization. Notably, two official documents prove U.S. citizenship: (a) a passport issued by the Secretary of the U.S. Department of State; and (b) a CRBA issued by the State Department's consular officer. [21] A CRBA is issued to U.S. citizens born abroad "[u]pon application and submission of satisfactory proof of birth, identity and nationality." [22] CRBA Form FS-240 [23] explicitly states that the holder of the CRBA "acquired United States CITIZENSHIP at birth as established by documentary evidence." [24] Being a citizen of the United States at birth, it would be absurd to construe Gana-Carait's submission of documents to the Consular Service of the United States of America in Manila to be akin to one's availment of the naturalization process for the purpose of becoming an American citizen which petitioner herself has already been since her birth. In fact, the document itself acknowledges Gana-Carait's citizenship as American at birth.

As it was, the CRBA merely confirmed Gana-Carait's status as an American citizen. In *Cordora v. COMELEC*, [25] which had a similar factual backdrop, the Court explained:

Tambunting does not deny that he is born of a Filipino mother and an American father. Neither does he deny that he underwent the process involved in INS Form I-130 (Petition for Relative) because of his father's citizenship. Tambunting claims that because of his parents' differing citizenships, he is both Filipino and American by birth. Cordora, on the other hand, insists that Tambunting is a naturalized American citizen.

We agree with Commissioner Sarmiento's observation that Tambunting possesses dual citizenship. Because of the circumstances of his birth, it was no longer necessary for Tambunting to undergo the naturalization process to acquire American citizenship. The process involved in INS Form I-130 only served to confirm the American citizenship which Tambunting acquired at birth. [26] (Emphasis supplied)

Because Gana-Carait was an American citizen at birth, and because she did not become a naturalized citizen of the United States or any other country, she is not required to comply with the twin requirements of swearing an Oath of Allegiance, and executing a Renunciation of Foreign Citizenship under RA 9225. [27]

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[1] Draft Decision, p. 2.

[2] Id.

[3] Id.

[4] Id.

[5] Id.

[6] Id. at 3.

[7] Otherwise known as the Citizenship Retention and Re-acquisition Act of 2003.

[8] Draft Decision, p. 3.

[9] Id.

[10] Id. at 4.

[11] Id. citing *Cordora v. COMELEC*, 599 Phil. 168 (2009) [Per J. Carpio, En Banc].

[12] Id. at 5.

[13] Id.

[14] Id.

**[15] 8 USC § 1433.**

[16] Draft Resolution, p. 3.

[17] BLACK'S LAW DICTIONARY, p. 1178 (1968)

[18] 418 Phil. 723, 734 (2001) [Per J. Panganiban, Third Division].

[19] See *Lam Swee Sang v. Commonwealth of the Philippines*, 73 Phil. 309, 310 (1941) [Per J. Laurel].

[20] Id.

[21] *Sabra as next friend of Baby M v. Pompeo*, 453 F.Supp.3d 291, April 2, 2020.

[22] *Chacoty v. Pompeo*, 392 F.Supp.3d 1, July 17, 2019; 22 USCA § 2705; 22 C.F.R. § 50.7.

[23] *Immigr. Empl. Compliance Handbook* § 9:54.

[24] See also Draft Resolution, p. 4.

[25] *Supra* note 11 [Per J. Carpio, En Banc].

[26] Id. at 175-176.

[27] Id.

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