Republic of the Philippines
Supreme Court
Manila

EN BANC

MARIZ LINDSEY TAN GANA-CARAIT *y* VILLEGAS,
Petitioner,

- *versus* -

COMMISSION ON ELECTIONS, ROMMEL MITRA LIM, AND DOMINIC P. NUÑEZ,
Respondents.

G.R. No. 257453

Present:

GESMUNDO, *C.J.*,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,*
ZALAMEDA,
LOPEZ, M.,**
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR.,*** and
SINGH, *JJ.*

Promulgated:

August 9, 2022

x - x

DECISION

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

* No part.
** On official leave.
*** No part.

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]

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[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.

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]

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[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.

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]

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[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.

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

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[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.

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]

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[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. at128-131.
[46] Id. at 131-135.
[47] Id. at 138.

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 aforequoted 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.

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[48] Id. at 151-154.
[49] Id. at 155-156.
[50] Id. at 166-170.
[51] Id. at 1 and 5.

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.
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> 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. (Undescoring 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.

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[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.

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***:[53]

> 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.
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> 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.[54] (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),[55] 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,[56] 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

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[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.

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)***,[57] 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.
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> 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.
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> 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.[58]
> (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***,[59] *viz.*:

> The Court shall first resolve the preliminary issue of mootness.
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> 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.

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[57] 599 Phil. 223 (2009).
[58] Id. at 229.
[59] 627 Phil. 331 (2010).

> 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.
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> 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.[60] (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

[60] Id. at 336.
[61] Concurring Opinion, J. Leonen, p. 8.
[62] 607 Phil. 810 (2009).

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

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[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;
[68] 709 Phil. 408 (2013).

> 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 or 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.

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[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.

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.

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[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.

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.

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[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.

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

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[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.

> 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

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[93] *Maquiling 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.

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.

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[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 x

(d) Those with dual citizenship;

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.

RICARDO R. ROSARIO
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

See separate concurring opinion

MARVIC MARIO VICTOR F. LEONEN
Senior Associate Justice

See Separate Concurring

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

P/s. see Concurrence

RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

ON OFFICIAL LEAVE
MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

NO PART
ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice