G.R. No. 210164 – ROMMEL C. ARNADO, *petitioner* v. COMMISSION ON ELECTIONS and FLORANTE CAPITAN, *respondents.*

Promulgated:

August 18, 2015

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DISSENTING OPINION

BRION, *J.:*

The present *certiorari* petition,[1] filed under Rule 64 in relation with Rule 65 of the Rules of Court, involves the disqualification of the present petitioner, Rommel C. Arnado (*Arnado*), in the May 13, 2013 National and Local Elections *(May 2013 Elections)*.

This case traces its roots to the ***earlier*** disqualification case [docketed as SPA No. 10-109 (DC)] filed against Arnado in relation with the May 10, 2010 Elections, that led to the Court's decision in *Maquiling v. Comelec* disqualifying Arnado.[2] To some extent, the present case is factually linked to the earlier disqualification case.

As in *Maquiling,* Arnado and his qualification to run for public office are at the center of the present petition. Private respondent Florante ***Capitan*** seeks to strengthen the linkage with the earlier *Maquiling* case by adopting the *Maquiling* positions and considering the present case as a seamless continuation of *Maquiling.*

Despite some commonalities, the present disqualification case, however, is separate and substantively distinct from the *Maquiling* disqualification case. The present case involves an election period (2013) separate and distinct from the election period covered by the *Maquiling* ruling (2010). The factual circumstances and consequent legal considerations also vary, as will be explained below, so that the present case need not necessarily follow the governing ruling in *Maquiling.*

Thus, at the outset, I invite the Court: to keep an open mind and remove any initial impression that the present case is a re-run of *Maquiling*; to recognize that at some point, the present case diverges from and must be viewed independently of *Maquiling*; and to resolve it from the perspective solely of the attendant factual and legal considerations specific to it.

The Court must not also forget that this is an election case where ***the electorate has its own separate interest to protect.*** This is an interest that

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1 *Rollo,* pp. 3-19.

2 G.R. No. 195649, April 16, 2013, 696 SCRA 420.

the Court must not ignore when the issues posed carry the potential of setting aside the electorate's expressed choice.

Notably, the present controversy involves a candidate whose disqualification (to run for elective office) has twice been sought based on the same cited facts and grounds, but who nevertheless has twice been elected by a clear and overwhelming majority of the voters – in the May 2010 and May 2013 Elections. ***In 2013, he garnered 84% of the votes of the people of Kauswagan.***

This clear and undeniably overwhelming voice of the electorate, to my mind, renders it necessary for the Court to consider and apply ***deeper democratic principles.***[3] The circumstances of the present controversy call for this kind of consideration, particularly when the electorate's already limited democratic decision making process runs the risk of being negated for no clear and conclusive reason, as discussed below.

To disregard the electorate's voice ***once*** can perhaps be excused by invoking the rule of law; to ignore the people's voice ***a second time*** can only be justified by clear reasons from this Court that the people can readily understand.

I submit this Dissenting Opinion to object to the *ponencia's* conclusion that Arnado is disqualified from running in the May 2013 Elections and that his proclamation as elected Mayor of Kauswagan, Lanao del Norte, should now be set aside.

I specifically find the *ponencia's* conclusions grossly erroneous and tainted with grave abuse of discretion based on the following considerations:

(1) Arnado became a "pure" Philippine citizen on April 3, 2009, after he took his oath of allegiance and executed his affidavit of renunciation. That he was subsequently deemed to have recanted his renunciation is unfortunate, but even the *Maquiling* ruling recognizes that for some eleven (11) days (*i.e.,* from April 3 to 14, 2009), he was qualified to run for public office because he was a "pure" Filipino.

Arnado more than reconfirmed and regained this status and was qualified to run for public office in the May 2013 Elections based on his persistent assertions of sole allegiance to the Republic and his repeated renunciation of his US citizenship.

a. Separately from the April 3, 2009 Affidavit of Renunciation that *Maquiling* said Arnado recanted, Arnado executed on May 9, 2013, another Affidavit of

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[3] See J. Brion's Separate Opinion in *Atty. Alicia Risos-Vidal v. Commission on Elections and Joseph Ejercito Estrada,* G.R. No. 206666, January 21, 2015.

Renunciation affirming the terms of his April 3, 2009 Affidavit and thus cured any defect in his qualification to run in the May 2013 Elections.

(2) The legal consequences of the *Maquiling* ruling is limited to Arnado's qualification for public office in the May 2010 elections.

a. The intervening 2010 *Maquiling* disqualification ruling did not and could not have invalidated Arnado's status as a "pure" Philippine citizen who was qualified to run for public office after having complied with the RA No. 9225 requirements in the May 2013 Elections.

(3) The Comelec gravely abused its discretion in ruling that the May 9, 2013 Confirmation of the Oath of Affirmation was filed out of time.

a. The Comelec grossly failed to consider (i) the circumstances of the filing of the October 1, 2012 Certificate of Candidacy (*CoC*), and (ii) the circumstances and the dynamics between the 2010 *Maquiling* case and ruling, and the present 2013 disqualification case, in terms of the retroactive application of the *Maquiling* ruling.

b. When Arnado filed his CoC on October 1, 2012 (for the 2013 Elections), the prevailing Comelec *en banc* ruling [in its February 2, 2011 resolution in SPA No. 10-109 (DC)] was that he was **not disqualified** to run for elective public office; hence, Arnado did not need to execute another affidavit of renunciation.

c. Based solely on the *Maquiling* Decision (that pertained to Arnado's ***disqualification for the 2010 elections***), the Comelec disqualified Arnado for the May 2013 elections because his October 1, 2012 CoC was not supported by any Affidavit of Renunciation (since *Maquiling* considered his April 3, 2009 Affidavit of Renunciation for the 2010 elections effectively recanted). This Comelec ruling disregards the unusual consequences of the April 3, 2009 Affidavit and the unique circumstances under which the October 1, 2012 CoC was filed.

d. Since the Comelec did not accept the Affidavit of Renunciation that Arnado filed on May 9, 2013 (for the 2013 Elections) in the light of the 2010 *Maquiling* ruling, he was placed in an impossible situation of being disqualified in 2013 for a ruling applicable to the 2010

elections, without being given the opportunity to submit his compliance for the May 2013 elections.

e. Notably, his May 9, 2013 Affidavit of Renunciation, submitted to comply with his May 2013 candidacy, was rejected because it should have been filed on October 1, 2012 (*i.e.,* when he filed his CoC for the May 2013 elections). If the *Maquiling* ruling, made on April 16, 2013, was made to retroactively apply to October 1, 2012, so should the opportunity to comply be similarly made retroactive. To the extent he was denied this opportunity is grave abuse of discretion.

(4) At any rate, all doubts should be resolved in favour of Arnado's qualification:

a. Arnado's unequivocal acts and show of allegiance to the Republic and renunciation of other citizenships, taken together, should have resolved all doubts in favor of his qualification;

b. the mandate of the people of Kauswagan that twice elected Arnado as their Mayor should be respected and upheld.

I. Roots of the Present Petition

A. Factual Background

For a fuller understanding of the present disqualification case, I reiterate below the important antecedent facts.

Arnado is a natural-born Filipino citizen who lost his Filipino citizenship after becoming a naturalized citizen of the United States of America *(U.S.)* in 1985.

In 2003, Congress enacted Republic Act *(RA)* No. 9225 (Citizenship Retention and Re-Acquisition Act of 2003).[4]

Arnado opted to re-acquire his Philippine citizenship pursuant to RA No. 9225 and soon filed the required application before the Philippine Consul General in San Francisco, U.S.A. On **July 10, 2008**, **Arnado took his Oath of Allegiance to the Republic of the Philippines**; the Approval of his Citizenship retention and re-acquisition was issued on the same date.

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[4] The complete title of RA 9225 reads: *"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."*

On **April 3, 2009**, Arnado executed an **Affidavit of Renunciation** of his foreign citizenship (interchangeably referred to, from here on, as *April 3, 2009 Affidavit of Renunciation* or *2009 express renunciation*).

On April 14, 2009, Arnado left the country for the US using his US passport – US passport (No. 057782700) – which identified his nationality as "USA-American." He returned to the country on June 25, 2009, using the same US passport. He again left for the US on July 29, 2009, and returned to the country on November 24, 2009, still using his US passport.

Unknown to Arnado, however, the Philippine Consulate General in San Francisco, USA, had approved and issued in his favor a Philippine Passport (No. XX 3979162) on June 18, 2009.[5] **He only received this Philippine passport three months later**.[6]

From then on, he used his Philippine passport in his travels on the following dates: December 11, 2009 (departure); January 12, 2010 (arrival); January 31, 2010 (departure); March 31, 2010 (arrival); April 11, 2010 (departure); April 16, 2010 (arrival); May 20, 2010 (departure); and June 4, 2010 (arrival).[7]

B. The Maquiling Case and its Incidents

On **November 30, 2009**, Arnado filed his CoC for the mayoralty post of Kauswagan, Lanao del Norte, for the **May 2010 Elections**. On the same day, he executed **another Affidavit of Renunciation with Oath of Allegiance**.[8]

Notably, this Affidavit of Renunciation came after his travel using an American passport.

Linog C. Balua, another mayoralty candidate, filed with the Comelec a petition to disqualify Arnado and/or to cancel his CoC *(2010 Disqualification case)* on the ground that Arnado remained a US citizen: he continued to use his US passport for entry to and exit from the Philippines after executing the April 3, 2009 Affidavit of Renunciation. Balua's petition was docketed as **SPA No. 10-109 (DC)**.

Arnado was proclaimed the winning candidate in the May 2010 Elections.

In a resolution dated **February 2, 2011**, the **Comelec *En Banc* ruled [in SPA No. 10-109 (DC)] that Arnado's use of his US passport, subsequent to his 2009 Affidavit of Renunciation, did not have the effect of reverting him to his status as a dual citizen**. The Comelec *En Banc*

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5 See J. Brion's Dissent to the April 16, 2013 decision in *Maquiling, supra* note 2, at 474-493.
6 Id.
7 Id.
8 *Rollo*, p. 7.

found believable and plausible Arnado's explanation that he continued to use his US passport because he only knew of and received his Philippine passport three months after it was issued on June 18, 2009. As soon as he received his Philippine passport, he used it in his subsequent travels abroad.

The 2010 disqualification case eventually reached this Court *via* the petition for *certiorari* filed by *Maquiling*; the case was docketed as **GR No. 195649** entitled ***Maquiling v. Comelec***.

a. The Court's *Maquiling* Decision.

In its **April 16, 2013** Decision, the Court annulled and set aside the Comelec *En Banc's* February 2, 2011 Resolution; disqualified Arnado from running for the position of Mayor; and declared Maquiling the duly elected mayor of Kauswagan, Lanao del Norte, in the May 2010 Elections. **The Court ruled that by his subsequent use of his US passport, Arnado effectively disavowed or recanted his April 3, 2009 Affidavit of Renunciation.**

In ruling on the case, the Court significantly acknowledged that:

> i. The "act of using a foreign passport does not divest Arnado of his Filipino citizenship, which he re-acquired by repatriation. By representing himself as an American citizen, however, Arnado voluntarily and effectively reverted to his earlier status as a dual citizen. Such reversion was not retroactive; it took place the instant Arnado represented himself as an American citizen by using his US passport."[9]
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> ii. "In effect, Arnado was solely and exclusively a Filipino citizen only for a period of eleven days, or from April 3, 2009, until 14 April 2009, on which date he first used his American passport after renouncing his American citizenship."[10]

C. The Present Disqualification Case

On **October 1, 2012**, and ***while the Maquiling case was still pending before this Court*** (so that the existing standing rule was the Comelec ruling that he was qualified to be a candidate), **Arnado filed his CoC[11] for the same mayoralty post for the May 2013 Elections**. Thus, Arnado saw no need to undertake another Renunciation.

Respondent Florante ***Capitan*** also filed his CoC[12] for the same position.

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9 *Supra* note 2, at 451-452.
10 Id.
11 *Rollo*, p. 55.
12 Id. at 54.

On ***April 16, 2013*****, t**he Court issued its Decision in ***Maquiling*** **v. Comelec**, **disqualifying Arnado for the May 2010 Elections**.

Apparently in response to the *Maquiling* ruling, Arnado executed on **May 9, 2013**, an **Oath of Allegiance and Oath of Renunciation affirming the terms of his April 3, 2009 Affidavit of Renunciation** (herein referred to as *2013 Affidavit*).[13] Arnado undertook the required acts as soon as he was aware that they had to be done to perfect his May 2013 candidacy.

On **May 10, 2013**, Capitan filed a petition to disqualify[14] Arnado from running for the Kauswagan mayoralty post and/or to cancel his CoC *(2013 Disqualification case)* **based on the Court's *Maquiling* ruling**. The case was docketed as **SPA No. 13-309 (DC)** and was raffled to the Comelec Second Division *(Second Division).*[15]

On **May 14, 2013, during the pendency of the 2013 Disqualification case before the Second Division, Arnado was proclaimed the duly elected Mayor of Lanao del Norte in the May 2013 Elections**.[16]

Capitan responded to the proclamation by filing a petition to nullify Arnado's proclamation, arguing that pursuant to the *Maquiling* ruling (which declared Arnado disqualified from running for any local elective office), Arnado's proclamation was void and carried no legal effect.

In a resolution dated **July 2, 2013**, the Court denied Arnado's motion for reconsideration of the April 16, 2013 *Maquiling* Decision.

II. The Proceedings before the Comelec

A. Comelec Second Division Ruling

In its resolution dated **September 6, 2013**, in **SPA No. 13-309(DC)**, the Comelec Second Division disqualified Arnado from running in the May 2013 Elections.

The Second Division declared that at the time he filed his CoC on October 1, 2012, Arnado still failed to comply with RA No. 9225's requirement of making a personal and sworn renunciation of any and all foreign citizenship, as his April 3, 2009 Affidavit of Renunciation had been deemed withdrawn or recalled pursuant to *Maquiling.* **His 2013 Affidavit did not rectify this failure as this subsequent affidavit should have been executed on or before the filing of his CoC on October 1, 2012**.

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13 Id. at 74.

14 Id. at 47-52.

15 The case was effectively a disqualification case case as it was filed outside of the allowable period for the filing of a petition for cancellation of a certificate of candidacy.

16 Id. at 68.

B. The Comelec En Banc Ruling

In its **December 9, 2013** resolution, the Comelec *En Banc* fully affirmed the Second Division's ruling; annulled Arnado's proclamation; and declared Capitan the duly elected mayor of Kauswagan.

III. The Issues

The issues raised for the Court's consideration are:

A. Whether the Comelec *En Banc* and the Second Division violated procedural due process and committed grave abuse of discretion in failing to dismiss the petitions filed by Capitan for forum shopping and/or late filing;

B. Whether the Comelec *En Banc* violated due process and committed grave abuse of discretion by allowing Commissioner Elias Yusoph to review the decision he wrote for the Second Division;

C. Whether the Comelec committed grave abuse of discretion in disenfranchising 84% of the voters of Kauswagan in the May 2013 elections; and

D. Whether the Comelec committed grave abuse of discretion in disqualifying Arnado who had fully complied with the requirements of RA No. 9225 before the filing of his CoC on October 1, 2012.

IV. Refutation of the *Ponencia*

A. Re-acquisition of Philippine citizenship under RA No. 9225; purposes and legal effect of the oath of allegiance and oath of renunciation

RA No. 9225 was enacted to allow natural-born Filipino citizens who lost their Philippine citizenship through naturalization in a foreign country, to expeditiously re-acquire Philippine citizenship.[17] It is a unique mode of re-acquiring Philippine citizenship and is a far departure from the citizenship re-acquisition procedure under Commonwealth Act *(CA)* No. 63,[18] the law in place before RA No. 9225 was enacted.

Under CA No. 63, Philippine citizenship may be re-acquired by: (1) naturalization; (2) repatriation of deserters of the Army, Navy, or Air Corps, or of a woman who has lost her citizenship by reason of marriage to an alien

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[17] See excerpts of Congress deliberations on RA 9225 in *AASJS v. Hon. Datumanong,* 51 Phil. 110, 116-117 (2007).

[18] Entitled "An Act Providing For The Ways In Which Philippine Citizenship May Be Lost Or Reacquired."

after the termination of her marital status; and (3) direct act of the National Assembly.[19]

Notably, re-acquisition of Philippine Citizenship under the first mode (*i.e.,* by naturalization) involves the more stringent procedure laid down in CA No. 473.[20] The reacquisition of Philippine citizenship under the second mode (*i.e.,* by repatriation), on the other hand, provides for an easier procedure as it requires only the taking of the oath of allegiance to the Republic of the Philippines and registration in the proper civil registry; it applies, however, only to the specific group of persons enumerated therein.

Under the procedure currently in place under RA No. 9225, the re-acquisition of Philippine citizenship requires only the taking of an oath of allegiance to the Republic of the Philippines in a manner similar to the second mode under CA No. 63. But, RA No. 9225 provides for a deeper effect by declaring it a State policy that under its terms "*all Philippine citizens of another country shall be deemed not to have lost their Philippine citizenship*"[21] under the conditions provided therein.

The full implication of the effects of RA No. 9225 can fully be appreciated by considering Section 3 of the law, which reads:

> **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**:
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> > "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." [emphases supplied]

By its express terms, this oath is one of allegiance that recognizes the ***"supreme authority"*** of the Philippines and the obligation to "maintain true faith and allegiance thereto."

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19 See Section 2 of CA No. 63.

20 Entitled "An Act To Provide For The Acquisition Of Philippine Citizenship By Naturalization, And To Repeal Acts Numbered Twenty-Nine Hundred And Twenty-Seven And Thirty-Four Hundred and Forty-Eight," enacted on June 17, 1939.

CA No. 63, as worded, provides that the procedure for re-acquisition of Philippine citizenship by naturalization shall be in accordance with the procedure for naturalization under Act No. 2927 (or The Naturalization Law, enacted on March 26, 1920), as amended. CA No. 473, however, repealed Act No. 2927 and 3448, amending 2927.

21 Section 1 of RA No. 9225.

These terms, while seemingly allowing dual citizenship for natural-born Filipino citizens who have lost their Philippine citizenship by reason of their naturalization as citizens in a foreign country,[22] carry **the implicit effect of renouncing their foreign citizenship and allegiance because of the renewed allegiance that is accorded to the supreme authority of the Republic.**[23]

In effect, the problem of dual allegiance created by dual citizenship is transferred from the Philippines to the foreign country. *Since the latest oath that the person takes is one of allegiance to the Republic, whatever treatment the foreign country may have on his or her status is a matter outside the concern and competence of the Philippine government.*[24]

The congressional exchanges on dual citizenship and the potential problem of dual allegiance (which under the Constitution is inimical to public interest), attest to this interpretation as these exchanges reconciled the **possession of dual citizenship** and the **dual allegiance that the Constitution states to "be inimical to public interest**."

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> Pursuing his point, Rep. Dilangalen noted that under the measure, two situations exist — the retention of foreign citizenship, and the reacquisition of Philippine citizenship. In this case, he observed that there are two citizenships and therefore, two allegiances. He pointed out that under the Constitution, dual allegiance is inimical to public interest. He thereafter **asked whether with the creation of dual allegiance by reason of retention of foreign citizenship and the reacquisition of Philippine citizenship, there will now be a violation of the Constitution**….
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> 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.
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> Rep. Dilangalen asked why this will no longer be the country's concern, when dual allegiance is involved.
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> Rep. Locsin clarified that this was precisely his objection to the original version of the bill, which did not require an oath of allegiance. **Since the measure now requires this oath, the problem of dual allegiance is transferred from the Philippines to the foreign country concerned**, he explained.

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22 See *AASJS v. Hon. Datumanong, supra* note 17, at 117-118.

23 Id.

24 Id.

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> Rep. Dilangalen asked whether in the particular case, the person did not denounce his foreign citizenship and therefore still owes allegiance to the foreign government, and at the same time, owes his allegiance to the Philippine government, such that there is now a case of dual citizenship and dual allegiance.
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> Rep. Locsin clarified that **by swearing to the supreme authority of the Republic, the person implicitly renounces his foreign citizenship.** However, he said that this is not a matter that he wishes to address in Congress because he is not a member of a foreign parliament but a Member of the House.
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> Rep. Locsin replied that it is imperative that those who have dual allegiance contrary to national interest should be dealt with by law. However, he said that the dual allegiance problem is not addressed in the bill. He then cited **the Declaration of Policy in the bill which states that "It is hereby declared the policy of the State that all citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act."** He stressed that **what the bill does is recognize Philippine citizenship but says nothing about the other citizenship.**
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> 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.** [emphases supplied]

Jurisprudence confirms this interpretation of RA No. 9225 in *AASJS v. Hon. Datumanong*[25] when the Court pointedly declared:

> **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.[26] [emphasis supplied]

The oath of allegiance taken under RA No. 9225 entitles a person to enjoy full civil and political rights that include the right to participate, directly or indirectly, in the establishment or administration of the government.[27] He or she may now vote.

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25 *Supra* note 22.
26 Id. at 117-118.
27 See Section 5(2) of RA No. 9225.

To be voted upon to an elective office, however, a natural-born Filipino citizen who has implicitly renounced foreign allegiance when he or she swears allegiance to the Republic under RA No. 9225 must still make his or her previous implicit renunciation "express." In the words of the law, he must *"make a personal and sworn renunciation of any and all foreign citizenship."* [Section 5(2) of RA No. 9225]

> **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:
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> (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; ….[emphases and underscoring supplied]

The requirement of an express renunciation, however, does not negate the effect of, or make any less real, the prior implicit renunciation of citizenship and allegiance made upon taking the oath of allegiance. Thus, persons availing of RA No. 9225 do not renounce their foreign citizenship for the first time by executing the Affidavit of renunciation that Section 5(2) of the law requires; ***they have implicitly made this renunciation when they swore allegiance to the supreme authority of the Republic***.

What the oath of renunciation simply does is to make express what natural-born Filipino citizens have already implicitly renounced. The requirement of express renunciation highlights the implication that it is not the exclusive means by which natural-born Filipino citizens may renounce their foreign citizenship. In reality, ***the oath of renunciation is a requirement simply for the purpose of running for elective public office, apparently to ensure that foreign citizenship and mixed loyalties are kept out of the elective public service.***

To paraphrase *Japzon v. Comelec*,[28] the oath of renunciation makes these natural-born potential candidates for public office "pure" Philippine citizens[29] *from the perspective of the election laws.*

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[28] 596 Phil. 354 (2009).

[29] Id. at 366-376. In declaring that Jaime Ty became a "pure" Philippine citizen after taking the Oath of Allegiance and executing an Oath of Renunciation, the Court said:

> "He was born and raised in the Municipality of General Macarthur, Eastern Samar, Philippines. However, he left to work in the USA and eventually became an American citizen. On 2 October 2005, Ty reacquired his Philippine citizenship by taking his Oath of Allegiance to the Republic of the Philippines before Noemi T. Diaz, Vice Consul of the Philippine Consulate General in Los Angeles, California, USA, in accordance with the provisions of Republic Act No. 9225. At this point, Ty still held dual citizenship, *i.e.*,

In sum, the ***oath of allegiance*** not only allows these natural-born Filipinos to re-acquire Philippine citizenship; thereby, they also implicitly renounce their citizenship and allegiance to any and all foreign country as they assert allegiance to the *"supreme authority of the Philippines and x x x maintain true faith and allegiance thereto"*. The ***oath of renunciation***, on the other hand, complements their oath of allegiance through the express manifestation, for purpose of running for public office, that the candidate is a "pure" Filipino.

B. Arnado's attainment, loss of "pure" Filipino citizen status, and subsequent developments

Based on the above discussions, I find – **as the *ponencia* and the majority in *Maquiling* did –** that Arnado became a "pure" Philippine citizen when he took his oath of allegiance to the Philippines on July 10, 2008, and his oath of renunciation on April 3, 2009.[30] With his oath of renunciation, he became solely a Filipino citizen with total allegiance to the Republic of the Philippines.

He could have, at that point, validly run for public office, except that subsequent to his renunciation, he travelled using his U.S. passport – a development that the *Maquiling* ruling unfortunately characterized as a recantation of his previous renunciation of American citizenship.

Had the developments that transpired in Arnado's political life simply stopped with his candidacy in the May 2010 Elections, then the present case and its complications would have been avoided. But as subsequent developments showed, a confluence of complicating factors arose.

First, Arnado ran again for the same office in the May 2013 Elections, and events overlapped. His disqualification case was not resolved with dispatch so that the **period for the filing of the CoC for the May 2013** Elections (in October 2012) was set while the **present case was still pending with this Court**.

Second, at that time, the **standing ruling** was the Comelec *en banc* decision that **Arnado was not disqualified** and had perfected the required submissions for his candidacy. **No restraining order or any other ruling from this Court intervened to prevent this Comelec ruling from being the governing rule in the interim**.

As a result, Arnado saw no need to undertake remedial measures addressing the matters complained about in the 2010 *Maquiling* disqualification case. But at that point, **he had already filed two oaths of**

American and Philippine. It was only on 19 March 2007 that Ty renounced his American citizenship before a notary public and, resultantly, became a pure Philippine citizen."

[30] Arnado executed an affidavit of Renunciation and Oath of Allegiance before notary public Thomas Dean M. Quijano. (See J. Brion Dissent in *Maquiling, supra* note 2.)

renunciation – on April 3, 2009 and on November 30, 2009 – **when he filed his CoC for the May 2010 Elections**.

Third, he did not submit any oath of renunciation together with his October 1, 2012 CoC since, to his knowledge, he had complied with the requirements of RA No. 9225 and the Local Government Code, and had attained "pure" Filipino citizen status. (That he did attain this status based on the 2008 oath of allegiance and his 2009 affidavit of renunciation is in fact confirmed by *Maquiling*, although his subsequent recantation intervened.)

Arnado's political world was overturned when the Court resolved the May 2010 disqualification case on April 16, 2013, *or a few days before the May 2013 elections*. But Arnado did not fully dwell on the past. While filing a motion for reconsideration of the *Maquiling* ruling, he also acted on his October 1, 2012 CoC by executing and submitting, on May 9, 2013, **an Oath of Allegiance and Oath of Renunciation affirming his April 3, 2009 Affidavit of Renunciation**.

Thus, from the perspective of the laws governing natural-born Filipinos who have re-acquired Philippine citizenship and who wish to run for public office, Arnado ***did not only comply*** with the twin requirements of RA No. 9225 as of April 3, 2009; he even ***exceeded the requirements*** of the law by ***asserting his oath of allegiance to the Republic four times,*** while also ***impliedly renouncing any and all foreign citizenships for the same number of times***, and ***twice expressly renouncing any and all other citizenships*** (with one express renunciation declared recanted by *Maquiling*).

All these are material considerations that should be taken into account in resolving the present case and are more fully discussed under separate headings below.

C. The Comelec gravely abused its discretion in ruling that the May 9, 2013 Confirmation of Oath of Affirmation was out of time

After the promulgation of the *Maquiling* Decision disqualifying Arnado for the May 2010 elections and relying solely on its terms, the Comelec disqualified Arnado for the May 2013 elections because his October 1, 2012 CoC was not supported by any Affidavit of Renunciation (since *Maquiling* considered his April 3, 2009 Affidavit of Renunciation for the May 2010 elections effectively recanted).

The Comelec ruling and its underlying reasons are, on their face, patently unreasonable since they did not consider at all the surrounding circumstances of the filing of the October 1, 2012 CoC and the circumstances that led to the absence of any oath of renunciation after the *Maquiling* ruling. The Comelec approach is in fact simplistic to the point of

grave abuse of discretion. Apparently, it considered that with the oath of renunciation recanted and with no oath filed with the October 1, 2012 CoC, then the CoC should be considered fatally deficient. The *ponencia's* reasoning also runs this way.

Subject to fuller discussions below, I submit that the Comelec missed out on at least three (3) basic considerations.

First, at the time the October 1, 2012 CoC was filed, the prevailing ruling, although then contested before the Court, was the ***Comelec en banc ruling that did not consider Arnado disqualified***. To reiterate, ***no intervening restraining order was issued by this Court*** addressing this Comelec ruling. Hence, there was no immediate need, at the time of the CoC's filing, for a replacement supporting oath of renunciation.

Second, since the Comelec did not accept Arnado's May 9, 2013 Affidavit of Renunciation (for the May 2013 Elections) in the light of the *Maquiling* ruling (affecting the May 2010 elections), he was placed in an impossible situation of being disqualified in the May 2013 Elections for a ruling applicable only to the May 2010 Elections, without being given the opportunity to submit his compliance for the May 2013 Elections.

Third, along the same line of thought, Arnado's May 9, 2013 Affidavit of Renunciation, submitted to comply with his May 2013 candidacy, was rejected because it should have been filed on October 1, 2012 (*i.e.,* when he filed his CoC for the May 2013 elections).

If the *Maquiling* ruling of April 16, 2013, which addressed the separate 2010 disqualification case, was made to retroactively apply to October 1, 2012, in the separate 2013 disqualification case, then a retroactive opportunity should also be given in the 2013 disqualification case to comply with what retroactively applied in *Maquiling.*

To the extent that Arnado was denied the chance to submit a replacement oath of renunciation in 2013, there was an unfair and abusive denial of opportunity equivalent to grave abuse of discretion.

D. The Maquiling ruling is limited to Arnado's qualification to run for public office and only for the purpose of the May 2010 elections

I submit that the *ponencia's* ruling, insofar as it adopts the *Maquiling* ruling, is an overreach that runs counter to the policy behind RA No. 9225.

I submit that the extent of the legal consequences of the ***Maquiling ruling affect solely Arnado's qualification to run for public office and only for the purpose of the May 2010 elections. These consequences should not be extended to situations outside of and not contemplated by Maquiling.***

The following reasons support my view:

First, the *Maquiling* ruling only considered the material facts surrounding the May 2010 Elections. The critical facts on which the *Maquiling* case turned dwelt with the travels of Arnado using his U.S. passport. These facts are not contested in the present case. Nor am I contesting that for eleven days in April 2009, Arnado was a "pure" Filipino, until a recantation of his renunciation oath took place. These are settled and accepted facts.

The *Maquiling* ruling left out, because these are facts that it did ***not consider material for its resolution*** (such as the overlaps in the filing of the October 1, 2012 CoC and the resolution of *Maquiling*; the effect of *Maquiling* on the 2013 disqualification case; the oath of allegiance and renunciation that accompanied the November 30, 2009 CoC for the May 2010 elections) or because they were ***outside the scope of the relevant facts of Maquiling*** (such as the prevailing Comelec *en banc* ruling on October 1, 2012 when Arnado filed his CoC; the facts surrounding the filing of the CoC on October 1, 2012; and the May 9, 2013 filing of the Oath of Allegiance and Oath of Renunciation affirming his April 3, 2009 Affidavit of Renunciation).

From these perspectives, how can the 2010 *Maquiling* case be a seamless continuation of the 2013 disqualification case now before this Court?

Second, the implied renunciation of foreign citizenship that Arnado made on several occasions is different from and has distinct legal implications separate from the express renunciation he made on April 3, 2009.

The ***implied renunciation*** of foreign citizenship proceeds from the oath of allegiance that natural-born Filipino citizens take to re-acquire Philippine citizenship. This is patent from the terms of the oath of allegiance and is a consequence of the resulting re-acquisition of Philippine citizenship.

The express renunciation, in contrast, is an ***after-the-fact requirement*** that arises only if these natural-born Filipino citizens choose to run for public office. The requirement of an express renunciation of foreign citizenship arises only after they have re-acquired Philippine citizenship ***for the exclusive purpose of qualifying them for elective public office***.

Note in this regard that ***Maquiling declared as recanted only the express renunciation that Arnado executed on April 3, 2009***, not the implied renunciation that Arnado made on several occasions when he swore allegiance to the supreme authority of the Republic.

This *Maquiling* declaration and the distinction that it signifies are crucial: *first,* the implied renunciation of foreign allegiance that Arnado made on several occasions still stands as valid, as *Maquiling* affected only his April 3, 2009 express renunciation; *second*, the implied renunciation must be valid because it did not affect Arnado's reacquisition of Filipino citizenship; and *third*, Arnado's express renunciation was declared recanted solely for the purpose of the May 2010 Elections, not for any and all other purposes.

In short, *Maquiling* ***did not declare Arnado's renunciation*** of his US citizenship ***invalid for all purposes***; it certainly could not have done so as that case involved an election disqualification case that challenged Arnado's candidacy for the mayoralty post by reason of an alleged defect in his qualification, *i.e.,* Arnado's isolated acts that, to the majority, effectively recanted his express renunciation.

In ruling as it did, *Maquiling* did not and ***could not have gone beyond the confines of the underlying election disqualification case and could not have ruled on Arnado's Philippine citizenship per se*** without exceeding the confines of the Court's jurisdiction.

Citizenship and its loss, acquisition, and re-acquisition are much broader concepts that cannot definitively be affected by a Court ruling in an election disqualification case, even if the disqualification case touches on the citizenship qualification of the candidate. Thus, I submit that ***Maquiling invalidated Arnado's renunciation oath solely for the purpose of his qualification for the May 2010 elections.***

Third, Arnado became a "pure" Philippine citizen as of April 3, 2009, a legal consequence that *Maquiling* recognized and conceded as it declared that "he in fact did" comply with the "twin requirements under RA No. 9225" for the purpose of election qualification.

What made the Court rule against Arnado's qualification for the May 2010 Elections was the finding of positive, *albeit* isolated, acts that effectively "disqualified him from running for an elective public office pursuant to Section 40(d) of the Local Government Code of 1991."

Otherwise stated, Arnado, in the *Maquiling* sense, was indisputably already a "pure" Philippine citizen as of April 3, 2009. He reverted to a dual citizen status (and only from the perspective of the concerned foreign country) only on the date subsequent to April 3, 2009, and only by virtue of the ruling that considered his use of his US passport on isolated occasions as a "voluntar[y] and effective[] [act of] revert[ing] to [the] earlier status [of] a dual citizen."

To quote and highlight the majority's pronouncement on this point: ***"[s]uch reversion was not retroactive as it took place the instant Arnado represented himself as an American citizen by using his US passport."***[31]

Thus, even if only for qualification purposes, the April 3, 2009 Affidavit of Renunciation was a valid and Court-recognized express declaration of Arnado's renunciation of his US citizenship that the Court cannot lightly disregard in the present disqualification case.

Fourth, even *Maquiling* did not perpetually and absolutely disqualify Arnado from running for any elective public office, or from running in any elections as they declared that *"[h]e is disqualified x x from becoming a candidate* ***in the May 2010 elections."***[32] In other words, *Maquiling* declared Arnado as disqualified from running only in the May 2010 Elections; they did not declare him as disqualified for any and all other elections, including the May 2013 Elections.

E. Arnado's May 9, 2013 Affidavit of Renunciation, affirming his April 3, 2009 Affidavit, cured any alleged defect in his qualification to run for public office during the May 2013 Elections

I take exception to the *ponencia's* ruling that ignores Arnado's May 9, 2013 Affidavit of Renunciation simply because it was executed after Arnado filed his CoC on October 1, 2012. I submit that Arnado's May 9, 2013 Affidavit of Renunciation bears crucial significance to Arnado's qualification to run for the May 2013 Elections which the Court cannot and should not lightly ignore.

Maquiling unequivocably held that by using an American passport, he effectively **recanted** his express renunciation of his US citizenship.

Jurisprudence defines the act of recantation to mean to "withdraw or repudiate formally and publicly;" "to renounce or withdraw prior statement." To "retract" means to "take back;" "to retract an offer is to withdraw it before acceptance."[33]

That Arnado took back his statement disavowing allegiance to the US government, however, does not render invalid his status as a natural-born Filipino citizen; neither does it negate the fact that he had impliedly renounced his US citizenship, and had subsequently made an express renunciation of his US citizenship.

Granting that Arnado's use of his US passport amounted to a withdrawal of the express renunciation he made of his allegiance to the US,

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31 *Supra* note 2, at 451-452.
32 Id. at 455.
33 *Almonte v. Sevallano*, G.R. No. 131652, March 9, 1998.

this withdrawal does not erase the fact that he did make an express renunciation of his US citizenship.

To my mind, this express renunciation, even if recanted, may still be re-affirmed, in the same way a statement already made and subsequently denied, can be re-confirmed. Thus, Arnado's 2013 Affidavit of Renunciation can validly re-affirm the 2009 express renunciation that the Court held to have been recanted in *Maquiling*.

Note that in the **May 9, 2013 Affidavit of Renunciation**, Arnado categorically stated that he **renounces his US citizenship**, as well as **any and all foreign citizenship**; swears **allegiance to the Republic**; and **confirms the renunciation (of his US citizenship) he had previously made in the April 3, 2009 Affidavit of Renunciation**.

Note, likewise, that as explained above, the April 3, 2009 Affidavit of Renunciation is a valid and Court-confirmed oath that Arnado had validly confirmed in his May 9, 2013 Affidavit. To confirm means "to make firm: strengthen in a resolution, conviction, loyalty, position; to give new assurance of the truth or validity; to state or imply the truth,"[34] and implies a prior existing act.

Finally, note that the *Maquiling* ruling was issued after Arnado took his oath of allegiance to the Republic four times – on July 10, 2008, April 3, 2009 (when he executed the affidavit of renunciation); November 30, 2009 (when he filed his CoC for the May 2010 Elections); and October 1, 2012 (when he filed his CoC for the May 2013 Elections). It was also issued after Arnado renounced his US citizenship expressly on April 3, 2009, and impliedly on four occasions on July 10, 2008; April 3, 2009; November 30, 2009; and October 1, 2012 when he swore allegiance to the supreme authority of the Republic.

In fact, in his October 1, 2012 CoC, Arnado made the following oath:

> I will support and defend the Constitution of the Republic of the Philippines and **will maintain true faith and allegiance thereto**. I will obey all laws, legal orders and decrees promulgated by the duly constituted authorities. I impose this obligation upon myself voluntarily, without mental reservation and purpose of evasion.

Taken together, all these facts undeniably show that Arnado's May 9, 2013 Affidavit of Renunciation was ***not entirely new, nor completely different and independent from the oath of renunciation that Arnado took on April 3, 2009***. Rather, it affirmed and revalidated the Court-recognized renunciation oath that he had earlier taken.

Indisputably, *Maquiling* found that Arnado's express renunciation had been validly made. This express renunciation, having been disavowed, can

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[34] Black's Law Dictionary, Fifth Edition, p. 476.

be re-affirmed by subsequent acts through his May 9, 2013 Affidavit of Renunciation and through the statement in his October 1, 2012 CoC.

The statement in Arnado's October 1, 2012 CoC, for instance, is substantially similar to the oath of allegiance required in RA No. 9225. This oath not only recognizes Arnado's Filipino citizenship, but impliedly renounces his US citizenship. That he swore sole allegiance to the Philippine Republic in his October 1, 2012 CoC in effect affirmed his express renunciation of US citizenship; and thus dispenses with the need for another express renunciation.

Rather than an oath that should simply be brushed aside as the Comelec did, the May 9, 2013 Affidavit served: *first,* to repair his reverted dual citizen status as declared in *Maquiling;* and *second*, to re-assert and emphasize his clear intent to renounce his US citizenship which he had expressly done once and impliedly done four times.

In this sense, the May 9, 2013 Affidavit of Renunciation retroacted to April 3, 2009, and cured any alleged defect in Arnado's October 1, 2012 CoC. More importantly, it cured any defect that the intervening *Maquiling* ruling introduced on Arnado's qualification to run for public office during the May 2013 Elections.

That Arnado executed his May 9, 2013 Affidavit of Renunciation while *Maquiling* was still under the Court's consideration (it was not confirmed on reconsideration until July 2, 2013) is not without significance. While the May 9, 2013 Affidavit was filed for purposes of the present disqualification case, it could have, had the Court been so inclined, considered as a factor in ruling on *Maquiling's* reconsideration; but apparently it was not at all considered since Arnado's use of his US passport was the focal point of the controversy.

F. The intervening Maquiling ruling did not and could not have invalidated his status as a "pure" Philippine citizen who was qualified to run and had filed a valid CoC for the May 2013 Elections

As the legal consequences of the *Maquiling* ruling on Arnado's renunciation of his US citizenship did not extend beyond his qualification to run for public office during the May 2010 elections; and that the May 9, 2013 Affidavit of Renunciation cured any alleged defect in Arnado's qualification to run for the May 2013 Elections, I submit that the *Maquiling* ruling on April 16, 2013 did not affect and could not have affected Armado's qualification to run for public office for the purpose of the May 2013 Elections.

Under the circumstances, Arnado had effectively become a "pure" natural-born Philippine citizen again on October 1, 2012, when he executed the retroactive and curative May 9, 2013 Affidavit of Renunciation, and which status continued well beyond the May 2013 Elections. In this way, Arnado qualified for the position of Mayor of Kauswagan, Lanao del Norte, and filed a valid CoC.

G. When Arnado filed his CoC on October 1, 2012, the Comelec En Banc, in its February 2, 2011 Resolution in SPA No. 10-109(DC), declared him as qualified to run for the elective office; hence, Arnado did not need to execute another Affidavit of Renunciation because of this standing Comelec ruling

I likewise strongly object to the *ponencia* for faulting Arnado for not executing another oath of renunciation at the time of or prior to the filing of his CoC on October 1, 2012, reasoning out that as "early as 2010 x x x Arnado has gotten wind that the use of his US passport might pose a problem to his candidacy."

It should be remembered that in the February 2, 2011 Resolution in SPA No. 10-109(DC), the Comelec *En Banc* declared Arnado as a "pure" Philippine citizen again, qualified to run for elective public office. This Comelec ruling still stood and had not yet been overturned at the time Arnado filed his CoC on October 1, 2012 for the May 2013 Elections. Arnado, therefore, had every right and reason to rely on this Comelec ruling and to believe that he was not disqualified to run in the May 2013 Elections.

I concede that, as the events have shown, he should, in retrospect, have exercised greater care and have taken every step to secure his qualification to run for public office. His failure, however, should not and cannot affect his qualification which then stands and is authoritatively affirmed by the Comelec.

Indeed "there is no law prohibiting him from executing an Affidavit of Renunciation every election period" as the *ponencia* puts it. But, note that **there is equally no law that requires him to constantly and consistently assert his renunciation of any and all foreign citizenship.** Neither is there any law that expressly or impliedly imposes on natural-born Filipino citizens the obligation to constantly assert their allegiance to the Republic and perform positive acts to assert this allegiance.

In fact, as the law stands, natural-born Filipino citizens who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country need only to take an oath of allegiance to the supreme authority of the Republic to re-acquire Philippine citizenship as they are *"deemed not to have lost their Philippine citizenship."* Once they re-acquire

their Philippine citizenship after complying with these legal steps, they no longer need to perform any positive act to assert Philippine citizenship or to elect citizenship.[35]

H. Arnado's persistent assertions of his allegiance to the Republic and renunciation of his US citizenship more than sufficiently proved his determined resolve to profess allegiance only to the Republic; these <u>continuing assertions</u> should have resolved any doubt in favor of his qualification

RA No. 9225 is a relatively new statutory enactment whose provisions have not been exhaustively interpreted and ruled upon by this Court, through an appropriate case. In this respect, I submit that in situations of doubt where the strict application of the equivocal letter of the law would clearly and undoubtedly disregard the legislative intent, the Court must and should tread lightly as it rules on the relatively uncharted area of application where RA No. 9225 overlaps with our elections laws.

The unique factual situation of this case presents such situation of doubt which the Court must resolve in the light of the clear legislative intent, rather than from the strict application of the ***equivocal*** letter of the law. I find that Arnado's persistent assertion of his allegiance to the Republic and renunciation of his US citizenship more than sufficiently prove his determined resolve to profess allegiance only to the Republic and to none other.

I submit that the following considerations should not be missed.

At the time Arnado filed his CoC on October 1, 2012, he had fully satisfied all of the requirements of RA No. 9225 to run for elective public office: he has re-acquired Philippine citizenship after having filed the Oath of Allegiance and secured the order of approval on July 10, 2008; he has also met all of the qualifications under the Constitution and the law for the local elective office; and he has already executed an Affidavit of Renunciation on April 3, 2009.

Likewise, as of October 1, 2012, Arnado had sworn allegiance to the Republic four times, *i.e.,* on July 10, 2008; April 3, 2009; November 30, 2009; and October 1, 2012. He had also renounced his US citizenship

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[35] Their situation should be contrasted with the situation of naturalized Filipinos who must not only prove that they possess all of the qualifications and none of the disqualifications provided by law to acquire Philippine citizenship. They must also expressly renounce any and all foreign citizenship, including their foreign citizenship, in order to acquire Philippine citizenship. Should they lose their Philippine citizenship, they must comply with the same requirements and go through the same rigorous procedure when they first applied for Philippine citizenship.

expressly on April 3, 2009, and impliedly thrice on July 10, 2008, November 30, 2009, and October 1, 2012.

Additionally, on October 1, 2012, the Comelec *en banc, via* the February 2, 2011 resolution in SPA No. 10-109(DC), had ruled in his favour, affirmed the existence and validity of his oath of renunciation, and confirmed his continuing qualification for the elective post. At that time, the February 2, 2011 Comelec ruling had not yet been reversed by this Court and stood as the final and most recent ruling as regards his qualification to run for the local elective post. As it had not yet been reversed, he clearly and rightfully had every reason to rely on this Comelec ruling when he filed his CoC on October 1, 2012.

In these lights, Arnado's allegiance to the supreme authority of the Republic and his renunciation of any and all foreign allegiance, including those to the US government, cannot be doubted. From the time he had re-acquired "pure" Philippine citizenship under the terms of RA No. 9225, Arnado has persistently asserted these oaths even while the law does not require him to do so.

In this situation, any doubt or ambiguity should be resolved in favor of his full Filipino citizenship – with his qualification to run for the May 2013 Elections – since the thrust of RA No. 9225 is to encourage the return to Filipino citizenship of natural-born Filipinos who lost their Philippine citizenship through their acquisition of foreign citizenship.[36] Note in this regard that Arnado consciously and voluntarily gave up a very much sought-after citizenship status in favor of returning to full Filipino citizenship and of participating in Philippine governance.[37]

I. Maquiling did not say that Arnado used his US passport again on January 12, 2010, and on March 23, 2010

A minor matter, asserted by the *ponencia,* which should be corrected is the claim that Arnado "used his US passport on January 12, 2010, and on March 23, 2010, as found by this Court in *Maquiling.*"

I strongly object to this observation as the *ponencia* **clearly misread *Maquiling***.

Nowhere in *Maquiling* did the Court make a finding that Arnado used his US passport again on January 12, 2010, and March 23, 2010 – months after he had received his Philippine passport. Rather, the alleged use by Arnado of his US passport on these dates was **a mere assertion of Balua, before the Comelec First Division** in the *Maquiling case*; interestingly,

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[36] See *Japzon v. COMELEC, et. al., supra* note 28, at 366-376 (2009) and *AASJS v. Hon. Datumanong, supra* note 17 at 116-117, cited in J. Brion's Dissenting Opinion dated July 2, 2013 (in *Maquiling v. Comelec, supra* note 2).

[37] See J. Brion's Dissenting Opinion dated July 2, 2013 (in *Maquiling v. Comelec, supra* note 2).

Balua was no longer a party when the case reached this Court. In fact, the Court in *Maquiling*, quoting a portion of the Comelec *En Banc* decision, noted that **on January 12, 2010, what Arnado used was his Philippine passport, not his US passport**.

J. Under the circumstances, the Comelec committed grave abuse of discretion

In this Rule 64-Rule 65 petition, the Court's review is limited to the jurisdictional issue of whether the Comelec acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

As a concept, grave abuse of discretion generally refers to capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction; the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough; it must be grave.

The Court's review power is also limited by the condition, under Section 5, Rule 64 of the Rules of Court, that findings of fact of the Comelec, supported by substantial evidence, shall be final and non-reviewable. In this respect, the Court does not ordinarily review the Comelec's appreciation and evaluation of evidence as any misstep by the Comelec in this regard generally involves an error of judgment, not of jurisdiction.

In exceptional situations, however, where the assailed judgment is based **on misapprehension or erroneous apprehension of facts** or **on the use of wrong or irrelevant considerations in deciding an issue**[38] – situations that are tainted with grave abuse of discretion – the Court is not only obliged but has the constitutional duty to intervene.[39] When grave abuse of discretion is present, the resulting errors mutate from error of judgment to one of jurisdiction.

I find that, based on the reasons discussed above, the Comelec's action in this case as it disqualified Arnado from running for the May 2013 Elections, was clearly tainted with grave abuse of discretion.

The Comelec committed grave abuse of discretion when: ***first,*** it relied completely and indiscriminately on the *Maquiling* ruling – the wrong and irrelevant, or at the very least, incomplete – consideration in deciding the underlying disqualification case; and ***second,*** it did not make its own finding of facts and evaluation of the evidence, independent of *Maquiling,*

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[38] See *Varias v. Comelec,* G.R. No. 189078, February 11, 2010, cited in *Mitra v. Comelec,* G.R. No. 191938, July 2, 2010; and *Belongilot v. Cua, et. al.,* 650 Phil. 392, 405 (2010).

[39] See Section 1, Article VIII of the Constitution.

and disregarded relevant facts and evidence subsequent to *Maquiling* – a clear misapprehension of the facts. Note that the Comelec, both in the September 6, 2013, and December 9, 2013 resolutions, quoted heavily portions of the *Maquiling* ruling and drew its discussions and conclusion largely from *Maquiling.*

For these reasons, and under the circumstances of this case, I submit that the assailed Comelec actions must be struck down for grave abuse of discretion amounting to lack or excess of jurisdiction.

K. At any rate, all doubts should be resolved in favor of Arnado's qualification: the mandate of the people of Kauswagan that twice elected Arnado as their Mayor should be respected and upheld

Independently of all these issues – of Arnado's qualification to run for the May 2013 Elections and the intervention of the *Maquiling* ruling – the Court cannot and should not now ignore the undeniable fact that the ***people of Kauswagan, Lanao del Norte, have themselves responded to the situation of doubt that might have arisen because of the factual link between the present disqualification case and the intervention of the Maquiling ruling.***

The people themselves made their own ruling when they elected Arnado as their mayor in the two successive elections – the May 2010 and the May 2013 elections – despite the "foreigner" label his rivals, even the ponencia, sought to continuously pin on him.

Arnado received an overwhelming **8,902 votes** as against the meager **1,707 votes of his opponent Capitan** in the May 2013 Elections; in the May 2010 Elections, he received the majority 5,952 of the total 11,309 votes cast. At this point, "**even this Court should heed this verdict by resolving all doubts regarding Arnado's eligibility in his favor.**" This is not a novel approach.[40] To reiterate what *Sinaca v. Mula*[41] teaches us:

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[40] See J. Panganiban's Concurring Opinion in *Bengson III v. House Representatives Electoral Tribunal* (G.R. No. 142840, May 7, 2001, 357 SCRA 545) where respondent Teodoro C. Cruz's citizenship was also questioned, viz:

> 4. In Case of Doubt, Popular Will Prevails
>
> Fourth, the court has a solemn duty to uphold the clear and unmistakable mandate of the people. It cannot supplant the sovereign will of the Second District of Pangasinan with fractured legalism. The people of the District have clearly spoken. They overwhelmingly and unequivocally voted for private respondent to represent them in the House of Representatives. The votes that Cruz garnered (80, 119) in the last elections were much more than those of all his opponents combined (66, 182). In such instances, all possible doubts should be resolved in favor of the winning candidate's eligibility; to rule otherwise would be to defeat the will of the people.
>
> Well-entrenched in our jurisprudence is the doctrine that in case of doubt, political laws must be so constructed as to give life and spirit to the popular mandate freely expressed

> [When] a candidate has received popular mandate, overwhelmingly and clearly expressed, all possible doubts should be resolved in favor of the candidate's eligibility for to rule otherwise is to defeat the will of the people. Above and beyond all, the determination of the true will of the electorate should be paramount. It is their voice, not ours or of anyone else, that must prevail. This, in essence, is the democracy we continue to hold sacred.

In the words of another leading case – *Frivaldo v. Comelec*[42]- the law and the courts, including this Court, must give serious consideration to the popular will.

"In any action involving the possibility of a reversal of the popular electoral choice, this Court must exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority. To successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote."[43]

Under the evidentiary and unique factual situation of this case, the alleged eligibility of Arnado is not antagonistic, patently or otherwise, to constitutional and legal principles such that giving effect to the sovereign will would create prejudice to our democratic institutions.

Notably, the Office of the *Sangguniannng Bayan*, through Resolution No. 002-2014[44] dated January 2, 2014, and the *Liga ng Mga Barangay,* through Resolution No. 001-2014[45] dated January 2, 2014, expressed their

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> through the ballot. Public interest and the sovereign will should, at all times, be the paramount considerations in election controversies. For it would be better to err in favor of the people's choice than to be right in complex but little understood legalisms.
>
> Indeed, this Court has repeatedly stressed the importance of giving effect to the sovereign will in order to ensure the survival of our democracy. In any action involving the possibility of a reversal of the popular electoral choice, this Court must exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority. **To successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrative that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote.** [Emphasis ours]

See also *Fernandez v. House of Representatives Electoral Tribunal,* G.R. No. 187478, December 21, 2009, 608 SCRA 733.

41 373 Phil. 896 (1999).

42 G.R. No. 120295, June 28, 1996.

43 *Frivaldo v. Comelec*, G.R. No. 120295, June 28, 1996.

44 *Rollo,* pp. 103-108.

45 *Rollo,* pp. 109-113.

continuing and overwhelming support for Arnado, notwithstanding the Comelec rulings disqualifying him from the May 2013 Elections, and implores the Court to heed the Kauswagan people's voice under the principle *vox populi, vox dei*.

Under the circumstances of this case, the *ponencia's* action that resolves all doubts against Arnado's eligibility undoubtedly defeats the will of the Kauswagan electorate.[46] In ruling as it does, the *ponencia* effectively disenfranchises an undoubtedly overwhelming majority of the Kauswagan people as "[t]he rights of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."[47] The Court should respect and uphold the will of the electorate.

For the above reasons, I vote to grant the petition.

ARTURO D. BRION
Associate Justice

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[46] See *Sinaca v. Mula,* 373 Phil. 896 (1999), where the Court said:
"[When] a candidate has received popular mandate, overwhelmingly and clearly expressed, all possible doubts should be resolved in favor of the candidate's eligibility for to rule otherwise is to defeat the will of the people. Above and beyond all, the determination of the true will of the electorate should be paramount. It is their voice, not ours or of anyone else, that must prevail. This, in essence, is the democracy we continue to hold sacred."

[47] *Gore v. Bush,* 531 U.S. 98, 105, 121 S. Ct. 525, 530; 148 L. Ed. 2d 288, 397 (2000), citing *Reynolds v. Sims,* 377 U.S. 533, 555, 12 L. Ed. 2d 506, 84 S. Ct. 1362 (1964).