

# To Be or Not To Be Natural-born: The Status of Persons Who Retained or Reacquired Philippine Citizenship Under the Citizenship Retention and Reacquisition Act and Its Implications on the Right of Suffrage

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## I. INTRODUCTION

Over the years, globalization has become an economic and a political trend. Consequently and contrary to the traditional view that a person should possess only a single nationality, there is a rising tendency towards the more liberal view – that which allows possession of dual or multiple citizenships. Protectionist barriers are now being dismantled and doors are being opened to aliens who want to enjoy privileges otherwise conferred only to citizens of a country. Contrary to the olden paradigm, applicants for citizenship are no longer suspected of evil motives but are now even considered as potential sources of developmental skills and capital. As the government's response to globalization and to the clamor of millions of Filipino migrants to be granted some, if not all, of the rights accorded to citizens of the Philippines, Republic Act No. 9225<sup>1</sup> was signed into law by President Gloria Macapagal-Arroyo on 29 August 2003.

The law is more popularly known as the *Dual Citizenship Law*. However, such designation is clearly a misnomer because the law does not really provide for dual citizenship but only grants to former natural-born citizens the privilege of reacquiring or retaining one's Philippine citizenship despite having lost such citizenship upon naturalization in a foreign country. Dual citizenship is not the primary purpose of the law, neither is it an automatic consequence thereof. Nevertheless, it is actually possible for dual citizenship to arise from availing of the law's privileges depending on the laws of the foreign state under which a natural-born citizen has been naturalized. For this reason, the law should more aptly be referred to as the Citizen Retention and Reacquisition Act and not the Dual Citizenship Law.

The implications of the Citizenship Retention and Reacquisition Act on the civil and political rights of persons who reacquire or retain Philippine citizenship are numerous and countless. It has repercussions on the lives of million Filipinos and many of these are still unknown. Furthermore, the inconsistencies and discrepancies of the law with existing Philippine law and the general principles of international law are not only apparent but real. However, because the law is intended to be self-implementing and self-executory, it is unlikely that implementing rules will ever be issued. For this reason, straightforward answers to possible areas of conflict are less expected as well. Consequently, it will devolve upon the Supreme Court to resolve

1. 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, Republic Act No. 9225 (2003).

the issues that may arise from the interpretation of the Citizenship Retention and Reacquisition Act. Nonetheless, until an actual case or controversy arises, and until the Court rules on the matter, the answers to the questions to be raised by the Filipino people will have to be left to speculation.

One of the most common and controversial questions that arise from the law is whether the person who reacquires or retains Philippine citizenship reacquires or retains his natural-born Filipino citizenship status, or merely Filipino citizenship, classified either as naturalized or some other classification. Since the answer to such query is projected to give light to numerous other important queries with regard to the law and its effects, this paper will be limited to the discussion of the kind of Filipino citizenship reacquired or retained under the law and its relation to the right of suffrage and the Absentee Voting Law.

## II. DUAL CITIZENSHIP *vis-à-vis* DUAL ALLEGIANCE

### A. Citizenship

The term *citizen* is derived from the Latin word *civis* meaning citizen or townsman.<sup>2</sup> It is capable of more than one meaning with which it has been variously defined. In its primary sense, citizenship signifies one who is vested with the freedom and privileges of a citizen as distinguished from a foreigner. In a bigger sense, citizenship generally denotes a status of one who, as a member of a nation or of the body politic of a sovereign state, owes allegiance to, and may claim reciprocal protection from its government.<sup>3</sup>

Consequently, citizenship is the status of being a citizen. It is membership in a political society, and the relation of allegiance and protection between individuals and their country. It is a term of municipal law which implies membership in a nation and is a political status which may be defined and limited by Congress.<sup>4</sup>

Citizenship is a personal and more or less permanent membership of a person in a political community. It signifies possession of full civil and political rights within a particular community which is consequently attended by certain duties and responsibilities such as the duty of allegiance

2. See the encyclopedic definition of the term available at <http://www.nationmaster.com/encyclopedia/civilization/> (last accessed Oct. 10, 2004).

3. 14 C.J.S *Citizens* §1 (1956).

4. *Id.*

to the political community.<sup>5</sup> Modern law recognizes three different modes of acquiring citizenship: (1) *jus sanguinis*; (2) *jus soli*; and (3) naturalization.

*Jus sanguinis* is the acquisition of citizenship on the basis of blood relationship while *jus soli* is the acquisition of citizenship on the basis of place of birth. Naturalization on the other hand is the legal act of a State adopting an alien and clothing him with the privilege of a person born in the native land.<sup>6</sup> Under the present Constitution, the Philippines adheres to the rule of *jus sanguinis*. Meanwhile, naturalization as a means of acquiring citizenship is provided for by special laws.

As a general rule of international law, each State is free to determine by its own municipal law the persons it considers to be its own citizens. In this light, the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws provides:

It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States insofar as it is consistent with international conventions, international customs, and the principles of law generally recognizes with regard to nationality.<sup>7</sup>

Corollary to the aforementioned rule of international law, it is also for the municipal law of each State to determine who its citizens are. In this regard, Article 2 of the same Convention provides: "Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State." Moreover, the Convention further provides that a person having two or more nationalities may be regarded as a national by each of the States whose nationality he possesses.

Hence, no other than the municipal law of a State determines whether or not a person is a citizen of such State. Only Philippine law can determine who are and who are not citizens of the Philippines. Consequently, Philippine law cannot determine whether a person is a citizen of another country.

5. JOAQUIN G. BERNAS, SJ, *THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY* 558 (1996).

6. *Id.*

7. Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, art. 1 (1930).

### B. Dual Citizenship

Since it is the municipal law of each State that determines who are its citizens, situations may arise when more than one State considers a person its citizen. Such situation gives rise to dual citizenship.

Dual citizenship arises when, as a result of the concurrent application of different laws of two or more states, a person is simultaneously considered a citizen by the said states. It usually occurs from the concurrent application of *jus soli* and *jus sanguinis* at birth, or from the refusal of certain States to accept a full application of the doctrine of expatriation. It may also result from marriage, or it may be produced by a formal and voluntary act.<sup>8</sup>

In certain instances, dual citizenship may exist from birth. A legitimate child born in the United States to a Filipino father is, by virtue of the rule of *jus sanguinis*, a Filipino citizen. However, applying the rule of *jus soli*, such child is also a citizen of the United States, being born in the United States which adheres to the rule of *jus soli*.<sup>9</sup> This is often referred to as *dual citizen per accidens* which arises out of involuntary circumstances.

Dual citizenship may also result from the denial of one State of the right of expatriation, which is the right of abandoning one's nationality and embracing another. This is usually called the principle of *perpetual allegiance*, which enunciates the belief that individuals lack the legal capacity to forsake his sovereign. Thus, a French national does not lose his French citizenship upon naturalization in a foreign state unless the express consent of the State has been obtained or unless certain military services which causes the loss of such nationality has been performed.<sup>10</sup>

Dual citizenship may also result from marriage such as when a woman marries a foreign subject and remains a citizen of her original State while also acquiring the nationality of her husband.

Lastly, it may also be produced by a formal and voluntary act of an individual. This situation results in dual citizenship when the law of the original country of citizenship allows its citizens to retain its original citizenship regardless of their acquisition of foreign citizenship.

Dual citizenship must be distinguished from dual allegiance which refers to a situation wherein a person simultaneously owes, by some positive act, loyalty to two or more states. While dual citizenship is often involuntary, dual allegiance is the result of an individual's own volition.<sup>11</sup> The distinction

8. JOVITO R. SALONGA, PRIVATE INTERNATIONAL LAW 136 (1979).

9. *Id.*

10. *Id.*

11. Mercado v. Manzano, 307 SCRA 630, 642 (1999).

is material because the Constitution shows a degree of aversion to dual allegiance but not to dual citizenship when it declares that "[d]ual allegiance of citizens is inimical to the national interest and shall be dealt with by law."<sup>12</sup>

This is because Philippine law acknowledges the reality that dual citizenship is sometimes inevitable and under certain circumstances, may arise even without its prior consent. Moreover, in addition to the fact that there is no express prohibition against dual citizenship, it may be inferred from the present Constitution that under certain circumstances, dual citizenship may even be allowed or tolerated. As one constitutional law expert opined:

Since the universal rule is that the child follows the citizenship of the father, and since under Section 1 (2) the child also follows the citizenship of the Filipino mother, and since under Section 4 the Filipino woman does not lose Philippine citizenship by marriage to an alien husband, it is clear that the Constitution allows for the possibility of dual citizenship. It is, after all, a condition which arises from the fact that Philippine law cannot control international law and the laws of other countries on citizenship.<sup>13</sup>

Nevertheless, the Constitution left the matter of dual citizenship to ordinary legislation.<sup>14</sup> To this date however, there is no law that directly tackles the matter and the closest to it is the Citizenship Retention and Reacquisition Act.

### C. Dual Allegiance

Allegiance is fealty or fidelity to the government of which the person is either a citizen or subject. It is a political duty that is due from every citizen of a state that binds those who enjoy the protection of such state. It is the obligation of fidelity and obedience which the individual owes to the government or the sovereign under which he lives in return for the protection he receives.<sup>15</sup>

Allegiance is of four kinds: (1) natural allegiance or that which arises by nature and birth; (2) acquired allegiance or that arising through some circumstance or act other than birth such as denization or naturalization; (3)

12. PHIL. CONST. art. IV, § 5.

13. BERNAS, *supra* note 5 at 575.

14. I RECORD OF CONSTITUTIONAL COMMISSION 190-191, 233 (1986).

15. 3 C.J.S. 885 *Allegiance* (1956).

local allegiance or that arising from residence simply within the country for however short a time; and (4) legal allegiance or that arising from oath.<sup>16</sup>

Dual allegiance, therefore, is fidelity to two governments of which a person is either a citizen or a subject. It is the obligation of loyalty and obedience to the government which renders him protection. And since it is impossible to serve two masters at the same time, dual allegiance is, aside from its inherent impossibility, commonly perceived as contrary to the concept of loyalty to a political community which is basically the essence of citizenship.

In this regard, the present Constitution provides that "[d]ual allegiance of citizens is inimical to the national interest and shall be dealt with by law."<sup>17</sup>

### III. WHO ARE CITIZENS OF THE PHILIPPINES

#### A. Under the Treaty of Paris

Under the Treaty of Paris, Spain ceded the Philippines to the United States on 10 December 1898, for \$20 Million. In relation to such cession, Article IX of the Treaty of Paris provided:

Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress.<sup>18</sup>

Hence, from the foregoing provision, it may be said that the very first citizens of the Philippines, although not referred to as such but only as Spanish subjects, did not acquire such status by birth but only by grant. They

16. *Id.*

17. PHIL. CONST. art. IV, § 5.

18. Treaty of Paris, art. IX (1898).

were actually born as Spanish subjects who, upon the cession of the Philippines to the United States, were held to have renounced their allegiance to the Crown of Spain and thus adopted the nationality of the territory in which they may reside and swore allegiance to the United States.

#### B. Under the Philippine Bill of 1902

Section 4 of the Philippine Bill of 1902 implemented Article IX of the Treaty of Paris. Such provision was an act of mass naturalization which, for the first time, created the category of Filipino citizens. Section 4 provides:

That all inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in the Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain signed at Paris, December tenth, eighteen hundred and ninety-eight. Provided, That the Philippine legislature is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of other insular possessions of the United States, and such other persons residing in the Philippine Islands, who could become citizens of the United States under the laws of the United States if residing therein.

Pursuant to the foregoing provision, the first citizens of the Philippines under the Philippine Bill of 1902 can be classified as: (1) those who were born in the Philippines; (2) persons born in Spain who remained in the Islands even after the cession and who did not preserve allegiance to the Crown of Spain; and (3) all other inhabitants of the Philippines provided that they were subjects of Spain and residents of the Philippines on 11 April 1899.

#### C. Under the 1935 Constitution

Under Section 1 of Article IV of the 1935 Constitution, the following are citizens of the Philippines:

- a) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.
- b) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.
- c) Those whose fathers are citizens of the Philippines.
- d) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

- e) Those who are naturalized in accordance with law.

The first category of citizens of the Philippines is that of individuals who were considered citizens of the Philippines at the time of the adoption of the 1935 Constitution. Constitutional law expert Joaquin Bernas, S.J. enumerated who were considered citizens of the Philippine Islands at the time of the adoption of the 1935 Constitution, provided they have not yet lost their citizenship on 15 November 1935, to wit:

- (1) All inhabitants of the Philippine Islands who were considered Filipino citizens.
- (2) Children of those who became Filipino citizens under the Philippine Bill.
- (3) Those who became Filipino citizens under the Naturalization Law enacted on 26 March 1920.
- (4) Children who were minors at the time of the naturalization of their parents under the previous paragraph if dwelling in the Philippines, and children born in the Philippines subsequent to the naturalization of their parents.
- (5) Foreign women married to citizens of the Philippines who may have acquired Philippine citizenship under Act 3448.
- (6) Those who were citizens of the Philippine by the principle of *res judicata*, that is, those who were individually declared to be citizens of the Philippines by final court decision even if on the mistaken application of the principle of *jus soli*.<sup>19</sup>

Moreover, other classifications of citizens under the 1935 Constitution are: (1) born in the Philippines of foreign parents who had been elected to public office; (2) those whose fathers or mothers are citizens of the Philippines; and (3) those who are naturalized.

It must also be emphasized that it is with the adoption of the 1935 Constitution that the Philippines first adhered to the principle of *jus sanguinis* as an absolute rule.

#### D. Under the 1973 Constitution

Under Section 1 of Article III of the 1973 Constitution, the following are citizens of the Philippines:

- a) Those who are citizens of the Philippines at the time of the adoption of this Constitution.
- b) Those whose fathers or mothers are citizens of the Philippines;

19. BERNAS, *supra* note 5 n.1 at 559.

- c) Those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five.
- d) Those who were naturalized in accordance with law.

Except for those who elected Philippine citizenship pursuant to the 1935 Constitution, citizens of the Philippines under the 1973 Constitution were basically similar to those who were considered citizens of the Philippines under the 1935 Constitution. In addition, the concept of natural-born citizens was also introduced for the first time in Philippine legal history. Section 4 of Article III provided that "[a] natural-born citizen is one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship."

#### E. Under the 1987 Constitution

Under the present Constitution, the following are citizens of the Philippines:

- (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;
- (2) Those whose fathers or mothers are citizens of the Philippines;
- (3) Those born before January 11, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
- (4) Those who are naturalized in accordance with law.

Under the 1987 Constitution, the enumeration of who are considered citizens of the Philippines is basically just a reiteration of who were citizens of the Philippines under the 1973 Constitution. The concept of natural-born citizens was also carried on to the present Constitution under Section 2 of Article IV which considers those born before 17 January 1973 of Filipino mothers and who elect Philippine citizenship upon reaching the age of majority, in addition to those citizens of the Philippines from birth without having to perform any act to acquire or perfect their citizenship, as natural-born citizens of the Philippines.

#### IV. THE CITIZENSHIP RETENTION AND REACQUISITION ACT

The Filipino migrant sector comprises of more than ten percent of the total population of the Philippines and annually salvages an ailing national economy through dollar remittances. In 2001 alone, Filipino migrants, numbering 8.7 million, remitted a gross of about US\$ 4.8 Billion.<sup>20</sup> Moreover, despite the differences in reasons for seeking greener pastures in a

20. Migrante Melbourne, Philippine Dual Citizenship and Absentee Voting Law 2003: Implications and Opportunities for Filipino-Australians (2003).

foreign land, the increase in annual remittances are proof that the Filipino migrants, a significant number of whom have acquired the citizenship of their host country, have stayed connected to their Filipino roots.

As a response to the demand of migrant workers to be restored, and entitled, to certain civil and political rights such as the right to vote and own real property, President Gloria Macapagal-Arroyo signed into law Republic Act No. 9225 or the Citizenship Retention and Reacquisition Act of 2003. The Citizenship Retention and Reacquisition Act of 2003 is a consolidation of Senate Bill No. 2130 and House Bill No. 4720 which was passed by the House of Representatives and the Senate on 25 August 2003 and 26 August 2003, respectively.

#### A. *The Policy of the Law*

In the explanatory note of Senate Bill No. 1354 otherwise known as the Citizenship Retention Bill, one of the bills that eventually led to the Citizenship Retention and Reacquisition Act, it was submitted that a great majority of the Filipino migrants are economic migrants – that is migrants for the sole purpose of seeking economic gain which is practically unattainable and highly improbable to obtain in this country. However, according to the proponents of the Bill, despite acquiring foreign citizenship, whether voluntary or just a product of circumstance or necessity, the continued allegiance of these Filipino migrants to the Philippines is demonstrated by their having maintained links to their native country, their keen interest and concern for the country, their desire to visit the country and their relatives at every available opportunity, and their contribution to the economy through investments or remittances.<sup>21</sup>

In this light, the Citizenship Retention Bill sought to make it part of the national policy to recognize that Philippine citizenship acquired by parentage is constitutionally guaranteed such that natural-born citizens may not be automatically deprived of Philippine citizenship absent any corresponding free, willful, and voluntary act on their part to expressly and formally renounce their citizenship or without the commission of acts patently inconsistent with the retention of citizenship.<sup>22</sup>

However, the final version of the law declared it a state policy that all natural-born Filipino citizens who have become citizens of another country

21. An Act Providing for the Retention of Citizenship by Philippine Citizens Who Acquire Foreign Citizenship, Amending for the Purpose Commonwealth Act No. 63, as amended, and for Other Purposes, Senate Bill No. 1354, 12<sup>TH</sup> Cong, 2d Sess (12 July 2007), Explanatory Note.

22. *Id.* at § 2.

shall be deemed not to have lost their Philippine citizenship except under the conditions prescribed by the Act.

#### B. *Citizens under the Citizenship Retention and Reacquisition Act*

Under the Citizenship Retention and Reacquisition Act, natural-born citizens who, by reason of their naturalization as citizens of a foreign country have lost their Philippine citizenship, are hereby *deemed to have reacquired* Philippine citizenship upon taking the required oath of allegiance<sup>23</sup> to the Republic.<sup>24</sup>

Moreover, natural-born citizens of the Philippines who, after the effectivity of the Citizenship Retention and Reacquisition Act shall become citizens of a foreign country shall *retain* their Philippine citizenship upon taking the same oath.<sup>25</sup>

Lastly, the unmarried child of those who reacquire Philippine citizenship upon effectivity of the Citizenship and Reacquisition Act, whether legitimate, illegitimate or adopted and below eighteen years of age, shall also be deemed a citizen of the Philippines.<sup>26</sup> This is called *derivative citizenship*.

Nevertheless, it must be emphasized that as expressly provided by the law, the privilege of reacquiring or retaining Philippine citizenship is only granted to natural-born citizens of the Philippines and not to citizens who are not natural-born such as those who were merely naturalized under the naturalization laws.

#### C. *Procedural Requirements*

Senator Franklin M. Drilon, the author of the Citizenship Retention Bill wanted the process of reacquisition to be as simple as possible. This is manifested in the proposed bill which required *no positive act* on the part of the natural-born citizen who has lost his Filipino citizenship to reacquire his Filipino citizenship. The proposed bill sought to declare all natural-born

23. 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.

24. R.A. No. 9225, § 3.

25. *Id.*

26. *Id.* at § 4.

Filipino citizens who are naturalized in a foreign country to have *automatically reacquired* their Philippine citizenship upon effectivity of the proposed law save for certain exceptions.<sup>27</sup>

On the other hand, Senate Bill No. 2130,<sup>28</sup> the enrolled bill of the Citizenship Retention Bill, required renunciation under oath of Philippine citizenship before a Philippine consular officer abroad or any public officer authorized to administer oath in order to successfully reject Philippine citizenship. Otherwise, they shall not be deemed to have lost their Philippine citizenship. Moreover, a renunciation merely part of, or in connection with, the oath of allegiance which may have been required by the foreign country for purposes of naturalization shall not be interpreted as a free, willful and voluntary act of renunciation and will therefore not be a bar to the retention of Philippine citizenship.<sup>29</sup>

However, under the enacted Citizenship Retention and Reacquisition Act, contrary to the proposal of automatic reacquisition, it is required that the natural-born Filipino who has lost his citizenship, or may lose such after the effectivity of the law, through naturalization in a foreign country, and who seeks to reacquire such citizenship must take the particular oath of allegiance to the Republic of the Philippines as stated in the law.<sup>30</sup> Other than the aforesaid oath of allegiance, a person seeking to reacquire or retain Philippine citizenship need not do anything else.

#### D. Effects of the Law

Section 5 of the Citizenship Retention and Reacquisition Act provides that those who retain or reacquire Philippine citizenship under the Act shall enjoy *full civil and political rights* and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines subject to specific conditions.<sup>31</sup>

27. *Supra* note 21.

28. An Act Providing for the Retention of Citizenship by Philippine Citizens Who Acquire Foreign Citizenship, Amending for the Purpose Commonwealth Act No. 63, as amended, and for other purposes, Senate Bill No. 2130, 12<sup>TH</sup> CONG, 1<sup>ST</sup> Sess. (14 May 2002).

29. *Id.* at § 4.

30. R.A. No. 9225, § 3.

31. §5 provides:

(1) Those intending to exercise their right of suffrage must meet the requirements under Section 1 Article V of the Constitution, Republic Act No. 9189, otherwise known as "The Overseas Absentee Voting Act of 2003" and other existing laws.

Thus, subject to existing laws and other limitations, some of the rights that will be restored and enjoyed by those who reacquired or retained their Philippine citizenship are the following:

- a) the right of suffrage;<sup>32</sup>
- b) the right to practice profession in the Philippines;<sup>33</sup>
- c) the right to own land;<sup>34</sup>
- d) right to explore, develop and utilize natural resources;<sup>35</sup>
- e) right to operate public utilities;<sup>36</sup>
- f) right to administer educational institutions;<sup>37</sup>
- g) right to own and manage mass media.<sup>38</sup>

Nevertheless, despite the restoration of civil and political rights, citizens of the Philippines should bear in mind that in return for the protection and

(2) Those seeking elective public office 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;

(3) Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and it duly constituted authorities prior to the assumption of office; Provided, That they renounce their oath of allegiance to the country where they took that oath;

(4) Those intending to practice their profession in the Philippines shall apply with the proper authority for a license or permit to engage in such practice; and

(5) That the right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who:

(a) are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or

(b) are in active service as commissioned or non-commissioned officers in the armed forces of the country which they are naturalized citizens.

32. PHIL. CONST. art. V, § 1.

33. PHIL. CONST. art. XII, § 14.

34. PHIL. CONST. art. XII, § 3.

35. PHIL. CONST. art. XII, § 2.

36. PHIL. CONST. art. XII, § 11.

37. PHIL. CONST. art. XIV, § 4, ¶ 2.

38. PHIL. CONST. art. XVI, § 11.

privileges granted by the State, certain duties and obligations attendant to citizenship cannot be compromised and thus, must be complied with. Such duties and obligations are captured in Section 1 of Article V of the 1973 Constitution which states:

It shall be the duty of the citizen to be loyal to the Republic and to honor the Philippine flag, to defend the State and contribute to its development and welfare, to uphold the Constitution and obey the laws, and to cooperate with the duly constituted authorities in the attainment and preservation of a just and orderly society.

Moreover, it must be emphasized that Philippine citizenship, in whatever way it may have been acquired, is not a commodity to be displayed when required and suppressed when convenient.<sup>39</sup>

#### V. CLASSIFICATION OF CITIZENS

The classification of citizens plays a significant role in determining the status of a person who reacquires or retains his Philippine citizenship under the Citizenship Retention and Reacquisition Act. Does he reacquire or retain his natural-born Filipino status or merely Philippine citizenship without the qualification of being natural-born? Further, such classification is significant because the jurisprudential basis<sup>40</sup> relied upon by those who believe that what is reacquired and/or retained is the original status of being natural-born has its foundation on the assumption that there are only two classes of citizens.

The first view is that there are only two classes of citizens: (1) native-born or natural-born citizens, and (2) naturalized citizens.<sup>41</sup> This belief is based on the assumption that citizens who are not under one class should necessarily be under the other class. This is the view espoused by those who believe that what is retained or reacquired under the Citizenship Retention and Reacquisition Act is the natural-born status. Thus, applying the theory, if one is not a naturalized citizen, then he should necessarily be a natural-born citizen. However, the author believes that such view is erroneous because of the improper method of deduction used; this will be discussed later on.

39. *Yu v. Defensor-Santiago*, 169 SCRA 364, 371 (1989).

40. *Bengzon III v. House of Representatives Electoral Tribunal*, 357 SCRA 545, 552 (2001).

41. 14 C.J.S. *Citizen*, § 1 (1956).

On the other hand, some are of the view that the previous classification is not exhaustive and that citizenship may be further classified in order to include those who are neither natural-born nor naturalized.

To illustrate, natural-born citizens and naturalized citizens are defined in the Constitution and the laws. Hence, if one is not covered by either definition, then such person is neither natural-born nor naturalized. To what classification then, does he belong? It is submitted that there should be a third classification of citizens which should include those who are neither natural-born nor naturalized citizens. Such third class of citizens should include persons who become citizens of the Philippines through means other than naturalization, such as through reacquisition or retention under the Citizenship Retention and Reacquisition Act. For purposes of this paper, such third class of citizens shall be termed as *citizens through means other than naturalization*.

For purposes of discussion, it is imperative to go over the definition of natural-born and naturalized citizens. The general rule is that a person, who at the time of his birth is a citizen of a particular country, is a natural-born citizen thereof.<sup>42</sup> Thus, as held in American law, a natural-born American citizen is an American citizen who has become such at the moment of his birth.<sup>43</sup>

Under the Constitution, natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Moreover, those born before 17 January 1973 of Filipino mothers who, upon reaching the age of majority elect Philippine citizenship, shall also be deemed natural-born citizens.<sup>44</sup>

On the other hand, naturalization is the conferring of the nationality or citizenship of a state upon a person after birth or by any means whatsoever.<sup>45</sup> Under Philippine law, a naturalized citizen is one who is declared as such by virtue of a judicial proceeding or one who underwent the process of naturalization, generally under Commonwealth Act No. 473 and Republic Act No. 530.<sup>46</sup> In addition, a person who underwent administrative

42. *Bengzon*, 357 SCRA at 552 citing ARTURO TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 188 (1990).

43. *Roa v. Collector of Customs*, 23 Phil 315, 332 (1912).

44. PHIL. CONST. art. V, § 2.

45. 3A AM. JUR. 2d *Aliens and Citizens* §1494 (1989).

46. *Bengzon*, 357 SCRA at 552.



naturalization under the Administrative Naturalization Law of 2000<sup>47</sup> is also a naturalized citizen.

Having discussed the two classifications of citizens, to what class of citizen does a person who reacquire or retains his Philippine citizenship under the Citizenship Retention and Reacquisition Act belong?

#### VI. NATURAL-BORN FILIPINO CITIZEN *vis-à-vis* NATURALIZED FILIPINO CITIZEN *vis-à-vis* FILIPINO CITIZEN THROUGH OTHER MEANS

In determining what is the status of a person who reacquires or retains Philippine citizenship under the Citizenship Retention and Reacquisition Act, several schools of thought come into play. The *first view* provides that natural-born citizens who lost such citizenship upon naturalization in a foreign land and who thereafter reacquires or retains their Philippine citizenship actually *recovers their natural-born status*. The *second view* provides that since they already performed an act to acquire or perfect their Philippine citizenship, they can no longer be considered natural-born. And if there are only two classes of citizens, using the process of elimination, then they necessarily belong to the other class, that is, *naturalized citizens*. The *third view*, however, posits that since they are neither natural-born – since they had to perform an act to perfect their citizenship – nor are they naturalized citizens – because they did not go through the process of naturalization – then there must be another class of citizens to which these citizens belong. As previously stated, such class may be called *citizens through means other than naturalization*. These views will be discussed in detail hereunder.

Nonetheless, it is immaterial whether such persons who reacquire or retain Philippine citizenship under the Citizenship Retention and Reacquisition Act are of the second or third class. What is relevant is whether or not he is considered natural-born or not. This is because the Constitution gives certain rights and privileges exclusive to natural-born Filipinos. Other than these specific rights and privileges, natural-born Filipino citizens and all other Filipino citizens, regardless of how such Philippine citizenship was acquired, are all treated alike. Otherwise, such would be a violation of the well-enshrined doctrine of equal protection of the laws.

47. An Act Providing for the Acquisition of Philippine Citizenship for Certain Aliens by Administrative Naturalization and for Other Purposes, Republic Act No. 9139 (2001).

#### A. *The First view: Natural-born Filipino Citizen*

Advocates of the view that what is reacquired or retained under the Citizenship Retention and Reacquisition Act is natural-born Filipino citizenship basically construct their arguments around the ruling of the Supreme Court in *Bengzon III v. House of Representatives Electoral Tribunal*.<sup>48</sup>

In *Bengzon*, Teodoro Cruz was born in Tarlac in 1960 to Filipino parents, thus, a natural-born citizen of the Philippines. In 1985, Cruz enlisted in the United States Marine Corps and took an oath of allegiance to the United States. Consequently, he lost his Filipino citizenship pursuant to Commonwealth Act No. 63<sup>49</sup> which provides that rendering service to or accepting commission in the armed forces of another country is a ground for losing Philippine citizenship. Moreover, he was formally naturalized as an American citizen in 1990. In 1994, Cruz reacquired his Philippine citizenship through the process of repatriation under Republic Act No. 2630.<sup>50</sup> He ran for, and was elected as, Representative of the Second District of Pangasinan. Thereafter, a petition for *quo warranto ad cautelam* was filed with the respondent House of Representatives Electoral Tribunal (HRET) claiming disqualification of Cruz on the ground that he is not a natural-born citizen as required by the Constitution.<sup>51</sup>

In holding that Cruz is deemed to have reacquired his natural-born status, the Court pronounced that *repatriation results in the recovery of the original nationality*. This meant that a naturalized Filipino who lost his citizenship will be restored to his prior status as a naturalized Filipino citizen; while a natural-born Filipino who lost his Philippine citizenship will be restored to his former status as a natural-born Filipino.<sup>52</sup>

Thus, the Court in *Bengzon* categorically held that the act of repatriation allows a person to recover, or return to, his original status before he lost his Philippine citizenship. The Court further held:

*A citizen who is not a naturalized Filipino, i.e., did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is a natural-born Filipino. Noteworthy is the absence in said enumeration of a separate category for persons who, after losing their Philippine citizenship.*

48. 357 SCRA 545 (2001).

49. An Act Providing for the Ways in Which Philippine Citizenship May Be Lost or Reacquired, Commonwealth Act No. 63, as amended (1936).

50. An Act Providing for Reacquisition of Philippine Citizenship by Persons Who Lost Such Citizenship by Rendering Service To, or Accepting Commission In, the Armed Forces of the United States, Republic Act No. 2630 (1960).

51. *Bengzon*, 357 SCRA at 548.

52. *Id.* at 556.

subsequently reacquires it. The reason therefore is clear: as to such persons, they would either be natural-born or naturalized depending on the reasons for the loss of their citizenship and the mode prescribed by the applicable law for the reacquisition thereof. *As respondent Cruz was not required to go through naturalization proceedings in order to reacquire his citizenship, he is perforce a natural-born Filipino.* As such, he possessed all the necessary qualifications to be elected as member of the House of Representatives.<sup>53</sup>

Based on such ruling, proponents of the view that what is reacquired or retained is natural-born status argue that since the oath required by the Citizenship Retention and Reacquisition Act is *similar* and even less stringent than that required by Commonwealth Act No. 63, then the effect of recovering natural-born status under the process of repatriation should also apply to those who reacquire or retain Philippine citizenship under the Citizenship Retention and Reacquisition Act. Using the same line of reasoning, since a person who would reacquire or retain Philippine citizenship under the Citizenship Retention and Reacquisition Act is not required to undergo naturalization proceedings but only to take an oath, then he should also be considered to have recovered his natural-born Filipino status.

#### B. *The Second View: Naturalized Citizens*

The second view is that since persons reacquiring or retaining Philippine citizenship through the Citizenship Retention and Reacquisition Act are required to take an oath of allegiance to the Republic, then such constitutes performing an act to perfect their citizenship, hence, excluding them from the definition of natural-born citizens. If one is of the view that there are only two classifications of citizens, it would necessarily follow that if one is not natural-born, then he is necessarily a naturalized citizen.

#### C. *The Third View: Filipino Citizens Through Other Means*

Advocates of this view believe that since persons who reacquire or retain Philippine citizenship under the Citizenship Retention and Reacquisition Act are neither natural-born – because they had to perform an act to perfect their citizenship – nor are they naturalized citizens – because they did not go through the process of naturalization – then there must be another class of citizens to which these citizens belong. As previously stated, such class may properly be called citizens through means other than naturalization.

Believers of this view base their position on the letter of no less than the Constitution, Commonwealth Act No. 63 and also on pronouncements of

53. *Id.* at 558 (emphasis supplied).

the Supreme Court that naturalization<sup>54</sup> in a foreign country results in the loss of Philippine citizenship.

The first argument in support of the third classification of citizens to which persons who reacquire or retain Philippine citizenship belong is that persons who reacquire or retain Philippine citizenship under the Citizenship Retention and Reacquisition Act are not natural-born citizens for the following reasons:

First, as earlier stated, natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Clearly then, a person who was originally a natural-born citizen and who thereafter loses it through any of the modes provided by law would have to do something to reacquire or perfect his Philippine citizenship. Consequently, he can not be considered a natural-born citizen.

Commonwealth Act No. 63 also provides for the modes by which citizenship may be lost, some of which are the following: (1) by naturalization in a foreign country; (2) by express renunciation of citizenship; and (3) by subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining 21 years of age or more.<sup>55</sup> Hence, by express provision of law, a person who is naturalized in a foreign country, or renounces his citizenship or subscribes to an oath of allegiance to a foreign country loses his citizenship. Logically, if one loses his citizenship, he must do an act to reacquire such citizenship unless Congress enacts a law of *automatic reacquisition* of citizenship.

Under the Citizenship Retention and Reacquisition Act, a person wanting to retain or reacquire Philippine citizenship must take an oath of allegiance to the Republic. Hence, such taking of an oath of allegiance clearly demonstrates that the person who seeks to reacquire his Philippine citizenship must perform an act – that is the taking of the oath of allegiance – to perfect his citizenship. While under this law, there is no need to undergo the tedious process of naturalization, one must still make an express and unequivocal act of pledging allegiance to the Republic.

Such pledge then constitutes an act to acquire or perfect Philippine citizenship. This is consistent with the argument of Willoughby<sup>56</sup> postulating that a natural-born citizen is one who is able to claim citizenship *without any prior declaration on his part of a desire to obtain such status.* Hence, even a simple

54. *Coquilla v. Comelec*, 385 SCRA 697, 617.

55. C.A. No. 63, § 1.

56. *Bengzon*, 357 SCRA at 576 (Sandoval-Gutierrez, J., dissenting).

oath made in order to reacquire or perfect one's citizenship renders one a non-natural born citizen.

Second, the Constitution provides that those born before 17 January 1973 of Filipino mothers, who, upon reaching the age of majority elect Philippine citizenship, shall be deemed natural-born citizens. From the foregoing, it can be argued that the election of such persons of Philippine citizenship upon reaching the age of majority constitutes an act to acquire or perfect their Philippine citizenship. Thus, they should logically not be considered natural-born citizens.

However, by express provision of the Constitution, such *act of election* is an *exception to the general rule* that a person should not have done anything to perfect his citizenship to be considered a natural-born citizen. And since under the rule in statutory construction, *expressio unius est exclusio alterius*, which means the express mention of one thing implies the exclusion of all others, such act of election is to be considered as the sole exception to the general rule that a person should not have done anything to perfect his citizenship to be considered a natural-born citizen. And since the definition of natural-born citizenship is enshrined in no less than the Constitution, no act of Congress can carve out exceptions therefrom.

Third, natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. The phrase *from birth* indicates that citizenship must start at a definite point – that is from birth, and must be continuous, constant and without interruption.<sup>57</sup> Otherwise, if a person who was a natural-born citizen thereafter loses his citizenship, i.e., through naturalization in a foreign country, then such status of being a natural-born citizen has been interrupted and therefore neither continuous nor constant. Consequently, they can no longer be considered natural-born citizens and neither can they be accorded the rights and privileges of a natural-born citizen.<sup>58</sup>

57. *Id.* at 572.

58. In cases of retention, it is possible that there is no intervening period between the time of naturalization and taking of the oath of allegiance to the Republic of the Philippines. It is likewise possible to have an intervening period between such events. In such a situation, the interruption would only be from the time of their naturalization until they take the prescribed oath. In both cases, whether there is an interruption in their possession of Philippine citizenship or not, they still cannot be considered natural-born citizens because they still have to take an oath, which is a positive act to perfect their citizenship. Thus, although the law states that those who become naturalized abroad after the effectivity of the law are deemed to have retained their Philippine citizenship, still it is required of them to take the prescribed oath.

Lastly, from the forgoing discussion, and on the assumption that there are only two classifications of citizens, the reasoning of the Supreme Court in *Bengzon* is, with all due respect, flawed.

The Supreme Court held in *Bengzon* that “[a] citizen who is not a naturalized Filipino, i.e., did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is a natural-born Filipino.... As respondent Cruz was not required to go through naturalization proceedings in order to reacquire his citizenship, he is perforce a natural-born Filipino.”<sup>59</sup>

However, no less than the Constitution enumerated who natural-born citizens of the Philippines are. On the other hand, there is no specific definition of naturalized citizens in the Constitution, such definition being left to subsequent legislation. And since the Constitution is the *supreme law* in a constitutional form of government, it is clear that the definition of natural-born in the Constitution takes precedence over what the legislature may later define as naturalized. Thus, stated differently: If a Filipino citizen does not fall within the definition of a natural-born citizen in the Constitution, then he is not natural-born. And if deductive inference should be resorted to, as what the Court did in *Bengzon*, the point of reckoning should be the definition of natural-born citizens under the Constitution, and not the statutory definition of naturalized citizens.

Hence, instead of holding that a person repatriated is a natural-born citizen because he is not a naturalized citizen, not having undergone the process of naturalization, the Court, with all deference and respect, should have held that a person who is not a natural-born citizen is a naturalized citizen.

Moreover, the classification of natural-born *vis-à-vis* not natural-born is material because the Constitution grants certain rights and privileges exclusively to natural-born citizens. Thus, the definition of natural-born citizens under the Constitution should be strictly construed because the enumeration is exclusive and no act of Congress can add to such list except if Congress, acting as a constituent assembly, proposes amendments to the Constitution.

It must also be emphasized that in response to the argument that reacquisition and retention under the Citizenship Retention and Reacquisition Act is *similar* to repatriation which produces the effect of reacquiring the original status before one lost his Philippine citizenship, then reacquisition and retention of Philippine citizenship under the Citizenship Retention and Reacquisition Act should also produce the same effect.

59. *Bengzon*, 357 SCRA at 558.

Suffice it to say that there is no settled judicial doctrine on the exact effect of repatriation sans the *Bengzon* case. Moreover, it is still unsettled whether the principle of reacquiring or retaining citizenship under the Citizenship Retention and Reacquisition Act is synonymous to repatriation to warrant the application of the *Bengzon* ruling.

The second argument in support of the third classification of citizens to which persons who reacquire or retain Philippine citizenship belong is that persons who reacquire or retain Philippine citizenship under the Citizenship Retention and Reacquisition Act are not naturalized citizens because naturalized citizens are those who are declared as such by virtue of a judicial proceeding or those who underwent the process of judicial or administrative naturalization. And since this law does not in any way mention or imply that it is a process or species of naturalization, neither can they be considered naturalized citizens.

Lastly, aside from legal arguments sustaining the view that what is reacquired under the Citizenship Retention and Reacquisition Act is not natural-born status, there are also valid non-legal arguments for such view.

It has been argued that these people seeking to reacquire and retain their Philippine citizenship are not *aliens* in the true sense of the law but are actually Filipinos by blood, by origin and by culture. Most of these Filipinos also went abroad and applied for naturalization in foreign countries because of great economic and social opportunities available there which are virtually non-existent in the country. Hence, for these reasons, they must not be punished for their natural desire to seek greener pasture in foreign lands.

Although it is true that Filipinos seeking better opportunities abroad should not be punished, it must be noted that one need not abandon his or her citizenship in order for one to successfully seek better opportunities abroad. Moreover, millions of other Filipinos experience the same economic ordeals and yet they opted to stay and risk their future in the country to which they owe their loyalty. Hence, it is only reasonable that those Filipinos who chose to stick with the rise and fall of their nation should be commended and given preference in the rights and privileges accorded only to natural-born citizens. Furthermore, *citizenship is not a commodity that should be equated with economic needs*. As the Supreme Court held in one case: "A citizen or subject owes, not a qualified and temporary, but an absolute and permanent allegiance, which consists in the obligation of fidelity and obedience to his government or sovereign."<sup>60</sup> Hence, a citizen should demonstrate absolute and permanent allegiance at all times and not only when convenient.

60. *Laurel v. Misa*, 77 Phil 856, 859 (1947).

The rights accorded to natural-born citizens, such as the opportunity to run for the highest public offices in the country, should be safeguarded from people who have dual citizenship because of the possibility and threat of dual allegiance. According to the Supreme Court, the law has reserved the privilege of being elected or appointed to the highest public offices in the land to citizens who have cast their lot with the country because the logical assumption, which more often than not is true, is that those who are resident aliens of a foreign country are incapable of such entire devotion to the interest and welfare of their homeland for with one eye on their public duties here, they must keep another eye on their duties under the laws of the foreign country of their choice in order to preserve their status as permanent residents thereof.<sup>61</sup>

Despite the silence of the law with regard to what kind of citizenship may be reacquired or retained under the Citizenship Retention and Reacquisition Act, the legislature could not have intended to give the privilege and the right to be elected or appointed in the highest positions of government which is coupled with great responsibility to the country and its people, to persons who have at one point in their lives, actually renounced Philippine citizenship and owed allegiance to a country other than the Philippines. As aptly held by the Court:

[The] stringent requirement of the Constitution is so placed as to insure that only Filipino citizens with an *absolute and permanent degree of allegiance and loyalty* shall be eligible for membership in Congress [and other high positions in government].<sup>62</sup>

It is thus submitted, that for the foregoing reasons, what is reacquired or retained under the Citizenship Retention and Reacquisition Act is definitely not the status of a natural-born citizenship. However, whether the citizenship of such persons can be considered naturalized or acquired through means other than naturalization is, effectively and for practical intents and purposes, immaterial because the rights and privileges granted to all Filipino citizens are alike, except certain rights and privileges exclusively granted to natural-born citizens.

#### VII. POSSIBLE IMPLICATIONS ON THE RIGHT OF SUFFRAGE

One of the most important rights that is reacquired or retained by former citizens of the Philippines under the Citizenship Retention and Reacquisition Act is the right of suffrage or the right to vote and be voted upon in Philippine elections.

61. *Caasi v. Court of Appeals*, 191 SCRA 227, 236 (1990).

62. *Bengzon*, at 576 (Sandoval-Gutierrez, J., dissenting).

The Citizenship Retention and Reacquisition Act mandates that those intending to exercise their right of suffrage must meet the requirements under the Article V of the Constitution, the Overseas Absentee Voting Act of 2003 and other existing laws.<sup>63</sup> In addition, the same law requires those seeking elective or appointive public office in the Philippines to make a personal and sworn renunciation of any and all foreign citizenship.<sup>64</sup> The law however disqualifies persons who are candidates or are occupying public office in the country of which they are naturalized citizens and those who are in active service in the armed forces of the country which they are naturalized citizens from voting or being elected or appointed to any public office in the Philippines.<sup>65</sup>

#### A. Right to Vote

##### 1. Right to Vote in Normal Elections

The Constitution provides that:

Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage.<sup>66</sup>

Hence, suffrage, both as a right and a duty was granted to those who possessed the following requirements: 1) Philippine citizenship; 2) at least eighteen years of age 3) residence in the Philippines for at least one year prior to the election; 4) residence in the place wherein they propose to vote for at least six months prior to the election; and 5) not otherwise disqualified by law. While generally, rights embodied in the Philippine Constitution apply without distinction both to citizens and aliens, the right of suffrage is extended only to Filipino citizens.

In addition to the requirement and grounds for disqualifications laid out by the Constitution and other related laws, the Citizenship Retention and Reacquisition Act also provides for other grounds for ineligibility to vote of persons reacquiring and retaining Philippine citizenship under the said law. The law provides:

63. R.A. No. 9225, § 5, ¶ 1.

64. *Id.* at § 5, ¶ 2-3.

65. *Id.* at § 5, ¶ 5.

66. PHIL. CONST. art V, § 1.

That right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who:

(a) are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or

(b) are in active services as commissioned or non-commissioned officers in the armed forces of the country of which they are naturalized citizens.<sup>67</sup>

Thus, natural-born Filipino citizens who have lost their Philippine citizenship upon naturalization abroad and who have reacquired or retained their Philippine citizenship are qualified to vote, provided they have complied with the age and residency requirement of the Constitution and other pertinent laws.

##### 2. Right to Vote under the Absentee Voting Law

###### a. The Absentee Voting Law

Fortifying the principle that Filipino citizens shall have the right to vote and recognizing the existing political and economic conditions, Congress enacted Republic Act No. 9189<sup>68</sup> or the Overseas Absentee Voting Act of 2003 under the direct constitutional mandate of Section 2 of Article V of the 1987 Constitution which provides that "Congress shall provide a system for securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad."

Section 4 of the Absentee Voting Law provides the qualifications to be an absentee voter, to wit:

All citizens of the Philippines abroad, who are not otherwise disqualified by law, at least eighteen years of age on the day of the elections, and who are registered overseas absentee voters with approved application to vote *in absentia* or by mail are qualified to vote for president, vice-president, senators and party-list representatives.

Thus, under the law, Filipino citizens overseas only need to have the legal capacity to vote at the time of the elections and to have registered as an absentee voter. This seems to be inconsistent with the residency requirements of the Constitution. However, the requirements under Section

67. R.A. No. 9225, § 5, ¶ 5.

68. An Act Providing for a System of Overseas Absentee Voting by Qualified Citizens of the Philippine Abroad, Republic Act No. 9189 (2003).

1 Article V of the Constitution should be construed in connection with Section 2 of the same article which espouses a system for absentee voting by qualified Filipinos abroad. Hence, it is the Constitution itself, in Section 2 of Article V, which provides for the exception to the qualifications enumerated in the preceding section.

On the other hand, Section 5 of the same law provides for the grounds for disqualification to vote under the Absentee Voting Law.<sup>69</sup>

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69. a. Those who have *lost* their Filipino citizenship in accordance with Philippine laws;

b. Those who have expressly *renounced* their Philippine citizenship and who have pledged allegiance to a foreign country;

c. Those who have committed and are *convicted* in a final judgment by a court or tribunal of an offense punishable by imprisonment of not less than one year, including those who have committed and been found guilty of Disloyalty under Article 137 of the Revised Penal Code, such disability not having been removed by plenary pardon or amnesty; *Provided*, however, That any person disqualified to vote under this subsection shall automatically acquire the right to vote upon expiration of five years after service of sentence, *Provided further*, That the Commission may take Cognizance of final judgments issued by foreign courts or tribunals only on the basis of reciprocity and subject to the formalities and processes prescribed by the Rules of Court on execution of judgments;

d. An *immigrant* or a permanent resident who is recognized as such in the host country unless he/she executes, upon registration, an affidavit prepared for the purpose by the Commission declaring that he/she shall resume actual physical permanent residence in the Philippines not later than three years from approval off his/her registration under this Act. Such affidavit shall also state that he/she has not applied for citizenship in another country. Failure to return shall be a cause for the removal of the name of the immigrant or permanent resident from the National Registry of Absentee Voters and his/her permanent disqualification to vote *in absentia*.

e. Any citizen of the Philippines abroad previously declared *insane* or incompetent by competent authority in the Philippines or abroad, as verified by the Philippine embassies, consulates or foreign service establishments concerned, unless such competent authority subsequently certifies that such person is no longer insane or incompetent (emphasis supplied).

b. Persons Reacquiring or Retaining Philippine Citizenship under the Citizenship Retention and Reacquisition Act Can Vote *via* the Applicability of the Absentee Voting Law

The foremost question will be the qualification of persons who have reacquired or retained Philippine citizenship under the Citizenship Retention and Reacquisition Act to vote under RA 9189. The Absentee Voting Law provides that the following shall be disqualified from voting under the said Act:

a) Those who have *lost* their Filipino citizenship in accordance with Philippine laws;

b) Those who have *expressly renounced* their Philippine citizenship and who have *pledged allegiance* to a foreign country;

x x x

d) An *immigrant* or a *permanent resident* who is recognized as such in the host country unless he/she executes, upon registration, an affidavit prepared for the purpose by the Commission declaring that he/she shall resume actual physical permanent residence in the Philippines not later than three years from approval off his/her registration under this Act. Such affidavit shall also state that he/she has not applied for citizenship in another country. Failure to return shall be a cause for the removal of the name of the immigrant or permanent resident from the National Registry of Absentee Voters and his/her permanent disqualification to vote *in absentia*.<sup>70</sup>

Thus, based on the Absentee Voting law, loss or renunciation of Filipino Citizenship or even a mere application for citizenship in a foreign country is a disqualification for purposes of absentee voting. In the case of persons who have reacquired or retained Philippine citizenship under the Citizenship Retention and Reacquisition Act, it should be emphasized that they have not only applied for citizenship in a foreign country, but have actually renounced and consequently lost their Philippine citizenship. Hence, construing the Absentee Voting Law strictly, they should definitely be disqualified from voting under such law.

However, it must be pointed out that under the Citizenship Retention and Reacquisition Act, persons who reacquire or retain their Philippine citizenship pursuant to the said law are granted the right to exercise their right of suffrage, provided they meet the requirements of the Constitution, the Absentee Voting Law and other existing laws.<sup>71</sup> Therefore, to strictly construe the said provision would render the grant of suffrage to persons who have reacquired or retained their Philippine citizenship nugatory. A

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70. R.A. No. 9189, § 5 (emphasis supplied).

71. R.A. No. 9225, § 5.

person who has reacquired or retained Philippine citizenship under the Citizenship Retention and Reacquisition Act can never comply with the requirements of the Absentee Voting Law because he has not only applied for a foreign citizenship, but also at one point in time, renounced and lost his Filipino citizenship. Hence, regardless of his reacquisition or retention of Philippine citizenship, he will still be disqualified under the Absentee Voting Law for the fact that he did the acts that disqualify him from being an absentee voter remains.

Nevertheless, in line with the rule in statutory construction that the construction that would give effect to two conflicting statutes should be upheld, the Absentee Voting Law should be liberally construed in order to give life to the right granted under the Citizenship Retention and Reacquisition Act. Otherwise, the right granted in the latter law would be rendered meaningless. It is therefore submitted that such grounds for disqualification under the Absentee Voting Law should be relaxed in favor of persons who have reacquired or retained Philippine citizenship under the Citizenship Retention and Reacquisition Act in order to give effect to the grant of the right of suffrage under the said law.

Hence, persons who have reacquired or retained Philippine citizenship under the Citizenship Retention and Reacquisition Act are allowed to vote under the Absentee Voting Law, provided he has complied with the other requirements of the law. Such construction is not only equitable but would give life to the letter of the law restoring full civil and political rights to persons who have reacquired and retained Philippine citizenship under the said Citizenship Retention and Reacquisition Act.

#### B. Right to Public Office

Under Section 5 of the Citizenship Retention and Reacquisition Act, those who retain or reacquire Philippine citizenship under this law shall enjoy full political rights granted to Filipino citizens and shall also be subject to all attendant liabilities and responsibilities under existing laws of the Philippines.

One of the political rights restored to citizens who reacquire or retain their Philippine citizenship under the Citizenship Retention and Reacquisition Act is the right to public office. However, it must be emphasized that such Filipinos cannot simply run for any elective public office nor be appointed to any appointive position. He must take into consideration relevant constitutional and statutory provisions related to the office he is seeking to be elected or appointed to. He must remember that the right to be elected and appointed to certain positions in government is exclusive to natural-born citizens.

Thus, and consistent with the earlier submission that a person who reacquires or retains his Filipino citizenship under the Citizenship Retention

and Reacquisition Act does not recover his natural-born status, a person who reacquired or retained his Philippine citizenship under the said law cannot be elected or appointed to public offices where natural-born citizenship is a requirement. These positions are: (1) President and Vice-President;<sup>72</sup> (2) members of the Senate;<sup>73</sup> (3) members of the House of Representatives;<sup>74</sup> (4) Chief Justice and Associate Justices of the Supreme Court, and members of other lower collegiate courts;<sup>75</sup> (5) members of the Constitutional Commissions: Civil Service Commission,<sup>76</sup> Commission on Audit<sup>77</sup> and Commission on Human Rights;<sup>78</sup> and (6) Ombudsman and his deputies.<sup>79</sup>

In addition to the citizenship status requirement in the different elective posts, another requirement for the right to run for public office is the satisfaction of the residency requirement as a condition precedent in the approval of the candidacy. Since it is a possibility that persons who have reacquired or retained Philippine citizenship may have already abandoned their domicile, which is synonymous to residence under election law, it is submitted that there might be a need to re-establish such domicile for purposes of complying with the residency requirement. However, the discussion on the need for the re-establishment of such person's domicile and how and when it may be effected is an entirely different issue which could properly be ventilated and exhausted in another opportune time.

Aside from the basic constitutional and statutory requirements, the right to be voted or appointed to public office of persons who have reacquired or retained their citizenship pursuant to the Citizenship Retention and Reacquisition Law is subject to additional conditions: (1) they should not be candidates for or occupying any public office in the country of which they are naturalized citizens; and/or (2) they should not be in active service as commissioned or non-commissioned officers in the armed forces of the country of which they are naturalized citizens.<sup>80</sup>

Lastly, the Citizenship Retention and Reacquisition Act also requires that before a person who reacquires or retains his Philippine citizenship can

72. PHIL. CONST. ART. VII, § 2-3.

73. PHIL. CONST. ART. VI, § 3.

74. PHIL. CONST. ART. VII, § 6.

75. PHIL. CONST. ART. VIII, § 7 ¶ 1.

76. PHIL. CONST. ART. IX-B, § 1.

77. PHIL. CONST. ART. IX-C, § 1.

78. PHIL. CONST. ART. IX-D, § 1.

79. PHIL. CONST. ART. XI, § 8.

80. R.A. No. 9225, § 5 ¶ 5.

run for public office or be appointed to a public position, he must, 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. The purpose of this requirement is to divest the applicant of his former nationality, before being allowed to run or appointed to a public office. This is because otherwise, he would have two nationalities and would owe allegiance to two distinct sovereignties;<sup>81</sup> which is the situation expressly prohibited by the Constitution due to its inherent contradiction to the concept that public office is public trust. Hence, there would actually be no situation where a Filipino dual citizen can really be a candidate for a public office because in order to be eligible to run for public office, it is a condition precedent that he renounces any other citizenship he might possess leaving only his Philippine citizenship.

#### VIII. CONCLUSION

Many issues have cropped up since the enactment of the Citizenship Retention and Reacquisition Act. Some question its constitutionality while some are just interested in its implications both on municipal law and international law. However, one of the questions most frequently asked is the status of persons who reacquire or retain Philippine citizenship under the law. Do they reacquire or retain their natural-born Filipino status? Do they become naturalized Filipino citizens? Or do they belong to some other classification of citizenship?

It bears stressing that the question is material for the reason that the Constitution and the law affords certain rights and privileges exclusively to natural-born citizens. One of such rights is the right to hold the highest elective and appointive national offices in the land.

The *Bengzon* ruling may be instructive. It involved a natural-born Filipino who became a naturalized American citizen and later returned to the Philippines and underwent the process of repatriation. The Supreme Court, in resolving the issue of whether the petitioner reacquired natural-born citizenship or not, which was determinative of the petitioner's qualification to a high elective national post, held that petitioner was a natural-born citizen using deductive inference that since the petitioner did not undergo a naturalization process, then he is not a naturalized citizen. Further, if he is not a naturalized citizen then he must be natural-born.

If one were to consider the process to be undergone in availing of the benefits of the Citizenship Retention and Reacquisition Act as similar to the process which the petitioner in *Bengzon* underwent, then one would have to

conclude that a natural-born Filipino necessarily retains or reacquires his/her natural-born citizenship under the Act.

However, there is a significant difference between repatriation in *Bengzon* and reacquisition and retention of Philippine citizenship under the Act. First, the repatriating Filipino would be forsaking any new citizenship he may have acquired while the retaining or reacquiring Filipino need not forsake any foreign citizenship acquired.

Second, and more important, even if repatriation is considered to be essentially the same as retention or reacquisition, the reason behind classifying citizens as either natural-born or not, militates against the application of the *Bengzon* doctrine to Filipinos availing of the benefits of the Citizenship Retention and Reacquisition Act. And on this score, the Supreme Court may have, with all due respect, committed a mistake in *Bengzon*.

As mentioned, the reason why citizens are classified as natural-born or not is due to certain exclusive rights and privileges granted to natural-born citizens. Bearing this in mind, as well as the fact that the Constitution itself defines what a natural-born Filipino is, one should take great care in classifying one to be natural-born or not. If at all, one should err on the side of declaring a person not natural-born, instead of running the risk of erroneously classifying him as natural-born, thus granting him rights and privileges exclusive to natural-born citizens.

Therefore, for the reasons mentioned above, it is more prudent and sound not to consider Filipinos availing of the benefits of the Citizenship Retention and Reacquisition Act to be natural-born citizens. Whether they can be classified as naturalized Filipino citizens or some other classification does not really matter. For as long as they are not natural-born, they are not entitled to the same rights and privileges. What is essential is that the rights and privileges granted to natural-born citizens should only be granted to citizens who have cast their lot with the ebbing fortunes of the country and not to those who may owe their allegiance to a foreign state.

81. OH HEK HOW V. REPUBLIC, 29 SCRA 927 (1969).