

order to restore the present election system from a popularity contest to a venue for re-examining significant national issues, ideals, and concrete plans towards stability and development.

#### VI. CONCLUSION

*When the leaders choose to make themselves bidders at an auction of popularity, their talents, in the construction of the state, will be of no service. They will become flatterers instead of legislators; the instruments, not the guides, of the people.*

- Edmund Burke

Democracy is the reason for the conduct of national elections. As embodied in the Preamble of the Constitution,<sup>110</sup> the sovereign power of government is vested in the people, whose genuine interests are represented in the proper forum through competent officers. When elections for these public officers prove to be motivated by personal and individual agenda, we rob ourselves of the power afforded by the fundamental law to participate in the national system of governance. When elections continue to revolve around faces and names, and not towards legitimate principles and standards, we do not compromise anyone but ourselves.

As reviewed from the factual backdrop and the Supreme Court's decision in the case of *BA-RA No. 7941 and Rosales v. Commission on Elections*, the current electoral setting does not provide a venue conducive to the meaningful exercise of certain basic rights enshrined in the Constitution. As such, courts must actively take due notice of the appropriate electoral reforms and balance them with the enforcement of constitutionally-guaranteed rights, together with spearheading changes in electoral culture perspectives in order to improve the quality of the Philippine electoral process, and in the larger context, to enliven the state as a democratic institution.

#### 110. The Preamble of the present Constitution states:

We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.

## A Dual Citizen's Right to Vote: A Comment on *Nicolas-Lewis v. Commission on Elections*

Floralie M. Pamfilo\*

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#### I. INTRODUCTION

The Philippines just recently witnessed yet another highlight in its political arena — the 2007 elections. Elections in the Philippines are very similar to the *fiestas* the country is known for — festivities abound in political sorties, streets are aligned with campaign paraphernalia, and anticipation builds up as the election day itself approaches.<sup>1</sup> The whole process is a culture in itself, sometimes mayhem, but definitely, of national interest.

However, the real drawing power of elections is not in the frills, but in the authority it extends to the citizens to have a voice in the future of the country. By having the right to vote, an individual can give his consent to the person he deems will serve the country's interest. It is a right as well as a responsibility, for its consequences can have a tremendous impact on the direction that the nation will take.

\* '08 J.D. cand., Ateneo de Manila University School of Law; Member, Board of Editors and Executive Committee, *Ateneo Law Journal*. The author previously co-authored *Testing Constitutional Waters: Balancing State Power, Economic Development and Respect for Human Rights*, 51 ATENEO L.J. 1 (2006) with Atty. Sedfrey M. Candelaria. She was also the Associate Lead Editor for Volume 51, Issue No. 1.

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1. MYRNA J. ALEJO, ET AL., [DE]SCRIBING ELECTIONS: A STUDY OF ELECTIONS IN THE LIFEWORLD OF SAN ISIDRO 130 (1996).

As of 2004, 43 million Filipino residents possessed this power by registering as qualified voters.<sup>2</sup> In addition, over 350,000 overseas absentee voters also registered. Under the law, an overseas absentee voter is defined as a citizen of the Philippines who is qualified to register and vote under the law and is not otherwise disqualified, and who must be abroad on the day of elections.<sup>3</sup>

The case of *Nicolas-Lewis v. Commission on Elections*<sup>4</sup> is a novel decision of the Supreme Court extending the right to vote to natural-born Filipino citizens who were naturalized under foreign laws but later on re-acquired their citizenship under Philippine law. This comment will tackle the soundness of the decision by tracing the history of the right of suffrage under the different constitutions and its requirements. It also aims to emphasize the importance of the right and enthruse those who are granted the same to use it as responsible citizens.

## II. FACTS OF THE CASE

The petition bringing about the case was filed by Loida Nicolas-Lewis and several other petitioners who were all dual citizens. All of them were granted recognition of Philippine citizenship under the Citizenship Retention and Re-Acquisition Act of 2003 (R.A. No. 9225).<sup>5</sup> As such dual citizens who are given the right to vote under the said law, and in anticipation of the May 2004 elections, they sought registration as overseas absentee voters. However, a letter from the Commission on Elections (COMELEC) to the Department of Foreign Affairs prompted the Philippine Embassy in the United States to advise petitioners that "they have yet no right to vote in such elections owing to their lack of the one-year residence requirement prescribed by the Constitution."<sup>6</sup>

2. Commission on Elections, Election Statistics: Number of Registered Voters and Established/Clustered Precincts, [http://www.comelec.gov.ph/stats/2004stats\\_prechr.html](http://www.comelec.gov.ph/stats/2004stats_prechr.html) (last accessed July 19, 2007).

3. An Act Providing for a System of Overseas Absentee Voting by Qualified Citizens of the Philippines Abroad, Appropriating Funds Therefor, and for Other Purposes, Republic Act No. 9189, § 3 (f) (2003).

4. *Nicolas-Lewis v. Commission on Elections*, 497 SCRA 649 (2006).

5. An Act Making the Citizenship of Philippine Citizens Who Acquire Foreign Citizenship Permanent, Amending for the Purpose, Commonwealth Act. No. 63, as Amended and for Other Purposes, Republic Act No. 9225 (2003).

6. *Nicolas-Lewis*, 497 SCRA at 652.

COMELEC's clarification of the matter affirmed the previous advisory. The Commission reasoned that the Overseas Absentee Voting Act (R.A. No. 9189)<sup>7</sup> was not enacted for those who were in the situation of the petitioners. It was of the position that petitioners are to be considered as regular voters who must then meet the requirements of the Constitution, among them, the requirement of residency.<sup>8</sup>

The holding of the May 2004 elections rendered the issue moot and academic in relation to that particular election. However, the issue of whether dual citizens availing of their right to vote under the R.A. No. 9225 may be registered and may actually vote under R.A. No. 9189 remained, and was resolved by the Supreme Court in favor of the petitioners.<sup>9</sup>

The Court explained that although section 1 of article 5 of the Constitution requires residency as a general qualification to vote, section 2 thereof gives the Congress the power to "devise a system wherein an absentee may vote, implying that a non-resident may, as an exception to the residency prescription in the preceding section, be allowed to vote."<sup>10</sup>

It further held that, "there is no provision in the dual citizenship law — R.A. 9225 — requiring 'duals' to actually establish residence and physically stay in the Philippines first before they can exercise their right to vote."<sup>11</sup> It said that the law, "in implicit acknowledgement that 'duals' are most likely non-residents, grants under Section 5(1) the same right of suffrage as that granted an absentee voter under R.A. 9189."<sup>12</sup> The Court also cited the case of *Macalintal v. Commission on Elections*<sup>13</sup> wherein it was maintained that the purpose of the latter law is to benefit as many overseas Filipinos as possible who have not abandoned their domicile.

Taking these together — the provisions of the Constitution, the purpose of R.A. No. 9225, and R.A. No. 9189, the Court concluded that dual citizens are eligible to vote as absentee voters under the Overseas Absentee Voting Act.

7. R.A. No. 9189, § 3 (f).

8. *Nicolas-Lewis*, 497 SCRA at 652.

9. *Id.* at 653.

10. *Nicolas-Lewis v. Commission on Elections*, 497 SCRA 649, 654 (2006).

11. *Id.* at 659.

12. *Id.*

13. *Macalintal v. Commission on Elections*, 405 SCRA 614 (2003).

### III. THE RIGHT TO VOTE

"No right is more precious in a free country than that of having a voice in the election of those who make the laws ... Other rights, even the most basic, are illusory if the right to vote is undermined."<sup>14</sup>

#### A. Sovereignty and Suffrage

"The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them."<sup>15</sup> This particular section is the foremost provision in the Declaration of Principles and State Policies in the 1987 Constitution. One of its key concepts is that of sovereignty which, as provided, is lodged in the people. In this sense, sovereignty means "the source of ultimate legal authority."<sup>16</sup>

This ultimate authority may be legal or political. Legal authority refers to law-making power while political authority is the "sum total of all the influences in a state, legal and non-legal, which determine the course of law."<sup>17</sup>

However, the declaration does not signify that the people in whom the power is vested exercise the same directly. The authority is delegated by them to certain representatives. The people select who shall temporarily exercise the authority to govern.

Such important task of delegating power underscores the significance of suffrage or the right to vote. It is through electing public officers that it is determined how a government is run, what laws are enacted and what policies affecting the country politically, economically and socially are formulated:

In terms of political practice however, non-participation entails losing the game by default. Participation is therefore a necessity, even if the political playing field has not yet attained its ideal form. It is precisely by participation that the rules of the game are modified and reformulated condition towards its ideal condition.<sup>18</sup>

14. Weberry, Jr., v. Sanders, 376 U.S. 1 (1964) (emphasis supplied).

15. PHIL. CONST. art II, § 1.

16. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 55 (2003 ed.).

17. *Id.* at 55 (citing TANADA & CARREON, POLITICAL LAW OF THE PHILIPPINES 18 (1961)).

18. ALEJO, ET AL., *supra* note 1, at 136.

#### B. History and Nature of Suffrage

##### 1. Statutorily Guaranteed Right

The right to vote was initially only statutorily guaranteed and, thus, may be granted or withheld by the Legislature.<sup>19</sup> In the case of *People v. Corral*,<sup>20</sup> the Court referred to the right as "a privilege granted by the State to such persons or classes as are most likely to exercise it for the public good."<sup>21</sup>

The first Philippine election was conducted in 1907 and was governed by Act No. 1582<sup>22</sup> enacted by the Philippine Commission. Under the Spanish regime, no elections were held, and thus, the creation of this right may be deemed a revolutionary step. However, the said law provided for voter qualifications that highly favored the well-heeled and schooled males in the society, which meant that the right to vote was limited only to a selected few.<sup>23</sup>

##### 2. Right under the 1935 Constitution

19. BERNAS, *supra* note 16, at 631.

20. *People v. Corral*, 62 Phil. 945 (1936).

21. *Id.* at 948.

22. Philippine Election Law, Act No. 1582 (1907).

23. *Id.* § 14 provided:

Sec. 14 - Every male person twenty three years of age or over who has had legal residence for a period of six months immediately preceding the election in the municipality in which he exercises suffrage, and who is not a citizen or subject of any foreign power, and who is comprised within one of the following three classes —

Those who, prior to the thirteenth of August, eighteen hundred and ninety-eight, held the office of municipal captain, *governadorcillo*, *alcalde*, lieutenant, *cabeza de barangay*, or member of any ayuntamiento;

Those who own real property to the value of five hundred pesos, or who annually pay thirty pesos or more of the established taxes;

Those, who speak, read, and write English or Spanish, shall be entitled to vote at all elections: PROVIDED, That officers, soldiers, sailors, or mariners of the Army or Navy of the United States shall not be considered as having acquired legal residence within the meaning of this section by reason of their having been stationed in the municipalities for the required six months.

The advent of the 1935 Constitution sealed the right as constitutionally guaranteed. It provided:

Section 1. Suffrage may be exercised by male citizens of the Philippines not otherwise disqualified by law, who are twenty-one years of age or over and are able to read and write, and who shall have resided in the Philippines for one year and in the municipality wherein they propose to vote at least six months preceding the election. The National Assembly shall extend the right of suffrage to women, if in a plebiscite which shall be held for that purpose within two years after the adoption of this Constitution, not less than three hundred thousand women possessing the necessary qualifications shall vote affirmatively on the question.<sup>24</sup>

The provision in the Constitution removed the right from the ambit of the legislature's discretion, though not from its regulation.<sup>25</sup> Further, the plebiscite conducted as provided by the 1935 Constitution finally established women's right to vote which forged their participation in government. It is also to be noted that the age requirement was lowered from 23 years old, as required in Act No. 1582, to 21 years old. The property requirement under the precedent law was also eliminated although the literacy requirement still remained.

### 3. Duty under the 1973 Constitution

The concept of suffrage took a further spin when the 1973 Constitution made it obligatory.<sup>26</sup> The move was aimed to increase the people's participation in the maintenance of a democratic government.<sup>27</sup>

For one to have the constitutional right and duty to register and vote, the 1973 Constitution provided the following as essential: Filipino citizenship; age requirement of 18 years or over; residence in the Philippines for at least a year preceding the election and in the place wherein one is proposed to vote for at least six months preceding the election; and lastly, freedom from any disqualification prescribed by the law.<sup>28</sup>

The amended provision lowered the age requirement from 21 years old to 18 years old and removed the literacy requirement prescribed in the 1935

24. 1935 PHIL. CONST. art V, § 1 (superseded 1971).

25. BERNAS, *supra* note 16, at 631.

26. 1973 PHIL. CONST. art V, § 4 (superseded 1987) ("It shall be the obligation of every citizen qualified to vote to register and cast his vote.").

27. BERNAS, *supra* note 16, at 631.

28. 1973 PHIL. CONST. art VI, § 1 (superseded 1987).

Constitution. The Committee on Suffrage and Electoral Reforms explained the motivation for the modifications:

In keeping with the trend for the broadening of the electoral base already begun with the lowering of the voting age to 18 and in keeping further with the committee's desire to discontinue the alienation and exclusion of millions of citizens from the political system and from participation in the political life in the country, the requirement of literacy for voting has been eliminated. It is noted that there are very few countries left in the world where literacy remains a condition for voting. There is no Southeast Asian country that imposes this requirement. The United States Supreme Court only a few months ago declared unconstitutional any state law that would continue to impose this requirement for voting.<sup>29</sup>

Then President Ferdinand Marcos promulgated a presidential decree penalizing the failure to register and vote without justifiable cause. However, such law was not vigilantly enforced.

### 4. Right under the 1987 Constitution

The present Constitution echoes the voter qualifications of the 1973 Constitution but does not mandate an obligation to register and vote. It provides:

Section 1. 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>30</sup>

## IV. CITIZENSHIP AND RESIDENCY REQUIREMENTS

What can be gleaned from the provisions on suffrage of the 1935, 1973, and 1987 Constitutions is that, among all the imposed qualifications of a voter, two remained constant through time: (1) Filipino citizenship and (2) the residency requirement of at least one year in the Philippines and at least six months in the place where the voter proposes to vote. The two requirements are also the crux of the controversy in the instant case.

29. *Macalintal v. Commission on Elections*, 405 SCRA 614, 676 (2003) (Puno, J., concurring and dissenting) (citing Resolution No. 03 of the Committee on Suffrage and Electoral Reforms)).

30. PHIL. CONST. art V, § 1.

### A. The Requirement of Citizenship

Citizenship has been defined as "membership in the political civil community of a state,"<sup>31</sup> and "the relation of allegiance and protection between individuals and their country."<sup>31</sup> Philippine jurisprudence recognizes it as "a treasured right conferred on those whom the state believes are deserving of the privilege. It is a 'precious heritage, as well as an inestimable acquisition' ..."<sup>32</sup>

The right to vote is an attribute of citizenship; only Filipino citizens are eligible to vote for public officers who will serve in the government.<sup>33</sup> "[I]t is a political right enabling every citizen to participate in the process of government to assure that it derives its power from the consent of the governed."<sup>34</sup>

The Constitution enumerates who are Filipino citizens in article IV, section 1:

Section 1. 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 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
- 4) Those who are naturalized in accordance with law.

But since citizenship is a matter of municipal law, it is possible that a Filipino citizen may also be considered its own citizen by another country. The Constitution recognizes the possibility of such circumstance.<sup>35</sup> A

31. 14 C.J.S. 1128 *Citizens* § 1.

32. *Tecson v. Commission on Elections*, 424 SCRA 277 (2004).

33. BERNAS, *supra* note 16, at 635.

34. *Pungutan v. Abubakar*, 43 SCRA 1 (1972).

35. BERNAS, *supra* note 16, at 628 ("Since the universal rule is that the child follows the citizenship of the father, 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."). See e.g., *Mercado v. Manzano*, 307 SCRA 630, 640 (1999).

Considering the citizenship clause (Art. IV) of our Constitution, it is possible for the following classes of citizens of the Philippines to possess dual citizenship:

common example is that of a person born of Filipino parents in the United States.<sup>36</sup> The child acquires citizenship under Philippine law which adheres to the application of *jus sanguinis* (in other words, citizenship by blood). At the same time, he also acquires citizenship under American law which follows the principle of *jus soli* (in other words, by place). Dual citizenship then occurs because of the applicability of different laws of different states.<sup>37</sup>

Dual citizenship should be distinguished from the concept of dual allegiance which is considered inimical to national interest.<sup>38</sup> Commissioner Blas Ople during the constitutional deliberations said that "dual allegiance is larger and more threatening than that of mere double citizenship which is seldom intentional and, perhaps, never insidious."<sup>39</sup>

### B. The Requirement of Residency

The significance of the residency requirement in exercising the right of suffrage cannot be overlooked as the specific qualification of residence "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" consistently remained a condition for the exercise of the right as the country adopted different constitutions.

#### 1. Residence and Domicile

"Residence, in its ordinary conception, implies the factual relationship of an individual to a certain place. It is the physical presence of a person in a given

(1) Those born of Filipino fathers and/or mothers in foreign countries which follow the principle of *jus soli*;

(2) Those born in the Philippines of Filipino mothers and alien fathers if by the laws of their fathers' country such children are citizens of that country;

(3) Those who marry aliens if by the laws of the latter's country the former are considered citizens, unless by their act or omission they are deemed to have renounced Philippine citizenship.

36. See, *Mercado v. Manzano*, 307 SCRA 630, 640 (1999).

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

38. PHIL. CONST. art IV, § 5 ("Dual allegiance of citizens is inimical to the national interest and shall be dealt with by the law.")

39. I RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 190.

area, community or country."<sup>40</sup> It is in this sense that residence is to be differentiated from domicile, and the Court has distinguished the two in the case of *Uytengsu v. Republic of the Philippines*:<sup>41</sup>

"Residence" is used to indicate a place of abode, whether permanent, or temporary; "domicile" denotes a fixed permanent residence to which, when absent, one has the intention of returning ... "Residence" is not domicile, but domicile is residence coupled with the intention to remain for an unlimited time ... His place of residence is generally his place of domicile, but is not by any means necessarily so, since no length of residence without intention of remaining will constitute domicile.<sup>42</sup>

In determining a person's domicile, intention and factual circumstances go hand in hand and there are three rules by which the latter is to be scrutinized. First, a person must have residence or domicile somewhere. Second, when such is established, it remains until a new one is acquired. Last, a person can only have one residence or domicile at a time.<sup>43</sup> To acquire a new domicile, one must prove an actual abandonment of the old domicile, a *bona fide* intent of abandoning it, and actual establishment of a new one coupled with acts consistent with this objective.<sup>44</sup>

## 2. Residence in Election Law

The particular meaning of the term "residence" had oftentimes been the reason for the disqualification or non-disqualification of candidates running for public office because for election law purposes, "residence" has an established definition. As early as 1928, the Court has held that "the term 'residence' as so used is synonymous with 'domicile,' which imports not only intention to reside in a fixed place, but also personal presence in that place, coupled with conduct indicative of such intention."<sup>45</sup>

It is equally settled that a person is not deemed to have abandoned his domicile even if several actual residences are maintained<sup>46</sup> and thus, the residency requirement is satisfied when the domicile is not abandoned

40. Romualdez-Marcos v. Commission on Elections, 248 SCRA 300, 323 (1995).

41. Uytengsu v. Republic of the Philippines, 95 Phil. 890 (1954).

42. *Id.* at 895.

43. Domino v. Commission on Elections, 310 SCRA 546 (1999).

44. Romualdez-Marcos, 248 SCRA at 331.

45. Nuval v. Guray, 52 Phil. 645, 651 (1928).

46. Romualdez-Marcos v. Commission on Elections, 248 SCRA 300, 328 (1995).

despite absence of a temporary nature. The Court has clarified this in the case of *Faypon v. Quirino*:<sup>47</sup>

A citizen may leave the place of his birth to look for "greener pastures," as the saying goes, to improve his lot, and that, of course, includes study in other places, practice of his avocation, or engaging in business. When election is to be held, the citizen who left his birthplace to improve his lot may desire to return to his native town to cast his ballot but for professional or business reasons, or for any other reason, he may not absent himself from the place of his professional or business activities; so there he registers as voter as he has the qualifications to be one and is not willing to give up or lose the opportunity to choose the officials who are to run the government especially in national elections. Despite such registration, the *animus revertendi* to his home, to his domicile or residence of origin, has not forsaken him. This may be the explanation why the registration of a voter in a place other than his residence of origin has not been deemed sufficient to constitute abandonment or loss of such residence. It finds justification in the natural desire and longing of every person to return to the place of his birth. This strong feeling of attachment to the place of one's birth must be overcome by positive proof of abandonment for another.<sup>48</sup>

## 3. Twofold Requirement and its Significance

The residency requirement in the Constitution is actually twofold as can be deduced from the case of *Faypon*.<sup>49</sup> The residency requirement of one year in the Philippines refers to domicile while the residency requirement of six months in the place where an individual proposes to vote refers to either domicile or temporary residence.<sup>50</sup> Thus, taking cue from *Faypon*, a person's domicile may be in a province but he may register as a voter in Manila if for instance, residing therein because of employment.

The Constitution requires residency as a condition not only for the exercise of the right to vote but also as a qualification for candidacy. Residency is required to enable the candidates and the electorate alike to observe the conditions, needs and other matters necessary to the wellbeing and interests of the people. Such requirement also gives the electorate the

47. *Faypon v. Quirino*, 96 Phil. 294 (1954).

48. *Id.* at 299-300.

49. BERNAS, *supra* note 16, at 639.

50. *Id.*

opportunity to scrutinize the candidates' competence for the position vied for.<sup>51</sup>

#### 4. Dual Citizens' Right to Vote

##### *The Dual Citizenship Law*

Prior to the passage of this law, Commonwealth Act No. 63<sup>52</sup> and Commonwealth Act No. 473<sup>53</sup> provided the modes of losing one's Filipino citizenship. C.A. No. 63 which applies to both natural-born<sup>54</sup> citizens and naturalized citizens, states the following as grounds for the loss of citizenship:

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

- (1) By naturalization in a foreign country;
- (2) By express renunciation of citizenship;
- (3) By subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining twenty-one years of age or more: *Provided, however,* That a Filipino may not divest himself of Philippine citizenship in any manner while the Republic of the Philippines is at war with any country;
- (4) By rendering services to, or accepting commission in, the armed forces of a foreign country: *Provided,* That the rendering of service to, or the acceptance of such commission in, the armed forces of a foreign country, and the taking of an oath of allegiance incident thereto, with the consent of the Republic of the Philippines, shall not divest a Filipino of his Philippine citizenship if either of the following circumstances is present:

- (a) The Republic of the Philippines has a defensive and/or offensive pact of alliance with the said foreign country; or

51. See, Torayno, Sr., v. Commission on Elections, 337 SCRA 574 (2000).

52. An Act Providing for the Ways in which Philippine Citizenship may be Lost or Acquired, Commonwealth Act No. 63 (1936).

53. An Act to Provide for the Acquisition of Philippine Citizenship by Naturalization, and to Repeal Acts Numbered 2927 and 3448, Commonwealth Act No. 473 (1939).

54. PHIL. CONST. art IV, § 2 defines natural-born citizens as "those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens."

(b) The said foreign country maintains armed forces on Philippine territory with the consent of the Republic of the Philippines: *Provided,* That the Filipino citizen concerned, at the time of rendering said service, or acceptance of said commission, and taking the oath of allegiance incident thereto, states that he does so only in connection with his service to said foreign country: *And provided, finally,* That any Filipino citizen who is rendering service to, or is commissioned in, the armed forces of a foreign country under any of the circumstances mentioned in paragraph (a) or (b), shall not be permitted to participate nor vote in any election of the Republic of the Philippines during the period of his service to, or commission in, the armed forces of said foreign country. Upon his discharge from the service of the said foreign country, he shall be automatically entitled to the full enjoyment of his civil and political rights as a Filipino citizen;

- (5) By cancellation of the of the certificates of naturalization;
- (6) By having been declared by competent authority, a deserter of the Philippine armed forces in time of war, unless subsequently, a plenary pardon or amnesty has been granted; and
- (7) In the case of a woman, upon her marriage to a foreigner if, by virtue of the laws in force in her husband's country, she acquires his nationality.<sup>55</sup>

On the other hand, C.A. No. 473 enumerates several grounds for the loss of citizenship, specifically applying only to naturalized citizens. The cancellation of the certificate of naturalization may be made upon any of the findings of its illegal or fraudulent acquisition, upon permanent residence in the country of origin within five years from being naturalized, when the petition for naturalization is found to be based on an invalid declaration of intent, failure to comply with the educational requirements of minor children, or if the naturalized citizen acts as a dummy for a foreigner.<sup>56</sup>

Upon the passage of R.A. No. 9225, C.A. No. 63 was partially amended. Natural-born citizens who subsequently became naturalized citizens of foreign countries are now deemed to have not lost their Filipino citizenship upon compliance with the provisions of the law.<sup>57</sup> The law provides:

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

55. C.A. No. 63, as amended, § 1.

56. C.A. No. 473, § 18.

57. R.A. No. 9225, § 2.

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

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

Natural born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.<sup>58</sup>

Thus, natural-born Filipino citizens who are subsequently naturalized under the laws of a foreign country may re-acquire their Filipino citizenship upon taking an oath of allegiance. Further, those who become citizens of a foreign country after the law's effectivity, maintain their Filipino citizenship upon the performance of the same act. These natural-born citizens thus become dual citizens. The liberality of the law even extends to "[t]he unmarried child, whether legitimate, illegitimate or adopted, below eighteen (18) years of age, of those who re-acquire Philippine citizenship upon effectivity of this Act"<sup>59</sup> who shall also be considered a citizen of the Philippines.

The retention or re-acquisition of Filipino citizenship consequently comes with corresponding rights and responsibilities. On top of the list is the right of suffrage. It provides:

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:

(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;<sup>60</sup>

58. *Id.* § 3.

59. *Id.* § 4.

60. *Id.* § 5. It further provides:

(2) Those seeking elective public in the Philippines shall meet the qualification for holding such public office as required by the

The extension of civil and political rights and the passage of the law in general, was to acknowledge that a large number of Filipino migrants only leave the country for economic reasons. Their subsequent acquisition of foreign citizenship does not negate their relations to their Filipino roots as evidenced by frequent visits, dollar remittances and general interest in the country.<sup>61</sup> Moreover, the law aims that Filipinos who have succeeded abroad be encouraged to invest and get more involved in the country.

#### *The Absentee Voting Act*

As provided in R.A. No. 9225, dual citizens may exercise their right to vote provided they comply with the requirements of the law, specifically, the Constitution, and R.A. No. 9189. The latter became a law on 13 February 2003, a few months ahead of R.A. No. 9225, which was signed by President Gloria Macapagal-Arroyo on 29 August 2003.

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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 its duly constituted authorities prior to their 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 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.

61. Anna Lynne P. San Juan, Comment, *To Be or Not To Be: 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*, 49 ATENEO L.J. 180 (2004).



Under the said act, all Filipino citizens abroad, not otherwise disqualified by law and at least 18 years of age on the day election, may vote for president, vice-president, senators, and party-list representatives.<sup>62</sup>

R.A. No. 9189 shares the same policy as R.A. No. 9225. Absentee voting was finally made into law not only in recognition of the constitutional provision mandating it,<sup>63</sup> but also due to the continuing phenomenon of migration among Filipinos seeking greener pastures abroad. In 2003 alone, 55,137 registered as Filipino emigrants, with the United States as the most favored destination.<sup>64</sup> 2005 statistics also show that the total remittances of OFWs were estimated at 85.4 billion pesos during the period April to September alone.<sup>65</sup>

Filipinos leave their homeland in search of better opportunities which benefit both their families and the country in general through the dollar-earnings they produce, which in turn help the economy stay afloat. Congress only deemed it high time that they be granted the chance to exercise their right to vote — an impossibility prior to the passage of this law given their physical absence from the country.<sup>66</sup>

#### Who May Vote

Section 5 (d) of the law was assailed as unconstitutional in the case of *Macalintal v. Commission on Elections*.<sup>67</sup> It was alleged as violative of the residency requirement provided by the Constitution as it allows a Filipino immigrant or permanent citizen of a foreign country to vote upon execution of an affidavit stating that he shall resume actual physical residence in the Philippines not later than three years from registration. The petitioner, citing *Caasi v. Court of Appeals*,<sup>68</sup> argued that a Filipino immigrant or green card

62. R.A. No. 9189, § 4.

63. PHIL. CONST. art V, § 2 ("The 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 ...").

64. *Registered Filipino Emigrants: 2002-2003*, 55 (3) JOURNAL OF PHILIPPINE STATISTICS 2 (2004).

65. National Statistics Office, One of Five Overseas Filipino Workers (OFWs) is in Saudi Arabia, <http://www.census.gov.ph/data/pressrelease/2006/of05tx.html> (last accessed July 19, 2007).

66. R.A. No. 9189, explanatory note.

67. *Macalintal v. Commission on Elections*, 405 SCRA 614 (2003).

68. *Caasi v. Court of Appeals*, 191 SCRA 229 (1990).

holder is deemed to have abandoned his domicile and residence in the Philippines. The provision states:

Sec. 5. Disqualifications. - The following shall be disqualified from voting under this Act:

(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 (3) years from approval of 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 the 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*;

The Court upheld the constitutionality of the provision. Looking into the intent of the Constitutional Commission of enfranchising as many Filipinos as possible who have not abandoned their domicile, the Court explained that precisely the reason that the Constitution included a provision on the authority of Congress to devise a system for absentee voting is to establish the inconsequentiality of the residency requirement ordinarily required. The deliberations of the Constitutional Commission prove the same. It was clarified by Commissioner Monsod that "there could be inconsistency on the residence rule if it is just a question of legislation by Congress. So, by allowing it and saying that this is possible, then legislation can take care of the rest."<sup>69</sup>

#### V. ANALYSIS

As of December 2005, statistics show that a total of 14,600 applications under R.A. No. 9225 have been approved by the government.<sup>70</sup> How many of these dual citizens exercised their right to vote in the past elections cannot as yet be ascertained but, based on the 2004 elections, absentee voters were not too keen on participating in the polls as evidenced by a low turnout of voters. The numbers gathered show that 358,660 Filipinos abroad registered for the 2004 national elections and 2,020 of them were dual citizens, but

69. II RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 33.

70. Department of Foreign Affairs, Highlights of the DFA Role in the Implementation of the Overseas Absentee Voting Act of 2003, <http://www.dfa.gov.ph/news/pr/pr2006/budget2005/oavdual.pdf> (last accessed July 19, 2007).

only 65% of the registrants actually cast their votes.<sup>71</sup> Whether or not the law providing for absentee voting is effective or otherwise in enticing absentee voters to go out and participate in the elections is a different matter. However, the wisdom in the Supreme Court's unanimous decision upholding the dual citizens' right to vote without the residency requirement is worth elucidating.

The Court pronounced that section 2 of article V of the Constitution, allowing Congress to provide a system for absentee voting, and such being strategically placed after section 1 providing for the residency requirement, implies that section 2 is an exception to this requirement and thus, a non-resident may vote. This leads to the question of whether physical presence in the country, pragmatically, is indeed necessary for one to be eligible to vote. Certainly, the requirement was placed in the Constitution for a reason and the theory behind it is to ensure that the voter is familiar with the conditions, needs, and potential of his country in order to choose the proper leaders. Former Court of Appeals Justice Jorge R. Coquia, wary of the decision's implication on the voters' duty, commented: "While suffrage is a human right incorporated in the Constitution, it is also an obligation of a citizen to intelligently and wisely choose the official to whom he entrusts for a time to run the government. The qualified voter must be fully cognizant of his responsibility in a Republican regime."<sup>72</sup>

Is the intent of the Constitution negated by allowing dual citizens to vote without requiring them residency in the Philippines? Is a non-resident dual citizen voter devoid of the ability to make intelligent choices on who should run the Philippines without physical presence in the country?

Several decades ago, the answer would have been yes. But in this day and age, bodily presence in the Philippines is no longer necessary for one to be familiar with current events, political and economic issues, and other pertinent concerns that will aid a voter in choosing the most competent among the candidates. The Philippines is not in isolation from the rest of the

71. Commission on Elections, Election Statistics: Matrix of OAV Registered Voters per Post, [http://www.comelec.gov.ph/stats/2004stats\\_oav.html](http://www.comelec.gov.ph/stats/2004stats_oav.html) (last accessed July 19, 2007).

72. Jorge R. Coquia, Annotation, *The Validity of Overseas Dual Citizens to Exercise Suffrage Without Residing for One Year in the Philippines*, 497 SCRA 665 (2006); See, Isagani Cruz, *Non-resident Dual Citizen Voters*, PHIL. DAILY INQUIRER, Apr. 15, 2007, [http://opinion.inquirer.net/inquireropinion/columns/view\\_article.php?article\\_id=60476](http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=60476) (last accessed July 19, 2007).

world with the advent of the internet, cable television, and other technologies. Filipinos abroad can monitor the situation in the country with a single click of a finger. They have different means to stay connected and informed of the different personalities involved, their platforms and track record, if any. As it is, no one can really claim that voters who are residing in the country make more intelligent choices than those who reside abroad. Residence is, in fact, not an absolute guarantee that one will make an informed vote unless the voter conscientiously analyzes his options.

Further, it has been settled in the decision in *Macalintal* that the Constitution intends to enfranchise as many Filipinos abroad who have not abandoned their domicile by mandating Congress to provide a system for absentee voting. As noted by Senator Angara during the deliberations over Senate Bill No. 2104, which was enacted as R.A. No. 9189, the interpretation that the residency requirement must still be complied with will render naught the Constitution's policy because, precisely, absentee voters are not residents of the country.<sup>73</sup>

COMELEC contended that dual citizens must first establish their domicile/residence in the Philippines. It is of the opinion that upon a Filipino's renouncement of his citizenship and naturalization in a foreign country, he has already abandoned his domicile.<sup>74</sup> Assuming *arguendo* that the COMELEC's position is tenable, it has overlooked the policy of R.A. No. 9225 that Filipino citizens of another country shall be deemed not to have lost their Philippine citizenship under the said law. Therefore, those who reacquire Filipino citizenship may be deemed not to have abandoned their domicile rebutting COMELEC's argument.

The decision of the Court is also more in consonance with the constitutional trend of widening the voting base. Comparing the provisions of the previous constitutions with the present one, it can be seen that requirements that resulted to the exclusion of a large number of the electorate were eliminated one by one to accommodate more voters. Thus, the 1973 and 1987 Constitutions permit even illiterates, who were previously ineligible, to cast their votes.<sup>75</sup> As discussed during the Constitutional

73. *Macalintal v. Commission on Elections*, 405 SCRA 614, 643-44 (2003) (citing Transcripts of Senate Proceedings, Oct. 1, 2002).

74. *Nicolas-Lewis*, 497 SCRA at 649, 658 (citing COMELEC's Memorandum).

75. PHIL. CONST. art V, § 2 ("... The Congress shall also design a procedure for the disabled and the illiterates to vote without the assistance of other persons. Until then, they shall be allowed to vote under existing laws and such rules as the

Commission's deliberations, "The representative quality of a government is determined by the voting base ... And therefore, as many as possible should be allowed to choose their representatives ..."<sup>76</sup>

#### VI. CONCLUSION

Over the years, the alarm over the exodus of many Filipinos to work abroad has been heightened. Nurses, teachers, other professionals, and non-professionals leave with the intention of giving their families the comforts in life which they can only dream of in the Philippines given the limited opportunities available. Most of them aspire to give back to those they left behind, including the country they have always known as home. Even if the future looks brighter on the other parts of the globe, there are Filipinos who dream of being able to bring hope to their motherland. In doing so, giving them the right to participate in nation building and good governance only seems to be a fair trade.

Commission on Elections may promulgate to protect the secrecy of the ballot.").

76. II RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 16.

## Physician and Hospital Liability in Cases of Medical Negligence: A Comment on *Professional Services, Inc. v. Agana*

Ivy D. Patdu, M.D.\*

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#### I. INTRODUCTION

The first physician recorded in history is Imhotep, who was worshipped as a god in Ancient Egypt.<sup>1</sup> Doctors throughout history have held the lives of patients in their hands and they have traditionally been held by society in high esteem. The practice of medicine has, however, evolved through the centuries. From tribal doctors to family physicians who make house calls, doctors have gained more knowledge and have become more specialized. Medical science has attained great heights. Hospitals have become business establishments and less like their historical counterparts.

What remains constant is that physicians have the duty to heal. The Hippocratic Oath provides that physicians will prescribe regimens for the good of their patients according to their ability and judgment and will never do harm to anyone.<sup>2</sup> The last decade is, however, witness to the increase in

\* '02 M.D., University of the Philippines; '09 J.D. cand., Ateneo de Manila University School of Law; Member, Board of Editors, *Ateneo Law Journal*. In 2005, she won 3rd place for her essay, *Judicial Reforms under the Davide Watch*, in a national essay writing contest for law students held by the Supreme Court.

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1. Peggy Saari, *Medicine And Disease*, HISTORY FACT FINDER (2006), <http://history.enotes.com/history-fact-finder/medicine-disease/who-was-first-doctor-history> (last accessed July 20, 2007).
2. L.R. FARNELL, GREEK HERO CULTS AND IDEAS OF IMMORTALITY 269 (1921). The Hippocratic Oath is an oath traditionally taken by physicians pertaining to the ethical practice of medicine. It has been translated from Greek and has