

Lewis v. Commission on Elections:-*
Dual Citizens May Vote

The Facts

Petitioners were successful applicants for recognition of their Philippine citizenship under Republic Act No. 9225, or the Citizenship Retention and Re-Acquisition Act of 2003, which accorded them the right of suffrage.

Long before the May 2004 national and local elections, they had sought registration and certification as "overseas absentee voters." They were, however, advised by the Philippine Embassy in the United States that, in accordance with a letter dated September 23, 2003, [\[1\]](#) sent by the Commission on Elections (Comelec) to the Department of Foreign Affairs, they still had no right to vote in the said elections, owing to their lack of the one-year residence requirement prescribed by the Constitution.

The same letter urged the different Philippine posts abroad not to discontinue their campaign for voters' registration, as the residence restriction would contextually affect only certain individuals who would likely be eligible to vote in future elections.

Prodded for clarification by petitioners, the Comelec informed them that they would not be allowed to vote, unless they met the constitutional residency requirement.

The Issue

The Court noted that the holding of the 2004 elections had rendered the Petition moot and academic, but only insofar as petitioners' participation in that exercise was concerned. Still unresolved, though, was the broader and more transcendental issue tendered or subsumed in the Petition: the propriety of allowing "duals" to participate in and vote as absentee voters in future elections.

Thus, the Court had to resolve the question of whether petitioners -- and others who might have, for the meantime, retained and/or reacquired Philippine citizenship pursuant to Republic Act No. 9225 -- may vote as absentee voters without possessing the ordinary residence requirement.

The Court's Ruling

In a unanimous Decision penned by Justice Cancio C. Garcia, the Court held

that those who had retained and/or required citizenship may vote as absentee voters.

Suffrage is a constitutional right given to all citizens of the Philippines who are not otherwise disqualified by law; are at least 18 years of age; and, at least six months immediately preceding the election, shall have resided in the Philippines for at least one year in the place where they propose to vote. The Constitution also authorizes Congress to devise a system in which an absentee may vote, implying that -- as an exception to the residency prescription -- a **nonresident** may be allowed to vote.^[2]

In response to this mandate, Congress enacted Republic Act 9189 (the Overseas Absentee Voting Act of 2003), which identified those who could vote under it.^[3] Filipino immigrants and permanent residents were allowed to avail themselves of the absentee voting mechanism. Ruling on the constitutionality of this matter, the Court held in *Macalintal v. Comelec* as follows:^[4]

“[RA 9189] allows an immigrant and permanent resident abroad to register as voter for as long as he/she executes an affidavit to show that he/she has not abandoned his domicile in pursuance of the constitutional intent expressed in Sections 1 and 2 of Article V that “all citizens of the Philippines not otherwise disqualified by law” must be entitled to exercise the right of suffrage and, that Congress must establish a system for absentee voting; for otherwise, if actual, physical residence in the Philippines is required, there is no sense for the framers of the Constitution to mandate Congress to establish a system for absentee voting.”

Soon after Republic Act 9189 passed the test of constitutionality, Congress

enacted Republic Act **9225**, the relevant portion of which reads:

SEC. 2. *Declaration of Policy.* – It is hereby declared the policy of the State that all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act.

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

xxx

xxx

xxx

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.

There is no provision in Republic Act 9225 requiring “duals” to establish residence actually and physically in the Philippines first before they can exercise their right to vote. On the contrary, implicitly acknowledging that “duals” are most likely nonresidents, this law grants them the same right of suffrage as that granted an absentee voter under Republic 9189. The Court emphasized that, as much as possible, the latter law essentially aimed to enfranchise all overseas Filipinos who -- save for the residency requirements imposed on an ordinary voter under ordinary conditions -- are qualified to vote.

The Court noted the common intent of the Constitution and of Republic Act No. 9189, as well as the expansion of the scope of that law with the passage of

Republic Act No. 9225. It arrived upon the unavoidable conclusion that those who retained or reacquired Philippine citizenship under **Republic Act 9225**, the Citizenship Retention and Reacquisition Act of 2003, may exercise the right to vote under the system of absentee voting provided under **Republic Act 9189** (the Overseas Absentee Voting Act of 2003).

^{*}
- GR No. 162759, August 4, 2006.

[1] Signed by Florentino A. Tuason Jr., as then COMELEC Committee Chairman on Overseas Absentee Voting.

[2] Sections 1 and 2, Article V of the Constitution

[3] Section 4. *Coverage*. – All citizens of the Philippines abroad, who are not otherwise disqualified by law, at least eighteen (18) years of age on the day of elections, may vote for president, vice-president, senators and party-list representatives.

Section 5. *Disqualifications*. – The following shall be disqualified from voting under this 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;

(c) Those who have ... [been] convicted in a final judgment by a court or tribunal of an offense punishable by imprisonment of not less than one (1) year, including those who have ... been found guilty of Disloyalty as defined under Article 137 of the Revised Penal Code,;

(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*.

(e) Any citizen of the Philippines abroad previously declared insane or incompetent by competent authority (Words in bracket added.)

G.R. No. 157013, July 10, 2003, 405 SCRA 614.