G.R. No. 248985* - **PHILIP HERNANDEZ PICCIO v. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL and ROSANNA VERGARA**

Promulgated: October 5, 2021

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DISSENTING OPINION

HERNANDO, *J.*:

At bar is a *Petition for Certiorari*[1] filed by Philip Hernandez Piccio (Piccio) assailing the May 23, 2019 Decision[2] of the House of Representatives Electoral Tribunal (HRET) in HRET Case No. 16-025 (QW) dismissing the *Petition for Quo Warranto* and declaring private respondent Rosanna Vergara (Vergara) not disqualified as Member of the House of Representatives representing the Third District of Nueva Ecija. The instant petition also assails the June 27, 2019 Resolution No. 19-043[3] of the HRET denying Piccio's motion for reconsideration.

The Facts:

Vergara is a natural-born citizen of the Philippines. She was born in the City of Manila on November 5, 1963, of Filipino parents.[4] In 1994, she moved to Cabanatuan City where she and her husband established their family home upon being married in 1995. In 1997, Vergara's application[5] as a registered voter in Cabanatuan City was duly approved.[6]

Prompted by her desire to pursue job opportunities in the United States of America, Vergara applied for naturalization and was issued a Certificate of Naturalization as an American citizen. Correspondingly, she was granted an American Passport on May 20, 1998.[7]

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* This case was consolidated with G.R. No. 236113 *(Rosanna V. Vergara v. House of Representatives Electoral Tribunal, Philip Hernandez Piccio and Aurelio Matias Umali)*. However, the *Petition for Certiorari and/or Prohibition (With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction* in G.R. No. 236113 was subsequently withdrawn.

[1] *Rollo*, pp. 3-36. Captioned as Petition for Review on *Certiorari*.

[2] Id. at 37-64. Signed by Chief Justice Diosdado M. Peralta (then Associate Justice and Chairperson of the HRET), Associate Justice Francis H. Jardeleza, and Representatives Jorge T. Almonte, Gavini C. Pancho, Abigail Faye C. Ferriol-Pascual, Joaquin M. Chipeco, Jr., Wilter Wee Palma II, and Abdullah D. Dimaporo. Senior Associate Justice Estela M. Perlas-Bernabe, as then Member of the HRET, took no part.

[3] Id. at 65.

[4] Id. at 38.

[5] Id.

[6] Id.

[7] Id. at 93, Verified Answer to the *Quo Warranto* Petition.

Sometime in November 2006, Vergara filed with the Bureau of Immigration (BI) a *Petition for the Issuance of an Identification Certificate* for the reacquisition of her Philippine citizenship[8] pursuant to Republic Act No. 9225 (RA 9225), in relation to Administrative Order No. 91 (AO 91), Series of 2004[9] and the Bureau of Immigration (BI) Memorandum Circular No. AFF-05-002.[10]

On November 28, 2006, Vergara took an Oath of Allegiance[11] to the Republic of the Philippines before a Notary Public in the City of Manila.

Finding that Vergara has complied with all the requirements of RA 9225 and Memorandum Circular No. AFF-05-002, the BI Task Force on the Citizenship Retention and Reacquisition Act of 2003 issued a *Memorandum*[12] dated November 28, 2006 recommending the approval of Vergara's petition for the issuance of an Identification Certificate. In an *Order*[13] dated November 30, 2006 signed by BI Commissioner Alipio F. Fernandez, Jr. (BI Commissioner Fernandez, Jr.), the Bureau granted Vergara's petition and ordered the Chief of the Alien Registration Division to issue an Identification Certificate in her favor. Pursuant thereto, Vergara was issued *Identification Certificate No. 06-12955*[14] recognizing her as having reacquired her Philippine citizenship.

Consequently, Vergara executed an *Affidavit of Renunciation of Foreign Citizenship*[15] on September 4, 2015 before a Notary Public in Cabanatuan City.

On October 15, 2015, respondent filed her Certificate of Candidacy (CoC) for the 2016 National and Local Elections to run as Representative for the Third District of Nueva Ecija.[16]

On October 19, 2015, Piccio filed a *Petition to Deny Due Course and/or Cancel Certificate of Candidacy* of Vergara before the Commission on Elections (COMELEC) on the ground that she failed to meet the citizenship,

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[8] Id.
[9] Designating the Bureau of Immigration as the Implementing Agency of Republic Act No. 9225, otherwise known as the "Citizenship Retention and Re-Acquisition Act of 2003.
[10] Revised Rules Governing Philippine Citizenship under Republic Act No. 9225 and Administrative Order No. 91, Series of 2004.
[11] *Rollo*, pp. 38, 93.
[12] Id. at 39.
[13] Id. at 40.
[14] Id. at 41.
[15] Id.
[16] Id. at 42.

residency and voter registration requirements. The case was docketed as SPA No. 15-003 (DC).[17]

In her *Verified Answer*,[18] Vergara countered that she is a natural-born citizen having been born to Filipino parents on November 5, 1963. Although she became a naturalized American citizen in 1998, Vergara claimed that the BI had long granted her petition for retention/reacquisition of Philippine citizenship under RA 9225 and since 2006 she had effectively renounced her American citizenship. In support thereof, Vergara attached the following documents:

1) her *Oath of Allegiance* to the Republic of the Philippines;

2) the November 28, 2006 *Memorandum* issued by the BI's Task Force on the Citizenship Retention and Reacquisition Act of 2003, which recommended the approval of her petition;

3) the November 30, 2006 *Order* of BI Commissioner Fernandez, Jr. which granted her petition;

4) *Identification Certificate No. 06-12955* dated November 30, 2006 issued to her by the BI, which recognized her as having reacquired her Philippine citizenship; and

5) her *Affidavit of Renunciation of Foreign Citizenship.*

In addition, Vergara presented documentary proofs of her being a natural born Filipino citizen, a legitimate resident and registered voter of the Third District of Nueva Ecija.

On May 16, 2016, Piccio sent a letter[19] addressed to then BI Commissioner Ronaldo A. Geron (Commissioner Geron) requesting for certified true copies of Vergara's *Oath of Allegiance* dated November 26, 2006, *RA 9225 Petition* dated November 28, 2006, *Order of the BI* dated November 30, 2006 and *Identification Certificate No. 06-12955*, which he will formally offer in evidence in Comelec Case No. SPA No. 15-003 (DC) and Court of Appeals Case No. CA-GR SP No. 144409.

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[17] Id.
[18] Id. at 90-114.
[19] Id. at 44.

In response thereto, then Commissioner Geron informed petitioner that the BI cannot provide certified true copies of the requested documents since the BI's Records Section only has photocopies of the same.[20]

Not satisfied, Piccio wrote another letter dated May 23, 2016, requesting for a certification from the BI on the existence of Vergara's *Identification Certificate No. 06-12955* in the Bureau's records.[21]

In a Letter[22] dated June 2, 2016, then Commissioner Geron gave a different reason as to why the BI could not issue the requested certification, thus: "based on the records of the Bureau of Immigration, no Petition for the Issuance of an Identification Certificate in favor of ROSANNA VALERIANA GARCIA VERGARA @ ROSANNA VERGARA (VERGARA) was received or processed by the Bureau. Further, no record of *Identification Certificate No. 06-12955* allegedly issued to VERGARA exists in the Bureau's files."

In another letter[23] dated May 25, 2016, Piccio sought a categorical explanation as to the non-existence of the original copies of the documents of Vergara in the Bureau's files. In a letter-reply[24] dated June 29, 2016, then Commissioner Geron merely reiterated the contents of his June 2, 2016 letter to petitioner.

Disappointed with the replies of former BI Commissioner Geron to Piccio's inquiries, Vergara wrote a letter dated July 4, 2016 addressed to the newly-appointed BI Commissioner Jaime H. Morente (Commissioner Morente) asking clarification regarding the June 2, 2016 letter. Vergara maintained that she had duly filed with the BI the original copies of the required documents in support of her RA 9225 Petition; that the said petition was granted and that she was thus issued *Identification Certificate No. 06-12955* by the BI. Vergara further contended that she was in fact issued certified true copies of her *Identification Certificate No. 06-12955* together with its relevant documents pursuant to her requests dated December 15, 2015 and June 27, 2016.[25]

In answer to Vergara's letter, Commissioner Morente confirmed that the petition for reacquisition/retention of Philippine citizenship filed by Vergara under RA 9225 had been duly received, processed and approved by the BI and that she had been duly issued *Identification Certificate No. 06-12955* pursuant

[20] Id.
[21] Id.
[22] Id. at 45.
[23] Id.
[24] Id.
[25] Id. at 46.

thereto, as per the Certification of the Acting Chief of the BI's Board of Special Inquiry. Further, Commissioner Morente disclosed that he had ordered the conduct of an investigation as to the allegations that her RA 9225 records were tampered.[26]

Meanwhile, on June 7, 2016, the COMELEC issued a Resolution[27] dismissing Piccio's *Petition to Deny Due Course and/or Cancel Certificate of Candidacy* for lack of merit. It held that Vergara was eligible to run for public office as she has fully complied with the twin requirements set forth in RA 9225 prior to the filing of her CoC on October 15, 2015. First, she took an Oath of Allegiance to the Republic of the Philippines on March 6, 2006 and second, she executed a personal and sworn renunciation of her foreign citizenship on September 4, 2015. The COMELEC likewise declared that Vergara is a natural-born Filipino citizen, a resident of the place where she sought public office for at least one (1) year immediately preceding the 2016 elections, and a registered voter of the Third District of Cabanatuan City, Nueva Ecija.

After the 2016 elections, Vergara was proclaimed as the duly elected member of the House of Representatives for the Third District of Nueva Ecija. She assumed office on June 30, 2016.

On July 11, 2016, Piccio instituted against Vergara a *Petition for Quo Warranto Ad Cautelam*[28] before the HRET, docketed as HRET Case No. 16-025 (QW), on the ground that she was not qualified to become a member of the House of Representatives for being an American Citizen. The *ad cautelam* petition was later converted into a regular petition for *quo warranto*.

On August 26, 2016, Piccio also filed a *Deportation Complaint* against Vergara for allegedly tampering her RA 9225 petition records. However, it was dismissed for lack of merit by Commissioner Morente in an Order dated October 7, 2016.[29]

In his Petition for *Quo Warranto*[30] before the HRET, Piccio averred that Vergara is ineligible to sit as a member of the House of Representatives as she remained to be an American citizen. Citing the Certification issued by the Office of the Clerk of Court and Ex-Officio Sheriff of the City of Manila as well as the June 2, 2016 and June 29, 2016 letters of then Commissioner Geron, Piccio maintained that Vergara failed to comply with the provisions of

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[26] Id. at 46-47.
[27] Id. at 340-365.
[28] Id. at 66-85.
[29] Id. at 366-367.
[30] Id. at 66-85.

RA 9225 on the reacquisition/retention of her Philippine citizenship. As such, she was not an eligible candidate at all. Consequently, her proclamation was null and void and without legal effect.

Aurelio Matias Umali (Umali) filed a *Motion for Leave to Intervene and to Admit Attached Petition-in-Intervention*. He basically adopted Piccio's position.[31]

In riposte, Vergara argued that she had satisfactorily complied with the requirements under RA 9225. She filed in November 2006, a *Petition for the Issuance of an Identification Certificate* pursuant to RA 9225; she took an *Oath of Allegiance* to the Republic of the Philippines; the said petition was approved by the BI on November 30, 2006 and she was issued *Identification Certificate No. 06-12955;* and finally, before she filed her CoC on October 15, 2015, she executed an *Affidavit of Renunciation of Foreign Citizenship* on September 4, 2015.[32]

Ruling of the House of Representatives Electoral Tribunal:

On May 23, 2019, the HRET rendered the assailed Decision[33] dismissing the petition for *Quo Warranto* and declaring Vergara as the duly elected Representative of the Third District of Nueva Ecija in the May 2016 National and Local Elections. Respondent HRET upheld the probative value of the documentary and testimonial evidence she presented and declared that Piccio and intervenor Umali have utterly failed to establish their claims in their respective petitions thereby warranting the dismissal thereof for being bereft of merit. The HRET likewise denied Piccio's motion for reconsideration of the Decision in its Resolution dated June 27, 2019.[34]

Piccio thus instituted the present petition assailing the HRET's dismissal of his *Quo Warranto* petition and motion for reconsideration.

The Petition:

Piccio imputes grave abuse of discretion amounting to lack or excess of jurisdiction against the HRET when it declared that Vergara has duly complied with the requirements of RA 9225 despite clear and convincing evidence to the contrary. Petitioner insists that Vergara failed to prove that she

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[31] Id. at 49.
[32] Id. at 90-114.
[33] Id. at 37-64.
[34] Id. at 65.

exerted reasonable diligence to produce an original copy of the questioned *Oath of Allegiance* before she can resort to a photocopy of the same. Piccio maintains that Vergara's possession of *Identification Certificate No. 06-12955* does not serve as conclusive proof of her compliance with the requirements of RA 9225. In short, the existence of the original documents required to be submitted under RA 9225 cannot be presumed.

Piccio further alleges that the HRET committed mosaic/patchwork plagiarism in the questioned Decision. He contends that most, if not all, of what was written in the assailed Decision could be found in Vergara's Answer and Memorandum which cast suspicion as to the tribunal's fairness, impartiality and integrity.

In her Comment,[35] Vergara seeks the outright dismissal of the extant petition as it suffers from serious procedural as well as substantive infirmities. On the procedural aspect, Vergara avers that petitioner failed to comply with the material data rule when he missed to state the date when he received the May 23, 2019 Decision of the HRET. Moreover, Piccio failed to attach Annexes "C" and "D" of the instant petition which is also a ground for its dismissal. On the substantive side, Vergara reiterates that she has legally and validly applied for the reacquisition/retention of her Philippine citizenship and that the same had been duly processed and approved by the BI based on the evidence on record.

By way of Comment,[36] the HRET, through the Office of the Solicitor General (OSG), argued that the petition should be dismissed outright for having been mooted in view of the fact that Vergara had already fully served or completed her term from 2016 to 2019 as the representative of the Third District of Nueva Ecija. Further, no grave abuse of discretion may be attributed to the HRET in dismissing the *Quo Warranto* petition as its decision was duly supported by the evidence on record.

In his Reply,[37] Piccio refutes the OSG's argument that the petition is already moot and academic. He cited numerous cases where the Court still passed upon the issues presented therein although the same have been mooted by supervening events. He reiterates the exceptional character of the instant case such that it is capable of repetition yet evading review.

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[35] Id. at 276-303.
[36] Id. at 314-335.
[37] Id. at 379-391.

Piccio raises the following issues for resolution:

> 1. WHETHER OR NOT THE HONORABLE TRIBUNAL ERRED IN CONCLUDING THAT RESPONDENT APPLIED FOR RETENTION/REACQUISITION OF PHILIPPINE CITIZENSHIP AND FULLY COMPLIED WITH THE REQUIREMENT OF R.A. 9225.
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> 2. WHETHER THE HONORABLE TRIBUNAL ERRED IN ASSUMING THAT RESPONDENT'S RA 9225 DOCUMENTS ARE GENUINE AND AUTHENTIC AND PART OF THE BI RECORDS.
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> 3. WHETHER THE HONORABLE TRIBUNAL ERRED IN ASSUMING THAT RESPONDENT FILED HER RA 9225 ORIGINAL DOCUMENTS WITH THE BUREAU OF IMMIGRATION[38]

The issue now before us is whether the HRET committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing petitioner's *Quo Warranto* Petition based on its finding that Vergara, a natural-born Filipino who became an American citizen, has fully complied with the requirements of RA 9225 and thus duly reacquired her Philippine citizenship to qualify her to sit as member of the House of Representatives.

I vote to GRANT the petition.

Preliminary Matters.

On the mootness of the petition.

The OSG seeks the outright dismissal of the present petition for being moot and academic as Vergara had already fully served or completed her term for 2016 to 2019 as the representative of the Third District of Nueva Ecija. However, the Court has consistently held that as an exception to the rule on mootness, courts will decide a question otherwise moot if it is capable of repetition yet evading review.

The ruling of the Court in *Vilando v. House of Representatives Electoral Tribunal*[39] is in point:

> It should be noted that Limkaichong's term of office as Representative of the First District of Negros Oriental from June 30, 2007 to June 30, 2010 already expired. As such, the issue questioning her eligibility to hold office has been rendered moot and academic by the expiration of her term. Whatever judgment is reached, the same can no longer have any practical legal effect or,

[38] Id. at 6.
[39] 671 Phil 524 (2011).

> in the nature of things, can no longer be enforced. Thus, the petition may be dismissed for being moot and academic.
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> Moreover, there was the conduct of the 2010 elections, a supervening event, in a sense, has also rendered this case moot and academic. A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness.
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> Citizenship, being a continuing requirement for Members of the House of Representatives, however, may be questioned at any time. For this reason, the Court deems it appropriate to resolve the petition on the merits. **This position finds support in the rule that courts will decide a question, otherwise moot and academic, if it is "capable of repetition, yet evading review." The question on Limkaichong's citizenship is likely to recur if she would run again, as she did run, for public office, hence, capable of repetition.**[40] (Emphasis supplied)

Conformably with the foregoing, I find that the instant petition is among the exceptional cases that must be adjudicated although the issues have become moot and academic since it is capable of repetition inasmuch as Vergara ran again for public office in the 2019 elections.

I. The Procedural Issues.

Failure to comply with the material date rule.

Vergara argues that the instant petition must be dismissed outright because Piccio failed to state the date when he received the May 23, 2019 Decision of the HRET. According to Vergara, such allegation is strictly required by the Court in order to establish that Piccio timely filed his motion for reconsideration thereof.

The rationale for requiring a complete statement of material dates is to determine whether the petition is timely filed.[41] In case of a Petition for *Certiorari* under Rule 65 of the Rules of Court, such a petition is required to be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed.[42] Accordingly, the petition must show when notice of the assailed judgment, order or resolution subject thereof was

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[40] Id. at 531-532.

[41] See *Technological Institute of the Philippines Teachers and Employees Organization (TIPTEO) v. Court of Appeals*, 608 Phil. 632, 649 (2009).

[42] Section 4, Rule 65 of the Rules of Court.

received; when a motion for reconsideration, if any, was filed; and when notice of the denial thereof was received.[43]

However, this Court may relax strict observance of the rules to advance substantial justice. In *Security Bank Corporation v. Aerospace University*,[44] the CA denied due course to the petition for failure to state the dates when the assailed order was received and the motion for reconsideration was filed. However, this Court held that "[t]he more material date for purposes of appeal to the Court of Appeals is the date of receipt of the trial court's order denying the motion for reconsideration". Thus, we remanded the case to the CA for resolution on the merits.

The doctrine was reiterated in *Acaylar, Jr. v. Harayo*,[45] where the Court held that the petitioner's failure to state the material dates is not fatal to his cause of action, provided the date of his receipt, *i.e.* May 9, 2006, of the RTC Resolution dated April 18, 2006 denying his Motion for Reconsideration is duly alleged in his Petition. Similarly, in *Capin-Cadiz v. Brent Hospital and Colleges, Inc.*,[46] the Court emphasized that the petitioner's failure to state the date of receipt of the copy of the NLRC decision is not fatal to her cause since she duly alleged the date of receipt of the resolution denying the motion for reconsideration.

In this case, Piccio clearly stated in the instant petition the date when he received the HRET Resolution dated June 27, 2019 denying his motion for reconsideration. Specifically, Piccio received the said Resolution on July 16, 2019 and timely filed the present petition before this Court on September 13, 2019[47] or within 60-day reglementary period.[48] As such, Piccio is deemed to have substantially complied with the rules.

Moreover, a perusal of the record of the case reveals that Piccio has timely moved for reconsideration of the May 23, 2019 HRET Decision by filing a Motion for Reconsideration[49] with the HRET on June 20, 2019 as evidenced by the date of receipt[50] stamped on the face of the said pleading. In

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43 Supreme Court Revised Circular 1-88, July 1, 1991.

44 500 Phil. 51, 60 (2005).

45 582 Phil. 600, 612 (2008).

46 781 Phil. 610, 621(2016).

47 *Rollo*, p. 3.

48 Id. at p. 4. The pertinent portion of the petition for certiorari states:

TIMELINESS OF THE PETITION

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3. On July 16, 2019, petitioner Piccio received a copy of the HRET Resolution dated June 29, 2019 (sic) (the assailed Resolution) denying petitioner's Motion for Reconsideration. Petitioner thus has until September 14, 2019 within which to file an appeal *via* Petition for Review on *Certiorari* under Rule 65 of the Rules of Court.

49 *Rollo*, pp. 254-265.

50 Id. at 254.

the said motion, Piccio stated that he received the HRET Decision on June 10, 201[9]. Since Piccio filed a motion for reconsideration on June 20, 2019, the same was clearly filed within the prescribed period of fifteen (15) days from notice or until June 25, 2019.

Failure to attach the annexes to the *Quo Warranto* petition.

Similarly, Vergara submits that Piccio violated paragraph 2, Section 1, Rule 65 of the Rules of Court when he failed to attach Annexes "A" to "L" of the Petition for *Quo Warranto* (marked as Annex C of the instant petition) as well as Annexes "1" to "8-g" of Vergara's Verified Answer (marked as Annex "D" of the instant petition). The said rule requires that the petition for *certiorari* "shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46."

A scrutiny of the records, however, shows that the contents of the omitted documents (e.g., Vergara's Certificate of Proclamation, Certificate of Candidacy, Oath of Allegiance, Identification Certificate No. 06-12955, Letters of former BI Commission Geron, etc.), were either quoted in verbatim or substantially summarized by the HRET in its assailed Decision. Verily, the said HRET Decision is already sufficient to enable this Court to pass upon the assigned errors and to resolve the instant petition even if there are missing attachments.

In *Spouses Cordero v. Octaviano,*[51] this Court ruled:

> A perusal of the petition for review, however, reveals that copies of the RTC Order dated June 22, 2017, the MCTC Decision dated May 22, 2013, and the RTC Decision dated December 7, 2016 were in fact attached as Annexes "A," "B," and "C," respectively. Hence, Spouses Cordero complied with the requirement of attaching copies of the judgments and orders of the trial courts. Moreover, these attachments are already sufficient to enable the CA to pass upon the assigned errors and to resolve the appeal even without the pleadings and other portions of the records. To be sure, the assailed decisions of the trial courts substantially summarized the contents of the omitted records.

The Rules of Court should be applied with reason and liberality to promote its objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Rules of procedure are used to help secure and

[51] G.R. No. 241385, July 7, 2020.

not override substantial justice. Thus, the dismissal of an appeal on a purely technical ground is frowned upon especially if it will result in unfairness.[52]

An appeal should not be dismissed outright on a purely technical ground, especially if there is some merit to the substantive issues raised by the petitioner. It is settled that liberal construction of the rules may be invoked in situations where there may be some excusable formal deficiency or error in a pleading, provided that the same does not subvert the essence of the proceeding and it at least connotes a reasonable attempt at compliance with the rules.[53]

II. The Substantive Issues.

Petitioner comes to the Court invoking our power of judicial review through a *Petition for Certiorari* under Rule 65 of the Rules of Court. He seeks to annul the assailed Decision and Resolution of the HRET, finding that Vergara is qualified to hold a seat as member of the House of Representatives.

In a petition for certiorari under Rule 65 of the Rules of Court, the primordial issue to be resolved is whether the respondent tribunal committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolution.

In the case at bar, while it is true that under the Constitution,[54] the HRET shall be the sole judge of all contests relating to the elections, returns and qualifications of its members, this does not, however, bar the Court from entertaining petitions which charge the HRET with grave abuse of discretion. In *Libanan vs. House of Representatives Electoral Tribunal*,[55] we explained our assumption of jurisdiction in election-related cases involving the HRET as follows -

> . . . In *Robles vs. HRET* (181 SCRA 780), the Court has explained that while the judgments of the Tribunal are beyond judicial interference, the Court may do so, however, but only "in the exercise of this Courts so-called extraordinary jurisdiction, . . . upon a determination that the Tribunal's decision or resolution was rendered without or in excess of jurisdiction, or with grave abuse of discretion or paraphrasing Marrero, upon a clear showing of such arbitrary and improvident use by the Tribunal of its power as constitutes a denial of due process of law, or upon a determination of a very clear unmitigated error, manifestly constituting such grave abuse of discretion, that there has to be a remedy for such abuse".

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52 *Benguet Corp. v. Cordillera Caraballo Mission Inc.*, 506 Phil. 366, 370-371 (2005).
53 *Mediserv v. Court of Appeals*. 631 Phil. 282, 295 (2010).
54 Sec. 17, Article VI.
55 347 Phil. 797, 804-805 (1997).

In the old, but still relevant, case of *Marrero vs. Bocar* (66 Phil. 429), the Court has ruled that the power of the Electoral Commission "is beyond judicial interference except, in any event, upon a clear showing of arbitrary and improvident use of power as will constitute a denial of due process". The Court does not, to paraphrase it in *Co vs. HRET* (199 SCRA 692), venture into the perilous area of correcting perceived errors of independent branches of the Government; it comes in only when it has to vindicate a denial of due process or correct an abuse of discretion so grave or glaring that no less than the Constitution itself calls for remedial action.

In *David v. Senate Electoral Tribunal,*[56] the Court held:

The term "grave abuse of discretion" has been generally held to refer to such arbitrary, capricious, or whimsical exercise of judgment as is tantamount to lack of jurisdiction:

> [T]he abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough: it must be grave.

In this case, I find that the HRET acted capriciously or whimsically in issuing its assailed Decision and Resolution.

The HRET acted with grave abuse of discretion when it ruled that respondent Vergara has validly complied with all the requirements for the reacquisition of her Philippine citizenship.

Article VI, Section 6 of the 1987 Constitution[57] spells out the requirement that "[n]o person shall be a Member of the House of Representatives unless he [or she] is a natural-born citizen of the Philippines."

In this case, Vergara claims that she had duly complied with the requirements of RA 9225. She filed a *Petition for the Issuance of an*

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[56] 795 Phil. 529, 565 (2016).

[57] Article VI
Section 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

Identification Certificate pursuant to RA 9225. She took her *Oath of Allegiance* before a Notary Public stationed inside the BI building. Thereafter, she submitted the original copy thereof to the BI in support of her *Petition for Retention/Reacquisition of Philippine Citizenship*. Since she submitted the original copy of the said *Oath of Allegiance* to the BI, she no longer has the original copy. Hence, what she has in her possession is a mere photocopy.

Piccio, on the other hand, argues that since Vergara failed to adduce an original copy of the *Oath of Allegiance,* it was incumbent upon her to prove its existence and due execution, which, Vergara failed to do.

For purposes of presenting documents as evidence before courts, documents are classified as either public or private.

Rule 132, Section 19 of the Rules of Court provides:

> SEC. 19. *Classes of Documents* – For the purpose of their presentation in evidence, documents are either public or private.
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> Public documents are:
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> (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
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> **(b) Documents acknowledged before a notary public except last wills and testaments**; and
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> (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.
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> All other writings are private. (Emphasis Supplied)

Concededly, the *Oath of Allegiance* of Vergara in this case is a public document having been acknowledged before a notary public. There is no dispute that generally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution. In addition, documents acknowledged before a notary public have in their favor the presumption of regularity. However, jurisprudence is replete with cases holding that such presumption is not absolute.

In *Spouses Tan v. Mandap,*[58] the Court held that even an apparently valid notarization of a document does not guarantee its validity. Having found that the affiant did not personally appear before the notary public, the Court held

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[58] 473 Phil. 787, 796-797 (2004).

that "such falsity raises doubt regarding the genuineness of the vendor's alleged consent to the deeds of sale."[59]

Similarly, in *Mayor v. Belen,*[60] the Court declared that notarization per se is not a guarantee of the validity of the contents of a document. The presumption of regularity of notarized documents cannot be made to apply and may be overthrown by highly questionable circumstances, as may be pointed out by the trial court.[61]

The same ruling holds true in the case of *Dizon v. Matti, Jr.,*[62] where the Court pronounced that with the existence of highly questionable circumstances that seriously repudiate the validity of the Deed of Absolute Sale, the presumption of regularity that may have been created by the notarization of the said instrument has been shattered.

In the instant case, the existence and due execution of Vergara's *Oath of Allegiance* had been challenged by Piccio in the proceedings below since Vergara merely submitted a photocopy of the same. In particular, Piccio averred that there was an irregularity in the execution of the said *Oath of Allegiance* because the signature of the concerned Notary Public (Atty. Cinco) as appearing thereon was dissimilar to that of his specimen signatures for his notarial commission and his oath of office as a notary public.[63] Piccio likewise pointed out the inability of the Office of the Clerk of Court and Ex-Officio Sheriff of the City of Manila to issue a certified true copy of the *Oath of Allegiance* on the ground that Book No. IV of Atty Cinco's Notarial Report, which allegedly contains the said entry, was not among those submitted by Atty. Cinco to the said office.

I agree with petitioner that these factual circumstances militate against the existence of Vergara's *Oath of Allegiance*.

For one, the Certification[64] dated May 24, 2016 issued by the Assistant Clerk of Court and Ex-Officio Sheriff of the City of Manila stating that "[t]his office could not issue a certified true copy of the document denominated as "*Oath of Allegiance*" executed by Rosanna Garcia Vergara, alleged to have been acknowledged before said Notary Public on November 26, 2006 with Cod. No. 115; Page No. 42; Book No. IV; Series of 2006, inasmuch as Book No. IV is not among those submitted to this Office", casts serious doubt on the

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[59] Id. at 797.
[60] 474 Phil. 630, 640 (2004).
[61] Id.
[62] G.R. No. 215614, March 27, 2019.
[63] See *Quo Warranto* Petition, *rollo*, pp. 73-74.
[64] *Rollo*, pp. 43-44.

authenticity of the challenged instrument. Apropos, there arises a presumption that the document was not notarized and is not a public document.[65]

Moreover, a comparison of the signature of Atty. Cinco in the impugned *Oath of Allegiance*[66] with his signatures inscribed on his notarial commission[67] and oath of office as notary public[68] shows that they are demonstrably dissimilar. It does not take one to be a handwriting expert to notice that there is evidently a missing portion of Atty. Cinco's admittedly genuine signature on Vergara's *Oath of Allegiance.*

In *Basilio v. Court of Appeals,*[69] the Court conducted its own visual analysis of the questioned document and after doing so, was convinced that the purported signature of the petitioner in the Deed of Absolute Sale was patently dissimilar from his admittedly genuine signatures.

Additionally, it boggles my mind why despite the direct challenge made by petitioner on the signatures of Atty. Cinco on Vergara's *Oath of Allegiance,* only the thumbmarks of Vergara in her *Identification Certificate* and her CoC were submitted for authentication before the NBI.

Considering the irregularities pointed out by petitioner with respect to the existence and authenticity of the foregoing *Oath of Allegiance,* the presumption of validity accorded to public documents cannot be made to apply in this case because its *prima facie* validity was overthrown by the aforementioned highly questionable circumstances. In short, the impugned instrument cannot be presumed as valid despite its notarization because of the direct challenge posed thereto by petitioner and the concomitant failure of Vergara to satisfactorily explain the irregularities and to present an original copy thereof.

Further, Piccio maintains that the acquisition of Vergara of an *Identification Certificate* was irregular due to the failure of the BI and Vergara to produce the original documents allegedly submitted by Vergara in support of her RA 9225 petition and the accompanying failure of the BI to satisfactorily explain why they only have photocopies of the said documents. He argues that Vergara's possession of *Identification Certificate No. 06-12955* does not serve as conclusive proof of her compliance with the requirements of RA 9225.

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[65] *Dizon v. Matti, Jr.,* supra.
[66] Supra note 11.
[67] See *Quo Warranto* Petition, *rollo*, p. 73.
[68] Id. at 74.
[69] 400 Phil. 120, 125 (2000).

Petitioner's argument is highly persuasive.

RA 9225 or the *Citizenship Retention and Re-acquisition Act of 2003* which took effect on September 17, 2003 is the law governing the retention and re-acquisition of Philippine citizenship of those who have lost the same through naturalization to a foreign country. Particularly, Section 3 thereof reads:

> Section 3. *Retention of Philippine Citizenship* - Any provision of law to the contrary notwithstanding, natural-born citizens by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:
>
> "I ______________________, solemny 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.

After the enactment of RA 9225, then President Gloria Macapagal Arroyo issued Administrative Order No. 91, S. 2004[70] authorizing the BI to promulgate rules and regulations to implement RA 9225. Section 3 thereof pertinently provides:

> SEC. 3. *Procedure* – Any person desirous of retaining or reacquiring Filipino citizenship pursuant to R. A. No. 9225 shall file his/her application with the Bureau of Immigration if he/she is in the Philippines or the Philippine Foreign Service Posts if he/she is abroad. If his/her application is approved he/she shall take his/her oath of allegiance to the Republic of the Philippines, after which he/she shall deemed to have re-acquired or retained Philippine citizenship.

Accordingly, on November 25, 2005, the BI issued Memorandum Circular No. AAF-05-002[71] entitled *Revised Rules Governing Philippine Citizenship under Republic Act (R.A.) No. 9225 and Administrative Order (A.O.) No. 91, Series of 2004*, (Implementing Rules). The salient provisions of the Implementing Rules are as follows:

> Section 8. *The Oath of Allegiance*. -

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[70] Supra note 9.
[71] Supra note 10.

Applicants under these Rules shall take and be given their Oath of Allegiance to the Republic of the Philippines as follows:

I (name of the applicant), 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.

x x x x

Section 11. *Retention/Reacquisition of Philippine Citizenship.* –

Subject to full compliance with these Rules, **the Oath of Allegiance shall be the final act to retain/reacquire Philippine citizenship.**

In case the applicant is in the Philippines, he may take his Oath of Allegiance before the Commissioner of Immigration or any officer authorized under existing laws to administer oaths. **In the latter case, the applicant shall submit the Oath of Allegiance to the BI to form part of his records.**

x x x x. (Emphasis supplied)

In *Philippine Trust Company v. Hon. Court of Appeals*[72] this Court ruled that:

"Public records made in the performance of a duty by a public officer" include those specified as public documents under Section 19(a), Rule 132 of the Rules of Court and the acknowledgement, affirmation or oath, or jurat portion of public documents under Section 19(c).

Conformably with the foregoing, it is undisputed that in this case, the documents submitted by Vergara in support of her RA 9225 petition, e.g., the November 28, 2006 BI *Memorandum* recommending approval of Vergara's RA 9225 petition, November 30, 2006 BI *Order* granting Vergara's RA 9225 petition, *Identification Certificate No. 06-12955* and *Oath of Allegiance*, are all public documents as they are written official acts of public officers under Section 19 (a) of the Revised Rules of Court, or acknowledged before a notary public under Section 19 (b) of the same rule. As such, they form part of the public records.

In this connection, Rule 132 of the Rules of Court provides for the effect of public documents as evidence and the manner of proof for public documents, *viz.*:

[72] 650 Phil. 54, 68-69 (2010).

> SEC. 24. *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or **by a copy attested by the officer having the legal custody of the record, or by his deputy**, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.
>
> SEC. 25. *What attestation of copy must state.* — **Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be.** The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court. (Emphasis ours)

As the afore-quoted provisions state, the record of the public documents submitted by Vergara to the BI may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy x x x. Such attestation must state in substance that the copy is a correct copy of the original or a specific part thereof, as the case may be.

In this regard, it is significant to note that in the present case, no official publication of the public record was presented in evidence. Neither was there evidence to prove that the copies of the supporting documents submitted by Vergara were correct copies of the original simply because the original copies thereof are missing or nowhere to be found.

This is strengthened by the testimony of Atty. Arvin Cesar G. Santos, (Atty. Santos), Chief of the BI Legal Division and Chairman of the BI Investigation Committee. During his cross-examination, Atty. Santos admitted that he never saw the original copies of Vergara's supporting documents on file. I quote the pertinent portions of his testimony:

> **ATTY. GARCIA:**
> Q: Was there any instance during the investigation that your committee saw any instance of any original document concerning the 9225 application of Rep. Vergara?
>
> **WITNESS:**
> A: Your Honor...
>
> Q: The IC, let us enumerate one by one. The IC, was it original or was it photocopy?
> A. I believe, it was photocopy.

Q. The Oath of Allegiance? Original…

x x x x

ATTY. GARCIA:
That was the practice in all government offices. You have two (2) copies. You keep the original and you give the other original but as far as the commission or the Immigration Bureau is concerned, no original is on file, as far as the IC is concerned.
Q: The Oath of Allegiance, the Oath of Allegiance is (sic) supposedly submitted by Rep. Vergara and therefore, presumptively, what is (sic) submitted should be original, is that not correct?

HEARING COMMISSIONER:
You required the original?

WITNESS:
A: Yes.

HEARING COMMISSIONER:
You require original.

ATTY. GARCIA:
Q: And therefore, the presumption is, the original should be in the possession of the Bureau of Immigration?
WITNESS:
A: That is correct.

ATTY. GARCIA:
Q: And have you seen during the conduct of your investigation any original Oath of Allegiance on file with the 9225 records?
WITNESS:
A: I don't think so.

Q: So, there is no original, it's a mere photocopy?
A: Yes.[73]

ATTY. GARCIA:
Q: And, therefore, the committee merely relied on whatever document or documents are currently available in the Bureau?
A: Documents and entries into the system.

Q: System, yes and therefore, all of these documents, setting aside the entries, are all photocopies?
A. Yes.

Q: In the conclusion, when the committee arrived at that conclusion, the committee said, well, as far as the first question is concerned, as to whether there was a processing of 9225, am I correct to say, for record purposes, that the

[73] Memorandum for the Petitioner, *rollo*, p. 184.

committee merely used the presumption in law and for record purposes, Mr. witness, sir, would you kindly state, what is that particular presumption?
A: The presumption of regularity.[74]

ATTY. GARCIA:
x x x x
My next question is, as to the second question, which was answered by yours truly which says that we cannot make any conclusion as to whether there was falsification because we have not seen the original. Is that correct?
WITNESS:
A: That's true.

It is plain from the testimony of Atty. Santos that the original attachments in support of Vergara's RA 9225 petition do not exist in the Records Section of the BI. To reiterate, what the Bureau have are mere photocopies of Vergara's supporting documents. Consequently, the BI cannot issue a copy of the said documents with an attestation that the same are correct copies of the original as required by the rules, simply because no originals exist on file.

This is precisely the reason why former Commissioner Geron stated in his first letter dated May 20, 2016 addressed to petitioner that the Bureau could not provide certified true copies of Vergara's RA 9225 dual citizenship documents (*Oath of Allegiance*, the November 28, 2006 Memorandum, the November 30, 2006 Order and *Identification Certificate No. 06-12955)* because upon verification, it was found out that the Bureau's Records Section only has photocopies of the foregoing documents.[75]

Worst, Vergara miserably failed to produce before the lower tribunal even a photocopy of her alleged *Petition for Retention/Reacquisition of Philippine Citizenship.*

In her *Memorandum*[76] before the HRET dated March 1, 2019, Vergara cited the case of *Republic v. Harp*[77] to stress that the last official act of the government which granted *Harp* the rights of a Filipino citizen, was the issuance of the order of recognition as well as the Identification Certificate. Thus, according to Vergara, the issuance of *Identification Certificate No. 06-12955* in her favor is conclusive proof that she complied with the requirements of RA 9225.

Vergara, however missed to point out that in the case of *Harp*, the Court reversed the ruling of the Department of Justice (DOJ) which ordered the deportation of *Harp* on the ground that the pieces of evidence relied upon by

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74 Id. at 184-185.
75 Supra note 20.
76 Id. at 212-248.
77 787 Phil. 33 (2016).

the DOJ were mere photocopies and thus were not enough to make it conclude that *Harp* deceived the DOJ and the BI about his citizenship. The Court held that mere photocopies of the documents were inconclusive evidence to warrant a revocation of the recognition of *Harp's* citizenship. Thus, the Court upheld the citizenship recognition accorded by the Philippines to *Harp.*

I quote the pertinent portion of the ruling in *Harp:*

> A final word. **The Court is compelled to make an observation on the cavalier way by which the BI, the DOJ and the Senate committee handled this matter. The DOJ and the BI relied on inconclusive evidence — in particular, on questionable reports based on photocopied documents — to take away the citizenship of respondent and even justify his deportation.** These acts violate our basic rules on evidences and, more important, the fundamental right of every person to due process.[78] (Emphasis supplied)

In the case of *Harp,* the photocopies relied upon by the DOJ were presented for the purpose of revoking Harp's Philippine citizenship. In the same vein, the photocopies of the documents submitted by Vergara in support of her RA 9225 petition were adduced in evidence to prove that she has complied with the submission of the documentary requirements under RA 9225.

In particular, the BI Investigating Committee simply relied on these photocopies in concluding that the RA 9225 petition of Vergara was duly processed and approved by the BI. Such reliance is misplaced.

As held by the Court in *Harp,* the photocopies of Vergara's supporting documents in this case are not conclusive evidence to prove that she submitted the originals thereof. Neither can we conclude that the issuance of *Identification Certificate No. 06-12955* in favor of Vergara is sufficient proof that she complied with the requirements of RA 9225. We cannot draw a conclusion from that single document (*Identification Certificate No. 06-12955)* considering the highly questionable circumstances under which the same had been issued.

Presumption of regularity in the performance of official duty does not apply favorably to the BI.

In the case at bar, the BI assumed and concluded that Vergara's RA 9225 petition was duly received, processed and approved based on the available records, in particular, the photocopies of Vergara's supporting documents as

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[78] Id. at 55.

well as the record on the data system, and considering the presumption of regularity in the performance of official duties. This was adopted by the HRET when it held that Atty. Santos confirmed that the BI required the submission of the original documents concerning Vergara's RA 9225 application, hence, the presumption that the said original documents are in the possession of the Bureau.[79]

The BI and the HRET are mistaken.

Jurisprudence teaches that the presumption of regularity in the performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty.[80] Further, such presumption is rebuttable by affirmative evidence of irregularity or of any failure to perform a duty. Judicial reliance on the presumption despite any hint of irregularity in the procedures undertaken by the agents of the law will thus be fundamentally unsound because such hint is itself affirmative proof of irregularity.[81]

Here, there is no doubt that there were indications of irregularity on the part of the BI in the processing of Vergara's petition. This is manifest from the conflicting claims of former Commissioner Geron and now Commissioner Morente. It must be recalled that in the May 20, 2016 letter-reply of former Commissioner Geron to Piccio, he stated that the Bureau only has photocopies of Vergara's supporting documents.

However, in his June 2, 2016 letter, former Commissioner Geron divulged that the BI has no record of Vergara's petition for the issuance of Identification Certificate in her favor as well as *Identification Certificate No. 06-12955* allegedly issued to Vergara. On the contrary, Commissioner Morente, in his letter-reply to Vergara dated August 10, 2016, disclosed that Vergara's RA 9225 petition had been duly received, processed and approved by the BI and that she had been issued *Identification Certificate No. 06-12955* pursuant thereto.

These material contradictions and inconsistencies coming from both Commissioners of the Bureau cast serious doubt on the reliability of Commissioner Morente's claim that Vergara's RA 9225 petition was duly processed and approved. Significantly, there is evidence to show that former Commissioner Geron exerted efforts to determine the veracity and existence of Vergara's RA 9225 records in the BI files.

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[79] Supra note 2 at 58.
[80] *People v. Arposeple*, 821 Phil. 340, 369 (2017).
[81] Id.

This can be shown by the Certification[82] dated August 4, 2016 issued by Acting Records Chief Maceda wherein she certified that the Records Section brought the RA 9225 records of Vergara to the Office of former Commissioner Geron on May 16, 2016. In the same Certification, Acting Records Chief Maceda confirmed that Vergara's RA 9225 records brought to the Office of former Commissioner Geron contain[ed] all photocopied documents. This substantiates former Commissioner Geron's May 20, 2016 letter asserting that the BI only has photocopies of Vergara's RA 9225 records.

However, despite the August 4, 2016 Certification of Acting Records Chief Maceda stating that Vergara's records contain mere photocopied documents, Acting Board of Special Inquiry Chief Canta issued another Certification[83] dated November 8, 2016 categorically declaring that Vergara's RA 9225 petition has been duly received, processed and approved by the Bureau on November 30, 2006 and that Vergara has been issued Philippine *Identification Certificate No. 06-12955* pursuant thereto.

According to the HRET, the two Certifications issued by Acting Records Chief Maceda and Acting Board of Special Inquiry Chief Canta together with Commissioner Morente's letter have exposed the falsity of former Commissioner Geron's letters to Piccio.

I do not agree.

To be sure, what these differing certifications and letters have unveiled were serious irregularities in the conduct and processes undertaken inside the Bureau. Thus, it bothers me why the HRET favorably applied the presumption of regularity in the performance of official duty to the concerned BI officials when it is apparent that the proceedings held by the BI regarding the RA 9225 petition of Vergara were marred by irregularities.

To stress, the BI is the government agency mandated to act as repository of Certificates of Oath of Allegiance, Applications for Retention or Reacquisition of Philippine citizenship, supporting documents and other pertinent documents in pursuance with the requirements of the law and its implementing rules and regulations.[84]

In this case, however, the concerned BI officials were unjustifiably remiss in their duties when they failed to present the original documents of Vergara pertaining to her RA 9225 petition, which they claim, had been

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[82] *Rollo*, p. 55.
[83] Id. at 56.
[84] Section 2(c) of AO 91, S. 2004.

submitted to the Bureau. To my mind, this is not a mere hint but is in itself an affirmative proof of irregularity. Thus, the presumption of regularity cannot be applied here because such presumption only works when nothing on the record suggests that there was a deviation from the standard conduct of official duty required by law.

At this juncture, it is worth pointing out that the burden to show that the procedure in the retention of Philippine citizenship were strictly followed lies with the person claiming that he or she has complied with it, for the Court cannot allow a mere presumption of regularity to take precedence over the citizenship requirement of every person seeking public office as provided by no less than the Constitution. To stress, the Constitution specifically requires that a Member of the House of Representatives must be a natural-born citizen of the Philippines.

In the extant case, Vergara miserably failed to prove that she exerted reasonable and diligent efforts in producing the original copies of her supporting documents. Such failure is essentially attributable to her own neglect.

Considering the questionable records of Vergara with the BI and the absence of original documents supporting her RA 9225 petition, it is my conclusion that she has not fully complied with the requirements of RA 9225 and thus did not duly reacquire her Philippine citizenship to qualify her to sit as member of the House of Representatives. Undoubtedly, Vergara, not being a Filipino citizen, lacks the fundamental qualification for the contested office.

While it is true that she won the elections, took her oath and began to discharge the functions of Representative of the Third District of Nueva Ecija, her victory cannot cure the defect of her candidacy. Garnering the most number of votes does not validate the election of a disqualified candidate because the application of the constitutional and statutory provisions on disqualification is not a matter of popularity.[85] Winning the election does not cloak one with the qualifications necessary for the elective position. Therefore, the fact that she was elected by the majority of the electorate is of no moment. As pronounced by the Court in *Limkaichong v. Commission on Elections*,[86] citing *Frivaldo v. Commission on Elections*:[87]

> This Court will not permit the anomaly of a person sitting as provincial governor in this country while owing exclusive allegiance to another country. The fact that he was elected by the people of Sorsogon does not excuse this

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[85] *Lopez v. Comelec*, 581 Phil. 657, 663 (2008).
[86] 601 Phil. 751, 784-785(2009).
[87] 255 Phil. 934, 944-945 (1989).

patent violation of the salutary rule limiting public office and employment only to the citizens of this country. The qualifications prescribed for elective office cannot be erased by the electorate alone. The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this case, that the candidate was qualified. **Obviously, this rule requires strict application when the deficiency is lack of citizenship. If a person seeks to serve in the Republic of the Philippines, he must owe his total loyalty to this country alone, abjuring and renouncing all fealty to any other state.** (Emphasis ours)

The assailed HRET Decision was tainted with grave abuse of discretion.

To tailor-fit the petition as one falling under Rule 65 of the Rules of Court, Piccio imputes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the HRET when it allegedly lifted most if not all of the declarations of Vergara in her *Verified Answer and Memorandum*, and used the same in the assailed *Decision*, without attribution and passed them as its own.

Piccio ventures to conclude that said acts amounted to mosaic plagiarism, a grave abuse of discretion. In support of this allegation, petitioner cited the case of *In the Matter of the Charges of Plagiarism, etc., Against Associate Justice Mariano C. Del Castillo (Associate Justice Del Castillo).*[88]

However, a careful reading of the ruling of the Court in the case of *Associate Justice Del Castillo* reveals that the plagiarism charge against him was dismissed by the Court for lack of merit. In that case, the Court held:

> The Court will not, therefore, consistent with established practice in the Philippines and elsewhere, dare permit the filing of actions to annul the decisions promulgated by its judges or expose them to charges of plagiarism for honest work done.[89]

The pertinent portions of the Dissenting Opinion of Senior Associate Justice Antonio T. Carpio in the case of *Associate Justice Del Castillo*, which petitioner likewise cited, is also worth stressing:

> *b. Copying from Pleadings of Parties*
>
> In writing judicial decisions, the judge may copy passages from the pleadings of the parties with proper attribution to the author of the pleading. **However, the failure to make the proper attribution is not actionable.**

[88] 657 Phil. 11 (2011).
[89] Id. at 43.

> Pleadings are submitted to the court precisely so that the ***pleas***, or the arguments written on the pleadings, are accepted by the judge. **There is an implied offer by the pleader that the judge may make any use of the pleadings in resolving the case.** If the judge accepts the pleader's arguments, he may copy such arguments to expedite the resolution of the case. In writing his decision, the judge does not claim as his own the arguments he adopts from the pleadings of the parties. Besides, the legal arguments in the pleadings are in most cases merely reiterations of judicial precedents, which are Works of the Government.
>
> However, misquoting or twisting, with or without attribution, any passage from the pleadings of the parties, **if done to mislead the parties or the public**, is actionable. Under Canon 3 of the Code of Judicial Conduct, a judge "should perform official duties honestly." Rule 3.01 and Rule 3.02 of the Code provide that a judge must be faithful to the law, maintain professional competence, and strive diligently to ascertain the facts and the applicable law.[90]

In the case at bar, I do not find any misquoting or twisting of passage from Vergara's pleading, much more done to mislead the parties or the public. To reiterate, the failure to make proper attribution to the author of the pleading is not actionable because there is an implied offer by the pleader that the Judge may make any use of the pleadings in resolving the case. Thus, I do not subscribe to petitioner's asseveration that the same is grave abuse of discretion.

Be that as it may, I find that the respondent tribunal acted with grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its questioned Decision and Resolution for reasons stated above.

I find the HRET's dismissive approach to the apparent absence of Vergara's original supporting documents and the discovered irregularities in the BI unacceptable. The documentary and testimonial evidence only point to one thing, no original copies of Vergara's RA 9225 petition exist in the Bureau's files. However, the HRET took these indicators very lightly and simply concluded that they do not conclusively prove that Vergara did not submit the same to the BI.

Verily, the respondent tribunal arbitrarily ignored the facts and circumstances pointing to the conclusion that Vergara failed to comply with the requirements of RA 9225. It also disregarded the rules of evidence by giving due credence to mere photocopies of Vergara's RA 9225 supporting documents. Worse, it erroneously relied upon the presumption of regularity in the performance of official duty despite the discovered irregularities in the processing of Vergara's RA 9225 petition.

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[90] Id. at 87-88.

In *David v. Senate Electoral Tribunal*,[91] the Court made the following pronouncement:

> There is grave abuse of discretion when a constitutional organ such as the Senate Electoral Tribunal or the Commission on Elections, makes manifestly gross errors in its factual inferences such that critical pieces of evidence, which have been nevertheless properly introduced by a party, or admitted, or which were the subject of stipulation, are ignored or not accounted for.

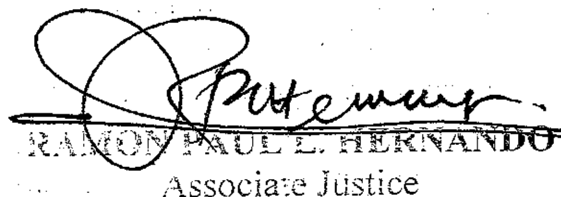
Moreover, the importance of determining whether Vergara had complied with the requirements of RA 9225 cannot be overemphasized. More than the perceived irregularities in the processing of Vergara's RA 9225 petition, it must be stressed that the controversy involves no less than a determination of whether she met the citizenship requirement for membership in the House of Representatives, as prescribed by the Constitution.

It is indubitably a matter of great public interest and concern to determine whether or not Vergara is qualified to hold so important and high public office which is specifically reserved by the Constitution only to natural-born Filipino citizens. Thus, the Court, in this instance, is called to perform a function entrusted and assigned to it by the Constitution of interpreting the law and the Constitution with finality.

In short, to allow a person, not a natural-born Filipino citizen, to continue to sit as a Member of the House of Representatives is grave abuse of discretion amounting to lack or excess of jurisdiction which requires the exercise by this Court of its power of judicial review.

In fine, I hold that the assailed HRET Decision dated May 23, 2019 and Resolution dated June 27, 2019 in HRET Case No. 16-025 (QW) are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

ACCORDINGLY, I vote for the **GRANT** of the Petition for *Certiorari* and the **REVERSAL** and **SETTING ASIDE** of the May 23, 2019 Decision of the House of Representatives Electoral Tribunal in HRET Case No. 16-025 (QW).



RAMON PAUL L. HERNANDO
Associate Justice

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[91] Supra note 56.