Sworn Elsewhere

De la Espriella's US Oath and Colombia's Constitution

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On 7 August, Colombia's president-elect, Abelardo de la Espriella, takes office amid a turbulent transition. The outgoing president, Gustavo Petro, rejects the result and alleges electoral fraud, and an electoral-nullity action against the election is now before the Council of State. De la Espriella will swear to keep faith with the Constitution and take command of the armed forces. Yet he has already sworn, in an oath that remains formally operative, to renounce all allegiance to every other sovereign and to bear arms for the United States. Constitutions that make dual nationality an individual right seldom pause to ask what that right means for the one office meant to personify the sovereignty of the people. Colombia can no longer avoid the question.

De la Espriella holds three nationalities: Colombian by birth, Italian by descent, and United States citizenship, acquired by naturalisation in 2023 and celebrated publicly at the time. Dual nationality does not disqualify a candidate from the Colombian presidency. I argue that the Constitution, read as a coherent whole, nonetheless requires of the president an undivided allegiance that he cannot now provide.

A Settled Question and an Unsettled One

The eligibility question is settled. Article 191 of the 1991 Constitution requires only that the president be Colombian by birth, a citizen in exercise, and over thirty. Article 96 makes multiple nationality a right: a natural-born Colombian cannot be deprived of nationality, and nationality is not lost by acquiring another. In *Sentencia* C-151 of 1997, the Constitutional Court held that where the Constitution itself fixes the conditions for an office, the legislature may not add to them, and may not disqualify a natural-born Colombian for holding a second nationality. On that basis, the electoral authority rejected petitions to revoke his registration, the Council of State dismissed a challenge to his candidacy on procedural grounds, and the Bogotá Superior Tribunal turned away a tutela framed in eligibility terms. There is no *inhabilidad*.

What those bodies did not resolve is a distinct claim advanced in a public letter signed by former presidents and magistrates of Colombia's high courts and the Special Jurisdiction for Peace. The letter was careful on a point the subsequent debate blurred: Italian nationality raises no legal difficulty, because it carries no obligations towards Italy incompatible with the presidential function. US citizenship is different, because the naturalisation oath imposes obligations of a qualitatively distinct kind. To acquire it, the applicant must abjure all prior allegiance and undertake to bear arms for the United States. The argument concerns not *inhabilidad* but *incompatibilidad*: not whether de la Espriella may be elected, but whether he may exercise the presidency while bound by that oath. An *inhabilidad* prevents election and can void it; an incompatibility concerns whether an office may be held concurrently with some other status or duty. The Constitutional Court said nothing about incompatibility in C-151/1997, where it considered the disqualifications a closed list – because incompatibility belongs to a separate legal category.

However, as established in *Sentencia* C-147 of 1998 and the Council of State's subsequent consolidation, *inhabilidades* and *incompatibilidades* must be established expressly and exhaustively in the Constitution or the law, and interpreted restrictively, never extended by analogy. The Court has grounded that rule in the equal right of access to public office and in the principle *pro libertate*. Thirteen former magistrates who took the opposite view from the first group deploy

exactly this principle: because no text expressly bars a dual national holding US citizenship from the presidency, no such bar can be inferred. However, this objection does not dispose of the incompatibility claim, because that claim does not rest on the analogical extension of a disqualification norm. As we will see, it rests on a systemic reading of principles already in the text, Articles 3, 4, 189 and 192 taken together.

The Oath as a Sovereignty Problem

Article 189 vests the president with the power to direct the nation's international relations, negotiate its treaties, and command its armed forces as supreme commander. On taking office, the president swears, under Article 192, to keep faith with the Constitution and laws of Colombia. Article 3 locates sovereignty exclusively in the Colombian people, and Article 4 establishes the Constitution as the supreme norm to which all persons and public powers are subject. Read as a whole, they place at the apex of the state a single person who personifies Colombian sovereignty and must answer to it alone. The incompatibility argument is that this same person has already pledged to subordinate all prior allegiances to the United States: the one foreign power with which a Colombian president must constantly negotiate, and whose public support, as this election showed, can shape Colombian democratic outcomes. During the campaign, US President Donald Trump publicly endorsed de la Espriella and warned that a defeat would cost Colombia the support of its most important partner, prompting Democratic members of the US Congress to condemn the intervention as an affront to Colombian sovereignty and turning the runoff into a closely watched test for Colombian democracy.

The oath is largely inert as a matter of positive law. It is codified at 8 U.S.C. § 1448(a) and set out verbatim at 8 CFR § 337.1(a). It reads:

> *"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; … that I will bear arms on behalf of the United States when required by the law."*

The United States has recognised dual nationality since *Afroyim v. Rusk* (1967) and does not treat the renunciation clause as extinguishing other citizenships; Colombia, under Article 96, cannot strip a natural-born national of nationality, whatever that person has sworn abroad. The renunciation is a speech act with little operative effect in either system. Yet it remains the core of the objection, which points to a constitutional question of a different order: whether the foundational principles of the 1991 Constitution can accommodate a head of state who has made a public, solemn and still-operative pledge of loyalty to another sovereign. The Constitution contains no mechanism that converts this oath into a disqualification or requires its renunciation before the presidential oath of office. Read in isolation, that gap looks like a permissive silence. Read against Articles 3, 4 and 192, it looks more like an omission, and one the Constitutional Court's own interpretive method, which reads the Constitution as a systemic whole rather than provision by provision, is well equipped to address.

What Colombia Already Decided for Everyone Else

Colombian constitutional law already treats undivided allegiance as a value the Constitution protects, though so far only below the presidency. In *Sentencia* C-601 of 2015, the Constitutional Court upheld a statutory bar preventing dual nationals from entering the diplomatic and consular career. Exclusive loyalty and fidelity to the Colombian state, the Court reasoned, is an essential principle of foreign representation; an official who owes obedience to another state's laws sees that representation "limited" and losing "firmness and solidity" (my translation), and the Court linked divided allegiance to the Penal Code's offence of diplomatic treason.

To be sure, that decision does not resolve the president's case, and the duty set out above does not rest on it. Yet the decision confirms that the Court already recognises and enforces undivided allegiance in the conduct of foreign affairs. Because the Constitution sets out the presidency's requirements exhaustively,

the filter the legislature may impose on a junior consular officer cannot be imposed by statute on the head of state who directs foreign policy and commands the armed forces. The office where divided allegiance matters most is the one most firmly shielded from any statutory loyalty test, which is why the question can be answered only by reading the Constitution itself.

Who Guards the Oath

The electoral authority rules on eligibility but does not guard the Constitution, and the Council of State declined the pre-election challenge on procedural grounds rather than on the merits. In July, a former magistrate of the electoral authority filed an electoral-nullity action before the Fifth Section of the Council of State, whose first ground is not dual nationality as such but the commitments of loyalty assumed in swearing fidelity to another state's constitution. The Section admitted it for study on 24 July, a step that does not suspend the election or prejudge the merits. The question is thus now before a court, and before the electoral judge rather than the constitutional one. The Constitutional Court, which could reach it only exceptionally through its discretionary *revisión of tutela* decisions, has never squarely decided the question.

The most authoritative response so far comes from Susana Buitrago Valencia, a former president of the Fifth Section, who observed in an interview that dual nationality is no ground of nullity, and that an incompatibility arising in office would be met by the president recusing himself from the particular decision rather than by losing the office. That is correct as a matter of electoral law, but inadequate as constitutional doctrine. Recusal presupposes a discrete conflict, identifiable in advance and severable from the rest of the office. The loyalty in question runs through directing foreign policy and commanding the army – not a decision he could step back from, but the job itself.

So far, practice has filled the legal gap. Colombian foreign ministers who dealt directly with the United States, among them Carolina Barco and Luis Gilberto Murillo, renounced their US nationality on taking office. That is not a legal rule but a settled political expectation, unwritten and judicially unenforced. De la Espriella could renounce at any time, as the convention itself demonstrates. So far, he has not – and the institutions have not made him.

Comparative Choices

By contrast, Article 227 of the Venezuelan Constitution resolves the question in plain text: the president must be Venezuelan by birth and hold no other nationality. Ecuador's 2008 Constitution took the other path, requiring in Article 142 only that the president be Ecuadorian by birth, a category that under *ius sanguinis* includes those born abroad to Ecuadorian parents.

Ecuador has therefore already run the experiment Colombia is now entering. Its current president, Daniel Noboa, was born in Miami to Ecuadorian parents and holds US citizenship, yet no court there has been asked whether that is compatible with the presidency. His alignment with Washington played out as politics instead. A close ally of the Trump administration, Noboa campaigned to lift the ban on foreign military bases that the 2008 Constitution adopted as a guarantee of sovereignty under Rafael Correa, who had refused to renew the United States lease at Manta. Voters rejected the proposal in a referendum in November 2025. The concern surfaced, but the Constitution gave no institution the power to adjudicate it. Between an explicit textual bar in Venezuela and entrenched silence in Ecuador, Colombia has drifted toward the second.

Conclusion

As a matter of electoral law, de la Espriella's election stands. But electoral validity is not constitutional clarity. The 1991 Constitution rests on the exclusive sovereignty of the Colombian people, the supremacy of its own norms, and a presidential oath of unconditional fidelity. It has now put the command of the armed forces and the direction of foreign policy in the hands of a man who, in an oath still in force, has already pledged to subordinate every prior allegiance to a foreign power. Whether that can be reconciled with Articles 3, 4, 189 and 192 is a question of consti-

tutional interpretation, not political preference, and Colombia's institutions are poorly arranged to answer it. The claim now sits with the electoral judge, who works from a closed list of disqualifications that does not include it. The Constitutional Court, whose *bloque de constitucionalidad* method is built for this kind of systemic reading, has no direct route to the question: it does not hear election challenges, and without a statute to review, it has no abstract-review route either. That mismatch is the constitutional problem. And the longer it goes unaddressed, the more the silence starts to look like an answer – to a question the constituent power itself never actually decided.

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