EN BANC

G.R. No. 237428 - REPUBLIC OF THE PHILIPPINES, represented by SOLICITOR GENERAL JOSE C. CALIDA, *petitioner*, ***versus*** **HON. CHIEF JUSTICE MARIA LOURDES P. A. SERENO,** *respondent.*

Promulgated:

May 11, 2018

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DISSENTING OPINION

CAGUIOA, *J.*:

"Integrity is the ability to stand by an idea."
- Ayn Rand, *The Fountainhead*

This *quo warranto* petition is brought before the Court purportedly to test the integrity of the Chief Justice. However, what it really tests is the integrity of the Court — its ability to stand by an idea. The idea is simple, clearly stated in the Constitution, and consistently upheld by the Court in its jurisprudence before today: impeachable officers, by express constitutional command, may only be removed from office by impeachment. By ousting the Chief Justice through the expediency of holding that the Chief Justice failed this "test" of integrity, it is actually the Court that fails.

The petitioner Solicitor General describes this new and creative mode of removing an impeachable officer as the "road less travelled by." But there is a reason why it has never been taken — it is not a sanctioned road. Refusing to see the impassability of this "road," the Solicitor General forges on, equivocating between grounds of impeachment and grounds for questioning eligibility for appointment, between the appropriate mode to question and the effects of non-submission of the Sworn Statement of Assets, Liabilities and Net Worth (SALN) to the Judicial and Bar Council (JBC) during the application process for appointments in the Judiciary and the non-filing of SALN punishable under Republic Act (R.A.) No. 6713. He attempts to sidestep the unconstitutionality of the consequent ouster he prays for in this *quo warranto* proceeding by drawing a false dichotomy between acts done prior to appointment as against acts done during the holding of office.

Contrary to the decision reached by the majority, it is my view that the *quo warranto* must fail for the following reasons:

1. *Quo warranto*, except only as explicitly allowed by the Constitution to be filed against the President or Vice President

under the rules promulgated by the Presidential Electoral Tribunal (PET), is not available as a mode of removal from office for impeachable officers by the clear command of Article XI, Section 2 of the Constitution;

2. Even assuming that *quo warranto* is available, the alleged non-submission or incomplete submission of SALN to the JBC is not a valid ground to question the eligibility of the respondent, the SALN not being a constitutional requirement for the position of Chief Justice.

3. Even assuming that *quo warranto* is available, and that the non-submission or incomplete submission of the SALN to the JBC can somehow be raised to a level of a constitutional requirement, the one-year prescriptive period for the filing of *quo warranto* lapsed one year after the appointment of or assumption of office by the respondent as Chief Justice in 2012;

4. Even assuming again, that the non-submission or incomplete submission of the SALN to the JBC is a ground to disqualify the respondent from being placed in the short list, the records show that the JBC considered the submissions of the respondent Chief Justice as substantial compliance. Any defect in the exercise of discretion by the JBC should have been assailed via *certiorari*, prior to the respondent's appointment. This was not done and can no longer be done through this *quo warranto* petition.

5. Even assuming again, that the non-filing of the SALN under R.A. No. 6713 may lead to the removal from office of an impeachable officer, it cannot be done by *quo warranto*, but through the procedure in Section 11 of R.A. No. 6713.

6. And finally, even assuming that *quo warranto* is available to remove an impeachable officer for violation of R.A. No. 6713 separate from the procedure provided in that law, the Solicitor General failed to prove the non-filing of SALN by the respondent — the evidentiary value of the Certifications from the University of the Philippines Human Resources Development Office (UP HRDO) and the Office of the Ombudsman having been destroyed by the discovery of other SALNs filed that were not found in the custodian's possession.

Contrary to what has been bandied about, this case does **not** present any novel legal or constitutional question. This is **not** a case of first impression. This case is nothing more than cheap trickery couched as some gaudy innovation. Thus, in disposing of this case, it does not take a lot to state plainly the truth; it takes infinitely more effort to hide and bury it.

Save for quo warranto which may be filed against the President and Vice-President, impeachment is the only mode of removal for impeachable officers.

The concept of impeachment was first introduced in the Philippines through the 1935 Constitution.[1] The adoption of impeachment as a method of removing public officers from service was "inspired by existing practice both in the federal and in the state governments of the United States."[2]

As approved, Article IX of the 1935 Constitution read:

> SECTION 1. The President, the Vice-President, the Justices of the Supreme Court, and the Auditor General, shall be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, or other high crimes.
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> SECTION 2. The Commission on Impeachment of the National Assembly, by a vote of two-thirds of its Members, shall have the sole power of impeachment.
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> SECTION 3. The National Assembly shall have the sole power to try all impeachments. When sitting for that purpose the Members shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of three-fourths of all the Members who do not belong to the Commission on Impeachment.
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> SECTION 4. Judgment in cases of impeachment shall not extend further then to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the Government of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment, according to law.

While the impeachment provisions found in the 1935 Constitution rest on American foundations, the material changes made by its framers resulted in an impeachment mechanism bound by *stricter* standards than its American counterpart, in view of the following features: (i) a narrower base (due to its applicability only to the "highest constitutional officers"[3]); (ii) a wider scope (due to the expansion of grounds upon which removal by impeachment may be based); and (iii) a higher threshold for conviction.

Esteemed Constitutionalist Fr. Joaquin G. Bernas explains the significance behind these stricter standards, thus:

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1 II Jose M. Aruego, *The Framing of the Philippine Constitution* 587 (1937).

2 Id.

3 I Joaquin G. Bernas, *The (Revised) 1973 Philippine Constitution, Notes and Cases* 892 (1983).

> Coming now to the provisions of our Constitution regarding impeachment, it will be noted that they differ from the U.S. Constitution in three material respects. Firstly, instead of rendering every civil officer liable to impeachment, our Constitution limits the number of impeachable officials to the President, Vice-President, Justices of the Supreme Court, the Auditor General, and members of the Commission on Elections. In other words, whereas in the United States even the most subordinate civil officer is subject to impeachment, here only the highest constitutional officials of the different departments of the government (except the legislative) are removable by impeachment. Secondly, instead of "treason, bribery, or other high crimes and misdemeanors" being the grounds for impeachment, our Constitution makes "culpable violation of the Constitution, treason, bribery, or other high crimes" the ground[s] for impeachment. x x x Thirdly, instead of a majority vote being sufficient for the House to impeach and a two-thirds vote for the Senate, to convict, in our Constitution, a two-thirds of the House is required for impeachment and a three-fourths of the Senate to convict.
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> The three points of difference between our Constitution and the U.S. Constitution, just pointed out, are of great significance. **It is plain and evident that the intention of the framers of our Constitution was to impress upon the members of our Congress the gravity of their responsibility for initiating and trying an impeachment and the necessity of proceeding slowly and with the utmost caution in the filing of impeachment charges, considering that the impeachable officials occupy the highest constitutional positions in the land. It is likewise plain and evident that the framers of our Constitution wanted to discourage the filing of impeachment charges inspired solely by personal or partisan considerations, considering the two-thirds vote required for the House to impeach and the three-fourths vote of the Senate to convict.**[4] (Emphasis supplied)

The impeachment provisions under the 1935 Constitution were substantially re-adopted under the 1973 Constitution, save for the addition of graft and corruption as grounds for impeachment, and the consolidation of the power to initiate and try impeachment cases in favor of a single legislative body, that is, the National Assembly.[5]

Subsequently, the 1973 impeachment provisions were carried over to the present Constitution, with the addition of betrayal of public trust as another ground, and the restructuring of the impeachment process to facilitate the allocation of impeachment powers to a bicameral legislature.[6]

While proposals to transfer the "powers of impeachment trial"[7] from the legislature to the judiciary had been put forth by Commissioner Felicitas S. Aquino during the 1986 Constitutional deliberations, the body ultimately rejected said proposal by a vote of 25-13.[8]

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4 I Joaquin G. Bernas, id.

5 I Joaquin G. Bernas, id. at 889.

6 See 1987 CONSTITUTION, Art. XI, Secs. 2 and 3.

7 As distinguished from the power to initiate the impeachment process through the formulation of the impeachment articles. See II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 353-354, 371-372 (1986).

8 Id. at 372.

Hence, at present, the provisions governing impeachment under the 1987 Constitution state:

> Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.
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> Section 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.
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> (2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution or endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.
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> (3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.
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> (4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.
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> (5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.
>
> (6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.
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> (7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment, according to law.
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> (8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.[9]

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[9] 1987 CONSTITUTION, Art. XI, Secs. 2 and 3.

The *ponencia* holds that Article XI of the 1987 Constitution permits the removal of impeachable officers through modes *other than* impeachment, on the basis of the following premises:

1. Pursuant to the Presidential Electoral Tribunal (PET) Rules, the eligibility of the President and Vice-President, both of whom are impeachable officers, may be questioned through a petition for *quo warranto*, thereby negating the notion of exclusivity;

2. Section 2, Article XI permits resort to alternative modes of removal, as implied by the use of the word "may" in reference to the impeachment mechanism; and

3. Jurisprudence permits cognizance of *quo warranto* petitions filed against impeachable officers.

As will be discussed henceforth, the foregoing premises, and the conclusion which they purportedly support, are grossly erroneous.

Quo warranto challenging the election, returns, and qualifications of the President and Vice-President is explicitly sanctioned by the Constitution.

The *ponencia* exclaims that the allowance of *quo warranto* under the PET Rules negates respondent's assertion that impeachment is the exclusive mode by which she may be removed from office.[10] The *ponencia* explains:

> Even the PET Rules expressly provide for the remedy of either an election protest or a petition for *quo warranto* to question the eligibility of the President and the Vice President, both of whom are impeachable officers. Following respondent's theory that an impeachable officer can be removed only through impeachment means that the President or Vice-President against whom an election protest has been filed can demand for the dismissal of the protest on the ground that it can potentially cause his/her removal from office through a mode other than by impeachment. x x x[11]

This is egregious error.

Lest it be overlooked, the filing of election protests assailing the qualifications of the President and Vice-President is a remedy **explicitly sanctioned by the Constitution itself**, particularly, under Article VII thereof, thus:

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[10] See *ponencia*, p. 57.

[11] Id.

> Section 4. The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date, six years thereafter. The President shall not be eligible for any re-election. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.
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> x x x x
>
> **The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose**. (Emphasis supplied)

The proposition that *quo warranto* is available as against the President and Vice President only because of the express constitutional commitment under Article VII, Section 4 is supported by the basis of the same authorities[12] used by the *ponencia* to say that *quo warranto* is available and has not prescribed:[13]

> §644. Ordinarily it would seem to be a sufficient objection to the exercise of the jurisdiction against a public officer that the case as presented is one in which the court can not give judgment of ouster, even should the relator succeed. Thus, an information [in *quo warranto*] will not be allowed against certain magistrates to compel them to show by what authority they grant licenses within a jurisdiction alleged to pertain to other magistrates, since there can not in such case be judgment of ouster or of seizure in the hands of the crown.
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> x x x x
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> §646a. When, under the constitution of a state, the power to determine the elections, returns and qualifications of members of the legislature is vested exclusively in each house as to its own members, the courts are powerless to entertain jurisdiction in *quo warranto* to determine the title of a member of the legislature. In such case, the constitution having expressly lodged the power of determining such question in another body, the courts cannot assume jurisdiction in *quo warranto*, but will have to leave the question to the tribunal fixed by the constitution. x x x[14] (Citations omitted)

By parity of reasoning, except only for the textual commitment in the Constitution to the PET of the power to determine the qualification of the President and Vice President *via quo warranto* under the PET Rules, the unavailability of *quo warranto* under Rule 66 of the Rules of Court extends to both elective and appointive impeachment officers.

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12 *People v. Bailey*, 30 Cal.App. 581 (1916) and *State of Rhode Island v. Pawtuxet Turnpike Co.*, 8 R.I. 521 (R.I. 1867).

13 *Ponencia*, pp. 75-79.

14 *High*, on Extraordinary Remedies, pp. 600-602.

Time and again, this Court has ruled that the Constitution is to be interpreted as a whole; one mandate should not be given importance over the other except where the primacy of one over the other is clear.[15] Meaning, even as Section 4, Article VII provides an exception to Section 2, Article XI, this exception should not be unduly extended to apply to impeachable officers *other than* the President and Vice-President. Such exception is specific and narrow, and should not be interpreted in a manner that subverts the entire impeachment mechanism.

The spirit, intent and purpose behind the impeachment provisions remain the same, despite the structural changes implemented since their initial adoption.

According to the *ponencia,* the language employed by Article XI, particularly, Section 2 thereof, permits alternative modes of removing impeachable officers from office,[16] claiming that the use of the phrase "*may* be removed", in contrast with the phrase "*shall* be removed" in its counterpart provisions found in the 1935 and 1973 Constitutions, indicate such intent.

This interpretation is fundamentally flawed as it puts unwarranted primacy on "legal hermeneutics" at the expense of Constitutional intent. As the deliberations indicate, the spirit, intent and purpose behind the impeachment provisions remain the same, despite the structural changes implemented since their initial adoption.

The fact that the word "may" *generally* denotes discretion is well taken; this interpretation proceeds from the word's ordinary usage and meaning. Indeed, the Court has, in several cases,[17] construed "may" as permissive in nature, consistent with the basic principle of statutory interpretation which requires, as a general rule, that words used in law be given their ordinary meaning.[18] Nevertheless, such general principle admits of exceptions, as when "a contrary intent is manifest from the law itself"[19] or, more notably, when the act to which it refers constitutes a public duty or **concerns public interest**.[20]

De Mesa v. Mencias[21] teaches:

> x x x While the ordinary acceptations of [the terms "may" and "shall"] may indeed be resorted to as guides in the ascertainment of the

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15 On the holistic interpretation of the Constitution, see generally *Abas Kida v. Senate of the Philippines,* 675 Phil. 316, 380 (2011).

16 See *ponencia,* p. 50.

17 See generally *Bersabal v. Salvador,* 173 Phil. 379 (1978); *Philippine Consumers Foundation, Inc. v. National Telecommunications Commission,* 216 Phil. 185, 195 (1984); and *Tan v. Securities and Exchange Commission,* 283 Phil. 692, 701 (1992).

18 See generally *Philippine Consumers Foundation, Inc. v. National Telecommunications Commission,* id. at 195.

19 Id.

20 See generally *De Mesa v. Mencias,* 124 Phil. 1187 (1966).

21 Id.

> mandatory or directory character of statutory provisions, **they are in no wise absolute and inflexible criteria in the vast areas of law and equity. Depending upon a consideration of the entire provision, its nature, its object and the consequences that would follow from construing it one way or the other, the convertibility of said terms either as mandatory or permissive is a standard recourse in statutory construction.** Thus, Black is authority for the rule that "**Where the statute provides for the doing of some act which is required by justice or public duty, or where it invests a public body, municipality or public officer with power and authority to take some action which concerns the public interest** or rights of individuals, the permissive language will be construed as mandatory and the execution of the power may be insisted upon as a duty[.]"[22] (Emphasis and underscoring supplied)

To further support this position, the *ponencia* quotes a passage from Burke Shartel's *Federal Judges: Appointment, Supervision, and Removal: Some Possibilities under the Constitution* where the author opines that the "express provision for removal by impeachment ought not to be taken as a tacit prohibition of removal by other methods when there are other adequate reasons to account for this express provision;" and concludes that "logic and sound policy demand that the Congressional power be construed to be a concurrent, not an exclusive, power of removal."[23] According to the *ponencia*, this interesting and valid observation deals with "a parallel provision on impeachment under the U.S. Constitution from which ours was heavily patterned."

While the observation may be valid as to the U.S. formulation of impeachment, it is entirely inapplicable to the Philippine formulation and interpretation of impeachment. To use this as support to say that in the application of the "parallel" impeachment provision in Article XI, Section 2, the power to remove is concurrent between the Legislature through impeachment and the Judiciary through *quo warranto* is downright misleading.

There are indeed parallel provisions relating to impeachment between the Constitution of the United States and ours.[24] However, the scope of the application and the grounds for impeachment are vastly different. This is easily shown when these "parallel" provisions are placed side by side.

Article II, Section 4 of the Constitution of the United States reads:

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22 Id. at 1196-1197.

23 *Ponencia*, pp. 59-60.

24 For example, U.S. CONST. art. I, §2, cl. 5 and Article XI, Section 3(1) of the 1987 Constitution on the sole or exclusive power of the House of Representatives to initiate impeachment; U.S. CONST. art. I, §3, cl. 6, 7 and Article XI, Sections 3(6) and 3(7) of the 1987 Constitution on the sole power of the Senate to try cases of impeachment, the requirement of oath and affirmation upon the Senators, and what may be adjudged in the said cases; U.S. CONST. art. I, §2 and Article VII, Section 19 of the 1987 Constitution excepting cases of impeachment from the power of the President to grant reprieves and pardons.

> The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article XI, Section 2 of the 1987 Constitution reads:

> The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

Obviously, the power to remove by the Legislature under the Constitution of the United States is necessarily construed as a concurrent power because impeachment in the United States covers not only the President, Vice President, and the heads of coordinate departments and constitutional commissions, but all civil officers, such as federal court judges and lesser executive functionaries. Shartel opines that these lesser functionaries, federal court judges in particular, be subject to removal for other offenses or defects. Unlike in the United States, lower court judges in the Philippines may be ordered dismissed by the Court in the exercise of its administrative and disciplinary powers,[25] and lesser executive functionaries are subject to the appointing authority's power of removal and the jurisdiction of the Office of the Ombudsman or the Sandiganbayan, as the case may be. The same considerations by Shartel do not obtain in the impeachment provision that limits itself to the highest public officers of the departments of government. As well, the language of Article XI, Section 2 of the Constitution, supported by the deliberations,[26] cannot admit of the interpretation that the power to remove these impeachable officers is concurrent.

To be sure, the use of Shartel's exposition justifying the removal of federal judges by judicial action on the ground that impeachment is a "limited legislative method for removal" does not find application in our jurisdiction. Contrary to the *ponencia*'s conclusion that the absolute enumeration of "impeachable offenses" cannot be a complete statement of the causes of removal from office, the constitutional deliberations[27] and the contemporaneous interpretation of the Legislature[28] bear out that virtually all offenses serious enough to warrant removal of those key impeachable officers can be grounds for impeachment.

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25 1987 CONSTITUTION, Art. VIII, Sec. 6 and 11.

26 *See* II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 272-274 (1986) on the discussions relating specifically with the language of Art. XI, Sec. 2 vis-à-vis P.D. No. 1606.

27 Id.

28 In the impeachment of former Chief Justice Renato C. Corona, the seven (7) out of eight (8) Articles of Impeachment charged "betrayal of public trust," consistent with the "catch-all" nature of the said ground as deliberated in II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 314-315 (1986).

To stress, the impeachment mechanism had been crafted and incorporated into the 1935, 1973 and 1987 Constitutions to strengthen the independence of the highest constitutional officers[29] by freeing them from political pressure.[30] **Accordingly, these provisions should be interpreted in a manner that serves the policy considerations for which they have been adopted.** To my mind, these policy considerations are crystal clear, and are too striking to either be ignored or concealed under the cloak of legal hermeneutics.

Quo warranto cannot proceed against a member of the Supreme Court.

The *ponencia* draws a distinction between impeachment and *quo warranto,* by respectively characterizing them as political and judicial nature.[31] Proceeding therefrom, the *ponencia* concludes that both may proceed independently and simultaneously in order to cause the removal of the respondent, who, in turn, is a sitting member of the Supreme Court.[32]

With due respect, I completely disagree — for reasons grounded upon the principle of separation of powers.

A. The Court's action on the Petition erodes judicial independence, and encroaches upon the legislature's impeachment powers.

The origin, textual history and structure of the impeachment provisions inevitably lead to the conclusion that impeachment is the exclusive mechanism for the removal of incumbent members of the Supreme Court.

This intention is easily discernable from the constitutional deliberations:

> MR. REGALADO. I propose to add in Section 2 as a last sentence thereof as already amended the following: ALL OTHER PUBLIC OFFICERS AND EMPLOYEES MAY BE REMOVED FROM OFFICE AS PROVIDED BY LAW BUT NOT BY IMPEACHMENT. The reason

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29 I Joaquin G. Bernas, supra note 3.

30 See II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 267 (1986). During the Sponsorship Speech of Commissioner Colayco, he explained the rationale of the inclusion of the Ombudsman among the list of officers removable only by impeachment, thus:

> To give the Ombudsman stature and a certain clout, we are proposing that he be given the status, the role or the rank of a chairman of a constitutional commission, as well as the same salary. If we are going to create an office which will have a lower rank than this, not even an ordinary employee of the government will bother to obey him. Second, to free him from political pressure, the Ombudsman cannot be removed except by impeachment. We hope that with the help of this body, we will receive better and more practical ideas. But we certainly appeal to the Members not to fail our people.

31 See *ponencia,* pp. 47-50.

32 See id. at 50-52.

for the amendment is this: While Section 2 enumerates the impeachable officers, there is nothing that will prevent the legislature as it stands now from providing also that other officers not enumerated therein shall also be removable only by impeachment, and that has already happened.

Under Section 1 of P.D. No. 1606, the Sandiganbayan Decree, justices of the Sandiganbayan may be removed only by impeachment, unlike their counterparts in the then Court of Appeals. **They are, therefore, a privileged class on the level of the Supreme Court**. In the Committee on Constitutional Commissions and Agencies, there are many commissions which are sought to be constitutionalized — if I may use the phrase — and the end result would be that if they are constitutional commissions, the commissioners there could also be removed only by impeachment. What is there to prevent the Congress later — because of the lack of this sentence that I am seeking to add — from providing that officials of certain offices, although non-constitutional, cannot also be removed except by impeachment?

x x x x

MR. MONSOD. Mr. Presiding Officer, the Committee is willing to accept the amendment of Commissioner Regalado.

x x x x

THE PRESIDING OFFICER (Mr. Treñas). x x x Is there any objection? (*Silence*) The Chair hears none; the amendment is approved.[33]

x x x x

MR. DAVIDE. x x x

On lines 13 and 14, I move for the deletion of the words "and the Ombudsman." **The Ombudsman should not be placed on the level of the President and the Vice-President, the members of the judiciary and the members of the Constitutional Commissions in the matter of removal from office.**

MR. MONSOD. Madam President.

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD. We regret we cannot accept the amendment because we feel that the Ombudsman is at least on the same level as the Constitutional Commissioners and this is one way of insulating it from politics.

MR. DAVIDE. **Madam President, to make the members of the Ombudsman removable only by impeachment would be to enshrine and install an officer whose functions are not as delicate as the others whom we wanted to protect from immediate removal by way of an impeachment.**

MR. MONSOD. We feel that an officer in the Ombudsman, if he does his work well, could be stepping on a lot of toes. We would really

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[33] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 356-357 (1986).

prefer to keep him there but we would like the body to vote on it, although I would like to ask if we still have a quorum, Madam President.

THE PRESIDENT. Do we have a quorum? x x x

x x x x

THE PRESIDENT. We have a quorum.

MR. MONSOD. May we restate the proposed amendment for the benefit of those who were not here a few minutes ago.

x x x x

MR. DAVIDE. The proposed amendment of Commissioner Rodrigo was the total deletion of the office of the Ombudsman and all sections relating to it. It was rejected by the body and, therefore, we can have individual amendments now on the particular sections.

THE PRESIDENT. **The purpose of the amendment of Commissioner Davide is not just to include the Ombudsman among those officials who have to be removed from office only on impeachment. Is that right?**

MR. DAVIDE. Yes, Madam President.

x x x x

THE PRESIDENT. We will now vote on the amendment.

x x x x

The results show 10 votes in favor and 14 against; the amendment is lost.[34] (Emphasis and underscoring supplied)

B. This has been the interpretation accorded by the Court to Article XI, Section 2 in extant jurisprudence.

The intent of the framers of the 1987 Constitution, as reflected in the records, had been subsequently recognized and accordingly applied in *Cuenco v. Fernan*[35] *(Cuenco),* where the Court *en banc* unanimously[36] resolved to dismiss the disbarment case filed against then Associate Justice Marcelo B. Fernan (Justice Fernan):

There is another reason why the complaint for disbarment here must be dismissed. Members of the Supreme Court must, under Article VIII (7) (1) of the Constitution, be members of the Philippine Bar and may be removed from office only by impeachment (Article XI [2], Constitution).

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34 Id. at 305.

35 241 Phil. 816 (1988).

36 With Chief Justice Teehankee, and Associate Justices Yap, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento and Cortes concurring. Associate Justices Fernan and Griño-Aquino did not participate in the deliberations, and took no part.

> **To grant a complaint for disbarment of a Member of the Court during the Member's incumbency, would in effect be to circumvent and hence to run afoul of the constitutional mandate that Members of the Court may be removed from office only by impeachment for and conviction of certain offenses listed in Article XI (2) of the Constitution.** x x x[37]
> (Emphasis and underscoring supplied)

The Court subsequently echoed its unequivocal pronouncements in *Cuenco* in *In re: Gonzalez*[38] concerning the same disbarment charges. Expounding further, the Court held:

> It is important to underscore the rule of constitutional law here involved. This principle may be succinctly formulated in the following terms: A public officer who under the Constitution is required to be a Member of the Philippine Bar as a qualification for the office held by him and who may be removed from office **only by impeachment**, cannot be charged with disbarment during the incumbency of such public officer. Further, such public officer, during his incumbency, cannot be charged criminally before the *Sandiganbayan* or any other court with any offense which carries with it the penalty of removal from office, or any penalty service of which would amount to removal from office.
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> This is not the first time the Court has had occasion to rule on this matter. In *Lecaroz v. Sandiganbayan*[39] [*Lecaroz*], the Court said:
>
> > "The broad power of the New Constitution vests the respondent court with jurisdiction over 'public officers and employees, including those in government-owned or controlled corporations.' There are exceptions, however, like constitutional officers, particularly those declared to be removed by impeachment. Section 2, Article XIII of the 1973 Constitution x x x
> >
> > **x x x [T]he above provision proscribes removal from office of the aforementioned constitutional officers by any other method; otherwise, to allow a public officer who may be removed solely by impeachment to be charged criminally while holding his office with an offense that carries the penalty of removal from office, would be violative of the clear mandate of the fundamental law.**["]
>
> x x x x
>
> The provisions of the 1973 Constitution we referred to above in *Lecaroz v. Sandiganbayan* are substantially reproduced in Article XI of the 1987 Constitution.
>
> x x x x

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37 *Cuenco v. Fernan*, supra note 35, at 828.
38 243 Phil. 167 (1988).
39 213 Phil. 288, 294 (1999).

> It is important to make clear that the Court is not here saying that its Members or the other constitutional officers we referred to above are entitled to immunity from liability for possibly criminal acts or for alleged violation of the Canons of Judicial Ethics or other supposed misbehaviour. **What the Court is saying is that there is a fundamental procedural requirement that must be observed before such liability may be determined and enforced. A Member of the Supreme Court must first be removed from office *via* the constitutional route of impeachment under Sections 2 and 3 of Article XI of the 1987 Constitution**. Should the tenure of the Supreme Court Justice be thus terminated by impeachment, he may then be held to answer either criminally or administratively (by disbarment proceedings) for any wrong or misbehaviour that may be proven against him in appropriate proceedings.
>
> **The above rule rests on the fundamental principles of judicial independence and separation of powers. The rule is important because judicial independence is important. Without the protection of this rule, Members of the Supreme Court would be vulnerable to all manner of charges which might be brought against them by unsuccessful litigants or their lawyers or by other parties who, for any number of reasons might seek to affect the exercise of judicial authority by the Court.**
>
> It follows from the foregoing that a fiscal or other prosecuting officer should forthwith and *motu proprio* dismiss any charges brought against a Member of this Court. **The remedy of a person with a legitimate grievance is to file impeachment proceedings.**[40] (Emphasis and underscoring supplied)

The *ponencia* finds the Court's pronouncements in *Cuenco, In re: Gonzalez* and *Lecaroz* inapplicable, as these cases do not delve into the validity of an impeachable officer's appointment.[41] The *ponencia* reaches the same conclusion anent the Court's rulings in *Jarque v. Desierto*[42] *(Jarque)* and *Marcoleta v. Borra*[43] *(Marcoleta)*.

Instead, the *ponencia* maintains that "*quo warranto* is the proper legal remedy to determine the right or title to [a] contested public office or to *oust* the holder [of public office] from its enjoyment,"[44] and that this remedy is available even against incumbent members of the Supreme Court.[45] The *ponencia* justifies this Court's assumption of jurisdiction by invoking the Court's power of judicial review under Article VIII, Section 1 of the Constitution. Further, the *ponencia* points to the cases of *Nacionalista Party v. De Vera*[46] (*Nacionalista*) and the consolidated cases of *Estrada v.*

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40 *In re: Gonzalez*, supra note 38, at 169-173.

41 *Ponencia,* p. 56.

42 A.C. No. 4506, December 5, 1995 (Minute Resolution). In *Jarque,* the Court, *via* minute resolution, resolved to dismiss the complaint for disbarment filed against Ombudsman Aniano A. Desierto.

43 601 Phil. 470 (2009). In *Marcoleta,* the Court resolved to dismiss the complaint for disbarment against Commissioners Resureccion Borra and Romeo Brawner of the Commission on Elections.

44 *Ponencia,* p. 50.

45 Id. at 48-49.

46 85 Phil. 126 (1949).

Desierto[47] and *Estrada v. Macapagal-Arroyo,*[48] (*Estrada cases*) as basis to support its assertions.

As stated earlier, I completely disagree.

The *ponencia* itself recognizes that the Court can only assume jurisdiction over a case, and thereby exercise its power of judicial review, "in the presence of all the requisites." Not all the requisites are present in this case as the Court is precisely prohibited by the Constitution from assuming jurisdiction, for the intent was to allow the removal of impeachable officers only through impeachment. Further, the *ponencia* is mistaken in invoking the Court's power of judicial review as there was absolutely no allegation by the petitioner of grave abuse of discretion on any part of the government as regards the respondent's appointment.

As regards the cases cited as basis, while *Lecaroz, Cuenco, In re: Gonzalez, Jarque* and *Marcoleta* involve criminal and administrative actions where the appointment of respondents therein had not been assailed, **the reasons which impelled the Court to dismiss said actions hold true for *all* proceedings which seek to remove those officers who, under the Constitution, may be removed from office *only* by impeachment.**

Verily, the dismissal of the complaints in the afore-cited disbarment cases had been ordered in furtherance of a single fundamental purpose — to protect the impeachable officers involved therein from immediate removal,[49] **pursuant to the explicit mandate enshrined in Article XI of the 1987 Constitution.** The protection afforded by Article XI of the 1987 Constitution applies with equal force and extends to such officers not only in cases of disbarment, but, also, to all other actions which seek their ouster through means *other than* impeachment.

Thus, any ruling which sanctions the removal of a sitting member of the Supreme Court through alternative modes, be it through an administrative proceeding (*i.e.,* disbarment) or a judicial proceeding (*i.e.,* criminal action or *quo warranto),* would, in effect, be unconstitutional.

Notably, the parameters for the removal of impeachable officers set by Article XI had not been called for consideration in the *Nacionalista* and *Estrada cases.* In other words, these cases cannot be relied upon to sanction the removal of an impeachable officer (particularly, an incumbent member of the Court) through means other than impeachment.

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47 406 Phil. 1 (2001).

48 Id.

49 II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 356-357 (1986).

In *Nacionalista,* the Court ruled that a petition for prohibition cannot be resorted to as a substitute for *quo warranto* where the purpose thereof is to assail the validity of an appointment into office.[50] However, nothing in *Nacionalista* upholds the propriety of a *quo warranto* action as a mode of removal of a public officer removable only by impeachment. As well, in the *Estrada cases,* the Court determined, on the basis of "the totality of prior, contemporaneous and posterior facts and circumstantial evidence,"[51] that Joseph Estrada had resigned from office, and had left vacant the position of President at the time Gloria Macapagal-Arroyo took her oath of office. The Court's ruling in the *Estrada cases* did not direct the removal of Joseph Estrada through *quo warranto,* but merely determined that the acts he had performed prior to his physical departure from Malacañang Palace constituted resignation.

To be certain, the grant of *quo warranto* against an incumbent member of the Supreme Court does not find any basis in the laws and jurisprudence cited by the *ponencia.*

C. Impeachment is a process textually committed to the legislature and is beyond the Court's power of review.

By deliberate constitutional design, the power to initiate and try impeachment cases has always been, and still remains, a political process textually committed to the legislature. This constitutional structure is, as stated, fundamentally grounded upon the principle of separation of powers. The purpose behind this intricately designed structure resonates with utmost clarity when considered in connection with the Judiciary and its power of review.

In *Nixon v. United States*[52] *(Nixon)*, the Supreme Court of the United States (SCOTUS) unequivocally ruled that the impeachment of a federal office is not subject to judicial review. In so ruling, SCOTUS emphasized that judicial involvement in the impeachment process would defeat the system of checks and balances, thus:

> The history and contemporary understanding of the impeachment provisions support our reading of the constitutional language. The parties do not offer evidence of a single word in the history of the Constitutional Convention or in contemporary commentary that even alludes to the possibility of judicial review in the context of the impeachment powers. x x x This silence is quite meaningful in light of the several explicit references to the availability of judicial review as a check on the Legislature's power with respect to bills of attainder, ex post facto laws, and statutes. x x x

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50 *Nacionalista,* supra note 46, at 133.
51 *Estrada cases*, supra notes 47 and 48, at 48.
52 506 U.S. 224 (1993).

> The Framers labored over the question of where the impeachment power should lie. x x x Indeed, Madison and the Committee of Detail proposed that the Supreme Court should have the power to determine impeachments. x x x Despite these proposals, the Convention ultimately decided that the Senate would have "the sole Power to Try all Impeachments." x x x According to Alexander Hamilton, the Senate was the "most fit depositary of this important trust" because its members are representatives of the people. x x x The Supreme Court was not the proper body because the Framers "doubted whether the members of that tribunal would, at all times, be endowed with so eminent a portion of fortitude as would be called for in the execution of so difficult a task" or whether the Court "would possess the degree x x x of credit and authority" to carry out its judgment if it conflicted with the accusation brought by the Legislature — the people's representative. x x x In addition, the Framers believed the Court was too small in number: "The awful discretion, which a court of impeachments must necessarily have, to doom to honor or to infamy the most confidential and the most distinguished characters of the community, forbids the commitment of the trust to a small number of persons." x x x
>
> There are two additional reasons why the Judiciary, and the Supreme Court in particular, were not chosen to have any role in impeachments. First, the Framers recognized that most likely there would be two sets of proceedings for individuals who commit impeachable offenses - the impeachment trial and a separate criminal trial. In fact, the Constitution explicitly provides for two separate proceedings. x x x The Framers deliberately separated the two forums to avoid raising the specter of bias and to ensure independent judgments:
>
> x x x x
>
> **Second, judicial review would be inconsistent with the Framers' insistence that our system be one of checks and balances. In our constitutional system, impeachment was designed to be the *only* check on the Judicial Branch by the Legislature**. On the topic of judicial accountability, Hamilton wrote:
>
> > "The precautions for their responsibility are comprised in the article respecting impeachments. They are liable to be impeached for mal-conduct by the house of representatives, and tried by the senate, and if convicted, may be dismissed from office and disqualified for holding any other. *This is the only provision on the point, which is consistent with the necessary independence of the judicial character, and is the only one which we find in our own constitution in respect to our own judges.*"
>
> **Judicial involvement in impeachment proceedings, even if only for purposes of judicial review, is counterintuitive because it would eviscerate the "important constitutional check" placed on the Judiciary by the Framers. x x x Nixon's argument would place final reviewing authority with respect to impeachments in the hands of the same body that the impeachment process is meant to regulate.**[53] (Emphasis and underscoring supplied; citations omitted)

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[53] Id. at 233-235.

The exclusion of the judicial branch from exercising any power in the impeachment process has a two-pronged purpose — it insulates the legislature from judicial encroachment, and, at the same time, ensures the independence of the *individual* members of the Court. **Verily, to permit the Court to exercise its judicial powers to determine the fate of its individual members would expose each to the pressures of conformity at the risk of removal.**

In *Chandler v. Judicial Council,*[54] the Judicial Council of the Tenth Circuit issued an order directing the District Judge of the Western District of Oklahoma to desist in acting in any case then or thereafter pending before his court. The District Judge thus sought the issuance of a writ of prohibition and/or mandamus to stay the Judicial Council's order, alleging, among others, that the order constitutes a usurpation of the impeachment powers vested in Congress. The SCOTUS denied the petition due to the District Judge's failure to exhaust his remedies.

In his dissent, Associate Justice William Douglas (Justice Douglas) expounded on the dangers of such judicial overreach, thus:

> An independent judiciary is one of this Nation's outstanding characteristics. **Once a federal judge is confirmed by the Senate and takes his oath, he is independent of every other judge**. He commonly works with other federal judges who are likewise sovereign. But neither one alone nor any number banded together can act as censor and place sanctions on him. **Under the Constitution the only leverage that can be asserted against him is impeachment, where pursuant to a resolution passed by the House, he is tried by the Senate, sitting as a jury**. x x x Our tradition even bars political impeachments as evidenced by the highly partisan, but unsuccessful, effort to oust Justice Samuel Chase of this Court in 1805. The Impeachment Provision of the Constitution indeed provides for the removal of "Officers of the United States," which includes judges, on "Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."
>
> **What the Judicial Council did when it ordered petitioner to "take no action whatsoever in any case or proceeding now or hereafter pending" in his court was to do what only the Court of Impeachment can do**. If the business of the federal courts needs administrative oversight, the flow of cases can be regulated. Some judges work more slowly than others; some cases may take months while others take hours or days. Matters of this kind may be regulated by the assignment procedure.
>
> But there is no power under our Constitution for one group of federal judges to censor or discipline any federal judge and no power to declare him inefficient and strip him of his power to act as a judge.
>
> The mood of some federal judges is opposed to this view and they are active in attempting to make all federal judges walk in some uniform step. What has happened to petitioner is not a rare instance; it has happened to other federal judges who have had perhaps a more libertarian approach

[54] 398 U.S. 74 (1970).

> to the Bill of Rights than their brethren. The result is that the nonconformist has suffered greatly at the hands of his fellow judges.
>
> x x x x
>
> These are subtle, imponderable factors which other judges should not be allowed to manipulate to further their own concept of the public good. x x x[55] (Emphasis supplied)

The grant of the *quo warranto* effectively sets a judicial precedent through which the dangers tersely identified by Justice Douglas will come to pass. On this point, the *ponencia* further states that:

> At this juncture, it would be apt to dissuade and allay the fear that a ruling on the availability of *quo warranto* would allow the Solicitor General to "wield a sword over our collective heads, over all our individual heads, and on that basis, impair the integrity of the Court as a court."
>
> Such view, while not improbable, betrays a fallacious and cynical view of the competence and professionalism of the Solicitor General and the members of this Court. It presupposes that members of this Court are law offenders. It also proceeds from the premise that the Solicitor General is the Executive's pawn in its perceived quest for a "more friendly" Court. Verily, fear, particularly if unfounded, should not override settled presumptions of good faith and regularity in the performance of official duties. This Court, absent a compelling proof to the contrary, has no basis to doubt the independence and autonomy of the Solicitor General. x x x[56]

If indeed all men, being inherently good, were motivated by the best intentions, and if they only did act with utmost good faith, fidelity and impartiality and uphold the Constitution, then there really would be nothing to be afraid of. In that ideal utopian scenario, this Court itself becomes *functus officio*.

The *ponencia,* however, completely misses the point. The "fear" is not based on the theory that the members of the Court are law offenders, nor is it based on an imputation of malice on the part of the Solicitor General. The *ponencia* misplaced the statement from its proper context. For a better understanding of the "fear" the *ponencia* outrightly dismisses as unfounded, I quote the following exchange from the Oral Arguments:

> **JUSTICE CAGUIOA:**
> Because if we were to follow the theory of the Solicitor General, he would have unfettered discretion.
>
> **ATTY. POBLADOR:**
> Yes.
>
> **JUSTICE CAGUIOA:**
> To file a *quo warranto* suits...

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[55] Id. at 136-137.
[56] *Ponencia*, p. 52.

ATTY. POBLADOR:
Yes, at any time…

JUSTICE CAGUIOA:
At any time because according to him, he is not bound by the one (1) year prescriptive period. So, he can file at any time or anything.

ATTY. POBLADOR:
Yes.

JUSTICE CAGUIOA:
As long as he is able to relate it to the question of integrity.

ATTY. POBLADOR:
Integrity, yes.

JUSTICE CAGUIOA:
So, if one of us had copied from his seatmate in college, and become a sitting Justice of the Supreme Court, he can in fact, be removed or ousted for lack of integrity because he cheated in college. Is that correct?

ATTY. POBLADOR:
Yes, but I would appeal to the discretion of the SolGen probably he will be very selective.

JUSTICE CAGUIOA:
Only if he cheated in law school.

ATTY. POBLADOR:
Well, the SolGen has full discretion. **He can actually say this particular offense impeachable or not affects integrity**. So, probably can make a case against any sitting Judge or any sitting Justice which to me highlights the danger of allowing…

JUSTICE CAGUIOA:
And that's…

ATTY. POBLADOR:
…him to do so….

JUSTICE CAGUIOA:
And that's where I'm coming from. If I follow the theory of the Solicitor General, then, is as if, this Court were to say that *quo warranto* is available then, is as if the Solicitor General **whoever that Solicitor General would be whether it's today, tomorrow, next year, six years from now, *he would have the ability to wield a sword over all our collective heads, over all our individual heads. And on that basis, therefore, impair the integrity of the Court as a Court.*** Do you agree?

ATTY. POBLADOR:
Yes, he can change the make-up of the Court, influence how the Court adopts policy. He can actually control them by selectively removing certain Justices which do not align himself, or align themselves with government policies…[57] (Emphasis, underscoring and italics supplied)

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[57] TSN, Oral Arguments dated April 10, 2018, pp. 198-200.

The "fear" is not founded on the "fallacious and cynical view of the competence and professionalism of the Solicitor General and the members of this Court."[58] As shown by the underscored portion of the quoted exchange, the "fear" is not even based on any imputation of malice or irregularity on the part of the *present* Solicitor General. Rather, the "fear" is based on the dangerous power the *ponencia* grants the *present* and *future* Solicitors General without any constitutional support. With such unfettered power, the balance of powers between the three coordinate departments unconstitutionally shifts, and the independence and stability of the Judiciary is eroded. **This is where the danger lies.**

The Constitution exacts adherence to the principle of separation of powers and the maintenance of the system of checks and balances.

The Constitution is the basic and paramount law to which all other laws must conform and to which all persons must defer.[59] From this cardinal postulate, it follows that the three branches of government must discharge their respective functions within the limits of authority conferred by the Constitution.[60]

The principle of separation of powers is borne out of the allocation of State powers under the Constitution, and precludes one branch from unduly encroaching upon, assuming, or interfering with powers that, under the Constitution, are vested in another.

"The Constitution expressly confers on the [J]udiciary the power to maintain inviolate what it decrees. As the guardian of the Constitution[, the Court] cannot shirk the duty of seeing to it that the officers in each branch of government do not go beyond their constitutionally allocated boundaries[.]"[61] Conversely, the Court is bound to exercise restraint with respect to matters unequivocally committed to a coordinate branch and refuse to act on matters placed beyond the scope of its judicial power.

The present action for *quo warranto* against the respondent constitutes an institutional attack on the Supreme Court, as it enlists the Court's participation in the erosion of its own independence through the circumvention of the very document it has been tasked to uphold. To my mind, the Court's *duty* to exercise restraint has never been so glaring.

Assuming that quo warranto is available, it is time-barred.

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58 *Ponencia*, p. 52.
59 See generally *Bengzon v. Drilon*, 284 Phil. 245, 260 (1992).
60 Id.
61 Id.

The Solicitor General argues that as early as 1901, the action for *quo warranto* has been available to question a person's title to an office, attempting to extend the same to impeachable officers as, in this case, to the Chief Justice. He also claims that the remedy remains available. Moreover, he argues that his right to file the *quo warranto* is imprescriptible on the basis alternatively of the maxim *nullum tempus occurit regis* and Article 1108 of the Civil Code.

Both premises are egregiously wrong.

The provision for *quo warranto* found in the 1901 Code of Civil Procedure[62] provides:

> *SEC. 197. Usurpation of an office or franchise.* — A civil action may be brought in the name of the Government of the Philippine Islands:
>
> 1. Against a person who usurps, intrudes into, or unlawfully holds or exercises a public civil office or a franchise within the Philippine Islands, or an office in a corporation created by the authority of the Government of the Philippine Islands;
>
> 2. Against a public civil officer who does or suffers an act which, by the provisions of law, works a forfeiture of his office;
>
> 3. Against an association of persons who act as a corporation within the Philippine Islands, without being legally incorporated or without lawful authority so to act.

While the provision does allow the filing of a civil action to question a person's title to public office, the passage of the 1935, 1973 and 1987 Constitutions had amended the provisions of *quo warranto* to exclude impeachable officers from its application. Indeed, it is hornbook that the Constitution is read into every law. It thus cannot be said that the provisions of *quo warranto* from the 1901 and 1940 Codes of Civil Procedure and the subsequent Rules of Court have efficacy independent of or contrary to the provisions of the Constitution. As provisions on *quo warranto* had to be harmonized and deemed modified by other existing laws,[63] all the more must it bow to the express constitutional directive of Article XI, Section 2.

Under this novel interpretation of the availability of *quo warranto* under Sections 197 to 216 of the 1901 Code of Civil Procedure as substantially retained in Rule 66 of the present Rules of Civil Procedure, any Solicitor General can assail the title of an impeachable officer, even the President, *via quo warranto*, bypassing the constitutional directive that removal of these officers is possible only by the process of impeachment.

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62 Act No. 190, AN ACT PROVIDING A CODE OF PROCEDURE IN CIVIL ACTIONS AND SPECIAL PROCEEDINGS IN THE PHILIPPINE ISLANDS, August 7, 1901.

63 See *Navarro v. Gimenez*, 10 Phil. 226 (1908).

The error in this interpretation is readily apparent: the Constitution committed to the Legislature the check in the form of removal only through impeachment of the appointive impeachable officers of the Judiciary, the Constitutional Commissions and the Ombudsman.[64] For elective impeachable officers, the President and the Vice President, the Constitution allowed other modes that may lead to removal in the form of election protest and *quo warranto* as allowed by the rules promulgated by the Court *en banc* sitting as the Presidential Electoral Tribunal.[65] Under the *ponencia's* theory, the Executive — nay, a mere agency of the Executive, can cause the removal of an appointive impeachable officer.

Aggravating the stance of the Solicitor General that *quo warranto* is available against appointive impeachable officers, he also claims that the right to file the action is imprescriptible on the basis of Article 1108 of the Civil Code and the maxim of *nullum tempus occurrit regi*. The *ponencia* agrees, in turn citing the cases of *Agcaoili v. Suguitan*[66] *(Agcaoili)*, citing *People ex rel. Moloney v. Pullman's Palace Car Co.*,[67] *State of Rhode Island v. Pawtuxet Turnpike Company*,[68] and *People v. Bailey*[69] *(Bailey)*.[70] At the risk of belaboring the point, these are wrong bases to rely on.

The reliance on *Agcaoili* does not entirely displace the running of prescription in *quo warranto* proceedings. In *Tumulak v. Egay*,[71] on the question of prescription, the Court held:

> And there is good justification for the limitation period: it is not proper that the title to public office should be subjected to continued uncertainty, and the people's interest requires that such right should be determined as speedily as practicable.
>
> Remembering that the period fixed may not be procedural in nature, it is quite possible that some persons will question the validity of the "rule of court" on the point. However, it should be obvious that if we admit the inefficacy of the particular rule of court hereinbefore transcribed, the previous statute on the subject (Act 190, section 216) — equally providing for a one-year term — would automatically come into effect, and we return to where we started: one year has passed.
>
> It is also suggested that according to *Agcaoili vs. Suguitan*, the one-year period does not refer to public officers, but to corporations. In that litigation, it is true that the court, on this particular point, decided by a bare majority, the case for the petitioner on two grounds, namely, (*a*) the one-year period applies only to actions against corporations and not to actions against public officers and (*b*) even if it applied to officers, the period had

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64 1987 CONSTITUTION, Art. XI, Sec. 2.
65 Id., Art. VII, Sec. 4.
66 48 Phil. 676 (1926).
67 175 Ill. 125; 64 L.R.A. 366.
68 Supra note 13.
69 Supra note 13.
70 *Ponencia*, pp. 74-76.
71 82 Phil. 828 (1949).

> not lapsed in view of the particular circumstances. However, upon a reconsideration this Court "modified" the decision "heretofore announced" by limiting it to the second ground.
>
> And thereafter — this is conclusive — this Court, with the concurrence of justices who had signed the original Agcaoili decision, expressly applied the one-year period in a quo warranto contest between two justices of the peace.[72]

As well, while the doctrine of *nullum tempus occurrit regi* ("time does not run against the King")[73] exempts the State from the effects of time limitations placed on private litigants,[74] such exemption is far from absolute. As observed by the United States Supreme Court, limitations (on the applicability of *nullum tempus*) derive their authority from statutes.[75] This is so because the contemporary notion of *nullum tempus* is grounded not on notions of royal privilege, but on considerations of public policy. [76] Consequently, statutes of limitation do not operate against the State **only in the absence of** an express provision on a period within which the State may, or should, bring an action.[77]

Further, the *ponencia* insists that prescription does not lie in the present case as deduced from the very purpose of an action for *quo warranto*, relying on *People v. City of Whittier*[78] (*Whittier*) and *Bailey*.[79] *Whittier,*[80] however, concerned the validity of an attempted annexation of a certain territory in the City of Whittier in the Los Angeles County. On the other hand, while the California Court of Appeals in *Bailey*[81] indeed held that the attorney general may file the information (in the nature of *quo warranto*) on behalf of the people at any time, and that lapse of time constitutes no bar to the proceeding, **the ruling itself recognizes that [*nullum tempus*] would only operate in favor of the State "in the absence of any statutory period of limitation".**[82] This same recognition of the import of *High* as authority for the passage in *Bailey* operates with its use in the case of *State of Rhode Island v. Pawtuxtet Turnpike Company.*[83]

In this regard, even if the discussions on prescription of the cases cited by the *ponencia* are applicable, these are not inconsistent with my conclusion that the *quo warranto* is time-barred. The authority relied upon by those cases, *High* on Extraordinary Remedies, explicitly states:

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72 Id. at 830-831.
73 Black's Law Dictionary 1096 (7th ed. 1999).
74 *United States v. Hoar*, 26 F Cas. 329, 330 (C.C.D. Mass. 1821); see also Mack, Joseph, *Nullum Tempus: Governmental Immunity to Statutes of Limitation, Laches, and Statutes of Repose*, p. 185.
75 *United States v. Thompson*, 98 U.S. 486 (1878).
76 *Guaranty Trust Co. v. United States*, 304 U.S. 126, 132, 58 S. Ct. 785, 788, 82 L. Ed. 1224 (1937)
77 *State v. Cape Giraardeau & Jackson Gravel Road Co.*, 207 Mo. 85, 105 S. W. 761 (1907).
78 *People v. City of Whittier* (1933) 133 Cal. App. 316, 324; 25 Ops. Cal. Atty. Gen. 223 (1955).
79 Supra note 13.
80 Supra note 78.
81 Supra note 13.
82 Id. at 584, citing *High on Extraordinary Legal Remedies, sec. 621.*
83 Supra note 13.

> §621. The information in the nature of a *quo warranto* being in effect a civil remedy, although criminal in form, it is held that a statute of limitations barring proceedings upon the prosecution of indictments or informations under any penal law is not applicable to this form of remedy, and it is not barred by such a statute. **And in the absence of any statutory period of limitation,** it is held in this country that the attorney-general may file in the information in behalf of the people at any time, in conformity with the maxim *nullum tempus occurrit regi*. So when the purpose of the information is to determine a matter of public right, as distinguished from a question of private interest, as when it is brought to test the legal existence of a municipal corporation and the right of its officers to exercise certain corporate powers and functions, the statute of limitations does not apply. **But the state may be barred by its own laches and acquiescence from maintaining the proceeding**, as in a case where it is sought to oust the corporation from the franchise or privilege of occupying certain public funds, in the use of which by the corporation the state has long acquiesced. And when a corporation, such as a railway or turnpike company, has been permitted to exercise its corporate franchises for many year, without objection or question upon the part of the state, such acquiescence has been held as sufficient ground for refusing to entertain an information in *quo warranto* to question the right to exercise such franchise.[84]

For the *quo warranto* imported into this jurisdiction, its earliest iteration in 1901 itself limited the period within which it can be filed:

> SECTION 216. *Limitations*. — Nothing herein contained shall authorize an action against a corporation for forfeiture of charter, unless the same be commenced within five years after the act complained of was done or committed; nor shall an action be brought against an officer to be ousted from his office unless within one year after the cause of such ouster, or the right to hold the office, arose.

This one-year statute of limitation was retained under Section 11 of Rule 66. There being an express provision of law on the period within which to institute a *quo warranto* action, *nullum tempus* does not serve to justify the delay in the filing of the present petition.

As for Article 1108, this is found in Book III of the Civil Code entitled Modes of Acquiring Ownership. The provision reads:

> ART. 1108. Prescription, both acquisitive and extinctive, runs against:
>
> (1) Minors and other incapacitated persons who have parents, guardians or other legal representatives;
>
> (2) Absentees who have administrators, either appointed by them before their disappearance, or appointed by the courts;
>
> (3) Persons living abroad, who have managers or administrators;
>
> (4) Juridical persons, except the State and its subdivisions.

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[84] *High*, on Extraordinary Remedies, p. 577.

> Persons who are disqualified from administering their property have a right to claim damages from their legal representatives whose negligence has been the cause of prescription.

The very placement of Article 1108 in Book III of the Civil Code already signals the extent of the applicability of the provision. Extant jurisprudence fails to yield any support to use Article 1108 outside of cases seeking recovery of ownership of State property.[85] Hence, to apply Article 1108 to the instant case is an unwarranted stretch. Most importantly, the use of Article 1108 as basis to say that the right to file an action for *quo warranto* is imprescriptible conveniently disregards Article 1115 of the same Code which provides:

> ART. 1115. The provisions of the present Title are understood to be without prejudice to what in this Code or in special laws is established with respect to specific cases of prescription.

For *quo warranto*, its earliest iteration in the law itself limited the period within which it can be filed under Section 216 earlier cited. This one-year statute of limitation was retained under Section 11 of Rule 66:

> SEC. 11. *Limitations.* - Nothing contained in this Rule shall be construed to authorize an action against a public officer or employee for his ouster from office unless the same be commenced within one (1) year after the cause of such ouster, or the right of the petitioner to hold such office or position, arose; nor to authorize an action for damages in accordance with the provisions of the next preceding section unless the same be commenced within one (1) year after the entry of the judgment establishing the petitioner's right to the office in question.

Therefore, even on the basis of the foreign jurisprudence cited in the *ponencia*, there is a recognition of prescription running against the State in informations in *quo warranto*. With more reason in this case, when Article 1115 of the Civil Code and Section 11, Rule 66 of the Rules of Court recognize a specific case of prescription for actions of *quo warranto*, and when Article XI, Section 2 of the Constitution signals the non-availability of the remedy.

The one-year period within which *quo warranto* may be filed commences from "the cause of such ouster, or the right of the petitioner to hold such office or position, arose;"[86] the relevant reckoning period is from the cause of the ouster.

Following the theory of the petitioner as rationalized by the *ponencia*, the cause(s) of the ouster of the respondent CJ elevated to the level of lack of

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[85] The case of *Republic v. CA* (253 Phil. 698 [1989]), used by the *ponencia* to support the claim that there can be no defense on the ground of laches or prescription as against the government deals with cancellation of free patent.

[86] RULES OF COURT, Rule 66, Sec. 11.

the constitutional requirement of integrity consist of (1) her alleged failure to file her SALNs during her employment with the UP College of Law, and (2) her failure to submit all SALNs to the JBC when she applied for the position of Chief Justice in 2012. Still following the "upon discovery" theory, however, it should be emphasized that the JBC, the Office of the Ombudsman, and the University of the Philippines under the Executive department would have already been aware, or at the very least, put on notice, of the said failure to file and the subsequent failure to submit to the JBC at the time she submitted her application for the position of Chief Justice. Even to generously apply Section 11 of Rule 66 to consider the reckoning point of the one-year period to be from the time the respondent "usurp[ed], intrude[d] into, or unlawfully h[eld] or execise[d]"[87] the office of the Chief Justice, it would still lead to the same conclusion that the one-year period to file the *quo warranto* commenced from the time the Chief Justice was appointed and took her oath.[88]

Both causes cannot be said to have only been discovered during the hearings before the Committee on Justice of the House of Representatives in order to justify the belated filing of the *quo warranto* action.

Regrettably, the Decision agrees with the petitioner's position, relying upon the use of the word "must" in Section 2[89] of Rule 66.

I disagree. The exercise of the Solicitor General's discretion to file an action for *quo warranto* when he "must" under Section 2 is available only as long as the right of action still exists. Section 11 of Rule 66 is clear that there is no authority to file an action beyond one (1) year after the cause of such ouster, or the right of the petitioner to hold such office, arose. Thus, even if *quo warranto* is available, the Solicitor General's right of action prescribed one year after the appointment of the Chief Justice in 2012.

To extend the pernicious implications of this interpretation, the *quo warranto* may now be used by the Executive, or by the Solicitor General, at his own discretion, to (1) force the removal of impeachable appointive officer appointed during previous administrations so that the sitting Executive can appoint a new person in his or her place; or (2) preempt or countermand the decision of the Legislature in an impeachment proceeding. **This is clearly not in consonance with the constitutional design. I simply cannot believe how**

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87 Id., Sec. 1(a).

88 See *Velicaria-Garafil v. Office of the President*, 760 Phil. 410, 438 (2015) where the Court stated: "Based on prevailing jurisprudence, appointment to a government post is a process that takes several steps to complete. Any valid appointment, including one made under the exception provided in Section 15, Article VII of the 1987 Constitution, must consist of the President signing an appointee's appointment paper to a vacant office, the official transmittal of the appointment paper (preferably through the MRO), receipt of the appointment paper by the appointee, and acceptance of the appointment by the appointee evidenced by his or her oath of office or his or her assumption to office."

89 SEC. 2. *When Solicitor General or public prosecutor must commence action.* – The Solicitor General or a public prosecutor, when directed by the president of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in the preceding section can be established by proof, must commence such action.

the Court can accept this interpretation as being consistent with the Constitution.

The submission of the SALN to the JBC is not a constitutional requirement for the position of the Chief Justice.

Article VIII, Section 7 of the 1987 Constitution provides for the qualifications for members of the Judiciary, particularly of the Supreme Court. The said section states:

> Section 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.
>
> (2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.
>
> (3) A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence.

These qualifications are absolutely exclusive, and no one can add to or lessen these qualifications. In *Social Justice Society v. Dangerous Drugs Board,*[90] where the constitutionality of a law requiring all candidates for public office, both in the national or local government, to undergo a mandatory drug test[91] was assailed, the Court held that the law and the subsequent issuances implementing the same were invalid for adding another layer of qualification to what the 1987 Constitution requires for membership in the Senate. Thus:

> Pimentel's contention is well-taken. Accordingly, Sec. 36(g) of RA 9165 should be, as it is hereby declared as, unconstitutional. It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution. In the discharge of their defined functions, the three departments of government have no choice but to yield obedience to the commands of the Constitution. Whatever limits it imposes must be observed.
>
> Congress' inherent legislative powers, broad as they may be, are subject to certain limitations. As early as 1927, in *Government v. Springer,* the Court has defined, in the abstract, the limits on legislative power in the following wise:

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90 591 Phil. 393 (2008).

91 Section 36(g) of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

> Someone has said that the powers of the legislative department of the Government, like the boundaries of the ocean, are unlimited. In constitutional governments, however, as well as governments acting under delegated authority, the powers of each of the departments x x x are limited and confined within the four walls of the constitution or the charter, and each department can only exercise such powers as are necessarily implied from the given powers. The Constitution is the shore of legislative authority against which the waves of legislative enactment may dash, but over which it cannot leap.

Thus, legislative power remains limited in the sense that it is subject to substantive and constitutional limitations which circumscribe both the exercise of the power itself and the allowable subjects of legislation. The substantive constitutional limitations are chiefly found in the Bill of Rights and other provisions, such as Sec. 3, Art. VI of the Constitution prescribing the qualifications of candidates for senators.

x x x x

Sec. 36(g) of RA 9165, as sought to be implemented by the assailed COMELEC resolution, effectively enlarges the qualification requirements enumerated in the Sec. 3, Art. VI of the Constitution. As couched, said Sec. 36(g) unmistakably requires a candidate for senator to be certified illegal-drug clean, obviously as a pre-condition to the validity of a certificate of candidacy for senator or, with like effect, a condition *sine qua non* to be voted upon and, if proper, be proclaimed as senator-elect. The COMELEC resolution completes the chain with the proviso that "[n]o person elected to any public office shall enter upon the duties of his office until he has undergone mandatory drug test". **Viewed, therefore, in its proper context, Sec. 36(g) of RA 9165 and the implementing COMELEC Resolution add another qualification layer to what the 1987 Constitution, at the minimum, requires for membership in the Senate.** Whether or not the drug-free bar set up under the challenged provision is to be hurdled before or after election is really of no moment, as getting elected would be of little value if one cannot assume office for non-compliance with the drug-testing requirement.

x x x x

It ought to be made abundantly clear, however, that the unconstitutionality of Sec. 36(g) of RA 9165 is rooted on its having infringed the constitutional provision defining the qualification or eligibility requirements for one aspiring to run for and serve as senator.[92] (Emphasis and underscoring supplied)

The case held that the requirements set by the Constitution are absolute, and that no one, not even the Legislature which possesses plenary powers, can add to the same. **By necessary implication, therefore, not even this Court, through the decisions it promulgates, can add to these qualifications.** Thus, the submission of SALNs to the JBC cannot be declared by this Court as a *pre-requisite* to a valid appointment of a Supreme Court Justice.

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[92] *Social Justice Society v. Dangerous Drugs Board,* supra note 90, at 405-408.

Unfortunately, this is what the *ponencia* does despite the exclusivity of these requirements.

For a valid appointment as a Justice of the Supreme Court, the Constitution only requires the applicant to possess the following qualifications: (1) natural-born citizenship; (2) at least forty years old; (3) at least fifteen (15) years of experience in the practice of law; and (4) proven competence, integrity, probity, and independence. Of these four requirements, the first three are easily verifiable for they can be proved without difficulty through documentary evidence, such as a certificate of live birth, and the certificate of admission to the Bar.

On the other hand, the requirement of having "proven competence, integrity, probity, and independence" is not easily quantifiable or measurable. Recognizing this, the Constitution precisely created a separate body to determine what possession of these characteristics entails, and who among several aspirants to a judicial post possesses the same. This Constitutional body tasked to define and ascertain the possession of these characteristics is the JBC.

The creation of the JBC was prompted by the clamor to rid the process of appointments to the Judiciary from political pressure and partisan activities.[93] Seeing the need to create a separate, competent, and independent body to recommend nominees to the President, the members of the Constitutional Commission conceived of a body representative of all the stakeholders in the judicial appointment process and called it the Judicial and Bar Council.[94] Sections 8 and 9, Article VIII of the 1987 Constitution provides that:

> Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.
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> (2) The regular Members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.
>
> (3) The Clerk of the Supreme Court shall be the Secretary *ex officio* of the Council and shall keep a record of its proceedings.

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93 *Chavez v. Judicial and Bar Council,* 691 Phil. 173, 188 (2012).

94 Id. at 188.

> (4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.
>
> (5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.
>
> Section 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

While the framers of our Constitution intended for the JBC to be an innovative solution in response to the public clamor to eliminate politics in the appointment of members of the Judiciary, **it was also envisioned to be a body that ensures judicial independence**. To reach that goal, they adopted a holistic approach and hoped that, in creating the JBC, the private sector and the three branches of government would have an active role and **equal voice** in the selection of the members of the Judiciary.[95] The JBC is, in fact, the central body which ensures the independence of the entire Judiciary by fulfilling its Constitutional role in the whole process of appointments in judicial posts. Together with the safeguards established by the 1987 Constitution on fiscal autonomy[96] and the prohibition on the reorganization of the Judiciary when the same undermines the security of tenure of its members,[97] the JBC's role of screening applicants and recommending prospective members of the Judiciary is actually a vital part in protecting judicial independence as it ensures that the persons appointed to judicial posts are persons of proven competence, integrity, probity, and independence. The deliberations of the Constitutional Commission illumine this:

> MR. COLAYCO. **The decision of the Committee in creating the Judicial and Bar Council was finally to establish the independence of the Judiciary.** We all talk about the independence of the three departments of our government and everybody knows, including the interpellator, that the Judiciary is not independent. It is the President who chooses, names and appoints the judges and who is the President? He is a politician. Granted that most of us know that our present President is somebody above politics, a lot of rumors have been going around that politics has somehow managed to get into the present reorganization of the Judiciary. This is inescapable because the President owes political favors. They are not easy to refuse or to fail to acknowledge on the part of the President-elect.
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> So, we felt that the creation of this Council would ensure more the appointment of judges and justices who will be chosen for their confidence and their moral qualifications, rather than to favor or to give something in return for their help in electing the President.

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95 Id. at 207.

96 1987 CONSTITUTION, Art. VIII, Sec. 3.

97 Id., Art. VIII, Sec. 2.

> MR. ROMULO. Mr. Presiding Officer, in approaching this question of the independence of the Judiciary, which I do not think anyone will dispute is a necessary goal, the Committee has used a holistic approach — as if it were a four-legged stool. One of the essential legs is the appointment of competent men, honest and so on. Another is, of course, the security of tenure. The third is fiscal independence of the Supreme Court. And if any of the legs of the stool is missing, then the stool cannot stand.
>
> Our experience has been, even with the Commission on Appointments, that politics does get into the picture. **We have tried to compromise in arriving at a unique system for us by making the Council a composition of representatives of the three branches of the government plus a wide spectrum of the private sector, and at the same time, without demeaning the power of the President to appoint because she or he inputs the considerations through the Minister of Justice; and the legislature, on the other hand, is able to express its considerations through the representatives of Congress. So we have what we believe is a good compromise. The Bar, equally for the first time, will be represented and has a definite say on appointments; and the private sector, as well as the law schools, is given a representative.** As we will notice, the private sector representative need not be a lawyer. So, as I say, it is a holistic approach.
>
> Finally, the problem of filling a vacancy in the Supreme Court within the three-month limit which we have all accepted, and the fact that the legislature may be in recess, is solved by this provision. I think we have to try something different, something radical because the past has not worked. **And insofar as the Committee is concerned, we can have any form of government we like and we are safe, provided we have an independent and competent Judiciary.** The English experience certainly proves this. **And if we are trying to bolster the independence of the Supreme Court, it is because in the end it is the Judiciary that will protect all of us.** We are not trying to create an independent republic out of the Judiciary, only an autonomous region.[98] (Emphasis supplied)

The symbiotic relationship between the JBC and the Court is highlighted by the fact that, as the *ponencia* pointed out, the Court exercises supervisory authority over the JBC.[99] However, contrary to the *ponencia*'s pronouncement, **the Constitution did not intend the JBC to be an office "subordinate" to the Supreme Court**. Instead, the JBC was intended to be a body that is independent from executive, legislative, and even judicial influence.

Supervision is a limited power, as defined in Book IV, Chapter 7, Section 38(2) of Executive Order No. 292, otherwise known as The Administrative Code of the Philippines:

> Sec. 38. *Definition of Administrative Relationship.* — Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:

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98 I RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 487-488 (1986).

99 1987 CONSTITUTION, Art. VIII, Sec. 8(1).

x x x x

(2) *Administrative Supervision.* — (a) Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies as may be provided by law, shall be limited to the authority of the department or its equivalent to generally oversee the operations of such agencies and to insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them;

(b) **Such authority shall not, however, extend to**: (1) appointments and other personnel actions in accordance with the decentralization of personnel functions under the Code, except when appeal is made from an action of the appointing authority, in which case the appeal shall be initially sent to the department or its equivalent, subject to appeal in accordance with law; (2) contracts entered into by the agency in the pursuit of its objectives, the review of which and other procedures related thereto shall be governed by appropriate laws, rules and regulations; and **(3) the power to review, reverse, revise, or modify the decisions of regulatory agencies in the exercise of their regulatory or quasi-judicial functions**; and

(c) Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "supervision" shall encompass administrative supervision as defined in this paragraph. (Emphasis supplied)

In *Aguinaldo v. Aquino III,*[100] the Court differentiated "supervision" and "control", thus:

> Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; **it does not include any restraining authority over such body.** Officers in control lay down the rules in the doing of an act. If they are not followed, it is discretionary on his part to order the act undone or redone by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. Supervising officers merely sees to it that the rules are followed, but he himself does not lay down such rules, **nor does he have the discretion to modify or replace them.** If the rules are not observed, he may order the work done or redone to conform to the prescribed rules. He cannot prescribe his own manner for the doing of the act. x x x[101] (Emphasis supplied)

In particular reference to the Supreme Court's supervisory authority over the JBC, the Supreme Court can only inquire and thereafter order that the JBC follow its own rules, **but it does not have the jurisdiction to revise**

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[100] G.R. No. 224302, November 29, 2016, 811 SCRA 304.

[101] Id. at 370-371.

the rules promulgated by JBC, much less supplant the latter's exercise of discretion with its own, as what the *ponencia* now does. In *Jardeleza v. Sereno,*[102] (*Jardeleza*) the Court held that:

> As a meaningful guidepost, jurisprudence provides the definition and scope of supervision. It is the power of oversight, or the authority to see that subordinate officers perform their duties. It ensures that the laws and the rules governing the conduct of a government entity are observed and complied with. Supervising officials see to it that rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. **They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed.**[103] (Emphasis supplied)

In the same case, the Court was unequivocal that "[c]onsidering that the Court's power over the JBC is merely supervisory, the revisions in its internal rules need not be submitted to the Court for approval."[104] Further, in *Villanueva v. Judicial and Bar Council,*[105] (*Villanueva*) the Court held that:

> Following this definition, **the supervisory authority of the Court over the JBC is to see to it that the JBC complies with its own rules and procedures.** Thus, when the policies of the JBC are being attacked, then the Court, through its supervisory authority over the JBC, has the duty to **inquire about the matter and ensure that the JBC complies with its own rules.**
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> x x x x
>
> As the constitutional body granted with the power of searching for, screening, and selecting applicants relative to recommending appointees to the Judiciary, **the JBC has the authority to determine how best to perform such constitutional mandate.** Pursuant to this authority, the JBC issues various policies setting forth the guidelines to be observed in the evaluation of applicants, and formulates rules and guidelines in order to ensure that the rules are updated to respond to existing circumstances. **Its discretion is freed from legislative, executive or judicial intervention to ensure that the JBC is shielded from any outside pressure and improper influence.** x x x[106] (Emphasis supplied)

The independence of JBC from the political departments was further underscored by the fact that in *Chavez v. Judicial and Bar Council,*[107] the Court ruled as unconstitutional the practice of having two members of the Legislature in the JBC membership. In the said case, the Court ruled that "to allow the Legislature to have more quantitative influence in the JBC by having

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[102] 749 Phil. 460 (2014).
[103] Id. at 489-490.
[104] *Jardeleza v. Sereno,* G.R. No. 213181, January 21, 2015, p. 5 (Unsigned Resolution).
[105] 757 Phil. 534 (2015).
[106] Id. at 545, 556.
[107] Supra note 93.

more than one voice speak, whether with one full vote or one-half (1/2) a vote each, would, as one former congressman and member of the JBC put it, 'negate the **principle of equality among the three branches of government** which is enshrined in the Constitution.'"[108]

If the Court was conservative enough not to let one more legislator disrupt the balance of power within the JBC, with more reason then that the Court should not allow the same balance of power to be disturbed by extending its supervisory authority beyond what was intended by the Constitution. The Court cannot say in one case that one branch of the government cannot be more powerful than the other two in the JBC, and then hold that the JBC is *completely subordinate* to it in this, another case.

The fact that the Constitution mandated the JBC to do "such other functions and duties as the Supreme Court may assign to it"[109] did not make the JBC subordinate to this Court. The Constitution, for instance, mandated the Commission on Human Rights (CHR) to "perform such other duties and functions as may be provided by law,"[110] but the Constitution did not intend the CHR to be in any way subordinate to the Legislature.

This is not to say that the JBC possesses absolute autonomy as to place its actions beyond the reach of the Court. Despite JBC independence as a body created by the Constitution, the Court can still review its exercise of discretion — not by virtue of its supervisory authority over the JBC, but by the power granted to the Court by the Constitution to determine whether or not there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.[111]

Differently put, when what is at issue is the JBC's determination of an applicant's fitness, which requires the JBC to do an act exclusively vested in it by the Constitution — as opposed to other matters such as the validity of its rules or its compliance with its own rules — then it is required that an allegation be made to the effect that the JBC had committed grave abuse of discretion amounting to lack or excess of jurisdiction. Without such allegation, the Court cannot review the JBC's exercise of discretion as it is not covered by the Court's supervisory authority over the said body.

As well, the review of the JBC's exercise of discretion must be assailed prior to the appointment. The reason is obvious: the subsequent appointment of an applicant to the position vests upon the appointee the status of an impeachable officer who can be removed only by impeachment under Article XI, Section 2.

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[108] Id. at 207; emphasis and underscoring supplied.
[109] 1987 CONSTITUTION, Art. VIII, Sec. 8(5).
[110] Id., Art. XIII, Sec. 18(11).
[111] Id., Art. VIII, Sec. 1.

Apparently cognizant of this fact, the Republic, through the OSG, never claimed that the JBC committed grave abuse of discretion amounting to lack or excess of jurisdiction. Thus, the *ponencia* is utterly confused when it invoked both (1) the Court's supervisory authority over the JBC and (2) its Constitutional power of judicial review based on allegations of grave abuse of discretion amounting to lack or excess of jurisdiction, to justify the Court's assumption of jurisdiction over this case. To repeat, the assailed actions of the JBC cannot be reviewed by this Court wearing its hat of supervision, and neither can it review the same by virtue of its Constitutional power of judicial review as there was absolutely no claim or allegation that the JBC had gravely abused its discretion. More important, following the fundamental precepts of due process and fair play, the Court cannot make a pronouncement on JBC's discretion without making the said body a party in this case.

Apart from its role in protecting judicial independence and ensuring that the appointments to the Judiciary are insulated from politics, it is likewise the JBC's task to ensure that the appointees possess the qualifications prescribed by the Constitution. This is clear in the deliberations of the Framers of the Constitution:

> MR. CONCEPCION. The Judicial and Bar Council is no doubt an innovation. But it is an innovation made in response to the public clamor in favor of eliminating politics in the appointment of judges.
>
> At present, there will be about 2,200 positions of judges, excluding those of the Supreme Court, to be filled. We feel that neither the President alone nor the Commission on Appointments would have the time and the means necessary to study the background of every one of the candidates for appointment to the various courts in the Philippines, **specially considering that we have accepted this morning the amendment to the effect that no person shall be qualified unless he has a proven high sense of morality and probity**. These are matters that require time, which we are sure the President does not have except, probably, he would have to endorse the matter to the National Bureau of Investigation or to some intelligence agency of the government. **And we do not think that these agencies are qualified to pass upon questions of morality, integrity and competence of lawyers.**[112] (Emphasis supplied)

On integrity, and the JBC's power to determine evidence thereof

To reiterate, no person shall be appointed as member of the Supreme Court unless (a) he is a natural-born citizen of the Philippines; (b) is at least forty years of age; and (c) must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.[113] He must also be a person of proven competence, integrity, probity, and independence. The requirement of proven competence, integrity, probity, and independence was proposed by Commissioner Jose N. Nolledo to strengthen the moral fiber

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[112] I RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 487 (1986).
[113] 1987 CONSTITUTION, Art. VIII, Sec. 7(1).

of the judiciary. The proposal was accepted; the pertinent Records of the Constitutional Commission reads:

> MR. NOLLEDO. Thank you, Mr. Presiding Officer.
>
> My amendment is to add a new subsection (3) on Section 4 which reads: A MEMBER OF THE JUDICIARY MUST BE A PERSON OF PROVEN COMPETENCE, INTEGRITY, PROBITY, AND INDEPENDENCE.
>
> Before the Committee decides on whether or not to accept the amendment, I would like to explain it first.
>
> Mr. Presiding Officer, this is a moral provision lifted with modifications from the "Canons of Judicial Ethics." The reputation of our justices and judges has been unsavory. I hate to say this, but it seems that it has become the general rule that the members of the Judiciary are corrupt and the few honest ones are the exceptions. We hear of justices and judges who would issue injunctive relief to the highest bidder and would decide cases based on hundreds of thousands, and even millions, mercenary reasons.
>
> The members of the deposed Supreme Court, with a few exceptions, catered to the political likings and personal convenience of Mr. Marcos by despicably surrendering their judicial independence. Why should we resist incorporating worthy moral principles in our fundamental law? Why should we canalize our conservative thoughts within the narrow confines of pure legalism?
>
> I plead to the members of the Committee and to my colleagues in this Constitutional Commission to support my amendment in order to strengthen the moral fiber of our Judiciary. Let not our Constitution be merely a legal or political document. Let it be a moral document as well.
>
> Thank you.
>
> x x x x
>
> THE PRESIDING OFFICER (Mr. Bengzon). The amendment has been accepted by the Committee.
>
> Is there any objection? (*Silence*) The Chair hears none; the amendment is approved.[114]

As earlier intimated, the first three constitutional requirements are objective qualifications and are easily verifiable. However, the requirement of proven competence, integrity, probity, and independence are not. Section 8(5), Article VIII states that the JBC shall have the principal function of recommending appointees to the Judiciary. Thus, I agree with the respondent that the question of whether an applicant for the position of the Chief Justice is a person of integrity is a question constitutionally committed to the JBC. In fact, the Records of the Constitutional Commission shows that the framers of the Constitution intended that these moral qualifications will be considered as

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[114] I RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 484-485 (1986).

guidelines by the JBC when they determine the qualification of prospective appointees.

> MR. NOLLEDO. If the Commissioner does not mind, I presented Resolution No. 188, which is not mentioned in the committee report, entitled:
>
> RESOLUTION TO ENSHRINE IN THE ARTICLE ON THE JUDICIARY OF THE NEW CONSTITUTION, ETHICAL RULES ON QUALIFICATIONS AND CONDUCT OF MEMBERS OF THE JUDICIARY.
>
> It is unfortunate that the reputation of our judges is not so good and so, I do not know what is the sense of the Committee. I would like to tell the members in advance that I intend to present this as an amendment for consideration — that in connection with Section 4, perhaps we can add a subsection there which may run like this: THAT NO ONE SHALL BE APPOINTED AS MEMBER OF THE JUDICIARY UNLESS HE IS A PERSON OF PROVEN COMPETENCE, INTEGRITY, PROBITY AND INDEPENDENCE and THAT THE ACTUATIONS OF A MEMBER OF THE JUDICIARY IN OR OUTSIDE THE COURT MUST BE BEYOND REPROACH.
>
> This is similar to a provision in "Canons of Judicial Ethics," but history states that those provisions are more honored in breach than in observance.
>
> MR. CONCEPCION. That is right.
>
> MR. NOLLEDO. So, when we discipline a member of the judiciary, perhaps it will strengthen the intention if we can quote a constitutional mandate that he has not acted beyond reproach as enjoined by the Constitution.
>
> MR. CONCEPCION. The Committee is well aware of the fact that our task is to make good laws. But it is also fully aware of the fact that no matter how good the laws are, if the persons chosen to enforce those laws are not the right persons, they may be doing a disservice to the country. In connection with the judges, that is the reason for the Judicial and Bar Council.
>
> MR. NOLLEDO. When we set forth these moral qualifications, they may be considered guidelines by the Judicial and Bar Council when they determine the qualifications of prospective appointees.
>
> MR. CONCEPCION: But that is understood: honesty, competence, etc. That is the only purpose of the Judicial and Bar Council.[115]

As the Constitutional body tasked to ensure that persons appointed to the Judiciary are persons of "proven competence, integrity, probity, and independence,"[116] the JBC is given sufficient, if not wide, discretion to

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[115] Id. at 440-441.

[116] 1987 CONSTITUTION, Art. VIII, Sec. 7(3).

define the said terms and then set the standards it would use to determine which of the applicants truly possesses the said qualities. In the case of *Villanueva,*[117] the issue was whether it was valid for the JBC to require five years of experience for judges of first-level courts before they could seek promotion to the Regional Trial Courts. The Court upheld the explanation of the JBC when it said:

> x x x While the 1987 Constitution has provided the qualifications of members of the judiciary, this does not preclude the JBC from having its own set of rules and procedures and providing policies to effectively ensure its mandate.
>
> The functions of searching, screening, and selecting are necessary and incidental to the JBC's principal function of choosing and recommending nominees for vacancies in the judiciary for appointment by the President. **However, the Constitution did not lay down in precise terms the process that the JBC shall follow in determining applicants' qualifications. In carrying out its main function, the JBC has the authority to set the standards/criteria in choosing its nominees for every vacancy in the judiciary, subject only to the minimum qualifications required by the Constitution and law for every position. The search for these long held qualities necessarily requires a degree of flexibility in order to determine who is most fit among the applicants. x x x**[118] (Emphasis and underscoring supplied)

The Court further expounded that "[f]ormulating policies which streamline the selection process falls squarely under the purview of the JBC. **No other constitutional body is bestowed with the mandate and competency to set criteria for applicants that refer to the more general categories of probity, integrity and independence.**"[119] In explaining that the JBC was justified in imposing the five-year experience requirement for judges of first-level courts, the Court held that:

> That is the situation here. **In issuing the assailed policy, the JBC merely exercised its discretion in accordance with the constitutional requirement and its rules that a member of the Judiciary must be of proven competence, integrity, probity and independence.** "To ensure the fulfillment of these standards in every member of the Judiciary, the JBC has been tasked to screen aspiring judges and justices, among others, making certain that the nominees submitted to the President are all qualified and suitably best for appointment. In this way, the appointing process itself is shielded from the possibility of extending judicial appointment to the undeserving and mediocre and, more importantly, to the ineligible or disqualified."[120] (Emphasis supplied)

Following the Court's pronouncement in *Villanueva,* where it upheld the JBC's exclusive power to define the requirement of "competence," the same body therefore has the sole and exclusive power to define the other

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[117] Supra note 105.
[118] Id. at 548-549.
[119] Id. at 551; emphasis supplied.
[120] Id. at 550.

qualifications such as "integrity." **To be clear, not even the Court's power of supervision can diminish the JBC's jurisdiction to define "integrity" and determine who possesses the same**.

It is a very grave error, therefore, for the *ponencia* to rule that the "qualifications under the Constitution cannot be waived or bargained away by the JBC" — when the JBC bargained away nothing. The *ponencia* itself recognized that the *Rules of the Judicial and Bar Council*[121] or JBC-009 was issued by the JBC in compliance with its Constitutional mandate. When the JBC issued JBC-009 and determined therein what constitutes "competence," "integrity," "probity," and "independence," the JBC was well-within its discretion granted by the Constitution, and neither the OSG nor the Court can inquire as to the validity of such determination. The JBC, through JBC-009, determined that a person's "integrity" is best proved by certifications and testimonials from various persons and organizations. Section 1, Rule 4 of JBC-009 provides:

RULE 4
INTEGRITY

> SECTION 1. *Evidence of integrity.* — The Council shall take every possible step to verify the applicant's record of and reputation for honesty, integrity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards. For this purpose, the applicant shall submit to the Council certifications or testimonials thereof from reputable government officials and non-governmental organizations, and clearances from the courts, National Bureau of Investigation, police, and from such other agencies as the Council may require.

Again, in *Jardeleza*,[122] the Court held:

> In the performance of this sacred duty, the JBC itself admits, as stated in the "whereas clauses" of JBC-009, that qualifications such as "competence, integrity, probity and independence are not easily determinable as they are developed and nurtured through the years." Additionally, "it is not possible or advisable to lay down iron-clad rules to determine the fitness of those who aspire to become a Justice, Judge, Ombudsman or Deputy Ombudsman." Given this realistic situation, there is a need "to promote stability and uniformity in JBC's guiding precepts and principles." **A set of uniform criteria had to be established in the ascertainment of "whether one meets the minimum constitutional qualifications and possesses qualities of mind and heart expected of him" and his office.** Likewise for the sake of transparency of its proceedings, the JBC had put these criteria in writing, now in the form of JBC-009. **True enough, guidelines have been set in the determination of "competence," "probity and independence," "soundness of physical and mental condition," and "integrity."**

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[121] Judicial and Bar Council Resolution No. JBC-009, October 18, 2000.
[122] Supra note 102.

> As disclosed by the guidelines and lists of recognized evidence of qualification laid down in JBC-009, "integrity" is closely related to, or if not, approximately equated to an applicant's good reputation for honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards. **That is why proof of an applicant's reputation may be shown in certifications or testimonials from reputable government officials and non-governmental organizations and clearances from the courts, National Bureau of Investigation, and the police, among others. In fact, the JBC may even conduct a discreet background check and receive feedback from the public on the integrity, reputation and character of the applicant, the merits of which shall be verified and checked.** As a qualification, the term is taken to refer to a virtue, such that, "integrity is the quality of person's character."[123] (Emphasis supplied)

JBC-009 did **not** require the submission of SALNs as proof of one's integrity. The submission of SALNs was only required in response to the ***impeachment*** of former Chief Justice Renato Corona. As the minutes of the JBC reveals, as quoted by the *ponencia* itself, requiring aspirants to a judicial post to submit to the JBC their SALNs was only to prevent the same thing from happening to the next Chief Justice:

> Senator Escudero moved that additional requirements be imposed by the Council for the position of Chief Justice, namely (1) all previous SALNs (up to December 31, 2012) for those in the government or SALN as of December 31, 2012 for those from the private sector; and (2) waiver in favor of the JBC of the confidentiality of local and foreign currency bank accounts under the Bank Secrecy Law and Foreign Currency Deposits Act. The documents shall be treated with utmost confidentiality and only for the use of the JBC. He proposed that these additional requirements be included in the publication of the announcement opening the said position. **He explained that the basis of his motion was the fact that the reason why Chief Justice Corona was removed from office was due to inaccuracies in his SALN. The Members of the House of Representatives, in the exercise of their wisdom, determined that non-inclusion of assets in one's SALN is an impeachable offense.** Likewise, majority of the Senate voted to convict because of the inaccuracies in the bank accounts and statements in his SALN. He said that the JBC would not want to recommend a person who is susceptible to such kind of attack. He said that the JBC should impose higher standards to aspirants for the position of Chief Justice.
>
> Congressman Tupas concurred with Senator Escudero's motion and suggested that the waiver should not be limited to year-end balances only.
>
> There being no objection, the motion was **APPROVED**. The Council agreed to **PUBLISH** the announcement opening the position of Chief Justice of the Supreme Court of the Philippines together with the additional requirements.[124] (Emphasis and underscoring supplied)

Hence, the requirement for aspirants to submit to the JBC their SALNs was only JBC's reaction to the Congress' *exercise of its wisdom* that non-inclusion of assets in one's SALN was an *impeachable offense*. **The JBC**

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[123] Id. at 492-496.

[124] Minutes of the JBC En Banc Meeting dated June 4, 2012, pp. 22-23.

itself did not make a determination that submission of SALNs is part of determining whether a person is of proven integrity. In fact, when the JBC Rules were revised in 2016, submission of SALNs still did not constitute proof of a person's integrity. Rule 4 of the *Revised Rules of the JBC*[125] provides that:

RULE 4
INTEGRITY AND PROBITY

SECTION 1. *Evidence of Integrity and Probity.* — The Council shall take every possible step to verify the applicants' record of and reputation for honesty, integrity, probity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards. For this purpose, the applicants shall submit to the Council certifications thereon or testimonials thereof from reputable government officials and non-governmental organizations, and clearances from the courts, National Bureau of Investigation, Office of the Ombudsman, Office of the Bar Confidant, Integrated Bar of the Philippines, Philippine National Police in their places of residence, and from such other agencies as the Council may require. All of these must have been issued not earlier than six (6) months from the deadline for their submission.

SEC. 2. *Background Check.* — The Council may order a discreet background check on the integrity, reputation, and character of the applicants, and receive feedback thereon from the public, which the Council shall check, verify, or validate the merits thereof.

All applicants may be subject to, or covered by, a survey or feedback mechanism.

SEC. 3. *Complaints or Oppositions.* — The Council may receive written sworn complaint or opposition relating to the qualifications or moral fitness of applicants.

The applicants concerned shall be furnished with a copy of the sworn complaint or opposition and shall be given five (5) days from receipt thereof within which to file a comment thereon, if they so desire. During the interview, the applicants concerned may be made to comment on the complaint or opposition.

SEC. 4. *Anonymous Complaints or Oppositions.* — Anonymous complaints or oppositions against applicants shall not be given due course unless there appears probable cause sufficient to engender a belief that the allegations may be true, which may affect the integrity of the applicants. The Council may either direct a discreet investigation or require the applicants concerned to comment thereon in writing or during the interview.

SEC. 5. *Disqualifications.* — The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman, Deputy Ombudsman, Special Prosecutor, or Chairperson or Regular Member of the Legal Education Board:

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[125] Promulgated on September 20, 2016.

1. *Applicants with Criminal Cases*

   a. Those with pending criminal cases in the Philippines even if they are still under preliminary investigation;

   b. Those with pending criminal cases in foreign courts or tribunals; and

   c. Those who have been convicted in any criminal case;

2. *Applicants with Administrative Cases*

   a. Those with pending administrative cases or complaints in the Office of the Ombudsman which are either under fact-finding stage and the applicants were not issued a clearance, or still under administrative adjudication.

   b. Those with pending administrative cases or complaints before any court, office, tribunal, any government office, agency, or instrumentality, or before the Integrated Bar of the Philippines or any association, disciplinary committee or body when, in the determination of the Council, the complaints are serious or grave as to affect their fitness for nomination;

      However, complaints against applicants concerning the merits of cases or ascribing errors to their decisions or resolutions, which are judicial in nature, shall not be a grounds for disqualification.

   c. Those who have been found guilty in an administrative case where the penalty imposed is suspension for a period at least ten (10) days or a fine of at least P10,000 unless they have been granted judicial clemency; and

3. Applicants who have been found to have made false statements, misrepresentations, or concealments of material information in their personal data sheet.

To emphasize, the whole rule, even as revised, did not consider the filing of SALNs as a measure of a person's integrity. Therefore, the *ponencia* ***was grossly unfair, if not unjust***, to the JBC when it stated that the latter 'bargained away constitutional qualifications' when the JBC simply did not. The JBC had rules in place to determine whether an applicant possesses the requisite qualification of 'proven integrity' and, therefore, it cannot be said that the JBC "bargained away" this qualification.

It is worth repeating that the JBC's discretion is freed from legislative, executive, or even ***judicial*** intervention to ensure that the JBC is shielded from any outside pressure and improper influence.[126] **It is thus the height of judicial tyranny for the *ponencia* to hold that the JBC's rules were insufficient to measure 'integrity'. In so doing, the Court unwarrantedly encroached on powers it unequivocally does not possess.**

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[126] *Villanueva v. Judicial and Bar Council*, supra note 105, at 556.

Further, the JBC had the right to rely on their rules existing at the time. In the respondent's case, therefore, the JBC followed its rules when it required her to submit the certifications or testimonials, and accordingly considered such as proof of her integrity once she submitted the same. The respondent cannot likewise be faulted for not submitting her complete SALNs because the JBC itself accepted her explanation that the said SALNs were "irretrievable." In *Office of the Court of Administrator v. Floro, Jr.*,[127] the Court held the judge involved could not be faulted when the JBC disregarded the Supreme Court Clinic's finding that he failed the psychological evaluations because the JBC was justified in disregarding the same. The Court held:

> Judge Floro did not breach any rule of procedure relative to his application for judgeship. **He went through the entire gamut of tests and interviews and he was nominated by the JBC on the strength of his scholastic achievements. As to having failed the psychological examinations given by the SC Clinic, it must be pointed out that this was disregarded by the JBC upon Judge Floro's submission of psychiatric evaluations conducted by mental health professionals from the private sector and which were favorable to him.** Nowhere is it alleged that Judge Floro acted less than honorably in procuring these evaluations.
>
> The JBC in 1999 had all the discretion to refer Judge Floro to a private clinic for a second opinion of his mental and psychological fitness. In performing its functions, the JBC had been guided primarily by the Constitution which prescribes that members of the Judiciary must be, in addition to other requirements, persons of proven competence, integrity, probity and independence. It was only on 18 October 2000 when it promulgated JBC-009, the "Rules of the Judicial and Bar Council," that the JBC put down in writing guidelines or criteria it had previously used in ascertaining "if one seeking such office meets the minimum constitutional qualifications and possesses qualities of mind and heart expected of the Judiciary." Rule 6 thereof states:
>
> > SECTION 1. *Good health.* — Good physical health and sound mental/psychological and emotional condition of the applicant play a critical role in his capacity and capability to perform the delicate task of administering justice. x x x
> >
> > SEC. 2. *Psychological/psychiatric tests.* — The applicant shall submit to psychological/psychiatric tests to be conducted by the Supreme Court Medical Clinic or by a psychologist and/or psychiatrist duly accredited by the Council.
>
> **It would seem that as things stood then, the JBC could very well rely on the evaluation of a private psychologist or psychiatrist not accredited by the JBC. Thus, the JBC cannot be faulted for accepting the psychological evaluations of mental health professionals not affiliated with the Supreme Court Clinic.**[128] (Emphasis supplied)

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[127] 520 Phil. 590 (2006).

[128] Id. at 666-667.

The JBC, recognizing its task of determining who meets the constitutional requirements to merit recommendation for appointment to the Judiciary, has grappled with this most difficult and trying duty because the virtues and qualities of competence, integrity, probity and independence are not easily determinable as they are developed and nurtured through the years.[129] Thus, in its attempt to determine whether a person is of proven integrity, the JBC, **in its wisdom**, laid down in JBC-009 certain guidelines to verify the applicant's records and of reputation for honesty, integrity, incorruptibility, irreproachable conduct and fidelity to sound moral and ethical standards.

In *Jardeleza,* the Court tried to rationalize the requirement of integrity as laid down in JBC-009, as follows:

> As disclosed by the guidelines and lists of recognized evidence of qualification laid down in JBC-009, **"integrity" is closely related to, or if not, approximately equated to an applicant's good reputation for honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards.** That is why proof of an applicant's reputation may be shown in certifications or testimonials from reputable government officials and non-governmental organizations and clearances from the courts, National Bureau of Investigation, and the police, among others. In fact, the JBC may even conduct a discreet background check and receive feedback from the public on the integrity, reputation and character of the applicant, the merits of which shall be verified and checked. As a qualification, the term is taken to refer to a virtue, such that, "integrity is the quality of person's character."[130] (Emphasis and underscoring supplied; citations omitted)

As can be gleaned above, the requirement of submission of SALNs is **not** found in Rule 4 of JBC-009. As stated earlier, the undenied fact is that the submission to the JBC of all of the applicant's SALNs was required only in the published *Announcement* dated June 5, 2012. Again, this requirement was prompted only by the impeachment of former Chief Justice Renato Corona who was removed from office due to inaccuracies in his SALN.[131]

The questioned appointment of respondent occurred in 2012. If indeed the submission of SALNs is a requirement to determine one's proven integrity, I reiterate that Rule 4 (Integrity) of JBC-009, after almost six years, remains the same and has not been amended to include the submission of SALNs.

As such, the Court cannot now say that the respondent had not proven her integrity at the time of her appointment — in the face of the JBC's own determination that she indeed possessed the requisite qualifications in compliance with its own rules.

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[129] JBC-009, 5th WHEREAS Clause.
[130] Supra note 102, at 492-496.
[131] See Minutes of the JBC En Banc Meeting, supra note 125.

Also noteworthy is the fact that prior to the screening of applicants for the Chief Justice post in 2012, the JBC had **never required** the submission of all SALNs from the prospective applicants. This fact was proved during the oral arguments as follows:

JUSTICE LEONEN:
Yes. Would you recall that if SALNs were required for the Office of the Chief Justice in 2010?

CHIEF JUSTICE SERENO:
I think, *hindi*. I think not, we had a chance to look at the publication.

JUSTICE LEONEN:
In point, in fact, it was not. In 2010 therefore, it was not required. Would you recall when you applied for Associate Justice in 2010, whether you were required to file your SALNs?

x x x x

CHIEF JUSTICE SERENO:
It was not formally required in the publication.

JUSTICE LEONEN:
Would you recall when it was first required, that SALN... should be submitted?

CHIEF JUSTICE SERENO:
I think it was after the impeachment of Justice Corona.

JUSTICE LEONEN:
And point in fact, in 2011 when there was an opening for Chief Justice, am I not correct?

CHIEF JUSTICE SERENO:
2012?

JUSTICE LEONEN:
Yes, when there was an opening vice Chief Justice Renato Corona...

CHIEF JUSTICE SERENO:
Yes...

JUSTICE LEONEN:
... that there was a requirement for SALN. Would you know for Associate Justices what the requirements for SALNs are? Is it all or is it only two (2)?

CHIEF JUSTICE SERENO:
Only two (2)?

JUSTICE LEONEN:
Only two (2).

CHIEF JUSTICE SERENO:
Okay. Thank you.

JUSTICE LEONEN:
In other words, the JBC has not been consistent in relation to the requirement of SALN, is that not correct?

CHIEF JUSTICE SERENO:
Yes.

JUSTICE LEONEN:
But they are consistent in trying to find out whether a person can be predictably, one with integrity, is that not correct? Because that's a constitutional requirement?

CHIEF JUSTICE SERENO:
Yes, and in fact, there's a special rule...

JUSTICE LEONEN:
Yes.

CHIEF JUSTICE SERENO:
...on integrity.

JUSTICE LEONEN:
Therefore, throughout the years there are instances where the JBC did not even require a SALN, am I not correct?

CHIEF JUSTICE SERENO:

Yes.[132] (Emphasis supplied)

This was also confirmed by Justice Aurora Santiago Lagman, a former member of the JBC, in her Comment dated March 23, 2018 in A.M. No. 17-11-12-SC and A.M. No. 17-11-17-SC, where she said that:

> Since the inception of the JBC more than twenty (20) years ago, submission of the SALN of candidates, was not required. SALN became one of the requirements only starting 2009, for candidates for appellate magistracy who were from the private sector. Later, in February 2011, SALNs for the past two (2) years were required. Starting 7 January 2013 to date, SALNs for the past two (2) years have been required of applicants in government service and SALNs for the preceding year, with respect to applicants from the private sector.
>
> It was only in the case of the *Chief Justice* post that the JBC, in the exercise of its discretion, required "[a]ll previous SALNs (up to 31 December 2011) for those in government."[133]

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[132] TSN, Oral Arguments dated April 10, 2018, pp. 88-90.

[133] Comment of Former Justice Aurora Santiago Lagman in A.M No. 17-11-12-SC and A.M. No. 17-11-17-SC, p. 8.

Therefore, by no stretch of the imagination can it be argued that JBC "bargained away" the Constitutional qualification of 'integrity', as the body has consistently been screening applicants based on the criteria it deems best proves that the applicant possesses the same. For the body tasked by the Constitution to define and determine who possesses integrity, the submission of SALNs is not a measure of the same. The absurdity of the *ponencia's* insistence that non-filing of SALN or incomplete or non-submission of past SALNs to the JBC means a lack of "proven integrity" is obvious when the import of the ruling is extended: all members of the Court who could not have complied with this ruling because the submission of all past SALNs was not required during their application process, say, pre-2009, do not have "proven integrity."

The SALN serves a purpose, but it is not to cast doubt upon the validity of a public officer's appointment or to impeach him.

The foregoing discussion does not intend to downplay the importance of complying with the SALN requirement. Concededly, the filing of SALNs is a Constitutional and statutory requirement which every public official should comply with. Being the fundamental law of the land, however, the Constitution cannot provide in specific detail what the requirement of submission under oath of the declaration of assets, liabilities, and net worth entails. The Constitution only very broadly provided that it is required:

> Section 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.[134]

Hence, implementing legislation was needed to be passed by Congress to ensure the effective implementation of this requirement. Thus, R.A. No. 6713[135] was enacted and provided the following:

> SEC. 8. *Statements and Disclosure.* — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, the assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.
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> (A) *Statements of Assets and Liabilities and Financial Disclosure.* — All public officials and employees, except those who serve in an

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[134] 1987 CONSTITUTION, Art. XII.

[135] CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, February 20, 1989.

honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

The two documents shall contain information on the following:

(a) real property, its improvements, acquisition costs, assessed value and current fair market value;
(b) personal property and acquisition cost;
(c) all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;
(d) liabilities; and
(e) all business interests and financial connections.

The documents must be filed:

(a) within thirty (30) days after assumption of office;
(b) on or before April 30, of every year thereafter; and
(c) within thirty (30) days after separation from the service.

All public officials and employees required under this section to file the aforestated documents shall also execute within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible, the year when they first assumed any office in the Government.

Husband and wife who are both public officials or employees may file the required statements jointly or separately.

The Statements of Assets, Liabilities and Net Worth and the Disclosure of Business Interests and Financial Connections shall be filed by:

(1) Constitutional and national elective officials, with the national office of the Ombudsman;

(2) Senators and Congressmen, with the Secretaries of the Senate and the House of Representatives, respectively; Justices, with the Clerk of Court of the Supreme Court; Judges, with the Court Administrator; and all national executive officials with the Office of the President.

(3) Regional and local officials and employees, with the Deputy Ombudsman in their respective regions;

(4) Officers of the armed forces from the rank of colonel or naval captain, with the Office of the President, and those below said ranks, with the Deputy Ombudsman in their respective regions; and

(5) All other public officials and employees, defined in Republic Act No. 3019 as amended, with the Civil Service Commission.

(B) *Identification and disclosure of relatives.* — It shall be the duty of every public official or employee to identify and disclose to the best of his knowledge and information, his relatives in the Government in the form, manner and frequency prescribed by the Civil Service Commission.

(C) *Accessibility of documents.* — (1) Any and all statements filed under this Act, shall be made available for inspection at reasonable hours.

(2) Such statements shall be made available for copying or reproduction after ten (10) working days from the time they are filed as required by law.

(3) Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of production and mailing of such statement, as well as the cost of certification.

(4) Any statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.

(D) *Prohibited acts.* — It shall be unlawful for any person to obtain or use any statement filed under this Act for:

(a) any purpose contrary to morals or public policy; or

(b) any commercial purpose other than by news and communications media for dissemination in the general public.

The same law likewise provided for the penalty for non-compliance, which was either a fine or imprisonment, or both, in case of a criminal prosecution, or removal in case of an administrative proceeding.

SEC. 11. *Penalties.* — (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act, shall be punished with a fine not exceeding the equivalent of six (6) months salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000), or both, and in the discretion of the court of competent jurisdiction, disqualification to hold public office.

(b) Any violation hereof proven in a **proper administrative proceeding** shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him. (Emphasis and underscoring supplied)

Thus, the law governing the submission of SALNs, while concededly providing that the penalty may be removal, still requires a finding of culpability in a "proper administrative proceeding" or, theoretically, in a criminal prosecution. Certainly, a *quo warranto* proceeding is not such

proceeding as it is, in the first place, a special civil action and neither an administrative nor criminal proceeding. **It was premature, therefore, for the Court, through the *ponencia*, to have categorically ruled that the respondent *did not file her SALNs* when no case, administrative or criminal, has been filed against her in accordance with R.A. No. 6713.**

The general proposition that non-filing of SALN means lack of integrity is erroneous.

The case of *Casimiro v. Rigor*[136] enunciated that the requirement of filing a SALN serves as a valid check and balance mechanism to verify undisclosed properties and wealth. The Court explained as follows:

> x x x The requirement of filing a SALN is enshrined in the Constitution to promote transparency in the civil service and serves as a deterrent against government officials bent on enriching themselves through unlawful means. By mandate of law, every government official or employee must make a complete disclosure of his assets, liabilities and net worth in order to avoid any issue regarding questionable accumulation of wealth. The importance of requiring the submission of a complete, truthful, and sworn SALN as a measure to defeat corruption in the bureaucracy cannot be gainsaid. Full disclosure of wealth in the SALN is necessary to particularly minimize, if not altogether eradicate, the opportunities for official corruption, and maintain a standard of honesty in the public service. **Through the SALN, the public can monitor movement in the fortune of a public official; it serves as a valid check and balance mechanism to verify undisclosed properties and wealth.** The failure to file a truthful SALN reasonably puts in doubts the integrity of the officer and normally amounts to dishonesty.[137] (Emphasis supplied; citations omitted)

Thus, the rationale behind the SALN requirement among public officials is not a matter of filing or non-filing, but is *to curtail the "acquisition of unexplained wealth."*[138]

Similarly, the addition of the requirement of proven competence, integrity, probity, and independence in the 1987 Constitution was to uplift the unbecoming reputation of the judiciary due to the corrupt practices of certain judges and justices. As Commissioner Nolledo mentioned, there were "justices and judges who would issue injunctive relief to the highest bidder and would decide cases based on hundreds of thousands, and even millions, of mercenary reasons."

As discussed, the requirement of the SALN during the 2012 application process for the Chief Justice position was prompted by the impeachment of former Chief Justice Renato Corona. When Senator Escudero

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136 749 Phil. 917 (2014).

137 Id. at 929-930.

138 *Office of the Ombudsman v. Racho*, 656 Phil. 148, 161 (2011).

moved that the additional requirements be imposed, including the SALNs, he manifested that the JBC would not want to recommend a person who would be susceptible to such kind of attack, which pertains to the eventual removal from office of former Chief Justice Renato Corona due to inaccuracies in his SALN.

Clearly, all of these, if not solely motivated, was significantly driven, by the crusade to eliminate corruption in the government. **With this rationale, the mere failure to submit SALNs without any intent to commit a wrong is thus properly contextualized as not meaning that the person lacks integrity.** The case of *Daplas v. Department of Finance*[139] is instructive:

> Indeed, the failure to file a truthful SALN puts in doubt the integrity of the public officer or employee, and would normally amount to dishonesty. **It should be emphasized, however, that mere non-declaration of the required data in the SALN does not automatically amount to such an offense. Dishonesty requires malicious intent to conceal the truth or to make false statements.** In addition, **a public officer or employee becomes susceptible to dishonesty only when such non-declaration results in the accumulated wealth becoming manifestly disproportionate to his/her income, and income from other sources, and he/she fails to properly account or explain these sources of income and acquisitions.**
>
> x x x x
>
> It should be emphasized that the **laws on SALN aim to curtail the acquisition of unexplained wealth.** Thus, in several cases **where the source of the undisclosed wealth was properly accounted for, the Court deemed the same an "explained wealth" which the law does not penalize.** Consequently, absent any intent to commit a wrong, and having accounted for the source of the "undisclosed wealth," as in this case, petitioner cannot be adjudged guilty of the charge of Dishonesty; but at the most, of mere negligence for having failed to accomplish her SALN properly and accurately. [140] (Additional emphasis supplied; citations omitted)

At this juncture, it is also important to differentiate the case of the respondent from that of former Chief Justice Corona. In the latter's case, he was charged with betrayal of public trust and/or culpable violation of the Constitution for (1) failing to disclose his SALN, (2) failure to include certain properties in the SALN, and (3) alleged hidden wealth. These charges have not been levelled against the respondent. She is merely accused of not filing her SALNs. Chief Justice Corona was convicted because he had undeclared dollar and peso deposits which were manifestly out of proportion to his lawful income and he failed to provide any explanation on how he obtained such funds. Thus, the case of Chief Justice Corona correctly applied the rule on SALN requirement when it delved into the real issue of curtailing the acquisition of unexplained wealth.

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[139] G.R. No. 221153, April 17, 2017.
[140] Id. at 6-7.

The Announcement required that for those engaged in government practice, all previous SALNs shall be submitted.

The *Announcement* dated June 5, 2012 required the applicants to submit to the JBC, "in addition to the usual documentary requirements," the following documents:

1. Sworn Statement of Assets, Liabilities, and Net Worth (SALN)
    a. **for those in the government: all previous SALNs (up to 31 December 2011)**
    b. for those from the private sector: SALN as of 31 December 2011
2. Waiver in favor of the JBC of the confidentiality of local and foreign bank accounts under the Bank Secrecy Law and Foreign Currency Deposits Act. (Emphasis supplied)

Aside from the respondent, there are other applicants engaged in government service, who failed to submit all of their previous SALNs (up to 31 December 2011), to wit:[141]

Candidates for position of Chief Justice of the Supreme Court	*Years in government service based on the "matrix"/ 20 July 2012 ORSN Report*	*Number of SALNs*[142]	*JBC's Remarks on the examination of the list with regard to the SALNs (Minutes of the JBC Special En Banc meeting, July 20, 2012)*
Abad, Roberto	21	6	There being no objection, the Council agreed that Justice Abad had **SUBSTANTIALLY COMPLIED** with the requirements of the JBC.
Bautista, Andres	6	3	*Minutes did not show any comment as regards SALN submission*
Brion, Arturo	22	12	Has substantially complied
Cagampang-De Castro, Soledad M.	12	1	*No notes/remark provided*
Carpio, Antonio	17	15	Has substantially complied
De Lima, Leila	11	6	Has substantially complied

[141] Annex "37," Respondent's Memorandum (Submission of documentary requirements and SALN of candidates for Chief Justice of the Philippines (with corresponding report on professional background) dated 20 July 2012.

[142] All SALNs with distinct dates were considered for purposes of counting the *Number of SALNs*.

Legarda, Maria Carolina	9	1	*No notes/remark provided*
Leonardo-De Castro, Teresita	39	15	Has substantially complied
Pangalanan, Raul	28	8	Justice Lagman moved that the SALNs of Dean Pangalangan be considered as substantial compliance.
Sarmiento, Rene	22	1	Has lacking SALNs
Sereno, Maria Lourdes	22	3	The Executive Officer informed the Council that she had not submitted her SALNs for a period of ten (10) years, that is, from 1986 to 2006 *(sic)*. Senator Escudero mentioned that Justice Sereno was his professor at U.P. and that they were required to submit SALNs during those years.
Siayngco, Manuel	25	18	Has complied
Valdez, Amado	13 (6)	1	Has lacking requirements
Zamora, Ronaldo	43	1	Has lacking SALNs and MCLE cert.

As earlier stated, Senator Francis G. Escudero, as then *ex officio* member, had suggested that "at least an attempt to comply with a particular requirement" can be used as a parameter for determining substantial compliance.[143] As such, some of the applicants, who did not submit all of their previous SALNs, as was required by the published *Announcement*, were still shortlisted because of substantial compliance, namely:

a. Abad, Roberto
b. Carpio, Antonio
c. Brion, Arturo
d. Leonardo-De Castro, Teresita
e. Zamora, Ronaldo

In doing so, I believe that the JBC did not act with grave abuse of discretion because it is well within its authority to determine what substantial compliance to its requirements shall mean. Thus, in *Villanueva*,[144] the Court ruled:

> As the constitutional body granted with the power of searching for, screening, and selecting applicants relative to recommending appointees to

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[143] Minutes of the JBC Special *En Banc* Meeting, July 20, 2012, p. 10.
[144] Supra note 105.

> the Judiciary, the JBC has the authority to determine how best to perform such constitutional mandate. Pursuant to this authority, the JBC issues various policies setting forth the guidelines to be observed in the evaluation of applicants, and formulates rules and guidelines in order to ensure that the rules are updated to respond to existing circumstances. Its discretion is freed from legislative, executive or judicial intervention to ensure that the JBC is shielded from any outside pressure and improper influence.[145]

The JBC was not misled into including the respondent in the shortlist.

The respondent submitted to the JBC her SALNs for the years 2009, 2010, and 2011. She also executed a waiver of confidentiality of her local and foreign bank accounts. On July 20, 2012, the respondent received a call from the JBC, through then Chief of Office of the Office of Recruitment, Selection and Nomination (ORSN), Atty. Pascual, asking for her SALNs for the years 1995 to 1999.

The respondent then called the U.P. College of Law, but she was informed that said SALNs were not in her 201 File. Thus, she was advised to write a letter-request to the UP HRDO instead. As there was no opportunity to secure those SALNs in time for the July 23, 2012 deadline, the respondent wrote a letter dated July 23, 2012 addressed to the JBC explaining why she will not be able to submit the SALNs from 1995-1999. She stated that "[c]onsidering that most of my government records in the academe are more than fifteen years old, it is reasonable to consider it infeasible to retrieve all of those files."[146]

During the JBC *en banc* meeting held on July 20, 2012, the members delegated to the Executive Committee the responsibility of determining whether an applicant had substantially complied with the SALN requirement. A Report dated July 24, 2012 of the ORSN indicates that the respondent as a candidate for the position of Chief Justice of the Philippines has "COMPLETE REQUIREMENTS."[147] The same Report includes the following remark:

> Letter 7/23/12 – considering that her government records in the academe are more than 15 years old, it is reasonable to consider it infeasible to retrieve all those files.

Thus, it is clear that the Executive Committee, within the exercise of their authority, adjudged the respondent's submission of her three SALNs, together with her letter-explanation, as substantial compliance to these additional requirements. **Thus, the JBC, which solely determines whether a candidate has substantially complied with all the documentary requirements, made a determination that respondent had indeed substantially complied.**

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[145] Id. at 556.
[146] Annex "11," Respondent's Comment.
[147] Annex "38," Respondent's Memorandum.

Worthy of note, Former Justice Aurora Santiago Lagman, up to the present time, stands by the JBC's determination on the question of substantial compliance:

> It was also in the exercise of its discretion that the JBC deemed some of the aspirants for the *Chief Justice* post with incomplete documents like SALNs to have substantially complied. It may be mentioned herein that the JBC also exempted some of the incumbent Justices of this Honorable Court who were candidates for the said position, from submitting clearances and other documentary requirements.
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> x x x x
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> It must be recalled that without any objection from the other JBC Members, the *Ex Officio* Member who was the proponent of the requirement of all previous SALNs of candidates from the government sector defined the "**parameter of substantial compliance**" as an "**attempt to comply with the particular requirement;**" and that if indeed those with lacking documents are "serious with their application, they should inform the JBC as to the reason for failing to comply with certain requirements."
>
> The Execom enjoys the presumption that it **regularly performed the task delegated to it** in the 20 July 2012 *en banc* meeting of **determining whether** the eleven (11) candidates with deficiencies in documents, including then Justice Sereno, had **substantially complied** with the documentary requirements – guided by the aforementioned parameter and on the basis of the documents submitted by the applicants and the profile matrices and reports submitted by the ORSN.
>
> Then Justice Sereno was deemed to have **substantially complied with the requirements,** on the basis of her letter to the JBC dated 23 July 2012 and considering further that another candidate who was similarly situated as be *(sic)* was not able to submit several SALNs when he was a Professor of the University of the Philippines, was deemed by the JBC *En Banc* in its 20 July 2012 meeting to have substantially complied with the requirements.[148] (Emphasis in the original)

Furthermore, JBC regular members Atty. Jose V. Mejia and Atty. Maria Milagros Fernan-Cayosa (Re: Resolution dated February 20, 2018) in A.M. No. 17-11-12-SC and A.M. No. 17-11-17-SC state in their Joint Comment:

> Then-Associate Justice Sereno was included in the shortlist because she possesses the constitutionally prescribed qualifications for a Chief Justice. She was recommended for the position. She conformed with the recommendation. She submitted her supporting documents for her application. She was interviewed. Her application was deliberated by the JBC En Banc. She garnered the required votes to be nominated for the position.[149]

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[148] Comment of Former Justice Aurora Santiago Lagman in A.M No. 17-11-12-SC and A.M. No. 17-11-17-SC, pp. 9-10.

[149] Joint Comment of Atty. Jose V. Mejia and Atty. Maria Milagros Fernan-Cayosa (Re: Resolution dated February 20, 2018) in A.M. No. 17-11-12-SC and A.M. No. 17-11-17-SC, paragraph 6.

As well, it would not be amiss to point out that at the time the respondent applied for the position of Chief Justice, she was a sitting Member of the Court.

Uncontroverted by the petitioner, respondent testified under oath during the Oral Argument[150] that when she applied for the position of Associate Justice in 2010, and consistent with the fact that she was not a government employee for the period of 2006-2009, she was considered as a private sector applicant. Hence, she was not required to submit previous SALNs and was only made to execute a SAL along with the waiver of confidentiality of bank deposits. Following its own rules, the JBC determined that the respondent had all the constitutional qualifications for a member of the Court.

Now, as a sitting Member of the Court, who had already hurdled the test of integrity when she was appointed as Associate Justice in 2010, respondent's integrity was no longer, as it could no longer be made, subject to any question. Thus, the JBC could not have been misled as to the integrity of the respondent when the JBC already had an earlier occasion to knowingly and intelligently determine her integrity.

The JBC's determination of a person's integrity is a political question outside of the jurisdiction of the Court.

Moreover, I agree with the respondent that the determination of whether a person is of proven integrity is a political question that is outside the jurisdiction of this Court. In *Garcia v. Executive Secretary*,[151] the Court explained the nature of a political question as follows:

> As *Tañada v. Cuenco*[152] [*Tañada*] puts it, political questions refer "to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of government." **Thus, if an issue is clearly identified by the text of the Constitution as matters for discretionary action by a particular branch of government or to the people themselves then it is held to be a political question.** In the classic formulation of Justice Brennan in *Baker v. Carr*, "[p]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political

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150 TSN, Oral Arguments dated April 10, 2018, pp. 34-40.
151 602 Phil. 64 (2009).
152 103 Phil. 1051 (1957).

> decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on the one question."[153] [Emphasis supplied.]

The OSG argues that for a political question to exist, there must be in the Constitution a power vested exclusively in the President or Congress.[154] It further avers that the issue of whether the respondent is a person of proven integrity had not been committed under the Constitution to a coordinate political department – either the executive or legislative department and that the JBC is not under the executive or legislative department.[155] Contrary to the OSG's position, I am of the view that the application of the political question doctrine is not limited to the executive and legislative departments. As abovementioned in the case of *Tañada*[156] and *In re McConaughy*,[157] such question covers a situation where the resolution of a particular question has been specifically delegated to some other department of the government, with discretionary power to act:

> x x x What is generally meant, when it is said that a question is political, and not judicial, is that *it is a matter which is to be exercised by the people in their primary political capacity*, **or that it has been specifically delegated to some other department or particular officer of the government, *with discretionary power to act.*** x x x[158] (Emphasis supplied)

The JBC, as the constitutional body granted with the power of searching for, screening, and selecting applicants relative to recommending appointees to the Judiciary, clearly exercises discretionary power and is a department of the government.

Further, the case of *Abella, Jr. v. CSC*,[159] where the Court affirmed that appointment is an essentially discretionary power and is a political question, applies in this case:

> Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide.
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> **Significantly, "the selection of the appointee – taking into account the totality of his qualifications, including those abstract qualities that define his personality – is the prerogative of the appointing authority. No tribunal, not even this Court, may compel the**

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153 Id. at 74, citing *Tañada v. Cuenco*, id. and *Baker v. Carr*, 369 U.S. 186.
154 OSG Memorandum, p. 42.
155 Id. at 43.
156 Supra note 152.
157 119 N.W. 408.
158 Supra note 152, at 1067.
159 485 Phil. 182 (2004).

exercise of an appointment for a favored person.[160] (Emphasis supplied; citations omitted)

The Solicitor General failed to discharge his burden to prove non-filing.

I disagree with the majority that the Republic was able to discharge its burden of proof and thus, it is now incumbent upon respondent to discharge her burden of evidence. The Republic relies on these three documents:

a. Letter[161] dated December 8, 2017 from the UP HRDO, through its Director, Dr. Angela D. Escoto, which states in part:

> 1. On the lack of Statement of Assets, Liabilities and Net Worth (SALN) of Chief Justice Ma. Lourdes A. Sereno, for the years 2000, 2001, 2003, 2004, 2005, and 2006:
>
> These documents are not contained in the 201 file of Chief Justice Sereno. Her 201 records show that she was on official leave from the University of the Philippines for the following periods:
>
> June 1, 2000 – May 31, 2001
> June 1, 2001 – May 31, 2002
> November 1, 2003 – May 31, 2004
> June 1, 2004 – October 31, 2004
> November 1, 2004 – February 10, 2005
> February 11, 2005 – October 31, 2005
> November 15, 2005 – May 31, 2006
> June 1, 2006 – resigned
>
> x x x x
>
> 3. On the requested certification that only the SALN for 31 December 2002 can be found in the 201 file of Chief Justice Sereno:
>
> We respectfully submit the attached certification marked as "Annex B" and the 2002 SALN we previously submitted to the Committee marked as "Annex B-1".

b. Certification[162] dated December 8, 2017, also issued by the UP HRDO, through Dr. Escoto, which states:

> This is to certify that based on the 201 files of Supreme Court Chief Justice Maria Lourdes A. Sereno under the custody of the Information Management Section of the Human Resources Development Office, University of the Philippines Diliman, it was found that between the period 2000

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160 Id. at 195-196.
161 Annex "D," Petition.
162 Annex "B," id.

> [to] 2009 the SALN submission on file is as of December 31, 2002.
>
> This further certifies that documents in the same 201 file referred to above indicate that Chief Justice Sereno resigned from the University of the Philippines on 01 June 2006.

c. Certification[163] dated December 4, 2017 issued by the Central Records Division of the Office of the Ombudsman, through SALN In-Charge" Ms. Julie Ann A. Garcia, which states:

> This is to certify that based on records on file, there is no SALN filed by **MS. MARIA LOURDES A. SERENO** for calendar years 1999 to 2009 except SALN ending December 1998 which was submitted to this Office on December 16, 2003.

The majority deems that these letter, certifications, and the records of the UP HRDO and the Ombudsman conclusively establish that for the years 1986, 1987, 1988, 1992, 1999, 2000, 2001, 2003, 2004, 2005 and 2006, respondent did not file her SALNs. Once more, I disagree. These letter and certifications only prove that these SALNs were not in respondent's files — **they, however, do not constitute proof as to the question of whether or not she had not filed her SALNs.**

Further, contrary to the *ponencia*'s position, the case of *Concerned Taxpayer v. Doblada, Jr.*[164] ***is*** applicable as regards the appreciation of the certifications relied on by the Republic. In the said case, the Court held that one cannot readily conclude that a person has failed to file his sworn SAL(N) simply because these documents are missing in the files of the those who are required to keep it. It also gave credence to the fact that the report of the Office of the Court Administrator simply stated that it does not have on its file the subject SAL of Doblada and that there was no categorical statement that Doblada failed to file his SAL for the years mentioned. The Court ruled as follows:

> Moreover, we find no sufficient evidence to prove that respondent failed to file his SAL for the years 1975, 1977 to 1988, 1990, 1992, 1994, 1997, 1999 and 2000. Respondent maintains that he has consistently filed his SAL for the said years. To prove his contention, respondent submitted a copy of a letter dated May 7, 2001 sent by Remegio C. Añosa, Acting Branch Clerk of Court of Branch 155, RTC, Pasig City, stating therein that attached to said letter are the sworn SAL of the staff of RTC Pasig City, Branch 155, including that of respondent's, for the year 2000. The letter was sent to and duly received by the OCA but the SAL of respondent for 2000 is one of those missing in the files of OCA. **On this premise, one cannot readily conclude that respondent failed to file his sworn SAL for the years 1975, 1977 to 1988, 1990, 1992, 1994, 1997, 1999 and 2000 simply because these documents are missing in the files of the OCA.** Even in

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[163] Annex "C," id.
[164] 498 Phil. 395 (2005).

> the report of the Court Administrator dated February 3, 2005, **there was no categorical statement that respondent failed to file his SAL for the years earlier mentioned. The report of the OCA simply stated that it does not have on its file the subject SAL of respondent.**[165] (Emphasis supplied)

Similarly, the letter and certifications of the UP HRDO only state that "these documents are not contained in the 201 file of Chief Justice Sereno" and "it was found that between the period 2000 [to] 2009 the SALN submission on file is as of December 31, 2002," respectively. There is no categorical statement that the respondent failed to file her SALN for the years requested as stated in the letter and the certifications. Thus, these do not constitute sufficient proof to conclude that respondent had failed to file her SALNs.

As regards the certification issued by the Office of the Ombudsman, it merely states that "there is no SALN filed by MS. MARIA LOURDES A. SERENO for calendar years 1999 to 2009 except SALN ending December 1998 which is submitted to this Office on December 16, 2003". Again, this language says only what it means: that the only SALN on file with the Office of the Ombudsman was the SALN ending December 1998. Accordingly, like the UP HRDO letter and certification, this does not suffice to prove that respondent failed to file her SALNs. Contrary to the *ponencia*'s interpretation, the phrase "there is no SALN filed by MS. MARIA LOURDES A. SERENO for calendar years 1999 to 2009" can only be understood as a reference to what was on file with the Office of the Ombudsman — and this is evident from its juxtaposition of the exception, "except SALN ending December 1998 which is submitted to this Office on December 16, 2003". To be sure, the fact that UP professors could submit their SALNs also with the UP HRDO means that the Office of the Ombudsman was not, as it could not be, in any position to make a definitive statement as to whether respondent had failed to file her SALNs.

For the years that respondent was a professor in the University of the Philippines, *i.e.*, 1986-2006, the UP HRDO was, in fact, able to produce the following SALNs: 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002.[166] Meanwhile, the respondent was able to retrieve her SALNs for the years 1989 and 1998 and was able to find a certified true copy of a page of a notarial book of Notary Public, Atty. Eugenia A. Borlas showing that she executed her SALN for year 1999.[167] Thus, the fact that respondent was able to establish that there are SALNs which are not in the records of the UP HRDO thus situated her similarly to Doblada who was able to present a letter stating that attached to said letter are the sworn SAL of the staff of RTC Pasig City, Branch 155, including that of respondent's, for the year 2000. **In plain terms, therefore, the Court's ruling that one cannot readily conclude that a person has failed to file his SALN simply because these documents are**

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[165] Id. at 404.

[166] *Ponencia*, p. 5.

[167] Annex "47," Respondent's Memorandum.

missing in the files of those who are required to keep them applies foursquare to the respondent.

Accordingly, it is quite clear that the burden of evidence has not shifted to the respondent.

Moreover, and contrary to the *ponencia*'s contention that the burden of proof in *quo warranto* cases rests on the defendant or respondent, as against the State at least, to show his right to the office from which it is sought to oust him,[168] the Court, in the case of *David v. Senate Electoral Tribunal*,[169] ruled that the burden of proof necessarily falls on the party who brings the action and who alleges that the respondent is ineligible for the office involved in the controversy. The Court stated as follows:

> **In an action for *quo warranto*, the burden of proof necessarily falls on the party who brings the action and who alleges that the respondent is ineligible for the office involved in the controversy.** In proceedings before quasi-judicial bodies such as the Senate Electoral Tribunal, the requisite quantum of proof is substantial evidence. This burden was petitioner's to discharge. Once the petitioner makes a prima facie case, the burden of evidence shifts to the respondent.[170]

The Chief Justice **testified under oath** by during the Oral Argument, [171] that she consistently filed her SALNs during her entire employment in the UP College of Law. In support, she also submitted her 1989 and 1998 SALNs, and independent proof of having subscribed to her 1999 SALN.[172] As against the certifications from UP HRDO and Ombudsman of some SALNs not being on file, which have been shown as insufficient to shift the burden of proof to the respondent, I find that on the strength of the testimonial and documentary evidence presented by the respondent, there can be no finding that she did not consistently file her SALNs.

Consequently, it becomes painfully apparent that the decision reached by the majority to oust the Chief Justice is not even for the graver offense of non-filing of SALN under R.A. No. 6713 — which was the only basis of the quo warranto petition — but for the non-submission of the "additional documentary requirement" of all previous SALNs to the JBC required by the Announcement.

Conclusion

The filing by the Solicitor General of the present *quo warranto* petition to oust the Chief Justice appears to be an admission on the part of the

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168 *Ponencia*, p. 103 citing Vicente J. Francisco, Revised Rules of Court in the Philippines, Volume IV-B, Special Civil Actions, 1972.

169 G.R. No. 221538, September 20, 2016, 803 SCRA 435.

170 Id. at 509-510.

171 TSN, Oral Arguments dated April 10, 2018, pp. 109-116.

172 Attached to the *Ad Cautelam Manifestation/Submission* of the Chief Justice.

Executive department that the grounds for impeachment, including the ground upon which this *quo warranto* petition is based, rest on shaky grounds. Understanding the inherent weakness of the grounds of impeachment and the improbability of ouster through the mode constitutionally provided, the Solicitor General has effectively shopped for a different forum to seek the Chief Justice's ouster. This is not a road less travelled — it is a prohibited alleyway that, regrettably, the Court is now allowing passage through.

To me, what had been shown in the hearings before the Committee on Justice in the House of Representatives are all internal matters that, to some, bespeak the lack of able leadership by the Chief Justice. The acts complained of, including the alleged failure to submit SALNs, are actionable under existing laws — provided the respondent is first impeached following settled and unequivocal jurisprudence.

Judicial power rests in the Court *en banc*. The Chief Justice, *primus inter pares*, is first in precedence but does not exercise judicial power on his own. The members of the Court are not without recourse — are not without power — to address any perceived encroachment being committed by the Chief Justice on the powers of the Court *en banc*. The Court's inability to resolve this leadership issue within its own walls and the need to ventilate these matters before another forum is a disservice to the institution and to the individual members of the Court. For the Court to now turn around and oust the Chief Justice on its own, without any constitutional basis, is an even greater disservice.

I view with deep shame and regret this day when the Court has ousted one of its sitting Members upon the prodding of a mere agency of a separate coordinate department. I steadfastly maintain that the members of the Court cannot and should not allow themselves to be used in this manner. No matter how dislikable a member of the Court is, the rules cannot be changed just to get rid of him, or her in this case. The other members of the Court — the Court *en banc* — are called upon to grin and bear the unbearable as travelling this prohibited road will be at the expense and to the extreme prejudice of the independence of the entire Judiciary, the independence of the Court's individual members, and the freedom of discourse within the Court. This case marks the time when the Court commits *seppuku* — without honor.

In view of the foregoing, I vote to **DISMISS** the petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice