EN BANC

G.R. No. 237428 - REPUBLIC OF THE PHILIPPINES, REPRESENTED BY SOLICITOR GENERAL JOSE C. CALIDA, Petitioner, **v. MARIA LOURDES P. A. SERENO,** Respondent.

Promulgated:

May 11, 2018

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DISSENTING OPINION

LEONEN, *J.*:

I dissent.

This Petition should have been dismissed outright and not given due course. It does not deserve space in judicial deliberation within our constitutional democratic space. Even if the Chief Justice has failed our expectations, quo warranto, as a process to oust an impeachable officer and a sitting member of the Supreme Court, is a legal abomination. It creates a precedent that gravely diminishes judicial independence and threatens the ability of this Court to assert the fundamental rights of our people. We render this Court subservient to an aggressive Solicitor General. We render those who present dissenting opinions unnecessarily vulnerable to powerful interests.

Granting this Petition installs doctrine that further empowers the privileged, the powerful, and the status quo.

A better reading of the Constitution requires us to read words and phrases in the context of the entire legal document. Thus, the general grant of original jurisdiction for quo warranto actions to this Court in Article VIII, Section 5(1)[1] should be read in the context of the provisions of Article XI, Sections 2[2] and 3,[3] as well as the principles of judicial independence and

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[1] CONST., art. VIII, sec. 5 provides:

Section 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

[2] CONST., art. XI, sec. 2 provides:

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.

[3] CONST., art XI, sec. 3 provides:

Section 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of

integrity inherent in a constitutional order implied in Article VIII, Sections 1, 3, 4, 7, 8, 9, 10, 11, 12, and 13[4] of the Constitution.

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impeachment.
(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of 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.
(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.
(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.
(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.
(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.
(8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.

[4] CONST., art. VIII, secs. 1, 3, 4, 7, 8, 9, 10, 11, 12 and 13 provide:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Section 3. The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

Section 4. (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit en banc or in its discretion, in divisions of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.
(2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc, and all other cases which under the Rules of Court are required to be heard en banc, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.
(3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided en banc: Provided, that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc.

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.

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.
(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 solution to address the problems relating to a Chief Justice is for this Court to call her out or for her to be tried using the impeachment process if any of her actions amounts to the grave offenses enumerated in the Constitution.

She also has the alternative to have the grace and humility to resign from her office to protect the institution from a leadership which may not have succeeded to address the divisiveness and the weaknesses within.

Granting a Petition for Quo Warranto against the Chief Justice—an impeachable officer—is not the right way to address her inability to gain the respect of the branch of government that she was entrusted to lead. This is clear from a deliberate, impartial, conscious, and contextual reading of the entirety of the text of the Constitution. This is the unclouded conclusion if this Court appreciates the true value of judicial independence.

Granting the Quo Warranto Petition as the majority proposes, is tantamount to empowering the Solicitor General, a repeat litigant representing the current political administration, far more than any other constitutional officer. The Solicitor General will be granted the competence to what amounts to a reconsideration of the determination of the Judicial and Bar Council and the President as to the qualifications of any appointed judge or justice.

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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.

(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. For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

Section 10. The salary of the Chief Justice and of the Associate Justices of the Supreme Court, and of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be decreased.

Section 11. The Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reached the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court en banc shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

Section 12. The Members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions.

Section 13. The conclusions of the Supreme Court in any case submitted to it for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. Any Member who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor. The same requirements shall be observed by all lower collegiate courts.

The majority attempts to make a distinction between the determination of the qualifications of an applicant to a judicial position and his or her acts after his or her appointment. For acts in relation to the presentation of qualifications, the majority argues that quo warranto may be a remedy. For acts after his or her appointment, it is proposed that impeachment and conviction may be the vehicle for an impeachable officer's removal.

Quo warranto is, therefore, presented as not exclusive of impeachment. This is a distinction which cannot be found in the Constitution. It is likewise contrary to its principles.

Tecson v. Commission on Elections[5] defined quo warranto proceedings as "an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office."

A petition for quo warranto under Rule 66 of the Rules of Court is required to be brought under the name of the Republic of the Philippines through a verified petition.[6] It may be instituted by an individual claiming a right to an office in his or her own name[7] or by the Solicitor General or public prosecutor.[8] The relevant provisions of the Rules of Court state:

> RULE 66
> *Quo Warranto*
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> Section 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.
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> Section 3. When Solicitor General or Public Prosecutor May Commence Action with Permission of Court. — The Solicitor General or a public prosecutor may, with the permission of the court in which the action is to be commenced, bring such an action at the request and upon the relation of another person; but in such case the officer bringing it may first require an indemnity for the expenses and costs of the action in an amount approved by and to be deposited in the court by the person at whose request and upon whose relation the same is brought.
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> . . . .
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> Section 5. When An Individual May Commence Such An Action. — A person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his

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5 468 Phil. 421, 461–462 (2004) [Per J. Vitug, En Banc].
6 RULES OF COURT, Rule 66, sec. 1.
7 RULES OF COURT, Rule 66, sec. 5.
8 RULES OF COURT, Rule 66, sec. 3.

own name.[9]

Quo warranto, as used in this case, will amount to a "removal" of an impeachable public officer. Thus, Article VIII, Section 5(1) should be read alongside Article XI, Section 2 of the Constitution. The distinction relating to when offenses were committed is not relevant for purposes of the process for removal. Concededly, actions prior to the assumption of office may amount to a crime. However, it is only upon the end of the tenure of the impeachable officer or after her removal may she be held to account.

The Constitutional design is to balance the accountability of an impeachable public officer with the necessity for a degree of immunity while in service that will assure the independence inherent in a republican government.

The gist of the present majority opinion is that respondent may be removed from her position as Chief Justice via quo warranto proceedings and that this Court can take cognizance of the present petition for quo warranto pursuant to Article VIII, Section 5(1), which provides:

> Section 5. The Supreme Court shall have the following powers:
>
> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.[10]

Then it proceeds to a narrow version of *verbal legis* or plain reading of Article XI, Section 2 to propose that there is possibly no other interpretation other than the removal of the President, Vice President, Members of the Supreme Court, Members of the Constitutional Commissions, and the Ombudsman by impeachment is merely permissive.

I disagree.

II

It is true that Article XI, Section 2 of the Constitution uses the phrase "may be removed," thus:

> 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

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9 RULES OF COURT, Rule 66, secs. 2, 3, and 5.

10 CONST., art. VIII, sec. 5(1).

> 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.[11] (Emphasis supplied)

Fundamentally, when construing the meaning of the Constitution, it is not only the literal meaning of words and phrases that should be taken into consideration.

Since it is the Constitution that we are reading, the context of the words and phrases (1) within the entire document, (2) in the light of the textual history as seen in past Constitutions ratified by our people, (3) within the meaning of precedents of this Court, and (4) in the light of contemporary circumstances, which may not have been in the contemplation of those who ratified the Constitution, as well as those who participated in the deliberation and decision of those who voted precedents in the light of their written opinions, must likewise be considered.

David v. Senate Electoral Tribunal,[12] thus, stated:

> Reading a constitutional provision requires awareness of its relation with the whole of the Constitution. A constitutional provision is but a constituent of a greater whole. It is the framework of the Constitution that animates each of its components through the dynamism of these components' interrelations. What is called into operation is the entire document, not simply a peripheral item. The Constitution should, therefore, be appreciated and read as a singular, whole unit — *ut magis valeat quam pereat*. Each provision must be understood and effected in a way that gives life to all that the Constitution contains, from its foundational principles to its finest fixings.[13]

David also underscored that jurisprudence over the text under consideration must also be taken into account, as judicial decisions that interpret law and the Constitution become part of our legal system.[14]

The Constitution is not just an ordinary legal document. It frames our legal order. The changes in its phraseology reflect the historical adjustments of the values of the sovereign. While admittedly, large portions of the document are consistent with our colonial history, many of the words have already been interpreted in the light of our own indigenous wisdom. Likewise, many of the fundamental rights of individuals, groups, and identities find resonance with normative formulations in the international sphere, which provide this Court with persuasive guidance.

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[11] CONST., art. XI, sec. 2.
[12] G.R. No. 221538, September 20, 2016, 803 SCRA 435 [Per J. Leonen, En Banc].
[13] Id. at 478–479.
[14] G.R. No. 221538, September 20, 2016, 803 SCRA 435 [Per J. Leonen, En Banc].

To focus on the dictionary meaning of the word "may" precludes the importance of the entire document. It provides a myopic and unhistorical view of the framework on which our legal order rests. It supplants sovereign intent to the linguistic whims of those who craft dictionaries.

Of course, no judicial interpretation, which is not supported by any textual anchor, should be allowed. Otherwise, we unreasonably endow ourselves with a power not ours. Instead of interpreting, we create new norms. This is a constitutional power not granted to this Court.

Definitely, the framers of the Constitution did not use the words "SHALL be removed." Clearly, this would not have been possible because it would have communicated the inference that removal through impeachment and conviction was mandatory. Thus, the word "may" should mean that it was an option to remove, in the sense that it was not mandatory to remove an impeachable officer. After all, most should be expected to serve out their term with "utmost responsibility, integrity, loyalty, and efficiency," acting "with patriotism and justice" and leading "modest lives."[15]

Neither did the framers use the phrase "may ALSO be removed from office . . ." This would have clearly stated the intent that there were processes other than impeachment and conviction that would remove a sitting Chief Justice.

Admittedly, the framers also did not use the phrase "may ONLY be removed from office . . ." However, the absence of the word "only" should not immediately lead to the conclusion that another process—like Quo Warranto—was possible. The context of the provision should be taken into consideration.

First, the process of removal through impeachment and conviction is reserved only for some officials, notably:

(1) The President;
(2) The Vice President;
(3) Members of the Supreme Court;
(4) Members of the Constitutional Commissions; and
(5) The Ombudsman.[16]

This list is exclusive. For all other public officers, the Constitution allows a process that may be provided by law—not by impeachment.

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[15] CONST., art. XI, sec. 1
[16] CONST., art. XI, sec. 2.

The officers enumerated head significant Constitutional organs, hence, the need to be independent of other Constitutional organs.

In the same manner, the President enjoys immunity from suit so that he may be able to exercise his duties and functions without any hindrance or distraction, thereby giving his office and the country the undivided attention that they deserve.[17]

A more complete picture will be seen if the process of removal of a member of the Senate or the House of Representatives is taken into consideration, thus, in Article VI:

> Section 16. . . .
>
> (3) Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds of all its members, suspend or expel a member. A penalty of suspension, when imposed, shall not exceed sixty days.[18]

This provision emphasizes the independence of Congress, which, under the provisions of our Constitution, impeaches and convicts the officers mentioned in Article XI, Section 2 of the Constitution.

Second, the process of removal is deliberately cumbersome. Article XI, Section 3 provides:

> Section 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.
>
> (2) A verified complaint may be filed by any Member of the House of Representatives or by any citizen upon a resolution of 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

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17 *Soliven v. Makasiar*, 249 Phil. 394 (1988) [Per Curiam, En Banc].

18 CONST., art. VI, sec. 16 (3).

> 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.
>
> (6) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.
>
> (7) 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 vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.
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> (8) 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.
>
> (9) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.[19]

Clearly, the power to remove an impeachable official, while involving the interpretation of the Constitution, is not assigned to the Judiciary. It is an exclusive function of the House of Representatives and the Senate. The House acts as prosecutor while the Senate will act as the body to try the case; that is, to receive evidence and vote for conviction or acquittal.

The votes needed are also specified. One-third of all the members of the House of Representatives is required to impeach, and thus, to file the Articles of Impeachment. Two-thirds of all the members of the Senate are required to convict.

There are also required timetables in the impeachment process. This includes a period of one (1) year after the last impeachment attempt before any new impeachment charge is brought.

The purpose of the one (1)-year time bar for impeachment is intended not only to avoid harassment suits against the impeachable officer, but also to prevent the disruption of public service. If numerous impeachment complaints are filed one after the other, impeachable officers would be unable to do their official functions and duties. Important legislative work would be delayed in order to be able to process the complaints. *Gutierrez v. House of Representatives*[20] explains:

> The Court does not lose sight of the salutary reason of confining only one impeachment proceeding in a year. Petitioner concededly cites Justice Adolfo Azcuna's separate opinion that concurred with the *Francisco*

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[19] CONST., art. XI, secs. 3(1) to (8).

[20] 658 Phil. 322 (2011) [Per J. Carpio Morales, En Banc].

> [*v. House of Representatives*] ruling. Justice Azcuna stated that the purpose of the one-year bar is two-fold: to prevent undue or too frequent harassment; and 2) to allow the legislature to do its principal task [of] legislation, with main reference to the records of the Constitutional Commission, that reads:
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> > MR. ROMULO. Yes, the intention here really is to limit. This is not only to protect public officials who, in this case, are of the highest category from harassment but also to allow the legislative body to do its work which is lawmaking. Impeachment proceedings take a lot of time. And if we allow multiple impeachment charges on the same individual to take place, the legislature will do nothing else but that.
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> It becomes clear that the consideration behind the intended limitation refers to the element of time, and *not* the number of complaints. The impeachable officer should defend himself in only one impeachment *proceeding*, so that he will not be precluded from performing his official functions and duties. Similarly, Congress should run only one impeachment proceeding so as not to leave it with little time to attend to its main work of law-making. The doctrine laid down in *Francisco* that initiation means filing *and* referral remains congruent to the rationale of the constitutional provision.[21] (Emphasis and underscoring in the original)

The numbers required from a collective body were clearly designed to ensure that the removal of the impeachable public officers requires a modicum of political will from the elected representatives in both Congressional chambers. This, again, was a process to shield the heads of the Constitutional departments, Constitutional Commissions, and the Ombudsman with an added layer of assurance against suits that could be maliciously filed by disgruntled parties, and therefore, diminish the independence and resolve of the impeachable officers.

The process of impeachment was designed as a measure of accountability for public officials who are not otherwise burdened by the pressures of maintaining electability. For this reason, the constitutional provisions on impeachment are placed under Article XI, on the Accountability of Public Officers, and not under Article VI on the Legislative Department,[22] emphasizing that the process is not merely a check and balance of government branches but rather a process to hold the highest public officials accountable to the people.

Third, the grounds for impeachment are weighty and serious, thus:

(1) Culpable violation of the Constitution;
(2) Treason;

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[21] Id. at 400–401 *citing* J. Azcuna, Separate Opinion in *Francisco v. House of Representatives*, 460 Phil. 830 (2003) [Per J. Carpio Morales, En Banc].

[22] *See also* the Separate Opinion of Justice Azcuna in *Francisco v. House of Representatives*, 460 Phil. 830 (2003) [Per J. Carpio Morales, En Banc].

(3) Bribery;
(4) Graft and Corruption; and
(5) Betrayal of the Public Trust.[23]

Again, the list is exclusive. The process does not allow removal for any other crime or misdemeanor. It is not left wholly to the discretion of the members of Congress. The evidence must infer facts which amount to the offenses mentioned.

In excluding other crimes, the intent to shield the impeachable officers from malicious or bothersome suits is palpable. Clearly, mistakes will be made by public officials. But, while in office, it is indisputable that some level of immunity is given to the official.

Again, the rationale is plain. Difficult decisions will be made by the President, members of the Supreme Court, members of the Constitutional Commissions, and the Ombudsman. In their decisions, there will be powerful perhaps even moneyed individuals who will be affected adversely. Certainly, the ideal should be that all the impeachable officers will decide on the basis of both principle and public good without fear of the detriment that will be felt by the losing parties. Structurally, the Constitution should be read as providing the incentive for them to do their duties. Thus, "may be removed" should be read in the light of this principle. That is, that impeachment and conviction is the only process. It simply signifies that there may be an attempt to impeach and it may be successful if the Senate convicts.

Granting this petition as a circumvention of the constitutionally mandated impeachment process will have the deleterious effect of allowing untrammeled incursions into our judicial independence. Without the mantle of judicial independence to protect us, the Judiciary will be substantially diminished with the courts subject to possible harassment during the performance of their duties.

III

Even assuming that this Court can take cognizance of the petition, an action for quo warranto is limited in time regardless of who institutes the action. It can only be instituted within one (1) year after the cause of action arises.[24]

Rule 66, Section 11 of the Rules of Court is clear and leaves no room

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[23] CONST., art. XI, sec. 2.

[24] *Villegas v. De La Cruz*, 122 Phil. 1102 (1965) [Per J. Bautista Angelo, En Banc]; *Cristobal v. Melchor*, 168 Phil. 328 (1977) [Per J. Muñoz Palma, First Division].

for interpretation:

> Section 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.[25] (Emphasis supplied)

It is in the public's best interest that questions regarding title to public office be resolved and laid to rest as soon as possible. This is the rationale behind the one (1)-year prescriptive period. Public service demands stability and consistency.

In the same manner, public officers cannot rest easy with the threat of being unseated at any time looming over their heads. The right of civil servants to occupy their seats must not be subjected to constant uncertainty. A public officer cannot afford to be distracted from his or her duties. When public officers cannot do their work effectively, it is not just the office that deteriorates. The nature of the office is such that it is the public that is inconvenienced and ultimately suffers.

It is, thus, imperative that a quo warranto petition be filed within the one (1)-year prescriptive period so as to establish immediately and with finality any nagging questions regarding title to public office.

In *Villegas v. De la Cruz*,[26] this Court stated that "it is not proper that the title to a public office be subjected to continued uncertainty for the people's interest requires that such right be determined as speedily as possible."[27]

The public policy behind the prescriptive period for quo warranto proceedings was emphasized in *Unabia v. City Mayor*[28]:

> [I]n actions of quo warranto involving right to an office, the action must be instituted within the period of one year. This has been the law in the island since 1901, the period having been originally fixed in section 216 of the Code of Civil Procedure (Act No. 190). We find this provision to be an expression of policy on the part of the State that persons claiming a right to an office of which they are illegally dispossessed should immediately take steps to recover said office and that if they do not do so within a period of

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25 RULES OF COURT, Rule 66, sec. 11.

26 122 Phil. 1102 (1965) [Per J. Bautista Angelo, En Banc].

27 Id. at 1105.

28 99 Phil. 253 (1956) [Per J. Labrador, En Banc].

> one year, they shall be considered as having lost their right thereto by abandonment. There are weighty reasons of public policy and convenience that demand the adoption of a similar period for persons claiming rights to positions in the civil service. *There must be stability in the service so that public business may be unduly retarded; delays in the statement of the right to positions in the service must be discouraged.*[29] (Emphasis supplied)

Unabia also emphasized the importance of protecting public funds, hence, the government cannot compensate an unqualified officer:

> Further, the Government must be immediately informed or advised if any person claims to be entitled to an office or a position in the civil service as against another actually holding it, so that the Government may not be faced with the predicament of having to pay two salaries, one, for the person actually holding the office, although illegally, and another, for one not actually rendering service although entitled to do so.[30]

The importance of protecting public funds and maintaining stability in the government is reiterated in *Pinullar v. President of Senate*[31] and *De la Cerna v. Osmeña.*[32]

In *Pinullar*:

> While the court exhorts the institution of the corresponding action for the redress of wrong or unlawful act committed either by a private person or an official of the Government, and discourages laches and inaction, such relief must be sought for within a reasonable period; otherwise any remedy to which he may be entitled would be denied him for his apparent loss of interest, or waiver, or even acquiescence on his part (Mesias *vs.* Jover, 97 Phil., 899; 51 Off. Gaz [12] 6171). The rationale of this doctrine is given when this Court said:
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> > ". . ., the Government must be immediately informed or advised if any person claims to be entitled to an office or a position in the civil service as against another actually holding it, so that the Government may not be faced with the predicament of having to pay two salaries, one, for the person actually holding the office, although illegally, and another, for one not actually rendering service although entitled to do so . . ."[33]

In *De la Cerna*:

> In his petition for mandamus, dated May 5, 1956, as well as in his amended petition, dated June 26, 1956, petitioner-appellant alleged that Administrative Case No. 22 of the municipal board of the City of Cebu was

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29 Id. at 257.
30 Id. at 257–258.
31 104 Phil. 131 (1958) [Per J. Felix, En Banc].
32 105 Phil. 774 (1959) [Per J. Montemayor, En Banc].
33 104 Phil. 131, 135 (1958) [Per J. Felix, En Banc].

> still pending investigation and awaiting judgment or decision. On the other hand, in their answer to his petition for mandamus, respondents therein equally alleged that in said Administrative Case No. 22, petitioner-appellant was found guilty of the charges and as a result the municipal board dismissed him from the service. For lack of evidence, we are unable to make a finding on this controverted point, not knowing which of the conflicting allegations should be accepted. However, it is a fact that appellant's position was duly abolished and that due to said abolitions, he was separated from the service on October 10, 1953, and as already stated, he filed this action for reinstatement and for the payment of back salaries, only on May 10, 1956, after a period of almost three years.
>
> Following the doctrine laid down in the case of Unabia *vs.* City Mayor, *supra*, and other cases, where we held that "any person claiming right to a position in the civil service should also be required to file his petition for reinstatement within the period of one year, otherwise he is thereby considered as having abandoned his office", we find no error in the two appealed orders, and, consequently, hereby affirm the same.[34] (Citation omitted)

An action for quo warranto should be promptly filed and persons who claim a right to the office occupied by a supposed usurper should do so within the provided period, lest they be deemed to have abandoned[35] their right.

The majority refers to Article 1108(4) of the Civil Code to support their stand that the prescriptive period for filing the quo warranto petition has not yet prescribed and will never prescribe because prescription does not lie against the State.

I cannot agree.

Article 1108(4) of the Civil Code provides:

> Article 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.*
>
> 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.[36] (Emphasis supplied)

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34 105 Phil. 774, 776 (1959) [Per J. Montemayor, En Banc].
35 *Castro v. Del Rosario,* 125 Phil. 611 (1967) [Per J. Makalintal, En Banc].
36 CIVIL CODE, art. 1108.

However, Article 1108(4) refers to acquisitive and extinctive prescription as regards the acquisition or ownership of real rights, and not prescription in general. Article 1108 can be found in Book III of the Civil Code which relates to the *different modes of acquiring ownership.*

The ownership referred to in Book III of the Civil Code is ownership of real property, personal property, and intellectual creations. It is preposterous to include the position of Chief Justice within the coverage of Book III of the Civil Code, since a public office is not a property right, hence, no proprietary title can attach to it.[37]

Furthermore, a quick review of jurisprudence[38] shows that the phrase "Prescription does not lie against the State" was limited to actions of reversion to the public domain of lands which were fraudulently granted to private individuals and not in all actions instituted by the State, as the majority has mistakenly concluded.

Republic v. Court of Appeals[39] emphasized that the State's action *to recover its own property* is imprescriptible:

> And in so far as the timeliness of the action of the Government is concerned, it is basic that prescription does not run against the State (Article 1108, Civil Code; Republic vs. Rodriguez, L-18967, January 31, 1966, 16 SCRA 53). The case law has also been:
>
> > "When the government is the real party in interest, and is proceeding mainly to assert its own rights and recover its own property, there can be no defense on the ground of limitation or limitation" (Government of the U.S. vs. Judge of First Instance of Pampanga, 49 Phil. 495, 500; Republic vs. Grijaldo, L-20240, December 31, 1965, 15 SCRA 681).
> >
> > "*Public land fraudulently included in patents or certificates of title may be recovered or reverted to the State in accordance with Section 101 of the Public Land Act. Prescription does not lie against the State in such cases for the Statute of Limitations does not run against the State. The*

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37 *Civil Service Commission v. Javier,* 570 Phil. 89 (2008) [Per J. Austria-Martinez, En Banc] *citing Montesclaros v. Commission on Elections,* 433 Phil. 620 (2002) [Per J. Carpio, En Banc].

38 *Republic of the Philippines v. Animas,* 155 Phil. 470 (1974) [Per J. Esguerra, First Division]; *Republic v. Court of Appeals,* 253 Phil 698 (1989) [Per J. Melencio-Herrera, Second Division]; *Reyes v. Court of Appeals,* 356 Phil 606 (1998) [Per J. Martinez, Second Division]; *Republic of the Philippines v. Court of Appeals,* 327 Phil 852 (1996) [Per J. Davide, Jr., Third Division]; *Dela Cruz v. Court of Appeals,* 349 Phil. 898 (1998) [Per J. Romero, Third Division]; *East Asia Traders Inc. v. Republic of the Philippines,* 477 Phil 848 (2004) (Per J. Sandoval-Gutierrez, Second Division); *Pelbel Manufacturing Corporation v. Court of Appeals,* 529 Phil 192 (2006) [Per J. Puno, Second Division); *Heirs of Parasac v. Republic of the Philippines,* 523 Phil 164 (2006) [Per J. Chico-Nazario, First Division]; *Samahan ng Masang Pilipino sa Makati, Inc. v. Bases Conversion Development Authority,* 542 Phil 86 (2007) [Per J. Velasco, Jr., Second Division); *Land Bank of the Philippines v. Republic of the Philippines,* 567 Phil 427 (2008) [Per J. Reyes, R.T., Third Division]; *Yu Chang v. Republic,* 659 Phil 176 (2011) [Per J. Villarama, Jr., Third Division].

39 253 Phil. 698 (1989) [Per J. Melencio-Herrera, Second Division].

> *right of reversion or reconveyance to the State is not barred by prescription.*"[40] (Emphasis supplied)

If we were to follow the majority's argument of altogether excusing the State from the limiting effects of time, then we would be encouraging and giving our imprimatur to indolence and mediocrity within government service. This must not be the case and we must always expect more from our public officers, especially the Solicitor General who holds the honor of representing the State.

IV

The history of impeachment enlightens us on the balance of values which have been considered in the removal of the class of public officers mentioned in Article XI, Section 2 of the Constitution.

Impeachment as a mode of removal of public officers was introduced in this jurisdiction through the 1935 Constitution. It was carried over from the American Constitution, which in turn, was carried over from English practice.[41] In 14th century England, impeachment was used by Parliament to gain authority over the King's ministers who were thought to be above the law. The proceeding was widely used until the 19th century, when the doctrine of ministerial responsibility was established and the Parliament, with a mere vote of no confidence, could oust an erring official.[42]

While it was virtually obsolete in England, the United Constitution adapted the proceeding as a "method of national inquest into the conduct of public men."[43] The American Founding Fathers, however, were careful to distinguish their proceeding from that of the English.[44] The English form of impeachment applied to any private citizen or commoner for treason or high crimes and to the high-born lords for any crime, and thus, was considered a criminal proceeding.[45] The American form, however, narrowly restricted its applicability to only "the chief of state, members of the cabinet and those in the judiciary" and the impeachable offenses to "treason, bribery, or other high crimes and misdemeanors." Hence, the proceeding was treated differently from any other proceeding.[46]

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40 Id. at 713.

41 *See* J. Vitug, Separate Opinion in *Francisco v. House of Representatives*, 460 Phil. 830 (2003) [Per J. Carpio Morales, En Banc].

42 Id. *citing* Michael Nelson, ed., THE PRESIDENCY A TO Z, WASHINGTON D.C. CONGRESSIONAL QUARTERLY (1998).

43 Id.

44 Id. *citing* Michael J. Gerhardt, *The Constitutional Limits to Impeachment and its Alternatives*, 68 TEX. L. REV. 1 (November 1989).

45 Id. *citing* Michael Nelson, ed., THE PRESIDENCY A TO Z, WASHINGTON D.C. CONGRESSIONAL QUARTERLY (1998).

46 Id. *citing* Michael J. Gerhardt, *The Constitutional Limits to Impeachment and its Alternatives*, 68 TEX. L. REV. 1 (November 1989).

This American form of impeachment was, thus, adopted by the framers of our 1935 Constitution, which provided:

ARTICLE IX.—IMPEACHMENT

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.

In its current iteration, the provision in the Constitution reads:

ARTICLE XI.
ACCOUNTABILITY OF PUBLIC OFFICERS

. . . .

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.

Section 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of 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.

(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.

(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.

(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.
>
> (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.
>
> (8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.

Impeachment is characterized as a *sui generis* proceeding that is both legal and political in nature. It is legal in the sense that like criminal cases, it requires basic evidentiary rules and due process.[47] As in administrative proceedings, it results in the removal and disqualification of the official.[48] It is political in the sense that it is used as "a constitutional measure designed to protect the State from official delinquencies and malfeasance, the punishment of the offender being merely incidental."[49] While the proceeding itself is nonpartisan, the powers to initiate impeachment and to conduct trial are exercised by Congress, a political body that may be susceptible to partisan influence.[50] The sanction also carries with it "the stigmatization of the offender."[51]

Impeachment is designed for occasional use, not to be invoked lightly, but reserved only for the most serious of offenses enumerated under the Constitution:

> [I]mpeachment is the heaviest piece of artillery in the congressional arsenal, but because it is so heavy it is unfit for ordinary use. It is like a hundred-ton gun which needs complex machinery to bring it into position, an enormous charge of powder to fire it, and a large mark to aim at.[52]

Due to its complex nature, "impeachment is the most difficult and cumbersome mode of removing a public officer from office."[53] Factors that must be examined and considered include "the process required to initiate the proceeding; the one-year limitation or bar for its initiation; the limited grounds for impeachment; the defined instrumentality given the power to try

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47 *See* J. Vitug, Separate Opinion in *Francisco v. House of Representatives*, 460 Phil. 830 (2003) [Per J. Carpio Morales, En Banc].

48 Id. *citing* Akhil Reed Amar, *On Impeaching Presidents*, 28 HOFSTRA L. REV. 2 (Winter 1999).

49 J. Vitug, Separate Opinion in *Francisco v. House of Representatives*, 460 Phil. 830, 957 (2003) [Per J. Carpio Morales, En Banc].

50 Id. *citing* UP Law Center Constitutional Revision Project, Manila (1970).

51 Id. *citing* Akhil Reed Amar, *On Impeaching Presidents*, 28 HOFSTRA L. REV. 2 (Winter 1999).

52 Lecture by United States Court of Appeals Chief Judge Irving R. Kaufman, *Chilling Judicial Independence*, Benjamin N. Cardozo Memorial Lectures, delivered on November 1, 1978, New York, 1002.

53 *See Gonzales III v. Office of the President of the Philippines*, 75 Phil. 380 (2014) [Per J. Brion, En Banc].

impeachment cases; and the number of votes required for a finding of guilt."[54] Proceedings stall legislative work, are costly to prosecute, and result in the divisiveness of the nation.[55] Thus, impeachment is limited "only to the officials occupying the highest echelons of responsibility in our government."[56]

In recognition of the immense responsibility reposed upon the highest officers of the land, the Constitution has decreed that they may only be removed via impeachment providing them with a level of immunity while in office but accountable after retirement, resignation, or removal.

This intention was reflected in the 1935 Constitution which provided:

> ARTICLE IX.—IMPEACHMENT
>
> 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.

Impeachment was also reproduced in the succeeding Constitutions, with the 1975 Constitution providing:

> Article XIII- Accountability of Public Officers
>
> . . . .
>
> Section 2. The President, the Justices of the Supreme Court, and the Members of the Constitutional Commissions shall be removed from office on *impeachment* for, and conviction of, culpable violation of the Constitution, treason, bribery, other high crimes, or graft and corruption. (Emphasis supplied)

And the 1987 Constitution stating:

> 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*. (Emphasis supplied)

An exception is provided for in the 2010 Rules of the Presidential Electoral Tribunal.[57] Rule 16 provides:

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54 Id.
55 Id.
56 Id.
57 A.M. No. 10-4-29-SC (2010).

> Rule 16. Quo warranto. — A verified petition for quo warranto contesting the election of the President or Vice-President on the ground of ineligibility or disloyalty to the Republic of the Philippines may be filed by any registered voter who has voted in the election concerned within ten days after the proclamation of the winner.

To the majority, the existence of this rule does not preclude the availability of a petition for quo warranto to remove impeachable officers.[58] This ignores that among the impeachable officers, the President and the Vice President are the only ones elected by the public. The rest are appointed officials.

Due to the highly politicized nature of an impeachment proceeding, it may be more difficult to initiate proceedings against elective officials who are members of the ruling political party in Congress. This was alluded to in the deliberations of the Constitutional Commission where a delegate suggested that the removal of the President should be by a nonpolitical judicial tribunal:

> On impeachment,; Mr. Guingona stated that elective officials are difficult to impeach, particularly the President, as he may be a member of the ruling party in the Senate. He advanced the view of the 1971 Constitutional Revision Project by stating that impeachment cases should be heard by a nonpolitical and highly qualified judicial tribunal, citing instances to prove his point.[59]

Another point to consider would be the vast difference in the qualifications required of each office. In order to be qualified to run as President or Vice President, the candidates must possess the following qualifications:

> Section 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.
>
> Section 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. He may be removed from office in the same manner as the President.[60]

The Constitution does not provide any other qualifications. Thus, any person who fulfills these *minimum* requirements will be considered a candidate. Otherwise, former President Joseph E. Estrada, who was not a college graduate, and former President Corazon C. Aquino, who had no

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[58] *Majority opinion*, pp. 48–50.

[59] 1986 Constitutional Deliberations, Journal No. 40, Vol. I, July 26, 1986.

[60] CONST., art. VII, secs. 2 and 3.

political experience,[61] would not have even been allowed on the ballot.

Furthermore, the process of presenting a protest against the President and Vice President is uniquely provided by the Constitution. Thus in Article VII, Section 4, paragraph 7:

> The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

V

In contrast, Members of the Supreme Court and the Ombudsman must not only possess the minimum requirements under the Constitution, but must also undergo a rigorous vetting process by the Judicial and Bar Council.[62]

An applicant must submit an application to the Judicial and Bar Council within 90 days from a vacancy.[63] The list of applicants who fulfill the minimum requirements is published in two (2) newspapers of general circulation. The publication is to inform and to give the public an opportunity to raise any complaint or opposition against any of the listed candidates.[64] The applications are then thoroughly examined by the Council,[65] which looks into the candidates' "educational preparation, relevant experience, work performance and performance ratings." It also looks into "other relevant accomplishments such as the completion of the Prejudicature Program of the Philippine Judicial Academy,"[66] background checks,[67] validated testimonies of reputable officials and impartial organizations,[68] comprehensive medical examinations and psychological evaluation,[69] written evaluative examinations,[70] and public interviews.[71] The Council then deliberates and conducts a final voting on nominations.[72] A candidate must garner at least four (4) votes from the Council before he or she can even be included in the short list.[73]

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61 Veronica Palumbarit, *Past PHL presidents: Many were lawyers, one a housewife, another a mechanic*, GMA NEWS ONLINE, December 17, 2015 <http://www.gmanetwork.com/news/news/specialreports/548156/past-phl-presidents-many-were-lawyers-one-a-housewife-another-a-mechanic/story/> (last accessed May 7, 2018).

62 *See* CONST., art. VIII, sec. 9 and art. XI, sec. 9.

63 The Revised Rules of the Judicial and Bar Council (2016), rule 1, sec. 1.

64 The Revised Rules of the Judicial and Bar Council (2016), rule 1, sec. 8.

65 The Revised Rules of the Judicial and Bar Council (2016), rule 3, rule 4, and rule 5.

66 The Revised Rules of the Judicial and Bar Council (2016), rule 1, sec. 1.

67 The Revised Rules of the Judicial and Bar Council (2016), rule 4, sec. 2.

68 The Revised Rules of the Judicial and Bar Council (2016), rule 5, sec. 2.

69 The Revised Rules of the Judicial and Bar Council (2016), rule 6.

70 The Revised Rules of the Judicial and Bar Council (2016), rule 7, sec. 1.

71 The Revised Rules of the Judicial and Bar Council (2016), rule 2, sec. 2.

72 The Revised Rules of the Judicial and Bar Council (2016), rule 8, sec. 1.

73 The Revised Rules of the Judicial and Bar Council (2016), rule 8, sec. 2.

Members of Constitutional Commissions, on the other hand, are appointed with the consent of the Commission on Appointments.[74] Under Article VII, Section 18 of the Constitution:

> Section 18. There shall be a Commission on Appointments consisting of the President of the Senate, as ex officio Chairman, twelve Senators and twelve Members of the House of Representatives, elected by each House on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented therein. The Chairman of the Commission shall not vote, except in case of a tie. The Commission shall act on all appointments submitted to it within thirty session days of the Congress from their submission. The Commission shall rule by a majority vote of all the Members.

While the Commission on Appointments consists of members of Congress, it is considered to be a constitutional body independent of Congress. *Pimentel v. Enrile*[75] explains:

> The Commission on Appointments is a creature of the Constitution. Although its membership is confined to members of Congress, said Commission is independent of Congress. The powers of the Commission do not come from Congress, but emanate directly from the Constitution. Hence, it is not an agent of Congress. In fact, the functions of the Commissioner are purely executive in nature.[76]

All nominations or appointments submitted for approval to the Commission on Appointments must submit papers or documents containing a family background and curriculum vitae.[77] In addition, the nominees or appointees must submit the following papers and documents:

> a) Disclosure, under oath, of kinship with any appointive or elective official in the Government, including government-owned or controlled corporations, occupying positions down to the directorship level, within the fourth degree of consanguinity or affinity;
>
> b) Copies of Income Tax Returns for the four (4) immediately preceding fiscal years;
>
> c) Verified statements of assets and liabilities for the four (4) immediately preceding fiscal years, including those of his spouse, if the nominee or appointee is in the government service; or verified statements of net worth for the four (4) immediately preceding fiscal years, if the nominee or appointee comes from the private sector;
>
> d) Disclosure of business, financial, personal and professional connections

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74 CONST., art. IX (B), sec. 1 (2); art. IX (C), sec. 1 (2); and art. IX (D), sec. 1 (2).

75 509 Phil. 567 (2005) [Per J. Carpio, En Banc].

76 Id. at 574.

77 2007 Rules of the Commission on Appointments, ch. IV, sec. 16.

> and interest for the four (4) immediately preceding fiscal years, including those of his spouse and unmarried children under eighteen (18) years of age living in his household;
>
> e) Clearances under oath by the heads of the National Bureau of Investigation, the Bureau of Internal Revenue, and such other concerned Agencies, as may be required by the nature of the position he is nominated or appointed to;
>
> f) A medical certificate issued by a duly licensed physician containing information about the nominee or appointee's physical and mental conditions; and,
>
> g) Statement, under oath, whether the nominee or appointee has any pending criminal or administrative case against him.[78]

A public hearing is conducted 30 days after the referral to the Commission.[79] The Commission votes by viva voce unless a member requests that the votes should be nominal.[80]

The Judicial and Bar Council has the *sole* constitutional mandate of preparing a short list of nominees for the President. The Commission on Appointments meanwhile has the *sole* constitutional mandate of acting upon nominations and appointments submitted to it. The Commission on Elections, however, exercises several functions,[81] its primary purpose being to ensure "free, orderly, honest, peaceful, and credible elections."[82] It is only expected to assess whether a person running for office fulfills the minimum requirements under the law.

Once a candidate has undergone the rigorous application process of the Judicial and Bar Council, the candidate is considered qualified for the position. To hold otherwise would be to render inutile the constitutional mandates of the Judicial and Bar Council and the Commission on Appointments. The removal of an impeachable officer was meant to be difficult and cumbersome since it will only be on the basis of impeachable offenses committed while in office, not any disqualification prior to appointment. The other constitutional organs such as the Judicial and Bar Council as well as the President can otherwise read the Constitution and discern its meaning.

Of the list of impeachable officers, only the Members of the Supreme Court,[83] the Ombudsman,[84] and a majority of the members of the Commission

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78 2007 Rules of the Commission on Appointments, ch. V, sec. 24.
79 2007 Rules of the Commission on Appointments, ch. IV, sec. 16.
80 2007 Rules of the Commission on Appointments, ch. IV, sec. 23.
81 CONST., art. IX (C), sec. 2.
82 CONST., art. IX (C), sec. 2(4).
83 CONST., art. VIII, sec. 7(1).
84 CONST., art. XI, sec. 8.

on Elections[85] are required to be lawyers. The members of the Commission on Audit may either be certified public accountants or members of the Bar.[86] Because of this, several disbarment attempts have been made on these impeachable officials, all of which were eventually dismissed.

In *Cuenco v. Fernan*,[87] an administrative case for disbarment was filed against then Justice Marcelo V. Fernan in relation to a case he had litigated prior to becoming a Justice of the Supreme Court. This Court stated in no uncertain terms that:

> 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. 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 ran 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. Precisely the same situation exists in respect of the Ombudsman and his deputies, a majority of the members of the Commission on Elections, and the members of the Commission on Audit who are not certified public accountants, all of whom are constitutionally required to be members of the Philippine Bar.[88] (Citations omitted)

This Court again reiterated this principle in *In re: Gonzalez*,[89] a case filed by then Tanodbayan Raul M. Gonzales, requesting Justice Fernan to comment on the letter of Mr. Cuenco questioning the dismissal of his disbarment complaint against Justice Fernan. This Court stated:

> 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.
>
> . . . .
>
> This is not the first time the Court has had occasion to rule on this matter. In *Lecaroz v. Sandiganbayan*, the Court said:
>
> "The broad power of the New Constitution vests the

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85 CONST., art. IX (C), sec. 1 (1).
86 CONST., art. IX (D), sec. 1.
87 241 Phil. 816 (1988) [Per Curiam, En Banc].
88 Id. at 828.
89 243 Phil. 167 (1988) [Per Curiam, En Banc].

> 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 provides:
>
> 'Sec. 2. The President, the Members of the Supreme Court, and the Members of the Constitutional Commissions shall be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, other high crimes, or graft and corruption.'
>
> Thus, the 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.
>
> Chief Justice Enrique M. Fernando, in his authoritative dissertation on the New Constitution, states that 'judgment in cases of impeachment shall be limited to removal from office and disqualification to hold any office of honor, trust, or profit under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution trial, and punishment, in accordance with law. The above provision is a reproduction of what was found in the 1935 Constitution. It is quite apparent from the explicit character of the above provision that the effect of impeachment is limited to the loss of position and disqualification to hold any office of honor, trust or profit under the Republic. It is equally manifest that the party thus convicted may be proceeded against, tried and thereafter punished in accordance with law. There can be no clearer expression of the constitutional intent as to the scope of the impeachment process (The Constitution of the Philippines, pp. 465-466).' The clear implication is, the party convicted in the impeachment proceeding shall nevertheless be liable and subject to prosecution, trial and punishment according to law; and that if the same does not result in a conviction and the official is not thereby removed, the filing of a criminal action 'in accordance with law' may not prosper."

The provisions of the 1973 Constitution we referred to above in *Lecaroz v. Sandiganbayan* are substantially reproduced in Article XI of the 1987 Constitution:

> 'Sec. 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.
>
> Sec. 3 . . .
>
> (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."
>
> 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.[90]

The same rule was applied in *Jarque v. Desierto*,[91] a disbarment case against former Ombudsman Aniano Desierto. In *Office of the Ombudsman v. Court of Appeals*,[92] however, this Court clarified that when it stated "[p]recisely the same situation exists in respect of the Ombudsman and his deputies"[93] in *Cuenco*, it did not mean that a Deputy Ombudsman was an impeachable officer:

> In cross-referencing Sec. 2, which is an enumeration of impeachable officers, with Sec. 8, which lists the qualifications of the Ombudsman and his deputies, the intention was to indicate, by way of *obiter dictum*, that as

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90 Id. at 169–173, *citing Lecaroz v.* Sandiganbayan, 213 Phil. 288 (1984) [Per J. Relova, En Banc].

91 A.C. No. 4509, December 5, 1995, as cited in *Office of the Ombudsman v. Court of Appeals*, 493 Phil. 63 (2005) [Per J. Chico-Nazario, Second Division].

92 493 Phil. 63 (2005) [Per J. Chico-Nazario, Second Division].

93 Id. at 82.

> with members of this Court, the officers so enumerated were also constitutionally required to be members of the bar.[94]

The principle applies to members of Constitutional Commissions that are also members of the Bar. In *Duque, Jr. v. Brilliantes, Jr.*,[95] a disbarment case was filed against members of the Commission on Elections for the allegedly erroneous resolutions that they issued. This Court held:

> This Court, guided by its pronouncements in *Jarque v. Ombudsman*, *In Re First Indorsement from Raul M. Gonzales* and *Cuenco v. Hon. Fernan*, has laid down the rule that an impeachable officer who is a member of the Bar cannot be disbarred without first being impeached. At the time the present complaint was filed, respondents-commissioners were all lawyers. As impeachable officers who are at the same time the members of the Bar, respondents-commissioners must first be removed from office via the constitutional route of impeachment before they may be held to answer administratively for their supposed erroneous resolutions and actions.[96]

If an impeachable officer is required to be a member of the Bar, disbarment would make the impeachable officer unqualified for the position and would result in his or her removal from office. This Court prohibited what would be a clear circumvention of the Constitution.

Thus, the rule is that impeachable officers are only removable by impeachment and no other proceeding. Even the majority concedes this point.[97]

This is not to say that this Court has never passed upon the issue on the discipline of impeachable officers. In *Espejo-Ty v. San Diego*,[98] a disbarment case was filed against Lourdes P. San Diego, an Associate Justice of the Court of Appeals in 1970 for misconduct as a bar examiner and for falsifying a public document when she was still a trial court judge. At the time, the Judiciary Act of 1948 provided that a Justice of the Court of Appeals may only be removed from office through impeachment.[99] This Court, in giving due course to the complaint, stated that it exercises the power to remove any unworthy member of the Bar, it is Congress alone that can remove from office the impeachable officer:

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94 Id.

95 A.C. No. 9912, September 21, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/9912.pdf> [Per J. Peralta, Third Division]

96 *Duque Jr. v. Brillantes, Jr.*, A.C. No. 9912, September 21, 2016 [Per J. Peralta, Third Division].

97 *Majority opinion*, p. 116. The majority opinion's argument appears to be that while impeachable officers can only be removed by impeachment, an officer who is unqualified to be an impeachable officer may be removed through other means.

98 150-A Phil. 757 (1972) [Per J. Zaldivar, En Banc].

99 Republic Act No. 296 (1948), ch. III, sec. 24 provides:
Section 24. The Presiding Justice and the Associate Justices of the Court of Appeals shall not be removed from office except on impeachment upon the grounds and in the manner provided for in Article IX of the Constitution.

> And so, in the case now before this Court, the fact that the respondent is a Justice of the Court of Appeals is no reason for this Court not to exercise its disciplinary power over her as a member of the bar. The provision of the second paragraph of Section 24 of the Judiciary Act of 1948 (R.A. No. 296), as amended, that the justices of the Court of Appeals shall not be removed from office except on impeachment, is no reason for this Court to abdicate its duty, and give up its inherent power, to oversee and discipline all members of the bar, regardless of whether they are in the private practice of the profession, or they hold office in any of the three departments of our government, or they pursue any other calling. The power of this Court to disbar an unworthy member of the legal profession is distinct and apart from the power of any other authority to remove such member of the legal profession from his judicial position or from any other position that he holds in the government. Constitutional or statutory proceedings for removal from office are wholly distinct and separate from disciplinary proceedings involving members of a profession.
>
> It is, therefore, Our considered view that the Supreme Court has jurisdiction to entertain and decide complaints for disbarment against a justice of the Court of Appeals. But while this Court may order the disbarment of a justice of the Court of Appeals, it is Congress, and Congress alone, in the exercise of its power of impeachment, that can remove from office a justice of the Court of Appeals.[100]

Espejo-Ty, however, has ceased to become good law with the promulgation of *Cuenco v. Fernan.*[101] In any case, *Espejo-Ty* was an unusual situation of disbarment against an impeachable officer who was under the disciplinary supervision of this Court. The charges against San Diego were eventually dismissed since this Court found no substantial evidence to support the allegations. Thus, there was no opportunity to discover whether San Diego's disbarment would have eventually led to her removal from the Court of Appeals, despite this Court stating that only Congress had the power to remove her.

VI

The propositions advanced by the majority threaten and undermine judicial independence and stability.

Judicial accountability cannot be separated from the concept of judicial independence. They are, in the words of Retired United States Supreme Court Justice Sandra Day O'Connor, "two sides of the same coin:"

> True judicial accountability advances judicial independence and the paramount Rule of Law. "Accountability and independence are two sides

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[100] *Espejo-Ty v. San Diego*, 150-A Phil. 757, 779 (1972) [Per J. Zaldivar, En Banc].
[101] 241 Phil. 816 (1988) [Per Curiam, En Banc].

> of the same coin: accountability ensures that judges perform their constitutional role, and judicial independence protects judges from pressures that would pull them out of that role."[102]

Lower court judges who have failed to meet the ethical standards imposed on the judiciary may face administrative[103] and disciplinary sanction from this Court. They may be admonished, reprimanded, suspended, or even removed from service depending on the gravity of their offense. This Court is specifically empowered under Article VIII, Section 11 of the Constitution, to dismiss lower court judges "by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon."

The same is not true with regard to the members of this Court. Article XI, Section 2 of the Constitution states that the Members of the Supreme Court, among others, may be removed from office through impeachment proceedings.[104] Liability of Members of the Supreme Court for the commission of a crime or a violation of judicial ethics can only be imposed after this process.[105] This rule is based on the principles of judicial independence and the doctrine of separation of powers.

In re: Gonzalez[106] teaches us that:

> 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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> . . . .
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> 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

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[102] Sandra Day O'Connor, *Judicial Accountability Must Safeguard, Not Threaten, Judicial Independence: An Introduction*, 86 DENV. U. L. REV. (2008).

[103] CONST., art. VIII, sec. 6 provides:
Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

[104] CONST., art. XI, sec. 2 provides:
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.

[105] *In re: Gonzales*, 243 Phil. 167, 172 (1988) [Per Curiam, En Banc].

[106] 243 Phil. 167 (1988) [Per Curiam, En Banc].

> 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.[107]

The independence of the Supreme Court and of the Judiciary in general demands that the Members of this Court be removed from office only through the process of impeachment and no other.

Irving R. Kaufman (Kaufman), Chief Judge of the United States Court of Appeals, makes out a compelling case in arguing that a judicial mechanism for the removal of judges weakens rather than promotes judicial independence. He cautions that a "simpler process for judicial removal, even one under the control of judges themselves, would eviscerate the independence of the individuals on the bench."[108]

Judges should be free to render unpopular decisions without fear that the same may threaten his or her term of office.[109] Removal from office through other lesser means may stifle the quality of judgments and judicial conduct.

Alexander Hamilton, one of the framers of the United States Constitution, shared a similar view. He proposed that the members of the judiciary, in order to be truly independent and to be able to fully discharge their functions, ought to be protected in terms of their tenure.[110]

In *The Federalist Papers No. 78*:

> If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.
>
> This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community.[111]

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[107] Id. at 170–172.

[108] Lecture by United States Court of Appeals Chief Judge Irving R. Kaufman, *Chilling Judicial Independence*, Benjamin N. Cardozo Memorial Lectures, delivered on November 1, 1978, New York.

[109] Id.

[110] The Federalist Papers No. 78, <http://avalon.law.yale.edu/18th_century/fed78.asp> (last visited May 9, 2018).

[111] Id.

Another reason that he advanced for proposing permanency in tenure was to ensure that only the best suited would occupy judicial office. The judiciary should be shielded from the mediocre:

> It has been frequently remarked, with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is, that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us, that the government can have no great option between fit character; and that a temporary duration in office, which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench, would have a tendency to throw the administration of justice into hands less able, and less well qualified, to conduct it with utility and dignity. In the present circumstances of this country, and in those in which it is likely to be for a long time to come, the disadvantages on this score would be greater than they may at first sight appear; but it must be confessed, that they are far inferior to those which present themselves under the other aspects of the subject.[112]

VII

Courts are the sanctuaries of rights, and not the preserve of political majorities. They are not representative organs. They do not exist to mirror the outcomes of deliberations in forums where the representatives of the majority of our people supposedly prevail. Rather, courts clarify the content of governmental powers most especially in the context of our fundamental rights. They are the sanctuaries for law. Courts are the soul of the government.

The Judiciary is the final arbiter of conflicts between and among the branches and different instrumentalities of the government. It has the duty to determine the proper allocation of governmental power and to guarantee "that no one branch or agency of the government transcends the Constitution, which is the source of all authority."[113] Moreover, the Judiciary acts as the guardian of the fundamental rights and freedoms guaranteed under the Bill of Rights.[114]

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[112] Id.

[113] *Angara v. Electoral Commission*, 63 Phil. 139, 182 (1936) [Per J. Laurel, En Banc].

[114] *See Export Processing Zone Authority v. Dulay*, 233 Phil. 313 (1987) [Per J. Gutierrez, Jr., En Banc].

In *Angara v. Electoral Commission*:[115]

> [T]he Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins. In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.
>
> As any human production, our Constitution is of course lacking perfection and perfectibility, but as much as it was within the power of our people, acting through their delegates to so provide, that instrument which is the expression of their sovereignty however limited, has established a republican government intended to operate and function as a harmonious whole, under a system of checks and balances, and subject to specific limitations and restrictions provided in the said instrument. The Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment, and the principles of good government mere political apothegms. Certainly, the limitations and restrictions embodied in our Constitution are real as they should be in any living constitution. In the United States where no express constitutional grant is found in their constitution, the possession of this moderating power of the courts, not to speak of its historical origin and development there, has been set at rest by popular acquiescence for a period of more than one and a half centuries. In our case, this moderating power is granted, if not expressly, by clear implication from section 2 of article VIII of our Constitution.[116]

The Constitution specifically vests courts with the ability to "settle actual controversies involving rights which are legally demandable and enforceable" and, more importantly, to determine whether either of the other two (2) branches of the government gravely abused its discretion.[117]

For courts to be able to discharge their functions, impartiality is required. Impartiality demands freedom from coercion. This requires judicial independence.

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[115] 63 Phil. 139 (1936) [Per J. Laurel, En Banc].
[116] Id. at 157–158.
[117] CONST., art. VIII, sec. 1.

Judicial independence has been described as a "vital mechanism that empowers judges to make decisions that may be unpopular but nonetheless correct."[118] The Philippine judiciary's historical underpinnings highlight this concept. In *Borromeo v. Mariano*:[119]

> A history of the struggle for a fearless and an incorruptible judiciary prepared to follow the law and to administer it regardless of consequences, can be perused with ever-recurring benefit. Since the early days of the Republic, the judicial system in the United States, with certain exceptions which only served to demonstrate more fully the excellence of the whole, has been viewed with pride, and confidently relied upon for justice by the American people. The American people considered it necessary "that there should be a judiciary endowed with substantial and independent powers and secure against all corrupting or perverting influences; secure, also, against the arbitrary authority of the administrative heads of the government." It was such a conception of an independent judiciary which was instituted in the Philippines by the American administration and which has since served as one of the chief glories of the government and one of the most priceless heritages of the Filipino people.[120] (Citations omitted)

There are two (2) aspects of judicial independence, namely: decisional independence and institutional independence.

Decisional independence focuses on the autonomy of a judge and his or her ability "to render decisions free from political or popular influence based solely on the individual facts and applicable law."[121]

The second aspect of judicial independence refers to institutional independence. As its name suggests, institutional independence puts more emphasis on the entire judiciary as an institution rather than the magistrate as an individual. It refers to the "collective independence of the judiciary as a body"[122] from the unlawful and wrongful interference of other government branches.[123]

Retired United States Supreme Court Justice O'Connor enumerates measures by which individual judicial independence may be secured. The first approach protects judges from possible retaliation that may be directed against them while the second minimizes external pressure and political influence:

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[118] Sandra Day O'Connor, *Judicial Accountability Must Safeguard, Not Threaten, Judicial Independence: An Introduction*, 86 DENV. U. L. REV. (2008).

[119] 41 Phil. 322 (1921) [Per J. Malcolm, En Banc].

[120] Id. at 329–330.

[121] *Re: COA Opinion on Computation of Appraised Value of Properties Purchased by SC Justices*, 692 Phil. 147, 156 (2012) [Per Curiam, En Banc].

[122] Id. at 157.

[123] Sandra Day O'Connor, *Judicial Accountability Must Safeguard, Not Threaten, Judicial Independence: An Introduction*, 86 DENV. U. L. REV. (2008).

> Judicial independence has both individual and institutional aspects. As for the independence of individual judges, there are at least two avenues for securing that independence: First, judges must be protected from the threat of reprisals, so that fear does not direct their decision making. Second, the method by which judges are selected, and the ethical principles imposed upon them, must be constructed so as to minimize the risk of corruption and outside influence. The first endeavor is to protect judicial independence from outside threat. The second is to ensure that judicial authority is not abused, and it is the core concern of the enterprise of judicial accountability.[124]

Considering that the Judiciary is publicly perceived "as the authority of what is proper and just,"[125] and taking into account its vital role in protecting fundamental freedoms, both decisional independence and institutional independence must be preserved.[126] The Judiciary's independence becomes more critical in light of the expanding critical issues it may possibly face.[127]

The 1987 Constitution sets up a framework that guarantees the Judiciary's institutional independence.

The Constitution vests the power to promulgate rules regarding pleading, practice, and procedure, and rules concerning admission to the Bar exclusively on the Supreme Court. This is in stark contrast with the 1935 and 1973 Constitutions, which granted Congress the authority to "repeal, alter or supplement" such rules.[128] The "power-sharing scheme" between the Judiciary and the Legislature was explicitly deleted under the present Constitution.[129]

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[124] Id.

[125] *Francia v. Abdon*, 739 Phil. 299, 313 (2014) [Per J. Reyes, First Division].

[126] *Re: COA Opinion on Computation of Appraised Value of Properties Purchased by SC Justices*, 692 Phil. 147,156 (2012) [Per Curiam, En Banc] *citing In re: Macasaet*, 583 Phil. 391 (2008) [Per J. Reyes, R.T., En Banc].

[127] Lecture by United States Court of Appeals Chief Judge Irving R. Kaufman, *Chilling Judicial Independence*, Benjamin N. Cardozo Memorial Lectures, delivered on November 1, 1978, New York.

[128] 1973 CONST., art. X, sec. 5(5) provides:
Section 5. The Supreme Court shall have the following powers:
...
5. Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the bar, which, however, may be repealed, altered or supplemented by the Batasang Pambansa. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights.

1935 CONST., art. VIII, sec. 13 provides:
Section 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines.

[129] *Baguio Market Vendors Multi-Purpose Cooperative v. Cabato-Cortes*, 627 Phil. 543, 549 (2010) [Per J. Carpio, Second Division] *citing In re: Cunanan*, 94 Phil. 534 (1954) [Per J. Diokno, Second Division].

The grant of fiscal autonomy to the Judiciary[130] and the prohibition on Congress from diminishing the scope of the Supreme Court's constitutionally defined jurisdiction and from passing a law that would, in effect, undermine the security of tenure of its Members[131] are among the other constitutional guarantees of judicial independence.

Another innovation of the present Constitution is the grant of administrative supervision over lower courts and court personnel to this Court. This is a power exclusive to and zealously guarded by this Court.

In *Maceda v. Vasquez*:[132]

> Article VIII, section 6 of the 1987 Constitution exclusively vests in the Supreme Court administrative supervision over all courts and court personnel, from the Presiding Justice of the Court of Appeals down to the lowest municipal trial court clerk. By virtue of this power, it is only the Supreme Court that can oversee the judges' and court personnel's compliance with all laws, and take the proper administrative action against them if they commit any violation thereof. No other branch of government may intrude into this power, without running afoul of the doctrine of separation of powers.[133]

The selection and appointment process to the Judiciary is an appropriate measure by which judicial independence may be advanced.[134]

Aspiring members of the Judiciary are screened by an independent constitutional body known as the Judicial and Bar Council. It is primarily tasked to undertake the process of vetting candidates to vacant positions in the Judiciary.[135]

In *Villanueva v. Judicial and Bar Council,*[136] this Court explained the

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130 CONST., art. VIII, sec. 3 provides:
Section 3. The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

131 CONST., art. VIII, sec. 2 provides:
Section 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.
No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of its Members.

132 293 Phil. 503 (1993) [Per J. Nocon, En Banc].

133 Id. at 506.

134 Sandra Day O'Connor, *Judicial Accountability Must Safeguard, Not Threaten, Judicial Independence: An Introduction*, 86 DENV. U. L. REV. (2008).

135 CONST., art. VIII, sec. 8(5) provides:
Section 8. (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.

136 G.R. No. 211833, April 7, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/211833.pdf> [Per J. Reyes, En Banc].

important role of the Judicial and Bar Council:

> As an offspring of the 1987 Constitution, the JBC is mandated to recommend appointees to the judiciary and only those nominated by the JBC in a list officially transmitted to the President may be appointed by the latter as justice or judge in the judiciary. Thus, the JBC is burdened with a great responsibility that is imbued with public interest as it determines the men and women who will sit on the judicial bench. 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. Thus, the JBC has sufficient but not unbridled license to act in performing its duties.
>
> JBC's ultimate goal is to recommend nominees and not simply to fill up judicial vacancies in order to promote an effective and efficient administration of justice. Given this pragmatic situation, the JBC had to establish a set of uniform criteria in order to ascertain whether an applicant meets the minimum constitutional qualifications and possesses the qualities expected of him and his office.[137]

The previous Constitutions conferred the power to nominate and appoint members of the Judiciary to the Executive and Legislative branches.[138]

Under the Malolos Constitution, the National Assembly, the President, and the Secretaries of Government shared the power to select the head of the Supreme Court:

> TITLE X
> OF THE JUDICIAL DEPARTMENT
>
> Article 80. The President of the Supreme Court of Justice and the Solicitor General shall be appointed by the National Assembly with the concurrence of the President of the Republic and the Secretaries of Government, and shall have absolute independence from the legislative and executive

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[137] Id. at 7–8.

[138] J. Leonen, Dissenting Opinion in *Umali v. Judicial and Bar Council*, G.R. No. 228628, July 25, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/228628.pdf> [Per J. Velasco, Jr., En Banc].

branches.

A similar appointment scheme was adopted in the 1935 Constitution:

> ARTICLE VIII
> Judicial Department
>
> Section 5. The Members of the Supreme Court and all judges of inferior courts shall be appointed by the President with the consent of the Commission on Appointments.

The 1973 Constitution granted the President the exclusive power to select and appoint members of the Judiciary:

> ARTICLE X
> The Judiciary
>
> Section 4. The Members of the Supreme Court and judges of inferior courts shall be appointed by the President.

At present, appointment to the Judiciary entails a two (2)-step process. The Judicial and Bar Council submits to the President a list containing at least three (3) nominees. The President then selects a candidate from the list and appoints such candidate to the vacancy.[139]

The Judicial and Bar Council's creation under the 1987 Constitution was revolutionary as it was seen as a way to "insulate the process of judicial appointments from partisan politics"[140] and "de-politicize" the entire Judiciary.[141]

In *De Castro v. Judicial and Bar Council*:[142]

> [T]he intervention of the JBC eliminates the danger that appointments to the Judiciary can be made for the purpose of buying votes in a coming presidential election, or of satisfying partisan considerations. The experience from the time of the establishment of the JBC shows that even candidates for judicial positions at any level backed by people influential with the President could not always be assured of being recommended for

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[139] CONST., art. VIII, sec. 9 provides:
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.
For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

[140] J. Leonen, Dissenting Opinion in *Umali v. Judicial and Bar Council*, G.R. No. 228628, July 25, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/228628.pdf> 2 [Per J. Velasco, Jr., En Banc].

[141] *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 697 (2010) [Per J. Bersamin, En Banc].

[142] 629 Phil. 629 (2010) [Per J. Bersamin, En Banc].

> the consideration of the President, because they first had to undergo the vetting of the JBC and pass muster there. Indeed, the creation of the JBC was *precisely* intended to de-politicize the Judiciary by doing away with the intervention of the Commission on Appointments. This insulating process was absent from the *Aytona* midnight appointment.[143] (Citations omitted, emphasis in the original)

Aside from the goal of insulating the Judiciary from partisan politics, the Judicial and Bar Council was envisioned to guarantee that only those who are deserving and qualified may be considered for purposes of appointment. Applicants undergo a rigorous process of screening and selection based on the minimum standards required by the office or position to which they are applying and the criteria set by the Judicial and Bar Council.

Aspiring members of the Judiciary must not only have the basic qualifications under Article VIII, Sections 7(1) and (2) of the Constitution, they must also be persons of "proven competence, integrity, probity, and independence."[144] The members of the 1986 Constitutional Commission believed that neither the President nor the Commission on Appointments would have the time to undertake this vetting process. Thus, the Judicial and Bar Council was tasked to take on the meticulous process of studying the qualifications of every candidate, "especially with respect to their probity and sense of morality."[145]

Villanueva is instructive:

> 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.[146] (Citation omitted)

In *Villanueva*, the Judicial and Bar Council's policy of requiring first-level courts to have five (5) years of service as judges before they may qualify as applicants to second-level courts was challenged for being unconstitutional. In dismissing the petition, this Court described the rigorous screening and selection procedure adopted by the Judicial and Bar Council as necessary to ensure that only the best suited applicants are considered for appointment.

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143 Id.

144 CONST., art. VIII, sec. 7(3).

145 J. Leonen, Dissenting Opinion in *Jardeleza v. Sereno*, G.R. No. 213181, August 19, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/213181.pdf> [Per J. Mendoza, En Banc] *citing* 1 RECORDS, CONSTITUTIONAL COMMISSION, PROCEEDINGS AND DEBATES, JOURNAL No. 29 (Monday, July 14, 1986).

146 G.R. No. 211833, April 7, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/211833.pdf> 8–9 [Per J. Reyes, En Banc] *citing Jardeleza v. Sereno*, 741 Phil. 460 (2014) [Per J. Mendoza, En Banc].

The assailed policy required by the Judicial and Bar Council was declared constitutional. It was a reasonable requirement that would demonstrate an applicant's competence:

> Consideration of experience by JBC as one factor in choosing recommended appointees does not constitute a violation of the equal protection clause. The JBC does not discriminate when it employs number of years of service to screen and differentiate applicants from the competition. The number of years of service provides a relevant basis to determine proven competence which may be measured by experience, among other factors. The difference in treatment between lower court judges who have served at least five years and those who have served less than five years, on the other hand, was rationalized by JBC as follows:
>
> > Formulating 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.
> >
> > The assailed criterion or consideration for promotion to a second-level court, which is five years['] experience as judge of a first-level court, is a direct adherence to the qualities prescribed by the Constitution. Placing a premium on many years of judicial experience, the JBC is merely applying one of the stringent constitutional standards requiring that a member of the judiciary be of "**proven competence**." In determining competence, the JBC considers, among other qualifications, **experience** and performance.
> >
> > Based on the JBC's collective judgment, those who have been judges of first-level courts for five (5) years are better qualified for promotion to second-level courts. It deems length of experience as a judge as indicative of conversance with the law and court procedure. Five years is considered as a sufficient span of time for one to acquire professional skills for the next level court, declog the dockets, put in place improved procedures and an efficient case management system, adjust to the work environment, and gain extensive experience in the judicial process.
> >
> > A five-year stint in the Judiciary can also provide evidence of the **integrity, probity**, and **independence** of judges seeking promotion. To merit JBC's nomination for their promotion, they must have had a "record of, and reputation for, honesty, integrity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards." Likewise, their decisions must be reflective of the soundness of their judgment, courage, rectitude, cold neutrality and strength of character.
> >
> > Hence, for the purpose of determining whether judges are worthy of promotion to the next level court, it would be

> premature or difficult to assess their merit if they have had less than one year of service on the bench. (Citations omitted and emphasis in the original)
>
> At any rate, five years of service as a lower court judge is not the only factor that determines the selection of candidates for RTC judge to be appointed by the President. Persons with this qualification are neither automatically selected nor do they automatically become nominees. The applicants are chosen based on an array of factors and are evaluated based on their individual merits. Thus, it cannot be said that the questioned policy was arbitrary, capricious, or made without any basis.[147]

Ethical standards imposed on members of the Judiciary strengthen and promote judicial independence both in its individual and institutional aspects.

The New Code of Judicial Conduct for the Philippine Judiciary[148] indirectly secures the institutional independence of the entire Judiciary by ensuring that individual judges remain independent in the exercise of their functions. Upon appointment and during their tenure, judges are expected to comply with and adhere to high ethical standards. Members of the Judiciary are "visible representation[s] of the law."[149]

Canon 1 directs judges in general to "uphold and exemplify judicial independence in both its individual and institutional aspects." More specifically, Canon 1, Section 1 mandates judges to exercise their functions "free from any extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason."

Judges are made aware that personal or even professional relationships may undermine their independence. Canon 1, Sections 2, 4, and 5 direct magistrates not to allow personal ties or affiliations to influence their judgment, whether directly or indirectly:

> CANON 1
> *Independence*
>
> Section 2. In performing judicial duties, Judges shall be independent from judicial colleagues in respect of decisions which the judge is obliged to make independently.
>
> . . . .
>
> Section 4. Judges shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to

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147 Id. at 9–10.

148 A.M. No. 03-05-01-SC (2004).

149 *Fidel v. Caraos*, 442 Phil. 236, 242 (2002) [Per J. Ynares-Santiago, First Division].

influence the judge.

> Section 5. Judges shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to be free therefrom to a reasonable observer.

Conversations with family members and other individuals regarding pending cases are deemed highly improper.[150] Associating with lawyers of litigants, though not wrong *per se*, may raise suspicion as to a judge's independence and integrity. Members of the Judiciary are enjoined from fraternizing with lawyers and litigants as such action may awaken the public's suspicion that a judge's personal relations would affect judicial conduct. For instance, a judge's act of having lunch with a lawyer who has a pending case before him was considered a ground for administrative sanction.[151]

It has been consistently held that "the conduct of a judge must be free of a whiff of impropriety."[152] Acts that appear to be legal and not wrong *per se* may not necessarily be ethical.

Another mechanism against unfit members of the Judiciary, with respect to collegiate courts, is collective judicial decision making. Kaufman points out that "[n]o opinion, whether idiosyncratic or exquisitely sculpted from crystalline premises, can become law without the agreement of at least half of the author's colleagues."[153]

There is another aspect of decisional independence. That is, the independence of a justice vis-à-vis another justice and even against the Court's majority.

Judicial independence transcends the doctrine of separation of powers. It is true that an independent judiciary demands the least amount of interference from the other two (2) branches save for certain instances. It is meant to be that way by Constitutional design. However, such a simplistic view severely glosses over what should be considered a more essential attribute of judicial independence:

> The heart of judicial independence, it must be understood, is judicial individualism. The judiciary, after all, is not a disembodied abstraction. It is composed of individual men and women who work primarily on their own. This is true of trial courts, and no less in higher reaches. The Supreme

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[150] *See Re: Conrado M. Vasquez, Jr.* 586 Phil. 321 (2008) [Per Curiam, En Banc].

[151] *See Pertierra v. Lerma*, 457 Phil. 796 (2003) [Per J. Quisumbing, Second Division].

[152] *See Castillo v. Calanog*, 276 Phil. 70 (1991) [Per Curiam, En Banc]; *Dela Cruz v. Bersamira*, A.M. No. RTJ-00-1567, July 24, 2000 [Per J. Ynares-Santiago, First Division]; *Sison-Barias v. Rubia*, 736 Phil. 81 (2014) [Per Curiam, En Banc].

[153] Lecture by United States Court of Appeals Chief Judge Irving R. Kaufman, Chilling Judicial Independence, Benjamin N. Cardozo Memorial Lectures, delivered on November 1, 1978, New York.

> Court, Justice Powell commented, is "perhaps one of the last citadels of jealously preserved individualism. For the most part, we function as nine small, independent law firms." The mental processes of the judges, then, are those of individuals and not of cogs in a vast machine.[154]

The New Code of Judicial Conduct for the Philippine Judiciary guards the Judiciary not only against possible influence and interference from litigants, parties, and personal affiliations, but also from influence that may possibly be exerted by judicial colleagues. Thus, Canon 1, Section 1 requires judges "to be independent from judicial colleagues in respect of decisions which the judge is obliged to make independently."

Independence from colleagues with respect to judicial conduct should be encouraged rather than suppressed, and all opportunities that would nurture it should be taken.

The personal standards of judges and their "individual sense of justice," for one, is essential for the development of law:

> For the law to progress it must occasionally adopt views that were previously in disfavor, and the intellectual foundations are often laid by the opinions of dissenting judges. A dissent, said Hughes, "is an appeal to the brooding spirit of the law, to the intelligence of a future day."[155]

Kaufman warns against the often overlooked but seemingly apparent peer pressure among and between members of a court:

> I have spoken of informal peer pressure as the most effective means of ridding the bench of its disabled members. But it is clear that the effectiveness of such pressure—as well as its fairness and the sound discretion as to when it should be applied—does not depend on a formal mechanism pitting judge against judge. It is based, rather on the prevalence within the judiciary of an atmosphere of good faith and collegiality. This sense of judicial community, itself so vital to the proper functioning of our courts, would be gravely endangered if judges were compelled to accept the formal power to discipline their colleagues, thus bypassing impeachment.[156]

Allowing a judicial mechanism for investigating judicial colleagues suppresses candor and undermines the spirit and practice of collegiality that has been so entrenched in the Supreme Court. Such a mechanism for exacting accountability threatens and effectively erodes the principle of independence that the Constitution has protected. It may even stifle free speech.

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[154] Id.
[155] Id.
[156] Id.

Kaufman observes:

> Sometimes, of course, ideological disagreements combine with personal incompatibilities to disrupt the working relationship. These rifts are unfortunate but tolerable. The other judges muffle the flames, and the consequences are rarely more severe than a few heated dissents and a mild increase in the number of cases heard *en banc*. But add a judicial mechanism for investigating judges and the problem would be magnified. *A judge might see across the table not merely a working partner but a potential adversary. The dialogue would continue, of course. In most cases no change would be detectable. But there would be an inevitable loss of frankness if each participant feared that candor might one day build a case against him.*
>
> . . . .
>
> *A judge who feels threatened by the perception that other judges are looking over his shoulder, not to decide whether to reverse him but to consider the possibility of discipline, will perform his work with a timidity and awkwardness damaging to the decision process. Judicial independence, like free expression, is most crucial and most vulnerable in periods of intolerance, when the only hope of protection lies in clear rules setting for the bright lines that cannot be traversed.* The press and the judiciary are two very different institutions, but they share one significant characteristic: both contribute to our democracy not because they are responsible to any branch of government, but precisely because, except in the most extreme cases, they are not accountable at all and so are able to check the irresponsibility of those in power. Even in the most robust of health, the judiciary lives vulnerably. It must have "breathing space." We must shelter it against the dangers of a fatal chill.[157] (Emphasis supplied)

The Supreme Court is a collegial body. As the final arbiter of the interpretation of laws and the Constitution, it will accommodate all points of view. Every legal provision given, the state of facts suggested by judicial notice or the evidence should be independently interpreted and evaluated by every member of the Court. Deliberations should be arrived at rationally within all possible points of view considered. Dissents shape the majority opinion and jurisprudence is enriched for so long as each member is kept independent of the others.

Courts also allow even a lone dissent. By tradition, every dissent is given its space to lay, alongside the majority's majority opinion, its reasons for taking the other view. No space should be allowed for the dissent to be stifled by any member of the Court or by its majority in any form or manner.

VIII

Petitioner claims that respondent's failure to submit copies of her

[157] Id.

Statements of Assets and Liabilities to the Judicial and Bar Council ultimately meant that she failed "to pass the test of integrity."[158]

I cannot agree to this blanket finding, which is based simply on the non-existence of the Statements of Assets and Liabilities.

The qualifications to become a Member of the Supreme Court can be found in Article VIII, Section 7 of the Constitution:

> 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.

The responsibility of ensuring that Members of the Supreme Court, as well as members of all the other courts exercising judicial functions, meet the qualifications required under the law falls upon the Judicial and Bar Council.

The Judicial and Bar Council was created under the 1987 Constitution, and it was intended to be a fully independent constitutional body functioning as a check on the President's power of appointment. Article VIII, Section 8 of the Constitution provides:

> 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.
>
> (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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[158] Petition, p. 2.

> (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.

Chavez v. Judicial and Bar Council[159] explains that the Judicial and Bar Council was created to rid the process of appointments to the Judiciary of political pressure and partisan activities.[160] The Judicial and Bar Council is a separate constitutional organ with the same autonomy as the House of Representative Electoral Tribunal and the Senate Electoral Tribunal. *Angara v. The Electoral Commission*[161] emphasizes that the Electoral Commission is "a constitutional creation, invested with the necessary authority in the performance and execution of the limited and specific function assigned to it by the Constitution."[162] The grant of power to the Electoral Commission is intended to be "complete and unimpaired."[163]

The Judicial and Bar Council is tasked to screen applicants for judiciary positions, recommend appointees to the Judiciary, "and only those nominated by the Judicial and Bar Council in a list officially transmitted to the President may be appointed by the latter as justice or judge in the judiciary."[164] In carrying out its main function, the Judicial and Bar Council is given the authority to set standards or criteria in choosing its nominees for every vacancy in the Judiciary,[165] as well as the discretion to determine how to best perform its constitutional mandate.[166]

The Constitution provides the qualifications of the members of the Judiciary, but it also gives the Judicial and Bar Council the latitude to promulgate its own set of rules and procedures to effectively ensure its mandate to recommend only applicants of "proven competence, integrity, probity and independence."[167] The internal rules of the Judicial and Bar Council are necessary and incidental to the function conferred to it by the Constitution.

Rule 4 of JBC-009, the internal rules in place at the time respondent applied for the position of Chief Justice, provides the framework on how the Judicial and Bar Council will determine if an applicant is a person of integrity:

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159 691 Phil 173 (2012) [Per J. Mendoza, En Banc].
160 Id. at 188.
161 63 Phil. 139 (1936) [Per J. Laurel, En Banc].
162 Id. at 175.
163 Id.
164 *Villanueva v. Judicial and Bar Council*, 757 Phil. 548 (2015) [Per J. Reyes, En Banc].
165 Id. at 549.
166 Id. at 556.
167 CONST. art. VIII, sec. 7(3).

Section 1. Evidence of Integrity — The council shall take every possible step to verify the applicants records and of 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.

Section 2. Background Check — The Council may order a discrete background check on the integrity, reputation and character of the applicant, and receive feedback thereon from the public, which it shall check or verify to validate the means thereof.

Section 3. Testimonies of Parties — The Council may receive written opposition to an applicant on ground of his moral fitness and its discretion, the Council may receive the testimony of the oppositor at a hearing conducted for the purpose, with due notice to the applicant who shall be allowed to be cross-examine the opposite and to offer countervailing evidence.

Section 4. Anonymous Complaints — Anonymous complaints against an applicant shall not be given due course, unless there appears on its face probable cause sufficient to engender belief that the allegations may be true. In the latter case the Council may either direct a discrete investigation or require the applicant to comment thereon in writing or during the interview.

Section 5. Disqualification — The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman or Deputy Ombudsman:

1. Those with pending criminal or regular administrative cases;
2. Those with pending criminal cases in foreign courts or tribunals; and
3. Those who have been convicted in any criminal case; or in administrative case where the penalty imposed is at least a fine of more than ₱10,000.00, unless he has been granted judicial clemency.

Section 6. Other instances of disqualification — Incumbent judges, officials or personnel of the Judiciary who are facing administrative complaints under informal preliminary investigation by the Office of the Court Administrator may likewise be disqualified from being nominated if, in the determination of the Council, the charges are serious or grave as to affect the fitness of the applicant for nomination.

For purposes of this Section and of the preceding Section 5 in so far as pending regular administrative cases are concerned, the Secretary of the Council shall, from time to time, furnish the Office of the Court of Administrator the name of an applicant upon receipt of the application/recommendation and completion of the required papers; and within ten days from the receipt thereof the Court Administrator shall report in writing to the Council whether or not the applicant if facing a regular administrative case or an IPI case and the status thereof. In regard to the

> IPI case, The Court Administrator shall attach to his report copies of the complaint and the comment of the respondent.

Petitioner is mistaken in its assertion that respondent's non-submission of her complete Statements of Assets and Liabilities is fatal to her application as Chief Justice. JBC-009 shows that the determination of integrity is so much more nuanced than merely submitting documents like Statements of Assets and Liabilities or clearances from government agencies.

The Judicial and Bar Council, in its sound discretion, is empowered to conduct background checks to ascertain an applicant's integrity and general fitness for the position. It is likewise authorized to conduct a hearing to give an applicant the opportunity to refute the testimony of an oppositor. Even an anonymous complaint, which is generally not given due course, can be acted upon by the Judicial and Bar Council by making it the subject of a discrete investigation or requiring the applicant to comment on the anonymous complaint.

It is true that in some cases, courts can put themselves in the shoes of representative branches to see how policy questions were weighed. But, this is only to provide them with context—not to supplant decisions. Furthermore, this is only valid to understand the milieu under which a power granted as a fundamental right guaranteed is present and must be understood. It is to sharpen the issues and the context of the *ratio decidendi* that will emerge.

It is true that the submission of a Statement of Assets and Liabilities may be implied from Article XI, Section 17[168] of the Constitution, thus:

> 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.

This finds its implementation in Section 8 of Republic Act No. 6713, or the Code of Conduct and Ethical Standards for Public Officials and Employees, and Section 7 of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act.

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[168] CONST., art. 11, sec. 17 provides:
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.

A closer reading of the provision, however, reveals that the ***constitutional*** requirement is for the submission of a Statement of Assets and Liabilities upon assumption of office. On the other hand, Republic Act No. 6713[169] and Republic Act No. 3019[170] ***statutorily*** require government employees to submit their Statements of Assets and Liabilities on an annual basis.

Concededly, the Statement of Assets and Liabilities plays a critical function in eliminating corruption in the government and ensuring that public servants remain truthful and faithful in discharging their duties towards the public. As practiced however, the Judicial and Bar Council ***did not always require*** the submission of Statements of Assets and Liabilities as part of the documentary requirements for applicants or recommendees to the Judiciary.

It was only in the year 2009 that the Judicial and Bar Council first required candidates to the Judiciary to submit Statements of Assets and Liabilities as part of the documentary requirements. Even then, only candidates from the private sector, who were applying for a position in the appellate courts, were required to submit their Statements of Assets and Liabilities.[171]

In the January 20, 2010 announcement[172] for the opening of the position of Chief Justice following the retirement on May 17, 2010 of Chief Justice Reynato S. Puno, the Judicial and Bar Council required applicants or recommendees to submit six (6) copies of each of the following documents:

Application or recommendation letter

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[169] *Navarro v. Office of the Ombudsman,* G.R. No. 210128. August 17, 2016 [Per J. Mendoza, Second Division] summarized the contents of Section 8, Republic Act No. 6713 as:
"[T]hat it is the duty of public officials and employees to accomplish and submit declarations under oath of their 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. The sworn statement is embodied in a proforma document with specific blanks to be filled out with the necessary data or information. Insofar as the details for real properties are concerned, the information required to be disclosed are limited to the following: 1) kind, 2) location, 3) year acquired, 4) mode of acquisition, 5) assessed value, 6) current fair market value, and 7) acquisition cost."

[170] Republic Act No. 3019, sec.7 provides:
Section 7. Statement of assets and liabilities. Every public officer, within thirty days after the approval of this Act or after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of the Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: Provided, That public officers assuming office less than two months before the end of the calendar year, may file their statements in the following months of January.

[171] Ad Cautelam Manifestation/ Submission, Annex 21, p. 15.

[172] Published in Philippine Daily Inquirer, p. A14.

Personal Data Sheet (JBC Form 1 downloadable from the JBC Website . . .)
Proof of Filipino Citizenship
ID Picture (2x2)
Cert. of Good Standing or latest Official Receipt from the IBP National Treasurer
ITR for the past two (2) years
2010 Clearances from NBI, Ombudsman, IBP, Office of the Bar Confidant and employer
Transcript of School Records
2010 Police Clearance from place of residence
Certificate of Admission to the Bar (with Bar Rating)

On June 24, 2010, with Chief Justice Renato C. Corona's appointment as Chief Justice, the Judicial and Bar Council put out an announcement[173] for applications or recommendations for the vacant position of Associate Justice of the Supreme Court. New applicants or recommendees were directed to submit the following documents:

Six (6) copies of the following:

Application or Recommendation Letter
Notarized Personal Data Sheet (JBC Form 1 downloadable from the JBC website . . . with recent ID Picture (2x2)
Transcript of School Records
Certificate of Admission to the Bar (with Bar Rating)

One (1) copy of the following:

ITR for the past two (2) years
2010 Clearances from NBI, Ombudsman, IBP, Office of the Bar Confidant and employer
Proofs of age and Filipino citizenship
2010 Police Clearance from place of residence
Results of Medical examination and sworn medical certificate with impressions on such results
Cert. of Good Standing or latest Official Receipt from the IBP National Treasurer

The January 20, 2010 and June 24, 2010 announcements for vacancies in the Supreme Court, the first of which pertained to the position of Chief Justice, did not require the applicants and recommendees to submit their Statement of Assets and Liabilities. Despite the constitutional requirement that a member of the Judiciary should be of "proven competence, integrity, probity and independence," the Judicial and Bar Council, until recently, has not consistently required the submission of Statements of Assets and Liabilities for applicants to the Judiciary.

It was only starting January 7, 2013 onwards that applicants in government service were required to submit their Statements of Assets and

[173] Published in Philippine Daily Inquirer, p. B4.

Liabilities for the past two (2) years, while applicants in private practice were required to submit their Statement of Assets and Liabilities for the preceding year. Likewise, it was only during the vacancy left by Chief Justice Corona's impeachment that the Judicial and Bar Council required the submission of all previous Statements of Assets and Liabilities for applicants in government service.[174]

Clearly, the Judicial and Bar Council recognized that *the Statement of Assets and Liabilities is merely a tool in determining if an applicant possesses integrity and is not the actual measure of integrity.*

The Judicial and Bar Council's own internal rules recognize that integrity is a collection of attributes that tend to show "the quality of a person's character,"[175] and as such, the Judicial and Bar Council in its discretion has prescribed the submission of select documents and formulated other processes which may allow it to best determine if a candidate possesses the required integrity for the position.

Jardeleza v. Sereno[176] summarized it best when it stated:

> 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."[177]

This Court in *Office of the Ombudsman v. Racho*[178] stressed that the failure to disclose assets or the misdeclaration of assets in a Statement of Assets and Liabilities does not automatically translate to dishonesty. Rather, what the Statement of Assets and Liabilities law aims to guard against are accumulated wealth of public servants that are grossly disproportionate to their income or other sources of income, and which cannot be properly accounted for or explained:

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[174] Ad Cautelam Manifestation/ Submission, Annex 21, pp. 15–16.
[175] *Jardeleza v. Sereno*, 741 Phil. 460 (2014) [Per J. Mendoza, En Banc].
[176] 741 Phil. 460 (2014) [Per J. Mendoza, En Banc].
[177] Id.
[178] 656 Phil. 148 (2011) [Per J. Mendoza, Second Division].

> In this case, the discrepancies in the statement of Racho's assets are not the results of mere carelessness. On the contrary, there is substantial evidence pointing to a conclusion that Racho is guilty of dishonesty because of his unmistakable intent to cover up the true source of his questioned bank deposits.
>
> It should be emphasized, however, that mere misdeclaration of the Statement of Assets and Liabilities does not automatically amount to dishonesty. Only when the accumulated wealth becomes manifestly disproportionate to the employee's income or other sources of income and the public officer/employee fails to properly account or explain his other sources of income, does he become susceptible to dishonesty because when a public officer takes an oath or office, he or she binds himself or herself to faithfully perform the duties of the office and use reasonable skill and diligence, and to act primarily for the benefit.[179]

It is within the discretion of the Judicial and Bar Council to decide that the mere failure to file a Statement of Assets and Liabilities or misdeclaration or omission of assets in a Statement of Assets and Liabilities, without any evidence of disproportionate or unexplained wealth, cannot be said to be reflective of one's lack of integrity. I find no transgression of the Constitution when the Judicial and Bar Council does so.

IX

The Judicial and Bar Council, in the proper exercise of its constitutional mandate, considered respondent's application and after finding that she substantially complied with the requirements and possessed all of the qualifications and none of the disqualifications for the position of Chief Justice, included her in the shortlist for the consideration of the President. That process is not being assailed in this quo warranto proceeding.

The validity of respondent's appointment was likewise recognized by the House of Representatives when it went through the process of considering the Complaint filed against her and announced the Articles of Impeachment.

Under the guise of this Court's power of supervision over the Judicial and Bar Council, the majority wants to supplant their own finding of respondent's lack of integrity over that of the Judicial and Bar Council's determination of respondent as a person of proven integrity.

The Judicial and Bar Council is under the supervision of the Supreme Court[180] and may exercise such other functions and duties as the Supreme Court may assign to it.[181] This Court's supervision over the Judicial and Bar

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[179] Id. at 164.
[180] CONST. art. VIII, sec. 8(1).
[181] CONST. art VIII, sec. 8(5).

Council is further manifested by its composition, wherein the Chief Justice is its *ex-officio* Chair,[182] exercising overall administrative authority in the execution of the Council's mandate,[183] and wherein the Clerk of Court is its Secretary *ex-officio.*[184] The emoluments of the members of the Council and its budget are determined and provided by this Court.[185]

Drilon v. Lim,[186] in differentiating between control and supervision, emphasized that supervision is the authority to ensure that the rules are followed, but without the power to lay down rules nor the discretion to modify or replace them. If the rules are not observed, the power of supervision involves the authority to order the work done or re-done. Supervising officials may not prescribe the manner by which an act is to be done. They have no judgment on that matter except to see that the rules are followed.

The Court goes beyond its constitutional role when its actions amount to control and not merely supervision. The varied composition of the Judicial and Bar Council is testament to its uniqueness with members that come not only from the Judiciary, but from the Executive and Legislative branches, the academe, and the private sector. While the Court possesses the power of control and supervision over members of the Judiciary and the legal profession, it does not have the same authority over the Secretary of Justice, a representative of Congress or a member of the private sector.[187]

This Court's power of supervision over the Judicial and Bar Council cannot be read as authority to interfere with the Judicial and Bar Council's discretion in performing its constitutional mandate. At most, this Court's supervision is administrative in nature.[188]

Justice Arturo Brion in his separate opinion in *De Castro v. Judicial and Bar Council*[189] expounded on the fully independent character of the Judicial and Bar Council:

> This aspect of the power of the Court — its power of supervision — is particularly relevant in this case since the JBC was created "under the supervision of the Supreme Court," with the "principal function of recommending appointees to the Judiciary." In the same manner that the Court cannot dictate on the lower courts on how they should decide cases except through the appeal and review process provided by the Rules of

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182 CONST. art VIII, sec. 8(1).

183 A.M. No. 03-11-16-SC, Sec. 4(a). *A Resolution Strengthening the Role and Capacity of the Judicial and Bar Council and Establishing the Offices Therein.*

184 CONST. art VIII, sec. 8(3).

185 CONST. art VIII, sec. 8(4).

186 *Drilon v. Lim,* 305 Phil. 146 (1994) [Per J. Cruz, En Banc].

187 J. Leonen, Concurring Opinion in *Aguinaldo v. Aquino III*, G.R. No. 224302 (November 29, 2016) [Per J. Leonardo- De Castro, En Banc].

188 J. Leonen, Dissenting Opinion in *Jardeleza v. Sereno*, 741 Phil. 460 (2014) [Per J. Mendoza, En Banc].

189 629 Phil. 629 (2010) [Per J. Bersamin, En Banc].

> Court, *so also cannot the Court intervene in the JBC's authority to discharge its principal function.* In this sense, the JBC is *fully independent* as shown by A.M. No. 03-11-16-SC or Resolution Strengthening the Role and Capacity of the Judicial and Bar Council and Establishing the Offices Therein. In both cases, however and unless otherwise defined by the Court (as in A.M. No. 03-11-16-SC), the Court can *supervise by ensuring the legality and correctness of these entities' exercise of their powers as to means and manner, and interpreting for them the constitutional provisions, laws and regulations affecting the means and manner of the exercise of their powers* as the Supreme Court is the final authority on the interpretation of these instruments. . . .[190] (Emphasis supplied)

The dissent in *Jardeleza v. Sereno*[191] then stressed that this Court should observe restraint in reviewing the Judicial and Bar Council's vetting process so as not to unnecessarily interfere with the nomination and appointment of its own Members:

> By constitutional design, this court should wisely resist temptations to participate, directly or indirectly, in the nomination and appointment process of any of its members. In reality, nomination to this court carries with it the political and personal pressures from the supporters of strong contenders. This court is wisely shaded from these stresses. We know that the quality of the rule of law is reduced when any member of this court succumbs to pressure.
>
> The separation of powers inherent in our Constitution is a rational check against abuse and the monopolization of all legal powers. We should not nullify any act of any constitutional organ unless there is grave abuse of discretion. The breach of a constitutional provision should be clearly shown and the necessity for the declaration of nullity should be compelling. Any doubt should trigger judicial restraint, not intervention. Doubts should be resolved in deference to the wisdom and prerogative of co-equal constitutional organs.[192]

The Concurring Opinion in *Villanueva v. Judicial and Bar Council*[193] and Separate Opinion in *Aguinaldo v. Aquino*[194] emphasized that while this Court has the power of supervision over the Judicial and Bar Council, such power must only be exercised in cases when the Council commits grave abuse of discretion.

This expanded power of review, even of independent constitutional bodies, is expressly granted to this Court by the second paragraph of Article VIII, Section 1 of the Constitution:

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[190] Justice Brion, Separate Opinion in *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 736 (2010) [Per J. Bersamin, En Banc].

[191] 741 Phil. 460 (2014) [Per J. Mendoza, En Banc].

[192] J. Leonen, Dissenting Opinion in *Jardeleza v. Sereno*, 741 Phil. 460 (2014) [Per J. Mendoza, En Banc]

[193] 757 Phil. 534 (2015) [Per J. Reyes, En Banc].

[194] G.R. No. 224302, November 29, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/224302.pdf> [Per J. Leonardo-De Castro, En Banc].

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The Separate Opinion in *Aguinaldo*, in particular, states:

> This Court exercises the powers of supervision only through judicial review over the Judicial and Bar Council and only when there is grave abuse of discretion.
>
> Nothing in the Constitution diminishes the fully independent character of the Judicial and Bar Council. It is a separate constitutional organ with the same autonomy as the House of Representative Electoral Tribunal and the Senate Electoral Tribunal. *Angara v. Electoral Commission* emphasizes that the Electoral Commission is "a constitutional creation, invested with the necessary authority in the performance and execution of the limited and specific function assigned to it by the Constitution." The grant of power to the Electoral Commission is intended to be "complete and unimpaired." The rules it promulgates cannot be subject to the review and approval of the legislature because doing so would render ineffective the grant of power to the Electoral Commission[.][195] (Citations omitted)

Nonetheless, the independent character of the Judicial and Bar Council as a constitutional body does not remove it from the Court's jurisdiction when its assailed acts involve grave abuse of discretion.

> Judicial review is the mechanism provided by the Constitution to settle actual controversies and to determine whether there has been grave abuse of discretion on the part of any branch or instrumentality of the Government. The expanded power of judicial review gives the court the authority to strike down acts of all government instrumentalities that are contrary to the Constitution. *Angara v. Electoral Commission* points out that judicial review is not an assertion of the superiority of the judiciary over other departments, rather, it is the judiciary's promotion of the superiority of the Constitution:
>
> > The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional

[195] J. Leonen, Separate Opinion in *Aguinaldo v. Aquino*, G.R. No. 224302, November 29, 2016 [Per J. Leonardo-De Castro, En Banc] <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/224302_leonen.pdf> 3–4.

> boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.[196]

In order to come within the scope of judicial review, the Constitution requires not merely abuse of discretion but *grave* abuse of discretion. The constitutional transgression must be nothing less than "arbitrary, capricious and whimsical."[197] The extent of this Court's review of the nomination and appointment process must not be given such an expansive interpretation that it not only undermines the independence of the Judicial and Bar Council, but even undermines the President's constitutional power of appointment.

There must also be a time period within which to question any perceived grave abuse of the Judicial and Bar Council's discretion. In this particular instance, the act complained of was allegedly committed by the Council *six (6) years ago*. The appointee whose qualifications are now being questioned was appointed by the President of the previous administration *six (6) years ago*.

Allowing an agent of the current administration to now question the previous administration's appointee would set a dangerous precedent. The current administration can just as easily undo all judicial appointments made by a previous administration. This will not inspire public trust and confidence in our institutions. The security of tenure of magistrates insulate them from the changing political winds. Removing that security renders members of the Judiciary vulnerable to currying favor with whichever political entity is in power, if only to guarantee that they remain in office until retirement. The immeasurable repercussions of this will corrode the foundations of our institution, to the ultimate detriment of the people.

X

The independence of the Judiciary should be specially guarded. This is

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[196] J. Leonen, Separate Opinion in *Aguinaldo v. Aquino*, G.R. No. 224302, November 29, 2016 [Per J. Leonardo-De Castro, En Banc] *citing Angara v. Electoral Commission*, 63 Phil. 139 (1936) [Per J. Laurel, En Banc] and CONST., art. VIII, sec. 1.

[197] *See Ganaden, et al. v. Court of Appeals, et al.*, G.R. Nos. 170500 and 170510-11, June 1, 2011, 650 SCRA 117 [Per J. Villarama, Jr., Third Division] and *Ysidoro v. Hon. De Castro*, G.R. Nos. 171513 and 190963, February 6, 2012, 665 SCRA 1 [Per J. Brion, Second Division].

the duty not only of the Court but likewise by the legal profession which includes the Solicitor General.

The Executive and Legislative departments are constitutional departments, but they are also political. The Constitutional Commissions and the Ombudsman have fixed terms, and therefore, are subject to the choices of a political administration. On the other hand, the justices of the Supreme Court serve under good behavior and are to serve until the age of 70 years old.

Political departments respond to majorities. That is in their nature since they act with the next elections in mind. Congress specifically makes policy choices through the concurrence of the majority in the House of Representatives and the Senate. The minorities may provide their dissenting voices on record but they are recorded for posterity and not for winning policy.

On the other hand, the Supreme Court is not political in that way. By providing for a term until the age of 70, the Constitution ensures that the vision of each member of the Court is for the longer term, and therefore, that decisions are made, not merely to address pragmatic needs, but long term principles as well. The Court is expected to be the last resort even in determining whether a political majority has transgressed its constitutional power or a fundamental right of the minority.

In doing so, the Court may be counter-majoritarian but pro-Constitution or pro-principle. Certainly, when it declares a law or an executive act as null and void because it is unconstitutional, it will arouse discomfort with those who are in political power. This Court, thus, protects not only the majority of the political present but the majority of the sovereign that ratified the Constitution.

Thus, even the majority of this Court must be shielded against the majority's power to remove. Their removal should also be done only through impeachment and conviction.

It cannot be denied that there are dire consequences in granting this Quo Warranto Petition.

First, the Solicitor General, who is not even a constitutional officer, is given awesome powers.

Second, since quo warranto is within the concurrent original jurisdiction of the Regional Trial Court, the Court of Appeals, and the Supreme Court, we will be ushering in the phenomena of a trial court judge ousting a colleague from another branch or another judicial region or a Court

of Appeals division ousting another justice belonging to another division or working in another region. The logical consequence is to diminish the concept of professional collegiality and independence also among lower courts.

Third, this Decision would inexorably empower appellate court judges to exercise discipline and control over lower courts through acting on Petitions for Quo Warranto against other lower court judges. This will take away this Court's sole constitutional domain to discipline lower court judges

Fourth, there will be no security of tenure for justices of this Court who will consistently dissent against the majority.

Fifth, this precedent opens the way to reviewing actions of the Judicial Bar Council and the President. It is an illicit motion for reconsideration against an appointment, even long after the exercise of judicial power.

Sixth, we have effectively included another requirement for the selection of judges and justices even though we are not constitutionally mandated to do so. Through the majority opinion, we now require the submission of all the Statements of Assets and Liabilities of a candidate.

XI

This dissent, however, should not be read as a shield for the respondent to be accountable for her actions.

The Constitution is not a document that ensures that there be no dialogical interaction between its various organs. Certainly, there will be tension between the Supreme Court and the various political branches. This is not a flaw in the design of a democratic and republican state. Rather, it reveals the necessary inherent contradiction between those who are elected to represent the contemporary majority and the court that represents the concept that there are foundational principles which not even a present contemporary majority can ignore. Democracies do not do away with discomfort. Discomfort in a true democratic setting is an assurance that there are contending voices to be resolved through the constitutional process.

Unfortunately, in her efforts to save her tenure of public office she held as a privilege, this nuance relating to this Court's role in the constitutional democracy may have been lost on the respondent. She may have created too much of a political narrative which elided her own accountability and backgrounded her responsibilities as a member of this Court.

Ideally, a justice must be slow to make public statements, always careful

that the facts before her may not be the entire reality. The conclusion that the initial effort to hold her to account for her acts was an attack on the entire judiciary itself should have been a judgment that should have been carefully weighed.

It was unfortunate that this seemed to have created the impression that she rallied those in political movements with their own agenda, tolerating attacks on her colleagues in social and traditional media. She may have broken the expectations we have had on parties to cases by speaking *sub judice* on the merits of the Quo Warranto Petition and her predictions on its outcome. She may not have met the reasonable expectation of a magistrate and a Chief Justice that, whatever the reasons and even at the cost of her own personal discomfort, she—as the leader of this Court—should not be the first to cause public shame and humiliation of her colleagues and the institution she represents.

The claim that the present actions against her was because of her constant position against the administration is belied by her voting record in this Court.

In *Lagman v. Medialdea*,[198] respondent did not dissent on the constitutionality of the extension of the President's declaration of martial law. She only opined that it was valid within the limited area of Lanao del Sur, Maguindanao, and Sulu.

In *Padilla v. Congress*,[199] respondent voted with the majority and concurred in the main opinion that a joint congressional session was unnecessary to affirm the President's declaration of Martial Law in Mindanao.

In *Baguilat v. Alvarez*,[200] respondent again voted with the majority and concurred in the main opinion that this Court cannot interfere in the manner by which the House of Representatives chooses its minority leader, despite the absence of a genuine minority.

In *SPARK v. Quezon City*,[201] respondent likewise voted with the

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198 G.R. No. 231658, July 4, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658.pdf> [Per J. Del Castillo, En Banc].

199 G.R. No. 231671, July 25, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231671.pdf> [Per J. Leonardo-De Castro].

200 G.R. No. 227757, July 25, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/227757.pdf> [Per J. Perlas-Bernabe, En Banc].

201 G.R. No. 225442, August 8, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/225442.pdf> [Per J. Perlas-Bernabe, En Banc].

majority and concurred in the main opinion, which upheld the curfew ordinance in Quezon City on the ground that the ordinance, as crafted, did not violate the constitutional rights of minors.

Her view of the expanded powers of the President is further cemented by her vote in two (2) landmark cases. In *Gonzalez v. Executive Secretary*,[202] she was one of the dissenters who opined that the Office of the President had the power to remove a Deputy Ombudsman. Then, in *Saguisag v. Ochoa*, she delivered the main opinion of this Court holding that an executive issuance or the Enhanced Defense Cooperation Agreement (EDCA) may have the same binding effect as a treaty ratified by the Senate.[203]

If true, the claim that the present status quo caused her difficulties due to her positions is, therefore, puzzling.

XII

More troubling was the inaccuracies in the announcements made by her team of the agreements of the Court *En Banc* to suit her personal agenda.

On February 27, 2018, during the regular *En Banc* session, respondent agreed to go on an indefinite leave.

Respondent's letter of even date to Atty. Anna-Li Papa Gombio, the En Banc Deputy Clerk of Court, supports what was agreed upon during the En Banc session:

> Dear Atty. Gombio,
>
> On the matter of my leave, please take note that due to the demands of the Senate trial where I intend to fully set out my defenses to the baseless charges, I will take an *indefinite leave*, until I shall have completed my preparation for the Senate trial, a portion of which will be charged against my wellness leave under A.M. No. 07-11-02-SC (Re: Wellness Program of all Justices for 2018), originally from March 12 to 23, 2018, to March 1 to 15, 2018. I will be submitting the requisite forms to the Clerk of Court.
>
> Thank you. (Emphasis supplied)

Strangely, the letter was not addressed to her colleagues. Neither were they given the courtesy of being furnished copies of her letter.

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202 725 Phil. 380 (2014) [Per J. Brion, En Banc].

203 G.R. No. 212426, January 12, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/212426.pdf> [Per C.J. Sereno, En Banc].

However, that same day, respondent's spokesperson announced a different version of events to the media by declaring that respondent will go on a wellness leave instead of an indefinite leave. This appeared to be an attempt to spin the events and sanitize the turn of events with the spokesperson's declaration that the wellness leave had long been scheduled and that respondent was only availing of her wellness leave a few weeks ahead of schedule.

Respondent is well aware that wellness leaves of Members of the Supreme Court are subject to the approval of the En Banc, hence, her follow-up letter the following day to the En Banc asking for approval of her wellness leave:

> Dear Colleagues:
>
> On the matter of my leave, I would respectfully need to advance my wellness leave to March 1 to 15, 2018 (originally March 12 to 26, 2018), to avail of the exemption from raffle under Section 6(c), Rule 7 of the Internal Rules of the Supreme Court. Thereafter, I shall take an indefinite vacation leave (of at least 15 days) to prepare for my Senate defense and to be exempt for raffle. Please note that under said rule:
>
> (c) Members who are on wellness leave or who are on vacation or sick leave, for at least fifteen (15) continuous calendar days, shall be exempt from raffle. . . .
>
> Thank you.

Her follow-up letter highlighted the inaccuracies over what was agreed upon during the February 27, 2018 En Banc session. Her camp's propensity to spin facts into a story that would closely hew to their narrative of respondent as the righteous and steadfast defender of the Judiciary should have been kept in check. There is a difference between sober advocacy and reckless media spin.

Confusion was by then rampant as to whether or not respondent was going on an indefinite leave or merely a rescheduled wellness leave, as her camp insisted. Speculations were also rife that some Members of the Supreme Court had forced respondent to go on indefinite leave and that respondent's indefinite leave was a prelude to her resignation as Chief Justice.

On March 1, 2018, the En Banc, with the exception of Associate Justice Alfredo Caguioa, who was then on official leave, took the unprecedented move of authorizing Atty. Theodore O. Te of the Public Information Office to release the following statement to clarify the confusion caused by respondent:

> I have been requested to read this Press Statement by thirteen (13) Justices of the Supreme Court.
>
> After extended deliberations last Tuesday February 27, 2018, thirteen (13) of the Justices present arrived at a consensus that the Chief Justice should take an indefinite leave. Several reasons were mentioned by the various justices. After consulting with the two most senior justices, the Chief Justice herself announced that she was taking an indefinite leave, with the amendment that she start the leave on Thursday, March 1, 2018. The Chief Justice did not request the rescheduling of her wellness leave.
>
> The Court En Banc regrets the confusion that the announcements and media releases of the spokespersons of the Chief Justice have caused, which seriously damaged the integrity of the Judiciary in general and the Supreme Court in particular. In the ordinary course of events, the Court expected the Chief Justice to cause the announcement only of what was really agreed upon without any modification or embellishment. This matter shall be dealt with in a separate proceeding.
>
> In view of the foregoing, the Court En Banc considers Chief Justice Maria Lourdes P.A. Sereno to be on an indefinite leave starting March 1, 2018. Senior Associate Justice Antonio T. Carpio shall be the Acting Chief Justice.
>
> The Clerk of Court and the Office of the Court Administrator will be informed and ordered to inform all courts and offices accordingly.

The Court's statement reveals what really happened during the En Banc session and confirms that contrary to her team's pronouncements to the media that it was her choice to go on leave, respondent was in truth asked by her peers to go on an indefinite leave. There was no reason for the En Banc to reveal such a delicate and sensitive matter which occurred within its chambers, but respondent's inaccurate statement meant that the En Banc had no choice but to correct her in order to preserve the Court's integrity.

In response to the En Banc's press release, respondent released a letter-explanation which read:

> The Chief Justice understands the sense of the thirteen (13) justices that they expected me, in the normal course of events, to cause the announcement of my indefinite leave. I had agreed to go on an indefinite leave, but I am also bound by the appropriate administrative rules. The rules do not contain any provision on "indefinite leave." I had to qualify my leave according to the provisions of Rule 7, Section 6(c) of the Internal Rules of the Supreme Court which reads "(c) Members who are on wellness leave or who are on vacation or sick leave, for at least fifteen (15) continuous calendar days shall be exempt from raffle. xxx" and the Resolution dated January 23, 2018 (A.M. No. 07-11-02-SC) on the matter of my approved wellness leave. I requested yesterday in writing the rescheduling of my wellness leave in view of my restudy of the rules. It is unfortunate that my plan of making use of any already approved wellness leave in relation to an indefinite leave was inaccurately conveyed for which I apologize.

> I have not resigned and I will not resign. This indefinite leave is not a resignation. I will devote my time to the preparation of my Senate defense and work on the cases in my docket.

This explanation does not inspire belief. It was obviously meant to harmonize her first and second letters and lessen the impact of the inaccuracies.

While the Court's internal or administrative rules may not contain a provision on indefinite leaves, it does not mean that it is not recognized. There was no need to denominate or qualify the indefinite leave as a wellness leave or any one of the recognized leaves that Members of the Supreme Court are entitled to. The intention to go on an indefinite leave was already understood, and to insinuate that categorizing the indefinite leave as a wellness leave was merely in compliance with administrative rules is certainly not the truth.

Besides, during the deliberations of February 27, 2018, respondent indeed attempted to convince her colleagues to characterize her leave as a wellness leave. She, together with all the other Justices present, knows that it was not accepted.

Strangely, she appeared at the Court's steps on May 8, 2018 purportedly to end her leave, knowing fully well that it was part of a collegial decision with her peers. She was well aware that the Court was on an intensive decision writing break for the whole month, and hence, there was no special reason for her to report back without the approval of the Court. Her reporting for work did not appear to have any urgent motive except her desire to preside over the special session of the en banc where the main agenda was the deliberation of this case.

The respondent knows fully well that she is a party to her case. For her to report to control the bureaucracy of the Court—such as the Clerk of Court and its process servers—when her case is for decision, and for her to put herself in a position to be engaged in *ex parte* communication with the sitting justices who will decide her case, border on the contumacious. At the very least, this appears to violate Canon 13 of the Code of Professional Responsibility, thus:

> Canon 13 – A lawyer shall rely upon the merits of his cause and refrain from any impropriety which tends to influence, or gives the appearance of influencing the Court.

Disappointments arising from losing one's motions and pleadings are understandable. Criticism of the Court that decides will always be

forthcoming. But for a party to do everything in her power to undermine the Court for fear of an adverse result may breach not only judicial courtesy but also our professional responsibilities as a lawyer.

XIII

This Court has its faults, and I have on many occasions written impassioned dissents against my esteemed colleagues. But, there have always been just, legal, and right ways to do the right thing. As a Member of this Court, it should be reason that prevails. We should maintain the highest levels of ethics and professional courtesy even as we remain authentic to our convictions as to the right way of reading the law. Despite our most solid belief that we are right, we should still have the humility to be open to the possibility that others may not see it our way. As mature magistrates, we should be aware that many of the reforms we envision will take time.

False narratives designed to simplify and demonize an entire institution and the attribution of false motives is not the mark of responsible citizenship. Certainly, it is not what this country expects from any justice. Courts are sanctuaries of all rights. There are many cases pending in this Court where those who have much less grandeur than the respondent seek succor. Every judicial institution, every Justice of this Court, will have weaknesses as well as strengths. We should address the weaknesses tirelessly but with respect. We should likewise acknowledge the strengths which we intend to preserve. No court is perfect. All courts need reform.

It is reasonable to expect that the Chief Justice should have the broadest equanimity, to have an open mind, and to show leadership by being the first to defend her Court against underserved, speculative, callous, *ad hominem*, and irrelevant attacks on their personal reputation. She should be at the forefront to defend the Court against unfounded speculation and attacks. Unfortunately, in her campaign for victory in this case, her speeches may have goaded the public to do so and without remorse.

To succeed in discrediting the entire institution for some of its controversial decisions may contribute to weakening the legitimacy of its other opinions to grant succor to those oppressed and to those who suffer injustice.

This is not the end for those who fight for judicial independence. This is not the end for those who articulate a vision of social justice against the unjustness of the politically dominant. There are still many among us in the Judiciary.

Those who choose to make personal sacrifices leave the most important lesson that can etch into our history that can be emulated by present and future Justices of this Court: having a soul where the genuine humility of servant leadership truly resides.

Today, perhaps, a torch may just have been passed so that those who are left may shine more brightly. Perhaps, an old torch will be finally rekindled: one which will light the way for a more vigilant citizenry that is sober, analytical, and organized enough to demand decency and a true passion for justice from all of government.

It is with all conviction that I vote to dismiss this Quo Warranto Petition. In my view, it should not even have been given due course. I am convinced that the majority opinion will weaken the role of the Judiciary to deliver social justice and assert our fundamental rights.

I grieve the doctrine of this case. It should be overturned in the near future.

I dissent.

ACCORDINGLY, I vote to **DISMISS** the Petition.

MARVIC M.V. F. LEONEN
Associate Justice