Republic of the Philippines
SUPREME COURT
Baguio City

EN BANC

G.R. No. 191002 April 20, 2010

ARTURO M. DE CASTRO, Petitioner,
vs.
JUDICIAL AND BAR COUNCIL (JBC) and PRESIDENT GLORIA MACAPAGAL - ARROYO, Respondents.

x -x

G.R. No. 191032

JAIME N. SORIANO, Petitioner,
vs.
JUDICIAL AND BAR COUNCIL (JBC), Respondent.

x -x

G.R. No. 191057

PHILIPPINE CONSTITUTION ASSOCIATION (PHILCONSA), Petitioner,
vs.
JUDICIAL AND BAR COUNCIL (JBC), Respondent.

x -x

A.M. No. 10-2-5-SC

IN RE APPLICABILITY OF SECTION 15, ARTICLE VII OF THE CONSTITUTION TO APPOINTMENTS TO THE JUDICIARY, ESTELITO P. MENDOZA, Petitioner,

x -x

G.R. No. 191149

JOHN G. PERALTA, Petitioner,
vs.
JUDICIAL AND BAR COUNCIL (JBC). Respondent.
PETER IRVING CORVERA; CHRISTIAN ROBERT S. LIM; ALFONSO V. TAN, JR.; NATIONAL UNION OF PEOPLE'S LAWYERS; MARLOU B. UBANO; INTEGRATED BAR OF THE PHILIPPINES-DAVAO DEL SUR CHAPTER, represented by its Immediate Past President, ATTY. ISRAELITO P. TORREON, and the latter in his own personal capacity as a MEMBER of the PHILIPPINE BAR; MITCHELL JOHN L. BOISER; BAGONG ALYANSANG BAYAN (BAYAN) CHAIRMAN DR. CAROLINA P. ARAULLO; BAYAN SECRETARY GENERAL RENATO M. REYES, JR.; CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCE-MENT OF GOVERNMENT EMPLOYEES (COURAGE)

CHAIRMAN FERDINAND GAITE; KALIPUNAN NG DAMAYANG MAHIHIRAP (KADAMAY) SECRETARY GENERAL GLORIA ARELLANO; ALYANSA NG NAGKAKAISANG KABATAAN NG SAMBAYANAN PARA SA KAUNLARAN (ANAKBAYAN) CHAIRMAN KEN LEONARD RAMOS; TAYO ANG PAG-ASA CONVENOR ALVIN PETERS; LEAGUE OF FILIPINO STUDENTS (LFS) CHAIRMAN JAMES MARK TERRY LACUANAN RIDON; NATIONAL UNION OF STUDENTS OF THE PHILIPPINES (NUSP) CHAIRMAN EINSTEIN RECEDES; COLLEGE EDITORS GUILD OF THE PHILIPPINES (CEGP) CHAIRMAN VIJAE ALQUISOLA; and STUDENT CHRISTIAN MOVEMENT OF THE PHILIPPINES (SCMP) CHAIRMAN MA. CRISTINA ANGELA GUEVARRA; WALDEN F. BELLO and LORETTA ANN P. ROSALES; WOMEN TRIAL LAWYERS ORGANIZATION OF THE PHILIPPINES, represented by YOLANDA QUISUMBING-JAVELLANA; BELLEZA ALOJADO DEMAISIP; TERESITA GANDIONCO-OLEDAN; MA. VERENA KASILAG-VILLANUEVA; MARILYN STA. ROMANA; LEONILA DE JESUS; and GUINEVERE DE LEON; AQUILINO Q. PIMENTEL, JR.; Intervenors.

x -x

G.R. No. 191342

ATTY. AMADOR Z. TOLENTINO, JR., (IBP Governor-Southern Luzon), and ATTY. ROLAND B. INTING (IBP Governor-Eastern Visayas), Petitioners,
vs.
JUDICIAL AND BAR COUNCIL (JBC), Respondent.

x -x

G.R. No. 191420

PHILIPPINE BAR ASSOCIATION, INC., Petitioner,
vs.
JUDICIAL AND BAR COUNCIL and HER EXCELLENCY GLORIA MACAPAGAL-ARROYO, Respondents.

R E S O L U T I O N

BERSAMIN, *J.:*

On March 17, 2010, the Court promulgated its decision, holding:

WHEREFORE, the Court:

1. Dismisses the petitions for certiorari and mandamus in G.R. No. 191002 and G.R. No. 191149, and the petition for mandamus in G.R. No. 191057 for being premature;

2. Dismisses the petitions for prohibition in G.R. No. 191032 and G.R. No. 191342 for lack of merit; and

3. Grants the petition in A.M. No. 10-2-5-SC and, accordingly, directs the Judicial and Bar Council:

(a) To resume its proceedings for the nomination of candidates to fill the vacancy to be created by the compulsory retirement of Chief Justice Reynato S. Puno by May 17, 2010;

(b) To prepare the short list of nominees for the position of Chief Justice;

(c) To submit to the incumbent President the short list of nominees for the position of Chief Justice on or before May 17, 2010; and

(d) To continue its proceedings for the nomination of candidates to fill other vacancies in the Judiciary and submit to the President the short list of nominees corresponding thereto in accordance with this decision.

SO ORDERED.

Motions for Reconsideration

Petitioners Jaime N. Soriano (G.R. No. 191032), Amador Z. Tolentino and Roland B. Inting (G.R. No. 191342), and Philippine Bar Association (G.R. No. 191420), as well as intervenors Integrated Bar of the Philippines-Davao del Sur (IBP-Davao del Sur, et al.); Christian Robert S. Lim; Peter Irving Corvera; Bagong Alyansang Bayan and others (BAYAN, et al.); Alfonso V. Tan, Jr.; the Women Trial Lawyers Organization of the Philippines (WTLOP); Marlou B. Ubano; Mitchell John L. Boiser; and Walden F. Bello and Loretta Ann P. Rosales (Bello, et al.), filed their respective motions for reconsideration. Also filing a motion for reconsideration was Senator Aquilino Q. Pimentel, Jr., whose belated intervention was allowed.

We summarize the arguments and submissions of the various motions for reconsideration, in the aforegiven order:

Soriano

1. The Court has not squarely ruled upon or addressed the issue of whether or not the power to designate the Chief Justice belonged to the Supreme Court en banc.

2. The Mendoza petition should have been dismissed, because it sought a mere declaratory judgment and did not involve a justiciable controversy.

3. All Justices of the Court should participate in the next deliberations. The mere fact that the Chief Justice sits as ex officio head of the JBC should not prevail over the more compelling state interest for him to participate as a Member of the Court.

Tolentino and Inting

1. A plain reading of Section 15, Article VII does not lead to an interpretation that exempts judicial appointments from the express ban on midnight appointments.

2. In excluding the Judiciary from the ban, the Court has made distinctions and has created exemptions when none exists.

3. The ban on midnight appointments is placed in Article VII, not in Article VIII, because it limits an executive, not a judicial, power.

4. Resort to the deliberations of the Constitutional Commission is superfluous, and is powerless to vary the terms of the clear prohibition.

5. The Court has given too much credit to the position taken by Justice Regalado. Thereby, the Court has raised the Constitution to the level of a venerated text whose intent can only be divined by its framers as to be outside the realm of understanding by the sovereign people that ratified it.

6. Valenzuela should not be reversed.

7. The petitioners, as taxpayers and lawyers, have the clear legal standing to question the illegal composition of the JBC.

Philippine Bar Association

1. The Court's strained interpretation of the Constitution violates the basic principle that the Court should not formulate a rule of constitutional law broader than what is required by the precise facts of the case.

2. Considering that Section 15, Article VII is clear and straightforward, the only duty of the Court is to apply it. The provision expressly and clearly provides a general limitation on the appointing power of the President in prohibiting the appointment of any person to any position in the Government without any qualification and distinction.

3. The Court gravely erred in unilaterally ignoring the constitutional safeguard against midnight appointments.

4. The Constitution has installed two constitutional safeguards:- the prohibition against midnight appointments, and the creation of the JBC. It is not within the authority of the Court to prefer one over the other, for the Court's duty is to apply the safeguards as they are, not as the Court likes them to be.

5. The Court has erred in failing to apply the basic principles of statutory construction in interpreting the Constitution.

6. The Court has erred in relying heavily on the title, chapter or section headings, despite precedents on statutory construction holding that such headings carried very little weight.

7. The Constitution has provided a general rule on midnight appointments, and the only exception is that on temporary appointments to executive positions.

8. The Court has erred in directing the JBC to resume the proceedings for the nomination of the candidates to fill the vacancy to be created by the compulsory retirement of Chief Justice Puno with a view to submitting the list of nominees for Chief Justice to President Arroyo on or before May 17, 2010. The Constitution grants the Court only the power of supervision over the JBC; hence, the Court cannot tell the JBC what to do, how to do it, or when to do it, especially in the absence of a real and justiciable case assailing any specific action or inaction of the JBC.

9. The Court has engaged in rendering an advisory opinion and has indulged in speculations.

10. The constitutional ban on appointments being already in effect, the Court's directing the JBC to comply with the decision constitutes a culpable violation of the Constitution and the commission of an election offense.

11. The Court cannot reverse on the basis of a secondary authority a doctrine unanimously formulated by the Court en banc.

12. The practice has been for the most senior Justice to act as Chief Justice whenever the incumbent is indisposed. Thus, the appointment of the successor Chief Justice is not urgently necessary.

13. The principal purpose for the ban on midnight appointments is to arrest any attempt to prolong the outgoing President's powers by means of proxies. The attempt of the incumbent President to appoint the next Chief Justice is undeniably intended to perpetuate her power beyond her term of office.

IBP-Davao del Sur, et al.

1. Its language being unambiguous, Section 15, Article VII of the Constitution applies to appointments to the Judiciary. Hence, no cogent reason exists to warrant the reversal of the Valenzuela pronouncement.

2. Section 16, Article VII of the Constitution provides for presidential appointments to the Constitutional Commissions and the JBC with the consent of the Commission on Appointments. Its phrase "other officers whose appointments are vested in him in this Constitution" is enough proof that the limitation on the appointing power of the President extends to appointments to the Judiciary. Thus, Section 14, Section 15, and Section 16 of Article VII apply to all presidential appointments in the Executive and Judicial Branches of the Government.

3. There is no evidence that the framers of the Constitution abhorred the idea of an Acting Chief Justice in all cases.

Lim

1. There is no justiciable controversy that warrants the Court's exercise of judicial review.

2. The election ban under Section 15, Article VII applies to appointments to fill a vacancy in the Court and to other appointments to the Judiciary.

3. The creation of the JBC does not justify the removal of the safeguard under Section 15 of Article VII against midnight appointments in the Judiciary.

Corvera

1. The Court's exclusion of appointments to the Judiciary from the Constitutional ban on midnight appointments is based on an interpretation beyond the plain and unequivocal language of the Constitution.

2. The intent of the ban on midnight appointments is to cover appointments in both the Executive and Judicial Departments. The application of the principle of verba legis (ordinary meaning) would have obviated dwelling on the organization and arrangement of the provisions of the Constitution. If there is any ambiguity in Section 15, Article VII, the intent behind the provision, which is to prevent political partisanship in all branches of the Government, should have controlled.

3. A plain reading is preferred to a contorted and strained interpretation based on compartmentalization and physical arrangement, especially considering that the Constitution must be interpreted as a whole.

4. Resort to the deliberations or to the personal interpretation of the framers of the Constitution should yield to the plain and unequivocal language of the Constitution.

5. There is no sufficient reason for reversing Valenzuela, a ruling that is reasonable and in accord with the Constitution.

BAYAN, et al.

1. The Court erred in granting the petition in A.M. No. 10-2-5-SC, because the petition did not present a justiciable controversy. The issues it raised were not yet ripe for adjudication, considering that the office of the Chief Justice was not yet vacant and that the JBC itself has yet to decide whether or not to submit a list of nominees to the President.

2. The collective wisdom of Valenzuela Court is more important and compelling than the opinion of Justice Regalado.

3. In ruling that Section 15, Article VII is in conflict with Section 4(1), Article VIII, the Court has violated the principle of ut magis valeat quam pereat (which mandates that the Constitution should be interpreted as a whole, such that any conflicting provisions are to be harmonized as to fully give effect to all). There is no conflict between the provisions; they complement each other.

4. The form and structure of the Constitution's titles, chapters, sections, and draftsmanship carry little weight in statutory construction. The clear and plain language of Section 15, Article VII precludes interpretation.

Tan, Jr.

1. The factual antecedents do not present an actual case or controversy. The clash of legal rights and interests in the present case are merely anticipated. Even if it is anticipated with certainty, no actual vacancy in the position of the Chief Justice has yet occurred.

2. The ruling that Section 15, Article VII does not apply to a vacancy in the Court and the Judiciary runs in conflict with long standing principles and doctrines of statutory

construction. The provision admits only one exception, temporary appointments in the Executive Department. Thus, the Court should not distinguish, because the law itself makes no distinction.

3. Valenzuela was erroneously reversed. The framers of the Constitution clearly intended the ban on midnight appointments to cover the members of the Judiciary. Hence, giving more weight to the opinion of Justice Regalado to reverse the en banc decision in Valenzuela was unwarranted.

4. Section 15, Article VII is not incompatible with Section 4(1), Article VIII. The 90-day mandate to fill any vacancy lasts until August 15, 2010, or a month and a half after the end of the ban. The next President has roughly the same time of 45 days as the incumbent President (i.e., 44 days) within which to scrutinize and study the qualifications of the next Chief Justice. Thus, the JBC has more than enough opportunity to examine the nominees without haste and political uncertainty.

5. When the constitutional ban is in place, the 90-day period under Section 4(1), Article VIII is suspended.

6. There is no basis to direct the JBC to submit the list of nominees on or before May 17, 2010. The directive to the JBC sanctions a culpable violation of the Constitution and constitutes an election offense.

7. There is no pressing necessity for the appointment of a Chief Justice, because the Court sits en banc, even when it acts as the sole judge of all contests relative to the election, returns and qualifications of the President and Vice-President. Fourteen other Members of the Court can validly comprise the Presidential Electoral Tribunal.

WTLOP

1. The Court exceeded its jurisdiction in ordering the JBC to submit the list of nominees for Chief Justice to the President on or before May 17, 2010, and to continue its proceedings for the nomination of the candidates, because it granted a relief not prayed for; imposed on the JBC a deadline not provided by law or the Constitution; exercised control instead of mere supervision over the JBC; and lacked sufficient votes to reverse Valenzuela.

2. In interpreting Section 15, Article VII, the Court has ignored the basic principle of statutory construction to the effect that the literal meaning of the law must be applied when it is clear and unambiguous; and that we should not distinguish where the law does not distinguish.

3. There is no urgency to appoint the next Chief Justice, considering that the Judiciary Act of 1948 already provides that the power and duties of the office devolve on the most senior Associate Justice in case of a vacancy in the office of the Chief Justice.

Ubano

1. The language of Section 15, Article VII, being clear and unequivocal, needs no interpretation

2. The Constitution must be construed in its entirety, not by resort to the organization and arrangement of its provisions.

3. The opinion of Justice Regalado is irrelevant, because Section 15, Article VII and the pertinent records of the Constitutional Commission are clear and unambiguous.

4. The Court has erred in ordering the JBC to submit the list of nominees to the President by May 17, 2010 at the latest, because no specific law requires the JBC to submit the list of nominees even before the vacancy has occurred.

Boiser

1. Under Section 15, Article VII, the only exemption from the ban on midnight appointments is the temporary appointment to an executive position. The limitation is in keeping with the clear intent of the framers of the Constitution to place a restriction on the power of the outgoing Chief Executive to make appointments.

2. To exempt the appointment of the next Chief Justice from the ban on midnight appointments makes the appointee beholden to the outgoing Chief Executive, and compromises the independence of the Chief Justice by having the outgoing President be continually influential.

3. The Court's reversal of Valenzuela without stating the sufficient reason violates the principle of stare decisis.

Bello, et al.

1. Section 15, Article VII does not distinguish as to the type of appointments an outgoing President is prohibited from making within the prescribed period. Plain textual reading and the records of the Constitutional Commission support the view that the ban on midnight appointments extends to judicial appointments.

2. Supervision of the JBC by the Court involves oversight. The subordinate subject to oversight must first act not in accord with prescribed rules before the act can be redone to conform to the prescribed rules.

3. The Court erred in granting the petition in A.M. No. 10-2-5-SC, because the petition did not present a justiciable controversy.

Pimentel

1. Any constitutional interpretative changes must be reasonable, rational, and conformable to the general intent of the Constitution as a limitation to the powers of Government and as a bastion for the protection of the rights of the people. Thus, in harmonizing seemingly conflicting provisions of the Constitution, the interpretation should always be one that protects the citizenry from an ever expanding grant of authority to its representatives.

2. The decision expands the constitutional powers of the President in a manner totally repugnant to republican constitutional democracy, and is tantamount to a judicial amendment of the Constitution without proper authority.

Comments

The Office of the Solicitor General (OSG) and the JBC separately represent in their respective comments, thus:

OSG

1. The JBC may be compelled to submit to the President a short list of its nominees for the position of Chief Justice.

2. The incumbent President has the power to appoint the next Chief Justice.

3. Section 15, Article VII does not apply to the Judiciary.

4. The principles of constitutional construction favor the exemption of the Judiciary from the ban on midnight appointments.

5. The Court has the duty to consider and resolve all issues raised by the parties as well as other related matters.

JBC

1. The consolidated petitions should have been dismissed for prematurity, because the JBC has not yet decided at the time the petitions were filed whether the incumbent President has the power to appoint the new Chief Justice, and because the JBC, having yet to interview the candidates, has not submitted a short list to the President.

2. The statement in the decision that there is a doubt on whether a JBC short list is necessary for the President to appoint a Chief Justice should be struck down as bereft of constitutional and legal basis. The statement undermines the independence of the JBC.

3. The JBC will abide by the final decision of the Court, but in accord with its constitutional mandate and its implementing rules and regulations.

For his part, petitioner Estelito P. Mendoza (A.M. No. 10-2-5-SC) submits his comment even if the OSG and the JBC were the only ones the Court has required to do so. He states that the motions for reconsideration were directed at the administrative matter he initiated and which the Court resolved. His comment asserts:

1. The grounds of the motions for reconsideration were already resolved by the decision and the separate opinion.

2. The administrative matter he brought invoked the Court's power of supervision over the JBC as provided by Section 8(1), Article VIII of the Constitution, as distinguished from the Court's adjudicatory power under Section 1, Article VIII. In the former, the requisites for judicial review are not required, which was why *Valenzuela* was docketed as an administrative matter. Considering that the JBC itself has yet to take a position on when to submit the short list to the proper appointing authority, it

has effectively solicited the exercise by the Court of its power of supervision over the JBC.

3. To apply Section 15, Article VII to Section 4(1) and Section 9, Article VIII is to amend the Constitution.

4. The portions of the deliberations of the Constitutional Commission quoted in the dissent of Justice Carpio Morales, as well as in some of the motions for reconsideration do not refer to either Section 15, Article VII or Section 4(1), Article VIII, but to Section 13, Article VII (on nepotism).

Ruling

We deny the motions for reconsideration for lack of merit, for all the matters being thereby raised and argued, not being new, have all been resolved by the decision of March 17, 2010.

Nonetheless, the Court opts to dwell on some matters only for the purpose of clarification and emphasis.

First: Most of the movants contend that the principle of stare decisis is controlling, and accordingly insist that the Court has erred in disobeying or abandoning Valenzuela.[1]

The contention has no basis.

Stare decisis derives its name from the Latin maxim stare decisis et non quieta movere, i.e., to adhere to precedent and not to unsettle things that are settled. It simply means that a principle underlying the decision in one case is deemed of imperative authority, controlling the decisions of like cases in the same court and in lower courts within the same jurisdiction, unless and until the decision in question is reversed or overruled by a court of competent authority. The decisions relied upon as precedents are commonly those of appellate courts, because the decisions of the trial courts may be appealed to higher courts and for that reason are probably not the best evidence of the rules of law laid down. [2]

Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.[3] In a hierarchical judicial system like ours, the decisions of the higher courts bind the lower courts, but the courts of co-ordinate authority do not bind each other. The one highest court does not bind itself, being invested with the innate authority to rule according to its best lights.[4]

The Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification.[5] The adherence to precedents is strict and rigid in a common-law setting like the United Kingdom, where judges make law as binding as an Act of Parliament.[6] But ours is not a common-law system; hence, judicial precedents are not always strictly and rigidly followed. A judicial pronouncement in an earlier decision may be followed as a precedent in a subsequent case only when its reasoning and justification are relevant, and the court in the latter case accepts such reasoning and justification to be applicable to the case. The application of the precedent is for the sake of convenience and stability.

For the intervenors to insist that Valenzuela ought not to be disobeyed, or abandoned, or reversed, and that its wisdom should guide, if not control, the Court in this case is, therefore, devoid of rationality and foundation. They seem to conveniently forget that the Constitution itself recognizes the innate authority of the Court en banc to modify or reverse a doctrine or principle of law laid down in any decision rendered en banc or in division.[7]

Second: Some intervenors are grossly misleading the public by their insistence that the Constitutional Commission extended to the Judiciary the ban on presidential appointments during the period stated in Section 15, Article VII.

The deliberations that the dissent of Justice Carpio Morales quoted from the records of the Constitutional Commission did not concern either Section 15, Article VII or Section 4(1), Article VIII, but only Section 13, Article VII, a provision on nepotism. The records of the Constitutional Commission show that Commissioner Hilario G. Davide, Jr. had proposed to include judges and justices related to the President within the fourth civil degree of consanguinity or affinity among the persons whom the President might not appoint during his or her tenure. In the end, however, Commissioner Davide, Jr. withdrew the proposal to include the Judiciary in Section 13, Article VII "(t)o avoid any further complication,"[8] such that the final version of the second paragraph of Section 13, Article VII even completely omits any reference to the Judiciary, to wit:

Section 13. xxx

The spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not during his tenure be appointed as Members of the Constitutional Commissions, or the Office of the Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.

Last: The movants take the majority to task for holding that Section 15, Article VII does not apply to appointments in the Judiciary. They aver that the Court either ignored or refused to apply many principles of statutory construction.

The movants gravely err in their posture, and are themselves apparently contravening their avowed reliance on the principles of statutory construction.

For one, the movants, disregarding the absence from Section 15, Article VII of the express extension of the ban on appointments to the Judiciary, insist that the ban applied to the Judiciary under the principle of verba legis. That is self-contradiction at its worst.

Another instance is the movants' unhesitating willingness to read into Section 4(1) and Section 9, both of Article VIII, the express applicability of the ban under Section 15, Article VII during the period provided therein, despite the silence of said provisions thereon. Yet, construction cannot supply the omission, for doing so would generally constitute an encroachment upon the field of the Constitutional Commission. Rather, Section 4(1) and Section 9 should be left as they are, given that their meaning is clear and explicit, and no words can be interpolated in them.[9] Interpolation of words is unnecessary, because the law is more than likely to fail to express the legislative intent with the interpolation. In other words, the addition of new words may alter the thought intended to be conveyed. And, even where the meaning of the law is clear and sensible, either with or without the omitted word or words, interpolation is improper, because the primary source of the legislative intent is in the language of the law itself.[10]

Thus, the decision of March 17, 2010 has fittingly observed:

Had the framers intended to extend the prohibition contained in Section 15, Article VII to the appointment of Members of the Supreme Court, they could have explicitly done so. They could not have ignored the meticulous ordering of the provisions. They would have easily and surely written the prohibition made explicit in Section 15, Article VII as being equally applicable to the appointment of Members of the Supreme Court in Article VIII itself, most likely in Section 4 (1), Article VIII. That such specification was not done only reveals that the prohibition against the President or Acting President making appointments within two months before the next presidential elections and up to the end of the President's or Acting President's term does not refer to the Members of the Supreme Court.

We cannot permit the meaning of the Constitution to be stretched to any unintended point in order to suit the purposes of any quarter.

Final Word

It has been insinuated as part of the polemics attendant to the controversy we are resolving that because all the Members of the present Court were appointed by the incumbent President, a majority of them are now granting to her the authority to appoint the successor of the retiring Chief Justice.

The insinuation is misguided and utterly unfair.

The Members of the Court vote on the sole basis of their conscience and the merits of the issues. Any claim to the contrary proceeds from malice and condescension. Neither the outgoing President nor the present Members of the Court had arranged the current situation to happen and to evolve as it has. None of the Members of the Court could have prevented the Members composing the Court when she assumed the Presidency about a decade ago from retiring during her prolonged term and tenure, for their retirements were mandatory. Yet, she is now left with an imperative duty under the Constitution to fill up the vacancies created by such inexorable retirements within 90 days from their occurrence. Her official duty she must comply with. So must we ours who are tasked by the Constitution to settle the controversy.

ACCORDINGLY, the motions for reconsideration are denied with finality.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

REYNATO S. PUNO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

RENATO C. CORONA
Associate Justice

CONCHITA CARPIO MORALES
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

ANTONIO EDUARDO B. NACHURA
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

REYNATO S. PUNO
Chief Justice

Footnotes

[1] In Re Appointments Dated March 30, 1998 of Hon. Mateo A. Valenzuela and Hon. Placido B. Vallarta as Judges of the Regional Trial Court of Branch 62, Bago City and of Branch 24, Cabanatuan City, respectively, A.M. No. 98-5-01-SC, November 9, 1998, 298 SCRA 408.

[2] Price & Bitner, Effective Legal Research, Little, Brown & Co., New York (1962), § 9.7.

[3] Caltex (Phil.), Inc. v. Palomar, No. L-19650, September 29, 1966, 18 SCRA 247

[4] E.g., Dias, Jurisprudence, Butterworths, London, 1985, Fifth Edition, p. 127.

[5] Limketkai Sons Milling, Inc. v. Court of Appeals, G.R. No. 118509, September 5, 1996, 261 SCRA 464.

[6] See Calabresi, A Common Law for the Age of Statutes, Harvard University Press, p. 4 (1982) and endnote 12 of the page, which essentially recounts that the strict application of the doctrine of stare decisis is true only in a common-law jurisdiction like England (citing Wise, The Doctrine of Stare Decisis, 21 Wayne Law Review, 1043, 1046-1047 (1975). Calabresi recalls that the English House of Lords decided in 1898 (London Tramways Co. v. London County Council, A.C. 375) that they could not alter precedents laid down by the House of Lords acting as the supreme court in previous cases, but that such precedents could only be altered by an Act of Parliament, for to do otherwise would mean that the courts would usurp legislative function; he mentions that in 1966, Lord Chancellor Gardiner announced in a Practice Statement a kind of general memorandum from the court that while: "Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law," they "nevertheless recognize that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so." (Calabresi cites Leach, Revisionism in the House of Lords: The Bastion of Rigid Stare Decisis Falls, 80 Harvard Law Review, 797 (1967).

[7] Section 4 (2), Article VIII, provides:

xxx

> (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.

[8] Record of the 1986 Constitutional Commission, Vol. 2, July 31, 1986, RCC No. 44. pp. 542-543.

[9] Smith v. State, 66 Md. 215, 7 Atl. 49.

[10] State ex rel Everding v. Simon, 20 Ore. 365, 26 Pac. 170.

DISSENTING OPINION

CARPIO MORALES, *J.:*

No compelling reason exists for the Court to deny a reconsideration of the assailed Decision. The various motions for reconsideration raise hollering substantial arguments and legitimately nagging questions which the Court must meet head on.

If this Court is to deserve or preserve its revered place not just in the hierarchy but also in history, passion for reason demands the issuance of an extended and extensive resolution that confronts the ramifications and repercussions of its assailed Decision. Only then can it offer an illumination that any self-respecting student of the law clamors and any adherent of the law deserves. Otherwise, it takes the risk of reeking of an objectionable air of supreme judicial arrogance.

It is thus imperative to settle the following issues and concerns:

Whether the incumbent President is constitutionally proscribed from appointing the successor of Chief Justice Reynato S. Puno upon his retirement on May 17, 2010 until the ban ends at 12:00 noon of June 30, 2010

> **1.** In interpreting the subject constitutional provisions, the Decision disregarded established canons of statutory construction. Without explaining the inapplicability of each of the relevant rules, the Decision immediately placed premium on the arrangement and ordering of provisions, one of the weakest tools of construction, to arrive at its conclusion.
>
> **2.** In reversing *Valenzuela*, the Decision held that the *Valenzuela* dictum did not firmly rest on ConCom deliberations, yet it did not offer to cite a material ConCom deliberation. It instead opted to rely on the memory of Justice Florenz Regalado which incidentally mentioned only the "Court of Appeals." The Decision's conclusion must rest on the strength of its own favorable Concom deliberation, none of which to date has been cited.
>
> **3.** Instead of choosing which constitutional provision carves out an exception from the other provision, the most legally feasible interpretation (in the limited cases of temporary physical or legal impossibility of compliance, as expounded in my Dissenting Opinion) is to consider the appointments ban or other substantial obstacle as a temporary impossibility which excuses or releases the constitutional obligation of the Office of the President for the duration of the ban or obstacle.

In view of the temporary nature of the circumstance causing the impossibility of performance, the outgoing President is released from non-fulfillment of the obligation to appoint, and the duty devolves upon the new President. The delay in the fulfillment of the obligation becomes excusable, since the law cannot exact compliance with what is impossible. The 90-day period within which to appoint a member of the Court is thus suspended and the period could only start or resume to run when the temporary obstacle disappears (*i.e.*, after the period of the appointments ban; when there is already a quorum in the JBC; or when there is already at least three applicants).

Whether the Judicial and Bar Council is obliged to submit to the President the shortlist of nominees for the position of Chief Justice (or Justice of this Court) on or before the occurrence of the vacancy.

> **1.** The ruling in the Decision that obligates the JBC to submit the shortlist to the President on or before the occurrence of the vacancy in the Court runs counter to the Concom deliberations which explain that the 90-day period is allotted for both the nomination by the JBC and the appointment by the President. In the move to increase the period to 90 days, Commissioner Romulo stated that "[t]he sense of the

Committee is that 60 days is awfully short and that the [Judicial and Bar] Council, as well as the President, may have difficulties with that."

2. To require the JBC to submit to the President a shortlist of nominees on or before the occurrence of vacancy in the Court leads to preposterous results. It bears reiterating that the requirement is absurd when, *inter alia*, the vacancy is occasioned by the death of a member of the Court, in which case the JBC could never anticipate the death of a Justice, and could never submit a list to the President on or before the occurrence of vacancy.

3. The express allowance in the Constitution of a 90-day period of vacancy in the membership of the Court rebuts any public policy argument on avoiding a vacuum of even a single day without a duly appointed Chief Justice. Moreover, as pointed out in my Dissenting Opinion, the practice of having an acting Chief Justice in the interregnum is provided for by law, confirmed by tradition, and settled by jurisprudence to be an internal matter.

The Resolution of the majority, in denying the present Motions for Reconsideration, failed to rebut the foregoing crucial matters.

I, therefore, maintain my dissent and vote to GRANT the Motions for Reconsideration of the Decision of March 17, 2010 insofar as it holds that the incumbent President is not constitutionally proscribed from appointing the successor of Chief Justice Reynato S. Puno upon his retirement on May 17, 2010 until the ban ends at 12:00 noon of June 30, 2010 and that the Judicial and Bar Council is obliged to submit to the President the shortlist of nominees for the position of Chief Justice on or before May 17, 2010.

CONCHITA CARPIO MORALES
Associate Justice

CONCURRING AND DISSENTING OPINION

BRION, *J.:*

The Motions for Reconsideration

After sifting through the motions for reconsideration, I found that the arguments are largely the same arguments that we have passed upon, in one form or another, in the various petitions. Essentially, the issues boil down to justiciability; the conflict of constitutional provisions; the merits of the cited constitutional deliberations; and the status and effect of the Valenzuela[1] ruling. Even the motion for reconsideration of the Philippine Bar Association (G.R. No. 191420), whose petition I did not expressly touch upon in my Separate Opinion, basically dwells on these issues.

I have addressed most, if not all, of these issues and I submit my Separate Opinion[2] as my basic response to the motions for reconsideration, supplemented by the discussions below.

As I reflected in my Separate Opinion (which three other Justices joined),[3] the election appointment ban under Article VII, Section 15 of the Constitution should not apply to the appointment of Members of the Supreme Court whose period for appointment is separately provided for under Article VIII, Section 4(1). I shared this conclusion with the Court's Decision although our reasons differed on some points.

I diverged fully from the Decision on the question of whether we should maintain or reverse our ruling in Valenzuela. I maintained that it is still good law; no reason exists to touch the ruling as its main focus – the application of the election ban on the appointment of lower court judges under Article VIII, Section 9 of the Constitution – is not even an issue in the present case and was discussed only because the petitions incorrectly cited the ruling as authority on the issue of the Chief Justice's appointment. The Decision proposed to reverse Valenzuela but only secured the support of five (5) votes, while my Separate Opinion in support of Valenzuela had four (4) votes. Thus, on the whole, the Decision did not prevail in reversing Valenzuela, as it only had five (5) votes in a field of 12 participating Members of the Court. Valenzuela should therefore remain, as of the filing of this Opinion, as a valid precedent.

Acting on the present motions for reconsideration, I join the majority in denying the motions with respect to the Chief Justice issue, although we differ in some respects on the reasons supporting the denial. I dissent from the conclusion that the Valenzuela ruling should be reversed. My divergence from the majority's reasons and conclusions compels me to write this Concurring and Dissenting Opinion.

The Basic Requisites / Justiciability

One marked difference between the Decision and my Separate Opinion is our approach on the basic requisites/justiciability issues. The Decision apparently glossed over this aspect of the case, while I fully explained why the De Castro[4] and Peralta[5] petitions should be dismissed outright. In my view, these petitions violated the most basic requirements of their chosen medium for review – a petition for certiorari and mandamus under Rule 65 of the Rules of Court.

The petitions commonly failed to allege that the Judicial and Bar Council (JBC) performs judicial or quasi-judicial functions, an allegation that the petitions could not really make, since the JBC does not really undertake these functions and, for this reason, cannot be the subject of a petition for certiorari; hence, the petitions should be dismissed outright. They likewise failed to facially show any failure or refusal by the JBC to undertake a constitutional duty to justify the issuance of a writ of mandamus; they invoked judicial notice that we could not give because there was, and is, no JBC refusal to act.[6] Thus, the mandamus aspects of these petitions should have also been dismissed outright. The ponencia, unfortunately, failed to fully discuss these legal infirmities.

The motions for reconsideration lay major emphasis on the alleged lack of an actual case or controversy that made the Chief Justice's appointment a justiciable issue. They claim that the Court cannot exercise the power of judicial review where there is no clash of legal rights and interests or where this clash is merely anticipated, although the anticipated event shall come with certainty.[7]

What the movants apparently forgot, focused as they were on their respective petitions, is that the present case is not a single-petition case that rises or falls on the strength of that single petition. The present case involves various petitions and interventions,[8] not

necessarily pulling towards the same direction, although each one is focused on the issue of whether the election appointment ban under Article VII, Section 15 of the Constitution should apply to the appointment of the next Chief Justice of the Supreme Court.

Among the petitions filed were those of Tolentino (G.R. No. 191342), Soriano (G.R. No. 191032) and Mendoza (A.M. No. 10-2-5-SC). The first two are petitions for prohibition under Section 2 of Rule 65 of the Rules of Court.[9] While they commonly share this medium of review, they differ in their supporting reasons. The Mendoza petition, on the other hand, is totally different – it is a petition presented as an administrative matter (A.M.) in the manner that the Valenzuela case was an A.M. case. As I pointed out in the Separate Opinion, the Court uses the A.M. docket designation on matters relating to its exercise of supervision over all courts and their personnel.[10] I failed to note then, but I make of record now, that court rules and regulations – the outputs in the Court's rulemaking function – are also docketed as A.M. cases.

That an actual case or controversy involving a clash of rights and interests exists is immediately and patently obvious in the Tolentino and Soriano petitions. At the time the petitions were filed, the JBC had started its six-phase nomination process that would culminate in the submission of a list of nominees to the President of the Philippines for appointive action. Tolentino and Soriano – lawyers and citizens with interest in the strict observance of the election ban – sought to prohibit the JBC from continuing with this process. The JBC had started to act, without any prodding from the Court, because of its duty to start the nomination process but was hampered by the petitions filed and the legal questions raised that only the Supreme Court can settle with finality.[11] Thus, a clash of interests based on law existed between the petitioners and the JBC. To state the obvious, a decision in favor of Tolentino or Soriano would result in a writ of prohibition that would direct the JBC not to proceed with the nomination process.

The Mendoza petition cited the effect of a complete election ban on judicial appointments (in view of the already high level of vacancies and the backlog of cases) as basis, and submitted the question as an administrative matter that the Court, in the exercise of its supervisory authority over the Judiciary and the JBC itself, should act upon. At the same time, it cited the "public discourse and controversy" now taking place because of the application of the election ban on the appointment of the Chief Justice, pointing in this regard to the very same reasons mentioned in Valenzuela about the need to resolve the issue and avoid the recurrence of conflict between the Executive and the Judiciary, and the need to "avoid polemics concerning the matter."[12]

I recognized in the Separate Opinion that, unlike in Valenzuela where an outright defiance of the election ban took place, no such obvious triggering event transpired in the Mendoza petition.[13] Rather, the Mendoza petition looked to the supervisory power of the Court over judicial personnel and over the JBC as basis to secure a resolution of the election ban issue. The JBC, at that time, had indicated its intent to look up to the Court's supervisory power and role as the final interpreter of the Constitution to guide it in responding to the challenges it confronts.[14] To me, this was "a point no less critical, from the point of view of supervision, than the appointment of the two judges during the election ban period in Valenzuela."[15]

In making this conclusion, I pointed out in my Separate Opinion the unavoidable surrounding realities evident from the confluence of events, namely: (1) an election to be held on May 10, 2010; (2) the retirement of the Chief Justice on May 17, 2010; (3) the lapse of the terms of the elective officials from the President to the congressmen on June 30, 2010; (4) the delay before the Congress can organize and send its JBC representatives; and (5) the expiration of

the term of a non-elective JBC member in July 2010.[16] All these – juxtaposed with the Court's supervision over the JBC, the latter's need for guidance, and the existence of an actual controversy on the same issues bedeviling the JBC – in my view, were sufficient to save the Mendoza petition from being a mere request for opinion or a petition for declaratory relief that falls under the jurisdiction of the lower court. This recognition is beyond the level of what this Court can do in handling a moot and academic case – usually, one that no longer presents a judiciable controversy but one that can still be ruled upon at the discretion of the court when the constitutional issue is of paramount public interest and controlling principles are needed to guide the bench, the bar and the public.[17]

To be sure, this approach in recognizing when a petition is actionable is novel. An overriding reason for this approach can be traced to the nature of the petition, as it rests on the Court's supervisory authority and relates to the exercise of the Court's administrative rather than its judicial functions (other than these two functions, the Court also has its rulemaking function under Article VIII, Section 5(5) of the Constitution). Strictly speaking, the Mendoza petition calls for directions from the Court in the exercise of its power of supervision over the JBC,[18] not on the basis of the power of judicial review.[19] In this sense, it does not need the actual clash of interests of the type that a judicial adjudication requires. All that must be shown is the active need for supervision to justify the Court's intervention as supervising authority.

Under these circumstances, the Court's recognition of the Mendoza petition was not an undue stretch of its constitutional powers. If the recognition is unusual at all, it is so only because of its novelty; to my knowledge, this is the first time ever in Philippine jurisprudence that the supervisory authority of the Court over an attached agency has been highlighted in this manner. Novelty, per se, however, is not a ground for objection nor a mark of infirmity for as long as the novel move is founded in law. In this case, as in the case of the writ of amparo and habeas data that were then novel and avowedly activist in character, sufficient legal basis exists to actively invoke the Court's supervisory authority – granted under the Constitution, no less – as basis for action.

To partly quote the wording of the Constitution, Article VIII, Section 8(1) and (5) provide that "A Judicial and Bar Council is hereby created under the supervision of the Supreme Court… It may exercise such other functions and duties as the Supreme Court may assign to it." Supervision, as a legal concept, more often than not, is defined in relation with the concept of control.[20] In Social Justice Society v. Atienza,[21] we defined "supervision" as follows:

[Supervision] means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter.

Under this definition, the Court cannot dictate on the JBC the results of its assigned task, i.e., who to recommend or what standards to use to determine who to recommend. It cannot even direct the JBC on how and when to do its duty, but it can, under its power of supervision, direct the JBC to "take such action or step as prescribed by law to make them perform their duties," if the duties are not being performed because of JBC's fault or inaction, or because of extraneous factors affecting performance. Note in this regard that, constitutionally, the Court can also assign the JBC other functions and duties – a power that suggests authority beyond what is purely supervisory.

Where the JBC itself is at a loss on how to proceed in light of disputed constitutional provisions that require interpretation,[22] the Court is not legally out of line – as the final authority on the interpretation of the Constitution and as the entity constitutionally-tasked to supervise the JBC – in exercising its oversight function by clarifying the interpretation of the disputed constitutional provision to guide the JBC. In doing this, the Court is not simply rendering a general legal advisory; it is providing concrete and specific legal guidance to the JBC in the exercise of its supervisory authority, after the latter has asked for assistance in this regard. That the Court does this while concretely resolving actual controversies (the Tolentino and Soriano petitions) on the same issue immeasurably strengthens the intrinsic correctness of the Court's action.

It may be asked: why does the Court have to recognize the Mendoza petition when it can resolve the conflict between Article VII, Section 15 and Article VIII, Section 4(1) through the Tolentino and Soriano petitions?

The answer is fairly simple and can be read between the lines of the above explanation on the relationship between the Court and the JBC. First, administrative is different from judicial function and providing guidance to the JBC can only be appropriate in the discharge of the Court's administrative function. Second, the resolution of the Tolentino and Soriano petitions will lead to rulings directly related to the underlying facts of these petitions, without clear guidelines to the JBC on the proper parameters to observe vis-à-vis the constitutional dispute along the lines the JBC needs. In fact, concrete guidelines addressed to the JBC in the resolution of the Tolentino/Soriano petitions may even lead to accusations that the Court's resolution is broader than is required by the facts of the petitions. The Mendoza petition, because it pertains directly to the performance of the JBC's duty and the Court's supervisory authority, allows the issuance of precise guidelines that will enable the JBC to fully and seasonably comply with its constitutional mandate.

I hasten to add that the JBC's constitutional task is not as simple as some people think it to be. The process of preparing and submitting a list of nominees is an arduous and time-consuming task that cannot be done overnight. It is a six-step process lined with standards requiring the JBC to attract the best available candidates, to examine and investigate them, to exhibit transparency in all its actions while ensuring that these actions conform to constitutional and statutory standards (such as the election ban on appointments), to submit the required list of nominees on time, and to ensure as well that all these acts are politically neutral. On the time element, the JBC list for the Supreme Court has to be submitted on or before the vacancy occurs given the 90-day deadline that the appointing President is given in making the appointment. The list will be submitted, not to the President as an outgoing President, nor to the election winner as an incoming President, but to the President of the Philippines whoever he or she may be. If the incumbent President does not act on the JBC list within the time left in her term, the same list shall be available to the new President for him to act upon. In all these, the Supreme Court bears the burden of overseeing that the JBC's duty is done, unerringly and with utmost dispatch; the Court cannot undertake this supervision in a manner consistent with the Constitution's expectation from the JBC unless it adopts a pro-active stance within the limits of its supervisory authority.

The Disputed Provisions

The movants present their arguments on the main issue at several levels. Some argue that the disputed constitutional provisions – Article VII, Section 15 and Article VIII, Section 4(1) – are clear and speak for themselves on what the Constitution covers in banning appointments during the election period.[23] One even posits that there is no conflict because both provisions

can be given effect without one detracting against the full effectiveness of the other,[24] although the effect is to deny the sitting President the option to appoint in favor of a deferment for the incoming President's action. Still others, repeating their original arguments, appeal to the principles of interpretation and latin maxims to prove their point.[25]

In my discussions in the Separate Opinion, I stated upfront my views on how the disputed provisions interact with each other. Read singly and in isolation, they appear clear (this reading applies the "plain meaning rule" that Tolentino advocates in his motion for reconsideration, as explained below). Arrayed side by side with each other and considered in relation with the other provisions of the Constitution, particularly its structure and underlying intents, the conflict however becomes obvious and unavoidable.

Section 15 on its face disallows any appointment in clear negative terms ("shall not make") without specifying the appointments covered by the prohibition.[26] From this literal and isolated reading springs the argument that no exception is provided (except that found in Section 15 itself) so that even the Judiciary is covered by the ban on appointments.

On the other hand, Section 4(1) is likewise very clear and categorical in its terms: any vacancy in the Court shall be filled within 90 days from its occurrence.[27] In the way of Section 15, Section 4(1) is also clear and categorical and provides no exception; the appointment refers solely to the Members of the Supreme Court and does not mention any period that would interrupt, hold or postpone the 90-day requirement.

From this perspective, the view that no conflict exists cannot be seriously made, unless with the mindset that one provision controls and the other should yield. Many of the petitions in fact advocate this kind of reading, some of them openly stating that the power of appointment should be reserved for the incoming President.[28] The question, however, is whether – from the viewpoint of strict law and devoid of the emotionalism and political partisanship that permeate the present Philippine political environment – this kind of mindset can really be adopted in reading and applying the Constitution.

In my view, this kind of mindset and the conclusion it inevitably leads to cannot be adopted; the provisions of the Constitution cannot be read in isolation from what the whole contains. To be exact, the Constitution must be read and understood as a whole, reconciling and harmonizing apparently conflicting provisions so that all of them can be given full force and effect,[29] unless the Constitution itself expressly states otherwise.[30]

Not to be forgotten in reading and understanding the Constitution are the many established underlying constitutional principles that we have to observe and respect if we are to be true to the Constitution. These principles – among them the principles of checks and balances and separation of powers – are not always expressly stated in the Constitution, but no one who believes in and who has studied the Constitution can deny that they are there and deserve utmost attention, respect, and even priority consideration.

In establishing the structures of government, the ideal that the Constitution seeks to achieve is one of balance among the three great departments of government – the Executive, the Legislative and the Judiciary, with each department undertaking its constitutionally-assigned task as a check against the exercise of power by the others, while all three departments move forward in working for the progress of the nation. Thus, the Legislature makes the laws and is supreme in this regard, in the way that the Executive is supreme in enforcing and administering the law, while the Judiciary interprets both the Constitution and the law. Any

provision in each of the Articles on these three departments[31] that intrudes into the other must be closely examined if the provision affects and upsets the desired balance.

Under the division of powers, the President as Chief Executive is given the prerogative of making appointments, subject only to the legal qualification standards, to the checks provided by the Legislature's Commission on Appointments (when applicable) and by the JBC for appointments in the Judiciary, and to the Constitution's own limitations. Conflict comes in when the Constitution laid down Article VII, Section 15 limiting the President's appointing power during the election period. This limitation of power would have been all-encompassing and would, thus, have extended to all government positions the President can fill, had the Constitution not inserted a provision, also on appointments, in the Article on the Judiciary with respect to appointments to the Supreme Court. This conflict gives rise to the questions: which provision should prevail, or should both be given effect? Or should both provisions yield to a higher concern – the need to maintain the integrity of our elections?

A holistic reading of the Constitution – a must in constitutional interpretation – dictates as a general rule that the tasks assigned to each department and their limitations should be given full effect to fulfill the constitutional purposes under the check and balance principle, unless the Constitution itself expressly indicates its preference for one task, concern or standard over the others,[32] or unless this Court, in its role as interpreter of the Constitution, has spoken on the appropriate interpretation that should be made.[33]

In considering the interests of the Executive and the Judiciary, a holistic approach starts from the premise that the constitutional scheme is to grant the President the power of appointment, subject to the limitation provided under Article VII, Section 15. At the same time, the Judiciary is assured, without qualifications under Article VIII, Section 4(1), of the immediate appointment of Members of the Supreme Court, i.e., within 90 days from the occurrence of the vacancy. If both provisions would be allowed to take effect, as I believe they should, the limitation on the appointment power of the President under Article VII, Section 15 should itself be limited by the appointment of Members of the Court pursuant to Article VIII, Section 4(1), so that the provision applicable to the Judiciary can be given full effect without detriment to the President's appointing authority. This harmonization will result in restoring to the President the full authority to appoint Members of the Supreme Court pursuant to the combined operation of Article VII, Section 15 and Article VIII, Section 4(1).

Viewed in this light, there is essentially no conflict, in terms of the authority to appoint, between the Executive and Judiciary; the President would effectively be allowed to exercise the Executive's traditional presidential power of appointment while respecting the Judiciary's own prerogative. In other words, the President retains full powers to appoint Members of the Court during the election period, and the Judiciary is assured of a full membership within the time frame given.

Interestingly, the objection to the full application of Article VIII, Section 4(1) comes, not from the current President, but mainly from petitioners echoing the present presidential candidates, one of whom shall soon be the incoming President. They do not, of course, cite reasons of power and the loss of the opportunity to appoint the Chief Justice; many of the petitioners/intervenors oppose the full application of Article VIII, Section 4(1) based on the need to maintain the integrity of the elections through the avoidance of a "midnight appointment."

This "integrity" reason is a given in a democracy and can hardly be opposed on the theoretical plane, as the integrity of the elections must indeed prevail in a true democracy.

The statement, however, begs a lot of questions, among them the question of whether the appointment of a full Court under the terms of Article VIII, Section 4(1) will adversely affect or enhance the integrity of the elections.

In my Separate Opinion, I concluded that the appointment of a Member of the Court even during the election period per se implies no adverse effect on the integrity of the election; a full Court is ideal during this period in light of the Court's unique role during elections. I maintain this view and fully concur in this regard with the majority.

During the election period, the court is not only the interpreter of the Constitution and the election laws; other than the Commission on Elections and the lower courts to a limited extent, the Court is likewise the highest impartial recourse available to decisively address any problem or dispute arising from the election. It is the leader and the highest court in the Judiciary, the only one of the three departments of government directly unaffected by the election. The Court is likewise the entity entrusted by the Constitution, no less, with the gravest election-related responsibilities. In particular, it is the sole judge of all contests in the election of the President and the Vice-President, with leadership and participation as well in the election tribunals that directly address Senate and House of Representatives electoral disputes. With this grant of responsibilities, the Constitution itself has spoken on the trust it reposes on the Court on election matters. This reposed trust, to my mind, renders academic any question of whether an appointment during the election period will adversely affect the integrity of the elections – it will not, as the maintenance of a full Court in fact contributes to the enforcement of the constitutional scheme to foster a free and orderly election.

In reading the motions for reconsideration against the backdrop of the partisan political noise of the coming elections, one cannot avoid hearing echoes from some of the arguments that the objection is related, more than anything else, to their lack of trust in an appointment to be made by the incumbent President who will soon be bowing out of office. They label the incumbent President's act as a "midnight appointment" – a term that has acquired a pejorative meaning in contemporary society.

As I intimated in my Separate Opinion, the imputation of distrust can be made against any appointing authority, whether outgoing or incoming. The incoming President himself will be before this Court if an election contest arises; any President, past or future, would also naturally wish favorable outcomes in legal problems that the Court would resolve. These possibilities and the potential for continuing influence in the Court, however, cannot be active considerations in resolving the election ban issue as they are, in their present form and presentation, all speculative. If past record is to be the measure, the record of past Chief Justices and of this Court speaks for itself with respect to the Justices' relationship with, and deferral to, the appointing authority in their decisions.

What should not be forgotten in examining the records of the Court, from the prism of problems an electoral exercise may bring, is the Court's unique and proven capacity to intervene and diffuse situations that are potentially explosive for the nation. EDSA II particularly comes to mind in this regard (although it was an event that was not rooted in election problems) as it is a perfect example of the potential for damage to the nation that the Court can address and has addressed. When acting in this role, a vacancy in the Court is not only a vote less, but a significant contribution less in the Court's deliberations and capacity for action, especially if the missing voice is the voice of the Chief Justice.

Be it remembered that if any EDSA-type situation arises in the coming elections, it will be compounded by the lack of leaders because of the lapse of the President's term by June 30,

2010; by a possible failure of succession if for some reason the election of the new leadership becomes problematic; and by the similar absence of congressional leadership because Congress has not yet convened to organize itself.[34] In this scenario, only the Judiciary of the three great departments of government stands unaffected by the election and should at least therefore be complete to enable it to discharge its constitutional role to its fullest potential and capacity. To state the obvious, leaving the Judiciary without any permanent leader in this scenario may immeasurably complicate the problem, as all three departments of government will then be leaderless.

To stress what I mentioned on this point in my Separate Opinion, the absence of a Chief Justice will make a lot of difference in the effectiveness of the Court as he or she heads the Judiciary, sits as Chair of the JBC and of the Presidential Electoral Tribunal, presides over impeachment proceedings, and provides the moral suasion and leadership that only the permanent mantle of the Chief Justice can bestow. EDSA II is just one of the many lessons from the past when the weightiest of issues were tackled and promptly resolved by the Court. Unseen by the general public in all these was the leadership that was there to ensure that the Court would act as one, in the spirit of harmony and stability although divergent in their individual views, as the Justices individually make their contributions to the collegial result. To some, this leadership may only be symbolic, as the Court has fully functioned in the past even with an incomplete membership or under an Acting Chief Justice. But as I said before, an incomplete Court "is not a whole Supreme Court; it will only be a Court with 14 members who would act and vote on all matters before it." To fully recall what I have said on this matter:

The importance of the presence of one Member of the Court can and should never be underestimated, particularly on issues that may gravely affect the nation. Many a case has been won or lost on the basis of one vote. On an issue of the constitutionality of a law, treaty or statute, a tie vote – which is possible in a 14 member court – means that the constitutionality is upheld. This was our lesson in Isagani Cruz v. DENR Secretary.

More than the vote, Court deliberation is the core of the decision-making process and one voice is less is not only a vote less but a contributed opinion, an observation, or a cautionary word less for the Court. One voice can be a big difference if the missing voice is that of the Chief Justice.

Without meaning to demean the capability of an Acting Chief Justice, the ascendancy in the Court of a permanent sitting Chief Justice cannot be equaled. He is the first among equals – a primus inter pares – who sets the tone for the Court and the Judiciary, and who is looked up to on all matters, whether administrative or judicial. To the world outside the Judiciary, he is the personification of the Court and the whole Judiciary. And this is not surprising since, as Chief Justice, he not only chairs the Court en banc, but chairs as well the Presidential Electoral Tribunal that sits in judgment over election disputes affecting the President and the Vice-President. Outside of his immediate Court duties, he sits as Chair of the Judicial and Bar Council, the Philippine Judicial Academy and, by constitutional command, presides over the impeachment of the President. To be sure, the Acting Chief Justice may be the ablest, but he is not the Chief Justice without the mantle and permanent title of the Office, and even his presence as Acting Chief Justice leaves the Court with one member less. Sadly, this member is the Chief Justice; even with an Acting Chief Justice, the Judiciary and the Court remains headless. [35]

Given these views, I see no point in re-discussing the finer points of technical interpretation and their supporting latin maxims that I have addressed in my Separate Opinion and now

feel need no further elaboration; maxims can be found to serve a pleader's every need and in any case are the last interpretative tools in constitutional interpretation. Nor do I see any point in discussing arguments based on the intent of the framers of the Constitution now cited by the parties in the contexts that would serve their own ends. As may be evident in these discussions, other than the texts of the disputed provisions, I prefer to examine their purposes and the consequences of their application, understood within the context of democratic values. Past precedents are equally invaluable for the lead, order, and stability they contribute, but only if they are in point, certain, and still alive to current realities, while the history of provisions, including the intents behind them, are primarily important to ascertain the purposes the provisions serve.

From these perspectives and without denigrating the framers' historical contributions, I say that it is the Constitution that now primarily speaks to us in this case and what we hear are its direct words, not merely the recorded isolated debates reflecting the personal intents of the constitutional commissioners as cited by the parties to fit their respective theories. The voice speaking the words of the Constitution is our best guide, as these words will unalterably be there for us to read in the context of their purposes and the nation's needs and circumstances. This Concurring and Dissenting Opinion hears and listens to that voice.

The Valenzuela Decision

The ponencia's ruling reversing Valenzuela, in my view, is out of place in the present case, since at issue here is the appointment of the Chief Justice during the period of the election ban, not the appointment of lower court judges that Valenzuela resolved. To be perfectly clear, the conflict in the constitutional provisions is not confined to Article VII, Section 15 and Article VIII, Section 4(1) with respect to the appointment of Members of the Supreme Court; even before the Valenzuela ruling, the conflict already existed between Article VII, Section 15 and Article VIII, Section 9 – the provision on the appointment of the justices and judges of courts lower than the Supreme Court. After this Court's ruling in Valenzuela, no amount of hairsplitting can result in the conclusion that Article VII, Section 15 applied the election ban over the whole Judiciary, including the Supreme Court, as the facts and the fallo of Valenzuela plainly spoke of the objectionable appointment of two Regional Trial Court judges. To reiterate, Valenzuela only resolved the conflict between Article VII, Section 15 and appointments to the Judiciary under Article VIII, Section 9.

If Valenzuela did prominently figure at all in the present case, the prominence can be attributed to the petitioners' mistaken reading that this case is primary authority for the dictum that Article VII, Section 15 completely bans all appointments to the Judiciary, including appointments to the Supreme Court, during the election period up to the end of the incumbent President's term.

In reality, this mistaken reading is an obiter dictum in Valenzuela, and hence, cannot be cited for its primary precedential value. This legal situation still holds true as Valenzuela was not doctrinally reversed as its proposed reversal was supported only by five (5) out of the 12 participating Members of the Court. In other words, this ruling on how Article VII, Section 15 is to be interpreted in relation with Article VIII, Section 9, should continue to stand unless otherwise expressly reversed by this Court.

But separately from the mistaken use of an obiter ruling as primary authority, I believe that I should sound the alarm bell about the Valenzuela ruling in light of a recent vacancy in the position of Presiding Justice of the Sandiganbayan resulting from Presiding Justice Norberto Geraldez's death soon after we issued the decision in the present case. Reversing the

Valenzuela ruling now, in the absence of a properly filed case addressing an appointment at this time to the Sandiganbayan or to any other vacancy in the lower courts, will be an irregular ruling of the first magnitude by this Court, as it will effectively be a shortcut that lifts the election ban on appointments to the lower courts without the benefit of a case whose facts and arguments would directly confront the continued validity of the Valenzuela ruling. This is especially so after we have placed the Court on notice that a reversal of Valenzuela is uncalled for because its ruling is not the litigated issue in this case.

In any case, let me repeat what I stressed in my Separate Opinion about Valenzuela which rests on the reasoning that the evils Section 15 seeks to remedy – vote buying, midnight appointments and partisan reasons to influence the elections – exist, thus justifying an election appointment ban. In particular, the "midnight appointment" justification, while fully applicable to the more numerous vacancies at the lower echelons of the Judiciary (with an alleged current lower court vacancy level of 537 or a 24.5% vacancy rate), should not apply to the Supreme Court which has only a total of 15 positions that are not even vacated at the same time. The most number of vacancies for any one year occurred only last year (2009) when seven (7) positions were vacated by retirement, but this vacancy rate is not expected to be replicated at any time within the next decade. Thus "midnight appointments" to the extent that they were understood in Aytona[36] will not occur in the vacancies of this Court as nominations to its vacancies are all processed through the JBC under the public's close scrutiny. As already discussed above, the institutional integrity of the Court is hardly an issue. If at all, only objections personal to the individual Members of the Court or against the individual applicants can be made, but these are matters addressed in the first place by the JBC before nominees are submitted. There, too, are specific reasons, likewise discussed above, explaining why the election ban should not apply to the Supreme Court. These exempting reasons, of course, have yet to be shown to apply to the lower courts. Thus, on the whole, the reasons justifying the election ban in Valenzuela still obtain in so far as the lower courts are concerned, and have yet to be proven otherwise in a properly filed case. Until then, Valenzuela, except to the extent that it mentioned Section 4(1), should remain an authoritative ruling of this Court.

CONCLUSION

In light of these considerations, a writ of prohibition cannot issue to prevent the JBC from performing its principal function, under the Constitution, of recommending nominees for the position of Chief Justice. Thus, I vote to deny with finality the Tolentino and Soriano motions for reconsideration.

The other motions for reconsideration in so far as they challenge the conclusion that the President can appoint the Chief Justice even during the election period are likewise denied with finality for lack of merit, but are granted in so far as they support the continued validity of the ruling of this Court in In Re: Valenzuela and Vallarta, A.M. No. 98-5-01-SC, November 9, 1998.

My opinion on the Mendoza petition stands.

ARTURO D. BRION
Associate Justice

Footnotes

[1] A.M. No. 98-5-01-SC, November 9, 1998, 298 SCRA 408. This A.M. involves the constitutional validity of the appointment of two (2) RTC Judges on March 30, 1998 – a date that falls within the supposed ban under Section 15, Article VII of the Constitution. We nullified the appointments.

[2] G.R. No. 191002 and companion cases, promulgated on March 17, 2010.

[3] Justices Diosdado M. Peralta, Mariano C. Del Castillo and Jose Catral Mendoza.

[4] G.R. No. 191002, Petition for Certiorari and Mandamus.

[5] G.R. No. 191149, Petition for Certiorari and Mandamus.

[6] The JBC reiterates its position in its Comment (dated April 12, 2010) on the motions for reconsideration that it is still acting on the preparation of the list of nominees and is set to interview the nominees.

[7] See, for instance, the motion for reconsideration of intervenor Alfonso Tan, Jr.

[8] The docketed petitions were seven; the petitions-in-intervention were ten.

[9] A prohibition petition seeks to stop the proceedings of a tribunal, corporation, board, officer or person exercising judicial, quasi-judicial or ministerial functions if any of its act is without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

[10] Separate Opinion, p. 16.

[11] The JBC position states:

x x x x

> Likewise, the JBC has yet to take a position on when to submit the shortlist to the proper appointing authority, in light of Section 4(1), Article VIII of the Constitution, which provides that vacancy in the Supreme Court shall be filled within ninety (90) days from the occurrence thereof, Section 15, Article VII of the Constitution concerning the ban on Presidential appointments "two (2) months immediately before the next presidential elections and up to the end of his term" and Section 261(g), Article XXIII of the Omnibus Election Code of the Philippines.
>
> 12. Since the Honorable Supreme Court is the final interpreter of the Constitution, the JBC will be guided by its decision in these consolidated Petitions and Administrative Matter. [Emphasis supplied.]

[12] Mendoza Petition, pp. 5-6.

[13] Separate Opinion, pp. 16-17.

[14] Supra note 11.

[15] Id. at 17.

[16] Separate Opinion, pp. 19-22:

> A **first reality** is that the JBC cannot, on its own due to lack of the proper authority, determine the appropriate course of action to take under the Constitution. Its principal function is to recommend appointees to the Judiciary and it has no authority to interpret constitutional provisions, even those affecting its principal function; the authority to undertake constitutional interpretation belongs to the courts alone.
>
> A **second reality** is that the disputed constitutional provisions do not stand alone and cannot be read independently of one another; the Constitution and its various provisions have to be read and interpreted as one seamless whole, giving sufficient emphasis to every aspect in accordance with the hierarchy of our constitutional values. The disputed provisions should be read together and, as reflections of the will of the people, should be given effect to the extent that they should be reconciled.
>
> The **third reality**, closely related to the second, is that in resolving the coverage of the election ban vis-à-vis the appointment of the Chief Justice and the Members of the Court, provisions of the Constitution other than the disputed provisions must be taken into account. In considering when and how to act, the JBC has to consider that:
>
> > 1. The President has a term of six years which **begins at noon of June 30** following the election, which implies that the outgoing President remains President up to that time. (Section 4, Article VII). The President assumes office at the beginning of his or her term, with provision for the situations where the President fails to qualify or is unavailable at the beginning of his term (Section 7, Article VII).
> >
> > 2. The Senators and the Congressmen begin their respective terms also at **midday of June 30** (Sections 4 and 7, Article VI). The Congress convenes on the **4th Monday of July** for its regular session, but the President may call a special session at any time. (Section 15, Article VI)
> >
> > 3. The Valenzuela case cited as authority for the position that the election ban provision applies to the whole Judiciary, only decided the issue with respect to lower court judges, specifically, those covered by Section 9, Article VIII of the Constitution. Any reference to the filling up of vacancies in the Supreme Court pursuant to Section 4(1), Article VIII constitutes obiter dictum as this issue was not directly in issue and was not ruled upon.
>
> These provisions and interpretation of the Valenzuela ruling – when read together with disputed provisions, related with one another, and considered with the May 17, 2010 retirement of the current Chief Justice – bring into focus certain unavoidable realities, as follows:

1. If the election ban would apply fully to the Supreme Court, the incumbent President cannot appoint a Member of the Court beginning March 10, 2010, all the way up to June 30, 2010.

2. The retirement of the incumbent Chief Justice – May 17, 2010 – falls within the period of the election ban. (In an extreme example where the retirement of a Member of the Court falls on or very close to the day the election ban starts, the Office of the Solicitor General calculates in its Comment that the whole 90 days given to the President to make appointment would be covered by the election ban.)

3. Beginning May 17, 2010, the Chief Justice position would be vacant, giving rise to the question of whether an Acting Chief Justice can act in his place. While this is essentially a Supreme Court concern, the Chief Justice is the ex officio Chair of the JBC; hence it must be concerned and be properly guided.

4. The appointment of the new Chief Justice has to be made within 90 days from the time the vacancy occurs, which translates to a deadline of August 15, 2010.

5. The deadline for the appointment is fixed (as it is not reckoned from the date of submission of the JBC list, as in the lower courts) which means that the JBC ideally will have to make its list available at the start of the 90-day period so that its process will not eat up the 90-day period granted the President.

6. After noon of June 30, 2010, the JBC representation from Congress would be vacant; the current representatives' mandates to act for their principals extend only to the end of their present terms; thus, the JBC shall be operating at that point at less than its full membership.

7. Congress will not convene until the 4th Monday of July, 2010, but would still need to organize before the two Houses of Congress can send their representatives to the JBC – a process may extend well into August, 2010.

8. By July 5, 2010, one regular member of the JBC would vacate his post. Filling up this vacancy requires a presidential appointment and the concurrence of the Commission on Appointments.

9. Last but not the least, the prohibition in Section 15, Article VII is that "a President or Acting President shall not make appointments." This prohibition is expressly addressed to the President and covers the act of appointment; the prohibition is not against the JBC in the performance of its function of "recommending appointees to the Judiciary" – an act that is one step away from the act of making appointments.

[17] The Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel Ancestral Domain, G.R. Nos. 183591, 183791, 183752, 183893, 183951 and 183962, October 14, 2008.

[18] By virtue of its power of administrative supervision, the Supreme Court oversees the judges' and court personnel's compliance with the laws, rules and regulations. It may take the proper administrative action against them if they commit any violation. See Ampong v. CSC, G.R. No. 107910, August 26, 2008, 563 SCRA 293. The Constitution separately provides for the Supreme Court's supervision over the JBC. See Article VIII, Section 8 of the CONSTITUTION.

[19] Judicial Review is the power of the courts to test the validity of executive and legislative acts for their conformity with the Constitution, Garcia v. Executive Secretary, G.R. No. 157584, April 2, 2009.

[20] Control is the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. It is distinguished from supervision in that the latter means overseeing, or the power or authority of an officer to see that subordinate officers perform their duties, and if the latter fail or neglect to fulfill them, then the former may take such action or steps as prescribed by law to make them perform these duties. Nachura, J., Outline Reviewer in Political Law, 2006 ed., p. 276.

[21] G.R. No. 156052, February 13, 2008, 545 SCRA 92.

[22] Supra notes 11 and 14.

[23] Philippine Bar Association (PBA), Women Trial Lawyers Organization of the Philippines (WTLOP), Atty. Amador Z. Tolentino, Atty. Roland B. Inting, Peter Irving Corvera and Alfonso V. Tan, Jr.

[24] See PBA's Motion for Reconsideration.

[25] See the Motions for Reconsideration for PBA, WTLOP, Atty. Amador Z. Tolentino, Atty. Roland B. Inting, Peter Irving Corvera and Alfonso V. Tan, Jr.

[26] CONSTITUTION, Article VII, Section 15:

> Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.

[27] CONSTITUTION, Article VIII, Section 4(1):

> (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.

x x x x

[28] See Petition on Intervention of WTLOP, as cited in the decision in the above-captioned cases; see also: PBA's motion for reconsideration.

[29] Francisco v. House of Representatives, G.R. No. 160261, November 10, 2003, 415 SCRA 44, citing Civil Liberties Union v. Executive Secretary, 194 SCRA 317 (1994); Peralta v. Commission on Elections, G.R. No. 47771, March 11, 1978, 82 SCRA 30 (1978); Ang-Angco v. Castillo, G.R. No. 17169, November 30, 1963, 9 SCRA 619 (1963).

[30] Macalintal v. Commission on Elections, G.R. No. 157013, July 10, 2003, 310 SCRA 614, citing Chiongbian v. De Leon, 82 Phil 771 (1949).

[31] Article VI for the Legislature, Article VII for the Executive, and Article VIII for the Judiciary.

[32] See Matibag v. Benipayo, G.R. No. 149036, April 2, 2002, 380 SCRA 49; where the court resolved the clash between the power of the President to extend ad interim appointments and the power of the Commission on Appointments to confirm presidential appointments.

[33] Ibid.

[34] Supra note 13.

[35] Separate Opinion, p. 32.

[36] Aytona v. Castillo, G.R. No. 19315, January 19, 1962, 4 SCRA 1.