G.R. No. 237428 – ***Republic of the Philippines, represented by Solicitor General Jose C. Calida vs. Maria Lourdes P.A. Sereno***

Promulgated: May 11, 2018

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DISSENTING OPINION

DEL CASTILLO, *J.*:

With all due respect to the *ponencia*, I dissent and vote for the dismissal of the *quo warranto* petition against the respondent, Chief Justice Ma. Lourdes P. Sereno. I express strong reservations against the Court's assumption of jurisdiction over a *quo warranto* petition against an impeachable officer, particularly when the ground for removal constitutes an impeachable offense.

My position is anchored on a holistic reading of the Constitution, which leads me to no other conclusion but that the intent of the framers is to ensure that the principles of separation of powers and checks and balance, and the independence of constitutional offices be maintained. Below, I explain my construction and understanding of the relevant constitutional provisions and principles; in gist, I maintain that **impeachment, not *quo warranto*, is the mode of removal from office of an appointive impeachable officer who does not possess the qualifications required by the Constitution for the position.**

THE ISSUES FOR RESOLUTION

Before the Court, the petition presents two core issues – one jurisdictional, and the other, substantive. The first asks **whether this Court has jurisdiction over a *quo warranto* petition against an impeachable official**. Subsumed in this question is **whether the Constitution allows the removal from office of an impeachable official by modes other than impeachment**. The second questions **whether the respondent met the qualifications required by the Constitution to become a Member of this Court.** Since it is my view that this Court is without jurisdiction over the

present proceeding, my discussion will focus mainly on the jurisdictional issue.

The jurisdictional issue

The *ponencia* relies on two constitutional provisions to justify the Court's assumption of jurisdiction over the present proceeding. First is the express grant of original jurisdiction over *quo warranto* petitions to this Court under Section 5(1), Article VIII of the Constitution. Second is the absence of an express provision in the Constitution restricting the removal from office of an impeachable officer solely to impeachment. Referring to Section 2, Article XI of the Constitution, the *ponencia* declares that nothing in its language forecloses a *quo warranto* action against impeachable officers.[1]

With due respect, I disagree with the *ponencia* and find that these provisions, in and of themselves, do not justify the Court's act of assuming jurisdiction over the petition and giving it due course. I believe that the reasoning adopted by the *ponencia* is based on an attenuated appreciation of the Constitution and its underlying principles, thereby disregarding well-settled rules on constitutional construction.

In *Francisco v. House of Representatives*,[2] this Court listed three main rules on constitutional construction:

"First, *verba legis* where, whenever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed."[3] The primary source from which to ascertain constitutional intent or purpose is the language of the provision itself.[4] The Court continues that "[w]e do not of course stop [with the language of the provision], but that is where we begin."[5]

"Second, where there is ambiguity, *ratio legis est anima.* The words of the Constitution should be interpreted in accordance with the intent of its framers."[6] In determining the intent behind a doubtful constitutional

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[1] *Ponencia*, p. 58.
[2] 460 Phil. 830 (2003)
[3] *Id.* at 884-885.
[4] *Funa v. Villar*, 686 Phil. 571, 592 (2012), citing *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, G.R. Nos. 147589 & 147613, June 26, 2001, 359 SCRA 698, 724.
[5] *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, 31 SCRA 413 (1970), cited in *Francisco v. House of Representatives*, Supra.
[6] Supra.

provision, courts should consider the objective sought to be accomplished and/or the evils sought to be prevented or remedied by the framers.[7]

"Finally, *ut magis valeat quam pereat*. The Constitution is to be interpreted as a whole."[8] Constitutional provisions do not stand alone and cannot be read independently of one another.[9] These should be considered together with other parts, and kept subservient to the general intent of the whole enactment.[10]

Applying these rules, I find that the principles embodied in the Constitution's language and design operate to deny this Court authority to assume jurisdiction over a *quo warranto* petition against an *appointive* impeachable officer.

A. A purely literal reading of Section 5(1), Article VIII and Section 2, Article XI of the Constitution does not justify this Court's assumption of jurisdiction over a* quo warranto *petition against an appointive impeachable officer

A.1 Section 5(1), Article VIII of the Constitution is a general grant of quo warranto jurisdiction to the Court

There is no doubt that this Court has original jurisdiction over petitions for *quo warranto*. This is expressly provided for under Section 5(1), Article VIII of the Constitution, which also grants this Court jurisdiction over *certiorari*, prohibition, *mandamus*, and *habeas corpus* petitions:

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

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[7] *Civil Liberties Union v. Executive Secretary*, 194 SCRA 317 (1991), cited in *Francisco v. House of Representatives*, supra note 2 at 885.
[8] *Francisco v. House of Representatives*, supra note 2 at 886.
[9] J. Brion's Separate Opinion in *De Castro v. Judicial & Bar Council*, 629 Phil. 629 (2010).
[10] *De Castro v. JBC, id. at.* 699.

> (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*. [emphasis supplied]

Although the Court is vested by no less than the Constitution with jurisdiction over these petitions, it cannot directly and immediately assume jurisdiction upon the mere filing of a petition, as ***other relevant laws and principles must be taken into account.*** **The Constitution does not operate in a vacuum, and the application of its provisions can vary depending on the context within which they are applied.**

A.1.a. The assumption and exercise of jurisdiction take into account other relevant laws and principles

Since jurisdiction over these petitions is not exclusive to this Court,[11] the principle of hierarchy of courts ought to be considered in determining the proper forum that can hear and resolve these petitions.[12] The Court may, however, exempt a petition filed directly before it from observing the rule on hierarchy when it raises issues of transcendental importance, as the *ponencia* proposes to do in the present case.[13]

The respondent's status may also be taken into consideration, as the Court did in *David v. Arroyo*,[14] where several *certiorari* and prohibition petitions were filed before the Court to assail presidential issuances of then President Gloria Macapagal Arroyo. Even as the Court assumed jurisdiction over the petitions, it excluded President Arroyo from being impleaded as respondent therein as it recognized the immunity that clothed the President during her incumbency.[15] Notably, presidential immunity obtains not by virtue of an express grant under the Constitution, but is a privilege that the courts have consistently acknowledged, for logical and practical reasons, to be inherent in the position. In other words, an implicit privilege recognized in favor of the President may deny this Court authority to assume jurisdiction notwithstanding an express grant by the Constitution.

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[11] The Court of Appeals and the Regional Trial Courts also have original jurisdiction. See Sections 9(1) and 21(1), respectively, of Batas Pambansa Blg. 129 or the Judiciary Reorganization Act of 1980.

[12] The *ponencia* considered the hierarchy of courts but exempted its application to the present petition as it raises a matter of transcendental importance, pp. 45-46.

[13] *Ibid.*

[14] 522 Phil. 705 (2006).

[15] *Id.* at 763-764. Similarly, in *Aguinaldo v. Aquino,* GR No. 224302, November 29, 2016, the Court dropped President Aquino as respondent in a petition for *quo warranto, certiorari*, and prohibition.

Certainly, in such cases, the Court's refusal to assume jurisdiction cannot constitute an abdication of its judicial duties, but simply a recognition that **there are other compelling constitutional principles that should prevail.** Parts B and C of this Dissent will identify and discuss what these other compelling constitutional principles are. For now, however, the discussion will be limited to the literal construction of the constitutional provisions on which the *ponencia* relies.

A.2 Section 2, Article XI of the Constitution does not indicate exclusivity as to the mode of removal of impeachable officers

Proceeding from the position that the Court's jurisdiction over *quo warranto* petitions is absolute and unrestrained, the *ponencia* claims that this jurisdiction may be enforced even against impeachable officers inasmuch as nothing in the language of Section 2, Article XI of the Constitution restricts the removal from office of these officials only to impeachment.[16] The provision reads:

> 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.

A.2.a Interpretation of the word "may" in the first sentence of Section 2, Article XI of the Constitution

The *ponencia* considers the word "may" in the first sentence of Section 2, Article XI of the Constitution as permissive, denoting "a mere possibility, an opportunity, or an option. x x x An option to remove by impeachment admits of an alternative mode of effecting removal."[17] Thus, it

[16] *Ponencia,* pp. 45, 59.
[17] *Id.* at 59.

declares that the provision does not foreclose a *quo warranto* proceeding against the impeachable officers.[18]

I disagree with the *ponencia's* construction of the provision.

The "'may' is permissive/'shall' is mandatory" rule is an established rule in statutory construction. Nonetheless, not every use of either of these words should automatically be interpreted as a permissive or mandatory directive, especially when statutory intent shows otherwise. Proof of this is the two provisions on impeachment in the 1935 Constitution, to wit:

Article IX Impeachment	**Article X Commission on Elections**
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 any conviction of, culpable violation of the Constitution, treason, bribery, or other high crimes. [emphasis supplied]	Article X, Section 1. There shall be an independent Commission on Elections composed of a Chairman and two other Members x x x The Chairman and the other Members of the Commission on Elections **may be removed from office *only by impeachment*** in the manner provided in this Constitution. [emphasis supplied]

Although Article X, Section 1 used the word "may," the inclusion of the qualifying phrase "only by impeachment" erased any doubt that the intent was to restrict solely to impeachment the removal from office of the Commission of Elections (*Comelec*) Chairman and Commissioners. On the other hand, it is debatable if same intent can be inferred from the language of Article IX, Section that used "shall" but clearly omitted a qualifying phrase similar to that in Article X, Section 1. This ambiguity certainly could be settled by the mere application of the "may/shall" rule, necessitating resort to other rules of constitutional construction.

Indeed, the variance in the language of the two provisions above renders doubtful any inference that the shift from "shall" in the 1935 and 1973 Constitutions to "may" in the 1987 Constitution reflected a corresponding shift in the framers' intent from a mandatory to permissive directive as to the exclusiveness of impeachment as a mode of removal.[19] The 1973 Constitution declared that:

> Article XIII, Section 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

[18] *Id.* at 60.

[19] Petitioner's Memorandum, pp. 19-20.

> violation of the Constitution, treason, bribery, other high crimes, or graft and corruption. [emphasis supplied]

Article XIII, Section 2 of the 1973 Constitution is effectively a consolidation of the two provisions on impeachment in the 1935 Constitution. Since the 1935 Constitution had two related but differently-worded provisions on impeachment, it is unclear which of the two possible interpretations that the framers of the 1973 Constitution had in mind when they drafted Article XIII, Section 2. Given this ambiguity, it would be foolish to read too much in the change from "shall" in the previous Constitutions to "may" in the present one.

In determining the real meaning of "may" in Article XI, Section 2, the better rule to follow is the one which states that "a word used on the statute in a given sense is presumed to be used in the same sense throughout the law."[20] This rule finds application in the present case because of the similarity in manner in which the first and second sentences of the provision are couched, and the fact that both sentences use the modal verb "may." **Both sentences merely provide for the modes by which public officers *can be* removed from office**: for the enumerated officers, by impeachment; for all others, by other means provided by law except by impeachment. **The use of the word "may" was not meant to indicate exclusivity (or lack thereof) in the mode of removal of the enumerated public officers.** This is the context in which the word "may" in the provision should be understood; nothing more, nothing less.

The only "exclusivity" that may be reasonably read from the wording of Section 2, Article XI of the Constitution is the list of impeachable officers and the grounds for which they may be impeached. This "exclusivity" is deducible, not from the use of the word "may," but from the enumeration of the officers and the grounds, following the rule of *expressio unius est exclusio alterius* in statutory construction.[21]

The respondent presents another interpretation of the word "may." She claims it refers to the imposable penalty at the conclusion of an impeachment trial. She argues that this interpretation is consistent with Section 3(7), Article XI of the Constitution which provides in part that "[j]udgment in cases of impeachment shall *not extend further than removal* from office and disqualification to hold any office under the Republic of the

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[20] Ruben Agpalo. *Statutory Construction*, p. 281 (2009).

[21] The rule states that the expression of one or more things of a class implies the exclusion of all others. See Ruben Agpalo. *Statutory Construction*, supra at 318-319.

Philippines."[22] Although plausible, nowhere from the respondent's interpretation can it be read that impeachment was contemplated as the sole mode of removing from office the enumerated officials.

A.2.b Comparing the two constitutional provisions on impeachment

Additionally, observe that there are only two provisions on impeachment in Article XI of the Constitution, *i.e.*, Section 2 as quoted above, and Section 3, which states:

> Section 3. (1) The House of Representatives shall have the **exclusive** power to initiate all cases of impeachment.
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> (2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution or endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.
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> (3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.
> (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.

[22] Respondent's Memorandum *Ad Cautelam*, p. 46.

> (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. [emphasis supplied]

Note that where there is intent to impose restrictions or limitations, the language employed, as in Section 3, Article XI of the Constitution, is categorical and unequivocal, *e.g.*, the House is given the *exclusive* power to initiate impeachment cases; the Senate is given the *sole* power to try and decide all impeachment cases; *no* impeachment proceeding shall be initiated against the same official more than once within a one-year period; judgment in impeachment cases shall *not extend further* than removal from office, etc. The same observation is noted with regard to the second sentence of Section 2, which authorizes the Congress to provide by law the mode of removal of other public officers and employees, "but not by impeachment."

Had the framers intended to restrict the mode of removal from office of the enumerated public officers *only* to impeachment in the first sentence of Section 2, they would have adopted a similar categorical and unequivocal language as they did in the second sentence of Section 2 and in Section 3. I believe that their deliberate omission to do so is a strong indication that **the framers recognized other modes by which impeachable public officers may be removed from office.**

A.3 Other modes of removal from office recognized in the Constitution

My reading of the Constitution reveals two other modes of removal from office aside from impeachment.

First, ***when an unfavorable decision in an election contest is rendered against the President or the Vice-President.***

The last paragraph of Section 4, Article VII of the Constitution authorizes election contests against the incumbent President or Vice-President. Certainly, a decision against the respondent in a presidential (or vice-presidential) electoral contest filed before the Supreme Court sitting as the Presidential Electoral Tribunal (*PET*) results in his/her removal from office. In fact, this is one scenario which the *ponencia* referred to in finding

that impeachment is not the sole mode of removal recognized in the Constitution.

Second, ***when an* ad interim *appointment for the position of Chairman or Commissioner of any of the three Constitutional Commissions is disapproved or by-passed by the Commission on Appointments*** (*ComAppt*).

It is recognized that the President may extend *ad interim* appointments while Congress is in recess,[23] including appointments for the positions of Chairman and Commissioners of the Comelec, Commission on Audit (*COA*), and the Civil Service Commission (*CSC*). In *Matibag v. Benipayo*,[24] the Court ruled that an *ad interim* appointment is a permanent appointment since "it takes effect immediately and can no longer be withdrawn by the President once the appointee has qualified into office."[25] Since the appointment is permanent and takes effect immediately, it is valid but only until disapproved by the ComAppt or by-passed through its inaction:

> An *ad interim* appointment can be terminated for two causes specified in the Constitution. The first cause is the disapproval of his *ad interim* appointment by the Commission on Appointments. The second cause is the adjournment of Congress without the Commission on Appointments acting on his appointment. These two causes are resolutory conditions expressly imposed by the Constitution on all *ad interim* appointments. These resolutory conditions constitute, in effect, a Sword of Damocles over the heads of *ad interim* appointees. No one, however, can complain because it is the Constitution itself that places the Sword of Damocles over the heads of the *ad interim* appointees.[26]

Thus, when the ComAppt disapproves the *ad interim* appointment or fails to act on it upon the adjournment of Congress, the removal of the appointee from office follows.

With the exception of the President or the Vice-President impleaded as respondents in an election contest, **there is nothing in my reading of the Constitution that shows the framers recognized a *quo warranto* proceeding as a mode of removing from office the other impeachable**

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[23] CONSTITUTION, Article VII, Section 16, which states that:

> The President shall have the power to make appointments during the recess of Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress.

[24] 429 Phil. 554 (2002)

[25] *Id.* at 581.

[26] *Id.*

officers, particularly on the ground of ineligibility. Applying the other rules on constitutional construction, I shall explain in the succeeding parts why a *quo warranto* proceeding may not be used to oust from office the appointive impeachable officers.

B. The intent of the framers of the Constitution is to maintain the separation of powers and uphold independence of the constitutional offices

B.1 The underlying principles of separation of powers and independence of constitutional offices

Though not couched in express language, principles that embody and enhance the democratic and republican nature of our State permeate the Constitution. Foremost of these is the principle of separation of powers and its corollary principle of checks and balances. In *Angara v. Electoral Commission*,[27] we recognized these principles not by any express provision in the Constitution, but on account of the constitutional design dividing the governmental powers among the different branches and bodies of the government.[28] These constitutional offices are deemed co-equal and independent of each other, as it is only by recognizing their status as such that the underlying principles can be maintained. Particularly for the Supreme Court, the three Constitutional Commissions, and the Office of the Ombudsman, independence is viewed as vital and imperative for the effective and efficient discharge of their functions. Hence, the Constitution expressly decreed their status as independent, whether individually for its members[29] or collectively for their entire office.[30]

Accordingly, the Constitution adopted mechanisms to safeguard the independence of these offices including: the conferment of powers which

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[27] 63 Phil. 139 (1936).
[28] *Id.* at 156-157.
[29] CONSTITUTION, Article VIII, Section 7(3) for the Judiciary, and Article XI, Section 8 for the Ombudsman and his Deputies.
[30] CONSTITUTION, Article IX-A, Section 1 for the Constitutional Commissions.

cannot be removed or reduced by statute[31]; the grant of fiscal autonomy[32]; the grant of security of tenure for their highest officials, which is ensured by fixing their term of office[33] or by providing a mandatory retirement age,[34] by prohibiting their reappointment or appointment in temporary or acting capacity,[35] by providing impeachment as a mode by which they may be removed from office,[36] etc. With specific regard to impeachment as a mode of removal, the Constitution provided for strict rules and a rigorous, difficult, and cumbersome process before removal can be effected.[37]

The clear intent behind these safeguards is to enable the officials of these bodies to carry out their constitutional mandates free from political influence and pressure.[38] Indeed, they are among the highest-ranking officials of the land burdened with the responsibility of running the government. Thus, in the interest of public service, it becomes imperative that they be insulated from political maneuverings, harassment, and vendetta when performing their functions. It is with this objective in mind that the Court has to evaluate the validity of acts and proceedings that could result in the impairment of the independence of these constitutional offices.

From an academic standpoint, I agree with the *ponencia* that an impeachment proceeding is distinct from a *quo warranto* proceeding.[39] That these proceedings are distinct, however, does not justify a ruling that they can proceed independently and simultaneously as the *ponencia* declared.[40] Such simplistic reasoning completely ignores the basic principles underlying our Constitution. I believe that the Court's assumption of jurisdiction over a *quo warranto* proceeding should be determined not merely on the basis of the theoretical differences between the two proceedings, but primarily from an appreciation of the constitutional intent behind the relevant provisions.

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[31] CONSTITUTION, Article VIII, Section 2 for the Supreme Court; Article IX-D, Sections 2 and 3 for the COA; Article IX-C, Section 2 for the Comelec, Article IX-B, Section 3 for the CSC, and Article XI, Sections 7 and 13 for the Office of the Ombudsman.

[32] CONSTITUTION, Article VIII, Section 3 for the Judiciary; Article IX-A, Section 5 for the Constitutional Commissions; Article XI, Section 14 for the Office of the Ombudsman.

[33] CONSTITUTION, Article IX-D, Section 1(2) for the COA; Article IX-C, Section 1(2) for the Comelec, Article IX-B, Section 1(2) for the CSC, and Article XI, Section 11 for the Office of the Ombudsman.

[34] CONSTITUTION, Article VIII, Section 11 for the Judiciary.

[35] CONSTITUTION, Article VIII, Sections 11 and 12 for the Judiciary; Article IX-D, Section 1(2) for the COA; Article IX-C, Section 1(2) for the Comelec, Article IX-B, Section 1(2) for the CSC, and Article XI, Section 11 for the Office of the Ombudsman.

[36] CONSTITUTION, Article XI, Section 2.

[37] Such as limiting the grounds for impeachment only for offenses that are grave and serious in nature and providing for a stringent or rigorous procedure for the impeachment proceedings. See Constitution, Article XI, Section 3.

[38] *Carpio Morales v. Court of Appeals*, 772 Phil. 672, 725 (2015). See also *Funa v. Villar*, 686 Phil. 571.

[39] *Ponencia*, pp. 50, 54.

[40] *Id.* at 52.

B.1 Allowing a* quo warranto *proceeding against impeachable officers impairs the independence of the constitutional offices

The *ponencia* reasons that, inasmuch as Section 2, Article XI of the Constitution did not foreclose other modes of removing from office the enumerated public officers and given that this Court has *quo warranto* jurisdiction, there is essentially nothing that prohibits their removal from office through a *quo warranto* proceeding before the Court.[41] I believe, however, that we ought to qualify to what extent this Court can assume *quo warranto* jurisdiction over impeachable officers.

At this point, there is a need to identify the **two classes of impeachable officers in Section 2, Article XI of the Constitution**: (1) the **elective officers**, *i.e.*, the President and the Vice-President, and (2) the **appointive officers**, *i.e.*, the Members of the Supreme Court; the Chairman and the Commissioners of the COA, the Comelec, and the CSC; and the Ombudsman.

With particular regard to *appointive* impeachable officers, it is my humble submission that *quo warranto* petitions against them threaten the constitutionally-decreed independence of their offices. While the Constitution has granted this Court general jurisdiction over *quo warranto* petitions, this jurisdiction may not be asserted against appointive impeachable officers without compromising institutional independence which is intended to uphold core constitutional principles and values.

B.1.a* Gonzales *demonstrated how the powers conferred under the Constitution should be interpreted in accordance with underlying constitutional principles

As I have said, the Constitution does not operate in a vacuum. The application of a constitutional provision must take into account the context in which it is applied, and its interpretation must be consistent with the

[41] *Id.* at 40, 50.

framers' intent and underlying principles of the Constitution. A case in point is *Gonzales v. Office of the President.*[42]

In *Gonzales*, the petitioner questioned the constitutionality of Section 8(2) of the Republic Act (*RA*) No. 6770 or the Ombudsman Act of 1989, which granted the President disciplinary authority over the Deputy Ombudsmen. Congress enacted this provision in accordance with the second sentence of Section 2, Article XI of the Constitution, which states that

> Section 2. x x x All other public officers and employees may be removed from office **as provided by law**, but not by impeachment. [emphasis supplied]

Construing this constitutional provision, the Court noted that it did not grant Congress blanket authority to legislate the manner by which non-impeachable public officers and employees may be removed and the grounds for their removal, nor to lodge such power to remove on whichever body Congress deemed proper. Instead, any statute that Congress enacts pursuant to the provision "must still be consistent with constitutional guarantees and principles."[43] Expounding on this, the Court said:

> **[T]he congressional determination of the identity of the disciplinary authority is not a blanket authority for Congress to repose it on whomsoever Congress chooses without running afoul of the independence enjoyed by the Office of the Ombudsman and without disrupting the delicate check and balance mechanism under the Constitution.** Properly viewed from this perspective, **the core constitutional principle of independence is observed and any possible absurdity resulting from a contrary interpretation is avoided.** In other words, **while the Constitution itself vested Congress with the power to determine the manner and cause of removal of all non-impeachable officials, this power must be interpreted consistent with the core constitutional principle of independence of the Office of the Ombudsman.**[44] [emphasis supplied]

To emphasize the point, I repeat that the interpretation of the provisions of the Constitution must be consistent with its underlying principles. *Gonzales* showed that, in the scale of constitutional values, the framers put a higher premium on upholding the independence of

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[42] 725 Phil. 380 (2014).
[43] *Id.* at 408-409.
[44] *Id.* at 409.

constitutional bodies. Hence, *Gonzales* ruled that a system devised to exact accountability from non-impeachable public officers (*i.e.*, the grant of disciplinary power over the Deputy Ombudsmen to the President) must remain consistent with the independence guaranteed to the Office of the Ombudsman.

The present *quo warranto* petition was instituted supposedly to ensure that "government authority is entrusted only to qualified individuals."[45] Accordingly, the *ponencia* declares that "*quo warranto* should be an available remedy to question the legality of appointments especially of impeachable officers x x x."[46] Taking heed of *Gonzales*, I do not subscribe to the said view. **I find the Court's assumption of *quo warranto* jurisdiction over impeachable officials alarming, *especially in light of the powers which the* ponencia *ascribes to the Solicitor General (SolGen) to have with respect to proceedings of this nature.***

B.2 The SolGen's imprescriptible power to commence* quo warranto *proceedings against the appointive impeachable officers threatens the independence of their offices

The SolGen's power to commence *quo warranto* proceedings is provided in Section 2, Rule 66 of the Rules of Court.[47] When the SolGen exercises such power, the *ponencia* declares that the one-year prescriptive period in Section 11 of the same Rule does not apply since, in filing the petition, the SolGen is not claiming an individual right to a particular office, but is asserting a public right to question the exercise of an authority unlawfully asserted by an ineligible public officer.[48] In other words, **the *ponencia* proclaims the SolGen's power to commence *quo warranto* proceedings to be imprescriptible.** In such a case, therefore, the SolGen's exercise of the power is practically subject to no restriction other than the exercise of his/her sound discretion. **If, as the *ponencia* posits, this unfettered power of the SolGen is allowed to be exerted against**

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[45] *Ponencia*, p. 52.
[46] *Id.*
[47] RULES OF COURT, Rule 66, Section 2 provides:

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

[48] *Ponencia*, p. 63.

impeachable officers, the independence of these constitutional offices will effectively be undermined.

The SolGen is a presidential appointee[49] whose office is attached to the Department of Justice[50] and is under the Executive Department. As a non-impeachable public officer, the SolGen is subject to the Ombudsman's disciplinary authority pursuant to Section 21 of the Ombudsman Act. It is not a stretch to claim that the Ombudsman's impartiality and independence when exercising his/her disciplinary power may be compromised if the SolGen can threaten the Ombudsman's claim to his/her position by commencing a *quo warranto* petition. A similar predicament can arise in the context of a disbarment proceeding against the SolGen filed before the Supreme Court if the SolGen can initiate proceedings for removal of the Members of this Court.

In advancing this position, I refer again to the Court's ruling in *Gonzales*,[51] which is relevant as it presented a parallel issue. In *Gonzales*, the Court ruled that the grant of disciplinary power to the President over the Deputy Ombudsmen imperiled the Office of the Ombudsman's independence as guaranteed by the Constitution, and accordingly voided the provision. We declared that:

> **subjecting the Deputy Ombudsman to discipline and removal by the President, whose own alter egos and officials in the Executive Department are subject to the Ombudsman's disciplinary authority, cannot but seriously place at risk the independence of the Office of the Ombudsman itself.** The Office of the Ombudsman, by express constitutional mandate, includes its key officials, all of them tasked to support the Ombudsman in carrying out her mandate. Unfortunately, intrusion upon the constitutionally-granted independence is what Section 8(2) of RA No. 6770 exactly did. By so doing, **the law directly collided not only with the independence that the Constitution guarantees to the Office of the Ombudsman, but inevitably with the principle of checks and balances that the creation of an Ombudsman office seeks to revitalize.**
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> What is true for the Ombudsman must be equally and necessarily true for her Deputies who act as agents of the Ombudsman in the performance of their duties. The Ombudsman can hardly be expected to place her complete trust in her subordinate officials who are not as independent as she is, if only because they are subject to pressures and controls external to her Office.

[49] ADMINISTRATIVE CODE, Book IV, Chapter 12, Section 36.
[50] ADMINISTRATIVE CODE, Book IV, Chapter 12, Section 34.
[51] Supra note 42.

x x x x

> The mere fact that a statutorily-created sword of Damocles hangs over the Deputy Ombudsman's head, by itself, opens up all the channels for external pressures and influence of officialdom and partisan politics. The fear of external reprisal from the very office he is to check for excesses and abuses defeats the very purpose of granting independence to the Office of the Ombudsman.[52] [emphasis in the original; underscoring supplied]

We also noted in *Gonzales* the absurdity resulting from the tangled web of disciplinary powers over non-impeachable officers between the President and the Ombudsman that could effectively erode the delicate system of checks and balance under the Constitution, to wit:

> **the Executive power to remove and discipline key officials of the Office of the Ombudsman, or to exercise any power over them, would result in an *absurd* situation wherein the Office of the Ombudsman is given the duty to adjudicate on the integrity and competence of the very persons who can remove or suspend its members.** Equally relevant is the impression that would be given to the public if the rule were otherwise. A complainant with a grievance against a high-ranking official of the Executive, who appears to enjoy the President's favor, would be discouraged from approaching the Ombudsman with his complaint; the complainant's impression (even if misplaced), that the Ombudsman would be susceptible to political pressure, cannot be avoided. To be sure, such an impression would erode the constitutional intent of creating an Office of the Ombudsman as champion of the people against corruption and bureaucracy.[53] [emphasis in the original; underscoring supplied]

Much in the same way, the independence of this Court, the Constitutional Commissions, and the Office of the Ombudsman can be unduly compromised if the SolGen can, at any time and subject to no other guarantee than the exercise of his/her sound discretion, commence *quo warranto* proceedings against the heads of these offices. **Given the powers that the *ponencia* proposes to endow the SolGen with as regards *quo warranto* petitions against appointive impeachable officers,[54] the SolGen can effectively remake the composition of this Court by causing the removal of its Members** – a matter which Justice Leonen similarly noted during the oral arguments.

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[52] Supra note 42 at 403, 410.
[53] Supra note 42 at 405.
[54] *Ponencia*, p. 46.

Whether the SolGen's filing of a *quo warranto* petition against an appointive impeachable officer is based on meritorious grounds or not becomes irrelevant as the evils that the framers intended to avoid by guaranteeing the independence of these constitutional offices can already occur. In *Gonzales*, we stated that the mere filing of an administrative case against the Deputy Ombudsman before the Office of the President could lead to his/her suspension and cause interruption in the performance of his/her functions to the detriment of public service.

It is therefore clear that **the grant to the SolGen of unrestricted and imprescriptible power to institute *quo warranto* petitions against appointive impeachable officers poses serious risks to the independence of constitutional offices declared to be independent**. In *Bengzon v. Drilon*,[55] we ruled that "[t]he Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties."[56] They "should be free to act as their conscience demands, without fear of retaliation or hope [of] reward."[57] **With the SolGen wielding a *quo warranto* sword of Damocles over the heads of these officers, the Filipino people cannot be assured that they will discharge their constitutional mandate and functions without fear or favor. Without such assurance, there can be no guarantee that the primordial interest of the sovereign people is promoted.**

In advancing this view, I do not aim to cast doubt on the competence and professionalism of the SolGen, incumbent or future ones. Rather, taking into consideration the constitutional design, I believe that **the SolGen's *quo warranto* power is not the "check and balance" that the framers intended for the impeachable officers who fail to meet the constitutional qualifications.**

The reality is that the SolGen is a presidential appointee who serves at the pleasure of the President.[58] As such, it would be incongruous for the SolGen to question the exercise of the President's power to appoint officials to the constitutional offices, particularly the choice of an appointee, unless it is upon the orders of the appointing President himself or his successor.[59]

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[55] 284 Phil. 245 (1992).
[56] *Id.* at 269.
[57] Supra note 4 at 600-601.
[58] The Administrative Code does not provide a fixed term for the SolGen. Following the general rule that the power to appoint includes the power to remove, it can be said that the SolGen serves at the pleasure of the President.
[59] Rules of Court, Rule 66, Section 2 provides:
SEC. 2. *When Solicitor General or public prosecutor must commence action.* — The

Neither should this view be construed as shielding from review the appointment of one who is otherwise unqualified for the position or whose appointment is tainted with irregularity. When the Court declines to assume jurisdiction in these proceedings, it neither cleanses the appointment of any defect, nor denies the people a remedy to correct a "public wrong," as the *ponencia* insinuates.[60] Taking into account the overall constitutional design, I believe that mechanisms have been put in place to allow for such a review to take place, though these may not necessarily be judicial in nature. After all, the exercise of appointing power (and all proceedings related to it) is not within the judiciary's exclusive domain. I discuss these review mechanisms next.

C. The Constitution has put in place mechanisms for the review of the eligibility of appointees to impeachable offices or the invalidity of their appointments

C.1 The Court's quo warranto *jurisdiction against elective impeachable officers is by virtue of a specific constitutional provision*

In arguing that impeachment is not the only mode for the removal of impeachable officers, the SolGen cites the *2010 Rules of the Presidential Electoral Tribunal,*[61] which authorizes the filing of election contests against the President or the Vice-President. As an election contest (filed either as an election protest or a *quo warranto* petition) before the PET could result in the ouster of an impeachable official, the SolGen contends that the PET Rules essentially recognize the availability of a writ of *quo warranto* against an impeachable officer. The *ponencia* agrees with the SolGen's reasoning.[62]

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.** [emphasis supplied]

[60] *Ponencia*, p. 61.

[61] A.M. No. 10-4-9-SC.

[62] *Ponencia*, p. 57.

I agree with the *ponencia* but only to the extent **that, under the 1987 Constitution, electoral contests under the PET Rules prove that impeachment is not the sole mode of removing from office impeachable officers.** This is one of the other modes of removal that I referred to in Part A of this Dissent. That a particular class of impeachable officers, *i.e.*, the *elective* ones, may be ousted from office through *quo warranto* proceedings, however, does not warrant extending the same rule to the *appointive* impeachable officers.

The Court's *quo warranto* jurisdiction over *elective* impeachable officials obtains, not on the basis of the general grant of jurisdiction under Section 5(1), Article VIII of the Constitution, but on the specific grant under the last paragraph of Section 4, Article VII of the Constitution, which reads:

> Section 4. x x x x
>
> **The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President**, and may promulgate rules for the purpose. [emphasis supplied]

Given this *specific constitutional mandate,* there is practically no discretion[63] left for the Court but to assume jurisdiction over *quo warranto* petitions against (and only against) this particular class of impeachable officials. Conversely, when jurisdiction is asserted on the basis of the general grant under Section 5(1), Article VIII of the Constitution, the Court ought to tread more carefully as there may be equally, if not more, compelling constitutional principles at play.

Parenthetically, there can be no equal protection issues that may arise in this regard as it is the Constitution itself that provides for a different treatment as far as *elective* impeachable officers are concerned by giving this Court exclusive jurisdiction over presidential electoral contests. It is also for this reason that I defend my position from any insinuation that it carves out a special rule for appointive impeachable officers by effectively clothing them with immunity against *quo warranto* petitions.

In plain and simple terms, **it is the Constitution itself which vests this Court (sitting as the PET) jurisdiction over *quo warranto* proceedings against *elective* impeachable officers.** Given the specific

[63] Except when the grounds for the summary dismissal of the election contests, as provided in Rule 21 of the 2010 PET Rules, obtain.

constitutional grant of *quo warranto* jurisdiction over *elective* impeachable officers, the 2010 PET Rules should not be used as authority to claim a similar jurisdiction over *appointive* impeachable officers.

C.1.a The cited* quo warranto *cases against the President, an impeachable officer, are jurisprudentially irrelevant to this case

It is for this reason that I find the SolGen's reliance on *Lawyers League for a Better Philippines v. Aquino*[64] and *Estrada v. Arroyo* misplaced.[65] The SolGen claims these cases prove that this proceeding is not the first time the Court entertained a *quo warranto* petition against an impeachable officer.[66]

Quo warranto* is a recognized mode for removal of the President or the Vice-President *only within the context of electoral contests. Significantly, neither *Lawyers League*[67] nor *Estrada* involved presidential elections. These cases were filed in the aftermath of turbulent times in our country's history, the 1986 EDSA People Power and the 2001 EDSA People Power, respectively, both of which resulted in the removal of incumbent presidents. Indeed, it is this special circumstance – the uncommon way of removing a sitting President from office and installing a new one by a mode other than election[68] – that renders these cases jurisprudentially irrelevant as far as the present proceeding is concerned.

C.1.b Other consequences when* quo warranto *jurisdiction against impeachable officers is allowed

The *ponencia* also fails to explain the inconsistent and absurd consequences of a ruling allowing *quo warranto* petitions against appointive impeachable officers.

[64] G.R. No. 73748, May 22, 1986.
[65] 406 Phil. 1 (2001).
[66] Petitioner's Memorandum, p. 15.
[67] The petition questioned the legitimacy of the Aquino government by claiming that it is illegal because it was not established pursuant to the 1973 Constitution, supra 64.
[68] Edsa I involved the overthrow of the whole Marcos government, while EDSA II involved the resignation of President Estrada and the succession of then Vice-President Arroyo, supra 65 at 44-45.

There is nothing to indicate that the Constitution allowed two types of *quo warranto* proceedings that may be commenced against the President or Vice-President: one within the context of an electoral contest under Section 4, Article VII of the Constitution, and another outside of it pursuant to Section 5(1), Article VIII of the Constitution. Assuming this is what the *ponencia* contemplated in declaring that the general *quo warranto* jurisdiction may be asserted against impeachable officers, how then do we reconcile the conflict between the express general grant of jurisdiction over *quo warranto* petitions to this Court and the implied immunity recognized in favor of the President who is made respondent thereto? May the President even assert his/her immunity against claims that he/she is ineligible for office in the first place? From this standpoint, it can be seen that the *ponencia's* position opens up a possibility of a constitutional crisis.

Another complication is the concurrent jurisdiction that this Court, the Court of Appeals (CA), and the Regional Trial Courts (RTC) have over *quo warranto* petitions. By allowing *quo warranto* proceedings against impeachable officers, the *ponencia* grants an RTC judge or CA justices the power to order the removal of a Member of this Court. This could render ineffective the Court's constitutional power to discipline judges of lower courts[69] and result in the perversion of the doctrine of hierarchy of courts.

The *ponencia* distinguishes impeachment from *quo warranto* to justify a ruling that the pendency of one proceeding did not preclude the commencement of the other.[70] It reasons that "[i]t is not legally possible to impeach or remove a person from an office that he/she, in the first place, does not and cannot legally occupy."[71] In contract law terms, the *ponencia* likens an appointment nullified through a *quo warranto* writ to a contract that is void *ab initio*.

Nevertheless, the *ponencia* also acknowledges that "[t]he remedies available in **a *quo warranto* judgment do not include a correction or reversal of acts taken under the ostensible authority of an office** or franchise. **Judgment is limited to the ouster or forfeiture** and may not be imposed retroactively upon prior exercise of official or corporate duties."[72] The result of a *quo warranto* judgment is therefore no different from a judgment of conviction in an impeachment: the removal of the public

[69] CONSTITUTION, Article VIII, Section 11.
[70] *Ponencia*, p. 52.
[71] *Id.* at 55.
[72] *Ibid.* Emphasis supplied.

officer.[73] In both cases, the acts of the ousted officer remain valid on account of his/her ostensible authority. Thus, there is no significance in making a distinction between the two proceedings when the result and practical effect of both is the same. I explain more of these in Part D of this Dissent and why, despite the clear overlap between *quo warranto* and impeachment, it is the latter proceeding that must prevail.

C.2 The review of the qualifications of impeachable officials is precisely the function of the PET, the ComAppt, and the JBC

Under Section 4, Article VII of the Constitution, the PET is the sole judge of all contests relating to the election, returns, and *qualifications* of the President or Vice-President. The creation of the PET is necessitated by the fact that there is no body that conclusively passes upon the qualifications of presidential and vice-presidential candidates. The Comelec initially reviews the candidates's qualifications when it receives their certificates of candidacy (*CoCs*) for these positions, but this review is not binding particularly since the Comelec only has a ministerial duty of receiving the CoCs.[74]

Along the same lines, the Constitution has tasked the Judicial and Bar Council (*JBC*) and the ComAppt to perform a similar function with respect to appointees to the other constitutional offices, specifically, the JBC for the Members of the Supreme Court[75] and the Ombudsman,[76] and the ComAppt for the Chairmen and Commissioners of the CSC, the Comelec, and the COA.[77] Indeed, the JBC's nominations and the ComAppt's confirmations are critical for the exercise of the President's appointment power that their absence or disregard renders the appointment invalid.

Corollary, the JBC and the ComAppt's functions serve as a check on the exercise of the President's appointing power. The JBC, in particular, is an innovation of the 1987 Constitution to remove, if not diminish, the highly

[73] CONSTITUTION, Article XI, Section 3(7).
[74] OMNIBUS ELECTION CODE, Section 76.
[75] CONSTITUTION, Article VIII, Section 9.
[76] CONSTITUTION, Article XI, Section 9.
[77] CONSTITUTION Article IX-B, Section 1(2), Article IX-C, Section 1(2), and Article IX-D, Section 1(2), respectively.

political nature of presidential appointments.[78] This Court, in *De Castro v. JBC*,[79] noted that

> [t]he 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 the consideration of the President, because **they first had to undergo the vetting of the JBC and pass muster there.** [emphasis supplied]

In constituting the PET, the JBC, and the ComAppt, the framers of the Constitution intended that there be a "vetting agency" in charge of reviewing the eligibility and qualifications of those elected as President and Vice-President, and those appointed to the other constitutional offices. The determination of an elected candidate or an appointee's eligibility and qualification is therefore primarily a function that the Constitution decreed is to be discharged by the PET, the JBC, and the ComAppt. We said as much in *Jardeleza v. Sereno*[80] with respect to the JBC's role:

> The purpose of the JBC's existence is indubitably rooted in the categorical constitutional declaration that "[a] member of the judiciary must be a person of proven competence, integrity, probity, and independence." To ensure the fulfillment of these standards in every member of the Judiciary, **the JBC has been tasked to screen aspiring judges and justices, among others, making certain that the nominees submitted to the President are all qualified and suitably best for appointment.** In this way, the appointing process itself is shielded from the possibility of extending judicial appointment to the undeserving and mediocre and, more importantly, to the ineligible or disqualified. [emphasis supplied]

Indeed, both the JBC[81] and the ComAppt[82] have provided in their respective rules the means by which to ascertain an applicant's qualification in order for them to fulfill their respective mandates. As far as possible, their screening process is made comprehensive and rigorous to ensure that not only the qualified but also the best applicant for the position is nominated or confirmed. Again, with respect to the JBC, this Court stated in *Jardeleza* that:

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[78] See *Chavez v. JBC*, 709 Phil. 478,485-486 (2013).
[79] 629 Phil. 629, 697 (2010).
[80] 741 Phil. 492 (2014).
[81] See JBC No. 2016-01 or the Revised Rules of the Judicial and Bar Council.
[82] See New Rules of the Commission of Appointments and the Rules of Standing Committees.

> The JBC then takes every possible step to verify an applicant's track record for the purpose of determining whether or not he is qualified for nomination. It ascertains the factors which entitle an applicant to become a part of the roster from which the President appoints.[83]

At this point, I would like to inject a realistic perspective on appointments to constitutional offices. Appointments to this Court, the Constitutional Commissions, and the Office of the Ombudsman are matters of public concern and generate a significant amount of public interest and media coverage. Under the screening procedure adopted by the JBC and the ComAppt, applicants to these positions are subjected to intense scrutiny by the members of these bodies, the stakeholders, and the media. A premise that an appointee has *grave and serious* eligibility issues that may be uncovered only after his/her nomination or confirmation and assumption to office so as to justify allowing *quo warranto* proceedings against the impeachable officers blissfully disregards the above reality. That the vetting agency may have failed in one instance to do its job does not warrant opening up a whole new remedy to rectify the error.

Of course, it is probable that an ineligible appointee to these high-ranking positions can slip through the vetting process. If, as I propose, a *quo warranto* proceeding is not available against an appointive impeachable officer, are we bereft of any remedy or recourse against the officer who was able to slip through the cracks in the constitutional design? The answer obviously is no. The remedy lies in the existing review mechanisms provided by the Constitution as part of the system of checks and balance.

If, for example, the nomination or confirmation was made notwithstanding the JBC or the ComAppt's knowledge of the ineligibility or ground for disqualification, a *certiorari* petition may be resorted to invoking, not the *certiorari* jurisdiction under Section 5(1), Article VIII of the Constitution, but the expanded power of judicial review under the second paragraph of Section 1, Article VIII of the Constitution.[84] The petition should implead the JBC or the ComAppt, as the case may be, since the central issue is whether or not the agency committed grave abuse of discretion amounting to lack or excess of jurisdiction for nominating or confirming an ineligible appointee. A *certiorari* petition against the vetting agency or the appointing authority does not violate the rule that title to public office may not be contested, except directly, by *quo warranto*

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[83] Supra note 80 at 505.
[84] *Id.* at 491.

proceedings.[85] The Court has already explained the distinction between the two proceedings in *Aguinaldo v. Aquino*.[86]

This Court may also review the JBC's acts pursuant to its supervisory authority over the Council[87] to determine whether or not JBC complied with the laws and rules.[88] Relatedly, the *ponencia* claims that the Court, while "*[w]earing its hat of supervision*,"[89] is "empowered to inquire into the processes leading to [the] respondent's nomination for the position of Chief Justice x x x and to determine whether, along the line, the JBC committed a violation x x x."[90] To me, it seems rather odd for the Court to exercise its supervisory power over the JBC *in a quo warranto proceeding*, all the more so when *the JBC itself was not impleaded in the case*.

Assuming that the ground for disqualification is discovered only after the applicant has been nominated or confirmed and has already assumed office, then resort may be had through that ultimate process of exacting accountability from the highest officials of our land: *impeachment*.

D. Impeachment is the remedy to unseat ineligible appointees to the constitutional offices

Impeachment is essentially a measure to exact accountability from a public officer.[91] As the *ponencia* puts it, impeachment is "a political process meant to vindicate the violation of a public's trust."[92]

The impeachable offenses are limited to six: culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, and

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[85] *Topacio v. Ong*, 595 Phil. 491, 503 (2008).

[86] *Aguinaldo v. Aquino*, G.R. No. 224302, November 29, 2016, where the Court declared:

> In *Topacio*, the writs of *certiorari* and prohibition were sought against Sandiganbayan Associate Justice Gregory S. Ong on the ground that he lacked the qualification of Filipino citizenship for said position. In contrast, the present Petition for *Certiorari* and Prohibition puts under scrutiny, not any disqualification on the part of respondents Musngi and Econg, but the act of President Aquino in appointing respondents Musngi and Econg as Sandiganbayan Associate Justices without regard for the clustering of nominees into six separate shortlists by the JBC, which allegedly violated the Constitution and constituted grave abuse of discretion amounting to lack or excess of jurisdiction. This would not be the first time that the Court, in the exercise of its expanded power of judicial review, takes cognizance of a petition for *certiorari* that challenges a presidential appointment for being unconstitutional or for having been done in grave abuse of discretion.

[87] CONSTITUTION, Article VIII, Section 8(1).

[88] Supra note 80 at 489-490.

[89] *Ponencia*, p. 82.

[90] *Id.*

[91] After all, it is placed under Article XI of the Constitution on "Accountability of Public Officers."

[92] *Ponencia*, pp. 48-49.

betrayal of public trust.[93] Treason, bribery, graft and corruption are easily understandable concepts particularly when we refer to relevant statutory provisions, but culpable violation of the Constitution, other high crimes, and betrayal of public trust all elude precise definition.[94] In fact, the last ground – betrayal of public trust – was deemed to be a catch-all phrase to cover any misconduct involving breach of public trust.[95] Thus, the determination of what acts (or omissions) may constitute an impeachable offense is one of the few purely political questions that is left to Congress' determination and is beyond the pale of judicial review.

Nevertheless, it is neither improbable nor illogical to suppose that a public officer's ineligibility for office (whether for lack of qualification or possession of grounds for disqualification) can be considered an act which constitutes an impeachable offense. The *ponencia* itself recognizes this.[96] Although "culpable violation of the Constitution," "other high crimes," and "betrayal of public trust" escape precise definitions, their common denominator is that they "obviously pertain to 'fitness for public office.'"[97] Thus, it can be said that a public officer who does not possess the minimum constitutional qualifications for the office commits a violation of the Constitution that he/she has sworn to uphold or, at the very least, betrays the public trust when he/she assumes the position without the requisite eligibility. **Impeachment then becomes the mode by which we exact accountability from the public officer who assumes a constitutional office notwithstanding his/her ineligibility.**

When an appointive impeachable officer is alleged to be ineligible, it makes no sense to distinguish between an impeachment proceeding and a *quo warranto* proceeding because the latter proceeding is subsumed in the former. After all, "**qualifications for public office are *continuing requirements*** and must be possessed not only at the time of appointment or assumption of office but during the officer's entire tenure."[98] If a public officer was ineligible upon assumption of office (either upon appointment or upon election), then he/she carries this ineligibility throughout his/her tenure and is unfit to continue in office. **Thus, an appointive impeachable officer who fails to meet the constitutional qualifications in the first place also commits an act that may amount to an impeachable offense.**

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[93] CONSTITUTION, Article XI, Section 2.
[94] Supra note 2 at 913.
[95] Vol. II, Records of the Constitutional Commission, p. 272.
[96] *Ponencia*, p. 65.
[97] J. Vitug's Separate Opinion in *Francisco v. House of Representatives*, supra note 2 at 958-959.
[98] *Frivaldo v. Comelec*, 255 Phil. 934, 944 (1989).

Consider the usual example of an impeachable public officer who, during his/her incumbency, is discovered to be holding foreign citizenship. That the public officer is able to cure or rectify his/her ineligibility (*e.g.*, by renouncing the foreign citizenship) is of no moment, as he/she had already committed an act that may amount to an impeachable offense by assuming a public office without the requisite constitutional qualification. Therefore, any attempt to determine which proceeding to commence based on when the ground for disqualification or ineligibility existed[99] is irrelevant.

From this perspective, **there clearly exists an overlap between impeachment and *quo warranto* when the ground pertains to the public officer's ineligibility**. If illustrated, *quo warranto* would be the small circle fully enclosed within the bigger impeachment circle, their common element being the impeachable officer's ineligibility, whether continuing or not. Indeed, this is precisely the situation for the respondent.

The first article in the Articles of Impeachment charges the respondent with culpable violation of the Constitution and/or betrayal of public trust for non-filing and non-disclosure of her Sworn Statements of Assets, Liabilities and Net Worth (*SALN*).[100] Allegedly, this act/omission proves that she is not of proven integrity and is thus ineligible for the position of Chief Justice.[101] This same ineligibility is the ground raised by the SolGen in the present *quo warranto* petition. Inasmuch as the ground for the *quo warranto* may be (and is in fact) raised also as ground for impeachment, it is the latter proceeding that should prevail.

D.1 This Court is precluded from assuming jurisdiction because Congress has primary jurisdiction

Even supposing that I am not averse to this Court having *quo warranto* jurisdiction over impeachable officers, I believe **this Court is still precluded from assuming jurisdiction based on the doctrine of primary jurisdiction.** Although the doctrine is primarily within the realm of administrative law,[102] it may be applied by analogy in this case.

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[99] *Ponencia*, p. 77.
[100] Respondent's *Ad Cautelam* Manifestation/Submission, Annex 25 – Resolution setting forth the Articles of Impeachment against Supreme Court Chief Justice Ma. Lourdes P.A. Sereno, pp. 16-17
[101] *Id.*, pp. 14-16.
[102] *Lim v Gamosa*, 774 Phil. 31, 48 (2015).

The matter of the respondent's ineligibility is already before the Congress as one of the charges in the Articles of Impeachment. The House Committee on Justice overwhelmingly ruled, by a vote of 33-1, in favor of finding probable cause to impeach the respondent. The Articles of Impeachment have been transmitted to the Committee on Rules so that the matter may be calendared and submitted to the plenary for its vote. That it is speculative whether the respondent may be held accountable because no impeachment has yet taken place[103] is beside the point. The impeachment proceeding has commenced,[104] and Congress has taken cognizance thereof with its finding of probable cause. Thus, it behooves this Court to exercise judicial restraint and accord respect to the processes that the Constitution has lodged within the powers of a co-equal department. The impeachment proceedings should be allowed to take its due course.

For this Court to assume jurisdiction over *quo warranto* proceedings against an appointive impeachable officer would be to effectively deny Congress's exclusive authority over impeachment proceedings. As the *ponencia* itself acknowledged, both impeachment and *quo warranto* proceedings result in the removal from office of the public officer. A successful *quo warranto* petition resulting in the ouster of the public officer would therefore render any further impeachment proceeding futile. By assuming jurisdiction, this Court would commit an impermissible interference with Congress' power to hold a public officer accountable and to remove him/her for failure to live up to the oath of upholding and defending the Constitution.

D.2 Impeachment is the delicate mechanism provided by the Constitution to balance compelling interests

Between a *quo warranto* proceeding and an impeachment proceeding available as remedies against an appointive impeachable officer who is alleged not to possess the required constitutional qualifications for his/her office, the choice is an easy one to make. In our scheme of constitutional values, the separation of powers, the independence of constitutional bodies, and the system of checks and balance are placed on a higher plane. Precisely in order to uphold these principles, the framers have provided a strict, difficult, and cumbersome process in the Constitution for their

[103] *Ponencia*, p. 69.
[104] In accordance with the ruling in *Francisco v. House of Representatives*, supra note 2 at 932-933.

removal from office. The *ponencia* turns constitutional logic in its head by justifying resort to *quo warranto* because impeachment is a long and arduous process that may not warrant Congress' time and resources particularly when the respondent public officer "*may clearly* be unqualified under existing laws and case law."[106] A *quo warranto* proceeding against an impeachable officer thus becomes nothing more than an impermissible short cut.

Impeachment is the delicate balancing act the Constitution has put in place to ensure two compelling interests are promoted: the need to guarantee the independence of constitutional bodies in the discharge of their mandate on one hand, and the need to enforce accountability from public officers who have failed to remain faithful to their oath to uphold and defend the Constitution on the other. Throwing *quo warranto* into the milieu unsettles the constitutional design and may ultimately end up throwing off the system that the Constitution has put in place.

In instituting this *quo warranto* proceeding, the SolGen urges this Court to take the road not taken. I am not inclined to take part in any constitutional adventurism, and I intend to remain within the clearly confined course that the framers of our Constitution have delineated.

For these reasons, I vote to **DISMISS** the petition.

[106] *Ponencia*, p. 66. Emphasis mine.