Republic of the Philippines
Supreme Court
Manila

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HON. PHILIP A. AGUINALDO, HON. REYNALDO A. ALHAMBRA, HON. DANILO S. CRUZ, HON. BENJAMIN T. POZON, HON. SALVADOR V. TIMBANG, JR., and the INTEGRATED BAR OF THE PHILIPPINES (IBP), Petitioners, - *versus* - **HIS EXCELLENCY PRESIDENT BENIGNO SIMEON C. AQUINO III, HON. EXECUTIVE SECRETARY PAQUITO N. OCHOA, HON. MICHAEL FREDERICK L. MUSNGI, HON. MA. GERALDINE FAITH A. ECONG, HON. DANILO S. SANDOVAL, HON. WILHELMINA B. JORGE-WAGAN, HON. ROSANA FE ROMERO-MAGLAYA, HON. MERIANTHE PACITA M. ZURAEK, HON. ELMO M. ALAMEDA, and HON. VICTORIA C. FERNANDEZ-BERNARDO,** Respondents.	**G.R. No. 224302** Present: SERENO, *CJ.*,* CARPIO,** VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA, BERSAMIN, DEL CASTILLO, PEREZ, MENDOZA, REYES, PERLAS-BERNABE, LEONEN, JARDELEZA, and CAGUIOA, *JJ.* Promulgated: November 29, 2016

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DECISION

LEONARDO-DE CASTRO, *J.*:

Before this Court is a Petition for *Quo Warranto* under Rule 66 and *Certiorari* and Prohibition under Rule 65 with Application for Issuance of Injunctive Writs[1] filed by petitioners Judge Philip A. Aguinaldo (Aguinaldo) of the Regional Trial Court (RTC), Muntinlupa City, Branch 207; Judge Reynaldo A. Alhambra (Alhambra) of RTC, Manila, Branch 53; Judge

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* No part.

** Senior Associate Justice presided over the proceedings.

1 *Rollo*, pp. 3-40.

Danilo S. Cruz (D. Cruz) of RTC, Pasig City, Branch 152; Judge Benjamin T. Pozon (Pozon) of RTC, Makati City, Branch 139; Judge Salvador V. Timbang, Jr. (Timbang) of RTC, Las Piñas City, Branch 253; and the Integrated Bar of the Philippines (IBP), against respondents former President Benigno Simeon C. Aquino III (Aquino), Executive Secretary Paquito N. Ochoa (Ochoa), Sandiganbayan Associate Justice Michael Frederick L. Musngi (Musngi), Sandiganbayan Associate Justice Ma. Geraldine Faith A. Econg (Econg), Atty. Danilo S. Sandoval (Sandoval), Atty. Wilhelmina B. Jorge-Wagan (Jorge-Wagan), Atty. Rosana Fe Romero-Maglaya (Romero-Maglaya), Atty. Merianthe Pacita M. Zuraek (Zuraek), Atty. Elmo M. Alameda (Alameda), and Atty. Victoria C. Fernandez-Bernardo (Fernandez-Bernardo). The Petition assails President Aquino's appointment of respondents Musngi and Econg as Associate Justices of the Sandiganbayan.[2]

I
FACTUAL ANTECEDENTS

On June 11, 1978, then President Ferdinand E. Marcos (Marcos) issued Presidential Decree No. 1486, creating a special court called the Sandiganbayan, composed of a Presiding Judge and eight Associate Judges to be appointed by the President, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations.[3] A few months later, on December 10, 1978, President Marcos also issued Presidential Decree No. 1606,[4] which elevated the rank of the members of the Sandiganbayan from Judges to Justices, co-equal in rank with the Justices of the Court of Appeals; and provided that the Sandiganbayan shall sit in three divisions of three Justices each.[5] Republic Act No. 7975[6] was approved into law on March 30, 1995 and it increased the composition of the Sandiganbayan from nine to fifteen Justices who would sit in five divisions of three members each. Republic Act No. 10660,[7] recently enacted on April 16, 2015, created two more divisions of the Sandiganbayan with three Justices each, thereby resulting in six vacant positions.

On July 20, 2015, the Judicial and Bar Council (JBC) published in the Philippine Star and Philippine Daily Inquirer and posted on the JBC website an announcement calling for applications or recommendations for the six

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2 Respondents Sandoval, Jorge-Wagan, Romero-Maglaya, Zuraek, Alameda, and Fernandez-Bernardo are sued as unwilling co-plaintiffs pursuant to Rule 3, Section 10 of the Revised Rules of Court.

3 1973 Constitution, Article XIII, Section 5.

4 Revising Presidential Decree No. 1486 Creating A Special Court To Be Known As "Sandiganbayan" And For Other Purposes.

5 Presidential Decree No. 1606, Section 3.

6 An Act To Strengthen The Functional And Structural Organization Of The Sandiganbayan, Amending For That Purpose Presidential Decree No. 1606, As Amended.

7 An Act Strengthening Further The Functional And Structural Organization Of The Sandiganbayan, Further Amending Presidential Decree No. 1606, As Amended, And Appropriating Funds Therefor.

newly created positions of Associate Justice of the Sandiganbayan.[8] After screening and selection of applicants, the JBC submitted to President Aquino six shortlists contained in six separate letters, all dated October 26, 2015, which read:

1) For the 16th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the SIXTEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. AGUINALDO, PHILIP A. - 5 votes
2. ALHAMBRA, REYNALDO A. - 5 votes
3. CRUZ, DANILO S. - 5 votes
4. POZON, BENJAMIN T. - 5 votes
5. SANDOVAL, DANILO S. - 5 votes
6. TIMBANG, SALVADOR JR. - 5 votes[9]

2) For the 17th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the SEVENTEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. CORPUS-MAÑALAC, MARYANN E. - 6 votes
2. MENDOZA-ARCEGA, MARIA THERESA V. - 6 votes
3. QUIMBO, RODOLFO NOEL S. - 6 votes
4. DIZON, MA. ANTONIA EDITA CLARIDADES - 5 votes
5. SORIANO, ANDRES BARTOLOME - 5 votes[10]

3) For the 18th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the EIGHTEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. BAGUIO, CELSO O. - 5 votes
2. DE GUZMAN-ALVAREZ, MA. TERESA E. - 5 votes
3. FERNANDEZ, BERNELITO R. - 5 votes
4. PANGANIBAN, ELVIRA DE CASTRO - 5 votes
5. SAGUN, FERNANDO JR. T. - 5 votes
6. TRESPESES, ZALDY V. - 5 votes[11]

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8 *Rollo*, p. 13.
9 Id. at 51.
10 Id. at 55.
11 Id. at 57.

4) For the 19th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the NINETEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. GUANZON, FRANCES V. - 6 votes
2. MACARAIG-GUILLEN, MARISSA - 6 votes
3. CRUZ, REYNALDO P. - 5 votes
4. PAUIG, VILMA T. - 5 votes
5. RAMOS, RENAN E. - 5 votes
6. ROXAS, RUBEN REYNALDO G. - 5 votes[12]

5) For the 20th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the TWENTIETH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes.

1. MIRANDA, KARL B. - 6 votes
2. ATAL-PAÑO, PERPETUA - 5 votes
3. BUNYI-MEDINA, THELMA - 5 votes
4. CORTEZ, LUISITO G. - 5 votes
5. FIEL-MACARAIG, GERALDINE C. - 5 votes
6. QUIMPO-SALE, ANGELENE MARY W. - 5 votes
7. JACINTO, BAYANI H. - 4 votes[13]

6) For the 21st Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the TWENTY-FIRST ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. JORGE-WAGAN, WILHELMINA B. - 6 votes
2. ECONG, GERALDINE FAITH A. - 5 votes
3. ROMERO-MAGLAYA, ROSANNA FE - 5 votes
4. ZURAEK, MERIANTHE PACITA M. - 5 votes
5. ALAMEDA, ELMO M. - 4 votes
6. FERNANDEZ-BERNARDO, VICTORIA C. - 4 votes
7. MUSNGI, MICHAEL FREDERICK L. - 4 votes[14]

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12 Id. at 59.
13 Id. at 61.
14 Id. at 53.

President Aquino issued on January 20, 2015 the appointment papers for the six new Sandiganbayan Associate Justices, namely: (1) respondent Musngi; (2) Justice Reynaldo P. Cruz (R. Cruz); (3) respondent Econg; (4) Justice Maria Theresa V. Mendoza-Arcega (Mendoza-Arcega); (5) Justice Karl B. Miranda (Miranda); and (6) Justice Zaldy V. Trespeses (Trespeses). The appointment papers were transmitted on January 25, 2016 to the six new Sandiganbayan Associate Justices, who took their oaths of office on the same day all at the Supreme Court Dignitaries Lounge. Respondent Econg, with Justices Mendoza-Arcega and Trespeses, took their oaths of office before Supreme Court Chief Justice Maria Lourdes P. A. Sereno (Sereno); while respondent Musngi, with Justices R. Cruz and Miranda, took their oaths of office before Supreme Court Associate Justice Francis H. Jardeleza (Jardeleza).[15]

Arguments of the Petitioners

Petitioners Aguinaldo, Alhambra, D. Cruz, Pozon, and Timbang (Aguinaldo, *et al.*), were all nominees in the shortlist for the 16th Sandiganbayan Associate Justice. They assert that they possess the legal standing or *locus standi* to file the instant Petition since they suffered a direct injury from President Aquino's failure to appoint any of them as the 16th Sandiganbayan Associate Justice.

Petitioner IBP avers that it comes before this Court through a taxpayer's suit, by which taxpayers may assail an alleged illegal official action where there is a claim that public funds are illegally disbursed, deflected to an improper use, or wasted through the enforcement of an invalid or unconstitutional law. Petitioner IBP also maintains that it has *locus standi* considering that the present Petition involves an issue of transcendental importance to the people as a whole, an assertion of a public right, and a subject matter of public interest. Lastly, petitioner IBP contends that as the association of all lawyers in the country, with the fundamental purpose of safeguarding the administration of justice, it has a direct interest in the validity of the appointments of the members of the Judiciary.

Petitioners base their instant Petition on the following arguments:

> PRESIDENT AQUINO VIOLATED SECTION 9, ARTICLE VIII OF THE 1987 CONSTITUTION IN THAT:
>
> (A) HE DID NOT APPOINT ANYONE FROM THE SHORTLIST SUBMITTED BY THE JBC FOR THE VACANCY FOR POSITION OF THE 16TH ASSOCIATE JUSTICE OF THE SANDIGANBAYAN; AND
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> (B) HE APPOINTED UNDERSECRETARY MUSNGI AND JUDGE ECONG AS ASSOCIATE JUSTICES OF THE

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15 Id. at 72.

SANDIGANBAYAN TO THE VACANCY FOR THE POSITION OF 21ST ASSOCIATE JUSTICE OF THE SANDIGANBAYAN.

(C) THE APPOINTMENTS MADE WERE NOT IN ACCORDANCE WITH THE SHORTLISTS SUBMITTED BY THE JUDICIAL AND BAR COUNCIL FOR EACH VACANCY, THUS AFFECTING THE ORDER OF SENIORITY OF THE ASSOCIATE JUSTICES.[16]

According to petitioners, the JBC was created under the 1987 Constitution to reduce the politicization of the appointments to the Judiciary, *i.e.*, "to rid the process of appointments to the Judiciary from the political pressure and partisan activities."[17]

Article VIII, Section 9 of the 1987 Constitution contains the mandate of the JBC, as well as the limitation on the President's appointing power to the Judiciary, thus:

> Sec. 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.
>
> For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

It is the function of the JBC to search, screen, and select nominees recommended for appointment to the Judiciary. It shall prepare a list with at least three qualified nominees for a particular vacancy in the Judiciary to be submitted to the President, who, in turn, shall appoint from the shortlist for said specific vacancy. Petitioners emphasize that Article VIII, Section 9 of the 1987 Constitution is clear and unambiguous as to the mandate of the JBC to submit a shortlist of nominees to the President for "every vacancy" to the Judiciary, as well as the limitation on the President's authority to appoint members of the Judiciary from among the nominees named in the shortlist submitted by the JBC.

In this case, the JBC submitted six separate lists, with five to seven nominees each, for the six vacancies in the Sandiganbayan, particularly, for the 16th, 17th, 18th, 19th, 20th, and 21st Associate Justices. Petitioners contend that only nominees for the position of the 16th Sandiganbayan Associate Justice may be appointed as the 16th Sandiganbayan Associate Justice, and the same goes for the nominees for each of the vacancies for the 17th, 18th, 19th, 20th, and 21st Sandiganbayan Associate Justices. However, on January 20, 2016, President Aquino issued the appointment papers for the six new Sandiganbayan Associate Justices, to wit:

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16 Id. at 15-16.

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

VACANCY IN THE SANDIGANBAYAN	PERSON APPOINTED	BAR CODE NO.	SHORTLISTED FOR
16th Associate Justice	Michael Frederick L. Musngi	PNOY019445	21st Associate Justice
17th Associate Justice	Reynaldo P. Cruz	PNOY019446	19th Associate Justice
18th Associate Justice	Geraldine Faith A. Econg	PNOY019447	21st Associate Justice
19th Associate Justice	Maria Theresa V. Mendoza-Arcega	PNOY019448	17th Associate Justice
20th Associate Justice	Karl B. Miranda	PNOY019449	20th Associate Justice
21st Associate Justice	Zaldy V. Trespeses	PNOY019450	18th Associate Justice

Petitioners observe the following infirmities in President Aquino's appointments:

> a. Michael Frederick L. Musngi, nominated for the vacancy of the 21st Associate Justice, was appointed as the 16th Associate Justice;
> b. Reynaldo P. Cruz, nominated for the vacancy of the 19th Associate Justice, was appointed as the 17th Associate Justice;
> c. Geraldine Faith A. Econg, also nominated for the vacancy of the 21st Associate Justice, but was appointed as the 18th Associate Justice;
> d. Maria Theresa V. Mendoza[-Arcega], nominated for the vacancy of the 17th Associate Justice, but was appointed as the 19th Associate Justice;
> e. Zaldy V. Trespeses, nominated for the vacancy of the 18th Associate Justice, but was appointed as the 21st Associate Justice.
>
> 60. Only the appointment of Karl B. Miranda as the 20th Associate Justice is in accordance with his nomination.[18]

Petitioners insist that President Aquino could only choose one nominee from each of the six separate shortlists submitted by the JBC for each specific vacancy, and no other; and any appointment made in deviation of this procedure is a violation of the Constitution. Hence, petitioners pray, among other reliefs, that the appointments of respondents Musngi and Econg, who belonged to the same shortlist for the position of 21st Associate Justice, be declared null and void for these were made in violation of Article VIII, Section 9 of the 1987 Constitution.

Arguments of the Respondents

The Office of the Solicitor General (OSG), on behalf of the Office of the President (OP), filed a Comment,[19] seeking the dismissal of the Petition on procedural and substantive grounds.

On matters of procedure, the OSG argues, as follows:

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18 *Rollo*, p. 22.
19 Id. at 65-93.

First, President Aquino should be dropped as a respondent in the instant case on the ground of his immunity from suit.

Second, petitioners Aguinaldo, *et al.* cannot institute an action for *quo warranto* because usurpation of public office, position, or franchise is a public wrong, and not a private injury. Hence, only the State can file such an action through the Solicitor General or public prosecutor, under Sections 2 and 3, Rule 66[20] of the Rules of Court. As an exception, an individual may commence an action for *quo warranto* in accordance with Section 5, Rule 66[21] of the Rules of Court if he/she claims entitlement to a public office or position. However, for said individual's action for *quo warranto* to prosper, he/she must prove that he/she suffered a direct injury as a result of the usurpation of public office or position; and that he/she has a clear right, and not merely a preferential right, to the contested office or position. Herein petitioners Aguinaldo, *et al.* have failed to show that they are entitled to the positions now being held by respondents Musngi and Econg, as the inclusion of petitioners Aguinaldo, *et al.* in the shortlist for the 16th Sandiganbayan Associate Justice had only given them the possibility, not the certainty, of appointment to the Sandiganbayan. Petitioners Aguinaldo, *et al.*, as nominees, only had an expectant right because their appointment to the Sandiganbayan would still be dependent upon the President's discretionary appointing power.

Third, petitioner IBP can only institute the *certiorari* and prohibition case, but not the action for *quo warranto* against respondents Musngi and Econg because it cannot comply with the direct injury requirement for the latter. Petitioner IBP justifies its *locus standi* to file the petition for *certiorari* and prohibition by invoking the exercise by this Court of its expanded power of judicial review and seeking to oust respondents Musngi and Econg as Sandiganbayan Associate Justices based on the alleged unconstitutionality of their appointments, and not on a claim of usurpation of a public office. Yet, based on *Topacio v. Ong*,[22] a petition for *certiorari* or prohibition is a collateral attack on a public officer's title, which cannot be permitted. Title to a public office can only be contested directly in a *quo warranto* proceeding.

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20 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.

Sec. 3. *When Solicitor General or Public Prosecutor May Commence Action with Permission of Court.* — The Solicitor General or a public prosecutor may, with the permission of the court in which the action is to be commenced, bring such an action at the request and upon the relation of another person; but in such case the officer bringing it may first require an indemnity for the expenses and costs of the action in an amount approved by and to be deposited in the court by the person at whose request and upon whose relation the same is brought.

21 Sec. 5. *When An Individual May Commence Such An Action.* — A person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his own name.

22 595 Phil. 491, 503 (2008).

Moreover, it is the JBC, not petitioner IBP, which has legal standing to file the present suit, as the dispute here is between the JBC and the OP. The fundamental question in this case is "whether the JBC can corral the discretion of the President to appoint, a core constitutional prerogative, by designating qualified nominees within specific, artificial numerical categories and forcing the President to appoint in accordance with those artificial numerical categories." The Court, though, is barred from deciding said question because the JBC is not a party herein.

Fourth, petitioners have erroneously included Jorge-Wagan, Romero-Maglaya, Zuraek, Alameda, and Fernandez-Bernardo (Jorge-Wagan, *et. al.*) as unwilling co-petitioners in the Petition at bar. Apart from the fact that Jorge-Wagan, *et al.* do not claim entitlement to the positions occupied by respondents Musngi and Econg, non-appointed nominees for the positions of 16th and 21st Associate Justices of the Sandiganbayan cannot simultaneously claim right to assume two vacancies in said special court.

And *fifth*, petitioners disregarded the hierarchy of courts by directly filing the instant Petition for *Quo warranto* and *Certiorari* and Prohibition before this Court. Even in cases where the Court is vested with original concurrent jurisdiction, it remains a court of last resort, not a court of first instance.

The OSG next addresses the substantive issues.

The OSG submits that the core argument of petitioners stems from their erroneous premise that there are existing numerical positions in the Sandiganbayan: the 1st being the Presiding Justice, and the succeeding 2nd to the 21st being the Associate Justices. It is the assertion of the OSG that the Sandiganbayan is composed of a Presiding Justice and 20 Associate Justices, without any numerical designations. Presidential Decree No. 1606 and its amendments do not mention vacancies for the positions of "2nd Associate Justice," "3rd Associate Justice," *etc*. There are no such items in the Judiciary because such numerical designations are only used to refer to the seniority or order of precedence of Associate Justices in collegiate courts such as the Supreme Court, Court of Appeals, Court of Tax Appeals, and Sandiganbayan.

The OSG further contends that the power to determine the order of precedence of the Associate Justices of the Sandiganbayan is reposed in the President, as part of his constitutional power to appoint. Citing Section 1, third paragraph of Presidential Decree No. 1606[23] and Rule II, Section 1 of

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23 Sec. 1. x x x. The Presiding Justice shall be so designated in his commission and the other Justices shall have precedence according to the dates of their respective commissions, or, when the commissions of two or more of them shall bear the same date, according to the order in which their commissions have been issued by the President.

the Revised Internal Rules of the Sandiganbayan,[24] the OSG explains that the order of precedence of the Associate Justices of the Sandiganbayan shall be according to the order of their appointments, that is, according to the dates of their respective commissions, or, when two or more commissions bear the same date, according to the order in which their commissions had been issued by the President. It is the averment of the OSG that the constitutional power of the JBC to recommend nominees for appointment to the Judiciary does not include the power to determine their seniority. President Aquino correctly disregarded the order of precedence in the shortlists submitted by the JBC and exercised his statutory power to determine the seniority of the appointed Sandiganbayan Associate Justices.

The OSG interprets Article VIII, Section 9 of the 1987 Constitution differently from petitioners. According to the OSG, said provision neither requires nor allows the JBC to cluster nominees for every vacancy in the Judiciary; it only mandates that for every vacancy, the JBC shall present at least three nominees, among whom the President shall appoint a member of the Judiciary. As a result, if there are six vacancies for Sandiganbayan Associate Justice, the JBC shall present, for the President's consideration, at least 18 nominees for said vacancies. In the case at bar, the JBC submitted 37 nominees for the six vacancies in the Sandiganbayan; and from said pool of 37 nominees, the President appointed the six Sandiganbayan Associate Justices, in faithful compliance with the Constitution.

It is also the position of the OSG that the President has the absolute discretion to determine who is best suited for appointment among all the qualified nominees. The very narrow reading of Article VIII, Section 9 of the 1987 Constitution proposed by petitioners unreasonably restricts the President's choices to only a few nominees even when the JBC recognized 37 nominees qualified for the position of Sandiganbayan Associate Justice. This gives the JBC, apart from its power to recommend qualified nominees, the power to dictate upon the President which among the qualified nominees should be contending for a particular vacancy. By dividing nominees into groups and artificially designating each group a numerical value, the JBC creates a substantive qualification to various judicial posts, which potentially impairs the President's prerogatives in appointing members of the Judiciary.

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[24] Sec. 1. *Composition of the Court and Rule on Precedence.* —
(a) Composition — The Sandiganbayan is composed of a Presiding Justice and fourteen (14) Associate Justices appointed by the President of the Philippines.
(b) Rule on Precedence — The Presiding Justice shall enjoy precedence over the other members of the Sandiganbayan in all official functions. The Associate Justices shall have precedence according to the order of their appointments.
(c) The Rule on Precedence shall apply:
1) In the seating arrangement;
2) In the choice of office space, facilities and equipment, transportation and cottages.
(d) The Rule on Precedence shall not be observed:
1) In social and other non-official functions.
2) To justify any variation in the assignment of cases, amount of compensation, allowances or other forms of remuneration.

The OSG additionally points out that the JBC made a categorical finding that respondents Musngi and Econg were "suitably best" for appointment as Sandiganbayan Associate Justice. The functions of the 16th Sandiganbayan Associate Justice are no different from those of the 17th, 18th, 19th, 20th, or 21st Sandiganbayan Associate Justice. Since respondents Musngi and Econg were indubitably qualified and obtained sufficient votes, it was the ministerial duty of the JBC to include them as nominees for any of the six vacancies in the Sandiganbayan presented for the President's final consideration.

Furthermore, the OSG alleges that it is highly unjust to remove respondents Musngi and Econg from their current positions on the sole ground that the nominees were divided into six groups. The JBC announced "the opening/reopening, for application or recommendation" of "[s]ix (6) newly-created positions of Associate Justice of the Sandiganbayan." Respondents Musngi and Econg applied for the vacancy of "Associate Justice of the Sandiganbayan." In its announcements for interview, the JBC stated that it would be interviewing applicants for "six (6) newly created positions of Associate Justice of the Sandiganbayan." It was only on October 26, 2015, the date of submission of the shortlists, when the nominees had been clustered into six groups. The OSG notes that there are no JBC rules on the division of nominees in cases where there are several vacancies in a collegiate court. In this case, the OSG observes that there were no measurable standards or parameters for dividing the 37 nominees into the six groups. The clustering of nominees was not based on the number of votes the nominees had garnered. The nominees were not evenly distributed among the six groups, *i.e.*, there were five nominees for 17th Sandiganbayan Associate Justice; six nominees for 16th, 18th, and 19th Sandiganbayan Associate Justices; and seven nominees for the 20th and 21st Sandiganbayan Associate Justices.

The OSG then refers to several examples demonstrating that the previous practice of the JBC was to submit only one shortlist for several vacancies in a collegiate court.

The other respondents had likewise filed their respective Comments or Manifestations:

1) In respondent Fernandez-Bernardo's Comment,[25] she recognizes the legal, substantial, and paramount significance of the ruling of the Court on the interpretation and application of Article VIII, Section 9 of the 1987 Constitution, which will serve as a judicial precedent for the guidance of the Executive and Legislative Departments, the JBC, the Bench, and the Bar.

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25 *Rollo*, p. 117.

2) Respondent Musngi states in his Manifestation[26] that he will no longer file a separate Comment and that he adopts all the averments, issues, arguments, discussions, and reliefs in the Comment of the OSG.

3) In her Comment,[27] respondent Jorge-Wagan maintains that she is not the proper party to assail the validity of the appointment of the 16th Sandiganbayan Associate Justice as she was nominated for the 21st Sandiganbayan Associate Justice; and that she is also not the proper party to seek the nullification of the appointments of respondents Musngi and Econg as Sandiganbayan Associate Justices. Not being a proper party-in-interest, respondent Jorge-Wagan argues that she cannot be considered an "unwilling co-plaintiff."

4) Respondent Romero-Maglaya makes the following averments in her Manifestation/Comment[28]: that she should not have been impleaded as a respondent or an unwilling co-plaintiff in the instant Petition because her rights as a nominee for judicial appointment were not violated; that she had no claim of entitlement to the position of Sandiganbayan Associate Justice; and that she had no participation in the alleged violation of the Constitution or exercise of grave abuse of discretion amounting to lack or excess of jurisdiction.

5) Respondent Econg manifests in her Comment[29] that while she is adopting *in toto* the arguments in the Comment of the OSG, she is also making certain factual clarifications and additional procedural and substantive averments.

Respondent Econg clarifies that her real name is Geraldine Faith A. Econg, and not Ma. Geraldine Faith A. Econg.

Respondent Econg believes that the present Petition is really for *quo warranto* because it seeks to declare null and void the respective appointments of respondents Musngi and Econg. Respondent Econg, however, asseverates that petitioners Aguinaldo, *et al.* have no clear, unquestionable franchise to the Office of Associate Justice of the Sandiganbayan simply because they had been included in the shortlist submitted for the President's consideration. Nomination is not equivalent to appointment and the removal of respondents Musngi and Econg will not automatically grant petitioners Aguinaldo, *et al.* the right to the Office of Associate Justice of the Sandiganbayan. Petitioners Aguinaldo, *et al.*, except for petitioner Alhambra, are even uncertain about their right to the position/s of 16th and/or 21st Sandiganbayan Associate Justice/s as they have also applied for the position of Sandiganbayan Associate Justice in lieu of

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26 Id. at 122-125.
27 Id. at 126-127.
28 Id. at 128C-131.
29 Id. at 132-144.

Sandiganbayan Associate Justice Teresita V. Diaz-Baldos, who eventually retired on July 22, 2016. Even assuming for the sake of argument that petitioners' alternative remedy of *certiorari* is proper, respondent Econg contends that petitioners only had 60 days to file such a petition from January 20, 2016, the date she and respondent Musngi were appointed. Petitioners belatedly filed their Petition before the Court on May 17, 2016.

Respondent Econg also raises the concern that if the Court affirms the petitioners' position that there are no valid appointments for the 16th and 21st Sandiganbayan Associate Justices, the seniority or order of precedence among the Sandiganbayan Associate Justices will be adversely affected. Respondent Econg avers that there was only one list of nominees for the six vacant positions of Sandiganbayan Associate Justice, considering that: (a) the announcement of the opening for application/recommendation was for the six newly-created positions of Sandiganbayan Associate Justice; (b) respondent Econg's application was for the six newly-created positions of Sandiganbayan Associate Justice; and (c) the announcement of the public interview of candidates was for the six newly-created positions of Sandiganbayan Associate Justice.

Thus, respondent Econg prays for, among other reliefs, the dismissal of the instant Petition for *Quo Warranto* and *Certiorari* and Prohibition for lack of merit, and the declaration that the appointments of respondents Musngi and Econg as Sandiganbayan Associate Justices are valid.

6) In respondent Sandoval's Comment,[30] he avows that he opts not to join the petitioners as he subscribes to the principle that the heart and core of the President's power to appoint is the freedom to choose. The power to appoint rests on the President and the President alone. Respondent Sandoval has already accepted the fact that he was not appointed despite being nominated by the JBC for the position of Sandiganbayan Associate Justice and he is looking forward to another opportunity to apply for a higher position in the Judiciary.

Respondents Zuraek and Almeda have not filed their comments despite notice and are deemed to have waived their right to do so.

On November 26, 2016, the JBC belatedly filed a Motion for Intervention in the Petition at bar, or more than six months from the filing of the herein Petition on May 17, 2016 and after Chief Justice Sereno, the Chairperson of the JBC herself, administered the oath of office of respondent Econg, whose appointment is now being questioned for having been done in disregard of the clustering of nominees by the JBC.

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30 Id. at 177-179.

II
The Ruling of the Court

The Court takes cognizance of the present Petition despite several procedural infirmities given the transcendental importance of the constitutional issue raised herein.

The Petition at bar is for (a) *Quo Warranto* under Rule 66 of the Revised Rules of Court; and (b) *Certiorari* and Prohibition under Rule 65 of the same Rules.

Rule 66 of the Revised Rules of Court particularly identifies who can file a special civil action of *Quo Warranto*, to wit:

> **RULE 66**
> ***Quo Warranto***
>
> Sec. 1. *Action by Government against individuals.* – An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines against:
>
> (a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise;
>
> (b) A public officer who does or suffers an act which, by the provision of law, constitutes a ground for the forfeiture of his office; or
>
> (c) An association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority so to act.
>
> 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.
>
> Sec. 3. *When Solicitor General or public prosecutor may commence action with permission of court.* – The Solicitor General or a public prosecutor may, with the permission of the court in which the action is to be commenced, bring such an action at the request and upon the relation of another person; but in such case the officer bringing it may first require an indemnity for the expenses and costs of the action in an amount approved by and to be deposited in the court by the person at whose request and upon whose relation the same is brought.
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> x x x x

> Sec. 5. *When an individual may commence such an action.* – A person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his own name.

In *Topacio v. Ong*,[31] the Court pronounced that:

> A *quo warranto* proceeding is the proper legal remedy to determine the right or title to the contested public office and to oust the holder from its enjoyment. It is brought against the person who is alleged to have usurped, intruded into, or unlawfully held or exercised the public office, and may be commenced by the Solicitor General or a public prosecutor, as the case may be, or by any person claiming to be entitled to the public office or position usurped or unlawfully held or exercised by another.
>
> Nothing is more settled than the principle, which goes back to the 1905 case of *Acosta v. Flor,* reiterated in the recent 2008 case of *Feliciano v. Villasin,* that **for a *quo warranto* petition to be successful, the private person suing must show a clear right to the contested office. In fact, not even a mere preferential right to be appointed thereto can lend a modicum of legal ground to proceed with the action.** (Emphasis supplied, citations omitted.)

Petitioners Aguinaldo, *et al.*, as nominees for the 16th Sandiganbayan Associate Justice, did not have a clear right to said position, and therefore not proper parties to a *quo warranto* proceeding. Being included in the list of nominees had given them only the possibility, but not the certainty, of being appointed to the position, given the discretionary power of the President in making judicial appointments. It is for this same reason that respondents Jorge-Wagan, *et al.*, nominees for the 21st Sandiganbayan Associate Justice, may not be impleaded as respondents or unwilling plaintiffs in a *quo warranto* proceeding. Neither can the IBP initiate a *quo warranto* proceeding to oust respondents Musngi and Econg from their currents posts as Sandiganbayan Associate Justices for the IBP does not qualify under Rule 66, Section 5 of the Revised Rules of Court as an individual claiming to be entitled to the positions in question.

Nevertheless, the Court takes in consideration the fact that the present Petition is also for *Certiorari* and Prohibition under Rule 65 of the Revised Rules of Court, which alleges that President Aquino violated Article VIII, Section 9 of the 1987 Constitution and committed grave abuse of discretion amounting to lack or excess of jurisdiction in his appointment of respondents Musngi and Econg as Sandiganbayan Associate Justices.

Article VIII, Section 1 of the 1987 Constitution vests upon the Court the expanded power of judicial review, thus:

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31 Supra note 22 at 504.

Article VIII

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

The Court recognized in *Jardeleza v. Sereno* (*Jardeleza Decision*)[32] that a "petition for *certiorari* is a proper remedy to question the act of any branch or instrumentality of the government on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions."

In opposing the instant Petition for *Certiorari* and Prohibition, the OSG cites *Topacio* in which the Court declares that title to a public office may not be contested except directly, by *quo warranto* proceedings; and it cannot be assailed collaterally, such as by *certiorari* and prohibition.[33] However, *Topacio* is not on all fours with the instant case. 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. As the Court held in *Funa v. Villar*[34]:

> Anent the aforestated posture of the OSG, there is no serious disagreement as to the propriety of the availment of *certiorari* as a medium to inquire on whether the assailed appointment of respondent Villar as COA Chairman infringed the constitution or was infected with grave abuse of discretion. For under the expanded concept of judicial review under the 1987 Constitution, the corrective hand of *certiorari* may be invoked not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government." "Grave abuse of discretion" denotes:

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32 G.R. No. 213181, August 19, 2014, 733 SCRA 279, 328.

33 *Topacio v. Ong,* supra note 22 at 503.

34 686 Phil. 571, 586-587 (2012).

> such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.
>
> We find the remedy of *certiorari* applicable to the instant case in view of the allegation that then President Macapagal-Arroyo exercised her appointing power in a manner constituting grave abuse of discretion. (Citations omitted.)

Even so, the Court finds it proper to drop President Aquino as respondent taking into account that when this Petition was filed on May 17, 2016, he was still then the incumbent President who enjoyed immunity from suit. The presidential immunity from suit remains preserved in the system of government of this country, even though not expressly reserved in the 1987 Constitution.[35] The President is granted the privilege of immunity from suit "to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office-holder's time, also demands undivided attention."[36] It is sufficient that former Executive Secretary Ochoa is named as respondent herein as he was then the head of the OP and was in-charge of releasing presidential appointments, including those to the Judiciary.[37]

Since the Petition at bar involves a question of constitutionality, the Court must determine the *locus standi* or legal standing of petitioners to file the same. The Court will exercise its power of judicial review only if the case is brought before it by a party who has the legal standing to raise the constitutional or legal question. "Legal standing" means a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged; while "interest" refers to material interest, an interest in issue and to be affected by the decree or act assailed, as distinguished from mere interest in the question involved, or a mere incidental interest. The interest of the plaintiff must be personal and not one based on a desire to vindicate the constitutional right of some third and unrelated party.[38]

In *David v. Macapagal-Arroyo*,[39] the Court acknowledged exceptional circumstances which justified liberality and relaxation of the rules on legal standing:

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35 *Lozada, Jr. v. Macapagal-Arroyo*, 686 Phil. 536, 552 (2012).
36 *Soliven v. Makasiar*, 249 Phil. 394, 400 (1988).
37 *See Kilosbayan Foundation v. Ermita*, 553 Phil. 331 (2007).
38 *Joya v. Presidential Commission on Good Government*, 296-A Phil. 595, 603 (1993).
39 522 Phil. 705, 756-760 (2006).

The difficulty of determining *locus standi* arises in public suits. Here, the plaintiff who asserts a "public right" in assailing an allegedly illegal official action, does so as a representative of the general public. He may be a person who is affected no differently from any other person. He could be suing as a "stranger," or in the category of a "citizen," or "taxpayer." In either case, he has to adequately show that he is entitled to seek judicial protection. In other words, he has to make out a sufficient interest in the vindication of the public order and the securing of relief as a "citizen" or "taxpayer."

Case law in most jurisdictions now allows both "citizen" and "taxpayer" standing in public actions. The distinction was first laid down in *Beauchamp v. Silk*, where it was held that the plaintiff in a taxpayer's suit is in a different category from the plaintiff in a citizen's suit. In the former, the plaintiff is affected by the expenditure of public funds, while in the latter, he is but the mere instrument of the public concern. As held by the New York Supreme Court in *People ex rel Case v. Collins*: "In matter of mere public right, however . . . the people are the real parties. . . It is at least the right, if not the duty, of every citizen to interfere and see that a public offence be properly pursued and punished, and that a public grievance be remedied." With respect to taxpayer's suits, *Terr v. Jordan* held that "the right of a citizen and a taxpayer to maintain an action in courts to restrain the unlawful use of public funds to his injury cannot be denied."

x x x x

However, being a mere procedural technicality, the requirement of *locus standi* may be waived by the Court in the exercise of its discretion. This was done in the 1949 Emergency Powers Cases, *Araneta v. Dinglasan*, where the "transcendental importance" of the cases prompted the Court to act liberally. Such liberality was neither a rarity nor accidental. In *Aquino v. Comelec*, this Court resolved to pass upon the issues raised due to the "far-reaching implications" of the petition notwithstanding its categorical statement that petitioner therein had no personality to file the suit. Indeed, there is a chain of cases where this liberal policy has been observed, allowing ordinary citizens, members of Congress, and civic organizations to prosecute actions involving the constitutionality or validity of laws, regulations and rulings.

Thus, the Court has adopted a rule that even where the petitioners have failed to show direct injury, they have been allowed to sue under the principle of "transcendental importance." Pertinent are the following cases:

> (1) *Chavez v. Public Estates Authority*, where the Court ruled that the enforcement of the constitutional right to information and the equitable diffusion of natural resources are matters of transcendental importance which clothe the petitioner with *locus standi*;
>
> (2) *Bagong Alyansang Makabayan v. Zamora*, wherein the Court held that "given the transcendental importance of the issues involved, the Court may relax the standing requirements and allow the suit to prosper despite

> the lack of direct injury to the parties seeking judicial review" of the Visiting Forces Agreement;
>
> (3) *Lim v. Executive Secretary*, while the Court noted that the petitioners may not file suit in their capacity as taxpayers absent a showing that "Balikatan 02-01" involves the exercise of Congress' taxing or spending powers, it reiterated its ruling in *Bagong Alyansang Makabayan v. Zamora*, that in cases of transcendental importance, the cases must be settled promptly and definitely and standing requirements may be relaxed.
>
> By way of summary, the following rules may be culled from the cases decided by this Court. Taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met:
>
> (1) the cases involve constitutional issues;
>
> (2) for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
>
> (3) for voters, there must be a showing of obvious interest in the validity of the election law in question;
>
> (4) for concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
>
> (5) for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.

While neither petitioners Aguinaldo, *et al.* nor petitioner IBP have legal standing to file a petition for *quo warranto*, they have legal standing to institute a petition for *certiorari*.

The clustering of nominees by the JBC, which the President, for justifiable reasons, did not follow, could have caused all nominees direct injury, thus, vesting them with personal and substantial interest, as the clustering limited their opportunity to be considered for appointment to only one of the six vacant positions for Sandiganbayan Associate Justice instead of all the six vacant positions to which the JBC found them as qualified for appointment. This is the far-reaching adverse consequence to petitioners Aguinaldo, *et. al.* that they have missed. More importantly, for a complete resolution of this Petition, the Court must inevitably address the issue of the validity of the clustering of nominees by the JBC for simultaneous vacancies in collegiate courts, insofar as it seriously impacts on the constitutional power of the President to appoint members of the Judiciary, which will be explained below.

One of the fundamental purposes of the IBP is to improve the administration of justice.[40] As the association of all lawyers in the country, petitioner IBP has an interest in ensuring the validity of the appointments to the Judiciary. It is recognized that the administration of justice is primarily a joint responsibility of the judge and the lawyer.[41] Definitely, lawyers cannot effectively discharge their duties if they entertain doubts, or worse, had lost their faith in judges and/or justices. It is clearly imperative for the IBP to prevent that situation from happening by exercising vigilance and ensuring that the judicial appointment process remains transparent and credible.

Given that the constitutional issue in the Petition at bar is of transcendental importance and of public interest, and for the above-mentioned reasons, the Court shall accord petitioners the legal standing to sue.

The instant Petition fundamentally challenges President Aquino's appointment of respondents Musngi and Econg as the 16th and 18th Sandiganbayan Associate Justices. Petitioners contend that only one of them should have been appointed as both of them were included in one cluster of nominees for the 21st Sandiganbayan Associate Justice. The Petition presents for resolution of the Court the issue of whether President Aquino violated Article VIII, Section 9 of the 1987 Constitution and gravely abused his discretionary power to appoint members of the Judiciary when he disregarded the clustering by the JBC of the nominees for each specific vacant position of Sandiganbayan Associate Justice. The issue is of paramount importance for it affects the validity of appointments to collegiate courts and, ultimately, the administration of justice, for if there are questions as to the right of the appointee to his position as judge/justice, then doubts shall likewise shadow all his acts as such. This will indubitably undermine the faith of the public in the judicial system. Since at hand is a constitutional issue of first impression, which will likely arise again when there are simultaneous vacancies in collegiate courts, it is imperative for the Court to already resolve the same for the guidance of the Bench and Bar, and the general public as well.

The OSG also prays for the dismissal of this Petition on the additional ground that petitioners, by coming directly before this Court, violated the hierarchy of courts. Relevant to this matter are the following pronouncements of the Court in *Querubin v. Commission on Elections*[42]:

> Notwithstanding the non-exclusivity of the original jurisdiction over applications for the issuance of writs of *certiorari*, however, the

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40 Rules of Court, Rule 139-A.
Sec. 2. *Purposes*. -The fundamental purposes of the Integrated Bar shall be to elevate the standards of the legal profession, improve the administration of justice, and enable the Bar to discharge its public responsibility more effectively.

41 *The Officers and Members of the IBP Baguio-Benguet Chapter v. Pamintuan*, 485 Phil. 473, 496 (2004).

42 G.R. No. 218787, December 8, 2015.

doctrine of hierarchy of courts dictates that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court. The rationale behind the principle is explained in *Bañez, Jr. v. Concepcion* in the following wise:

> The Court must enjoin the observance of the policy on the hierarchy of courts, and now affirms that the policy is not to be ignored without serious consequences. The strictness of the policy is designed to shield the Court from having to deal with causes that are also well within the competence of the lower courts, and thus leave time to the Court to deal with the more fundamental and more essential tasks that the Constitution has assigned to it. The Court may act on petitions for the extraordinary writs of *certiorari*, prohibition and *mandamus* only when absolutely necessary or when serious and important reasons exist to justify an exception to the policy.

Petitioners do not have the absolute and unrestrained freedom of choice of the court to which an application for *certiorari* will be directed. Indeed, referral to the Supreme Court as the court of last resort will simply be empty rhetoric if party-litigants are able to flout judicial hierarchy at will. The Court reserves the direct invocation of its jurisdiction only when there are special and important reasons clearly and especially set out in the petition that would justify the same.

In the leading case of *The Diocese of Bacolod v. Comelec*, the Court enumerated the specific instances when direct resort to this Court is allowed, to wit:

(a) When there are genuine issues of constitutionality that must be addressed at the most immediate time;

(b) When the issues involved are of transcendental importance;

(c) Cases of first impression;

(d) When the constitutional issues raised are best decided by this Court;

(e) When the time element presented in this case cannot be ignored;

(f) When the petition reviews the act of a constitutional organ;

(g) When there is no other plain, speedy, and adequate remedy in the ordinary course of law;

(h) When public welfare and the advancement of public policy so dictates, or when demanded by the broader interest of justice;

(i) When the orders complained of are patent nullities; and

> (j) When appeal is considered as clearly an inappropriate remedy. (Citations omitted.)

Inasmuch as the Petition at bar involves a constitutional question of transcendental importance and of first impression and demanded by the broader interest of justice, the Court, in the exercise of its discretion, resolves to exercise primary jurisdiction over the same.

Lastly, respondent Econg opposes the Petition at bar for being filed out of time. According to respondent Econg, the 60-day period for petitioners to file this Petition commenced on January 20, 2016, the date she and her co-respondent Musngi were appointed by President Aquino. Based on respondent Econg's argument, the 60-day period ended on March 20, 2016, Sunday, so petitioners only had until March 21, 2016, Monday, to timely file the Petition. For their part, petitioners aver that after learning of the appointments of respondents Musngi and Econg as Sandiganbayan Associate Justices from the media, they obtained copies of the shortlists for the vacancies for the 16th to the 21st Sandiganbayan Associate Justices on March 22, 2016. Counting the 60-day period from March 22, 2016, petitioners allege that they had until May 21, 2016 to file their Petition.

Rule 65, Section 4 of the Revised Rules of Court explicitly states that *certiorari* should be instituted within a period of 60 days from notice of the judgment, order, or resolution sought to be assailed. The 60-day period is inextendible to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case. The question though is when said 60-day period began to run in this case. The Court refers to its ruling in *Velicaria-Garafil v. Office of the President.*[43] In said case, the Court declared that appointment is a process. For an appointment to be valid, complete, and effective, four elements must always concur, to wit: "(1) authority to appoint and evidence of the exercise of authority, (2) transmittal of the appointment paper and evidence of the transmittal, (3) a vacant position at the time of appointment, and (4) receipt of the appointment paper and acceptance of the appointment by the appointee who possesses all the qualifications and none of the disqualifications." The Court expounded on the importance of the last element as follows:

> Acceptance is indispensable to complete an appointment. Assuming office and taking the oath amount to acceptance of the appointment. An oath of office is a qualifying requirement for a public office, a prerequisite to the full investiture of the office.
>
> *Javier v. Reyes* is instructive in showing how acceptance is indispensable to complete an appointment. On 7 November 1967, petitioner Isidro M. Javier (Javier) was appointed by then Mayor Victorino B. Aldaba as the Chief of Police of Malolos, Bulacan. The Municipal Council confirmed and approved Javier's appointment on the same date.

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43 G.R. Nos. 203372, 206290, 209138 & 212030, June 16, 2015, 758 SCRA 414, 450.

> Javier took his oath of office on 8 November 1967, and subsequently discharged the rights, prerogatives, and duties of the office. On 3 January 1968, while the approval of Javier's appointment was pending with the CSC, respondent Purificacion C. Reyes (Reyes), as the new mayor of Malolos, sent to the CSC a letter to recall Javier's appointment. Reyes also designated Police Lt. Romualdo F. Clemente as Officer-in-Charge of the police department. The CSC approved Javier's appointment as permanent on 2 May 1968, and even directed Reyes to reinstate Javier. Reyes, on the other hand, pointed to the appointment of Bayani Bernardo as Chief of Police of Malolos, Bulacan on 4 September 1967. This Court ruled that Javier's appointment prevailed over that of Bernardo. It cannot be said that Bernardo accepted his appointment because he never assumed office or took his oath.
>
> Excluding the act of acceptance from the appointment process leads us to the very evil which we seek to avoid (*i.e.*, antedating of appointments). Excluding the act of acceptance will only provide more occasions to honor the Constitutional provision in the breach. The inclusion of acceptance by the appointee as an integral part of the entire appointment process prevents the abuse of the Presidential power to appoint. It is relatively easy to antedate appointment papers and make it appear that they were issued prior to the appointment ban, but it is more difficult to simulate the entire appointment process up until acceptance by the appointee.[44] (Citations omitted.)

The records show that on January 25, 2016, the appointment papers were transmitted to and received by the six newly-appointed Sandiganbayan Associate Justices, including respondents Musngi and Econg, who, on the same day, already took their oaths of office. Therefore, pursuant to *Velicaria-Garafil*, the appointment process became complete and effective on January 25, 2016. If the Court is to count the 60-day reglementary period for filing a petition for *certiorari* from January 25, 2016, it expired on March 25, 2016. The present Petition for *Certiorari* and Prohibition was filed on May 17, 2016.

Just like any rule, however, there are recognized exceptions to the strict observance of the 60-day period for filing a petition for *certiorari*, *viz.*: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake, or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances. There should be an

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[44] Id. at 466-467.

effort, though, on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.[45]

The peculiar circumstances of this case, plus the importance of the issues involved herein, justify the relaxation of the 60-day period for the filing of this Petition for *Certiorari* and Prohibition. Indeed, the official act assailed by petitioners is the appointment by President Aquino of respondents Musngi and Econg as Sandiganbayan Associate Justices, which was completed on January 25, 2016 when said respondents took their oaths of office. Yet, petitioners could not have sought remedy from the Court at that point. As basis for petitioners' opposition to the said appointments, they needed to see and secure copies of the shortlists for the 16th to the 21st Sandiganbayan Associate Justices. It was only after petitioners obtained copies of all six shortlists on March 22, 2016 that petitioners would have been able to confirm that no one from the shortlist for the 16th Sandiganbayan Associate Justice was appointed to any of the six vacancies for Sandiganbayan Associate Justice; and that respondents Musngi and Econg, both in the shortlist for the 21st Sandiganbayan Associate Justice, were appointed as the 16th and 18th Sandiganbayan Associate Justices, respectively. In addition, respondent Econg is not unjustly prejudiced by the delay, but will even benefit from the Court resolving once and for all the questions on her right to the position of Sandiganbayan Associate Justice.

The Court reiterates that there can be no valid objection to its discretion to waive one or some procedural requirements if only to remove any impediment to address and resolve the constitutional question of transcendental importance raised in this Petition, the same having far-reaching implications insofar as the administration of justice is concerned.[46]

President Aquino did not violate the Constitution or commit grave abuse of discretion in disregarding the clustering of nominees into six separate shortlists for the six vacancies for Sandiganbayan Associate Justice.

Article VIII, Section 9 of the 1987 Constitution provides that "[t]he Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy."

The appointment process for the Judiciary seems simple enough if there is only one vacancy to consider at a time. The power of the President to appoint members of the Judiciary is beyond question, subject to the

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45 *Labao v. Flores*, 649 Phil. 213, 222-223 (2010).

46 *Social Justice Society (SJS) Officers v. Lim,* G.R. Nos. 187836 & 187916, November 25, 2014, 742 SCRA 1, 73-74.

limitation that the President can only appoint from a list of at least three nominees submitted by the JBC for every vacancy. However, the controversy in this case arose because by virtue of Republic Act No. 10660, creating two new divisions of the Sandiganbayan with three members each, there were six simultaneous vacancies for Associate Justice of said collegiate court; and that the JBC submitted six separate shortlists for the vacancies for the 16th to the 21st Sandiganbayan Associate Justices.

On one hand, petitioners assert that President Aquino's power to appoint is limited to each shortlist submitted by the JBC. President Aquino should have appointed the 16th Sandiganbayan Associate Justice from the nominees in the shortlist for the 16th Sandiganbayan Associate Justice, the 17th Sandiganbayan Associate Justice from the nominees in the shortlist for the 17th Sandiganbayan Associate Justice, and so on and so forth. By totally overlooking the nominees for the 16th Sandiganbayan Associate Justice and appointing respondents Musngi and Econg, who were both nominees for the 21st Sandiganbayan Associate Justice, as the 16th and 18th Sandiganbayan Associate Justices, respectively, President Aquino violated the 1987 Constitution and committed grave abuse of discretion amounting to lack or excess of jurisdiction.

Respondents, on the other hand, maintain that President Aquino acted in accordance with the 1987 Constitution and well-within his discretionary power to appoint members of the Judiciary when he disregarded the clustering of nominees by the JBC into six separate shortlists and collectively considered all 37 nominees named in said shortlists for the six vacancies for Sandiganbayan Associate Justice.

The primordial question then for resolution of the Court is whether President Aquino, under the circumstances, was limited to appoint only from the nominees in the shortlist submitted by the JBC for each specific vacancy.

The Court answers in the negative.

The JBC was created under the 1987 Constitution with the principal function of recommending appointees to the Judiciary.[47] It is a body, representative of all the stakeholders in the judicial appointment process, intended to rid the process of appointments to the Judiciary of the evils of political pressure and partisan activities.[48] The extent of the role of the JBC in recommending appointees vis-à-vis the power of the President to appoint members of the Judiciary was discussed during the deliberations of the Constitutional Commission (CONCOM) on July 10, 1986, thus:

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47 1987 Constitution, Article VIII, Section 8(5).

48 *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 485-486 (2013).

> MR. RODRIGO: Let me go to another point then.
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> On page 2, Section 5, there is a novel provision about appointments of members of the Supreme Court and of judges of lower courts. At present it is the President who appoints them. If there is a Commission on Appointments, then it is the President with the confirmation of the Commission on Appointments. In this proposal, we would like to establish a new office, a sort of a board composed of seven members, called the Judicial and Bar Council. And while the President will still appoint the members of the judiciary, he will be limited to the recommendees of this Council.
>
> MR. CONCEPCION: That is correct.
>
> MR. RODRIGO: And the Council will, whenever there is a vacancy, recommend three.
>
> MR. CONCEPCION: At least three for every vacancy.
>
> MR. RODRIGO: And the President cannot appoint anybody outside of the three recommendees.
>
> MR. CONCEPCION: Nomination by the Council would be one of the qualifications for appointment.[49]

It is apparent from the aforequoted CONCOM deliberations that nomination by the JBC shall be a qualification for appointment to the Judiciary, but this only means that the President cannot appoint an individual who is not nominated by the JBC. It cannot be disputed herein that respondents Musngi and Econg were indeed nominated by the JBC and, hence, qualified to be appointed as Sandiganbayan Associate Justices.

It should be stressed that the power to recommend of the JBC cannot be used to restrict or limit the President's power to appoint as the latter's prerogative to choose someone whom he/she considers worth appointing to the vacancy in the Judiciary is still paramount. As long as in the end, the President appoints someone nominated by the JBC, the appointment is valid. On this score, the Court finds herein that President Aquino was not obliged to appoint one new Sandiganbayan Associate Justice from each of the six shortlists submitted by the JBC, especially when the clustering of nominees into the six shortlists encroached on President Aquino's power to appoint members of the Judiciary from all those whom the JBC had considered to be qualified for the same positions of Sandiganbayan Associate Justice.

Moreover, in the case at bar, there were six simultaneous vacancies for the position of Sandiganbayan Associate Justice, and the JBC cannot, by clustering of the nominees, designate a numerical order of seniority of the prospective appointees. The Sandiganbayan, a collegiate court, is composed of a Presiding Justice and 20 Associate Justices divided into seven divisions, with three members each. The numerical order of the seniority or order of

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[49] Record of the Constitutional Commission, 1986, Volume I, pp. 444-445.

preference of the 20 Associate Justices is determined pursuant to law by the date and order of their commission or appointment by the President.

This is clear under Section 1, paragraph 3 of Presidential Decree No. 1606, which reads:

> Sec. 1. *Sandiganbayan; composition; qualifications; tenure; removal and compensation.* – x x x
>
> x x x x
>
> The Presiding Justice shall be so designated in his commission and the other Justices shall have precedence according to the dates of their respective commissions, or, when the commissions of two or more of them shall bear the same date, according to the order in which their commissions have been issued by the President.

Consistent with the foregoing, Rule II, Section 1(b) of the Revised Internal Rules of the Sandiganbayan similarly provides:

> Sec. 1. *Composition of the Court and Rule on Precedence.* –
>
> x x x x
>
> (b) *Rule on Precedence* – The Presiding Justice shall enjoy precedence over the other members of the Sandiganbayan in all official functions. The Associate Justices shall have precedence according to the order of their appointments.

Apropos herein is the following ruling of the Court in *Re: Seniority Among the Four (4) Most Recent Appointments to the Position of Associate Justices of the Court of Appeals*,[50] which involved the Court of Appeals, another collegiate court:

> For purposes of appointments to the judiciary, therefore, the date the commission has been signed by the President (which is the date appearing on the face of such document) is the date of the appointment. Such date will determine the seniority of the members of the Court of Appeals in connection with Section 3, Chapter I of BP 129, as amended by RA 8246. In other words, **the earlier the date of the commission of an appointee, the more senior he/she is over the other subsequent appointees. It is only when the appointments of two or more appointees bear the same date that the order of issuance of the appointments by the President becomes material**. This provision of statutory law (Section 3, Chapter I of BP 129, as amended by RA 8246) controls over the provisions of the 2009 IRCA which gives premium to the order of appointments as transmitted to this Court. Rules implementing a particular law cannot override but must give way to the law they seek to implement. (Emphasis supplied.)

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50 646 Phil. 1, 11 (2010).

Evidently, based on law, rules, and jurisprudence, the numerical order of the Sandiganbayan Associate Justices cannot be determined until their actual appointment by the President.

It bears to point out that part of the President's power to appoint members of a collegiate court, such as the Sandiganbayan, is the power to determine the seniority or order of preference of such newly appointed members by controlling the date and order of issuance of said members' appointment or commission papers. By already designating the numerical order of the vacancies, the JBC would be establishing the seniority or order of preference of the new Sandiganbayan Associate Justices even before their appointment by the President and, thus, unduly arrogating unto itself a vital part of the President's power of appointment.

There is also a legal ground why the simultaneous vacant positions of Sandiganbayan Associate Justice should not each be assigned a specific number by the JBC. The Sandiganbayan Associate Justice positions were created without any distinction as to rank in seniority or order of preference in the collegiate court. The President appoints his choice nominee to the post of Sandiganbayan Associate Justice, but not to a Sandiganbayan Associate Justice position with an identified rank, which is automatically determined by the order of issuance of appointment by the President. The appointment does not specifically pertain to the 16th, 17th, 18th, 19th, 20th, or 21st Sandiganbayan Associate Justice, because the Sandiganbayan Associate Justice's ranking is temporary and changes every time a vacancy occurs in said collegiate court. In fact, by the end of 2016, there will be two more vacancies for Sandiganbayan Associate Justice.[51] These vacancies will surely cause movement in the ranking within the Sandiganbayan. At the time of his/her appointment, a Sandiganbayan Associate Justice might be ranked 16th, but because of the two vacancies occurring in the court, the same Sandiganbayan Associate Justice may eventually be higher ranked.

Furthermore, the JBC, in sorting the qualified nominees into six clusters, one for every vacancy, could influence the appointment process beyond its constitutional mandate of recommending qualified nominees to the President. Clustering impinges upon the President's power of appointment, as well as restricts the chances for appointment of the qualified nominees, because (1) the President's option for every vacancy is limited to the five to seven nominees in the cluster; and (2) once the President has appointed from one cluster, then he is proscribed from considering the other nominees in the same cluster for the other vacancies. The said limitations are utterly without legal basis and in contravention of the President's appointing power.

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51 Per JBC Announcement dated July 7, 2016: x x x.
2. Two positions of Sandiganbayan Associate Justice (vice Justice Napoleon E. Inoturan, whose approved optional retirement is effective 1 August 2016, and vice Justice Jose R. Hernandez, who will compulsorily retire on 22 November 2016)[.]

To recall, the JBC invited applications and recommendations and conducted interviews for the "six newly created positions of Associate Justice of the Sandiganbayan." Applicants, including respondents Musngi and Econg, applied for the vacancy for "Associate Justice of the Sandiganbayan." Throughout the application process before the JBC, the six newly-created positions of Sandiganbayan Associate Justice were not specifically identified and differentiated from one another for the simple reason that there was really no legal justification to do so. The requirements and qualifications, as well as the power, duties, and responsibilities are the same for all the Sandiganbayan Associate Justices. If an individual is found to be qualified for one vacancy, then he/she is also qualified for all the other vacancies. It was only at the end of the process that the JBC precipitously clustered the 37 qualified nominees into six separate shortlists for each of the six vacant positions.

The Court notes that the clustering of nominees is a totally new practice of the JBC. Previously, the JBC submitted only one shortlist for two or more vacancies in a collegiate court. Worth reproducing below are the examples cited by the OSG:

> 77. For instance, in June 2011, there were 2 vacancies for Associate Justice of the Supreme Court. Out of 30 candidates, the JBC submitted to the President only 1 short list of 6 nominees. Based on this short list, President Aquino appointed Associate Justices Bienvenido L. Reyes, and Estela Perlas-Bernabe.
>
> 78. In January 2012, there were 3 vacancies for Associate Justice of the CA. Out of sixty-three (63) candidates, the JBC prepared only 1 short list of 13 nominees for these 3 vacancies. Based on this short list, President Aquino appointed Associate Justices Ma. Luisa C. Quijano-Padilla, Renato C. Francisco, and Jhosep Y. Lopez.
>
> 79. In June 2012, there were 3 vacancies for Associate Justice of the CA. Out of 53 candidates, the JBC submitted to the President only 1 short list of 14 nominees who obtained the required number of votes. Based on this short list, President Aquino appointed Associate Justices Henri Jean Paul B. Inting, Oscar V. Badelies, and Marie Christine Azcarraga Jacob.[52]

Additionally, in 1995, when Republic Act No. 7975 increased the divisions in the Sandiganbayan from three to five, which similarly created six simultaneous vacant positions of Sandiganbayan Associate Justice, the JBC, with then Supreme Court Chief Justice Andres R. Narvasa as Chairman, submitted a single list of nominees from which former President Fidel V. Ramos subsequently chose his six appointees. Reproduced in full below was the nomination submitted by the JBC on said occasion:

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52 *Rollo*, pp. 87-88.

July 17, 1997

HIS EXCELLENCY
PRESIDENT FIDEL V. RAMOS
Malacañan, Manila

Dear Mr. President:

Pursuant to the provisions of Article VIII, Section 9 of the Constitution, the Judicial and Bar Council has the honor to submit the nominations (in alphabetical order) for six (6) positions of Associate Justice of the Sandiganbayan, per the JBC Minutes of July 9 and 16, 1997:

1. Asuncion, Elvi John S.
2. Badoy Jr., Anacleto D.
3. Castañeda Jr., Catalino D.
4. De Castro, Teresita Leonardo
5. Fineza, Antonio J.
6. Flores, Alfredo C.
7. Gustilo, Alfredo J.
8. Hernandez, Jose R.
9. Ilarde, Ricardo M.
10. Laggui, Pedro N.
11. Lee Jr., German G.
12. Legaspi, Godofredo L.
13. Makasiar, Ramon P.
14. Mallillin, Hesiquio R.
15. Martinez, Wilfredo C.
16. Mirasol, Teodulo E.
17. Nario, Narciso S.
18. Navarro, Flordelis Ozaeta
19. Ortile, Senecio D.
20. Pineda, Ernesto L.
21. Ponferrada, Bernardo T.
22. Quimsing, Godofredo P.
23. Rivera, Candido V.
24. Rosario Jr., Eriberto U.
25. Salonga, Josefina Guevara
26. Sultan, Justo M.
27. Umali, Mariano M.

Their respective curriculum vitae are hereto attached.

Once more, on November 23, 2009, the JBC, then headed by Supreme Court Chief Justice Reynato S. Puno (Puno), submitted to former President Gloria Macapagal-Arroyo (Macapagal-Arroyo) a single list of nominees for two vacant positions of Supreme Court Associate Justice, from which President Macapagal-Arroyo ultimately appointed Associate Justices Jose P. Perez and Jose C. Mendoza. The letter of nomination of the JBC reads:

November 23, 2009

Her Excellency
President Gloria Macapagal Arroyo
Malacañang Palace
Manila

Your Excellency:

Pursuant to Section 9, Article VIII of the Constitution, the Judicial and Bar Council has the honor to submit nominations for two (2) positions of Associate Justice of the Supreme Court (vice Hon. Leonardo A. Quisumbing and Hon. Minita V. Chico-Nazario), per the JBC Minutes of even date, to wit:

1. Abdulwahid, Hakim S. - 6 votes
2. Mendoza, Jose C. - 6 votes
3. Perez, Jose P. - 5 votes
4. Villaruz, Francisco, Jr. H. - 5 votes
5. De Leon, Magdangal M. - 4 votes
6. Tijam, Noel G. - 4 votes

Their respective curriculum vitae are hereto attached.

And, as mentioned by the OSG, the JBC, during the Chairmanship of Supreme Court Chief Justice Renato C. Corona, submitted to President Aquino on June 21, 2011 just one list of nominees for two vacant positions of Supreme Court Associate Justice, from which President Aquino eventually appointed Associate Justices Bienvenido L. Reyes and Estela M. Perlas-Bernabe. Such list is fully quoted hereunder:

June 21, 2011

His Excellency
President Benigno Simeon C. Aquino III
Malacañang Palace
Manila

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council has the honor to submit nominations for the two (2) positions of ASSOCIATE JUSTICE of the SUPREME COURT, per the JBC Minutes of even date, as follows:

Reyes, Jose, Jr. C. - 7 votes
Robles, Rodolfo D. - 7 votes
De Leon, Magdangal M. - 6 votes
Reyes, Bienvenido L. - 6 votes
Bernabe, Estela Perlas - 5 votes
Dimaampao, Japar B. - 5 votes

Their respective curriculum vitae are hereto attached.

There is no explanation for the shift in practice by the JBC, which impaired the power of the President to appoint under the 1987 Constitution and his statutory authority to determine seniority in a collegiate court. The clustering by the JBC of the qualified nominees for the six vacancies for Sandiganbayan Associate Justice appears to have been done arbitrarily, there being no clear basis, standards, or guidelines for the same. The number of nominees was not even equally distributed among the clusters.

In view of the foregoing, President Aquino validly exercised his discretionary power to appoint members of the Judiciary when he disregarded the clustering of nominees into six separate shortlists for the vacancies for the 16th, 17th, 18th, 19th, 20th, and 21st Sandiganbayan Associate Justices. President Aquino merely maintained the well-established practice, consistent with the paramount Presidential constitutional prerogative, to appoint the six new Sandiganbayan Associate Justices from the 37 qualified nominees, as if embodied in one JBC list. This does not violate Article VIII, Section 9 of the 1987 Constitution which requires the President to appoint from a list of at least three nominees submitted by the JBC for every vacancy. To meet the minimum requirement under said constitutional provision of three nominees per vacancy, there should at least be 18 nominees from the JBC for the six vacancies for Sandiganbayan Associate Justice; but the minimum requirement was even exceeded herein because the JBC submitted for the President's consideration a total of 37 qualified nominees. All the six newly appointed Sandiganbayan Associate Justices met the requirement of nomination by the JBC under Article VIII, Section 9 of the 1987 Constitution. Hence, the appointments of respondents Musngi and Econg, as well as the other four new Sandiganbayan Associate Justices, are valid and do not suffer from any constitutional infirmity.

The ruling of the Court in this case shall similarly apply to the situation wherein there are closely successive vacancies in a collegiate court, to which the President shall make appointments on the same occasion, regardless of whether the JBC carried out combined or separate application process/es for the vacancies. The President is not bound by the clustering of nominees by the JBC and may consider as one the separate shortlists of nominees concurrently submitted by the JBC. As the Court already ratiocinated herein, the requirements and qualifications, as well as the power, duties, and responsibilities are the same for all the vacant posts in a collegiate court; and if an individual is found to be qualified for one vacancy, then he/she is also qualified for all the other vacancies. It is worthy of note that the JBC, in previous instances of closely successive vacancies in collegiate courts, such as the Court of Appeals and the Supreme Court, faithfully observed the practice of submitting only a single list of nominees for all the available vacancies, with at least three nominees for every vacancy, from which the President made his appointments on the same occasion. This is in keeping with the constitutional provisions on the President's exclusive power to appoint members of the Judiciary and the

mandate of the JBC to recommend qualified nominees for appointment to the Judiciary.

The Court denies the Motion for Intervention of the JBC in this Petition.

In its Motion for Intervention, the JBC echoes the arguments of the OSG in the latter's Comment that the dispute is between the JBC and the OP and it cannot be decided by the Court since the JBC is not a party, much less, a complaining party in this case. The JBC asserts that it has legal interest in the matter of litigation because it will be adversely affected by the judgment or decision in the present case, having submitted the controverted shortlists of nominees to the OP. The JBC likewise claims that its intervention will not unduly delay or prejudice the adjudication of the rights of the original parties in the case. The JBC, thus, prays that it be allowed to intervene in the instant case and to submit its complaint-in-intervention within 30 days from receipt of notice allowing its intervention.

Intervening in a case is not a matter of right but of sound discretion of the Court.[53] The allowance or disallowance of a motion for intervention rests on the sound discretion of the court after consideration of the appropriate circumstances. It is not an absolute right. The statutory rules or conditions for the right of intervention must be shown. The procedure to secure the right to intervene is to a great extent fixed by the statute or rule, and intervention can, as a rule, be secured only in accordance with the terms of the applicable provision.[54]

It bears to point out that petitioners did not name the JBC as a respondent in this case because petitioners precisely wanted the shortlists submitted by the JBC upheld; they were on the same side. Petitioners already presented the arguments for the constitutionality of and strict adherence by the President to the separate shortlists submitted by the JBC for the six simultaneous vacancies for Sandiganbayan Associate Justice. Significantly, not one of the parties moved, and not even the Court *motu proprio* ordered, to implead the JBC as an indispensable party herein.

The JBC avers in its Motion for Intervention that it has a legal interest in the Petition at bar and its intervention will not unduly delay or prejudice the adjudication of the rights of the original parties in the case.

The Court is unconvinced.

The instant Petition was filed before this Court on May 17, 2016, yet, the JBC filed its Motion for Intervention only on November 26, 2016, more

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53 *Tanjuatco v. Gako, Jr.*, 601 Phil. 193, 207 (2009).

54 *Mactan-Cebu International Airport Authority v. Heirs of Estanislao Miñoza*, 656 Phil. 537, 549 (2011).

than six months later, and even praying for an additional 30-day period from notice to submit its complaint-in-intervention. Therefore, allowing the intervention will undoubtedly delay the resolution of the case; and further delay in the resolution of this case will only perpetuate the doubts on the legitimacy of the appointments of respondents Musngi and Econg as Sandiganbayan Associate Justices, to the detriment of said court, in particular, and the entire justice system, in general. What is more, unless promptly resolved by the Court, the instant case is capable of repetition given the forthcoming vacancies in collegiate courts, particularly, the Supreme Court.

Even if the intervention of the JBC will evidently cause delay in the resolution of this case and prejudice to the original parties herein, are there compelling substantive grounds to still allow the intervention of the JBC? The JBC, through its own fault, did not provide the Court with a way to make such a determination. The Revised Rules of Court explicitly requires that the pleading-in-intervention already be attached to the motion for intervention.[55] The JBC could have already argued the merits of its case in its complaint-in-intervention. However, the JBC not only failed to attach its complaint-in-intervention to its Motion for Intervention, but it also did not provide any explanation for such failure.

The Court can reasonably assume, as well, that the JBC is well-aware of President Aquino's appointment of the six Sandiganbayan Associate Justices, including respondents Musngi and Econg, on January 20, 2015. The six newly-appointed Sandiganbayan Associate Justices all took their oaths of office on January 25, 2016 at the Supreme Court Dignitaries Lounge. Respondent Econg, with Justices Mendoza-Arcega and Trespeses, took their oaths of office before Chief Justice Sereno, who is also the Chairperson of the JBC; while respondent Musngi, with Justices R. Cruz and Miranda, took their oaths of office before Supreme Court Associate Justice Jardeleza on the same occasion and at the same venue. Despite its knowledge of the appointment and assumption of office of respondents Musngi and Econg in January 2016, the JBC did not take any action to challenge the same on the ground that President Aquino appointed respondents Musngi and Econg in disregard of the clustering of nominees by the JBC through the separate shortlists for the six vacancies for Sandiganbayan Associate Justice. The silence of the JBC all this while, for a period of eleven (11) months, can already be deemed as acquiescence to President Aquino's appointment of respondents Musngi and Econg.

For the foregoing reasons, the Court denies the Motion for Intervention of the JBC.

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[55] Rule 19, Section 2 of the Revised Rules of Court provides that, "The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties."

There are several other new rules and practices adopted by the JBC which the Court takes cognizance of as a separate administrative matter.

The Court takes cognizance of several other matters covered by the new rules and practices adopted by the JBC.

Item No. 1: The Court takes judicial notice of the fact that the JBC promulgated on September 20, 2016 JBC No. 2016-1, "The Revised Rules of the Judicial and Bar Council" (Revised JBC Rules), to take effect on October 24, 2016. Notably, the Revised JBC Rules explicitly states among its Whereas clauses:

> **WHEREAS**, the President of the Philippines may appoint only one from the list of at least three nominees for every vacancy officially transmitted by the Council to the Office of the President[.]

This is an obvious attempt by the JBC to institutionalize through the Revised JBC Rules its newly-introduced practice of clustering nominees for simultaneous vacancies in collegiate courts. The timing likewise is disturbing as the instant case is pending resolution by this Court and with existing and upcoming vacancies in several collegiate courts, *i.e.*, the Sandiganbayan, the Court of Appeals, and even this Court. As the Court has categorically declared herein, the clustering by the JBC of nominees for simultaneous vacancies in collegiate courts constitute undue limitation on and impairment of the power of the President to appoint members of the Judiciary under the 1987 Constitution. It also deprives qualified nominees equal opportunity to be considered for all vacancies, not just a specific one. Incorporating such Whereas clause into the Revised JBC Rules will not serve to legitimize an unconstitutional and unfair practice. Accordingly, such Whereas clause shall not bind the President pursuant to the pronouncements of the Court in the present Petition.

Item No. 2: The same Revised JBC Rules deleted a significant part of JBC-009, the former JBC Rules, specifically, Rule 8, Section 1, which provided:

> Sec. 1. *Due weight and regard to the recommendees of the Supreme Court.* – In every case involving an appointment to a seat in the Supreme Court, the Council shall give due weight and regard to the recommendees of the Supreme Court. For this purpose, the Council shall submit to the Court a list of candidates for any vacancy in the Court with an executive summary of its evaluation and assessment of each of them, together with all relevant records concerning the candidates from whom the Court may base the selection of its recommendees.

The deletion of this provision will likewise institutionalize the elimination by Chief Justice Sereno of the voting by the Supreme Court Justices on who among the applicants to the Supreme Court they believe are most deserving.

Through Rule 8, Section 1 of JBC-009, the JBC had accorded through the years due weight and regard to the recommendees of the Supreme Court for the vacancies in said Court. The JBC had consistently complied with said rule and furnished the Court in prior years with the list of candidates for vacancies in the Court, together with an executive summary of the evaluation and assessment of each candidate by the JBC and all relevant documents concerning the candidates, for the incumbent Justices' consideration, but stopped doing so ever since Chief Justice Sereno became the Chairperson of the JBC. Although the JBC was not bound by the list of recommendees of the Court, the JBC at least took the list under advisement. The deletion of the foregoing provision from the Revised JBC Rules formally institutionalizes Chief Justice Sereno's unilateral decision to abandon a well-established rule, procedure, and practice observed by the Court, and completely precludes the incumbent Supreme Court Justices from expressing their views on the qualifications of the applicants to the vacancies in the Supreme Court.

The Court calls attention to the fact that the JBC, in JBC-009 and the Revised JBC Rules, invites the public to give any comment or opposition against the applicants to the Judiciary.

According to Rule 1, Section 9 of JBC-009:

> Sec. 9. *Publication of list of applicants.* – The list of applicants or recommendees which the Council shall consider in a given time shall be published once in a newspaper of general circulation in the Philippines and once in a newspaper of local circulation in the province or city where the vacancy is located. **The publication shall invite the public to inform the Council within the period fixed therein of any complaint or derogatory information against the applicant.** x x x (Emphasis supplied.)

A similar provision can be found in the Revised JBC Rules as Rule 1, Section 8:

> Sec. 8. *Publication of List of Applicants.* – The list of applicants who meet the minimum qualifications and the Council's evaluative criteria prescribed in Sections 2 and 3 of Rule 3 of these Rules, which the Council shall consider in a given time, shall be published once in two newspapers of general circulation in the Philippines.
>
> **The publication shall inform the public that any complaint or opposition against applicants may be filed with the secretariat of the Council.** A copy of the list shall likewise be posted in the JBC website. (Emphasis supplied.)

Yet, Chief Justice Sereno, without consulting the Court *en banc*, has done away with the settled practice of seeking the views of the incumbent Justices on the applicants to the vacant positions in the Supreme Court.

To recall, Chief Justice Sereno had previously disregarded Rule 8, Section 1 of JBC-009, during the nomination process for the vacancy of Supreme Court Associate Justice following the retirement of Associate Justice Roberto A. Abad on May 22, 2014. As Associate Justice Arturo D. Brion narrated in his Separate Concurring Opinion in the *Jardeleza Decision*[56]:

> [Of particular note in this regard is this Court's own experience when it failed to vote for its recommendees for the position vacated by retired Associate Justice Roberto A. Abad, because of a letter dated May 29, 2014 from the Chief Justice representing to the Court that "several Justices" requested that the Court do away with the voting for Court recommendees, as provided in Section 1, Rule 8 of JBC-009. When subsequently confronted on who these Justices were, the Chief Justice failed to name anyone. As a result, applicants who could have been recommended by the Court (Jardeleza, among them), missed their chance to be nominees.][57]

The Supreme Court Justices were also not given the opportunity to know the applicants to the succeeding vacant position in the Court (to which Associate Justice Alfredo Benjamin S. Caguioa was eventually appointed) as Rule 8, Section 1 of JBC-009 was again not followed.

Item No. 3: The JBC currently has no incumbent Supreme Court Associate Justice as consultant. By practice, since the creation of the JBC, the two (2) most senior Supreme Court Associate Justices had acted as consultants of the JBC. From 1987 until 2016, the following Associate Justices of this Court, during their incumbency, served as JBC consultants:

Supreme Court Associate Justices as JBC Consultants	**Period**
Pedro L. Yap+	December 10, 1987 to April 13, 1988
Marcelo B. Fernan+	January 5, 1988 to June 29, 1988
Andres R. Narvasa	May 6, 1988 to December 5, 1991
Leo M. Medialdea+	July 21, 1988 to November 4, 1992
Ameurfina M. Herrera	January 16, 1992 to March 30, 1992
Josue N. Bellosillo	December 21, 1993 to November 13, 2003
Jose C. Vitug	November 20, 2003 to July 14, 2004
Artemio V. Panganiban	July 21, 2004 to December 19, 2005
Leonardo A. Quisumbing	January 1, 2006 to November 5, 2009
Consuelo Y. Santiago	December 11, 2006 to October 4, 2009
Renato C. Corona	November 6, 2009 to May 16, 2010
Antonio T. Carpio	October 5, 2009 to May 16, 2010 September 10, 2012 to January 28, 2014

56 *Jardeleza v. Sereno*, supra note 32.

57 Id. at 391.

Presbiterio J. Velasco, Jr.	June 4, 2012 to August 23, 2012 September 10, 2012 to [August 2016]
Teresita J. Leonardo-De Castro	June 4, 2012 to August 23, 2012 [February 1, 2014] to [August 2016][58]

Without notice, warning, or explanation to the Supreme Court *En Banc*, Chief Justice Sereno recently unceremoniously relieved Supreme Court Associate Justices Presbiterio J. Velasco, Jr. and Teresita J. Leonardo-De Castro as JBC consultants, and in their stead, the Chief Justice appointed retired Chief Justices Hilario G. Davide, Jr., Artemio V. Panganiban, and Reynato S. Puno as JBC consultants. The experience and wisdom of the three retired Chief Justices are undisputed. However, practicality and prudence also dictate that incumbent Associate Justices of the Court should be retained as JBC consultants since their interest in the Judiciary is real, actual, and direct. Incumbent Associate Justices of the Court are aware of the present state, needs, and concerns of the Judiciary, and consultants from the Court, even if they have no right to vote, have served, from the organization of the JBC, as the only link to the supervisory authority of the Court over the JBC under the 1987 Constitution. Moreover, Hon. Angelina Sandoval-Gutierrez already sits as a regular member of the JBC representing the Retired Supreme Court Justices, pursuant to Article VIII, Section 8(1) of the 1987 Constitution, which expressly describes the composition of the JBC, as follows:

> Sec. 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, **a retired Member of the Supreme Court**, and a representative of the private sector. (Emphasis supplied.)

These changes in settled rules and practices recently adopted by the JBC under Chief Justice Sereno are disconcerting. There appears to be a systematic move by the JBC, under Chief Justice Sereno to arrogate to itself more power and influence than it is actually granted by the Constitution and this Court, and at the same time, to ease out the Court from any legitimate participation in the nomination process for vacancies in the Judiciary, specifically, in the Supreme Court. This behooves the Court, through the exercise of its power of supervision over the JBC, to take a closer look into the new rules and practices of the JBC and ensure that these are in accord with the 1987 Constitution, the pertinent laws, and the governmental policies of transparency and accountability in the nomination process for vacancies in the Judiciary.

Article VIII, Section 8 of the 1987 Constitution gives the JBC the principal function of "recommending appointees to the Judiciary," but it also explicitly states that the JBC shall be "under the supervision of the Court"

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[58] http://jbc.judiciary.gov.ph/index.php/about-the-jbc/jbc-officials, Last visited October 15, 2016.

and that "[i]t may exercise such other functions and duties as the Supreme Court may assign to it."

Book IV, Chapter 7, Section 38(2) of Executive Order No. 292, otherwise known as The Administrative Code of the Philippines, defines supervision as follows:

> Sec. 38. *Definition of Administrative Relationship.* – Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:
>
> x x x x
>
> (2) *Administrative Supervision.* – (a) Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies as may be provided by law, shall be limited to the authority of the department or its equivalent to generally oversee the operations of such agencies and to insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them;
>
> (b) Such authority shall not, however, extend to: (1) appointments and other personnel actions in accordance with the decentralization of personnel functions under the Code, except when appeal is made from an action of the appointing authority, in which case the appeal shall be initially sent to the department or its equivalent, subject to appeal in accordance with law; (2) contracts entered into by the agency in the pursuit of its objectives, the review of which and other procedures related thereto shall be governed by appropriate laws, rules and regulations; and (3) the power to review, reverse, revise, or modify the decisions of regulatory agencies in the exercise of their regulatory or quasi-judicial functions; and
>
> (c) Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "supervision" shall encompass administrative supervision as defined in this paragraph.

The Court also provided the following definition of supervision in the *Jardeleza Decision*[59]:

> As a meaningful guidepost, jurisprudence provides the definition and scope of supervision. It is the power of oversight, or the authority to see that subordinate officers perform their duties. It ensures that the laws

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59 *Jardeleza v. Sereno*, supra note 32 at 326, citing *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 235 SCRA 135, 142.

> and the rules governing the conduct of a government entity are observed and complied with. Supervising officials see to it that rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed. (Citation omitted.)

"Supervision" is differentiated from "control," thus:

> Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body. Officers in control lay down the rules in the doing of an act. If they are not followed, it is discretionary on his part to order the act undone or re-done by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. Supervising officers merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done to conform to the prescribed rules. He cannot prescribe his own manner for the doing of the act.[60] (Citations omitted.)

The Court had recognized that "[s]upervision is not a meaningless thing. It is an active power. It is certainly not without limitation, but it at least implies authority to inquire into facts and conditions in order to render the power real and effective."[61]

In the exercise of its power of supervision over the JBC, the Court shall take up the aforementioned Item Nos. 2 and 3 as a separate administrative matter and direct the JBC to file its comment on the same.

WHEREFORE, premises considered, the Court **DISMISSES** the instant Petition for *Quo Warranto* and *Certiorari* and Prohibition for lack of merit. The Court **DECLARES** the clustering of nominees by the Judicial and Bar Council **UNCONSTITUTIONAL**, and the appointments of respondents Associate Justices Michael Frederick L. Musngi and Geraldine Faith A. Econg, together with the four other newly-appointed Associate Justices of the Sandiganbayan, as **VALID**. The Court further **DENIES** the Motion for Intervention of the Judicial and Bar Council in the present Petition, but **ORDERS** the Clerk of Court *En Banc* to docket as a separate administrative matter the new rules and practices of the Judicial and Bar Council which the Court took cognizance of in the preceding discussion as ***Item No. 2***: the deletion or non-inclusion in JBC No. 2016-1, or the Revised Rules of the Judicial and Bar Council, of Rule 8, Section 1 of JBC-009; and ***Item No. 3***: the removal of incumbent Senior Associate Justices of the Supreme Court as consultants of the Judicial and Bar Council, referred to in pages 35 to 40 of this Decision. The Court finally **DIRECTS** the Judicial

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60 *Bito-onon v. Yap Fernandez*, 403 Phil. 693, 702-703 (2001).

61 *Planas v. Gil*, 67 Phil. 62, 77 (1939).

and Bar Council to file its comment on said ***Item Nos. 2 and 3*** within thirty (30) days from notice.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

No part
MARIA LOURDES P. A. SERENO
Chief Justice

I join the concurring opinion of Justice Leonen
ANTONIO T. CARPIO
Senior Associate Justice, Presiding

I join the concurring opinion of J. Leonen
PRESBITERO J. VELASCO, JR.
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

I join the concurring opinion of J. Leonen
ESTELA M. PERLAS-BERNABE
Associate Justice

In the result. See separate opinion
MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

I join the concurring opinion of J. Leonen
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ANTONIO T. CARPIO
Senior Associate Justice