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

Promulgated:

June 19, 2018

x----------x

SEPARATE OPINION

JARDELEZA, *J.*:

I vote to **DENY** respondent's *Ad Cautelam* Motion for Reconsideration.

Much of the controversy surrounding this case involves the conventional wisdom (one which I myself then thought to be self-evident) that impeachment is the *only* mode of removing a sitting member of the Supreme Court. However, my study into, and consideration of, applicable original understanding, constitutional text and structure, case precedent and historical practice, both American and Philippine, occasioned as it was by this case, has since shown me otherwise.

Last May 11, 2018, a Majority of this Court relied on the special civil action for *quo warranto* to oust a sitting member of the Court, for her failure to meet a constitutional qualification. Lest there be misunderstanding, I emphasize that Our holding was neither an invention nor improvisation of existing remedies cut by this Court out of whole cloth.

On the contrary, as this Concurring Opinion will attempt to show, on the issue of jurisdiction, the majority's conclusion is supported by the following propositions:

1. The American Constitution provides that all civil officers of the United States shall be removed on impeachment.[1] Nevertheless, the controversy of whether impeachment should be the exclusive mode to remove federal judges (including justices of the United States Supreme Court) persists in pertinent scholarly discourses,[2] case law[3] and even practice of state courts[4] on the matter. It would also take a century and a half after the Philadelphia Convention of 1787 before the United States Supreme Court would be confronted with the question. In 1937, the appointment of Justice Hugo L. Black to the American Supreme Court was questioned by a citizen by direct action on the ground that it violated the emoluments clause of the

---

[1] U.S. CONSTITUTION, Article II, Section 4.

[2] *See* Saikrishna Prakash and Steven D. Smith, *How to Remove a Federal Judge*, 116 Yale L. J. 72 (2006).

[3] *Chandler v. Judicial Council of the Tenth Circuit*, 398 U.S. 74 (1970).

[4] See *Commonwealth v. Fowler*, 10 Mass. 290 (1813); see J.F.D., *The Missouri Supreme Judgeship/ Conflict between Executive and Judiciary. Powers of Constitutional Convention. Quo Warranto*, The American Law Register (1852-1891), Vol. 13, No. 12, New Series Volume 4 (Oct., 1865), p. 719.

Constitution.[5] In *Ex Parte Levitt,* the United States Supreme Court dismissed the petition on the ground that the petitioner lacked standing, **not** that impeachment is the exclusive mode to unseat a sitting justice of the Court.[6] In 2009, the United States Supreme Court denied *certiorari*[7] and let stand a United States Court of Appeals decision denying standing to a litigant who questioned then President Barack Obama's natural born citizenship.[8]

2. Meanwhile, while we essentially incorporated the text of the impeachment clause of the American Constitution into our 1935 Constitution,[9] this Court, in 1966 and in the context of the doctrine of separation of powers, would stake a grand constitutional principle defining the reach of judicial power respecting contests relating to the qualifications of all public officers. In *Lopez v. Roxas*,[10] it would hold that the power to be the judge of contests relating to, among others, the *qualifications* of *all* public officers is a power that belongs *exclusively* to the judicial department. The 1987 Constitution would constitutionalize this deep principle by providing that the Supreme Court, sitting en banc, shall be the sole judge of all contests relating to, among others, the *qualifications* of the President or the Vice-President.[11] It would also not be amiss to note that the 1934 Constitutional Convention, in a marked departure from the process under the American Constitution on the removal of members of Congress,[12] provided for an Electoral Commission for each house of the Congress, the membership of which included three justices of the Supreme Court. This Commission was mandated to be the sole judge of all contests relating to, among others, the *qualifications* of the Members of Congress.[13]

3. In 2011, in *In the matter of the charges of Plagiarism, etc., against Associate Justice Mariano C. Del Castillo (In re Del Castillo)*, twelve Members of the Court asserted the administrative authority to investigate and discipline its Members for official infractions that do not constitute impeachable offenses and mete penalties short of removal.[14]

---

[5] U.S. CONSTITUTION, Article I, Section b; see *The Ineligibility Clause's Lost History: Presidential Patronage and Congress, 1787-1850*, Harv. L. Rev., Vol. 123, No. 7, May 2010; Paul R. Lieggi, *The Ineligibility Clause; An Historical Approach to Its Interpretation and Application*, 14 J. Marshall L. Rev. p. 819 (1981); Richard David Hofstetter, *Survey of Constitutional Law, Part I: Special Legislation of Ineligibility Clause,* 31 Rutgers L. Rev. p. 388 (1978).

[6] 302 U.S. 633 (1937).

[7] *Berg v. Obama*, 555 U.S. 1126 (2009); *Berg v. Obama*, 555 U.S. 1134 (2009).

[8] *Berg v. Obama*, 586 F.3d 234, 242 (2009).

[9] 1935 CONSTITUTION, Article IX, Section 1.

[10] G.R. No. L-25716, July 28, 1966, 17 SCRA 756.

[11] 1987 CONSTITUTION, Article VII, Section 5.

[12] U.S. CONSTITUTION, Article I, Section 5.

[13] 1935 CONSTITUTION, Article VI, Section 11.

[14] A.M. No. 10-7-17-SC, February 8, 2011, 642 SCRA 11, 76 (Concurring Opinion of J. Abad).

After careful consideration and analysis of all the foregoing, I am convinced that (and contrary to respondent's claim) judicial integrity can only be preserved if the Supreme Court, in the exercise of its judicial powers, is recognized to be vested with the authority to oust and remove one of their Own, if that sitting Justice is proven to lack a constitutional *qualification*.

I find that the *raison d'etre* for the removal (with the sole or substantial participation of this Court) of the President, the Vice-President, and Members of Congress, all duly-elected high-ranking officials of the two other separate and co-equal Branches of Government, applies with equal, if not more, cogency to the case of a member of the Court whose constitutional *qualification* has been similarly put in issue. Since judicial power is defined to include the exclusive authority of the judicial department to judge contests relating to the *qualifications* of any public officer, to which class a Member of this Court undeniably belongs, perforce the Court has the authority to oust one of its Own when the Court finds that he/she lacks the qualifications required of him/her by the Constitution.

To be sure, impeachment is accurately described as a process fundamentally political in nature,[15] with the French aptly calling it "political justice."[16] So different was it from the judicial process that then Representative Gerald Ford, in furtherance of President Richard M. Nixon's aborted campaign to impeach United States Supreme Court Justice William O. Douglas, would cynically define an impeachable offense as "whatever a majority of the House of Representatives considers it to be at a given moment in in history."[17] Conviction by the Senate, he explained, would depend only on "whatever offense or offenses two-thirds of the other body considers... sufficiently serious to require removal of the accused from office."[18]

It is in these lights that I cast my lot with the Majority. For me, it is unnatural, even aberrant, of any Member of this Court to prefer that a case (where his or her legal *qualification* to the office of Justice of this Court is in issue) be decided by way of a political, rather than judicial, process.

I

Impeachment is an exceptional method of removing public officials lodged with, and exercised by, the Congress with great circumspection.[19] It is fundamentally political in nature,[20] as it involves government and the interplay of the sovereign power in removing unfit public officials vis-à-vis

---

[15] Alexander Hamilton, *The Federalist No. 65.*
[16] Bernas, S.J., *The Constitution of the Republic of the Philippines–A Commentary* (1996), p. 989.
[17] Laurence Tribe and Joshua Matz, *To End A Presidency* (2018), p. 25.
[18] *Id.* at 25-26.
[19] A more detailed discussion on impeachment is attached as Appendix A.
[20] Alexander Hamilton, *The Federalist No. 65.*

the state's protection of its high-level public officers.[21] From the face of Sections 1 to 3 of Article XI of the 1987 Constitution, it further discernibly appears that the main purpose of the institution of an impeachment proceeding is to exact accountability in the enumerated impeachable public officers.

As it stands now in accordance with our Constitution, in the judicial branch, it is only the Justices of the Supreme Court who are removable via impeachment.[22] In contemplation of the lengthier terms that Supreme Court justices may occupy their positions, impeachment was created as a recourse against an erring judicial officer who would otherwise remain unremoved until retirement:

> To guard against the selection or retention of unfit presidents and vice-presidents, the Constitution provides for periodic elections. Frequent and regular elections mean that if the American people are unhappy with the job that these officers are doing, or disapprove of their behavior generally, they may turn them out of office... But what about judges who engage in odious behavior, but who ostensibly hold their offices for life? To provide a means for removing civil officers who abuse their power in office, the impeachment process was devised as a grave remedy of last resort.[23]

A

The exclusivity of impeachment as a mode of removing a judicial officer, however, is far from settled. My survey of existing scholarly writing on the issue shows that there have been two main opposing views on the dispute. The first view champions the impeachment-only argument, with Hamilton,[24] Story,[25] Kent,[26] Tucker[27] and Kaufman[28] as its leading advocates. In *The Federalist, No. 79*, Alexander Hamilton wrote:

> The precautions for [judges'] responsibility are comprised in the article respecting impeachments. They are liable to be impeached for malconduct by the House of Representatives and tried by the Senate; and, if convicted, may be dismissed from office and disqualified for holding any other. This is the only provision on the point which is consistent with the necessary independence of the judicial character, and is the only one which we find in our own Constitution in respect to our own judges. The want of a

---

[21] This power was given to the most political of the branches of government because of sound and practical considerations on the nature of impeachment. Originally, the Framers of the American Federal Constitution considered placing the impeachment power with the Federal Judiciary. However, this plan was discarded because the Constitutional Framers felt that the Legislature was the most "fit depositary of this important trust" and it was doubted if the members of the Supreme Court "would possess the degree of credit and authority" to carry out its judgment if it conflicted with Congress' authority.

[22] In the U.S., federal judges are also impeachable officers.

[23] Emily Field Van Tassel and Paul Finkelman, *Impeachable Offenses–A Documentary History from 1787 to Present*, Congressional Quarterly Inc., 1999, pp. 2-3.

[24] *The Federalist Nos. 78 and 79.*

[25] J. Story, *Commentaries on the Constitution,* §§ 1599-1635 (1833).

[26] J. Kent, *Commentaries on American Law*, XIV (1826).

[27] St. G. Tucker, W. Blackstone, *Commentaries*, 353, 359-60 (App.) (Tucker ed. 1803).

[28] See Irving R. Kaufman, *Chilling Judicial Independence*, in Benjamin N. Cardozo Memorial Lectures Delivered at the Association of the Bar of the City of New York (1996).

> provision for removing the judges on account of inability has been a subject of complaint. But all considerate men will be sensible that such a provision would either not be practiced upon or would be more liable to abuse than calculated to answer any good purpose. The mensuration of the faculties of the mind has, I believe, no place in the catalogue of known arts. An attempt to fix the boundary between the regions of ability and inability would much oftener give scope to personal and party attachments and enmities than advance the interests of justice or the public good. The result, except in the case of insanity, must for the most part be arbitrary; and insanity, without any formal or express provision, may be safely pronounced to be a virtual disqualification.[29]

Hamilton's other *Federalist* writings also support a narrow reading of the above passage. In another part of the *Federalist No. 79,* Hamilton observed that judges "if they behave properly, will be secure in their places for life."[30] However, despite several writings expressing the narrower view of mode of removal, the American Constitution's text did not textually embrace Hamilton's position, and his writings ran contradictory to centuries of contrary convention of constitutional textual support.[31]

Irving Kaufman, a hardliner for the impeachment-only view, acknowledged the steady rise in the number of scholars who suggest that impeachment is not the only mode to effect judicial removal.[32] He opined, however, "that the very absence of a removal provision in Article III of the U.S. Constitution indicated that the Framers must have intended that bad behavior be dealt with by impeachment."[33] Kaufman added that if easier procedures for removal are appropriate for the judges in whom the Constitution vested the judicial power of the country, their independence may as well be a "snare" and a "delusion."[34]

Since impeachment and conviction entail, by design, a highly deliberative and cumbersome decision-making process, it has been argued that it would be implausible for the founders to have purposefully chosen a painstaking mechanism for disciplining judicial "Treason, Bribery, or other high Crimes and Misdemeanors," then leave open to Congress or to the President the removal of federal judges on lesser grounds and less exacting means. This exclusivity view was also seen as consistent with Supreme Court decisions on the separation of powers, where it found impeachment to be the sole mechanism through which Congress may participate in decisions to remove executive officers.[35]

---

[29] *Supra* note 24 at 474.

[30] Saikrishna Prakash and Steven D. Smith, *How to Remove a Federal Judge,* 116 Yale L.J. 72, 120 (2006), citing *The Federalist No. 79.*

[31] *Id.*

[32] Irving R. Kaufman, *Chilling Judicial Independence*, in Benjamin N. Cardozo Memorial Lectures Delivered at the Association of the Bar of the City of New York, p. 1190 (1996).

[33] *Id.* at 1191.

[34] *Id.*

[35] Peter M. Shane, *Who May Discipline or Remove Federal Judges? A Constitutional Analysis*, 209 U. Pa. L. Rev. 142, 209 (1993), citing *Bowsher v. Synar*, 478 U.S. 714, 722-23 (1986) (finding that officers of the United States can be removed "only upon impeachment by the House of Representatives and conviction by the Senate"); *Myers v. United States*, 272 U.S. 52, 114-15, 170 (1926) (quoting with

On the contrapositive side of the argument are those who contend that impeachment is **not** the exclusive mode of removing a federal judge, keeping open the legal defensibility and compelling logic of judicial modes of removal.

Burke Shartel, as echoed by Raoul Berger and Michael Gerhardt, proffer along this line of reasoning. They rest their case in large measure on the proposition that the Constitution should not be understood to have ruled out a "rational method of improving the administration of justice."[36] The main argument asserts that since there might be transgressions of the "good behavior" standard which do not rise to the level of impeachable offenses, it is not constitutionally inconceivable to have a mechanism for removal apart from impeachment for judges whose conduct are unimpeachable but nonetheless warrant removal.

In his advocacy of *judicial* removal of judges, Shartel stopped short of removal of Supreme Court Justices on the ground that "there is no agency in the judiciary branch to remove the Justices of the Supreme Court." He suggested instead that "perhaps Congress could confer statutory authority on the Supreme Court as a whole to remove its own offending members."[37] Shartel's reasoning was further described, thus:

> He contended that the impeachment clause of Article II was a limitation on the power of the Congress to remove judges, and Article III a limitation on the executive power of removal. No constitutional limitation existed on the power of Congress to define "good behavior" in Article III and to provide a mechanism whereby the judiciary could try the fitness of its own members.'" In other words, judicial power to try the fitness of judges was not prohibited, though the executive was deprived of all power, and the legislature limited to impeachment. Slight support for this conclusion can be found in the case law construing Article II with respect to non-judicial civil officers; in that context, it has been held that impeachment is not the sole power of removal, as there might be conduct less than good behavior that is not a high crime or misdemeanor, for example, insanity or senility where the judge's condition is morally blameless.[38]

Berger, for his analysis, argued against the exclusivity of impeachment in this wise:

> Judicial tenure "during good behaviour" was terminated at common law by bad behavior, and since impeachable offenses, that is, "high crimes and misdemeanors" are not identical with all breaches of "good behavior" but merely overlap in the case of serious misconduct, there exist an implied power to remove judges whose "misbehavior" falls short of "high crimes and misdemeanors."

---

approval President Coolidge's statement that "[t]he dismissal of an officer of the Government ... other than by impeachment, is exclusively an executive function").

[36] Preble Stolz, *Disciplining Federal Judges: Is Impeachment Hopeless*, 57 Cal. L. Rev. 659, p. 660 (1969).

[37] *Supra* note 35.

[38] Preble Stolz, *Disciplining Federal Judges: Is Impeachment Hopeless*, *supra* at 661.

> Traditionally, forfeiture upon a breach of a condition subsequent was a judicial function, and a forfeiture of a judicial office therefore falls within Article III "judicial power." Congress may add the forfeiture of a judicial office for misbehavior to the forfeiture jurisdiction or, if necessary, it may under the "necessary and proper" clause provide a new remedy for forfeiture of judicial office, in order to effectuate the implied power to remove a judge whose tenure was terminated by his misbehavior.
>
> The argument that the impeachment provisions bar the way [to other modes of removal] sacrifices a necessary power to a canon of construction. With Chief Justice Marshall, I should want nothing less than an express prohibition to preclude beneficial exercise of an implied means. Those who would deny to Congress the right to select the means for the termination implicit in the constitutional text – "during good behavior" – have the burden of establishing the preclusion.

In addition, Berger, responding to the strong criticism of a judicial mode of removal of a judge which Kaufman described as one that would "pose an ominous threat to...judicial independence,"[39] and effectively be "a dragnet that would inevitably sweep into its grasp the maverick, the dissenter, the innovator," countered:

> To object to the trial of a judge for misconduct, by his judicial peers drawn from the entire United States is to cast doubt on the fairness of the judicial process. If such a panel cannot be trusted to fairly try a "dissenter" for alleged judicial misconduct, no more can a district judge be trusted to try social rebels. If the process is good enough for the common man in matters of life or death, it is good enough for the trial of a judge's fitness to try others.

Berger further reckoned that, in the actual history of the impeachment power as a tool for disciplining judges who commit misdemeanors, the very tedious design of the process has in fact proven counterproductive, as it took the time of the entire Senate away from legislative duties. It had consistently been resorted to with "extreme reluctance," even in cases of the most reprehensible impropriety.[40] This, in turn, resulted in a scenario where a majority of cases of misconduct went unvisited, finally achieving an end opposite that which the Framers conceivably intended – that impeachment became a "standing invitation for judges to abuse their authority with impunity and without fear of removal." Berger further added that judicious search revealed that other leading legal luminaries on the bench, including Chief Justice Burger,[41] Justice Blackmun,[42] Justice Rehnquist,[43] and Justice

---

[39] Irving R. Kaufman, *Chilling Judicial Independence*, in Benjamin N. Cardozo Memorial Lectures Delivered at the Association of the Bar of the City of New York, p. 1183.

[40] Raoul Berger, *Chilling Judicial Independence: A Scarecrow*, 64 Cornell L. Rev. 822, 825 (1979).

[41] *Id.*, citing *Nomination of Warren E. Burger, of Virginia, to be Chief Justice of the United States: Hearings Before the Senate Comm. On the Judiciary*, 91st Cong., 1st Sess. 11 (1969).

[42] *Id.*, citing *Nomination of Harry A. Blackmun, of Minnesota, to be Associate Justice of the Supreme Court of the United States: Hearings Before the Senate Comm. On the Judiciary,* 91st Cong., 2d Sess. 52 (1970).

[43] *Id.*, citing *The Independence of Federal Judges: Hearings Before the Subcomm. On Separation of Powers of the Senate Comm. On the Judiciary*, 91st Cong., 2d Sess. 330 (1970) (statement of W. Rehnquist, Asst. Attorney General of the United States).

Tom Clark,[44] saw proposals for judicial removal of judges as non-threats, and regarded them as constitutional.

B

While these debates have been ongoing since the time American founding fathers decided (in the Philadelphia Convention of 1759) to subject federal judges to removal by impeachment, state courts would in the meantime continue to turn to other devices (specifically, *quo warranto*) to oust erring judges. State legal history and jurisprudence present us with cases, dating back as early as the 1800's, where the fitness of a sitting judge was challenged through the application for a writ of *quo warranto* on allegations of constitutional disqualifications.[45]

In 1833, the Supreme Court of Alabama, in *State Ex. Rel. Attorney Gen. v. Paul,* refused to resolve the question of the right of a judge to hold the office of justice of a newly-created judicial circuit, when his appointment to the same was made by the very legislature of which the judge was a member immediately prior thereto.[46] In its application for a writ of *quo warranto*, the Attorney General raised, as a constitutional disqualification, the section of the State Constitution which provided "that no senator or representative shall, during the terms which he shall have been elected, be appointed to any civil office of profit, under this State, which shall have been created, or the emoluments of which shall have been increased, during such term; except such offices as may be filled by elections by the people."[47] There, the Court, after deciding that the action for writ of *quo warranto* was a proper proceeding, held that the separation of powers of government left the judiciary powerless to review the act of the legislature in making the appointment.[48]

Seven years later, the same issue was brought before the same State Supreme Court, in the case of *State ex. rel. Attorney Gen. v. Porter.*[49] Although the case became moot due to the resignation of the judge so challenged upon commencement of the proceedings, the court in *Porter* nevertheless took the opportunity to overrule its 1833 decision by upholding its competency to decide the constitutionality of such an appointment. It announced further that "the powers of this court not only authorize, but require it, in a proper case, to determine whether an individual, elected to the bench by the two houses of the General Assembly, possesses the

---

[44] *Id.*, citing Clark, *Judicial Self-Regulation – Its Potential,* 35 L. & Contemp. Probs. 37, 40-41 (1970).

[45] Ernest E. Jr. Clulow; Lester M. Ponder; Harry C. Nail; Garfield O. Anderson, *Constitutional Objections to the Appointment of a Member of a Legislature to Judicial Office: Remedies: Interest of Parties: Authority to Determine the Issue*, 6 Geo. Wash. L. Rev. 46 (1937). A more detailed discussion on *quo warranto* is attached as Appendix B.

[46] *Id.*, citing *State Ex. Rel. Attorney Gen. v. Paul,* 5 Stew. & P. 40 (1833).

[47] *Id.*, citing the Constitution of Alabama, Article 3, Section 25.

[48] *Id.*

[49] Ernest E. Jr. Clulow, *et al.*, *Constitutional Objections to the Appointment of a Member of a Legislature to Judicial Office: Remedies: Interest of Parties: Authority to Determine the Issue*, *supra*; 1 Ala. 68[illegible] (1840).

constitutional qualifications for the office."[50] In *Porter*, the court was "entirely satisfied that the respondent was ineligible to the judgeship of the tenth circuit... and should cause a judgment of ouster to be rendered," had the issue not been rendered moot.

At the next crucial point, the case of *Ex Parte Levitt*[51] became most instructive. In October 1937, the appointment of Hugo L. Black to the office of Associate Justice of the United States Supreme Court was similarly challenged, through a direct action to show cause,[52] filed by one Albert Levitt, a citizen and member of the bar. Prior to his appointment, Justice Black served as Senator from Alabama for over a decade, ending in his recommendation and appointment to a seat in the U.S. Supreme Court (succeeding retired Justice Willis Van Devanter) by President Franklin D. Roosevelt. The petition centered on Justice Black's alleged ineligibility due to the prohibition in the Constitution under the emoluments clause.[53] On October 11, 1937, the U.S. Supreme Court dismissed Levitt's action on the ground of lack of sufficient interest in the contested office. Chief Justice Hughes, departing from familiar practice, announced from the Bench the Court's reasons for its action:

> The motion papers disclose no interest upon the part of the petitioner other than that of a citizen and a member of the bar of this court. That is insufficient. It is an established principle that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action, he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public.[54]

It bears stressing what the U.S. Supreme Court did not do in *Levitt*. Despite the received tradition that justices of the American Supreme Court can be removed from office exclusively by impeachment,[55] it did not dismiss Levitt's motion on the ground that impeachment is the exclusive mode of removing a sitting Justice of the Court. This, to me, signified that the U.S. High Court deemed itself proper to entertain a petition to remove a sitting Justice from its very own bench.

Contemporary scholarly commentary on *Ex Parte Levitt*[56] analyzed the various federal remedies available to those who dispute the right to occupy a

---

[50] *Id.*

[51] 302 U.S. 633 (1937).

[52] Ernest E. Jr. Clulow, *et al.*, *Constitutional Objections to the Appointment of a Member of a Legislature to Judicial Office: Remedies: Interest of Parties: Authority to Determine the Issue*, *supra* note 45, Appendix A.

[53] This clause, found under Article I, Section 6, cl. 2. of the U.S. Constitution, provided that no Senator or Representative, during the time for which he was elected, should be appointed to any civil office of the United States, which was created, or the emoluments of which were increased during the appointee's term.

[54] 303 U.S. 633 (1937).

[55] U.S. CONSTITUTION, Article II, Section 4.

[56] Ernest E. Jr. Clulow, *et al.*, *Constitutional Objections to the Appointment of a Member of a Legislature to Judicial Office: Remedies: Interest of Parties: Authority to Determine the Issue*, *supra* note 45.

public office, including *habeas corpus*, injunction, writ of prohibition, writ of *certiorari*, *mandamus* and *quo warranto*.[57] Clulow, et.al.'s central argument is: short of finding a proper party, "**[t]he only other remedy which is undoubtedly available is quo warranto.**"[58]

As earlier stated, the U.S. Supreme Court, in the 2009 case of *Berg v. Obama*, denied *certiorari* and allowed to stand a United States Court of Appeals decision dismissing a declaratory judgment finding then-Presidential Candidate Obama ineligible under the natural-born clause requirement of the U.S. Constitution.[59] The Court of Appeals held that plaintiff Berg, a lawyer, lacked sufficient standing, holding the door open to a list of parties "...who could have challenged, or could still challenge, Obama's eligibility through various means..."[60]

II

This Part shall discuss the development of our own Constitution's provisions on removal of public officials on issues of qualification.

In 1966, this Court, in *Lopez v. Roxas*,[61] was asked to resolve a petition to prevent the Presidential Electoral Tribunal, created by Republic Act No. 1793 (R.A. No. 1793) and composed of the Chief Justice and the other ten members of the Supreme Court, from hearing and deciding an election contest for the position of Vice President of the Republic of the Philippines. In dismissing the petition, We upheld the inherently judicial nature of deciding questions of qualification and said:

> x x x **the power to be the "judge ... of ... contests relating to the election, returns, and qualifications" of any public officer is essentially judicial.** As such — under the very principle of separation of powers invoked by petitioner herein — **it belongs exclusively to the judicial department, except only insofar as the Constitution provides otherwise.** This is precisely the reason why said organic law ordains that "the Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members." In other words, the purpose of this provision was to exclude the power to decide such contests relating to Members of Congress—which by nature is judicial—from the operation of the general grant of judicial power to "the Supreme Court and such inferior courts as may be established by law."[62]

Prior to *Lopez,* however, there had already been textual recognition of the essentially judicial (and concededly, counter-majoritarian) nature of the process for resolving questions of eligibility/qualification of public officers.

---

[57] *Id.* at 48-57.
[58] *Id.* at 52. Emphasis supplied.
[59] *Berg v. Obama*, 555 U.S. 1126 (2009); *Berg v. Obama*, 555 U.S. 1134 (2009).
[60] *Berg v. Obama*, 586 F.3d 234, 242 (2009).
[61] *Supra* note 10. Emphasis in the original.
[62] *Id.*

As earlier discussed, our 1935 Constitution, for example, created an Electoral Commission to act as the sole judge of all contests relating to the election, returns, and qualifications of members of each house of the Congress.[63] In stark contrast with the process under the U.S. Constitution, which provided that each House of Congress shall be the judge of the election, returns, and qualifications of its own members,[64] our framers provided that such issues shall be decided by a nine person-tribunal, three members of whom shall come from the Supreme Court.[65] Justice Laurel, in the landmark case of *Angara v. Electoral Commission*,[66] noted that the Constitutional Convention sought to cure, with a body "endowed with judicial temper," the evil of the "scandalously notorious canvassing of votes by political parties."[67]

The 1973 Constitution would later give the Supreme Court not only original jurisdiction over petitions for *quo warranto*,[68] a grant which the Legislature cannot remove, but also the express power to discipline (and, by a vote of at least eight members, dismiss) judges of inferior courts.[69] The 1986 Constitution would contain a further provision "constitutionalizing" R.A. No. 1793 (and *Lopez*) by expressly empowering the Supreme Court, sitting *en banc*, to be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice President.[70]

In addition to the foregoing, our Constitution, in its three iterations since 1935, would also adopt provisions relating to the qualification requirements for judges, and the vetting process for the confirmation of judicial appointments, all of which bear directly on the question of whether in our jurisdiction the impeachment mode to remove judges has remained exclusive. These include: (1) the addition of the so-called moral provision to the qualifications of members of the judiciary, namely, that they be of proven competence, integrity, probity, and independence;[71] (2) the creation of a Judicial and Bar Council, which is vested with the principal function of recommending to the President appointees to the Judiciary;[72] (3) the requirement, upon assumption of office and as often thereafter as may be required by law, for all public officers and employees to submit a declaration under oath of his assets, liabilities, and net worth (SALN);[73] and, finally, (4) the grant to the Supreme Court of its so-called expanded power of judicial

---

[63] Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* (2003), p. 725.
[64] *Id.*
[65] Six of the other Members were to be chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second largest number of votes therein (1935 CONSTITUTION, Article VI, Section 4).
[66] 63 Phil. 170 (1936).
[67] See Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* (2003), p. 726, citing 63 Phil. 170 (1936).
[68] 1973 CONSTITUTION, Article X, Section 5(1). A more detailed discussion on Quo Warranto is attached as Appendix B.
[69] 1973 CONSTITUTION, Article X, Section 7.
[70] 1986 CONSTITUTION, Article VII, Section 4.
[71] Article VIII, Section 7.
[72] Article VII, Section 8(1) and (5) and Section 9.
[73] Article XI, Section 17.

review, which is the duty to determine whether 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.[74]

To my mind, the textual recognition of the essentially judicial nature of questions of qualifications, coupled with the accumulated effect of all of the above changes to the Constitution we have surveyed, have been to create a distinctive Philippine constitutional law on impeachment *and* removal, respecting judges. Unlike the American constitutional provision which seems to maintain impeachment as the exclusive mode of removing judicial officials, the exigencies of our recognized need to exact accountability from public officials in general, and members of the judiciary, in particular, has led us to create a constitutional structure where the existence of the inarguably political power of impeachment against members of this Court does not necessarily preclude/exclude removal by the Court itself of its own members on issues of eligibility for failure to meet constitutionally-set qualifications.

III

Judicial independence, or the independence of the judiciary as an institution from other branches of government,[75] is said to be most crucial in "periods of intolerance."[76] Here, it has been repeatedly alleged that, by giving due course to the Solicitor General's petition for *quo warranto* filed against respondent, the Court may have irreparably compromised its independence for political ends. Not only does this argument have no basis other than the fact that respondent has styled herself as one of the staunchest critics of the present Administration, it also appears to operate on the erroneous premise that judicial independence is incompatible with judicial discipline.[77] On this score, I find Justice Brion's following words in *In re Del Castillo* to be *apropos*:

---

[74] Article VIII, Section 1.

[75] Irving R. Kaufman, *Chilling Judicial Independence*, in Benjamin N. Cardozo Memorial Lectures Delivered at the Association of the Bar of the City of New York (1996), p. 1209.

[76] *Id.* at 1211.

[77] It is recognized that a number of commentators have asserted arguments demonstrating the exclusivity of impeachment as a political device for judicial discipline, with three factors supposedly mandating that conclusion: (1) the Constitution's failure to authorize expressly any disciplinary procedure other than removal, (2) the ideal of judicial independence embodied in Article III, and (3) the contemporary statements such as the above quoted passages from The Federalist and the Letters of Brutus regarding the exclusivity of impeachment as a removal device.

If followed categorically, however, such an analysis would leave the government with no procedural avenue other than impeachment for disciplining sitting judges guilty of misconduct, and no disciplinary sanctions other than removal and disqualification for punishing such judges. The net effect of this line of thought, among others, is a scenario wherein the Supreme Court's hands are tied, and it relegated to "watch helplessly–for the reason that the power to act is granted solely to Congress under the express terms of the Constitution–as its own Members prostitute its integrity as an institution." (Separate Concurring Opinion of Justice Brion, *In re Del Castillo*, *supra* note 14 at 64-65).

Such an interpretation would also be inconsistent with the accepted standards for removal of a judge, and the fact that removal is not the only price exacted for every incident of judicial misconduct. This contrary understanding eliminates the demonstrated spectrum of possible misconduct, as well as the gradations of sanctions that correspond to them, and further implies that the justice is only either perfect/incapable of misstep or that the Court has to wait for the gravest of transgressions before an erring

> x x x Another interest to consider is the need for judicial integrity – a term not expressly mentioned in the Article on the Judiciary (Article VIII), but is a basic concept found in Article XI (on Accountability of Public Officers) of the Constitution. It is important as this constitutional interest underlies the independent and responsible Judiciary that Article VIII establishes and protects. To be exact, it complements judicial independence as integrity and independence affect and support one another; only a Judiciary with integrity can be a truly independent Judiciary. Judicial integrity, too, directly relates to public trust and accountability that the Constitution seeks in the strongest terms. x x x[78]

Conversely, a proscription against the Court disciplining its own members - by virtue of the argument that impeachment (undertaken solely by Congress) is the only administrative disciplinary proceeding available - is arguably *counterintuitive* to the spirit of judicial independence, as it ties the Court's hands from meting out the extreme penalty of removal in the disciplining of its own bench.

Indeed, while judicial independence and freedom are unquestionably desirable (if not necessary) values, judicial discipline is also equally important to ensure that the conduct of the justice system's individual judges, especially its highest magistrates, is beyond question.[79] The purpose of judicial discipline is, after all, not to punish the erring judge but more to preserve the integrity of the judicial system and safeguard the bench and the public from those who are unfit.[80] Thus, and in concrete terms, our Constitution sets out several disciplinary powers that necessarily capacitate[81]

Justice can be subject to discipline. This would, in turn, inarguably mean that the Framers of the Constitution have conceded the condonation and tolerance of misdemeanors and misconduct of judicial officers that do not tilt the scales in equal weight as those offenses of impeachable gravity.

Viewed from the lens of the doctrine of separation of powers among the three equal branches of government, a state's highest court must necessarily possess the inherent power to all its judges, including those of them on the highest court, for to deny a state's highest court the power to discipline *all* its members would be to deny such a court equality with the other two branches. These conclusions are likewise buttressed by the argument that forms of discipline that depend on the judiciary for their effectuation do not threaten the separation of powers. The basic idea behind separation of powers is that the three great branches of government must be separate, coordinate and equal, (*Id.*, citing *Humphrey's Ex'r v. United States*, 295 U.S. 602, 629-30 (1934), with each branch free to function without restriction, supervision or interference by the other two branches. (*Id.*, citing Carrigan, *Inherent Powers and Finance,* 7 TRIAL 22 (Nov./Dec. 1971). The separation of powers doctrine implies that each branch of government has inherent power to "keep its own house in order," absent a specific grant of power to another branch, such as the power to impeach. (*Id.*, citing Comment, *The Limitations of Article III on the Proposed Judicial Removal Machinery: S. 1506*, 118 PA. L. REV. 1064, 1067-68 (1970) [hereinafter cited as LIMITATIONS OF ARTICLE III].) It recognizes that each branch of government must have sufficient power to carry out its assigned tasks and that these constitutionally assigned tasks will be performed properly within the governmental branch itself. (*Id.*, citing Traynor, *Who Can Best Judge the Judges, 53* VA. L. REV. 1266 (1967) [hereinafter cited as Traynor].

[78] Separate Concurring Opinion of Justice Brion, *In re Del Castillo, supra* note 14 at 62.

[79] Lisa L. Lewis, *Judicial Discipline, Removal and Retirement,* 1976 Wis. L. Rev. 563, 563 (1976).

[80] Cynthia Gray, *A Study of State Judicial Discipline Sanctions,* Am. Jud. Soc. (2002). See also Robin Cooke, *Empowerment and Accountability: The Quest for Administrative Justice* (1992) 18 Commonwealth Law Bulletin 1326; Lisa L. Lewis, *Judicial Discipline, Removal and Retirement*, Wis. L. Rev. p. 563 (1976), citing *Courts-Judicial Removal-Establishment of Judicial Commission for Removal of Judges Precludes Legislative Investigation of Judicial Misconduct,* 84 Harv. L. Rev. pp. 1002-1005 (1971); *Judicial Integrity,* 44 J. Am. Jud. Soc. P. 165 (1961).

[81] This inherent power in administrative discipline is elucidated by Justice Brion in his Separate Concurring Opinion, *In re Del Castillo, supra* note 14 at 65 to wit:

the Court to "keep its own house in order," and thereby preserve the integrity of the judicial system, namely: (1) admission and discipline of members of the Bar,[82] (2) contempt powers,[83] (3) discipline and removal of judges of lower courts,[84] and (4) the general power of administrative supervision over *all* courts and the personnel thereof.[85] Moreover, the Internal Rules of the Supreme Court (2010)[86] expressly included, for the first time, "cases involving the discipline of a Member of the Court"[87] as among those matters and cases falling within the purview of the Court *en banc*.[88]

There have been at least three cases of judicial discipline respecting sitting members of the Supreme Court. The most recent one is *In Re: Del Castillo*,[89] which involved charges of plagiarism against a sitting member of the Supreme Court and confronted the long-held debate over the disciplinary measures that may be taken against a sitting Supreme Court Justice. In her Separate Dissenting Opinion therein, Justice Carpio-Morales noted two other instances, *In re Undated Letter of Biraogo* and Bar Matter No. 979, wherein the Supreme Court conducted disciplinary proceedings against two Justices, both of whom were incumbent members at the time of the proceedings. While the Decisions in these cases meted penalties short of removal (in *In Re Del Castillo*, the Court eventually resolved to dismiss the case for lack of merit), all of them unequivocally signified an acknowledgment on the part of the Court of its power to enforce judicial discipline within its ranks. To me, the underlying principles supporting a recognition of such power on the part of the Court is no different from those that support a finding of a power to

---

> Independent of the grant of supervisory authority and at a more basic level, the Supreme Court cannot be expected to play its role in the constitutional democratic scheme solely on the basis of the Constitution's express grant of powers. Implied in these grants are the inherent powers that every entity endowed with life (even artificial life) and burdened with responsibilities can and must exercise if it is to survive. The Court cannot but have the right to defend itself to ensure that its integrity and that of the Judiciary it oversees are kept intact. This is particularly true when its integrity is attacked or placed at risk by its very own Members — a situation that is not unknown in the history of the Court.

[82] CONSTITUTION, Article VIII, Section 5(5); RULES OF COURT, Rules 138 and 139-B.

[83] RULES OF COURT, Rule 71.

[84] CONSTITUTION, Article VIII, Section 11; RULES OF COURT, Rule 140.

[85] Cynthia Gray, *A Study of State Judicial Discipline Sanctions*, American Judicature Society (2002); available at www.ajs.org/ethics/pdfs/Sanctions.pdf.

[86] A.M. No. 10-4-20-SC, May 4, 2010.

[87] Rule 2, Sec. 3, par. (h), A.M. No. 10-4-20-SC, May 4, 2010.

[88] Elucidating on the procedure, Section 13, Rule 2 of the Court's Internal Rules provides:

> Sec. 13. *Ethics Committee.* — In addition to the above, a permanent Committee on Ethics and Ethical Standards shall be established and chaired by the Chief Justice, with following membership:
>
> a) a working Vice-Chair appointed by the Chief Justice;
>
> b) three (3) members chosen among themselves by the *en banc* by secret vote; and
>
> c) a retired Supreme Court Justice chosen by the Chief Justice as a non-voting observer-consultant.
>
> The Vice-Chair, the Members and the Retired Supreme Court Justice shall serve for a term of one (1) year, with the election in the case of elected Members to be held at the call of the Chief Justice.
>
> The Committee shall have the task of preliminarily investigating all complaints involving graft and corruption and violations of ethical standards, including anonymous complaints, filed against Members of the Court, and of submitting findings and recommendations to the *en banc*. All proceedings shall be completely confidential. The Committee shall also monitor and report to the Court the progress of the investigation of similar complaints against Supreme Court officials and employees, and handle the annual update of the Court's ethical rules and standards for submission to the *en banc*. (Emphasis and underscoring supplied).

[89] A.M. No.10-7-17-SC, October 12, 2010, 632 SCRA 607.

inquire into (and decide) issues of its own members with respect to constitutionally-set *qualifications*.

On another note, I disagree with the view of Justice Leonen, as expressed in his Dissent, that vesting in the Court the power to oust one of its Own could result to dissenters being targeted for judicial removal. With respect, for me, this argument proceeds from the erroneous premise that judicial accountability and the power of dissent cancel each other out. As shown by history, judicial discipline and accountability have always held the line to safeguard both institutional and individual judicial independence, and to impute that the freedom of dissent will be negated by the option of judicial removal is a precarious fallacy of unwarranted assumptions.

In converse truth, the very existence of the elbow room for dissent owes itself in large measure to judicial accountability, inasmuch as dissents continuously ensure that no one sitting magistrate may stifle the voice of another who is moved to "show why the judgment of his fellows are worthy of contradiction."[90] Disabusing the Court from the notion that judicial unanimity was required for legitimacy, the subsequent and prevailing tradition has since been to allow dissenting opinions to serve many utilities, including: (1) leading the majority opinion to sharpen and polish its initial draft; (2) attracting public attention for legislative change; and (3) giving the Court the farsighted contingency to correct its mistake in case of a future opportunity.[91]

A dissenter has indeed been described as one whose opinion 'speak[s] to the future... his voice... pitched to a key that will carry through the years,"[92] "recording prophecy and shaping history."[93] Most dissents that have become the majority opinion in later years have also proven right by Chief Justice Hughes' elegant definition of the same when he said "a dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed."[94]

These celebrated dissents were made possible through the synergized efforts of striving for judicial independence without sacrificing the system's corporate and individual integrity. Judicial accountability provided a court

---

[90] *Dissenting Opinions*, University of Pennsylvania Law Review and American Law Register, Volume 1, No. 3, March 1923, p. 206. See also Evan A. Evans, *Dissenting Opinion–Its Use and Abuse,* 3 Mo. L. Rev. (1938), citing *Georgia v. Brailsford*, 2 U.S. 2 Dall. 415, 415 (1793).

[91] Ruth Bader Ginsburg, *The Role of Dissenting Opinions*, Presentation to the Harvard Club of Washington, D.C., on December 17, 2009, pp. 3, 4, 6.

[92] Bernice B. Donald, *The Intrajudicial Factor in Judicial Independence: Reflections on Collegiality and Dissent in Multi-Member Courts*, available at www.memphis.edu/law/documents/donald/pdf, last accessed on June 6, 2018, citing Benjamin Cordozo, Law & Literature, p. 36 (1931).

[93] *Ferguson v. Moore-McCormack Lines*, 352 U.S. 521, 528 (1957).

[94] Randall T. Shepard, *Perspectives: Notable Dissents in State Constitutional Cases-What Can Dissents Teach Us*, 68 Alb. L. Rev. 337 (2005), citing C. Hughes, *The Supreme Court of the Unites States*, 68 (1921).

environment conducive for the flourishing of dissents by serving as the constant check for abuse and intimidation. It has made vastly more difficult any given majority of a multi-membered court to gag their colleagues into concession or silence. It has made space for the glorious dissents of Justice Curtis in *Dred Scott*,[95] Justice Harlan in *Plessy*,[96] and Justice Jackson in *Korematsu*,[97] to be heard. I find that the claim that the exercise of the general supervision of the Court over its own members would equate to silencing of dissent unduly underestimates the good faith and good sense of the Members of the Court.

Judicial accountability and integrity operatively protect *all* types of dissent, whether self-seeking or sincere, whether truly intuitive of future wisdom or merely self-consciously done for the sake of itself. It safeguards dissents whether borne out of honest convictions or self-perpetuation. What remains to be seen is verifiable empirical proof to substantiate the belief that the dissenting voice has been persecuted in the historical experience of judicial removal; an unease that seems to be more apparent than it is real.[98] There is only therefore a cognitive leap between judicial options for removal and stifling of dissent, as judicial accountability and integrity give dissent a protected platform and a breathing room, a voice that warrants the belief of authenticity.

Conclusion

It is not difficult to concede that the impeachment-only argument is popular, especially if the Constitution is understood as a restricted enumeration of powers.[99] As I stated in the outset, I myself previously thought its premises to be correct. The reality, however, is that, prior to this case, there has been no factual occasion for the examination (or rejection) of the plausibility of the impeachment-only view in the context of an actual case and controversy involving an incumbent Justice of the Supreme Court, where this exclusive view could be tested on all accounts.[100] Thus, while it is not hard to imagine how the impeachment-only argument respecting our country's highest ranking judicial magistrates might be accepted as resolved, this case has forced us to look more closely into its historical, legal, and logical bases. Upon doing so, I am convinced that impeachment is **not** an exclusive mode of removal respecting justices of the Supreme Court, respecting their constitutional *qualifications.*

I am further convinced that this reading gives more life to the Constitution's promise of accountability of public officers, not excluding the

---

[95] *Dred Scott v. Sandford,* 60 U.S. 393, 564-633, (1857), Curtis, J. dissenting.
[96] *Plessy v. Ferguson,* 163 U.S. 537, 552-62 (1896), Harlan, J. dissenting.
[97] *Korematsu v. United States,* 323 U.S. 214, 242-48 (1944), Jackson, J. dissenting.
[98] There appears to be neither historical evidence nor contemporary commentary offered to show any single instance of judicial removal founded on the concerned judge's propensity to dissent.
[99] Saikrishna Prakash and Steven D. Smith, *How to Remove a Federal Judge,* 116 Yale L.J. 72, 135 (2006). Available at: http://digitalcommons .law.yale.edu/ylj/vol116/iss1/2.
[100] *Id.* at 136.

Court's own. I thus affirm my non-recusal and concurrence to the analysis of the ponencia and Justice De Castro on why, under the facts, respondent's integrity was not proven on account of her repeated failures to file her SALNs. The Chief Justice of the Supreme Court is the highest fiduciary in the Judicial Branch of the government. The discharge of the fiduciary duties of the Chief Justice, respecting her obligation to file her SALNs, is thus not measured by the standard applicable to Doblado.[101] Rather, in the words of Judge Cardozo, "Not honesty alone, but the punctilio of an honor the most sensitive, is... the standard of behavior."[102]

FOR ALL THE FOREGOING REASONS, I vote to **DENY** respondent's *Ad Cautelam* Motion for Reconsideration.

FRANCIS H. JARDELEZA
Associate Justice

[101] *Concerned Taxpayer v. Doblada, Jr.*, A.M. No. P-99-1342, September 20, 2005, 470 SCRA 218.
[102] *Meinhard v. Salmon*, 249 NY 458 (1928).

Impeachment: History and Rationale

Impeachment is an exceptional method of removing public officials lodged with and exercised by the Congress with great circumspection. It is widely considered *sui generis* and characteristically political, with penal and judicial attributes.[1] It is an extraordinary means of removal exercised by the legislature over impeachable officials, with the purpose of "ensuring the highest care in their indictment and conviction and the imposition of special penalties in the case of a finding of guilt."[2] The purpose of impeachment is to remove an officer who is no longer fit to occupy the office so held, and shall not extend further, although proper prosecution, trial and punishment according to law are not foreclosed.[3]

The principle that public office is a public trust is the core principle of the impeachment power with its primary objective the removal from office and disqualification of the public officer, who is deemed unfit. This mechanism was installed by the pragmatic consideration that men in public office might fail to discharge their duties in the manner befitting of their posts.[4] As clarified in the deliberations of the Constitutional Commission of 1986 on the impeachment provision:

> MR. REGALADO. Just for the record, what would the Committee envision as a betrayal of the public trust which is not otherwise covered by the other terms antecedent thereto?
> MR. ROMULO. I think, if I may speak for the Committee and subject to further comments of Commissioner de los Reyes, the concept is that this is a catchall phrase. Really, it refers to his oath of office, in the end that the idea of a public trust is connected with the oath of office of the officer, and if he violates that oath of office, then he has betrayed that trust.
>
> x x x x
>
> MR. DE LOS REYES. The reason I proposed this amendment is that during the Regular Batasang Pambansa when there was a move to impeach then President Marcos, there were arguments to the effect that there is no ground for impeachment because there is no proof that President Marcos committed criminal acts which are punishable, or considered penal offenses. And so the term "betrayal of public trust" is a catchall phrase to include all acts which are not punishable by statutes

---

1 Antonio R. Tupaz and Edsel C.F. Tupaz, *Fundamentals on Impeachment,* (2001), pp. 6-8.
2 Isagani Cruz, *Philippine Political Law*, (1989 ed.), pp. 313-314.
3 Section 7, Article XI, 1987 Constitution.
4 *Supra* note 2.

> as penal offenses but, nonetheless, render the officer unfit to continue in office. It includes betrayal of public interest, inexcusable negligence of duty, tyrannical abuse of power, breach of official duty by malfeasance or misfeasance, cronyism, favouritism, etc to the prejudice of public interest and which tend to bring the office into disrepute. That is the purpose, Madam President.[5]

It is also fundamentally political in nature,[6] with the French even calling it "political justice"[7] as it "involves government and the arching interplay of interests – the interest of the sovereign in removing unfit public officials versus the state interest in protecting high-level public officers."[8] From the face of Sections 1-3 of Article XI of the 1987 Constitution, it further discernibly appears that the main purpose of the institution of an impeachment proceeding is to exact accountability in the enumerated public officers.

The impeachment process in the Philippines traces its origins back to the American law on impeachment, which was in turn borrowed from the English parliament practice, thus making the law on impeachment common law in origin.[9] Impeachment began in the late fourteenth century when the Commons found the need to prosecute before the Lords offenders and officers of the Crown.[10] The parliament of Great Britain developed the impeachment process to be able to exercise some measure of control over the King and officials who operated under his authority. It sought to prosecute ministers of the King, who with near absolute power would have been untouchable; thereby putting the parliamentary supreme.[11] It was further described as "the most powerful weapon in the political armory, short of civil war,"[12] largely viewed as a means for the ouster of corrupt officers, and was for the English "the chief institution for

---

5 *Record of the Constitutional Commission: Proceedings and Debates*, Vol. II, p. 272.

6 Alexander Hamilton, *The Federalist No. 65.*

7 Fr. Joaquin Bernas, S.J., *The Constitution of the Republic of the Philippines – A Commentary*, (1986 ed.), p. 989.

8 This power was given to the most political of the branches of government because of sound and practical considerations on the nature of impeachment. Originally, the Framers of the American Federal Constitution considered placing the impeachment power with the Federal Judiciary. However, this plan was discarded because the Constitutional Framers felt that the Legislature was the most "fit depositary of this important trust' and it was doubted if the members of the Supreme Court "would possess the degree of credit and authority" to carry out its judgment if it conflicted with Congress' authority.

9 *Supra* note 1 at 4.

10 Raoul Berger, *Impeachment: The Constitutional Problems, Harvard University Press,* 1973, citing Joseph Borkin, *The Corrupt Judge*, New York, (1962).

11 The House of Commons did not exercise the right to impeach sparingly. For instance, during the reign of James I (1603-1625) and Charles I (1628-1649), over 100 impeachments were voted by it.

12 *Supra* note 1 at 4, citing Plucknett, *Presidential Address* reproduced in 3 Transactions, Royal Historical Society, 5th Series, (1952), p. 145.

the preservation of the government".[13] It was also initially not limited to removal from office, but included the imposition of all sorts of punishment, including sentencing people to death.[14] In its English advent, it was an expansive parliamentary tool of criminal prosecution and punishment, meant to be a drastic remedy, "essential but dangerous," to be used only in "imperative cases."[15]

The Founders conceived impeachment chiefly as a "bridle" upon the President and his officers,[16] a heavy "piece of artillery" as to be "unfit for ordinary use".[17] Hamilton further elucidated that impeachment was "designed as a method of national inquest into the conduct of public men" and could result in a sentence of doom "to a perpetual ostracism from the esteem and confidence, and honors and emoluments of his country". The impeachment standard appears to be purposively burdensome, designed to limit impeachment to only the gravest kinds of errors of a political nature that is directed against the state.[18] The process was entrusted to the Senate rather than the Supreme Court because the "awful discretion which a court of impeachment must necessarily have, to doom to honor or to infamy the most confidential and the most distinguished characters of the community, forbids the commitment of the trust to a small number of persons".[19]

When the English parliament practice was borrowed by the American Framers, the latter appropriated impeachment as the political weapon and remedy against executive tyranny. Impeachment was deemed "indispensable" to fend against "the incapacity, negligence or perfidy of the chief Magistrate".

Acts constituting grounds for impeachment

The offenses covered as grounds by impeachment are those that are political in nature. The political offenses, as differentiated from criminal offenses, were described as those that "proceed from the misconduct of public men, or in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated *political,* as they relate chiefly to

---

[13] *Supra* note 1 at 4, citing John Hatsell's *Precedents of Proceedings in the House of Commons*, (1956), p. 63.

[14] Saikrishna Prakash and Steven D. Smith, *How to Remove a Federal Judge,* (2006), 116 Yale L.J. 72, 110 & 136.

[15] Irving Kaufman, *Chilling Judicial Independence*, in Benjamin N. Cardozo Memorial Lecture, p. 1200.

[16] Arthur Bestor, *Impeachment*, (1973), 49 Wash. L. Rev. 255, 258.

[17] *Id.*, citing Viscount James Bryce, *The American Commonwealth*, (1908), p. 233.

[18] *Supra* note 14 at 135.

[19] J. Hampden Dougherty, *Inherent Limitations upon Impeachment*, (1913-14), 23 Yale L.J. 60, 70.

injuries done immediately to the society itself."[20] According to Justice Joseph Story in his *Commentaries on the Constitution* in 1833:

> The acts covered by impeachment are therefore enlarged in operation, and reaches what are aptly termed political offense, growing out of personal misconduct or gross neglect, or usurpation, or habitual disregard of the public interests, various in their character, and so indefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law. They must be examined upon very broad and comprehensive principles of public policy and duty. They must be judged by the habits and rules and principles of diplomacy, or departmental operations and arrangements, of parliament practice, of executive customs, and negotiations, of foreign as well as domestic political movements; and in short, by a great variety of circumstances, as well as those which aggravate as those which extenuate or justify the offensive acts which do not properly belong to the judicial character in the ordinary administration of justice, and are far removed from the reach of municipal jurisprudence.[21]

A similar view was articulated by Judge Lawrence who described impeachment as a proceeding for removal of any officer "who fills his office in a way detrimental to the public interest," which presumes that impeachable offenses cover official acts carried out during incumbency.[22] Impeachable offenses have also been believed to cover (1) criminal offenses, (2) political offenses, and (3) any breach of either type of duty implies an offense which gives rise to an impeachment.[23]

Majority of the debate as to the breadth and scope of impeachable offenses dwell on whether impeachable offenses may cover only acts that are official in character, or also those that are done in personal capacity. With respect to whether acts that may constitute grounds for impeachment are limited to those committed during incumbency in the position from which the official is sought to be impeached, or whether it may extend to acts done prior to assumption into office, a reading of the Constitutional Commission deliberations, as well as historical supportive discussions on the origin of impeachment suggest that the acts constitutive of impeachment grounds are those that are done during incumbency.

---

[20] *Supra* note 6 at 423-424.

[21] Justice Joseph Story, *Commentaries on the Constitution*, (1905, 5th ed.), §764, p. 559.

[22] Jerome S. Sloan; Ira E. Garr, *Treason, Bribery, or Other High Crimes and Misdemeanors - A Study of Impeachment*, (1974), 47 Temp. L.Q. 413, 414 (citing Lawrence, *The Law of Impeachment*, (1867), 6 Am L. Register (N.S.) 641).

[23] *Id.* at 455.

Additional historical basis that may support this is the original conception of impeachment of judicial officers, i.e. to terminate their tenure on account of bad behavior, which reasonably implies that the act which must trigger the termination of tenure must necessarily be one committed *during* the tenure sought to be terminated.

Impeachment of Judicial Officers

Americans were originally familiar with three models of judicial accountability to political authority. These were systems by which judges could be removed (1) by the Executive at will,[24] (2) by the Executive upon "address" from the legislature,[25] or (3) by legislative bodies through impeachment. One of the major grievances of the English was the vulnerability of judges to at-will discharge by the Stuart monarchs, which prevailed throughout most of the 17th century.[26]

Regarding impeachment as a mode of removing federal judges, it has been universally considered as an ineffective method of discipline, "illusory"[27] at best, mainly due to the fact that it had been used for political ends. It has likewise been criticized as an inadequate device for removal largely due to practical imperfections of the actual process,[28] including the legislators' lack of time or training for the role of a judge in a trial-like proceeding.[29] Legislative removal proceedings were also largely subject to broad publicity which tended to expose the challenged judge to unwarranted conclusions without the benefit of actual parliamentary determination of guilt.[30]

The earliest version of the process as invoked for the removal of judicial officers contemplated offenses that were considered departures from "good behavior"[31] that merited the end of the judge's

---

[24] Peter M. Shane, *Who May Discipline or Remove Federal Judges? A Constitutional Analysis*, 209 U. Pa. L. Rev., 142, 215.

[25] *Id.*, citing See Joseph H. Smith, *An Independent Judiciary: The Colonial Background,* (1976), 124 U. Pa. L. Rev. 1104, 1113 (describing attempt by the Pennsylvania Assembly in the 17 00s to insist that colonial judges be displaced for misbehavior at the request of the Assembly); *id.* at 1153-55 (describing address under, inter alia, the Bill of Rights of the Massachusetts Constitution of 1780, the Delaware and Maryland Constitutions of 1776, and the South Carolina Constitution of 1778); An address is a concurrent resolution of both houses of the legislature requesting the governor to remove a judge from office.

[26] *The Declaration of Independence,* (U.S. 1776), para. 10 ("He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.").

[27] Lisa L. Lewis, *Judicial Discipline, Removal and Retirement,* (1976), 1976 Wis. L. Rev. 563, 564.

[28] *Id.* at 566.

[29] *Id.*

[30] *Id.* at 567.

[31] "Good behavior" is commonly associated with the Act of Settlement (1700) which granted judges tenure *quamdiu se bene gesserint,* that is, for so long as they conduct themselves well, and also provide for termination by the Crown upon the Address of both Houses of Parliament. The origin of "good behavior" long antedates the Act. Judge St. George Tucker, a pioneer commentator on the Constitution, noted in 1803 that "these words in all commissions and

tenure.[32] It is held that an office held "during good behavior" is terminated by the grantee's misbehavior, through the execution of a rational device for removal.[33] The English practice refrained from referring to "good behavior" as something to be determined by the impeachment process in the courts or before bodies specifically designated as the adjudicators of misbehavior. Instead, the authorities who addressed the issue referred to a judicial process. The English law provided a proceeding to forfeit the office by a writ of *scire facias.*[34] The function of this writ was explained by Burke Shartel in this wise:

> The English Constitution knew certain *judicial* proceedings for the forfeiture of office. Judges, and other officers, holding good behavior by patent from the King, were removable by *scire facias* in the King's Bench... The causes of forfeiture were misconduct and neglect of duty; and the judgment of ouster, essential to complete the forfeiture, was not difference in substance and effect from a judgment of removal.[35]

This writ was the remedy to repeal a patent in case of forfeiture.[36] Several examples in history also seem to illustrate that judges saw trial by judges as the familiar and preferred remedy over trial before the Parliament.[37] In 1628, Sir John Walter, the Chief baron of the Exchequer, refused to surrender his patent of appointment on the ground that he should not be removed except through a proceeding on *scire facias.*[38] In 1672, Sir John Archer, a Justice of the Common Pleas similarly refused to surrender his patent of appointment without the benefit of *scire facias.*[39] Finally, in 1806, Lord Chancellor Erskine, on whether to resort to trial before the parliament for the removal of Justice Luke Fox of Common Pleas in England, summarized the rationale behind the preference as such: 'Were their Lordships afraid to trust the ordinary tribunals upon this occasion, to let the guilt or innocence of the honorable judge be

---

grants, public and private, imported an office or estate, for the life of the grantee, determinable only by his death, or breach of good behavior". In the Pennsylvania Ratification Convention, Chief Justice McKean explained that "the judges may continue for life, if they shall so long behave themselves well."

[32] *Supra* note 14 at 116 & 123.

[33] *Id.* at 127.

[34] Burke Shartel, *Federal Judges-Appointmen Supervision, and Removal-Some Possibilities Under the Constitution, (1930),* 28 Mich. L. Rev. 870, 891-98 (citing Baron John Comyns, *A Digest of the Laws of England,* 1766).

[35] *Id.* (arguing for judicial self-discipline and removal power).

[36] *Id.* This procedure found employment with lesser officials – rising no higher than a Recorder, a lesser judge – and
that there is no English case wherein a judge comparable to a federal judge was removed in a judicial proceeding.

[37] Raoul Berger, *Chilling Judicial Independence: A Scarecrow,* (1979), 64 Cornell L. Rev. 822, 831.

[38] *Id.*

[39] *Id.*, citing Mc Ilwain, *The Tenure of English Judges,* (1913), Am. Pol. Sci. Rev. pp. 217-221.

decided ... upon a *scire facias* to repeal the patent by which he held his office?"[40]

These repeated preferences of trial by fellow judges than by parliament appear to exhibit that English judges historically regarded judicial removal as a "privilege," and not an impairment of their independence.[41]

[40] *Id.* at 832.
[41] *Id.*

Quo Warranto

The legal remedy of *quo warranto* is a high prerogative writ[1] that traces its roots in English history and whose origin has long been "obscured by antiquity."[2] Historical records show that the writ was issued as far back as 1198 A.D. during the reign of King Richard I of England, when it was issued against an incumbent of a church, ordering him to show his right to hold the church.[3]

The ancient writ of *quo warranto* was a common law remedy and was considered to be "in the nature of a writ of right for the King, against him who claimed or usurped any office, franchise or liberty, to inquire by what authority he supported his claim in order to determine the right."[4] It was "issued out of chancery and was returnable before the King's Bench at Westminister."[5] Meanwhile, its proceedings were purely civil in nature and a judgment against the respondent simply involved "seizure of the franchise by the Crown or a judgment of ouster against the party who had usurped the franchise."[6] A proceeding for a writ of *quo warranto* was always initiated by the Crown Attorney or on his relation.[7] A private individual was never allowed to file the suit because a usurpation of a right or franchise of the Crown concerned the Crown alone, and "whether the party so usurping should be ousted or permitted to continue and enjoy the franchise was a matter that rested solely with the King."[8]

Afterward, the ancient writ was gradually abandoned and superseded by the remedy of information in the nature of *quo warranto*, with the latter being employed exclusively as a prerogative remedy to punish a usurper of the franchises or liberties granted by the Crown.[9] Similar to the ancient writ of *quo warranto*, its scope was limited to encroachments upon the royal prerogative.[10]

Subsequently in 1710, the Statute of 9 Anne, c. 20 was passed, which introduced several changes to the procedure to make the practice of *quo warranto* speedier and more effective.[11]

---

1 Floyd R. Mechem. *Treatise on the Law of Public Offices and Officers*, (1890), p. 304.
2 Forrest G. Ferris & Forrest Ferris, Jr., *The Law on Extraordinary Legal Remedies*, (1926), p. 126. Citations omitted.
3 Arthur J. Eddy, *Law of Combinations Embracing Monopolies, Trusts, and Combinations of Labor and Capital; Conspiracy, and Contracts in Restraint of Trade*, (1901), p. 1221.
4 *Supra* note 1 at 304, citing High Ex. Leg. Rem. § 592.
5 *Supra* note 2 at 126. Citations omitted.
6 *Supra* note 3 at 1223.
7 *Supra* note 2 at 127. Citations omitted.
8 *Id.* at 128. Citations omitted.
9 *Id.*
10 *Id.*
11 *Id.* at 127. Citations omitted; *see also Newman v. United States ex. Rel. Frizzell*, 238 U.S. 537, 544 (1915).

One glaring difference is that the information in the nature of *quo warranto* treated usurpation as a crime.[12] Thus, its nature transformed into a criminal proceeding to ascertain "which of two claimants was entitled to an office and warranted not only a judgment of ouster, but a fine or even imprisonment against the respondent if he was found guilty of usurpation."[13] It also required "the proper officer, by leave of the court, to exhibit an information in the nature of a *quo warranto* at the relation of any person desiring to prosecute the same" against the designated municipal officers."[14]

Another pertinent difference is that it finally provided private individuals a legal remedy to prosecute or question the usurpation of an office or franchise, albeit with the consent of the state. Thus, the informations in the nature of a *quo warranto* resulted in two (2) kinds: 1) an information filed by the attorney-general or solicitor general on behalf of the Crown; and 2) an information filed with permission by the master of the crown office on the relation of some private individual.[15]

During British occupation, the United States of America (US) adopted the information in the nature of *quo warranto*, notwithstanding several differences.[16] In fact, it treated usurpation as a quasi-criminal act, which was adopted in some American states and formed the basis of statutes in others.[17]

In 1884, with the enactment of the Supreme Court of Judicature Act of 1884, or Statute 47 and 48 Vict. Chap. 61, the information in the nature of *quo warranto* shed its nature as a criminal proceeding and became recognized as a civil proceeding.[18]

In 1902, the US Congress followed suit and adopted a District Code for the District of Columbia, which contained a chapter on *quo warranto* which bore similarities with the English model.[19] Under the District Code, the writ was treated as a civil remedy instead of a criminal one and encompassed all persons in the District who exercised any office, civil, or military.[20] It was made available to test the right to exercise a public franchise or to hold an office in a private corporation. The District Code treats usurpation of officers as a public wrong which can be corrected only by proceeding in the name of the government itself. It, however, recognized that there might be

---

[12] *Newman v. United States ex. Rel. Frizzell*, *id.* at 543.
[13] *Id* at 544.
[14] *Id.*
[15] *Supra* note 3 at 1233.
[16] *Supra* note 2 at 130, citations omitted; *see supra* note 3 at 1233.
[17] *Newman v. United States ex. Rel. Frizzell*, *supra* note 11 at 544.
[18] *Supra* note 2 at 131. Citations omitted.
[19] *Newman v. United States ex. Rel. Frizzell*, *supra* note 11 at 544.
[20] *Newman v. United States ex. Rel. Frizzell*, *supra* note 11 at 544.

instances in which it would be proper to allow such proceedings to be instituted by a third person with the consent of the Attorney General.[21]

Notably, the *quo warranto* is not the only concept that can be traced back to English laws, but its procedure as well.

Sometime in February 1822, the US Supreme Court established Rules of Equity Procedure for the federal courts, pursuant to its authority under the 1792 Process Act.[22] Equity is nothing new. It is a centuries-old system of English jurisprudence in which "judges based decisions on general principles of fairness in situations where rigid application of common-law rules would have brought about injustice." The Rules also specified that "all situations not otherwise provided for were to be governed by the practices of the High Court of Chancery in England." In 1842 and 1912, the US Supreme Court issued new sets of equity rules.[23] From then on, various persons and institutions have lobbied for the creation of a federal code, namely, David Dudley Field and the American Bar Association under the leadership of Thomas Shelton.[24] Sometime in 1922, Chief Justice William Howard Taft addressed the American Bar Association, urging the union of law and equity in the proposed civil procedure.[25]

In 1938, after years of lobbying and drafting, the US Federal Rules of Civil Procedure was finally promulgated pursuant to the Act of June 19, 1934.[26] It merged law and equity into one type of suit known as a "civil action,"[27] as well as formulated an important federal court system which embraced the district courts of the US held in several States and in the District of Columbia.[28] Likewise, it was designed to unify the federal practice in the US and modernize procedure and was primarily based on the Equity Rules of 1912.[29]

Under the Rules, the civil rules apply to *quo warranto* proceedings, but only to appeals and then only to the extent that the practice in such proceedings is not prescribed by Federal Statute.[30] The provisions in the law have not changed much as the present US Federal Rules of Civil Procedure provide:

---

[21] *Newman v. United States ex. Rel. Frizzell*, *supra* note 11 at 546.
[22] Federal Judicial Center, *Equity Rules*, *available at* https://www.fjc.gov/history/timeline/equity-rules (last accessed June 15, 2018).
[23] *Id.*
[24] James WM. Moore & Joseph Friedman, *A Treatise on the Federal Rules of Civil Procedure*, (1938), pp. 7-8.
[25] *Id.* at 9.
[26] Lawrence Koenigsberger, *An Introduction to the Federal Rules of Civil Procedure*, (1938), p. 1, citing Rule 81 (a)(2); *supra* note 24 at 6.
[27] *Supra* note 22.
[28] *Supra* note 24 at 1.
[29] *Id.* at 2-3.
[30] *Supra* note 26 at 6, citing Rule 81 (a)(2).

TITLE XI. GENERAL PROVISIONS

Rule 81. Applicability of the Rules in General; Removed Actions

(A) APPLICABILITY TO PARTICULAR PROCEEDINGS.

(B) Prize Proceedings. These rules do not apply to prize proceedings in admiralty governed by 10 U.S.C. §§ 7651–7681.

(2) Bankruptcy. These rules apply to bankruptcy proceedings to the extent provided by the Federal Rules of Bankruptcy Procedure.

(3) Citizenship. These rules apply to proceedings for admission to citizenship to the extent that the practice in those proceedings is not specified in federal statutes and has previously conformed to the practice in civil actions. The provisions of 8 U.S.C. § 1451 for service by publication and for answer apply in proceedings to cancel citizenship certificates.

(4) Special Writs. These rules apply to proceedings for habeas corpus and for *quo warranto* to the extent that the practice in those proceedings:

(A) is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules Governing Section 2255 Cases; and

(B) has previously conformed to the practice in civil actions.

x x x x.[31]

Presently, it is the state constitutions and statutes that contain particular provisions on jurisdiction over *quo warranto* proceedings.[32] Indeed, the use of this remedy, and the practice and procedure in seeking and applying it, have been regulated by statute in many of the States and in some superseded altogether. However, where the *quo warranto* is still in use, its main features are still the same.[33]

In the US, the *quo warranto* has been effectively used as a means to oust officials who have been found to usurp or not possess

---

[31] Emphasis and underscoring supplied.

[32] *See* Logan Scott Stafford, *Judicial Coup d' Etat: Mandamus, Quo warranto and the Origin Jurisdiction of the Supreme Court of Arkansas*, (1998), 20 UALR L. J. 891, 892; *see also Newman v. United States ex. Rel. Frizzell*, *supra* note 11.

[33] *Supra* note 1 at 304-305.

rightful title to their office, even those belonging in the judiciary. In *Commonwealth v. Fowler*,[34] it was claimed that an information in the nature of *quo warranto* did not lie against an officer appointed and commissioned by the Executive. After all, it is the Executive that has the exclusive right to appoint officers as well as determine if a vacancy in the office exists and to fill such vacancy. The Supreme Court of Massachusetts, however, did not accept such rationale. It held that the validity of an appointment was judicially obtainable[35] as the remedy of *quo warranto* lies and is available to test the right to a judicial office.[36]

The remedy of *quo warranto* was adopted in the Philippines while the country was under American occupation,[37] with its procedure delineated in the old Code of Civil Procedure. It was primarily used in cases "where a person has no title to the office which he pretends to hold and has no right to exercise the functions which he assumes to exercise, or where a corporation acts without being legally incorporated or has offended against some provision of law in such manner as to forfeit its privileges and franchise or has surrendered its corporate rights, privileges, or franchise."[38] Section 197 of the Code of Civil Procedure states the grounds for filing a petition for *quo warranto*:

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

---

[34] 10 Mass. 290 (1813).
[35] *Id.* at 301-302.
[36] J.F.D., *The Missouri Supreme Judgeship: Conflict between Executive and Judiciary. Powers of Constitutional Convention. Quo warranto*, The American Law Register (1852-1891), Vol. 13, No. 12, New Series Volume 4 (October,1865), p. 719, citing *State v. McBride*, 4 Mo. Rep. 303, 1836.
[37] *Alberto v. Nicolas*, 279 U.S. 139 (1929).
[38] Vicente J. Francisco, *The Revised Rules of Court of the Philippines*, Vol. V, (1970), p. 319.

However, it was not until the 1973 Philippine Constitution that *quo warranto* was clearly stated in the Constitution, *to wit*:

> Sec. 5. The Supreme Court shall have the following powers:
>
> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers, and consuls, and over petitions for certiorari, prohibition, mandamus, ***quo warranto***, and habeas corpus.
>
> (2) Review and revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and decrees of inferior courts in–
>
> (a) All cases in which the constitutionality or validity of any treaty, executive agreement, law, ordinance, or executive order or regulation is in question.
>
> (b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
>
> (c) All cases in which the jurisdiction of any inferior court is in issue.
>
> (d) All criminal cases in which the penalty imposed is death or life imprisonment.
>
> (e) All cases in which only an error or question of law is involved.
>
> x x x x

At present, the proceeding for *quo warranto* is found in Rule 66 of the 1997 Revised Rules for Civil Procedure.

In allegations made in a *quo warranto* petition, the State or relator, as plaintiffs, must allege several facts, foremost of which is the act of usurpation and possession of defendant, and show that such usurpation and possession are still being illegally usurped by the latter. Even if unnecessary facts are pleaded, right of redress will not be prejudiced as long as the information presents facts sufficient to constitute a cause of action.[39] It must be emphasized that particularity of facts is only considered when the proceeding is filed against a corporation to forfeit its franchise for nonuser or misuser.[40]

---

[39] *Supra* note 2 at 150. Citations omitted.
[40] *Supra* note 3 at 1277.

On the other hand, defendant, in his Answer, must already plead facts showing his valid title to the office as the State is not bound to show anything. Likewise, it is not sufficient to merely claim that the relator is not entitled to the office, the defendant is still called upon to show by what authority he exercises the functions of the office he holds. Otherwise, the State is entitled to a judgment of ouster.[41] Indeed, the defendant cannot escape the legal consequences for failure to justify his title by reason of the fact that the right or title of the relator may not be sufficient.[42]

Further, the sufficiency of the information is measured by the rules applicable to civil cases. Sufficiency of matters will not be examined when no timely objection is made, the matters are not preserved for consideration, and are considered waived when respondent answers.[43]

Previously, the practice was to reverse the ordinary rule of pleading and charge nothing specifically on behalf of the State. It was respondent's task to prove his right to the franchise or office, otherwise judgment went against him. Today, the practice is to set forth in the information in some detail the facts relied upon to show the intrusion, misuser or nonuser complained of.[44]

Quo warranto proceedings are regarded as civil actions, and as such, the general rules of civil actions are readily applicable. Nonetheless, jurisprudence evinces the fact that some civil law principles are not applied in *quo warranto* proceedings, such as burden of proof and prescription, when the petition is filed by the Attorney General, or in the case of the Philippines, the Solicitor General.

Ordinarily, in civil cases, it is the plaintiff who alleges his right who has the burden of proving his entitlement to such right. In *quo warranto* proceedings, however, the rule is quite different. When the action is brought by the attorney general ex officio to test a person's right to a public office, the burden of proof, in the first instance, falls on respondent whose right to the office is challenged.[45] Moreover, respondent must also show that he continuously possesses the qualifications necessary to enjoy his title to the office.[46] The State is not required to establish respondent's qualifications as it is the latter's

---

[41] John F. Dillon, *Commentaries on the Law of Municipal Corporations*, (1911), p. 2734.
[42] *Library of Law and Practice*, (1919), p. 41.
[43] *Supra* note 2 at 150-151. Citations omitted.
[44] *Supra* note 3 at 1277.
[45] *Krajicek v. Gale*, 267 Neb. 623, 677 N.W.2d 488, 495 (2004); see *supra* note 2 at 156, citations omitted; see *also* Halbert E. Paine, *Treatise on the Law of Elections to Public Offices, Exhibiting the Rules and Principles Applicable to Contests before Judicial Tribunals and Parliamentary Bodies*, (1888), p. 745.
[46] *People ex rel. Finnegan v. Mayworm*, 5 Mich. 146, 148 (1858).

obligation to make out an indisputable case.[47] Indeed, the entire burden is upon respondent.[48]

The exception to the rule that it is respondent who bears the burden of proof is when the *quo warranto* proceeding was brought on relation of a private individual as claimant, or for a private purpose when authorized by a statute. In such cases, the burden of proof lies on the person asserting his title to the office.[49]

When, however, respondent has made out a prima facie right to the office, as by showing that he was declared duly elected by the proper officers or has received a certificate of election or holds the commission of appointment by the executive to the office in question, the burden of proof shifts.[50]

The principle on burden of proof has consistently been applied in US jurisprudence. A study of US Jurisprudence shows that in *quo warranto* cases filed by the State, the burden of proof is always on defendant to show his right to the title of the office.

In *People ex rel. Finnegan v. Mayworm*,[51] the Supreme Court of Michigan emphasized that the burden of proof falls on defendant to establish his or her right to the office. The facts show that on September 30, 1856, an election was conducted for the position of Houghton County Sheriff. From all the votes cast, John Burns received 369 votes, while petitioner Michael Finnegan received the remaining votes: as Michael Finegan- 271 votes, Michael Finnegan- 175 votes, and Michael Finnigan- 1 vote. The board of canvassers declared Burns duly elected. Petitioner was not given any formal official notice of the result of the election and the decision of the board. Nonetheless, he found out about the results after it was announced. The newly elected Sheriff Burns, meanwhile, never took or filed the oath of office nor did he ever give and deposit the bond as required by law. On December 25, 1856, Burns, after only serving as Sheriff for a short while, resigned. There being no undersheriff, or other person authorized to perform the duties of the office, the county clerk and prosecuting attorney, on said day, appointed defendant Francis Mayworm as acting Sheriff to fill the vacancy left behind by Burns. Mayworm took an oath and deposited the bond required under the law.[52]

---

[47] *Supra* note 2 at 126. Citations omitted.
[48] *Supra* note 38 at 357; *supra* note 42 at 42.
[49] *Supra* note 2 at 157. Citations omitted.
[50] *Supra* note 1 at 322.
[51] 5 Mich. 146 (1858).
[52] *Id.* at 147.

Thereafter, Finnegan filed a *quo warranto* petition against Mayworm, asserting that the former is entitled to the office. The Court ruled that by applying the legal doctrine of *idem sonans,* Finnegan was entitled to the office as he was duly elected by the majority of the people.[53] Hence, judgment of ouster must be rendered against Mayworm. Indeed, although Mayworm's appointment appears to have been regular, it is not enough that an officer appointed for a temporary purpose should show a legal appointment. The usurpation charged is a continuing usurpation, one alleged to exist months after the commencement of a new statutory term. The rule is well settled, that "where the state calls upon an individual to show his title to an office, he must show the continued existence of every qualification necessary to the enjoyment of the office. The state is bound to make no showing, and the defendant must make out an undoubted case.[54] It is not sufficient to state the qualifications necessary to the appointment, and rely on the presumption of their continuance. The law makes no such presumption in his favor."[55]

Meanwhile, in the more recent case of *Krajicek v. Gale*,[56] petitioner Tim Kracijek was elected to represent subdistrict No. 8 on the board of directors of the Papio Missouri River Natural Resources District (NRD) for a term of four years. At the time of the election, Kracijek lived at 104 Madison St., Omaha, Nebraska, which was located within subdistrict No. 8.[57]

Thereafter, the Douglas County Attorney, on behalf of the State, filed a *quo warranto* petition seeking an order that Krajicek be removed from office as he changed his residence to 7819 South 45th Ave., which is outside the boundaries of subdistrict No. 8. As a result of the change in address, Krajicek had vacated his office pursuant to Neb. Rev. Stat. §32-560 (5) (Reissue 1998) of the Election Act, which required incumbent officers to be a resident of the district where their duties are to be exercised and for which he or she may have been elected.[58]

Krajicek, meanwhile, alleged that he resided at 4505 Jefferson St, which was located within subdistrict No. 8, and that he also owned a house located at 7819 South 45th Ave. The house in Jefferson St., however, was currently being occupied by his aunt and uncle. Likewise, he presented evidence showing that he was registered to

---

[53] *Idem sonans* is a Latin term meaning sounding the same or similar; having the same sound. It is a legal doctrine in which a person's identity is presumed known despite the misspelling of his or her name.

[54] *People ex rel. Finnegan*, 5 Mich. at 148 (1858).

[55] *Id.*, citing *State v. Beecher*, 15 Ohio, 723; *People v. Phillips*, 1 Denio, 388; *State v. Harris*, 3 Pike, 570.

[56] 677 N.W.2d 490 (2004).

[57] *Id.*

[58] *Id.*

vote, received mail, stored personal items, filed tax returns, and registered his vehicle at 4505 Jefferson St. The State, on the other hand, presented evidence that Krajicek and his family were currently living in 7819 South 45th Ave. Likewise, his wife's car registration as well as the couple's tax return indicated their address as 7819 South 45th Ave. The house in 4505 Jefferson St., meanwhile, was built and paid for Kracijek's aunt and uncle and the latter paid for the insurance, utilities, and other related expenses for the upkeep of the house.[59]

The district court ruled in favor of the *quo warranto* petition, finding that Krajicek no longer properly held the office of the director of the NRD. On appeal, the appellate court affirmed the lower court's decision, ruling that Krajicek failed to present sufficient evidence that he was a resident of subdistrict No. 8. Indeed, the "burden of proof in the first instance is on the defendant whose right to the office is challenged."[60] "Where the proceeding is brought to try title to a public office, the burden rests on the defendant respondent, as against the state at least, to show a right to the office from which he or she is ought to be ousted."[61]

With regard to the prescription of a *quo warranto* petition, Section 11, Rule 66 of the Revised Rules of Court expressly states that "an action against a public officer or employee for his ouster from office unless the same be commenced within one year after the cause of such ouster, or the right of the petitioner to hold such office or position, arose; nor to authorize an action for damages in accordance with the provisions of the next preceding section unless the same be commenced within one year after the entry of the judgment establishing the petitioner's right to the office in question.

This provision, however, only applies to a petition for *quo warranto* that is initiated by a private person alleging his title to the office as against that of respondent's.

Similar to the principle on burden of proof, prescription in *quo warranto* proceedings are to be construed differently. To shed light on its applicability, one must refer to its origins in US jurisprudence. In a long line of cases, it is well-settled that the "statute of limitations generally does not run against the state or commonwealth in a *quo warranto* proceeding concerning a public right."[62] It has also been held that "a *quo warranto* proceeding by the state was not barred by

---

[59] *Id.* at 491.
[60] *Id.* at 495, citing *Stasch v. Weber*, 188 Neb. 710, 711, 199 N.W.2d 391, 393 (1972).
[61] *Id.* at 495, citing 65 Am. Jur.2d *Quo warranto* § 119 at 165 (2001).
[62] *Catlett v. People* (1894) 151 Ill 16, 37 NE 855; *Commonwealth ex rel. Atty. Gen. v. Bala & Byrn Mawr Turnpike Co.* (1893) 153 Pa 47, 25 A 1105.

the statute of limitations because it was provided that the limitation should not apply to actions brought in the name of the state."[63]

Since a *quo warranto* proceeding is not simply a civil remedy for the protection of private rights, but rather a matter of public concern, the statute of limitations as to civil actions does not apply to it.[64] Indeed, a *quo warranto* proceeding that intends to remove a public official is considered as a governmental function; hence, no statute of limitations is applicable."[65]

In *People ex rel. Moloney v. Pullman's Palace-Car Co.*,[66] the attorney general filed an information in the nature of a *quo warranto* in the circuit court of Cook county, in the name and on behalf of the people of the State of Illinois, against Pullman's Palace-Car Company.[67]

The information sets out the charter of the defendant, and then alleges 21 acts which are alleged to be usurpations by the defendant of powers not conferred by its charter, and concludes with a prayer for the forfeiture of the charter of the corporation. Some of the allegations contained in the information of the usurpations of power on the part of the defendant, among others, include ownership and control of a large blocks of real property as well as businesses located therein, defendant's receipt of a large income from the rental of such properties with only a small portion of it occupied by the company's employees, and defendant's alleged manipulation and control of the affairs of the Town of Pullman.[68]

The district court ruled that the corporation, at and before the time of the filing of the information, was exercising powers and performing acts not authorized either by the express grant of its charter or any implication of law. Further, the corporation was exercising powers and functions which the general law of the state contemplates shall be possessed and exercised only by municipal authorities of cities or towns as well as public school authorities. Thus, its acts and doings are opposed to good public policy.[69]

The court likewise stated that "demand of the sovereign that usurpations so clearly antagonistic to good public policy shall be restrained can be defeated by any imputation of laches, or upon the

---

[63] *State ex rel. Security Sav. & Trust Co. v. School District No. 9 of Tillamook County* (1934) 148 Or 273, 36 P2d 179.
[64] *McPhail v. People* (1895) 160 Ill 77, 43 NE 382, 52 Am St Rep 306.
[65] *State ex rel. Stovall v. Meneley*, 271 Kan. 355, 22 P.3d 124 (2001).
[66] 64 L.R.A. 366, 175 Ill. 125, 51. N.E. 664 (1898).
[67] *Id.* at 665.
[68] *Id.* at 665-667.
[69] *Id.* at 677.

ground that acquiescence is to be inferred from the failure to invoke the aid of courts at an early day."[70] It is the general rule that "laches, acquiescence, or unreasonable delay in the performance of duty on the part of the officers of the state, is not imputable to the state when acting in its character as a sovereign."[71] It is also acknowledged that "the state, acting in its character as a sovereign, is not bound by any statute of limitations or technical estoppel."[72]

In the more recent case of *State of Kansas ex. rel. Stovall v. Meneley*,[73] one of the issues raised was the applicability of the statute of limitations on *quo warranto* petitions brought by the Attorney General on behalf of the State. The facts of the case are as follows:

Sometime in November 1996, David R. Meneley was elected a second time as Sheriff of Shawnee County, Kansas. In 1993, he created a special services unit, which, in addition to investigating burglaries, provided manpower for surveillance support for the narcotics unit. Deputy Timothy Oblander was a member of the said unit. Sometime in late 1993 or early 1994, Oblander started consuming small amounts of cocaine and methamphetamine, taking the drugs from the evidence packets used to train his dog. He carried the drugs with him daily. On two (2) occasions, it was discovered that there was a weight discrepancy in the drugs. These discrepancies were supposed to be noted on reports signed by the property room officer and Oblander. Nothing, however, was ever done to resolve the discrepancies. Sometime in late 1994 or early 1995, Oblander began making drug buys on the street. He even occasionally consumed the drugs he purchased. In late July 1994, Officer J.D. Sparkman retrieved a bag of evidence from the drug evidence locker located at the sheriff's office in the basement of the Shawnee County Courthouse. The evidence was from the Caldwell case which involved state and federal drug charges. After weighing the evidence, Sparkman discovered that some of the cocaine evidence was missing. As a result, Caldwell was acquitted.[74]

On November 23, 1999, Oblander confessed to taking the Caldwell drugs to the district attorney. Meneley directed a local health care provider to examine Oblander. Later on, Oblander entered Valley Hope Treatment Center in Atchison, Kansas. The Kansas Bureau of Investigation (KBI) subsequently conducted an investigation. They found out that Meneley knew that Oblander was using drugs and had stolen drugs.[75]

---

[70] *Id.* at 677.
[71] *Id.* at 676.
[72] *People ex rel. Moloney v. Pullman's Palace-Car Co*, 64 L.R.A. 366, 175 Ill. 125, 51. N.E. at 676.
[73] *State ex rel. Stovall*, 271 Kan. 355, 22 P.3d 124 (2001).
[74] *Id.* at 359-360.
[75] *Id.* at 361.

On May 24, 1999, the Attorney General filed a petition for *quo warranto* for the ouster of Meneley on behalf of the State on the ground of willful misconduct in office. The trial judges unanimously found, by clear and convincing evidence, that Meneley committed willful misconduct, as contemplated in K.S.A. 60-1205(1). He knowingly and willfully concealed evidence of Oblander's theft of drug evidence, he falsely testified under oath at an Attorney General's inquisition by denying his knowledge of Oblander's illegal drug use and treatment for drug addiction, and he falsely testified under oath in the Shawnee County District Court by denying that he had any knowledge regarding Oblander's illegal drug use and treatment for drug addiction.[76]

Meneley argued that a *quo warranto* action seeking ouster from office is considered as a "forfeiture." Therefore, a 1-year statute of limitation applies under K.S.A. 60-514. Since several of the alleged acts of misconduct occurred outside the 1-year limitation, the case should have been dismissed. The court, however, ruled otherwise, stating that "K.S.A. 60-521, by negative implication, retains governmental immunity from the statute of limitations for causes of action arising out of a governmental function."[77]

Notably, "governmental functions are those performed for the general public with respect to the common welfare for which no compensation or particular benefit is received. Proprietary functions, on the other hand, are exercised when an enterprise is commercial in character or is usually carried on by private individuals or is for the profit, benefit, or advantage of the governmental unit conducting the activity."[78] Since *quo warranto* proceedings seeking ouster of a public official are considered as a governmental function,[79] no statute of limitations is thus applicable.[80]

It must be pointed out that it is not only the civil law principle on statute of limitations that does not apply in *quo warranto* proceedings initiated by the State. Neither will laches, estoppel, or waiver by inaction apply as "inaction by the State may not be subject to waiver by inaction on the theory that the public interest is

---

[76] *Id.* at 364.

[77] *Id.* at 384, citing *KPERS v. Reimer & Koger Assocs., Inc.*, 262 Kan. 635, 659, 941 P.2d 1321 (1997); *State ex rel. Schneider v. McAfee*, 2 Kan. App.2d 274, 275, 578 P.2d 281, rev. denied 225 Kan. 845 (1978).

[78] *State ex rel. Stovall*, 271 Kan. 355, 22 P.3d 124 at 384, citing *State ex rel. Schneider v. McAfee*, 2 Kan. App.2d at 276; *see also International Ass'n of Firefighters v. City of Lawrence*, 14 Kan. App.2d 788, Syl. ¶ 3, 798 P.2d 960 rev. denied, 248 Kan. 996 (1991).

[79] *Id.* at 384, citing *State, ex rel., v. Showalter*, 189 Kan. 562, 569, 370 P.2d 408 (1962).

[80] *Id.* at 385.

paramount to the prejudices arising from the passage of time."[81] In applying the doctrine of laches to *quo warranto* proceedings, "no fixed time will be taken as controlling, but the facts in each particular case must govern the court's decision."[82] Indeed, the statute of limitations or technical estoppel does not bind the State, acting in its sovereign capacity because "laches, acquiescence or unreasonable delay in the performance of duty on the part of the officers of the State is not imputable to the State."[83] In view of the fact that the statute of limitation does not run against the State and laches, estoppel, or acquiescence does not apply, the issue on reckoning period or date of discovery is thus rendered moot.

---

[81] *Carleton v. Civil Service Com'n of City of Bridgeport*, 10 Conn. App. 209, 522 A.2d 825 (1987).

[82] *State ex rel. Harmis v. Alexander* (1906) 129 Iowa 538, 105 NW 1021; *State ex rel. School Township v. Kinkade* (1922) 192 Iowa 1362, 186 NW 662; *State ex rel. Crain v. Baker* (1937, Mo App) 104 SW2d 726; *State ex rel. Madderson v. Nohle* (1907) 16 ND 168, 112 NW 141, 125 Am St Rep 628.

[83] *Supra* note 3 at 1267.