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

Promulgated:

May 11, 2018

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SEPARATE OPINION

PERLAS-BERNABE, *J.*:

At the core of this matter is our touchstone of integrity. Inasmuch as it puts into issue respondent's personal integrity, this case of first impression raises novel questions of law which test the integrity of the Judiciary as an institution. Amidst its theoretical complexity and the controversy surrounding the same, my principles stand firm: while authority may be indeed wrested from the ineligible, things must be done in accordance with the prevailing constitutional order.

I.

For the first time in our nation's history, a petition for *quo warranto*[1] has been filed by the Solicitor General (also referred to as the Office of the Solicitor General [OSG]) directly before this Court seeking to oust one of its members, let alone its head, the Chief Justice, an impeachable official. Briefly stated, the thesis of the Solicitor General is as follows: respondent Maria Lourdes P. A. Sereno (respondent) – appointed by former President Benigno S. Aquino III as the 24th Chief Justice of the Supreme Court of the Philippines[2] – is not qualified to hold such post and therefore, should be ousted, because she is not a person of "proven integrity" in view of her failure to file – as well as to submit before the Judicial and Bar Council (JBC or the Council) – her Statement of Assets, Liabilities, and Net Worth (SALN) as prescribed by law.

The OSG's postulate rests on Section 7 (3), Article VIII of the 1987 Constitution, which states that "[a] **Member of the Judiciary** must be a person of **proven** competence, **integrity**, probity, and independence."[3] As worded, the requirement of "integrity" applies not only to magistrates of the High Court but generally, to all members of the Judiciary. In *Samson v.*

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1 See Petition dated March 2, 2018.

2 <http://jbc.judiciary.gov.ph/index.php/about-the-jbc/jbc-members/58> (visited May 9, 2018).

3 Emphases and underscoring supplied.

Caballero,[4] the Court characterized integrity as "[t]he most fundamental qualification of a member of the [J]udiciary."[5]

However, "integrity" – same as "competence," "probity," and "independence" – remains to be an innately subjective term. Notably, the Constitution itself does not provide for an exact definition of the term "integrity." In our jurisprudence, "integrity" has been amorphously described as "**the quality of [a] person's character**";[6] it is "closely related to, or if not, approximately equated to an applicant's good reputation for honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards."[7] Meanwhile, the New Code of Judicial Conduct for the Philippine Judiciary[8] only states:

> CANON 2
> INTEGRITY
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> Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.
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> Section 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.
>
> Section 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.
>
> Section 3. Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

While it is true that integrity is "not a new concept in the vocation of administering and dispensing justice,"[9] nor a "complex concept necessitating esoteric philosophical disquisitions to be understood,"[10] the fact remains that the interpretation of what constitutes integrity – more so, as a qualification for nomination to a judgeship post – is fundamentally relative and at times, arbitrary. In this relation, it may not be amiss to point out that the Constitution itself qualifies that these virtues need not only reside in a person, but they must also be "proven:" "[i]f something is proven, it has been shown to be true."[11] To be "proven" is "to subject to a test, experiment, comparison, analysis, or the like, to determine quality, amount, acceptability, characteristics, *etc.*"; "to show (oneself) to have the character or ability expected of one, especially through one's actions."[12]

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4 612 Phil. 737 (2009).
5 Id. at 746.
6 *Jardeleza v. Sereno*, 741 Phil. 460, 496 (2014); emphasis supplied.
7 Id. at 495.
8 A.M. No. 03-05-01-SC, promulgated on April 27, 2004.
9 *Ponencia*, p. 1.
10 Id.
11 <https://dictionary.cambridge.org/us/dictionary/learner-english/proven> (visited May 5, 2018).
12 <http://www.dictionary.com/browse/proven> (visited May 2, 2018).

This being so, one is then bound to discern: in "proving" one's integrity, what do we look for in a person? How does one say that a candidate has proven his or her integrity to be qualified for the position? Ultimately, against what rubric of values and principles do we judge him or her? The literature on the subject matter muses:

> Is judicial integrity a norm? The debates on judicial integrity seem to suggest that integrity is a norm that can be violated. In the debates on safeguarding integrity, it seems to be a kind of overriding principle, which governs professional ethics for judges. But is integrity then, as Simon Lee once put it, merely '**a catch-all for more or less everything that is good in judicial thought**,' **or is there more to it**? [13] (Emphasis and underscoring supplied)

Thus, is integrity – as the *ponencia* aims to impress – as simple as "[a] qualification of being honest, truthful, and having steadfast adherence to moral and ethical principles";[14] of being "consistent – **doing the right thing in accordance with the law and ethical standards [every time]**"?[15] If so, then should a person – as was somewhat sardonically interjected during the oral arguments[16] – caught cheating during college or in law school be already disqualified to become a judge? How about someone who mistakenly inputs the actual valuation of his or her property in a tax return, or misses a few payments on due and demandable government exactions? Do we ban for appointment someone who had, once or twice, given in to sexual infidelity or had, at one point in time, an extramarital affair? Do we look at frequency or gravity? If so, then how frequent, or how grave should the misdemeanor be?

With all these in mind, ***is the determination of "integrity" really then that simple?*** *Do we account for* ***context, depth, and perception?*** *Do we give leeway for* ***acts of remorse or reformation?*** *Do we factor in the person's* ***"good faith"*** *or examine* ***the difficulty of a particular legal question?*** In the final analysis, the jarring question is that: ***in our appreciation of a person befitting of the office of a judge, do we demand perfection?***

Truly, because of its inherently subjective nature, the determination of "integrity," as well as such similar qualifications, is easily susceptible to varied interpretation. As illustrated above, there are multifarious factors that go into the determination of the subjective qualifications of a judge. Thus, there lies the need of a central authority that would, among others, standardize the criteria to determine whether or not a person possesses these subjective qualifications and hence, render him or her eligible for

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[13] Soeharno, J., (2007). *Is judicial integrity a norm? An inquiry into the concept of judicial integrity in England and the Netherlands*. Utrecht Law Review. 3 (1), p. 22. DOI: <http://doi.org/10.18352/ulr.34> (visited May 2, 2005).

[14] *Ponencia*, pp. 1-2.

[15] Id.; emphasis and underscoring supplied.

[16] See TSN, April 10, 2018, pp. 199-201.

appointment to the Judiciary. By deliberate constitutional design, this central authority is no other than the JBC.

In *Jardeleza v. Sereno (Jardeleza)*,[17] this Court declared that: "**[t]he purpose of the JBC's existence is indubitably rooted in the categorical constitutional declaration that '[a] member of the judiciary must be a person of proven competence, integrity, probity, and independence**.'"[18] Section 8 (5), Article VIII of the 1987 Constitution mandates that "[t]he [Judicial and Bar] Council shall have the principal function of recommending appointees to the Judiciary." In line with its mandate, the JBC is necessarily tasked to "screen aspiring judges and justices, among others, **making certain that the nominees submitted to the President are all qualified** and suitably best for appointment. In this way, the appointing process itself is shielded from the possibility of extending judicial appointment to the undeserving and mediocre and, **more importantly, to the ineligible or disqualified**."[19]

In *Villanueva v. Judicial and Bar Council (Villanueva)*,[20] the Court held that the JBC's "**discretion is freed from legislative, executive or judicial intervention to ensure that [it] is shielded from any outside pressure and improper influence**."[21] Tracing its genesis, the creation of a "separate, competent and independent body to recommend nominees to the President" was "[p]rompted by the clamor to rid the process of appointments to the Judiciary [of the evils of] political pressure and partisan activities."[22] As explained in the constitutional deliberations, the Council was institutionalized to ensure that judges and justices will be chosen for their confidence and their moral qualifications, rather than based on favor or gratitude to the appointing power, *viz.*:

> MR. CONCEPCION: The Judicial and Bar Council is no doubt an innovation. But it is an innovation made **in response to the public clamor in favor of eliminating politics in the appointment of judges**.
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> x x x x
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> MR. COLAYCO: x x x
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> x x x x
>
> Third, the Commission on Appointments is not as sincere in its mission to censor the qualifications of the appointees to the Judiciary as has been mentioned by the Honorable Rodrigo because many appointees who had to pass through the Commission on Appointments were witnesses to the fact that some members of the Commission on Appointments had used it to force the appointments of other people as a compromise for the

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17 Supra note 6.
18 Id. at 492; emphasis and underscoring supplied.
19 Id.; emphasis supplied.
20 757 Phil. 534 (2015).
21 Id. at 556; emphasis supplied.
22 *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 188 (2012).

approval of those who have been already designated by the President. This was an open secret.

> So, we felt that **the creation of this Council would ensure more the appointment of judges and justices who will be chosen for their confidence and their moral qualifications, rather than to favor or to give something in return for their help in electing the President.**[23] (Emphases supplied)

As may be seen from the various provisions in the Constitution, the independence of the JBC is reified by the following features: ***first***, it is composed of representatives from various sectors such as the Executive, Legislative, and Judicial departments, as well as from the legal community and private sector;[24] ***second***, it is subject only to the supervision, not control, of the Court;[25] ***third***, the President can only appoint someone from among those included in the JBC's list of nominees and thus, acts as a check-and-balance on the Chief Executive;[26] and ***fourth***, the President's appointment based on the JBC's list no longer requires confirmation.[27]

In order to fulfill its constitutional mandate, "**the JBC had to establish a set of uniform criteria in order to ascertain whether an applicant meets the minimum constitutional qualifications and possesses the qualities expected of him and his office.**"[28] As earlier stated, while the Constitution requires that every member to be appointed to the Judiciary must be a person of proven competence, integrity, probity, and independence, there are no precise definitions for these terms. Thus, the JBC has to concretize these qualifications into operable standards, through demandable submissions and institutional checks; otherwise, their determination would be – as abovementioned – highly-subjective and more so, inexecutable because of their obscurity.

In the "whereas clauses" of the Rules of the Judicial and Bar Council (JBC-009)[29] – which were the guidelines that applied to respondent when

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[23] I RECORD, CONSTITUTIONAL COMMISSION (July 14, 1986), pp. 487-488; emphases supplied.

[24] Section 8 (1), Article VIII of the 1987 CONSTITUTION states:

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

[25] Id.

[26] See Associate Justice Marvic M.V.F. Leonen's Separate Opinion in *Aguinaldo v. Aquino III* (*ponencia* on the MR) (G.R. No. 224302, February 21, 2017, 818 SCRA 310, 372-373), quoted in pages 34-35 below.

[27] Section 9, Article VIII of the 1987 CONSTITUTION states:

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

[28] *Villanueva v. JBC*, supra note 20, at 549; emphasis supplied.

[29] (December 1, 2000).

she applied for the position of Associate Justice in 2010, as well as for the position of Chief Justice in 2012 – the JBC had explicitly recognized the difficulty of ascertaining these "virtues and qualities" in a person because they are "not easily determinable as they are developed and nurtured through the years";[30] nevertheless, the Council expressed that certain guidelines and criteria may be prescribed therefor:

> WHEREAS, the Council is thus vested with a delicate function and burdened with a great responsibility; **its task of determining who meets the constitutional requirements to merit recommendation for appointment to the Judiciary is a most difficult and trying duty because the virtues and qualities of competence, integrity, probity and independence are not easily determinable as they are developed and nurtured through the years**; and it is self-evident that, to be a good Judge, one must have attained sufficient mastery of the law and legal principles, be of irreproachable character and must possess unsullied reputation and integrity, should consider his office as a sacred public trust; and, above all, he must be one whose loyalty to law, justice and the ideals of an independent Judiciary is beyond doubt;
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> x x x x
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> WHEREAS, while it is **not possible or advisable to lay down ironclad rules** to determine the fitness of those who aspire to become a Justice, Judge, Ombudsman or Deputy Ombudsman, **certain guidelines or criteria may be prescribed to ascertain if one seeking such office meets the minimum constitutional qualifications and possesses qualities of mind and heart expected of a member of the Judiciary, or an Ombudsman or Deputy Ombudsman**[.] (Emphases and underscoring supplied)

In *Villanueva*, this Court characterized the JBC's authority to set these standards as one which is **flexible**.[31] Accordingly, this mirrors the JBC's observation in JBC-009 that it is "not possible or advisable to lay down ironclad rules to determine the fitness of those who aspire to become a Justice [or] Judge."[32] In the same case, this Court described the JBC's "license to act" as "**sufficient**" but nonetheless, exhorted that the same is "**not unbridled**:"

> The functions of searching, screening, and selecting are necessary and incidental to the JBC's principal function of choosing and recommending nominees for vacancies in the judiciary for appointment by the President. However, the Constitution did not lay down in precise terms the process that the JBC shall follow in determining applicants' qualifications. **In carrying out its main function, the JBC has the authority to set the standards/criteria in choosing its nominees for every vacancy in the judiciary, subject only to the minimum qualifications required by the Constitution and law for every position. The search for these long held qualities necessarily requires a degree of flexibility in order to determine who is most fit among the**

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30 See 5th whereas clause, JBC-009.

31 See *Villanueva v. JBC*, supra note 20, at 549

32 See 7th whereas clause, JBC-009.

> **applicants**. Thus, the JBC has **sufficient but not unbridled** license to act in performing its duties.[33] (Emphases and underscoring supplied)

Moreover, the Court ruled that "the JBC has the authority to determine how best to perform [its] constitutional mandate."[34] In *Aguinaldo v. Aquino III* (*Aguinaldo*),[35] it was further declared that "[t]he JBC, as a constitutional body, enjoys independence, and as such, it may change its practice from time to time in accordance with its wisdom."[36]

In view of the JBC's independence and integral role under the Constitution, it can therefore be concluded that ***the interpretation, treatment, and application of its guidelines and criteria set to determine the subjective qualifications of a Judiciary candidate are – as will be further expounded below – policy matters that are solely within its sphere of authority and hence, generally non-justiciable, absent any showing of grave abuse of discretion***.

II.

Rule 4 of JBC-009 prescribes the guidelines and criteria in determining the integrity of candidates who, among others, applied for the position of Chief Justice in 2012:

> **RULE 4**
> **INTEGRITY**
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> Section 1. *Evidence of integrity.* – The Council shall **take every possible step** to **verify** the applicant's **record of and reputation for honesty, integrity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards**. For this purpose, the applicant shall submit to the Council certifications or testimonials thereof from reputable government officials and non-governmental organizations, and clearances from the courts, National Bureau of Investigation, police, and from such other agencies as the Council may require.
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> Section 2. *Background check.* – The Council may **order a discreet background check on the integrity, reputation and character of the applicant, and receive feedback thereon from the public**, which it shall **check or verify to validate** the merits thereof.
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> Section 3. *Testimony of parties.* – The Council may receive **written opposition** to an applicant on ground of his moral fitness and [in] its discretion, the Council may receive the testimony of the opposition at a hearing conducted for the purpose, with due notice to the applicant who shall be allowed to cross-examine the oppositor and to offer countervailing evidence.

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33 *Villanueva v. JBC*, supra note 20, at 549.
34 Id. at 556.
35 Supra note 26.
36 Id. at 321.

> Section 4. *Anonymous complaints.* – **Anonymous complaints** against an applicant shall not be given due course, unless there appears on its face a probable cause sufficient to engender belief that the allegations may be true. In the latter case the Council may either direct a discreet investigation or require the applicant to comment thereon in writing or during the interview.
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> Section 5. *Disqualification.* – The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman or Deputy Ombudsman:
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> 1. Those with pending criminal or regular administrative cases;
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> 2. Those with pending criminal cases in foreign courts or tribunals; and
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> 3. Those who have been convicted in any criminal case; or in an administrative case, where the penalty imposed is at least a fine of more than ₱10,000, unless he has been granted judicial clemency.
>
> Section 6. *Other instances of disqualification.* – Incumbent judges, officials or personnel of the Judiciary who are facing administrative complaints under informal preliminary investigation (IPI) by the Office of the Court Administrator may likewise be disqualified from being nominated **if, in the determination of the Council, the charges are serious or grave** as to affect the fitness of the applicant for nomination.
>
> For purposes of this Section and of the preceding Section 5 insofar as pending regular administrative cases are concerned, the Secretary of the Council shall, from time to time, furnish the Office of the Court Administrator the name of an applicant upon receipt of the application/recommendation and completion of the required papers; and within ten days from the receipt thereof the Court Administrator shall report in writing to the Council whether or not the applicant is facing a regular administrative case or an IPI case and the status thereof. In regard to the IPI case, the Court Administrator shall attach to his report copies of the complaint and the comment of the respondent. (Emphases and underscoring supplied)

As may be gleaned from the foregoing, the JBC entasked itself to "take every possible step to verify the applicant's record of and reputation for honesty, integrity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards."[37] Cogent with this objective, the JBC's determination of integrity was not confined solely to the documentary requirements submitted by the applicant before it; in fact, the guidelines show that the JBC implements a rigorous screening process, which includes the conduct of a discreet background check, as well as the receipt of written oppositions and anonymous complaints against a candidate, if any. Moreover, in its appreciation of what constitutes integrity, the JBC set certain grounds which would disqualify an applicant outright.

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[37] See Section 1, Rule 4, JBC-009.

Pertinent to this case, a perusal of Rule 4 of JBC-009 shows that the candidate's submission of a SALN was not required for the JBC to assess an applicant's integrity. The submission of a SALN has, in fact, not been required in the present iteration of the JBC Rules.[38] However, as respondent herself points out, the JBC had separately required the submission of a SALN for the first time in 2009 for "candidates for appellate magistracy who were from the private sector"; and also, in February 2011, the JBC required the submission of the applicant's SALNs for the past two (2) years.[39]

Similarly, in its June 5, 2012[40] Announcement for applications to the position of Chief Justice *vice* former Chief Justice Renato C. Corona, the JBC directed all applicants in the government service to submit, in addition to the usual documentary requirements,[41] **all their previous SALNs (up to December 2011)**:

> 1. **[SALN]**
>   a. **for those in the government: all previous SALNs (up to 31 December 2011)**
>   b. for those from the private sector: SALN as of 31 December 2011
>
> 2. Waiver in favor of the JBC of the confidentiality of local and foreign bank accounts under the Bank Secrecy Law and Foreign Currency Deposits Act.[42]

The JBC's June 5, 2012 Announcement also included a note that "[a]pplicants with incomplete or out of date documentary requirements will not be interviewed or considered for nomination."[43]

When respondent applied for the position of Chief Justice in 2012, it is undisputed that she submitted, among others,[44] her SALNs **only for the**

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38 See the REVISED RULES OF THE JUDICIAL AND COUNCIL (JBC No. 2016-01) (October 24, 2016).

39 See Respondent's Memorandum *Ad Cautelam* dated April 20, 2018, p. 14, citing the Comment of then member of the JBC, Justice Aurora Santiago Lagman in A.M. Nos. 17-11-12-SC and 17-11-17-SC; Annex "24" of the *Ad Cautelam* Manifestation/Submission dated April 10, 2018.

40 See Annex "H" of the Petition.

41 The JBC's Announcement dated June 5, 2012 listed the usual documentary requirements, as follows: "[a]pplicants or recommendees must submit the following documents within fifteen (15) days from the aforementioned deadlines for submission of applications: [*a*] Clearances from the National Bureau of Investigation [(NBI)], Ombudsman, Integrated Bar of the Philippines [(IBP)], Police from place of residence, Office of the Bar Confidant [(OBC)], and employer[; *b*] Transcript of School Records[; *c*] Certificate of Admission to the Bar (with Bar rating) [; *d*] Income Tax Return for the past two (2) years[; *e*] Proofs of age and Filipino Citizenship[; *f*] Cert. of Good Standing or latest official receipt from the IBP[; *g*] Certificate of Compliance with, or Exemption from, Mandatory Continuing Legal Education [(MCLE)][; *h*] [SALNs] for the past two (2) years (for Legal Education Board [LEB] candidates)[, *i*] Certification as to the number of years in the teaching of law (for LEB candidates only)[; and *j*] Results of medical examination and sworn medical certificate with impressions on such results, both conducted/issued within 2 months prior to the filing of application[.]" (See id.)

42 See also June 4, 2012 Announcement; Annex "G" of the Petition.

43 See Annex "H" of the Petition.

44 Respondent also allegedly submitted to the JBC, as evidence of her integrity, these certifications from various government agencies: the OBC, the IBP, the NBI, the Cainta Police Station, and the Office of the Ombudsman to evince that she had no pending criminal or administrative case (See Comment *Ad*

years 2009, 2010, and 2011 which were filed while she was serving as Associate Justice of the Supreme Court.[45] Nonetheless, it appears that respondent was not the only one who failed to completely comply with the said requirement.

Records show that a number of respondent's co-applicants for the same position in 2012 were similarly unable to submit all their previous SALNs while in government service. This was reflected in the "matrix" contained in the July 20, 2012 Report[46] of the JBC's Office of the Recruitment, Selection and Nomination (ORSN), which data may be tabulated as follows:[47]

Candidate for the position of Chief Justice of the Supreme Court	*Years in government service*	*Number of SALNs submitted to the JBC*
Abad, Roberto A.	21	6
Bautista, Andres B.	6	3
Brion, Arturo D.	22	10
Cagampang-De Castro, Soledad M.	9	1
Carpio, Antonio T.	16	14
De Lima, Leila M.	11	6
Legarda, Maria Carolina T.	9	1
Leonardo-De Castro, Teresita J.	39	15
Pangalangan, Raul C.	28	8
Sarmiento, Rene V.	22	1
Sereno, Maria Lourdes P.A.	22	3
Siayngco, Manuel DJ.	25	18
Valdez, Amado D.	13	1
Zamora, Ronaldo B.	43	1

Despite the JBC's note regarding the submission of incomplete or out of date documentary requirements, records bear out that the JBC nonetheless adopted a policy of substantial compliance, at least with respect to the SALN requirement. The Minutes of the JBC's July 20, 2012 *En Banc* Meeting[48] disclose that the JBC deliberated on the matter regarding the non-submission of complete SALNs and in this relation, took into consideration, *inter alia*, the fact that certain candidates expressed difficulties in locating all their previous SALNs, much more timely producing them for submission to the Council.[49] Also, in the July 20, 2012 Minutes, it has been indicated that the following candidates were deemed to have "**substantially complied**" with the SALN requirement despite their failure to submit all their SALNs: Retired Associate Justices Roberto A. Abad and Arturo D. Brion, Senior

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Cautelam dated March 16, 2018, p. 7 and respondent's Memorandum *Ad Cautelam*, p. 16).

45 See Petition, p. 6. See also Annex "E" of the Petition.

46 See Annex "37" of Respondent's Memorandum *Ad Cautelam*.

47 See also Respondent's Memorandum *Ad Cautelam*, pp. 18-19.

48 Annex "18" of Respondent's Comment *Ad Cautelam*.

49 See the July 20, 2012 Minutes as to the discussions on Justice Abad and Dean Pangalanan's respective cases; Annex "18" of Respondent's Comment *Ad Cautelam*, pp. 8-9 and 11. See also Respondent's Memorandum *Ad Cautelam*, pp. 19-20.

Associate Justice Antonio T. Carpio, Associate Justice Teresita J. Leonardo-De Castro, and former Department of Justice Secretary Leila M. De Lima.[50]

As regards respondent, the JBC noted that she had not submitted her SALNs for a period of ten (10) years from 1986 to 2006, when she was employed in the University of the Philippines (UP) College of Law.[51] As such, the JBC inquired[52] as to her SALNs for the years 1995 to 1999, to which she responded with a **Letter**[53] **dated July 23, 2012**, stating that, "[c]onsidering that most of [her] government records in the academe are more than fifteen years old, **it is reasonable to consider it infeasible to retrieve all of those files**,"[54] and that nevertheless, UP had already cleared her of all academic and administrative accountabilities as of June 1, 2006.[55] However, as petitioner points out, there is no showing that respondent's request was ever approved by the JBC.[56]

This notwithstanding, the JBC included respondent's name in the August 13, 2012 shortlist[57] of qualified nominees for the Chief Justice position submitted to the President. The shortlisted candidates (vis-à-vis their votes received, as well as the status of their compliance with the SALN requirement) were:

Short-listed candidate for the position of Chief Justice of the Supreme Court	*Votes received from the JBC*[58]	*Remark on compliance with JBC's requirement to submit all SALNs* [59]
1. Carpio, Antonio T.	7 votes	Substantially complied
2. Abad, Roberto A.	6 votes	Substantially complied
3. Brion, Arturo D.	6 votes	Substantially complied
4. Jardeleza, Francis H.	6 votes	Complied
5. Sereno, Maria Lourdes P.A.	6 votes	No explicit mention that she substantially complied. However, there is a note that "[t]he Executive Officer informed the Council that she had not submitted her SALNs

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50 See Annex "18" of Respondent's Comment *Ad Cautelam*, pp. 8-11 and Respondent's Memorandum *Ad Cautelam*, pp. 18-19. As to Dean Raul C. Pangalanan's case: while the July 20, 2012 Minutes indicated that Justice Lagman moved that his submission of his SALNs be considered substantial compliance, said record was silent on the action taken on the said motion (see Annex "18" of Respondent's Comment *Ad Cautelam*, p. 11).

51 See Annex "18" of Respondent's Comment *Ad Cautelam*, p. 11. See also Respondent's Memorandum *Ad Cautelam*, p. 21.

52 Through a phone call by Judge Richard O. Pascual, then Chief of Office of the ORSN-JBC. See Respondent's Memorandum *Ad Cautelam*, pp. 14 and 22.

53 See Annex "11" of Respondent's Comment *Ad Cautelam*.

54 Id.; emphasis supplied.

55 Id.

56 See OSG's Memorandum dated April 20, 2018, p. 7.

57 See Annex "17" of Respondent's Comment *Ad Cautelam*.

58 See id.

59 See Annex "18" of the Comment *Ad Cautelam*, pp. 8-11.

		for a period of ten (10) years, that is, from 1986 to 2006." [60]
6. Zamora, Ronaldo B.	6 votes	Lacking SALNs and MCLE certificate
7. Leonardo-De Castro, Teresita J.	5 votes	Substantially complied
8. Villanueva, Cesar L.	5 votes	Lacking requirements

As it turned out, respondent was appointed[61] by President Aquino III as Chief Justice of the Supreme Court on August 24, 2012.[62] Five (5) years after, or on August 30, 2017, an impeachment complaint was filed[63] against her; and later on, the present *quo warranto* petition.

III.

As above-mentioned, the Solicitor General disputes the eligibility of respondent through this petition for *quo warranto*, claiming that she is not a person of "proven integrity" because she had not only failed to submit all her SALNs as required by the JBC, but more so, failed to file her SALNs in accordance with law.[64] The OSG even paints a picture of misrepresentation as it further argues that respondent had the legal obligation to disclose her failure to file her SALNs at least eleven (11) times, and that had she informed the Council of such fact then she should not have been included in the shortlist in the first place.[65] In this relation, the OSG discussed the relevance of faithfully submitting one's SALN on the determination of a person's integrity:

> 132. The function of the SALNs as a measure of a person's integrity cannot be downplayed. As declared by the Court in *Jardeleza v. Sereno* [(supra note 5)], one facet of integrity is "fidelity to sound moral and ethical standards." If an applicant proves that she has performed her duty to file SALNs in accordance with the manner and frequency required by law, the JBC can use this to determine whether she possessed the integrity required of members of the Judiciary.
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> 137. Considering that the submission of correct SALNs is imposed by the Constitution, the Anti-Graft and Corrupt Practices Act (R.A. No. 3019)[[66]], and Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. No. 6713)[[67]], compliance with such legal obligation

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60 In the ORSN Report dated July 24, 2012, it was indicated that respondent has submitted "complete requirements" with notation "Letter 7/23/12 - considering that her government records in the academe are more than 15 years old, it is reasonable to consider it infeasible to retrieve all those file[s]." (see Annex "38" of Respondent's Memorandum *Ad Cautelam).*

61 See Annex "K" of the Petition.

62 For reference, respondent's inclusive years in government employment vis-à-vis the SALNs filed by her and available on record were tabulated on pages 6-8 of the *ponencia*.

63 Petition, p. 7.

64 See OSG's Memorandum, pp. 44 and 49.

65 See id. at 46.

66 See Section 7 of RA 3019 (August 17, 1960).

67 See Section 8 of RA 6713, entitled "AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY

> is an indispensable measure of the constitutional qualification of *integrity* under Section 7(3), Article VIII of the 1987 Constitution. Put differently, even without the JBC's requirement to submit SALNs as part of her application as Chief Justice, Respondent had the positive legal obligation to religiously file her SALNs and her failure to do so marred her integrity, rendering her unqualified for appointment in the Judiciary.[68]

While the OSG conveys valuable insights, it is my view that the determination of a candidate's "integrity" as a subjective qualification for appointment lies within the discretion of the JBC. As thoroughly discussed above, the JBC was created precisely to screen the qualifications of Judiciary candidates, and in line therewith, promulgates its own guidelines and criteria to ascertain the same. It should therefore be given the sole prerogative to determine the import of a requirement bearing on an applicant's subjective qualification (such as the submission of all SALNs for those in the government service) as it is after all, the authority who had imposed this requirement based on its own criteria for the said qualification.

Likewise, it is within the JBC's sphere of authority to determine if non-compliance with the legal requirements on the filing of SALNs – assuming that respondent had indeed failed to file her SALNs as prescribed by law – is *per se* determinative of one's lack of "proven integrity." While it is true that the 1987 Constitution states that "[a] public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth,"[69] it is not sufficiently clear that the solitary breach of this requirement would virtually negate one's integrity as a qualification for appointment to the Judiciary. According to jurisprudence, the filing of a public official's SALN is a measure of transparency that is "aimed particularly at curtailing and minimizing, the opportunities for official corruption and maintaining a standard of honesty in the public service."[70] In line with this policy to exact transparency, the non-submission of the SALN is penalized as a crime. It is, however – as the *ponencia* itself classifies – *malum prohibitum*, and not *malum in se*.[71] In *Dungo v. People*,[72] this Court explained that "[c]riminal law has long divided crimes into acts wrong in themselves called acts *mala in se*; and **acts which would not be wrong but for the fact that positive law forbids them, called acts *mala prohibita*.**"[73] As illumined by this Court, crimes which are classified as *mala prohibita* are to be distinguished from crimes that are *mala in se* in that the latter is inherently immoral or vile, while the former is not but is only penalized by reasons of public policy:

SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES," approved on February 20, 1989.

68 OSG's Memorandum, pp. 45-46.

69 Section 17, Article XI of the 1987 CONSTITUTION.

70 *Office of the Ombudsman v. Racho*, 656 Phil. 148, 160 (2011); citing *Carabeo v. Court of Appeals*, 622 Phil. 413, 429 (2009); further citing *Ombudsman v. Valeroso*, 548 Phil. 688, 698 (2007).

71 *Ponencia*, p. 98.

72 762 Phil. 630 (2015).

73 Id. at 658; emphasis and underscoring supplied.

> The better approach to distinguish between *mala in se* and *mala prohibita* crimes is the determination of the inherent immorality or vileness of the penalized act. If the punishable act or omission is immoral in itself, then it is a crime *mala in se*; on the contrary, if it is not immoral in itself, but there is a statute prohibiting its commission by reasons of public policy, then it is *mala prohibita*. In the final analysis, whether or not a crime involves moral turpitude is ultimately a question of fact and frequently depends on all the circumstances surrounding the violation of the statute.[74]

Lest it be misunderstood, the foregoing characterization should not downplay the value of a SALN. As mentioned, it ought to be recognized as an important requirement in the overall scheme of measures designed to exact transparency from public officials pursuant to the State's policy on accountability. This notwithstanding, it remains questionable that the non-filing of one's SALN is, by and of itself, enough to discredit one's integrity, and in such regard, render ineligible an applicant to – much more, an already appointed member of – the Judiciary. Frankly speaking, ***there is simply both a lack of established authority, as well as rational soundness for this Court to adjudge – at least, at this point – that the non-filing of a SALN is <u>on the plane of constitutional or ethical non-negotiables</u> that ought to wipe out all good deeds, credentials, or acclaim which a Judiciary aspirant had worked so hard for all throughout his or her professional career.*** Moreover, there may be numerous circumstances that could demonstrate the candidate's good faith, or reasons which would altogether justify his or her non-compliance with the SALN requirement. Without going into the merits, respondent asserts the following defenses:

> 3.90 In sum, the facts and circumstances in this case show that, independent of the presumption of innocence and regularity, the Chief Justice had, **in fact**, been **complying** with her duties and obligations under the applicable SALN laws. That said, there were actually periods during her stint with the U.P. College of Law when she was **not even required** to file a **SALN**.
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> > 3.90.1. Section 8(A), R.A. No. 6713 provides that those serving in an "honorary capacity, laborers and casual or **temporary** workers" are **not** required to file SALNs. Since R.A. No. 6713 is a penal law, its provisions on exemptions apply retroactively. As mentioned, the "status" and "appointment" of the Chief Justice was merely "**temporary**" from 2 November 1986 to 31 December 1991. Accordingly, from 1986 to 1991, the Chief Justice was **not required** to file a SALN. It was therefore unnecessary for her to file SALNs for the years **1985, 1989, 1990** and **1991.** That she filed those SALNs, of course, does not change the fact that she was *not required* to filed them.
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> > 3.90.2. The Chief Justice was also not required to file SALNs during the years when she was on leave and **did not**

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[74] Id. at 659.

> **receive compensation** as a U.P. Professor (i.e., the years **2001, 2004, 2005**, and **2006**).
>
> 3.90.2.1. Section 1, Rule VII of the IRR of R.A. No. 6713 states that "those who serve in an official honorary capacity, **without service credit or pay**, temporary laborers and casual or temporary and contractual workers," are also **exempted** from the SALN requirement.
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> 3.90.2.2. Under the last paragraph, item (5) of Section 8(A) of R.A. No. 6713 among those mandated to file SALNs are "(a)ll other public officials and employees, **defined in Republic Act No. 3019**, as amended." This is essentially the catch-all phrase for all public officers required to file a SALN. However, under Section 2(b), R.A. No. 3019, a "public officer" is defined as "elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service, **receiving compensation**, *even nominal, from the government* as defined in the preceding subparagraph."[75]

True, the fact that non-compliance *per se* may result into penal or administrative sanctions;[76] however, I am unable to jump to the conclusion that the filing of one's SALN, being in the nature of *malum prohibitum*, should be considered as a ground to *per se* obliterate the integrity of a candidate to – or a duly appointed member of – the Judiciary. At the very least, should this Court make such a determination, then it must first accord participation to the JBC in the proper proceeding therefor, commenced through a petition for *certiorari* as will be expounded below. **This is not only in due deference to the JBC's role in our constitutional order, it is also because the JBC – in this case – appears to have not accorded strict compliance with the SALN requirement which thus, tends to show that it was not that crucial in assessing the candidate's subjective qualifications**. As the records disclose, despite its initial statement that "[a]pplicants with incomplete or out of date documentary requirements will not be interviewed or considered for nomination,"[77] the JBC still allowed substantial compliance to not one, but several, candidates who applied for the 2012 Chief Justice post. Among other reasons, the JBC considered the candidate's difficulty in producing dated SALNs, as well as the time constraints in submitting them. In her Comment[78] dated March 23, 2018 in A.M. No. 17-11-12-SC and A.M. No. 17-11-17-SC,[79] Justice Aurora

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75 See Respondent's Memorandum *Ad Cautelam*, pp. 107-108.

76 See Section 9 (b) of RA 3019 and Section 11 (a) and (b) of RA 6713.

77 See Annex "H" of the Petition.

78 Annex "24" of the *Ad Cautelam* Manifestation/Submission dated April 10, 2018.

79 Entitled "*Re: Impeachment Case No. 002-2017 (Re: In the Matter of the Verified Complaint for Impeachment Against Supreme Court Chief Justice Maria Lourdes P. A. Sereno filed by Atty. Lorenzo G. Gadon and Endorsed by Twenty-Five [25] House Members), and (Re: Letter dated November 23, 2017 of Representative Reynaldo V. Umali, Chairman, Committee on Justice, House of Representatives, to Associate Justice Teresita J. Leonardo-De Castro, Re: Invitation to Attend the Hearing of the Committee on Justice in the Matter of the Verified Complaint for Impeachment against Supreme Court Chief Justice Maria Lourdes P. A. Sereno).*"

Santiago Lagman, a regular member of the JBC and member of the Executive Committee in 2012, disclosed that an "attempt to comply" with the SALN requirement was the Council's "parameter for substantial compliance:"

> It must be recalled that without any objection from the other JBC Members, the *Ex Officio* Member who was the proponent of the requirement of all previous SALNs of candidates from the government sector defined the "**parameter of substantial compliance**" as an "**attempt to comply with the particular requirement**;" and that if indeed those with lacking documents are "serious with their application, they should inform the JBC as to the reason for failing to comply with certain requirements."[80] (Emphases and underscoring supplied)

Further, there is no gainsaying that the submission of SALNs is but one of the several documentary requirements[81] asked of Chief Justice aspirants in 2012. In fact, the submission of "all previous SALNs" does not even appear to be a staple requirement consistently required of candidates in the government service by the JBC throughout the years. To add, it should be borne in mind that the Council, as per JBC-009, undertook to take every possible step to verify the applicants' records and reputation. In so doing, the JBC implemented a rigorous screening process that goes beyond the scrutiny of documentary requirements, but includes the implementation of other mechanisms, such as the conduct of public interviews and background checks, to determine the applicant's "proven integrity," among other subjective qualifications necessary for the office.

At this juncture, it is apt to point out that "integrity," as well as the other subjective qualifications of "competence," "probity," and "independence," are personal qualities that are hardly determinable from the facts on record. Unless they are first concretized into operable guidelines and criteria, the determination of the same would be clearly subject to varied interpretation. **The nature of these subjective qualifications starkly contrasts with the qualifications of age, natural-born citizenship, and years of legal practice,**[82] **which are inherently objective in nature**. Logically speaking, the presence or absence of any of these objective qualifications may be readily established based on the evidence submitted by

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80 Id.

81 While the JBC *En Banc* maintained its previous ruling that "incumbent Justices would not be required to submit other documentary requirements, particularly, clearances" (see Minutes of the JBC Meeting on June 28, 2012; and respondent's Memorandum *Ad Cautelam*, pp. 15-16), respondent, aside from the SALNs, waiver, medical certificate and laboratory results, and updated personal data sheet (PDS), likewise submitted certifications from various government agencies: the OBC, the IBP, the NBI, the Cainta Police Station, and the Office of the Ombudsman to evince that she had no pending criminal or administrative case (See Comment *Ad Cautelam* dated March 16, 2018, p. 7 and respondent's Memorandum *Ad Cautelam*, p. 16).

82 Section 7 (1), Article VIII of the 1987 CONSTITUTION provides:

> (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines. (Underscoring supplied)

the parties. Thus, while it is true that the JBC may prescribe the type of document needed to prove the presence of an objective qualification (*i.e.*, a birth certificate, personal data sheet [PDS], or the like), the determination thereof may still be made without any prior need of interpretation.

On the other hand, **there is an unavoidable and imperative need to set definable criteria before one may be able to establish the presence or absence of a subjective qualification**; in fact, **the enterprise of interpretation is intrinsically linked to the nature of a subjective qualification**. This is because one cannot ascertain if a candidate is of proven integrity, competence, probity or independence, unless these personal qualities are first interpreted into demonstrable standards therefor. Based on these premises, it is therefore my view that when the JBC imposes a requirement that bears on an applicant's subjective qualification, such as integrity, it ineluctably engages in the enterprise of interpretation. **In so doing, the JBC exercises an inherent policy function and perforce, the treatment and application of said requirement – being a concrete embodiment of the JBC's interpretation – should be deemed as "political questions," which, as earlier stated, are generally non-justiciable, unless tainted with grave abuse of discretion**.

While it is true that the "political question doctrine" is commonly applied to acts of the political branches of government,[83] by no means should the concept be confined to the Executive or Legislative Departments. "[T]he term '**political question' connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy**."[84] In the classic case of *Baker v. Carr*,[85] a political question is said to exist when there is found, among others, "the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion." In *The Diocese of Bacolod v. Commission on Elections*,[86] citing *Tañada v. Cuenco*,[87] this Court stated:

> What is generally meant, when it is said that a question is political, and not judicial, is that it is a matter which is to be exercised by the people in their primary political capacity, or **that it has been specifically delegated to some other department or particular officer of the government, with discretionary power to act.**[88] (Emphasis and underscoring supplied)

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83 "The exercise of the discretionary power of the legislative or executive branch of government **was often the area where the Court had to wrestle with the political question doctrine**." See former Chief Justice Reynato S. Puno's Separate Opinion in *Integrated Bar of the Philippines v. Zamora* (103 Phil. 1051, 1067 [2000]), citing Bernas, Joaquin G., SJ., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, p. 859 (1996); emphasis and underscoring supplied.

84 *Tañada v. Cuenco*, 103 Phil. 1051, 1067 (1957); emphasis and underscoring supplied.

85 369 U.S. 186, 218 (1962).

86 751 Phil. 301 (2015).

87 Supra note 84.

88 *The Diocese of Bacolod v. Commission on Elections*, supra note 86, at 336-337.

The true authors of the Constitution are the people,[89] and the structure of power conferred to the other constitutionally-created bodies, such as the Constitutional Commissions, as well as the JBC, is but an expression of the people's will. Hence, it is conceptually sound to apply the political question doctrine to certain inherent policy functions of bodies which have been conferred with the discretionary power to act.

To illustrate, respondent aptly cites the cases of *Luego v. Civil Service Commission*,[90] *Mauna v. Civil Service Commission*,[91] and *Medalla, Jr. v. Sto. Tomas*,[92] which show that the political question doctrine has been applied by the Court in "ruling on the extent of the appointive powers of public officers not belonging to either the executive or legislative branches."[93] In all three (3) cases, it was consistently observed:

> Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. **This is a political question involving considerations of wisdom which only the appointing authority can decide.**[94] (Emphasis supplied)

In any event, the cross-sectoral composition of the JBC, with, among others, "the Secretary of Justice, and a representative of Congress as *ex officio* Members," makes it a quasi-political body whose policy functions may fall within the ambit of the political question doctrine.

In this case, if this Court were to rule that non-compliance with a particular requirement -- such as the filing of SALNs – would negate the "integrity" of an applicant, then it would effectively be making its own interpretation of "integrity" as an eligibility qualification, and in so doing, arrogate unto itself a policy function constitutionally committed to the JBC. As earlier discussed, a subjective qualification must be first interpreted into definable criteria before a certain candidate may be said to possess or not possess the same. As typified by this case, should this Court assess the import of a particular requirement which bears on one's subjective qualification, it would then be – practically speaking – performing an "initial policy determination" and hence, traversing a "political" (or policy) question that can only be scrutinized under the lens of grave abuse of discretion duly raised in a petition for *certiorari*.

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89 "The Constitution is truly a public document in that it was ratified and approved by a direct act of the People[.]" (*David v. Senate Electoral Tribunal* (G.R. No. 221538, September 20, 2016, 803 SCRA 435).

90 227 Phil. 303 (1986).

91 302 Phil. 410 (1994).

92 284 Phil. 488 (1992).

93 Respondent's Memorandum *Ad Cautelam*, p. 76.

94 *Luego v. Civil Service Commission*, supra note 90, at 307; *Mauna v. Civil Service Commission*, supra note 91, at 417; and *Medalla, Jr. v. Sto. Tomas*, supra note 92, at 495.

IV.

It is well-settled that political questions are not completely beyond the realm of justiciability. In the seminal case of *Marcos v. Manglapus*,[95] it was therein qualified that the Constitution limits the adjudication of political questions to the issue of grave abuse of discretion for the precise reason that the Court cannot substitute its judgment on a matter which by nature or by law is for the latter to decide, *viz.*:

> When political questions are involved, **the Constitution limits the determination to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned**. If grave abuse is not established, the Court will not substitute its judgment for that of the official concerned and decide a matter which by its nature or by law is for the latter alone to decide.[96] (Emphasis and underscoring supplied)

As commonly known, the legal anchorage of the Court's expanded power of judicial review to determine the existence of grave abuse of discretion on the part of any branch or instrumentality of government (such as the JBC) is Section 1, Article VIII of the 1987 Constitution:

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

Under our prevailing jurisprudence, the recognized mode of invoking the ground of grave abuse of discretion against the act of an instrumentality of government is a petition for *certiorari* filed for the purpose.

In *Araullo v. Aquino III*,[97] it was explained that a writ of *certiorari* with respect to the Court "may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, [Article VIII of the 1987 Constitution]."[98]

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95 258 Phil. 479 (1989).
96 Id. at 506-507.
97 737 Phil. 457 (2014).
98 Id. at 531.

Further, in *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.* (*Association of Medical Clinics*),[99] this Court elucidated:

> Meanwhile that no specific procedural rule has been promulgated to enforce [the] "expanded" constitutional definition of judicial power and because of the commonality of "grave abuse of discretion" as a ground for review under Rule 65 and the courts' expanded jurisdiction, **the Supreme Court – based on its power to relax its rules – allowed Rule 65 to be used as the medium for petitions invoking the courts' expanded jurisdiction**[.][100] (Emphasis and underscoring supplied)

Notably, since a petition for *certiorari* assailing the act of the JBC would not constitute an attack against a "judgment, order or resolution" of a "tribunal, board or officer exercising judicial or quasi-judicial functions,"[101] it is therefore apparent that the sixty (60)-day filing period under Section 4,[102] Rule 65 of the Rules of Court would not apply. As worded, the period thereunder is reckoned from "notice of the judgment, order or resolution" of said tribunal, which circumstance does not obtain in this case. Hence, similar to cases where *certiorari* was filed assailing a non-judicial or non-quasi-judicial act of government,[103] the sixty (60)-day period under Rule 65 was not applied, or if at all, based on *Association of Medical Clinics*, may be relaxed.

All things considered, it is my opinion that a petition for *certiorari* is the proper remedy to assail the subjective qualifications of a Judiciary

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99 G.R. Nos. 207132 and 207205, December 6, 2016, 812 SCRA 452.

100 Id at 479; citation omitted.

101 See Section 1, Rule 65 of the RULES OF COURT, which states:

> Section 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
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> x x x x

102 Section 4. *When and where to file the petition.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not [later] than sixty (60) days counted from the notice of the denial of the motion.

103 Jurisprudence is replete with cases wherein the Court took cognizance of petitions for *certiorari* assailing a non-judicial or non-quasi-judicial act of government without observing the sixty-(60) day period to file under Rule 65.

For instance, in *Araullo v. Aquino III* (see supra note 98), the Court took cognizance of nine (9) petitions filed in October and November 2013 assailing the constitutionality of the Disbursement Acceleration Program (DAP) as implemented through National Budget Circular No. 541 as of June 30, 2012, and all other related executive issuances. The DAP had been instituted in 2011 but the petitions were filed only in 2013.

In *Belgica v. Ochoa* (see 721 Phil. 416 [2013]), the Court similarly gave due course to the petitions filed in August and September 2013 questioning the constitutionality of the pork barrel system, which may be traced to various provisions of previous General Appropriations Acts dating to the Priority Development Assistance Fund in 2000 and even its previous iterations implemented way back.

appointee. This is because a Judiciary appointee's subjective qualification should always be determined relative to the interpretation, treatment, and application of the standards employed by the JBC. Being the body specifically tasked by the Constitution to recommend appointees to the Judiciary, due deference should be given to the JBC's nomination of a particular candidate. It is understood that when the JBC submits its shortlist of candidates, it has screened those included therein and have so resolved that they have presumably met all the minimum constitutional requirements, including the subjective qualification of "proven integrity." The screening and shortlisting of candidates for appointment are all official acts of the JBC. **Thus, as in all official acts of government, a candidate's full qualification for appointment – which is manifested by his or her JBC nomination – should be accorded with the presumption of validity**[104] and hence, should prevail until nullified on the ground of grave abuse of discretion duly raised in a petition for *certiorari*. Simply put, until that act is set aside in the proper proceeding therefor, the same should be regarded as valid.

Besides, a petition for *certiorari* is not only the proper mode of invoking grave abuse of discretion against the act of any instrumentality of government. Based on recently decided cases, it is also the proper vehicle for invoking the Court's supervisory power over the JBC.

Section 8 (1), Article VIII of the 1987 Constitution decrees that the JBC is "created under the supervision of the Supreme Court." According to jurisprudence, supervision only pertains to the mere oversight over an inferior body. In *Aguinaldo*,[105] the concept of supervision was distinguished from the power of control as follows:

> Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body. Officers in control lay down the rules in the doing of an act. If they are not followed, it is discretionary on his part to order the act undone or re-done by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. **Supervising officers merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them.** If the rules are not observed, he may order the work done or re-done to conform to the prescribed rules. He cannot prescribe his own manner for the doing of the act.[106] (Emphasis supplied)

In *Jardeleza*, this Court granted the petition for *certiorari* filed by therein petitioner Associate Justice Francis H. Jardeleza, "seeking to compel the JBC to include him in the list of nominees for Supreme Court Associate

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[104] "As a general rule, official acts enjoy a presumed validity. In the absence of clear and convincing evidence to the contrary, the presumption logically stands." (*Philippine Association of Service Exporters, Inc., v. Drilon*, 246 Phil. 393, 400 [1988].)

[105] *Aquinaldo v. Aquino III* (main *ponencia*), supra note 26, G.R. No. 224302, November 29, 2016, 811 SCRA 304, citing *Bito-onon v. Yap Fernandez*, 403 Phil. 693 (2001).

[106] *Aquinaldo v. Aquino III*, id. at 370-371.

Justice *vice* Associate Justice Abad, on the grounds that the JBC and Chief Justice Sereno acted in grave abuse of discretion amounting to lack or excess of jurisdiction in excluding him, despite having garnered a sufficient number of votes to qualify for the position."[107] In said case, the Court held, *inter alia*, that "[b]ased on [Section 8(1), Article VIII of the 1987 Constitution], the supervisory authority of the Court over the JBC covers the overseeing of compliance with its rules [and that] Justice Jardeleza's principal allegations in his petition merit the exercise of this supervisory authority."[108] Eventually, the Court resolved that Justice Jardeleza should be deemed included in the shortlist submitted to the President for consideration as an Associate Justice of the Supreme Court *vice* Justice Abad. Further, it directed the JBC to review and adopt rules relevant to the observance of due process in its proceedings, particularly JBC-009 and JBC-010, subject to the approval of the Court.[109] In one of his opinions, Justice Arturo D. Brion identified the approach utilized by this Court in *Jardeleza*:

> A very recent case before this Court involving the JBC (which the *ponencia* cited in its earlier draft) is *Jardeleza v. Sereno* [(supra note 5)], where the Court, for the first time since the enactment of the 1987 Constitution, nullified an action by the JBC. **In so doing, the Court exercised both its expanded jurisdiction to review acts of government agencies amounting to grave abuse of discretion, and its supervisory jurisdiction over the JBC**.[110] (Emphasis and underscoring supplied)

Similarly, in the case of *Villanueva*, this Court took cognizance of the petition for *certiorari* filed by therein petitioner Presiding Judge Ferdinand R. Villanueva "to assail the policy of the Judicial and Bar Council (JBC), requiring five [(5)] years of service as judges of first-level courts before they can qualify as applicant to second-level courts, on the ground that it is unconstitutional, and was issued with grave abuse of discretion."[111] On the tenability of the remedy of *certiorari*, it was instructively pronounced:

> In this case, it is clear that the JBC does not fall within the scope of a tribunal, board, or officer exercising judicial or quasi-judicial functions. In the process of selecting and screening applicants, the JBC neither acted in any judicial or quasi-judicial capacity nor assumed unto itself any performance of judicial or quasi-judicial prerogative. However, since the formulation of guidelines and criteria, including the policy that the petitioner now assails, is necessary and incidental to the exercise of the JBC's constitutional mandate, a determination must be made on whether the JBC has acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing and enforcing the said policy.
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> Besides, the Court can appropriately take cognizance of this case by virtue of the Court's power of supervision over the JBC. x x x

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107 Supra note 6, at 480-481.
108 Id. at 490.
109 Id. at 516.
110 See Associate Justice Arturo D. Brion's Separate Concurring Opinion in *Villanueva v. JBC*, supra note 20, at 558.
111 Id. at 541.

> Following this definition, the supervisory authority of the Court over the JBC is to see to it that the JBC complies with its own rules and procedures. Thus, when the policies of the JBC are being attacked, then the Court, through its supervisory authority over the JBC, has the duty to inquire about the matter and ensure that the JBC complies with its own rules.[112] (Underscoring supplied)

As exhibited above, settled jurisprudence experientially validates the premise that *certiorari* is a valid mode of assailing the acts of the JBC, both in the supplication of the Court's expanded power of judicial review, as well as its supervisory authority over said governmental body.

As demonstrated in *Jardeleza*, this Court may, through a petition for *certiorari*, modify the act of the JBC (*i.e.*, alter Justice Jardeleza's exclusion from the shortlist and instead, deem him to be included) based on fundamental considerations of due process in view of the well-settled rule that a flagrant violation of due process constitutes grave abuse of discretion,[113] which is correctible through *certiorari*. To note, the Court therein pronounced that "[t]he JBC, as the sole body empowered to evaluate applications for judicial posts, exercises full discretion on its power to recommend nominees to the President. The *sui generis* character of JBC proceedings, however, is not a blanket authority to disregard the due process under JBC-010."[114] As it was ultimately concluded, "[J]ardeleza was deprived of his right to due process when, contrary to the JBC rules, he was neither formally informed of the questions on his integrity nor was provided a reasonable opportunity to prepare his defense."[115] Nonetheless, the Court cautiously circumscribed its authority to act on issues concerning the JBC's policies, *viz.*:

> With the foregoing, the Court is compelled to rule that Jardeleza should have been included in the shortlist submitted to the President for the vacated position of Associate Justice Abad. This consequence arose not from the unconstitutionality of Section 2, Rule 10 of JBC-009, *per se*, but from the violation by the JBC of its own rules of procedure and the basic tenets of due process. By no means does the Court intend to strike down the "unanimity rule" as it reflects the JBC's policy and, therefore, wisdom in its selection of nominees. Even so, the Court refuses to turn a blind eye on the palpable defects in its implementation and the ensuing treatment that Jardeleza received before the Council. True, Jardeleza has no vested right to a nomination, but this does not prescind from the fact that the JBC failed to observe the minimum requirements of due process.[116] (Underscoring supplied)

Meanwhile, in *Villanueva*, the Court dismissed the petition for lack of merit since it was not shown that the policy of the JBC requiring judges to

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[112] Id. at 544-545.
[113] See *Villa-Ignacio v. Ombudsman Gutierrez*, G.R. No. 193092, February 21, 2017.
[114] *Jardeleza v. Sereno*, supra note 6, at 513-514.
[115] Id. at 514.
[116] Id.

serve five (5) years in first-level courts before they can qualify as applicants to second-level courts was unconstitutional. In arriving at this conclusion, the Court had to thresh out issues concerning the equal protection clause,[117] as well as – same as in *Jardeleza* – due process considerations.[118] Furthermore, the Court resolved that "petitioner argued but failed to establish that the assailed policy violates the constitutional provision under social justice and human rights for equal opportunity of employment."[119]

Thus, guided by these cases, should the JBC ***(a)*** commit an obvious due process violation – for instance, by clearly discriminating on the application of its promulgated rules against a certain applicant in favor of others – or ***(b)*** issue a policy that unquestionably transgresses the Constitution – for example, by setting criteria that violates the equal protection clause or perhaps, by qualifying a candidate who undeniably lacks integrity for committing egregious crimes or ethical violations (*e.g.*, plunder, rape, murder, and the like) – then this Court, as it had in the past, would not hesitate to wield its supervisory authority over the JBC, much more its expanded power of judicial review, being the institutional check against grave abuse of discretion committed by any government instrumentality as mandated by the Constitution. As eruditely illustrated by Justice Brion in his opinion in *Jardeleza*, the distinct interplay of power between the Court and the JBC operates as follows:

> B. Relationship with the JBC
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> As has earlier been discussed, the Court exercises two points of entry in assuming jurisdiction over the present petition. **The first is its supervision over the JBC, while the second is the exercise of its expanded judicial power. Both of these powers are constitutional in nature.**
>
> The JBC is under the supervision, not just of a member of the Supreme Court but of this Court as a collegial body. Since the JBC's main function is to recommend appointees to the judiciary, this constitutional

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[117] On this point, the Court held that "[t]he JBC does not discriminate when it employs number of years of service to screen and differentiate applicants from the competition. The number of years of service provides a relevant basis to determine proven competence which may be measured by experience, among other factors." (*Villanueva v. JBC*, supra note 20, at 551.)

[118] On this point, the Court declared that although "publication is also required for the five-year requirement because it seeks to implement a constitutional provision requiring proven competence from members of the judiciary[,] x x x x the JBC's failure to publish the assailed policy has not prejudiced the petitioner's private interest x x x since the possession of the constitutional and statutory qualifications for appointment to the Judiciary may not be used to legally demand that one's name be included in the list of candidates for a judicial vacancy." (Id. at 555.)

[119] On this point, the Court quoted with approval the OSG's explanation that "[t]he questioned policy does not violate equality of employment opportunities. The constitutional provision does not call for appointment to the Judiciary of all who might, for any number of reasons, wish to apply. As with all professions, it is regulated by the State. The office of a judge is no ordinary office. It is imbued with public interest and is central in the administration of justice x x x. Applicants who meet the constitutional and legal qualifications must vie and withstand the competition and rigorous screening and selection process. They must submit themselves to the selection criteria, processes and discretion of respondent JBC, which has the constitutional mandate of screening and selecting candidates whose names will be in the list to be submitted to the President. So long as a fair opportunity is available for all applicants who are evaluated on the basis of their individual merits and abilities, the questioned policy cannot be struck down as unconstitutional." (Id. at 555-556.)

design was put in place in order to reinforce another constitutional mandate granted to this Court: its administrative supervision over all courts and personnel thereof.

In *Ambil, Jr. v. Sandiganbayan and People* [(669 Phil. 32)], we characterized what makes up the power of supervision:

> On the other hand, the power of supervision means "overseeing or the authority of an officer to see to it that the subordinate officers perform their duties." If the subordinate officers fail or neglect to fulfill their duties, the official may take such action or step as prescribed by law to make them perform their duties. Essentially, the power of supervision means no more than the power of ensuring that laws are faithfully executed, or that subordinate officers act within the law. The supervisor or superintendent merely sees to it that the rules are followed, but he does not lay down the rules, nor does he have discretion to modify or replace them.

This ruling shows that the power of supervision is both normative and proactive. The supervisor not only ensures that the subordinate acts within the bounds of its law-laden duties and functions; he may also compel a subordinate to perform such duties and functions, whenever it becomes clear that the subordinate has already acted in disregard of it.

That the JBC is granted the full discretion to determine its own rules and select the nominees it deems qualified is beyond question. This discretion, however, like all other exercise of discretion, comes with the limitation that the JBC rules should not violate the fundamental rights of third parties as well as the provisions of the Constitution. Whenever any such violation occurs, the Supreme Court may step in wearing its second hat in its relationship with the JBC – exercising its power to correct grave abuse of discretion under Section 1, Article VIII of the Constitution.[120] (Emphasis supplied)

V.

Unlike in those cases, the OSG in this case purports no due process violation or any other serious constitutional violation on the part of the JBC. **In fact, the Solicitor General has voluntarily admitted[121] that the JBC's grave abuse of discretion is not at all an issue. This is further magnified by the fact that the JBC was not even impleaded as a party to these proceedings**. As it has been oftentimes repeated, this case is a petition for *quo warranto* directly assailing the eligibility of respondent for her alleged lack of "proven integrity." The OSG explains the nature of a petition for *quo warranto*, which as well constitutes the reason as to why the JBC was not even impleaded herein:

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[120] See Associate Justice Arturo D. Brion's Separate Concurring Opinion in *Jardeleza v. Sereno*, supra note 6, at 584-585.

[121] TSN, April 10, 2018, p. 16.

V.a. The JBC need not be impleaded.

123. In *Aguinaldo v. Aquino*, the Court explained that a case which puts under scrutiny the qualifications of a person holding a public office is properly the subject of a petition for *quo warranto*. Applying *Topacio v. Ong*, the Court held that a *quo warranto* petition "is brought against the person who is alleged to have usurped, intruded into, or unlawfully held or exercised the public office."

124. **Inasmuch as the present Petition only disputes the eligibility of Respondent to become Chief Justice, and not the acts of either the President or the JBC, the Solicitor General correctly instituted a petition for *quo warranto* and impleaded only Sereno as respondent to Section 1**[122] **of Rule 66.**[123] (Emphasis supplied)

Heavily intertwined with the OSG's position on *quo warranto* is its refutation of – on the other side – respondent's unyielding stance that "[a] Member of this Honorable Court may be removed only by impeachment."[124] The reasons of respondent therefor are best encapsulated in this statement:

3.3.6 Impeachment was chosen as the means for removal of high government officers for a public purpose – to shield such officers from harassment suits which would prevent them from performing their functions which are vital to the continued operations of government. Such purpose would be defeated if the first sentence of Section 2, Article XI of the Constitution would not be construed as providing exclusive means for removal of impeachable officers. It would be absurd for the framers to provide a very cumbersome process for removing said officers, only to allow less difficult means to remove them.[125]

In response, the OSG argues that *quo warranto* is a remedy which is separate and distinct from impeachment: "*quo warranto* ousts a public officer for ineligibility, or failing to meet the qualifications for such public office at the time of appointment, while impeachment can result in the removal of a validly-appointed or elected impeachable officer for the commission of any of the impeachable offenses while in office."[126] Further, *quo warranto*, which is to be filed and later resolved by courts of law, is judicial in nature, whereas impeachment, which proceedings are taken before the Senate sitting as an impeachment court, is political in character.

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[122] Section 1, Rule 66 of the RULES OF COURT states:

Section 1. *Action by Government against individuals.* — An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines against:

(a) **A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise;**

(b) A public officer who does or suffers an act which, by the provision of law, constitutes a ground for the forfeiture of his office; [or]

(c) An association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority so to act. (Emphasis supplied)

[123] See OSG's Memorandum, p. 43.

[124] See Respondent's Memorandum *Ad Cautelam*, p. 40.

[125] Id. at 42.

[126] See OSG's Memorandum, p. 25.

Withal, the OSG submits that "[a]n impeachment case against a Supreme Court Justice for an impeachable offense presupposes a valid appointment of that Justice. In contrast, a *quo warranto* petition asserts that the appointment of [said Justice] is void *ab initio*."[127]

The OSG's arguments are partially tenable.

The roots of the Philippine's concept of impeachment – as was adopted in the 1935 Constitution and carried over to the 1987 Constitution – can be traced to the Constitution of the United States (US),[128] which was, in turn, borrowed from English law.[129] As manifested in the statements of the Founding Fathers, an impeachment proceeding was intended to try offenses which are denominated as "political" in character.

In the Federalist No. 65, Alexander Hamilton wrote:

> A well-constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. **The subjects of its jurisdiction are those offenses which 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 injuries done immediately to the society itself. x x x

Meanwhile, James Wilson stated:[130]

> In the United States and in Pennsylvania, impeachments are **confined to political characters, to political crimes and misdemeanors, and to political punishments.** The president, vice president, and all civil officers of the United States; the governour and all other civil officers under this commonwealth, are liable to impeachment.

In the opinion of former Chief Justice Renato C. Corona in *Francisco v. House of Representatives*,[131] the concept of impeachment under our Constitution was characterized as "a remedy for serious political offenses

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127 Id.

128 Section 4, Article II of the US Constitution reads:

> Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

129 In the Federalist No. 65 (The Powers of the Senate Continued, From the New York Packet, March 7, 1788), Alexander Hamilton recognized that the drafters of the US Constitution "borrowed" the model of impeachment from English Law, in this wise: "The model from which the idea of this institution has been borrowed, pointed out that course to the convention. In Great Britain, it is the province of the House of Commons to prefer the impeachment, and the House of Lords to decide upon it. Several of the State constitutions have followed the example. x x x" See also Romney, Matthew R., *The Origins and Scope of Presidential Impeachment,* HINCKLEY JOURNAL OF POLITICS, 67-72 (Spring 2000).

130 Gerhardt, Michael J., *The Lessons of Impeachment History.* Faculty Publications (1999), p. 978. <http://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=1077&context=faculty_publications> (visited on May 8, 2018).

131 460 Phil. 830 (2003).

against the people, [which] runs parallel to that of the U.S. Constitution," *viz.*:

> **Impeachment under the Philippine Constitution, as a remedy for serious political offenses against the people, runs parallel to that of the U.S. Constitution whose framers regarded it as a political weapon against executive tyranny**. It was meant to "fend against the incapacity, negligence or perfidy of the Chief Magistrate." Even if an impeachable official enjoys immunity, he can still be removed in extreme cases to protect the public. Because of its peculiar structure and purpose, impeachment proceedings are neither civil nor criminal:
>
> **James Wilson described impeachment as "confined to political characters, to political crimes and misdemeanors, and to political punishment."** According to Justice Joseph Story, in his *Commentaries on the Constitution*, in 1833, **impeachment applied to offenses of a political character**[.][132] (Emphases supplied)

In its present formulation, the impeachment clause in our Constitution enumerates the following grounds to impeach certain high-ranking public officials, which hew with its political nature based on its origins as above-discussed:

Section 2, Article XI of the 1987 Constitution

> Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, **culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.** All other public officers and employees may be removed from office as provided by law, but not by impeachment. (Emphasis supplied)

As provided, the grounds for impeachment under the 1987 Constitution are: **(1)** culpable violation of the Constitution; **(2)** treason; **(3)** bribery; **(4)** graft and corruption; **(5)** other high crimes; and **(6)** betrayal of public trust. Palpably, the common thread amongst these grounds is that they are all serious political offenses that bear on one's fitness to continue with the discharge of his or her public office. As they are in the nature of "offenses," they essentially presume intent or negligence on the part of the wrongdoer, which need not obtain when one fails to meet the minimum qualifications for eligibility as prescribed by law. To be sure, the ground of "culpable violation of the Constitution" – as the name itself implies – requires a showing of "culpa", which is defined as "actionable negligence or fault."[133] Meanwhile, the grounds of "treason" and "bribery" constitute felonies that are well-defined under the provisions of the Revised Penal Code, whereas the term "graft and corruption" refers to the complement of crimes that are penalized under RA 3019, or the "Anti-Graft and Corrupt

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[132] Id. at 1007-1008.

[133] <https://www.merriam-webster.com/dictionary/culpa> (visited May 8, 2018).

Practices Act." As regards the ground of "betrayal of public trust," the constitutional deliberations characterize the same to be:

> 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," as explained by Commissioner Romulo, is **a catchall phrase to include all acts which are not punishable by statutes 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, favoritism, etc. to the prejudice of public interest and which tend to bring the office into disrepute. That is the purpose, Madam President.**
>
> Thank you.[134] (Emphasis and underscoring supplied)

In similar fashion, the ground of "other high crimes" was meant to include "any act, omission or conduct that renders an official unworthy to remain in office," *viz.*:

> MR. CONCEPCION: Thank you. Madam President.
>
> We have been discussing the grounds for impeachment in the apparent belief that the actual provisions on impeachment are not sufficiently embracing. There is this all-embracing phrase in the Constitution which says: "other high crimes." As Commissioner Romulo stated, this is a political matter more than a legal one. And **jurisprudence has settled that "other high crimes" does not even have to be a crime, but it is any act, omission or conduct that renders an official unworthy to remain in office.** My apprehension is that the more we particularize the grounds for impeachment, the more we reduce its ambit because we would be subject to the rule: *expressio unius est exclusio alterius*. I would prefer if the enumeration ended with the phrase "other high crimes" because this phrase includes anything that in the opinion of the impeaching body renders the subject of impeachment unworthy to remain in office.
>
> Thank you, Madam President.[135] (Emphasis supplied)

Owing to both the "political" and "offense-based" nature of these grounds, I am thus inclined to believe that impeachment is not the sole mode of "removing" impeachable officials as it would be clearly absurd for any of them to remain in office despite their failure to meet the minimum eligibility requirements, which failure does not constitute a ground for impeachment. Sensibly, there should be a remedy to oust all our public officials, no matter how high-ranking they are or critical their functions may be, upon a

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[134] II RECORD, CONSTITUTIONAL COMMISSION (July 28, 1986), p. 272.
[135] Id. at 315-316.

determination that they have not actually qualified for election or appointment. While I do recognize the wisdom of insulating impeachable officials from suits that may impede the performance of vital public functions, ultimately, this concern cannot override the basic qualification requirements of public office. ***There is no doubt that qualification should precede authority***. Every public office is created and conferred by law;[136] hence, its inherent conditions should be faithfully adhered to. On this score, the *ponencia* aptly rationalizes:

> The courts should be able to inquire into the validity of appointments even of impeachable officers. To hold otherwise is to allow an absurd situation where the appointment of an impeachable officer cannot be questioned even when, for instance, he or she has been determined to be of foreign nationality or, in offices where Bar membership is a qualification, when he or she fraudulently represented to be a member of the Bar. Unless such an officer commits any of the grounds for impeachment and is actually impeached, he can continue discharging the functions of his office even when he is clearly disqualified from holding it. Such would result in permitting unqualified and ineligible public officials to continue occupying key positions, exercising sensitive sovereign functions until they are successfully removed from office through impeachment. This could not have been the intent of the framers of the Constitution.[137]

This notwithstanding, I am still unable to agree that *quo warranto* – as the OSG argues – should be the proper remedy *under the circumstances of this case*.

Quo warranto is a prerogative writ sourced from common law used to inquire into the legality of the claim which a party asserts to an office and to oust him if the claim is not well-founded.[138] **By nature, it partakes of a direct attack to the title of one's office**. Way back in 1949, this Court, in the case of *Nacionalista Party v. De Vera*[139] (*Nacionalista*), spoke about the "direct" nature of *quo warranto* as opposed to a writ of prohibition:

> The title of a *de facto* officer cannot be indirectly questioned in a proceeding to obtain the writ of a prohibition to prevent him from doing an official act, nor in a suit to enjoin the collection of a judgment rendered by him. Having at least colorable right to the office his title can be determined only in a *quo warranto* proceeding or information in the nature of a *quo warranto* at suit of the sovereign.[140]

In its memorandum, the OSG claims that a *quo warranto* petition is the proper remedy to oust an ineligible impeachable official; it is distinct from the other special civil actions under the Rules of Court. Under Rule 66

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[136] See *Laurel v. Desierto*, 430 Phil. 658, 672 (2002).
[137] *Ponencia*, p. 61.
[138] See id. at 49-50. See also Spelling, Thomas. *Treatise on Injunctions and Other Extraordinary Remedies* (1901), pp. 1435-1439.
[139] 85 Phil. 101 (1949).
[140] Id. at 132.

of the Rules of Court, it is the precise remedy to oust a usurper (*i.e.*, someone who is appointed to public office despite his or her ineligibility), and the action does not require other parties to be impleaded for the suit to prosper. On the other hand, a remedy like a petition for *certiorari* under Rule 65 is directed against a judge or court, quasi-judicial agency, tribunal, etc. Thus, the Court can grant petitioner complete relief although the JBC was not impleaded.[141]

To my mind, the fundamental flaw in the OSG's position on *quo warranto* is its failure to consider that the qualification being assailed in this petition is a subjective qualification that has been priorly determined based on certain criteria set by the JBC. As may be gathered throughout this discourse, **it could not have been intended that the subjective qualifications of any judge or justice be directly assailed before a court of law**; otherwise, that court would be basically supplanting the Council's determination thereof, and in so doing, effectively assume the latter's role incongruous to and disruptive of the current structure of the Constitution. This is not to say that the JBC's determination of an appointee's integrity, competence, probity, and independence is completely insulated from judicial intervention. Again, in the proper scheme of things, the JBC's official acts are presumed to be valid and hence, assailable only on the ground of grave abuse of discretion coursed through a petition for *certiorari*. As per our existing procedural framework, grave abuse of discretion is not an available ground under the rules on *quo warranto*; more so, the Solicitor General had expressly admitted that it considers immaterial the issue of grave abuse of discretion. Thus, if grave abuse of discretion has not been asserted nor was it attributed against the JBC, which was not even made a party to this case, then the qualification of respondent, as embodied in her shortlisting by the JBC, should be maintained. For these reasons, the present petition for *quo warranto* is infirm.

The OSG cites *Nacionalista* as basis to prove that impeachable officials (such as the Chairman of the Commission on Elections in that case) may be removed not only through impeachment, but through *quo warranto*. While it is true that the Court in *Nacionalista* had declared that *quo warranto* is the proper remedy to inquire into the validity of the appointment of the Chairman of the Commission on Elections, who was indeed an impeachable officer then,[142] it bears emphasizing that *Nacionalista* was decided in 1949 when the 1935 Constitution was still in effect; at that time, the Court did not have its expanded *certiorari* jurisdiction. Thus, the ruling in *Nacionalista* is not binding under the present Constitution. In fact, in the more recent case of *Funa v. Villar*,[143] the Court found that the use of its expanded *certiorari* jurisdiction was proper to inquire into whether the appointment of another impeachable officer, the Chairman of the Commissioner on Audit, infringed the Constitution or amounted to grave

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[141] See OSG's Memorandum, p. 27.

[142] See Section 1, Article X of the 1935 CONSTITUTION, as amended (May 14, 1935).

[143] 686 Phil. 571 (2012).

abuse of discretion. Moreover, as above-explained, in the recent cases of *Jardeleza* and *Villanueva*, this Court recognized that *certiorari* is not only the proper remedy to invoke its expanded power of judicial review against the act of any branch or instrumentality of government, it is likewise the vehicle by which it could exercise its power of supervision over the JBC.

Besides, Rule 66 of the Rules of Court only mirrors the primeval concept of *quo warranto* and thus, partakes of a remedy to test the title of an alleged **usurper** to a public office. As such, time and again, writs of *quo warranto* have been issued as a means to determine which of two claimants is entitled to an office.[144] In this specific instance, the OSG, however, questions respondent's integrity as an eligibility qualification; this exact qualification had already been resolved by the constitutional body particularly tasked for the purpose. Hence, until the JBC's resolution is validly assailed, an appointee's title to office carries with it constitutional imprimatur and thus, he or she cannot – as of yet – be tagged as a "usurper." This peculiar scenario properly extricates this case and cases similar thereto from the pale of *quo warranto*.

Consequently, given that impeachment and *quo warranto* are not the proper remedies under these circumstances, it is therefore unnecessary to address the other ancillary issues related to these remedies, among others, the issue of prescription.

VI.

As a final point of discussion, allow me to briefly address the issue of misrepresentation as *allegedly* committed by respondent not only in her application before the JBC, but also with respect to the filing of her SALNs.

The *ponencia* asserts that "[r]espondent chronically failed to file her SALNs and thus violated the Constitution, the law, and the Code of Judicial Conduct."[145] On this score, the *ponencia* ruminates that *had respondent duly filed her SALNs as she claims, then why has she not submitted these missing SALNs before the Court?* It points out:

> **Respondent could have easily dispelled doubts as to the filing or non-filing of the unaccounted SALNs by presenting them before the Court**. Yet, respondent opted to withhold such information or such evidence, if at all, for no clear reason. Respondent likewise manifests having been successful in retrieving most of the "missing" SALNs and yet withheld presentation of such before the Court, except for a photocopy of her 1989 SALN submitted only in the morning of the Oral Argument and allegedly sourced from the "drawers of U.P." Only in respondent's Memorandum *Ad Cautelam* did she attach the SALNs she supposedly recovered. But the SALNs so attached, except for the 1989 SALN, were

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[144] See *ponencia*, p. 34.
[145] Id. at 98.

> the same SALNs priorly offered by the Republic. Other than offering legal or technical justifications, respondent has not endeavored to convince this Court of the *existence* of the still unaccounted SALNs. As she herself stated in her July 23, 2012 letter to the JBC, only some, but not all, of her SALNs are infeasible to retrieve. Thus, this Court is puzzled as to why there has been no account of respondent's more recent SALNs, particularly those from 2000, 2001, 2003, 2004, 2005 and 2006.[146] (Emphasis and underscoring supplied)

In this relation, the *ponencia* further details that "[o]n its face, the SALNs filed by respondent covering her years of government service in U.P., appear to have been executed and filed under suspicious circumstances;"[147] and that "[t]he SALNs that she submitted in support of her application for Chief Justice bear badges of irregularities."[148] Accordingly, these circumstances exhibit "respondent's intention to falsely state a material fact and to practice deception in order to secure for herself the appointment as Chief Justice."[149]

While the facts on record and respondent's own statements cast shadows of doubt on her claim that she indeed faithfully filed *all her SALNs* in full compliance with the law, the bottom line is that this Court cannot altogether conclude – without the JBC as party to this case – that respondent's non-filing of her SALNs would have affected the JBC's determination as regards her integrity and perforce, result in her non-inclusion in the shortlist of qualified appointees. *Misrepresentation is always relative to the fact being misrepresented*; hence, it is for the JBC to determine if indeed any misrepresentation with respect to the filing of her SALNs (or for that matter, the incomplete submission thereof before the Council) would have been material to its appreciation of respondent's "proven integrity." In fact, the need to ascertain the JBC's official take on the matter gains greater force when one considers that the JBC had accorded substantial compliance on the SALN requirement, which shows its liberal treatment therefor.

This is not to say that the JBC has absolute free-will in resolving an issue of misrepresentation. As the *ponencia* exclaims, it is beyond cavil that the JBC cannot bargain away qualifications under the Constitution.[150] However, whatever would be its resolution on an issue of misrepresentation, it remains imperative that the JBC be made a party in a *certiorari* case duly filed for the purpose. This is because this Court would necessarily have to nullify a standing nomination by the JBC, which carries with it an effective attestation that the person so nominated had met all the subjective qualifications to be appointed to the position. To rule on this issue absent the JBC's participation would inevitably result in either one of two things: (1)

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146 Id. at 99
147 See id. at 109-110.
148 See id. at 110-111.
149 Id. at 111-112.
150 See id. at 71.

this Court would be making an assumption that the JBC was misled; or (2) it would be directly assuming the role of the JBC, irrespective of the JBC's stand on the matter. Either way, to proceed as such would dangerously supplant the JBC's functions and altogether disregard its role pursuant to the Constitution. There is no denying that fraudulent misrepresentation is indeed a serious ethical violation. However, until this allegation is threshed out in the proper forum, the JBC's determination on respondent's integrity ought to prevail. ***Again, this case deals with the issue of integrity as an eligibility qualification, and not as an act that bears on one's fitness to continue in public office.*** The latter may be classified as an offense triable through impeachment, whereas the former is always rooted in the context of the JBC's pre-qualification process which act can only be nullified on the ground of grave abuse of discretion.

Conclusion

A wise man once said that there is "[a] place for everything, [and] everything in its place."[151]

Integrity is not all about personal qualities; it also bespeaks of a state of cohesion; a social value that evokes a becoming respect for structure and order. The Constitution is our bedrock of legal structure and order. It is the basic and paramount law wherein the contours of authority are drawn, and the power of government flows. Section 8, Article VIII is a pillar of this foundation. By virtue of which, the Judicial and Bar Council was created and given the principal function of recommending appointees to the judiciary. In pursuit of this function, the Council – barring any grave abuse of discretion – has the preeminence to determine their qualifications.

This unique screening and nomination process is not only designed for convenience: rather, it is a necessary innovation. The JBC – in the invaluable words of Justice Marvic M.V.F. Leonen – was intended to be a "fully independent constitutional body functioning as a check-and-balance on the President's power of appointment." It is "a constitutional organ participating in the process that guides the direction of the Judiciary." "More than a technical committee, it has the power to examine the judicial philosophies of the applicants and make selections, which it submits to the President."[152] Accordingly, "[n]othing in the Constitution diminishes the

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[151] Attributed to Benjamin Franklin. See <https://www.phrases.org.uk/meanings/14400.html> (visited May 9, 2018).

[152] The full quote reads:

> The Judicial and Bar Council was created under the 1987 Constitution. It was intended to be a fully independent constitutional body functioning as a check-and-balance on the President's power of appointment.
>
> Before the existence of the Judicial and Bar Council, the executive and legislative branches had the exclusive prerogative of appointing members of the judiciary, subject only to confirmation by the Commission on Appointments. However, this appointment process was highly susceptible to political pressure and partisan activities and eventually prompted

fully independent character of the [Council]. It is a separate constitutional organ, x x x x which functions as a check on the President's power of appointment, and called for judicial restraint."[153]

For the plentiful reasons discussed herein, it is my humble yet resolute view that *quo warranto* is not the proper remedy to assail the determination of a Judiciary appointee's integrity, which is a subjective qualification that is essentially bound to the interpretation, treatment, and application of the standards set by the JBC. This interpretation is inherently a policy question that can only be nullified on the ground of grave abuse of discretion, which may be coursed only through a petition for *certiorari*. To allow a direct resort to *quo warranto* would amount to bypassing the JBC, and in consequence, render vulnerable the integrity of the Judiciary as an institution. Indeed, it could not have been intended that the OSG could simply come in at any time and ask the Supreme Court to re-assess the subjective qualifications of any Judiciary appointee when the same had already been determined by the body specifically created therefor.

Lest it be misunderstood, I make no claim that respondent is or is not a person of integrity. In fact, if there is one thing that is glaringly apparent from these proceedings, it is actually the lack of respondent's candor and forthrightness in the submission of her SALNs. Nevertheless, I am impelled, through this opinion, to drive one inexorable point: that the issue of a person's integrity, as a qualification for appointment to the Judiciary, must be threshed out in the appropriate case for *certiorari* as above-explained. In the final analysis, it is my hope that this be not mistaken as overzealousness for procedural technicalities, but rather objectively viewed as a substantive compulsion by no other than the fundamental law.

WHEREFORE, I vote to **DISMISS** the petition for *quo warranto* on the sole ground that it is an improper remedy under the circumstances of this case.

ESTELA M. PERLAS-BERNABE
Associate Justice

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the need for a separate, competent, and independent body to recommend to the President nominees to the Judiciary.

The Judicial and Bar Council is not merely a technical committee that evaluates the fitness and integrity of applicants in the Judiciary. It is a constitutional organ participating in the process that guides the direction of the Judiciary. Its composition represents a cross section of the legal profession, retired judges and Justices, and the Chief Justice. More than a technical committee, it has the power to examine the judicial philosophies of the applicants and make selections, which it submits to the President. The President may have the final discretion to choose, but he or she chooses only from that list.

This is the complex relationship mandated by the sovereign through the Constitution. It ensures judicial independence, checks and balances on the Judiciary, and assurance for the rule of law. (*Aguinaldo v. Aquino III* (*ponencia* on the MR), supra note 26, at 372-373)

[153] *Aguinaldo v. Aquino III* (main *ponencia*), supra note 105, at 376-377.