

**EN BANC**

**[ G.R. No. 191002, April 20, 2010 ]**

**ARTURO M. DE CASTRO, PETITIONER, VS. JUDICIAL AND BAR COUNCIL (JBC) AND PRESIDENT GLORIA MACAPAGAL - ARROYO, RESPONDENTS.**

**[G.R. No. 191032]**

**JAIME N. SORIANO, PETITIONER, VS. JUDICIAL AND BAR COUNCIL (JBC), RESPONDENT.**

**[G.R. No. 191057]**

**PHILIPPINE CONSTITUTION ASSOCIATION (PHILCONSA), PETITIONER, VS. JUDICIAL AND BAR COUNCIL (JBC), RESPONDENT.**

**[A.M. No. 10-2-5-SC]**

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

**[G.R. No. 191149]**

**JOHN G. PERALTA, PETITIONER, VS. JUDICIAL AND BAR COUNCIL (JBC). RESPONDENT.**

**PETER IRVING CORVERA;**

**CHRISTIAN ROBERT S. LIM;**

**ALFONSO V. TAN, JR.;**

**NATIONAL UNION OF PEOPLE'S LAWYERS;**

**MARLOU B. UBANO;**

**INTEGRATED BAR OF THE PHILIPPINES-DAVAO DEL SUR CHAPTER, REPRESENTED BY ITS IMMEDIATE PAST PRESIDENT, ATTY. ISRAELITO P. TORREON, AND THE LATTER IN HIS OWN PERSONAL CAPACITY AS A MEMBER OF THE PHILIPPINE BAR;**

**MITCHELL JOHN L. BOISER;**

**BAGONG ALYANSANG BAYAN (BAYAN) CHAIRMAN DR.**

**CAROLINA P. ARAULLO; BAYAN SECRETARY GENERAL RENATO M. REYES, JR.; CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCE-MENT OF GOVERNMENT EMPLOYEES (COURAGE) CHAIRMAN FERDINAND GAITE; KALIPUNAN NG DAMAYANG MAHIHIRAP (KADAMAY) SECRETARY GENERAL GLORIA ARELLANO; ALYANSA NG NAGKAKAISANG KABATAAN NG SAMBAYANAN PARA SA KAUNLARAN (ANAKBAYAN) CHAIRMAN KEN LEONARD RAMOS; TAYO ANG PAG-ASA CONVENOR ALVIN PETERS; LEAGUE OF FILIPINO STUDENTS (LFS) CHAIRMAN JAMES MARK TERRY LACUANAN RIDON; NATIONAL UNION OF STUDENTS OF THE PHILIPPINES (NUSP) CHAIRMAN EINSTEIN RECEDES; COLLEGE EDITORS GUILD OF THE PHILIPPINES (CEGP) CHAIRMAN VIJAE ALQUISOLA; AND STUDENT CHRISTIAN MOVEMENT OF THE PHILIPPINES (SCMP) CHAIRMAN MA. CRISTINA ANGELA GUEVARRA;**

**WALDEN F. BELLO AND LORETTA ANN P. ROSALES;**

**WOMEN TRIAL LAWYERS ORGANIZATION OF THE PHILIPPINES, REPRESENTED BY YOLANDA QUISUMBING-JAVELLANA; BELLEZA ALOJADO DEMAISIP; TERESITA GANDIONCO-OLEDAN; MA. VERENA KASILAG-VILLANUEVA; MARILYN STA. ROMANA; LEONILA DE JESUS; AND GUINEVERE DE LEON;**

**AQUILINO Q. PIMENTEL, JR.; INTERVENORS.**

**[G.R. No. 191342]**

**ATTY. AMADOR Z. TOLENTINO, JR., (IBP GOVERNOR-SOUTHERN LUZON), AND ATTY. ROLAND B. INTING (IBP GOVERNOR-EASTERN VISAYAS), PETITIONERS, VS. JUDICIAL AND BAR COUNCIL (JBC), RESPONDENT.**

**[G.R. No. 191420]**

**PHILIPPINE BAR ASSOCIATION, INC., PETITIONER, VS. JUDICIAL AND BAR COUNCIL AND HER EXCELLENCY GLORIA MACAPAGAL-ARROYO, RESPONDENTS.**

## **R E S O L U T I O N**

**BERSAMIN, J.:**

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

WHEREFORE, the Court:

1. Dismisses the petitions for *certiorari* and *mandamus* in G.R. No. 191002 and G.R. No. 191149, and the petition for *mandamus* in G.R. No. 191057 for being premature;
2. Dismisses the petitions for prohibition in G.R. No. 191032 and G.R. No.

191342 for lack of merit; and

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

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

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

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

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

SO ORDERED.

### **Motions for Reconsideration**

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

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

#### **Soriano**

1. The Court has not squarely ruled upon or addressed the issue of whether or not the power to designate the Chief Justice belonged to the Supreme Court *en banc*.
2. The *Mendoza* petition should have been dismissed, because it sought a mere declaratory judgment and did not involve a justiciable controversy.
3. All Justices of the Court should participate in the next deliberations. The mere fact that the Chief Justice sits as *ex officio* head of the JBC should not prevail over the more compelling state interest for him to participate as a Member of the Court.

#### **Tolentino and Inting**

1. A plain reading of Section 15, Article VII does not lead to an interpretation that exempts judicial appointments from the express ban on midnight appointments.
2. In excluding the Judiciary from the ban, the Court has made distinctions and has created exemptions when none exists.
3. The ban on midnight appointments is placed in Article VII, not in Article VIII, because it limits an executive, not a judicial, power.
4. Resort to the deliberations of the Constitutional Commission is superfluous, and is powerless to vary the terms of the clear prohibition.
5. The Court has given too much credit to the position taken by Justice Regalado. Thereby, the Court has raised the Constitution to the level of a venerated text whose intent can only be divined by its framers as to be outside the realm of understanding by the sovereign people that ratified it.
6. *Valenzuela* should not be reversed.
7. The petitioners, as taxpayers and lawyers, have the clear legal standing to question the illegal composition of the JBC.

### **Philippine Bar Association**

1. The Court's strained interpretation of the Constitution violates the basic principle that the Court should not formulate a rule of constitutional law broader than what is required by the precise facts of the case.
2. Considering that Section 15, Article VII is clear and straightforward, the only duty of the Court is to apply it. The provision expressly and clearly provides a general limitation on the appointing power of the President in prohibiting the appointment of any person to any position in the Government without any qualification and distinction.
3. The Court gravely erred in unilaterally ignoring the constitutional safeguard against midnight appointments.
4. The Constitution has installed two constitutional safeguards:- the prohibition against midnight appointments, and the creation of the JBC. It is not within the authority of the Court to prefer one over the other, for the Court's duty is to apply the safeguards as they are, not as the Court likes them to be.
5. The Court has erred in failing to apply the basic principles of statutory construction in interpreting the Constitution.
6. The Court has erred in relying heavily on the title, chapter or section headings, despite precedents on statutory construction holding that such headings carried very little weight.

7. The Constitution has provided a general rule on midnight appointments, and the only exception is that on temporary appointments to executive positions.
8. The Court has erred in directing the JBC to resume the proceedings for the nomination of the candidates to fill the vacancy to be created by the compulsory retirement of Chief Justice Puno with a view to submitting the list of nominees for Chief Justice to President Arroyo on or before May 17, 2010. The Constitution grants the Court only the power of supervision over the JBC; hence, the Court cannot tell the JBC what to do, how to do it, or when to do it, especially in the absence of a real and justiciable case assailing any specific action or inaction of the JBC.
9. The Court has engaged in rendering an advisory opinion and has indulged in speculations.
10. The constitutional ban on appointments being already in effect, the Court's directing the JBC to comply with the decision constitutes a culpable violation of the Constitution and the commission of an election offense.
11. The Court cannot reverse on the basis of a secondary authority a doctrine unanimously formulated by the Court *en banc*.
12. The practice has been for the most senior Justice to act as Chief Justice whenever the incumbent is indisposed. Thus, the appointment of the successor Chief Justice is not urgently necessary.
13. The principal purpose for the ban on midnight appointments is to arrest any attempt to prolong the outgoing President's powers by means of proxies. The attempt of the incumbent President to appoint the next Chief Justice is undeniably intended to perpetuate her power beyond her term of office.

### **IBP-Davao del Sur, et al.**

1. Its language being unambiguous, Section 15, Article VII of the Constitution applies to appointments to the Judiciary. Hence, no cogent reason exists to warrant the reversal of the *Valenzuela* pronouncement.
2. Section 16, Article VII of the Constitution provides for presidential appointments to the Constitutional Commissions and the JBC with the consent of the Commission on Appointments. Its phrase "other officers whose appointments are vested in him in this Constitution" is enough proof that the limitation on the appointing power of the President extends to appointments to the Judiciary. Thus, Section 14, Section 15, and Section 16 of Article VII apply to all presidential appointments in the Executive and Judicial Branches of the Government.
3. There is no evidence that the framers of the Constitution abhorred the idea of an *Acting* Chief Justice in all cases.