Republic of the Philippines
Supreme Court
Baguio City

EN BANC

FRANCISCO I. CHAVEZ,
Petitioner,

- versus -

JUDICIAL AND BAR COUNCIL, SEN. FRANCIS JOSEPH G. ESCUDERO and REP. NIEL C. TUPAS, JR.,
Respondents.

G.R. No. 202242

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE, and
LEONEN, *JJ.*

Promulgated:

APRIL 16, 2013

X ---------- X

RESOLUTION

MENDOZA, *J.*:

This resolves the *Motion for Reconsideration*[1] filed by the Office of the Solicitor General *(OSG)* on behalf of the respondents, Senator Francis Joseph G. Escudero and Congressman Niel C. Tupas, Jr. *(respondents)*,

[1] *Rollo*, pp. 257-286.

duly opposed[2] by the petitioner, former Solicitor General Francisco I. Chavez *(petitioner).*

By way of recapitulation, the present action stemmed from the unexpected departure of former Chief Justice Renato C. Corona on May 29, 2012, and the nomination of petitioner, as his potential successor. In his initiatory pleading, petitioner asked the Court to determine 1] whether the first paragraph of Section 8, Article VIII of the 1987 Constitution allows more than one (1) member of Congress to sit in the JBC; and 2] if the practice of having two (2) representatives from each House of Congress with one (1) vote each is sanctioned by the Constitution.

On July 17, 2012, the Court handed down the assailed subject decision, disposing the same in the following manner:

> WHEREFORE, the petition is GRANTED. The current numerical composition of the Judicial and Bar Council is declared UNCONSTITUTIONAL. The Judicial and Bar Council is hereby enjoined to reconstitute itself so that only one (1) member of Congress will sit as a representative in its proceedings, in accordance with Section 8(1), Article VIII of the 1987 Constitution.
>
> This disposition is immediately executory.
>
> SO ORDERED.

On July 31, 2012, following respondents' motion for reconsideration and with due regard to Senate Resolution Nos. 111,[3] 112,[4] 113,[5] and 114,[6] the Court set the subject motion for oral arguments on August 2, 2012.[7] On August 3, 2012, the Court discussed the merits of the arguments and agreed,

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[2] Id. at 287-298.

[3] Entitled "Resolution expressing the sense of the Senate that the Judicial and Bar Council (JBC) defer the consideration of all nominees and the preparation of the short list to be submitted to the President for the position of Chief Justice of the Supreme Court;" id. at 303-304.

[4] Entitled "Resolution expressing anew the sense of the Senate that the Senate and House of Representatives should have one (1) representative each in the Judicial and Bar Council (JBC) and that each representative is entitled to a full vote;" id. at 305-307.

[5] Entitled "Resolution to file an urgent motion with the Supreme Court to set for oral argument the motion for reconsideration filed by the representatives of Congress to the Judicial and Bar Council (JBC) in the case of *Francisco Chavez v. Judicial and Bar Council, Sen. Francis Joseph G.. Escudero and Rep. Niel Tupas [Jr.] [,] G.R. [No.] 2022242* considering the primordial importance of the constitutional issues involved;" id. at 308-310.

[6] Entitled "Resolution authorizing Senator Joker P. Arroyo to argue, together with the Counsel-of-record, the motion for reconsideration filed by the representative of the Senate to the Judicial and Bar Council in the case of *Francisco Chavez v. Judicial and Bar Council, Sen. Francis Joseph G. Escudero and Rep. Niel Tupas, Jr.;"* id. at 311-312.

[7] Id. at 313-314.

in the meantime, to suspend the effects of the second paragraph of the dispositive portion of the July 17, 2012 Decision which decreed that it was immediately executory. The decretal portion of the August 3, 2012 Resolution[8] reads:

> WHEREFORE, the parties are hereby directed to submit their respective MEMORANDA within ten (10) days from notice. Until further orders, the Court hereby SUSPENDS the effect of the second paragraph of the dispositive portion of the Court's July 17, 2012 Decision, which reads: "This disposition is immediately executory."[9]

Pursuant to the same resolution, petitioner and respondents filed their respective memoranda.[10]

Brief Statement of the Antecedents

In this disposition, it bears reiterating that from the birth of the Philippine Republic, the exercise of appointing members of the Judiciary has always been the exclusive prerogative of the executive and legislative branches of the government. Like their progenitor of American origins, both the Malolos Constitution[11] and the 1935 Constitution[12] vested the power to appoint the members of the Judiciary in the President, subject to confirmation by the Commission on Appointments. It was during these times that the country became witness to the deplorable practice of aspirants seeking confirmation of their appointment in the Judiciary to ingratiate themselves with the members of the legislative body.[13]

Then, under the 1973 Constitution,[14] with the fusion of the executive and legislative powers in one body, the appointment of judges and justices ceased to be subject of scrutiny by another body. The power became

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[8] Id. at (318-I)-(318-K).
[9] Id. at 318-J.
[10] Petitioner's Memorandum, id. at 326-380; Respondents' Memorandum, id. at 381-424.
[11] Malolos Constitution Article 80 Title X. – The Chief Justice of the Supreme Court and the Solicitor-General shall be chosen by the National Assembly in concurrence with the President of the Republic and the Secretaries of the Government, and shall be absolutely independent of the Legislative and Executive Powers."
[12] 1935 Constitution Article VIII, Section 5. – The Members of the Supreme Court and all judges of inferior courts shall be appointed by the President with the consent of the Commission on Appointments."
[13] 1 Records of the Constitutional Commission Proceedings and Debates, 437.
[14] Section 4 Article X of the 1973 Constitution provides: "The Members of the Supreme Court and judges of inferior courts shall be appointed by the President."

exclusive and absolute to the Executive, subject only to the condition that the appointees must have all the qualifications and none of the disqualifications.

Prompted by the clamor to rid the process of appointments to the Judiciary of the evils of political pressure and partisan activities,[15] the members of the Constitutional Commission saw it wise to create a separate, competent and independent body to recommend nominees to the President. Thus, it conceived of a body, representative of all the stakeholders in the judicial appointment process, and called it the Judicial and Bar Council *(JBC)*. The Framers carefully worded Section 8, Article VIII of the 1987 Constitution in this wise:

> 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 the Congress** as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

From the moment of the creation of the JBC, Congress designated one (1) representative to sit in the JBC to act as one of the *ex-officio* members.[16] Pursuant to the constitutional provision that Congress is entitled to one (1) representative, each House sent a representative to the JBC, not together, but alternately or by rotation.

In 1994, the seven-member composition of the JBC was substantially altered. An eighth member was added to the JBC as the two (2) representatives from Congress began sitting simultaneously in the JBC, with each having one-half (1/2) of a vote.[17]

In 2001, the JBC *En Banc* decided to allow the representatives from the Senate and the House of Representatives one full vote each.[18] It has been the situation since then.

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[15] 1 Records, Constitutional Commission, Proceedings and Debates, p. 487.
[16] List of JBC Chairpersons, Ex-Officio and Regular Members, Ex Officio Secretaries and Consultants, issued by the Office of the Executive Officer, Judicial and Bar Council, *rollo*, pp. 62-63.
[17] Id.
[18] Id. at 80, citing Minutes of the 1st En Banc Executive Meeting, January 12, 2000 and Minutes of the 12th En Banc Meeting, May 30, 2001.

Grounds relied upon by Respondents

Through the subject motion, respondents pray that the Court reconsider its decision and dismiss the petition on the following grounds: 1] that allowing only one representative from Congress in the JBC would lead to *absurdity* considering its bicameral nature; 2] that the failure of the Framers to make the proper adjustment when there was a shift from unilateralism to bicameralism was a *plain oversight*; 3] that two representatives from Congress would not subvert the intention of the Framers to insulate the JBC from political partisanship; and 4] that the rationale of the Court in declaring a seven-member composition would provide a solution should there be a stalemate is not exactly correct.

While the Court may find some sense in the reasoning in amplification of the third and fourth grounds listed by respondents, still, it finds itself unable to reverse the assailed decision on the principal issues covered by the first and second grounds for lack of merit. Significantly, the conclusion arrived at, with respect to the first and second grounds, carries greater bearing in the final resolution of this case.

As these two issues are interrelated, the Court shall discuss them jointly.

Ruling of the Court

The Constitution evinces the direct action of the Filipino people by which the fundamental powers of government are established, limited and defined and by which those powers are distributed among the several departments for their safe and useful exercise for the benefit of the body politic.[19] The Framers reposed their wisdom and vision on one *suprema lex* to be the ultimate expression of the principles and the framework upon which government and society were to operate. Thus, in the interpretation of the constitutional provisions, the Court firmly relies on the basic postulate that the Framers mean what they say. The language used in the Constitution must be taken to have been deliberately chosen for a definite purpose. Every word employed in the Constitution must be interpreted to exude its deliberate intent which must be maintained inviolate against disobedience and defiance. What the Constitution clearly says, according to its text, compels acceptance and bars modification even by the branch tasked to interpret it.

[19] Malcolm, The Constitutional Law of the Philippine Islands (2nd ed. 1926), p. 26.

For this reason, the Court cannot accede to the argument of plain oversight in order to justify constitutional construction. As stated in the July 17, 2012 Decision, in opting to use the singular letter "*a*" to describe "*representative of Congress*," the Filipino people through the Framers intended that Congress be entitled to only one (1) seat in the JBC. Had the intention been otherwise, the Constitution could have, in no uncertain terms, so provided, as can be read in its other provisions.

A reading of the 1987 Constitution would reveal that several provisions were indeed adjusted as to be in tune with the shift to bicameralism. One example is Section 4, Article VII, which provides that a tie in the presidential election shall be broken *"by a majority of all the Members of both Houses of the Congress, voting separately."*[20] Another is Section 8 thereof which requires the nominee to replace the Vice-President to be confirmed *"by a majority of all the Members of both Houses of the Congress, voting separately."*[21] Similarly, under Section 18, the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus *may be revoked or continued by the Congress, voting separately, by a vote of at least a majority of all its Members."*[22] In all these provisions, the bicameral nature of Congress was recognized and, clearly, the corresponding adjustments were made as to how a matter would be handled and voted upon by its two Houses.

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[20] 1987 Constitution, Article VII, Section 4. – The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date, six years thereafter. The President shall not be eligible for any re-election. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

x x x

The person having the highest number of votes shall be proclaimed elected, but **in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, *voting separately.*** (Emphasis supplied)

x x x.

[21] 1987 Constitution, Article VII, Section 9. – Whenever there is a vacancy in the Office of the Vice-President during the term for which he was elected, the President shall nominate a Vice-President from among the Members of the Senate and the House of Representatives who shall assume office **upon confirmation by a majority vote of all the Members of both Houses of the Congress, *voting separately*.** (Emphasis supplied)

[22] 1987 Constitution, Article VII, Section 18. – The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. **The Congress, *voting jointly*, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension**, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it. (Emphasis supplied)

Thus, to say that the Framers simply failed to adjust Section 8, Article VIII, by sheer inadvertence, to their decision to shift to a bicameral form of the legislature, is not persuasive enough. Respondents cannot just lean on plain oversight to justify a conclusion favorable to them. It is very clear that the Framers were not keen on adjusting the provision on congressional representation in the JBC because it was not in the exercise of its primary function – to legislate. JBC was created to support the executive power to appoint, and Congress, as one whole body, was merely assigned a contributory non-legislative function.

The underlying reason for such a limited participation can easily be discerned. Congress has two (2) Houses. The need to recognize the existence and the role of each House is essential considering that the Constitution employs precise language in laying down the functions which particular House plays, regardless of whether the two Houses consummate an official act by voting jointly or separately. Whether in the exercise of its legislative[23] or its non-legislative functions such as *inter alia*, the power of appropriation,[24] the declaration of an existence of a state of war,[25] canvassing of electoral returns for the President and Vice-President,[26] and impeachment,[27] the dichotomy of each House must be acknowledged and

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[23] 1987 Constitution, Article VI Section 27(1). – Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it.

[24] 1987 Constitution, Article VI Section 24. – All appropriation, revenue or tariff bills, bills authorizing increase of public debt, bills of local application, and private bills shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.

[25] 1987 Constitution, Article VI Section 23 (1). – The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war.

[26] 1987 Constitution, Article VII Section 4. – The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.

[27] 1987 Constitution, Article XI Section 3 (1). – The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

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(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

recognized considering the interplay between these two Houses. In all these instances, each House is constitutionally granted with powers and functions peculiar to its nature and with keen consideration to 1) its relationship with the other chamber; and 2) in consonance with the principle of checks and balances, as to the other branches of government.

In checkered contrast, there is essentially **no interaction between the two Houses in their participation in the JBC.** No mechanism is required between the Senate and the House of Representatives in the screening and nomination of judicial officers. Rather, in the creation of the JBC, the Framers arrived at a unique system by adding to the four (4) regular members, three (3) representatives from the major branches of government - the Chief Justice as *ex-officio* Chairman (representing the Judicial Department), the Secretary of Justice (representing the Executive Department), and a representative of the Congress (representing the Legislative Department). The **total** is **seven (7)**, not eight. In so providing, the Framers simply gave recognition to the Legislature, not because it was in the interest of a certain constituency, but in reverence to it as a major branch of government.

On this score, a Member of Congress, Hon. Simeon A. Datumanong, from the Second District of Maguindanao, submitted his well-considered position[28] to then Chief Justice Reynato S. Puno:

> I humbly reiterate my position that there should be **only one representative** of Congress in the JBC in accordance with Article VIII, Section 8 (1) of the 1987 Constitution x x x.
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> The aforesaid provision is **clear** and **unambiguous** and does not need any further interpretation. Perhaps, it is apt to mention that the oft-repeated doctrine that "construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them."
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> Further, to allow Congress to **have two representatives** in the Council, with one vote each, is to **negate the principle of equality among the three branches of government** which is enshrined in the Constitution.

[28] Dated March 27, 2007; Annex "D," *rollo*, p. 104.

> In view of the foregoing, I vote for the proposition that the Council should adopt the rule of single representation of Congress in the JBC in order to respect and give the right meaning to the above-quoted provision of the Constitution. (Emphases and underscoring supplied)

On March 14, 2007, then Associate Justice Leonardo A. Quisumbing, also a JBC Consultant, submitted to the Chief Justice and *ex-officio* JBC Chairman his opinion,[29] which reads:

> 8. Two things can be gleaned from the excerpts and citations above: the creation of the JBC is intended to curtail the influence of politics in Congress in the appointment of judges, and the understanding is that **seven (7) persons** will compose the JBC. As such, the interpretation of **two votes** for Congress **runs counter to the intendment of the framers.** Such interpretation actually gives Congress more influence in the appointment of judges. Also, two votes for Congress **would increase the number of JBC members to eight**, which could lead to voting deadlock by reason of even-numbered membership, and a clear violation of 7 enumerated members in the Constitution. (Emphases and underscoring supplied)

In an undated position paper,[30] then Secretary of Justice Agnes VST Devanadera opined:

> As can be gleaned from the above constitutional provision, the JBC is composed of **seven (7) representatives** coming from different sectors. From the enumeration it is patent that each category of members pertained to a **single individual only**. Thus, while we do not lose sight of the bicameral nature of our legislative department, it is beyond dispute that Art. VIII, Section 8 (1) of the 1987 Constitution is explicit and specific that "Congress" shall have only "xxx **a representative**." Thus, two (2) representatives from Congress would **increase** the number of JBC members to **eight (8), a number beyond what the Constitution has contemplated**. (Emphases and underscoring supplied)

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[29] Annex C, id. at 95. Quoting the interpretation of Article VIII, Section (1) of the Constitution by Fr. Joaquin Bernas in page 984 of his book, *The 1987 Constitution of the Republic of the Philippines, A Commentary.* He quoted another author, Hector de Leon, and portions of the decisions of this Court in *Flores v. Drilon*, and *Escalante v. Santos*, before extensively quoting the Record of the Constitutional Commission of 1986 (pages 444 to 491).

[30] Annex "E," id. at 1205.

In this regard, the scholarly dissection on the matter by retired Justice Consuelo Ynares-Santiago, a former JBC consultant, is worth reiterating.[31] Thus:

> A perusal of the records of the Constitutional Commission reveals that the composition of the JBC reflects the Commission's desire "to have in the Council a representation for the major elements of the community." xxx The *ex-officio* members of the Council consist of representatives from the three main branches of government while the regular members are composed of various stakeholders in the judiciary. **The unmistakeable tenor of Article VIII, Section 8(1) was to treat each *ex-officio* member as representing one co-equal branch of government.** xxx Thus, the JBC was designed to have **seven voting members** with the three *ex-officio* members having equal say in the choice of judicial nominees.
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> xxx
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> **No parallelism can be drawn between the representative of Congress in the JBC and the exercise by Congress of its legislative powers under Article VI and constituent powers under Article XVII of the Constitution.** Congress, in relation to the executive and judicial branches of government, is constitutionally treated as another co-equal branch in the matter of its representative in the JBC. On the other hand, the exercise of legislative and constituent powers requires the Senate and the House of Representatives to coordinate and act as distinct bodies in furtherance of Congress' role under our constitutional scheme. **While the latter justifies and, in fact, necessitates the separateness of the two Houses of Congress as they relate *inter se*, no such dichotomy need be made when Congress interacts with the other two co-equal branches of government.**
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> **It is more in keeping with the co-equal nature of the three governmental branches to assign the same weight to considerations that any of its representatives may have regarding aspiring nominees to the judiciary. The representatives of the Senate and the House of Representatives act as such for one branch and should not have any more quantitative influence as the other branches in the exercise of prerogatives evenly bestowed upon the three.** Sound reason and principle of equality among the three branches support this conclusion. [Emphases and underscoring supplied]

The argument that a senator cannot represent a member of the House of Representatives in the JBC and *vice-versa* is, thus, misplaced. In the JBC, any member of Congress, whether from the Senate or the House of Representatives, is *constitutionally empowered* to represent the *entire* Congress. It may be a constricted constitutional authority, but it is not an absurdity.

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[31] *Rollo*, pp. 91-93.

From this score stems the conclusion that the lone representative of Congress is entitled to one full vote. This pronouncement effectively disallows the scheme of splitting the said vote into half (1/2), between two representatives of Congress. Not only can this unsanctioned practice cause disorder in the voting process, it is clearly against the essence of what the Constitution authorized. After all, basic and reasonable is the rule that what cannot be legally done directly cannot be done indirectly. To permit or tolerate the splitting of one vote into two or more is clearly a constitutional circumvention that cannot be countenanced by the Court. Succinctly put, when the Constitution envisioned one member of Congress sitting in the JBC, it is sensible to presume that this representation carries with him one full vote.

It is also an error for respondents to argue that the President, in effect, has more influence over the JBC simply because all of the regular members of the JBC are his appointees. The principle of checks and balances is still safeguarded because the appointment of all the regular members of the JBC is subject to a stringent process of confirmation by the Commission on Appointments, which is composed of members of Congress.

Respondents' contention that the current irregular composition of the JBC should be accepted, simply because it was only questioned for the first time through the present action, deserves scant consideration. Well-settled is the rule that acts done in violation of the Constitution no matter how frequent, usual or notorious cannot develop or gain acceptance under the doctrine of estoppel or laches, because once an act is considered as an infringement of the Constitution it is void from the very beginning and cannot be the source of any power or authority.

It would not be amiss to point out, however, that as a general rule, an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all. This rule, however, is not absolute. Under the *doctrine of operative facts*, actions previous to the declaration of unconstitutionality are legally recognized. They are not nullified. This is essential in the interest of fair play. To reiterate the doctrine enunciated in *Planters Products, Inc. v. Fertiphil Corporation*:[32]

> The doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play. It nullifies the effects of an unconstitutional law by recognizing that the existence of a statute prior to a determination of unconstitutionality is an

[32] G.R. No. 166006, March 14, 2008, 548 SCRA 485.

> operative fact and may have consequences which cannot always be ignored. The past cannot always be erased by a new judicial declaration. The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law. Thus, it was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy or would put in limbo the acts done by a municipality in reliance upon a law creating it.[33]

Under the circumstances, the Court finds the exception applicable in this case and holds that notwithstanding its finding of unconstitutionality in the current composition of the JBC, all its prior official actions are nonetheless valid.

Considering that the Court is duty bound to protect the Constitution which was ratified by the direct action of the Filipino people, it cannot correct what respondents perceive as a mistake in its mandate. Neither can the Court, in the exercise of its power to interpret the spirit of the Constitution, read into the law something that is contrary to its express provisions and justify the same as correcting a perceived inadvertence. To do so would otherwise sanction the Court action of making amendment to the Constitution through a judicial pronouncement.

In other words, the Court cannot supply the legislative omission. According to the rule of *casus omissus* "a case omitted is to be held as intentionally omitted."[34] "The principle proceeds from a reasonable certainty that a particular person, object or thing has been omitted from a legislative enumeration."[35] Pursuant to this, "the Court cannot under its power of interpretation supply the omission even though the omission may have resulted from *inadvertence* or because the case in question was not foreseen or contemplated."[36] "The Court cannot supply what it thinks the legislature would have supplied had its attention been called to the omission, as that would be *judicial legislation*."[37]

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[33] Id. at 516-517. (Citations omitted.)
[34] Black's Law Dictionary, Fifth ed., p. 198.
[35] Agpalo, Statutory Construction, 2009 ed., p. 231.
[36] Id., citing *Cartwrite v. Cartwrite*, 40 A2d 30, 155 ALR 1088 (1944).
[37] Id., Agpalo, p. 232

Stated differently, the Court has no power to add another member by judicial construction.

The call for judicial activism fails to stir the sensibilities of the Court tasked to guard the Constitution against usurpation. The Court remains steadfast in confining its powers in the sphere granted by the Constitution itself. Judicial activism should never be allowed to become judicial exuberance.[38] In cases like this, no amount of practical logic or convenience can convince the Court to perform either an excision or an insertion that will change the manifest intent of the Framers. To broaden the scope of congressional representation in the JBC is tantamount to the inclusion of a subject matter which was not included in the provision as enacted. True to its constitutional mandate, the Court cannot craft and tailor constitutional provisions in order to accommodate all of situations no matter how ideal or reasonable the proposed solution may sound. To the exercise of this intrusion, the Court declines.

WHEREFORE, the Motion for Reconsideration filed by respondents is hereby **DENIED.**

The suspension of the effects of the second paragraph of the dispositive portion of the July 17, 2012 Decision of the Court, which reads, "This disposition is immediately executory," is hereby **LIFTED.**

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

[38] Dissenting Opinion, Chief Justice Panganiban, *Central Bank (Now Bangko Sentral Ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004, 446 SCRA 299, citing *Peralta v. COMELEC*, No. L-47771, March 11, 1978, 82 SCRA 30, 77, citing concurring and dissenting opinion of former Chief Justice Fernando, citing Malcolm.

WE CONCUR:

no part as I am Chairperson of JBC.

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

(no part due to participation in JBC)
PRESBITERO J. VELASCO, JR.
Associate Justice

NO PART

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

I join the dissent of J Abad

See my dissenting opinion.

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

See separate dissenting opinion

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice