

EN BANC

[G.R. No. 228628, July 25, 2017]

REP. REYNALDO V. UMALI, IN HIS CAPACITY AS CHAIRMAN OF THE HOUSE OF REPRESENTATIVES COMMITTEE ON JUSTICE AND EX OFFICIO MEMBER OF THE JBC, PETITIONER, VS. THE JUDICIAL AND BAR COUNCIL, CHAIRED BY THE HON. MARIA LOURDES P.A. SERENO, CHIEF JUSTICE AND EX OFFICIO CHAIRPERSON, RESPONDENT.

DECISION

VELASCO JR., J.:

Stare decisis et non quieta movere. This principle of adherence to precedents has not lost its luster and continues to guide the bench in keeping with the need to maintain stability in the law.^[1]

This Petition for *Certiorari* and *Mandamus* under Rule 65 of the Rules of Court filed directly with this Court by herein petitioner Rep. Reynaldo V. Umali, current Chair of the House of Representatives Committee on Justice, impugns the present-day practice of six-month rotational representation of Congress in the Judicial and Bar Council (JBC) for it unfairly deprives both Houses of Congress of their full participation in the said body. The aforementioned practice was adopted by the JBC in light of the ruling in *Chavez v. Judicial and Bar Council*.^[2]

As an overview, in *Chavez*, the constitutionality of the practice of having two representatives from both houses of Congress with one vote each in the JBC, thus, increasing its membership from seven to eight, was challenged. With that, this Court examined the constitutional provision that states the composition of the JBC, that is, Section 8(1), Article VIII of the 1987 Constitution, which reads:

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. (Emphasis supplied.)

Following a painstaking analysis, this Court, in a Decision dated July 17, 2012, declared the said practice of having two representatives from Congress with one vote each in the JBC unconstitutional. This Court enunciated that the use of the singular letter "a" preceding "*representative of the Congress*" in the aforequoted provision is unequivocal and leaves no room for any other construction or interpretation. The same is indicative of the Framers' intent that Congress may designate only one representative to the JBC. Had it been otherwise, they could have, in no uncertain terms, so provided. This Court further articulated that in the

context of JBC representation, the term "Congress" must be taken to mean the entire legislative department as no liaison between the two houses exists in the workings of the JBC. There is no mechanism required between the Senate and the House of Representatives in the screening and nomination of judicial officers. Moreover, this Court, quoting the keen observation of Retired Supreme Court Associate Justice Consuelo Ynares-Santiago, who is also a JBC Consultant, stated that the *ex officio* members of the JBC consist of representatives from the three main branches of government, to wit: the Chief Justice of the Supreme Court representing the judiciary, the Secretary of Justice representing the executive, and a representative of the Congress representing the legislature. It can be deduced therefrom that the unmistakable tenor of Section 8(1), Article VIII of the 1987 Constitution was to treat each *ex officio* member as representing one co-equal branch of government having equal say in the choice of judicial nominees. Now, to allow the legislature to have more than one representative in the JBC would negate the principle of equality among these three branches of the government, which is enshrined in the Constitution.^[3]

The subsequent motion for reconsideration thereof was denied in a Resolution dated April 16, 2013, where this Court reiterated that Section 8(1), Article VIII of the 1987 Constitution providing for "*a representative of the Congress*" in the JBC is clear and unambiguous and does not need any further interpretation. Besides, this Court is not convinced that the Framers simply failed to adjust the aforesaid constitutional provision, by sheer inadvertence, to their decision to shift to a bicameral form of legislature. Even granting that there was, indeed, such omission, this Court cannot supply the same. Following the rule of *casus omissus*, that is, a case omitted is to be held as intentionally omitted, this Court cannot under its power of interpretation supply the omission even if the same may have resulted from inadvertence or it was not foreseen or contemplated for to do so would amount to judicial legislation. Ergo, this Court has neither power nor authority to add another member in the JBC simply by judicial construction.^[4]

In light of these Decision and Resolution, both Houses of Congress agreed on a six-month rotational representation in the JBC, wherein the House of Representatives will represent Congress from January to June and the Senate from July to December.^[5] This is now the current practice in the JBC. It is by reason of this arrangement that the votes cast by the petitioner for the selection of nominees for the vacancies of then retiring Supreme Court Associate Justices Jose P. Perez (Perez) and Arturo Brion (Brion) were not counted by the JBC during its *En Banc* deliberations held last December 2 and 9, 2016. Instead, the petitioner's votes were simply placed in an envelope and sealed subject to any further disposition as this Court may direct in a proper proceeding.^[6] This is the root of the present controversy that prompted the petitioner to file the instant Petition for *Certiorari* and *Mandamus* based on the following grounds:

I.

THE WRIT OF *CERTIORARI* IS PROPER TO ENJOIN THE JBC TO CORRECT ITS UNWARRANTED DENIAL OF THE VOTES REGISTERED BY [HEREIN PETITIONER] DURING THE EN BANC DELIBERATIONS ON DECEMBER 2 AND 9, 2016 BECAUSE THE DECISION IN THE *CHAVEZ* CASE IS

DEFECTIVE/FLAWED.

II.

THE WRIT OF MANDAMUS IS PROPER TO MANDATE THE JBC TO ACCEPT/COUNT SAID VOTES CAST BY [PETITIONER] BECAUSE THE RECONSTITUTION OF THE JBC IS DEFECTIVE/FLAWED AND UNCONSTITUTIONAL.

III.

THE PRESENT PRACTICE OF THE JBC IN ALLOWING ONLY ONE REPRESENTATIVE FROM THE SENATE OR THE HOUSE OF [REPRESENTATIVES] TO PARTICIPATE AND VOTE ON A [6-MONTH] ROTATION BASIS IS IMPRACTICABLE, ABSURD AND UNCONSTITUTIONAL, CREATES AN [INSTITUTIONAL] IMBALANCE BETWEEN THE TWO INDEPENDENT CHAMBERS OF CONGRESS, AND INSTITUTES AN INHERENT AND CONTINUING CONSTITUTIONAL DEFECT IN THE PROCEEDINGS OF THE JBC THAT ADVERSELY AFFECTS APPOINTMENTS TO THE JUDICIAL DEPARTMENT, INCLUDING AND PARTICULARLY [THIS COURT].

IV.

THE 1987 CONSTITUTION CLEARLY REQUIRES PARTICIPATION AND VOTING BY REPRESENTATIVES FROM THE SENATE AND THE HOUSE OF REPRESENTATIVES IN JBC PROCEEDINGS AND ALL APPOINTMENTS TO THE JUDICIAL DEPARTMENT, INCLUDING AND PARTICULARLY [THIS COURT].

A. THE BICAMERAL NATURE OF THE LEGISLATIVE DEPARTMENT WAS BELATEDLY DECIDED UNDER THE 1987 CONSTITUTION, BUT MUST BE DEEMED AS INCORPORATED AND MODIFYING THE JBC STRUCTURE UNDER SECTION 8(1) [,,] ARTICLE VIII OF THE [1987] CONSTITUTION, TO GIVE FULL MEANING TO THE INTENT OF ITS FRAMERS.

B. THERE WAS A CLEAR OVERSIGHT AND TECHNICAL OMISSION INVOLVING SECTIONS 8(1)[,,] ARTICLE VIII OF THE [1987] CONSTITUTION THAT SHOULD BE RECTIFIED BY [THIS COURT].

C. THE FULL REPRESENTATION OF CONGRESS IN THE JBC IS POSSIBLE ONLY WITH PARTICIPATING AND VOTING FROM REPRESENTATIVES FROM THE TWO INDEPENDENT CHAMBERS, OTHERWISE THE JBC PROCEEDINGS ARE UNCONSTITUTIONAL.

D. THE PRESENCE OF THE SENATE AND [THE] HOUSE OF REPRESENTATIVES MEMBERS IN THE JBC UPHOLDS THE CO-EQUAL REPRESENTATION IN THE COUNCIL OF THE THREE MAIN BRANCHES OF GOVERNMENT.^[7]

As instructed by this Court,^[8] both Houses of Congress, through the Manifestation of the Office of the Solicitor General (OSG), which acts as the People's Tribune in this case, and the JBC commented on the Petition.

The OSG wants this Court to revisit *Chavez* for its alleged unexecutability arising from constitutional constraints. It holds that the current practice of alternate representation was only arrived at because of time constraints and difficulty in securing the agreement of both Houses of Congress.^[9] And, since the Constitution itself did not clearly state who is the Congress' representative in the JBC, the provision, therefore, regarding the latter's composition must be harmonized to give effect to the current bicameral system.^[10] With this in view, the OSG believes that it is only proper for both Houses of Congress to be given equal representation in the JBC as neither House can bind the other for there can be no single member of either House who can fully represent the entire legislature for to do so would definitely result in absurdity.^[11]

Further, the OSG avers that *Chavez's* strict interpretation of Section 8(1), Article VIII of the 1987 Constitution violates the very essence of bicameralism and sets aside the inherent dichotomy between the two Houses of Congress.^[12] To note, a JBC member's votes are reflective of the position and the interest such member wants to uphold, such that when the representatives from each House of Congress vote for a certain judicial nominee, they carry the interests and views of the group they represent. Thus, when only one would represent both Houses of Congress in the JBC, the vote would not be representative of the interests embodied by the Congress as a whole.^[13]

In the same way, the OSG contends that the bicameral nature of the legislature strictly adheres to the distinct and separate personality of both Houses of Congress; thus, no member of Congress can represent the entire Congress. Besides, the phrase "*a representative of the Congress*" in Section 8(1), Article VIII of the 1987 Constitution is qualified by the phrase "*ex officio members*." The *ex officio* nature of the position derives its authority from the principal office. It, thus, follows that each house of Congress must be represented in the JBC.^[14]

Also, the OSG states that the constitutional intent in creating the JBC is to ensure community representation from the different sectors of society, as well as from the three branches of government, and to eliminate partisan politics in the selection of members of the judiciary. The focus, therefore, is more on proper representation rather than qualitative limitation. It even insists that when the Framers deliberated on Section 8(1), Article VIII of the 1987 Constitution, they were still thinking of a unicameral legislature, thereby, giving Congress only one representative to the JBC. However, with the shift from unicameralism to bicameralism, "*a representative of the Congress*" in the JBC should now be understood to mean one representative from each House of Congress. For had it been the intention of the Framers for the JBC to be composed only of seven members, they would have specified the numbers just like in the other constitutional provisions. As such, the membership in the JBC should not be limited to seven members. More so, an eventual deadlock in the voting would not pose any problem since the voting in the JBC is not through a "yes" or a "no" vote.^[15]

As its final argument, the OSG maintains that while Congress' participation in the JBC may be non-legislative, still, the involvement of both Houses of Congress in its every proceeding is indispensable, as each House represents different constituencies and would necessarily bring a unique perspective to the recommendation process of the JBC.^[16]

For its part, the JBC vehemently pleads that the present Petition be dismissed as its adopted rotational scheme and the necessary consequences thereof are not the proper subjects of a *certiorari* and even a mandamus petition for the same do not involve an exercise of judicial, quasi-judicial or ministerial functions. Apart from that, it committed no grave abuse of discretion in refusing to recognize, accept and count the petitioner's votes during its En Banc deliberations last December 2 and 9, 2016 for it merely acted in accordance with the Constitution and with the ruling in *Chavez*. More so, there is no showing that the petitioner has no plain, speedy and adequate remedy other than this Petition for nowhere herein did he assert that he exerted all efforts to have his concern addressed by Congress, such as asking the latter to repudiate the rotational arrangement. Thus, for the petitioner's failure to exhaust all remedies available to him in Congress, he deprived the latter of an opportunity to address the matter. Also, the practice and acquiescence of both Houses of Congress to such an arrangement operates as an estoppel against any member thereof to deny its validity. As regards a writ of mandamus, it cannot be issued to compel the JBC to count the petitioner's votes for it will not lie to control the performance of a discretionary act.^[17]

The JBC further enunciates that the petitioner has no *locus standi* to institute this Petition in his capacity as Chairman of the House of Representatives Committee on Justice and *Ex Officio* Member of the JBC without the requisite resolution from both Houses of Congress authorizing him to sue as a member thereof, which absence is a fatal defect rendering this Petition dismissible.^[18]

In the same vein, the JBC asseverates that this Petition should also be dismissed as the allegations herein are mere rehash of the arguments and dissents in *Chavez*, which have already been exhaustively litigated and settled therein by this Court, more in particular, the interpretation of Section 8(1), Article VIII of the 1987 Constitution, hence, barred by the doctrine of *stare decisis*. Similarly, there exists no substantial reason or even supervening event or material change of circumstances that warrants Chavez's reversal.^[19]

The JBC likewise insists that it was the intent of the Framers of the Constitution for the JBC to have only seven members. The reason for that was laid down in *Chavez*, that is, to provide a solution should there be a stalemate in the voting. As to the alleged oversight and technical omission of the Framers in changing the provision on the JBC to reflect the bicameral nature of Congress, these are flimsy excuses to override the clear provision of the Constitution and to disturb settled jurisprudence. As explained in *Chavez*, Congress' membership in the JBC was not in the interest of a certain constituency but in reverence to it as a major branch of government.^[20]

Last of all, the JBC holds that should this Petition be granted, there would be an imbalance in favor of Congress with respect to the representation in the JBC of the three main and co-equal branches of the government. For the unmistakable tenor of Section 8(1), Article VIII of the 1987 Constitution was to treat each *ex officio*