Republic v. Sereno: Revisiting Constitutional Qualifications for Impeachable Public Officers

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I. INTRODUCTION

> *When the Constitution and the law exact obedience, public officers must comply and not offer excuses. When a public officer is unable or unwilling to comply, he or she must not assume office in the first place, or if already holding one, he or she must vacate that public office because it is the correct and honorable thing to do. A public officer who ignores, trivializes*[,] *or disrespects Constitutional and legal provisions, as well as the canons of ethical standards, forfeits his or her right to hold and continue in that office.*
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> — Republic v. Sereno (2018)[1]

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With one deft stroke, the Supreme Court effectively ousted the Chief Justice of the Republic of the Philippines from her post via a *quo warranto* petition, a move without any legal precedent in this jurisdiction, and arguably even in any jurisdiction around the globe. The High Court's move drew mixed, and passionate, reactions from Filipinos around the country and all over the world, with supporters of the ousted Chief Justice Maria Lourdes P.A. Sereno decrying it as an attack on the judiciary itself and on judicial independence, while the government, more specifically the Solicitor General who argued for the Republic, said that it was triumph for the rule of law.

The ruling was quickly condemned by political figures from across the political spectrum. Vice President Maria Leonor "Leni" G. Robredo said, "*Ngayong nakompromiso ang pinaka-pundasyon ng ating hudikatura, kanino na tatakbo ang mga Pilipino para sa patas na laban at kahit kapiraso man lang na katarungan? Saan na tayo dudulog kung ang pinaka-integridad ng institusyon na ating sandigan ay siya nang nadungisan? ...* (Now that the foundation of our judiciary has been compromised, to whom will Filipinos turn for justice? Where will we go now that the integrity of the institution that was supposed to protect us has been tarnished?)"[2] Opposition Senator Ana Theresia "Risa" N. Hontiveros-Baraquel said that "[t]he Constitution is clear. The best way to hold accountable and remove impeachable high-ranking government officials is through the process of impeachment[,] in which the Senate is convened as an impeachment court. With this decision, the Senate is robbed of that power and denied the obligation to fulfill its constitutional duty. There is a clear attempt to relegate the Senate to the political sidelines[.]"[3] Senate President Aquilino "Koko" Pimentel III, a party mate and close ally of President Rodrigo R. Duterte, echoes Hontiveros' words when he said that "[t]he Supreme Court is supreme in a lot of things[,] but not in

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1. Republic v. Sereno, G.R. No. 237428, May 11, 2018, at 151, *available at* http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/may2018/237428.pdf (last accessed Aug. 31, 2018).
2. Mara Cepeda, Sereno ouster 'brazenly tramples on' the Constitution – Robredo, *available at* https://www.rappler.com/nation/202279-robredo-statement-sereno-ouster-supreme-court-decision (last accessed Aug. 31, 2018).
3. Senate of the Philippines Press Release, Hontiveros on Sereno's removal via Quo Warranto: A Black Day for Justice, A Stab to the Heart of the Constitution, *available at* http://www.senate.gov.ph/press_release/2018/0511_hontiveros1.asp (last accessed Aug. 31, 2018).

everything. In impeachment matters the Supreme Court is not supreme, because the Senate is the one and only impeachment court[.]"[4]

Various protest actions and demonstrations were also held across the country to express opposition to the decision. A group of lawyers, led by the National Union of Peoples' Lawyers (NUPL), appealed to the Supreme Court to rethink and change their mind on the petition.[5] Edre Olalia, of the NUPL, said that "[w]e are appealing, more than protesting, to internalize and think about the repercussions because they [are] going to be there even after President Duterte is out of power. They have to remember that, they will have to answer to the people[.]"[6] Student demonstrations were also held by students of several top schools in Metro Manila hours after the news of the decision broke.[7] Rallies were held in Ateneo de Manila University, University of the Philippines-Diliman, University of the Philippines-Manila, University of the Philippines-Los Baños, University of Santo Tomas, and the Polytechnic University of the Philippines, to name a few.[8]

Given this, and given the polarizing effect the decision has had on the country, it is but apt to review the salient points in *Republic v. Sereno* and to look back on the legal reasoning behind the Court's decision in allowing the *quo warranto* petition against a sitting justice of the Supreme Court, who was hitherto only removable via impeachment, to prosper.

II. SALIENT POINTS ON *QUO WARRANTO* AS APPLIED IN *REPUBLIC V. SERENO*

As mentioned at the outset, the *quo warranto* decision removing Sereno from the highest post in the judiciary is *sui generis* in this jurisdiction, and probably the first of its kind anywhere in the world. Justices of the Supreme Court, which were hitherto only removable through impeachment, can now be

4. Pathricia Ann V. Roxas, *Pimentel: SC should review Sereno ouster decision*, PHIL. DAILY INQ., May 11, 2018, *available at* http://newsinfo.inquirer.net/989552/pimentel-sc-should-review-sereno-ouster-decision (last accessed Aug. 31, 2018).

5. Lian Buan, Lawyers counting on 'swing votes' to reverse Sereno ouster, *available at* https://www.rappler.com/nation/202545-sereno-ouster-quo-warranto-swing-votes (last accessed Aug. 31, 2018).

6. *Id.*

7. Aya Tantiango, Protests break out at universities after Sereno ouster decision, *available at* http://www.gmanetwork.com/news/news/nation/653090/protests-break-out-at-universities-after-sereno-ouster-decision/story (last accessed Aug. 31, 2018).

8. *Id.*

removed by the mere filing of a Rule 66[9] petition. This does not only have implications for the judiciary itself, but also for the other impeachable officials mentioned under the Constitution, which may very well be removed through the same manner, if found to be deficient in their qualifications.

This Article attempts to scrutinize the decision with a more discerning eye, comment on the legal reasoning in how the *ponencia* justified the rationale behind the decision, and attempt to reconcile any potential discord with the current body of jurisprudence relating to *quo warranto*.

The first point is using *quo warranto* in order to remove a sitting Chief Justice of the Supreme Court of the Philippines. In justifying its actions to use it as a mode of removing a sitting Chief Justice, the Court mentions how Section 5, Article 8 of the Constitution[10] allows the Supreme Court to exercise original jurisdiction over such a petition, in relation to Section 7, Rule 66 of the Rules of Court.[11] It also dealt with the undercutting of the doctrine of the hierarchy of courts with the petitioner's direct resort to the Supreme Court by explaining that this mode is justified, considering that the action for *quo warranto* questions the *qualification* of no less than a Member of the Court.[12] "The issue of whether a person usurps, intrudes into, or unlawfully holds or exercises a public office is a matter of public concern over which the government takes special interest[,] as it obviously cannot allow an intruder or impostor to occupy a public position."[13]

The Court also mentioned that the case was of transcendental importance, and a direct invocation to the High Court for relief was warranted, saying that the State "maintains an interest on the issue of the legality of the Chief Justice's appointment"[14] and that "[t]he Court's action on the present petition has far-reaching implications, and it is paramount that the Court make definitive pronouncements on the issues herein presented for the guidance of the bench, bar, and the public in future analogous cases."[15]

9. Rule 66 of the Rules of Court prescribes the procedure for a *quo warranto* petition. *See* 1997 RULES OF CIVIL PROCEDURE, rule 66.

10. PHIL. CONST. art. VIII, § 5.

11. *Sereno*, G.R. No. 237428, at 46.

12. *Id.*

13. *Id.* (citing Republic of the Philippines v. Pablico Corpin, 104 Phil. 49, 53 (1958)).

14. *Sereno*, G.R. No. 237428, at 47.

15. *Id.*

In response to the respondent's assertions that *quo warranto* cannot be used on an impeachable official such as herself, the Court made short shrift of her argument by saying that "[t]he origin, nature, and purpose of impeachment and *quo warranto* are materially different."[16] As the Court stated, impeachment is used by the legislative as a check against erring government officials who "breach of the trust reposed by the people in the hands of the public officer by determining the public officer's fitness to stay in the office" while *quo warranto* is a "judicial determination of the eligibility or validity of the election or appointment of a public official based on predetermined rules."[17]

It also mentions how the two actions can proceed independently and exclusively from one another. In essence, the Court said that while a *quo warranto* action talks about a public official's *qualifications* in holding the office from the outset, impeachment talks about *acts done while that public official is in office, and presupposes that the public official holds legal title to such an office.* Hence, the Court says that the "causes of action in the two proceedings are unequivocally different" as the issue in a *quo warranto* proceeding is basically a public officer's "title to hold a public office" while in impeachment, it is a given that the official holds the office under legal color of authority, and the "only issue being whether or not she committed impeachable offenses to warrant her removal from office."[18]

The reliefs sought for each action are also markedly different. As the Court said, a public officer ousted via *quo warranto* is "adjudged to cease from holding a public office, which he/she is ineligible to hold" while in impeachment, if such officer is found guilty of the impeachable offenses charged against him or her, it "shall result to the removal of the respondent from the public office that he/she is legally holding" and the Court pointed out that a person who, in the first instance, "does not and cannot legally hold or occupy" an office cannot be impeached.[19]

On respondent's assertions that she can only be removed through impeachment, as she is one of high officials listed in the Constitution as removable through impeachment, the Court said that this is not so.[20] It mentioned how "[e]ven the PET [(Presidential Electoral Tribunal)] Rules expressly provide for remedy of either an election protest or a petition for *quo warranto* to question the eligibility of the President and the Vice-

16. *Id.* at 48.

17. *Id.* at 51.

18. *Id.* at 55.

19. *Id.* at 55-56.

20. *See Sereno*, G.R. No. 237428, at 57-58.

President, both of whom are impeachable officers."[21] and that it would not be the first time for the Court to entertain such a petition, since *quo warranto* was also employed against former President Gloria Macapagal-Arroyo on whether the resignation of former President Joseph Ejercito Estrada ended his status as president officially.[22] Mention was also made of the use of the term "may be removed from office" in Section 2, Article XI of the 1987 Philippine Constitution,[23] and that it is clear as day that "[t]he provision uses the permissive term 'may[,]' which, in statutory construction, denotes discretion and cannot be construed as having a mandatory effect."[24]

As to the issue if such an action is violative of the doctrine of separation of powers and deprives the Senate as the sole body to try and decide impeachment cases under the Constitution, the Court answered with a resounding "no."[25] It explains that while *quo warranto* involves "matters that render him or her ineligible to hold the position to begin with,"[26] impeachment "concerns actions that make the officer unfit to continue exercising his or her office."[27] The Court added that in entertaining the petition, it "does not preclude Congress from enforcing its own prerogative of determining probable cause for impeachment, to craft and transmit the Articles of Impeachment, nor will it preclude the Senate from exercising its constitutionally[-]committed power of impeachment."[28]

The Court then said that "respondent's case is peculiar in that her omission to file her Statement of Assets, Liabilities, and Net Worth (SALN) also formed part of the allegations against her in the Verified Complaint for Impeachment"[29] and it confirmed how the filing of the SALN is a constitutional requirement, and its non-filing may be interpreted as "constituting culpable violation of the Constitution."[30] In respondent's case, however, it went deeper, as the Court provided that she, along with other justices of the High Court, "also answer[ ] to the unique Constitutional qualification of having to be a person of proven competence, integrity, probity, and independence [—] qualifications not expressly required by the

21. *Sereno*, G.R. No. 237428, at 58.

22. *Id.* at 59.

23. PHIL. CONST. art. XI, § 2.

24. *Sereno*, G.R. No. 237428, at 60 (citing People v. Amigo, 252 SCRA 43 (1996)).

25. *Id.* at 64.

26. *Id.* at 65.

27. *Id.*

28. *Id.* at 65-66.

29. *Id.* at 66.

30. *Sereno*, G.R. No. 237428, at 66.

fundamental law for the other impeachable officers"[31] and that "when a [m]ember of the Supreme Court transgresses the SALN requirement prior to his or her appointment as such, he or she commits a violation of the Constitution and belies his or her qualification to hold the office."[32] In other words, "more stringent and burdensome requirements for qualification and holding office are expressly placed upon [the justices of the Supreme Court.]"[33]

The guidelines which the Court laid down in instituting a *quo warranto* action against a public official are as follows —

> [F]or the guidance of the bench and the bar, and to obliviate confusion in the future as to when *quo warranto* as a remedy to oust an ineligible public official may be availed of, and in keeping with the Court's function of harmonizing the laws and the rules with the Constitution, the Court herein demarcates that an act or omission committed prior to or at the time of appointment or election relating to an official's qualifications to hold office as to render such appointment or election invalid is properly the subject of a *quo warranto* petition, provided that the requisites for the commencement thereof are present. Contrariwise, acts or omissions, even if it relates to the qualification of integrity, being a continuing requirement but nonetheless committed during the incumbency of a validly appointed and/or validly elected official, cannot be the subject of a *quo warranto* proceeding, but of something else, which may either be impeachment if the public official concerned is impeachable and the act or omission constitutes an impeachable offense, or disciplinary, administrative[,] or criminal action, if otherwise.[34]

On the issue of prescription as barring the *quo warranto* petition from being taken cognizance of by the Court, it declared that "prescription does not lie against the State,"[35] applying a traditional property law principle in this instance, with the Court even citing that the principle "finds textual basis under Article 1108 (4) of the Civil Code[.]"[36]

With the preliminary matters out of the way and concepts clarified, the Court proceeded to the crux of the matter — whether or not respondent is eligible for the position of the Chief Justice of the highest court of the land. The Court's *ponencia* answered in the negative.

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31. *Id.*

32. *Id.* at 66-67.

33. *Id.* at 67.

34. *Id.* at 67-68.

35. *Id.* at 72.

36. *Sereno*, G.R. No. 237428, at 77.

First, to arrive at this conclusion, the Court clarified that although the Judicial and Bar Council (JBC), a constitutionally-created body, exercises discretion in the choice of who among the applicants to shortlist for positions in the Supreme Court, the JBC nonetheless comes under the supervisory powers of the High Court, to the extent that the Court has the power to ensure that this body complies with not only constitutionally-mandated imperatives, but also its own internal rules, to wit —

> So too, the JBC's exercise of discretion is not automatically equivalent to an exercise of policy decision as to place, in wholesale, the JBC process beyond the scope of the Court's supervisory and corrective powers. The primary limitation to the JBC's exercise of discretion is that the nominee must possess the minimum qualifications required by the Constitution and the laws relative to the position. While the resolution of who to nominate as between two candidates of equal qualification cannot be dictated by this Court upon the JBC, such surrender of choice presupposes that whosoever is nominated is not otherwise disqualified. The question of whether or not a nominee possesses the requisite qualifications is determined based on facts and therefore does not depend on, nor call for, the exercise of discretion on the part of the nominating body.
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> Thus, along this line, the nomination by the JBC is not accurately an exercise of policy or wisdom as to place the JBC's actions in the same category as political questions that the Court is barred from resolving. Questions of policy or wisdom refer 'to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which *full* discretionary authority has been delegated to the *legislative* or *executive* branch of government.'[37]

An integral part of these constitutionally- and statutorily-required imperatives, which cannot be bargained away by the JBC, is the submission of the SALN for potential contenders for the vacant posts of justices of the Supreme Court, as mandated by Section 17, Article XI of the Constitution and the Anti-Graft and Corrupt Practices Act or Republic Act 3019,[38] specifically Sections 7 and 8,[39] passed by Congress as early as 1960.[40] The Court emphasized that "compliance with [this] requirement indubitably reflects on a person's integrity" and went back to Section 7, Article VIII, where a member of the judiciary must be of proven integrity.[41] It went so

37. *Id.* at 82-83 (citing Tañada and Macapagal v. Cuenco, et al., 103 Phil. 1051 (1957)).

38. Anti-Graft and Corrupt Practices Act, Republic Act No. 3019 (1960).

39. *Id.* § 7 & 8.

40. *Sereno*, G.R. No. 237428, at 90-91.

41. *Id.* at 97.

far as to say that the "failure to file SALN is clearly a violation of the law"[42] and added that "[t]he offense is penal in character and is a clear breach of the ethical standards set for public officials and employees" as "[i]t disregards the requirement of transparency as a deterrent to graft and corruption."[43]

It is precisely this flouting of the laws of the land, as the *ponencia* emphasized, which put the erstwhile Chief Justice in hot water. In "chronically" failing to file her SALNs, she is deemed to have violated not just the Constitution but also the "law and [the] Code of Judicial Conduct."[44] A member of the High Court who "commits such violations cannot be deemed to be a person of proven integrity[,]"[45] as such —

> 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 [the University of the Philippines (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 the same SALNs [previously] 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 [23 July 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.[46]

The JBC rules, as the Court stated, clearly laid down the requirement of submitting at least 10 SALNs from applicants who are also incumbent justices of the Court. Failure of respondent, or any of the other candidates similarly situated, to do so would mean that "the [respondent] ought not to have been interviewed, much less been considered for nomination"[47] —

> [R]ecords clearly show that the only remaining applicant-incumbent Justice who was not determined by the JBC *En Banc* to have substantially complied was respondent, who submitted only [three] SALNs, [i.e.], 2009,

42. *Id.*

43. *Id.*

44. *Sereno*, G.R. No. 237428, at 100.

45. *Id.*

46. *Id.*

47. *Id.* at 114.

> 2010 and 2011, even after extensions of the deadline for the submission to do so.
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> Instead of complying, respondent offered, by way of her letter dated [23 July 2012], *justifications* why she should no longer be required to file the SALNs: that she resigned from U.P. in 2006 and then resumed government service only in 2009, thus her government service is not continuous; that her government records are more than 15 years old and thus infeasible to retrieve; and that U.P. cleared her of all academic and administrative responsibilities and charges.
>
> These justifications, however, did not obliterate the simple fact that respondent submitted only [three] SALNs in her 20-year service in U.P., and that there was nary an attempt on respondent's part to comply.[48]

This, then, the Court reasoned, was not just an empty requirement placed by the JBC for no reason whatsoever, as submitting the SALNs with the bank deposits waiver was not just for show, as it allowed the JBC to fulfill its duty of "recommending only applicants of high standards and who would be unsusceptible to impeachment attacks due to inaccuracies in SALNs" and that "failure to submit the required SALNs means that the JBC and the public are divested of the opportunity to consider the applicant's fitness or propensity to commit corruption or dishonesty."[49]

Respondent's actions, as the Court ratiocinated, puts into question her integrity for the post of the highest magistrate of the land, the *primus inter pares* of the body of 15 members of the High Court tasked with interpreting and defending the supreme law of the land. Such blatant failure to do what was required of her, as the Court said, disqualifies her even as a nominee who could be considered by the JBC, and her subsequent appointment and assumption of office of Chief Justice could not cure this initial defect, *viz* —

> Well-settled is the rule that qualifications for public office must be possessed at the time of appointment and assumption of office and also during the officer's entire tenure as a continuing requirement. When the law requires certain qualifications to be possessed or that certain disqualifications be not possessed by persons desiring to serve as public officials, those qualifications must be met before one even becomes a candidate.
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> The voidance of the JBC nomination as a necessary consequence of the Court's finding that respondent is ineligible, in the first place, to be a candidate for the position of Chief Justice and to be nominated for said position follows as a matter of course.
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> ...

48. *Id.* at 119.

49. *Id.* at 123.

> *Neither will the President's act of appointment cause to qualify respondent. Although the JBC is an office constitutionally created, the participation of the President in the selection and nomination process is evident from the composition of the JBC itself. The regular members of the JBC are appointees of the President, including an ex-officio member, the Secretary of Justice, who serves as the President's alter ego.*
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> ...
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> *In effect, the action of the JBC, particularly that of the Secretary of Justice as ex-officio member, is reflective of the action of the President. Such as when the JBC mistakenly or wrongfully accepted and nominated respondent, the President, through his alter egos in the JBC, commits the same mistake and the President's subsequent act of appointing respondent cannot have any curative effect.*
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> ...
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> *Thus, while the Court surrenders discretionary appointing power to the President, the exercise of such discretion is subject to the non-negotiable requirements that the appointee is qualified and all other legal requirements are satisfied, in the absence of which, the appointment is susceptible to attack.*[50]

Given all this, it is without doubt, as the Court said, that respondent is "a *de facto* officer removable through *quo warranto*"[51] as the "effect of a finding that a person appointed to an office is ineligible[,] therefor[e,] is that [her] presumably valid appointment will give [her] color of title that confers on [her] the status of a *de facto* officer."[52] As a *de facto* officer, she is "ineligible to hold the position of Chief Justice and is merely holding a colorable right or title thereto" and was never counted within the category of impeachable officers in the first place, therefore "her removal from the office, other than by impeachment, is justified."[53]

As a guide for the bench, the bar, the public, and JBC itself, the Court summarized the rules for *quo warranto* petitions thusly —

> *Quo warranto* as a remedy to oust an ineligible public official may be availed of, provided that the requisites for the commencement thereof are present, when the subject act or omission was committed prior to or at the time of appointment or election relating to an official's qualifications to hold office as to render such appointment or election invalid. Acts or omissions, even if it relates to the qualification of integrity being a continuing requirement but nonetheless committed during the incumbency of a validly appointed and/or validly elected official cannot be the subject of a *quo warranto* proceeding, but of impeachment if the public official concerned is

50. *Sereno*, G.R. No. 237428, at 131-33 (emphases supplied).

51. *Id.* at 134.

52. *Id.*

53. *Id.*

impeachable and the act or omission constitutes an impeachable offense, or to disciplinary, administrative[,] or criminal action, if otherwise.

Members of the Judiciary are bound by the qualifications of honesty, probity, competence, and integrity. In ascertaining whether a candidate possesses such qualifications, the JBC in the exercise of its Constitutional mandate, set certain requirements which should be complied with by the candidates to be able to qualify. These requirements are announced and published to notify not only the applicants but the public as well. Changes to such set of requirements, as agreed upon by the JBC *En Banc* through a proper deliberation, such as in this case when the JBC decided to allow substantial compliance with the SALN submission requirement, should also be announced and published for the same purpose of apprising the candidates and the public of such changes. At any rate, if a candidate is appointed despite being unable to comply with the requirements of the JBC and despite the lack of the aforementioned qualifications at the time of application, the appointment may be the subject of a *quo warranto* provided it is filed within one year from the appointment or discovery of the defect. Only the Solicitor General may institute the *quo warranto* petition.

The willful non-filing of a SALN is an indication of dishonesty, lack of probity[,] and lack of integrity. More [ ] so if the non-filing is repeated in complete disregard of the mandatory requirements of the Constitution and the law.

Consistent with the SALN laws, however, SALNs filed need not be retained after more than ten years by the receiving office or custodian or repository unless these are the subject of investigation pursuant to the law. Thus, to be in keeping with the spirit of the law requiring public officers to file SALNs [—] to manifest transparency and accountability in public office [—] if public officers cannot produce their SALNs from their personal files, they must obtain a certification from the office where they filed and/or the custodian or repository thereof to attest to the fact of filing. In the event that said offices certify that the SALN was indeed filed but could not be located, said offices must certify the valid and legal reason of their non-availability, such as by reason of destruction by natural calamity due to fire or earthquake, or by reason of the allowed destruction after [10] years under Section 8 of [Republic Act] No. 6713.[54]

54. *Id.* at 135-36 (citing 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 Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and for Other Purposes [CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES], Republic Act No. 6713, § 8 (1989)).

III. DISSENTERS ON *SERENO*

However, the dissenters in this case took a very polar view altogether when it came to granting the *quo warranto* petition against the erstwhile Chief Justice. They are one in saying that *quo warranto* is not a constitutional means in removing any sitting justice of the highest court of the land. Justice Marvic Mario Victor F. Leonen was even of the opinion that the "petition should have been dismissed outright and not given due course" as "[e]ven if the Chief Justice has failed our expectations, *quo warranto*, as a process to oust an impeachable officer and a member of the Supreme Court, is a legal abomination."[55]

As mentioned in the dissents, an impartial and *verba legis* reading of the Constitution's text does not include removal of a sitting Supreme Court justice through *quo warranto*. The use of the word "may" in Article XII, Sec. 2[56] does not open the doors for other methods to remove an impeachable officer from office, to wit —

> To focus on the dictionary meaning of the word 'may' precludes the importance of the entire document. It provides a myopic and unhistorical view of the framework on which our legal order rests. It supplants sovereign intent to the linguistic whims of those who craft dictionaries.
>
> Of course, no judicial interpretation, which is not supported by any textual anchor, should be allowed. Otherwise, we unreasonably endow ourselves with a power not ours. Instead of interpreting, we create new norms. This is a constitutional power not granted to this Court.
>
> Definitely, the framers of the Constitution did not use the words 'SHALL be removed.' Clearly, this would not have been possible because it would have communicated the inference that removal through impeachment and conviction was mandatory. Thus, the word 'may' should mean that it was an option to remove, in the sense that it was not mandatory to remove an impeachable officer. After all, most should be expected to serve out their term with 'utmost responsibility, integrity, loyalty, and efficiency,' acting 'with patriotism and justice' and leading 'modest lives.'
>
> Neither did the framers use the phrase 'may ALSO be removed from office ...' This would have clearly stated the intent that there were processes other than impeachment and conviction that would remove a sitting Chief Justice.
>
> Admittedly, the framers also did not use the phrase 'may ONLY be removed from office ...' However, the absence of the word 'only' should not immediately lead to the conclusion that another process [—] like [*quo*

55. *Sereno*, G.R. No. 237428, at 1 (J. Leonen, dissenting opinion).

56. PHIL CONST. art XII, § 2.

> *warranto* —] was possible. The context of the provision should be taken into consideration.[57]

Additionally, the dissents pointed out that the *ponencia* was incorrect in saying that allowing *quo warranto* under the Presidential Electoral Tribunal (PET) rules negate Sereno's assertion that it is only through impeachment that she may be removed from office. Emphatically, Justice Alfred Benjamin S. Caguioa held that

> [t]his is egregious error.
>
> Lest it be overlooked, the filing of election protests assailing the qualifications of the President and Vice-President is a remedy *explicitly sanctioned by the Constitution itself*, particularly, under Article VII thereof, thus:
>
> > 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.
> >
> > [...]
> >
> > *The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.*
>
> The proposition that *quo warranto* is available as against the President and Vice President only because of the express constitutional commitment under Article VII, Section 4 is supported by the basis of the same authorities used by the *ponencia* to say that *quo warranto* is available and has not prescribed [—]
>
> > §[ ]644. Ordinarily it would seem to be a sufficient objection to the exercise of the jurisdiction against a public officer that the case as presented is one in which the court [cannot] give judgment of ouster, even should the relator succeed. Thus, an information [in *quo warranto*] will not be allowed against certain magistrates to compel them to show by what authority they grant licenses within a jurisdiction alleged to pertain to other magistrates, since there [cannot] in such case be judgment of ouster or of seizure in the hands of the crown.
> >
> > [...]

57. *Id.* at 7.

> §[ ]646a. When, under the constitution of a state, the power to determine the elections, returns[,] and qualifications of members of the legislature is vested exclusively in each house as to its own members, the courts are powerless to entertain jurisdiction in *quo warranto* to determine the title of a member of the legislature. In such case, the constitution having expressly lodged the power of determining such question in another body, the courts cannot assume jurisdiction in *quo warranto*, but will have to leave the question to the tribunal fixed by the constitution. [ ]
>
> By parity of reasoning, except only for the textual commitment in the Constitution to the PET of the power to determine the qualification of the President and Vice President via *quo warranto* under the PET Rules, the unavailability of *quo warranto* under Rule 66 of the Rules of Court extends to both elective and appointive impeachment officers.
>
> Time and again, this Court has ruled that the Constitution is to be interpreted as a whole; one mandate should not be given importance over the other except where the primacy of one over the other is clear. Meaning, even as Section 4, Article VII provides an exception to Section 2, Article XI, this exception should not be unduly extended to apply to impeachable officers *other than* the President and Vice-President. Such exception is specific and narrow, and should not be interpreted in a manner that subverts the entire impeachment mechanism.[58]

As to the discussion that the non-filing or non-submission of the SALN means that Sereno failed to pass the test of integrity, the dissenters are divided. On the one hand, they believe that this is not so, and that it is up to the JBC to determine a candidate's integrity as a *subjective qualification*. As mentioned by Justice Estela Perlas-Bernabe —

> While the [Office of the Solicitor General] 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 [j]udicia[l]·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 [—]

58. *Sereno*, G.R. No. 237428, at 7-8 (J. Caguioa, dissenting opinion).

> 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.'[59]

On the other hand, others believe that the failure to file the SALNs constitutes a culpable violation of the Constitution, but that handing out a judgment on this ground is left to the sovereign will of Congress through constitutional impeachment proceedings. As put by Senior Associate Justice Antonio Carpio —

> [T]he repeated failure to file SALNs constitutes culpable violation of the Constitution and betrayal of public trust, grounds for removing an impeachable officer. While the failure to file SALNs may also raise questions on the integrity, and thus the qualification, of an applicant for Justice of the Supreme Court, the relevant applicable violation, for purposes of removing such impeachable officer once already in office, is culpable violation of the Constitution and betrayal of public trust. Only Congress, through the impeachment process, can remove an impeachable officer on these grounds.
>
> If a court finds that an impeachable officer has committed an impeachable act, the court should refer the matter to Congress, for Congress to exercise its exclusive mandate to remove from office impeachable officers. No court, not even this Court, can assume the exclusive mandate of Congress to remove impeachable officers from office.
>
> ...
>
> Thus, this Court should treat the present *quo warranto* petition as an administrative investigation by this Court of one of its members. The resolution of this Court should be to refer its findings and recommendation against respondent to Congress.[60]

The dissenters were also vocal in saying that even if, indeed, *quo warranto* were to prosper against Sereno, the one year time bar for such an action applies in this case, and prescription *does* lie against the State in this instance. As mentioned by Justice Leonen —

> An action for *quo warranto* should be promptly filed and persons who claim a right to the office occupied by a supposed usurper should do so within the provided period, lest they be deemed to have abandoned their right.
>
> The majority refers to Article 1108 (4) of the Civil Code to support their stand that the prescriptive period for filing the *quo warranto* petition has not yet prescribed and will never prescribe because prescription does not lie against the State.
>
> I cannot agree.

59. *Sereno*, G.R. No. 237428, at 13 (J. Perlas-Bernabe, dissenting opinion).

60. *Sereno*, G.R. No. 237428, at 25-26 (J. Carpio, dissenting opinion).

[...]

Article 1108 (4) refers to acquisitive and extinctive prescription as regards the acquisition or ownership of real rights, and not prescription in general. Article 1108 can be found in Book III of the Civil Code which relates to the *different modes of acquiring ownership*.

The ownership referred to in Book III of the Civil Code is ownership of real property, personal property, and intellectual creations. It is preposterous to include the position of Chief Justice within the coverage of Book III of the Civil Code, since a public office is not a property right, hence, no proprietary title can attach to it.

Furthermore, a quick review of jurisprudence shows that the phrase '[p]rescription does not lie against the State' was limited to actions of reversion to the public domain of lands which were fraudulently granted to private individuals and not in all actions instituted by the State, as the majority has mistakenly concluded.

[...]

If we were to follow the majority's argument of altogether excusing the State from the limiting effects of time, then we would be encouraging and giving our imprimatur to indolence and mediocrity within government service. This must not be the case and we must always expect more from our public officers, especially the Solicitor General who holds the honor of representing the State.[61]

Justice Caguioa added, to wit —

Therefore, even on the basis of the foreign jurisprudence cited in the *ponencia*, there is a recognition of prescription running against the State in informations in *quo warranto*. With more reason in this case, when Article 1115 of the Civil Code and Section 11, Rule 66 of the Rules of Court recognize a specific case of prescription for actions of *quo warranto*, and when Article XI, Section 2 of the Constitution signals the non-availability of the remedy.

The one-year period within which *quo warranto* may be filed commences from 'the cause of such ouster, or the right of the petitioner to hold such office or position, arose;' the relevant reckoning period is from the cause of the ouster.

Following the theory of the petitioner as rationalized by the *ponencia*, the cause(s) of the ouster of the respondent [Chief Justice] elevated to the level of lack of the constitutional requirement of integrity consist of (1) her alleged failure to file her SALNs during her employment with the [U.P.] College of Law, and (2) her failure to submit all SALNs to the JBC when she applied for the position of Chief Justice in 2012. Still following the 'upon discovery' theory, however, it should be emphasized that the JBC,

61. *Sereno*, G.R. No. 237428, at 14-16 (J. Leonen, dissenting opinion).

> the Office of the Ombudsman, and the University of the Philippines under the Executive department would have already been aware, or at the very least, put on notice, of the said failure to file and the subsequent failure to submit to the JBC at the time she submitted her application for the position of Chief Justice. Even to generously apply Section 11 of Rule 66 to consider the reckoning point of the one-year period to be from the time the respondent 'usurp[ed], intrude[d] into, or unlawfully h[eld] or execise[d]' the office of the Chief Justice, it would still lead to the same conclusion that the one-year period to file the *quo warranto* commenced from the time the Chief Justice was appointed and took her oath.
>
> Both causes cannot be said to have only been discovered during the hearings before the Committee on Justice of the House of Representatives in order to justify the belated filing of the *quo warranto* action.
>
> Regrettably, the Decision agrees with the petitioner's position, relying upon the use of the word 'must' in Section 2 of Rule 66.
>
> I disagree. The exercise of the Solicitor General's discretion to file an action for *quo warranto* when he 'must' under Section 2 is available only as long as the right of action still exists. Section 11 of Rule 66 is clear that there is no authority to file an action beyond one (1) year after the cause of such ouster, or the right of the petitioner to hold such office, arose. Thus, even if *quo warranto* is available, the Solicitor General's right of action prescribed one year after the appointment of the Chief Justice in 2012.
>
> To extend the pernicious implications of this interpretation, the *quo warranto* may now be used by the Executive, or by the Solicitor General, at his own discretion, to (1) force the removal of impeachable appointive officer appointed during previous administrations so that the sitting Executive can appoint a new person in his or her place; or (2) preempt or countermand the decision of the Legislature in an impeachment proceeding. *This is clearly not in consonance with the constitutional design. I simply cannot believe how the Court can accept this interpretation as being consistent with the Constitution.*[62]

IV. IMPEACHMENT V. *QUO WARRANTO*: THE GENERAL RULE AND THE EXCEPTION

Indeed, it would seem that in this particular instance the dissenters appear to be in the right as to how *quo warranto* is simply not an available means to oust sitting justices of the Supreme Court, as they are one of the few exceptions to this mode of removal — as they are impeachable officers.

Article XI, Section 2 of the 1987 Philippine Constitution is clear: the President, Vice-President, Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman are impeachable

62. *Sereno*, G.R. No. 237428, at 27-29 (J. Caguioa, dissenting opinion).

officers which are removable from office via impeachment proceedings.[63] The reason for this exclusive listing of impeachable officials, all respective heads of the great branches of government or important Constitutional organs, is quite plain. As was explained succinctly by Justice Leonen in his dissenting opinion —

> The process of impeachment was designed as a measure of accountability for public officials who are not otherwise burdened by the pressures of maintaining electability. For this reason, the constitutional provisions on impeachment are placed under Article XI, on the Accountability of Public Officers, and not under Article VI on the Legislative Department, emphasizing that the process is not merely a check and balance of government branches but rather a process to hold the highest public officials accountable to the people.[64]

Impeachment, as Philippine jurisprudence defines it,

> refers to the power of Congress to remove a public official for serious crimes or misconduct as provided in the Constitution. A mechanism designed to check abuse of power, impeachment has its roots in Athens and was adopted in the United States (US) through the influence of English common law on the Framers of the US Constitution. *Our own Constitution's provisions on impeachment were adopted from the US Constitution.*[65]

As the Philippine's impeachment process has American roots — which are distinct and have marked differences from its English common law predecessor, it is interesting to note the differences between the two —

> The discussions of the delegates to the Constitutional Convention and state ratifying conventions provide some important background for appreciating the distinctive features of the federal impeachment process. The Founders wanted to distinguish the impeachment power set forth in the [US] Constitution from the British practice in at least eight important ways. First, the Founders limited impeachment only to '[t]he President, Vice President and all civil Officers of the [US],' whereas at the time of the founding of the Republic, anyone (except for a member of the royal family) could be impeached in England. Second, the delegates to the Constitutional Convention narrowed the range of impeachable offenses for public officeholders to 'Treason, Bribery, or other high Crimes and Misdemeanors,' although the English Parliament always had refused to constrain its jurisdiction over impeachments by restrictively defining impeachable offenses. Third, whereas the English House of Lords could convict upon a bare majority, the delegates to the Constitutional

63. PHIL. CONST. art. XI, § 2.

64. *Sereno*, G.R. No. 237428, at 10 (J. Leonen, dissenting opinion).

65. Corona v. Senate of the Philippines, 676 SCRA 563, 574 (2012) (emphasis supplied).

> Convention agreed that in an impeachment trial held in the Senate, no Person shall be convicted [and removed from office] without the Concurrence of two thirds of the Members present.' Fourth, the House of Lords could order any punishment upon conviction, but the delegates limited the punishments in the federal impeachment process 'to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the [US].' Fifth, the king could pardon any person after an impeachment conviction, but the delegates expressly prohibited the President from exercising such power in the Constitution. Sixth, the Founders provided that the President could be impeached, whereas the King of England could not be impeached. Seventh, impeachment proceedings in England were considered to be criminal, but the Constitution separates criminal and impeachment proceedings.? *Lastly, the British provided for the removal of their judges by several means, whereas the Constitution provides impeachment as the sole political means of judicial removal.*[66]

The Constitutional history of the Philippines seems to bear out this American tradition on limiting impeachment to the highest officers of the State and not removing them by any other means while in office, except through impeachment for the particular aforementioned reasons. In *Lecaroz v. Sandiganbayan*,[67] decided under the aegis of the 1973 Constitution, the Supreme Court said that

> [t]he broad power of the New Constitution vests the respondent court with jurisdiction over 'public officers and employees, including those in government-owned or controlled corporations.' There are exceptions, however, like constitutional officers, particularly those declared to be removed by impeachment. Section 2, Article XIII of the 1973 Constitution provides [—]
>
> > 'SEC. 2. The President, the Members of the Supreme Court, and the Members of the Constitutional Commissions shall be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, other high crimes, or graft and corruption.'
>
> Thus, the [ ] provision proscribes removal from office of the aforementioned constitutional officers by any other method; otherwise, to allow a public officer who may be removed solely by impeachment to be charged criminally while holding his office with an offense that carries the penalty of removal from office, would be violative of the clear mandate of the fundamental law.[68]

66. Michael J. Gerhardt, *The Lessons of Impeachment History*, 67 GEO. WASH. L. REV. 603, 605-06 (1999) (emphasis supplied).

67. Lecaroz v. Sandiganbayan, 128 SCRA 324 (1984).

68. *Id.* at 330-31 (emphasis supplied).

This was reiterated in a subsequent case involving a disbarment complaint filed against then Justice Marcelo B. Fernan (who eventually became Chief Justice), where the High Court ruled that what cannot be done directly cannot also be done indirectly, and that a disbarment complaint against a sitting Justice of the Supreme Court will not prosper, as the only way to remove him or her from the post is through the initiation of impeachment proceedings,[69] in this wise —

> *The provisions of the 1973 Constitution we referred to above in Lecaroz v. Sandiganbayan are substantially reproduced in Article XI of the 1987 Constitution:*
>
> > Sec. 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.
> >
> > Sec. 3[.]
> >
> > > (7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial[,] and punishment according to law.
>
> It is important to make clear that the Court is not here saying that its Members or the other constitutional officers we referred to above are entitled to immunity from liability for possibly criminal acts or for alleged violation of the Canons of Judicial Ethics or other supposed misbehavior. What the Court is saying is that there is a fundamental procedural requirement that must be observed before such liability may be determined and enforced. A Member of the Supreme Court must first be removed from office via the constitutional route of impeachment under Sections 2 and 3 of Article XI of the 1987 Constitution. Should the tenure of the Supreme Court Justice be thus terminated by impeachment, he may then be held to answer either criminally or administratively (by disbarment proceedings) for any wrong or misbehavior that may be proven against him in appropriate proceedings.
>
> *The above rule rests on the fundamental principles of judicial independence and separation of powers. The rule is important because judicial independence is*

69. Supreme Court, In Re First Endorsement from Honorable Raul M. Gonzalez dated 16 March 1988 Requesting Honorable Justice Marcelo B. Fernan to Comment on an Anonymous Letter-Complaint, [A.M. No. 88-4-5433] (Apr. 15, 1988).

> *important. Without the protection of this rule, Members of the Supreme Court would be brought against them by unsuccessful litigants or their lawyers or by other parties who, for any number of reasons might seek to affect the exercise of judicial authority by the Court.*
>
> *It follows from the foregoing that a fiscal or other prosecuting officer should forthwith and motu proprio dismiss any charges brought against a Member of this Court. The remedy of a person with a legitimate grievance is to file impeachment proceedings.*[70]

It is thus quite clear that for impeachable officials, the only mode available to remove them from office is impeachment, save for Constitutionally-mandated exceptions such as the previously mentioned PET cases versus the President and Vice-President.

On the other hand, a *quo warranto* proceeding

> is the proper legal remedy to determine the right or title to the contested public office and to oust the holder from its enjoyment. It is brought against the person who is alleged to have usurped, intruded into, or unlawfully held or exercised the public office, and may be commenced by the Solicitor General or a public prosecutor, as the case may be, or by any person claiming to be entitled to the public office or position usurped or unlawfully held or exercised by another.[71]

The *quo warranto* is an ancient writ that can ultimately be traced to English common law, as such —

> The [*quo warranto*] [ ] appear[s] to be 'prerogative' in the strictest sense. [It is] very old; and [ ] date[s] from the critical years of the thirteenth century, when the newly consolidated State was entering upon its struggle with rival jurisdictions for the sole custody of the Fount of Justice. The [*quo warranto*] is a statutory writ invented to try the validity of the feudal franchises. It took its rise in the great Statute of Gloucester of 1278, which initiated the sweeping reforms of the English Justinian; and, after the long and acrimonious enquiry which resulted in the compilation of the Hundred Rolls, and the concession of the 'time whereof the memory of man,' etc., it was consecrated as an established form, 'to be awarded as an original out of the chancery,' in 1301, when the old reformer, his great life's work done, was passing to his grave. *The paraphrase of* [*King*] *Edward's statutes given in Britton makes it fairly clear that the* [*quo warranto*] *was originally intended solely as a royal weapon; and it is worthy of notice that (seemingly) it does not appear in the ordinary printed Register.* But it is equally clear that, at a later time, by the process of 'informing' the royal officials of an alleged usurpation, a private person could make use of the writ; and though 'informations' became unpopular after the Restoration [of the English Monarchy], and were definitely checked at the Revolution, the information in the nature of a [*quo warranto*] took its place during the

70. *Id.* (emphases supplied).

71. Topacio v. Ong, 574 SCRA 817, 827-28 (2008).

> eighteenth century as a process open to the ordinary citizen. Though it could not be issued strictly as 'of course,' it was exhibited with leave of the courts at the relation of any person or persons desirous to sue or prosecute the same.[72]

In our jurisdiction, the present incarnation of this writ is found in Rule 66 of the Rules of Court, to wit —

> 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.
>
> Section 2. *When Solicitor General or public prosecutor must commence action.* — The Solicitor General or a public prosecutor, when directed by the President of the Philippines, or when upon complaint or otherwise[,] he has good reason to believe that any case specified in the preceding section can be established by proof, must commence such action.
>
> ...
>
> Section 5. *When an individual may commence such an action.* — A person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his own name.
>
> ...
>
> Section 9. *Judgment where usurpation found.* — When the respondent is found guilty of usurping into, intruding into, or unlawfully holding or exercising a public office, position[,] or franchise, judgment shall be rendered that such respondent be ousted and altogether excluded therefrom, and that the petitioner or relator, as the case may be, recover his costs. Such further judgment may be rendered determining the respective rights in and to the public office, position or franchise of all the parties to the action as justice requires.
>
> ...

72. Edward Jenks, *The Prerogative Writs in English Law*, 32 YALE L.J. 523, 527-28 (1923).

> Section 11. *Limitations.* — Nothing contained in this Rule shall be construed to authorize an action against a public officer or employee for his ouster from office unless the same be commenced within one (1) year after the cause of such ouster, or the right of the petitioner to hold such office or position, arose, nor to authorize an action for damages in accordance with the provisions of the next preceding section unless the same be commenced within one (1) year after the entry of the judgment establishing the petitioner's right to the office in question.[73]

As held in the case of *Regatcho v. Cleto*,[74]

> [t]he writ of *quo warranto* is an ancient common-law prerogative writ and remedy. In its broadest sense it is a proceeding to determine the right to the use or exercise of a franchise or office and to oust the holder from its enjoyment, if his claim is not well founded, or if he has forfeited his right to enjoy the privilege. It is a demand made through the State by some individual to show by what right an individual or corporation exercises a franchise or privilege belonging to the State which according to the laws of the land they cannot legally exercise except by virtue of a grant or authority from the State.
>
> ...
>
> The application of the writ has been expanded to include an action by a person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another.[75]

Despite this, the current 1987 Constitution has explicitly mentioned who are impeachable officers: the President, Vice-President, Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman.[76] The Constitution itself made their removal through the impeachment process, which is a more exacting though political process.[77]

But, in essence, and for the sake of argument as held in the majority in the *Sereno* decision, can an impeachable officer be actually removed through *quo warranto* proceedings other than what has already been explicitly allowed by the Constitution itself?

V. QUALIFICATIONS OF IMPEACHABLE OFFICERS

It is then noteworthy to check out the qualifications of the individual impeachable officers as provided for in the Constitution.

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73. 1997 RULES OF CIVIL PROCEDURE, rule 66, §§ 1-2, 5, 9 & 11.

74. Regatcho v. Cleto, 126 SCRA 342 (1983).

75. Id. at 346 (citing 74 C.J.S. 174 & 1997 RULES OF CIVIL PROCEDURE, rule 66, § 6).

76. PHIL. CONST. art. XI, § 2.

77. *See* PHIL. CONST. art. XI, § 2.

The President and Vice President must be:

(1) natural-born citizens of the Philippines;

(2) registered voters;

(3) able to read and write;

(4) at least forty years of age on the day of the election; and

(5) residents of the Philippines for at least ten years immediately preceding the election.[78]

A member of the Supreme Court must be:

(1) a natural-born citizen of the Philippines;

(2) must be at least forty years of age;

(3) must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines; and

(4) must be a person of *proven competence*, *integrity*, *probity*, and *independence*.[79]

A member of the Civil Service Commission must be:

---

78. PHIL. CONST. art. VII, §§ 2 & 3. The provisions state —

> SECTION 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.
>
> SECTION 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. He may be removed from office in the same manner as the President.

PHIL. CONST. art. VII, §§ 2 & 3.

79. PHIL. CONST. art. VIII, §§ 7 (1) & (3). The provisions state —

> SECTION 7. (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.
>
> ...
>
> (3) A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence. (Article VIII, 1987 Constitution)

PHIL. CONST. art. VIII, §§ 7 (1) & (3).

(1) a natural-born citizen of the Philippines;

(2) at least thirty-five years of age;

(3) with proven capacity for public administration; and

(4) must not have been candidates for any elective position in the elections immediately preceding their appointment.[80]

A member of the Commission on Elections must be:

(1) a natural-born citizen of the Philippines;

(2) at least thirty-five years of age;

(3) holders of a college degree;

(4) must not have been candidates for any elective position in the immediately preceding elections; and

(5) a majority thereof, including the Chairperson, shall be Members of the Philippine Bar who have been engaged in the practice of law for at least ten years.[81]

A member of the Commission on Audit must be:

(1) a natural-born citizen of the Philippines;

(2) at least thirty-five years of age;

---

80. PHIL. CONST. art. IX-B, § 1 (1). The provision provides —

> SECTION 1. (1) The Civil Service shall be administered by the Civil Service Commission composed of a Chairman and two Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, with proven capacity for public administration, and must not have been candidates for any elective position in the elections immediately preceding their appointment.

PHIL. CONST. art. IX-B, § 1 (1).

81. PHIL. CONST. art. IX-C, § 1 (1). The provision states —

> SECTION 1. (1) There shall be a Commission on Elections composed of a Chairman and six Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, holders of a college degree, and must not have been candidates for any elective position in the immediately preceding elections. However, a majority thereof, including the Chairman, shall be Members of the Philippine Bar who have been engaged in the practice of law for at least ten years.

PHIL. CONST. art. IX-C, § 1 (1).

(3) a Certified Public Accountant with not less than ten years of auditing experience, or a member of the Philippine Bar who has been engaged in the practice of law for at least ten years;

(4) must not have been a candidate for any elective position in the elections immediately preceding their appointment; and

(5) at no time shall all Members of the Commission belong to the same profession.[82]

And, finally, the Ombudsman must be:

(1) a natural-born citizen of the Philippines;

(2) at least forty years old;

(3) of *recognized probity* and *independence*;

(4) a member of the Philippine Bar;

(5) must not have been a candidate for any elective office in the immediately preceding election; and

(6) must have for ten years or more been a judge or engaged in the practice of law in the Philippines.[83]

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82. PHIL. CONST. art. IX-D, § 1 (1). The provision provides —

> SECTION 1. (1) There shall be a Commission on Audit composed of a Chairman and two Commissioners, who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, certified public accountants with not less than ten years of auditing experience, or members of the Philippine Bar who have been engaged in the practice of law for at least ten years, and must not have been candidates for any elective position in the elections immediately preceding their appointment. At no time shall all Members of the Commission belong to the same profession.

PHIL. CONST. art. IX-D, § 1 (1).

83. PHIL. CONST. art. XI, § 8. The provision is quoted thus —

> SECTION 8. The Ombudsman and his Deputies shall be natural-born citizens of the Philippines, and at the time of their appointment, at least forty years old, of recognized probity and independence, and members of the Philippine Bar, and must not have been candidates for any elective office in the immediately preceding election. The Ombudsman must have, for ten years or more, been a judge or engaged in the practice of law in the Philippines.
>
> During their tenure, they shall be subject to the same disqualifications and prohibitions as provided for in Section 2 of Article IX-A of this Constitution.
>
> PHIL. CONST. art. XI, § 8.

Clearly, the qualifications of impeachable officers *speak of both objective and subjective ones*, depending on the position.

The *objective qualifications* can be identified as:

(1) being natural-born citizens of the Philippines;

(2) registered voters;

(3) able to read and write;

(4) the age requirement (e.g., at least forty years of age on the day of the election),

(5) residency requirement;

(6) being in the practice of a profession for a determined number of years;

(7) must not have been candidates for any elective position in the elections immediately preceding their appointment; and

(8) educational requirement (e.g., holders of a college degree).

On the other hand, the *subjective qualifications* are:

(1) a person of *proven competence*, *integrity*, *probity*, and *independence* (for Members of the Supreme Court);

(2) with *proven capacity for public administration* (for Members of the Civil Service Commission); and

(3) of *recognized probity* and *independence* (Ombudsman).

It is worthy to point out the distinction between objective and subjective qualifications since the latter recognizes the exercise of discretion of the appointing authority, in this case the President. Verily, should the President appoint a person who does not satisfy the *objective* qualifications, such may be questioned before the courts on the basis of grave abuse of discretion.[84]

In *Velicaria-Garafil v. Office of the President*,[85] the Supreme Court held that

> [t]he President's exercise of his power to appoint officials is provided for in the Constitution and laws. *Discretion is an integral part in the exercise of the power of appointment.*
>
> Considering that appointment calls for a selection, the appointing power necessarily exercises a discretion. According to Woodbury, J., 'the choice of a person to fill an office constitutes the essence of his appointment,' and

84. Cayetano v. Monsod, 201 SCRA 210, 228 (1991).

85. Velicaria-Garafil v. Office of the President, 758 SCRA 414 (2015).

> Mr. Justice Malcolm adds that an '[a]ppointment to office is intrinsically an executive act involving the exercise of discretion.' In *Pamantasan ng Lungsod ng Maynila v. Intermediate Appellate Court*[, the Court] held [—]
>
> 'The power to appoint is, in essence, discretionary. The appointing power has the right of choice which he may exercise freely according to his judgment, *deciding for himself who is best qualified among those who have the necessary qualifications and eligibilities*. It is a prerogative of the appointing power[.]'
>
> Indeed, the power of choice is the heart of the power to appoint. Appointment involves an exercise of discretion of whom to appoint; it is not a ministerial act of issuing appointment papers to the appointee. In other words, the choice of the appointee is a fundamental component of the appointing power.[86]

In the case of appointments to the judiciary and Office of the Ombudsman, the Constitution has given the JBC the "principal function of recommending appointees to the Judiciary."[87]

In the case of *Jardeleza v. Sereno*,[88] the Supreme Court recognized 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."[89]

In fact, the Supreme Court itself clarified in the same case that "the Court neither intends to strip the JBC of its discretion to recommend nominees nor proposes that the JBC conduct a full-blown trial when objections to an application are submitted[,]"[90] as long as due process has been observed.

It is the JBC that evaluates whether the applicant satisfies the requirement of being a person of *proven competence*, *integrity*, *probity*, and *independence* so that they can be recommended as nominees to the President as the appointing authority.[91]

On the matter of integrity, the Supreme Court mentioned in the case of *Dizon v. Dollete*[92] that

86. *Id.* at 454-55 (emphasis supplied).

87. PHIL. CONST. art. § 8, ¶ 5.

88. Jardeleza v. Sereno, 733 SCRA 279 (2014).

89. *Id.* at 352 (emphases supplied).

90. *Id.* at 348.

91. *Id.* at 416.

92. Dizon v. Dollete, 11 SCRA 467 (1964).

> [i]ntegrity includes not only soundness of moral principle and character but also connotes strictness or fidelity in the discharged of the trust reposed.
>
> > [ ]INTEGRITY. As occasionally used [in] statutes prescribing the qualifications of public officers, trustees, etc., this term means soundness of moral principle and character, as shown by one person dealing with others in the making and performance of contract, and fidelity and honesty in the discharge of trusts; it is synonymous with 'probity,' 'honesty,' and 'uprightness.'[.][93]

But even the Supreme Court, in the case of *Jardeleza*, recognized that

> integrity as a ground has not been defined. While the initial impression is that it refers to the moral fiber of a candidate, it can be, as it has been, used to mean other things. In fact, the minutes of the JBC meetings in this case reflect the lack of consensus among the members as to its precise definition. Not having been defined or described, it is vague, nebulous[,] and confusing. It must be distinctly specified and delineated.[94]

To say, then, that a person lacks integrity or does not satisfy this constitutional requirement is to question a *subjective* qualification, which has been determined, in this case, by the JBC in the exercise of its discretion. Can the Supreme Court, then, through a *quo warranto* proceeding, substitute its own interpretation of the qualification of *proven integrity* which has been determined by the JBC as mandated by the Constitution? Or should a case for grave abuse of discretion instead have been filed against the JBC to question its finding of *proven integrity*?

VI. CONCLUSION

While this landmark case has brought lively and animated debate within the legal community on its promulgation, with much condemnation coming from numerous practitioners and experts in law on how the use of *quo warranto* was legally infirm, the Authors believe that this is not purely the case and certain nuances may still be reasonably inferred from the decision.

The Authors are of the opinion that the Supreme Court was correct in saying that *quo warranto* is a possible mode of removing a public official — even an impeachable one — when that officer has not met the most basic and necessary qualification/s for the position, as provided for under the Constitution. However, this would only apply to the *objective qualifications* which are provided for, and which do not involve any exercise of discretion at all on the part of the appointing authority. This does *not* apply to the *subjective qualifications* which necessarily involve an exercise of discretion on the part of the appointing authority, as the latter is precisely given the

93. *Id.* at 471-72 (citing BLACK'S LAW DICTIONARY 94).

94. *Jardeleza*, 733 SCRA at 354-55.

leeway to determine if the nominee in question possesses these subjective criteria which the letter of the law does not even attempt to identify. Only in cases where there has been a *grave abuse of that discretion* should the issue of subjective qualifications be put to the test.

While *Sereno* did not explicitly lay down these distinctions, the Authors believe that these are the necessary imports of the case if it is to be reconciled with existing laws, jurisprudence, and the Constitution itself. A contrary reading, lumping together in one category both objective and subjective criteria, and saying that non-compliance with both sets of qualifications can subject an impeachable public officer to *quo warranto* proceedings, would be a "legal abomination," as Justice Leonen put it, and has no place at all in the country's legal system, or in any other.