EN BANC

G.R. No. 224302 – HON. PHILIP A. AGUINALDO, HON. REYNALDO A. ALHAMBRA, DANILO S. CRUZ, HON. BENJAMIN T. POZON, HON. SALVADOR V. TIMBANG, JR., and the INTEGRATED BAR OF THE PHILIPPINES, *Petitioners,* ***versus*** **HIS EXCELLENCY PRESIDENT BENIGNO SIMEON C. AQUINO III, HON. EXECUTIVE SECRETARY PAQUITO N. OCHOA, HON. MICHAEL FREDERICK L. MUSNGI, HON. MA. GERALDINE FAITH A. ECONG, HON. DANILO S. SANDOVAL, HON. WILHELMINA B. JORGE-WAGAN, HON. ROSANA FE ROMERO-MAGLAYA, HON. MERIANTHE PACITA M. ZURAEK, HON. ELMO M. ALMEDA, and HON. VICTORIA C. FERNANDEZ-BERNARDO,** *Respondents.*

Promulgated:

February 21, 2017

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SEPARATE OPINION

CAGUIOA, *J.*:

I am filing this separate opinion to clarify my position on the final disposition of the case wherein the Court, in dismissing the Petition for *Quo Warranto* and *Certiorari*, declared the clustering of nominees by the Judicial and Bar Council (JBC) unconstitutional and the appointments of Associate Justices Michael Frederick L. Musngi and Ma. Geraldine Faith A. Econg, together with the four other newly-appointed Associate Justices of the Sandiganbayan, as valid. As explained below, I maintain my position that the dismissal of the Petition and the upholding of the appointments of the six newly-appointed Associate Justices of the Sandiganbayan are in order. It is, however, the ruling on the unconstitutionality of the questioned act of the JBC that I am espousing a separate view.

In the Decision dated November 29, 2016, I joined the Concurring Opinion of Justice Marvic M.V.F. Leonen. Justice Leonen stated:

> I concur in the result in so far as finding that the respondents did not gravely abuse their discretion in making appointments to the Sandiganbayan, considering that all six vacancies were opened for the first time. I disagree that we make findings as to whether the Judicial and Bar Council gravely abused its discretion considering that they were not impleaded and made party to this case. Even for the Judicial and Bar Council, a modicum of fairness requires that we should have heard them

> and considered their arguments before we proceed to exercise any degree of supervision as they exercise their constitutionally mandated duties.[1]

After the JBC filed on December 27, 2016 its Motion for Reconsideration (with Motion for the Inhibition of the *Ponente*) and on February 6, 2017 its Motion for Reconsideration-in-Intervention (Of the Decision dated 29 November 2016), the majority of the Court resolved to grant its motion/prayer for intervention and to deny the Motion for the Inhibition of the *Ponente*. To this extent, I concur with the Court's Resolution.

On the motion for inhibition, the *ponente* is in the best position to determine whether her involvement with the JBC justifies her possible inhibition in this case. The *ponente* has found no basis for her inhibition, and I accept her decision unqualifiedly.

On the JBC's motion to intervene, I reiterate the position taken by J. Leonen, to which I concurred, that the JBC should be allowed to intervene. To be sure, the JBC is not an ordinary body. It was created by no less than our Constitution, and given the constitutional mandate of recommending to the President the nominees to every vacancy in the judiciary.[2] Hence, since the JBC's very action has been declared by the Court unconstitutional, the JBC clearly has a legal interest in the matter in litigation and is so situated as to be adversely affected by the disposition of the Court.[3] Everyone deserves a day in court. The JBC is no exception.

The very purpose and singular function of the JBC is involved in the Petition as the petitioners' reliefs are grounded on the simple formulation that the President's act of appointing Justices Musngi and Econg was made in violation of Section 9, Article VIII of the Constitution. This, in turn, is premised on the petitioners' belief that the President could not appoint Justices for any given position (in specific reference to the 16th and 21st stations/Associate Justice positions) outside of the list of nominees that had been clustered by the JBC for each of the stations/Associate Justice positions.

In plain terms, the Court is confronted with the proper interpretation of Section 9, Article VIII of the Constitution, to wit:

> Section 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

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1 *Hon. Philip A. Aguinaldo, et al. v. His Excellency President Benigno Simeon C. Aquino III, et al.*, G.R. No. 224302, November 29, 2016, Concurring Opinion of J. Leonen, p. 1.

2 Section 8(5), Article VIII of the Constitution provides: "The Council shall have the principal function of recommending appointees to the judiciary. x x x"

3 RULES OF COURT, Rule 19, Sec. 1.

x x x x

To my mind, the pointed question to be resolved is this: "If respondent President Benigno Simeon C. Aquino III (President Aquino) had made his appointments of the six new Associate Justices of the Sandiganbayan based on the six separate lists prepared by the JBC, meaning one appointment per list, would he have violated the Constitution?"

If the answer is in the affirmative, then the action of the JBC would be unconstitutional. Inversely, if the answer is in the negative, meaning the Court upholds as constitutional the appointments made following the clustering by the JBC, then that would, in turn, mean that the JBC had acted pursuant to its mandate under the Constitution.

To reiterate, Section 9, Article VIII of the Constitution provides:

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

President Aquino was presented with six lists to fill up the six vacancies in the Sandiganbayan. Each list has at least three nominees. An appointment coming from each of the six lists would be in keeping with the Constitutional provision. I cannot see it otherwise. Thus, had President Aquino picked one from each of the six lists prepared by the JBC, I would not have declared his action unconstitutional.

My basis is the plain language of the above Constitutional provision which mandates the JBC to recommend nominees to any vacancy in the judiciary — to prepare a list of at least three nominees for every vacancy.[4]

So long as the grouping of at least three nominees for every vacancy by the JBC did not impinge on the President's appointing power, there is, in my view, no violation of the Constitution. Thus, I cannot view as grave abuse of discretion the act of the JBC in adopting the six lists it came up with following its "textualist approach of constitutional interpretation".

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[4] A list containing at least three nominees consists a group. A group may also be called a cluster. However, a "cluster" is defined by Merriam-Webster as: "a number of similar things that occur together: such as ***a*** : two or more consecutive consonants or vowels in a segment of a speech ***b*** : a group of buildings and especially houses built together on a sizable tract in order to preserve open spaces larger than the individual yard for common recreation ***c*** : an aggregation of stars or galaxies that appear close together in the sky and are gravitationally associated x x x ***d*** : a larger than expected number of cases of disease (as leukemia) occurring in a particular locality, group of people, or period of time ***e*** : a number of computers networked together in order to function as a single computing system x x x." MERRIAM-WEBSTER available at https://www.merriam-webster.com/dictionary/cluster; last accessed on February 27, 2017. As a verb, "cluster" means "to come together to form a group." Id. Either a group or a cluster has no fixed legal meaning. "Clustering" has no definitive legal import.

In the same vein, that President Aquino chose to disregard JBC's clustering, and considered all the 37 nominees named in the six lists, is likewise "textually compliant" with Section 9, Article VIII of the Constitution (*i.e.*, because there are at least three nominees for each of the six Associate Justice positions).[5] For this reason, I cannot find the act of President Aquino as constituting grave abuse of discretion.

In fine, I find nothing unconstitutional in the questioned action of the JBC—in the same manner that I find nothing unconstitutional in the act of President Aquino in disregarding the clustering done by the JBC, and in choosing Associate Justices for each of the vacancies "outside" of the "clustered" lists provided by the JBC.

ACCORDINGLY, I vote to **RECONSIDER** the Decision dated November 29, 2016 and to **DELETE** from the dispositive portion the declaration that "the clustering of nominees by the Judicial and Bar Council [as] **UNCONSTITUTIONAL.**"

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[5] Meaning, since there were 6 positions, there should have been at least a minimum of 18 nominees in compliance with the Constitution. Thus, since there were, in fact, 37 nominees for the 6 positions, then the Constitutional requirement was still met.