EN BANC

G.R. 228628 – 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 **v. THE JUDICIAL AND BAR COUNCIL, chaired by THE HON. MA. LOURDES P.A. SERENO, Chief Justice and Ex Officio Chairperson,** Respondent.

Promulgated:

July 25, 2017

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DISSENTING OPINION

LEONEN, *J.*:

This Court is once again tasked to re-examine our interpretation of Article VIII, Section 8(1) of the Constitution, previously the subject of this Court's review in *Chavez v. Judicial and Bar Council.*[1] In the aftermath of *Chavez*, we see the absurd and unworkable effects of having only one (1) representative of Congress within the Judicial and Bar Council.

Chavez v. Judicial and Bar Council[2] sanctioned what was clearly unintended by the Constitution: the periodic disempowerment of one (1) legislative chamber. In doing so, it weakens Congress itself as a bicameral constitutional department. The subtraction of the critical one (1) vote that determines who gets into the shortlist is achieved by periodically disempowering one (1) chamber. From the time *Chavez* was promulgated, significant facts have come to light that justifies the abandonment of that precedent.

We must do so in this case.

This is a Petition for mandamus and certiorari filed by Representative Reynaldo V. Umali (Representative Umali), current Chair of the House of Representatives Committee on Justice, questioning the six (6)-month rotational representation arrangement of Congress adopted by the Judicial and Bar Council pursuant to *Chavez v. Judicial and Bar Council*,[3] which was decided with finality on April 16, 2013. Petitioner claims that the current arrangement unfairly deprives both chambers of Congress of its full participation in the Judicial and Bar Council.

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1 691 Phil. 173 (2012) [Per J. Mendoza, En Banc].

2 Id.

3 709 Phil. 478 (2013) [Per J. Mendoza, En Banc].

An understanding of the process of appointment to the judiciary, especially in its historical context, is important to situate this Court's proper interpretation of the current provisions of the Constitution.

Before the creation of the Judicial and Bar Council, the power to nominate and appoint members of the judiciary was vested in the executive and legislative branches.

Title X, Article 80 of the Malolos Constitution provides:

> TITLE X
> The Judicial Power
>
> Article 80. The Chief Justice of the Supreme Court and the Solicitor-General shall be chosen by the National Assembly in concurrence with the President of the Republic and the Secretaries of the Government, and shall be absolutely independent of the Legislative and Executive Powers.

The 1935 Constitution similarly states:

> ARTICLE VIII
> Judicial Department
>
> Section 5. The Members of the Supreme Court and all judges of inferior courts shall be appointed by the President with the consent of the Commission on Appointments.

The promulgation of the 1973 Constitution, however, vested the chief executive with both executive and legislative powers. Vetting and appointing of members to the judiciary became the sole prerogative of the President:

> ARTICLE X
> The Judiciary
>
> Section 4. The Members of the Supreme Court and judges of inferior courts shall be appointed by the President.

Hoping to unshackle the Republic from the abuses of power during Martial Law but at the same time wanting to insulate the process of judicial appointments from partisan politics, the 1986 Constitutional Commission, through Commissioner Roberto Concepcion, proposed the creation of an independent body that would vet potential appointees to the judiciary.[4] This body would be represented by the different stakeholders of the legal sector and would have the mandate of preparing the list of potential judicial

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[4] *See* I CONSTITUTIONAL COMMISSION RECORD, JOURNAL No. 29, dated July 14, 1986.

appointees to be submitted to the President. The proposal became what is now the Judicial and Bar Council. Article VIII, Section 8 of the Constitution now provides:

> ARTICLE VIII
> Judicial Department
>
> . . . .
>
> 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.
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> (2) The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.
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> (3) The Clerk of the Supreme Court shall be the Secretary ex officio of the Council and shall keep a record of its proceedings.
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> (4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.
>
> (5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

Based on their understanding of the provision stating that one (1) of its ex officio members would be "*a* representative of Congress," both the House of Representatives and Senate sent representatives to the Council. Representative Rogaciano A. Mercado sat as ex officio member from December 10, 1987 to February 23, 1989 while Senator Wigberto E. Tañada sat as ex officio member from March 2, 1988 to May 21, 1990.[5] In a previous case, however, this Court stated that membership in the Council would be altered only in 1994, stating that before then, the House of Representatives and the Senate would alternate its representation:

> [F]rom the moment of the creation of the JBC, [Congress] designated one representative to sit in the JBC to act as one of the *ex officio* members. Perhaps in order to give equal opportunity to both houses to sit in the exclusive body, the House of Representatives and the Senate would send alternate representatives to the JBC. In other words, Congress had only one (1) representative.

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[5] *JBC Officials*, JUDICIAL AND BAR COUNCIL <http://jbc.judiciary.gov.ph/index.php/about-the-jbc/jbc-officials> (Last accessed March 6, 2017).

> In 1994, the composition of the JBC was substantially altered. Instead of having only seven (7) members, an eighth (8th) member was added to the JBC as two (2) representatives from Congress began sitting in the JBC—one from the House of Representatives and one from the Senate, with each having one-half (1/2) of a vote. Then, curiously, the JBC En Banc, in separate meetings held in 2000 and 2001, decided to allow the representatives from the Senate and the House of Representatives one full vote each.[6]

The practice of giving each member of Congress one (1) full vote was questioned in 2012 in *Chavez v. Judicial and Bar Council*.[7]

This Court, voting 7-2,[8] stated that the Constitution intended for the Judicial and Bar Council to only have seven (7) members; thus, only one (1) representative from Congress must sit as an ex officio member. The dispositive portion of the Decision reads:

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

Upon Motion for Reconsideration, this Court, voting 10-3,[9] reiterated that "[i]n the [Judicial and Bar Council], any member of Congress, whether from the Senate or the House of Representatives, is constitutionally empowered to represent the entire Congress."[10]

The Minutes of the July 29, 2013 Judicial and Bar Council En Banc meeting reflect their actions after the case was promulgated. Representative

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6 *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 189 (2012) [Per J. Mendoza, En Banc] *citing* List of JBC Chairpersons, Ex-Officio and Regular Members, Ex Officio Secretaries and Consultants, issued by the Office of the Executive Officer, Judicial and Bar Council and Minutes of the 1st En Banc Executive Meeting, January 12, 2000 and Minutes of the 12th En Banc Meeting, May 30, 2001. Curiously, the List found in Judicial and Bar Council's website shows that since 1988, Congress has sent two (2) representatives to the Council.

7 691 Phil. 173, 189 (2012) [Per J. Mendoza, En Banc].

8 Peralta, Bersamin, Villarama, Jr., Perez, Reyes, and Perlas-Bernabe, JJ., concurred. Carpio, Velasco, Jr., Leonardo-De Castro, and Sereno, JJ., no part, nominees to the C.J. position. Brion J., no part, on leave. Abad, J., dissented. Del Castillo, J., joined the dissent of J. Abad.

9 C.J. Sereno had no part as chair of JBC. Associate Justice Velasco had no part due to participation in Judicial and Bar Council. Associate Justice Brion had no part. Associate Justices Carpio, Leonardo-De Castro, Peralta, Bersamin, Villarama, Jr., Perez, Mendoza, Reyes, and Perlas-Bernabe concurred. Associate Justice Abad, Del Castillo and Leonen dissented.

10 *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 494 (2013) [Per J. Mendoza, En Banc].

Niel C. Tupas, Jr. (Representative Tupas) informed the Council that pursuant to *Chavez*, the House of Representatives and Senate agreed that their representation would be on a six (6)-month rotational basis, with Senator Aquilino "Koko" Pimentel III (Senator Pimentel) representing Congress from July 1 to December 31, 2013.[11] The Minutes state:

> [Congressman Tupas] said that in view of the decision of the Supreme Court in April this year, the Speaker of the House of Representatives and the Senate President authorized him and Senator Pimentel, Chairperson of the Committee on Justice of the Senate to discuss the matter of representation to the JBC. They decided that the representation would be on a rotation basis. For the first six (6) months, Senator Pimentel would be the one to represent both Houses of Congress; and for the next six (6) months, it would be he. In the absence of Senator Pimentel, Congressman Tupas will automatically attend the meetings, and vice versa. He cautioned that since it is quite difficult for both Houses to come up with an agreement, it would not be good to assume that whenever the Senate President or the Speaker of the House writes the JBC, it is the decision of Congress. It should be a communication from both Houses. He then requested that he be furnished with copies of all notices from the JBC even during the term of Senator Pimentel.
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> Chief Justice Sereno clarified that she received the Letter of Senate President Drilon stating, among other things, that the Speaker of the House and the Senate President agreed that Senator Pimentel would be the one to represent Congress until December 31, 2013, but that in his absence it would be Congressman Tupas. She assured both Congressman Tupas and Senator Pimentel that they will both receive copies of all notices and information that are being circulated among the JBC Members. She thanked Congressman Tupas for personally informing the Council of the agreement between the two Houses of Congress, thus giving a higher level of comfort than it had already given.
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> Congressman Tupas mentioned that he was not aware that the Senate President sent a letter. His assumption is that the information would come from both Houses, not just from the Senate. He thus came to the meeting to personally inform the JBC of the agreement. He thanked the Chief Justice and asked for permission to leave.
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> Senator Pimentel likewise requested that he also be furnished with copies of all documents during the rotation of Congressman Tupas. He then requested for a three-minute break, as he had some matters to discuss with the Congressman before leaving.[12]

There was no showing of the presence of any resolution from any of the legislative chambers that authorized or ratified the practice.

From then on, it became the practice of the House of Representatives to represent Congress in the Judicial and Bar Council from January to June

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[11] *Rollo*, p. 45.
[12] Id.

and for the Senate to represent Congress from July to December.[13]

The present controversy arose from the En Banc deliberations of the Judicial and Bar Council on December 2 and December 9, 2016, for the selection of nominees for the vacancies of retiring Supreme Court Associate Justices Arturo D. Brion and Jose P. Perez. On both occasions, Representative Umali[14] cast his votes. His votes, however, were not counted due to the present rotational representation arrangement. The votes were instead placed in an envelope and sealed, "subject to any further disposition as the Supreme Court may direct in a proper proceeding."[15]

Representative Umali filed this present Petition[16] praying that:

> a. The JBC's denial of petitioner Umali's vote as ex-officio member during the En Banc sessions on December 2 and 9, 2016, be reversed and set aside;
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> b. The JBC be directed to count the votes of petitioner Umali as ex-officio member during the en banc sessions on December 2 and 9, 2016;
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> c. The current six-month rotational representation of Congress by the Senate and the House of Representatives in the JBC be declared unconstitutional; and
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> d. The JBC be directed to revert back to its prior representational arrangement where two representatives from Congress are recognized and allowed to vote, or the status quo ante, prior to the *Chavez* ruling, and in accordance with such specific guidelines that the Supreme Court will promulgate to ensure full and proper representation and voting by both members from the Senate and the House of Representatives, and thereafter to recognize, accept and count the votes cast by the petitioner Umali in all proceedings of the JBC.[17]

The Judicial and Bar Council was directed to file its comment to the Petition. On February 6, 2017, the Office of the Solicitor General submitted a Manifestation (in lieu of Comment)[18] entering its appearance for "[t]he Congress of the Republic of the Philippines, represented by the Senate and the House of Representatives"[19] and "[acting] as the People's Tribune."[20]

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13 Id. at 260, Comment.
14 Id. at 6. Representative Umali is the current chair of the House Committee on Justice.
15 Id. at 10.
16 Id. at 3–40.
17 Id. at 33.
18 Id. at 160–241.
19 Id. at 160.
20 Id.

On February 10, 2017, the Judicial and Bar Council Executive Chair[21] and its regular members[22] filed its Comment[23] on behalf of the Council.

Petitioner argues that *Chavez v. Judicial and Bar Council*[24] did not define the manner by which the Judicial and Bar Council should be reconstituted and that no formal resolution was issued by the Council to resolve the issue. The Council instead adopted Representative Tupas' manifestation that the Senate and House of Representatives agreed on a six (6)-month rotational representation.[25]

Petitioner points out that Representative Tupas had cautioned the Council that decisions of Congress should be a communication of both houses. He argues that neither Representative Tupas' manifestation nor then Senate President Franklin Drilon's (then Senate President Drilon) letter conferring Senator Pimentel's representation constitute a plenary act of both Houses of Congress so the present rotational representation cannot be adopted by the Council.[26]

Petitioner asserts that allowing only one (1) representative of Congress on the Council is "impractical, absurd and unconstitutional".[27] He explains that the bicameral nature of Congress results in both houses having different powers, functions, and decision-making processes. Thus, any communication, action, or resolution from either house should not be interpreted as binding on the whole Congress. He points out that other than this Court's interpretation of Article VIII, Section 8(1),[28] there is also no provision in the Constitution that expressly mandates a single representation of Congress to any political or adjudicating body.[29] The genuine and full representation of Congress expresses the voice of the electorate to the Judicial and Bar Council.[30]

Petitioner contends that the distinction between both houses is recognized under the Constitution. He claims that denying the House of Representatives' continuous representation in the Council would be denying it of its duty to screen and vote for the candidates for the eight (8) Associate Justices of the Supreme Court who will compulsorily retire from 2017 to

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21 Retired Associate Justice Angelina Sandoval-Gutierrez.
22 Jose V. Mejia, Maria Milagros N. Fernan-Cayosa, and Toribio E. Ilao, Jr.
23 *Rollo*, pp. 257–290.
24 691 Phil. 173 (2012) [Per J. Mendoza, En Banc].
25 *Rollo*, pp. 15–16.
26 Id. at 16.
27 Id. at 16–17.
28 CONST., art. VIII, sec. 8 (1) provides:
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.
29 *Rollo*, pp. 17–18.
30 Id. at 18.

2019.[31] The Senate would also be deprived of its duty to screen and vote for the two (2) vacant positions in the Supreme Court in 2022.[32] He cites as basis the vote for the vacancies left by Associate Justices Perez and Brion that was scheduled in December, which deprived petitioner of his chance to vote.[33]

Petitioner asserts that the bicameral nature of Congress requires both houses to observe inter-parliamentary courtesies and were meant to represent different constituencies. Because of the shift from National Assembly to a bicameral Congress, Article VIII, Section 8(1) of the Constitution should be interpreted to allow representatives from both chambers to fully participate and vote in the Judicial and Bar Council.[34] He maintains that Article VIII, Section 8(1) was not plain and was unambiguous because from 2001 until the promulgation of *Chavez*, the Judicial and Bar Council allowed both the House of Representatives and the Senate to be given one (1) full vote each.[35] He insists that a *verba legis* interpretation of Article III, Section 8(1) would deny Congress of its representation since neither chamber on its own can represent the entirety of Congress.[36]

Petitioner claims that allowing both the House of Representatives and the Senate to represent Congress in the Council upholds the co-equal representation of the three (3) branches of the government. He explains that under the present composition, there are actually three (3) representatives from the judicial branch (the Chief Justice, a retired Justice of the Supreme Court, and a member of the Integrated Bar of the Philippines) and three (3) representatives of the executive branch (Secretary of Justice, the professor of law, and the representative of the private sector who are all presidential appointees).[37] Thus, he claims that continuing the present practice results in the legislative department having a disproportionate representation in the constitutional body and diminishes the integrity of the House of Representatives, which represents the people.[38]

For these reasons, petitioner argues that the Judicial and Bar Council committed grave abuse of discretion that could be remedied through a writ

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31 Id. at19. Under its current arrangement, the House of Representatives represents Congress in the JBC from January to June while Senate represents Congress from July to December. Justice Bienvenido Reyes retired on July 6, 2017 while Justice Mendoza retires on August 13, 2017. Justice Velasco, Jr. retires on August 18, 2018 while Justice Leonardo-De Castro retires on October 8, 2018. Justice Del Castillo retires on July 29, 2019, Justice Jardeleza retires on September 26, 2019, Justice Bersamin retires on October 18, 2019 and Justice Carpio retires on October 26, 2019. Two justices will retire in the first half of 2019: Justice Martires retires on January 2, 2019 and Justice Tijam retires on January 5, 2019.

32 Justice Peralta retires on March 27, 2022 while Justice Perlas-Bernabe retires on May 14, 2022.

33 *Rollo*, p. 20.

34 Id. at 23.

35 Id. at 24.

36 Id. at 27–28.

37 Id. at 29–30.

38 Id. at 30.

of certiorari.[39] He adds that a writ of mandamus would also be proper to compel the Judicial and Bar Council to accept and recognize the votes he cast in the December 2 and 9, 2016 En Banc sessions.[40]

Unlike in *Chavez v. Judicial and Bar Council*,[41] both the House of Representatives and the Senate were able to comment on the petition, through a Manifestation[42] and Consolidated Manifestation[43] by the Office of the Solicitor General.

The Office of the Solicitor General, for Congress, argues that *Chavez* should be revisited due to its "unexecutability . . . arising from constitutional constraints."[44] It explains that the current practice "was arrived at in view of time constraints and difficulty in securing the agreement of both Houses."[45] It likewise points out that since the Constitution did not identify who should represent Congress in the Judicial and Bar Council, the provision must be harmonized to take into account the current bicameral system.[46]

The Office of the Solicitor General contends that the current rotational arrangement sets aside the inherent dichotomy between the two (2) Houses of Congress and violates the essence of bicameralism.[47] It explains that when the representatives of the Senate or the House of Representatives vote for a certain judicial nominee, they carry the interests and views of the group they represent. If there is only one (1) member of Congress in the Council, this vote would not be representative of the interests represented by Congress as a whole.[48]

The Office of the Solicitor General maintains that no member of Congress can represent all of Congress, which is why Congress has always sent two (2) representatives to the Council.[49] It points out that the phrase "a representative of Congress" in Article VIII, Section 8(1) is qualified by the phrase "ex-officio *members*" signifying that the member in an ex-officio capacity must be qualified to represent the entirety of Congress.[50]

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39 Id. at 15.
40 Id. at 16.
41 691 Phil. 173, 494 (2012) [Per J. Mendoza, En Banc].
42 *Rollo*, pp. 160–245. The Manifestation was verified by Senate President Aquilino "Koko" Pimentel III and Speaker of the House Pantaleon D. Alvarez.
43 Id. at 425–432. The Counter-Manifestation attached a letter from Senator Richard Gordon, the current Chair of the Senate Committee on Justice and Senate representative to the Judicial and Bar Council, signifying his assent to the Petition filed by Rep. Umali. This Court likewise noted a Letter (*rollo*, pp. 426–427) from Secretary of Justice Vitaliano N. Aguirre II stating that while he previously signified his assent to the filing of the Judicial and Bar Council's Comment, he found after further evaluation that "the arguments of the representative of Mindoro in his petition to be impressed with merit."
44 Id. at 168.
45 Id. at 169.
46 Id. at 175.
47 Id. at 185.
48 Id. at 186–187.
49 Id. at 190–194.
50 Id. at 194–198.

The Office of the Solicitor General asserts that the intent of the Judicial and Bar Council's composition is for the representation to be collegial and to eliminate partisan politics in the selection of members of the judiciary; thus, "the focus is more on proper representation rather than quantitative limitation."[51] It asserts that when the framers deliberated on Article VIII, Section 8(1), they were still of the belief that legislature would be unicameral.[52] If they had intended for the Council to only have seven (7) members, it would have specified the number, as it did in other provisions of the Constitution.[53] It contends that a deadlock in the voting is not enough justification to undermine the bicameral nature of the legislature since voting in the Council is not decided by a "yes" or "no" vote.[54]

The Office of the Solicitor General likewise holds that while the function of the Judicial and Bar Council may be non-legislative, the involvement of both Houses of Congress is indispensable since each represents different constituencies and would necessarily bring a unique perspective to the Council's recommendation process.[55] It cites statistics from June 2016 to present showing that a large number of appointments were made to the lower courts at a time when the House of Representatives, which represents sectors or local districts, was not able to participate in the voting process.[56]

The Office of the Solicitor General also cites *Aguinaldo v. Judicial and Bar Council*[57] to argue that in the review of the Judicial and Bar Council's rules, it should also include a review of the rule on Congress' representation on the Council.[58]

Respondent Judicial and Bar Council, on the other hand, attests that the Petition should be dismissed since the rotational scheme adopted by Congress is not the proper subject of a petition for certiorari or mandamus. It contends that the controversy does not involve the Council's exercise of judicial, quasi-judicial, or ministerial functions.[59] It maintains that there was also no grave abuse of discretion when it refused to count petitioner's votes since this act was authorized by the Constitution and *Chavez v. Judicial and Bar Council*.[60] It argues that the Council's performance of its duties is

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51 Id. at 200.
52 Id. at 201.
53 Id. at 207–209.
54 Id. at 209–211.
55 Id. at 217–220.
56 Id. at 224–225.
57 G.R. No. 224302, November 29, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/224302.pdf> [Per J. Leonardo-De Castro, En Banc].
58 *Rollo*, pp. 227–237.
59 Id. at 262–263.
60 Id. at 264–265.

discretionary; thus, mandamus cannot be issued to control the performance of a discretionary act.[61]

Respondent counters that the Petition is not the plain, speedy, and adequate remedy since petitioner did not show that he exerted all efforts to have his concern addressed by Congress. It points out that it was Congress, not the Council, which adopted the rotational scheme.[62] *Chavez* declared that the representation of Congress in the Council would be for Congress to determine; thus, petitioner should have first asked Congress to repudiate the rotational scheme agreement.[63] Respondent insists that the practice and acquiescence of Congress to this arrangement operates as an estoppel against any member of Congress to deny the validity of this agreement.[64] It also points out that petitioner has no *locus standi* to file this Petition in his capacity as Chair of the House of Representatives Committee on Justice absent any resolution by the Senate and the House of Representatives authorizing him to do so.[65]

Respondent likewise prays for the dismissal of the Petition on the ground that petitioner's allegations are mere rehashes of the arguments and dissents in *Chavez* and are, thus, barred by the doctrine of *stare decisis*.[66] It insists that any issue on the interpretation of Article VIII, Section 8(1) has already been settled in *Chavez*.[67]

Respondent reiterates the ruling in *Chavez* and argues that the framers of the Constitution intended for the Council to only have seven (7) members to provide a solution when there is a stalemate in the voting.[68] It insists that *Chavez* has also settled the alleged "oversight and technical omission" argued by petitioner when it stated that the membership of Congress to the Council was not in the interest of a certain constituency but in reverence to it as the third branch of the government.[69]

Respondent argues that the grant of the Petition would create an imbalance since Article VIII treats each ex officio member as representing one (1) co-equal branch of the government.[70] It maintains that even assuming that there is an imbalance, it is not for this Court or the Council to remedy the imbalance since the remedy lies in the amendment of the constitutional provision.[71]

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61 Id. at 268–269.
62 Id. at 265.
63 Id. at 266–267.
64 Id. at 267.
65 Id. at 269–271.
66 Id. at 271–273.
67 Id. at 273–275.
68 Id. at 276.
69 Id. at 277–280.
70 Id. at 280–281.
71 Id. at 282–284.

The case presents several procedural and substantive issues. Procedurally, this Court is asked to determine *first*, whether petitioner has the *locus standi* to file the Petition in the absence of a resolution of both Houses of Congress authorizing him for that purpose; *second*, whether the Petition is the plain, speedy, and adequate remedy for addressing the issue of the rotational representation arrangement; and *third*, whether the doctrine of *stare decisis* operates as a bar for petitioner to question the ruling in *Chavez v. Judicial and Bar Council*.

On the substantive issues, this Court is likewise asked to determine, *first*, whether the current six (6)-month rotational representation arrangement deprives Congress of its full participation in the deliberations in the Judicial and Bar Council; *second*, whether the Judicial and Bar Council committed grave abuse of discretion in adopting a six (6)-month rotational representation arrangement absent a plenary action by both Houses of Congress; and *finally*, whether the Judicial and Bar Council can be compelled, by writ of mandamus, to count petitioner's votes in the En Banc sessions of December 2 and 9, 2016.

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Every case brought to this Court must be filed by the party having the standing to file the case. The definition of legal standing is settled:

> Locus standi is defined as "a right of appearance in a court of justice on a given question." In private suits, standing is governed by the "real-parties-in interest" rule as contained in Section 2, Rule 3 of the 1997 Rules of Civil Procedure, as amended. It provides that "every action must be prosecuted or defended in the name of the real party in interest." Accordingly, the "real-party-in interest" is "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit." Succinctly put, the plaintiff's standing is based on his own right to the relief sought.[72]

Respondent contends that petitioner has no standing to file this case absent a resolution from the House of Representatives authorizing him to do so.[73] It anchors its argument on *Philippine Constitutional Association v. Enriquez*,[74] where this Court stated:

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[72] *David v. Arroyo*, 522 Phil. 705, 755–756 (2006) [Per J. Sandoval-Gutierrez, En Banc] citing Black's Law Dictionary, 6th Ed. 1991, p. 941, RULES OF COURT, Rule 3, sec. 2, and *Salonga v. Warner Barnes & Co.*, 88 Phil. 125 (1951) [Per J. Bautista Angelo, En Banc].

[73] *Rollo*, pp. 269–271.

[74] 305 Phil. 546 (1994) [Per J. Quiason, En Banc].

> While the petition in G.R. No. 113174 was filed by 16 Senators, including the Senate President and the Chairman of the Committee on Finance, the suit was not authorized by the Senate itself. Likewise, the petitions in G.R. Nos. 113766 and 113888 were filed without an enabling resolution for the purpose.[75]

Respondent, however, failed to read the entirety of the quoted portion. In *Philippine Constitutional Association*, the procedural issue on standing was whether Senators could question a presidential veto on an appropriations bill despite the absence of a Senate resolution authorizing them to file the case. This Court, in addressing the issue, first acknowledged that previous decisions have required Senators to first submit a Senate resolution authorizing the filing of the case. Nevertheless, this Court ruled that members of Congress have standing to question any action that impairs the Congress' powers and privileges, regardless of whether there was a prior Congressional resolution:

> The legal standing of the Senate, as an institution, was recognized in *Gonzales v. Macaraig, Jr.* . . . In said case, 23 Senators, comprising the entire membership of the Upper House of Congress, filed a petition to nullify the presidential veto of Section 55 of the GAA of 1989. The filing of the suit was authorized by Senate Resolution No. 381, adopted on February 2, 1989, and which reads as follows:
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> > Authorizing and Directing the Committee on Finance to Bring in the Name of the Senate of the Philippines the Proper Suit with the Supreme Court of the Philippines contesting the Constitutionality of the Veto by the President of Special and General Provisions, particularly Section 55, of the General Appropriation Bill of 1989 (H.B. No. 19186) and For Other Purposes.
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> In the United States, the legal standing of a House of Congress to sue has been recognized . . .
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> While the petition in G.R. No. 113174 was filed by 16 Senators, including the Senate President and the Chairman of the Committee on Finance, the suit was not authorized by the Senate itself. Likewise, the petitions in G.R. Nos. 113766 and 113888 were filed without an enabling resolution for the purpose.
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> . . . .
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> We rule that a member of the Senate, and of the House of Representatives for that matter, has the legal standing to question the validity of a presidential veto or a condition imposed on an item in an appropriation bill.
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> Where the veto is claimed to have been made without or in excess of the authority vested on the President by the Constitution, the issue of an

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[75] Id. at 562–536. *See also rollo*, pp. 269–270.

impermissible intrusion of the Executive into the domain of the Legislature arises . . .

To the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution . . .

An act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress . . . In such a case, any member of Congress can have a resort to the courts.

Former Chief Justice Enrique M. Fernando, as *Amicus Curiae*, noted[:]

> This is, then, the clearest case of the Senate as a whole or individual Senators as such having substantial interest in the question at issue. It could likewise be said that there was requisite injury to their rights as Senators. It would then be futile to raise any locus standi issue. Any intrusion into the domain appertaining to the Senate is to be resisted. Similarly, if the situation were reversed, and it is the Executive Branch that could allege a transgression, its officials could likewise file the corresponding action. What cannot be denied is that a Senator has standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in his office.[76] (Emphasis supplied; Citations omitted.)

Every member of Congress has standing to question acts which affect the powers, prerogatives, and privileges of Congress. In *Pimentel v. Executive Secretary*:[77]

> As regards Senator Pimentel, it has been held that "to the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution." Thus, *legislators have the standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in their office and are allowed to sue to question the validity of any official action which they claim infringes their prerogatives as legislators*. The petition at bar invokes the power of the Senate to grant or withhold its concurrence to a treaty entered into by the executive branch, in this case, the Rome Statute. The petition seeks to order the executive branch to transmit the copy of the treaty to the Senate to allow it to exercise such authority. Senator Pimentel, as member of the institution,

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[76] *Philconsa v. Enriquez*, 305 Phil. 563, 562–564 (1994) [Per J. Quiason, En Banc] citing *Gonzales v. Macaraig, Jr.*, 269 Phil. 472 (1990) [Per J. Melencio-Herrera, En Banc]; *United States v. American Tel. & Tel. Co.*, 551 F. 2d 384, 391 (1976); *Notes: Congressional Access To The Federal Courts*, 90 Harvard Law Review 1632 (1977); *Coleman v. Miller*, 307 U.S. 433 (1939); *Holtzman v. Schlesinger*, 484 F. 2d 1307 (1973); and *Kennedy v. Jones*, 412 F. Supp. 353 (1976).

[77] 501 Phil. 303 (2005) [Per J. Puno, En Banc].

> certainly has the legal standing to assert such authority of the Senate.[78] (Emphasis supplied, citations omitted)

Here, petitioner, as a member of Congress and the Chair of the House Committee on Justice, alleges that the rotational representation arrangement adopted by respondent Judicial and Bar Council impairs the prerogative of Congress to have full representation within the Council. Petitioner need not have the required House resolution to file his Petition.

In any case, parties are vested by this Court with legal standing when constitutional challenges have become justiciable, consistent with this Court's role in the constitutional order. While the parties must first establish their right to appear before us on a given question of law, they must, more importantly, present concrete cases and controversies. In this instance, the continuing problematic application of *Chavez* vests petitioner, as the current representative of the House to the Judicial and Bar Council, with sufficient standing to raise this issue before us.

The Office of the Solicitor General, however, may have been confused when it filed its Manifestation (in Lieu of Comment). It stated before this Court that the Manifestation is filed by "[t]he Congress of the Republic of the Philippines, represented by the Senate and the House of Representatives, through the Office of the Solicitor General (OSG) who in this case acts as the People's Tribune."[79]

It is unclear whether the Office of the Solicitor General intends to represent Congress or to act as the People's Tribune.

The Office of the Solicitor General's mandate is to "represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer."[80]

Thus, as a general rule, the Office of the Solicitor General represents the Philippine government in all legal proceedings. The rule has exceptions, such as when it takes an adverse position and acts as the "People's Tribune." In *Pimentel v. Commission on Elections*:[81]

> True, the Solicitor General is mandated to represent the Government, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services

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78 Id. at 312–313 *citing Del Mar vs. Philippine Amusement and Gaming Corporation*, 400 Phil. 307 (2000) [Per J. Puno, En Banc].

79 *Rollo*, p. 160.

80 1987 ADM. CODE, Book IV, Title III, chapter 12, sec. 35.

81 352 Phil. 424 (1998) [Per J. Kapunan, En Banc].

> of a lawyer. However, *the Solicitor General may, as it has in instances take a position adverse and contrary to that of the Government on the reasoning that it is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position.*
>
> . . . .
>
> As we commented on the role of the Solicitor General in cases pending before this Court:
>
> > This Court does not expect the Solicitor General to waver in the performance of his duty. As a matter of fact, the Court appreciates the participation of the Solicitor General in many proceedings and his continued fealty to his assigned task. He should not therefore desist from appearing before this Court even in those cases he finds his opinion inconsistent with the Government or any of its agents he is expected to represent. The Court must be advised of his position just as well.[82] (Emphasis supplied, citations omitted)

Gonzales v. Chavez[83] further explains:

> Indeed, in the final analysis, it is the Filipino people as a collectivity that constitutes the Republic of the Philippines. Thus, the distinguished client of the OSG is the people themselves of which the individual lawyers in said office are a part.
>
> . . . .
>
> Moreover, endowed with a broad perspective that spans the legal interests of virtually the entire government officialdom, the OSG may be expected to transcend the parochial concerns of a particular client agency and instead, promote and protect the public weal. Given such objectivity, it can discern, metaphorically speaking, the panoply that is the forest and not just the individual trees. Not merely will it strive for a legal victory circumscribed by the narrow interests of the client office or official, but as well, the vast concerns of the sovereign which it is committed to serve.[84]

The Office of the Solicitor General is not prohibited from taking a position adverse from that of the Judicial and Bar Council. Its representation would be on behalf of the Filipino people, instead of a particular government instrumentality.

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[82] Id. at 431–432 citing Section 1 of Presidential Decree No. 478; Section 35, Chapter 12 of the Administrative Code of 1987; *Orbos v. Civil Service Commission*, 267 Phil. 476 (1990) [Per J. Gancayco, En Banc]; and *Martinez v. Court of Appeals*, 307 Phil. 592 (1994) [Per C.J. Narvasa, Second Division].

[83] 282 Phil. 858 (1992) [Per J. Romero, En Banc].

[84] Id. at 889–891.

Its representation in this case, however, is contradictory. It intends to represent Congress, a government instrumentality, and act as the People's Tribune; that is, it will be taking a position contrary to that of a government instrumentality. Obviously, the Office of the Solicitor General cannot represent both at the same time.

Nevertheless, considering that the Office of the Solicitor General manifested that it would not be representing the Judicial and Bar Council as mandated and will instead be taking an adverse position, this Court will presume that it intends to act as the People's Tribune.

In future cases, however, the Office of the Solicitor General should be more cautious in entering its appearance to this Court as the People's Tribune to prevent further confusion as to its standing.

II

Respondent claims that the Petition is not the plain, speedy, and adequate remedy for questioning the rotational representation arrangement adopted by Congress.[85]

A petition for certiorari under Rule 65 of the Rules of Court primarily requires that there must be no appeal, or any other plain, speedy, and adequate remedy available before filing the petition:

> Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and *there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law*, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (Emphasis supplied)

Citing the rule on exhaustion of administrative remedies, respondent contends that the Petition is not the plain, speedy, and adequate remedy since

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[85] *Rollo*, p. 265.

petitioner should have first asked Congress to repudiate the rotational representation agreement.[86]

This rule, however, applies to *administrative* agencies, not to Congress. Respondent fails to cite any provision of law or Congressional rule that requires petitioner to have his concern addressed by Congress before filing a petition with this Court.

There is also a time element to be considered that would allow the direct resort to this Court. In *Diocese of Bacolod v. Commission on Elections*,[87] we stated that "a direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time."[88] We further recognized that "[e]xigency in certain situations would qualify as an exception for direct resort to this [C]ourt."[89]

Under the Constitution, the President only has 90 days from the vacancy to appoint members of the Supreme Court. Thus, the Judicial and Bar Council must be able to submit its list of nominees before the running of the period.

> Article VIII
> Judicial Department
>
> . . . .
>
> Section 4. (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or in its discretion, in divisions of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.

This 90-day period is mandatory. Failure to comply is considered a culpable violation of the Constitution. In *De Castro v. Judicial and Bar Council*:[90]

> [T]he usage in Section 4 (1), Article VIII of the word *shall*—an imperative, operating to impose a duty that may be enforced—should not be disregarded. Thereby, Sections 4 (1) imposes on the President the *imperative duty* to make an appointment of a Member of the Supreme Court within 90 days from the occurrence of the vacancy. The failure by the President to do so will be a clear disobedience to the Constitution.[91] (Emphasis in the original, citation omitted)

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86 Id. at 266–267.
87 751 Phil. 301 (2015) [Per J. Leonen, En Banc].
88 Id. at 331.
89 Id. at 330.
90 629 Phil. 629 (2010) [Per J. Bersamin, En Banc].
91 Id. at 692 *citing Dizon v. Encarnacion*, 119 Phil. 20 (1963) [Per J. Concepcion, En Banc].

Admittedly, petitioner's prayer to have his vote counted in the December 2 and 9, 2016 En Banc Meetings has already become moot with the appointments of Associate Justice Samuel R. Martires and Associate Justice Noel G. Tijam.[92] Nevertheless:

> Th[is] Court will decide cases, otherwise moot, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.[93] (Citation omitted)

An erroneous interpretation of a constitutional provision would be considered a grave violation of the Constitution. Judicial appointments are likewise of paramount public interest. This case will also settle, once and for all, the issue on the interpretation of Article VIII, Section 8(1).

This issue will once again arise considering that two (2) more justices are set to retire this year.[94] There is, thus, a limited amount of time for petitioner to question the lists of nominees submitted by respondent to the Office of the President. A direct resort to this Court would be warranted under the circumstances.

III

Respondent argues that this Petition is barred by the doctrine of *stare decisis*[95] considering that the interpretation of Article VIII, Section 8(1) has already been settled in *Chavez v. Judicial and Bar Council*.[96]

The principle of *stare decisis* is derived from the Latin maxim "*stare decisis, et non quieta movere*"; that is, "it is best to adhere to decisions and not to disturb questions put at rest."[97] Its function is to ensure certainty and stability in the legal system.[98] Ruling by precedent is meant to assure the

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92 Associate Justice Martires was appointed on March 2, 2017 vice Associate Justice Perez while Associate Justice Tijam was appointed on March 8, 2017 vice Associate Justice Brion. Judicial and Bar Council, *See Newly-appointed Judges/Justices*, JUDICIAL AND BAR COUNCIL, <http://jbc.judiciary.gov.ph/index.php/announcements/newly-appointed> (Lase accessed July 25, 2017).

93 *Belgica v. Ochoa*, 721 Phil. 416, 678 (2013) [Per J. Perlas-Bernabe, En Banc] citing *Mattel, Inc. v. Francisco*, 582 Phil. 492 (2008) [Per J. Austria-Martinez, Third Division] and *Constantino v. Sandiganbayan (First Division)*, 559 Phil. 622 (2007) [Per J. Tinga, Second Division].

94 Associate Justice Bienvenido Reyes retired on July 6, 2017 while Associate Justice Mendoza retires on August 13, 2017.

95 *Rollo*, pp. 271–273.

96 Id. at 273–275.

97 *Tung Chin Hui v. Rodriguez*, 395 Phil. 169, 177 (2000) [Per J. Panganiban, Third Division] citing R.S. Vasan, *Latin Words and Phrases for Lawyers*, p. 227.

98 Id.

public of the court's objectivity.[99] *Stare decisis* provides the public with a reasonable expectation that courts will rule in a certain manner given a similar set of facts.

Courts, however, are cautioned against "blind adherence to precedents."[100] Decisions of this Court previously found to have been valid may become impractical, contrary to law, or even unconstitutional. It then becomes the duty of this Court to abandon that decision:

> The principle of *stare decisis* does not mean blind adherence to precedents. The doctrine or rule laid down, which has been followed for years, no matter how sound it may be, if found to be contrary to law, must be abandoned. The principle of *stare decisis* does not and should not apply when there is conflict between the precedent and the law. The duty of this Court is to forsake and abandon any doctrine or rule found to be in violation of the law in force.[101]

Similarly, in *De Castro v. Judicial and Bar Council*:[102]

> The Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification. The adherence to precedents is strict and rigid in a common-law setting like the United Kingdom, where judges make law as binding as an Act of Parliament. But ours is not a common-law system; hence, judicial precedents are not always strictly and rigidly followed. A judicial pronouncement in an earlier decision may be followed as a precedent in a subsequent case only when its reasoning and justification are relevant, and the court in the latter case accepts such reasoning and justification to be applicable to the case. The application of the precedent is for the sake of convenience and stability.[103] (Citations omitted)

Whenever this Court renders its decisions, the intended effects of those decisions to future cases are taken into consideration. The changing membership of the bench likewise contributes to the evolution of this Court's stand on certain issues and cases. Ruling by precedent, thus, requires more than a mechanical application:

> [T]he use of precedents is never mechanical.

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99 *See* Concurring Opinion of J. Leonen in *Belgica v. Ochoa*, 721 Phil. 416, 677 [Per J. Perlas-Bernabe, En Banc].

100 *Tan Chong v. Secretary of Labor*, 79 Phil. 249, 257 (1947) [Per J. Padilla, En Banc].

101 Id.

102 632 Phil. 657 (2010) [Per J. Bersamin, En Banc].

103 Id. at 686 citing *Limketkai Sons Milling, Inc. v. Court of Appeals*, 330 Phil. 171 (1996) [Per J. Francisco, Third Division] and Calabresi, A Common Law for the Age of Statutes, Harvard University Press, p. 4 (1982).

> Some assumptions normally creep into the facts established for past cases. These assumptions may later on prove to be inaccurate or to be accurate only for a given historical period. Sometimes, the effects assumed by justices who decide past cases do not necessarily happen. Assumed effects are given primacy whenever the spirit or intent of the law is considered in the interpretation of a legal provision. Some aspect of the facts or the context of these facts would not have been fully considered. It is also possible that doctrines in other aspects of the law related to a precedent may have also evolved.
>
> In such cases, the use of precedents will unduly burden the parties or produce absurd or unworkable outcomes. Precedents will not be useful to achieve the purposes for which the law would have been passed.[104] (Citations omitted)

There is also a need to abandon decisions "when this Court discerns, after full deliberation, that a continuing error in the interpretation of the spirit and intent of a constitutional provision exists."[105] Assuring the public of stability in the law and certainty of court actions is important. It is, however, more important for this Court to be right. Thus, it becomes imperative for this Court to re-examine previous decisions to avoid continuing its error:

> The rule of stare decisis is entitled to respect. Stability in the law . . . is desirable. But idolatrous reverence for precedent, simply as precedent, no longer rules. More important than anything else is that the court should be right. And particularly is it not wise to subordinate legal reason to case law and by so doing perpetuate error when it is brought to mind that the views now expressed conform in principle to the original decision and that since the first decision to the contrary was sent forth there has existed a respectable opinion of non-conformity in the court. Indeed, on at least one occasion has the court broken away from the revamped doctrine, while even in the last case in point the court was as evenly divided as it was possible to be and still reach a decision.[106]

Chavez v. Judicial and Bar Council was not a unanimous decision of this Court. Vigorous dissents accompanied not only the main decision but also the resolution on the motion for reconsideration. This Petition precisely assails *Chavez*'s outcome and its effect on the diminished representation of Congress in the vetting process of judicial nominees. Rather than dismiss this case on the basis of *stare decisis*, it would be more prudent for this Court to revisit *Chavez* in order to settle the issue.

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[104] Concurring Opinion of J. Leonen in *Belgica v. Ochoa*, 721 Phil. 416, 678 [Per J. Perlas-Bernabe, En Banc] citing *Ting v. Velez-Ting*, 601 Phil. 676 (2009) [Per J. Nachura, Third Division]; Dissenting Opinion of J. Puno in *Lambino v. Commission on Elections*, 536 Phil. 1, 281 (2006) [Per J. Carpio, En Banc], Separate Opinion of Justice Imperial in *In the matter of the Involuntary Insolvency of Rafael Fernandez*, 59 Phil. 30, 41 (1933) [Per J. Malcolm, En Banc], and *Lazatin v. Desierto*, 606 Phil. 271 (2009) [Per J. Peralta, Third Division].

[105] Concurring Opinion of J. Leonen in *Belgica v. Ochoa*, 721 Phil. 416, 678 [Per J. Perlas-Bernabe, En Banc] citing *Urbano v. Chavez*, 262 Phil. 374, 385 (1990) [Per J. Gancayco, En Banc].

[106] *In the matter of the Involuntary Insolvency of Rafael Fernandez*, 59 Phil. 30 (1933) [Per J. Malcolm, En Banc].

IV

The doctrine of *Chavez v. Judicial and Bar Council*[107] must be abandoned and revised.

Under the Constitution, Congress is bicameral in nature. It consists of two (2) chambers: the Senate and the House of Representatives. Article VI, Section 1 provides:

> ARTICLE VI
> The Legislative Department
>
> Section 1. The legislative power shall be vested in *the Congress of the Philippines which shall consist of a Senate and a House of Representatives,* except to the extent reserved to the people by the provision on initiative and referendum. (Emphasis supplied)

The Constitution considers both chambers as separate and distinct from each other. The manner of elections, terms of office, and organization of each chamber is provided for under separate provisions of the Constitution.

Senators are "elected at large by the qualified voters of the Philippines."[108] Members of the House of Representatives are elected by their respective legislative districts[109] or through the party-list system.[110] The differing nature of its elections affects the scope of its representation. Senators represent a national constituency while the House of Representatives represents only a particular legislative district or marginalized and underrepresented sector.

A Senator's term of office is for six (6) years[111] while the term of office of a Member of the House of Representatives is for three (3) years.[112]

Each chamber chooses its own officers.[113] Each chamber promulgates its own rules of procedure.[114] Each chamber maintains separate Journals.[115] Each chamber keeps separate Records of its proceedings.[116] Each chamber

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107 691 Phil 173 (2012) [Per J. Mendoza, En Banc] and 709 Phil. 478 (2013) [Per J. Mendoza, En Banc].
108 CONST., art. VI, sec. 2.
109 CONST., art. VI, sec. 5(1).
110 CONST., art. VI, sec. 5(2).
111 CONST., art. VI, sec. 4.
112 CONST., art. VI, sec. 7.
113 CONST., art. VI, sec. 16.
114 CONST., art. VI, sec. 16 (1).
115 CONST., art. VI, sec. 16 (4), par. (1).
116 CONST., art. VI, sec. 16 (4), par. (2).

disciplines its own members.[117] Each chamber even maintains separate addresses.[118] There is no mechanism that would allow the two (2) chambers to represent the other:

> There is no presiding officer for the Congress of the Philippines, but there is a Senate President and a Speaker of the House of Representatives. There is no single journal for the Congress of the Philippines, but there is a journal for the Senate and a journal for the House of Representatives. There is no record of proceedings for the entire Congress of the Philippines, but there is a Record of proceedings for the Senate and a Record of proceedings for the House of Representatives. The Congress of the Philippines does not discipline its members. It is the Senate that promulgates its own rules and disciplines its members. Likewise, it is the House that promulgates its own rules and disciplines its members.
>
> No Senator reports to the Congress of the Philippines. Rather, he or she reports to the Senate. No Member of the House of Representatives reports to the Congress of the Philippines. Rather, he or she reports to the House of Representatives.
>
> Congress, therefore, is the Senate and the House of Representatives. Congress does not exist separate from the Senate and the House of Representatives.
>
> Any Senator acting *ex officio* or as a representative of the Senate must get directions from the Senate. By constitutional design, he or she cannot get instructions from the House of Representatives. If a Senator represents the Congress rather than simply the Senate, then he or she must be open to amend or modify the instructions given to him or her by the Senate if the House of Representatives' instructions are different. Yet, the Constitution vests disciplinary power only on the Senate for any Senator.
>
> The same argument applies to a Member of the House of Representatives.
>
> No Senator may carry instructions from the House of Representatives. No Member of the House of Representatives may carry instructions from the Senate. Neither Senator nor Member of the House of Representatives may therefore represent Congress as a whole.[119]

Thus, there is no Member of Congress that can represent *all* of Congress. Congress is represented by both the Senate and the House of Representatives. The Constitution itself provides for only one (1) instance when both chambers must vote jointly:

> ARTICLE VII
> Executive Department
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> . . . .

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[117] CONST., art. VI, sec. 16 (3).

[118] The House of Representatives is located in Quezon City while the Senate is located in Pasay City.

[119] Dissenting Opinion of J. Leonen in *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 503–504 (2013) [Per J. Mendoza, En Banc].

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

In *Chavez v. Judicial and Bar Council*,[120] this Court, however, ruled that Congress is only entitled to one (1) seat in the Judicial and Bar Council, pursuant to its interpretation of Article VIII, Section 8(1) of the Constitution. Article VIII, Section 8(1) provides:

> ARTICLE VIII
> Judicial Department
>
> . . . .
>
> 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)

A *verba legis* interpretation of Article VIII, Section 8(1) of the Constitution leads to an ambiguity and disregards the bicameral nature of Congress. *Chavez* presumes that one (1) member of Congress can vote on behalf of the entire Congress.

It is a basic rule of statutory construction that constitutional provisions must be harmonized so that all words are operative. Thus, in *Civil Liberties Union v. Executive Secretary*:[121]

> It is a well-established rule in constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate

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[120] 691 Phil. 173 (2012) [Per J. Mendoza, En Banc].
[121] 272 Phil. 147 (1991) [Per C.J. Fernan, En Banc].

> the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.
>
> *In other words, the court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory.*[122] (Emphasis provided, citations omitted)

Civil Liberties Union also instructs us that constitutional interpretation should depend on the understanding of the people adopting it, rather than how the framers interpreted it:

> While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face." *The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framer[s'] understanding thereof.*[123] (Emphasis provided, citations omitted)

Resort to the records of the Constitutional Commission to discern the framers' intent must always be with the understanding of its context and its contemporary consequences.[124] Records show that Article VIII, Section 8(1) was approved by the Constitutional Commission on July 19, 1986.[125] On July 21, 1986, the Commission voted to amend the proposal of a unicameral "National Assembly" to a bicameral "Congress."[126]

The change of legislative structure led Commissioner Christian Monsod on July 30, 1986 to remark:

> Last week, we voted for a bicameral legislature. Perhaps it is symptomatic of what the thinking of this group is, that all the provisions

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122 Id. at 162.

123 Id. at 169-170.

124 Dissenting Opinion of J. Leonen in *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 501 (2013) [Per J. Mendoza, En Banc].

125 I CONSTITUTIONAL COMMISSION RECORD, JOURNAL NO. 34, dated July 19, 1986.

126 I CONSTITUTIONAL COMMISSION RECORD, JOURNAL NO. 35, dated July 21, 1986, which reads in part With 22 Members voting for a unicameral system and 23 Members voting for bicameralism, the Body approved the proposal for a bicameral legislature.

> that were being drafted up to that time assumed a unicameral government.[127]

On October 8, 1986, the Article on the Judiciary was reopened to introduce amendments to the proposed Sections 3, 7, 10, 11, 13, and 14 only.[128] The entire Article on the Legislature, meanwhile, was approved on October 9, 1986.[129] By October 15, 1986, the Constitution was presented to the President of the Constitutional Commission, Cecilia Muñoz Palma.[130]

The chronology of events shows that the provision on the composition of the Judicial and Bar Council had been passed at a time when the framers were still of the belief that there was to be a unicameral legislature. Thus, Section 8(1) provides for only "a representative" instead of "representatives."

However, Section 8(1) must also be interpreted according to the understanding of the people who ratified it.

Historically, both the Senate and the House of Representatives sent their members to sit in the Judicial and Bar Council:[131]

> *Ex Officio* Members Representing the Senate, Congress:
>
> | | |
> |---|---|
> | WIGBERTO E. TAÑADA | 2 March 1988 to 21 May 1990 |
> | +RAUL S. ROCO | 30 September 1992 to 3 March 1993 |
> | ALBERTO G. ROMULO | 14 April 1993 to 1 August 1995 |
> | +MARCELO B. FERNAN | 2 August 1995 to 31 December 1996 |
> | +RAUL S. ROCO | 1 January 1997 to 30 July 1998 |
> | +RENATO L. CAYETANO | 31 July 1998 to 31 January 2000 |
> | AQUILINO Q. PIMENTEL, JR. | 1 February 2000 to 29 November 2000 |
> | +MIRIAM D. SANTIAGO | 10 January 2001 to 14 February 2001 |
> | +RENATO L. CAYETANO | 16 May 2001 to 28 August 2001 |
> | FRANCIS N.PANGILINAN | 29 August 2001 to August 2004
23 August 2004 to 30 June 2007
6 August 2007 to 23 November 2008 |
> | FRANCIS JOSEPH G. ESCUDERO | 24 November 2008 to 30 June 2013 |

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127 II CONSTITUTIONAL COMMISSION RECORD 434, dated 30, 1986.
128 II CONSTITUTIONAL COMMISSION RECORD, JOURNAL NO. 102, dated October 7 and 8, 1987.
129 III CONSTITUTIONAL COMMISSION RECORD, JOURNAL NO. 103 dated October 9, 1986.
130 V CONSTITUTIONAL COMMISSION RECORD, JOURNAL NO. 109 dated October 15, 1986.
131 *List of Former and Incumbent JBC Chairpersons, Ex Officio and Regular Members, Ex Officio Secretaries, Consultants and Officers (from 1987 to date)*, JUDICIAL AND BAR COUNCIL, < http://jbc.judiciary.gov.ph/index.php/about-the-jbc/jbc-officials> (Last accessed July 25, 2017).

AQUILINO MARTIN DL. PIMENTEL III	23 July 2013 to 31 December 2013 1 July 2014 to 31 December 2014 1 July 2015 to 31 December 2015
LEILA M. DE LIMA	26 July 2016 to 19 September 2016
RICHARD J. GORDON	19 September 2016 to date

Ex Officio Members Representing the House of Representatives, Congress:

+ROGACIANO M. MERCADO	10 December 1987 to 23 February 1989
ISIDRO C. ZARRAGA	31 July 1989 to 12 August 1992
PABLO P. GARCIA	26 August 1992 to 8 March 1995
ISIDRO C. ZARRAGA	28 June 1995 to 30 June 1998
ALFREDO E. ABUEG	31 July 1998 to 29 November 2000
+HENRY P. LANOT	14 December 2000 to 30 June 2001
ALLAN PETER S.CAYETANO	8 August 2001 to 3 March 2003
MARCELINO C. LIBANAN	4 March 2003 to 8 August 2003
SIMEON A. DATUMANONG	9 August 2004 to 30 June 2007
MATIAS V. DEFENSOR, JR.	8 August 2007 to 30 June 2010
NIEL C. TUPAS, JR.	29 July 2010 to 30 June 2013 1 January 2014 to 30 June 2014 1 January 2015 to 30 June 2015
REYNALDO V. UMALI	3 August 2016 to date

From the promulgation of the Constitution, Congress already recognized that "a representative of Congress" can only mean one (1) representative from each chamber. This interpretation was so prevalent that from 2001, each member from the Senate and the House of Representatives was given one (1) full vote.[132] This is the representation of Congress contemplated in the Constitution.

The current practice of alternate representation not only diminishes Congress' representation. It negates it.[133]

When a Senator sits in the Council, he or she can only represent the Senate. Likewise, when a Member of the House of Representatives sits in the Council, he or she can only represent the House of Representatives. Congress is not represented at all in this kind of arrangement.

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[132] *See Chavez v. Judicial and Bar Council*, 691 Phil. 173 (2012) [Per J. Mendoza, En Banc].

[133] *See* Dissenting Opinion of J. Leonen in *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 506 (2013) [Per J. Mendoza, En Banc].

The composition of the Judicial and Bar Council is representative of the constituencies and sectors affected by judicial appointments. Hence, practicing lawyers, prosecutors, the legal academe, members of the Bench, and the private sector are represented in the Council.

Members of Congress are the only officials within the Judicial and Bar Council that are elected. The rest of the officials are appointed by the President. Thus, their membership within the Council is the only genuine representation of the People. Their input in the possible candidates to the judiciary is as invaluable as that of a member of the legal academe or that of the private sector.

The antecedents of this case only serve to highlight the absurd results wrought by *Chavez*. In 2013, then Representative Tupas approached the Judicial and Bar Council to personally inform it of the agreed representation between the Senate and the House of Representatives. When told by Chief Justice Sereno that she had already received a letter from then Senate President Drilon informing the Council of the agreed representation, Representative Tupas replied that he was not aware of the letter:

> [Congressman Tupas] said that in view of the decision of the Supreme Court in April this year, the Speaker of the House of Representatives and the Senate President authorized him and Senator Pimentel, Chairperson of the Committee on Justice of the Senate to discuss the matter of representation to the JBC. They decided that representation would be on a rotation basis. For the first six (6) months, Senator Pimentel would be the one to represent both Houses of Congress; and for the next six (6) months, it would be [him]. In the absence of Senator Pimentel, Congressman Tupas will automatically attend the meetings, and vice versa. *He cautioned that since it is quite difficult for both Houses to come up with an agreement, it would not be good to assume that whenever the Senate President or the Speaker of the House writes the JBC, it is the decision of Congress. It should be a communication from both Houses.* He then requested that he be furnished with copies of all notices from the JBC even during the term of Senator Pimentel.
>
> Chief Justice Sereno clarified that she received the Letter of the Senate President Drilon stating, among other things, that the Speaker of the House and the Senate President agreed that Senator Pimentel would be the one to represent Congress until December 31, 2013, but that in his absence it would be Congressman Tupas. She assured both Congressman Tupas and Senator Pimentel that they will both receive copies of all notices and information that are being circulated among the JBC Members. She thanked Congressman Tupas for personally informing the Council of the agreement between the two Houses of Congress, thus giving a higher level of comfort than it had already given.
>
> *Congressman Tupas mentioned that he was not aware that the Senate President sent a letter. His assumption is that the information would come from both Houses, not just from the Senate.* He thus came to the meeting to personally inform the JBC of the agreement. He thanked

the Chief Justice and asked for permission to leave.

Senator Pimentel likewise requested that he also be furnished with copies of all documents during the rotation of Congressman Tupas. He then requested for a three-minute break, as he had some matters to discuss with the Congressman before leaving.[134] (Emphasis supplied)

There is no office or officer in Congress that can represent both chambers. Representative Tupas recognized this difficulty and cautioned the Council that it should never presume that one (1) chamber can speak for the entire Congress. He proved this point when he told the Council that he was unaware of any letter sent by the Senate President.

Chavez forces one (1) chamber of Congress to arrogate upon itself all the powers, prerogatives, and privileges of the entire Congress in the Judicial and Bar Council. This is contrary to its bicameral nature.

When members of Congress sit in the Judicial and Bar Council, it may be with the instruction of their respective chambers, as Representative Tupas demonstrated in the July 23, 2013 En Banc Meeting. Their votes may likewise be constrained by resolutions and actions of the Congressional Committees they represent. They do not just represent themselves. They are "representatives of Congress" "*ex officio.*"[135]

Of the two (2) chambers in Congress, the House of Representatives represent constituencies on a more local scale. As pointed out by the Office of the Solicitor General, current voting patterns of the Council shows that a large number of appointees were for the lower courts:[136]

Court/Tribunal	Number of Appointees
Supreme Court	1
Court of Appeals	0
Legal Education Board	1
Sandiganbayan	1
Court of Tax Appeals	1
Ombudsman	0
Lower Courts	38

Chavez deprives Congress its opportunity to fully represent its constituencies, whether at the national or at the local level.

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134 *Rollo*, p. 259.

135 *See* Dissenting Opinion of J. Leonen in *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 507 (2013) [Per J. Mendoza, En Banc].

136 *Rollo*, p. 224.

The purported reasons for having only one (1) representative of Congress to the Council are illusory.

Chavez stated that Congress should be represented in the Council by only one (1) member "not because it was in the interest of a certain constituency, but in reverence to it as a major branch of government."[137]

Within the Council, the Executive is represented by the Secretary of Justice, considered as the alter ego of the President. The Judiciary is represented by the Chief Justice. Congress, however, operates through a Senate and a House of Representatives. Two (2) separate and distinct chambers cannot be represented by a single individual.

Chavez also implied that the framers intended for the Council's membership to be seven (7), not eight (8).

Article VIII, Section 8(1), however, does not provide a numerical count for its membership unlike in other the provisions of the Constitution.[138] Increasing the Council's membership to eight (8) would not violate the provisions of the Constitution.

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[137] *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 491 (2013) [Per J. Mendoza, En Banc].

[138] *See* the following constitutional provisions:
Article VI
. . . .
Section 2. The Senate shall be composed of twenty-four Senators who shall be elected at large by the qualified voters of the Philippines, as may be provided by law.
Section 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law[.]
. . . .
Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be[.]
Section 18. There shall be a Commission on Appointments consisting of the President of the Senate, as ex officio Chairman, twelve Senators and twelve Members of the House of Representatives, elected by each House on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented therein.
. . . .
Article VIII
. . . .
Section 4. (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit en banc or in its discretion, in divisions of three, five, or seven Members . . .
Article IX
. . . .
B. The Civil Service Commission
Section 1. (1) The civil service shall be administered by the Civil Service Commission composed of a Chairman and two Commissioners . . .
C. The Commission on Elections
Section 1. (1) There shall be a Commission on Elections composed of a Chairman and six Commissioners . . .
D. Commission on Audit
Section 1. (1) There shall be a Commission on Audit composed of a Chairman and two Commissioners . . .
Article XI

Chavez also insisted that the Council should have an odd-number representation so that one (1) member could function as a tie-breaker.

Judicial nominees, however, are not decided by a "yes" or "no" vote. The Council submits to the President a list of at least three (3) potential nominees who garnered a plurality of the votes. Some nominees may even have the same number of votes, and the Council will still include all of those names in the shortlist.

The shortlist dated December 2, 2016 for the vacancy of Associate Justice Perez contained the following names:[139]

1.	REYES, Jose Jr. C.	-	7 votes
2.	BRUSELAS, Apolinario Jr. D.	-	5 votes
3.	DIMAAMPAO, Japar B.	-	5 votes
4.	MARTIRES, Samuel R.	-	5 votes
5.	REYES, Andres Jr. B.	-	4 votes

The shortlist dated December 9, 2016 for the vacancy of Associate Justice Brion contained the following names:[140]

1.	CARANDANG, Rosmari D.	-	6 votes
2.	BRUSELAS, Apolinario Jr. D.	-	5 votes
3.	REYES, Jose, Jr. C.	-	5 votes
4.	DIMAAMPAO, Japar B.	-	4 votes
5.	LAZARO-JAVIER, Amy C.	-	4 votes
6.	TIJAM, Noel G.	-	4 votes
7.	VENTURA-JIMENO, Rita Linda S.	-	4 votes

As demonstrated, no tie-breaker was needed in the preparation of the shortlist. Insisting that the composition of the Council should be an odd number is unnecessary. The Council will still be able to discharge its functions regardless of whether it is composed of seven (7) or eight (8) members.

. . . .
Section 11. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.
Article XIII
. . . .
Section 17 . . .
(2) The Commission [on Human Rights] shall be composed of a Chairman and four Members who must be natural-born citizens of the Philippines and a majority of whom shall be members of the Bar.

[139] *Shortlist of Nominees dated December 2, 2016*, JUDICIAL AND BAR COUNCIL, <http://jbc.judiciary.gov.ph/announcements/2016/Shortlist_SC-Perez_12-2-16.pdf> (Last accessed July 25, 2017).

[140] *Shortlist of Nominees dated December 9, 2016*, JUDICIAL AND BAR COUNCIL, <http://jbc.judiciary.gov.ph/announcements/2016/Shortlist_SC-Brion_12-9-16.pdf> (Last accessed July 25, 2017).

V

Respondent Judicial and Bar Council, however, did not commit grave abuse of discretion when it adopted the six (6)-month rotational representation arrangement.

Grave abuse of discretion is defined as:

> [S]uch capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction . . . , or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[141] (Citations omitted)

Respondent Judicial and Bar Council was merely implementing a prior decision of this Court when it refused to count petitioner's votes. A relevant portion of the *Chavez*'s fallo states:

> The Judicial and Bar Council is hereby enjoined to reconstitute itself so that only one (1) member of Congress will sit as a representative in its proceedings, in accordance with Section 8 (1), Article VIII of the 1987 Constitution.[142]

The method of reconstitution was left to the discretion of the Judicial and Bar Council, in recognition of its status as an independent constitutional body. The Council, in turn, implemented *Chavez* by requiring that Congress provide it with only one (1) representative. In the July 23, 2013 En Banc Meeting, Representative Tupas relayed the instructions of the House of Representatives. Then Senate President Drilon sent the instructions of the Senate through a letter to the Chief Justice. Both the Senate and the House of Representatives did not offer any other type of representation that may have been agreed upon. The Council, therefore, was merely complying with the directive in *Chavez*. In *De Castro v. Judicial and Bar Council*:[143]

> Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.[144]

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[141] *Alafriz v. Nable*, 72 Phil. 278, 280 (1941) [Per J. Moran, First Division] citing *Abad Santos vs. Province of Tarlac*, 67 Phil. 480 (1939) [Per J. Moran, En Banc] and *Tavera-Luna, Inc. vs. Nable*, 67 Phil. 340 (1939) [Per J. Laurel, En Banc].

[142] *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 209 (2012) [Per J. Mendoza, En Banc].

[143] 632 Phil. 657 (2010) [Per J. Bersamin, En Banc].

[144] Id. at 686 *citing Caltex (Phil.), Inc. v. Palomar*, 124 Phil. 763 (1966) [Per J. Castro, En Banc].

These events, however, highlight the inevitable difficulty in implementing *Chavez's* interpretation of Article VIII, Section 8(1). There is no one (1) office in Congress that could provide the Council with one (1) representative. The Council has no authority to order Congress to jointly convene for the determination of its sole representative. Thus, the Council would only be able to implement what is practicable, that is, whatever arrangement the Congressional representatives may have agreed upon. Considering that the Congressional representatives have not yet manifested to the Council that it was considering another type of arrangement, the Council could not have been faulted for refusing to count petitioner's votes at a time when Senate was representing Congress in the Council.

The Office of the Solicitor General likewise requests that this Court take up the matter of rotational representation in the review of the Council's rules in *Aguinaldo v. Judicial and Bar Council*.[145]

In *Aguinaldo*, the new rules and practices of the Judicial and Bar Council were docketed as a separate administrative matter to be discussed at a future time.[146]

This case, however, is a matter of constitutional interpretation. There is, thus, no need to direct the Judicial and Bar Council to review its own rules to allow for the interpretation of this constitutional provision.

VI

The Judicial and Bar Council could have been compelled by a writ of mandamus to count petitioner's votes in the En Banc sessions of December 2 and 9, 2016.

Mandamus is provided for under Rule 65, Section 3 of the Rules of Court:

> Section 3. Petition for Mandamus.– When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging

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[145] G.R. No. 224302, November 29, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/224302.pdf> [Per J. Leonardo-De Castro, En Banc].

[146] Id. at 40.

> the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

Mandamus may issue to compel the performance of a ministerial duty. It cannot be issued to compel the performance of a discretionary act. In *Metro Manila Development Authority v. Concerned Residents of Manila Bay*:[147]

> Generally, the writ of mandamus lies to require the execution of a ministerial duty. A ministerial duty is one that "requires neither the exercise of official discretion nor judgment." It connotes an act in which nothing is left to the discretion of the person executing it. It is a "simple, definite duty arising under conditions admitted or proved to exist and imposed by law." Mandamus is available to compel action, when refused, on matters involving discretion, but not to direct the exercise of judgment or discretion one way or the other.[148] (Citations omitted)

The difference between a discretionary act and a ministerial act is settled:

> The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.[149] (Citation omitted)

The determination of the qualifications and fitness of judicial applicants is discretionary on the part of the Judicial and Bar Council.[150] A writ of mandamus cannot be issued to compel the council to withdraw a list originally submitted and to add other nominees that have not previously qualified.[151]

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147 595 Phil. 305 (2008) [Per J. Velasco, En Banc].

148 Id. at 326 citing *Angchangco, Jr. v. Ombudsman*, 335 Phil. 766 (1997) [Per J. Melo, Third Division]; BLACK'S LAW DICTIONARY (8th ed., 2004); *Lamb v. Phipps*, 22 Phil. 456, 490 (1912) [Per J. Johnson, First Division].

149 *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 706-707 (2010) [Per J. Bersamin, En Banc] *citing Espiridion v. Court of Appeals*, 523 Phil. 664 (2006) [Per J. Corona, Second Division].

150 *See* Dissenting Opinion of J. Leonen in *Jardeleza v. Judicial and Bar Council*, 741 Phil. 460, 641 (2014) [Per J. Mendoza, En Banc].

151 Id.

De Castro v. Judicial and Bar Council,[152] however, states that a writ of mandamus may be issued to compel the Council to comply with its constitutional mandate to submit a list of nominees to the President before the 90-day period to appoint:

> The duty of the JBC to submit a list of nominees before the start of the President's mandatory 90-day period to appoint is ministerial, but its selection of the candidates whose names will be in the list to be submitted to the President lies within the discretion of the JBC. The object of the petitions for mandamus herein should only refer to the duty to submit to the President the list of nominees for every vacancy in the Judiciary, because in order to constitute unlawful neglect of duty, there must be an unjustified delay in performing that duty. For mandamus to lie against the JBC, therefore, there should be an unexplained delay on its part in recommending nominees to the Judiciary, that is, in submitting the list to the President.[153] (Citation omitted)

The Judicial and Bar Council has the ministerial duty to count the votes of *all* its members. Petitioner, as the Chair of the House of Representatives Committee on Justice, should be considered a regular ex officio member of the Council, and his votes in the December 2 and 9, 2016 En Banc Meetings should have been counted. This relief, however, has already become moot in light of the recent appointments to this Court. In future deliberations, however, the Judicial and Bar Council should have the ministerial duty to separately count the votes of both Congressional representatives in the Council.

Accordingly, I vote to **GRANT** the Petition. The doctrine in *Chavez v. Judicial and Bar Council*[154] must be **ABANDONED** and the Judicial and Bar Council must be **DIRECTED** to separately count the votes of both Congressional representatives in the Council in its En Banc deliberations.

MARVIC M.V.F. LEONEN
Associate Justice

CERTIFIED XEROX COPY:
FELIDA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT

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[152] 629 Phil. 629 (2010) [Per J. Bersamin, En Banc].

[153] Id. at 706 citing *Nery v. Gamolo*, 446 Phil. 76 (2003) [Per J. Quisumbing, Second Division], *Musni v. Morales*, 373 Phil. 703 (1999) [Per J. Panganiban, Third Division].

[154] 691 Phil. 173 (2012) [Per J. Mendoza, En Banc] and 709 Phil. 478 (2013) [Per J. Mendoza, En Banc].