Republic of the Philippines
SUPREME COURT
Manila

EN BANC

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, - *versus* - **THE JUDICIAL AND BAR COUNCIL, chaired by THE HON. MARIA LOURDES P.A. SERENO, Chief Justice and *Ex Officio* Chairperson,** Respondent.	**G.R. No. 228628** Present: SERENO, *C.J.*,* CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, PERALTA, BERSAMIN, DEL CASTILLO, MENDOZA, PERLAS-BERNABE, LEONEN, JARDELEZA, CAGUIOA, MARTIRES, TIJAM, and REYES, JR., *JJ.* Promulgated: July 25, 2017

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DECISION

VELASCO, JR., *J.*:

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

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* No Part.

[1] *Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 132051, June 25, 2001, 359 SCRA 469.

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

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

> SECTION 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and **a representative of the Congress** as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector. (Emphasis supplied.)

Following a painstaking analysis, this Court, in a Decision dated July 17, 2012, declared the said practice of having two representatives from Congress with one vote each in the JBC unconstitutional. This Court enunciated that the use of the singular letter "*a*" preceding "*representative of the Congress*" in the aforequoted provision is unequivocal and leaves no room for any other construction or interpretation. The same is indicative of the Framers' intent that Congress may designate only one representative to the JBC. Had it been otherwise, they could have, in no uncertain terms, so provided. This Court further articulated that in the context of JBC representation, the term "Congress" must be taken to mean the entire legislative department as no liaison between the two houses exists in the workings of the JBC. There is no mechanism required between the Senate and the House of Representatives in the screening and nomination of judicial officers. Moreover, this Court, quoting the keen observation of Retired Supreme Court Associate Justice Consuelo Ynares-Santiago, who is also a JBC Consultant, stated that the *ex officio* members of the JBC consist of representatives from the three main branches of government, to wit: the Chief Justice of the Supreme Court representing the judiciary, the Secretary of Justice representing the executive, and a representative of the Congress representing the legislature. It can be deduced therefrom that the unmistakable tenor of Section 8(1), Article VIII of the 1987 Constitution was to treat each *ex officio* member as representing one co-equal branch of government having equal say in the choice of judicial nominees. Now, to allow the legislature to have more than one representative in the JBC would

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[2] G.R. No. 202242, July 17, 2012, 676 SCRA 579.

negate the principle of equality among these three branches of the government, which is enshrined in the Constitution.[3]

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

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

I.

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

II.

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

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[3] Id. at 597-606.
[4] *Chavez v. Judicial and Bar Council*, G.R. No. 202242, April 16, 2013, 696 SCRA 496.
[5] *Rollo*, pp. 42 & 45.
[6] Petition, id. at 9-10.

III.

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

IV.

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

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

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

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

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

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

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[7] Id. at 11-12.

[8] Per Resolutions dated January 17, 2017 (id. at 84-85) and February 14, 2017 (id. at 255-256).

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

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

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

Also, the OSG states that the constitutional intent in creating the JBC is to ensure community representation from the different sectors of society, as well as from the three branches of government, and to eliminate partisan politics in the selection of members of the judiciary. The focus, therefore, is more on proper representation rather than qualitative limitation. It even insists that when the Framers deliberated on Section 8(1), Article VIII of the 1987 Constitution, they were still thinking of a unicameral legislature, thereby, giving Congress only one representative to the JBC. However, with the shift from unicameralism to bicameralism, "*a representative of the Congress*" in the JBC should now be understood to mean one representative

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[9] Manifestation in lieu of Comment (to the Petition dated December 28, 2016), OSG, id. at 168-169.

[10] Id. at 175.

[11] Id. at 183.

[12] Id. at 185.

[13] Id. at 187.

[14] Id. at 191, 194 & 198.

from each House of Congress. For had it been the intention of the Framers for the JBC to be composed only of seven members, they would have specified the numbers just like in the other constitutional provisions. As such, the membership in the JBC should not be limited to seven members. More so, an eventual deadlock in the voting would not pose any problem since the voting in the JBC is not through a "yes" or a "no" vote.[15]

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

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

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

In the same vein, the JBC asseverates that this Petition should also be dismissed as the allegations herein are mere rehash of the arguments and dissents in *Chavez*, which have already been exhaustively litigated and settled therein by this Court, more in particular, the interpretation of Section 8(1), Article VIII of the 1987 Constitution, hence, barred by the doctrine of

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[15] Id. at 199-202, 207 & 210.
[16] Id. at 217 & 224.
[17] Comment/Opposition (On the Petition dated 28 December 2016), JBC, id. at 262-268.
[18] Id. at 269-271.

stare decisis. Similarly, there exists no substantial reason or even supervening event or material change of circumstances that warrants *Chavez's* reversal.[19]

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

Last of all, the JBC holds that should this Petition be granted, there would be an imbalance in favor of Congress with respect to the representation in the JBC of the three main and co-equal branches of the government. For the unmistakable tenor of Section 8(1), Article VIII of the 1987 Constitution was to treat each *ex officio* member as representing one co-equal branch of government. And, even assuming that the current six-month rotational scheme in the JBC created an imbalance between the two Houses of Congress, it is not within the power of this Court or the JBC to remedy such imbalance. For the remedy lies in the amendment of this constitutional provision.[21]

Given the foregoing arguments, the issues ought to be addressed by this Court can be summed up into: (1) whether the petitioner has *locus standi* to file this Petition even without the requisite resolution from both Houses of Congress permitting him to do so; (2) whether the petitioner's direct resort to this Court *via* a Petition for *Certiorari* and Mandamus is the plain, speedy and adequate remedy available to him to assail the JBC's adoption of the rotational representation leading to the non-counting of his votes in its En Banc deliberations last December 2 and 9, 2016; (3) whether the JBC acted with grave abuse of discretion in adopting the six-month rotational scheme of both Houses of Congress resulting in the non-counting of the petitioner's votes in its En Banc deliberations last December 2 and 9, 2016; (4) whether the JBC can be compelled through mandamus to count the petitioner's votes in its En Banc deliberations last December 2 and 9, 2016; and (4) whether this Court's ruling in *Chavez* applies as *stare decisis* to the present case.

Before delving into the above-stated issues, this Court would like to note that this Petition was primarily filed because of the non-counting of the petitioner's votes in the JBC En Banc deliberations last December 2 and 9, 2016 held for the purpose of determining, among others, who will be the possible successors of the then retiring Associate Justices of the Supreme

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[19] Id. at 271-273.
[20] Id. at 273-280.
[21] Id. at 280-282.

Court Perez and Brion, whose retirements were set on December 14 and 29, 2016, respectively. The list of nominees will then be forwarded to the President as the appointing authority. With the appointments of Associate Justices Samuel R. Martires (Martires) and Noel G. Tijam (Tijam) on March 2 and 8, 2017, respectively, this Petition has now been rendered moot insofar as the petitioner's prayers to (1) reverse and set aside the JBC En Banc deliberations last December 2 and 9, 2016; and (2) direct the JBC to count his votes therein as its *ex officio* member,[22] are concerned.

As a rule, courts do not entertain moot questions. An issue becomes moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value. This notwithstanding, the Court in a number of cases held that the moot and academic principle is not a magical formula that can automatically dissuade the courts from resolving a case. Courts will still decide cases otherwise, moot and academic if: (1) there is a grave violation of the Constitution; (2) the exceptional character of the situation and the paramount public interest is involved; (3) when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (4) the case is capable of repetition yet evading review.[23] Considering that all the arguments herein once again boil down to the proper interpretation of Section 8(1), Article VIII of the 1987 Constitution on congressional representation in the JBC, this Court deems it proper to proceed on deciding this Petition despite its mootness to settle the matter once and for all.

Having said that, this Court shall now resolve the issues in seriatim.

On petitioner's locus standi. The petitioner brings this suit in his capacity as the current Chairman of the House of Representatives Committee on Justice and *Ex Officio* Member of the JBC. His legal standing was challenged by the JBC for lack of an enabling resolution for that purpose coming from both Houses of Congress.

Locus standi or legal standing is defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act. It requires a personal stake in the outcome of the controversy as to assure the concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.[24] With that definition, therefore, a party will be allowed to litigate only when he can demonstrate that (1) he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by the remedy being sought.[25] Otherwise, he/she would not

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[22] Supra note 6, at 83.

[23] *Lu v. Lu YM, Sr.*, G.R. Nos. 153690, 157381 & 170889, August 26, 2008, 563 SCRA 254, 273.

[24] *Imbong v. Ochoa, Jr.*, G.R. Nos. 204819, 204934, 204957, *et al.*, April 8, 2014, 721 SCRA 146, 283.

[25] *Lozano v. Nograles*, G.R. Nos. 187883 & 187910, June 16, 2009, 589 SCRA 356, 360.

be allowed to litigate. Nonetheless, in a long line of cases, concerned citizens, taxpayers and legislators when specific requirements have been met have been given standing by this Court. This was succinctly explained in *Francisco, Jr. v. The House of Representatives*, thus:

> When suing as a *citizen*, the interest of the petitioner assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of. In fine, when the proceeding involves the assertion of a public right, the mere fact that he is a citizen satisfies the requirement of personal interest.
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> In the case of a *taxpayer*, he is allowed to sue where there is a claim that public funds are illegally disbursed, or that public money is being deflected to any improper purpose, or that there is a wastage of public funds through the enforcement of an invalid or unconstitutional law. Before he can invoke the power of judicial review, however, he must specifically prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation and that he would sustain a direct injury as a result of the enforcement of the questioned statute or contract. It is not sufficient that he has merely a general interest common to all members of the public.
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> **As for a *legislator*, he is allowed to sue to question the validity of any official action which he claims infringes his prerogatives as a legislator. Indeed, a member of the House of Representatives has standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in his office**.[26] (Emphasis and underscoring supplied.)

The legal standing of each member of Congress was also upheld in *Philippine Constitution Association v. Enriquez*,[27] where this Court pronounced that:

> The legal standing of the Senate, as an institution, was recognized in *Gonzales v. Macaraig, Jr.* (citation omitted). 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,

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[26] G.R. Nos. 160261-160263, *et al.*, November 10, 2003, 415 SCRA 44, 136-137

[27] G.R. Nos. 113105, 113174, 113766, *et al.*, August 19, 994, 235 SCRA 506.

> particularly Section 55, of the General Appropriation Bill of 1989 (H.B. No. 19186) and For Other Purposes.

In the United States, the legal standing of a House of Congress to sue has been recognized (citation omitted).

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.

Therefore, the question of the legal standing of petitioners in the three cases becomes a preliminary issue before this Court can inquire into the validity of the presidential veto and the conditions for the implementation of some items in the GAA of 1994.

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.

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 impermissible intrusion of the Executive into the domain of the Legislature arises (citation omitted).

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 (citation omitted).

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 (citation omitted). 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 a substantial interest in the question at issue. It could likewise be said that there was the 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** (citation omitted).[28] (Emphases and underscoring supplied.)

It is clear therefrom that each member of Congress has a legal standing to sue even without an enabling resolution for that purpose so long as the questioned acts invade the powers, prerogatives and privileges of

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[28] Id. at 519-520.

Congress. Otherwise stated, whenever the acts affect the powers, prerogatives and privileges of Congress, anyone of its members may validly bring an action to challenge the same to safeguard and maintain the sanctity thereof.

With the foregoing, this Court sustains the petitioner's legal standing as Member of the House of Representatives and as the Chairman of its Committee on Justice to assail the alternate representation of Congress in the JBC, which arrangement led to the non-counting of his votes in its En Banc deliberations last December 2 and 9, 2016, as it allegedly affects adversely Congress' prerogative to be fully represented before the said body.

On petitioner's direct resort to this Court via certiorari petition. The JBC questions the propriety of the petitioner's direct resort to this Court via the present Petition to assail its adoption of the rotational representation of Congress resulting in the non-counting of his votes in its En Banc deliberations last December 2 and 9, 2016. The JBC insists that the said scheme was a creation of Congress itself; as such, the petitioner's plain, speedy and adequate remedy is to appeal to Congress to repudiate the same. Direct resort to this Court should not be allowed if there is a remedy available to the petitioner before Congress.

Generally, the writ of *certiorari* can only be availed of in the absence of an appeal or any plain, speedy and adequate remedy in the ordinary course of law. In *Bordomeo v. Court of Appeals*, however, this Court clarified that it is inadequacy that must usually determine the propriety of *certiorari* and not the mere absence of all other remedies and the danger of failure of justice without the writ. A remedy is considered plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment, order, or resolution of the lower court or agency.[29]

In the same way, as a matter of policy, direct resort to this Court will not be entertained unless the redress desired cannot be obtained in the appropriate lower courts, and exceptional and compelling circumstances, such as in cases involving national interest and those of serious implications, justify the availment of the extraordinary remedy of the writ of *certiorari*, calling for the exercise of its primary jurisdiction.[30] In *The Diocese of Bacolod v. Commission on Elections*,[31] and again in *Maza v. Turla*,[32] this Court took pains in enumerating the circumstances that would warrant a direct resort to this Court, to wit: (1) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (2) when the issues involved are of transcendental importance; (3) cases of first impression as no jurisprudence yet exists that will guide the lower courts on this matter; (4) the constitutional issues raised are better decided by this court; (5) the time element presented in this case cannot be ignored; (6) the

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[29] G.R. No. 161596, February 20, 2013, 691 SCRA 269, 286.
[30] *Yee v. Bernabe*, G.R. No. 141393, April 19, 2006, 487 SCRA 385, 394.
[31] G.R. No. 205728, January 21, 2015, 747 SCRA 1.
[32] G.R. No. 187094, February 15, 2017.

filed petition reviews the act of a constitutional organ; (7) petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law; and (8) the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.[33]

Here, while this Court agrees with the JBC that the petitioner's preliminary remedy to question the rotational arrangement of Congress is to ask the latter to repudiate the same, this, however, cannot be considered plain, speedy and adequate. This Court is, thus, inclined to sustain the petitioner's direct resort to this Court not only because it is the plain, speedy and adequate remedy available to him but also by reason of the constitutional issues involved herein and the urgency of the matter. As correctly pointed out by the OSG, the Constitution mandates that any vacancy to the office of an Associate Justice of the Supreme Court must be filled up within the 90-day period from its occurrence. Therefore, the JBC must submit the list of nominees prior to the start of that period. As the nominations covered by the questioned December 2016 JBC En Banc deliberations were intended for vacancies created by then Associate Justices Perez and Brion, who respectively retired last December 14 and 29, 2016, hence, any resort to Congress during that time would already be inadequate since the JBC list of nominees would be submitted any moment to the Office of the President for the appointment of the next Associate Justices of the Supreme Court. Since time is of the essence, the petitioner's direct resort to this Court is warranted.

On the alleged grave abuse of discretion of the JBC in adopting the rotational representation of Congress correctible by certiorari. The petitioner ascribed grave abuse of discretion on the part of the JBC in its adoption of the rotational scheme, which led to the non-counting of his votes in its En Banc deliberations last December 2 and 9, 2016, as it deprives Congress of its full representation therein. The JBC, on the other hand, believes otherwise for it merely acted in accordance with the mandate of the Constitution and with the ruling in *Chavez*. Also, such rotational scheme was a creation of Congress, which it merely adopted.

Certiorari and Prohibition under Rule 65 of the present Rules of Court are the two special civil actions used for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction. The sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which necessarily includes the commission of grave abuse of discretion amounting to lack of jurisdiction.[34] The burden is on the petitioner to prove that the respondent tribunal committed not merely a reversible error but also a grave abuse of discretion amounting to lack or excess of jurisdiction.

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[33] *The Diocese of Bacolod v. Commission on Elections*, supra note 31, at 45-50.

[34] *Araullo v. Aquino III*, G.R. Nos. 209287, 209135-209136, *et al.*, July 1, 2014, 728 SCRA 1, 72.

Showing mere abuse of discretion is not enough, for the abuse must be shown to be grave. Grave abuse of discretion means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.[35]

But, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach before this Court as the writs may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. Thus, they are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.[36]

Here, it is beyond question that the JBC does not fall within the scope of a tribunal, board, or officer exercising judicial or quasi-judicial functions. Neither did it act in any judicial or quasi-judicial capacity nor did it assume any performance of judicial or quasi-judicial prerogative in adopting the rotational scheme of Congress, which was the reason for not counting the votes of the petitioner in its En Banc deliberations last December 2 and 9, 2016. But, despite this, its act is still not beyond this Court's reach as the same is correctible by *certiorari* if it is tainted with grave abuse of discretion even if it is not exercising judicial and quasi-judicial functions. Now, did the JBC abuse its discretion in adopting the six-month rotational arrangement and in not counting the votes of the petitioner? This Court answers in the negative. As correctly pointed out by the JBC, in adopting the said arrangement, it merely acted pursuant to the Constitution and the *Chavez* ruling, which both require only one representative from Congress in the JBC. It cannot, therefore, be faulted for simply complying with the Constitution and jurisprudence. Moreover, said arrangement was crafted by both Houses of Congress and the JBC merely adopted the same. By no stretch of imagination can it be regarded as grave abuse of discretion on the part of the JBC.

With the foregoing, despite this Court's previous declaration that *certiorari* is the plain, speedy and adequate remedy available to petitioner, still the same cannot prosper for the petitioner's failure to prove that the JBC acted with grave abuse of discretion in adopting the rotational scheme.

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[35] *Bordomeo v. Court of Appeals*, supra note 29, at 289.
[36] *Araullo v. Aquino III*, supra note 34, at 74-75.

On the propriety of mandamus. It is essential to the issuance of a writ of mandamus that the applicant has a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required. The burden is on the petitioner to show that there is such a clear legal right to the performance of the act, and a corresponding compelling duty on the part of the respondent to perform the act. **As an extraordinary writ, it lies only to compel an officer to perform a ministerial duty, not a discretionary one**.[37] A clear line demarcates a discretionary act from a ministerial one. A purely ministerial act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done.[38] On the other hand, 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.[39] Clearly, the use of discretion and the performance of a ministerial act are mutually exclusive. Further, the writ of mandamus does not issue to control or review the exercise of discretion or to compel a course of conduct.[40]

In the case at bench, the counting of votes in the selection of the nominees to the judiciary may only be considered a ministerial duty of the JBC if such votes were cast by its rightful members and not by someone, like the petitioner, who is not considered a member during the En Banc deliberations last December 2 and 9, 2016. For during the questioned period, the lawful representative of Congress to the JBC is a member of the Senate and not of the House of Representatives as per their agreed rotational scheme. Considering that a member of the Senate already cast his vote therein, the JBC has the full discretion not to count the votes of the petitioner for it is mandated by both the Constitution and jurisprudence to maintain that Congress will only have one representative in the JBC. As the act of the JBC involves a discretionary one, accordingly, mandamus will not lie.

On the application of Chavez as stare decisis in this case. The petitioner strongly maintains that *Chavez* must be revisited and reversed due to its unexecutability. But the JBC insists that the arguments herein are mere rehash of those in *Chavez*, hence, already barred by the doctrine of *stare decisis*. Also, there is no cogent reason for *Chavez's* reversal.

This Court takes another glance at the arguments in *Chavez* and compares them with the present arguments of the petitioner. A careful perusal, however, reveals that, although the petitioner questioned the JBC's adoption of the six-month rotational representation of Congress leading to

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[37] *Villanueva v. Judicial and Bar Council*, G.R. No. 211833, April 7, 2015, 755 SCRA 182, 198.

[38] *Partido ng Manggagawa v. Commission on Elections*, G.R. No. 164702, March 15, 2006, 484 SCRA 671, 684.

[39] *Mallari v. Banco Filipino Savings and Mortgage*, G.R. No. 157660, August 29, 2008, 563 SCRA 664, 671.

[40] *Villanueva v. Judicial and Bar Council*, supra note 37.

the non-counting of his votes in its En Banc deliberations last December 2 and 9, 2016, the supporting arguments hereof still boil down to the proper interpretation of Section 8(1), Article VIII of the 1987 Constitution. Hence, being mere rehash of the arguments in *Chavez*, the application of the doctrine of *stare decisis* in this case is inevitable. More so, the petitioner failed to present strong and compelling reason not to rule this case in the same way that this Court ruled *Chavez*.

As stated in the beginning of this *ponencia*, *stare decisis et non quieta movere* is a doctrine which means to adhere to precedents and **not to unsettle things which are established**. This is embodied in Article 8 of the Civil Code of the Philippines which provides, thus:

> ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

The doctrine enjoins adherence to judicial precedents and requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine is based on the principle that **once a question of law has been examined and decided, it should be deemed settled and closed to further argument**. The same is grounded on the necessity for securing certainty and stability of judicial decisions, thus, time and again, the court has held that it is a very desirable and necessary judicial practice that **when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same**. It simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue. The doctrine has assumed such value in our judicial system that the Court has ruled that "[a]bandonment thereof must be based only on strong and compelling reasons, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished." **Verily, only upon showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, can the courts be justified in setting aside the same.**[41]

Here, the facts are exactly the same as in *Chavez*, where this Court has already settled the issue of interpretation of Section 8(1), Article VIII of the

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[41] *Lazatin v. Desierto*, G.R. No. 147097, June 5, 2009, 588 SCRA 285, 293-295.

1987 Constitution. Truly, such ruling may not be unanimous, but it is undoubtedly a reflection of the wisdom of the majority of members of this Court on that matter. *Chavez* cannot simply be regarded as an erroneous application of the questioned constitutional provision for it merely applies the clear mandate of the law, that is, Congress is entitled to only one representative in the JBC in the same way that its co-equal branches are.

As this Court declared in *Chavez*, Section 8(1), Article VIII of the 1987 Constitution is clear, categorical and unambiguous. Thus, it needs no further construction or interpretation. Time and time again, it has been repeatedly declared by this Court that **where the law speaks in clear and categorical language, there is no room for interpretation, only application**.[42] The wordings of Section 8(1), Article VIII of the 1987 Constitution are to be considered as indicative of the final intent of its Framers, that is, for Congress as a whole to only have one representative to sit in the JBC. This Court, therefore, cannot simply make an assumption that the Framers merely by oversight failed to take into account the bicameral nature of Congress in drafting the same. As further laid down in *Chavez*, the Framers were not keen on adjusting the provision on congressional representation in the JBC as it was not in the exercise of its primary function, which is to legislate. Notably, the JBC was created to support the executive power to appoint, and Congress, as one whole body, was merely assigned a contributory non-legislative function. No parallelism can be drawn between the representative of Congress in the JBC and the exercise by Congress of its legislative powers under Article VI and constituent powers under Article XVII of the Constitution. Congress, in relation to the executive and judicial branches of government, is constitutionally treated as another co-equal branch in the matter of its JBC representation.[43]

This Court cannot succumb to the argument that Congress, being composed of two distinct and separate chambers, cannot represent each other in the JBC. Again, as this Court explained in *Chavez*, such an argument is misplaced because in the JBC, any member of Congress, whether from the Senate or the House of Representatives, is constitutionally empowered to represent the entire Congress. It may be a constricted constitutional authority, but it is not an absurdity. To broaden the scope of congressional representation in the JBC is tantamount to the inclusion of a subject matter which was not included in the provision as enacted. True to its constitutional mandate, the Court cannot craft and tailor constitutional provisions in order to accommodate all situations no matter how ideal or reasonable the proposed solution may sound. To the exercise of this intrusion, the Court declines.[44]

While it is true that Section 8(1), Article VIII of the 1987 Constitution did not explicitly state that the JBC shall be composed of seven members,

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[42] *Barcellano v. Bañas*, G.R. No. 165287, September 14, 2011, 657 SCRA 545, 554.
[43] *Chavez v. Judicial and Bar Council*, supra note 4, at 507-514.
[44] Id. at 515-518.

however, the same is implied in the enumeration of who will be the members thereof. And though it is unnecessary for the JBC composition to be an odd number as no tie-breaker is needed in the preparation of a shortlist since judicial nominees are not decided by a "yes" or "no" vote, still, JBC's membership cannot be increased from seven to eight for it will be a clear violation of the aforesaid constitutional provision. To add another member in the JBC or to increase the representative of Congress to the JBC, the remedy is not judicial but constitutional amendment.

In sum, this Court will not overthrow *Chavez* for it is in accord with the constitutional mandate of giving Congress "a representative" in the JBC. In the same manner, the adoption of the rotational scheme will not in any way deprive Congress of its full participation in the JBC for such an arrangement is also in line with that constitutional mandate.

WHEREFORE, premises considered, the instant Petition for *Certiorari* and Mandamus is hereby **DISMISSED** for lack of merit.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:

(no part)
MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

I join the dissent of Justice Leonen.
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

I join the dissent of J. Leonen
MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

See Dissenting Opinion
MARVIC M.V.F. LEONEN
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

I join the dissent of J. Leonen
SAMUEL R. MARTIRES
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

I join the dissent of J. Leonen
ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P.A. SERENO
Chief Justice

CERTIFIED XEROX COPY:
FELICIA B. BANAMA
CLERK OF COURT, EN BANC
SUPREME COURT