STARE (IN)DECISIS: SOME REFLECTIONS ON JUDICIAL FLIP-FLOPPING IN *LEAGUE OF CITIES V. COMELEC* AND *NAVARRO V. ERMITA*[*]

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> *"A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines. With consistency a great soul has simply nothing to do. He may as well concern himself with his shadow on the wall."*[1]

ABSTRACT

Stare decisis, or the adherence to precedents, allows the courts of today to bring in the past in order to shape the future. A key feature of common law jurisdictions where court decisions become law, *stare decisis* is a transplant into the Philippine legal system from our history of colonization. Thus, article 8 of the Civil Code provides that judicial decisions form part of the law of the land even as they are not *per se* laws. In disposing of cases, the courts, particularly the Supreme Court, have consistently adhered to *stare decisis*. In a recent series of decisions, however, involving the two cases of *League of Cities of the Philippines v. COMELEC* and *Navarro v. Ermita*, the Supreme Court engaged in what may be called *stare (in)decisis* as it literally flip-flopped on the sole issue of the constitutionality of one provincehood and sixteen (16) cityhood laws, coming up with a total of ten decisions. This article inquires into the manner by which the Supreme Court "changed its mind" in these two cases as well as its implications on *stare decisis* in the Philippines.

I. INTRODUCTION

Stare decisis may be said to be the glue that binds the court's past, present and future. It allows the courts of today to bring in the past in order to shape the future. Adherence to precedent ties a court deciding a case in the present to what

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[1] R. W. Emerson, *Self-Reliance*, ESSAYS: FIRST SERIES (1841).

it has done in the past and binds other litigants in the future. It has been described as being fundamentally important to the rule of law and contributing to the stability and integrity of the judicial process.[2] On the other hand, it has also been criticized as being fundamentally inconsistent with due process in that it overreaches to routinely extinguish rights of non-parties in future cases.[3]

Commonly considered as a key feature of a common law system[4] where court decisions become law, *stare decisis* is nonetheless observed in the Philippines, which is a civil law system.[5] As early as 1908, the Supreme Court stated that "(i)t is a rule well established in the interpretation of customs laws that, where there has been a long acquiescence in a regulation by which the rights of parties for years have been determined and adjusted, such interpretation should be followed in the absence of the most cogent and persuasive reasons to the contrary."[6]

The reason for this could be traced to the Philippines' colonial history which, in turn, explains the legal system of the country. The Philippine judicial system is a strange hybrid of local traditions and customs and transplanted colonial influences, much of it Spanish and American – vestiges of our colonial past. Much of the Spanish and American influences are wholesale transplants with very little room for consideration of the unique culture and identity of its citizens. In specific instances, where transplantation has not been wholesale but selective, key elements that would have made the transplanted rules meaningful were left out.[7]

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[2] Randy Kozel, *Stare Decisis as Judicial Doctrine*, 67 WASH. & LEE L. REV. 411, 412-413 (2010).

[3] Max Minzner, *Saving* Stare Decisis*: Preclusion, Precedent, and Procedural Due Process*, 2010 B.Y.U. L. REV. 597 (2010).

[4] Roscoe Pound writes that "... *stare decisis* is a feature of the common law technique of decision....The common-law technique is based on a conception of law as experience developed by reason and reason tested and developed by experience. It is a technique of finding the grounds of decision in recorded judicial experience, making for stability by requiring adherence to decisions of the same question in the past, allowing growth and change by the freedom of choice from among competing analogies of equal authority when new questions arise or old ones take on new forms. In that technique there is a distinction between binding authority and persuasive authority. The decision of the ultimate court of review in a common-law jurisdiction is held to bind all inferior courts of that jurisdiction and also the court itself in future cases involving the question of law decided or at least necessary to the decision rendered." R. Pound, *What of Stare Decisis?,* 10 FORDHAM L. REV. 6 (1941).

[5] The nature of Philippine courts is defined by the 1987 Constitution in its definition of "judicial power" as including "the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." In its Internal Rules, the Supreme Court defines itself as primarily "a court of law (where) (i)ts primary task is to resolve and decide cases and issues presented by litigants according to law." *See* Rule 3, § 1, A.M. No. 10-4-20-SC, May 4, 2010 ("Internal Rules of the Supreme Court").

[6] Kuenzle and Streiff v. Collector of Customs, G.R. No. 4315, 12 Phil. 117, 119-120, Nov. 21, 1908.

[7] For instance, the use of the adversarial system that is a key feature of the Anglo-American rules of evidence is a transplant into the Philippine legal system. The United States employs a jury system which the Philippines does not. Yet, the Philippines adopts and uses the prohibition against subjudice reporting of cases that makes perfect sense in the American system, where the empaneled jury may be unduly influenced

Stare decisis is one such transplant. The Civil Code of the Philippines, passed in 1949, provides the statutory basis for *stare decisis*, which in other jurisdictions is a judge-made rule. Article 8 of the Civil Code provides that "(j)udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."[8] The lawmaking power is however vested exclusively in Congress by the 1987 Constitution.[9] Thus, although judicial decisions in the Philippines cannot be considered law, under article 8 of the Civil Code, they have the force of law. The legislative recognition of the effects of judicial decisions of the Supreme Court underscores the strange situation obtaining within the Philippines hybrid system where courts are expected to stay within the strict confines of the law,[10] yet are also expected, by their decisions, to also "make law."

Not being law but having only the "force of law," the impact of *stare decisis* is limited and specific. Judicial decisions are binding only on the parties to a case and on future parties with similar or identical factual situations. Thus, the Court has ruled in *Negros Navigation Co., Inc. v. Court of Appeals*[11] that:

> Adherence to the (precedent) is dictated by this Court's policy of maintaining stability in jurisprudence in accordance with the legal maxim '*stare decisis et non quieta movere*' (Follow past precedents and do not disturb what has been settled.) Where, as in this case, the same questions relating to the same event have been put forward by 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.

Unlike legislation which affects everyone within a certain territory, the binding effect of judicial decisions under *stare decisis* would be dependent on resort to a court. In *Lazatin v. Desierto*,[12] the Court explicitly stated that:

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by media reporting of cases, but does not make sense in the Philippines, where there is no jury to unduly influence.

[8] In *People v. Licera*, G.R. No. 39990, 65 SCRA 270, 272-273, Jul. 22, 1975, the Court stated that:

"Article 8 of the Civil Code of the Philippines decrees that judicial decisions applying or interpreting the laws of the Constitution form part of this jurisdiction's legal system. These decisions, although in themselves are not laws, constitute evidence of what the laws mean. The application or interpretation merely establishes the contemporaneous legislative intent that the construed law purports to carry into effect."

[9] CONST. art. VI, § 1

[10] In *Tanada v. Yulo,* G.R. No. 43575, 61 Phil. 515, 518, May 31, 1935, the Court, through Chief Justice Malcolm cautioned against judicial legislation and warned against liberal construction being used as license to legislate and not simply to interpret.

[11] G.R. No. 110398, 281 SCRA 534, 542-543, Nov. 7, 1997.

[12] G.R. No. 147097, 588 SCRA 285, 294, Jun. 5, 2009, *citing* Fermin v. People, G.R. No. 157643, 550 SCRA 132, Mar. 28, 2008.

> The doctrine of *stare decisis* enjoins adherence to judicial precedents. **It 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 of *stare decisis* 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. (Emphasis supplied)

The Court in *Lazatin* emphasized that *stare decisis* would be the rule in deciding cases which it had already previously ruled upon where the factual and legal environment were similar or identical. It added 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."[13] The Court has, however, itself recognized that it is not to be blindly bound by precedent. Former Chief Justice Malcolm declares that while "(t)he rule of *stare decisis* is entitled to respect (and) (s)tability in the law... is desirable, ... idolatrous reverence for precedent, simply as precedent, no longer rules. More important than anything else is that the court should be right."[14] Unfortunately, the Supreme Court does not provide for standards to determine when a court may choose stability of the precedent and when it may choose to rule differently, in spite of precedent.

This became a problem when the Supreme Court disposed of two cases, namely *League of Cities of the Philippines v. COMELEC*[15] and *Navarro v. Ermita*.[16] In these two cases, the Court changed its mind so many times that it becomes difficult to understand both the why – the reasons for changing the decisions – and the what – the actual reasons for the ruling of the Court. Also in these two cases, the Court disregarded the immutability of its own decisions by ruling on the same issues presented in the same case, despite a final and executory judgment in the two cases. Reflecting on the Court's decisions in these two cases, where it reversed itself on the sole issue of constitutionality of the laws challenged, it appears that there are no clear criteria for knowing when a decision really becomes final or immutable and how previous decisions can become precedent for purposes of *stare decisis*. The Court's methodology and reasoning in *League of Cities* and *Navarro* should lead to a more critical examination of the instances when *stare*

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[13] 588 SCRA 285, 294-295, *citing* Pepsi-Cola Products, Phil., Inc. v. Pagdanganan, G.R. No. 167866, 504 SCRA 549, 564, Oct. 12, 2006.

[14] In Re: Involuntary Insolvency of Rafael Fernandez, G.R. No. 38398, 59 Phil. 30, 36, Dec. 8, 1933.

[15] G.R. No. 176951, G.R. No. 177499, G.R. No. 178056, 571 SCRA 263, Nov. 18, 2008; 608 SCRA 636, Dec. 21, 2009; 628 SCRA 819, Aug. 24, 2010; Feb. 15, 2011; Apr. 12, 2011.

[16] G.R. No. 180050, Feb. 10, 2010.

decisis can and should apply – especially to the Supreme Court – and perhaps the formulation of a clear set of criteria for its application.

II. SEVENTEEN LAWS, ONE PROVINCE AND SIXTEEN CITIES: TEN DECISIONS, TWO CASES, ONE COURT

A. *League of Cities of the Philippines v. COMELEC*

In *League of Cities of the Philippines v. COMELEC*,[17] the Court ruled on the same issue a record-setting seven times. It changed its "mind" three times. In the process, it reversed its own final and executory decision in the very same case and proceeded to rule in the other direction.

This controversy has its origins in the 11th Congress when thirty-three (33) laws converting 33 municipalities into cities were enacted into law. During this time, twenty-four (24) other bills converting 24 municipalities into cities were not passed. At this time, the annual income requirement for a municipality to become a city was 20 million pesos under the Local Government Code.

During the 12th Congress, Republic Act (R.A.) No. 9009, which amended section 450 of the Local Government Code by **increasing the annual income requirement for conversion of a municipality into a city** from 20 million pesos to 100 million pesos, was enacted.[18] The rationale for the amendment was to restrain, in the words of Senator Sen. Aquilino Pimentel, "the mad rush" of municipalities to convert into cities solely to secure a larger share in the Internal Revenue Allotment despite the fact that they are incapable of fiscal independence. As a result of the increased annual income requirement under R.A. No. 9009, the

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[17] G.R. No. 176951, G.R. No. 177499, G.R. No. 178056;

[18] The amended provisions reads:

Sec. 450. Requisites for Creation. — (a) A municipality or a cluster of barangays may be converted into a component city if it has a **locally generated average annual income, as certified by the Department of Finance, of at least One hundred million pesos (P100,000,000.00) for the last two (2) consecutive years** based on 2000 constant prices, and if it has either of the following requisites:

(i) a contiguous territory of at least one hundred (100) square kilometers, as certified by the Land Management Bureau; or

(ii)a population of not less than one hundred fifty thousand (150,000) inhabitants, as certified by the National Statistics Office.

The creation thereof shall not reduce the land area, population and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) The territorial jurisdiction of a newly-created city shall be properly identified by metes and bounds. The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, transfers, and non-recurring income. (Emphasis supplied)

24 municipalities could no longer qualify under the increased annual income requirement. The House of Representatives of the 12th Congress adopted Joint Resolution No. 29 seeking to exempt the remaining 24 municipalities whose cityhood bills had not been approved during the 11th Congress from the 100 million-peso income requirement; this exemption did not materialize as the Senate did not join the resolution.

During the 13th Congress, Joint Resolution No. 1, reiterating the sentiments of Joint Resolution No. 29 under the 12th Congress, was adopted by the House of Representatives and forwarded to the Senate for approval; again, the Senate failed to approve the exemption sought under Joint Resolution No. 1. Not to be deterred, sixteen (16) municipalities[19] filed, through their respective sponsors,

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[19] The sixteen cityhood laws are the following:

1. R.A. No. 9389, entitled "An Act converting the Municipality of Baybay in the Province of Leyte into a component city to be known as the City of Baybay." Lapsed into law on Mar. 15, 2007;
2. R.A. No. 9390, entitled "An Act converting the Municipality of Bogo, Cebu Province into a component city to be known as the City of Bogo." Lapsed into law on Mar. 15, 2007;
3. R.A. No. 9391, entitled "An Act converting the Municipality of Catbalogan in the Province of Samar into a component city to be known as the City of Catbalogan." Lapsed into law on Mar. 15, 2007;
4. R.A. No. 9392, entitled "An Act converting the Municipality of Tandag in the Province of Surigao del Sur into a component city to be known as the City of Tandag." Lapsed into law on Mar. 15, 2007;
5. R.A. No. 9394, entitled "An Act converting the Municipality of Borongan in the Province of Eastern Samar into a component city to be known as the City of Borongan." Lapsed into law on Mar. 16, 2007;
6. R.A. No. 9398, entitled "An Act converting the Municipality of Tayabas in the Province of Quezon into a component city to be known as the City of Tayabas." Lapsed into law on Mar. 18, 2007;
7. R.A. No. 9393, entitled "An Act converting the Municipality of Lamitan in the Province of Basilan into a component city to be known as the City of Lamitan." Lapsed into law on Mar. 15, 2007;
8. R.A. No. 9404, entitled "An Act converting the Municipality of Tabuk into a component city of the Province of Kalinga to be known as the City of Tabuk." Lapsed into law on Mar. 23, 2007;
9. R.A. No. 9405, entitled "An Act converting the Municipality of Bayugan in the Province of Agusan del Sur into a component city to be known as the City of Bayugan." Lapsed into law on Mar. 23, 2007;
10. R.A. No. 9407, entitled "An Act converting the Municipality of Batac in the Province of Ilocos Norte into a component city to be known as the City of Batac." Lapsed into law on Mar. 24, 2007;
11. R.A. No. 9408, entitled "An Act converting the Municipality of Mati in the Province of Davao Oriental into a component city to be known as the City of Mati." Lapsed into law on Mar. 24, 2007;
12. R.A. No. 9409, entitled "An Act converting the Municipality of Guihulngan in the Province of Negros Oriental into a component city to be known as the City of Guihulngan." Lapsed into law on Mar. 24, 2007;
13. R.A. No. 9434, entitled "An Act converting the Municipality of Cabadbaran into a component city of the Province of Agusan Del Norte to be known as the City of Cabadbaran." Lapsed into law on Apr. 12, 2007;
14. R.A. No. 9436, entitled "An Act converting the Municipality of Carcar in the Province of Cebu into a component city to be known as the City of Carcar." Lapsed into law on Apr. 15, 2007;
15. R.A. No. 9435, entitled "An Act converting the Municipality of El Salvador in the Province of Misamis Oriental into a component city to be known as the City of El Salvador." Lapsed into law on Apr. 12, 2007; and

individual cityhood bills, all of which contained a common provision exempting all the 16 municipalities from the P100 million income requirement under R.A. No. 9009. These cityhood bills were approved by the House of Representatives and the Senate, and lapsed into law without the President's signature. The 16 cityhood laws directed the Commission on Elections (COMELEC) to hold plebiscites to determine whether the voters in each municipality approved of the conversion.

The 16 cityhood laws were challenged by the League of Cities of the Philippines on the ground that they were unconstitutional for violation of article X, section 10 of the 1987 Constitution,[20] which provides that no city shall be created except in accordance with the criteria established in the Local Government Code, and the equal protection clause under article III, section 1.[21] The petitioner League of Cities of the Philippines argued that the wholesale conversion of municipalities into cities would reduce the share of existing cities in the Internal Revenue Allotment (IRA). The sole issue presented to the Court was the constitutionality of the 16 cityhood laws.

First, Second and Third Decisions:
16 Cityhood Laws Unconstitutional

In its *first* decision dated November 18, 2008, through Associate Justice Carpio, the Court, voting 6-5,[22] declared the 16 cityhood laws unconstitutional on the ground that they violated article X, section 10 and the equal protection clause under article III, section 1. In essence, the Court held that since the municipalities did not meet the P100 million income requirement under section 450 of the Local Government Code, as amended by R.A. No. 9009, the cityhood laws converting the 16 municipalities into cities were unconstitutional. Additionally, the Court also held that there was no valid classification between those entitled and those not entitled to exemption from the P100 million income requirement because:

16. R.A. No. 9491, entitled "An Act converting the Municipality of Naga in the Province of Cebu into a component city to be known as the City of Naga." Lapsed into law on Jul. 15, 2007.

[20] CONST. art. X, § 10. No province, city, municipality, or barangay may be created, divided, merged, abolished or its boundary altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

[21] Art. III, § 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

[22] Those who concurred in this decision written by Justice Carpio were Quisumbing, Austria-Martinez, Carpio-Morales, Velasco, Jr. and Brion. Justice Reyes wrote a separate dissent joined by Corona, Azcuna, Chico-Nazario and Leonardo-de Castro. The following took no part: Chief Justice Puno, Justices Nachura and Tinga while Ynares-Santiago was on official leave.

(1) There was **no substantial distinction** between municipalities with pending cityhood bills in the 11th Congress when R.A. No. 9009 was enacted and municipalities that did not have such pending bills;
(2) The **classification criterion,** that is, mere pendency of a cityhood bill in the 11th Congress, was not germane to the purpose of the law, which was to prevent fiscally nonviable municipalities from converting into cities;
(3) **The pendency of a cityhood bill in the 11th Congress limited the exemption to a specific condition existing at the time of passage of R.A. No. 9009**, a condition that would never happen again, violating the requirement that a valid classification must not be limited to existing conditions only; and
(4) **Limiting the exemption only to the 16 municipalities** violated the requirement that the classification must apply **to all similarly situated**; municipalities with the same income as the 16 respondent municipalities could not convert into cities.[23] (Emphasis supplied)

This first decision was the subject of a motion for reconsideration by the 16 municipalities which was denied on March 31, 2009 by the Court in its *second* decision, through a vote of 7-5.[24] The 16 municipalities filed a second motion for reconsideration. The Court's *third* decision on the same issue affirmed the first and second decision because it was deadlocked, 6-6;[25] in such an instance, the decision under consideration would have to be affirmed. Thus, after three decisions, the 16 cityhood laws remained unconstitutional. The decision dated November 18, 2008 became final and executory and was recorded in the Book of Entries of Judgments on May 21, 2009.

That should have been the last word on the fate of the 16 municipalities. This was not to be so.

Fourth Decision:
16 Cityhood Laws Constitutional

On December 21, 2009, the Court, through Associate Justice Velasco and voting 6-4, **reversed** its November 18, 2008 decision and declared as constitutional the 16 cityhood laws, thus converting the 16 municipalities into cities. In what was now the *fourth* decision on the same issue, the Court said that based on Congress' deliberations, the clear legislative intent was that the then pending cityhood bills would be outside the pale of the minimum income requirement of P100 million and that R.A. No. 9009 would not have any retroactive effect insofar as the cityhood bills are concerned. Further, the Court

[23] G.R. No. 176951, G.R. No. 177499, G.R. No. 178056, 571 SCRA 263, 288-289, Nov. 18, 2008.
[24] G.R. No. 176951, G.R. No. 177499, G.R. No. 178056, Mar. 31, 2009.
[25] G.R. No. 176951, G.R. No. 177499, G.R. No. 178056, Apr. 28, 2009.

held that the favorable treatment accorded the sixteen municipalities by the cityhood laws rests on substantial distinction. The Court stressed that the 16 municipalities were qualified cityhood applicants before the enactment of R.A. No. 9009 and to impose on them the much higher income requirement after what they have gone through would be unfair. The reasoning behind the fourth decision was the fairness would dictate that the 16 municipalities be given a means by which they could prove that they had the necessary qualifications for cityhood under the old law, the Local Government Code of 1991, and not R.A. No. 9009.[26]

Fifth Decision:
16 Cityhood Laws Unconstitutional

Writing a then-unprecedented *fifth* decision on the same case, the Court on August 24, 2010, through Justice Carpio and voting 7-6, reversed the fourth decision and held that the 16 laws are unconstitutional. In granting the motions for reconsideration of the League of Cities of the Philippines (LCP), *et al.*, the Court reinstated its November 18, 2008 decision declaring unconstitutional the 16 laws converting the 16 municipalities into cities. According to the Court in this fifth decision, "(u)ndeniably, the 6-6 vote did not overrule the prior majority *en banc* Decision of 18 November 2008, as well as the prior majority *en banc* Resolution of 31 March 2009 denying reconsideration. The tie-vote on the second motion for reconsideration is not the same as a tie-vote on the main decision where there is no prior decision." It reiterated its November 18, 2008 ruling that the Cityhood Laws violate article X, section 10 of the Constitution which expressly provides that "no city...shall be created...except in accordance with the criteria established in the local government code." It further stressed that while all the criteria for the creation of cities must be embodied exclusively in the Local Government Code, the assailed laws provided an exemption from the increased income requirement for the creation of cities under section 450 of the LGC. According to the Court, "(t)he unconstitutionality of the Cityhood Laws lies in the fact that Congress provided an exemption contrary to the express language of the Constitution.... Congress exceeded and abused its law-making power, rendering the challenged Cityhood Laws void for being violative of the Constitution." Finally, the Court added that "limiting the exemption only to the 16 municipalities violates the requirement that the classification must apply to all similarly situated. Municipalities with the same income as the 16 respondent municipalities cannot convert into cities, while the 16 respondent municipalities can. Clearly, as worded the exemption provision found in the Cityhood Laws, even if it were written in section 450 of the Local Government Code, would still be unconstitutional for violation of the equal protection clause."

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[26] *See* G.R. No. 176951, G.R. No. 177499, G.R. No. 178056, 608 SCRA 636, Dec. 21, 2009.

Sixth and Seventh Decisions:
16 Cityhood Laws Unconstitutional

It did not stop there. On February 15, 2011, the pendulum swung to the other side again when the Court ruled in the *sixth* decision on the same matter that the laws are constitutional because they did not violate article X, section 10 and the equal protection clause.[27] The majority in this sixth decision said that article X, section 10 was not violated because the cityhood laws were amendments to the local government code inasmuch as they each provided for exemptions to R.A. No. 9009. They also ruled that there was a substantial distinction between the 16 municipalities and other aspirants, which was found "in the capacity and viability of respondent municipalities to become component cities of their respective provinces. Congress, by enacting the Cityhood Laws, recognized this capacity and viability of respondent municipalities to become the State's partners in accelerating economic growth and development in the provincial regions, which is the very thrust of the LGC, manifested by the pendency of their cityhood bills during the 11th Congress and their relentless pursuit for cityhood up to the present. Truly, the urgent need to become a component city arose way back in the 11th Congress, and such condition continues to exist."

Finally, resolving the motion for reconsideration of the League of Cities, the Court, on April 12, 2011 through Justice Bersamin, wrote the *seventh* decision on the same matter and declared, with finality (again), that the 16 Cityhood Laws are constitutional.[28] Invoking legislative intent, the Court stressed that Congress clearly intended that the local government units covered by the 16 cityhood laws be exempted from the coverage of R.A. No. 9009, which imposes a higher income requirement of P100 million for the creation of cities:

> We should not ever lose sight of the fact that the 16 cities covered by the Cityhood Laws not only had conversion bills pending during the 11th Congress, but have also complied with the requirements of the [Local Government Code] LGC prescribed prior to its amendment by RA No. 9009. Congress undeniably gave these cities all the considerations that justice and fair play demanded. Hence, this Court should do no less by stamping its *imprimatur* to the clear and unmistakable legislative intent and by duly recognizing the certain collective wisdom of Congress.

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[27] G.R. No. 176951, G.R. No. 177499, G.R. No. 178056, Feb. 15, 2011; those who concurred with the decision of Justice Bersamin were Chief Justice Corona and Justices Velasco, Leonardo-De Castro, Abad, Perez and Mendoza; the following dissented: Carpio, Carpio-Morales, Brion, Peralta, Villarama and Sereno; Justices Nachura and Del Castillo took no part.

[28] G.R. No. 176951, G.R. No. 177499, G.R. No. 178056, Apr. 12, 2011; the same vote patterns as in the sixth decision was recorded.

The Court reiterated the history of the 16 cityhood bills starting from the 11th Congress and the joint resolutions of the House of Representatives during the 12th and 13th Congress as well as the approval by both houses of the cityhood bills which all contained the exemptions from the increased annual income requirement. Thus, according to the Court, "(t)he acts of both Chambers of Congress show that the exemption clauses ultimately incorporated in the Cityhood Laws are but the express articulations of the clear legislative intent to exempt the respondents, without exception, from the coverage of R.A. No. 9009. Thereby, R.A. No. 9009, and, by necessity, the LCG, were amended, not by repeal but by way of the express exemptions being embodied in the exemption clauses."

B. *Navarro v. Ermita*

At about the same time that the Court was deciding the *League of Cities* case, it was also deliberating on R.A. No. 9355, creating the Province of Dinagat Islands in *Navarro v. Ermita*.[29] Similar to *League of Cities*, the sole question in this case was constitutionality of the cityhood law for allegedly being in violation of article X, section 10 of the 1987 Constitution.

The Petitioners filed a taxpayers suit as residents of the Province of Surigao del Norte and as former Vice-Governor and members of the Provincial Board of the Province. They allege that the creation of the Dinagat Islands as a new province, if uncorrected, perpetuates an illegal act of Congress, and unjustly deprives the people of Surigao del Norte of a large chunk of its territory, Internal Revenue Allocation and rich resources from the area.

The background, as provided by the Court's decision, are:

> The mother province of Surigao del Norte was created and established under R.A. No. 2786 on June 19, 1960. The province is composed of three main groups of islands: (1) the Mainland and Surigao City; (2) Siargao Island and Bucas Grande; and (3) Dinagat Island, which is composed of seven municipalities, namely, Basilisa, Cagdianao, Dinagat, Libjo, Loreto, San Jose, and Tubajon.
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> Based on the official 2000 Census of Population and Housing conducted by the National Statistics Office (NSO), the population of the Province of Surigao del Norte as of May 1, 2000 was 481,416, broken down as follows:

[29] G.R. No. 180050, 612 SCRA 131, Feb. 10, 2010.

Mainland	281,111
Surigao City	118,534
Siargao Island & Bucas Grande	93,354
Dinagat Island	106,951

Under Section 461 of R.A. No. 7610, otherwise known as The Local Government Code, a province may be created if it has an average annual income of not less than P20 million based on 1991 constant prices as certified by the Department of Finance, and a population of not less than 250,000 inhabitants as certified by the NSO, or a contiguous territory of at least 2,000 square kilometers as certified by the Lands Management Bureau. The territory need not be contiguous if it comprises two or more islands or is separated by a chartered city or cities, which do not contribute to the income of the province.

On April 3, 2002, the Office of the President, through its Deputy Executive Secretary for Legal Affairs, advised the Sangguniang Panlalawigan of the Province of Surigao del Norte of the deficient population in the proposed Province of Dinagat Islands.

In July 2003, the Provincial Government of Surigao del Norte conducted a special census, with the assistance of an NSO District Census Coordinator, in the Dinagat Islands to determine its actual population in support of the house bill creating the Province of Dinagat Islands. The special census yielded a population count of 371,576 inhabitants in the proposed province. The NSO, however, did not certify the result of the special census. On July 30, 2003, Surigao del Norte Provincial Governor Robert Lyndon S. Barbers issued Proclamation No. 01, which declared as official, for all purposes, the 2003 Special Census in Dinagat Islands showing a population of 371,576.

The Bureau of Local Government Finance certified that the average annual income of the proposed Province of Dinagat Islands for calendar year 2002 to 2003 based on the 1991 constant prices was P82,696,433.23. The land area of the proposed province is 802.12 square kilometers.

On August 14, 2006 and August 28, 2006, the Senate and the House of Representatives, respectively, passed the bill creating the Province of Dinagat Islands. It was approved and enacted into law as R.A. No. 9355 on October 2, 2006 by President Gloria Macapagal-Arroyo.

On December 2, 2006, a plebiscite was held in the mother Province of Surigao del Norte to determine whether the local government units directly affected approved of the creation of the Province of Dinagat Islands into a distinct and independent province comprising the municipalities of Basilisa, Cagdianao, Dinagat, Libjo (Albor), Loreto, San Jose, and Tubajon. The result of the plebiscite yielded 69,943 affirmative votes and 63,502 negative votes.

> On December 3, 2006, the Plebiscite Provincial Board of Canvassers proclaimed that the creation of Dinagat Islands into a separate and distinct province was ratified and approved by the majority of the votes cast in the plebiscite.
>
> On January 26, 2007, a new set of provincial officials took their oath of office following their appointment by President Gloria Macapagal-Arroyo. Another set of provincial officials was elected during the synchronized national and local elections held on May 14, 2007. On July 1, 2007, the elected provincial officials took their oath of office; hence, the Province of Dinagat Islands began its corporate existence.[30]

The claim is that R.A. No. 9355 creating the province of Dinagat Islands is not valid because it failed to comply with either the population or land area requirement prescribed by the Local Government Code. Petitioners went to the Supreme Court asking that the law creating the new province be declared unconstitutional and that all subsequent appointments and elections to the new vacant positions in the newly-created Province of Dinagat Islands be declared null and void and that the municipalities of the Province of Dinagat Islands and former districts of the newly-created Province of Dinagat Islands be returned to the mother Province of Surigao del Norte.

First Decision: Law Creating the Province Unconstitutional

The Court granted the petition and declared that the law creating the Dinagat province is unconstitutional for being in violation of article X, section 10 of the 1987 Constitution.[31] This would be its *first* decision in this case.

Similar to the *League of Cities* case, *Navarro* also involved a violation of the Local Government Code but unlike *League of Cities*, which was a violation of the annual income requirement under section 450 as amended, the violation alleged in *Navarro* was the requirement of land and population under section 461 of the Local Government Code.[32] In the *League of Cities* case, the question was one of

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[30] 612 SCRA 131, 135-138, Feb. 10, 2010.

[31] Thirteen members of the Court concurred in the decision written by Justice Peralta, namely, Chief Justice Puno and Associate Justices Carpio, Corona, Carpio Morales, Velasco, Jr., Leonardo-De Castro, Brion, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez and Mendoza; only Justice Nachura dissented, writing a separate dissent.

[32] The provision reads:

SEC. 461.Requisites for Creation. — (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (P20,000,000.00) based on 1991 constant prices **and <u>either</u> of the following requisites:**

fact as well as law – the 16 municipalities met the previous, lower annual income requirement but not the new, higher annual income requirement but nonetheless enjoyed an exemption from the new requirement under the laws creating them into cities. In Navarro, the question was simply one of fact – whether Dinagat met the land territory and population requirement under the Code, which it admittedly did not.

The Code requires a contiguous territory of at least 2,000 square kilometers, as certified by the Lands Management Bureau. However, the requirement of contiguous territory is dispensed with if it comprises two or more islands or is separated by a chartered city or cities that do not contribute to the income of the province.

The Court found that Dinagat Islands failed to comply with the requirement of land and population. The law creating Dinagat province expressly states that the approximate land area of the Province of Dinagat Islands 80,212 hectares or 802.12 sq. km., more or less, including Hibuson Island and approximately 47 islets. This does not comply with the land area requirement of 2,000 square kilometers. Also, the Province does not comply with the population requirement of not less than 250,000 inhabitants as certified by the NSO. Based on the 2000 Census of Population conducted by the NSO, the population of the Province of Dinagat Islands as of May 1, 2000 was only 106,951.

Second Decision: Law Creating the Province Unconstitutional

On May 12, 2010, the Court handed down its *second* decision in this same case, again through Justice Peralta,[33] denying two motions for reconsideration from the first decision. In this decision, the Court noted that the arguments presented had already been passed upon previously in its first decision on this matter. The Court, however, took note that while the Province of Dinagat Islands did not dispute the failure to comply with the statutory requirement of 2,000 square kilometers because R.A. No. 9355 only specifies an approximate total land

(i) a **contiguous territory** of at least **two thousand (2,000) square kilometers**, as certified by the Lands Management Bureau; or

(ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:

Provided, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) **The territory need not be contiguous if it comprises two (2) or more islands** or is separated by a chartered city or cities which do not contribute to the income of the province.

(c)The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income. (Emphasis added)

[33] G.R. No. 180050, 620 SCRA 529, May 12, 2010.

area of 802.12 square kilometers, the argument centered more on the claim that the province, which is composed of more than one island, is exempted from the land area requirement based on the Implementing Rules and Regulations of the LGC, particularly paragraph 2 of article 9.[34] The Court, however, maintained its position, first enunciated in its first decision of February 10, 2010,[35] thus:

> However, the Court held that paragraph 2 of article 9 of the IRR is null and void, because the exemption is not found in section 461 of the Local Government Code. There is no dispute that in case of discrepancy between the basic law and the rules and regulations implementing the said law, the basic law prevails, because the rules and regulations cannot go beyond the terms and provisions of the basic law.[36]

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[34] This states, pertinently, that "[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands."

[35] The Court, in its first decision in this case, ruled that:

The territorial requirement in the Local Government Code is adopted in the Rules and Regulations Implementing the Local Government Code of 1991 (IRR), thus:

ART. 9.Provinces. — (a) Requisites for creation — A province shall not be created unless the following requisites on income and either population or land area are present:

(1)Income — An average annual income of not less than Twenty Million Pesos (P20,000,000.00) for the immediately preceding two (2) consecutive years based on 1991 constant prices, as certified by DOF. The average annual income shall include the income accruing to the general fund, exclusive of special funds, special accounts, transfers, and nonrecurring income; and

(2)Population or land area — Population which shall not be less than two hundred fifty thousand (250,000) inhabitants, as certified by National Statistics Office; or land area which must be contiguous with an area of at least two thousand (2,000) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. *The land area requirement shall not apply where the proposed province is composed of one (1) or more islands.* The territorial jurisdiction of a province sought to be created shall be properly identified by metes and bounds.

However, the IRR went beyond the criteria prescribed by Section 461 of the Local Government Code when it added the italicized portion above stating that "[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands." Nowhere in the Local Government Code is the said provision stated or implied. Under Section 461 of the Local Government Code, the only instance when the territorial or land area requirement need not be complied with is when there is already compliance with the population requirement. The Constitution requires that the criteria for the creation of a province, **including any exemption from such criteria**, must all be written in the Local Government Code. There is no dispute that in case of discrepancy between the basic law and the rules and regulations implementing the said law, the basic law prevails, because the rules and regulations cannot go beyond the terms and provisions of the basic law.

Hence, the Court holds that the provision in Sec. 2, Art. 9 of the IRR stating that "[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands" is null and void. (citations omitted; some emphasis in the original)

[36] G.R. No. 180050, 620 SCRA 529, 537-539, May 12, 2010.

Significantly, the movants also asked the Court to adopt the fourth decision in *League of Cities*,[37] particularly on the application of the "operative facts" principle by way of *stare decisis*. The court was "not persuaded" because

> (i)n League of Cities of the Philippines v. Commission on Elections, the Court held that the 16 cityhood laws, whose validity were questioned therein, were constitutional mainly because it found that the said cityhood laws merely carried out the intent of R.A. No. 9009, now Section 450 of the Local Government Code, to exempt therein respondents local government units (LGUs) from the P100 million income requirement, since the said LGUs had pending cityhood bills long before the enactment of R.A. No. 9009. Each one of the 16 cityhood laws contained a provision exempting the municipality covered from the P100 million income requirement.
>
> In this case, R.A. No. 9355 was declared unconstitutional because there was utter failure to comply with either the population or territorial requirement for the creation of a province under Section 461 of the Local Government Code.[38]

After two decisions, the law making Dinagat Islands a province was still unconstitutional. It should have stopped there but, like *League of Cities*, it didn't.

It appeared that both the Republic, through the Solicitor General, and the Province of Dinagat Islands filed their respective motions for leave of court to admit their second motions for reconsideration, accompanied by their second motions for reconsideration. These motions were eventually "noted without action" by this Court in its June 29, 2010 Resolution.

Also, the Congressman and other elected officials of Surigao del Norte filed on June 18, 2010 a Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010. They alleged that the COMELEC had issued Resolution No. 8790, which provides:

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[37] G.R. Nos. 176951, 177499 & 178056, 608 SCRA 636, December 21, 2009; this decision, penned by Justice Velasco, resurrected the case after it had become final, and reversed the what was then final decision of unconstitutionality reached after three decisions of the Court.

[38] G.R. No. 180050, 620 SCRA 529, 545, May 12, 2010; Justice Perez dissented from this ruling citing, as part of the reasons for his dissent, the Court's fourth decision in *League of Cities*.

RESOLUTION NO. 8790

WHEREAS, Dinagat Islands, consisting of seven (7) municipalities, were previously components of the First Legislative District of the Province of Surigao del Norte. In December 2006 pursuant to Republic Act No. 9355, the Province of Dinagat Island[s] was created and its creation was ratified on 02 December 2006 in the Plebiscite for this purpose;

WHEREAS, as a province, Dinagat Islands was, for purposes of the May 10, 2010 National and Local Elections, allocated one (1) seat for Governor, one (1) seat for Vice Governor, one (1) for congressional seat, and ten (10) Sangguniang Panlalawigan seats pursuant to Resolution No. 8670 dated 16 September 2009;

WHEREAS, the Supreme Court in G.R. No. 180050 entitled "Rodolfo Navarro, et al. vs. Executive Secretary Eduardo Ermita, as representative of the President of the Philippines, et al." rendered a Decision, dated 10 February 2010, declaring Republic Act No. 9355 unconstitutional for failure to comply with the criteria for the creation of a province prescribed in Sec. 461 of the Local Government Code in relation to Sec. 10, Art. X, of the 1987 Constitution;

WHEREAS, respondents intend to file Motion[s] for Reconsideration on the above decision of the Supreme Court;

WHEREAS, the electoral data relative to the: (1) position for Member, House of Representatives representing the lone congressional district of Dinagat Islands, (2) names of the candidates for the aforementioned position, (3) position for Governor, Dinagat Islands, (4) names of the candidates for the said position, (5) position of the Vice Governor, (6) the names of the candidates for the said position, (7) positions for the ten (10) Sangguniang Panlalawigan Members and, (8) all the names of the candidates for Sangguniang Panlalawigan Members, have already been configured into the system and can no longer be revised within the remaining period before the elections on May 10, 2010.

NOW, THEREFORE, with the current system configuration, and depending on whether the Decision of the Supreme Court in Navarro vs. Ermita is reconsidered or not, the Commission RESOLVED, as it hereby RESOLVES, to declare that:

a. If the Decision is reversed, there will be no problem since the current system configuration is in line with the reconsidered Decision, meaning that the Province of Dinagat Islands and the Province of Surigao del Norte remain as two (2) separate provinces;

b. If the Decision becomes final and executory before the election, the Province of Dinagat Islands will revert to its previous status as part of the First Legislative District, Surigao del Norte.

But because of the current system configuration, the ballots for the Province of Dinagat Islands will, for the positions of Member, House of Representatives, Governor, Vice Governor and Members, Sangguniang Panlalawigan, bear only the names of the candidates for the said positions.

Conversely, the ballots for the First Legislative District of Surigao del Norte, will, for the position of Governor, Vice Governor, Member, House of Representatives, First District of Surigao del Norte and Members, Sangguniang Panlalawigan, show only candidates for the said position. Likewise, the whole Province of Surigao del Norte, will, for the position of Governor and Vice Governor, bear only the names of the candidates for the said position[s].

Consequently, the voters of the Province of Dinagat Islands will not be able to vote for the candidates of Members, Sangguniang Panlalawigan, and Member, House [of] Representatives, First Legislative District, Surigao del Norte, and candidates for Governor and Vice Governor for Surigao del Norte. Meanwhile, voters of the First Legislative District of Surigao del Norte, will not be able to vote for Members, Sangguniang Panlalawigan and Member, House of Representatives, Dinagat Islands. Also, the voters of the whole Province of Surigao del Norte, will not be able to vote for the Governor and Vice Governor, Dinagat Islands. Given this situation, the Commission will postpone the elections for Governor, Vice Governor, Member, House of Representatives, First Legislative District, Surigao del Norte, and Members, Sangguniang Panlalawigan, First Legislative District, Surigao del Norte, because the election will result in [a] failure to elect, since, in actuality, there are no candidates for Governor, Vice Governor, Members, Sangguniang Panlalawigan, First Legislative District, and Member, House of Representatives, First Legislative District (with Dinagat Islands) of Surigao del Norte.

c. If the Decision becomes final and executory after the election, the Province of Dinagat Islands will revert to its previous status as part of the First Legislative District of Surigao del Norte.

The result of the election will have to be nullified for the same reasons given in Item "b" above. A special election for Governor, Vice Governor, Member, House of Representatives, First Legislative District of Surigao del Norte, and Members, Sangguniang Panlalawigan, First District, Surigao del Norte (with Dinagat Islands) will have to be conducted.

This intervention was denied by the Court on July 20, 2010. Undeterred, this became subject of a motion for reconsideration. In the meantime, the February 10, 2010 decision of the Court in this case had been entered and was now final.

On October 29, 2010, the interventors filed an "Urgent Motion to Recall Entry of Judgment" asking that the first decision be recalled and reconsidered and that the July 20, 2010 resolution denying their intervention be reconsidered.

This now set the stage for the Court to consider this very same case once again even as it had already declared the law unconstitutional twice and the decision had already become final.

Third Decision: Law Creating the Province Constitutional

Thus, on April 12, 2011, the Court once again ruled on this same case, and, this time, the pendulum swung over to the other side. In its *third* decision on the same case, the Court, through Justice Nachura, among other reliefs, set aside the May 12, 2010 resolution (second decision). As a result, the Court declared that:

> (t)he provision in Article 9(2) of the Rules and Regulations Implementing the Local Government Code of 1991 stating, "The land area requirement shall not apply where the proposed province is composed of one (1) or more islands," is declared **VALID**. Accordingly, Republic Act No. 9355 (An Act Creating the Province of Dinagat Islands) is declared as **VALID** and **CONSTITUTIONAL**, and the proclamation of the Province of Dinagat Islands and the election of the officials thereof are declared **VALID**.[39]

The *ratio* for this third decision was the "clear legislative intent" to include the exemption from the land area requirement even if the same was not expressly stated in the Local Government Code.[40] After three decisions in the same case, the law was now constitutional.

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[39] G.R. No. 180050, Apr. 12, 2011.

[40] Three dissents were registered (Carpio, Brion and Peralta), all of whom submitted separate dissenting opinions arguing against the majority's adoption of the principle of "legislative construction."

III. JUDICIAL FLIP FLOPS

In his dissent in *Navarro*, Justice Brion wrote that:

> I submit this Dissenting Opinion to express my objections ***in the strongest terms*** against the transgressions the Court committed in ruling on this case. The result, which is obvious to those who have been following the developments in this case and current Supreme Court rulings, is another **flip-flop**, made worse by the violations of the Court's own Internal Rules. This is not, of course, the Court's first flip-flop in recent memory; we did a couple of remarkable somersaults in our rulings in the case of *League of Cities of the Philippines, et al. v. Comelec.* **This Dissent is written in the hope that the Court's violation of its own rules in this case will be the last, and that the Court will re-think its disposition of this case.**[41]

For a Court that professes adherence to precedent as a means of ensuring stability, what has been revealed by the *League of Cities* and *Navarro* flip flops has been the transactional nature by which the Court decides cases. While it is not the first time the Court has changed its mind and, certainly it is entitled to change its mind,[42] the manner by which these cases were eventually decided was certainly disturbing.

In both *League of Cities* and *Navarro*, final judgments were set aside and the main case revived on second or more motions for reconsideration; in the *Navarro* case, the third decision was premised on the arguments submitted, essentially for the first time, by new parties. A transactional mindset, that is, that the Court is ruling for the moment and that its ruling will only apply to the case presented, weakens *stare decisis* and lessens the stability, predictability and eventually consistency of judicial decisions.

Instead of applying *res judicata* as well as *stare decisis*, the Court set aside precedents and proceeded to rule in both instances as if the issues were being presented for the first time, even on motion for reconsideration. And to the extent that both cases resulted in the Court changing its mind many times on the same issues presented before it underscores what appears to be a transactional, that is, a *pro hac vice*,[43] mindset in resolving such disputes.

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[41] *See* dissenting opinion of Justice Brion, G.R. No. 180050, Apr. 12, 2011 (emphasis in the original, citations omitted).

[42] Under the Constitution, a decision of the Supreme Court may only be set aside by the Court *en banc.*

[43] Literally translated "for this occasion."

A. THE COURT ON *STARE DECISIS*

The Supreme Court is vested with the exclusive power under the Constitution to promulgate rules on pleading, practice and procedure.[44] Thus, it is the sole entity which may determine how courts are to decide cases as well as the correctness of a court's decisions and actions. As both a court of first and last resort,[45] the Supreme Court's actions, expressed through its decisions, resolutions and circulars, take on authoritative force not only among the members of the bench and bar but also on the public at large. Notably, the Court has not provided in any rule,[46] circular or resolution any standards for the invocation and application of *stare decisis*, opting to define the parameters for this invocation in its decisions.

These parameters and standards are important because *stare decisis*, unlike *res judicata*, is not a command. Rule 39, sec. 47 of the Rules of Court provides for the rule on *res judicata* and, in an appropriate instance, the rule is binding on a court. *Stare decisis*, however, is not an inflexible rule nor is it an "inexorable command."[47] In fact, the Court may overrule itself as the Constitution gives the Supreme Court the power to modify or reverse its own decisions except that only the Court sitting *en banc* may do so.[48]

On the part of a lower court judge, however, the discretion to disregard a Supreme Court decision is very limited. In deciding a case where a precedent exists, the lower court may not overrule or modify the Supreme Court's ruling even if it believes it is wrong, uncontextual or outdated. The trial court has to choose simply between applying or not applying the precedent. Failure or refusal of a court to apply precedent may, however, be challenged for being in grave abuse of discretion. For this reason the guidance of the Court becomes very important.

In *De Castro v. Judicial and Bar Council*,[49] the Court, in resolving various motions for reconsideration of its decision holding that the President may appoint a Chief Justice despite a constitutional provision holding that appointments may

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[44] CONST. art. VIII, § 5(5).

[45] Under art. VIII, § 5(1) and (2), the Supreme Court has both original jurisdiction thus making it a court of first resort and appellate jurisdiction over final orders thus making it a court of last resort;

[46] Rule 39, secs. 47 and 48 define the conclusiveness of a judgment, whether domestic or foreign, under the principle of *res judicata*. The provisions do not define the standards and parameters under which a judge may choose to be bound or not bound by precedent.

[47] Burnet v. Colorado Oil and Gas, 285 U.S. 393 (1932), Brandeis, J., *dissenting*.

[48] CONST. art. VIII, § 4(3).

[49] G.R. No. 191002, G.R. No. 191032, G.R. No. 191057, A.M. No. 10-2-5-SC, G.R. No. 191149, G.R. No. 191342, G.R. No. 191420, 618 SCRA 639, Apr. 20, 2010.

not be made during the election period, countered the view that *stare decisis* should control and argued against the application of *stare decisis*, thus:

> *Stare decisis* derives its name from the Latin maxim *stare decisis et non quieta movere,* i.e., to adhere to precedent and not to unsettle things that are settled. It simply means that a principle underlying the decision in one case is deemed of imperative authority, controlling the decisions of like cases in the same court and in lower courts within the same jurisdiction, unless and until the decision in question is reversed or overruled by a court of competent authority. The decisions relied upon as precedents are commonly those of appellate courts, because the decisions of the trial courts may be appealed to higher courts and for that reason are probably not the best evidence of the rules of law laid down.
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> **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.** In a hierarchical judicial system like ours, the decisions of the higher courts bind the lower courts, but the courts of co-ordinate authority do not bind each other. The one highest court does not bind itself, being invested with the innate authority to rule according to its best lights.
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> **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**.
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> For the intervenors to insist that *Valenzuela* ought not to be disobeyed, or abandoned, or reversed, and that its wisdom should guide, if not control, the Court in this case is, therefore, devoid of rationality and foundation. They seem to conveniently forget that the Constitution itself recognizes the innate authority of the Court en banc to modify or reverse a doctrine or principle of law laid down in any decision rendered en banc or in division.[50] (Emphasis supplied)

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[50] G.R. No. 191002, G.R. No. 191032, G.R. No. 191057, A.M. No. 10-2-5-SC, G.R. No. 191149, G.R. No. 191342, G.R. No. 191420, 618 SCRA 639, 657-660, Apr. 20, 2010.

In *Negros Navigation v. Court of Appeals*,[51] the Court stated that "(t)he doctrine of *stare decisis* works as a bar only against issues litigated in a previous case. Where the issue involved was not raised nor presented to the court and not passed upon by the court in the previous case, the decision in the previous case is not *stare decisis* of the question presently presented." From this formulation, it would appear that *stare decisis* is the same as *res judicata* as the primary consideration would appear to be the identity of issues presented.[52]

In *Jose Chong v. Secretary of Labor*,[53] the Court ruled that "(t)he 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."

In *Osmena v. COMELEC*,[54] the Court invoked *stare decisis* to uphold its previous ruling on the same issue, citing that the present resort did not present a justiciable controversy but simply an academic discussion. Interestingly, two Justices in their respective separate opinions argued against simply upholding precedent based on *stare decisis*, setting forth criteria and standards when a precedent should be overruled. In her separate dissenting opinion, Justice Romero argued that:

> While it is desirable, even imperative, that this Court, in accordance with the principle of *stare decisis*, afford stability to the law by hewing to doctrines previously established, said principle was never meant as an obstacle to the abandonment of established rulings where abandonment is demanded by public interest and by circumstances. Reverence for precedent simply as precedent cannot prevail when constitutionalism and public interest demand otherwise. Thus, a doctrine which should be abandoned or modified accordingly. More pregnant than anything else is that the court should be right.[55]

Justice Panganiban, on the other hand, in his separate dissent submitted that

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[51] G.R. No. 110398, 281 SCRA 534, 545, Nov. 7, 1997.

[52] The same formulation was used by the Court in Tung Chun Hui v. Rodriguez, G.R. No. 137571, 340 SCRA 765, 772-773, Sep. 21, 2000.

[53] G.R. No. 47616, 79 Phil. 249, 257, Sep. 16, 1947.

[54] G.R. No. 132231, 288 SCRA 447, 489, Mar. 31, 1998.

[55] *Id.*

> (m)ore important than consistency and stability are the verity, integrity and correctness of jurisprudence. As Dean Roscoe Pound explains, "Law must be stable but it cannot stand still." Verily, it must correct itself and move in cadence with the march of the electronic age. Error and illogic should not be perpetuated.

In *People v. Daganio*,[56] the Court invoked *stare decisis* in justifying its reliance on the testimony of a mother as to the age of her daughter as well as the credibility of the mother's testimony, substituting both a finding of fact (age) and a conclusion of law (credibility) with a precedent.

In *Columbia Pictures v. CA*,[57] the Court ruled that *stare decisis* cannot be invoked retroactively to impose greater conditions than that which was previously prevailing at that time.

In *Gosiaco v. Ching*,[58] the Court applied *stare decisis* and considered a precedent binding because it did not want to overrule a case it had just recently decided.

In *Lepanto Consolidated Mining v. Executive Labor Arbiter*,[59] the Court expressly invoked *stare decisis* to remind the National Labor Relations Commission and labor arbiters of the applicable rule which the Court had set forth, thus:

> The court serves notice on the National Labor Relations Commission (NLRC), labor arbiters and other responsible officials of the Department of Labor and Employment to take their bearings from this rule that illegally dismissed employees or laborers shall be entitled to reinstatement without loss of seniority and to payment of back wages of not more than three years without any qualification or deduction. Although this policy had been consistently adhered to by the court even after the passage of the present Labor Code, there are still many instances, as in this case and other cases decided by the court, where the labor arbiters and/or the NLRC still awarded back wages beyond the 3-year limit set by the Court. The governing principle, which has given consistency and stability to the law, is *stare decisis et non movere* (follow past precedents and do not disturb what has been settled).

These decisions provide a snapshot of how the Court views *stare decisis* and when it feels compelled to be bound and, conversely, not bound by precedent. From this snapshot, the following standards can be culled:

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[56] G.R. No. 137385, 374 SCRA 365, Jan. 23, 2002.
[57] G.R. No. 111267, 262 SCRA 219, Sep. 20, 1996.
[58] G.R. No. 173807, 585 SCRA 471, Apr. 16, 2009.
[59] G.R. No. 77437, 162 SCRA 512, 520, Jun. 23, 1988.

a) The court will apply precedent and not consider revisiting the legal issue or principle previously decided if the facts and legal issues presented in one case are the same or sufficiently similar with a previous decision already decided in a particular manner.
b) On the other hand, if the precedent is considered unsound or violative of law, the Court will not consider itself to be bound and may revisit the same with an eye towards reversing or modifying the ruling.
c) The Court considers itself bound by precedent, despite changes in the composition of the Court for so long as the precedent remains consistent with the law and has disposed of a legal issue in a very particular way. However, changes in the composition of the Court may trigger a reexamination and, if necessary, a rectification of the precedent because the Court does not consider *stare decisis* to be a rule that is to be followed rigidly but a convenient means to ensure stability of judicial decisions.

B. *STARE DECISIS* OF A DIFFERENT SORT

In the Philippines, only the decisions of the Supreme Court have precedential value, that is, only Supreme Court decisions can bind for purposes of *stare decisis*. Thus, only the lower courts[60] and the Court of Appeals would be bound by *stare decisis*.

There is, however, a curious form of binding precedent that the Supreme Court itself adopts and it represents a *stare decisis* of a different sort. The Supreme Court is not a trier of fact and, for every petition that is brought before it, the findings of fact are generally not reviewed by the Court as only questions of law or grave abuse of discretion are reviewed. On the rare occasion that a review of the facts may be relevant, the Court generally defers to the trial court and voluntarily accepts the findings of fact, considering them binding on the Court unless grave abuse of discretion is shown.[61]

In doing so, the Court is essentially extending *stare decisis* vertically upward, from the trial courts to the Supreme Court. It must be noted that this would be the only occasion that the trial court's ruling or findings would be conclusive and binding on the Supreme Court.

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[60] Included in this hierarchy would be the trial courts (Regional Trial Courts and the Metropolitan/Municipal Trial Courts).

[61] Manotok Realty v. CLT Realty Development Corporation, G.R. No. 123346, 476 SCRA 305, Nov. 29, 2005.

C. *PRO HAC VICE* RULINGS

The flip-flopping referred to by Justice Brion in his dissent in *Navarro* shows just how dangerous and how unstable judicial decision-making can be if it is transactional, or *pro hac vice*, in nature. By saying the decision-making is transactional means that the Court rules only to settle the particular dispute and not necessarily to set forth doctrine or authority; essentially *pro hac vice*, or "for this occasion" only.

In the United States, the phrase *pro hac vice* is a qualifier that is used to denote a limited or special appearance in a jurisdiction where a lawyer is not licensed to practice law; its meaning and context would be that the appearance would be "for this turn" or for "on this one occasion." Such limited permission to practice law would be allowed only upon leave of court and would thus be subject to the discretion of the court.

In the Philippines, however, the phrase *pro hac vice* has been used in very different contexts and has taken on a different meaning. It does not refer to limited permission to practice because there is only one, mandatory bar for the Philippines and the permission to practice law is granted only by one entity, the Supreme Court.[62] The use of the phrase *pro hac vice* in the Philippines, while still retaining its literal "on this one occasion" meaning, has evolved to something much broader than limited permission to appear before a court. The range of usage of the phrase can be seen in the following illustrative cases:

In *Philippine National Bank v. Judge Pabalan*,[63] the Court used the qualifier *pro hac vice* to refer to the exception under which the government loses its immunity to be sued, *to wit*: "By engaging in a particular business thru the instrumentality of a corporation, the government divests itself *pro hac vice* of its sovereign character, so as to render the corporation subject to the rules of law governing private corporations."

In *Litonjua Shipping v. National Seamen Board*,[64] the Court described a temporary and limited characterization of the shipowner in a bareboat charter as the owner *pro hac vice* for purposes of assigning liability.

In *Coronel v. Desierto*,[65] the Court relaxed an administrative and technical rule in order to allow a petition for certiorari wrongly filed with the Supreme Court

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[62] CONST. art. VIII, § 5(5)
[63] G.R. No. 33112, 83 SCRA 595, 600, Jun. 15, 1978.
[64] G.R. No. 51910, 176 SCRA 189, Aug. 10, 1989.
[65] G.R. No. 149022, 401 SCRA 27, Apr. 8, 2003.

and not with the Court of Appeals to be considered as *pro hac vice* a petition for review and remanded the same to the Court of Appeals. The reason for the *pro hac vice* ruling was the very serious issues raised in the petition and the implications on the petitioner if the petition were not to be allowed as the decision of the ombudsman would become final. In a similar vein, in *Bayog v. Matino*,[66] the Court allowed a petition for review *pro hac vice* even if such was a prohibited pleading under the Rules on Summary Procedure because of "peculiar circumstances" and to avoid a patent injustice.

In *Manila Electric Company v. Secretary of Labor*,[67] the Court applied a formula *pro hac vice* in settling a labor dispute, that is, retroacting an arbitral award to the first day after the sixth month period following the expiration of a collective bargaining agreement. The reason for the *pro hac vice* application in this case was social justice in favor of the workers after applying a "balancing of interests" test.

In *Hidalgo v. Republic of the Philippines*,[68] the Court referred *pro hac vice* to the Civil Service Commission a case involving government employees decided by a labor arbiter without jurisdiction because of the length of time that the case had been pending (almost ten years). Instead of annulling the decision and having to start all over again, the Court referred the matter to the Civil Service Commission but in a *pro hac vice* capacity, that is, only for the occasion and only because of the specific reason.

The cases *supra* show that the Court adopts the qualifier *pro hac vice* if it wants to emphasize that its ruling applied only to that specific occasion and because of a very specific reason. In the three cases discussed *infra*, however, the Court goes beyond that and categorically states that its rulings apply also *pro hac vice* and that the rulings should not be taken as precedent.

In *Lazaro Kavinta v. Hon. Castillo Jr.*,[69] the Supreme Court First Division ruled *pro hac vice* that belated compliance with the rule on attaching a certification against forum shopping would constitute substantial compliance because of the proximity of the date between the effectivity of the rule requiring the certification and the filing of the complaint. In this case, however, the Court specifically characterized what its *pro hac vice* ruling meant.

> We thus rule *pro hac vice*, but not without a whit of reluctance, that this special circumstance in this case could sustain the action of the respondent

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[66] G.R. No. 118691, 258 SCRA 378, Jul. 5, 1996.
[67] G.R. No. 127598, 337 SCRA 90, 98-99, Aug. 1, 2000.
[68] G.R. No. 179793, 623 SCRA 391, Jul. 5, 2010.
[69] G.R. No. 117083, 249 SCRA 604, Oct. 27, 1995.

> Judge. **This should not be taken, however, as a precedent.** Elsewise stated, the mere submission of a certification under Administrative Circular No. 04-94 after the filing of a motion to dismiss on the ground of non-compliance thereof does not ipso facto operate as a substantial compliance; otherwise the Circular would lose its value or efficacy.[70] (Emphasis added)

In *Professional Services Inc. v. CA* (and companion cases),[71] the Court *en banc* held a hospital liable for negligence under the principle of "Ostensible Agency" and *pro hac vice* under the principle of corporate negligence for failure to perform its duties as a hospital. Having decided these cases earlier in 2007, the Court in its 2010 decision disposed of a rare second motion for reconsideration filed with leave of court but nonetheless denied the same and ordered the hospital to pay damages *pro hac vice*. Similar to *Kavinta*, the Court expressly stated that the "hospital liability based on ostensible agency and corporate negligence applies only to this case, *pro hac vice*. It is not intended to set a precedent and should not serve as a basis to hold hospitals liable for every form of negligence of their doctors-consultants under any and all circumstances. The ruling is unique to this case..."

In *Republic of the Philippines v. Vega*,[72] the Court through its Third Division held as substantial compliance *pro hac vice* proof that a parcel of land is alienable and disposable through means other that prescribed in one of its decisions. In its ruling, the Court clearly stated that it had no intention of overturning its previous decision, thus:

> It must be emphasized that the present ruling on substantial compliance applies *pro hac vice*. It does not in any way detract from our rulings in Republic v. T.A.N. Properties, Inc., and similar cases which impose a strict requirement to prove that the public land is alienable and disposable, especially in this case when the Decisions of the lower court and the Court of Appeals were rendered prior to these rulings. To establish that the land subject of the application is alienable and disposable public land, the general rule remains: all applications for original registration under the Property Registration Decree must include both (1) a CENRO or PENRO certification and (2) a certified true copy of the original classification made by the DENR Secretary.
>
> As an exception, however, the courts—in their sound discretion and based solely on the evidence presented on record—may approve the application, *pro hac vice*, on the ground of substantial compliance showing that there has been a positive act of government to show the nature and character of the land and an absence of effective opposition from the government. This exception shall only apply to applications for registration

[70] 249 SCRA 604, 609, Oct. 27, 1995.
[71] G.R. Nos. 126297, 126467, 127590, 611 SCRA 282 , 300, Feb. 2, 2010.
[72] G.R. No. 1777790, Jan. 17, 2011.

> currently pending before the trial court prior to this Decision and shall be inapplicable to all future applications.

In *Hacienda Luisita Inc. v. PARC,*[73] the Court resolved the long-simmering agrarian reform controversy at Hacienda Luisita by upholding the action of the Presidential Agrarian Reform Council (PARC) which invalidated Hacienda Luisita's stock distribution plan. In the penultimate paragraph of the decision is this caveat: "The instant petition is treated *pro hac vice* in view of the peculiar facts and circumstances of the case."

IV. *STARE INDECISIS?*

There are several things that are bothering about the Court's decisions in *League of Cities* and *Navarro* and how the Court arrived at them.

First, the Court considered itself only selectively bound by precedents on the various issues presented without a clear indication as to how one precedent is chosen but the other is not. Reading through the decisions (seven in *League of Cities*, three in *Navarro*), the Court chose which precedents it would apply but also which it would not. What tilted the balance in favor of one but not all of the precedents it had is not clear.

For instance, in *Navarro*, the question of the IRR to the Local Government Code being *ultra vires* for providing terms not in the law has been decided previously by the Court *en banc* in *Pharmaceutical and Health Care Association of the Philippines v. Secretary of Health.*[74] In this case, the Court struck down provisions of the IRR to the Milk Code for imposing restrictions not contained in the law. Even before this, the principle was already accepted to the point of immutability, that an administrative rule cannot include matters that are not included in the law itself because it would amount to additional legislation done administratively. When confronted in the third *Navarro* decision with the challenge to its previous two rulings on the void nature of the IRR to the Local Government Code, the Court chose not to adhere to the precedent in *Pharmaceutical and Health Care Association v. Secretary of Health* and effectively created a new rule, that is, even if the IRR provides for terms, exemptions, conditions, restrictions, and prohibitions not found in the law itself, these may still be considered valid if it can be divined that there was a "clear legislative intent" to include these terms, exemptions, conditions, restrictions, and prohibitions in the law even if they were actually not included.

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[73] G.R. No. 171101, Jul. 5, 2011.

[74] G.R. No. 173034, 535 SCRA 265, Oct. 9, 2007.

Second, the Court did not consider itself bound even by finality of its own decisions. Showing an alarming alacrity to consider new submissions in the same case, even by new parties (as in the case of *Navarro*), the manner by which the Court viewed the two cases and the way it resolved the cases (seven decisions in *League of Cities*, three decisions in *Navarro*) highlighted its transactional decision-making process. Justice Brion, in his *Navarro* dissent, pointed out the importance of immutability of decisions calling it as "one of the pillars supporting a strong, credible and effective court."[75] Indeed, unless decisions become final, then litigation would never end and stability and the consequent predictability of decisions would never be achieved. It certainly does not augur well for the sound administration of justice if the Supreme Court itself can, literally, resurrect a final decision and swing the result the other way.

Third, given the number of decisions involved, seven for *League of Cities* and three for *Navarro,* it is difficult, without clear guidelines or standards, to determine which one carries doctrinal authority. In *Navarro*, for instance, the Court was asked, on motion for reconsideration from its first decision, to consider applying the "operative fact" principle cited in the fourth decision in *League of Cities*. In the fourth decision[76] in *League of Cities*, penned by Justice Velasco, the Court, almost as an aside, said:

> A final consideration. The existence of the cities consequent to the approval of the creating, but challenged, cityhood laws in the plebiscites held in the affected LGUs is now an operative fact. New cities appear to have been organized and are functioning accordingly, with new sets of officials and employees. Other resulting events need not be enumerated. The operative fact doctrine provides another reason for upholding the constitutionality of the cityhood laws in question.

Considering the circumstances of its invocation in the fourth decision, the "operative fact principle" is actually only *dictum* as far as the fourth decision is concerned. In the fifth decision,[77] however, dated August 24, 2010, the Court disregarded the "operative facts" principle as part of the *ratio* and thus investing it with significant authoritative value, thus:

> The operative fact doctrine never validates or constitutionalizes an unconstitutional law. Under the operative fact doctrine, the unconstitutional law remains unconstitutional, but the effects of the unconstitutional law, prior to its judicial declaration of nullity, may be left

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[75] *See* dissenting opinion of Justice Brion, G.R. No. 180050, Apr. 12, 2011.
[76] G.R. No. 176951, 608 SCRA 636, 676, Dec. 21, 2009.
[77] G.R. No. 176951, 628 SCRA 819, 834 Aug. 24, 2010.

> undisturbed as a matter of equity and fair play. In short, the operative fact doctrine affects or modifies only the effects of the unconstitutional law, not the unconstitutional law itself.
>
> Thus, applying the operative fact doctrine to the present case, the Cityhood Laws remain unconstitutional because they violate Section 10, Article X of the Constitution. However, the effects of the implementation of the Cityhood Laws prior to the declaration of their nullity, such as the payment of salaries and supplies by the "new cities" or their issuance of licenses or execution of contracts, may be recognized as valid and effective. This does not mean that the Cityhood Laws are valid for they remain void.

If the "operative fact" principle were to be seriously considered to be *stare decisis* by the Court in *Navarro*, it ought to have been the Court's fifth ruling and not its fourth ruling, as it is *ratio* in the fifth and *dictum* in the fourth. But this also begs the question, considering the very slim majority involved, of how, if at all, these cases could carry significant doctrinal value. In fact, the Court, again, in its seventh and last decision in *League of Cities* had this to say about the "operative fact" principle, without calling it that:

> We should not ever lose sight of the fact that the 16 cities covered by the Cityhood Laws not only had conversion bills pending during the 11th Congress, but have also complied with the requirements of the LGC prescribed prior to its amendment by R.A. No. 9009. Congress undeniably gave these cities all the considerations that justice and fair play demanded. Hence, this Court should do no less by stamping its imprimatur to the clear and unmistakable legislative intent and by duly recognizing the certain collective wisdom of Congress.[78]

The succession of cases and differences in rulings based on the same set of facts for both cases usher in a confusing and bewildering state of affairs where a court relying solely on the Supreme Court for guidance on when to apply *stare decisis*, which precedent to use for *stare decisis* and when, if at all, *stare decisis* should not apply is not given any guidance at all.

V. CONCLUSION

There is clearly a need for the Court to clarify when *stare decisis* applies and under what conditions. Yet, its own actions in the two cases, *League of Cities* and *Navarro*, show that the Court itself appears to be unclear on these matters. Hence, the following concerns are submitted and some concrete steps towards addressing this need.

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[78] G.R. No. 176951, Apr. 12, 2011.

Due regard for specific content and context of rulings

In applying previous decisions as precedent, the Court does not appear too mindful of the specific content of the rulings that it invokes as precedent. Many times, the Court chooses to be bound by a ruling simply because it has disposed, in general terms, of the legal principle that is being re-litigated in the case under present consideration but fails to consider the ruling's intrinsic content as well as its context. To my mind, for a decision to become doctrine, it should be unanimous or nearly unanimous. A decision that is carried by one or two votes cannot be said to be doctrinal simply because it may be easily reversed the next time around. Yet, the Court, in invoking previous cases and applying them as precedent under *stare decisis* does not consider this.

The context for a particular decision ought to also be considered by the Court before the decision is invoked as precedent. Not only the legal issues but also the facts as well as the operative conditions under which the facts arose should be considered. Applying a legal principle that is based on outdated facts is not only irresponsible, it is also wrong.

For instance, the common assertion that "(n)o young Filipina of decent repute would publicly admit she has been raped unless that is the truth"[79] is an assertion that has a long and rich vintage. It has become so common due to frequent invocation by way of *stare decisis* that the Court treats this as canonical, though often not always in context. It is submitted that this ruling, and similar rulings of older vintage, must be re-examined to determine their appropriateness given current realities and conditions. The Court must set out guidelines to determine "outlier" decisions or those which are no longer consistent with current practice, understandings or even reality.

Stare decisis does not mean only adhering to prececents, it also, on occasion, requires changing the prececent. The United States Supreme Court in *Planned Parenthood v. Casey*[80] considered, among the guidelines for determining whether a precedent should be overruled or abandoned, "whether the rule has proven to be intolerable simply in defying practical workability; whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and lend inequity to the cost of repudiation; whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine; or whether facts have so changed, or come to be

[79] People v. Madsali, G.R. No. 179570, 611 SCRA 596, 608, Feb. 4, 2010.
[80] 505 U.S. 833 (1992).

seen so differently, as to have robbed the old rule of significant application or justification."

Without a clear understanding of what decisions may be considered uncontextual or outliers, the tendency to simply accept each and every decision as precedent is tempting; in the end, the objectives of achieving stability and clarity in judicial decision-making would not be achieved.

One Court, many divisions

The Supreme Court is one court under the Constitution.[81] In reality, however, there are four Courts because the Supreme Court is allowed to work in two ways: by divisions of five and as a whole court of fifteen members or *en banc*.[82] Whether by division or as a *banc*, however, the Court does not distinguish as to the authoritative nature of its decisions. Whether *en banc* or by division, the Court considers its decisions as having been rendered by the one Court and equally authoritative. In its Internal Rules, the Supreme Court lists down only one source of "significant doctrinal value" – a decision.[83] It does not distinguish whether a decision by a division has the same doctrinal value as a decision by the *banc*.

This failure to distinguish is significant because a decision by a division can be reached by simply a majority of the members, which is three votes out of five members.[84] Without qualification and simply on the basis of parity of issues, a decision approved by three members of the Court may be considered precedent simply because of the fiction that a division decision is on the same level of authoritativeness as one rendered by the Court *en banc*. The Court must provide clear guidelines for the courts to understand which decisions acquire that level of "authoritativeness" such that it could be precedent under *stare decisis*.

One way it can do this is to distinguish the type of cases it assigns to the division and the type of cases it handles en banc. For decisions which are essentially transactional, or dispute resolution involving the present time with no implications for future cases, a division may decide it with the understanding that such a decision applies only to the parties in that case and all others who could have been parties in relation to the issues presented in that case and could have been presented. All other decisions which require more than a transactional perspective, that is, the decision decided in the present may have a future impact, must be decided by the whole court. The Court may also wish to specify that

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[81] CONST. art, VIII, § 1, para. 1

[82] Art. VIII, § 4(1)

[83] A.M. No. 10-4-20-SC ("SC Internal Rules"), rule 13, § 6(a).

[84] SC Internal Rules, rule 12, § 1(b).

should such a decision obtain only a simple plurality, it does not become authoritative and that only if the decision is unanimous may it become precedent.

Stare Decisis *to be Applied*
Only When There is Need

That the Philippines is not a common law jurisdiction makes it incumbent on the Court to recognize that *stare decisis* is neither mandatory nor is it indispensable in discharging the judicial function. The primary mandate of the courts is still to interpret the law and, despite what the fourth decision in *League of Cities* says, the primary rule of interpretation is still not to interpret where the law is clear.

The Court must also recognize that "(t)he obligation to follow precedent begins with necessity, and a contrary necessity marks its outer limit."[85] There must be a balance between transactional decision-making, i.e., decisions rendered only to settle a dispute for the moment, and decisions that are impressed with significant doctrinal value, i.e., decisions that will define rights, relationships, and structures beyond the current dispute. While the courts are not expected to treat each case as new and reinvent the wheel, at every turn, so too are they not expected to mechanically apply precedent and bind itself to rulings from the past that would define, establish, extinguish and create rights, relations and structures for the future.

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[85] Planned Parenthood v. Casey, 505 U.S. 833 (1992).