RECENT JURISPRUDENCE ON POLITICAL LAW*

I. CONSTITUTIONAL LAW

A. *Falcis III v. Civil Registrar General*[1]

Lawyer Jesus Falcis III filed a petition assailing the constitutionality of Articles 1 and 2 of the Family Code, arguing that by restricting marriage between a man and a woman, said provisions of law run against the petitioner's constitutional rights to due process, equal protection, decisional and marital privacy, and founding a family in accordance with religious convictions. Additionally, he posited homosexual couples are as capable of fulfilling essential marital obligations—procreation not being one of these obligations. In this light, restricting marriage among same-sex couples is unfounded, and thus contravened their right to liberty.

The Supreme Court, through Justice Leonen, dismissed the petition due to the petitioner's failure to pose a facial challenge to the assailed provisions of the Family Code. He neither posed an actual case or controversy nor established *locus standi* as he is not seeking marriage himself. According to the Court, "[t]he need to demonstrate an actual case or controversy is even more compelling in cases concerning minority groups" because despite being equipped with legal expertise, the Court is not the final authority in other disciplines. The petition did not cite any study, statistics, paper, or statement to establish the gravity of petitioner's cause, "failing to represent the very real and well-documented issues the LGBTQI+ community face in Philippine society."

Nevertheless, the decision made a big leap for the cause of the lesbian, gay, bisexual, transgender, queer, intersex, and other gender and sexual minorities (LGBTQI+) community after the Supreme Court recognized their marginalization. The latter also pointed out that the plain text of the Constitution "does not define or restrict marriage on the basis of sex, gender, sexual orientation, or gender identity or expression," acknowledging that anchoring the idea of the family as a social institution "on the concept of complementarity of the sexes is to perpetuate the discrimination faced by couples, whether opposite-sex or same-sex, who do not fit into that mold."

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* *Cite as Recent Jurisprudence on Political Law,* 93 PHIL. L.J. 251, [page cited] (2020).

[1] G.R. No. 217910, Sept. 3, 2019.

B. *Lagman v. Medialdea*[2]

Four petitions were filed against the third extension of Martial Law in Mindanao. The petitioners argued that the Court, under Section 18, Article VII of the Constitution, is mandated to conduct an independent determination of the existence of the factual basis on which such extension was predicated, and to review the sufficiency of the same. They also posited that the situation in Mindanao has ceased to warrant another extension of martial law, and that Congress committed grave abuse of discretion in approving it despite the lack of factual basis.

The consolidated petitions were dismissed by the Supreme Court. It ruled that it "need not delve into the accuracy of the reports upon which the President's decision was based, or the correctness of his decision to declare martial law or suspend the writ, for this is an executive function." It upheld its pronouncement in the 2017 decision concerning the same issue, holding it was within the discretion of Congress to extend martial law on the basis of the deliberations of the Constitutional Commission, thus setting a precedent since the Constitution is silent on the duration of such extension.

Since President Rodrigo Duterte declared martial law in Mindanao on May 23, 2017 through Proclamation 216, the Chief Executive has requested three extensions thereof—the first was in July 2017, when the 60-day state of martial law was supposed to expire; the second, for the entirety of 2018; and the third, until the end of 2019. Citing weakened terrorist and extremist rebellion forces, the Chief Executive no longer sought a fourth extension from Congress. Notably, in all of its decisions concerning the matter, the Supreme Court has consistently sustained the Chief Executive's discretion in declaring martial law and Congress' prerogative in extending the same. In the process, the Court has buttressed its line of jurisprudence relating to the emergency powers of these two co-equal branches of government.

C. *Pimentel v. Legal Education Board*[3]

Petitioners, as citizens, taxpayers, lawyers, law students, and law professors, brought a suit against the constitutionality of Republic Act No. 7662, or the Legal Education Reform Act of 199, which aims "to uplift the standards of legal education" in the country. Fulfilling its mandate, the Legal Education Board (LEB) required aspiring law students to pass the Philippine Law Schools Admission Test ("PhiLSAT") as a prerequisite for admission to

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[2] G.R. No. 243522, Mar. 15, 2019.

[3] G.R. No. 230642, Sept. 10, 2019.

basic law courses in any law school. Petitioners averred the LEB's authority and the PhiLSAT contravened Section 5(5), Article VIII of the Constitution, which enshrines the Supreme Court's power to regulate and supervise the admission to the practice of law. According to the petitioners, the PhiLSAT requirement also transgressed the academic freedom of law and the citizens' right to education.

The Supreme Court, through Justice Reyes Jr., elucidated on its jurisdiction as far as legal education was concerned. It held that the Court does not exercise exclusive rule-making power over regulating and supervising legal education—it only does so in the practice of law. However, it deemed, among others, the PhiLSAT unconstitutional, stating that "[w]hen [it] is used to exclude, qualify, and restrict admissions to law schools, as its present design mandates, [it] goes beyond mere supervision and regulation, [and] violates institutional academic freedom." It held that in: (1) prescribing the cut-off score; (2) requiring law schools to only admit applicants meeting the cut-off score; and (3) rejecting those who do not meet the same, as well as those whose PhiLSAT eligibility has prescribed, "[it] actually usurps the right and duty of the law school to determine for itself the criteria for the admission of students[,] and thereafter, to apply such criteria on a case-to-case basis."

Nonetheless, the Court did not completely bar any future iterations of the PhiLSAT. Provided that it is administered as an aptitude test and is not "exclusionary, restrictive, or qualifying as to encroach upon institutional academic freedom," the Court held that it still relates "to the State's unimpeachable interest in improving the quality of legal education."

II. PUBLIC OFFICERS

A. *Republic v. Sereno*[4]

The Office of the Solicitor General (OSG) filed a petition for *quo warranto* against then Chief Justice Maria Lourdes Sereno, questioning the latter's appointment as an associate justice of the Supreme Court in 2010. Submission of Statements of Assets, Liabilities, and Net worth (SALNs) is mandated by the Judicial and Bar Council as a requirement for SC Justice nominations. The petitioner averred the respondent only filed 11 out of 25 she ought to have filed, and should have been disqualified at the outset for such non-compliance. More importantly, the OSG contended that respondent's failure to submit her SALN constituted her failure to prove her

[4] G.R. No. 237428, June 19, 2018.

integrity—a constitutional requirement for the position she was appointed to. Being ineligible, she had no right to hold the office she occupied, and thus may be ousted through *quo warranto* proceedings. In response, the respondent averred, among others, that the action for *quo warranto* filed by the OSG is time-barred. Under Rule 66 of the Rules of Court, an action for *quo warranto* may only be filed within one year from the cause of the ouster. The contested appointment was made in 2012—more than five years have already lapsed by the time the action was filed.

Amidst all this, the SC granted the petition. In light of the use of the permissive term "may" in Section 2, Article XI of the Constitution, the Court held that impeachment is not the sole remedy for ousting ineligible or invalidly appointed or elected officials. As to the issue of whether or not prescription barred the action at hand, the Court ruled in the negative. It sided with the contention of the OSG that "prescription does not lie against the State." It also deemed the respondent ineligible for the position of Chief Justice on the ground that compliance with the SALN submission requirement closely relates to one's integrity. As she had failed to comply with this requirement, she cannot be regarded as a person of integrity, which is one of the constitutional requirements for magistrates. The Court likewise held that her appointment as Chief Justice by the former President did not cure this defect, as an act of the Chief Executive cannot override a requirement mandated by the supreme law of the land.

Contrary to the long-established doctrine concerning impeachable officers in the Constitution, the Court ruled that *quo warranto* extends even to impeachable officers, citing its decision in *Estrada v. Desierto*.[5] However, despite seemingly doing away with the prescription rule on *quo warranto* proceedings, the Court clarified that "[t]he one-year prescriptive period under Section 11, Rule 66 of the Rules of Court still stands" The rule remains for *quo warranto* proceedings "filed by the Solicitor General or public prosecutor at the request and upon relation of another person, with leave of court," or "filed by an individual in his or her own name [...] except when established jurisprudential exceptions are present."

[5] 406 Phil. 167 (2001).

III. ADMINISTRATIVE LAW

A. *Republic v. Gallo*[6]

Michelle Soriano Gallo sought to correct the name written on her birth certificate from "Michael" to "Michelle," and the sex from "Male" to "Female" under Rule 108 of the Rules of Court. The Republic contended that the change sought by Gallo is substantial and not merely clerical, and therefore covered by Rule 103, and that Gallo failed to exhaust administrative remedies and observe the doctrine of primary jurisdiction as it is Republic Act (R.A.) No. 9048 that now governs the change of first name, superseding the civil registrar's jurisdiction over the matter.

Under the old rules, a judicial authorization was required for substantial changes in the given name or surname, provided they fall under any of the valid reasons recognized by law, while Rule 108 governed corrections of clerical errors. R.A. No. 9048 amended Articles 376 and 412 of the Civil Code, effectively removing clerical errors and changes of first names from the ambit of Rule 108, placing them instead under the jurisdiction of the civil registrar. Thus, a person may now change his or her first name, or correct clerical errors in his or her name through administrative proceedings. Rules 103 and 108 only apply if the administrative petition was filed and later denied. In 2012, R.A. No. 9048 was amended by R.A. No. 10172, which clarified that change in the first name, the day and month of birth, and the sex of a person may now be done administratively.

In this case, however, R.A. No. 10172 does not apply as it was only enacted on August 15, 2012—more than two years after Gallo filed her Petition for Correction of Entry. Hence, R.A. No. 9048 still governs. Considering that Gallo had shown that the reason for her petition was not to change the name by which she is commonly known, her petition is therefore not covered by Rule 103. Although she failed to exhaust administrative remedies and observe the doctrine of primary jurisdiction since she filed the petition directly with the trial court instead of the civil registrar first, the Republic failed to raise the issue of non-compliance at an opportune time, and hence, is estopped from raising it now before the Supreme Court.

This case cemented the prevailing rule that change in first name or correction of clerical errors in a person's name no longer requires judicial authorization, and may now be done through administrative proceedings by filing a subscribed and sworn affidavit with the local civil registry office of the

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[6] G.R. No. 207074, Jan. 17, 2018.

city or municipality where the record being sought to be changed or corrected is kept. It is only when the administrative petition is filed and later denied that Rules 103 and 108 of the Rules of Court will come into play.

B. *Genuino v. De Lima*[7]

Former Justice Secretary Leila de Lima issued a Watch List Order against former President Gloria Macapagal-Arroyo and her husband, as well as a Hold Departure Order against petitioners Genuino when criminal complaints were filed against them, pursuant to her authority under Department of Justice (DOJ) Circular No. 41, s. 2010 otherwise known as the *Consolidated Rules and Regulations Governing Issuance and Implementation of Hold Departure Orders, Watch List Orders, and Allow Departure Orders*, the constitutionality of which is being contested.

The Court held that there is no law particularly providing for the authority of the Justice Secretary to curtail the exercise of the right to travel in the interest of national security, public safety, or public health. DOJ Circular No. 41 is not a law; it is a mere administrative issuance designed to carry out the provisions of Executive Order 292, otherwise known as the "Administrative Code of 1987." However, before there can even be a valid administrative issuance, there must first be a showing that the delegation of legislative power is complete in itself and fixes a standard, the limits of which are sufficiently determinate and determinable, to which the delegate must conform in the performance of his or her functions. If these two are fulfilled, then the administrative issuance is valid.

Here, the provisions being relied upon by the former DOJ secretary will disclose that they do not particularly vest the DOJ with the authority to issue the circular. Secretaries of government agencies have the power to promulgate rules and regulations that will aid in the performance of their functions. This, however, is different from the delegated legislative power to promulgate rules of government agencies. Without a clear mandate of an existing law, an administrative issuance is *ultra vires*. DOJ Circular No. 41 was declared unconstitutional, and all issuances released pursuant thereto were declared null and void.

While it has been established in *Silverio v. Court of Appeals*[8] that "[h]olding an accused in a criminal case within the reach of the Courts by preventing his departure from the Philippines [is] a valid restriction on his

[7] G.R. No. 197930, Apr. 17, 2018.
[8] 273 Phil. 128 (1991).

right to travel," no such rule has been laid down in the case of persons who are the subject of a preliminary investigation. This prompted the issuance of a series of DOJ orders concerning such issue, including DOJ Circular No. 41, invoked by De Lima to restrain the right to travel of former President Macapagal-Arroyo and her husband pending the conclusion of the Joint DOJ-COMELEC Preliminary Investigation Committee on the complaint for electoral sabotage against them. However, the Court struck down the circular for being unconstitutional as it curtails the fundamental right to travel, and clarified once and for all that "the issuance of HDOs is an exercise of the Court's inherent power 'to preserve and to maintain the exercise of its jurisdiction over the case and the person of the accused,'" and that the exercise of that judicial power "belongs to the Court alone, [...] which the DOJ, even as the principal law agency of the government, does not have the authority to wield." Consequently, A.M. No. 18-07-05-SC was promulgated, which allows the issuance of a Precautionary Hold Departure Order (PHDO) upon application of the investigating officer with the proper Regional Trial Court and upon the determination by a judge.

IV. LOCAL GOVERNMENT

A. *Dator v. Carpio-Morales*[9]

Villasenor filed a complaint against the incumbent Mayor of Lucban, Quezon, Dator, and Macandile for grave misconduct, grave abuse of authority, and nepotism. He alleged that in Dator's immediately preceding term, the latter hired his sister, Macandile, as Chief Administrator Officer and later on, Municipal Administrator without submitting any appointment paper to the *Sangguniang Bayan* for the required confirmation pursuant to Sec. 443(d) of the Local Government Code (LGC). Macandile allegedly lacked the qualifications and stated in her Job Order that "*she is not related within the third degree (fourth degree in the case of LGUs) of consanguinity or affinity to the 1) hiring authority and/or 2) representatives of the hiring authority*" when in truth, she is Dator's sister.

The Ombudsman dismissed the charges but found Dator administratively liable for simple misconduct for failure to observe the regular process of appointment. Dator questioned the immediate implementation of the suspension and insisted on the application of the condonation doctrine in his case.

[9] G.R. No. 237742, Oct. 8, 2018.

The Court held that the condonation principle is not applicable to him. The case of the *Office of the Ombudsman vs. Mayor Julius Cesar Vergara*[10] clarified that the abandonment of the doctrine of condonation is prospective in application, hence, the same doctrine was still applicable in cases that transpired prior to the ruling of this Court in the seminal case of *Carpio-Morales v. CA and Jejomar Binay, Jr.*[11] In this case, however, the action against Dator was instituted on May 2, 2016, or after the promulgation of *Carpio-Morales v. CA and Binay.* Therefore, the condonation principle is no longer applicable to him. Moreover, his act of issuing the Special Order and Job Order upon hiring his sister, Macandile, as Chief Administrative Officer, was irregular. There was no confirmation of the latter's appointment by the *Sangguniang Bayan* precisely because there was no existing plantilla position for municipal administrator or chief administrative officer in the local government of Lucban, Quezon.

This case not only abandoned the condonation doctrine but also tempered adherence to *stare decisis* and, in the process, provided a precedent for the abandonment of obsolete case laws. Citing American authorities in the landmark case of *Pascual vs. The Hon. Provincial Board of Nueva Ecija*,[12] the Court in *Carpio-Morales v. CA and Binay* explained that the condonation doctrine is based on the underlying theory that "each term is separate from other terms[,]" and "that the re-election to office operates as a condonation of [the officer's] previous misconduct, thereby cutting [off] the right to remove him therefor." But upon making its own investigation, the Court found that there was simply no legal authority to sustain the condonation doctrine in this jurisdiction, and that the doctrine—adopted back in 1959—has been long rendered obsolete.

B. *Mandanas v. Ochoa, Jr.*[13]

This is a consolidation of two cases assailing the manner in which the General Appropriations Act for Fiscal Year (F.Y.) 2012 computed the Internal Revenue Allotment (IRA) for local government units (LGUs). It was alleged that excise taxes, value added taxes, and documentary stamp taxes collected by the Bureau of Customs had not been included in the base amounts for the computation of the IRA when they should have been because they constituted National Internal Revenue Taxes ("NIRTs"), and that the insertion by Congress of the words "internal revenue" in the phrase "national taxes found in Section 284" of the LGC caused the diminution of the base

[10] 848 SCRA 151 (2017).
[11] 772 Phil. 672 (2015).
[12] 106 Phil. 466 (1959).
[13] G.R. No. 199802, July 3, 2018.

for determining the just share of the LGUs and should thus be declared unconstitutional.

In partially granting the petition, the Court held that while Congress possesses and wields plenary power to control and direct the destiny of the LGUs, the power is still subject to the Constitution itself. In this case, Congress exceeded its constitutional boundary by limiting to the NIRTs the base from which to compute the just share of the LGUs. The phrase "national internal revenue taxes" engrafted in Section 284 is more restrictive than the term "national taxes" in Section 6. As such, Congress departed from the letter of the 1987 Constitution, which states that the national taxes should be the base from which the just share of the LGU is to be obtained. Despite these pronouncements, the unconstitutionality of Section 284 of the LGC and its related laws, insofar as they limited the source of the just share of the LGUs to the NIRTs, is prospective. It cannot be otherwise under the doctrine of operative fact, which recognizes the existence of the law or executive act prior to the determination of its unconstitutionality as an operative fact that produced consequences that cannot always be erased, ignored, or disregarded. In short, it nullifies the void law or executive act but sustains its effects. It provides an exception to the general rule that a void or unconstitutional law produces no effect.

The promulgation of the ruling in *Mandanas v. Ochoa, Jr.* deleted the phrase "internal revenue" from the related sections of the LGC—specifically Sections 285, 287, and 290—and established that LGUs are entitled to IRA based on the collections of all national taxes, and not just from national internal revenue taxes. Henceforth, the national taxes to be included in the base for computing the just share of the LGUs shall be, but not limited to, the following:

1. The NIRTs enumerated in Section 21 of the NIRC, as amended, to be inclusive of the VATs, excise taxes, and DSTs collected by the BIR and the BOC, and their deputized agents;

2. Tariff and customs duties collected by the BOC;

3. 50% of the VATs collected in the ARMM, and 30% of all other national taxes collected in the ARMM; the remaining 50% of the VATs and 70% of the collections of the other national taxes in the ARMM shall be the exclusive share of the ARMM pursuant to Section 9 and Section 15 of RA 9054;

4. 60% of the national taxes collected from the exploitation and development of the national wealth; the remaining 40% will exclusively accrue to the host LGUs pursuant to Section 290 of the LGC;

5. 85% of the excise taxes collected from locally manufactured Virginia and other tobacco products; the remaining 15% shall accrue to the special purpose funds pursuant created in RA 7171 and RA 7227;

6. The entire 50% of the national taxes collected under Section 106, Section 108, and Section 116 of the NIRC in excess of the increase in collections for the immediately preceding year; and

7. 5% of the franchise taxes in favor of the national government paid by franchise holders in accordance with Section 6 of RA 6631 and Section 8 of RA 6632.

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