

Expanding The Powers of The Commission on Appointments: An Unconstitutional Effort.

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An expansion of the confirming powers of the Commission on Appointments is unconstitutional for the primary reason that it shall run counter to Section 16 of Article VII of the New Constitution. Allow me to elaborate further on the unconstitutionality of such.

First, Section 16 of Article VII of the Constitution provides:

The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in the Constitution. He shall also appoint all other officers of the government whose appointments are not otherwise provided by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards."

The text of this provision is clear. Confirmation by the Commission on Appointments is required only for the heads of executive departments, ambassadors, public ministers, consuls, officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in the President by the Constitution, such as the members of the various Constitutional Commissions. With respect to the other officers whose appointments are not otherwise provided for by law and to those whom the President may be authorized by law to appoint, no confirmation by the Commission on Appointments is required. Had it been the intention to allow Congress to expand the list of officers whose appointments must be confirmed by the Commission on Appointments, the Constitution would have said so by adding the phrase "and other officers required by law" at the end of the first sentence, or the phrase, "with the consent of the Commission on Appointments" at the end of the second sentence. Evidently our Constitution has omitted to provide for such additions.

Since the language of this provision is clear, there is no room for interpretation.

What it ('the Constitution') says according to the text of the provision to be construed compels acceptance and negates the

power of the courts to alter it, based on the postulate that the framers and the people mean what they say.¹

The intent of a Constitution must be gathered from the four corners of the document.²

Second, the first sentence of Section 16 of Article VII of the Constitution enumerates the officers whose appointments must be confirmed by the Commission on Appointments, hence, any other officer is excluded from the requirement of confirmation by the Commission on Appointments.

Any other matter not mentioned therein is deemed excluded. This is under the principle of *Expressio Unius Est Exclussio Alterius*.³

Third, the substantive changes in the text of Section 16 of Article VII of the Constitution clearly shows the intent of the framers to exclude from the requirement of confirmation, officers other than those mentioned in the first sentence. These changes are not without reason.

Subsection 3, Section 10 of Article VII of the 1935 Constitution reads:

The President shall nominate and with the consent of the Commission on Appointments shall appoint the heads of the executive department and bureaus, officers of the army from the rank of colonel, of the navy, and air forces, from the rank of captain or commander, and all other officers of the Government whose appointments are not herein otherwise provided for, and those whom he may be authorized by law to appoint; but the Congress may by law vest the appointment of inferior officers, in the President alone, in the courts, or in the heads of departments.

¹ *J.M. Tuason & Co., Inc., vs. Land Tenure Administration* 31 SCRA 413, 423. In this case, then Justice Fernando reasoned:

The ascertainment of meaning of provisions of Constitution begins with the language of the document itself the words used in the Constitution are to be given their ordinary meaning except where technical terms are employed in the Constitution in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that if it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say.

² *Manila Lodge No. 761 vs. Court of Appeals*, 73 SCRA 162, 177.

³ *Lerum vs. Cruz*, 87 Phil. 652, 65.

The original text of Section 16 of Article VII of the present Constitution as embodied in Resolution No. 517 of the Constitutional Commission reads as follows:

The President shall nominate and, with the consent of the Commission on Appointments, shall appoint the heads of the executive departments and bureaus, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of captain or commander, and all other officers of the Government whose appointments are not herein otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may by law vest the appointment of inferior officers in the President alone, in the courts or in the heads of the department."

Three points should be noted regarding Subsection 3 of Section 10 of Article VII of the 1935 Constitution and in the original text of Section 16 of Article VII of the present Constitution as proposed in Resolution No. 517.

First point, in both of them, the appointments of heads of bureaus were required to be confirmed by the Commission on Appointments.

Second point, in both of them, the appointments of other officers, "whose appointments are not otherwise provided for by law and those whom the President may be authorized by law to appoint" are expressly made subject to confirmation by the Commission on Appointments. However, in the final version of Resolution No. 517, as embodied in Section 16 of Article VII of the present Constitution, the appointments of the above mentioned officers are excluded from the list of those officers whose appointments are required to be confirmed by the Commission on Appointments. This amendment, reflected in Section 16 of the Article VII of the Constitution, clearly shows the intent of the framers to exclude such appointments from the requirement of confirmation by the Commission on Appointments.

Third point, under the 1935 Constitution the word "nominate" qualifies the entire Subsection 3 of Section 10 of Article VII thereof. Under Section 16 of Article VII of the present Constitution, however, the word "nominate" appears only in the first sentence. It does not appear in both the second and third sentences. In fact, in the second and third sentences, only the words "appoint" and "appointment" appear respectively.

The difference is substantive. When the Constitution, whether the 1935 or the 1986, states that the President shall "nominate" and with the consent of the Commission on Appointments, appoint etc., it assumes three steps. As prescribed in the case of *Lacson vs. Romero*.⁴

⁴84 Phil. 744, In this case, the appointment at issue involved the position of provincial fiscal.

First, comes the nomination by the President. To make that nomination valid and permanent, the Commission on Appointments of the legislature has to confirm the nomination. The last step is the acceptance thereof by the appointee by his assumption of office.”⁵

This three stage process, concededly applies to all appointments pursuant to Section 10 of Article VII of the 1935 Constitution. It may not be said, however, of Section 16, Article VII, of the 1986 Constitution. Pursuant to Section 16, Article VII of the present Constitution, the word “nominate” appears only in the first sentence, hence, the three stage process applies only to those officers enumerated in the said sentence. Conversely, the word “nominate” does not appear in the second and third sentences of the said section, hence, the three stage process does not apply to officers the President may appoint pursuant to the second and third sentences.

The import of the difference in language between the 1935 and 1986 Constitutions is best described in the words of Representative Miguel Romero.⁶

“Over the weekend, we discussed this matter with Father Joaquin G. Bernas, an authority on Constitutional Law, who maintains innovative views on this matter. Based on our discussions and the ruminations embodied in a letter dated August 2, 1987, the pertinent view of Fr. Bernas can be outlined as follows:

First, he observed that under Sec. 16. Art. VII of the 1987 Constitution “. . . there are now three sentences. The first sentence speaks of nomination, consent, and appointment. The second sentence, beginning with the phrase “he shall also appoint” speaks only of appointment . . . The conclusion, therefore, is that, whereas under the 1935 text, the general rule was that all Presidential appointments needed the consent of the Commission on Appointments under the 1987 text only those coming under the first sentence of Section 16 need the consent of the Commission on Appointments.”⁷

“The deliberate selection in a statute of language differing from that of earlier acts on the subject indicates that a change of law was intended.”⁸

⁵ *Ibid.*, at 745.

⁶ Vice Chairman of the Commission on Appointments, House of Congress and sponsor of House Bill 2740: Expanding the Confirming Powers of The Commission on Appointments.

⁷ Privileged speech of Congressman Miguel Romero, given on August 4, 1987.

⁸ *Portillo vs. Salvani*, 54, Phil 543, 547, citing *Brewster vs. Gage* [1930], U.S. Sup. Ct. Advance opinions, p. 183.

Fourth, the intention to exclude other officials is clear from the explanation of Commissioner Vicente Foz, who sponsored the amendment, as shown by the following excerpts from the proceedings of the Constitutional Commission.

“Mr. Regalado: May we have the amendments one by one.

The first proposed amendment is to delete the words ‘and bureaus’ on line 26.

Mr. Foz; That is correct.

Mr. Regalado: For the benefit of the other Commissioner, what would be the justification of the proponent of such a deletion?

Mr. Foz: The position of Bureau Director is actually quite low in the executive department and to require further confirmation of Presidential appointment of heads of bureaus would subject them to political influence.”⁹

Subsequently, Commissioner Florenz Regalado remarked:

Madam President, the committee accepts the proposed amendment because it makes it clear that these other officers mentioned therein do not have to be confirmed by the Commission on Appointments.¹⁰

Fifth, to interpret Section 16 of Article VII of the Constitution as authorizing Congress to enact a law expanding the number of officers whose appointments must be confirmed by the Commission on Appointments will result in absurdities. For illustrative purposes, since clerks of courts and sheriffs are appointed, it would be unreasonable to imply that Congress may pass a law stating that the appointment of such officers must also be confirmed by the Commission on Appointments. In addition, under Section 23 of Article VI of the Constitution, all appropriation, revenue tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills shall originate exclusively in the House of Representatives. It would be similiary unconstitutional for Congress to pass a law expanding the list of bills that must originate exclusively from this House. As a final illustration, under Subsection 2 of Section 27 of Article VI of the Constitution, the President has the power to veto any particular item in an appropriation, revenue or tariff bill. Thus can Congress pass a law expanding this list so as to authorize the President to veto particular items in other types of bills? Patently, the answer would be negative.

Sixth, Congress cannot pass a law interpreting Section 16 of Article VII of the Constitution allowing it to expand the list of officers whose appoint-

⁹Records of The Constitutional Commission, Volume II, July 31, 1986, p. 313.

¹⁰*Ibid* at p. 520 etc . . .

ments must be confirmed by the Commission on Appointments. It is for the Courts and not for Congress to interpret the Constitution.¹¹

In *Angara V. Electoral Commision*¹² our Supreme Court ruled:

From the very nature of the Republican Government established in our country in the light of American experience and of our own, upon the judicial department is thrown the solemn and inescapable obligation of interpreting the Constitution and defining constitutional boundaries.¹³

For the legislature to arrogate upon itself the solemn obligation reposed in the Supreme Court is a travesty of the principle of separation of powers.

This act of interpreting the Constitution or any part thereof by the legislature is an invasion of the well-defined and established province and jurisdiction of the judiciary.¹⁴

While it may be conceded that the House of Representatives may determine its own rules through these bills, it should not be forgotten that the issue at hand is a judicial one. As held in the case of *U.S. vs. Smith*.¹⁵

The Constitution empowers each House to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights. x x x as the construction to be given to the rules affects persons other than members of the Senate, the question presented is of necessity a judicial one.

Lastly, there are those who quote the remarks of Father Joaquin Bernas during the proceedings of the Constitutional Commission, in which he stated that Congress may pass a law requiring the appointment of other officers to be confirmed by the Commission on Appointments.¹⁷

¹¹ *Chinese Flour Importers Association v. Prince Stabilization Board*, 89 Phil. 439, 359, citing *State ex rel Washington-Oregon I v. Co. Dobson*, 130 P2d 939, 169, Or. 546, which stated. "A legislative declaration of opinion as to the meaning of earlier statues, with a positive legislative act, is not binding on the court in the construction of the earlier statue, since statutory construction is a 'judicial' not a 'legislative function'."

¹² 63 Phil 139.

¹³ *Ibid.*, at 160.

¹⁴ *Endencia vs. David*, 93 Phil. 696, 701.

¹⁵ 286 US 6

¹⁶ *Ibid.*, at 33.

¹⁷ Records of the Constitutional Commission, Vol II, July 31, 1986 pp. 320-321. In the deliberations, Commissioner Davide, in seeking clarification of the amendment asked:

With the acceptance of the proposed amendment, would Congress be prohibited from creating an office and vesting the authority of appointing

As explained above, such alleged intent is not borne by the clear text of Section 16 of Article VII of the Constitution. Such alleged intent cannot be given effect. Since it was not implemented by the incorporation of a corresponding amendment in the text of Section 16 of Article VII of the Constitution.

It is pertinent to observe here that, as pointed out by one of appellants' own cited authorities, in the interpretation of a legal document, especially a statute, unlike in the interpretation of an ordinary written document, it is not enough to obtain information as to the intention or meaning of the author or authors, but also to see whether the intention or meaning has been expressed in such a way as to give it legal effect and validity. In short, the purpose of the inquiry, is not only to know what the author meant by the language he used, but also see that the language used sufficient expresses that meaning. The legal act, so to speak, is made up of two elements — an internal and an external one; it originates in intention and is perfected by expression.¹⁸

In conclusion, everyone from the highest official to the lowliest citizen is bound by the Constitution. Congress no less must accept the limitations of its powers.

officials therein on the President, with the requirement that such appointments should bear the confirmity or consent of the Commission on Appointments? Under the proposal, it would seem that all other such officials may be appointed without the consent of the Commission on Appointments, prohibiting, therefore, the legislature to so create an office for which the requirement for consent of the Commission on Appointments for positions therein is stated in the law itself.

In reply, Fr. Bernas stressed that:

The constitutional list of officers whose appointments need the confirmation of the Commission on Appointments is not exclusive. If the Congress is so minded, it may require other officers also to be confirmed by the Commission on Appointments.

¹⁸Manila Jockey Club Inc. vs. Games and Amusement Board 107 Phil. 151, 158.