G.R. No. 196231 – EMILIO A. GONZALES III, *petitioner –versus–* OFFICE OF THE PRESIDENT OF THE PHILIPPINES, etc., et al., *respondents.*

G.R. No. 196232 – WENDELL BARRERAS-SULIT, *petitioner –versus–* ATTY. PAQUITO N. OCHOA, JR., etc., et al., *respondents.*

Promulgated:

September 4, 2012

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CONCURRING AND DISSENTING OPINION

BRION, *J.*:

The present case consists of two consolidated petitions, G.R. No. 196231 and G.R. No. 196232.

I concur with the *ponencia*'s main conclusion that petitioner Emilio Gonzales III (in G.R. No. 196231, referred to as *Gonzales* or *petitioner Gonzales*) is not guilty of the charges leveled against him. But with due respect, ***I disagree with the conclusion that Section 8(2) of Republic Act (RA) No. 6770 (which empowers the President to remove a Deputy Ombudsman or a Special Prosecutor) is constitutionally valid.***

The petition of Wendell Barreras-Sulit (in G.R. No. 196232, referred to as *Sulit* or *petitioner Sulit*) commonly shares with G.R. No. 196231 the issue of the constitutionality of Section 8(2) of RA No. 6770. For the same reasons of unconstitutionality discussed below, the administrative proceedings against Sulit should be halted and nullified as she prays for in her petition.

G.R. No. 196231 is a petition questioning the validity of the administrative proceedings conducted by the Office of the President against Gonzales who was the Deputy Ombudsman for Military and Other Law Enforcement Offices.

The action against him before the Office of the President consists of an administrative charge for Gross Neglect of Duty and/or Inefficiency in the Performance of Official Duty (under Section 22, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and other pertinent Civil Service laws, rules and regulations), and of Misconduct in Office (under Section 3 of the Anti-Graft and Corrupt Practices Act [RA No. 3019]).[1] The administrative case against Gonzales was recommended by the Incident Investigation and Review Committee (*IIRC*) in connection with the hijacking of a tourist bus resulting in the death of the hijacker and of some passengers; the hijacker then accused Gonzales of illegal exactions and of delaying the disposition of his Ombudsman case.

On March 31, 2011, the Office of the President found[2] Gonzales guilty of Gross Neglect of Duty and Grave Misconduct constituting betrayal of public trust, and penalized him with dismissal from office.

In **G.R. No. 196232**, petitioner Sulit, a Special Prosecutor in the Office of the Ombudsman, seeks to halt and nullify the ongoing administrative proceedings conducted by the Office of the President against her. Sulit was charged with violating Section 3(e) of RA No. 3019 and for having committed acts and/or omissions tantamount to culpable violations of the Constitution, and betrayal of public trust.

In behalf of the Office of the Ombudsman, Sulit entered into a plea bargain with Major General Carlos F. Garcia who had been charged with

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1 *Rollo*, Vol. 1, p. 322.
2 *Id.* at 72-86.

Plunder and Money Laundering. Because of the plea bargain, Sulit was required to show cause why an administrative case should not be filed against her. She raised in her Written Explanation of March 24, 2011 the impermissibility and impropriety of administrative disciplinary proceedings against her because the Office of the President has no jurisdiction to discipline and penalize her.[3]

The two petitions – G.R. No. 196231 and G.R. No. 196232 - share a common issue: whether the President has the power to discipline or remove a Deputy Ombudsman or a Special Prosecutor in the Office of the Ombudsman from office. While the *ponencia* resolves this issue in favor of the President, **it is my considered view that the power to discipline or remove an official of the Office of the Ombudsman should be lodged only with the Ombudsman and not with the Office of the President, in light of the independence the Constitution guarantees the Office of the Ombudsman.**

The Office of the Ombudsman is a very powerful government constitutional agency tasked to enforce the accountability of public officers. Section 21 of The Ombudsman Act of 1989 (RA No. 6770) concretizes this constitutional mandate by providing that:

> Section 21. *Official Subject to Disciplinary Authority; Exceptions.* — The Office of the Ombudsman **shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries**, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary. (Emphasis ours.)

The Ombudsman's duty to protect the people from unjust, illegal and inefficient acts of all public officials emanates from Section 12, Article XI of the Constitution. These broad powers include all acts of malfeasance,

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[3] *Rollo*, Vol. 2, p. 8.

misfeasance, and nonfeasance of all public officials, **including Members of the Cabinet and key Executive officers**, during their tenure.

To support these broad powers, the Constitution saw it fit to insulate the Office of the Ombudsman from the pressures and influence of officialdom and partisan politics[4] and from fear of external reprisal by making it an "independent" office. Section 5, Article XI of the Constitution expressed this intent, as follows:

> Section 5. There is hereby created the **independent** Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed. (Emphasis ours.)

It is in this light that the general authority of the Office of the President to discipline all officials and employees the President has the authority to appoint,[5] should be considered.

In more concrete terms, **subjecting the officials of the Office of the Ombudsman to discipline and removal by the President, *whose own alter egos and officials in the Executive Department are subject to the Ombudsman's disciplinary authority*, cannot but seriously place at risk the independence of the Ombudsman and her officials, and must consequently run counter to the independence that the Constitution guarantees the Office of the Ombudsman. What is true for the Ombudsman must be equally true, not only for her Deputies but for other lesser officials of that Office who act as delegates and agents of the Ombudsman in the performance of her duties.** The Ombudsman can hardly be expected to place her complete trust in subordinate officials who are not as independent as she is, if only because they are subject to pressures and controls external to her Office. This need for complete trust is true in an

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4 See *Department of Justice v. Hon. Liwag*, 491 Phil. 270, 283 (2005); and *Deloso v. Domingo*, G.R. No. 90591, November 21, 1990, 191 SCRA 545, 550-551.

5 *Atty. Aguirre, Jr. v. De Castro*, 378 Phil. 714, 726 (1999); *Hon. Bagatsing v. Hon. Melencio-Herrera*, 160 Phil. 449, 458 (1975); and *Lacson v. Romero*, 84 Phil. 740, 749 (1949).

ideal setting and truer still in a young democracy like the Philippines where graft and corruption is still a major problem for the government. For these reasons, **Section 8(2) of RA No. 6770**[6] **(providing that the President may remove a Deputy Ombudsman)** clearly runs against the constitutional intent and should, thus, be declared void.

Significantly, the possible unconstitutional effects of Section 8(2) of RA No. 6770 were not unknown to the framers of this law. These possibilities were brought by then Senator Teofisto Guingona to the framers' attention as early as the congressional deliberations:

> Reacting thereto, Senator Guingona observed that this might impair the independence of the Tanodbayan and suggested that the procedural removal of the Deputy Tanodbayan xxx be not by the President but by the Ombudsman.
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> x x x x
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> Senator Guingona contended, however, that the Constitution provides for an independent Office of the Tanodbayan, and to allow the Executive to have disciplinary powers over the Tanodbayan Deputies would be an encroachment on the independence of the Tanodbayan.[7]

Despite Senator Guingona's objections, Congress passed RA No. 6770 and the objected Section 8(2) into law.[8] While it may be claimed that the congressional intent is clear after the Guingona objection was considered and rejected by Congress, such clarity and the overriding congressional action are not enough to insulate the assailed provision from constitutional infirmity if one, in fact, exists. This is particularly true if the infirmity relates to a core constitutional principle – the independence of the Ombudsman – that belongs to the same classification as the constitutionally-guaranteed independence that the Judiciary enjoys. To be sure, neither the Executive nor the Legislative can create the power that Section 8(2) grants

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6 Section 8. *Removal; Filling of Vacancy.*—

x x x x

(2) A Deputy or the Special Prosecutor may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.

7 *Ponencia*, p. 22.

8 *Id.* at 22-23.

where the Constitution confers none.[9] When exercised authority is drawn from a vacuum, more so when the authority runs counter to constitutional intents, this Court is obligated to intervene under the powers and duties granted and imposed on it by Article VIII of the Constitution.[10] The alternative for the Court is to be remiss in the performance of its own constitutional duties.

More compelling and more persuasive than the reason expressed in the congressional deliberations in discerning constitutional intent should be the **deliberations of the Constitutional Commission** itself on the independence of the Ombudsman. Commissioner Florenz Regalado of the Constitutional Commission openly expressed his concerns on the matter, fearing that any form of presidential control over the Office of the Ombudsman would diminish its independence:

> In other words, Madam President, what actually spawned or caused the failure of the justices of the Tanodbayan insofar as monitoring and fiscalizing the government offices are concerned was due to two reasons: First, almost all their time was taken up by criminal cases; and second, since they were under the Office of the President, their funds came from that office. I have a sneaking suspicion that they were prevented from making administrative monitoring because of the sensitivity of the then head of that office, **because if the Tanodbayan would make the corresponding reports about failures, malfunctions or omissions of the different ministries, then that would reflect upon the President who wanted to claim the alleged confidence of the people**.
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> x x x x
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> It is said here that the Tanodbayan or the Ombudsman would be a toothless or a paper tiger. That is not necessarily so. If he is toothless, then let us give him a little more teeth by making him **independent of the Office of the President** because it is now a constitutional creation, so that the insidious tentacles of politics, as has always been our problem, even with PARGO, PCAPE and so forth, will not deprive him of the opportunity to render service to Juan de la Cruz. x x x. There is supposed to be created a constitutional office — constitutionalized to free it from those tentacles of politics — and we give it more teeth and have the corresponding legislative provisions for its budget, not a budget under the Office of the President.
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9 *Bautista v. Senator Salonga*, 254 Phil. 156, 179 (1989).

10 CONSTITUTION, Article VIII, Sections 1 and 5(2).

> x x x. For that reason, Madam President, I support this committee report on a constitutionally created Ombudsman and I further ask that to avoid having a toothless tiger, there should be further provisions for statistical and logistical support.[11] (Emphases ours.)

The intention of the Constitutional Commission to keep the Office of the Ombudsman independent from the President could not have been made any clearer than when Commissioner Christian Monsod vehemently rejected the recommendation of Commissioner Blas Ople who had suggested to the Committee that the Office of the Ombudsman be placed under the Executive:

> MR. OPLE. x x x
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> May I direct a question to the Committee? xxx [W]ill the Committee consider later an amendment xxx, by way of designating the office of the Ombudsman as a constitutional arm for good government, efficiency of the public service and the integrity of the President of the Philippines, instead of creating another agency in a kind of administrative limbo which would be accountable to no one on the pretext that it is a constitutional body?
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> MR. MONSOD. The Committee discussed that during our committee deliberations and when we prepared the report, it was the opinion of the Committee — and I believe it still is — that it may not contribute to the effectiveness of this office of the Ombudsman precisely because many of the culprits in inefficiency, injustice and impropriety are in the executive department. Therefore, as we saw the wrong implementation of the Tanodbayan which was under the tremendous influence of the President, it was an ineffectual body and was reduced to the function of a special fiscal.
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> The whole purpose of the our proposal is precisely to separate those functions and to produce a vehicle that will give true meaning to the concept of Ombudsman. Therefore, we regret that we cannot accept the proposition.[12]

The statements made by Commissioner Monsod emphasized a very logical principle: **the Executive power to remove and discipline members of the Office of the Ombudsman, or to exercise any power over them, would result in an *absurd* situation wherein the Office of the Ombudsman is given the duty to adjudicate on the integrity and competence of the very persons who can remove or suspend its members**. Equally relevant is the

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11 Record of the Constitutional Commission, Vol. 2, July 26, 1986, p. 294.

12 *Id.* at 294.

impression that would be given to the public if the rule were otherwise. A complainant with a grievance against a high-ranking official of the Executive, who appears to enjoy the President's favor, would be discouraged from approaching the Ombudsman with his complaint; the complainant's impression (even if misplaced), that the Ombudsman would be susceptible to political pressure, cannot be avoided. To be sure, such an impression would erode the constitutional intent of creating an Office of the Ombudsman as champion of the people against corruption and bureaucracy.

These views, to my mind, demolish the concern raised in Congress to justify Section 8(2) of RA No. 6770 — *i.e.*, that vesting the authority to remove the Tanodbayan on the Ombudsman would result in mutual protection.[13] This congressional concern, too, is a needless one as it is inconsistent with the system of checks and balance that our legal structure establishes.

At the practical constitutional level, the Tanodbayan (now the Office of the Special Prosecutor) cannot protect the Ombudsman who is an impeachable officer, as the power to remove the Ombudsman rests with Congress as the representative of the people.[14] On the other hand, should the Ombudsman attempt to shield the Tanodbayan from answering for any violation, the matter may be raised with the Supreme Court on appeal[15] or by Special Civil Action for *Certiorari*,[16] whichever may be applicable, in addition to the impeachment proceedings to which the Ombudsman may be subjected. For its part, the Supreme Court is a non-political independent body mandated by the Constitution to settle judicial and quasi-judicial disputes, whose judges and employees are not subject to the disciplinary authority of the Ombudsman and whose neutrality would be less questionable. In these lights, the checks and balance principle that underlies the Constitution can be appreciated to be fully operational.

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13 *Ponencia*, p. 22.
14 CONSTITUTION, Article XI, Section 2.
15 RA No. 6770, Section 27.
16 RULES OF COURT, Rule 65.

I find it significant that the Office of the Ombudsman is not the only governmental body labeled as "independent" in our Constitution. The list includes the Judiciary,[17] the Constitutional Commissions (Commission on Elections, Commission on Audit, and the Civil Service Commission),[18] the Commission on Human Rights,[19] a central monetary authority,[20] and, to a certain extent, the National Economic Development Authority.[21] These bodies, however, are granted various degrees of "independence" and these variations must be clarified to fully understand the context and meaning of the "independent" status conferred on the office of the Ombudsman.

The independence enjoyed by the Office of the Ombudsman, by the Constitutional Commissions, and by the Judiciary shares certain characteristics – they do not owe their existence to any act of Congress, but are created by the Constitution itself; additionally, they all enjoy fiscal autonomy.[22]

For most, if not for all of these "independent" bodies, the framers of the Constitution intended that they be insulated from political pressure. As a checks and balance mechanism, the Constitution, the Rules of Court, and their implementing laws provide measures to check on the "independence" granted to the Constitutional Commissions and the Office of the Ombudsman; the Supreme Court, as the final arbiter of all legal questions, may review the decisions of the Constitutional Commissions and the Office of the Ombudsman, especially when there is grave abuse of discretion.[23] Of course, foisted over the Members of the Supreme Court is the power of impeachment that Congress has the authority to initiate, and carry into its logical end a meritorious impeachment case.[24] Such is the symmetry that our Constitution provides for the harmonious balance of all its component and "independent" parts.

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17 CONSTITUTION, Article VIII, Sections 1, 2, 3, 6, 10 and 11.
18 *Id*., Article IX(A), Section 1.
19 *Id*., Article XIII, Section 17(1).
20 *Id*., Article XII, Section 20.
21 *Ibid*.
22 *Id*., Article VIII, Section 3; Article IX(A), Section 5; and Article XI, Section 14.
23 *Id.*, Article VIII, Section 5.
24 *Id.*, Article XI, Section 2.

In *Bengzon v. Drilon*,[25] we ruled on the fiscal autonomy of the Judiciary, and ruled against the interference that the President may bring. In doing so, we maintained that the independence, and the flexibility of the Judiciary, the Constitutional Commissions and the Office of the Ombudsman are crucial to our legal system:

> The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based.

As in the case of the Office of the Ombudsman, the constitutional deliberations explain the Constitutional Commissions' need for independence.

In the deliberations for the **1973 Constitution**, the delegates amended the 1935 Constitution by providing for a constitutionally-created Civil Service Commission, instead of one created by law, based on the precept that the effectivity of this body is dependent on its freedom from the tentacles of politics:

> DELEGATE GUNIGUNDO x x x
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> [b] because we believe that the Civil Service created by law has not been able to eradicate the ills and evils envisioned by the framers of the 1935 Constitution; because we believe that the Civil Service created by law is beholden to the creators of that law and is therefore not politics-free, not graft-free and not corruption-free; because we believe that as long as the law is the reflection of the will of the ruling class, the Civil Service that will be created and recreated by law will not serve the interest of the people but only the personal interest of the few and the enhancement of family power, advancement and prestige.[26]

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[25] G.R. No. 103524 and A.M. No. 91-8-225-CA, April 15, 1992, 208 SCRA 133, 150.

[26] Speech, Session of February 18, 1972, as cited in "The 1987 Constitution of the Republic of the Philippines: A Commentary" by Joaquin Bernas, 2003 ed., p. 1009.

The deliberations of the **1987 Constitution** on the Commission on Audit, on the other hand, highlighted the developments in the past Constitutions geared towards insulating the Commission on Audit from political pressure:

> MR. JAMIR. x x x
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> When the 1935 Constitution was enacted, the auditing office was constitutionalized because of the increasing necessity of empowering the auditing office to withstand political pressure. Finding a single Auditor to be quite insufficient to withstand political pressure, the 1973 Constitution established the Commission consisting of three members — a chairman and two commissioners.[27]

In *Brillantes, Jr. v. Yorac*,[28] we pointedly emphasized that the Constitutional Commissions, which have been characterized under the Constitution as "independent," are *not under the control of the President, even if they discharge functions that are executive in nature*. Faced with a temporary presidential appointment in the Commission on Elections, this Court vigorously denied the President the authority to interfere in these constitutional bodies:

> The lack of a statutory rule covering the situation at bar is no justification for the President of the Philippines to fill the void by extending the temporary designation in favor of the respondent. This is still a government of laws and not of men. The problem allegedly sought to be corrected, if it existed at all, did not call for presidential action. The situation could have been handled by the members of the Commission on Elections themselves without the participation of the President, however well-meaning.
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> x x x. But while conceding her goodwill, we cannot sustain her act because it conflicts with the Constitution.

The Commission on Human Rights, also created by the Constitution as an "independent" office,[29] enjoys lesser independence since it was not granted fiscal autonomy, in the manner fiscal autonomy was granted to the

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27 Record of the Constitutional Commission, Vol. 1, July 15, 1986, pp. 532-533.

28 G.R. No. 93867, December 18, 1990, 192 SCRA 358, 361.

29 Section 17(1), Article XIII of the 1987 Constitution reads:

> Section 17. (1) There is hereby created an independent office called the Commission on Human Rights.

offices above-discussed. The lack of fiscal autonomy notwithstanding, the framers of the 1987 Constitution clearly expressed their desire *to keep the Commission independent from the executive branch and other political leaders*:

> MR. MONSOD. We see the merits of the arguments of Commissioner Rodrigo. If we explain to him our concept, he can advise us on how to reconcile his position with ours. The position of the committee is that we need a body that would be able to work and cooperate with the executive because the Commissioner is right. Many of the services needed by this commission would need not only the cooperation of the executive branch of the government but also of the judicial branch of government. This is going to be a permanent constitutional commission over time. **We also want a commission to function even under the worst circumstance when the executive may not be very cooperative.** However, the question in our mind is: Can it still function during that time? Hence, we are willing to accept suggestions from Commissioner Rodrigo on how to reconcile this. We realize the need for coordination and cooperation. **We also would like to build in some safeguards that it will not be rendered useless by an uncooperative executive.**
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> MR. GARCIA. Thank you very much, Madame President.
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> Before we address the procedural question which Commissioner Rodrigo requested, I would like to touch on a very important question which I think is at the very heart of what we are trying to propose — the independence of this Commission on Human Rights. xxx
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> When I was working as a researcher for Amnesty International, one of my areas of concern was Latin America. I headed a mission to Colombia in 1980. I remember the conversation with President Julio Cesar Turbay Ayala and he told me that in Colombia, there were no political prisoners. This is a very common experience when one goes to governments to investigate human rights. From there, we proceeded to the Procuraduria General to the Attorney-General, to the Ministry of Justice, to the Ministry of Defense, and normally the answers that one will get are: "There are no political prisoners in our country"; "Torture is not committed in this country." Very often, when international commissions or organizations on human rights go to a country, the most credible organizations are independent human rights bodies. Very often these are private organizations, many of which are prosecuted, such as those we find in many countries in Latin America. **In fact, what we are proposing is an independent body on human rights, which would provide governments with credibility precisely because it is independent of the present administration.** Whatever it says on the human rights situation will be credible because it is not subject to pressure or control from the present political leadership.
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> Secondly, we all know how political fortunes come and go. Those who are in power yesterday are in opposition today and those who are in power today may be in the opposition tomorrow. **Therefore, if we have a**

> **Commission on Human Rights that would investigate and make sure that the rights of each one is protected, then we shall have a body that could stand up to any power, to defend the rights of individuals against arrest, unfair trial, and so on.**[30] (Emphases ours.)

Similarly, the Constitution grants Congress the authority to establish an independent central monetary authority.[31] Under these terms, this office is not constitutionally-created nor does it possess fiscal autonomy. When asked what "independence" means in this provision, Commissioner Bernardo Villegas again reiterated the intention of various framers for it to be *independent of the executive branch*:

> MR. VILLEGAS. No, this is a formula intended to prevent what happened in the last regime when the fiscal authorities sided with the executive branch and were systematically in control of monetary policy. This can lead to disastrous consequences. When the fiscal and the monetary authorities of a specific economy are combined, then there can be a lot of irresponsibility. So, this word "independent" refers to the executive branch.[32]

The National Economic Development Authority, nominally designated as "independent," differs from the other similarly-described agencies because the constitutional provision that provides for its creation immediately puts it under the control of the executive.[33] This differing shade of "independence" is supported by the statements made during the constitutional deliberations:

> MR. MONSOD. I believe that the word "independent" here, as we answered Commissioner Azcuna, was meant to be <u>independent of the legislature</u> because the NEDA under the present law is under the Office of the President.

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30 Records of the Constitutional Commission, Vol. 3, August 27, 1986, pp. 748-749.

31 Section 20, Article XII of the 1987 Constitution reads:

> Section 20. The Congress shall establish an independent central monetary authority, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector.

32 Record of the Constitutional Commission, Vol. 3, August 13, 1986, p. 268.

33 Section 9, Article 12 of the 1987 Constitution reads:

> Section 9. The Congress may establish an independent economic and planning agency headed by the President, which shall, after consultations with the appropriate public agencies, various private sectors, and local government units, recommend to Congress, and implement continuing integrated and coordinated programs and policies for national development.
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> Until Congress provides otherwise, the National Economic and Development Authority shall function as the independent planning agency of the government.

> MR. COLAYCO. Yes. In other words, the members of that agency are appointed by the President?
> MR. VILLEGAS. That is right.
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> MR. MONSOD. Yes.
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> MR. VILLEGAS. The President heads the NEDA.[34]

Commissioner Monsod continues by explaining that they did not constitutionalize the National Economic Development Authority, and, in accordance with the second paragraph of Section 9, Article XII of the 1987 Constitution, even left to Congress the discretion to abolish the office:

> MR. MONSOD. During the Committee hearings, there were proposals to change the composition of the governing body not only of the Monetary Board but also of the NEDA. That is why if we notice in this Article, we did not constitutionalize the NEDA anymore unlike in the 1973 Constitution. We are leaving it up to Congress to determine whether or not the NEDA is needed later on. The idea of the Committee is that if we are going for less government and more private sector initiative, later on it may not be necessary to have a planning agency. Thus, it may not be necessary to constitutionalize a planning agency anymore.
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> So this provision leaves room for the legislature not only to revise the composition of the governing body, but also to remove the NEDA once it is no longer needed in its judgment.[35]

These deliberative considerations make it abundantly clear that with the exception of the National Economic Development Authority, the independent constitutional bodies were consistently intended by the framers to be ***independent from executive control or supervision or any form of political influence.***

This perspective abundantly clarifies that the cases cited in the *ponencia – Hon. Hagad v. Hon. Gozodadole*[36] and *Office of the Ombudsman v. Delijero, Jr.*[37] – are not in point. These cases refer to the disciplinary authority of the Executive over a public school teacher and a local elective official. Neither of these officials belongs to independent constitutional

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34 Record of the Constitutional Commission, Vol. 3, August 13, 1986, p. 263.
35 *Id.* at 263-264.
36 321 Phil. 604 (1995).
37 G.R. No. 172635, October 20, 2010, 634 SCRA 135.

bodies whose actions should not even be tainted with any appearance of political influence.

In my view, the closest and most appropriate case to cite as exemplar of independence from executive control is *Bautista v. Senator Salonga*,[38] where this Court categorically stated, with respect to the independent Commission on Human Rights, that the tenure of its Commissioners could not be placed under the discretionary power of the President:

> Indeed, the Court finds it extremely difficult to conceptualize how an office conceived and created by the Constitution to be independent – as the Commission on Human Rights – and vested with the delicate and vital functions of investigating violations of human rights, pinpointing responsibility and recommending sanctions as well as remedial measures therefor, can truly function with independence and effectiveness, when the tenure in office of its Chairman and Members is made dependent on the pleasure of the President. Executive Order No. 163-A, being antithetical to the constitutional mandate of independence for the Commission on Human Rights has to be declared unconstitutional.[39]

Also in point as another "independence" case is *Atty. Macalintal v. Comelec*,[40] this time involving the Commission on Elections, which gave the Court the opportunity to consider ***even the mere review of the rules of the Commission on Elections by Congress a "trampling" of the constitutional mandate of independence*** of these bodies. Obviously, the mere review of rules places considerably less pressure on these bodies than the Executive's power to discipline and remove key officials of the Office of the Ombudsman. The caution of, and the strong words used by, this Court in protecting the Commission on Elections' independence should – in addition to those expressed before the Constitutional Commissions and in Congress in the course of framing RA No. 6770 – speak for themselves as reasons to invalidate the more pervasive authority granted by Section 8(2) of RA No. 6770.

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38 *Supra* note 9.
39 *Id*. at 183-184.
40 453 Phil. 586, 658-659 (2003).

Thus, in the case of independent constitutional bodies, with the exception of the National Economic Development Authority, the principle that the President should be allowed to remove those whom he is empowered to appoint (because of the implied power to dismiss those he is empowered to appoint[41]) should find no application. **Note that the withholding of the power to remove is not a stranger to the Philippine constitutional structure**.

For example, while the President is empowered to appoint the Members of the Supreme Court and the judges of the lower courts,[42] he cannot remove any of them; the Members of the Supreme Court can be removed only by impeachment and the lower court judges can be removed only by the Members of the Supreme Court *en banc*. This is one of the modes by which the independence of the Judiciary is ensured and is an express edge of the Judiciary over the other "independent" constitutional bodies.

Similarly, the President can appoint Chairmen and Commissioners of the Constitutional Commissions, and the Ombudsman and her Deputies,[43] but the Constitution categorically provides that the Chairmen of the Constitutional Commissions and the Ombudsman can only be removed by impeachment.[44] **The absence of a constitutional provision providing for the removal of the Commissioners and Deputy Ombudsmen does not mean that Congress can empower the President to discipline or remove them in violation of the independence that the Constitution textually and expressly provides.**[45] As members of independent constitutional

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41 *Supra* note 5. Section 17, Article VII, and Section 4, Article X of the Constitution likewise provide that:

> Section 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.
> Section 4. The President of the Philippines shall exercise general supervision over local governments.

42 CONSTITUTION, Article VIII, Section 9.

43 *Id*., Article IX(B), Section 1(2); Article IX(C), Section 1(2); Article IX(D), Section 1(2); and Article XI, Section 9.

44 *Id*., Article XI, Section 2.

45 *Id*., Article IX(A), Section 1 and Article XI, Section 5 read:

bodies, they should be similarly treated as lower court judges, subject to discipline only by the head of their respective offices and subject to the general power of the Ombudsman to dismiss officials and employees within the government for cause. **No reason exists to treat them differently**.

While I agree with Justice Carpio's opinion that the Constitution empowered Congress to determine the manner and causes for the removal of non-impeachable officers, we cannot simply construe Section 2, Article XI of the Constitution to be a blanket authority for Congress to empower the President to remove all other public officers and employees, including those under the independent constitutional bodies. When the Constitution states that Congress may provide for the removal of public officers and employees by law, it does not mean that the law can violate the provisions and principles laid out in the Constitution. The provision reads:

> The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. **All other public officers and employees may be removed from office as provided by law, <u>but not by impeachment</u>.** [emphasis and underscoring ours]

The deliberations of the Constitutional Commissions, as quoted by Justice Carpio, explain an important aspect of the **second sentence of Section 2, Article XI of the Constitution — that it was not the intent to widen the discretion of Congress in providing for the removal of a public officer; the intent was to limit its powers. The second sentence of *<u>Section 2, Article XI was provided to limit the public officers who can only be removed by impeachment</u>***. This limitation is one made necessary by past experiences. In an earlier law, Presidential Decree No. 1606, Congress provided, by law, that justices of the Sandiganbayan (who are not included

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> Section 1. The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.
> Section 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and

in the enumeration) may only be removed by impeachment. **Commissioner Regalado insisted on adding the second sentence of Section 2, Article XI of the Constitution to prevent Congress from extending the more stringent rule of "removal only by impeachment" to favored public officers**.[46]

Ultimately, the question now before this Court goes back to whether the Constitution intended to allow political entities, such as the Executive, to discipline public officers and employees of independent constitutional bodies. If this is the intent, then Congress cannot have the authority to place the power to remove officers of these "independent constitutional bodies" under executive disciplinary authority unless otherwise expressly authorized by the Constitution itself. I firmly take this position because the drafters repeatedly and painstakingly drafted the constitutional provisions on the independent constitutional bodies to separate them from executive control. Even after the other delegates made it clear that the easier path would be to place these bodies under the control of the President, the majority nevertheless voted against these moves and emphatically expressed its refusal to have these offices be made in any way under the disciplinary authority of the Executive.

This constitutional intent rendered it necessary for the Constitution to provide the instances ***when executive interference may be allowed***. In the case of the National Economic Development Authority, the Constitution explicitly provided that the President may exert control over this body. The Constitution was also explicit when it empowered the President to appoint

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at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

[46] Record of the Constitutional Commission, Vol. 2, July 28, 1986, p. 356 reads:

MR. REGALADO. xxx The reason for the amendment is this: While Section 2 enumerates the impeachable officers, there is nothing that will prevent the legislature as it stands now from providing also that other officers not enumerated therein shall also be removable only by impeachment, and that has already happened.

Under Section 1 of P.D. No,, 1606, the Sandiganbayan Decree, justices of the Sandiganbayan may be removed only by impeachment, unlike their counterparts in the then Court of Appeals. They are, therefore, a privileged class xxx

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the officers of the other "independent" bodies, and even then, this power was qualified: (1) in the cases of the Constitutional Commissions, by giving the chairmen and the members staggered terms of seven years to lessen the opportunity of the same President to appoint the majority of the body;[47] and (2) in the case of the Ombudsman and his Deputies, by limiting the President's choice from a list prepared by the Judicial and Bar Council.[48]

Thus, we cannot maintain a light and cavalier attitude in our constitutional interpretation and merely say that the "independence" of the constitutional bodies is whatever Congress would define it at any given time. In the cases I have cited – *Bautista v. Senator Salonga*,[49] *Atty. Macalintal v. Comelec*,[50] and *Brillantes, Jr. v. Yorac*[51] – this Court did not merely leave it to the Legislature or the Executive to freely interpret what "independence" means. We recognized in the term a meaning fully in accord with the intent of the Constitution.

This intent was the same guiding light that drove this Court to rule that the President cannot determine the tenure of the Commission on Human Rights Chairman and Members; that Congress cannot enact a law that empowers it to review the rules of the Commission on Elections; and that the President cannot even make interim appointments in the Commission on Elections.

After halting these lesser infractions based on the constitutional concept of "independence," it would be strange – in fact, it would be inconsistent and illogical for us – to rule at this point that Congress can actually allow the President to exercise the power of removal that can

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MR. REGALADO. xxx But the proposed amendment with not prevent the legislature from subsequently repealing or amending that portion of the law [PD No. 1606]. Also, it will prevent the legislature from providing for favored public officials as not removable except by impeachment.

47 CONSTITUTION, Article IX-B, C, and D, Section 1(2).

48 *Id.*, Article XI, Section 9.

49 *Supra* note 9.

50 *Supra* note 39.

51 *Supra* note 27.

produce a chilling effect in the performance of the duties of a Special Prosecutor or of the Deputy Ombudsman.

I draw attention to the fact that Sections 9, 10, 11 and 12, Article XI of the Constitution do not only refer to the Ombudsman, but also to the Ombudsman's Deputies. **Section 9** provides for their appointment process. While the President can appoint them, the appointment should be made from the nominations of the Judicial and Bar Council and the appointments do not require confirmation. **Section 10** gives the Ombudsman and the Deputies the same rank and salary as the Chairmen and Members of the Constitutional Commission. The salary may not be diminished during their term. **Section 11** disqualifies them from reappointment and participation in the immediately succeeding elections, in order to insulate them further from politics. **Section 12** designates the Ombudsman and the Deputies as "protectors of the people" and directs them to act promptly on all complaints against public officials or employees.

Under this structure providing for terms and conditions fully supportive of "independence," it makes no sense to insulate their appointments and their salaries from politics**, *but not their tenure***. One cannot simply argue that the President's power to discipline them is limited to specified grounds, since the mere filing of a case against them can result in their suspension and can interrupt the performance of their functions, in violation of Section 12, Article XI of the Constitution. With only one term allowed under Section 11, a Deputy Ombudsman or Special Prosecutor removable by the President can be reduced to the very same ineffective Office of the Ombudsman that the framers had foreseen and carefully tried to avoid by making these offices independent constitutional bodies.

At the more practical level, we cannot simply turn a blind eye or forget that the work of the Office of the Ombudsman, like the Constitutional

Commissions, can place the officers of the Executive branch and their superior in a bad light. We cannot insist that the Ombudsman and his Deputies look into all complaints, even against those against Executive officials, and thereafter empower the President to stifle the effectiveness of the Ombudsman and his or her Deputies through the grant of disciplinary authority and the power of removal over these officers. Common and past experiences tell us that the President is only human and, like any other, can be displeased. At the very least, granting the President the power of removal can be counterproductive, especially when other less political officers, such as the Ombudsman and the Judiciary, already have the jurisdiction to resolve administrative cases against public officers under the Office of the Ombudsman.

Given the support of the Constitution, of the Records of the Constitutional Commission, and of previously established jurisprudence, we cannot uphold the validity of Section 8(2) of RA No. 6770 merely because a similar constitutionally-unsupported provision exists under RA No. 7653. Under our legal system, statutes give way to the Constitution, to the intent of its framers and to the corresponding interpretations made by the Court. It is not, and should not be, the other way around.

I join the *ponente* in declaring that the Deputy Ombudsmen and Special Prosecutors should not escape accountability for their wrongdoing or inefficiency. I differ only in allowing the President, an elective official whose position is primarily political, to discipline or remove members of independent constitutional bodies such as the Office of the Ombudsman. Thus, the administrative proceedings conducted by the Office of the President against petitioner Gonzales should be voided and those against petitioner Sulit discontinued.

Lastly, while I find the proceedings before the Office of the President constitutionally infirm, nothing in this opinion should prevent the

Ombudsman from conducting the proper investigations and, when called for, from filing the proper administrative proceedings against petitioners Gonzales and Sulit. In the case of Gonzales, further investigation may be made by the Ombudsman, but only for aspects of his case not otherwise covered by the Court's Decision.

ARTURO D. BRION
Associate Justice