Republic of the Philippines
Supreme Court
Manila

EN BANC

ATTY. CHELOY E. VELICARIA-GARAFIL,
Petitioner,

- versus -

OFFICE OF THE PRESIDENT and HON. SOLICITOR GENERAL JOSE ANSELMO I. CADIZ,
Respondents.

x----------x

ATTY. DINDO G. VENTURANZA,
Petitioner,

- versus -

OFFICE OF THE PRESIDENT, LEILA M. DE LIMA, in her capacity as the Secretary of the Department of Justice, CLARO A. ARELLANO, in his capacity as the Prosecutor General, and RICHARD ANTHONY D. FADULLON, in his capacity as the Officer-in-Charge of the Office of the City Prosecutor of Quezon City,
Respondents.

x----------x

IRMA A. VILLANUEVA and FRANCISCA B. ROSQUITA,
Petitioners,

- versus -

COURT OF APPEALS and THE OFFICE OF THE PRESIDENT,
Respondents.

x----------x

G.R. No. 203372

G.R. No. 206290

G.R. No. 209138

EDDIE U. TAMONDONG,
Petitioner,

- versus -

EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.,
Respondent.

G.R. No. 212030

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,*
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN,* and
JARDELEZA,** *JJ.*

Promulgated:

June 16, 2015

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DECISION

CARPIO, *J.*:

The present consolidated cases involve four petitions: G.R. No. 203372 with Atty. Cheloy E. Velicaria-Garafil (Atty. Velicaria-Garafil), who was appointed State Solicitor II at the Office of the Solicitor General (OSG), as petitioner; G.R. No. 206290 with Atty. Dindo G. Venturanza (Atty. Venturanza), who was appointed Prosecutor IV (City Prosecutor) of Quezon City, as petitioner; G.R. No. 209138 with Irma A. Villanueva (Villanueva), who was appointed Administrator for Visayas of the Board of Administrators of the Cooperative Development Authority (CDA), and Francisca B. Rosquita (Rosquita), who was appointed Commissioner of the National Commission of Indigenous Peoples (NCIP), as petitioners; and G.R. No. 212030 with Atty. Eddie U. Tamondong (Atty. Tamondong), who was appointed member of the Board of Directors of the Subic Bay Metropolitan Authority (SBMA), as petitioner. All petitions question the constitutionality of Executive Order No. 2 (EO 2) for being inconsistent with Section 15, Article VII of the 1987 Constitution.

* On official leave.
** No part.

Petitioners seek the reversal of the separate Decisions of the Court of Appeals (CA) that dismissed their petitions and upheld the constitutionality of EO 2. G.R. No. 203372 filed by Atty. Velicaria-Garafil is a Petition for Review on Certiorari,[1] assailing the Decision[2] dated 31 August 2012 of the CA in CA-G.R. SP No. 123662. G.R. No. 206290 filed by Atty. Venturanza is a Petition for Review on Certiorari,[3] assailing the Decision[4] dated 31 August 2012 and Resolution[5] dated 12 March 2013 of the CA in CA-G.R. SP No. 123659. G.R. No. 209138 filed by Villanueva and Rosquita is a Petition for Certiorari,[6] seeking to nullify the Decision[7] dated 28 August 2013 of the CA in CA-G.R. SP Nos. 123662, 123663, and 123664.[8] Villanueva and Rosquita filed a Petition-in-Intervention in the consolidated cases before the CA. G.R. No. 212030 is a Petition for Review on Certiorari,[9] assailing the Decision[10] dated 31 August 2012 of the CA in CA-G.R. SP No. 123664 and Resolution[11] dated 7 April 2014 of the CA in CA-G.R. SP Nos. 123662, 123663, and 123664.[12]

Facts of the Cases

Prior to the conduct of the May 2010 elections, then President Gloria Macapagal-Arroyo (President Macapagal-Arroyo) issued more than 800 appointments to various positions in several government offices.

The ban on midnight appointments in Section 15, Article VII of the 1987 Constitution reads:

> Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger

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1 Under Rule 45 of the Rules of Court.

2 *Rollo* (G.R. No. 203372), pp. 45-67. Penned by Associate Justice Noel G. Tijam, with Associate Justices Romeo F. Barza and Edwin D. Sorongon concurring.

3 Under Rule 45 of the Rules of Court.

4 *Rollo* (G.R. No. 206290), pp. 10-40. Penned by Associate Justice Noel G. Tijam, with Associate Justices Romeo F. Barza and Edwin D. Sorongon concurring.

5 Id. at 42-47. Penned by Associate Justice Noel G. Tijam, with Associate Justices Romeo F. Barza and Edwin D. Sorongon concurring.

6 Under Rule 65 of the Rules of Court.

7 *Rollo* (G.R. No. 209138), pp. 38-60. Penned by Associate Justice Noel G. Tijam, with Associate Justices Romeo F. Barza and Edwin D. Sorongon concurring.

8 The following cases were consolidated in the CA: CA-G.R. SP No. 123662 (Atty. Velicaria-Garafil), CA-G.R. SP No. 123663 (Bai Omera D. Dianalan-Lucman), and CA-G.R. SP No. 123664 (Atty. Tamondong).

9 Under Rule 45 of the Rules of Court.

10 *Rollo* (G.R. No. 212030), pp. 30-53. Penned by Associate Justice Noel G. Tijam, with Associate Justices Romeo F. Barza and Edwin D. Sorongon concurring.

11 Id. at 59-63. Penned by Associate Justice Noel G. Tijam, with Associate Justices Romeo F. Barza and Edwin D. Sorongon concurring.

12 In this Resolution, the following were listed as petitioners-intervenors: Atty. Jose Sonny G. Matula, member of the Social Security Commission and National Vice President of Federation of Free Workers; Ronnie M. Nismal, Alvin R. Gonzales, Jomel B. General, Alfredo E. Maranan, Exequiel V. Bacarro, and Juanito S. Facundo, Board Members, union officers, or members of the Federation of Free Workers.

public safety.

Thus, for purposes of the 2010 elections, 10 March 2010 was the cut-off date for valid appointments and the next day, 11 March 2010, was the start of the ban on midnight appointments. Section 15, Article VII of the 1987 Constitution recognizes as an exception to the ban on midnight appointments only "temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety." None of the petitioners claim that their appointments fall under this exception.

Appointments

G.R. No. 203372

The paper evidencing Atty. Velicaria-Garafil's appointment as State Solicitor II at the OSG was dated 5 March 2010.[13] There was a transmittal letter dated 8 March 2010 of the appointment paper from the Office of the President (OP), but this transmittal letter was received by the Malacañang Records Office (MRO) only on 13 May 2010. There was no indication as to the OSG's date of receipt of the appointment paper. On 19 March 2010, the OSG's Human Resources Department called up Atty. Velicaria-Garafil to schedule her oath-taking. Atty. Velicaria-Garafil took her oath of office as State Solicitor II on 22 March 2010 and assumed her position on 6 April 2010.

G.R. No. 206290

The paper evidencing Atty. Venturanza's appointment as Prosecutor IV (City Prosecutor) of Quezon City was dated 23 February 2010.[14] It is apparent, however, that it was only on 12 March 2010 that the OP, in a letter dated 9 March 2010, transmitted Atty. Venturanza's appointment paper to then Department of Justice (DOJ) Secretary Alberto C. Agra.[15] During the period between 23 February and 12 March 2010, Atty. Venturanza, upon verbal advice from Malacañang of his promotion but without an official copy of his appointment paper, secured clearances from the Civil Service Commission (CSC),[16] Sandiganbayan,[17] and the DOJ.[18] Atty. Venturanza took his oath of office on 15 March 2010, and assumed office on the same day.

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13 *Rollo* (G.R. No. 203372), p. 99.
14 *Rollo* (G.R. No. 206290), p. 115.
15 Id. at 121.
16 Id. at 118.
17 Id. at 119.
18 Id. at 120.

G.R. No. 209138

The paper evidencing Villanueva's appointment as Administrator for Visayas of the Board of Administrators of the CDA was dated 3 March 2010.[19] There was no transmittal letter of the appointment paper from the OP. Villanueva took her oath of office on 13 April 2010.

The paper evidencing Rosquita's appointment as Commissioner, representing Region I and the Cordilleras, of the NCIP was dated 5 March 2010.[20] Like Villanueva, there was no transmittal letter of the appointment paper from the OP. Rosquita took her oath of office on 18 March 2010.

G.R. No. 212030

The paper evidencing Atty. Tamondong's appointment as member, representing the private sector, of the SBMA Board of Directors was dated 1 March 2010.[21] Atty. Tamondong admitted that the appointment paper was received by the Office of the SBMA Chair on 25 March 2010[22] and that he took his oath of office on the same day.[23] He took another oath of office on 6 July 2010 as "an act of extra caution because of the rising crescendo of noise from the new political mandarins against the so-called 'midnight appointments.'"[24]

To summarize, the pertinent dates for each petitioner are as follows:

G.R. No.	Date of Appointment Letter	Date of Transmittal Letter	Date of Receipt by MRO	Date of Oath of Office	Assumption of Office
203372 (Atty. Velicaria-Garafil)	5 March 2010	8 March 2010	13 May 2010	22 March 2010	6 April 2010
206290 (Atty. Venturanza)	23 February 2010	9 March 2010	12 March 2010	15 March 2010	15 March 2010
209138 (Villanueva)	3 March 2010		4 May 2010	13 April 2010	
209138 (Rosquita)	5 March 2010		13 May 2010	18 March 2010	
212030 (Atty. Tamondong)	1 March 2010			25 March 2010 and 6 July 2010	

19 *Rollo* (G.R. No. 209138), p. 25.
20 Id. at 26.
21 *Rollo* (G.R. No. 212030), p. 72.
22 Id. at 13.
23 Id. at 73.
24 Id. at 13.

Issuance of EO 2

On 30 June 2010, President Benigno S. Aquino III (President Aquino) took his oath of office as President of the Republic of the Philippines. On 30 July 2010, President Aquino issued EO 2 recalling, withdrawing, and revoking appointments issued by President Macapagal-Arroyo which violated the constitutional ban on midnight appointments.

The entirety of EO 2 reads:

EXECUTIVE ORDER NO. 2

RECALLING, WITHDRAWING, AND REVOKING APPOINTMENTS ISSUED BY THE PREVIOUS ADMINISTRATION IN VIOLATION OF THE CONSTITUTIONAL BAN ON MIDNIGHT APPOINTMENTS, AND FOR OTHER PURPOSES.

WHEREAS, Sec. 15, Article VII of the 1987 Constitution provides that "Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.";

WHEREAS, in the case of "*In re: Appointments dated March 30, 1998 of Hon. Mateo Valenzuela and Hon. Vallarta as Judges of the Regional Trial Court of Branch 62 of Bago City and Branch 24 of Cabanatuan City, respectively*" (A.M. No. 98-5-01-SC Nov. 9, 1998), the Supreme Court interpreted this provision to mean that the President is neither required to make appointments nor allowed to do so during the two months immediately before the next presidential elections and up to the end of her term. The only known exceptions to this prohibition are (1) temporary appointments in the executive positions when continued vacancies will prejudice public service or endanger public safety and in the light of the recent Supreme Court decision in the case of De Castro, et al. vs. JBC and PGMA, G.R. No. 191002, 17 March 2010, (2) appointments to the Judiciary;

WHEREAS, Section 261 of the Omnibus Election Code provides that:

"Section 261**.** *Prohibited Acts*.– The following shall be guilty of an election offense:

(g) Appointments of new employees, creation of new position, promotion, or giving salary increases. – During the period of forty-five days before a regular election and thirty days before a special election.

(1) Any head, official or appointing officer of a government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, who appoints or hires any new employee, whether provisional, temporary or casual, or creates and fills any new position, except upon prior authority to the Commission. The

Commission shall not grant the authority sought unless it is satisfied that the position to be filled is essential to the proper functioning of the office or agency concerned, and that the position shall not be filled in a manner that may influence the election.

As an exception to the foregoing provisions, a new employee may be appointed in the case of urgent need:

Provided, however, that notice of the appointment shall be given to the Commission within three days from the date of the appointment. Any appointment or hiring in violation of this provision shall be null and void.

(2) Any government official who promotes or gives any increase of salary or remuneration or privilege to any government official or employee, including those in government-owned or controlled corporations.";

WHEREAS, it appears on record that a number of appointments were made on or about 10 March 2010 in complete disregard of the intent and spirit of the constitutional ban on midnight appointment and which deprives the new administration of the power to make its own appointment;

WHEREAS, based on established jurisprudence, an appointment is deemed complete only upon acceptance of the appointee;

WHEREAS, in order to strengthen the civil service system, it is necessary to uphold the principle that appointments to the civil service must be made on the basis of merit and fitness, it is imperative to recall, withdraw, and revoke all appointments made in violation of the letter and spirit of the law;

NOW, THEREFORE, I, BENIGNO S. AQUINO III, by virtue of the powers vested in me by the Constitution as President of the Philippines, do hereby order and direct that:

SECTION 1. Midnight Appointments Defined. – The following appointments made by the former President and other appointing authorities in departments, agencies, offices, and instrumentalities, including government-owned or controlled corporations, shall be considered as midnight appointments:

(a) Those **made on or after March 11, 2010**, including <u>all appointments bearing dates prior to March 11, 2010 where the appointee has accepted, or taken his oath, or assumed public office on or after March 11, 2010</u>, except temporary appointments in the executive positions when continued vacancies will prejudice public service or endanger public safety as may be determined by the appointing authority.

(b) Those made prior to March 11, 2010, but to take effect after said date or appointments to office that would be vacant only after March 11, 2010.

(c) Appointments and promotions made during the period of 45 days prior to the May 10, 2010 elections in violation of Section 261 of the Omnibus Election Code.

> SECTION 2. Recall, Withdraw, and Revocation of Midnight Appointments. Midnight appointments, as defined under Section 1, are hereby recalled, withdrawn, and revoked. The positions covered or otherwise affected are hereby declared vacant.
>
> SECTION 3. Temporary designations. – When necessary to maintain efficiency in public service and ensure the continuity of government operations, the Executive Secretary may designate an officer-in-charge (OIC) to perform the duties and discharge the responsibilities of any of those whose appointment has been recalled, until the replacement of the OIC has been appointed and qualified.
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> SECTION 4. Repealing Clause. – All executive issuances, orders, rules and regulations or part thereof inconsistent with the provisions of this Executive Order are hereby repealed or modified accordingly.
>
> SECTION 5. Separability Clause. – If any section or provision of this executive order shall be declared unconstitutional or invalid, the other sections or provision not affected thereby shall remain in full force and effect.
>
> SECTION 6**.** Effectivity. – This Executive order shall take effect immediately.
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> DONE in the City of Manila, this 30th day of July, in the year Two Thousand and Ten.
>
> (Sgd.) BENIGNO S. AQUINO III
>
> By the President:
> (Sgd.) PAQUITO N. OCHOA, JR.
> Executive Secretary[25]

Effect of the Issuance of EO 2

G.R. No. 203372

On 5 August 2010, Jose Anselmo Cadiz assumed office as Solicitor General (Sol. Gen. Cadiz). On 6 August 2010, Sol. Gen. Cadiz instructed a Senior Assistant Solicitor General to inform the officers and employees affected by EO 2 that they were terminated from service effective the next day.

Atty. Velicaria-Garafil reported for work on 9 August 2010 without any knowledge of her termination. She was made to return the office-issued

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[25] http://www.gov.ph/2010/07/30/executive-order-no-2/ (accessed 15 June 2015). (Boldfacing and underscoring supplied)

laptop and cellphone, and was told that her salary ceased as of 7 August 2010. On 12 August 2010, Atty. Velicaria-Garafil was informed that her former secretary at the OSG received a copy of a memorandum on her behalf. The memorandum, dated 9 August 2010, bore the subject "Implementation of Executive Order No. 2 dated 30 July 2010" and was addressed to the OSG's Director of Finance and Management Service.

Atty. Velicaria-Garafil filed a petition for certiorari (G.R. No. 193327) before this Court on 1 September 2010. The petition prayed for the nullification of EO 2, and for her reinstatement as State Solicitor II without loss of seniority, rights and privileges, and with full backwages from the time that her salary was withheld.[26]

G.R. No. 206290

On 1 September 2010, Atty. Venturanza received via facsimile transmission an undated copy of DOJ Order No. 556. DOJ Order No. 556, issued by DOJ Secretary Leila M. De Lima (Sec. De Lima), designated Senior Deputy State Prosecutor Richard Anthony D. Fadullon (Pros. Fadullon) as Officer-in-Charge of the Office of the City Prosecutor in Quezon City. In a letter to Sec. De Lima dated 15 September 2010, Atty. Venturanza asked for clarification of his status, duties, and functions since DOJ Order No. 556 did not address the same. Atty. Venturanza also asked for a status quo ante order to prevent Pros. Fadullon from usurping the position and functions of the City Prosecutor of Quezon City. Atty. Venturanza also wrote a letter to President Aquino on the same day, and sought reaffirmation of his promotion as City Prosecutor of Quezon City.

On 6 October 2010, Atty. Venturanza received a letter dated 25 August 2010 from Sec. De Lima which directed him to relinquish the office to which he was appointed, and to cease from performing its functions.

Atty. Venturanza filed a Petition for Certiorari, Prohibition, Mandamus with Urgent Prayer for Status Quo Ante Order, Temporary Restraining Order and/or Preliminary Mandatory Injunction (G.R. No. 193867) before this Court on 14 October 2010.[27]

G.R. No. 209138

The OP withheld the salaries of Villanueva and Rosquita on the basis of EO 2. On 3 August 2010, Villanueva and Rosquita sought to intervene in G.R. No. 192991.[28] On 1 October 2010, Executive Secretary Paquito N.

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26 *Rollo (*G.R. No. 203372), pp. 19-21.

27 *Rollo* (G.R. No. 206290), pp. 55-57.

28 G.R. No. 192991 was titled "*Atty. Jose Arturo Cagampang De Castro, J.D., in his capacity as Assistant Secretary, Department of Justice v. Office of the President, represented by Executive Secretary Paquito N. Ochoa, Jr.*"

Ochoa, Jr. revoked Rosquita's appointment as NCIP Commissioner.[29] On 13 October 2010, Villanueva and Rosquita notified this Court that they wanted to intervene in Atty. Tamondong's petition (G.R. No. 192987) instead.

G.R. No. 212030

Atty. Tamondong was removed from the SBMA Board of Directors on 30 July 2010. He filed a petition for prohibition, declaratory relief and preliminary injunction with prayer for temporary restraining order (G.R. No. 192987) before this Court on 9 August 2010. The petition prayed for the prohibition of the implementation of EO 2, the declaration of his appointment as legal, and the declaration of EO 2 as unconstitutional.[30]

Referral to CA

There were several petitions[31] and motions for intervention[32] that challenged the constitutionality of EO 2.

On 31 January 2012, this Court issued a Resolution referring the petitions, motions for intervention, as well as various letters, to the CA for further proceedings, including the reception and assessment of the evidence from all parties. We defined the issues as follows:

> 1. Whether the appointments of the petitioners and intervenors were midnight appointments within the coverage of EO 2;
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> 2. Whether all midnight appointments, including those of petitioners and intervenors, were invalid;

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29 *Rollo* (G.R. No. 209138), p. 5.

30 *Rollo* (G.R. No. 212030), p. 13.

31 G.R. No. 192987, *Eddie U. Tamondong v. Executive Secretary Paquito N. Ochoa, Jr.*,; G.R. No. 193327, *Atty. Cheloy E. Velicaria-Garafil v. Office of the President, represented by Hon. Executive Secretary Paquito N. Ochoa, Jr.,and Solicitor General Jose Anselmo L. Cadiz*; G.R. No. 193519, *Bai Omera D. Dianalan-Lucman v. Executive Secretary Paquito N. Ochoa, Jr.,*; G.R. No. 193867, *Atty. Dindo G. Venturanza, as City Prosecutor of Quezon City v. Office of the President, represented by President of the Republic of the Philippines Benigno Simeon C. Aquino, Executive Secretary Paquito N. Ochoa, Jr., et al.*; G.R. No. 194135, *Manuel D. Andal v. Paquito N. Ochoa, Jr., as Executive Secretary amd Junio M. Ragrario*; G.R. No. 194398, *Atty. Charito Planas v. Executive Secretary Paquito N. Ochoa, Jr., Tourism Secretary Alberto A. Lim and Atty. Apolonio B. Anota, Jr.*

32 Intervenors were: Dr. Ronald L. Adamat, in his capacity as Commissioner, National Commission on Indigenous Peoples; Angelita De Jesus-Cruz, in her capacity as Director, Subic Bay Metropolitan Authority; Atty. Jose Sonny G. Matula, Member of the Social Security Commission National Vice President of Federation of Free Workers; Ronnie M. Nismal, Alvin R. Gonzales, Jomel B. General, Alfredo E. Maranan, Exequiel V. Bacarro, and Juanito S. Facundo, as Board Members, union officers or members of the Federation of Free Workers; Atty. Noel K. Felongco in his capacity as Commissioner of the National Commission on Indigenous Peoples; Irma A. Villanueva, in her capacity as Administrator for Visayas, Board of Administrators of the Cooperative Development Authority; and Francisca B. Rosquita, in her capacity as Commissioner of the National Commission on Indigenous Peoples.

> 3. Whether the appointments of the petitioners and intervenors were made with undue haste, hurried maneuvers, for partisan reasons, and not in accordance with good faith; and
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> 4. Whether EO 2 violated the Civil Service Rules on Appointment.[33]

This Court gave the CA the authority to resolve all pending matters and applications, and to decide the issues as if these cases were originally filed with the CA.

Rulings of the CA

Even though the same issues were raised in the different petitions, the CA promulgated separate Decisions for the petitions. The CA consistently ruled that EO 2 is constitutional. The CA, however, issued different rulings as to the evaluation of the circumstances of petitioners' appointments. In the cases of Attys. Velicaria-Garafil and Venturanza, the CA stated that the OP should consider the circumstances of their appointments. In the cases of Villanueva, Rosquita, and Atty. Tamondong, the CA explicitly stated that the revocation of their appointments was proper because they were midnight appointees.

G.R. No. 203372 (CA-G.R. SP No. 123662)

The CA promulgated its Decision in CA-G.R. SP No. 123662 on 31 August 2012. The CA ruled that EO 2 is not unconstitutional. However, the CA relied on *Sales v. Carreon*[34] in ruling that the OP should evaluate whether Atty. Velicaria-Garafil's appointment had extenuating circumstances that might make it fall outside the ambit of EO 2.

The dispositive portion of the CA's Decision reads:

> WHEREFORE, the petition for certiorari and mandamus [is] DENIED.
>
> Executive Order No. 2, dated July 30, 2010, is NOT unconstitutional.
>
> The issue on whether or not to uphold petitioner's appointment as State Solicitor II at the OSG is hereby *referred* to the Office of the President which has the sole authority and discretion to pass upon the same.
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> SO ORDERED.[35]

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33 *Rollo* (G.R. No. 203372), p. 80.

34 544 Phil. 525, 531 (2007), citing *Davide v. Roces*, 160-A Phil. 430 (1975).

35 *Rollo* (G.R. No. 203372) , p. 66.

G.R. No. 206290 (CA-G.R. SP No. 123659)

The CA promulgated its Decision in CA-G.R. SP No. 123659 on 31 August 2012. The CA ruled that EO 2 is not unconstitutional. Like its Decision in CA-G.R. SP No. 123662, the CA relied on *Sales v. Carreon*[36] in ruling that the OP should evaluate whether Atty. Venturanza's appointment had extenuating circumstances that might make it fall outside the ambit of EO 2.

The dispositive portion of the CA's Decision reads:

> WHEREFORE, the petition for certiorari, prohibition and mandamus [is] DENIED.
>
> *Executive Order No. 2*, dated July 30, 2010, is NOT unconstitutional.
>
> The issue on whether or not to uphold petitioner's appointment as City Chief Prosecutor of Quezon City is hereby *referred* to the Office of the President which has the sole authority and discretion to pass upon the same.
>
> SO ORDERED.[37]

G.R. No. 209138

The CA ruled on Villanueva and Rosquita's Petition-in-Intervention through a Decision in CA-G.R. SP Nos. 123662, 123663, and 123664 promulgated on 28 August 2013. The CA stated that Villanueva and Rosquita were midnight appointees within the contemplation of Section 15, Article VII of the 1987 Constitution. The letter issued by the CSC that supported their position could not serve as basis to restore them to their respective offices.

The dispositive portion of the CA's Decision reads:

> WHEREFORE, premises considered, the instant Petition is hereby DISMISSED. Executive Order No. 2 is hereby declared NOT UNCONSTITUTIONAL. Accordingly, the revocation of Petitioners-Intervenors Irma Villanueva and Francisca Rosquita [sic] appointment[s] as Administrator for Visayas of the Board of Administrators of the Cooperative Development Authority, and Commissioner of National Commission on Indigenous Peoples [respectively,] is VALID, the same being a [sic] midnight appointment[s].
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> SO ORDERED.[38]

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36 Supra note 34.
37 *Rollo* (G.R. No. 206290), p. 39.
38 *Rollo* (G.R. No. 209138), p. 60.

G.R. No. 212030 (CA-G.R. SP No. 123664)

On 31 August 2012, the CA promulgated its Decision in CA-G.R. SP No. 123664. The dispositive portion reads as follows:

> WHEREFORE, premises considered, the instant Petition is hereby DISMISSED. Executive Order No. 2 is hereby declared NOT UNCONSTITUTIONAL. Accordingly, the revocation of Atty. Eddie Tamondong's appointment as Director of Subic Bay Metropolitan Authority is VALID for being a midnight appointment.
>
> SO ORDERED.[39]

The Issues for Resolution

We resolve the following issues in these petitions: (1) whether petitioners' appointments violate Section 15, Article VII of the 1987 Constitution, and (2) whether EO 2 is constitutional.

Ruling of the Court

The petitions have no merit. All of petitioners' appointments are midnight appointments and are void for violation of Section 15, Article VII of the 1987 Constitution. EO 2 is constitutional.

Villanueva and Rosquita, petitioners in G.R. No. 209138, did not appeal the CA's ruling under Rule 45, but instead filed a petition for certiorari under Rule 65. This procedural error alone warrants an outright dismissal of G.R. No. 209138. Even if it were correctly filed under Rule 45, the petition should still be dismissed for being filed out of time.[40] There was also no explanation as to why they did not file a motion for reconsideration of the CA's Decision.

Midnight Appointments

This *ponencia* and the dissent both agree that the facts in all these cases show that "none of the petitioners have shown that their appointment papers (and transmittal letters) have been issued (and released) before the ban."[41] The dates of receipt by the MRO, which in these cases are the only reliable evidence of actual transmittal of the appointment papers by

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39 *Rollo* (G.R. No. 212030), p. 52.

40 See Rule 45, Section 2. Villanueva and Rosquita only had until 2 October 2013 to file their appeal. They filed their petition on 7 October 2013.

41 Dissenting Opinion of Justice Arturo Brion, p. 43.

President Macapagal-Arroyo, are dates clearly falling during the appointment ban. Thus, this *ponencia* and the dissent both agree that all the appointments in these cases are midnight appointments in violation of Section 15, Article VII of the 1987 Constitution.

Constitutionality of EO 2

Based on prevailing jurisprudence, appointment to a government post is a process that takes several steps to complete. Any valid appointment, including one made under the exception provided in Section 15, Article VII of the 1987 Constitution, must consist of the President signing an appointee's appointment paper to a vacant office, the official transmittal of the appointment paper (preferably through the MRO), receipt of the appointment paper by the appointee, and acceptance of the appointment by the appointee evidenced by his or her oath of office or his or her assumption to office.

Aytona v. Castillo (*Aytona*)[42] is the basis for Section 15, Article VII of the 1987 Constitution. *Aytona* defined "midnight or last minute" appointments for Philippine jurisprudence. President Carlos P. Garcia submitted on 29 December 1961, his last day in office, 350 appointments, including that of Dominador R. Aytona for Central Bank Governor. President Diosdado P. Macapagal assumed office on 30 December 1961, and issued on 31 December 1961 Administrative Order No. 2 recalling, withdrawing, and cancelling all appointments made by President Garcia after 13 December 1961 (President Macapagal's proclamation date). President Macapagal appointed Andres V. Castillo as Central Bank Governor on 1 January 1962. This Court dismissed Aytona's *quo warranto* proceeding against Castillo, and upheld Administrative Order No. 2's cancellation of the "midnight or last minute" appointments. We wrote:

> x x x But the issuance of 350 appointments in one night and the planned induction of almost all of them a few hours before the inauguration of the new President may, with some reason, be regarded by the latter as an abuse of Presidential prerogatives, the steps taken being apparently a mere partisan effort to fill all vacant positions irrespective of fitness and other conditions, and thereby to deprive the new administration of an opportunity to make the corresponding appointments.
>
> x x x Now it is hard to believe that in signing 350 appointments in one night, President Garcia exercised such "double care" which was required and expected of him; and therefore, there seems to be force to the contention that these appointments fall beyond the intent and spirit of the constitutional provision granting to the Executive authority to issue *ad interim* appointments.

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[42] No. L-19313, 19 January 1962, 4 SCRA 1.

> Under the circumstances above described, what with the separation of powers, this Court resolves that it must decline to disregard the Presidential Administrative Order No. 2, cancelling such "midnight" or "last-minute" appointments.
>
> Of course the Court is aware of many precedents to the effect that once an appointment has been issued, it cannot be reconsidered, specially where the appointee has qualified. But none of them refer to mass *ad interim* appointments (three hundred and fifty), issued in the last hours of an outgoing Chief Executive, in a setting similar to that outlined herein. On the other hand, the authorities admit of exceptional circumstances justifying revocation and if any circumstances justify revocation, those described herein should fit the exception.
>
> Incidentally, it should be stated that the underlying reason for denying the power to revoke after the appointee has qualified is the latter's equitable rights. Yet it is doubtful if such equity might be successfully set up in the present situation, considering the rush conditional appointments, hurried maneuvers and other happenings detracting from that degree of good faith, morality and propriety which form the basic foundation of claims to equitable relief. The appointees, it might be argued, wittingly or unwittingly cooperated with the stratagem to beat the deadline, whatever the resultant consequences to the dignity and efficiency of the public service. Needless to say, there are instances wherein not only strict legality, but also fairness, justice and righteousness should be taken into account.[43]

During the deliberations for the 1987 Constitution, then Constitutional Commissioner (now retired Supreme Court Chief Justice) Hilario G. Davide, Jr. referred to this Court's ruling in *Aytona* and stated that his proposal seeks to prevent a President, whose term is about to end, from preempting his successor by appointing his own people to sensitive positions.

> MR. DAVIDE: The idea of the proposal is that about the end of the term of the President, he may prolong his rule indirectly by appointing people to these sensitive positions, like the commissions, the Ombudsman, the judiciary, so he could perpetuate himself in power even beyond his term of office; therefore foreclosing the right of his successor to make appointments to these positions. We should realize that the term of the President is six years and under what we had voted on, there is no reelection for him. Yet he can continue to rule the country through appointments made about the end of his term to these sensitive positions.[44]

The 1986 Constitutional Commission put a definite period, or an empirical value, on *Aytona*'s intangible "stratagem to beat the deadline," and also on the act of "preempting the President's successor," which shows a lack of "good faith, morality and propriety." Subject to only one exception, appointments made during this period are thus automatically prohibited under the Constitution, regardless of the appointee's qualifications or even of the President's motives. The period for prohibited appointments covers

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43 Id. at 10-11.

44 http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/24/51487 (accessed 15 June 2015).

two months before the elections until the end of the President's term. The Constitution, with a specific exception, ended the President's power to appoint "two months immediately before the next presidential elections." For an appointment to be valid, it must be made outside of the prohibited period or, failing that, fall under the specified exception.

The dissent insists that, during the prohibited period, an appointment should be viewed in its "narrow sense." In its narrow sense, an appointment is not a process, but is only an "executive act that the President unequivocally exercises pursuant to his discretion."[45] The dissent makes acceptance of the appointment inconsequential. The dissent holds that an appointment is void if the appointment is made before the ban but the transmittal and acceptance are made after the ban. However, the dissent holds that an appointment is valid, or "efficacious," if the appointment and transmittal are made before the ban even if the acceptance is made after the ban. In short, the dissent allows an appointment to take effect during the ban, as long as the President signed and transmitted the appointment before the ban, even if the appointee never received the appointment paper before the ban and accepted the appointment only during the ban.

The dissent's view will lead to glaring absurdities. Allowing the dissent's proposal that an appointment is complete merely upon the signing of an appointment paper and its transmittal, excluding the appointee's acceptance from the appointment process, will lead to the absurdity that, in case of non-acceptance, the position is considered occupied and nobody else may be appointed to it. Moreover, an incumbent public official, appointed to another public office by the President, will automatically be deemed to occupy the new public office and to have automatically resigned from his first office upon transmittal of his appointment paper, even if he refuses to accept the new appointment. This will result in chaos in public service.

Even worse, a President who is unhappy with an incumbent public official can simply appoint him to another public office, effectively removing him from his first office without due process. The mere transmittal of his appointment paper will remove the public official from office without due process and even without cause, in violation of the Constitution.

The dissent's proferred excuse (that the appointee is not alluded to in Section 15, Article VII) for its rejection of "acceptance by the appointee" as an integral part of the appointment process ignores the reason for the limitation of the President's power to appoint, which is to prevent the outgoing President from continuing to rule the country indirectly after the end of his term. The 1986 Constitutional Commission installed a definite cut-off date as an objective and unbiased marker against which this once-in-

[45] Dissent, pp. 26-27, citing *Bermudez v. Executive Secretary Torres*, 370 Phil. 769, 776 (1999) citing *Aparri v. Court of Appeals*, 212 Phil. 215, 222-223 (1984).

every-six-years prohibition should be measured.

The dissent's assertion that appointment should be viewed in its narrow sense (and is not a process) ***only*** during the prohibited period is selective and time-based, and ignores well-settled jurisprudence. For purposes of complying with the time limit imposed by the appointment ban, the dissent's position cuts short the appointment process to the signing of the appointment paper and its transmittal, excluding the receipt of the appointment paper and acceptance of the appointment by the appointee.

The President exercises only ***one*** kind of appointing power. There is no need to differentiate the exercise of the President's appointing power outside, just before, or during the appointment ban. The Constitution allows the President to exercise the power of appointment during the period not covered by the appointment ban, and disallows (subject to an exception) the President from exercising the power of appointment during the period covered by the appointment ban. The concurrence of all steps in the appointment process is admittedly required for appointments outside the appointment ban. There is no justification whatsoever to remove acceptance as a requirement in the appointment process for appointments just before the start of the appointment ban, or during the appointment ban in appointments falling within the exception. The existence of the appointment ban makes no difference in the power of the President to appoint; it is still the same power to appoint. In fact, considering the purpose of the appointment ban, the concurrence of all steps in the appointment process must be strictly applied on appointments made just before or during the appointment ban.

In attempting to extricate itself from the obvious consequences of its selective application, the dissent glaringly contradicts itself:

> **Thus, an acceptance is still necessary in order for the appointee to validly assume his post and discharge the functions of his new office, and thus make the appointment effective.** There can never be an instance where the appointment of an incumbent will automatically result in his resignation from his present post and his subsequent assumption of his new position; or where the President can simply remove an incumbent from his current office by appointing him to another one. I stress that acceptance through oath or any positive act is still indispensable before any assumption of office may occur.[46] (Emphasis added)

The dissent proposes that this Court ignore well-settled jurisprudence during the appointment ban, but apply the same jurisprudence outside of the appointment ban.

> [T]he well-settled rule in our jurisprudence, that an appointment is a process that begins with the selection by the appointing power and ends with acceptance of the appointment by the appointee, *stands*. As early as the 1949 case of *Lacson v. Romero*, this Court laid down the rule that

[46] Dissent, p. 37.

> acceptance by the appointee is the last act needed to make an appointment complete. The Court reiterated this rule in the 1989 case of *Javier v. Reyes*. In the 1996 case of *Garces v. Court of Appeals*, this Court emphasized that acceptance by the appointee is indispensable to complete an appointment. The 1999 case of *Bermudez v. Executive Secretary*, cited in the *ponencia*, affirms this standing rule in our jurisdiction, to wit:
>
> > "The appointment is deemed complete once the last act required of the appointing authority has been complied with and its acceptance thereafter by the appointee in order to render it effective."[47]

The dissent's assertion creates a *singular exception* to the well-settled doctrine that appointment is a process that begins with the signing of the appointment paper, followed by the transmittal and receipt of the appointment paper, and becomes complete with the acceptance of the appointment. The dissent makes the singular exception that during the constitutionally mandated ban on appointments, acceptance is not necessary to complete the appointment. The dissent gives no reason why this Court should make such singular exception, which is contrary to the express provision of the Constitution prohibiting the President from making appointments during the ban. The dissent's singular exception will allow the President, during the ban on appointments, to remove from office incumbents without cause by simply appointing them to another office and transmitting the appointment papers the day before the ban begins, appointments that the incumbents cannot refuse because their acceptance is not required during the ban. Adoption by this Court of the dissent's singular exception will certainly wreak havoc on the civil service.

The following elements should ***always*** concur in the making of a valid (which should be understood as both complete and effective) appointment: (1) authority to appoint and evidence of the exercise of the authority; (2) transmittal of the appointment paper and evidence of the transmittal; (3) a vacant position at the time of appointment; and (4) receipt of the appointment paper and acceptance of the appointment by the appointee who possesses all the qualifications and none of the disqualifications. The concurrence of ***all*** these elements should ***always*** apply, regardless of when the appointment is made, whether outside, just before, or during the appointment ban. These steps in the appointment process should always concur and operate as a single process. There is no valid appointment if the process lacks even one step. And, unlike the dissent's proposal, there is no need to further distinguish between an effective and an ineffective appointment when an appointment is valid.

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[47] Separate Concurring Opinion of Justice Antonio T. Carpio in *Re: Seniority Among the Four (4) Most Recent Appointments to the Position of Associate Justices of the Court of Appeals*, 646 Phil. 1, 17 (2010), citing *Lacson v. Romero*, 84 Phil. 740 (1949); *Javier v. Reyes*, 252 Phil. 369 (1989); *Garces v. Court of Appeals*, 328 Phil. 403 (1996); and *Bermudez v. Executive Secretary Torres*, 370 Phil. 769 (1999).

Appointing Authority

The President's exercise of his power to appoint officials is provided for in the Constitution and laws.[48] Discretion is an integral part in the exercise of the power of appointment.[49]

> Considering that appointment calls for a selection, the appointing power necessarily exercises a discretion. According to Woodbury, J., "the choice of a person to fill an office constitutes the essence of his appointment," and Mr. Justice Malcolm adds that an "[a]ppointment to office is intrinsically an executive act involving the exercise of discretion." In *Pamantasan ng Lungsod ng Maynila v. Intermediate Appellate Court* we held:
>
> > The power to appoint is, in essence, discretionary. The appointing power has the right of choice which he may exercise freely according to his judgment, deciding for himself who is best qualified among those who have the necessary qualifications and eligibilities. It is a prerogative of the appointing power x x x x
>
> Indeed, the power of choice is the heart of the power to appoint. Appointment involves an exercise of discretion of whom to appoint; it is not a ministerial act of issuing appointment papers to the appointee. In other words, the choice of the appointee is a fundamental component of the appointing power.
>
> Hence, when Congress clothes the President with the power to appoint an officer, it (Congress) cannot at the same time limit the choice of the President to only one candidate. Once the power of appointment is conferred on the President, such conferment necessarily carries the discretion of whom to appoint. Even on the pretext of prescribing the qualifications of the officer, Congress may not abuse such power as to divest the appointing authority, directly or indirectly, of his discretion to pick his own choice. Consequently, when the qualifications prescribed by Congress can only be met by one individual, such enactment effectively eliminates the discretion of the appointing power to choose and constitutes an irregular restriction on the power of appointment.[50]

Transmittal

It is not enough that the President signs the appointment paper. There should be evidence that the President intended the appointment paper to be issued. It could happen that an appointment paper may be dated and signed by the President months before the appointment ban, but never left his locked drawer for the entirety of his term. Release of the appointment paper through the MRO is an unequivocal act that signifies the President's intent of its issuance.

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48 See Section 16, Chapter 5, Title I, Book III, Executive Order No. 292, Administrative Code of 1987.

49 See *Bermudez v. Executive Secretary Torres*, 370 Phil. 769 (1999).

50 *Flores v. Drilon*, G.R. No. 104732, 22 June 1993, 223 SCRA 568, 579-580. Citations omitted.

The MRO was created by Memorandum Order No. 1, Series of 1958, Governing the Organization and Functions of the Executive Office and General Matters of Procedure Therein. Initially called the Records Division, the MRO functioned as an administrative unit of the Executive Office. Memorandum Order No. 1 assigned the following functions:

> a. Receive, record and screen all incoming correspondence, telegrams, documents and papers, and
>
> (1) Forward those of a personal and unofficial nature to the President's Private Office; and
>
> (2) Distribute those requiring action within the Office or requiring staff work prior to presentation to the President to the appropriate units within the Office.
>
> b. Follow up on correspondence forwarded to entities outside the Office to assure that prompt replies are made and copies thereof furnished the Office.
>
> c. Dispatch outgoing correspondence and telegrams.
>
> d. Have custody of records of the Office, except personal papers of the President, and keep them in such condition as to meet the documentary and reference requirements of the Office.
>
> e. Keep and maintain a filing and records system for acts, memoranda, orders, circulars, correspondence and other documents affecting the Office for ready reference and use.
>
> f. Issue certified true copies of documents on file in the Division in accordance with prevailing standard operating procedure.
>
> g. Keep a separate record of communications or documents of confidential nature.
>
> h. Have custody of the Great Seal of the Republic of the Philippines.
>
> i. Prepare and submit to the approving authority, periodic disposition schedules of non-current records which have no historical, legal and/or claim value.
>
> j. With the approval of the Executive Secretary, assist other offices in the installation or improvement of their records management system; and
>
> k. Give instructions or deliver lectures and conduct practical training to in-service trainees from other offices and to students from educational institutions on records management.[51]

The Records Division was elevated to an Office in 1975, with the addition of the following functions:

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[51] *Rollo* (G.R. No. 206290), pp. 526-527.

> 1. Maintain and control vital documents and essential records to support the functions of the OP in its day to day activities;
>
> 2. Monitor the flow of communications from their time of receipt up to their dispatch;
>
> 3. Service the documentary, information and reference requirements of top management and action officers of the OP, and the reference and research needs of other government agencies and the general public;
>
> 4. Ensure the proper storage, maintenance, protection and preservation of vital and presidential documents, and the prompt disposal of obsolete and valueless records;
>
> 5. Effect the prompt publication/dissemination of laws, presidential issuances and classified documents;
>
> 6. Provide computerized integrated records management support services for easy reference and retrieval of data and information; and
>
> 7. To be able to represent the OP and OP officials in response to Subpoena Duces Tecum and Testificandum served by courts and other investigating bodies.[52]

For purposes of verification of the appointment paper's existence and authenticity, the appointment paper must bear the security marks (i.e., handwritten signature of the President, bar code, etc.) and must be accompanied by a transmittal letter from the MRO.

The testimony of Mr. Marianito Dimaandal, Director IV of the MRO, underscores the purpose of the release of papers through his office.

> Q: What are the functions of the MRO?
> A: The MRO is mandated under Memorandum Order No. 1, series of 1958 to (1) receive, record, and screen all incoming correspondence, telegrams, documents, and papers; (2) follow up on correspondence forwarded to entities outside the Office of the President ("OP") to assure that prompt replies are made and copies thereof furnished the OP; (3) timely dispatch all outgoing documents and correspondence**;** (4) have custody of records of the OP, except personal papers of the President, and keep them in such condition as to meet the documentary and reference requirements of the Office; (5) keep and maintain a filing and records system for Acts, Memoranda, Orders, Circulars, correspondence, and other pertinent documents for ready reference and use; (6) issue certified copies of documents on file as requested and in accordance with prevailing standard operating procedures; (7) maintain and control vital documents and essential records to support the OP in its day-to-day activities; (8) monitor the flow of communications from the time of receipt up to their dispatch; and (9) other related functions.
>
> x x x x

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[52] Id. at 527.

Q: As you previously mentioned, the MRO is the custodian of all documents emanating from Malacañang pursuant to its mandate under Memorandum Order No. 1, Series of 1958. Is the MRO required to follow a specific procedure in dispatching outgoing documents?
A: Yes.

Q: Is this procedure observed for the release of an appointment paper signed by the President?
A: Yes. It is observed for the release of the original copy of the appointment paper signed by the President.

Q: Can you briefly illustrate the procedure for the release of the original copy of the appointment paper signed by the President?
A: After an appointment paper is signed by the President, the Office of the Executive Secretary (OES) forwards the appointment paper bearing the stamp mark, barcode, and hologram of the Office of the President, together with a transmittal letter, to the MRO for official release. Within the same day, the MRO sends the original copy of the appointment paper together with the transmittal letter and a delivery receipt which contains appropriate spaces for the name of the addressee, the date released, and the date received by the addressee. Only a photocopy of the appointment is retained for the MRO's official file.

Q: What is the basis for the process you just discussed?
A: The Service Guide of the MRO.

x x x x

Q: What is the legal basis for the issuance of the MRO Service Guide, if any?
A: The MRO Service Guide was issued pursuant to Memorandum Circular No. 35, Series of 2003 and Memorandum Circular No. 133, Series of 2007.
x x x x

Q: Do you exercise any discretion in the release of documents forwarded to the MRO for transmittal to various offices?
A: No. We are mandated to immediately release all documents and correspondence forwarded to us for transmittal.

Q: If a document is forwarded by the OES to the MRO today, when is it officially released by the MRO to the department or agency concerned?
A: The document is released within the day by the MRO if the addressee is within Metro Manila. For example, in the case of the appointment paper of Dindo Venturanza, the OES forwarded to the MRO on March 12, 2010 his original appointment paper dated February 23, 2010 and the transmittal letter dated March 9, 2010 prepared by the OES. The MRO released his appointment paper on the same day or on March 12, 2010, and was also received by the DOJ on March 12, 2010 as shown by the delivery receipt.

Q: What is the effect if a document is released by an office or department within Malacañan without going through the MRO?
A: If a document does not pass through the MRO contrary to

established procedure, the MRO cannot issue a certified true copy of the same because as far as the MRO is concerned, it does not exist in our official records, hence, not an official document from the Malacañang. There is no way of verifying the document's existence and authenticity unless the document is on file with the MRO even if the person who claims to have in his possession a genuine document furnished to him personally by the President. As a matter of fact, it is only the MRO which is authorized to issue certified true copies of documents emanating from Malacañan being the official custodian and central repository of said documents. Not even the OES can issue a certified true copy of documents prepared by them.

Q: Why do you say that, Mr. Witness?
A: Because the MRO is the so-called "gatekeeper" of the Malacañang Palace. All incoming and outgoing documents and correspondence must pass through the MRO. As the official custodian, the MRO is in charge of the official release of documents.

Q: What if an appointment paper was faxed by the Office of the Executive Secretary to the appointee, is that considered an official release by the MRO?
A: No. It is still the MRO which will furnish the original copy of the appointment paper to the appointee. That appointment paper is, at best, only an "advanced copy."

Q: Assuming the MRO has already received the original appointment paper signed by the President together with the transmittal letter prepared by the OES, you said that the MRO is bound to transmit these documents immediately, that is, on the same day?
A: Yes.

Q: Were there instances when the President, after the original appointment paper has already been forwarded to the MRO, recalls the appointment and directs the MRO not to transmit the documents?
A: Yes, there were such instances.

Q: How about if the document was already transmitted by the MRO, was there any instance when it was directed to recall the appointment and retrieve the documents already transmitted?
A: Yes, but only in a few instances. Sometimes, when the MRO messenger is already in transit or while he is already in the agency or office concerned, we get a call to hold the delivery.

Q: You previously outlined the procedure governing the transmittal of original copies of appointment papers to the agency or office concerned. Would you know if this procedure was followed by previous administrations?
A: Yes. Since I started working in the MRO in 1976, the procedure has been followed. However, it was unusually disregarded when the appointments numbering more than 800 were made by then President Arroyo in March 2010. The MRO did not even know about some of these appointments and we were surprised when we learned about them in the newspapers.

Q: You mentioned that then President Arroyo appointed more than 800 persons in the month of March alone. How were you able to determine this number?
A: My staff counted all the appointments made by then President Arroyo within the period starting January 2009 until June 2010.

Q: What did you notice, if any, about these appointments?
A: There was a steep rise in the number of appointments made by then President Arroyo in the month of March 2010 compared to the other months.

Q: Do you have any evidence to show this steep rise?
A: Yes. I prepared a Certification showing these statistics and the graphical representation thereof.

Q: If those documents will be shown to you, will you be able to recognize them?
A: Yes.

Q: I am showing you a Certification containing the number of presidential appointees per month since January 2009 until June 2010, and a graphical representation thereof. Can you go over these documents and tell us the relation of these documents to the ones you previously mentioned?
A: These are [sic] the Certification with the table of statistics I prepared after we counted the appointments, as well as the graph thereof.

x x x x

Q: Out of the more than 800 appointees made in March 2010, how many appointment papers and transmittal letters were released through the MRO?
A: Only 133 appointment papers were released through the MRO.

Q: In some of these transmittal letters and appointment papers which were not released through the MRO but apparently through the OES, there were portions on the stamp of the OES which supposedly indicated the date and time it was actually received by the agency or office concerned but were curiously left blank, is this regular or irregular?
A: It is highly irregular.

Q: Why do you say so?
A: Usually, if the document released by the MRO, the delivery receipt attached to the transmittal letter is filled out completely because the dates when the original appointment papers were actually received are very material. It is a standard operating procedure for the MRO personnel to ask the person receiving the documents to write his/her name, his signature, and the date and time when he/she received it.

Q: So, insofar as these transmittal letters and appointment papers apparently released by the OES are concerned, what is the actual date when the agency or the appointee concerned received it?
A: I cannot answer. There is no way of knowing when they were actually received because the date and time were deliberately or inadvertently left blank.

> Q: Can we say that the date appearing on the face of the transmittal letters or the appointment papers is the actual date when it was released by the OES?
> A: We cannot say that for sure. That is why it is very unusual that the person who received these documents did not indicate the date and time when it was received because these details are very important.[53]

The MRO's exercise of its mandate does not prohibit the President or the Executive Secretary from giving the appointment paper directly to the appointee. However, a problem may arise if an appointment paper is not coursed through the MRO and the appointment paper is lost or the appointment is questioned. The appointee would then have to prove that the appointment paper was directly given to him.

Dimaandal's counsel made this manifestation about petitioners' appointment papers and their transmittal:

> Your Honors, we respectfully request for the following markings to be made:
>
> 1. A) The Transmittal Letter pertinent to the appointment of petitioner DINDO VENTURANZA dated March 9, 2010 as Exhibit "2-F" for the respondents;
> B) The delivery receipt attached in front of the letter bearing the date March 12, 2010 as Exhibit "2-F-1";
> C) The Appointment Paper of DINDO VENTURANZA dated February 23, 2010 as Exhibit "2-G" for the respondents;
>
> 2. A) The Transmittal Letter pertinent to the appointment of CHELOY E. VELICARIA-GARAFIL turned over to the MRO on May 13, 2010 consisting of seven (7) pages as Exhibits "2-H," "2-H-1," "2-H-2," "2-H-3," "2-H-4," "2-H-5," and "2-H-6" respectively for the respondents;
>
> i. The portion with the name "CHELOY E. VELICARIA-GARAFIL" as "State Solicitor II, Office of the Solicitor General" located on the first page of the letter as Exhibit "2-H-7;"
> ii. The portion rubber stamped by the Office of the Executive Secretary located at the back of the last page of the letter showing receipt by the DOJ with blank spaces for the date and time when it was actually received as Exhibit "2-H-8;"
>
> B) The Appointment Paper of CHELOY E. VELICARIA-GARAFIL dated March 5, 2010 as Exhibit "2-I" for the respondents;
>
> x x x x
>
> 4. A) The Transmittal Letter pertinent to the appointment of EDDIE U. TAMONDONG dated 8 March 2010 but turned over to the MRO only on May 6, 2010 consisting of two (2) pages as Exhibits "2-L" and "2-L-1" respectively for the respondents;

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[53] Id. at 455-471.

(a) The portion with the name "EDDIE U. TAMONDONG" as "Member, representing the Private Sector, Board of Directors" as Exhibit "2-L-2";

(b) The portion rubber stamped by the Office of the Executive Secretary located at the back of the last page of the letter showing receipt by Ma. Carissa O. Coscuella with blank spaces for the date and time when it was actually received as Exhibit "2-L-3";

x x x x

8. A) The Transmittal Letter pertinent to the appointments of x x x FRANCISCA BESTOYONG-ROSQUITA dated March 8, 2010 but turned over to the MRO on May 13, 2010 as Exhibit "2-T" for the respondents;

x x x x

(c) The portion with the name "FRANCISCA BESTOYONG-ROSQUITA" as "Commissioner, Representing Region I and the Cordilleras" as Exhibit "2-T-3;"

(d) The portion rubber stamped by the Office of the Executive Secretary at the back thereof showing receipt by Masli A. Quilaman of NCIP-QC on March 15, 2010 as Exhibit "2-T-4;"

x x x x

D) The Appointment Paper of FRANCISCA BESTOYONG-ROSQUITA dated March 5, 2010 as Exhibit "2-W" for the respondents;

9. A) The Transmittal Letter pertinent to the appointment of IRMA A. VILLANUEVA as Administrator for Visayas, Board of Administrators, Cooperative Development Authority, Department of Finance dated March 8, 2010 as Exhibit "2-X" for the respondents;

(a) The portion rubber stamped by the Office of the Executive Secretary at the back thereof showing receipt by DOF with blank spaces for the date and time when it was actually received as Exhibit "2-X-1;"

B) The Appointment Paper of IRMA A. VILLANUEVA dated March 3, 2010 as Exhibit "2-Y" for the respondents.[54]

The testimony of Ellenita G. Gatbunton, Division Chief of File Maintenance and Retrieval Division of the MRO, supports Dimaandal's counsel's manifestation that the transmittal of petitioners' appointment papers is questionable.

Q: In the case of Cheloy E. Velicaria-Garafil, who was appointed as State Solicitor II of the Office of the Solicitor General, was her appointment paper released through the MRO?

A: No. Her appointment paper dated March 5, 2010, with its corresponding transmittal letter, was merely turned over to the MRO on May 13, 2010. The transmittal letter that was turned over to the MRO was already stamped "released" by the Office of the Executive Secretary, but the date and time as to when it was actually received were unusually left blank.

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54 Id. at 460-466.

Q: What is your basis?
A: The transmittal letter and appointment paper turned over to the MRO.

x x x x

Q: In the case of Eddie U. Tamondong, who was appointed as member of the Board of Directors of Subic Bay Metropolitan Authority, was her [sic] appointment paper released through the MRO?
A: No. His appointment paper dated March 1, 2010, with its corresponding transmittal letter, was merely turned over to the MRO on May 6, 2010. The transmittal letter that was turned over to the MRO was already stamped "released" by the Office of the Executive Secretary, but the date and time as to when it was actually received were unusually left blank.

Q: What is your basis?
A: The transmittal letter and appointment paper turned over to the MRO.

x x x x

Q: In the case of Francisca Bestoyong-Resquita who was appointed as Commissioner of the National Commission on Indigenous Peoples, representing Region 1 and the Cordilleras, was her appointment paper released thru the MRO?
A: No. Her appointment paper dated March 5, 2010, with its corresponding transmittal letter, was merely turned over to the MRO on May 13, 2010. The transmittal letter that was turned over to the MRO was already stamped "released" by the Office of the Executive Secretary and received on March 15, 2010.

Q: What is your basis?
A: The transmittal letter and appointment paper turned over to the MRO.

x x x x

Q: In the case of Irma A. Villanueva who was appointed as Administrator for Visayas of the Cooperative Development Authority, was her appointment paper released thru the MRO?
A: No. Her appointment paper dated March 3, 2010, with its corresponding transmittal letter, was merely turned over to the MRO on May 4, 2010. The transmittal letter that was turned over to the MRO was already stamped "released" by the Office of the Executive Secretary, but the date and time as to when it was actually received were unusually left blank.

Q: What is your basis?
A: The transmittal letter and appointment paper turned over to the MRO.[55]

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[55] Judicial Affidavit of Ellenita G. Gatbunton, Division Chief of File Maintenance and Retrieval Division of the Malacañang Records Office. Id. at 410-412, 416-417.

The possession of the original appointment paper is not indispensable to authorize an appointee to assume office. If it were indispensable, then a loss of the original appointment paper, which could be brought about by negligence, accident, fraud, fire or theft, corresponds to a loss of the office.[56] However, in case of loss of the original appointment paper, the appointment must be evidenced by a certified true copy issued by the proper office, in this case the MRO.

Vacant Position

An appointment can be made only to a vacant office. An appointment cannot be made to an occupied office. The incumbent must first be legally removed, or his appointment validly terminated, before one could be validly installed to succeed him.[57]

To illustrate: in *Lacson v. Romero*,[58] Antonio Lacson (Lacson) occupied the post of provincial fiscal of Negros Oriental. He was later nominated and confirmed as provincial fiscal of Tarlac. The President nominated and the Commission on Appointments confirmed Honorio Romero (Romero) as provincial fiscal of Negros Oriental as Lacson's replacement. Romero took his oath of office, but Lacson neither accepted the appointment nor assumed office as provincial fiscal of Tarlac. This Court ruled that Lacson remained as provincial fiscal of Negros Oriental, having declined the appointment as provincial fiscal of Tarlac. There was no vacancy to which Romero could be legally appointed; hence, Romero's appointment as provincial fiscal of Negros Oriental *vice* Lacson was invalid.

> The appointment to a government post like that of provincial fiscal to be complete involves several steps. First, comes the nomination by the President. Then to make that nomination valid and permanent, the Commission on Appointments of the Legislature has to confirm said nomination. The last step is the acceptance thereof by the appointee by his assumption of office. The first two steps, nomination and confirmation, constitute a mere offer of a post. They are acts of the Executive and Legislative departments of the Government. But the last necessary step to make the appointment complete and effective rests solely with the appointee himself. He may or he may not accept the appointment or nomination. As held in the case of *Borromeo vs. Mariano*, 41 Phil. 327, "there is no power in this country which can compel a man to accept an office." Consequently, since Lacson has declined to accept his appointment as provincial fiscal of Tarlac and no one can compel him to do so, then he continues as provincial fiscal of Negros Oriental and no vacancy in said office was created, unless Lacson had been lawfully removed as such fiscal of Negros Oriental.[59]

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56 See *Marbury v. Madison*, 5 U.S. 137 (1803).
57 See *Garces v. Court of Appeals*, 328 Phil. 403 (1996).
58 84 Phil. 740 (1949).
59 Id. at 745.

Paragraph (b), Section 1 of EO 2 considered as midnight appointments those appointments to offices that will only be vacant on or after 11 March 2010 even though the appointments are made prior to 11 March 2010. EO 2 remained faithful to the intent of Section 15, Article VII of the 1987 Constitution: the outgoing President is prevented from continuing to rule the country indirectly after the end of his term.

Acceptance by the Qualified Appointee

Acceptance is indispensable to complete an appointment. Assuming office and taking the oath amount to acceptance of the appointment.[60] An oath of office is a qualifying requirement for a public office, a prerequisite to the full investiture of the office.[61]

Javier v. Reyes[62] is instructive in showing how acceptance is indispensable to complete an appointment. On 7 November 1967, petitioner Isidro M. Javier (Javier) was appointed by then Mayor Victorino B. Aldaba as the Chief of Police of Malolos, Bulacan. The Municipal Council confirmed and approved Javier's appointment on the same date. Javier took his oath of office on 8 November 1967, and subsequently discharged the rights, prerogatives, and duties of the office. On 3 January 1968, while the approval of Javier's appointment was pending with the CSC, respondent Purificacion C. Reyes (Reyes), as the new mayor of Malolos, sent to the CSC a letter to recall Javier's appointment. Reyes also designated Police Lt. Romualdo F. Clemente as Officer-in-Charge of the police department. The CSC approved Javier's appointment as permanent on 2 May 1968, and even directed Reyes to reinstate Javier. Reyes, on the other hand, pointed to the appointment of Bayani Bernardo as Chief of Police of Malolos, Bulacan on 4 September 1967. This Court ruled that Javier's appointment prevailed over that of Bernardo. It cannot be said that Bernardo accepted his appointment because he never assumed office or took his oath.

Excluding the act of acceptance from the appointment process leads us to the very evil which we seek to avoid (i.e., antedating of appointments). Excluding the act of acceptance will only provide more occasions to honor the Constitutional provision in the breach. The inclusion of acceptance by the appointee as an integral part of the entire appointment process prevents the abuse of the Presidential power to appoint. It is relatively easy to antedate appointment papers and make it appear that they were issued prior to the appointment ban, but it is more difficult to simulate the entire appointment process up until acceptance by the appointee.

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60 See *Javier v. Reyes*, 252 Phil. 369 (1989). See also *Mitra v. Subido*, 128 Phil. 128 (1967).

61 *Chavez v. Ronidel*, 607 Phil. 76 (2009), citing *Mendoza v. Laxina, Sr.*, 453 Phil. 1013, 1026-1027 (2003); *Lecaroz v. Sandiganbayan*, 364 Phil. 890, 904 (1999).

62 252 Phil. 369 (1989).

Petitioners have failed to show compliance with all four elements of a valid appointment. They cannot prove with certainty that their appointment papers were transmitted before the appointment ban took effect. On the other hand, petitioners admit that they took their oaths of office during the appointment ban.

Petitioners have failed to raise any valid ground for the Court to declare EO 2, or any part of it, unconstitutional. Consequently, EO 2 remains valid and constitutional.

WHEREFORE, the petitions in G.R. Nos. 203372, 206290, and 212030 are **DENIED**, and the petition in G.R. No. 209138 is **DISMISSED**. The appointments of petitioners Atty. Cheloy E. Velicaria-Garafil (G.R. No. 203372), Atty. Dindo G. Venturanza (G.R. No. 206290), Irma A. Villanueva, and Francisca B. Rosquita (G.R. No. 209138), and Atty. Eddie U. Tamondong (G.R. No. 212030) are declared **VOID**. We **DECLARE** that Executive Order No. 2 dated 30 July 2010 is **VALID** and **CONSTITUTIONAL**.

SO ORDERED.

ANTONIO T. CARPIO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

I join the dissent of Justice Brion.
Teresita Leonardo de Castro

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

See: Concurring & Dissenting Opinion.

ARTURO D. BRION
Associate Justice

(On leave, left vote)
I join J. Brion's dissent

DIOSDADO M. PERALTA
Associate Justice

I join the dissent of J. Brion

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

I join J. Brion in his dissent

JOSE PORTUGAL PEREZ
Associate Justice

I join the dissent of J. Brion

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

(On leave, left my vote)

MARVIC M.V.F. LEONEN
Associate Justice

(no part)
FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice