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[G.R. NO. 139554. July 21, 2006]

ARMITA B. RUFINO, ZENAIDA R. TANTOCO, LORENZO CALMA, RAFAEL SIMPAO, JR., AND FREDDIE GARCIA, PETITIONERS, VS. BALTAZAR N. ENDRIGA, MA. PAZ D. LAGDAMEO, PATRICIA C. SISON, IRMA PONCE-ENRILE POTENCIANO, AND DOREEN FERNANDEZ, RESPONDENTS. [G.R. NO. 139565] BALTAZAR N. ENDRIGA, MA. PAZ D. LAGDAMEO, PATRICIA C. SISON, IRMA PONCE-ENRILE POTENCIANO, AND DOREEN FERNANDEZ, PETITIONERS, VS. ARMITA B. RUFINO, ZENAIDA R. TANTOCO, LORENZO CALMA, RAFAEL SIMPAO, JR., AND FREDDIE GARCIA, RESPONDENTS.

D E C I S I O N

CARPIO, J.:

Presidential Decree No. 15 (PD 15) created the Cultural Center of the Philippines (CCP) for the primary purpose of propagating arts and culture in the Philippines.[1] The CCP is to awaken the consciousness of the Filipino people to their artistic and cultural heritage and encourage them to preserve, promote, enhance, and develop such heritage.[2]

PD 15 created a Board of Trustees ("Board") to govern the CCP. PD 15 mandates the Board to draw up programs and projects that (1) cultivate and enhance public interest in, and appreciation of, Philippine art; (2) discover and develop talents connected with Philippine cultural pursuits; (3) create opportunities for individual and national self-expression in cultural affairs; and (4) encourage the organization of cultural groups and the staging of cultural exhibitions.[3] The Board administers and holds in trust real and personal properties of the CCP for the benefit of the Filipino people.[4] The Board invests income derived from its projects and operations in a Cultural Development Fund set up to attain the CCP's objectives.[5]

The consolidated petitions in the case at bar stem from a *quo warranto* proceeding involving two sets of CCP Boards. The controversy revolves on who between the contending groups, both claiming as the rightful trustees of the CCP Board, has the legal right to hold office.

The resolution of the issue boils down to the constitutionality of the provision of PD 15 on the manner of filling vacancies in the Board.

The Case

Before us are two consolidated Petitions for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure. In **G.R. No. 139554,** petitioners Armita B. Rufino ("Rufino"), Zenaida R. Tantoco ("Tantoco"),[6] Lorenzo Calma ("Calma"), Rafael Simpao, Jr. ("Simpao"), and Freddie Garcia ("Garcia"), represented by the Solicitor General and collectively referred to as the Rufino group, seek to set aside the Decision[7] dated 14 May 1999 of the Court of Appeals in CA-G.R. SP No. 50272 as well as the Resolution dated 3 August 1999 denying the motion for reconsideration. The dispositive portion of the appellate court's decision reads:

> WHEREFORE, judgment is hereby rendered
>
> 1) Declaring petitioners [the Endriga group] to have a clear right to their respective offices to which they were elected by the CCP Board up to the expiration of their 4-year term,
>
> 2) Ousting respondents [the Rufino group], except respondent Zenaida R. Tantoco, from their respective offices and excluding them therefrom, and
>
> 3) Dismissing the case against respondent Zenaida R. Tantoco.
>
> SO ORDERED.[8]

In **G.R. No. 139565**, petitioners Baltazar N. Endriga ("Endriga"), Ma. Paz D. Lagdameo ("Lagdameo"), Patricia C. Sison ("Sison"), Irma Ponce-Enrile Potenciano ("Potenciano"), and Doreen Fernandez ("Fernandez"), collectively referred to as the Endriga group, assail the Resolution dated 3 August 1999 issued by the Court of Appeals in the same case insofar as it denied their Motion for Immediate Execution of the Decision dated 14 May 1999.

The Antecedents

On 25 June 1966, then President Ferdinand E. Marcos issued Executive Order No. 30 (EO 30) creating the Cultural Center of the Philippines as a trust governed by a Board of Trustees of seven members to preserve and promote Philippine culture. The original

founding trustees, who were all appointed by President Marcos, were Imelda Romualdez-Marcos, Juan Ponce-Enrile, Andres Soriano, Jr., Antonio Madrigal, Father Horacio Dela Costa, S.J., I.P. Soliongco, and Ernesto Rufino.

On 5 October 1972, or soon after the declaration of Martial Law, President Marcos issued PD 15,[9] the CCP's charter, which converted the CCP under EO 30 into a non-municipal public corporation free from the "pressure or influence of politics."[10] PD 15 increased the members of CCP's Board from seven to nine trustees. Later, Executive Order No. 1058, issued on 10 October 1985, increased further the trustees to 11.

After the People Power Revolution in 1986, then President Corazon C. Aquino asked for the courtesy resignations of the then incumbent CCP trustees and appointed new trustees to the Board. Eventually, during the term of President Fidel V. Ramos, the CCP Board included Endriga, Lagdameo, Sison, Potenciano, Fernandez, Lenora A. Cabili ("Cabili"), and Manuel T. Mañosa ("Mañosa").

On 22 December 1998, then President Joseph E. Estrada appointed seven new trustees to the CCP Board for a term of four years to replace the Endriga group as well as two other incumbent trustees. The seven new trustees were:

1. Armita B. Rufino – President, vice Baltazar N. Endriga
2. Zenaida R. Tantoco – Member, vice Doreen Fernandez
3. Federico Pascual – Member, vice Lenora A. Cabili
4. Rafael Buenaventura – Member, vice Manuel T. Mañosa
5. Lorenzo Calma – Member, vice Ma. Paz D. Lagdameo
6. Rafael Simpao, Jr. – Member, vice Patricia C. Sison
7. Freddie Garcia – Member, vice Irma Ponce-Enrile Potenciano

Except for Tantoco, the Rufino group took their respective oaths of office and assumed the performance of their duties in early January 1999.

On 6 January 1999, the Endriga group filed a petition for *quo warranto* before this Court questioning President Estrada's appointment of seven new members to the CCP Board. The Endriga group alleged that under Section 6(b) of PD 15, vacancies in the CCP Board "shall be filled by election by a vote of a majority of the trustees held at the next regular meeting x x x." In case "only one trustee survive[s], the vacancies shall be filled by the surviving trustee acting in consultation with the ranking officers of the [CCP]." The Endriga group

claimed that it is only when the CCP Board is entirely vacant may the President of the Philippines fill such vacancies, acting in consultation with the ranking officers of the CCP.

The Endriga group asserted that when former President Estrada appointed the Rufino group, only one seat was vacant due to the expiration of Mañosa's term. The CCP Board then had 10 incumbent trustees, namely, Endriga, Lagdameo, Sison, Potenciano, Fernandez, together with Cabili, Father Bernardo P. Perez ("Fr. Perez"), Eduardo De los Angeles ("De los Angeles"), Ma. Cecilia Lazaro ("Lazaro"), and Gloria M. Angara ("Angara"). President Estrada retained Fr. Perez, De los Angeles, Lazaro, and Angara as trustees.

Endriga's term was to expire on 26 July 1999, while the terms of Lagdameo, Sison, Potenciano, and Fernandez were to expire on 6 February 1999. The Endriga group maintained that under the CCP Charter, the trustees" fixed four-year term could only be terminated "by reason of resignation, incapacity, death, or other cause." Presidential action was neither necessary nor justified since the CCP Board then still had 10 incumbent trustees who had the statutory power to fill by election any vacancy in the Board.

The Endriga group refused to accept that the CCP was under the supervision and control of the President. The Endriga group cited Section 3 of PD 15, which states that the CCP "shall enjoy autonomy of policy and operation x x x."

The Court referred the Endriga group's petition to the Court of Appeals "for appropriate action" in observance of the hierarchy of courts.

On 14 May 1999, the Court of Appeals rendered the Decision under review granting the *quo warranto* petition. The Court of Appeals declared the Endriga group lawfully entitled to hold office as CCP trustees. On the other hand, the appellate court's Decision ousted the Rufino group from the CCP Board.

In their motion for reconsideration, the Rufino group asserted that the law could only delegate to the CCP Board the power to appoint officers lower in rank than the trustees of the Board. The law may not validly confer on the CCP trustees the authority to appoint or elect their fellow trustees, for the latter would be **officers of equal rank and not of lower rank.** Section 6(b) of PD 15 authorizing the CCP trustees to elect their fellow trustees should be declared unconstitutional being repugnant to Section 16, Article VII of the 1987 Constitution allowing the appointment only of **"officers lower in rank"** than the appointing power.

On 3 August 1999, the Court of Appeals denied the Rufino group's motion for reconsideration. The Court of Appeals also denied the Endriga group's motion for immediate execution of the 14 May 1999 Decision.

Hence, the instant consolidated petitions.

Meanwhile, Angara filed a Petition-in-Intervention before this Court alleging that although she was not named as a respondent in the *quo warranto* petition, she has an interest in the case as the then incumbent CCP Board Chairperson. Angara adopted the same position and offered the same arguments as the Rufino group.

The Ruling of the Court of Appeals

The Court of Appeals held that Section 6(b) of PD 15 providing for the manner of filling vacancies in the CCP Board is clear, plain, and free from ambiguity. Section 6(b) of PD 15 mandates the remaining trustees to fill by election vacancies in the CCP Board. Only when the Board is entirely vacant, which is not the situation in the present case, may the President exercise his power to appoint.

The Court of Appeals stated that the legislative history of PD 15 shows a clear intent "to insulate the position of trustee from the pressure or influence of politics by abandoning appointment by the President of the Philippines as the mode of filling"[11] vacancies in the CCP Board. The Court of Appeals held that until Section 6(b) of PD 15 is declared unconstitutional in a proper case, it remains the law. The Court of Appeals also clarified that PD 15 vests on the CCP Chairperson the power to appoint all officers, staff, and personnel of the CCP, subject to confirmation by the Board.

The Court of Appeals denied the Rufino group's motion for reconsideration for failure to raise new issues except the argument that Section 6(b) of PD 15 is unconstitutional. The Court of Appeals declined to rule on the constitutionality of Section 6(b) of PD 15 since the Rufino group raised this issue for the first time in the motion for reconsideration. The Court of Appeals also held, "Nor may the President's constitutional and/or statutory power of supervision and control over government corporations restrict or modify the application of the CCP Charter."[12]

The Court of Appeals, moreover, denied the Endriga group's motion for immediate execution of judgment on the ground that the reasons submitted to justify execution pending appeal were not persuasive.

The Issues

In **G.R. No. 139554**, the Rufino group, through the Solicitor General, contends that the Court of Appeals committed reversible error:

I

x x x in holding that it was "not actuated" to pass upon the constitutionality of Section 6(b) of PD 15 inasmuch as the issue was raised for the first time in [Rufino et al.'s] motion for reconsideration;

II

x x x in not holding that Section 6(b) of PD 15 is unconstitutional considering that:

A. x x x [it] is an invalid delegation of the President's appointing power under the Constitution;

B. x x x [it] effectively deprives the President of his constitutional power of control and supervision over the CCP;

III

x x x in declaring the provisions of PD 15 as clear and complete and in failing to apply the executive/administrative construction x x x which has been consistently recognized and accepted since 1972;

IV

x x x in finding that [Endriga et al.] have a clear legal right to be the incumbent trustees and officers of the CCP considering that:

A. Endriga et al. are estopped from instituting the *quo warranto* action since they recognized and benefited from the administrative construction regarding the filling of vacancies in the CCP Board of Trustees x x x;

B. x x x [Endriga et al.'s] terms did not legally commence as [they] were not validly elected under PD 15;
C. assuming that [Endriga et al.] were validly elected, they lost their right to retain their offices because their terms as trustees expired on 31 December 1998;
D. [Endriga et al.] assumed positions in conflict x x x with their offices in the CCP and were thus not entitled to retain the same;

V

x x x in not dismissing the *quo warranto* petition for being moot x x x;

VI

x x x in holding that [Rufino et al.'s] prayer [that the] disputed offices [be declared] entirely as vacant is bereft of basis and amounts to "an admission of their lack of right to the office they claim."[13]

In **G.R. No. 139565**, the Endriga group raises the following issue:

whether a writ of *quo warranto* involving a public office should be declared a self-executing judgment and deemed immediately executory under Rule 39, Section 4 of the Rules of Court.[14]

The Court's Ruling

The petition in G.R. No. 139554 has merit.

The battle for CCP's leadership between the Rufino and Endriga groups dealt a blow to the country's artistic and cultural activities. The highly publicized leadership row over the CCP created discord among management, artists, scholars, employees, and even the public because of the public interest at stake.

Subsequently, the assumption to office of a new President in 2001 seemingly restored normalcy to the CCP leadership. After then Vice-President Gloria Macapagal-Arroyo assumed the Presidency on 20 January 2001, the Rufino group tendered their respective resignations on 24-29 January 2001 as trustees of the CCP Board. On 12 July 2001,

President Macapagal-Arroyo appointed 11 trustees to the CCP Board with the corresponding positions set opposite their names:

1. Baltazar N. Endriga – Chairman
2. Nestor O. Jardin – President
3. Ma. Paz D. Lagdameo – Member
4. Teresita O. Luz – Member
5. Irma P.E. Potenciano – Member
6. Eduardo D. De los Angeles – Member
7. Patricia C. Sison – Member
8. Benjamin H. Cervantes – Member
9. Sonia M. Roco – Member
10. Ruperto S. Nicdao, Jr. – Member
11. Lina F. Litton – Member

In its special meeting on 13 July 2001, the CCP Board **elected** these 11 newly-appointed trustees to the same positions and as trustees of the CCP Board. In the same meeting, the Board also elected the Chairman and President.

On 21 December 2001, the Solicitor General submitted to this Court a manifestation stating that the "election of the trustees was made without prejudice to the resolution of the constitutional issues before this Honorable Court in G.R. Nos. 139554 and 139565, x x x."[15]

The Issue of Mootness

We first consider the Rufino group's contention that the Endriga group's *quo warranto* suit should have been dismissed for being moot. The Rufino group argued that when the Endriga group's terms subsequently expired, there was no more actual controversy for the Court to decide.

For the Court to exercise its power of adjudication, there must be an actual case or controversy " one that involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution.[16] The case must not be moot or based on extra-legal or other similar considerations not cognizable by courts of justice.[17] A case becomes moot when its purpose has become stale.[18]

The purpose of the *quo warranto* petition was to oust the Rufino group from the CCP Board

and to declare the Endriga group as the rightful trustees of the CCP Board. It may appear that supervening events have rendered this case moot with the resignation of the Rufino group as well as the expiration of the terms of the Endriga group based on their appointments by then President Ramos. A "new" set of CCP trustees had been **appointed** by President Macapagal-Arroyo and subsequently **elected** by the CCP Board.

However, there are times when the controversy is of such character that to prevent its recurrence, and to assure respect for constitutional limitations, this Court must pass on the merits of a case. This is one such case.

The issues raised here are no longer just determinative of the respective rights of the contending parties. The issues pertaining to circumstances personal to the Endriga group may have become stale. These issues are (1) whether the Endriga group is estopped from bringing the *quo warranto* for they themselves were appointed by the incumbent President; (2) whether they were validly elected by the remaining CCP trustees; (3) whether their terms expired on 31 December 1998 as specified in their appointment papers; and (4) whether they are entitled to immediate execution of judgment.

However, the constitutional question that gave rise to these issues will continue to spawn the same controversy in the future, unless the threshold constitutional question is resolved " the validity of Section 6(b) and (c) of PD 15 on the manner of filling vacancies in the CCP Board. While the issues may be set aside in the meantime, they are certain to recur every four years, especially when a new President assumes office, generating the same controversy all over again. Thus, the issues raised here are capable of repetition, yet evading review if compromises are resorted every time the same controversy erupts and the constitutionality of Section 6(b) and (c) of PD 15 is not resolved.

The Court cannot refrain from passing upon the constitutionality of Section 6(b) and (c) of PD 15 if only to prevent a repeat of this regrettable controversy and to protect the CCP from being periodically wracked by internecine politics. Every President who assumes office naturally wants to appoint his or her own trustees to the CCP Board. A frontal clash will thus periodically arise between the President's constitutional power to appoint under Section 16, Article VII of the 1987 Constitution and the CCP trustees' power to elect their fellow trustees under Section 6(b) and (c) of PD 15.

This Court may, in the exercise of its sound discretion, brush aside procedural barriers[19] and take cognizance of constitutional issues due to their paramount importance. It is the

Court's duty to apply the 1987 Constitution in accordance with what it says and not in accordance with how the Legislature or the Executive would want it interpreted.[20] This Court has the final word on what the law means.[21] The Court must assure respect for the constitutional limitations embodied in the 1987 Constitution.

Interpreting Section 6(b) and (c) of PD 15

At the heart of the controversy is Section 6(b) of PD 15, as amended, which reads:

> *Board of Trustees.* – The governing powers and authority of the corporation shall be vested in, and exercised by, a Board of eleven (11) Trustees who shall serve without compensation.
>
> x x x x
>
> (b) Vacancies in the Board of Trustees due to termination of term, resignation, incapacity, death or other cause as may be provided in the By-laws, **shall be filled by election by a vote of a majority of the trustees held at the next regular meeting following occurrence of such vacancy.** The elected trustee shall then hold office for a complete term of four years unless sooner terminated by reason of resignation, incapacity, death or other cause. Should only one trustee survive, the vacancies shall be filled by the surviving trustee acting in consultation with the ranking officers of the Center. Such officers shall be designated in the Center's Code of By-Laws. Should for any reason the Board be left entirely vacant, the same shall be filled by the President of the Philippines acting in consultation with the aforementioned ranking officers of the Center. (Emphasis supplied)

Inextricably related to Section 6(b) is Section 6(c) which limits the terms of the trustees, as follows:

> (c) No person may serve as trustee who is not a resident of the Philippines, of good moral standing in the community and at least 25 years of age: *Provided*, That there shall always be a majority of the trustees who are citizens of the Philippines. Trustees may not be **reelected** for more than two (2) consecutive terms. (Emphasis supplied)

The clear and categorical language of Section 6(b) of PD 15 states that vacancies in the CCP Board shall be **filled by a majority vote of the remaining trustees.** Should only one trustee survive, the vacancies **shall be filled by the surviving trustee acting in consultation with the ranking officers of the CCP. Should the Board become entirely vacant, the vacancies shall be filled by the President of the Philippines** acting in consultation with the same ranking officers of the CCP. Thus, the remaining trustees, whether one or more, elect their fellow trustees for a fixed four-year term. On the other hand, Section 6(c) of PD 15 does not allow trustees to reelect fellow trustees for more than two consecutive terms.

The Power of Appointment

The source of the President's power to appoint, as well as the Legislature's authority to delegate the power to appoint, is found in Section 16, Article VII of the 1987 Constitution which provides:

> The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. **The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.**
>
> The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress. (Emphasis supplied)

The power to appoint is the prerogative of the President, except in those instances when the Constitution provides otherwise. Usurpation of this fundamentally Executive power by the Legislative and Judicial branches violates the system of separation of powers that inheres in our democratic republican government.[22]

Under Section 16, Article VII of the 1987 Constitution, the President appoints three groups of officers. The first group refers to the heads of the Executive departments, ambassadors, other public ministers and consuls, officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in the President by the Constitution. The second group refers to those whom the President may be authorized by law to appoint. The third group refers to all other officers of the Government whose appointments are not otherwise provided by law.

Under the same Section 16, there is a fourth group of lower-ranked officers whose appointments Congress may by law vest in the heads of departments, agencies, commissions, or boards. The present case involves the interpretation of Section 16, Article VII of the 1987 Constitution with respect to the appointment of this fourth group of officers.[23]

The President appoints the first group of officers with the consent of the Commission on Appointments. The President appoints the second and third groups of officers without the consent of the Commission on Appointments. The President appoints the third group of officers if the law is silent on who is the appointing power, or if the law authorizing the head of a department, agency, commission, or board to appoint is declared unconstitutional. Thus, if Section 6(b) and (c) of PD 15 is found unconstitutional, the President shall appoint the trustees of the CCP Board because the trustees fall under the third group of officers.

The Scope of the Appointment Power of the Heads of Departments, Agencies, Commissions, or Boards

The original text of Section 16, Article VII of the 1987 Constitution, as written in Resolution No. 517[24] of the Constitutional Commission, is almost a verbatim copy of the one found in the 1935 Constitution. Constitutional Commissioner Father Joaquin Bernas, S.J., explains the evolution of this provision and its import, thus:

> The last sentence of the first paragraph of Section 16 x x x is a relic from the 1935 and 1973 Constitutions, x x x.
>
> Under the 1935 Constitution, the provision was: “but the Congress may by law vest the appointment of inferior officers in the President alone, in the courts, or in the heads of departments.” As already seen, it meant that, while the general rule was that all presidential appointments needed confirmation by the

> Commission on Appointments, Congress could relax this rule by vesting the power to appoint "inferior officers" in "the President alone, in the courts, or in the heads of departments." **It also meant that while, generally, appointing authority belongs to the President, Congress could let others share in such authority. And the word "inferior" was understood to mean not petty or unimportant but lower in rank than those to whom appointing authority could be given.**
>
> Under the 1973 Constitution, according to which the power of the President to appoint was not limited by any other body, the provision read: "However, the Batasang Pambansa may by law vest in members of the Cabinet, courts, heads of agencies, commissions, and boards the power to appoint inferior officers in their respective offices." No mention was made of the President. **The premise was that the power to appoint belonged to the President; but the Batasan could diffuse this authority by allowing it to be shared by officers other than the President.**
>
> The 1987 provision also has the evident intent of allowing Congress to give to officers other than the President the authority to appoint. To that extent therefore reference to the President is pointless. And by using the word "alone," copying the tenor of the 1935 provision, it implies, it is submitted, that the general rule in the 1935 Constitution of requiring confirmation by the Commission on Appointments had not been changed. Thereby the picture has been blurred. This confused text, however, should be attributed to oversight. Reference to the President must be ignored and the whole sentence must be read merely as authority for Congress to vest appointing power in courts, in heads of departments, agencies, commissions, or boards after the manner of the 1973 text.
>
> Incidentally, the 1987 text, in order to eschew any pejorative connotation, avoids the phrase "inferior officers" and translates it instead into "officers lower in rank," that is, **lower in rank than the courts or the heads of departments, agencies, commissions, or boards.**[25] (Emphasis supplied)

The framers of the 1987 Constitution clearly intended that Congress could by law vest the appointment of **lower-ranked officers** in the heads of departments, agencies, commissions,

or boards. The deliberations[26] of the

1986 Constitutional Commission explain this intent beyond any doubt.[27]

The framers of the 1987 Constitution changed the qualifying word "inferior" to the less disparaging phrase "lower in rank" purely for style. However, the clear intent remained that **these inferior or lower in rank officers are the subordinates of the heads of departments, agencies, commissions, or boards who are vested by law with the power to appoint.** The express language of the Constitution and the clear intent of its framers point to only one conclusion – the officers whom the heads of departments, agencies, commissions, or boards may appoint **must be of lower rank** than those vested by law with the power to appoint.

Congress May Vest the Authority to Appoint
Only in the Heads of the Named Offices

Further, Section 16, Article VII of the 1987 Constitution authorizes Congress to vest "**in the heads** of departments, agencies, commissions, or boards" the power to appoint lower-ranked officers. Section 16 provides:

> The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or **in the heads of departments, agencies, commissions, or boards.** (Emphasis supplied)

In a department in the Executive branch, the head is the Secretary. The law may not authorize the Undersecretary, acting as such Undersecretary, to appoint lower-ranked officers in the Executive department. In an agency, the power is vested **in the head of the agency** for it would be preposterous to vest it in the agency itself. In a commission, the head is the chairperson of the commission. In a board, the head is also the chairperson of the board. In the last three situations, the law may not also authorize officers other than the heads of the agency, commission, or board to appoint lower-ranked officers.

The grant of the power to appoint to the heads of agencies, commissions, or boards is a matter of legislative grace. Congress has the discretion to grant to, or withhold from, the heads of agencies, commissions, or boards the power to appoint lower-ranked officers. If it so grants, Congress may impose certain conditions for the exercise of such legislative delegation, like requiring the recommendation of subordinate officers or the concurrence of

the other members of the commission or board.

This is in contrast to the President's power to appoint which is a self-executing power vested by the Constitution itself and thus not subject to legislative limitations or conditions.[28] The power to appoint conferred directly by the Constitution on the Supreme Court *en banc*[29] and on the Constitutional Commissions[30] is also self-executing and not subject to legislative limitations or conditions.

The Constitution authorizes Congress to vest the power to appoint lower-ranked officers specifically in the "**heads**" of the specified offices, and in no other person.[31] The word "**heads**" refers to the chairpersons of the commissions or boards and not to their members, for several reasons.

First, a plain reading of the last sentence of the first paragraph of Section 16, Article VII of the 1987 Constitution shows that the word "heads" refers to all the offices succeeding that term, namely, the departments, agencies, commissions, or boards. This plain reading is consistent with other related provisions of the Constitution.

Second, agencies, like departments, have no collegial governing bodies but have only chief executives or heads of agencies. Thus, the word "heads" applies to agencies. Any other interpretation is untenable.

Third, all commissions or boards have chief executives who are their heads. Since the Constitution speaks of "heads" of offices, and all commissions or boards have chief executives or heads, the word "heads" could only refer to the chief executives or heads of the commissions or boards.

Fourth, the counterpart provisions of Section 16, Article VII of the 1987 Constitution in the 1935 and 1973 Constitutions uniformly refer to "heads" of offices. The 1935 Constitution limited the grant of the appointment power only to "heads of departments."[32] The 1973 Constitution expanded such grant to other officers, namely, "members of the Cabinet, x x x, courts, heads of agencies, commissions, and boards x x x."[33]

If the 1973 Constitution intended to extend the grant to members of commissions or boards, it could have followed the same language used for "members of the Cabinet" so as to state "members of commissions or boards." Alternatively, the 1973 Constitution could have placed the words commissions and boards after the word "courts" so as to state "members of the Cabinet, x x x, courts, commissions and boards." Instead, the 1973 Constitution used

"heads of agencies, commissions, and boards."

Fifth, the 1935, 1973, and 1987 Constitutions make a clear distinction whenever granting the power to appoint lower-ranked officers to members of a collegial body or to the head of that collegial body. Thus, the 1935 Constitution speaks of vesting the power to appoint "**in the courts**, or in the heads of departments." Similarly, the 1973 Constitution speaks of "**members of the Cabinet, courts,** heads of agencies, commissions, and boards."

Also, the 1987 Constitution speaks of vesting the power to appoint "**in the courts**, or in the heads of departments, agencies, commissions, or boards." This is consistent with Section 5(6), Article VIII of the 1987 Constitution which states that the "Supreme Court shall x x x [a]ppoint all officials and employees of the Judiciary in accordance with the Civil Service Law," making the Supreme Court *en banc* the appointing power. In sharp contrast, when the 1987 Constitution speaks of the power to appoint lower-ranked officers in the Executive branch, it vests the power "**in the heads** of departments, agencies, commissions, or boards."

In addition, the 1987 Constitution expressly provides that in the case of the constitutional commissions, the power to appoint lower-ranked officers is vested in the **commission as a body.** Thus, Section 4, Article IX-A of the 1987 Constitution provides, "The Constitutional Commissions shall appoint their officials and employees in accordance with law."

Sixth, the last clause of the pertinent sentence in Section 16, Article VII of the 1987 Constitution is an **enumeration** of offices whose heads may be vested by law with the power to appoint lower-ranked officers. This is clear from the framers' deliberations of the 1987 Constitution, thus:

> THE PRESIDENT: Commissioner Davide is recognized.
>
> MR. DAVIDE: On page 8, line 3, change the period (.) after "departments" to a comma (,) and add AGENCIES, COMMISSIONS, OR BOARDS. This is just to complete the **enumeration** in the 1935 Constitution from which this additional clause was taken.
>
> THE PRESIDENT: Does the Committee accept?
>
> x x x x

> MR. SUMULONG: We accept the amendment.
>
> MR. ROMULO: The Committee has accepted the amendment, Madam President.
>
> THE PRESIDENT: Is there any objection to the addition of the words "AGENCIES, COMMISSIONS, OR BOARDS" on line 3, page 8? (Silence) The Chair hears none; the amendment is approved.[34] (Italicization in the original; boldfacing supplied)

As an **enumeration** of offices, what applies to the first office in the enumeration also applies to the succeeding offices mentioned in the enumeration. Since the words "**in the heads of**" refer to "departments," the same words "**in the heads of**" also refer to the other offices listed in the enumeration, namely, "agencies, commissions, or boards."

The Chairperson of the CCP Board is the Head of CCP

The head of the CCP is the Chairperson of its Board. PD 15 and its various amendments constitute the Chairperson of the Board as the head of CCP. Thus, Section 8 of PD 15 provides:

> *Appointment of Personnel.* – The Chairman, with the confirmation of the Board, shall have the power to appoint all officers, staff and personnel of the Center with such compensation as may be fixed by the Board, who shall be residents of the Philippines. The Center may elect membership in the Government Service Insurance System and if it so elects, its officers and employees who qualify shall have the same rights and privileges as well as obligations as those enjoyed or borne by persons in the government service. Officials and employees of the Center shall be exempt from the coverage of the Civil Service Law and Rules.

Section 3 of the Revised Rules and Regulations of the CCP recognizes that the head of the CCP is the Chairman of its Board when it provides:

> CHAIRMAN OF THE BOARD. – The Board of Trustees shall elect a Chairman who must be one of its members, and who shall be the presiding officer of the Board of Trustees, with power among others, to appoint, within the compensation fixed by the Board, and subject to confirmation of the Board, remove, discipline all

> officers and personnel of the Center, and to do such other acts and exercise such other powers as may be determined by the Board of Trustees. The Chairman shall perform his duties and exercise his powers as such until such time as the Board of Trustees, by a majority vote, shall elect another Chairman. The Chairman shall be concurrently President, unless the Board otherwise elects another President.

Thus, the Chairman of the CCP Board is the "head" of the CCP who may be vested by law, under Section 16, Article VII of the 1987 Constitution, with the power to appoint lower-ranked officers of the CCP.

Under PD 15, the CCP is a public corporation governed by a Board of Trustees. Section 6 of PD 15, as amended, states:

> *Board of Trustees*. – The governing powers and authority of the corporation shall be vested in, and exercised by, a Board of eleven (11) Trustees who shall serve without compensation.

The CCP, being governed by a board, is not an agency but a board for purposes of Section 16, Article VII of the 1987 Constitution.

Section 6(b) and (c) of PD 15 Repugnant to Section 16, Article VII of the 1987 Constitution

Section 6(b) and (c) of PD 15 is thus irreconcilably inconsistent with Section 16, Article VII of the 1987 Constitution. Section 6(b) and (c) of PD 15 empowers the remaining trustees of the CCP Board to fill vacancies in the CCP Board, allowing them to elect their fellow trustees. On the other hand, Section 16, Article VII of the 1987 Constitution allows **heads** of departments, agencies, commissions, or boards to appoint only "**officers lower in rank**" than such "heads of departments, agencies, commissions, or boards." This excludes a situation where the appointing officer appoints an officer equal in rank as him. Thus, insofar as it authorizes the trustees of the CCP Board to elect their co-trustees, Section 6(b) and (c) of PD 15 is unconstitutional because it violates Section 16, Article VII of the 1987 Constitution.

It does not matter that Section 6(b) of PD 15 empowers the remaining trustees to "elect" and not "appoint" their fellow trustees for the effect is the same, which is to fill vacancies in

the CCP Board. A statute cannot circumvent the constitutional limitations on the power to appoint by filling vacancies in a public office through election by the co-workers in that office. Such manner of filling vacancies in a public office has no constitutional basis.

Further, Section 6(b) and (c) of PD 15 makes the CCP trustees the independent appointing power of their fellow trustees. The creation of an independent appointing power inherently conflicts with the President's power to appoint. This inherent conflict has spawned recurring controversies in the appointment of CCP trustees every time a new President assumes office.

In the present case, the incumbent President **appointed** the Endriga group as trustees, while the remaining CCP trustees **elected** the same Endriga group to the same positions. This has been the *modus vivendi* in filling vacancies in the CCP Board, allowing the President to **appoint** and the CCP Board to **elect** the trustees. **In effect, there are two appointing powers over the same set of officers in the Executive branch.** Each appointing power insists on exercising its own power, even if the two powers are irreconcilable. The Court must put an end to this recurring anomaly.

The President's Power of Control

There is another constitutional impediment to the implementation of Section 6(b) and (c) of PD 15. Under our system of government, all Executive departments, bureaus, and offices are under the control of the President of the Philippines. Section 17, Article VII of the 1987 Constitution provides:

> The President shall have **control of all the executive departments, bureaus, and offices.** He shall ensure that the laws be faithfully executed. (Emphasis supplied)

The presidential power of control over the Executive branch of government extends to all executive employees from the Department Secretary to the lowliest clerk.[35] This constitutional power of the President is self-executing and does not require any implementing law. Congress cannot limit or curtail the President's power of control over the Executive branch.[36]

The 1987 Constitution has established three branches of government – the Executive, Legislative and Judicial. In addition, there are the independent constitutional bodies – like

the Commission on Elections, Commission on Audit, Civil Service Commission, and the Ombudsman. Then there are the hybrid or quasi-judicial agencies,[37] exercising jurisdiction in specialized areas, that are under the Executive branch for administrative supervision purposes, but whose decisions are reviewable by the courts. Lastly, there are the local government units, which under the Constitution enjoy local autonomy[38] subject only to limitations Congress may impose by law.[39] Local government units are subject to general supervision by the President.[40]

Every government office, entity, or agency must fall under the Executive, Legislative, or Judicial branches, or must belong to one of the independent constitutional bodies, or must be a quasi-judicial body or local government unit. Otherwise, such government office, entity, or agency has no legal and constitutional basis for its existence.

The CCP does not fall under the Legislative or Judicial branches of government. The CCP is also not one of the independent constitutional bodies. Neither is the CCP a quasi-judicial body nor a local government unit. Thus, the CCP must fall under the Executive branch. Under the Revised Administrative Code of 1987, any agency "not placed by law or order creating them under any specific department" falls "under the Office of the President."[41]

Since the President exercises control over "all the executive departments, bureaus, and offices," the President necessarily exercises control over the CCP which is an office in the Executive branch. In mandating that the President "shall have control of **all executive x x x offices,**" Section 17, Article VII of the 1987 Constitution does not exempt any executive office – one performing executive functions outside of the independent constitutional bodies – from the President's power of control. There is no dispute that the CCP performs executive, and not legislative, judicial, or quasi-judicial functions.

The President's power of control applies to the acts or decisions of all officers in the Executive branch. This is true whether such officers are appointed by the President or by heads of departments, agencies, commissions, or boards. The power of control means the power to revise or reverse the acts or decisions of a subordinate officer involving the exercise of discretion.[42]

In short, the President sits at the apex of the Executive branch, and exercises "control of **all** the executive departments, bureaus, and offices." There can be no instance under the Constitution where an officer of the Executive branch is outside the control of the President. The Executive branch is unitary since there is only one President vested with executive

power exercising control over the entire Executive branch.[43] Any office in the Executive branch that is not under the control of the President is a lost command whose existence is without any legal or constitutional basis.

The Legislature cannot validly enact a law that puts a government office in the Executive branch outside the control of the President in the guise of insulating that office from politics or making it independent. If the office is part of the Executive branch, it must remain subject to the control of the President. Otherwise, the Legislature can deprive the President of his constitutional power of control over "all the executive x x x offices." If the Legislature can do this with the Executive branch, then the Legislature can also deal a similar blow to the Judicial branch by enacting a law putting decisions of certain lower courts beyond the review power of the Supreme Court. This will destroy the system of checks and balances finely structured in the 1987 Constitution among the Executive, Legislative, and Judicial branches.

Of course, the President's power of control does not extend to quasi-judicial bodies whose proceedings and decisions are judicial in nature and subject to judicial review, even as such quasi-judicial bodies may be under the administrative supervision of the President. It also does not extend to local government units, which are merely under the general supervision of the President.

Section 6(b) and (c) of PD 15, which authorizes the trustees of the CCP Board to fill vacancies in the Board, runs afoul with the President's power of control under Section 17, Article VII of the 1987 Constitution. The intent of Section 6(b) and (c) of PD 15 is to insulate the CCP from political influence and pressure, specifically from the President.[44] Section 6(b) and (c) of PD 15 makes the CCP a self-perpetuating entity, virtually outside the control of the President. Such a public office or board cannot legally exist under the 1987 Constitution.

Section 3 of PD 15, as amended, states that the CCP "shall enjoy autonomy of policy and operation x x x."[45] This provision does not free the CCP from the President's control, for if it does, then it would be unconstitutional. This provision may give the CCP Board a free hand in initiating and formulating policies and undertaking activities, but ultimately these policies and activities are all subject to the President's power of control.

The CCP is part of the Executive branch. No law can cut off the President's control over the CCP in the guise of insulating the CCP from the President's influence. By stating that the

"President shall have control of all the executive x x x offices," the 1987 Constitution empowers the President **not only to influence but even to control** all offices in the Executive branch, including the CCP. **Control is far greater than, and subsumes, influence.**

WHEREFORE, we **GRANT** the petition in G.R. No. 139554. We declare **UNCONSTITUTIONAL** Section 6(b) and (c) of Presidential Decree No. 15, as amended, insofar as it authorizes the remaining trustees to fill by election vacancies in the Board of Trustees of the Cultural Center of the Philippines. In view of this ruling in G.R. No. 139554, we find it unnecessary to rule on G.R. No. 139565.

SO ORDERED.

Panganiban, C.J., Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Callejo, Sr., Chico-Nazario, Garcia, and *Velasco, Jr. JJ.,* concur
Puno, Quisumbing, J., joins the dissenting opinion of J. Tinga.
Carpio-Morales, J, no part. ponente of decision of the case before the court of appeals
Azcuna, J., on leave.
Tinga, J., Please see dissenting opinion.

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[1] *See* Section 2 of PD 15.

[2] PD 15, Sec. 2(b).

[3] Id., Sec. 2(c) to (e).

[4] Id., Sec. 3 in relation to Sec. 6.

[5] Id.

[6] Zenaida R. Tantoco had expressed "utter lack of interest" in the case since she did not take her oath of office or assumed the position of CCP trustee at any time.

[7] Penned by Associate Justice Conchita Carpio Morales (now Associate Justice of this Court), with Associate Justices Artemon D. Luna and Bernardo P. Abesamis, concurring.

[8] *Rollo* (G.R. No. 139554), pp. 100-101.

[9] Later amended by Presidential Decree Nos. 179, 1444, 1815, 1825, and Executive Order No. 1058 dated 10 October 1985.

[10] CA *rollo,* p. 331-A.

[11] Id.

[12] Id.

[13] *Rollo* (G.R. No. 139554), pp. 28-31.

[14] *Rollo* (G.R. No. 139565), p. 19.

[15] *Rollo* (G.R. No. 139554), p. 714

[16] *Joya v. Presidential Commission on Good Government,* G.R. No. 96541, 24 August 1993, 225 SCRA 568.

[17] Id.

[18] Id.

[19] The requisites before courts will assume jurisdiction over a constitutional question are (1) there must be an actual case or controversy involving a conflict of rights susceptible of judicial determination; (2) the constitutional question must be raised by a proper party; (3) the constitutional question must be raised at the earliest opportunity; and (4) the resolution of the constitutional question must be necessary to the resolution of the case. (Board of Optometry v. Hon. Colet, 328 Phil. 1187 [1996])

[20] *See Calderon v. Carale,* G.R. No. 91636, 23 April 1992, 208 SCRA 254.

[21] *Endencia v. David,* 93 Phil. 696 (1953).

[22] *See Santos v. Macaraig,* G.R. No. 94070, 10 April 1992, 208 SCRA 74.

[23] There is a fifth group of officers whose appointments are vested by the Constitution in the Supreme Court and the Constitutional Commissions. (CONSTITUTION, Art. VIII, Sec. 5[6] and Art. IX-A, Sec. 4)

[24] It reads:

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

[25] II J. Bernas, The Constitution of the Republic of the Philippines, A Commentary 194-195 (1988).

[26] THE PRESIDENT. Commissioner Bennagen is recognized.

> R. BENNAGEN. Anterior amendment on page 8, line 1, Madam President, which I indicated during the period of interpellations regarding the use of the word "inferior." I understand from the Commissioners that we can delete "inferior" without sacrificing its meaning.
> MR. REGALADO. So line 1 would now read: "of OTHER officers LOWER IN RANK."
> MR. BENNAGEN. Thank you, Madam President.
> MR. REGALADO. The Committee accepts the amendment.
> THE PRESIDENT. The Committee has accepted the amendment.
> Is there any objection to change "inferior" to "OTHER officers "LOWER IN RANK"? (*Silence*) The Chair hears none; the amendment is approved.
> Let us go back to the amendment of Commissioner de los Reyes.
> MR. DE LOS REYES. Does the Committee accept my proposed amendment?
> MR. REGALADO. The amendment of Commissioner de los Reyes is to change "courts" to "MEMBERS OF THE JUDICIARY."
> FR. BERNAS. It is a little vague if we just say "in the MEMBERS OF THE JUDICIARY" because we have collegiate and noncollegiate bodies. So for instance, if we take the case of the Supreme Court when we say "MEMBERS OF THE JUDICIARY," which of the members of the Supreme Court would have the appointing authority?
> MR. DE LOS REYES. But the point is that the first sentence refers to the President alone; it does not say "executive." And the last portion refers to "the heads of departments" because these are persons who appoint, but the middle

portion refers to “courts” which do not appoint. How can the courts appoint?
FR. BERNAS. How about “in the HEADS OF courts”?
THE PRESIDENT. Commissioner Concepcion is here now, may we seek his opinion on this matter? May we ask Commissioner Regalado to kindly inform Commissioner Concepcion of the issue.
Commissioner Concepcion is recognized.
MR. CONCEPCION. I suppose that insofar as collegiate courts are concerned, certain rules will be adopted by the Supreme Court. Under the present setup, court employees are actually appointed by the Chief Justice of the Supreme Court. I suppose in this case, when we speak of courts, it refers to the judges presiding in courts. After all, the presiding judge acts in behalf of the court. These are court employees, and whoever presides performs the administrative functions corresponding to his particular station. Insofar as clerks of courts are concerned, generally, they are appointed by the Supreme Court in agreement with collegiate courts through the passage of a resolution that is deemed to be an appointment by the court concerned. So I think we can retain the word “courts” since it has been used for so long in the past, and it has an established connotation.
MR. DE LOS REYES. I submit if that is the explanation, although I find the wordings inconsistent. It refers to the President and heads of departments as officers, but it does not say “or in the Executive Department.” The middle portion refers to courts, and I do not think the courts can appoint. But if the Committee wants to retain this in this particular Article, I submit.
Thank you, Madam President.
THE PRESIDENT. Thank you.
Is Commissioner de los Reyes insisting on his amendment?
MR. DE LOS REYES. I am not insisting, Madam President.
THE PRESIDENT. Commissioner Davide is recognized.
MR. DAVIDE. On page 8, line 3, change the period (.) after “departments” to a comma (,) and add AGENCIES, COMMISSIONS, OR BOARDS. This is just to complete the enumeration in the 1935 Constitution from which this additional clause was taken.
THE PRESIDENT. Does the Committee accept?
MR. SARMIENTO. Just a point of clarification, Madam President. I think this was taken from the 1973 Constitution. The 1935 Constitution speaks only of “heads of departments.”

> MR. DAVIDE. Yes, it is the 1973 Constitution rather.
> THE PRESIDENT. Does the Committee need time to consider?
> MR. SUMULONG. We accept the amendment.
> MR. ROMULO. The Committee has accepted the amendment, Madam President.
> THE PRESIDENT. Is there any objection to the addition of the words "AGENCIES, COMMISSIONS, OR BOARDS" on line 3, page 8? (Silence) The Chair hears none; the amendment is approved. (II Record, Constitutional Commission 522-523 [31 July 1986])

[27] For the role of the deliberations of the Constitutional Commission in determining the framers' intent, *see Development Bank of the Philippines v. COA,* 424 Phil. 411 (2002).

[28] *Bermudez v. Executive Secretary Torres,* 370 Phil. 769 (1999).

[29] Section 5, Article VIII of the 1987 Constitution provides:

> The Supreme Court shall have the following powers:
>
> x x x x
>
> (6) Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

[30] Section 4, Article IX-A of the 1987 Constitution provides: "The Constitutional Commissions shall appoint their officials and employees in accordance with law."

[31] *See* note 26.

[32] CONSTITUTION (1935), Art. VII, Sec. 10(3).

[33] CONSTITUTION (1973), Art. VII, Sec. 10.

[34] Supra note 26 at 523.

[35] *National Electrification Administration v. COA,* 427 Phil. 464 (2002).

[36] Id.

[37] *Department of Agrarian Reform Adjudication Board (DARAB) v. Lubrica,* G.R. No. 159145, 29 April 2005, 457 SCRA 800; *San Miguel Corporation v. Secretary of Labor,* No. L-39195, 16 May 1975, 64 SCRA 56.

[38] CONSTITUTION, Art. X, Sec. 2.

[39] Id., Secs. 3 and 5.

[40] Id., Sec. 4.

[41] ADMINISTRATIVE CODE, Book III, Title II, Chapter 8, Section 23.

[42] *Mondano v. Silvosa,* 97 Phil. 143 (1955); Section 38, paragraph 1, Chapter 7, Book IV of the Administrative Code of 1987 provides:

Supervision and Control. – Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; **review, approve, reverse or modify acts and decisions of subordinate officials or units**; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs. Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "control" shall encompass supervision and control as defined in this paragraph. (Emphasis supplied)

[43] CONSTITUTION, Art. VII, Sec. 1; *Villena v. Secretary of the Interior,* 67 Phil. 451 (1939).

[44] Supra note 10.

[45] "*Nature.* – The corporation hereby created shall be a non-municipal public corporation. Its property, real and personal, shall belong to and be managed exclusively by the corporation for the benefit of the Filipino people. Any income that may be derived from its projects and operations and any contributions it may receive shall be invested in a Cultural Development Fund set up to attain the objectives of this Act, or utilized for such purposes as its governing board may decide upon, consistent with the purposes herein provided. It **shall enjoy autonomy of policy and operation** but may seek the assistance and cooperation of various government offices in pursuit of its objectives." (Emphasis supplied)

DISSENTING OPINION

Tinga, *J.:*

The majority's ruling is not as innocuous as it may seem. It is of monumental but disturbing consequence. It upsets the delicate balance ordained by our constitutional system, which reposes on the three equal branches of government different inherent functions augmented by specifically chartered duties. **In one fell swoop, it expands executive power in unprecedented fashion while diminishing the inherent plenary power of Congress to make laws as explicitly guaranteed by the Constitution. It gives license to the President to disregard the laws enacted by Congress although it is the Chief Executive's sworn constitutional duty to faithfully execute the laws of the land, an intolerable notion under the democratic order. With all due respect, I must dissent.**

The majority has voted to uphold the power of the President to appoint the members of the Board of Trustees (CCP board) of the Cultural Center of the Philippines (CCP), a government owned or controlled corporation (GOCC) established by P.D. No. 15 as amended (CCP Charter)[1] as a "non-municipal public corporation."[2] A brief reference to the key facts is necessary to illustrate the seriousness of the problem.

The petitioners in G.R. No. 139565 (Endriga Group) were members of the CCP board who sat in such capacity beginning in 1995. Then President Ramos issued appointment papers to the members of the Endriga Group in 1995, qualifying that their appointment would extend only until 31 December 1998. At the same time, the Endriga Group was likewise elected by the CCP board as members of the board, with Endriga himself elected as President.

On 22 December 1998, President Estrada advised Endriga through a letter advising him of seven (7) new appointees (the Rufino Group) to the CCP board replacing the Endriga Group. The Endriga Group resisted these new appointments by filing *a quo warranto* petition, the resolution of which by the Court of Appeals spawned the present petitions.

In main, the Endriga Group posited that they could not have been replaced by President Estrada as they had not yet completed their four-year term of office as provided in the CCP Charter. The Court of Appeals[3] agreed with the basic position of the Endriga Group, notwithstanding the proviso made by President Ramos in his appointment papers. The Court of Appeals compelled obeisance instead to Section 6 of the CCP Charter which reads:

> Sec. 6. *Board of Trustees.* – The governing powers and authority of the corporation shall be vested in, and exercised by, a Board of eleven (11) trustees

> who shall serve without compensation.
>
> (a) The trustees appointed by the President of the Philippines pursuant to Executive Order No. 30 dated 25 June 1966, and currently holding office shall be the first trustees to serve on the Board of the new Center and shall be known as Founding Trustees. They shall elect the remaining trustees for a complete [Board]. Elected trustees shall hold office for a period of four (4) years.
>
> (b) Vacancies in the Board of Trustees due to termination of term, resignation, incapacity, death or other cause as may be provided in the By-laws, shall be filled by election by a vote of a majority of the trustees held at the next regular meeting following occurrence of such vacancy. The elected trustee shall then hold office for a complete term of four years unless sooner terminated by reason of resignation, incapacity, death or other cause. Should only one trustee survive, the vacancies shall be filled by the surviving trustee acting in consultation with the ranking officers of the Center. Such officers shall be designated in the Center's Code of By-Laws. Should for any reason the Board be left entirely vacant, the same shall be filled by the President of the Philippines acting in consultation with the aforementioned ranking officers of the Center.[4]

The CCP Charter clearly states that the trustees appointed by the President in 1966 shall elect the remaining trustees to complete the board, and such electees shall hold office for a period of four (4) years. Subsequent vacancies in the board shall be filled by the Board of Trustees, through a majority vote, with the new appointee serving for a four (4)-year term. The power to select the members of the Board of Trustees is always vested in the board, no matter the number of persons who are serving therein at a particular time, except when all the positions in the board without exception are vacant. It is only then that the President may exercise the power to appoint the members of the board, subject to the condition that the appointments be made in consultation with the ranking officers of the CCP.

The majority, reversing the Court of Appeals, holds this setup prescribed by Section 6 of the CCP Charter, unconstitutional. Two grounds are offered for this holding. First, Section 16,[5] Article VII of the Constitution (Appointments Clause) limits the authority of Congress to vest the power of appointment over lower-ranked officials only to "heads of departments, agencies, commissions or boards." In the majority's estimation, the CCP should be considered as a "board" for purposes of the Appointments Clause, and thus, only the

chairperson of the CCP could be authorized by law to exercise the right to appoint.[6]

Second, the presidential power of control over the executive branch, as provided in Section 17,[7] Article VII of the Constitution (Executive Control Clause), grants the President control over the CCP. The authority of the CCP board of Trustees to fill vacancies in the Board renders the CCP a "self-perpetuating entity [outside] the control of the President," and is thus unconstitutionally drawn.[8]

It is not readily apparent from the *ponencia* whether it maintains that executive control, as contemplated in the Constitution, empowers the President to make all appointments of officers and officials within the executive branch. If that were the position, such view is clearly inconsistent with the Appointments Clause which categorically authorizes Congress to empower officials other than the President to make such appointments, in the case of lower-ranked officials. To sustain the expansive view that "executive control" extends to the power of the President to make all appointments in the executive branch would render the Appointments Clause inutile. It would then be senseless to acknowledge that Congress has the right to authorize the heads of departments, agencies, commissions or boards to appoint their junior officers, since executive control would indubitably vest that right to the President anyway. It is nonetheless cold comfort that the majority does not expressly frame such a view, and I hope that the *ponencia* does not lay the groundwork for such a radical notion.

Notwithstanding, I prefer to **delineate the critical issues** in the following manner. The Appointments Clause, being complete in itself, is the sole constitutional provision governing the authority of the President to make appointments to the executive branch, as well as the authority of Congress to provide otherwise in certain instances. The Executive Control Clause does not extend to the presidential power of appointments. Thus, in ruling on whether or not the President or the CCP Board of Trustees has the power to appoint members of the board, it is the Appointments Clause alone that should govern.

At the same time, due consideration of the Executive Control Clause is also warranted in the present cases, but for a different purpose. It is clear from the petitions that assailed also are the acts of President Ramos in limiting below four (4) years the term of his appointees to the CCP board, and the subsequent act of President Estrada in appointing new appointees to the board despite the fact that the four(4)-year term of those persons who purportedly vacated their seats had not yet expired. Thus, a second critical issue arises: **whether the holder of a statutory term of office in the executive branch may be removed from**

office by the President on the basis of the power of executive control.

The Power of Appointment in Relation to the CCP Board of Trustees

Constitutional authority to make appointments within the executive branch is governed solely by the Appointments Clause of the Constitution, which is broad enough to cover all possible appointment scenarios. The provision states:

> SECTION 16. The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.

The first sentence of the Appointments Clause enumerates the officers whom only the President may appoint, subject to the consent of the Commission of Appointments. There is no doubt that no official of the CCP, or any GOCC for that matter, is included in this first category of appointees.[9]

The second and third sentences must be examined together. The second sentence **authorizes the President** to appoint all other officers whose appointments are not otherwise provided for by law, or those whom he may be authorized to appoint by law. This authority must be appreciated with the third sentence, which **authorizes Congress** to vest the appointment of other officers lower in rank to the President, the courts, or in the heads of departments, agencies, commissions, or boards.

Thus, as regards the officials in the executive branch other than those enumerated in the first sentence of the Appointments Clause, or those who do not belong to the first category, the following valid scenarios are authorized: (1) the law may expressly authorize the President to make the appointment; (2) the law may expressly authorize the courts or the heads of departments, agencies, commissions or boards to appoint those officers lower in rank; (3) the law may remain silent on the power of appointment, thus enabling the

President to make the appointment on the basis of the Appointments Clause itself. Implicitly, it can also be argued that other than the case of "other officers lower in rank," Congress may authorize a person or entity other than the President to appoint all such other officers, or provide for a modality through which such appointment may be made. I am aware that this last point may be a source of controversy, yet for reasons I shall explain later, it is not an issue in the particular cases at bar and, hence, need not be settled for now.

From the same provision, the majority formulates two premises: that the CCP is considered a "board" or "Board" for purposes of the Appointments Clause,[10] and, that only the President or the chairperson of the CCP Board of Trustees, may be authorized by law to appoint officials of the CCP.[11] I respectfully disagree with both premises.

CCP an Agency under the Appointments Clause

I submit that "**boards**," as used in the Appointments Clause, does not pertain to the boards of directors of government or public corporations such as the CCP. Such GOCCs are properly considered as agencies which nonetheless fall within the same classification in the Appointments Clause.

The term "board" or "**Board,**"[12] as utilized in the administrative bureaucracy, may pertain to different entities performing different functions under different mandates. There are several prominent government agencies which use the nomenclature "Board," such as the Monetary Board (MB), the Housing Land Use and Regulatory Board (HLURB), the Department of Agrarian Reform Adjudication Board (DARAB), the Movie and Television Review and Classification Board (MTRCB), and the former Energy Regulatory Board, among others. Collegial bodies such as the **Boards** just mentioned have long formed part of the executive superstructure, along with departments, agencies and commissions. Hence, it came as no surprise that all four (4) entities were lumped together in the Appointments Clause.

However, the **board of directors** or **board of trustees** of a government corporation should be appreciated in a different context. Unlike the Boards enumerated above, the **board of directors/trustees** does not constitute a unit that operates by itself as an agency of the government. Instead, **such board of directors/trustees,** as a general rule, operates as the body that exercises the corporate powers of the government corporations concerned. The Constitution itself authorizes the creation of government-owned or controlled corporations through special charters,[13] and the CCP was established as a public corporation through

Presidential Decree No. 15, its charter.

The majority believes differently, stating that since the CCP is governed by a **board,** it is not an agency but a **Board** for purposes of the Appointments Clause. The majority explains this away by merely noting that there is such an entity as the CCP Board of Trustees. The bother of explaining why the CCP is a board, as distinguished from a department, agency or commission is altogether avoided. Instead, it is assumed as self-evident that since there is a CCP Board of Trustees, the CCP is consequently a board.

For one, the CCP itself may be considered as an agency since under the Administrative Code, an agency includes a government-owned or controlled corporation.[14] The term "**Board**," used in a general sense, has been defined as a representative body organized to perform a trust or to execute official or representative functions,[15] or a group of persons with managerial, supervisory or investigatory functions.[16] There is no doubt that sovereign executive functions can be delegated through duly constituted **Boards**, such as the HLURB or MTRCB, and it is commonly understood that the **Boards** in those cases refer to a group of individuals vested with the exercise of governmental functions. However, boards do not normally have independent juridical personality, unlike corporations.

Indeed, whatever governmental functions are exercised by the members of the CCP Board of Trustees are not derived from their formation as a board but from its installation by charter as the governing authority of a GOCC. The Board of Trustees is not vested with any sort of independent juridical personality under the CCP charter; such personality is imbued instead in the CCP itself. The Board of Trustees may be the governing authority of the CCP, but it is the CCP itself as the legislative creation that is tasked to perform the mandate of its charter. The latest performances of the prima ballerinas are sponsored and presented not by the panel known as the "CCP Board of Trustees," but by the entity that is the CCP itself.

Assuming for the nonce that there is ambiguity in how the term "board" in the Appointments Clause should be construed, the rule is that the correct meaning may be made clear and specific by considering the company of words in which the term is found or with which it is associated.[17] Departments, agencies, commissions or boards (**Boards**) all pertain to segregate units within the executive branch performing with particular competence unique and specialized functions. Departments, agencies, commissions or boards (Boards) refer to offices of different nomenclatures within the executive department, each performing functions that are independent of each other.

Furthermore, that the use of the disjunctive term "or" in the enumeration "departments, agencies, commissions or boards (Boards)" signifies that these four entities, though lumped together, are under constitutional contemplation disassociated or distinct from each other.[18] Given the degree of fluidity within administrative practice, it is standard that a particular government office would create subdivided groupings to which functions would be delegated. Considering the paucity of available terms, these groupings could very well be named as "departments," "agencies," "commissions," or "boards" (Boards). Thus, Agency X could have an Accounting Department, a Board of Merit Review, and Employee Health and Welfare Commission. With the majority's reasoning, these three aggrupments would fall within the same constitutional class under the Appointments Clause as Agency X itself. Worse, the appointing power of the head of the Accounting Department would be treated separately and accorded equal constitutional weight as that of the head of Agency X.

The example may border on the absurd, but that is the implication of the majority's holding that the CCP Board of Trustees is considered as a "Board" for purposes of the Appointments Clause, even if the CCP itself is properly an agency. The enumeration "departments, agencies, commissions or boards (Boards)," highlighted by the use of the disjunctive word "or" positively implies that the

items are treated singly, and not one at the same time.[19] The CCP board cannot be disassociated from the CCP itself for the former was constituted as the governing authority of the CCP and not as an independent entity on its own.

In short, within the enumeration the CCP is more akin to an "agency" rather than a "Board." Under the Appointments Clause, agencies and Boards are accorded similar treatment and in both cases, Congress may vest the power to appoint officers in the "head" of such agency or Board. In CCP's case, the appointment power may be delegated to the "head" of the CCP.

Board of Trustees is the Head of the CCP

Who then is the "head" of the CCP? The majority suggests that it is the Chairperson of the CCP board. I respectfully differ but maintain that it is the CCP board itself that is the "head" of the CCP or acts as such head.

The majority's conclusion is predicated on the premise that the CCP should be classified as a board (Board) and not an agency. However, as I pointed out, the CCP as a GOCC should instead be considered as an agency. Indeed, the CCP Board of Trustees cannot exercise any

function or power outside the context of its mandate as the governing authority of the CCP.

Certainly, the answer to the query as to who or which is the head of the CCP should be discerned primarily from its charter.

As earlier stated, Section 6 of the CCP Charter expressly provides that "**the governing powers and authority of the corporation shall be vested in, and exercised by, a Board [of] Trustees."**[20] Even the Rufino Group concedes that the CCP Board of Trustees itself is the "head" of the CCP, owing to the fact that is the governing body of the CCP.[21]

Section 8 of the CCP Charter provides the Chairperson with a power of appointment which nonetheless is limited, incomplete, and subject to confirmation by the CCP Board.

> Sec. 8. *Appointment of Personnel*. – The Chairman, **with the confirmation of the Board,** shall have the power to appoint all officers, staff and personnel of the Center with such compensation as may be fixed by the Board, who shall be residents of the Philippines. xxx[22]

The Revised Rules and Regulations of the CCP provides the Chairperson with additional powers not found in the charter, particularly the power to remove and discipline all officers and personnel of the CCP. Section 3 of the Revised Rules states:

> Sec. 3. *Chairman of the Board*. – The Board of Trustees shall elect a Chairman who must be one of its members, and who shall be the presiding officer of the Board of Trustees, with power among others, to appoint, **within the compensation fixed by the Board, and subject to confirmation of the Board**, remove, discipline all officers and personnel of the Center, and to do such other acts and **exercise such other powers as may be determined by the Board of Trustees.** The Chairman shall perform his duties and exercise his powers as such **until such time as the Board of Trustees, by a majority vote, shall elect another Chairman.** The Chairman shall be concurrently President unless the Board otherwise elects another President.[23]

Even as these Revised Rules and Regulations emanate from the CCP Board itself, the limitations contained therein on the powers to be exercised by the Chairperson highlight,

rather than diminish, the stature of the board as the governing power and authority over the CCP.

This relationship between the CCP Chairperson and the CCP board is aligned with the theory and practice of corporations. Generally, corporate acts and powers are exercised by the board of directors of stock corporations or the board of trustees of non-stock corporations.[24] Such corporate powers may be delegated by charter or by-laws, or even by the board, to particular corporate officers. However, the authority of officers to bind the corporation is usually not considered inherent in their office, but is derived from law, the corporate by-laws, or by delegation from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business.[25]

In the case of the CCP, whatever powers are delegated to the CCP Chairperson, even if incidental to the exercise of the corporate powers of the CCP, are still subject to confirmation by the Board of Trustees. The Chairperson cannot by himself/herself enter into contractual relations unless previously authorized by the Board of Trustees. On the other hand, the Board may, without prior authority from any other person or entity, enter into such contractual relations. Even those powers expressly granted to the Chairperson, such as appointment of officers, staff and personnel, are qualified with the phrase, "subject to/with confirmation of the Board."

Evidently, the powers of the CCP Chairperson are especially circumscribed while the Board of Trustees is vested with latitude to overturn the discretion of the CCP Chairperson.

In short, for all the prestige that comes with chairing the CCP board, the Chairperson has limited powers, and his/her acts are subject to confirmation, if not reversal, by the board. The Chairperson is not the final authority as he/she lacks the final say within the CCP system itself. It is the Board of Trustees that is the duly constituted governing authority of the CCP, the statutory delegate vested with the last word over the acts of the CCP itself.

I feel that the majority has succumbed to the temptation in regarding the term "head" as exclusively referring to a singular personality. Such a reading, I respectfully submit, is unduly formalistic. The proper construction of "head" should be functional in approach, focusing on the entity that exercises the actual governing authority rather than searching for a single individual who could be deemed by reason of title as representative of the CCP. **For the objective of the Appointments Clause is to allow the power to appoint to be**

exercised by the final governing authority of a department, agency, commission or board (Board) over its junior officers. It would be patently absurd to insist that the constitutional intent is to authorize the repose of such appointing power instead to an individual officer whose acts are still subject to confirmation by a higher authority within that office. *Interpretatio talis in ambiguis semper freinda est, ut eviatur inconveniens et absurdum*.[26]

Thus, pursuant to the Appointments Clause, Congress may vest on the CCP board, as the head of the CCP, the power to appoint officers of the CCP. The controversy in this case lies though in the appointment of the members of the Board of Trustees themselves, and not the particular officers of the CCP. Thus, the question is this: Can the Board of Trustees be validly empowered by law to appoint its own members, as it is so under the CCP Charter?

CCP Board Superior in Rank
Over the Individual Trustees

As stated earlier, the Rufino Group concedes that it is the CCP board that is the "head" of the CCP.[27] At the same time, it argues that the law could not validly give unto the members of the CCP board the authority to appoint their fellow trustees, for the latter would be officers of equal rank, and not lower rank.[28] The majority adopts this latter position of the Rufino Group.[29]

I respectfully submit that the CCP board may validly appoint its own trustees, as provided for in Section 6(b) of the CCP Charter, and under the authority of Section 16, Article VII of the Constitution. **In doing so, I recognize that the Board of Trustees as a body, the head of the CCP, remains superior in rank than any particular member of the board.**

Certainly, there can be no argument that an individual member of the CCP board is an entity separate from the board itself, and that he, the board member, remains under the governing authority of the CCP board. Generally speaking, the term "inferior officer" connotes a relationship with some higher ranking officer or officers.[30] A board member by himself/herself cannot speak for or act in behalf of the board as a whole, unless the board authorizes that member to do so. When the Board of Trustees elects to fill a vacancy in the board, it cannot be said that it exercises the power appointment to a co-equal office. As stated before, the Board of Trustees is an entity separate from and superior to any one of its members.

Under Section 6(d) of the CCP Charter, "majority of the Trustees **holding office** shall constitute a quorum to do business." The CCP board is thus able to operate and exercise its corporate powers irrespective of the number of persons sitting on the board at a particular time. In fact, it is possible that at a given time, the entire CCP board would consist of only one member, who until such time the vacancies are filled, wields the powers of the Board of Trustees. This possibility is precisely recognized under Section 6(b) of the CCP Charter, which authorizes the single remaining board member to fill the remaining vacancies in the board. Unusual as it may seem, it precisely aligns with the theories behind corporate personality. The remaining board member is authorized to fill the remaining vacancies for at that moment said member **is** the Board of Trustees, the governing authority of the CCP.

The Court has recognized that collective or collegiate bodies outweigh or outrank the individual members, even if the member is the presiding officer of the body. In *GMCR, Inc. v. Bell Telecommunications,*[31] the Court upheld a ruling of the Court of Appeals invalidating an order and other issuances signed solely by the Chairman of the National Telecommunications Commission (NTC). The Chairman had maintained that he had the exclusive authority to sign, validate and promulgate all orders, resolutions and decisions of the NTC. The Court disagreed, holding that the NTC is a collegial body "requiring a majority vote out of the three members of the commission in order to validly decide a case or any incident therein."[32] It was further noted that the NTC Chairman "is not the [NTC]. He alone does not speak for and in behalf of the NTC. The NTC acts through a three-man body, and the three members of the commission each has one vote to cast in every deliberation concerning a case or any incident therein that is subject to the jurisdiction of the NTC."[33]

Even the collegial bodies established under the Constitution exercise their powers collectively, and not through their presiding officer. Thus, it is the Supreme Court, not the Chief Justice, which has the power to appoint all officials and employees of the judiciary.[34] The Commission on Elections (COMELEC) and the Commission on Audit (COA) exercise their constitutional powers as a body, and not through their Chairpersons.[35]

Even if not denominated as such, the CCP board takes on the same attributes as any collegial body, and could be recognized as such in the same way that the Court has recognized the Integrated Bar of the Philippines Board of Governors as a collegial body. The CCP board makes decisions as a collective body during its regular meetings, presumably after deliberation, the exchange of views and ideas, and the concurrence of the required majority vote.[36]

Still, the majority's theory that Section 6 of the CCP Charter is unconstitutional is anchored in part on the assumed predicate that it is the only the Chairperson of the CCP board, as "head" of the CCP, who may be empowered by law to appoint the members of the CCP board. If this premise is adopted, it would operate as the rule not only in the CCP, but in all GOCCs. Following the majority, the following kinds of appointment would consequently be unconstitutional:

1) *Appointments to the Board of Directors/Trustees of any GOCC by authorities other than the President of the Philippines or the chairperson of the board.* The power to appoint members of the Board of Directors/Trustees of GOCCs would exclusively belong to the President or the Chairperson of the Board, notwithstanding any statutory mandate through a charter providing the contrary.

2) *Appointments of other officers and officials of GOCCs by authorities other than the President of the Philippines or the chairperson of the board.* Even if the Board of Directors or Trustees is duly constituted by charter as the governing authority of the GOCC, the majority would deprive such governing authority any appointing power, as such power could purportedly be vested only in the President or the chairperson of the board.

3) *Ex-officio appointments to the boards of GOCCs.* The charters of several GOCCs mandate that certain persons sit in the Board of Directors/Trustees by reason of their office, or in an *ex-officio* capacity. Such *ex-officio* appointments are not expressly provided for in the Constitution. Following the majority's literalist reading of the Appointments Clause, *ex-officio* appointments are similarly invalid as they do not derive from the exclusive appointment power of the President or the chairperson of the board.

Again, with all due respect, the rationale is predicated on a flawed interpretation of the terms "head" and "board" (Board) as used in Section 16, Article VII, a reading that is alien to the common understanding of corporate personality, as well as actual corporate practice. On the contrary, the procedure outlined in Section 6 of the CCP Charter, vesting in the CCP Board of Trustees the authority to appoint the members of the board, is congruent with constitutional order. It should be stressed anew that the CCP Board itself is the head of the CCP and that any individual member of the board is lower in rank than the board itself.

It is *de rigueur* for directors of a corporation to fill vacancies in their own Board where such power is conferred upon them by statute or charter or by by-law.[37] Modern statutes typically provide that vacancies in the Board, regardless of the cause, may be filled up by

the Board itself, side by side with an identical power vested in the shareholders.[38] Among them is the U.S. Model Corporation Business Act of 1984 which acknowledges that vacancies in the board of directors may be properly filled by the Board itself.[39] The CCP precisely has that power conferred to it by statute, the CCP charter that is.

Perhaps this question may arise: if the CCP board, as head of the CCP, may be legally authorized to appoint its own members, they being officers lower in rank than the board, who then may appoint the CCP board itself, as distinguished from individual vacancies therein? It should be noted though that it is settled rule that the term "appointment" is in law equivalent to "filling a vacancy."[40] A vacancy exists when there is no person lawfully authorized to assume and exercise at present the duties of the office.[41] Accordingly the appointment power cannot be validly exercised unless there is a vacancy to be filled. In the case of the CCP, its charter provides that the Board of Trustees subsists even if there is only one remaining board member left.[42] Hence, the CCP board can only be considered as truly vacant if there is not even one member left sitting on the board. In that case, the CCP Charter authorizes the President to appoint the new CCP board to replace the board that no longer exists,[43] by filling the vacancies in the board.

Yet pursuant to the CCP Charter, it still is the President that appoints the Board of Trustees when such board is vacant. The statutory impediment to such appointing authority is the recognition of very limited circumstances under which the CCP board may be considered as truly vacant.

During deliberations on these petitions, some distress was raised over the prospect that in case only one person remained on the CCP Board of Trustees, that one person is empowered to appoint the other members of the Board. Perhaps the notion may strike as counterintuitive, yet it is perfectly valid under legal consideration considering that this sole remaining member stands as the Board itself, and not just an individual member thereof. This setup adheres to sound theory that a Board of Directors/Trustees retains collective force, no matter the number of persons sitting thereon, so long as the quorum requirements are satisfied.

Indeed, the idea of a one-person board of directors is hardly a flight of whimsy under modern corporation law. Consider the U.S. state of Delaware, the state most associated with incorporation. **With over half of publicly traded American corporations and over 60% of all Fortune 500 companies incorporated in Delaware**[44], **it among** all the American states, has the greatest public interest in the oversight or regulation of corporations. **Yet**

the Delaware General Corporation Law expressly authorizes a corporation to constitute a board of directors consisting of only one (1) member.[45] The choice, as expressed in the by-laws or the certificate of incorporation, is up to the corporation. **When a board of 1 director is so authorized, "the 1 director shall constitute a quorum."**[46] Certainly, there is nothing so forlorn with the statutory prescription of the CCP charter that admits to the possibility of only one trustee acting as the Board. The law of Delaware, the corporate hub of America, sufficiently defeats any supposition that the possibility of a one-person CCP Board of Trustees offends good customs, morals, law or public policy.

Our own Corporation Code does not permit one-person Board of Directors for private corporations,[47] yet it concedes that corporations created by special laws or charters are governed primarily by the provisions of the charter creating them.[48] The determination of the quorum requirement for chartered corporations is exclusively the prerogative of the legislature, which can very well impose a one-person board of directors or, as in the case of CCP, permit a situation whereby a lone remaining director would be empowered to act as the board.

The majority states that this statutory setup of the CCP "makes [it] a self-perpetuating entity." But the CCP is really no different from private corporations whose boards of directors are, under the Corporation Code, permitted to fill vacancies in the Board themselves for as long as the remainder of the board still constitute a quorum.[49] Considering the clear legislative intent to accord the CCP with a significant degree of independence, with its chartered guarantee of "autonomy of policy and operation,"[50] the notion should give no offense at all. Yet even if there is wisdom or cause in preventing the "self-perpetuation" of the CCP Board, the solution lies in legislative amendment. The majority cannot supplant legislative prerogatives by merely doing away with provisions of law that meet its aversion. Moreover, short of amending the CCP Charter there are enough anti-graft laws, government audit controls and other administrative safeguards to check abuse in office and ensure accountable governance.

My own conclusion is that the means prescribed by the CCP Charter in the appointment of the members of the CCP board is in accordance with the Appointments Clause, specifically the provision therein that authorizes Congress to empower the President, the courts and the heads of departments, agencies, commissions or boards (Boards) to appoint officers of lower rank. The CCP is an agency, not a Board, and its head is its Board of Trustees. The CCP board is superior in rank than any of its particular members, and it may thus be authorized by law to fill vacancies by appointing new members of the board. Should the CCP board be

totally vacant, owing to the fact that no person sits on the board at a given time, then the President is authorized by law to fill the vacant CCP board by appointment.

While the members of the Endriga Group were "appointed" by President Ramos, who had no authority to do so, it is also uncontested that the Endriga Group were subsequently elected by the CCP board to sit on the Board. For that reason, not their "appointment" by President Ramos, they could be deemed as having validly assumed their office upon their election to the board in 1995, for the statutory term of four (4) years.

Executive Control and Statutory Restrictions Thereon

There is an even more disturbing implication to the present ruling which the majority barely touches upon. By ruling against the Endriga Group, and sanctioning their replacement by President Estrada even though their statutory term had yet to expire, **the majority in effect has ruled that the President may remove officials whose terms have been fixed by law even prior to the cessation of the terms in office.** The legal rationale for this precipitate new rule is not precisely explained. Pointedly though, the majority refers to the power of the President of executive control to bolster its conclusion, characterizing such power as "another constitutional impediment to the implementation of Section 6(b) and (c)" of the CCP Charter.

The power of the President to maintain executive control over executive departments, bureaus and offices is constitutionally mandated by the Executive Control Clause.[51] Yet as earlier stressed, the power of the President to make appointments is governed by a different provision, the Appointments Clause which is complete by itself. If executive control is extended to bear on the power of the President to make appointments in the executive branch by further expanding it, then the Appointments Clause would be rendered useless. Clearly, the Constitution authorizes Congress to vest the power to appoint lower-ranked officials to the heads of departments, agencies, commissions or boards, (Boards). To insist that such power of appointment so vested in an agency head is nonetheless circumscribed by executive control would render the provision nugatory.

Yet, may executive control be utilized to justify the removal of public officers within the executive department notwithstanding statutory restrictions thereon, such as the prescription of a fixed term of office? To declare that it does would be equivalent to saying that executive control authorizes the President to violate the laws passed by Congress. **And that is not what the Constitution says.**

The Executive Control Clause, which enshrines the presidential power of executive control, actually prescribes two (2) functions to the President.

> Sec. 17. The President shall have control of all the executive departments, bureaus and offices. **He shall ensure that the laws be faithfully executed**.

While the majority understandably lays emphasis on the first sentence of the Executive Control Clause, the second sentence is of equal importance. It emphasizes the cardinal principle that the President is not above the laws enacted by Congress and is obliged to obey and execute these laws. The duty of faithful execution of laws is enshrined not only in the Constitution, but also in the oath of office of the President and Vice-President.[52]

It is clear that the twin duties prescribed under the Executive Control Clause are of equal value. At very least, they should be construed in harmony, not antagonism, to each other, so that the power of control that the President may exercise over executive departments, bureaus and offices should still stay within the ambit of faithful execution of the Constitution and the laws of the land which the Constitution itself ordains.

I submit that the members of the CCP board are shielded by law from arbitrary removal by the President, even if is sought to be justified under the aegis of executive control. The traditional view that "the power of removal of executive officers [is] incident to the power of appointment"[53] has since been severely undercut by the U.S. Supreme Court,[54] and is of limited application in this jurisdiction in light of the constitutional guarantee to the security of tenure of employees in the civil service.[55] The notion that executive control authorizes the President to remove the members of the CCP board at his pleasure contravenes not only the CCP Charter but the Constitution itself, not to mention our civil service laws.

CCP Embraced Under the Civil Service

Section 2(1), Article IX-B of the Constitution states that "[t]he civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including **government owned or controlled corporations with original charters**". It appears to have been the deliberate intent of the framers of the 1987 Constitution, in specifying the phrase "with original charters," to exclude from civil service coverage those GOCCs without original charters, meaning those incorporated under the general corporation law.[56] Yet undoubtedly, the CCP was created through an original charter, and is hence covered by the

civil service by mandate of the Constitution. This point has significant impact on the resolution of this case.

It can be advanced that *Ang-Angco v. Castillo*[57] settles the question in favor of the Endriga Group. In that case, President Garcia, through his Executive Secretary, rendered a ruling finding a Collector of Customs guilty of prejudicial conduct and considering him "resigned effective from the date of notice."[58] The action was justified by virtue of the President's power of control over all executive departments, bureaus and offices as provided for in the 1935 Constitution. Ang-Angco countered that the Civil Service Act of 1959, a legislative enactment, vests in the Commissioner of Civil Service the original and exclusive jurisdiction to decide administrative cases against officers and employees in the classified service such as himself; and that his subsequent removal by order of the President violated the Civil Service Act. The Court agreed with Ang-angco, holding that such "law which governs the action to be taken against officers and employees in the classified civil service is binding upon the President."[59]

The Court explained why the power of executive control could not supersede a statutory enactment such as the Civil Service Act of 1959:

> Let us now take up the power of control given to the President by the Constitution over all officers and employees in the executive department which is now invoked by respondents as justification to override the specific provisions of the Civil Service Act. This power of control is couched in general terms for it does not set in specific manner its extent and scope. Yes, this Court in the case of Hebron vs. Reyes, supra, had already occasion to interpret the extent of such power to mean "the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter" , to distinguish it from the power of general supervision over municipal government, but the decision does not go to the extent of including the power to remove an officer or employee in the executive department. **Apparently, the power merely applies to the exercise of control over the acts of the subordinate and not over the actor or agent himself of the act.** It only means that the President may set aside the judgment or action taken by a subordinate in the performance of his duties.[60]

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Further, the Court in *Ang-Angco* chose to avoid the ungainly clash between the constitutional power of executive control and the constitutional guarantee of security of tenure to those in the civil service, thus:

> [T]he strongest argument against the theory of respondents is that it would entirely nullify and set at naught the beneficient purpose of the whole civil service system implanted in this Jurisdiction which is to give stability to the tenure of office of those who belong to the classified service in derogation of the provision of our Constitution which provides that "No officer or employee in the civil service shall be removed or suspended except for cause as provided by law" (Section 4, Article XII, Constitution). **Here, we have two provisions of our Constitution which are apparently in conflict, the power of control by the President embodied in Section 10 (1), Article VII, and the protection extended to those who are in the civil service of our government embodied in Section 4, Article XII. It is our duty to reconcile and harmonize these conflicting provisions in a manner that may be given to both full force and effect and the only logical, practical and rational way is to interpret them in the manner we do it in this decision.** As this Court has aptly said in the case of Lacson vs. Romero:
>
> > ". . . **To hold that civil service officials hold their office at the will of the appointing power subject to removal or forced transfer at any time, would demoralize and undermine and eventually destroy the whole Civil Service System and structure.** The country would then go back to the days of the old Jacksonian Spoils System under which a victorious Chief Executive, after the elections could if so minded, sweep out of office, civil service employees differing in political color or affiliation from him, and sweep in his political followers and adherents, especially those who have given him help, political or otherwise." (Lacson vs. Romero, 84 Phil., 740, 754)[61]

At the same time, the Court considered the difference between the power of control exercised by President Garcia over his direct appointees *vis-á-vis* that over employees belonging to the classified service.

> There is some point in the argument that the power of control of the President may extend to the power to investigate, suspend or remove officers and employees who belong to the executive department if they are presidential appointees or do not belong to the classified service for such can be justified under the principle that the power to remove is inherent in the power to appoint (Lacson vs. Romero, supra), but not with regard to those officers and employees who belong to the classified service for as to them that inherent power cannot be exercised. This is in line with the provision of our Constitution which says that "the Congress may by law vest the appointment of the inferior officers, in the President alone, in the courts, or in heads of department" (Article VII, Section 10 (3), Constitution). **With regard to these officers whose appointments are vested on heads of departments, Congress has provided by law for a procedure for their removal precisely in view of this constitutional authority.**[62]

Evidently, *Ang-Angco* lays the precedent for distinguishing between officials whose tenure are protected under the civil service law, and those who enjoy no such statutory protection. The 1987 Constitution likewise makes it explicit that GOCCs with original charters such as the CCP are embraced under the civil service. Reference is thus necessary to the provisions of the present civil service law, particularly the Administrative Code of 1987.

The Administrative Code restates that GOCCs with original charters are within the scope of the civil service.[63] It further classifies positions in the civil service into career service and non-career service.[64] Generally, personnel of GOCCs are classified as career service, provided that they do not fall under the non-career service. On the other hand, the Administrative Code provides that non-career service employees under the Administrative Code are characterized by:

> The Non-Career Service shall be characterized by (1) entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and (2) **tenure which is limited to a period specified by law**, or which is

coterminous with that of the appointing authority or subject to his pleasure, or which is limited to the duration of a particular project for which purpose employment was made.

Included in the non-career service are:

1. Elective officials and their personal or confidential staff;
2. Secretaries and other officials of Cabinet rank who hold their positions at the pleasure of the President and their personal confidential staff(s);
3. **Chairman and Members of Commissions and boards with fixed terms of office and their personal or confidential staff;**

4. Contractual personnel or those whose employment in the government is in accordance with a special contract to undertake a specific work or job requiring special or technical skills not available in the employing agency, to be accomplished within a specific period, which in no case shall exceed one year and performs or accomplishes the specific work or job, under his own responsibility with a minimum of direction and supervision from the hiring agency;
5. Emergency and seasonal personnel.[65]

Since the members of the CCP board are appointed to a fixed tenure, the four (4)-year period specified by the CCP Charter, they may be properly considered as non-career service. Yet, even if these members fall within non-career service, their right to security of tenure is guaranteed both by the Constitution and by law.

Section 2. xxx

(3) No officer or employee of the civil service shall be removed or suspended except for cause provided by law.[66]

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Sec. 46. *Discipline: General Provisions.* – (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.[67]

What are thus the implications of the constitutionally guaranteed right to security of tenure to non-career service officials of GOCCs with original charter, particularly those whose appointments are for a fixed term? Simply put, these officials cannot be removed from office before the expiration of their term without cause, or for causes other than those specified by either the GOCC's charter, the Administrative Code, or other relevant civil service laws. Otherwise, their removal is unconstitutional.

An appointing power cannot arbitrarily remove an officer if the tenure is fixed by law, or if the officer is appointed to hold during the pleasure of some officer or board other than that appointing him.[68] In the absence of any provision for summary removal, an individual appointed to a post for a fixed term may be removed prior to the term's expiration only for cause. It is the fixity of the term that destroys the power of removal at pleasure.[69]

Under the CCP Charter, the term of a trustee may be terminated "due to termination of term, resignation, incapacity, death or other cause as may be provided in the By-laws."[70] These are the causes by law which may cause the dismissal of a member of the CCP board. In this case, the right of the Rufino Group to sit on the CCP board is premised on the claim that the members of the Endriga Group vacated their seats before the expiration of the four (4)-year term owing to the conditionalities made by President Ramos to their appointment. I have already pointed out that President Ramos did not have the authority to appoint the Endriga Group, but that they still were validly elected to the Board upon vote by the CCP board. Evidently, the conditionality restricting the Endriga Group to serve for a period less than the statutory term of four (4) years is invalid, whether or not it was attached to a valid appointing authority.

Clearly then, the power of the President to remove appointed officials of GOCCs with original charters, grounded as it could be in the power of "executive control" in the Constitution, is circumscribed by another constitutional provision. There is no showing that the Endriga Group was validly removed for legal cause before the expiration of their four (4)-year term. Hence, their removal is unconstitutional, as is the appointment of the Rufino Group to fill seats to the CCP board that had not yet become vacant.

CCP Governed by its Statutory Charter

Special considerations must likewise be appreciated owing to the fact that the CCP is a GOCC with an original charter. The Constitution authorizes the creation or establishment of

GOCCs with original charters.[71] Section 6 of the Corporation Code states that "[c]orporations created by special laws or charters shall be governed primarily by the provisions of the special law or charter creating them or applicable to them."[72]

Obviously, since the CCP Charter mandates a four (4)-year term for the members of the CCP board, such condition is binding as a law governing the CCP. Hence, any measure diminishing a duly elected trustee's right to serve out the four (4)-year term solely on the basis of the President's discretion or pleasure runs contrary to law. This is a simple way to look at the issue, and its starkness does not detract from its inherent validity. Still, a deeper examination into the question supports the same conclusion.

There is no question that a GOCC with original charter falls within the executive department, hence generally subject to executive control. At the same time, the fact that its creation is sourced from legislative will should give cause for pause. GOCCs may be created by the State either through the legislative route-the enactment of its original charter, or the executive route-its incorporation with the Securities and Exchange Commission. The discretion to incorporate unchartered government units falls solely with the executive branch, but the discretion in chartering GOCCs is purely legislative. In theory, a chartered GOCC can come into being even against the will of the Chief Executive, as is done if Congress overrides an executive veto of a bill chartering a particular GOCC.

Our laws similarly sustain the theoretical underpinning that a chartered GOCC is a creature of the legislative branch of government, even as it falls within the executive branch. As noted earlier, Section 6 of the Corporation Code states that "[c]orporations created by special laws or charters shall be governed primarily by the provisions of the special law or charter creating them or applicable to them"[73] Thus, it is Congress, and not the executive branch, which determines a chartered GOCC's corporate structure, purposes and functions. This basic point should be beyond controversy. Yet, the majority implies that Congress cannot limit or curtail the President's power of control over the Executive branch, and from that context, declares that a law authorizing the CCP Board of Trustees to appoint its own members runs afoul with the President's power of control. Evidently, there is a looming clash between the prerogative of the President to exercise control over the executive branch, and the prerogative of Congress to dictate through legislation the metes and bounds of a government corporation with original charter.

The scope of the potential controversy could also extend not only to GOCCs with original charters, but also to other public offices created by law. Outside of those offices specifically

created by the Constitution itself, the creation and definition of the bureaucracy that constitutes the executive branch of government is an incident of the legislative power to make laws. **The power to create public offices is inherently legislative,**[74] **and generally includes the power to modify or abolish it.**[75]

Laws that create public offices or GOCCs are no different from other statutes in that they are all binding on the Chief Executive. Indeed, while Congress is vested with the power to enact laws, the President executes the law, executive power generally defined as the power to enforce and administer the laws.[76] The corresponding task of the Chief Executive is to see that every government office is managed and maintained properly by the persons in charge of it in accordance with pertinent laws and regulations. Corollary to these powers is the power to promulgate rules and issuances that would ensure a more efficient management of the executive branch, for so long as such issuances are not contrary to law.[77]

Since the creation of public offices involves an inherently legislative power, it necessarily follows that the particular characteristics of the public office, including eligibility requirements and the nature and length of the term in office, are also for legislative determination. Hence, laws creating public offices generally prescribe the necessary qualifications for appointment to the public office and the length of their terms. The wisdom of such matters is left up to the legislative branch. At the same time, the power of appointment is executive in character, and the choice of whom to appoint is within the discretion of the executive branch of government. This setup aligns with traditional notions of checks and balances ” the choice whom to appoint resting with the executive branch, but proscribed by the standards enacted by the legislative. Persons to be appointed to a public office should possess the prescribed qualifications as may be mandated by Congress.

The same setup governs the removal of officers from public office. The power to remove a public officer is again executive in nature, but also subject to limitations as may be provided by law. Ordinarily, where an office is created by statute, it is wholly within the power of Congress, its legislative power extends to the subject of regulating removals from the office.[78]

Even the very definition of “executive control” under the Administrative Code concedes that the general definition of control may yield to a different prescription under a specific law governing particular agencies.

> SECTION 38. *Definition of Administrative Relationships.* – Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:
>
> (1) *Supervision and Control.* – Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs. **Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies** the word "control" shall encompass supervision and control as defined in this paragraph.[79]

The charters of GOCCs are specific laws with specific application to the GOCCs they govern. The Administrative Code itself affirms that "control," as defined by a particular charter, supersedes the general definition under the Code with respect to the GOCC governed by the charter. This concession is recognition of the primacy of legislative enactments in the constitution and definition of public offices within the executive branch of government.

The Authority of Congress to Impose Limitations
On the Exercise of Executive Control

There is another worrisome implication in the majority's reliance on executive control. It connotes that the legislative branch of government has no power to legislate any form of controls on executive action, thus effectively authorizing the President to ignore the laws of Congress. This significant diminution of the plenary power of the legislature to make laws guts the power of Congress to check and balance the executive branch of government.

The duty of the President "to faithfully execute the laws of the land" places the Chief Executive under the rule of law.[80] The President cannot refuse to carry out a law for the simple reason that in his/her judgment it will not be beneficial to the people.[81] Indeed, the exercise of every aspect of executive power, whether residual, express, or delegated, is governed by one principle beyond compromise-that such powers be in accordance with law. Executive control, taken to its furthest extreme that it warrants the unchecked exercise of executive power, can be used to justify the President or his/her subalterns in ignoring the law, or disobeying the law.

I submit that as a means of checking executive power, the legislature is empowered to impose reasonable statutory limitations in such exercise, over such areas wherein the legislative jurisdiction to legislate is ceded. As stated earlier, among such areas within the province of Congress is the creation of public offices or GOCCs. Even as such public offices or GOCCs may fall within the control and supervision of the executive branch, Congress has the power, through legislation, to enact whatever restrictions it may deem fit to prescribe for the public good.

Indeed, there are appreciable limits to what restrictions Congress may impose on public offices within the Executive Branch. For example, a law prescribing a fixed term for a Cabinet Secretary which may extend beyond the President's term of office is of dubious constitutional value, since Cabinet departments are recognized by law and tradition as extensions of the President, and their heads as *alter* egos thereof. This concession likewise finds constitutional enshrinement in the fact that the Appointments Clause vests solely in the President the power to appoint members of the cabinet, subject only to confirmation by the Commission on Appointments. I likewise recognize that in the absence of statutory restrictions, the President should be given wide latitude in the selection and termination of presidential appointees, and discretion to review, reverse or modify the acts of these officials.

GOCCs with original charters pose special considerations. The very fact that they were created by legislative enactments denotes the presence of statutory restrictions. At the same time, while remaining agencies of the State, they are in possession of independent juridical personality segregate from that of the Government. Indeed, the very corporate character of GOCCs implies a legislative intent to delegate sovereign functions to an entity that, in legal contemplation, is endowed with a separate character from the Government. The congressional charter of a GOCC should be recognized as legislative expression of some degree of independence from the Government reposed in the GOCC. The charter itself is an assertion of a GOCC's statutory independence from the other offices in the executive branch.

The comments of Constitutional Commissioner Fr. Joaquin Bernas on the power of control over GOCCs warrant consideration:

> It is submitted [that] the Executive's power of control over government-owned corporations, which in legal category are not on the same level as executive

> departments, bureaus, or offices, is not purely constitutional but largely statutory. The legislature may place them under the control of the Executive where their functions "partake of the nature of government bureaus and offices." Unlike executive departments, bureaus or offices, however, which by constitutional mandate must be under the Executive's control, government-owned corporations may be removed by the legislature from the Executive's control when the nature of their functions is changed.[82]

Even with respect to other public offices, if Congress deems it necessary to vest such a particular public office with a degree of independence from the executive branch, then the legislative prescription of conditions to the appointment/removal, including the fixing of a term of office, should generally be upheld. Indeed, Congress has the right to create public offices. While falling under the executive branch of government, the legislature may find in its creation such a significant public purpose as to be accorded a degree of independence from the executive department. This may especially hold true for quasi-judicial agencies tasked with determining competing claims lodged by private persons against the executive department. In the United States, the Supreme Court has upheld the authority of Congress "in creating quasi-legislative or quasi-judicial agencies, to require them to act in the discharge of their duties independently of executive control " and that the authority includes, as an appropriate incident, power to fix the period during which they shall continue in office, and to forbid their removal except for cause in the meantime."[83]

Unlike the "necessary and proper" clause of the U.S. Constitution,[84] there is no express characterization in our Constitution as to what laws our legislature should enact. This should not dissuade the Court from recognizing that Congress has the right to enact laws that are for the public good, even if they impair the comfort of private citizens or the officials of government. There are valid legislative purposes for insulating certain agencies of the State from unfettered executive interference. Congress may create agencies under the executive branch tasked with investigatory or fact-finding functions, and accord them a necessary degree of independence by assuring tenure to its members, for example. I submit that such prerogative of Congress is aligned with the principle of checks and balances, under which the legislature is empowered to prescribe standards and impose limitations in the exercise of powers vested or delegated to the President. The ruling in the majority would sadly impair the right of the legislature to impart public offices it creates with safeguards that ensure independence from executive interference should Congress deem that such independence serves a necessary public purpose.

The implications are similarly ruinous to the independent corporate personality of GOCCs as determined and fleshed out by Congress. Their charters are legislative enactments beyond the pale of the President to amend or repeal. **In effect, there is a seeming new rule – that the President may ignore or countermand statutory limitations contained in the charters of GOCCs. The President may thus abolish chartered GOCCs at whim, appoint persons Congress may have deemed as unqualified to positions in the GOCC, alter the corporate purposes for which the GOCC was established, all in the guise of executive control. Executive control may similarly be justified to alter or deprive statutory rights which may have been vested by Congress to private persons via the corporate charter. The power of Congress to charter government corporations would be rendered worthless-an intent hardly justified by the Constitution, which allocated the power to create GOCCs to Congress.**[85]

CCP Charter a Means of Promoting
An Autonomous Policy on the Arts

Odd as the structure of the CCP may be, its atypical nature was not enacted for the sake of uniqueness, but for laudable public purposes which the Court should acknowledge. The CCP Charter, apart from recognizing the CCP's corporate personality, goes as far as mandating that the CCP "enjoy[s] autonomy of policy and operation."[86] While the inherent right of Congress to create public offices in general, and specifically to charter GOCCs sufficiently justifies the constitutionality of Section 6 of the CCP Charter. Still, if it is necessary to inquire into the public purpose for prescribing the unique setup of the CCP, I submit that the mandated autonomy of the CCP is in accord with constitutional principles that should be upheld and promoted.

The Constitution provides that "arts and letters shall enjoy the patronage of the State"[87] and "[t]he state shall foster the preservation, enrichment, and dynamic evolution of a Filipino national culture based on the principle of unity in diversity in **a climate of free artistic and intellectual expression.**"[88] More crucially, artistic and intellectual expression is encompassed in free expression guaranteed by the Bill of Rights.[89] Clearly, art and culture, in constitutional contemplation, is not the product of collectivist thought like the prescribed social realism in Stalin's Soviet Union, but of free individual expression consonant to the democratic ideal.

The assurance of policy and operational autonomy on the CCP is aligned with these constitutional purposes. Government-sponsored art is susceptible to executive diktat,

especially to countermand unpopular art or to dilute its potency to the point of innocuousness. Indeed, executive control left unhampered could allow the executive branch to impose its own notions of what art and culture should be, and to block the art forms that do not conform to its vision. Given the paramount constitutional protection guaranteed to artistic expression, such executive interference would contravene constitutional rights. Such interference could be enforced by the executive through a Board of Directors whose subservience could be guaranteed by their staying in office solely by pleasure of the President. Even without the autonomy granted to the CCP in its charter, the CCP as a government agency would still be precluded from denigrating any person's right to free expression. But the fact that the legislative charter did put into operation safeguards that promote a climate of artistic independence should be lauded and upheld as within the prerogative of the legislature to enact. There is no higher public purpose in the formulation of laws than to promote constitutional values.

I could not improve on the following disquisition of Justice Puno on the important role the CCP has played in our development as a nation:

> The CCP Complex is the only area in the Philippines that is fully devoted to the growth and propagation of arts and culture. It is the only venue in the country where artists, Filipino and foreign alike, may express their art in its various forms, be it in music, dance, theater, or in the visual arts such as painting, sculpture and installation art or in literature such as prose, poetry and the indigenous oral and written literary forms. The theaters and facilities of the Complex have been utilized for the staging of cultural presentations and for the conduct of lectures and demonstrations by renowned visiting artists. The wide open spaces of the Complex are the only open spaces in Metropolitan Manila that have been used to accommodate huge crowds in cultural, artistic and even religious events.
>
> But the fulfillment of CCP's mandate did not start and end in Manila Bay. The CCP, through its Board of Trustees, has reached out to the provinces through programs, scholarships and national competitions for young artists. It has helped young artists hone their craft and develop their creativity and ingenuity. It has also exposed the Filipino artists to foreign art and advanced instruction, and thereby develop world-class artists, earning for the Philippines the respect and admiration of other countries. The CCP has likewise exposed the ordinary

> Filipino to the national culture. It has enhanced public interest in Philippine art in various forms, in our history, in our indigenous and modern culture, and at the same time, enriched us with the culture of other countries. The CCP has indeed emerged as a dynamic force in the promotion of the country's artistic and cultural heritage and the development of new and modern art forms. Through the years, it has helped raise the Filipino consciousness to our nationhood, and in the process, inculcated love for our country… The state recognizes the vital role arts and culture play in national development. Indeed, a nation that would give up its cultural patrimony in exchange for economic and material pursuits cannot but be doomed as a "people without a soul."[90] The Cultural Center of the Philippines has helped us capture this "soul."[91]

Art thrives within an atmosphere of free thought. The CCP Charter, by ensuring political and operational autonomy, ferments expression free from prior restraint or subsequent punishment from the executive department. There is a constitutional purpose to the independence attendant to the unique corporate structure of the CCP. There is constitutional authority for the legislature to charter a

government corporation with reasonable safeguards of independence from the executive branch. And there is a constitutional duty for the President to obey and execute the laws enacted by Congress.

Conclusion

The ruling of the Court today is boon for those quarters which wish to concede to the presidency as much power as there can be. Sadly, it comes at the expense of the time-honored prerogative of Congress to legislate laws. The power of Congress to enact legislative charters with any sort of restrictions that would be enforced is now severely put in doubt. The power of Congress to fix the terms of the offices it creates is now controvertible. The President has been given the green light to remove at will officials whose terms of offices are set by law, without regard to the constitutional guarantee of security of tenure to these officials. All these wrought simply because for the majority, the CCP Board of Trustees somehow transubstantiated itself into the CCP itself.

I have consistently advocated a generous interpretation of presidential authority, owing to my firm belief in the potency of the inherent and residual powers implicit in the highest office of the land.[92] Still, the Constitution is allergic to an omnipotent presidency, and thus,

the law is the limit. This is a live tiger that the majority has set loose today, one utterly capable of inflicting great pain on the delicate balance that safeguards the separation of powers.

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[1] Issued by President Ferdinand Marcos on 5 October 1972 in the exercise of his legislative powers during martial law. The legislative character of the CCP charter is beyond dispute, even by the majority.

[2] *See* Sec. 3, P.D No. 15, as amended (CCP Charter).

[3] Per Decision dated 14 May 1999 in CA G.R. SP No. 50272, penned by Justice (now Supreme Court Justice) Conchita Carpio-Morales, concurred in by Justices Artemon Luna and Bernardo Abesamis.

[4] Section 6, CCP Charter.

[5] *Infra.*

[6]Decision, *infra.*

[7] Section 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

[8] Decision, *infra.*

[9] Those officers whose appointment is vested to the President by the Constitution include the Chairman and Commissioners of the three constitutional commissions (Section 1(2), Article IX-B; Section 1(2), Article IX-C; Section 1(2), Article IX-D), the members of the Judicial and Bar Council (Section 8(2), Article VIII), the Ombudsman and his Deputies (Section 9, Article XI), members of the regional consultative commissions (Section 18, Article X), and formerly, sectoral representatives (Section 7, Article XVIII). See also *Sarmiento v. Mison,* G.R. No. L-79974, 17 December 1987, 156 SCRA 549.

[10] Decision, *infra.*

[11] Decision, *infra.*

[12] For emphasis and contrast, in this disquisition the term board used in the Appointments

Clause is spelled with a capital letter “B” (Board) while the board of trustees/directors in government corporations is spelled with a small letter “b” (board).

[13] See Section 16, Article XII, Constitution.

[14] See Section 2(4), Administrative Code of 1987.

[15] Black’s Law Dictionary, p. 618; citing *Commissioners of State Ins. Fund v. Dinowitz,* 179 Misc. 278, 39 N.Y.S.2d 34, 38.

[16] Ibid.

[17] *Nosictur a sociis.*

[18] “The rule is too well-settled to require any citation of authorities that the word “or” is a disjunctive term signifying dissociation and independence of one thing from each of the other things enumerated unless the context requires a different interpretation.” *People v. Martin,* G.R. No. 33487, 31 May 1971, 39 SCRA 340, 346.

[19] “It is to be remembered that the law makes the proprietor, lessee or operator, of the amusement place liable for the amusement tax, the three tax payers being connected by the disjunctive conjunction “or,” thereby positively implying that the tax should be paid either by the proprietor, the lessee, or the operator, as the case may be, singly and not by all at one and the same time.” *CIR v. Manila Jockey Club, Inc., 99* Phil. 289, 296 (1956).

[20] *Supra* note 4.

[21] G.R. No. 139554 *rollo*, p. 39.

[22] Section 8, CCP Charter. Emphasis supplied.

[23] See G.R. No. 139554, *rollo*, p. 211. Emphasis supplied.

[24] See J. Campos, Jr. and M.C. Campos, I The Corporation Code: Comments, Notes and Selected Cases, 1990 ed., at 340.

[25] *See Vicente v. Geraldez,* L-32473 & 32483, 31 July 1973, 52 SCRA 210, 227; citing *Board of Liquidators v. Kalaw,* L-18805, Aug. 14, 1967, 20 SCRA 987.

[26] “Where there is ambiguity, such interpretation as will avoid inconvenience and absurdity

is to be adopted." See *CIR v. TMX Sales,* G.R. No. 83736, 15 January 1992, 205 SCRA 184, 188; Cosico, Jr. v. NLRC, 338 Phil. 1080, 1089; *Southern Cross Cement Corporation v. PHILCEMCOR,* G.R. No. 158540, 8 July 2004, 434 SCRA 65, 89.

[27] *Supra* note 21.

[28] Ibid.

[29] Decision, *infra.* I agree with the Decision that the authority of Congress to authorize appointments by the heads of departments, commissions, agencies or bureaus pertain only to those junior officers within their respective enclaves. Thus, the Chairperson of the National Police Commission cannot be authorized by law to appoint junior officials of the Dangerous Drugs Board.

[30] *Edmond* v. U.S., 520 U.S. 651 (1997).

[31] 338 Phil. 507 (1997).

[32] Id. at 520.

[33] Ibid.

[34] See Section 5(6), Article VIII, Constitution.

[35] See Section 2, Article IX-C and Section 2, Article IX-D, Constitution.

[36] See *Malonso v. Principe,* A.C. No. 6289, 16 December 2004, 447 SCRA 1, 12-13; which discussed the collegial nature of the IBP Board of Governors:

> "Relevantly, Sec. 6, Rule 139-A of the Rules of Court provides in part:
>
> Sec. 6. Board of Governors. – the Integrated Bar shall be governed by a Board of Governors. Nine Governors shall be elected by the House of Delegates from the nine Regions on the representation basis of one Governor from each Region. . .
>
> xxx xxx xxx
>
> The Board shall meet regularly once every three months, on such date and at such time and place as it shall designate. A majority of all the members of the

> Board shall constitute a quorum to do business. . . .
>
> From these provisions, it is clear that before a lawyer may be suspended from the practice of law by the IBP, there should be (1) a review of the investigator's report; (2) a formal voting; and (3) a vote of at least five (5) members of the Board. **The rationale for this rule is simple: a decision reached by the Board in compliance with the procedure is the official decision of the Board as a body and not merely as the collective view of the individual members thereof. This is in keeping with the very nature of a collegial body which arrives at its decisions only after deliberation, the exchange of views and ideas, and the concurrence of the required majority vote**. (Ibid, at 12-13; citing Consing v. Court of Appeals, G.R. No. 78272, 29 August 1989, 177 SCRA 14, 22. Emphasis supplied)

[37] 19 C.J.S. 33 (1940 ed.), citing *Mcwhirter v. Washington Royalties Co.,* 152 A. 220, 17 Del. Ch. 243; In re: Vicksburg Bridge & Terminal Co., D.C. Miss., 22 F. Supp. 490.

[38] S. BAINBRIDGE, CORPORATION LAW AND ECONOMICS (2002 ed.), p. 230.

[39] See §8.08, MODEL CORPORATION BUSINESS ACT.

[40] See *Conde v. National Tobacco Corp.,* 110 Phil. 717, 721 (1961); citing 6 C.J.S. 89. See also H. de Leon and H. de Leon Jr., The Law on Public Officers and Election Law, 3rd.ed., 1997, at 48.

[41] F. MECHEM, A TREATISE ON THE LAW OF PUBLIC OFFICES AND OFFICERS, 1890 ed., at 61; citing Stocking v. State, 7 Ind. 326.

[42] *Supra* note 4.

[43] Ibid.

[44] See "*Division of Corporations, State of Delaware,*" http://www.state.de.us/corp/default.shtml (Last visited, 18 July 2006).

[45] See §141(b), Subchapter IV. Directors and Officers, Chapter 1. General Corporation, Title 8. Corporations, Delaware Code.

[46] Id.

[47] See Section 14, Corporation Code, which fixes the number of directors or trustees as not less than five (5), and not more than fifteen (15).

[48] See Section 4, Corporation Code.

[49] See Section 29, Corporation Code.

[50] See Section 3, CCP Charter.

[51] See Section 17, Article VII, Constitution; *infra.*

[52] See Section 5, Article VII.

[53] *Myers v. United States,* 272 U.S. 52, 119 (1926)

[54] See *Humphrey's Executor v. United States,* 295 U.S. 602 (1935); *Wiener v. United States*, 357 U.S. 349 (1958)

[55] See Section 2(3), Article IX-B, Constitution.

[56] See J. BERNAS, THE INTENT OF THE 1986 CONSTITUTION WRITERS, 1995 ed., at 596-98. The exclusion of unchartered GOCCs from civil service coverage was in apparent adverse reaction to the Court's ruling in *National Housing Authority v. Juco,* G.R. No. 64313, 17 January 1985, 134 SCRA 172, that the Civil Service covered all GOCCs irrespective of the manner of their creation. *NHA v. Juco,* id., at 182.

[57] 118 Phil. 1468. (1963)

[58] Id. at 1472.

[59] Id. at 1477.

[60] Id. at 1478. Emphasis supplied.

[61] Id. at 1479-80. Emphasis supplied.

[62] Id. at 1480.

[63] See Section 6, Chapter 2, Subtitle A, Title I, Book V, Administrative Code of 1987.

[64] Section 6(2), Chapter 2, Subtitle A, Title I, Book V, Administrative Code of 1987.

[65] Section 9, Chapter 2, Subtitle A, Title I, Book V, Administrative Code of 1987. A similar provision may be found in Section 6, Pres. Decree No. 807.

[66] Section 2(2), Article IX(B), Constitution.

[67] Section 46, Chapter 2, Subtitle A, Title I, Book V, Administrative Code of 1987.

[68] Mechem, supra note 41, at 284.

[69] H. DE LEON AND H. DE LEON JR., *supra* note 40, at 338; citing 63 Am. Jur. 2d at 826-827.

[70] Section 6(b), CCP Charter.

[71] See Section 16, Article XII, Constitution.

[72] See Sec. 6, Corporation Code.

[73] See Sec. 6, Corporation Code.

[74] *Castillo v. Pajo,* 103 Phil. 515, 519 (1958); *Llanto v. Dimaporo,* et al., G.R. No. L-21905, 31 March 1966, 16 SCRA 599, 604; *U.P. Board of Regents v. Razul,* G.R. No. 91551, 16 August 1991, 200 SCRA 685, 693.

[75] *De la Llana v. Alba,* G.R. No. L-57883, 12 March 1982, 112 SCRA 294, 345, J. Barredo, concurring.

[76] *Ople v. Torres,* G.R. No. 127685, 23 July 1998, 293 SCRA 141, 150.

[77] *Phividec v. Capitol Steel,* G.R. No. 155692, 23 October 2003, 414 SCRA 327, 332-333.

[78] See H. de Leon and H. de Leon Jr., supra note 40, at 337.

[79] Section 38, paragraph 1, Chapter 7, Book IV, Administrative Code of 1987.

[80] See *Gonzales v. Henchanova,* 118 Phil. 1065, 1089, J. Barrerra, concurring.

[81] J. BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, 2003 ed., at 864.

[82] Id. at 863.

[83] *Humphrey's Executor v. United States,* 295 U.S. 602, 629. (1935).

[84] See Section 8(18), Article I, U.S. Constitution.

[85] See Section 16, Article XII, which reads: "Government owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability." A charter has been defined as an act of legislature creating a business corporation, or creating and defining the franchise of a corporation." See BLACK'S LAW DICTIONARY, p. 236.

[86] See Section 3, CCP Charter.

[87] See Section 15, Article XIV, Constitution.

[88] See Section 14, Article XIV, Constitution.

[89] See Section 4, Article III, Constitution.

[90] *Republic v. Court of Appeals, infra,* citing El Filibusterismo, Guerrero translation, p. 49 [1965].

[91] *Republic v. Court of Appeals,* 359 Phil. 530, 667-668 (1998), *J. Puno*, concurring.

[92] See *Sanlakas v. Executive Secretary,* G.R. No. 159085, 3 February 2004, 421 SCRA 656; Separate Opinion, *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, G.R. No. 127882, 1 December 2004, 445 SCRA 1, 435-463; *Constantino v. Cuisia,* G.R. No. 106064, 13 October 2005, 472 SCRA 505; Dissenting Opinion, *David v. Ermita,* G.R. Nos. 171396, et al., 3 May 2006.

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