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A Missing Comma

SACRAMENTO, CALIF., Jan. 20 (PinoyGlobal) - A political earthquake is about to occur in the judicial system of the Philippines. The core of the problem is the interpretation of Section 15 Article VII of the Philippine constitution. At issue is President Gloria Macapagal Arroyo's plan to appoint the next Chief Justice of the Supreme Court during the period when "midnight appointments" are banned by the constitution. The presidential elections will be held on May 10, 2010 and Chief Justice Reynato Puno will be retiring on May 17, 2010.

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

My interpretation of Section 15 is: A President or Acting President shall not make appointments two months immediately before the next presidential elections and up to the end of his term with the exception of "temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety." In essence, President Arroyo is only allowed to make "temporary appointments to executive positions" under certain conditions but cannot appoint the Chief Justice during the period when the ban on "midnight appointments" which will start on March 10, 2010 until the end of her term on June 30, 2010.

It is interesting to note that several legal luminaries and experts were of the opinion that Section 15 in Article VII of the Constitution does not apply to the appointment of the Chief Justice. They would be right if a comma -- punctuation mark (,) -- was inserted after "except temporary appointments" which would then read as follows: "Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments, to executive positions when continued vacancies therein will prejudice public service or endanger public safety." If Section 15 was written in this manner, then there would be no question that the ban does not apply to the appointment of the Chief Justice. However, the whole sentence wouldn't make sense either.

A few weeks ago, Congressman Matias Defensor Jr., member of the Judicial and Bar Council (JBC) and an ally of Gloria, opened a Pandora's box when he asked the JBC to "hasten the nomination process for Chief Justice and allow Arroyo to appoint Puno's successor before his retirement." He argued that the "Chief Justice post should not be left vacant 'even for a day' especially in a crucial period such as presidential elections."

If Mr. Defensor's main worry was the "Chief Justice post should not be left vacant 'even for a day'," I have good news for him: Section 12 of the Judiciary Act of 1948 states that in case when the office of the Chief Justice is vacated, the most senior Associate Justice would take over until the next Chief Justice is appointed. That means that the Chief Justice

post will not be left vacant ‘even for a second,’ and whoever takes over in acting capacity will remain in that post until a permanent Chief Justice is appointed by the next President.

As a matter of record, Section 12 of the Judiciary Act of 1948 has been invoked at least once before. In 1991, Chief Justice Marcelo Fernan resigned to run for a political office the following year. Associate Justice Andres Narvasa, the most senior member in the High Court, became acting Chief Justice until President Cory Aquino appointed the Chief Justice who happened to be Narvasa himself.

Since “vacancy” shouldn’t be an issue at all, why is it then that Gloria is bent on appointing the next Chief Justice during the ban on “midnight appointments”? And this is where the debate has gone from legal to political, from logical to comical, from sanity to absurdity. It’s going to be a circus.

Forget about what Section 15 Article VII of the constitution says. Forget about what Section 12 of the Judiciary Act of 1948 says. Forget about what civil society and the media say. Nothing stops Gloria from doing what she wants to do regardless of whether it’s constitutional or unconstitutional. What Gloria wants, Gloria gets... by hook or by crook. She has done it before, and most of the time she had it her way. So, why can’t she do it again? After all, what has she got to

lose? Impeach her? Forget it.

Last January 18, 2010, the eight-member JBC decided to proceed with the process of putting together a “short list” of at least three nominees for Chief Justice. The top contenders are the five most senior associate justices: Antonio Carpio, Renato Corona, Conchita Carpio-Carpio Morales, Presbitero Velasco and Antonio Eduardo Nachura. However, the JBC did not yet decide on when to submit the “short list” to President Arroyo. But many legal experts are of the opinion that the JBC can only submit the “short list” when the post is vacated with the retirement of Chief Justice Puno.

What’s going to happen next would test the independence and integrity of the Supreme Court. The question is: Would the Supreme Court validate Gloria’s “midnight appointment” of the Chief Justice when it is crystal clear that Section 15 Article VI would only allow “temporary appointments to executive positions”? If the High Court validated Gloria’s “midnight appointment,” it would then establish a dangerous precedent.

At the end of the day, the interpretation of Section 15 Article VII could hinge on the absence of a punctuation mark, a missing comma.