

The Role of the Supreme Court in Unstable Democracies: The Case of the Philippine Supreme Court, An Empirical Analysis 1986-2010^{*}

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Abstract

In this paper we investigate empirically the determinants of judicial behavior at the Philippine Supreme Court in the period 1986-2010. Our preliminary results do not offer strong support to the attitudinal model. At the same time, the results so far do not seem to corroborate the defection model.

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I. INTRODUCTION

Courts have become an important field of study for legal economists, political scientists, and lawyers.¹ At the same time, the importance and role of judicial review in unstable or transition democracies has been recognized in the literature.² In fact, the appropriate design of constitutional review plays an important role in political stability, consolidation of democracy, and economic growth.³

Theoretical and empirical studies about the behavior of the U.S. justices abound. Legal legalists take the view that judges simply interpret and apply the Constitution in a conformist view of precedents. In a completely different perspective, the attitudinal model sees judicial preferences, with special emphasis on ideology, as the main explanatory model. Finally, agency theorists recognize the importance of judicial preferences but argue that they are implemented taking into account political and institutional realities.⁴

This paper focuses on the interesting case of the Philippines. Although there have been significant advances in the empirical study of Asian courts, there has been less work about the Philippines in recent decades.⁵ The Philippines can be regarded a successful transition from dictatorship to democracy, therefore providing an ideal case study to analyze judicial behavior in the context of particular institutional arrangements.⁶ At the same time, given the contemporary history of the Philippines, the Supreme Court has many similarities with the U.S. Supreme Court since the general design was transplanted in the early 20th century. However, there are some important differences. They result from the variety of institutional arrangements, but also the economic and social context.

The Philippines was a Spanish colony until the Spanish-American war (1898).⁷ For the period 1901-1935, the Philippines was under American influence, technically under an insular government that reported directly to the U.S. government. It evolved into a commonwealth of the United States in the period 1935-1946 (although under Japanese occupation during WWII).

¹ For further discussion, see, among others, Brenner & Spaeth (1988), Segal & Cover (1989), Epstein & Knight (1998), Epstein & et. al. (2001), Segal & Spaeth (2002), Hansford & Springs (2006).

² See Ginsburg (2003).

³ For a good introduction to the field, see Ginsburg (2002).

⁴ See Spiller and Gely (2007).

⁵ On Asia courts, see Ginsburg (2003), Ramseyer & Rasmusen (2003 & 2006), Garoupa et. al. (2011). On the Philippines, see Tate (1993) and Tate & Haynie (1993 & 1994).

⁶ See Gatmaytan-Magno (2007).

⁷ See Agoncillo (1990).

The Second Republic (1946-1965) secured the independence of the Philippines but was dominated by ineffective and increasingly corrupt administrations. Marcos was elected democratically in 1965 in the context of a difficult political struggle, but declared martial law in 1972 inaugurating a period of authoritarian government. The EDSA revolution led to the downfall of Marcos and the return to democracy in 1986. Five presidents have followed since then, namely, Corazón Aquino (1986-1992), Fidel Ramos (1992-1998), Joseph Estrada (1998-2001), Gloria Arroyo (2001-2010), and Benigno Aquino III (since 2010). All presidents have faced serious political challenges that tested the Philippines democracy.

The Supreme Court has played a significant political role since its foundation and has been involved in critical constitutional review with considerable policy consequences. Apparently the Court enjoyed a reputation for independence before the Marcos dictatorship (1972-1986).⁸ Due to the fact that the Court was largely perceived subservient to President Marcos and unpopular, the Court was purged in 1986 and packed by the new democratic regime. President Aquino accepted the resignation of all Justices and appointed the entire Court according to her preferences and political needs (in fact, reappointing those Justices perceived to be less likely to oppose her). Under a new Chief Justice, Claudio Teehankee (a political antagonist of President Marcos), the Court initially recovered some popularity. The role and powers of the Court were also enhanced with the new 1987 Constitution, thus promoting a new period of strong judicial review. However, after the initial period, the Court did not fully regain the excellent reputation enjoyed before the 1970s. The later Chief Justices, Marcelo Fernan and Andres Narvasa, were not able to recover the old prestigious status. The general perception was that the Court was too deferent to the President in office, occasionally corrupt and highly politicized.

By the late 1990s it was clear that the Court had not regained the prestige and popularity it once had. Haynie (1998) explained the situation in the 1990s by a confluence of factors: (i) expanded power of the Court by the 1987 democratic Constitution (many cases where not

⁸ See Tate & Haynie (1993 & 1994). Tate and Haynie (1993) study in detail the Court during the times of President Marcos (1961-1986). They conclude that there is little evidence of authoritarianism having an impact on the performance of the Court. They use time-series econometrics with caseload as dependent variable. In a different paper, Tate and Haynie (1994) conclude that Justices tend to perceive themselves as political insulated and see the previous (for Justices after 1986)/next (for Justices before 1986) generation more politicized.

justiciable before under the *political question doctrine*⁹ embraced by the Court during the period of President Marcos), (ii) media accountability (that exposed corruption in the Court in several significant cases) and (iii) the participation of Justices in the JBC (Judicial and Bar Council) that administered and managed the court system. She also pointed out that the fact that the Court operated in three divisions of five Justices each since 1987 which undermined precedent and created potential conflicts across divisions, a situation not always easy to understand from the outside. Notwithstanding, the vast majority of decisions by the Court in the period were unanimous.

The 2000s saw some aggravating perceptions about the role of the Court. Notwithstanding the institutional and constitutional safeguards in place, such as the creation of the JBC, there has been clear and significant erosion in judicial independence. There were several controversial decisions by the Supreme Court that attracted significant attention by the public. As in the United States, the relationship between the Supreme Court and the general public is crucially determined by salient cases. These cases have represented important landmarks for the public image of the court and the relevance of judicial review by the Supreme Court in the Philippines from a public opinion perspective:

(1) *Javellana* (1973), a six-four majority of the Supreme Court packed by appointees of President Marcos declared the 1973 Constitution not properly ratified although recognizing the new charter was already applicable. Because of a requirement of two-thirds voting to declare a law unconstitutional, the Court decision effectively allowed the 1973 Constitution to be applied. Although the justices rebuked the President for the process used to adopt a new Constitution, the decision legitimized the new political regime (with four justices showing approval for all decisions of President Marcos under martial law). This case undermined considerably the prestige of the Supreme Court at the eyes of the public.

(2) *Philippine Long Distance Telephone* (1992), the Court reversed a government's decision to allow more competition on the provision of international telecommunications. Later it was revealed that the justice who drafted the opinion of the Court had used PLDT counseling in the

⁹ Frequently used by the Court during the years of President Marcos to decline review and avoid politically cumbersome cases. The political question doctrine in the Philippines was inspired by the U.S. doctrine of the same name.

writing. Justice Gutierrez took early retirement and the Chief Justice opened an investigation on corruption at the Court. Other similar cases followed later.

(3) *People's Initiative for Reforms, Modernization and Action* (PIRMA, 1998), the Court started by deciding that the PIRMA endorsed by President Ramos was void and more legislation was required (essentially if approved would have allowed the reelection of the President but there was little time before the new election). On a second hearing, the Court reversed the position while opponents were vacationing, including Chief Justice Narvasa.

(4) *Lambino* (2006), a majority eight-seven dismissed a petition for a constitutional referendum ratifying a proposal of President Arroyo. Because the two-thirds voting requirement was no longer applicable, the decision of the Court effectively undermined the constitutional project of the incumbent President. This decision included eleven separating opinions (six concurrent and five dissents). Most of Arroyo's appointees dissented and considered the petition appropriate. The reaction to *Lambino* included recusal of justices who dismiss the petition (including the Chief Justice and the justice who drafted the majority opinion), filling of vacancy in the Court by the Solicitor General, and legislative preparation of impeachment of justices who voted against the petition. The retirement of the Chief Justice by the end of 2006 allow President Arroyo to command a solid majority in the Court. However, by unanimous vote, the Court rejected a motion to reconsider the petition.¹⁰

(5) *De Castro* (2010), a majority nine-four allowed President Arroyo to make so-called midnight appointments to the Supreme Court, in particular replacing the Chief Justice a couple of days before her own term expired and after a new presidential election (won by her rival candidate). The majority defended that constitutional provisions against midnight appointments do not apply to the Supreme Court (with five justices extending the exception to the entire judiciary). Only one justice entered a dissent concerning lifting the two-month ban (the remaining dissenting justices opposed the decision on procedural matters).

These cases have raised concerns about the independence of the Philippine Supreme Court. There is a general sense that the members of the Court defer regularly to the appointer and are

¹⁰ Gatmaytan-Magno (2007) sees this case as evidence that ideological alignment is not strong in the modern Philippine Supreme Court.

unable to disregard the immediate interests of the President. As a consequence, the Supreme Court faces serious criticism.¹¹

This paper studies empirically the Philippine Supreme Court. Our goal is to assess the extent to which such controversies are widely supported by empirical evidence. The paper goes as follows. The details of the Supreme Court are addressed in the following section. Section 3 explains the hypotheses concerning the behavior of the Philippine justices. Section 4 introduces the data. Preliminary regressions are discussed in section 5. Section 6 concludes the paper.

II. THE SUPREME COURT

The Supreme Court of the Philippines is composed of fifteen justices appointed by the President.¹² The Chief Justice is also picked by the President although there is an informal rule that the longest serving Justice should be picked. Presidents have broken such rule periodically.¹³ Justices are appointed for life subject to mandatory retirement at seventy. Table 1 summarizes the composition of the Supreme Court since 1986.

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According to the Philippine 1987 Constitution, the Supreme Court is suppose to settle controversies and determine if there is abuse of power by the government.¹⁴ The Court currently operates by three divisions of five justices each, although other possibilities are contemplated in the Constitution.¹⁵ Separating opinions are allowed but a concurrence of the

¹¹ See Vitug (2010).

¹² Article VIII, Section 9: "The Members of the Supreme Court and judges of the lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation."

¹³ For example, in 2005, when President Arroyo appointed Artemio Panganiban Chief Justice rather than Reynato Puno and, in 2010, when she picked Renato Corona rather than Antonio Carpio.

¹⁴ Article VIII, Section 1: "The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

¹⁵ Article VIII, Section 4 (1): "The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or in its discretion, in division of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof."

majority is needed to settle a case.¹⁶ The most important and relevant cases are decided *en banc*.¹⁷

The Supreme Court has two main powers.¹⁸ Appellate review is by far the most relevant activity of the Court. It is exercised in the context of an appeal from a decision of a lower court. Cases originated on trial courts have first to be elevated to the Court of Appeals, and only exceptionally directly with the Supreme Court on questions of law. The Court also entertains appeals from the Court of Tax Appeals, the Sandiganbayan (a special court for cases involving public officials) and the Commission on Elections (although technically not in the nature of an appeal). Decisions by administrative agencies have to be challenged first at the Court of Appeals.

¹⁶ Article VIII, Section 4 (2): "All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and all other cases which under the Rules of Court are required to be heard *en banc*, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon."

¹⁷ Article VIII, Section 4 (3): "Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc* provided that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*."

¹⁸ Article VIII, Section 5: "The Supreme Court shall have the following powers: 1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*. (2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in: (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question; (b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto; (c) All cases in which the jurisdiction of any lower court is in issue; (d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher; (e) All cases in which only an error or question of law is involved.(3) Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned. (4) Order a change of venue or place of trial to avoid a miscarriage of justice. (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court. (6) Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law."

As in the United States, review on appeal by the Supreme Court is not universal, and only granted when there are significant reasons.¹⁹ The Supreme Court can reverse a decision of lower courts if an error of law is proved. As to review of facts, the Court usually declines access, but there have been significant exceptions.

The Supreme Court has original jurisdiction concerning certain petitions, including *certiorari*, prohibition, and *mandamus*, among others. Due to the excessive workload, the Court has assigned to the Court of Appeals (and other lower courts) the power to hear some of these petitions. Consequently, the Court has been able to develop some discretion and has periodically refuse to hear these petitions filed directly before it on the ground that such should have been filed instead with the Court of Appeals (and other lower courts). In the context of original jurisdiction, the Supreme Court has apparently to decide on a standard higher than error of law, namely grave abuse of discretion.

In order to understand the dynamics of court behavior and judicial review in the Philippines, we briefly provide an overview of the key events that happened and situate the role of the judiciary in this development. More than two decades after the end of the Marcos dictatorship, the Philippines has experienced another people's uprising that led to the ouster of President Estrada²⁰, an impeachment trial by the president²¹, eight coup attempts²², and moves to change the 1987 Constitution that would extend presidential term limits or change the form of government to a parliamentary system.²³

These events show that the Philippines is not yet a stable democracy. Rather, it could be more appropriately characterized as undergoing the process of institutional experimentation towards

¹⁹ Section 6, Rule 45, 1997 Code of Civil Procedure.

²⁰ On January 17-20, 2001, a peaceful people's uprising, known as People Power 2 took place after the impeachment trial of President Estrada was aborted. On the fourth day, the military withdrew their support for Estrada and the Supreme Court swore into oath Vice-President Gloria Macapagal Arroyo as the President of the Republic. See Lande (2001).

²¹ An Impeachment Complaint was filed at the House of Representative accusing Estrada of bribery, graft and corruption, abuse of public trust and culpable violation of the Constitution which are all impeachable offenses under the 1987 Constitution on October 18, 2000, mainly for his involvement in the illegal lottery game. See Kasuya (2005).

²² Seven coups were staged against Aquino and one under Arroyo. The figures do not include the unsuccessful coup plots and attempts. The frequency of its occurrence can be traced to a politicized military whose influence in civilian affairs continued even after the end of the Marcos dictatorship. See Gloria (2003).

²³ Except under C. Aquino, all succeeding administrations introduced moves to amend the Constitution.

a mature and working democracy. It fits well with Ginsburg's characterization of new democracies wherein the institutional structure is "in a period of transition, of movement from one equilibrium to another." Under such a setting, there exists a "wide range of institutional configurations that are possible even within the category of democracies." It is therefore imperative to relate "judicial review to political uncertainty" in order to "provide a new perspective on the spread of judicial review."²⁴

Thus, in the Philippine case, the Supreme Court, aside from performing its usual functions, has also played crucial roles in shaping the democratic and institutional setup that eventually emerged. These are displayed in several circumstances. For example, at the height of the two people's uprisings or "people power," it timely swore into oath Aquino and Arroyo as the presidents of the Philippines, immediately solving the issue of succession and legitimacy at the same time.²⁵ Both moves were challenged later in the Supreme Court. In *Lawyer's League for Better Philippines et al v President Aquino*²⁶, the Supreme Court ruled that the Aquino government is not merely a *de facto* government, it is a *de jure* government. It was the people who have in fact bestowed their judgment. In *Estrada v. Desierto, Estrada v Macapagal-Arroyo*²⁷, the Supreme Court used a totality test and declared that Estrada has in effect resigned from office due to "his acts and omissions before, during and after January 20, 2001, or by the totality of prior, contemporaneous and posterior facts and circumstantial evidence bearing a material relevance on the issue." It based the decision on the common law principle *salus populi est suprema lex* or "the welfare and the will of the people is the supreme law."²⁸ Other circumstances include: Chief Justice Hilarion Davide presided over the impeachment trial of Estrada when the Senate convened itself into an impeachment court²⁹; under Chief Justice Reynato Puno, it has exercised its rule-making powers by promulgating the Rules on the *Writ of*

²⁴ Ginsburg (2003), pp 30-31.

²⁵ The 1986 and 2001 People Power were generally hailed as legitimate exercises of the sovereign right of the people to effect regime change within the context of government abuse and unworking democratic institutions. However, a smaller uprising, marred by violence took place by forces loyal to Estrada a few months after his ouster that put into question this view, arguing about the dangers of legitimizing mob rule. See Gatmaytan (2006) for a survey of the debate. See also Abinales and Amoroso, pp. 277-278, De Dios and Hutchcroft (2003).

²⁶ G.R. No. 73748, May 22, 1986.

²⁷ G.R. Nos. 146710-15, 146738, March 2, 2001.

²⁸ See also Lande.

²⁹ Article XI, Section 6:"(...) "When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote.(...)"

*Amparo*³⁰, and the *Writ of Habeas Data*³¹ in response to the extrajudicial killings and involuntary disappearances of journalists and leaders and members of the left and progressive movement³² during the Arroyo government; it decided on constitutional and key issues that involve the term extension or survival of the incumbent president (this happened under the Ramos' administration in 1997 in *Santiago v Comelec*³³ and under Arroyo's administration in 2006 in *Lambino v Comelec*³⁴).

Given the crucial role that the Supreme Court has assumed over the past two decades, it is not surprising that the incumbent administration would always attempt to exercise influence and control over it, leading to judicial capture. Garoupa and Maldonado (2011) have outlined the different measures taken by governments in political transition such as court packing, court removing, judicial pressure and, in the limit, the sponsoring of violence against the judiciary. These trends could also be seen in the Philippines during term changes.

Like the U.S. model, the Philippines take the Constitution as the supreme law of the land. Judicial review is enshrined in the Constitution. However, unlike in the U.S. where judicial review is usually perceived in the light of its supposed limitations arising from its countermajoritarian character, in the Philippines, it has taken to mean as the exercise of the balancing of powers between the three institutional pillars of democracy; the executive, the legislative and the judiciary (Feliciano, 1992; Panganiban, 2001; Gatmaytan, 2007; Desierto, 2010). This stems from its recent experience with authoritarian rule where the judiciary, specifically the Supreme Court, had in effect allowed and legitimized the Marcos dictatorship

³⁰ See A.M. No. 07-9-12-SC, October 24, 2007. The *Writ of Amparo* is “a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.”

³¹ See A.M. No. 08-1-16-SC, January 22, 2008. Among the reliefs available under the *Writ of Habeas Data* are the “deletion, destruction, or rectification of the erroneous data or information” by the public official or employee or of the private individual or entity engaged in the gathering, collecting, or storing of data or information regarding the person, family, home, and correspondence of the aggrieved party.

³² See UN Mission to the Philippines: Report of UN Special Rappoertuer Philip Alston on the extrajudicial, summary or arbitrary executions (A/HRC/8/3/Add.2) April 16, 2008.

³³ G.R. No. 127325, March 19, 1997. The Supreme Court ruled that while it recognizes the people's right to directly amend the Constitution, this right cannot be exercised in the absence of an implementing law promulgated by Congress. One of the amendments being considered is the lifting of presidential term limits.

³⁴ G.R. No. 174153, October 25, 2006. The Supreme Court ruled that the people's initiative spearheaded by Lambino failed to comply with the requirements of the Constitution.

with its passive non opposition to the 1973 Constitution³⁵. Further, the Supreme Court refrained from making decisions on a host of issues that allowed the perpetuation of dictatorial rule on the grounds that they were political questions and therefore non justiciable.

Since authoritarian rule was traced to the grave abuse of executive powers, the framers of the 1987 Constitution explicitly contained provisions designed to check it. A key measure is the expansion of the scope of judicial review to include the duty to “settle actual controversies involving rights which are *legally demandable and enforceable*, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.” Thus, rights that are legally demandable and enforceable are broad constructions to empower the Supreme Court to decide on almost all cases. Thus, while in the U.S., judicial restraint is espoused to some extent, in the Philippines, it appears that judicial activism is encouraged.

The rule-making powers of the Supreme Court were also expanded in the Constitution. Article VIII Sec. 5(5) authorizes it to “promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged.” This has been invoked by Chief Justice Puno in promulgating the *Writs of Amparo and Habeas Data*.³⁶

Since the Constitution was formed under a revolutionary government after a peaceful people's revolt, it has also recognized the direct exercise of the sovereign will of the people. The Constitution for instance has allowed the ratification of amendments of the Constitution through a plebiscite, the direct introduction of amendments through a people's initiative, and the removal of elected officials through a recall³⁷. In practice however, it is the Supreme Court that eventually defined the scope and limits of the people's exercise of sovereign will and the role it plays in the Philippine democratic space. Thus, apart from being the arbiter between the executive and legislative branch, it has also played a role in checking another emergent force in Philippine democratic governance, the so-called people power or the so called civil society.³⁸

³⁵ See *Javellana v. Executive Secretary*, G.R. No. L-36142, March 31, 1973. The Court ruled that while ratification of the 1973 Constitution through a people's assembly was not properly conducted, it was in fact, already in effect and thus, paving the way for Marcos dictatorial rule.

³⁶ See *supra* 30 and 31.

³⁷ See Desierto, p.450.

³⁸ See *supra* 25-28.

While the expansion of the Supreme Court is perceived as a necessary check against the abuses of executive powers, there were also criticisms arising from its countermajoritarian character.³⁹

Since the effectiveness of the judiciary in dispensing its role in a democracy hinges on its independence, the JBC (Judicial and Bar Council)⁴⁰, was created with the principal function of recommending appointees to the President. The president is constrained to appoint the members of the Supreme Court from a list of at least three nominees. The JBC is under the supervision of the Chief Justice who sits as the *ex officio* Chairman.

Given the expanded powers of the Supreme Court, and as the crucial role it plays during periods of political and economic instability that may lead to a regime change became apparent, it becomes understandable why the executive control of the Supreme Court is necessary not only to pass the incumbent's executive and legislative agenda but also to preserve themselves or to perpetuate themselves in power. In other words, the incentives for judicial capture on the part of the incumbent president became higher as the Supreme Court established its ability to influence policymaking.

In this context, we may expect the president to disregard judicial career and seniority and appoint individuals who are more likely or more inclined to pursue his or her interests. On the other hand, once appointed to the Supreme Court, since the justices serve until the retirement age of seventy years old, we may expect their voting behavior to be a balancing of the costs and benefits of allying themselves with the incumbent president.

³⁹ See for instance Agabin (1996).

⁴⁰ See Article VIII Sections 8-9, *supra* 10. Article VIII, Section 8: "(1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector; (2) The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year; (3) The Clerk of the Supreme Court shall be the Secretary *ex officio* of the Council and shall keep a record of its proceedings; (4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council; (5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it."

Table 1 summarizes the appointments to the Supreme Court in the more than two decades of democracy in the Philippines. There were sixty-three justices appointed to the Supreme Court during the period considered. The lowest percentage of justices appointed with no judicial experience happened under the Aquino government which is consistent with her establishment of a revolutionary government. On the other hand, the highest percentage with judicial experience occurred under Estrada, who ironically was accused of grand corruption and influence peddling. His term was cut short by a people's uprising that led the Supreme Court to swear into office the Vice-President, Gloria Arroyo after later declaring that he has technically resigned. To the extent that judicial experience is indicative of the court's independence, it appears to show the possible dire consequences for the incumbent chief executive of having a relatively independent judiciary.

The Aquino Supreme Court (1986-1992)

Aquino came to power through “people power revolution”, which is the result of a series of events, namely, massive electoral fraud, a coup attempt by a fraction of the military, that culminated in the people pouring out of the streets and her being sworn into office by a justice of the Supreme Court, Claudio Teehankee who later became the Chief Justice. The particular act administered by the Supreme Court, although arguably symbolic, resolved issues of legitimacy and succession that also led to the recognition of the international community. She established a revolutionary government that aimed to break ties with the dictatorship and rebuild the institutions of democracy which were corrupted by the past regime. In 1987 a new Constitution was ratified that introduced term limits, expanded the scope of the judiciary and ensured its independence. Immediately after assuming office, Aquino asked all the Supreme Court justices to tender their resignation and reappointed only four justices who were the voice of dissent under the Marcos court. Prior to the creation of the Judicial and Bar Council in 1988, Aquino had appointed seventeen justices whose background reflects her key constituencies: the Catholic Church, the Muslim minority, Liberal party human rights opposition to the Marcos regime and women and academic lawyers (Tate & Haynie, 1994). Since there was a general distrust of the judges who served under Marcos, the Aquino Supreme Court has the lowest proportion of justices with judicial experience and who served as a public official. Most of them were law professors as the academic community became one of the staunchest opposition to Marcos.

One of the cases that was filed under the Supreme Court involved questions of legitimacy of the Aquino government.⁴¹ Others question the extent of the powers of the executive with regards to the reorganization of the government, measures to recover ill gotten wealth of Marcos and his cronies, the review of human rights cases tried under Marcos, and a test of the new provisions of the Constitution⁴².

The Ramos Supreme Court (1992-1999)

Unlike Aquino whose administration was rocked by seven bloody coup attempts, Ramos' term can be characterized by a period of stability. However, it is questionable whether this can be attributed to the military's acceptance of civilian supremacy and the diminution of its role in a democracy. Ramos, one of the key generals who withdrew their support for Marcos and who remained loyal to Aquino, rewarded military officials with key positions in the government.⁴³ He is known to build consensus and introduced the so-called Rainbow coalition, an alliance of parties from different political spectrum in the legislature. He also institutionalized coordination between the two branches of government with the formation of the Legislative-Executive Advisory Council (LEDAC). This made possible the passage of several bills, mostly related with implementing market oriented economic reforms such as the privatization of government assets and services, deregulation of the telecommunication industry and financial services, and the approval of the GATT. As a result of the tight legislative and executive coordination, Ramos enjoyed the highest passage rate of administration-backed bills being passed into law.⁴⁴ He also forged peace agreements with the left, the Muslims and the rebel soldiers. The period also ushered in a period of steady economic growth.

Ramos appointed fourteen justices, all of whom are male. A high percentage of the appointees had judicial experience and law professors. Interestingly, the proportion with experience as public official was also high. Thus, it appears that the legislative executive coordination also extends into the judiciary and, at the same time, the judiciary understood the intricacies of the executive branch.

⁴¹ *Lawyers for Better Philippines vs Aquino*, supra note 26.

⁴² See Supreme Court Annual Report, years 1986-1992.

⁴³ See Gloria (2003) for a discussion of the role of military in the civilian government.

⁴⁴ See Kawanaka (2010) for a detailed discussion of the relationship between the executive and the legislature.

Most of the significant Supreme Court cases concern the resolution of the extent of executive powers in implementing dramatic economic reforms. In 1997 for instance, the Supreme Court struck down the oil deregulation bill as unconstitutional.⁴⁵ In 1992, the Court promulgated a decision that runs counter to the deregulation of the telecommunications industry⁴⁶. The most controversial ruling however involved the Supreme Court's rejection of the introduction of constitutional amendments to extend presidential term limits (PIRMA) that would benefit Ramos.

The Estrada Supreme Court (1998-2001)

Estrada won by an overwhelming majority by forty percent and took this as a strong mandate from the people. Unlike Ramos who only won by a plurality of votes and needed consensus, Estrada implemented his legislative agenda without proper consideration of other interests in society. He appointed government officials whose qualifications were dubious and he was accused of grand corruption involving his participation in the illegal lottery game. An impeachment trial started in the Senate and when the majority of the Senator allied with Estrada voted to suppress a key evidence in the Court, the people flocked to the streets. It was followed by the withdrawal of support by the military. The Supreme Court chief justice swore into oath Vice-President Macapagal Arroyo at the height of the demonstrations. As discussed above,⁴⁷ the Supreme Court played a role in the transfer of power. His popular mandate may also have been a factor in appointing career justices in the Supreme Court and allowing it to be relatively independent.

The Arroyo Supreme Court (2001-2010)

Arroyo first assumed office when she was sworn into office by the Supreme Court in 2001. In contrast to Estrada, she promised a more transparent and clean government. Her popularity began to dip when corruption scandals started erupting involving the first family. In 2003, young military officers staged a coup, dubbed as the Oakwood Mutiny. She also ran in the next presidential election and won by a slim margin. Evidence of massive electoral fraud led to events that resembled the making of another people power and a military coup. However, this was preempted by a timely declaration of emergency rule.⁴⁸ During this period, she took advantage of her executive powers in order to remain in office at the expense of undermining

⁴⁵ G.R. No. 124360, November 5, 1997.

⁴⁶ G.R. No. 94374, August 27, 1992.

⁴⁷ See *supra* 20, 21 and 27.

⁴⁸ David, et al vs Arroyo, G.R. No. 171396, May 3, 2006.

the already weak democratic institutions (Hutchcroft, 2008). Most of these measures were repressive in nature and whose constitutionality were challenged in the Court such as the Calibrated Preemptive Response⁴⁹, the prohibition among government employees and officials to disclose information in Congressional and Senate Hearings⁵⁰ (See also list of cases in the dataset.).

Arroyo appointed twenty-eight justices during her term. Perhaps aware of the crucial role by the Supreme Court and the Chief Justice, she appointed individuals within her circle of influence. She appointed three chief justices and ignored the tradition of appointing the most senior twice. She bypassed Puno over Panganiban in 2005 and bypassed Carpio over Corona in 2010.

III. THEORY AND HYPOTHESIS

Judicial decision-making in a supreme court is the result of multiple variables. Personal attributes⁵¹ and attitudes matter (including policy preferences in the relevant dimensions, for example, disposition concerning outcomes and policies). At the same time intra-court interaction plays an important role (a natural pressure for consensus and court reputation; a common objective to achieve empower the court over competing political and judicial actors). Party politics could also be relevant (for example, loyalty to the appointer). Finally, these variables interact in a given constitutional and doctrinal environment (for example, more or less legal formalism).⁵²

The relative importance of these variables varies across explanatory theories. A pure legalist theory does not recognize personal attributes or ideological preferences as a powerful explanatory variable of judicial behavior. A supporter of the attitudinal model does not recognize the institutional and doctrinal environment as a serious constraint to preferences. A believer of the principal-agent model sees intra-court as well as competing powers derived from government interaction as a major strategic limitation to ideological advancements of the agent.

Our model is largely inspired by the attitudinal literature. In the standard account, we might expect judicial behavior in the form of sincere ideological voting due to the combination of four

⁴⁹ Bayan vs Ermita, G.R. No. 69838, April 25, 2006

⁵⁰ Senate of the Philippines vs Ermita, G.R. No. 169777, April 25, 2006.

⁵¹ For judicial preferences, see Easterbrook (1990), Posner (1993 & 2005), Baum (1994), Schauer (2000).

⁵² See, among others, George & Epstein (1992) and Lax & Cameron (2007).

conditions: life tenure, no judicial superiors, docket control, and no career ambitions.⁵³ While the first two hold in the Philippines, the other two are not satisfied. The Supreme Court has less control over its docket than in the United States (although, as explained before, it has developed important legal doctrines to enhance such control). Justices clearly have career or career-related ambitions, namely being appointed Chief Justice (since the unofficial rule that the senior justice becomes Chief Justice has been broken occasionally), any other political job (the outgoing Chief Justice Reynato Puno was mentioned as a potential presidential candidate in 2010) or rent extraction by corruption.⁵⁴

At the same time, “sincere ideological vote” has to be considered in the context of the Philippine’s political system. The fifteen justices are selected by the President with no confirmation by the Senate. The President is largely unconstrained and subject to no significant scrutiny in appointments to the Supreme Court. Not surprisingly, the appointees are perceived by the media and the commentators as generally close to the interests of the President, where packing the court is a regular practice.⁵⁵ Presidents tend to be partisan in appointing their candidates to the Court.

There is no stable party system in the Philippines. Politics is based on local patronizing, pork barrel and traditional families. Presidents forge a coalition of different parties that generally collapses in due course; winning coalitions tend to be short-lived and with constant changing membership.⁵⁶ Ideology in the sense of pro-market or pro-state intervention, liberal or conservative, pro-federal government or pro-decentralization, with programmatic conflict is largely absent from Philippine politics. Individual loyalties, local interests and families, patronage, cronyism and political corruption are dominant.⁵⁷ Historians have pointed out that political pragmatism is the traditional essence of Filipino politics.⁵⁸ Furthermore, the “partyless democracy” of Manuel Quezon (1935-1944) and the authoritarian government of Ferdinand Marcos (1965-1986) have generalized the idea of technocracy over ideology.⁵⁹ Even under Corazón Aquino (1986-1992) policies were more the outcome of contingency than ideology.⁶⁰

⁵³ See Segal & Spaeth (2002).

⁵⁴ See discussion by Vitug (2010).

⁵⁵ See Vitug (2010).

⁵⁶ See Abinales and Amoroso (2005), at 239.

⁵⁷ *Id.* at 142, “Combining corruption and competence would become a pattern among state leaders.”

⁵⁸ *Id.* at page 126, “(...) political pragmatism became the foundation of conservative Filipino nationalism.”

⁵⁹ *Id.* at page 157.

⁶⁰ *Id.* at page 231.

With the exception of the period immediately after WWII, Filipino political parties have been loose associations serving individual interests and with no clear ideological agenda.⁶¹

Our hypothesis that the behavior of the Filipino justices is explained by strategic voting is based on two different elements, and therefore two different subhypotheses emerge:

(H1) While the appointer is in office, the justices are loyal to the President for reasons loosely similar to the attitudinal model. Furthermore, because of the nature of Filipino politics, we expect pressure by the appointer in the most salient cases to guarantee the pro-administration outcome.

(H2) When the appointer is no longer in office, the justices are loyal to the new President (and likely to be disloyal to the interests of the appointer) due to opportunism, survival and the possibility of personal gains. This hypothesis has been supported by evidence in the context of other experiences.⁶²

We will test our hypothesis with two different empirical methods. First, we establish the existence of correlation between the way the justices vote on cases and their loyalties. Second, we empirically study the coalitions in the Supreme Court and assess the extent to which they are explained by presidential appointments.

IV. DATASET

We have intent to code around two hundred decisions by the Philippine Supreme Court in the period 1986-2010. We have been compiling all decisions that are politically salient in the considered timeframe.⁶³ We will add some more cases mentioned by legal scholars and other commentators as extremely significant in establishing precedent by the Philippine Supreme Court.⁶⁴ We are confident our database will include all cases that are politically relevant for testing our model. Since the vast majority of the cases are decided unanimously, our sample includes a large proportion of the cases without dissents. Given that we observe the individual

⁶¹ Id. at page 170 and later at 190, "(...) the two parties were the Pepsi and Coke of politics. Switching parties was always publicly justified by "principle", of course, but the emptiness of this rhetoric was obvious to all."

⁶² See Helmke (2002 & 2004).

⁶³ We have hired a media expert specialized in the Supreme Court in the Philippines to compile this list of cases.

⁶⁴ Following Bakker (1997) and Vitug (2010).

vote of each Justice in these two hundred decisions, we expect to have around twenty five hundred individual observations.

Due to the current information available to us, in this draft, we analyze twenty-one cases only, for the period 2004-2008. We have 294 individual observations. Our dependent variable is a vote favorable to the administration. There are 184 votes favorable to the administration (63% of the sample) and 110 opposed to the administration (37% of the sample), President Arroyo in the considered period. Table 2 summarizes the descriptive statistics. We highlight in yellow the justices not appointed by President Arroyo. Largely speaking, we can see that they tend to have a lower percentage of decisions favorable to the administration.

<Table 2 insert here>

A simple contingency table is illustrative. The correlation between the individual vote and the appointer is not strong as presented on Table 3. It confirms the previous observation. There is a tendency for justices appointed by President Arroyo to vote more favorable to the administration, but such empirical feature is not statistically powerful.

<Table 3 insert here>

V. PRELIMINARY REGRESSIONS

In this section we present a more detail analysis of the dataset by virtue of regressions. Our dependent variable is a vote favorable to the administration, a dummy that takes value one if the vote is favorable to the administration and value zero if the vote is contrary to the interests of the administration.

The independent variables are the following:

- (i) *President Arroyo*: the dummy takes value one if the Justice was appointed by President Arroyo and zero otherwise;
- (ii) *Age*: age at year of appointment. The expected sign of the coefficient is negative since older Justices are presumably more dependent of the wishes of the administration for political sinecures after retirement and on the possibility of becoming Chief Justice;
- (iii) *Gender*: the dummy takes value one if the Justice is male and zero otherwise;

- (iv) *Judicial experience*: the variable takes value one if the Justice has previous judicial experience and zero otherwise;
- (v) *Law professor*: the variable takes value one if the Justice was previously a law professor and zero otherwise;
- (vi) *Public official*: the dummy takes value one if the Justice has previous experience as public official and zero otherwise;
- (vii) *Constitutionality*: the dummy takes value one if the decision refers to constitutional interpretation and zero otherwise. The expected sign of the coefficient is positive since constitutional interpretation is more relevant for the administration given the legal consequences;
- (viii) *Executive order*: the dummy takes value one if the decision refers to a presidential executive order and zero otherwise. The expected sign of the coefficient is positive since executive orders affect presidential powers directly;
- (ix) *Appeal from a Supreme Court Division*: the dummy takes value one if the decision refers to an appeal from a prior decision by one of the Supreme Court Divisions. The expected sign of the coefficient is positive since these are frequently more controversial and more politically relevant cases.

Several fixed effects were considered per relevant judge (although, we do not comment on them extensively because their statistical significance is known to be unstable in this type of econometric exercises). Due to the non-independence of the individual votes within decisions, we estimated the appropriate logit models correcting for the non-independence, in particular, with clustering by court decision.⁶⁵

As a result, we produced several regressions that are reported on Table 4. Usually with these types of regressions, we should consider the sign and not the magnitude of the estimated coefficients. In other words, we do not assess quantitatively the marginal impact of each explanatory variable on the probability of a judge voting for constitutionality, but rather there is only a qualitative assessment (the sign of the coefficient).

⁶⁵ We have used STATA 11.

<Table 4 insert here>

In order to interpret the logit coefficients, we provide guidance by reporting the odds-ratio on Table 5.

<Table 5 insert here>

Overall the regressions seem to support our previous analysis. Being appointed by President Arroyo does not seem to strongly determine judicial voting. The coefficient is positive as expected by the attitudinal model, but not statistically significant in some specifications. Notice the coefficients in relation to the type of case are all consistent with our predictions, but only statistically significant for constitutional interpretation.

The present dataset does not provide for a good framework to test the defection model. It could be argued that the variable capturing President Arroyo's appointees is not statistically significant because several justices have defected to her side (as documented by Table 2). However, since the period 2004-2008 is neither at the beginning nor at the end of Arroyo's presidency, we cannot test the defection model in a proper way.

Figure 1 shows the evolution of voting patterns for the twenty-one justices in our sample. There is no strong tendency consistent with the defection model. However, some justices do seem to favor the administration initially, and vote against more frequently against President Arroyo at later stages.

<Figure 1 insert here>

VI. PRELIMINARY CONCLUSIONS

Given the current preliminary sample we have, we can conclude so far that there is some weak evidence for the attitudinal model. However, it is likely to be much less convincing than in the US (as we expected in the context of the Philippines). There is also some evidence for the

defection model. However, it does not seem to be overwhelming. It is likely to be less pronounced than anticipated.

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Table 1: Judicial Appointments, 1986-2010

President	Number of Appointees	Percent Male	Percent Judicial Experience	Percent Law Professor	Percent Public Official
C. Aquino (1986-1992)	21	81%	38%	71%	52%
Ramos (1992-1998)	14	100%	71%	86%	71%
Estrada (1998-2001)	7	57%	86%	57%	57%
Arroyo (2001-2010)	21	86%	71%	57%	62%
TOTAL	63				

Table 2
Dataset, 2004-2008

	PRO-ARROYO ADMINISTRATION	ANTI-ARROYO ADMINISTRATION	% PRO-ARROYO ADMINISTRATION
Ynares Santiago	7	13	0.35
Azcuna	7	9	0.44
Puno	8	9	0.47
Vitug	2	2	0.50
Davide	5	5	0.50
Reyes	2	2	0.50
Carpio Morales	11	10	0.52
Carpio	11	9	0.55
Sandoval Gutierrez	10	8	0.56
Austria Martinez	12	9	0.57
Callejo	10	7	0.59
Panganiban	11	5	0.69
Quisumbing	15	6	0.71
Corona	14	5	0.74
Tinga	16	5	0.76
Garcia	10	3	0.77
Velasco	9	2	0.82
Chico-Nazario	14	1	0.93
Nachura	4	0	1.00
Leonardo De Castro	4	0	1.00
Brion	2	0	1.00

Table 3: Contingency Table

	PRO-ARROYO ADMINISTRATION	ANTI-ARROYO ADMINISTRATION	
ARROYO APPOINTEE	126 (67%)	62 (33%)	188
NOT ARROYO APPOINTEE	58 (55%)	48 (45%)	106
	184 (63%)	110 (37%)	294

Pearson Chi-Square = 4.38

p-value = 0.0363

Table 4:

LOGISTIC REGRESSIONS, DEPENDENT VARIABLE=VOTO FOR ARROYO, CLUSTERED BY CASE (21 CLUSTERS), 294 OBSERVATIONS

	REG 1	REG 2	REG 3	REG 4	REG 5
PSEUDO-R2	0.0112	0.0304	0.1071	0.118	0.1468
CONSTANT	0.189	-0.191	-1.613*	-2.031*	-3.16*
ARROYO APPOINTEE	0.52*	0.94*	0.64*	0.32	0.126
PUNO		0.073			-1.95
PANGANIBAN		0.98			1.25
QUISUMBING		1.11*			0.289
DAVIDE		0.19			-0.94
CORONA		-0.54			-0.65
CARPIO		0.285			0.36
AGE				0.034	-0.004
GENDER (MALE)				-0.16	0.134
JUDICIAL EXPERIENCE				0.189	1.07*
PROFESSOR OF LAW				0.383	0.71*
PUBLIC OFFICIAL				0.4	1.19*
CONSTITUTIONALITY			1.63*	1.65*	1.73*
EXECUTIVE ORDER			0.69	0.70	0.71
SC DIVISION			0.303	0.289	0.32

*significant 5%

Table 5

LOGISTIC REGRESSIONS, DEPENDENT VARIABLE=VOTO FOR ARROYO, ODDS-RATIO, CLUSTERED BY CASE (21 CLUSTERS), 294 OBSERVATIONS

	REG 1	REG 2 FIXED EFFECTS	REG 3	REG 4	REG 5 FIXED EFFECTS
PSEUDO-R2	0.0112	0.0304	0.1071	0.118	0.1468
ARROYO APPOINTEE	1.68*	2.55*	1.90*	1.38	1.13
AGE				1.04	1.00
GENDER (MALE)				0.851	1.14
JUDICIAL EXPERIENCE				1.21	2.91*
PROFESSOR OF LAW				1.47	2.03*
PUBLIC OFFICIAL				1.49	3.3*
CONSTITUTIONALITY			5.09*	5.22*	5.66*
EXECUTIVE ORDER			1.99	2.02	2.02
SC DIVISION			1.35	1.33	1.37

*significant 5%



Graphs by Judge

Case

Cases included in the dataset (2004-2008).

Source: <http://www.abs-cbnnews.com/research/10/23/08/voting-pattern-supreme-court-justices>

1. Case: Information Technology Foundation of the Philippines vs. Commission on Elections. Date of decision: January 13, 2004. Summary: The Supreme Court declared null and void the contracts awarded by the Commission on Elections for the automation of the 2004 elections.

2. Case: LA BUGAL-B'LAAN TRIBAL ASSOCIATION, INC.,vs. VICTOR RAMOS. Date of decision: January 27, 2004. Summary: The Supreme Court struck down as unconstitutional the provisions of RA 7942 or the Mining Act and DENR Order 96-40 that allowed financial technical assistance agreements. It also voided the FTAA between Western Mining Corp.-Philippines and the government

3. Case: SANLAKAS VS. EXECUTIVE SECRETARY. Date of decision: February 3, 2004. Summary: The Supreme Court dismissed the petitions assailing Proclamation No. 427 and General Order No. 4, which both declared a state of rebellion, as unconstitutional.

4. Case: TECSON VS. COMMISSION ON ELECTIONS. Date of decision: March 3, 2004. Summary: The Supreme Court dismissed the petitions seeking to disqualify Poe as a presidential candidate for allegedly not being a natural-born Filipino

5. Case: LA BUGAL-B'LAAN TRIBAL ASSOCIATION, INC., VS. VICTOR RAMOS. Date of decision: December 1, 2004. Summary: The Supreme Court reversed its January 27, 2004 decision and declared as constitutional the Mining Act of 1995, DENR 96-40 and the FTAA between WMC Philippines and the government

6. Case: ESTRADA VS. DESIERTO. Date of decision: December 9, 2004. Summary: The Supreme Court ruled that the Court of Appeals did not err in dismissing Estrada's petition for certiorari for lack of jurisdiction. Estrada filed a motion for reconsideration at the appellate court questioning a resolution of the Ombudsman which dismissed criminal charges against the BIR and Citibank officials who placed his foreign currency deposit on hold.

7. Case: LEGARDA VS. DE CASTRO. Date of decision: March 31, 2005
Summary: The Supreme Court denied De Castro's motion for reconsideration and affirmed the jurisdiction of the Presidential Electoral Tribunal over Legarda's petition.

8. Case: ABAKADA Guro Party List Officer Samson Alcantara vs. Executive Secretary. Date of decision: October 18, 2005. Summary: The Supreme Court junked the motions for reconsideration filed by

Alcantara which questioned the September 1, 2005 decision of the High Court. In said decision, the SC declared RA 9337 or the VAT Reform Act as constitutional.

9. Case: PIMENTEL VS. ERMITA. Date of decision: October 13, 2005. Summary: The Supreme Court saw no abuse on the part of the president when she made ad interim appointments as these were made during recess of Congress.

10. Case: REPUBLIC OF THE PHILIPPINES VS. HON. HENRICK F. GINGOYON. Date of decision: December 19, 2005. Summary: The Supreme Court granted in part the petition by modifying Gingoyn's assailed January 4 and 5 orders, which prohibited the government from awarding concessions or leasing any part of NAIA 3 to other parties pending its payment of P3 billion to PIATCO. The Court also affirmed Gingoyn's January 7 order, which appointed three commissioners who would ascertain the amount to be paid to PIATCO for the NAIA-3 complex. It also lifted its January 15 TRO against Gingoyn's order for the compensation of PIATCO.

11. Case: KILUSANG MAYO UNO VS. NEDA. Date: April 19, 2006. Summary: The Supreme Court declared Executive No. 420, which streamlined the ID systems of the government, as valid.

12. Case: GUDANI VS. SENG. Date of decision: Aug. 15, 2006. Summary: The Supreme Court denied the petition, which sought the invalidation of a presidential directive that prohibited petitioners from appearing in Congressional inquiries without the president's consent.

13. Case: LAMBINO vs. COMELEC. Date of decision: Oct. 25, 2006. Summary: The Supreme Court dismissed the petition, which questioned COMELEC's decision refuting the petitioner's appeal for a plebiscite that would authorize a people's initiative as instrument for charter change.

14. Case: BAYAN VS. ERMITA. Date of decision: April 25, 2006. Summary: The Supreme Court declared Calibrated Preemptive Response as null and void as it goes against the principle of maximum tolerance and enjoined the Executive, DILG and PNP from enforcing it. But the High Court ruled that Batas Pambansa No. 880 remains constitutional.

15. Case: Ejercito vs. Sandiganbayan. Date of decision: November 30, 2006. Summary: The Supreme Court upheld Sandiganbayan resolutions which denied JV Ejercito's motion to quash subpoenas that order the production of documents about bank accounts in the Export and Import Bank and PCI-Equitable Bank.

16. Case: SENATE OF THE PHILIPPINES VS. ERMITA. Date: April 20, 2006. Summary: The Supreme Court declared provisions of EO 464 which allowed executive department heads to invoke executive privilege as valid.

17. Case: DAVID VS. ARROYO. Date of decision: May 3, 2006. Summary: The Supreme Court declared PP1017 constitutional and G.O. No. 5 as valid, but struck down the arrest of David et al as unconstitutional.

18. Case: CHAVEZ VS. GONZALEZ. Date of decision: February 15, 2008. Summary: The Supreme Court nullified statements from Department of Justice and National Telecommunications Commission which prohibited the airing of alleged wiretapped conversations between Pres. Arroyo and former COMELEC Commissioner Virgilio Garcillano during the May 2004 elections.

19. Case: NERI VS. SENATE. Date of decision: March 25, 2008. Summary: The Supreme Court upheld the claim of Neri to executive privilege and nullified the Senate order which held him in contempt and also called for his arrest for snubbing a Senate inquiry on the aborted NBN-ZTE deal.

20. Case: AKBAYAN VS. AQUINO. Date of decision: July 16, 2008. Summary: The Supreme Court ruled that that the communications covered in the Japan-Philippines Economic Partnership Agreement are not for public disclosure as they are covered by executive privilege

21. Case: The Province of Cotobato Vs. The Gov't of the Republic of the Philippines. Date of decision: October 14, 2008. Summary: The Supreme Court granted the petition and declared the Memorandum of Agreement on Ancestral Domain unconstitutional.