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SENATE

P.S. RESOLUTION NO. 1550

RECEIVED BY: 

Introduced by:

Senators Francis N. Pangilinan, Edgardo Angara, Benigno Aquino III, Rodolfo Biazon, Alan Peter S. Cayetano, Pia S. Cayetano, Jinggoy Ejercito Estrada, Gregorio B. Honasan, M.A. Madrigal, Aquilino Pimentel, Jr., Mar Roxas, Antonio Trillanes IV

***A RESOLUTION EXPRESSING THE SENSE OF THE SENATE
THAT THE PRESIDENT OF THE PHILIPPINES SHOULD NOT
MAKE MIDNIGHT APPOINTMENTS IN THE JUDICIARY, SUCH
AS APPOINTING THE CHIEF JUSTICE OF THE SUPREME COURT,
AS MANDATED BY THE 1987 PHILIPPINE CONSTITUTION***

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

WHEREAS, the Constitution is clear that the ban on presidential appointments during the election period is absolute, except temporary executive appointments when public service calls for it. The President is prohibited to appoint an official to any post within sixty (60) days before Election Day except temporary appointments in the executive branch. Any midnight appointment made by the incumbent President of the Philippines is prohibited, starting from March 10, 2010 to June 30, 2010;

WHEREAS, the Judiciary Act of 1948 provides that in case of a vacancy in the office of the Chief Justice, the duties and powers of his office shall devolve upon the associate justice who is first in precedence. The position of Chief Justice will be occupied/filled by an Acting Chief Justice who is automatically the most senior of the justices.;

WHEREAS, on the other hand, Article VIII, Section 4(1) of the Constitution states that 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 (90) days from the occurrence thereof;

WHEREAS, under Section 9 of Article VIII of the Constitution, 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;

WHEREAS, according to the incumbent Supreme Court Chief Justice Reynato Puno, the procedure that has been followed is for the Judicial and Bar Council (JBC) to nominate the candidates for the position not only of associate justices but also of the Chief Justice. The Chief Justice is also considered as a member of the Supreme Court which should be appointed by the President based on the list prepared and submitted by the JBC. Therefore, President can appoint only from a list given by the JBC;

WHEREAS, the prohibition against appointment by the President starts on March 10, 2010 and will last until June 30, 2010. The period for filling a vacancy in the Supreme Court lasts until August 17, 2010. The new President by that time will therefore have about forty five (45) days after June 30, 2010 to make the appointment. The provisions of Article VII and Article VII shall have been reconciled and properly complied with;

WHEREAS, in cases decided by the Supreme Court; during the period stated in Section 15, Article VII of the Constitution, the President is neither required to make appointments to the courts nor allowed to do so. Sections 4(1) and 9 of Article VIII simply mean that the President is required to fill vacancies in the courts within the time frames provided therein *unless prohibited by Section 15, Article VII*. The prohibitions on appointments come into effect only once every six (6) years;

WHEREAS, the incumbent Supreme Court Justice will retire on May 17, 2010. The appointment to fill an expected vacancy in the Supreme Court is legitimate only if the person making the appointment still has the power when the vacancy occurs. President Gloria Macapagal-Arroyo cannot prematurely appoint the Chief Justice ahead of the retirement of the incumbent Chief Justice on May 17, 2010. The President will only have the power to make temporary appointments in the executive department on May 17, 2010;

WHEREAS, the vacancy has yet to occur after the May 10, 2010 elections. The power to appoint the new Chief Justice of the Supreme Court should be left to the next President. President Macapagal Arroyo is prohibited by no less than the Constitution to appoint the next Chief Justice.

NOW, THEREFORE, be it resolved, as it is hereby resolved, to express the sense of the Senate that the President of the Philippines should not make midnight appointment in the judiciary, such as appointing the Chief Justice of the Supreme Court, as mandated by the 1987 Philippine Constitution.

ADOPTED,

A collection of handwritten signatures in black ink. On the left side, there are several signatures, including one that appears to be 'M. Lopez' and another that looks like 'M. Lopez' with a large flourish. On the right side, there are more signatures, including one that clearly reads 'Macapagal' at the top, followed by 'Arroyo', 'P. Arroyo', and 'S. Arroyo'. There are also some illegible signatures at the bottom right.