EN BANC

[G.R. No. 174153. October 25, 2006.]

RAUL L. LAMBINO and ERICO B. AUMENTADO, TOGETHER WITH 6,327,952 REGISTERED VOTERS, *petitioners*, *vs*. THE COMMISSION ON ELECTIONS, *respondent*.

ALTERNATIVE LAW GROUPS, INC., *intervenor*.

ONEVOICE INC., CHRISTIAN S. MONSOD, RENE B. AZURIN, MANUEL L. QUEZON III, BENJAMIN T. TOLOSA, JR., SUSAN V. OPLE and CARLOS P. MEDINA, JR., *intervenors*.

ATTY. PETE QUIRINO QUADRA, *intervenor*.

BAYAN represented by its Chairperson Dr. Carolina Pagaduan-Araullo, BAYAN MUNA represented by its Chairperson Dr. Reynaldo Lesaca, KILUSANG MAYO UNO represented by its Secretary General Joel Maglunsod, HEAD represented by its Secretary General Dr. Gene Alzona Nisperos, ECUMENICAL BISHOPS FORUM represented by Fr. Dionito Cabillas, MIGRANTE represented by its Chairperson Concepcion Bragas-Regalado, GABRIELA represented by its Secretary General Emerenciana de Jesus, GABRIELA WOMEN'S PARTY represented by Sec. Gen. Cristina Palabay, ANAKBAYAN represented by Chairperson Eleanor de Guzman, LEAGUE OF FILIPINO STUDENTS represented by Chair Vencer Crisostomo Palabay, JOJO PINEDA of the League of Concerned Professionals and Businessmen, DR. DARBY SANTIAGO of the Solidarity of Health Against Charter Change, DR. REGINALD PAMUGAS of Health Action for Human Rights, *intervenors*.

LORETA ANN P. ROSALES, MARIO JOYO AGUJA, and ANA THERESA HONTIVEROS-BARAQUEL, *intervenors*.

LUWALHATI RIACASA ANTONINO, *intervenor*.

ARTURO M. DE CASTRO, *intervenor*.

TRADE UNION CONGRESS OF THE PHILIPPINES, *intervenor*.

LUWALHATI RICASA ANTONINO, *intervenor*.

PHILIPPINE CONSTITUTION ASSOCIATION (PHILCONSA), CONRADO F. ESTRELLA, TOMAS C. TOLEDO, MARIANO M. TAJON, FROILAN M. BACUNGAN, JOAQUIN T. VENUS, JR., FORTUNATO P. AGUAS, and

AMADO GAT INCIONG, *intervenors*.

RONALD L. ADAMAT, ROLANDO MANUEL RIVERA, and RUELO BAYA, *intervenors*.

PHILIPPINE TRANSPORT AND GENERAL WORKERS ORGANIZATION (PTGWO) and MR. VICTORINO F. BALAIS, *intervenors*.

SENATE OF THE PHILIPPINES, represented by its President, MANUEL VILLAR, JR., *intervenor*.

SULONG BAYAN MOVEMENT FOUNDATION, INC., *intervenor*.

JOSE ANSELMO I. CADIZ, BYRON D. BOCAR, MA. TANYA KARINA A. LAT, ANTONIO L. SALVADOR, and RANDALL TABAYOYONG, *intervenors*.

INTEGRATED BAR OF THE PHILIPPINES, CEBU CITY AND CEBU PROVINCE CHAPTERS, *intervenors*.

SENATE MINORITY LEADER AQUILINO Q. PIMENTEL, JR. and SENATORS SERGIO R. OSMEÑA III, JAMBY MADRIGAL, JINGGOY ESTRADA, ALFREDO S. LIM and PANFILO LACSON, *intervenors*.

JOSEPH EJERCITO ESTRADA and PWERSA NG MASANG PILIPINO, *intervenors*.

[G.R. No. 174299. October 25, 2006.]

MAR-LEN ABIGAIL BINAY, SOFRONIO UNTALAN, JR., and RENE A.V. SAGUISAG, *petitioners*, *vs*. COMMISSION ON ELECTIONS, represented by Chairman BENJAMIN S. ABALOS, SR., and Commissioners RESURRECCION Z. BORRA, FLORENTINO A. TUASON, JR., ROMEO A. BRAWNER, RENE V. SARMIENTO NICODEMO T. FERRER, and John Doe and Peter Doe, *respondents*.

D E C I S I O N

CARPIO, *J* :

The Case

These are consolidated petitions on the Resolution dated 31 August 2006 of the Commission on Elections ("COMELEC") denying due course to an initiative petition to amend the 1987 Constitution.

Antecedent Facts

On 15 February 2006, petitioners in G.R. No. 174153, namely Raul L. Lambino and Erico B. Aumentado ("Lambino Group"), with other groups [1] and individuals, commenced gathering signatures for an initiative petition to change the 1987 Constitution. On 25 August 2006, the Lambino Group filed a petition with the COMELEC to hold a plebiscite that will ratify their initiative petition under Section 5(b) and (c) [2] and Section 7 [3] of Republic Act No. 6735 or the Initiative and Referendum Act ("RA 6735").

The Lambino Group alleged that their petition had the support of 6,327,952 individuals constituting at least twelve *per centum* (12%) of all registered voters, with each legislative district represented by at least three *per centum* (3%) of its registered voters. The Lambino Group also claimed that COMELEC election registrars had verified the signatures of the 6.3 million individuals.

The Lambino Group's initiative petition changes the 1987 Constitution by modifying Sections 1-7 of Article VI (Legislative Department) [4] and Sections 1-4 of Article VII (Executive Department) [5] and by adding Article XVIII entitled "Transitory Provisions." [6] These proposed changes will shift the present Bicameral-Presidential system to a Unicameral-Parliamentary form of government. The Lambino Group prayed that after due publication of their petition, the COMELEC should submit the following proposition in a plebiscite for the voters' ratification:

> DO YOU APPROVE THE AMENDMENT OF ARTICLES VI AND VII OF THE 1987 CONSTITUTION, CHANGING THE FORM OF GOVERNMENT FROM THE PRESENT BICAMERAL-PRESIDENTIAL TO A UNICAMERAL-PARLIAMENTARY SYSTEM, AND PROVIDING ARTICLE XVIII AS TRANSITORY PROVISIONS FOR THE ORDERLY SHIFT FROM ONE SYSTEM TO THE OTHER?

On 30 August 2006, the Lambino Group filed an Amended Petition with the COMELEC indicating modifications in the proposed Article XVIII (Transitory Provisions) of their initiative. [7]

The Ruling of the COMELEC

On 31 August 2006, the COMELEC issued its Resolution denying due course to the Lambino Group's petition for lack of an enabling law governing initiative petitions to amend the Constitution. The COMELEC invoked this Court's ruling in ***Santiago v. Commission on Elections*** [8] declaring RA 6735 inadequate to implement the initiative clause on proposals to amend the Constitution. [9]

In G.R. No. 174153, the Lambino Group prays for the issuance of the writs of *certiorari* and mandamus to set aside the COMELEC Resolution of 31 August 2006 and to compel the COMELEC to give due course to their initiative petition. The Lambino Group contends that the COMELEC committed grave abuse of discretion in denying due course to their petition since ***Santiago*** is not a binding precedent. Alternatively, the Lambino Group claims that ***Santiago*** binds only the parties to that case, and their petition deserves cognizance as an expression of the "will of the sovereign people."

In G.R. No. 174299, petitioners ("Binay Group") pray that the Court require respondent COMELEC Commissioners to show cause why they should not be cited in contempt for the COMELEC's verification of signatures and for "entertaining" the Lambino Group's petition despite the permanent injunction in ***Santiago***. The Court treated the Binay Group's petition as an opposition-in-intervention.

In his Comment to the Lambino Group's petition, the Solicitor General joined causes with the petitioners, urging the Court to grant the petition despite the ***Santiago*** ruling. The Solicitor General proposed that the Court treat RA 6735 and its implementing rules "as temporary devises to implement the system of initiative."

Various groups and individuals sought intervention, filing pleadings supporting or opposing the Lambino Group's petition. The supporting intervenors [10] uniformly hold the view that the COMELEC committed grave abuse of discretion in relying on ***Santiago***. On the other hand, the opposing intervenors [11] hold the contrary view and maintain that ***Santiago*** is a binding precedent. The opposing intervenors also challenged (1) the Lambino Group's standing to file the petition; (2) the validity of the signature gathering and verification process; (3) the Lambino Group's compliance with the minimum requirement for the percentage of voters supporting an initiative petition under Section 2, Article XVII of the 1987 Constitution; [12] (4) the nature of the proposed changes as revisions and not mere amendments as provided under Section 2, Article XVII of the 1987 Constitution; and (5) the Lambino Group's compliance with the requirement in Section 10(a) of RA 6735 limiting initiative petitions to only one subject.

The Court heard the parties and intervenors in oral arguments on 26 September 2006. After receiving the parties' memoranda, the Court considered the case submitted for resolution.

The Issues

The petitions raise the following issues:

1. Whether the Lambino Group's initiative petition complies with Section 2, Article XVII of the Constitution on amendments to the Constitution through a people's initiative;

2. Whether this Court should revisit its ruling in ***Santiago*** declaring RA 6735 "incomplete, inadequate or wanting in essential terms and conditions" to implement the initiative clause on proposals to amend the Constitution; and

3. Whether the COMELEC committed grave abuse of discretion in denying due course to the Lambino Group's petition.

The Ruling of the Court

There is no merit to the petition.

The Lambino Group miserably failed to comply with the basic requirements of the Constitution for conducting a people's initiative. Thus, there is even no need to revisit ***Santiago***, as the present petition warrants dismissal based alone on the Lambino Group's glaring failure to comply with the basic requirements of the Constitution. For following the Court's ruling in ***Santiago***, no grave abuse of discretion is attributable to the Commission on Elections.

1. The Initiative Petition Does Not Comply with Section 2, Article XVII of the Constitution on Direct Proposal by the People

Section 2, Article XVII of the Constitution is the **governing** constitutional provision that allows a people's initiative to propose amendments to the Constitution. This section states:

> Sec. 2. Amendments to this Constitution may likewise be **directly proposed by the people through initiative upon a petition** of at least twelve *per centum*

> of the total number of registered voters of which every legislative district must be represented by at least three *per centum* of the registered voters therein. . . . . (Emphasis supplied)

The deliberations of the Constitutional Commission vividly explain the meaning of an amendment "**directly proposed by the people through initiative upon a petition**," thus:

> MR. RODRIGO: Let us look at the mechanics. Let us say some voters want to propose a constitutional amendment. **Is the draft of the proposed constitutional amendment ready to be shown to the people when they are asked to sign**?
>
> MR. SUAREZ: **That can be reasonably assumed**, Madam President.
>
> MR. RODRIGO: What does the sponsor mean? **The draft is ready and shown to them before they sign**. Now, who prepares the draft?
>
> MR. SUAREZ: The people themselves, Madam President.
>
> MR. RODRIGO: No, because **before they sign there is already a draft shown to them and they are asked whether or not they want to propose this constitutional amendment**.
>
> MR. SUAREZ: **As it is envisioned, any Filipino can prepare that proposal and pass it around for signature**. [13] (Emphasis supplied)

Clearly, the framers of the Constitution intended that the "**draft of the proposed constitutional amendment**" should be "**ready and shown**" to the people "**before**" they sign such proposal. The framers plainly stated that "**before they sign there is already a draft shown to them**." The framers also "**envisioned**" that the people should sign **on the proposal itself** because the proponents must "**prepare that proposal and pass it around for signature**."

The essence of amendments "**directly proposed by the people through initiative upon a petition**" is that **the entire proposal on its face is a petition by the people**. This means two essential elements must be present. First, the people must author and thus sign the entire proposal. No agent or representative can sign on their behalf. Second, as an initiative upon a petition, the proposal must be embodied in a petition.

These essential elements are present only if the full text of the proposed amendments is first shown to the people who express their assent by signing such complete proposal in a petition. **Thus, an amendment is "directly proposed by the people through initiative upon a petition" only if the people sign on a petition that contains the full text of the proposed amendments**.

The full text of the proposed amendments may be either written on the face of the petition, or attached to it. If so attached, the petition must state the fact of such attachment. This is an assurance that every one of the several millions of signatories to the petition had seen the full text of the proposed amendments before signing. Otherwise, it is physically impossible, given the time constraint, to prove that every one of the millions of signatories had seen the full text of the proposed amendments before signing.

The framers of the Constitution directly borrowed [14] the concept of people's initiative from the United States where various State constitutions incorporate an initiative clause. In

almost all States [15] which allow initiative petitions, the **unbending requirement is that the people must first see the full text of the proposed amendments before they sign to signify their assent, and that the people must sign on an initiative petition that contains the full text of the proposed amendments**. [16]

The rationale for this requirement has been repeatedly explained in several decisions of various courts. Thus, in ***Capezzuto v. State Ballot Commission***, the Supreme Court of Massachusetts, affirmed by the First Circuit Court of Appeals, declared:

> **[A] signature requirement would be meaningless if the person supplying the signature has not first seen what it is that he or she is signing**. Further, and more importantly, loose interpretation of the subscription requirement can pose a significant potential for fraud. A person permitted to describe orally the contents of an initiative petition to a potential signer, without the signer having actually examined the petition, could easily mislead the signer by, for example, omitting, downplaying, or even flatly misrepresenting, portions of the petition that might not be to the signer's liking. **This danger seems particularly acute when, in this case, the person giving the description is the drafter of the petition, who obviously has a vested interest in seeing that it gets the requisite signatures to qualify for the ballot**. [17] (Boldfacing and underscoring supplied)

Likewise, in ***Kerr v. Bradbury***, [18] the Court of Appeals of Oregon explained:

> The purposes of "full text" provisions that apply to amendments by initiative commonly are described in similar terms. . . . (**The purpose of the full text requirement is to provide sufficient information so that registered voters can intelligently evaluate whether to sign the initiative petition."**); . . . (publication of full text of amended constitutional provision required because it is "essential for the elector to have . . . the section which is proposed to be added to or subtracted from. If he is to vote intelligently, he must have this knowledge. Otherwise in many instances he would be required to vote in the dark.") (Emphasis supplied)

Moreover, "an initiative signer must be informed at the time of signing of the **nature and effect** of that which is proposed" and failure to do so is "**deceptive and misleading**" which renders the initiative void. [19]

Section 2, Article XVII of the Constitution does not expressly state that the petition must set forth the full text of the proposed amendments. However, the deliberations of the framers of our Constitution clearly show that the framers intended to adopt the relevant American jurisprudence on people's initiative. In particular, the deliberations of the Constitutional Commission **explicitly reveal** that the framers intended that **the people must first see the full text of the proposed amendments before they sign, and that the people must sign on a petition containing such full text**. Indeed, Section 5(b) of Republic Act No. 6735, the Initiative and Referendum Act that the Lambino Group invokes as valid, requires that the people must sign the "**petition . . . as signatories**."

The proponents of the initiative secure the signatures from the people. The proponents secure the signatures in their private capacity and not as public officials. The proponents are not disinterested parties who can impartially explain the advantages and disadvantages of the proposed amendments to the people. The proponents present favorably their proposal to the people and do not present the arguments against their proposal. The proponents, or their supporters, often pay those who gather the signatures.

Thus, there is no presumption that the proponents observed the constitutional requirements in gathering the signatures. The proponents bear the burden of proving that they complied with the constitutional requirements in gathering the signatures — **that the petition contained, or incorporated by attachment, the full text of the proposed amendments**.

The Lambino Group did not attach to their present petition with this Court a copy of the paper that the people signed as their initiative petition. The Lambino Group submitted to this Court a copy of a **signature sheet** [20] after the oral arguments of 26 September 2006 when they filed their Memorandum on 11 October 2006. The signature sheet with this Court during the oral arguments was the signature sheet attached [21] to the opposition in intervention filed on 7 September 2006 by intervenor Atty. Pete Quirino-Quadra.

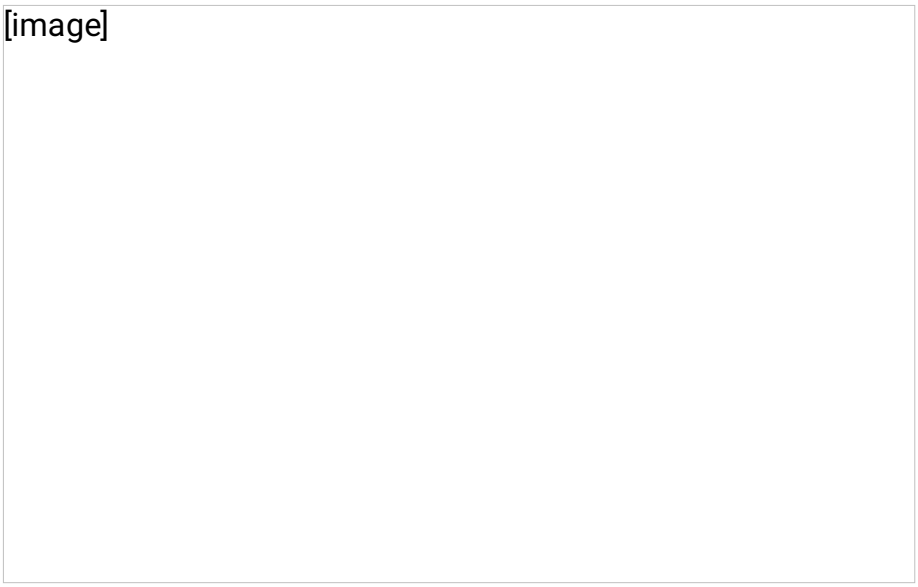
The signature sheet attached to Atty. Quadra's opposition and the signature sheet attached to the Lambino Group's Memorandum are the **same**. We reproduce below the signature sheet in full:

Province: City/Municipality: No. of Verified

Legislative District: Barangay: Signatures:

PROPOSITION: "DO YOU APPROVE OF THE AMENDMENT OF ARTICLES VI AND VII OF THE 1987 CONSTITUTION, CHANGING THE FORM OF GOVERNMENT FROM THE PRESENT BICAMERAL-PRESIDENTIAL TO A UNICAMERAL-PARLIAMENTARY SYSTEM OF GOVERNMENT, IN ORDER TO ACHIEVE GREATER EFFICIENCY, SIMPLICITY AND ECONOMY IN GOVERNMENT; AND PROVIDING AN ARTICLE XVIII AS TRANSITORY PROVISIONS FOR THE ORDERLY SHIFT FROM ONE SYSTEM TO ANOTHER?"

I hereby APPROVE the proposed amendment to the 1987 Constitution. My signature herein which shall form part of the petition for initiative to amend the Constitution signifies my support for the filing thereof.



There is not a single word, phrase, or sentence of text of the Lambino Group's proposed changes in the signature sheet. Neither does the signature sheet state that the text of the proposed changes is attached to it. Petitioner Atty. Raul Lambino **admitted** this during the oral arguments before this Court on 26 September 2006.

The signature sheet merely asks a question whether the people approve a shift from the Bicameral-Presidential to the Unicameral-Parliamentary system of government. **The**

signature sheet does not show to the people the draft of the proposed changes before they are asked to sign the signature sheet. Clearly, the signature sheet is not the **"petition"** that the framers of the Constitution envisioned when they formulated the initiative clause in Section 2, Article XVII of the Constitution.

Petitioner Atty. Lambino, however, explained that during the signature-gathering from February to August 2006, the Lambino Group circulated, together with the signature sheets, printed copies of the Lambino Group's draft petition which they later filed on 25 August 2006 with the COMELEC. When asked if his group also circulated the draft of their **amended** petition filed on 30 August 2006 with the COMELEC, Atty. Lambino initially replied that they circulated both. However, Atty. Lambino changed his answer and stated that what his group circulated was the draft of the 30 August 2006 amended petition, not the draft of the 25 August 2006 petition.

The Lambino Group would have this Court believe that they prepared the draft of the 30 August 2006 amended petition **almost seven months earlier in February 2006** when they started gathering signatures. Petitioner Erico B. Aumentado's "Verification/Certification" of the 25 August 2006 petition, as well as of the 30 August 2006 amended petition, filed with the COMELEC, states as follows:

> I have caused the preparation of the foregoing [Amended] Petition in my personal capacity as a registered voter, **for and on behalf of the Union of Local Authorities of the Philippines, as shown by ULAP Resolution No. 2006-02 hereto attached**, and as representative of the mass of signatories hereto. (Emphasis supplied)

The Lambino Group failed to attach a copy of ULAP Resolution No. 2006-02 to the present petition. However, the "Official Website of the Union of Local Authorities of the Philippines" [22] has posted the full text of Resolution No. 2006-02, which provides:

[image]

RESOLUTION NO. 2006-02

RESOLUTION SUPPORTING THE PROPOSALS OF THE PEOPLE'S CONSULTATIVE COMMISSION ON CHARTER CHANGE THROUGH PEOPLE'S INITIATIVE AND REFERENDUM AS A MODE OF AMENDING THE 1987 CONSTITUTION

WHEREAS, there is a need for the Union of Local Authorities of the Philippines (ULAP) to adopt a common stand on the approach to support the proposals of the People's Consultative Commission on Charter Change;

WHEREAS, ULAP maintains its unqualified support to the agenda of Her Excellency President Gloria Macapagal-Arroyo for constitutional reforms as embodied in the ULAP Joint Declaration for Constitutional Reforms signed by the members of the ULAP and the majority coalition of the House of Representatives in Manila Hotel sometime in October 2005;

WHEREAS, the People's Consultative Commission on Charter Change created by Her Excellency to recommend amendments to the 1987 Constitution has submitted its final report sometime in December 2005;

WHEREAS, the ULAP is mindful of the current political developments in Congress which militates against the use of the expeditious form of amending the 1987 Constitution;

WHEREAS, subject to the ratification of its institutional members and the failure of Congress to amend the Constitution as a constituent assembly, ULAP has unanimously agreed to pursue the constitutional reform agenda through People's Initiative and Referendum without prejudice to other pragmatic means to pursue the same;

WHEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED, THAT ALL THE MEMBER-LEAGUES OF THE UNION OF LOCAL AUTHORITIES OF THE PHILIPPINES (ULAP) SUPPORT THE PORPOSALS (SIC) OF THE PEOPLE'S CONSULATATIVE (SIC) COMMISSION ON CHARTER CHANGE THROUGH PEOPLE'S INITIATIVE AND REFERENDUM AS A MODE OF AMENDING THE 1987 CONSTITUTION;

DONE, during the ULAP National Executive Board special meeting held on 14 January 2006 at the Century Park Hotel, Manila. [23] (Underscoring supplied)

ULAP Resolution No. 2006-02 **does not authorize** petitioner Aumentado to prepare the 25 August 2006 petition, or the 30 August 2006 amended petition, filed with the COMELEC. ULAP Resolution No. 2006-02 "**support(s) the porposals (sic) of the Consulatative (sic) Commission on Charter Change** through people's initiative and referendum as a mode of amending the 1987 Constitution." The proposals of the Consultative Commission [24] are **vastly different** from the proposed changes of the Lambino Group in the 25 August 2006 petition or 30 August 2006 amended petition filed with the COMELEC.

For example, the proposed revisions of the Consultative Commission affect **all provisions** of the existing Constitution, **from the Preamble to the Transitory Provisions**. The proposed revisions have profound impact on the Judiciary and the National Patrimony provisions of the existing Constitution, provisions that the Lambino Group's proposed changes do not touch. The Lambino Group's proposed changes purport to affect only Articles VI and VII of the existing Constitution, including the introduction of new Transitory Provisions.

The ULAP adopted Resolution No. 2006-02 on 14 January 2006 or more than six months before the filing of the 25 August 2006 petition or the 30 August 2006 amended petition with the COMELEC. However, ULAP Resolution No. 2006-02 does not establish that ULAP or the Lambino Group caused the circulation of the draft petition, together with the signature sheets, six months before the filing with the COMELEC. On the contrary, ULAP Resolution No. 2006-02 casts grave doubt on the Lambino Group's claim that they circulated the draft petition together with the signature sheets. **ULAP Resolution No. 2006-02 does not refer at all to the draft petition or to the Lambino Group's proposed changes**.

In their Manifestation explaining their amended petition before the COMELEC, the Lambino Group declared:

> After the Petition was filed, Petitioners belatedly realized that the proposed amendments alleged in the Petition, more specifically, paragraph 3 of Section 4 and paragraph 2 of Section 5 of the Transitory Provisions were inaccurately stated and failed to correctly reflect their proposed amendments.

The Lambino Group did not allege that they were amending the petition because the amended petition was what they had shown to the people during the February to August 2006 signature-gathering. Instead, the Lambino Group alleged that the petition of 25 August 2006 "inaccurately stated and failed to correctly reflect their proposed amendments."

The Lambino Group **never alleged** in the 25 August 2006 petition or the 30 August 2006 amended petition with the COMELEC that they circulated printed copies of the draft petition together with the signature sheets. Likewise, the Lambino Group did **not** allege in their present petition before this Court that they circulated printed copies of the draft petition together with the signature sheets. The signature sheets do not also contain any indication that the draft petition is attached to, or circulated with, the signature sheets.

It is only in their Consolidated Reply to the Opposition-in-Interventions that the Lambino Group first claimed that they circulated the "petition for initiative filed with the COMELEC," thus:

> [T]here is persuasive authority to the effect that "**(w)here there is not (sic) fraud, a signer who did not read the measure attached to a referendum petition cannot question his signature on the ground that he did not understand the nature of the act**." [82 C.J.S. S128h. Mo. State v. Sullivan, 224, S.W. 327, 283 Mo. 546.] Thus, **the registered voters who signed the signature sheets circulated together with the petition for initiative filed with the COMELEC below**, are presumed to have understood the proposition contained in the petition. (Emphasis supplied)

The Lambino Group's statement that they circulated to the people "**the petition for initiative filed with the COMELEC**" appears an afterthought, made after the intervenors Integrated Bar of the Philippines (Cebu City Chapter and Cebu Province Chapters) and Atty. Quadra had pointed out that the signature sheets did not contain the text of the proposed changes. In their Consolidated Reply, the Lambino Group alleged that they circulated "**the petition for initiative**" but failed to mention the **amended petition**. This contradicts what Atty. Lambino finally stated during the oral arguments that what they circulated was the draft of the **amended petition** of 30 August 2006.

The Lambino Group cites as authority *Corpus Juris Secundum*, stating that "a signer who did not read **the measure *attached* to a referendum petition** cannot question his signature on the ground that he did not understand the nature of the act." The Lambino Group quotes an authority that cites a **proposed change *attached* to the petition signed by the people**. Even the authority the Lambino Group quotes requires that the proposed change must be attached to the petition. The same authority the Lambino Group quotes requires the people to sign on the petition itself.

Indeed, it is basic in American jurisprudence that the proposed amendment must be incorporated with, or attached to, the initiative petition signed by the people. In the present initiative, the Lambino Group's proposed changes were not incorporated with, or attached to, the signature sheets. The Lambino Group's citation of *Corpus Juris Secundum* pulls the

rug from under their feet.

It is extremely doubtful that the Lambino Group prepared, printed, circulated, from February to August 2006 during the signature-gathering period, the draft of the petition or amended petition they filed later with the COMELEC. The Lambino Group are less than candid with this Court in their belated claim that they printed and circulated, together with the signature sheets, the petition or amended petition. **Nevertheless, even *assuming* the Lambino Group circulated the amended petition during the signature-gathering period, the Lambino Group admitted circulating only *very limited copies* of the petition**.

During the oral arguments, **Atty. Lambino *expressly admitted* that they printed only 100,000 copies of the draft petition they filed more than six months later with the COMELEC**. Atty. Lambino added that he also asked other supporters to print additional copies of the draft petition but he could not state with certainty how many additional copies the other supporters printed. **Atty. Lambino could only assure this Court of the printing of 100,000 copies because he himself caused the printing of these 100,000 copies**.

Likewise, in the Lambino Group's Memorandum filed on 11 October 2006, **the Lambino Group expressly admit that "petitioner Lambino initiated the printing and reproduction of 100,000 copies of the petition for initiative . . . ." [25] This admission binds the Lambino Group and establishes beyond any doubt that the Lambino Group failed to show the full text of the proposed changes to the great majority of the people who signed the signature sheets**.

Thus, of the 6.3 million signatories, only 100,000 signatories could have received with certainty one copy each of the petition, assuming a 100 percent distribution with no wastage. If Atty. Lambino and company attached one copy of the petition to each signature sheet, only 100,000 signature sheets could have circulated with the petition. Each signature sheet contains space for ten signatures. Assuming ten people signed each of these 100,000 signature sheets with the attached petition, the maximum number of people who saw the petition before they signed the signature sheets would not exceed 1,000,000.

With only 100,000 printed copies of the petition, it would be physically impossible for all or a great majority of the 6.3 million signatories to have seen the petition before they signed the signature sheets. **The inescapable conclusion is that the Lambino Group failed to show to the 6.3 million signatories the full text of the proposed changes**. If ever, not more than one million signatories saw the petition before they signed the signature sheets.

In any event, the Lambino Group's signature sheets do not contain the full text of the proposed changes, either on the face of the signature sheets, or as attachment with an indication in the signature sheet of such attachment. **Petitioner Atty. Lambino admitted this during the oral arguments, and this admission binds the Lambino Group. This fact is also obvious from a mere reading of the signature sheet. This omission is fatal**. The failure to so include the text of the proposed changes in the signature sheets renders the initiative void for non-compliance with the constitutional requirement that the amendment must be "**directly proposed by the people through initiative upon a petition**." The signature sheet is not the "**petition**" envisioned in the initiative clause of the Constitution.

For sure, the great majority of the 6.3 million people who signed the signature sheets did

not see the full text of the proposed changes before signing. They could not have known the nature and effect of the proposed changes, among which are:

1. The **term limits on members of the legislature will be lifted** and thus members of Parliament can be re-elected indefinitely; [26]

2. The interim Parliament can continue to function indefinitely until its members, who are almost all the present members of Congress, decide to call for new parliamentary elections. Thus, the **members of the interim Parliament will determine the expiration of their own term of office**; [27]

3. Within 45 days from the ratification of the proposed changes, **the interim Parliament shall convene to propose further amendments or revisions to the Constitution**. [28]

These three specific amendments are not stated or even indicated in the Lambino Group's signature sheets. The people who signed the signature sheets had no idea that they were proposing these amendments. These three proposed changes are highly controversial. The people could not have inferred or divined these proposed changes merely from a reading or rereading of the contents of the signature sheets.

During the oral arguments, petitioner Atty. Lambino stated that he and his group **assured the people during the signature-gathering that the elections for the regular Parliament would be held during the 2007 local elections** if the proposed changes were ratified before the 2007 local elections. However, the text of the proposed changes **belies** this.

The proposed Section 5(2), Article XVIII on Transitory Provisions, as found in the amended petition, states:

> Section 5(2). The interim Parliament shall provide for the election of the members of Parliament, **which shall be synchronized and held simultaneously with the election of all local government officials**. . . . . (Emphasis supplied)

Section 5(2) does not state that the elections for the regular Parliament will be held simultaneously with the 2007 local elections. This section merely requires that the elections for the regular Parliament shall be held simultaneously with the local elections **without specifying the year**.

Petitioner Atty. Lambino, who claims to be the principal drafter of the proposed changes, could have easily written the word "**next**" before the phrase "election of all local government officials." This would have insured that the elections for the regular Parliament would be held in the next local elections following the ratification of the proposed changes. However, the absence of the word "next" allows the interim Parliament to schedule the elections for the regular Parliament simultaneously with **any** future local elections.

Thus, the members of the interim Parliament will decide the expiration of their own term of office. This allows incumbent members of the House of Representatives to hold office beyond their current three-year term of office, and possibly even beyond the five-year term of office of regular members of the Parliament. **Certainly, this is contrary to the representations of Atty. Lambino and his group to the 6.3 million people who signed the signature sheets. Atty. Lambino and his group deceived the 6.3 million signatories, and even the entire nation**.

This lucidly shows the **absolute need** for the people to sign an initiative petition that

contains the full text of the proposed amendments to avoid fraud or misrepresentation. In the present initiative, the 6.3 million signatories had to rely on the **verbal representations** of Atty. Lambino and his group because the signature sheets did not contain the full text of the proposed changes. The result is a **grand deception** on the 6.3 million signatories who were led to believe that the proposed changes would require the holding in 2007 of elections for the regular Parliament simultaneously with the local elections.

The Lambino Group's initiative springs another surprise on the people who signed the signature sheets. The proposed changes **mandate** the interim Parliament to make further amendments or revisions to the Constitution. The proposed Section 4(4), Article XVIII on Transitory Provisions, provides:

> Section 4(4). Within forty-five days from ratification of these amendments, the interim Parliament **shall convene to propose amendments to, or revisions of, this Constitution** consistent with the principles of local autonomy, decentralization and a strong bureaucracy. (Emphasis supplied)

During the oral arguments, Atty. Lambino stated that this provision is a "surplusage" and the Court and the people should simply ignore it. Far from being a surplusage, this provision invalidates the Lambino Group's initiative.

Section 4(4) is a subject matter **totally unrelated** to the shift from the Bicameral-Presidential to the Unicameral-Parliamentary system. American jurisprudence on initiatives outlaws this as **logrolling** — when the initiative petition incorporates an unrelated subject matter in the same petition. This puts the people in a dilemma since they can answer only either yes or no to the entire proposition, forcing them to sign a petition that effectively contains two propositions, one of which they may find unacceptable.

Under American jurisprudence, the effect of logrolling is to **nullify the entire proposition** and not only the unrelated subject matter. Thus, in ***Fine v. Firestone***,[29] the Supreme Court of Florida declared:

> **Combining multiple propositions into one proposal constitutes "logrolling," which, if our judicial responsibility is to mean anything, we cannot permit**. The very broadness of the proposed amendment amounts to logrolling because the electorate cannot know what it is voting on — the amendment's proponents' simplistic explanation reveals only the tip of the iceberg. . . . . The ballot must give the electorate fair notice of the proposed amendment being voted on. . . . . The ballot language in the instant case fails to do that. The very broadness of the proposal makes it impossible to state what it will affect and effect and violates the requirement that proposed amendments embrace only one subject. (Emphasis supplied)

Logrolling confuses and even deceives the people. In ***Yute Air Alaska v. McAlpine***,[30] the Supreme Court of Alaska warned against "inadvertence, stealth and fraud" in logrolling:

> Whenever a bill becomes law through the initiative process, all of the problems that the single-subject rule was enacted to prevent are exacerbated. There is a greater danger of logrolling, or the deliberate intermingling of issues to increase the likelihood of an initiative's passage, and **there is a greater opportunity for "inadvertence, stealth and fraud" in the enactment-by-initiative process**. The drafters of an initiative operate independently of any structured or supervised process. They often emphasize particular provisions of their proposition, while remaining silent on other (more complex or less appealing) provisions, when communicating to the public. . . . **Indeed, initiative promoters typically use**

> **simplistic advertising to present their initiative to potential petition-signers and eventual voters**. Many voters will never read the full text of the initiative before the election. More importantly, there is no process for amending or splitting the several provisions in an initiative proposal. These difficulties clearly distinguish the initiative from the legislative process. (Emphasis supplied)

Thus, the present initiative appears merely a preliminary step for further amendments or revisions to be undertaken by the interim Parliament as a constituent assembly. The people who signed the signature sheets could not have known that their signatures would be used to propose an amendment **mandating** the interim Parliament to propose **further** amendments or revisions to the Constitution.

Apparently, the Lambino Group inserted the proposed Section 4(4) to **compel** the interim Parliament to amend or revise again the Constitution within 45 days from ratification of the proposed changes, **or before the May 2007 elections**. In the absence of the proposed Section 4(4), the interim Parliament has the discretion whether to amend or revise again the Constitution. With the proposed Section 4(4), the initiative proponents want the interim Parliament **mandated** to immediately amend or revise again the Constitution.

However, the signature sheets do not explain the reason for this rush in amending or revising again so soon the Constitution. The signature sheets do not also explain what specific amendments or revisions the initiative proponents want the interim Parliament to make, and why there is a need for such further amendments or revisions. **The people are again left in the dark to fathom the nature and effect of the proposed changes**. Certainly, such an initiative is not "directly proposed by the people" because the people do not even know the nature and effect of the proposed changes.

There is another intriguing provision inserted in the Lambino Group's amended petition of 30 August 2006. The proposed Section 4(3) of the Transitory Provisions states:

> Section 4(3). Senators whose term of office ends in 2010 shall be members of Parliament until noon of the thirtieth day of June 2010.

> After 30 June 2010, **not one** of the present Senators will remain as member of Parliament if the interim Parliament does not schedule elections for the regular Parliament by 30 June 2010. However, there is no counterpart provision for the present members of the House of Representatives even if their term of office will all end on 30 June 2007, three years earlier than that of half of the present Senators. Thus, **all** the present members of the House will remain members of the interim Parliament after 30 June 2010.

The term of the incumbent President ends on 30 June 2010. Thereafter, the Prime Minister exercises all the powers of the President. If the interim Parliament does not schedule elections for the regular Parliament by 30 June 2010, the Prime Minister will come **only** from the present members of the House of Representatives to the **exclusion** of the present Senators.

The signature sheets do not explain this discrimination against the Senators. **The 6.3 million people who signed the signature sheets could not have known that their signatures would be used to discriminate against the Senators. They could not have known that their signatures would be used to limit, after 30 June 2010, the interim Parliament's choice of Prime Minister only to members of the existing House of Representatives**.

An initiative that gathers signatures from the people without **first showing** to the people the full text of the proposed amendments is most likely a deception, and can operate as a **gigantic fraud on the people**. That is why the Constitution requires that an initiative must be "**directly proposed by the people . . . in a petition**" — meaning that the people must sign on a petition that contains the full text of the proposed amendments. On so vital an issue as amending the nation's fundamental law, the writing of the text of the proposed amendments cannot be **hidden from the people** under a general or special power of attorney to unnamed, faceless, and unelected individuals.

The Constitution entrusts to the people the power to directly propose amendments to the Constitution. This Court trusts the wisdom of the people even if the members of this Court do not personally know the people who sign the petition. **However, this trust emanates from a fundamental assumption: the full text of the proposed amendment is first shown to the people before they sign the petition, not after they have signed the petition**.

In short, the Lambino Group's initiative is void and unconstitutional because it dismally fails to comply with the requirement of Section 2, Article XVII of the Constitution that the initiative must be "**directly proposed by the people through initiative upon a petition**."

2. The Initiative Violates Section 2, Article XVII of the Constitution Disallowing Revision through Initiatives

A people's initiative to change the Constitution applies only to an amendment of the Constitution and not to its revision. In contrast, Congress or a constitutional convention can propose both amendments and revisions to the Constitution. Article XVII of the Constitution provides:

> ARTICLE XVII
> AMENDMENTS OR REVISIONS
>
> Sec. 1. **Any amendment to, or revision of, this Constitution** may be proposed by:
>
> (1) The **Congress**, upon a vote of three-fourths of all its Members, or
>
> (2) A **constitutional convention**.
>
> Sec. 2. **Amendments to this Constitution** may likewise be directly proposed by the **people through initiative** . . . . (Emphasis supplied)

Article XVII of the Constitution speaks of three modes of amending the Constitution. The first mode is through Congress upon three-fourths vote of all its Members. The second mode is through a constitutional convention. The third mode is through a people's initiative.

Section 1 of Article XVII, referring to the first and second modes, applies to "**[A]ny amendment to, or revision of**, this Constitution." In contrast, Section 2 of Article XVII, referring to the third mode, applies only to "**[A]mendments** to this Constitution." This distinction was **intentional** as shown by the following deliberations of the Constitutional Commission:

> MR. SUAREZ: Thank you, Madam President.
>
> May we respectfully call the attention of the Members of the Commission that pursuant to the mandate given to us last night, we submitted this afternoon a

complete Committee Report No. 7 which embodies the proposed provision governing the matter of initiative. This is now covered by Section 2 of the complete committee report. With the permission of the Members, may I quote Section 2:

> The people may, after five years from the date of the last plebiscite held, directly propose amendments to this Constitution thru initiative upon petition of at least ten percent of the registered voters.

This completes the blanks appearing in the original Committee Report No. 7. This proposal was suggested on the theory that this matter of initiative, which came about because of the extraordinary developments this year, has to be separated from the traditional modes of amending the Constitution as embodied in Section 1. **The committee members felt that this system of initiative should be limited to amendments to the Constitution and should not extend to the revision of the entire Constitution, so we removed it from the operation of Section 1 of the proposed Article on Amendment or Revision**. . . . .

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MS. AQUINO: [I] am seriously bothered by providing this process of initiative as a separate section in the Article on Amendment. Would the sponsor be amenable to accepting an amendment in terms of realigning Section 2 as another subparagraph (c) of Section 1, instead of setting it up as another separate section as if it were a self-executing provision?

MR. SUAREZ: We would be amenable except that, as we clarified a while ago, **this process of initiative is limited to the matter of amendment and should not expand into a revision which contemplates a total overhaul of the Constitution**. That was the sense that was conveyed by the Committee.

MS. AQUINO: **In other words, the Committee was attempting to distinguish the coverage of modes (a) and (b) in Section 1 to include the process of revision; whereas, the process of initiation to amend, which is given to the public, would only apply to amendments**?

MR. SUAREZ: **That is right. Those were the terms envisioned in the Committee**.

MS. AQUINO: I thank the sponsor; and thank you, Madam President.

xxx xxx xxx

MR. MAAMBONG: **My first question: Commissioner Davide's proposed amendment on line 1 refers to "amendments." Does it not cover the word "revision" as defined by Commissioner Padilla when he made the distinction between the words "amendments" and "revision"**?

MR. DAVIDE: **No, it does not, because "amendments" and "revision" should be covered by Section 1. So insofar as initiative is concerned, it can only relate to "amendments" not "revision."**

MR. MAAMBONG: Thank you. [31] (Emphasis supplied)

There can be no mistake about it. The framers of the Constitution **intended, and wrote**, a clear distinction between "amendment" and "revision" of the Constitution. The framers **intended, and wrote**, that only Congress or a constitutional convention may propose revisions to the Constitution. The **framers intended, and wrote**, that a people's initiative may propose only amendments to the Constitution. Where the intent and language of the

Constitution clearly withhold from the people the power to propose revisions to the Constitution, the people cannot propose revisions even as they are empowered to propose amendments.

This has been the consistent ruling of state supreme courts in the United States. Thus, in ***McFadden v. Jordan***,[32] the Supreme Court of California ruled:

> **The initiative power reserved by the people by amendment to the Constitution . . . applies only to the proposing and the adopting or rejecting of 'laws and amendments to the Constitution' and does not purport to extend to a constitutional revision**. . . . . It is thus clear that a revision of the Constitution may be accomplished only through ratification by the people of a revised constitution proposed by a convention called for that purpose as outlined hereinabove. Consequently if the scope of the proposed initiative measure (hereinafter termed 'the measure') now before us is so broad that if such measure became law a substantial revision of our present state Constitution would be effected, then the measure may not properly be submitted to the electorate until and unless it is first agreed upon by a constitutional convention, and the writ sought by petitioner should issue. . . . . (Emphasis supplied)

Likewise, the Supreme Court of Oregon ruled in ***Holmes v. Appling***:[33]

> It is well established that when a constitution specifies the manner in which it may be amended or revised, it can be altered by those who favor amendments, revision, or other change only through the use of one of the specified means. The constitution itself recognizes that there is a difference between an amendment and a revision; and it is obvious from an examination of the measure here in question that it is not an amendment as that term is generally understood and as it is used in Article IV, Section 1. The document appears to be based in large part on the revision of the constitution drafted by the 'Commission for Constitutional Revision' authorized by the 1961 Legislative Assembly, . . . and submitted to the 1963 Legislative Assembly. It failed to receive in the Assembly the two-third's majority vote of both houses required by Article XVII, Section 2, and hence failed of adoption, ...
>
> While differing from that document in material respects, the measure sponsored by the plaintiffs is, nevertheless, a thorough overhauling of the present constitution . . . .
>
> To call it an amendment is a misnomer.
>
> Whether it be a revision or a new constitution, it is not such a measure as can be submitted to the people through the initiative. If a revision, it is subject to the requirements of Article XVII, Section 2(1); if a new constitution, it can only be proposed at a convention called in the manner provided in Article XVII, Section 1. . . . .

Similarly, in this jurisdiction there can be no dispute that a people's initiative can only propose amendments to the Constitution since the Constitution itself limits initiatives to amendments. There can be no deviation from the constitutionally prescribed modes of **revising** the Constitution. A popular clamor, even one backed by 6.3 million signatures, cannot justify a deviation from the specific modes prescribed in the Constitution itself.

As the Supreme Court of Oklahoma ruled in ***In re Initiative Petition No. 364***:[34]

> **It is a fundamental principle that a constitution can only be revised or amended in the manner prescribed by the instrument itself, and that any attempt to revise a constitution in a manner other than the one provided in the instrument is almost invariably treated as extra-constitutional and revolutionary**. . . . . "While it is universally conceded that the people are sovereign and that they have power to adopt a constitution and to change their own work at will, they must, in doing so, act in an orderly manner and according to the settled principles of constitutional law. And where the people, in adopting a constitution, have prescribed the method by which the people may alter or amend it, an attempt to change the fundamental law in violation of the self-imposed restrictions, is unconstitutional." . . . . (Emphasis supplied)

This Court, whose members are sworn to defend and protect the Constitution, cannot shirk from its solemn oath and duty to insure compliance with the clear command of the Constitution — that a people's initiative may only amend, never revise, the Constitution.

The question is, does the Lambino Group's initiative constitute an amendment or revision of the Constitution? If the Lambino Group's initiative constitutes a revision, then the present petition should be dismissed for being outside the scope of Section 2, Article XVII of the Constitution.

Courts have long recognized the distinction between an amendment and a revision of a constitution. One of the earliest cases that recognized the distinction described the fundamental difference in this manner:

> [T]he very term "constitution" implies an instrument of a permanent and abiding nature, and the **provisions contained therein for its revision indicate the will of the people that the underlying principles upon which it rests, as well as the substantial entirety of the instrument**, shall be of a like permanent and abiding nature. On the other hand, the significance of the term "amendment" implies such an addition or change within the lines of the original instrument as will effect an improvement, or better carry out the purpose for which it was framed. [35] (Emphasis supplied)

Revision broadly implies a change that **alters a basic principle in the constitution**, like altering the principle of separation of powers or the system of checks-and-balances. There is also revision if the change **alters the substantial entirety of the constitution, as when the change affects substantial provisions of the constitution**. On the other hand, amendment broadly refers to **a change that adds, reduces, or deletes *without* altering the basic principle involved**. Revision generally affects several provisions of the constitution, while amendment generally affects only the specific provision being amended.

In California where the initiative clause allows amendments but not revisions to the constitution just like in our Constitution, courts have developed a **two-part test**: the quantitative test and the qualitative test. The quantitative test asks whether the proposed change is "so extensive in its provisions as to change directly the 'substantial entirety' of the constitution by the deletion or alteration of numerous existing provisions." [36] The court examines only the number of provisions affected and does not consider the degree of the change.

The qualitative test inquires into the qualitative effects of the proposed change in the constitution. The main inquiry is whether the change will "accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision." [37] Whether there is an alteration in the structure of government is a proper subject of inquiry. Thus, "a change in the nature of [the] basic governmental plan" includes "change in its

fundamental framework or the fundamental powers of its Branches." [38] A change in the nature of the basic governmental plan also includes changes that "jeopardize the traditional form of government and the system of check and balances." [39]

Under both the quantitative and qualitative tests, the Lambino Group's initiative is a revision and not merely an amendment. Quantitatively, the Lambino Group's proposed changes overhaul two articles — Article VI on the Legislature and Article VII on the Executive — affecting a total of 105 provisions in the entire Constitution. [40] Qualitatively, the proposed changes alter substantially the basic plan of government, from presidential to parliamentary, and from a bicameral to a unicameral legislature.

A change in the structure of government is a revision of the Constitution, as when the three great co-equal branches of government in the present Constitution are reduced into two. **This alters the separation of powers in the Constitution**. A shift from the present Bicameral-Presidential system to a Unicameral-Parliamentary system is a revision of the Constitution. Merging the legislative and executive branches is a radical change in the structure of government.

The abolition alone of the Office of the President as the locus of Executive Power alters the separation of powers and thus constitutes a revision of the Constitution. Likewise, the abolition alone of one chamber of Congress alters the system of checks-and-balances within the legislature and constitutes a revision of the Constitution.

By any legal test and under any jurisdiction, a shift from a Bicameral-Presidential to a Unicameral-Parliamentary system, involving the abolition of the Office of the President and the abolition of one chamber of Congress, is beyond doubt a revision, not a mere amendment. On the face alone of the Lambino Group's proposed changes, it is readily apparent that the changes will **radically alter the framework of government as set forth in the Constitution**. Father Joaquin Bernas, S.J., a leading member of the Constitutional Commission, writes:

> An amendment envisages an alteration of one or a few specific and separable provisions. The guiding original intention of an amendment is to improve specific parts or to add new provisions deemed necessary to meet new conditions or to suppress specific portions that may have become obsolete or that are judged to be dangerous. In revision, however, the guiding original intention and plan contemplates a re-examination of the entire document, or of provisions of the document which have over-all implications for the entire document, to determine how and to what extent they should be altered. **Thus, for instance a switch from the presidential system to a parliamentary system would be a revision because of its over-all impact on the entire constitutional structure. So would a switch from a bicameral system to a unicameral system be because of its effect on other important provisions of the Constitution**. [41] (Emphasis supplied)

In ***Adams v. Gunter***, [42] an initiative petition proposed the amendment of the Florida State constitution to **shift from a bicameral to a unicameral legislature**. The issue turned on whether the initiative "was defective and unauthorized where [the] proposed amendment would . . . affect several other provisions of [the] Constitution." The Supreme Court of Florida, striking down the initiative as outside the scope of the initiative clause, ruled as follows:

> The proposal here to amend Section 1 of Article III of the 1968 Constitution to provide for a Unicameral Legislature **affects not only many other provisions**

> **of the Constitution but provides for a change in the form of the legislative branch of government**, which has been in existence in the United States Congress and in all of the states of the nation, except one, since the earliest days. **It would be difficult to visualize a more revolutionary change**. The concept of a House and a Senate is basic in the American form of government. **It would not only radically change the whole pattern of government in this state and tear apart the whole fabric of the Constitution, but would even affect the physical facilities necessary to carry on government**.
>
> xxx xxx xxx
>
> We conclude with the observation that if such proposed amendment were adopted by the people at the General Election and if the Legislature at its next session should fail to submit further amendments to revise and clarify the numerous inconsistencies and conflicts which would result, or if after submission of appropriate amendments the people should refuse to adopt them, simple chaos would prevail in the government of this State. The same result would obtain from an amendment, for instance, of Section 1 of Article V, to provide for only a Supreme Court and Circuit Courts-and there could be other examples too numerous to detail. These examples point unerringly to the answer.
>
> The purpose of the long and arduous work of the hundreds of men and women and many sessions of the Legislature in bringing about the Constitution of 1968 was to eliminate inconsistencies and conflicts and to give the State a workable, accordant, homogenous and up-to-date document. All of this could disappear very quickly if we were to hold that it could be amended in the manner proposed in the initiative petition here. [43] (Emphasis supplied)

The rationale of the ***Adams*** decision applies with greater force to the present petition. The Lambino Group's initiative not only seeks a shift from a bicameral to a unicameral legislature, it also seeks to merge the executive and legislative departments. The initiative in ***Adams*** did not even touch the executive department.

In ***Adams***, the Supreme Court of Florida enumerated 18 sections of the Florida Constitution that would be affected by the shift from a bicameral to a unicameral legislature. In the Lambino Group's present initiative, **no less than 105 provisions of the Constitution would be affected** based on the count of Associate Justice Romeo J. Callejo, Sr. [44] There is no doubt that the Lambino Group's present initiative seeks far more radical changes in the structure of government than the initiative in ***Adams***.

The Lambino Group theorizes that the difference between "amendment" and "revision" is only **one of procedure, not of substance**. The Lambino Group posits that when a deliberative body drafts and proposes changes to the Constitution, substantive changes are called "revisions" because **members of the deliberative body work full-time on the changes**. However, the same substantive changes, when proposed through an initiative, are called "amendments" because the **changes are made by ordinary people who do not make an "occupation, profession, or vocation" out of such endeavor**.

Thus, the Lambino Group makes the following exposition of their theory in their Memorandum:

> 99. With this distinction in mind, we note that the constitutional provisions expressly provide for both "amendment" and "revision" when it speaks of legislators and constitutional delegates, while the same provisions expressly

provide only for "amendment" when it speaks of the people. It would seem that the apparent distinction is based on the actual experience of the people, that on one hand the common people in general are not expected to work full-time on the matter of correcting the constitution because that is not their occupation, profession or vocation; while on the other hand, the legislators and constitutional convention delegates are expected to work full-time on the same matter because that is their occupation, profession or vocation. **Thus, the difference between the words "revision" and "amendment" pertain only to the process or procedure of coming up with the corrections**, for purposes of interpreting the constitutional provisions.

100. **Stated otherwise, the difference between "amendment" and "revision" cannot reasonably be in the substance or extent of the correction**. . . . . (Underlining in the original; boldfacing supplied)

The Lambino Group in effect argues that if Congress or a constitutional convention had drafted the same proposed changes that the Lambino Group wrote in the present initiative, the changes would constitute a revision of the Constitution. **Thus, the Lambino Group *concedes* that the proposed changes in the present initiative constitute a revision if Congress or a constitutional convention had drafted the changes**. However, since the Lambino Group as private individuals drafted the proposed changes, the changes are merely amendments to the Constitution. The Lambino Group trivializes the serious matter of changing the fundamental law of the land.

The **express intent of the framers and the plain language of the Constitution** contradict the Lambino Group's theory. Where the intent of the framers and the language of the Constitution are clear and plainly stated, courts do not deviate from such categorical intent and language. [45] Any theory espousing a construction contrary to such intent and language deserves scant consideration. More so, if such theory wreaks havoc by creating inconsistencies in the form of government established in the Constitution. Such a theory, devoid of any jurisprudential mooring and inviting inconsistencies in the Constitution, only exposes the flimsiness of the Lambino Group's position. Any theory advocating that a proposed change involving a radical structural change in government does not constitute a revision justly deserves rejection.

The Lambino Group simply recycles a theory that initiative proponents in American jurisdictions have attempted to advance without any success. In ***Lowe v. Keisling***, [46] the Supreme Court of Oregon **rejected this theory**, thus:

> Mabon argues that Article XVII, section 2, does not apply to changes to the constitution proposed by initiative. **His theory is that Article XVII, section 2 merely provides a procedure by which the legislature can propose a revision of the constitution, but it does not affect proposed revisions initiated by the people**.
>
> Plaintiffs argue that the proposed ballot measure constitutes a wholesale change to the constitution that cannot be enacted through the initiative process. They assert that the distinction between amendment and revision is determined by reviewing the scope and subject matter of the proposed enactment, and that revisions are not limited to "a formal overhauling of the constitution." They argue that this ballot measure proposes far reaching changes outside the lines of the original instrument, including profound impacts on existing fundamental rights and radical restructuring of the government's relationship with a defined group of citizens. Plaintiffs assert that, because the proposed ballot measure "will refashion the most basic principles of Oregon constitutional law," the trial court correctly held

that it violated Article XVII, section 2, and cannot appear on the ballot without the prior approval of the legislature.

We first address Mabon's argument that Article XVII, section 2(1), does not prohibit revisions instituted by initiative. In *Holmes v. Appling*, . . ., the Supreme Court concluded that a revision of the constitution may not be accomplished by initiative, because of the provisions of Article XVII, section 2. After reviewing Article XVII, section1, relating to proposed amendments, the court said:

> "From the foregoing it appears that Article IV, Section 1, authorizes the use of the initiative as a means of amending the Oregon Constitution, but it contains no similar sanction for its use as a means of revising the constitution." . . . .

It then reviewed Article XVII, section 2, relating to *revisions*, and said: "It is the only section of the constitution which provides the means for constitutional revision and it excludes the idea that an individual, through the initiative, may place such a measure before the electorate." . . . .

Accordingly, we reject Mabon's argument that Article XVII, section 2, does not apply to constitutional revisions proposed by initiative. (Emphasis supplied)

Similarly, this Court must reject the Lambino Group's theory which negates the express intent of the framers and the plain language of the Constitution.

We can visualize amendments and revisions as a spectrum, at one end green for amendments and at the other end red for revisions. Towards the middle of the spectrum, colors fuse and difficulties arise in determining whether there is an amendment or revision. The present initiative is indisputably located at the far end of the red spectrum where revision begins. The present initiative seeks a radical overhaul of the existing separation of powers among the three co-equal departments of government, requiring far-reaching amendments in several sections and articles of the Constitution.

Where the proposed change applies only to a specific provision of the Constitution without affecting any other section or article, the change may generally be considered an amendment and not a revision. For example, a change reducing the voting age from 18 years to 15 years [47] is an amendment and not a revision. Similarly, a change reducing Filipino ownership of mass media companies from 100 percent to 60 percent is an amendment and not a revision. [48] Also, a change requiring a college degree as an additional qualification for election to the Presidency is an amendment and not a revision. [49]

The changes in these examples do not entail any modification of sections or articles of the Constitution other than the specific provision being amended. These changes do not also affect the structure of government or the system of checks-and-balances among or within the three branches. These three examples are located at the far green end of the spectrum, opposite the far red end where the revision sought by the present petition is located.

However, there can be no fixed rule on whether a change is an amendment or a revision. A change in a single word of one sentence of the Constitution may be a revision and not an amendment. For example, the substitution of the word "republican" with "monarchic" or "theocratic" in Section 1, Article II [50] of the Constitution radically overhauls the entire structure of government and the fundamental ideological basis of the Constitution. Thus, each specific change will have to be examined case-by-case, depending on how it affects other provisions, as well as how it affects the structure of government, the carefully crafted

system of checks-and-balances, and the underlying ideological basis of the existing Constitution.

Since a revision of a constitution affects basic principles, or several provisions of a constitution, a **deliberative body with recorded proceedings** is best suited to undertake a revision. A revision requires harmonizing not only several provisions, but also the altered principles with those that remain unaltered. Thus, constitutions normally authorize deliberative bodies like constituent assemblies or constitutional conventions to undertake revisions. On the other hand, constitutions allow people's initiatives, which do not have fixed and identifiable deliberative bodies or recorded proceedings, to undertake only amendments and not revisions.

In the present initiative, the Lambino Group's proposed Section 2 of the Transitory Provisions states:

> Section 2. Upon the expiration of the term of the incumbent President and Vice President, with the exception of Sections 1, 2, 3, 4, 5, 6 and 7 of Article VI of the 1987 Constitution which shall hereby be amended and Sections 18 and 24 which shall be deleted, all other Sections of Article VI are hereby retained and renumbered sequentially as Section 2, ad seriatim up to 26, **unless they are inconsistent with the Parliamentary system of government, in which case, they shall be amended to conform with a unicameral parliamentary form of government**; . . . . (Emphasis supplied)

The basic rule in statutory construction is that if a later law is irreconcilably inconsistent with a prior law, the later law prevails. This rule also applies to construction of constitutions. However, the Lambino Group's draft of Section 2 of the Transitory Provisions turns on its head this rule of construction by stating that in case of such irreconcilable inconsistency, the earlier provision "**shall be amended** to conform with a unicameral parliamentary form of government." The effect is to freeze the two irreconcilable provisions until the earlier one "shall be amended," which requires a future separate constitutional amendment.

Realizing the absurdity of the need for such an amendment, petitioner Atty. Lambino readily conceded during the oral arguments that the requirement of a future amendment is a "surplusage." In short, Atty. Lambino wants to reinstate the rule of statutory construction so that the later provision automatically prevails in case of irreconcilable inconsistency. However, it is not as simple as that.

The irreconcilable inconsistency envisioned in the proposed Section 2 of the Transitory Provisions is not between a provision in Article VI of the 1987 Constitution and a provision in the proposed changes. The inconsistency is between a provision in Article VI of the 1987 Constitution and the "**Parliamentary system of government**," and the inconsistency shall be resolved in favor of a "**unicameral parliamentary** form of government."

Now, what "**unicameral parliamentary** form of government" do the Lambino Group's proposed changes refer to — the Bangladeshi, Singaporean, Israeli, or New Zealand models, which are among the **few** countries with **unicameral** parliaments? The proposed changes could **not** possibly refer to the traditional and well-known parliamentary forms of government — the British, French, Spanish, German, Italian, Canadian, Australian, or Malaysian models, which have all **bicameral** parliaments. Did the people who signed the signature sheets realize that they were adopting the Bangladeshi, Singaporean, Israeli, or New Zealand parliamentary form of government?

This drives home the point that the people's initiative is not meant for revisions of the Constitution but only for amendments. A shift from the present Bicameral-Presidential to a Unicameral-Parliamentary system requires harmonizing several provisions in many articles of the Constitution. Revision of the Constitution through a people's initiative will only result in gross absurdities in the Constitution.

In sum, there is no doubt whatsoever that the Lambino Group's initiative is a revision and not an amendment. Thus, the present initiative is void and unconstitutional because it violates Section 2, Article XVII of the Constitution limiting the scope of a people's initiative to "**[A]mendments to this Constitution**."

3. A Revisit of Santiago v. COMELEC is Not Necessary

The present petition warrants dismissal for failure to comply with the basic requirements of Section 2, Article XVII of the Constitution on the conduct and scope of a people's initiative to amend the Constitution. There is no need to revisit this Court's ruling in ***Santiago*** declaring RA 6735 "incomplete, inadequate or wanting in essential terms and conditions" to cover the system of initiative to amend the Constitution. An affirmation or reversal of ***Santiago*** will not change the outcome of the present petition. Thus, this Court must decline to revisit ***Santiago*** which effectively ruled that RA 6735 does not comply with the requirements of the Constitution to implement the initiative clause on amendments to the Constitution.

This Court must avoid revisiting a ruling involving the constitutionality of a statute if the case before the Court can be resolved on some other grounds. Such avoidance is a logical consequence of the well-settled doctrine that courts will not pass upon the constitutionality of a statute if the case can be resolved on some other grounds. [51]

Nevertheless, even assuming that RA 6735 is valid to implement the constitutional provision on initiatives to amend the Constitution, this will not change the result here because the present petition violates Section 2, Article XVII of the Constitution. To be a valid initiative, the present initiative must **first comply** with Section 2, Article XVII of the Constitution even before complying with RA 6735.

Even then, the present initiative violates Section 5(b) of RA 6735 which requires that the "petition for an initiative on the 1987 Constitution must have at least twelve *per centum* (12%) of the total number of registered voters **as signatories**." Section 5(b) of RA 6735 requires that the people must sign the "**petition** . . . **as signatories**."

The 6.3 million signatories did not sign the petition of 25 August 2006 or the amended petition of 30 August 2006 filed with the COMELEC. **Only Atty. Lambino, Atty. Demosthenes B. Donato, and Atty. Alberto C. Agra signed the petition and amended petition as counsels for "Raul L. Lambino and Erico B. Aumentado, Petitioners."** In the COMELEC, the Lambino Group, claiming to act "**together with**" the 6.3 million signatories, merely attached the signature sheets to the petition and amended petition. Thus, the petition and amended petition filed with the COMELEC did not even comply with the basic requirement of RA 6735 that the Lambino Group claims as valid.

The Lambino Group's logrolling initiative also violates Section 10(a) of RA 6735 stating, "**No petition embracing more than one (1) subject shall be submitted to the electorate;** . . . ." The proposed Section 4(4) of the Transitory Provisions, mandating the interim Parliament to propose further amendments or revisions to the Constitution, is a subject matter **totally unrelated** to the shift in the form of government. Since the present initiative embraces more than one subject matter, RA 6735 prohibits submission of the

initiative petition to the electorate. Thus, even if RA 6735 is valid, the Lambino Group's initiative will still fail.

4. The COMELEC Did Not Commit Grave Abuse of Discretion in Dismissing the Lambino Group's Initiative

In dismissing the Lambino Group's initiative petition, the COMELEC *en banc* merely followed this Court's ruling in ***Santiago*** and ***People's Initiative for Reform, Modernization and Action (PIRMA) v. COMELEC***. [52] For following this Court's ruling, no grave abuse of discretion is attributable to the COMELEC. On this ground alone, the present petition warrants outright dismissal. Thus, this Court should reiterate its **unanimous** ruling in ***PIRMA***:

> The Court ruled, first, by a unanimous vote, that no grave abuse of discretion could be attributed to the public respondent COMELEC in dismissing the petition filed by PIRMA therein, it appearing that it only complied with the dispositions in the Decisions of this Court in G.R. No. 127325, promulgated on March 19, 1997, and its Resolution of June 10, 1997.

5. Conclusion

The Constitution, as the fundamental law of the land, deserves the utmost respect and obedience of all the citizens of this nation. No one can trivialize the Constitution by cavalierly amending or revising it in blatant violation of the clearly specified modes of amendment and revision laid down in the Constitution itself.

To allow such change in the fundamental law is to set adrift the Constitution in unchartered waters, to be tossed and turned by every dominant political group of the day. If this Court allows today a cavalier change in the Constitution outside the constitutionally prescribed modes, tomorrow the new dominant political group that comes will demand its own set of changes in the same cavalier and unconstitutional fashion. A revolving-door constitution does not augur well for the rule of law in this country.

An overwhelming majority — **16,622,111 voters comprising 76.3 percent of the total votes cast** [53] — approved our Constitution in a national plebiscite held on 11 February 1987. **That approval is the unmistakable voice of the people, the full expression of the people's sovereign will. That approval included the prescribed modes for amending or revising the Constitution**.

No amount of signatures, not even the 6,327,952 million signatures gathered by the Lambino Group, can change our Constitution contrary to the specific modes that the people, in their sovereign capacity, prescribed when they ratified the Constitution. The alternative is an extra-constitutional change, which means **subverting the people's sovereign will and discarding the Constitution**. This is one act the Court cannot and should never do. As the ultimate guardian of the Constitution, this Court is sworn to perform its solemn duty to defend and protect the Constitution, which embodies the real sovereign will of the people.

Incantations of "people's voice," "people's sovereign will," or "let the people decide" cannot override the specific modes of changing the Constitution as prescribed in the Constitution itself. Otherwise, the Constitution — the people's fundamental covenant that provides enduring stability to our society — becomes easily susceptible to manipulative changes by political groups gathering signatures through false promises. Then, the Constitution ceases to be the bedrock of the nation's stability.

The Lambino Group claims that their initiative is the "people's voice." However, the Lambino Group unabashedly states in ULAP Resolution No. 2006-02, in the verification of their petition with the COMELEC, that "ULAP maintains its unqualified support to the agenda of Her Excellency President Gloria Macapagal-Arroyo for constitutional reforms." The Lambino Group thus **admits** that their "people's" initiative is an "**unqualified support to the agenda**" of the incumbent President to change the Constitution. This forewarns the Court to be wary of incantations of "people's voice" or "sovereign will" in the present initiative.

This Court cannot betray its primordial duty to defend and protect the Constitution. The Constitution, which embodies the people's sovereign will, is the bible of this Court. **This Court exists to defend and protect the Constitution**. To allow this constitutionally infirm initiative, propelled by deceptively gathered signatures, to alter basic principles in the Constitution is to allow a desecration of the Constitution. To allow such alteration and desecration is to lose this Court's *raison d'etre*.

WHEREFORE, we DISMISS the petition in G.R. No. 174153.

SO ORDERED.

Carpio Morales, J., concurs.

Panganiban, C.J., see separate concurring opinion.

Puno, J., pls. see dissent.

Quisumbing and *Ynares-Santiago, JJ.,* pls. see separate opinion.

Sandoval-Gutierrez, J., pls. see my concurring opinion.

Austria-Martinez, J., also concurs with Justice Callejo, Sr.

Corona, J., see dissenting opinion.

Callejo, Sr., J., please se concurring opinion.

Azcuna, J., concurs in separate opinion.

Tinga, J., see separate opinion.

Chico-Nazario, J., joins the dissenting opinion of J. Puno. Please see separate opinion.

Garcia, J., joins the dissenting opinion of J. Puno.

Velasco, Jr., J., joins the dissent of J. Puno.

Separate Opinions

PANGANIBAN, *C.J.*, *concurring*:

> Without the rule of law, there can be no
> lasting prosperity and certainly no liberty.
> Beverley McLachlin [1]
> Chief Justice of Canada

After a deep reflection on the issues raised and a careful evaluation of the parties' respective arguments — both oral and written — as well as the enlightened and enlightening

Opinions submitted by my esteemed colleagues, I am fully convinced that the present Petition must be dismissed.

I write, however, to show that my present disposition is completely consistent with my previous Opinions and votes on the two extant Supreme Court cases involving an initiative to change the Constitution.

In my Separate Opinion in *Santiago v. Comelec*, [2] I opined "that taken together and interpreted properly and liberally, the Constitution (particularly Art. XVII, Sec. 2), Republic Act 6735 and Comelec Resolution 2300 provide more than sufficient authority to implement, effectuate and realize our people's power to amend the Constitution."

Six months after, in my Separate Opinion in *People's Initiative for Reform, Modernization and Action (PIRMA) v. Comelec*, [3] I joined the rest of the members of the Court in ruling "by a unanimous vote, that no grave abuse of discretion could be attributed to the Comelec in dismissing the petition filed by PIRMA therein," since the Commission had "only complied" with the *Santiago* Decision.

I added "that my position upholding the adequacy of RA 6735 and the validity of Comelec Resolution 2300 will not *ipso facto* validate the PIRMA petition and automatically lead to a plebiscite to amend the Constitution. Far from it." I stressed that PIRMA must show the following, **among others**:

(1) The proposed change — the lifting of term limits of elective officials — "constitute[s] a mere amendment and not a revision of the Constitution."

(2) The "six million signatures are genuine and verifiable"; and they "really belong to qualified warm bodies comprising at least 12% of the registered voters nationwide, of which every legislative district is represented by at least 3% of the registered voters therein."

In both Opinions, I concluded that we must implement "the *right thing* [initiative] in the *right way* at the *right time* and for the *right reason*."

In the present case, I steadfastly stand by my foregoing Opinions in *Santiago* and *PIRMA*. Tested against them, the present Petition of Raul Lambino and Erico Aumentado must be DISMISSED. **Unfortunately, *the right thing* is being rushed in the *wrong* way and for the *wrong reasons***. Let me explain.

No Grave Abuse of Discretion by Comelec

As in *PIRMA*, I find no grave abuse of discretion in Comelec's dismissal of the Lambino Petition. After all, the Commission merely followed the holding in *Santiago* permanently enjoining the poll body "from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the system."

Indeed, the Comelec did not violate the Constitution, the laws or any jurisprudence. [4] **Neither can whim, caprice, arbitrariness or personal bias be attributed to the Commission.** [5] Quite the contrary, it prudently followed this Court's jurisprudence in *Santiago* and *PIRMA*. Even assuming *arguendo* that Comelec erred in ruling on a very difficult and unsettled question of law, this Court still cannot attribute grave abuse of discretion to the poll body with respect to that action. [6]

The present Lambino Petition is in exactly the same situation as that of PIRMA in 1997. The differences pointed out by Justice Reynato S. Puno are, with due respect, superficial. It is argued that, unlike the present Lambino Petition, *PIRMA* did not contain verified signatures. These are distinctions that do not make a difference. Precisely, Justice Puno is urging a remand, because the verification issue is "contentious" and remains unproven by petitioners. **Clearly, both the PIRMA and the Lambino Petitions contain unverified signatures. Therefore, they both deserve the same treatment: DISMISSAL**.

Besides, the **only reason** given in the unanimous Resolution on *PIRMA v. Comelec* was that the Commission had "only complied" with this Court's Decision in *Santiago*, the same reason given by Comelec in this case. The Separate Opinions in *PIRMA* gave no other reason. **No one argued, even remotely, that the *PIRMA* Petition should have been dismissed because the signatures were unverified**.

To stress, I adhere to my Opinion in *PIRMA* that, "[b]eing a constitutional requirement, the number of signatures becomes a condition precedent to the filing of the petition, and is jurisdictional. [7] Without those signatures, the Comelec shall *motu proprio* reject the petition."

So, until and unless *Santiago* is revisited and changed by this Court or the legal moorings of the exercise of the right are substantially changed, **the Comelec cannot be faulted for acting in accord with this Court's pronouncements**. Respondent Commission has **no discretion, under any guise, to refuse enforcement of any final decision of this Court**. [8] The refusal of the poll body to act on the Lambino Petition was its only recourse. Any other mode of action would appear not only presumptuous, but also contemptuous. It would have constituted defiance of the Court and would have surely been struck down as grave abuse of discretion and contumacious disregard of the supremacy of this Court as the final arbiter of justiciable controversies.

Even assuming further that this Court rules, as I believe it should (for the reasons given in my Opinions in *Santiago* and *PIRMA*), that Republic Act 6735 is indeed sufficient to implement an initiative to amend the Constitution, still, no grave abuse of discretion can be attributed to the Comelec for merely following prevailing jurisprudence extant at the time it rendered its ruling in question.

Only Amendments, Not Revisions

I reiterate that **only amendments, not revisions, may be the proper subject of an initiative** to change the Constitution. This principle is crystal clear from even a layperson's reading of the basic law. [9]

I submit that changing the system of government from presidential to parliamentary and the form of the legislature from bicameral to unicameral contemplates an **overhaul of the structure of government**. The ponencia has amply demonstrated that the merger of the legislative and the executive branches under a unicameral-parliamentary system, "[b]y any legal test and under any jurisdiction," will "radically alter the framework of government as set forth in the Constitution." Indeed, the proposed changes have an overall implication on the entire Constitution; they effectively rewrite its most important and basic provisions. The prolixity and complexity of the changes cannot be categorized, even by semantic generosity, as "amendments."

In addition, may I say that of the three modes of changing the Constitution, revisions (or amendments) may be proposed only through the first two: by Congress or by a

constitutional convention. Under the third mode — people's initiative — only amendments are allowed. Many of the justices' Opinions have cited the historical, philosophical and jurisprudential bases of their respective positions. I will not add to the woes of the reader by reiterating them here.

Suffice it to say that, to me, the practical test to differentiate an amendment from a revision is found in the Constitution itself: **a revision may be done only when the proposed change can be drafted, defined, articulated, discussed and agreed upon after a mature and democratic debate in a deliberative body like Congress or a Convention**. The changes proposed must necessarily be scrutinized, as their adoption or non-adoption must result from an informed judgment.

Indeed, the constitutional bodies that drafted the 1935, the 1972 and the 1987 Constitutions had to spend many months of purposeful discussions, democratic debates and rounds of voting before they could agree on the wordings covering the philosophy, the underlying principles, and the structure of government of our Republic.

Verily, even bills creating or changing the administrative structure of local governments take several weeks or even months of drafting, reading, and debating before Congress can approve them. How much more when it comes to constitutional changes?

A change in the form of government of our country from presidential-bicameral to parliamentary-unicameral is monumental. Even the initiative proponents admit this fact. So, why should a revision be rammed down our people's throats without the benefit of intelligent discussion in a deliberative assembly?

Added to the constitutional mandate barring revisions is the provision of RA 6735 expressly prohibiting petitions for initiative from "embracing more than one subject matter." [10] The present initiative covers at least two subjects: (1) the shift from a presidential to a parliamentary form of government; and (2) the change from a bicameral to a unicameral legislature. [11] Thus, even under Republic Act 6735 — the law that Justice Puno and I hold to be sufficient and valid — the Lambino Petition deserves dismissal.

12 Percent and 3 Percent Thresholds Not Proven by Petitioners

The **litmus test** of a people's petition for initiative is its ability to muster the constitutional requirement that it be supported by at least 12 percent of the registered voters nationwide, of which at least 3 percent of the registered voters in every legislative district must be represented. As pointed out by Intervenors One Voice, Inc., et al., however, records show that there was a failure to meet the minimum percentages required. [12]

Even Justice Puno concedes that the 12 percent and 3 percent constitutional requirements involve "contentious facts," which have not been proven by the Lambino Petition. Thus, he is urging a remand to the Comelec.

But a remand is both **imprudent** and **futile**. It is imprudent because the Constitution itself mandates the said requisites of an initiative petition. In other words, **a petition that does not show the required percentages is fatally defective and must be dismissed**, as the Delfin Petition was, in *Santiago*.

Furthermore, as the ponencia had discussed extensively, the present Petition is void and unconstitutional. It points out that the Petition dismally fails to comply with the

constitutional requirement that an initiative must be directly proposed by the people. Specifically, the ponencia has amply established that petitioners were unable to show that the Lambino Petition contained, or incorporated by attachment, the full text of the proposed changes.

So, too, a remand is futile. **Even if the required percentages are proven before the Commission, the Petition must still be dismissed for proposing a revision, not an amendment, in gross violation of the Constitution**. At the very least, it proposes more than one subject, in violation of Republic Act 6735.

Summation

Petitioners plead with this Court to hear the voice of the people because, in the words of Justice Puno who supports them, the "people's voice is sovereign in a democracy."

I, too, believe in heeding the people's voice. I reiterate my Separate Opinion in PIRMA that "initiative is a democratic method of enabling our people to express their will and chart their history. . . . . I believe that Filipinos have the ability and the capacity to rise above themselves, to use this right of initiative wisely and maturely, and to choose what is best for themselves and their posterity."

This belief will not, however, automatically and blindly result in an initiative to change the Constitution, because the present Petition violates the following:

- The **Constitution** (specifically Article XVII, which allows only amendments, not revisions, and requires definite percentages of verified signatures)
- The **law** (specifically, Republic Act 6735, which prohibits petitions containing more than one subject)
- **Jurisprudence** (specifically, *PIRMA v. Comelec*, which dismissed the Petition then under consideration on the ground that, by following the *Santiago* ruling, the Comelec had not gravely abused its discretion).

I submit further that a remand of the Lambino Petition is both imprudent and futile. More tellingly, it is a **cop-out, a hand-washing** already discredited 2000 years ago. **Instead of finger-pointing**, I believe we must confront the issues head on, because the people expect no less from this august and venerable institution of supreme justice.

Epilogue

At bottom, **the issue in this case is simply the Rule of Law**.[13] Initiative, like referendum and recall, is a treasured feature of the Filipino constitutional system. It was born out of our world-admired and often-imitated People Power, but **its misuse and abuse must be resolutely rejected**. Democracy must be cherished, but mob rule vanquished.

The Constitution is a **sacred social compact**, forged between the government and the people, between each individual and the rest of the citizenry. Through it, the people have solemnly expressed their will that all of them shall be governed by laws, and their rights limited by agreed-upon covenants to promote the common good. If we are to uphold the Rule of Law and reject the rule of the mob, **we must faithfully abide by the processes the Constitution has ordained** in order to bring about a **peaceful, just and humane society**. Assuming *arguendo* that six million people *allegedly* gave their assent to the

proposed changes in the Constitution, they are nevertheless **still bound by the social covenant** — the present Constitution — which was ratified by a far greater majority almost twenty years ago. [14] I do not denigrate the majesty of the sovereign will; rather, I elevate our society to the loftiest perch, because **our government must remain as one of laws and not of men**.

Upon assuming office, each of the justices of the Supreme Court took a solemn oath to uphold the Constitution. Being the protectors of the fundamental law as the highest expression of the sovereign will, they must subject to the strictest scrutiny **any attempt to change it, lest it be trivialized and degraded by the assaults of the mob and of ill-conceived designs**. The Court must single-mindedly **defend the Constitution from bogus efforts** falsely attributed to the sovereign people.

The judiciary may be the weakest branch of government. Nonetheless, when ranged against incessant voices from the more powerful branches of government, it should never cower in submission. On the other hand, I daresay that the same weakness of the Court becomes its strength when it speaks independently through decisions that rightfully uphold **the supremacy of the Constitution and the Rule of Law**. The strength of the judiciary lies not in its lack of brute power, but in its moral courage to perform its constitutional duty at all times against all odds. **Its might is in its being right**. [15]

During the past weeks, media outfits have been ablaze with reports and innuendoes about alleged carrots offered and sticks drawn by those interested in the outcome of this case. [16] There being no judicial proof of these allegations, I shall not comment on them for the nonce, except to quote the Good Book, which says, "There is nothing hidden that will not be revealed, and nothing secret that will not be known and come to light." [17]

Verily, the Supreme Court is now on the crossroads of history. By its decision, the Court and each of its members shall be judged by posterity. Ten years, fifty years, a hundred years — or even a thousand years — from now, what the Court did here, and how each justice opined and voted, will still be talked about, either in shame or in pride. Indeed, the hand-washing of Pontius Pilate, the abomination of *Dred Scott*, and the loathing of *Javellana* still linger and haunt to this day.

Let not this case fall into the same damnation. Rather, let this Court be known throughout the nation and the world for its **independence, integrity, industry and intelligence**.

WHEREFORE, I vote to ***DISMISS*** the Petition.

PUNO, *J., dissenting*:

"*It is a Constitution we are expounding. . .* " [1]
— Chief Justice John Marshall

The petition at bar is not a fight over molehills. At the crux of the controversy is the critical understanding of the **first and foremost** of our constitutional principles — "the Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them." [2] Constitutionalism dictates that this creed must be respected with deeds; our belief in its validity must be backed by behavior.

This is a Petition for *Certiorari* and *Mandamus* to set aside the resolution of respondent Commission on Elections (COMELEC) dated August 31, 2006, denying due course to the Petition for Initiative filed by petitioners Raul L. Lambino and Erico B. Aumentado in their own behalf and together with some **6.3 million registered voters** who have affixed their

signatures thereon, and praying for the issuance of a *writ* of *mandamus* to compel respondent COMELEC to set the date of the plebiscite for the ratification of the proposed amendments to the Constitution in accordance with Section 2, Article XVII of the 1987 Constitution.

First, a flashback of the proceedings of yesteryears. In **1996**, the Movement for People's Initiative sought to exercise the sovereign people's power to directly propose amendments to the Constitution through initiative under Section 2, Article XVII of the 1987 Constitution. Its founding member, Atty. Jesus S. Delfin, filed with the COMELEC on December 6, 1996, a "Petition to Amend the Constitution, to Lift Term Limits of Elective Officials, by People's Initiative" (Delfin Petition). It proposed to amend Sections 4 and 7 of Article VI, Section 4 of Article VII, and Section 8 of Article X of the 1987 Constitution by deleting the provisions on the term limits for all elective officials.

The **Delfin Petition** stated that the Petition for Initiative would first be submitted to the people and would be formally filed with the COMELEC after it is signed by at least twelve *per cent* (12%) of the total number of registered voters in the country. **It thus sought the assistance of the COMELEC in gathering the required signatures by fixing the dates and time therefor and setting up signature stations on the assigned dates and time**. The petition prayed that the COMELEC issue an Order (1) fixing the dates and time for signature gathering all over the country; (2) causing the publication of said Order and the petition for initiative in newspapers of general and local circulation; and, (3) instructing the municipal election registrars in all the regions of the Philippines to assist petitioner and the volunteers in establishing signing stations on the dates and time designated for the purpose.

The COMELEC conducted a hearing on the Delfin Petition.

On **December 18, 1996**, Senator **Miriam Defensor Santiago**, Alexander Padilla and Maria Isabel Ongpin filed a special civil action for prohibition before this Court, seeking to restrain the COMELEC from further considering the Delfin Petition. They impleaded as respondents the COMELEC, Delfin, and Alberto and Carmen Pedrosa (Pedrosas) in their capacities as founding members of the **People's Initiative for Reforms, Modernization and Action (PIRMA)** which was likewise engaged in signature gathering to support an initiative to amend the Constitution. They argued that the constitutional provision on people's initiative may only be implemented by a law passed by Congress; that no such law has yet been enacted by Congress; that Republic Act No. 6735 relied upon by Delfin does not cover the initiative to amend the Constitution; and that COMELEC Resolution No. 2300, the implementing rules adopted by the COMELEC on the conduct of initiative, was *ultra vires* insofar as the initiative to amend the Constitution was concerned. The case was docketed as G.R. No. 127325, entitled **Santiago v. Commission on Elections**. [3]

Pending resolution of the case, the Court issued a temporary restraining order enjoining the COMELEC from proceeding with the Delfin Petition and the Pedrosas from conducting a signature drive for people's initiative to amend the Constitution.

On March 19, 1997, the Court rendered its decision on the petition for prohibition. The Court ruled that the constitutional provision granting the people the power to directly amend the Constitution through initiative is not self-executory. An enabling law is necessary to implement the exercise of the people's right. Examining the provisions of R.A. 6735, **a majority of eight (8) members of the Court held that said law was "incomplete, inadequate, or wanting in essential terms and conditions insofar as**

initiative on amendments to the Constitution is concerned," [4] and thus voided portions of COMELEC Resolution No. 2300 prescribing rules and regulations on the conduct of initiative on amendments to the Constitution. It was also held that even if R.A. 6735 sufficiently covered the initiative to amend the Constitution and COMELEC Resolution No. 2300 was valid, the **Delfin Petition** should still be dismissed as it **was not the proper initiatory pleading contemplated by law**. Under Section 2, Article VII of the 1987 Constitution and Section 5(b) of R.A. 6735, a petition for initiative on the Constitution must be signed by at least twelve *per cent* (12%) of the total number of registered voters, of which every legislative district is represented by at least three *per cent* (3%) of the registered voters therein. **The Delfin Petition did not contain signatures of the required number of voters**. The decision stated:

> CONCLUSION
>
> This petition must then be granted, and the COMELEC should be permanently enjoined from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the system.
>
> We feel, however, that the system of initiative to propose amendments to the Constitution should no longer be kept in the cold; it should be given flesh and blood, energy and strength. Congress should not tarry any longer in complying with the constitutional mandate to provide for the implementation of the right of the people under that system.
>
> WHEREFORE, judgment is hereby rendered
>
> a) GRANTING the instant petition;
>
> b) DECLARING R.A. No. 6735 inadequate to cover the system of initiative on amendments to the Constitution, and to have failed to provide sufficient standard for subordinate legislation;
>
> c) DECLARING void those parts of Resolution No. 2300 of the Commission on Elections prescribing rules and regulations on the conduct of initiative or amendments to the Constitution; and
>
> d) ORDERING the Commission on Elections to forthwith DISMISS the DELFIN petition (UND-96-037).
>
> The Temporary Restraining Order issued on 18 December 1996 is made permanent against the Commission on Elections, but is LIFTED as against private respondents. [5]

Eight (8) members of the Court, namely, then Associate Justice Hilario G. Davide, Jr. *(ponente)*, Chief Justice Andres R. Narvasa, and Associate Justices Florenz D. Regalado, Flerida Ruth P. Romero, Josue N. Bellosillo, Santiago M. Kapunan, Regino C. Hermosisima, Jr. and Justo P. Torres, fully concurred in the majority opinion.

While all the members of the Court who participated in the deliberation [6] agreed that the Delfin Petition should be dismissed for lack of the required signatures, **five (5) members**, namely, Associate Justices Jose A.R. Melo, Reynato S. Puno, Vicente V. Mendoza, Ricardo J. Francisco and Artemio V. Panganiban, held that R.A. 6735 was sufficient and adequate to implement the people's right to amend the Constitution through initiative, and that COMELEC Resolution No. 2300 validly provided the details for the actual exercise of such right. **Justice Jose C. Vitug**, on the other hand, opined that the Court should confine itself

to resolving the issue of whether the Delfin Petition sufficiently complied with the requirements of the law on initiative, and **there was no need to rule on the adequacy of R.A. 6735**.

The COMELEC, Delfin and the Pedrosas filed separate motions for reconsideration of the Court's decision.

After deliberating on the motions for reconsideration, six (6) [7] of the eight (8) majority members maintained their position that R.A. 6735 was inadequate to implement the provision on the initiative on amendments to the Constitution. Justice Torres filed an inhibition, while Justice Hermosisima submitted a Separate Opinion adopting the position of the minority that R.A. 6735 sufficiently covers the initiative to amend the Constitution. Hence, of the thirteen (13) members of the Court who participated in the deliberation, six (6) members, namely, Chief Justice Narvasa and Associate Justices Regalado, Davide, Romero, Bellosillo and Kapunan voted to deny the motions for lack of merit; and six (6) members, namely, Associate Justices Melo, Puno, Mendoza, Francisco, Hermosisima and Panganiban voted to grant the same. Justice Vitug maintained his opinion that the matter was not ripe for judicial adjudication. The motions for reconsideration were therefore denied for lack of sufficient votes to modify or reverse the decision of March 19, 1997. [8]

On **June 23, 1997, PIRMA** filed with the COMELEC a Petition for Initiative to Propose Amendments to the Constitution (PIRMA Petition). The PIRMA Petition was supported by around five (5) million signatures in compliance with R.A. 6735 and COMELEC Resolution No. 2300, and prayed that the COMELEC, among others: (1) cause the publication of the petition in Filipino and English at least twice in newspapers of general and local circulation; (2) order all election officers to verify the signatures collected in support of the petition and submit these to the Commission; and (3) set the holding of a plebiscite where the following proposition would be submitted to the people for ratification:

> Do you approve amendments to the 1987 Constitution giving the President the chance to be reelected for another term, similarly with the Vice-President, so that both the highest officials of the land can serve for two consecutive terms of six years each, and also to lift the term limits for all other elective government officials, thus giving Filipino voters the freedom of choice, amending for that purpose, Section 4 of Article VII, Sections 4 and 7 of Article VI and Section 8 of Article X, respectively?

The **COMELEC dismissed** the PIRMA Petition in view of the permanent restraining order issued by the Court in **Santiago v. COMELEC**.

PIRMA filed with this Court a Petition for *Mandamus* and *Certiorari* seeking to set aside the COMELEC Resolution dismissing its petition for initiative. PIRMA argued that the Court's decision on the Delfin Petition did not bar the COMELEC from acting on the PIRMA Petition as said ruling was not definitive based on the deadlocked voting on the motions for reconsideration, and because there was no identity of parties and subject matter between the two petitions. PIRMA also urged the Court to reexamine its ruling in **Santiago v. COMELEC**.

The Court dismissed the petition for *mandamus* and *certiorari* in its resolution dated September 23, 1997. It explained:

> The Court ruled, first, by a unanimous vote, that no grave abuse of discretion could

be attributed to the public respondent COMELEC in dismissing the petition filed by PIRMA therein, it appearing that it only complied with the dispositions in the Decision of this Court in G.R. No. 127325 promulgated on March 19, 1997, and its Resolution of June 10, 1997.

The Court next considered the question of whether there was need to resolve the second issue posed by the petitioners, namely, that the Court re-examine its ruling as regards R.A. 6735. On this issue, the Chief Justice and six (6) other members of the Court, namely, Regalado, Davide, Romero, Bellosillo, Kapunan and Torres, *JJ.*, voted that there was no need to take it up. Vitug, *J.*, agreed that there was no need for re-examination of said second issue since the case at bar is not the proper vehicle for that purpose. Five (5) other members of the Court, namely, Melo, Puno, Francisco, Hermosisima, and Panganiban, *JJ.*, opined that there was a need for such a re-examination . . . . [9]

In their Separate Opinions, Justice (later Chief Justice) Davide and Justice Bellosillo stated that the PIRMA petition was dismissed on the ground of *res judicata*.

Now, almost a decade later, another group, **Sigaw ng Bayan**, seeks to utilize anew the system of initiative to amend the Constitution, this time to change the form of government from bicameral-presidential to unicameral-parliamentary system.

Let us look at the facts of the petition at bar with clear eyes.

On **February 15, 2006, Sigaw ng Bayan**, in coordination with Union of Local Authorities of the Philippines (**ULAP**), embarked on a nationwide drive to gather signatures to support the move to adopt the parliamentary form of government in the country through charter change. They proposed to amend the Constitution as follows:

A. Sections 1, 2, 3, 4, 5, 6 and 7 of Article VI shall be amended to read as follows:

Section 1. (1) The legislative and executive powers shall be vested in a unicameral Parliament which shall be composed of as many members as may be provided by law, to be apportioned among the provinces, representative districts, and cities in accordance with the number of their respective inhabitants, with at least three hundred thousand inhabitants per district, and on the basis of a uniform and progressive ratio. Each district shall comprise, as far as practicable, contiguous, compact and adjacent territory, and each province must have at least one member.

(2) Each Member of Parliament shall be a natural-born citizen of the Philippines, at least twenty-five years old on the day of the election, a resident of his district for at least one year prior thereto, and shall be elected by the qualified voters of his district for a term of five years without limitation as to the number thereof, except those under the party-list system which shall be provided for by law and whose number shall be equal to twenty per centum of the total membership coming from the parliamentary districts.

B. Sections 1, 2, 3 and 4 of Article VII of the 1987 Constitution are hereby amended to read, as follows:

Section 1. There shall be a President who shall be the Head of State. The executive power shall be exercised by a Prime Minister, with the

assistance of the Cabinet. The Prime Minister shall be elected by a majority of all the Members of Parliament from among themselves. He shall be responsible to the Parliament for the program of government.

C. For the purpose of insuring an orderly transition from the bicameral-Presidential to a unicameral-Parliamentary form of government, there shall be a new Article XVIII, entitled "Transitory Provisions," which shall read, as follows:

Section 1. (1) The incumbent President and Vice President shall serve until the expiration of their term at noon on the thirtieth day of June 2010 and shall continue to exercise their powers under the 1987 Constitution unless impeached by a vote of two thirds of all the members of the interim parliament.

(2) In case of death, permanent disability, resignation or removal from office of the incumbent President, the incumbent Vice President shall succeed as President. In case of death, permanent disability, resignation or removal from office of both the incumbent President and Vice President, the interim Prime Minister shall assume all the powers and responsibilities of Prime Minister under Article VII as amended.

Section 2. Upon the expiration of the term of the incumbent President and Vice President, with the exception of Sections 1, 2, 3, 4, 5, 6 and 7 of Article VI of the 1987 Constitution which shall hereby be amended and Sections 18 and 24 which shall be deleted, all other Sections of Article VI are hereby retained and renumbered sequentially as Section 2, *ad seriatim* up to 26, unless they are inconsistent with the Parliamentary system of government, in which case, they shall be amended to conform with a unicameral parliamentary form of government; provided, however, that any and all references therein to "Congress," "Senate," "House of Representatives" and "Houses of Congress" shall be changed to read "Parliament;" that any and all references therein to "Member(s) of Congress," "Senator(s)" or "Member(s) of the House of Representatives" shall be changed to read as "Member(s) of Parliament" and any and all references to the "President" and/or "Acting President" shall be changed to read "Prime Minister."

Section 3. Upon the expiration of the term of the incumbent President and Vice President, with the exception of Sections 1, 2, 3 and 4 of Article VII of the 1987 Constitution which are hereby amended and Sections 7, 8, 9, 10, 11 and 12 which are hereby deleted, all other Sections of Article VII shall be retained and renumbered sequentially as Section 2, *ad seriatim* up to 14, unless they shall be inconsistent with Section 1 hereof, in which case they shall be deemed amended so as to conform to a unicameral Parliamentary System of government; provided, however, that any all references therein to "Congress," "Senate," "House of Representatives" and "Houses of Congress" shall be changed to read "Parliament;" that any and all references therein to "Member(s) of Congress," "Senator(s)" or "Member(s) of the House of Representatives" shall be changed to read as "Member(s) of Parliament" and any and all references to the "President" and or "Acting President" shall be changed to read "Prime Minister."

Section 4. (1) There shall exist, upon the ratification of these amendments, an interim Parliament which shall continue until the Members of the regular Parliament shall have been elected and shall have qualified. It

shall be composed of the incumbent Members of the Senate and the House of Representatives and the incumbent Members of the Cabinet who are heads of executive departments.

(2) The incumbent Vice President shall automatically be a Member of Parliament until noon of the thirtieth day of June 2010. He shall also be a member of the cabinet and shall head a ministry. He shall initially convene the interim Parliament and shall preside over its sessions for the election of the interim Prime Minister and until the Speaker shall have been elected by a majority vote of all the members of the interim Parliament from among themselves.

(3) Senators whose term of office ends in 2010 shall be Members of Parliament until noon of the thirtieth day of June 2010.

(4) Within forty-five days from ratification of these amendments, the interim Parliament shall convene to propose amendments to, or revisions of, this Constitution consistent with the principles of local autonomy, decentralization and a strong bureaucracy.

Section 5. (1) The incumbent President, who is the Chief Executive, shall nominate, from among the members of the interim Parliament, an interim Prime Minister, who shall be elected by a majority vote of the members thereof. The interim Prime Minister shall oversee the various ministries and shall perform such powers and responsibilities as may be delegated to him by the incumbent President."

(2) The interim Parliament shall provide for the election of the members of Parliament, which shall be synchronized and held simultaneously with the election of all local government officials. The duly elected Prime Minister shall continue to exercise and perform the powers, duties and responsibilities of the interim Prime Minister until the expiration of the term of the incumbent President and Vice President. [10]

Sigaw ng Bayan prepared signature sheets, on the upper portions of which were written the abstract of the proposed amendments, to *wit*:

> ***Abstract***: Do you approve of the amendment of Articles VI and VII of the 1987 Constitution, changing the form of government from the present bicameral-presidential to a unicameral-parliamentary system of government, in order to achieve greater efficiency, simplicity and economy in government; and providing an Article XVIII as Transitory Provisions for the orderly shift from one system to another?

The signature sheets were distributed nationwide to affiliated non-government organizations and volunteers of Sigaw ng Bayan, as well as to the local officials. Copies of the draft petition for initiative containing the proposition were also circulated to the local officials and multi-sectoral groups.

Sigaw ng Bayan alleged that it also held **barangay assemblies** which culminated on March 24, 25 and 26, 2006, to inform the people and explain to them the proposed amendments to the Constitution. Thereafter, they circulated the signature sheets for signing.

The signature sheets were then **submitted to the local election officers for verification** based on the voters' registration record. Upon completion of the verification

process, the respective **local election officers issued certifications** to attest that the signature sheets have been verified. The verified signature sheets were subsequently transmitted to the office of Sigaw ng Bayan for the counting of the signatures.

On **August 25, 2006**, herein petitioners Raul L. Lambino and Erico B. Aumentado filed with the COMELEC a Petition for Initiative to Amend the Constitution entitled "In the Matter of Proposing Amendments to the 1987 Constitution through a People's Initiative: A Shift from a Bicameral Presidential to a Unicameral Parliamentary Government by Amending Articles VI and VII; and Providing Transitory Provisions for the Orderly Shift from the Presidential to the Parliamentary System." They filed an Amended Petition on August 30, 2006 to reflect the text of the proposed amendment that was actually presented to the people. They alleged that they were filing the petition in their own behalf and together with some 6.3 million registered voters who have affixed their signatures on the signature sheets attached thereto. Petitioners appended to the petition signature sheets bearing the signatures of registered voters which they claimed to have been verified by the respective city or municipal election officers, and allegedly constituting at least twelve *per cent* (12%) of all registered voters in the country, wherein each legislative district is represented by at least three *per cent* (3%) of all the registered voters therein.

As basis for the filing of their petition for initiative, petitioners averred that Section 5 (b) and (c), together with Section 7 of R.A. 6735, provide sufficient enabling details for the people's exercise of the power. Hence, petitioners prayed that the COMELEC issue an Order:

1. Finding the petition to be sufficient pursuant to Section 4, Article XVII of the 1987 Constitution;

2. Directing the publication of the petition in Filipino and English at least twice in newspapers of general and local circulation; and

3. Calling a plebiscite to be held not earlier than sixty nor later than ninety days after the Certification by the COMELEC of the sufficiency of the petition, to allow the Filipino people to express their sovereign will on the proposition.

Several groups filed with the COMELEC their respective oppositions to the petition for initiative, among them ONEVOICE, Inc., Christian S. Monsod, Rene B. Azurin, Manuel L. Quezon III, Benjamin T. Tolosa, Jr., Susan V. Ople, and Carlos P. Medina, Jr.; Alternative Law Groups, Inc., Senate Minority Leader Aquilino Q. Pimentel, Jr., Senators Sergio Osmeña III, Jamby A.S. Madrigal, Alfredo S. Lim, Panfilo M. Lacson, Luisa P. Ejercito-Estrada, and Jinggoy Estrada; Representatives Loretta Ann P. Rosales, Mario Joyo Aguja, and Ana Theresia Hontiveros-Baraquel; Bayan, Kilusang Mayo Uno, Ecumenical Bishops Forum, Migrante, Gabriela, Gabriela Women's Party, Anakbayan, League of Filipino Students, Leonardo San Jose, Jojo Pineda, Drs. Darby Santiago and Reginald Pamugas; Attys. Pete Quirino-Quadra, Jose Anselmo I. Cadiz, Byron D. Bocar, Ma. Tanya Karina A. Lat, Antonio L. Salvador, and Randall C. Tabayoyong.

On **August 31, 2006**, the COMELEC denied due course to the Petition for Initiative. It cited this Court's ruling in **Santiago v. COMELEC** [11] permanently enjoining the Commission from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the system.

Forthwith, petitioners filed with this Court the instant Petition for *Certiorari* and *Mandamus* praying that the Court set aside the August 31, 2006 resolution of the COMELEC, direct

respondent COMELEC to comply with Section 4, Article XVII of the Constitution, and set the date of the plebiscite. They state the following grounds in support of the petition:

I.

The Honorable public respondent COMELEC committed grave abuse of discretion in refusing to take cognizance of, and to give due course to the petition for initiative, because the cited *Santiago* ruling of 19 March 1997 cannot be considered the majority opinion of the Supreme Court *en banc*, considering that upon its reconsideration and final voting on 10 June 1997, no majority vote was secured to declare Republic Act No. 6735 as inadequate, incomplete and insufficient in standard.

II.

The 1987 Constitution, Republic Act No. 6735, Republic Act No. 8189 and existing appropriation of the COMELEC provide for sufficient details and authority for the exercise of people's initiative, thus, existing laws taken together are adequate and complete.

III.

The Honorable public respondent COMELEC committed grave abuse of discretion in refusing to take cognizance of, and in refusing to give due course to the petition for initiative, thereby violating an express constitutional mandate and disregarding and contravening the will of the people.

A.

Assuming in arguendo that there is no enabling law, respondent COMELEC cannot ignore the will of the sovereign people and must accordingly act on the petition for initiative.

1.

The framers of the Constitution intended to give the people the power to propose amendments and the people themselves are now giving vibrant life to this constitutional provision.

2.

Prior to the questioned *Santiago* ruling of 19 March 1997, the right of the people to exercise the sovereign power of initiative and recall has been invariably upheld.

3.

The exercise of the initiative to propose amendments is a political question which shall be determined solely by the sovereign people.

4.

By signing the signature sheets attached to the petition for initiative duly verified by the election officers, the people have chosen to perform this sacred exercise of their sovereign power.

B.

The *Santiago* ruling of 19 March 1997 is not applicable to the instant petition for initiative filed by the petitioners.

C.

The permanent injunction issued in *Santiago vs. COMELEC* only applies to the Delfin petition.

1.

It is the dispositive portion of the decision and not other statements in the body of the decision that governs the rights in controversy.

IV.

The Honorable public respondent failed or neglected to act or perform a duty mandated by law.

A.

The ministerial duty of the COMELEC is to set the initiative for plebiscite. [12]

The **oppositors-intervenors**, ONEVOICE, Inc., Christian S. Monsod, Rene B. Azurin, Manuel L. Quezon III, Benjamin T. Tolosa, Jr., Susan V. Ople, and Carlos P. Medina, Jr.; Alternative Law Groups, Inc.; Bayan, Kilusang Mayo Uno, Ecumenical Bishops Forum, Migrante Gabriela, Gabriela Women's Party, Anakbayan, League of Filipino Students, Leonardo San Jose, Jojo Pineda, Dr. Darby Santiago, and Dr. Reginald Pamugas; Senate Minority Leader Aquilino Q. Pimentel, Jr., and Senators Sergio Osmeña III, Jamby A.S. Madrigal, Alfredo S. Lim, Panfilo M. Lacson, Luisa P. Ejercito-Estrada, and Jinggoy Estrada; Representatives Loretta Ann P. Rosales, Mario Joyo Aguja, and Ana Theresia Hontiveros-Baraquel; and Attys. Pete Quirino-Quadra, Jose Anselmo I. Cadiz, Byron D. Bocar, Ma. Tanya Karina A. Lat, Antonio L. Salvador, and Randall C. Tabayoyong moved to intervene in this case and filed their respective Oppositions/Comments-in-Intervention.

The Philippine Constitution Association, Conrado F. Estrella, Tomas C. Toledo, Mariano M. Tajon, Froilan M. Bacungan, Joaquin T. Venus, Jr., Fortunato P. Aguas, and Amado Gat Inciong; the Integrated Bar of the Philippines Cebu City and Cebu Province Chapters; former President Joseph Ejercito Estrada and Pwersa ng Masang Pilipino; and the Senate of the Philippines, represented by Senate President Manuel Villar, Jr., also filed their respective motions for intervention and Comments-in-Intervention.

The Trade Union Congress of the Philippines, Sulongbayan Movement Foundation, Inc., Ronald L. Adamat, Rolando Manuel Rivera, Ruelo Baya, Philippine Transport and General Workers Organization, and Victorino F. Balais likewise moved to intervene and submitted to the Court a Petition-in-Intervention. All interventions and oppositions were granted by the Court.

The **oppositors-intervenors** essentially submit that the COMELEC did not commit grave abuse of discretion in denying due course to the petition for initiative as it merely followed this Court's ruling in **Santiago v. COMELEC** as affirmed in the case of **PIRMA v. COMELEC**, based on the principle of *stare decisis*; that there is no sufficient law providing for the authority and the details for the exercise of people's initiative to amend the Constitution; that the proposed changes to the Constitution are actually revisions, not mere amendments; that the petition for initiative does not meet the required number of signatories under Section 2, Article XVII of the 1987 Constitution; that it was not shown that the people have been informed of the proposed amendments as there was disparity between the proposal presented to them and the proposed amendments attached to the petition for initiative, if indeed there was; that the verification process was done *ex parte*, thus rendering dubious the signatures attached to the petition for initiative; and that

petitioners Lambino and Aumentado have no legal capacity to represent the signatories in the petition for initiative.

The **Office of the Solicitor General (OSG)**, in compliance with the Court's resolution of September 5, 2006, filed its Comment to the petition. Affirming the position of the petitioners, the OSG prayed that the Court grant the petition at bar and render judgment: (1) declaring R.A. 6735 as adequate to cover or as reasonably sufficient to implement the system of initiative on amendments to the Constitution and as having provided sufficient standards for subordinate legislation; (2) declaring as valid the provisions of COMELEC Resolution No. 2300 on the conduct of initiative or amendments to the Constitution; (3) setting aside the assailed resolution of the COMELEC for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction; and, (4) directing the COMELEC to grant the petition for initiative and set the corresponding plebiscite pursuant to R.A. 6735, COMELEC Resolution No. 2300, and other pertinent election laws and regulations.

The **COMELEC filed its own Comment** stating that its resolution denying the petition for initiative is not tainted with grave abuse of discretion as it merely adhered to the ruling of this Court in **Santiago v. COMELEC** which declared that R.A. 6735 does not adequately implement the constitutional provision on initiative to amend the Constitution. It invoked the permanent injunction issued by the Court against the COMELEC from taking cognizance of petitions for initiative on amendments to the Constitution until a valid enabling law shall have been passed by Congress. It asserted that the permanent injunction covers not only the Delfin Petition, but also all other petitions involving constitutional initiatives.

On **September 26, 2006, the Court heard the case**. The parties were required to argue on the following issues: [13]

1. Whether petitioners Lambino and Aumentado are proper parties to file the present Petition in behalf of the more than six million voters who allegedly signed the proposal to amend the Constitution.

2. Whether the Petitions for Initiative filed before the Commission on Elections complied with Section 2, Article XVII of the Constitution.

3. Whether the Court's decision in **Santiago v. COMELEC** (G.R. No. 127325, March 19, 1997) bars the present petition.

4. Whether the Court should re-examine the ruling in Santiago v. COMELEC that there is no sufficient law implementing or authorizing the exercise of people's initiative to amend the Constitution.

5. Assuming R.A. 6735 is sufficient, whether the Petitions for Initiative filed with the COMELEC have complied with its provisions.

    5.1 Whether the said petitions are sufficient in form and substance.

    5.2 Whether the proposed changes embrace more than one subject matter.

6. Whether the proposed changes constitute an amendment or revision of the Constitution.

    6.1 Whether the proposed changes are the proper subject of an initiative.

7. Whether the exercise of an initiative to propose amendments to the

Constitution is a political question to be determined solely by the sovereign people.

8. Whether the Commission on Elections committed grave abuse of discretion in dismissing the Petitions for Initiative filed before it.

With humility, I offer the following views to these issues as profiled:

I

Petitioners Lambino and Aumentado are proper parties to file the present Petition in behalf of the more than six million voters who allegedly signed the proposal to amend the Constitution.

Oppositors-intervenors contend that petitioners Lambino and Aumentado are not the proper parties to file the instant petition as they were not authorized by the signatories in the petition for initiative.

The argument deserves scant attention. The Constitution requires that the petition for initiative should be filed by at least twelve *per cent* (12%) of all registered voters, of which every legislative district must be represented by at least three *per cent* (3%) of all the registered voters therein. The petition for initiative filed by Lambino and Aumentado before the COMELEC was accompanied by voluminous signature sheets which ***prima facie*** show the intent of the signatories to support the filing of said petition. Stated above their signatures in the signature sheets is the following:

> . . . My signature herein which shall form part of the petition for initiative to amend the Constitution signifies my support for the filing thereof. [14]

There is thus no need for the more than six (6) million signatories to execute separate documents to authorize petitioners to file the petition for initiative in their behalf.

Neither is it necessary for said signatories to authorize Lambino and Aumentado to file the petition for *certiorari* and *mandamus* before this Court. Rule 65 of the 1997 Rules of Civil Procedure provides who may file a petition for *certiorari* and *mandamus*. Sections 1 and 3 of Rule 65 read:

> SECTION 1. ***Petition for certiorari***. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a **person aggrieved** thereby may file a verified petition in the proper court . . . . .
>
> SEC. 3. ***Petition for mandamus***. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station . . . and there is no other plain, speedy and adequate remedy in the ordinary course of law, **the person aggrieved** thereby may file a verified petition in the proper court . . . . .

Thus, any person aggrieved by the act or inaction of the respondent tribunal, board or officer may file a petition for *certiorari* or *mandamus* before the appropriate court. Certainly, Lambino and Aumentado, as among the proponents of the petition for initiative dismissed by the COMELEC, have the standing to file the petition at bar.

II

The doctrine of *stare decisis* does not bar the reexamination of Santiago.

The latin phrase ***stare decisis et non quieta movere*** means "stand by the thing and do not disturb the calm." The doctrine started with the English Courts. [15] **Blackstone** observed that at the beginning of the **18th century**, "it is an established rule to abide by former precedents where the same points come again in litigation." [16] As the rule evolved, **early limits to its application were recognized**: (1) it would not be followed if it were "plainly unreasonable;" (2) where courts of equal authority developed conflicting decisions; and, (3) the binding force of the decision was the "actual principle or principles necessary for the decision; not the words or reasoning used to reach the decision." [17]

The doctrine migrated to the United States. It was recognized by the **framers** of the U.S. Constitution. [18] According to **Hamilton**, "strict rules and precedents" are necessary to prevent "arbitrary discretion in the courts." [19] **Madison** agreed but stressed that ". . . **once the precedent ventures into the realm of altering or repealing the law, it should be rejected**." [20] Prof. Consovoy well noted that Hamilton and Madison "disagree about the countervailing policy considerations that would allow a judge to abandon a precedent." [21] He added that their ideas "reveal a deep internal conflict between the concreteness required by the rule of law and the flexibility demanded in error correction. **It is this internal conflict that the Supreme Court has attempted to deal with for over two centuries**." [22]

Indeed, two centuries of American case law will confirm Prof. Consovoy's observation although *stare decisis* developed its own life in the United States. **Two strains** of *stare decisis* have been isolated by legal scholars. [23] The first, known as **vertical *stare decisis*** deals with the **duty of lower courts** to apply the decisions of the **higher courts** to cases involving the same facts. The second, known as **horizontal *stare decisis*** requires that **high courts must follow its own precedents**. Prof. Consovoy correctly observes that **vertical** *stare decisis* has been viewed as an **obligation**, while **horizontal** *stare decisis*, has been viewed as a **policy**, imposing choice but not a command. [24] Indeed, *stare decisis* is not one of the precepts set in stone in our Constitution.

It is also instructive to distinguish the **two kinds of horizontal *stare decisis* — constitutional *stare decisis* and statutory** *stare decisis*. [25] **Constitutional *stare decisis*** involves judicial interpretations of the Constitution while **statutory *stare decisis*** involves interpretations of statutes. The **distinction is important** for courts enjoy **more flexibility** in refusing to apply *stare decisis* in constitutional litigations. **Justice Brandeis'** view on the binding effect of the doctrine in constitutional litigations still holds sway today. In soothing prose, Brandeis stated: "**Stare *decisis* is not . . . a universal and inexorable command**. The rule of *stare decisis* is **not inflexible**. Whether it shall be followed or departed from, is a question **entirely within the discretion of the court**, which is again called upon to consider a question once decided." [26] In the same vein, the venerable **Justice Frankfurter** opined: "the ultimate touchstone of constitutionality is the Constitution itself **and not what we have said about it**." [27] **In contrast**, the application of *stare decisis* on judicial interpretation of statutes is more inflexible. As **Justice Stevens** explains: "after a statute has been construed, either by this Court or by a consistent course of decision by other federal judges and agencies, it acquires a meaning that should be as clear as if the judicial gloss had been drafted by the Congress itself." [28] This stance reflects both respect for Congress' role and the need to preserve the courts' limited resources.

In general, **courts follow** the *stare decisis* rule for an ensemble of reasons, [29] *viz*: (1) it legitimizes judicial institutions; (2) it promotes judicial economy; and, (3) it allows for

predictability. Contrariwise, **courts refuse to be bound by the *stare decisis* rule where** [30] (1) its application perpetuates illegitimate and unconstitutional holdings; (2) it cannot accommodate changing social and political understandings; (3) it leaves the power to overturn bad constitutional law solely in the hands of Congress; and, (4) activist judges can dictate the policy for future courts while judges that respect *stare decisis* are stuck agreeing with them.

In its 200-year history, the U.S. Supreme Court has refused to follow the *stare decisis* rule and reversed its decisions in **192 cases**. [31] The most famous of these reversals is **Brown v. Board of Education** [32] which junked **Plessy v. Ferguson's** [33] "separate but equal doctrine." **Plessy** upheld as constitutional a state law requirement that races be segregated on public transportation. In **Brown**, the U.S. Supreme Court, unanimously held that "**separate . . . is inherently unequal**." Thus, by freeing itself from the shackles of *stare decisis*, the U.S. Supreme Court freed the colored Americans from the chains of inequality. In the Philippine setting, this Court has likewise refused to be straitjacketed by the *stare decisis* rule in order to promote public welfare. In **La Bugal-B'laan Tribal Association, Inc. v. Ramos**, [34] we reversed our original ruling that certain provisions of the Mining Law are unconstitutional. Similarly, in **Secretary of Justice v. Lantion**, [35] we overturned our first ruling and held, on motion for reconsideration, that a private respondent is bereft of the right to notice and hearing during the evaluation stage of the extradition process.

An examination of decisions on *stare decisis* in major countries will show that courts are agreed on the factors that should be considered before overturning prior rulings. These are workability, reliance, intervening developments in the law and changes in fact. In addition, courts put in the balance the following determinants: closeness of the voting, age of the prior decision and its merits. [36]

The **leading case** in deciding whether a court should follow the *stare decisis* rule in constitutional litigations is **Planned Parenthood v. Casey**. [37] It established a **4-pronged test**. The court should (1) determine whether the rule has proved to be **intolerable** simply in defying practical workability; (2) consider whether the rule is subject to a kind of **reliance** that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation; (3) determine whether **related principles of law have so far developed** as to have the old rule no more than a remnant of an abandoned doctrine; and, (4) find out whether **facts have so changed** or come to be seen differently, as to have robbed the old rule of significant application or justification.

Following these guidelines, I submit that the *stare decisis* rule should not bar the reexamination of Santiago. On the factor of intolerability, the six (6) justices in **Santiago** held R.A. 6735 to be insufficient as it provided no standard to guide COMELEC in issuing its implementing rules. The **Santiago** ruling that R.A. 6735 is insufficient but without striking it down as unconstitutional is an **intolerable aberration**, the only one of its kind in our planet. It improperly assails the ability of legislators to write laws. It usurps the exclusive right of legislators to determine how far laws implementing constitutional mandates should be crafted. It is elementary that courts cannot dictate on Congress the style of writing good laws, anymore than Congress can tell courts how to write literate decisions. The doctrine of separation of powers forbids this Court to invade the exclusive lawmaking domain of Congress for **courts can construe laws but cannot construct them**. The end result of the ruling of the six (6) justices that R.A. 6735 is insufficient is **intolerable** for it rendered lifeless the sovereign right of the people to amend the Constitution *via* an initiative.

On the factor of reliance, the ruling of the six (6) justices in **Santiago** did not induce any expectation from the people. On the contrary, the ruling smothered the hope of the people that they could amend the Constitution by direct action. Moreover, reliance is a non-factor in the case at bar for it is more appropriate to consider in decisions involving contracts where private rights are adjudicated. The case at bar involves no private rights but the sovereignty of the people.

On the factor of changes in law and in facts, certain realities on ground cannot be blinked away. The urgent need to adjust certain provisions of the 1987 Constitution to enable the country to compete in the new millennium is given. The only point of contention is the mode to effect the change — whether through constituent assembly, constitutional convention or people's initiative. Petitioners claim that they have gathered over six (6) million registered voters who want to amend the Constitution through people's initiative and that their signatures have been verified by registrars of the COMELEC. **The six (6) justices who ruled that R.A. 6735 is insufficient to implement the direct right of the people to amend the Constitution through an initiative cannot waylay the will of 6.3 million people who are the bearers of our sovereignty and from whom all government authority emanates**. New developments in our internal and external social, economic, and political settings demand the reexamination of the **Santiago** case. **The *stare decisis* rule is no reason for this Court to allow the people to step into the future with a blindfold**.

III

A reexamination of R.A. 6735 will show that it is sufficient to implement the people's initiative.

Let us reexamine the validity of the view of the six (6) justices that R.A. 6735 is insufficient to implement Section 2, Article XVII of the 1987 Constitution allowing amendments to the Constitution to be directly proposed by the people through initiative.

When laws are challenged as unconstitutional, courts are counseled to give life to the intent of legislators. In enacting R.A. 6735, it is daylight luminous that **Congress intended** the said law to implement the right of the people, thru initiative, to propose amendments to the Constitution by direct action. This all-important intent is palpable from the following:

First. The **text** of R.A. 6735 is replete with references to the right of the people to initiate changes to the Constitution:

> The **policy statement** declares:
>
> Sec. 2. Statement of Policy. — The power of the people under a system of initiative and referendum to directly propose, enact, approve or reject, in whole or in part, the **Constitution**, laws, ordinances, or resolutions passed by any legislative body upon compliance with the requirements of this Act is hereby affirmed, recognized and guaranteed. (emphasis supplied)

It defines "initiative" as "**the power of the people to propose amendments to the Constitution** or to propose and enact legislations **through an election called for the purpose**," and "plebiscite" as "the electoral process by which an **initiative on the Constitution** is approved or rejected by the people."

It provides the requirements for a petition for initiative to amend the Constitution, *viz*:

> (1) That "(a) petition for an initiative on the 1987 Constitution must have at

least twelve *per centum* (12%) of the total number of registered voters as signatories, of which every legislative district must be represented by at least three *per centum* (3%) of the registered voters therein;" [38] and

(2) That "(i)nitiative on the Constitution may be exercised only after five (5) years from the ratification of the 1987 Constitution and only once every five (5) years thereafter." [39]

It fixes the effectivity date of the amendment under Section 9(b) which provides that "(t)he proposition in an initiative on the Constitution approved by a majority of the votes cast in the plebiscite shall become effective as to the day of the plebiscite."

Second. The **legislative history** of R.A. 6735 also reveals the clear intent of the lawmakers to use it as the instrument to implement people's initiative. No less than former **Chief Justice Hilario G. Davide, Jr.**, the *ponente* in **Santiago**, concedes: [40]

> We agree that R.A. No. 6735 was, as **its history reveals, intended to cover *initiative* to propose amendments to the Constitution**. The Act is a consolidation of House Bill No. 21505 and Senate Bill No. 17 . . . . The Bicameral Conference Committee consolidated Senate Bill No. 17 and House Bill No. 21505 into a draft bill, which was subsequently approved on 8 June 1989 by the Senate and by the House of Representatives. This approved bill is now R.A. No. 6735.

Third. The **sponsorship speeches by the authors of R.A. 6735** similarly demonstrate beyond doubt this intent. In his sponsorship remarks, the late **Senator Raul Roco** (then a Member of the House of Representatives) emphasized the intent to make initiative as a mode whereby the people can propose amendments to the Constitution. We quote his relevant remarks: [41]

SPONSORSHIP REMAKRS OF REP. ROCO

> MR. ROCO. Mr. Speaker, with the permission of the committee, we wish to speak in support of House Bill No. 497, entitled: INITIATIVE AND REFERENDUM ACT OF 1987, which later on may be called Initiative and Referendum Act of 1989.
>
> As a background, we want to point out the constitutional basis of this particular bill. The grant of plenary legislative power upon the Philippine Congress by the 1935, 1973 and 1987 Constitutions, Mr. Speaker, was based on the principle that any power deemed to be legislative by usage and tradition is necessarily possessed by the Philippine Congress unless the Organic Act has lodged it elsewhere. This was a citation from **Veer vs. Avelino** (1946).
>
> The presidential system introduced by the 1935 Constitution saw the application of the principle of separation of powers. While under the parliamentary system of the 1973 Constitution the principle remained applicable, Amendment 6 or the 1981 amendments to the 1973 Constitution ensured presidential dominance over the Batasang Pambansa.
>
> Our constitutional history saw the shifting and sharing of legislative power between the legislature and the executive.
>
> Transcending such changes in the exercise of legislative power is the declaration in the Philippine Constitution that he Philippines is a Republican State where sovereignty resides in the people and all government authority emanates from them.
>
> In a Republic, Mr. Speaker, the power to govern is vested in its citizens participating

through the right of suffrage and indicating thereby their choice of lawmakers.

Under the 1987 Constitution, lawmaking power is still preserved in Congress. However, to institutionalize direct action of the people as exemplified in the 1986 Revolution, there is a practical recognition of what we refer to as people's sovereign power. This is the recognition of a system of initiative and referendum.

Section 1, Article VI of the 1987 Constitution provides, and I quote:

> The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

In other words, Mr. Speaker, under the 1987 Constitution, Congress does not have plenary powers. There is a reserved legislative power given to the people expressly.

Section 32, the implementing provision of the same article of the Constitution provides, and I quote:

> The Congress shall, as early as possible, provide for a system of initiative and referendum, and the exceptions therefrom, whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition therefor signed by at least ten *per centum* of the total number of registered voters, or which every legislative district must be represented by at least three *per centum* of the registered voters thereof.

In other words, Mr. Speaker, in Section 1 of Article VI which describes legislative power, there are reserved powers given to the people. In Section 32, we are specifically told to pass at the soonest possible time a bill on referendum and initiative. We are specifically mandated to share the legislative powers of Congress with the people.

Of course, another applicable provision in the Constitution is Section 2, Article XVII, Mr. Speaker. Under the provision on amending the Constitution, the section reads, and I quote:

> Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.

We in Congress therefore, Mr. Speaker, are charged with the duty to implement the exercise by the people of the right of initiative and referendum.

House Bill No. 21505, as reported out by the Committee on Suffrage and Electoral Reforms last December 14, 1988, Mr. Speaker, is the response to such a constitutional duty.

Mr. Speaker, if only to allay apprehensions, allow me to show where initiative and referendum under Philippine law has occurred.

Mr. Speaker, the system of initiative and referendum is not new. In a very limited extent, the system is provided for in our Local Government Code today. On initiative, for instance, Section 99 of the said code vests in the barangay assembly

the power to initiate legislative processes, to hold plebiscites and to hear reports of the sangguniang barangay. There are variations of initiative and referendum. The barangay assembly is composed of all persons who have been actual residents of the barangay for at least six months, who are at least 15 years of age and citizens of the Philippines. The holding of barangay plebiscites and referendum is also provided in Sections 100 and 101 of the same Code.

Mr. Speaker, for brevity I will not read the pertinent quotations but will just submit the same to the Secretary to be incorporated as part of my speech.

To continue, Mr. Speaker these same principles are extensively applied by the Local Government Code as it is now mandated by the 1987 Constitution.

In other jurisdictions, Mr. Speaker, we have ample examples of initiative and referendum similar to what is now contained in House Bill No. 21505. As in the 1987 Constitutions and House Bill No. 21505, the various constitutions of the states in the United States recognize the right of registered voters to initiate the enactment of any statute or to reject any existing law or parts thereof in a referendum. These states are Alaska, Alabama, Montana, Massachusetts, Dakota, Oklahoma, Oregon, and practically all other states.

In certain American states, the kind of laws to which initiative and referendum applies is also without ay limitation, except for emergency measures, which is likewise incorporated in Section 7(b) of House Bill No. 21505.

The procedure provided by the House bill — from the filing of the petition, the requirement of a certain percentage of supporters to present a proposition to submission to electors — is substantially similar to those of many American laws. Mr. Speaker, those among us who may have been in the United States, particularly in California, during election time or last November during the election would have noticed different propositions posted in the city walls. They were propositions submitted by the people for incorporation during the voting. These were in the nature of initiative, Mr. Speaker.

Although an infant then in Philippine political structure, initiative and referendum is a tried and tested system in other jurisdictions, and House Bill No. 21505 through the various consolidated bills is patterned after American experience in a great respect.

What does the bill essentially say, Mr. Speaker? Allow me to try to bring our colleagues slowly through the bill. The bill has basically only 12 sections. The constitutional Commissioners, Mr. Speaker, saw this system of initiative and referendum as an instrument which can be used should the legislature show itself indifferent to the needs of the people. That is why, Mr. Speaker, it may be timely, since we seem to be amply criticized, as regards our responsiveness, to pass this bill on referendum and initiative now. While indifference would not be an appropriate term to use at this time, and surely it is not the case although we are so criticized, one must note that it is a felt necessity of our times that laws need to be proposed and adopted at the soonest possible time to spur economic development, safeguard individual rights and liberties, and share governmental power with the people.

With the legislative powers of the President gone, we alone, together with the Senators when they are minded to agree with us, are left with the burden of enacting the needed legislation.

Let me now bring our colleagues, Mr. Speaker, to the process advocated by the bill.

First, initiative and referendum, Mr. Speaker, is defined. Initiative essentially is what the term connotes. It means that the people, on their own political judgment, submit fore the consideration and voting of the general electorate a bill or a piece of legislation.

Under House Bill No. 21505, there are three kinds of initiative. One is an initiative to amend the Constitution. This can occur once every five years. Another is an initiative to amend statutes that we may have approved. Had this bill been an existing law, Mr. Speaker, it is most likely that an overwhelming majority of the barangays in the Philippines would have approved by initiative the matter of direct voting.

The third mode of initiative, Mr. Speaker, refers to a petition proposing to enact regional, provincial, city, municipal or barangay laws or ordinances. It comes from the people and it must be submitted directly to the electorate. The bill gives a definite procedure and allows the COMELEC to define rules and regulations to give teeth to the power of initiative.

On the other hand, referendum, Mr. Speaker, is the power of the people to approve or reject something that Congress has already approved.

For instance, Mr. Speaker, when we divide the municipalities or the barangays into two or three, we must first get the consent of the people affected through plebiscite or referendum.

Referendum is a mode of plebiscite, Mr. Speaker. However, referendum can also be petitioned by the people if, for instance, they do not life the bill on direct elections and it is approved subsequently by the Senate. If this bill had already become a law, then the people could petition that a referendum be conducted so that the acts of Congress can be appropriately approved or rebuffed.

The initial stage, Mr. Speaker, is what we call the petition. As envisioned in the bill, the initiative comes from the people, from registered voters of the country, by presenting a proposition so that the people can then submit a petition, which is a piece of paper that contains the proposition. The proposition in the example I have been citing is whether there should be direct elections during the barangay elections. So the petition must be filed in the appropriate agency and the proposition must be clear stated. It can be tedious but that is how an effort to have direct democracy operates.

Section 4 of the bill gives requirements, Mr. Speaker. It will not be all that easy to have referendum or initiative petitioned by the people. Under Section 4 of the committee report, we are given certain limitations. For instance, to exercise the power of initiative or referendum, at least 10 percent of the total number of registered voters, of which every legislative district is represented by at least 3 percent of the registered voters thereof, shall sign a petition. These numbers, Mr. Speaker, are not taken from the air. They are mandated by the Constitution. There must be a requirement of 10 percent for ordinary laws and 3 percent representing all districts. The same requirement is *mutatis mutandis* or appropriately modified and applied to the different sections. So if it is, for instance, a petition on initiative or referendum for a barangay, there is a 10 percent or a certain number required of the voters of the barangay. If it is for a district, there is also a certain number required of all towns of the district that must seek the petition. If it is for a province then again a certain percentage of the provincial electors is required. All these are

based with reference to the constitutional mandate.

The conduct of the initiative and referendum shall be supervised and shall be upon the call of the Commission on Elections. However, within a period of 30 days from receipt of the petition, the COMELEC shall determine the sufficiency of the petition, publish the same and set the date of the referendum which shall not be earlier than 45 days but not later than 90 days from the determination by the commission of the sufficiency of the petition. Why is this so, Mr. Speaker? The petition must first be determined by the commission as to its sufficiency because our Constitution requires that no bill can be approved unless it contains one subject matter. It is conceivable that in the fervor of an initiative or referendum, Mr. Speaker, there may be more than two topics sought to be approved and that cannot be allowed. In fact, that is one of the prohibitions under this referendum and initiative bill. When a matter under initiative or referendum is approved by the required number of votes, Mr. Speaker, it shall become effective 15 days following the completion of its publication in the *Official Gazette*. Effectively then, Mr. Speaker, all the bill seeks to do is to enlarge and recognize the legislative powers of the Filipino people.

Mr. Speaker, I think this Congress, particularly this House, cannot ignore or cannot be insensitive to the call for initiative and referendum. We should have done it in 1987 but that is past. Maybe we should have done it in 1988 but that too had already passed, but it is only February 1989, Mr. Speaker, and we have enough time this year at least to respond to the need of our people to participate directly in the work of legislation.

For these reasons, Mr. Speaker, we urge and implore our colleagues to approve House Bill No. 21505 as incorporated in Committee Report No. 423 of the Committee on Suffrage and Electoral Reforms.

In closing, Mr. Speaker, I also request that the prepared text of my speech, together with the footnotes since they contain many references to statutory history and foreign jurisdiction, be reproduced as part of the Record for future purposes.

Equally unequivocal on the intent of R.A. 6735 is the sponsorship speech of former Representative **Salvador Escudero III**, *viz*: [42]

SPONSORSHIP REMARKS OF REP. ESCUDERO

MR. ESCUDERO. Thank you, Mr. Speaker.

Mr. Speaker and my dear colleagues: Events in recent years highlighted the need to heed the clamor of the people for a truly popular democracy. One recalls the impatience of those who actively participated in the parliament of the streets, some of whom are now distinguished Members of this Chamber. A substantial segment of the population feel increasingly that under the system, the people have the form but not the reality or substance of democracy because of the increasingly elitist approach of their chosen Representatives to many questions vitally affecting their lives. There have been complaints, not altogether unfounded, that many candidates easily forge their campaign promises to the people once elected to office. The 1986 Constitutional Commission deemed it wise and proper to provide for a means whereby the people can exercise the reserve power to legislate or propose amendments to the Constitution directly in case their chose Representatives fail to live up to their expectations. That reserve power known as initiative is explicitly recognized in three articles and four sections of the 1987 Constitution, namely: Article VI Section 1; the same article, Section 312; Article X, Section 3; and Article XVII, Section 2. May I request that he explicit provisions of

these three articles and four sections be made part of my sponsorship speech, Mr. Speaker.

These constitutional provisions are, however, not self-executory. There is a need for an implementing law that will give meaning and substance to the process of initiative and referendum which are considered valuable adjuncts to representative democracy. It is needless to state that this bill when enacted into law will probably open the door to strong competition of the people, like pressure groups, vested interests, farmers' group, labor groups, urban dwellers, the urban poor and the like, with Congress in the field of legislation.

Such probability, however, pales in significance when we consider that through this bill we can hasten the politization of the Filipino which in turn will aid government in forming an enlightened public opinion, and hopefully produce better and more responsive and acceptable legislations.

Furthermore, Mr. Speaker, this would give the parliamentarians of the streets and cause-oriented groups an opportunity to articulate their ideas in a truly democratic forum, thus, the competition which they will offer to Congress will hopefully be a healthy one. Anyway, in an atmosphere of competition there are common interests dear to all Filipinos, and the pursuit of each side's competitive goals can still take place in an atmosphere of reason and moderation.

Mr. Speaker and my dear colleagues, when the distinguished Gentleman from Camarines Sur and this Representation filed our respective versions of the bill in 1987, we were hoping that the bill would be approved early enough so that our people could immediately use the agrarian reform bill as an initial subject matter or as a take-off point.

However, in view of the very heavy agenda of the Committee on Local Government, it took sometime before the committee could act on these. But as they say in Tagalog, *huli man daw at magaling ay naihahabol din*. The passage of this bill therefore, my dear colleagues, could be one of our finest hours when we can set aside our personal and political consideration for the greater good of our people. I therefore respectfully urge and plead that this bill be immediately approved.

Thank you, Mr. Speaker.

We cannot dodge the duty to give effect to this intent for the "[c]ourts have the duty to interpret the law as legislated and when possible, to honor the clear meaning of statutes as revealed by its language, purpose and history." [43]

The **tragedy is that while conceding this intent**, the six (6) justices, nevertheless, ruled that ". . . R.A. No. 6735 is incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned" for the following reasons: (1) Section 2 of the Act **does not suggest** an initiative on amendments to the Constitution; (2) the Act **does not provide** for the contents of the petition for initiative on the Constitution; and (3) while the Act provides subtitles for National Initiative and Referendum (Subtitle II) and for Local Initiative and Referendum (Subtitle III), **no subtitle** is provided for *initiative* on the Constitution.

To say the least, these alleged **omissions** are too weak a reason to throttle the right of the sovereign people to amend the Constitution through initiative. R.A. 6735 clearly expressed the **legislative policy** for the people to propose amendments to the Constitution by direct

action. The fact that the legislature may have **omitted certain details** in implementing the people's initiative in R.A. 6735, does not justify the conclusion that, ***ergo***, the law is insufficient. What were **omitted were mere details** and **not fundamental policies** which Congress alone can and has determined. **Implementing details of a law** can be delegated to the COMELEC and can be the subject of its rule-making power. Under Section 2(1), Article IX-C of the Constitution, the COMELEC has the power to enforce and administer all laws and regulations relative to the conduct of initiatives. Its rule-making power has long been recognized by this Court. In ruling R.A. 6735 insufficient but without striking it down as unconstitutional, the six (6) justices failed to give due recognition to the indefeasible right of the sovereign people to amend the Constitution.

IV

The proposed constitutional changes, albeit substantial, are mere amendments and can be undertaken through people's initiative.

Oppositors-intervenors contend that Sections 1 and 2, Article XVII of the 1987 Constitution, only allow the use of people's initiative to amend and not to revise the Constitution. They theorize that the changes proposed by petitioners are **substantial** and thus constitute a revision which cannot be done through people's initiative.

In support of the thesis that the Constitution bars the people from proposing **substantial amendments** amounting to revision, the oppositors-intervenors cite the following deliberations during the Constitutional Commission, *viz*: [44]

> MR. SUAREZ: . . . . This proposal was suggested on the theory that this matter of initiative, which came about because of the extraordinary developments this year, has to be separated from the traditional modes of amending the Constitution as embodied in Section 1. The Committee members felt that this system of initiative should not extend to the revision of the entire Constitution, so we removed it from the operation of Section 1 of the proposed Article on Amendment or Revision.
>
> xxx xxx xxx
>
> MS. AQUINO. In which case, I am seriously bothered by providing this process of initiative as a separate section in the Article on Amendment. Would the sponsor be amenable to accepting an amendment in terms of realigning Section 2 as another subparagraph (c) of Section 1, instead of setting it up as another separate section as if it were a self-executing provision?
>
> MR. SUAREZ. We would be amenable except that, as we clarified a while ago, this process of initiative is limited to the matter of amendment and should not expand into a revision which contemplates a total overhaul of the Constitution. That was the sense that was conveyed by the Committee.
>
> MS. AQUINO. In other words, the Committee was attempting to distinguish the coverage of modes (a) and (b) in Section 1 to include the process of revision; whereas the process of initiation to amend, which is given to the public, would only apply to amendments?
>
> MR. SUAREZ. That is right. Those were the terms envisioned in the Committee.

Commissioner (later Chief Justice) Hilario G. Davide, Jr., espoused the same view: [45]

> MR. DAVIDE. . . . . We are limiting the right of the people, by initiative, to submit a proposal for amendment only, not for revision, only once every five years . . .

.

MR. MAAMBONG. My first question: Commissioner Davide's proposed amendment on line 1 refers to "amendment." Does it cover the word "revision" as defined by Commissioner Padilla when he made the distinction between the words "amendments" and "revision?"

MR. DAVIDE. No, it does not, because "amendments" and "revision" should be covered by Section 1. So insofar as initiative is concerned, it can only relate to "amendments" not "revision."

Commissioner (now a distinguished Associate Justice of this Court) Adolfo S. Azcuna also clarified this point [46] —

MR. OPLE. To more closely reflect the intent of Section 2, may I suggest that we add to "Amendments" "OR REVISIONS OF" to read: "Amendments OR REVISION OF this Constitution."

MR. AZCUNA. I think it was not allowed to revise the Constitution by initiative.

MR. OPLE. How is that again?

MR. AZCUNA. It was not our intention to allow a revision of the Constitution by initiative but merely by amendments.

MR. BENGZON. Only by amendments.

MR. AZCUNA. I remember that was taken on the floor.

MR. RODRIGO. Yes, just amendments.

The oppositors-intervenors then point out that by their proposals, petitioners will "change the very system of government from presidential to parliamentary, and the form of the legislature from bicameral to unicameral," among others. They allegedly seek other major revisions like the inclusion of a minimum number of inhabitants per district, a change in the period for a term of a Member of Parliament, the removal of the limits on the number of terms, the election of a Prime Minister who shall exercise the executive power, and so on and so forth. [47] In sum, oppositors-intervenors submit that "the proposed changes to the Constitution effect major changes in the political structure and system, the fundamental powers and duties of the branches of the government, the political rights of the people, and the modes by which political rights may be exercised." [48] They conclude that they are substantial amendments which cannot be done through people's initiative. In other words, **they posit the thesis that only simple but not substantial amendments can be done through people's initiative**.

With due respect, I disagree. To start with, the words "**simple**" and "**substantial**" are not subject to any accurate quantitative or qualitative test. Obviously, relying on the **quantitative test**, oppositors-intervenors assert that the amendments will result in some one hundred (100) changes in the Constitution. **Using the same test**, however, **it is also arguable** that petitioners seek to change basically only two (2) out of the eighteen (18) articles of the 1987 Constitution, *i.e.* Article VI (Legislative Department) and Article VII (Executive Department), together with the complementary provisions for a smooth transition from a presidential bicameral system to a parliamentary unicameral structure. **The big bulk of the 1987 Constitution will not be affected** including Articles I (National Territory), II (Declaration of Principles and State Policies), III (Bill of Rights), IV (Citizenship), V (Suffrage), VIII (Judicial Department), IX (Constitutional Commissions), X

(Local Government), XI (Accountability of Public Officers), XII (National Economy and Patrimony), XIII (Social Justice and Human Rights), XIV (Education, Science and Technology, Arts, Culture, and Sports), XV (The Family), XVI (General Provisions), and even XVII (Amendments or Revisions). In fine, **we stand on unsafe ground if we use simple arithmetic to determine whether the proposed changes are "simple" or "substantial."**

Nor can this Court be surefooted if it applies the qualitative test to determine whether the said changes are "**simple**" or "**substantial**" as to amount to a revision of the Constitution. The well-regarded political scientist, **Garner**, says that a good constitution should contain at least three (3) sets of provisions: the **constitution of liberty** which sets forth the fundamental rights of the people and imposes certain limitations on the powers of the government as a means of securing the enjoyment of these rights; the **constitution of government** which deals with the framework of government and its powers, laying down certain rules for its administration and defining the electorate; and, the **constitution of sovereignty** which prescribes the mode or procedure for amending or revising the constitution. [49] **It is plain that the proposed changes will basically affect only the constitution of government**. The constitutions of liberty and sovereignty remain unaffected. **Indeed, the proposed changes will not change the fundamental nature of our state as ". . . a democratic and republican state."** [50] It is self-evident that a unicameral-parliamentary form of government will not make our State any less democratic or any less republican in character. Hence, **neither will the use of the qualitative test resolve the issue of whether the proposed changes are "simple" or "substantial."**

For this reason and more, **our Constitutions did not adopt any quantitative or qualitative test to determine whether an "amendment" is "simple"** or **"substantial." Nor did they provide that "substantial" amendments are beyond the power of the people to propose to change the Constitution**. Instead, our **Constitutions carried the traditional distinction** between "amendment" and "revision," *i.e.*, "amendment" means change, **including complex changes** while "revision" means **complete change**, including the adoption of an entirely new covenant. The **legal dictionaries** express this traditional difference between "**amendment**" and "revision." **Black's Law Dictionary** defines "**amendment**" as "[a] formal revision or addition proposed or made to a statute, constitution, pleading, order, or other instrument; specifically, a change made by addition, deletion, or correction." [51] Black's also refers to "amendment" as "the process of making such a revision." [52] **Revision**, on the other hand, is defined as "[a] reexamination or careful review for correction or improvement." [53] In parliamentary law, it is described as "[a] general and thorough rewriting of a governing document, in which the **entire document** is open to amendment." [54] Similarly, **Ballentine's** Law Dictionary defines "**amendment**" — as "[a] correction or revision of a writing to correct errors or better to state its intended purpose" [55] and "amendment of constitution" as "[a] process of proposing, passing, and ratifying amendments to the . . . constitution." [56] In contrast, "**revision**," when applied to a statute (or constitution), "contemplates the re-examination of the same subject matter contained in the statute (or constitution), and the substitution of a new, and what is believed to be, a still more perfect rule." [57]

One of the most authoritative constitutionalists of his time to whom we owe a lot of intellectual debt, **Dean Vicente G. Sinco**, of the University of the Philippines College of Law, (later President of the U.P. and delegate to the Constitutional Convention of 1971) similarly spelled out the difference between "amendment" and "revision." He opined: "the revision of a constitution, in its strict sense, refers to a consideration of the **entire**

constitution and the procedure for effecting such change; while **amendment** refers only to particular provisions to be added to or to be altered in a constitution." [58]

Our people were guided by this traditional distinction when they effected changes in our 1935 and 1973 Constitutions. In **1940**, the changes to the 1935 Constitution **which included the conversion from a unicameral system to a bicameral structure**, the shortening of the tenure of the President and Vice-President from a six-year term without reelection to a four-year term with one reelection, and the establishment of the COMELEC, together with the complementary constitutional provisions to effect the changes, **were considered amendments only, not a revision**.

The **replacement of the 1935 Constitution by the 1973 Constitution** was, however, **considered a revision** since the 1973 Constitution was "a **completely new** fundamental charter embodying new political, social and economic concepts." [59] Among those adopted under the 1973 Constitution were: the parliamentary system in place of the presidential system, with the leadership in legislation and administration vested with the Prime Minister and his Cabinet; the reversion to a single-chambered lawmaking body instead of the two-chambered, which would be more suitable to a parliamentary system of government; the enfranchisement of the youth beginning eighteen (18) years of age instead of twenty-one (21), and the abolition of literacy, property, and other substantial requirements to widen the basis for the electorate and expand democracy; the strengthening of the judiciary, the civil service system, and the Commission on Elections; the complete nationalization of the ownership and management of mass media; the giving of control to Philippine citizens of all telecommunications; the prohibition against alien individuals to own educational institutions, and the strengthening of the government as a whole to improve the conditions of the masses. [60]

The 1973 Constitution in turn underwent a series of **significant changes** in 1976, 1980, 1981, and 1984. The **two significant innovations** introduced in **1976** were (1) the creation of an *interim* Batasang Pambansa, in place of the *interim* National Assembly, and (2) Amendment No. 6 which conferred on the President the power to issue decrees, orders, or letters of instruction, whenever the Batasang Pambansa fails to act adequately on any matter for any reason that in his judgment requires immediate action, or there is grave emergency or threat or imminence thereof, with such decrees, or letters of instruction to form part of the law of the land. In **1980**, the retirement age of seventy (70) for justices and judges was restored. In **1981**, the presidential system with parliamentary features was installed. The transfer of private land for use as residence to natural-born citizens who had lost their citizenship was also allowed. Then, in **1984**, the membership of the Batasang Pambansa was reapportioned by provinces, cities, or districts in Metro Manila instead of by regions; the Office of the Vice-President was created while the executive committee was abolished; and, urban land reform and social housing programs were strengthened. [61] **These substantial changes were simply considered as mere amendments**.

In **1986**, Mrs. Corazon C. Aquino assumed the presidency, and repudiated the 1973 Constitution. She governed under Proclamation No. 3, known as the Freedom Constitution.

In **February 1987**, the **new constitution** was ratified by the people in a plebiscite and superseded the Provisional or Freedom Constitution. Retired Justice Isagani Cruz underscored the outstanding features of the 1987 Constitution which consists of eighteen articles and is excessively long compared to the Constitutions of 1935 and 1973, on which it was largely based. Many of the original provisions of the 1935 Constitution, particularly those pertaining to the legislative and executive departments, have been restored because of the revival of the bicameral Congress of the Philippines and the strictly presidential

system. The independence of the judiciary has been strengthened, with new provisions for appointment thereto and an increase in its authority, which now covers even political questions formerly beyond its jurisdiction. **While many provisions of the 1973 Constitution were retained**, like those on the Constitutional Commissions and local governments, **still the new 1987 Constitution was deemed as a revision of the 1973 Constitution**.

It is now contended that this traditional distinction between amendment and revision was abrogated by the 1987 Constitution. It is urged that Section 1 of Article XVII gives the power to amend or revise to Congress acting as a constituent assembly, and to a Constitutional Convention duly called by Congress for the purpose. Section 2 of the same Article, it is said, limited the people's right to change the Constitution *via* initiative through **simple amendments**. In other words, the **people cannot propose substantial amendments** amounting to revision.

With due respect, I do not agree. As aforestated, the oppositors-intervenors who peddle the above proposition rely on the opinions of some Commissioners expressed in the course of the debate on how to frame the amendment/revision provisions of the 1987 Constitution. It is **familiar learning**, however, that opinions in a constitutional convention, **especially if inconclusive of an issue**, are of **very limited value** as explaining doubtful phrases, and are an unsafe guide (to the intent of the people) since the constitution derives its force as a fundamental law, not from the action of the convention but from the powers (of the people) who have ratified and adopted it. [62] "**Debates** in the constitutional convention 'are of value as showing the views of the individual members, and as indicating the reasons for their votes, **but they give us no light as to the views of the large majority who did not talk, much less of the mass** of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law.'" [63] **Indeed, a careful perusal of the debates of the Constitutional Commissioners can likewise lead to the conclusion that there was no abandonment of the traditional distinction between "amendment" and "revision."** For during the debates, some of the commissioners referred to the concurring opinion of former Justice Felix Q. Antonio in **Javellana v. The Executive Secretary**, [64] that **stressed the traditional distinction between amendment and revision**, thus: [65]

> MR. SUAREZ: We mentioned the possible use of only one term and that is, "amendment." However, the Committee finally agreed to use the terms — "amendment" or "revision" when our attention was called by the honorable Vice-President to the substantial difference in the connotation and significance between the said terms. As a result of our research, we came up with the observations made in the famous — or notorious — Javellana doctrine, particularly the decision rendered by Honorable Justice Makasiar, [66] wherein he made the following distinction between "amendment" and "revision" of an existing Constitution: "Revision" may involve a rewriting of the whole Constitution. On the other hand, the act of amending a constitution envisages a change of specific provisions only. The intention of an act to amend is not the change of the entire Constitution, but only the improvement of specific parts or the addition of provisions deemed essential as a consequence of new conditions or the elimination of parts already considered obsolete or unresponsive to the needs of the times.
>
> The 1973 Constitution is not a mere amendment to the 1935 Constitution. It is a completely new fundamental Charter embodying new political, social and

economic concepts.

So, the Committee finally came up with the proposal that these two terms should be employed in the formulation of the Article governing amendments or revisions to the new Constitution.

To further explain "revision," former Justice Antonio, in his concurring opinion, used an analogy — "When a house is completely demolished and another is erected on the same location, do you have a changed, repaired and altered house, or do you have a new house? Some of the material contained in the old house may be used again, some of the rooms may be constructed the same, but this does not alter the fact that you have altogether another or a new house." [67]

Hence, it is arguable that when the framers of the 1987 Constitution used the word "revision," they had in mind the "**rewriting of the whole Constitution**," or the "**total overhaul of the Constitution**." **Anything less** is an "amendment" or just "a change of specific provisions only," the intention being "not the change of the entire Constitution, but only the improvement of specific parts or the addition of provisions deemed essential as a consequence of new conditions or the elimination of parts already considered obsolete or unresponsive to the needs of the times." Under this view, "substantial" amendments are still "amendments" and thus can be proposed by the people *via* an initiative.

As we cannot be guided with certainty by the inconclusive opinions of the Commissioners on the difference between "simple" and "substantial" amendments or whether "substantial" amendments amounting to revision are covered by people's initiative, it behooves us to follow the **cardinal rule in interpreting Constitutions**, *i.e.*, construe them to give effect to the **intention of the people who adopted it**. The illustrious Cooley explains its rationale well, *viz*: [68]

> . . . the constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be arrived at is that of the people, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed. These proceedings therefore are less conclusive of the proper construction of the instrument than are legislative proceedings of the proper construction of a statute; since in the latter case it is the intent of the legislature we seek, while in the former we are endeavoring to arrive at the intent of the people through the discussion and deliberations of their representatives. The history of the calling of the convention, the causes which led to it, and the discussions and issues before the people at the time of the election of the delegates, will sometimes be quite as instructive and satisfactory as anything to be gathered form the proceedings of the convention.

Corollarily, a constitution is not to be interpreted on narrow or technical principles, but **liberally and on broad general lines, to accomplish the object of its establishment and carry out the great principles of government — not to defeat them**. [69] One of these great principles is the sovereignty of the people.

Let us now determine the **intent of the people** when they adopted initiative as a mode to amend the 1987 Constitution. We start with the **Declaration of Principles and State Policies** which **Sinco** describes as "the basic political creed of the nation" [70] as it "lays down the policies that government is bound to observe." [71] Section 1, Article II of the 1935 Constitution and Section 1, Article II of the 1973 Constitution, **similarly provide** that "the Philippines is a **republican state**. Sovereignty resides in the people and all government

authority emanates from them." **In a republican state, the power of the sovereign people is exercised and delegated to their representatives**. Thus in **Metropolitan Transportation Service v. Paredes**, this Court held that "a republican state, like the Philippines . . . (is) derived from the will of the people themselves in freely creating a government 'of the people, by the people, and for the people' — a representative government through which they have agreed to exercise the powers and discharge the duties of their sovereignty for the common good and general welfare." [72]

In both the 1935 and 1973 Constitutions, the **sovereign people delegated to Congress or to a convention**, the power to amend or revise our fundamental law. **History informs us how this delegated power to amend or revise the Constitution was abused particularly during the Marcos regime**. The Constitution was changed several times to satisfy the power requirements of the regime. Indeed, **Amendment No. 6** was passed giving unprecedented legislative powers to then President Ferdinand E. Marcos. A conspiracy of circumstances from above and below, however, brought down the Marcos regime through an **extra constitutional revolution**, albeit a peaceful one by the people. **A main reason for the people's revolution was the failure of the representatives of the people to effectuate timely changes in the Constitution either by acting as a constituent assembly or by calling a constitutional convention**. When the representatives of the people **defaulted** in using this **last peaceful process** of constitutional change, the **sovereign people themselves took matters in their own hands**. They revolted and replaced the 1973 Constitution with the 1987 Constitution.

It is significant to note that the people modified the ideology of the 1987 Constitution as it stressed the power of the people to act directly in their capacity as sovereign people. Correspondingly, the power of the legislators to act as representatives of the people in the matter of amending or revising the Constitution was diminished for the spring cannot rise above its source. To reflect this significant shift, Section 1, Article II of the 1987 Constitution was **reworded**. It **now** reads: "the Philippines is a **democratic** and republican state. Sovereignty resides in the people and all government authority emanates from them." The commissioners of the 1986 Constitutional Commission explained the **addition of the word "democratic,"** in our first Declaration of Principles, *viz*:

> MR. NOLLEDO. I am putting the word "democratic" because of the provisions that we are now adopting which are covering consultations with the people. For example, we have provisions on recall, initiative, the right of the people even to participate in lawmaking and other instances that recognize the validity of interference by the people through people's organizations . . . . [73]
>
> MR. OPLE. . . . . The Committee added the word "democratic" to "republican," and, therefore, the first sentence states: "The Philippines is a republican and democratic state . . . .
>
> May I know from the committee the reason for adding the word "democratic" to "republican"? The constitutional framers of the 1935 and 1973 Constitutions were content with "republican." Was this done merely for the sake of emphasis?
>
> MR. NOLLEDO. . . . . **"democratic" was added because of the need to emphasize people power and the many provisions in the Constitution that we have approved related to recall, people's organizations, initiative and the like, which recognize the participation of the people in policy-making in certain**

circumstances . . . .

MR. OPLE. I thank the Commissioner. That is a very clear answer and I think it does meet a need . . . .

MR. NOLLEDO. According to Commissioner Rosario Braid, "democracy" here is understood as participatory democracy. [74] (*emphasis supplied*)

The following exchange between **Commissioners Rene V. Sarmiento** and **Adolfo S. Azcuna** is of the same import: [75]

MR. SARMIENTO. When we speak of republican democratic state, are we referring to representative democracy?

MR. AZCUNA. That is right.

MR. SARMIENTO. So, why do we not retain the old formulation under the 1973 and 1935 Constitutions which used the words "republican state" because "republican state" would refer to a democratic state where people choose their representatives?

MR. AZCUNA. We wanted to emphasize the participation of the people in government.

MR. SARMIENTO. But even in the concept "republican state," we are stressing the participation of the people . . . . So the word "republican" will suffice to cover popular representation.

MR. AZCUNA. Yes, the Commissioner is right. However, the committee felt that in view of the introduction of the aspects of **direct democracy** such as initiative, referendum or recall, it was necessary to emphasize the democratic portion of republicanism, of representative democracy as well. **So, we want to add the word "democratic" to emphasize that in this new Constitution there are instances where the people would act directly, and not through their representatives**. (*emphasis supplied*)

Consistent with the stress on **direct democracy**, the **systems of initiative**, referendum, and recall were enthroned as polestars in the 1987 Constitution. Thus, **Commissioner Blas F. Ople** who introduced the provision on people's initiative said: [76]

MR. OPLE. . . . . I think this is just the correct time in history when we should introduce an innovative mode of proposing amendments to the Constitution, **vesting in the people** and their organizations the right to formulate and **propose their own amendments and revisions of the Constitution** in a manner that will be binding upon the government. It is not that I believe this kind of direct action by the people for amending a constitution will be needed frequently in the future, **but it is good to know that the ultimate reserves of sovereign power still rest upon the people and that in the exercise of that power, they can propose amendments or revision to the Constitution**. (*emphasis supplied*)

Commissioner Jose E. Suarez also explained the people's initiative as a safety valve, as a peaceful way for the people to change their Constitution, by citing our experiences under the Marcos government, *viz*: [77]

MR. SUAREZ. We agree to the difficulty in implementing this particular provision,

but we are providing a channel for the expression of the sovereign will of the people through this initiative system.

MR. BENGZON. Is Section 1, paragraphs (a) and (b), not sufficient channel for expression of the will of the people, particularly in the amendment or revision of the Constitution?

MR. SUAREZ. Under normal circumstances, yes. **But we know what happened during the 20 years under the Marcos administration. So, if the National Assembly, in a manner of speaking**, is operating under the thumb of the Prime Minister or the President as the case may be, and the required number of votes could not be obtained, we would have to provide for a **safety valve** in order that the people could ventilate in a very peaceful way their desire for amendment to the Constitution.

It is very possible that although the people may be pressuring the National Assembly to constitute itself as a constituent assembly or to call a constitutional convention, the members thereof would not heed the people's desire and clamor. So this is a third avenue that we are providing for the implementation of what is now popularly known as people's power. (*emphasis supplied*)

Commissioner Regalado E. Maambong opined that the **people's initiative could avert a revolution**, *viz*: [78]

MR. MAAMBONG. . . . . the amending process of the Constitution **could actually avert a revolution** by providing a safety valve in bringing about changes in the Constitution through pacific means. This, in effect, operationalizes what political law authors call the "prescription of sovereignty." (*emphasis supplied*)

The **end result** is Section 2, Article XVII of the 1987 Constitution which expressed the right of the sovereign people to propose amendments to the Constitution by direct action or through initiative. To that extent, **the delegated power of Congress to amend or revise the Constitution has to be adjusted downward**. Thus, Section 1, Article VI of the 1987 Constitution has to be **reminted and now provides**: "The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the **extent reserved to the people by the provision on initiative and referendum**."

Prescinding from these baseline premises, **the argument that the people through initiative cannot propose substantial amendments to change the Constitution turns sovereignty on its head**. At the very least, the **submission constricts the democratic space** for the exercise of the direct sovereignty of the people. It also denigrates the sovereign people who they claim can only be trusted with the power to propose **"simple" but not "substantial"** amendments to the Constitution. According to **Sinco**, the concept of sovereignty should be strictly understood in its legal meaning as it was originally developed in law. [79] Legal sovereignty, he explained, is "the possession of **unlimited power to make laws**. Its possessor is the legal sovereign. It implies the absence of any other party endowed with legally superior powers and privileges. **It is not subject to law 'for it is the author and source of law.'** Legal sovereignty is thus the equivalent of **legal omnipotence**." [80]

To be sure, sovereignty or popular sovereignty, emphasizes the supremacy of the people's will over the state which they themselves have created. The state is created by and subject

to the will of the people, who are the source of all political power. Rightly, we have ruled that "the sovereignty of our people is not a kabalistic principle whose dimensions are buried in mysticism. Its metes and bounds are familiar to the framers of our Constitutions. They knew that in its broadest sense, sovereignty is meant to be supreme, the *jus summi imperu*, the absolute right to govern." [81]

James Wilson, regarded by many as the most brilliant, scholarly, and visionary lawyer in the United States in the 1780s, laid down the first principles of popular sovereignty during the Pennsylvania ratifying convention of the 1787 Constitution of the United States: [82]

> There necessarily exists, in every government, a power from which there is no appeal, and which, for that reason, may be termed supreme, absolute, and uncontrollable.
>
> . . . . Perhaps some politician, who has not considered with sufficient accuracy our political systems, would answer that, in our governments, the supreme power was vested in the constitutions . . . . This opinion approaches a step nearer to the truth, but does not reach it. **The truth is, that in our governments, the supreme, absolute, and uncontrollable power remains in the people**. As our constitutions are superior to our legislatures, so the people are superior to our constitutions. Indeed the superiority, in this last instance, is much greater; for the people possess over our constitution, control in *act*, as well as right. (*emphasis supplied*)

I wish to reiterate that in a democratic and republican state, only the people is sovereign — not the elected President, not the elected Congress, not this unelected Court. Indeed, the sovereignty of the people which is **indivisible** cannot be reposed in any organ of government. **Only its exercise may be delegated to any of them. In our case, the people delegated to Congress the exercise of the sovereign power to amend or revise the Constitution**. If Congress, as delegate, can exercise this power to amend or revise the Constitution, can it be argued that the sovereign people who delegated the power has no power to substantially amend the Constitution by direct action? If the sovereign people do not have this power to make substantial amendments to the Constitution, what did it delegate to Congress? How can the people lack this **fraction of a power** to substantially amend the Constitution when by their sovereignty, **all power** emanates from them? It will take some *mumbo jumbo* to argue that the whole is lesser than its part. Let **Sinco** clinch the point: [83]

> But although possession may not be delegated, the exercise of sovereignty often is. It is delegated to the organs and agents of the state which constitute its government, for it is only through this instrumentality that the state ordinarily functions. **However ample and complete this delegation may be, it is nevertheless subject to withdrawal at any time by the state**. On this point Willoughby says:
>
> > Thus, States may concede to colonies almost complete autonomy of government and reserve to themselves a right to control of so slight and so negative a character as to make its exercise a rare and improbable occurrence; yet so long as such right of control is recognized to exist, and the autonomy of the colonies is conceded to be founded upon a grant and continuing consent of the mother countries the sovereignty of those mother countries over them is complete and they are to be considered as possessing only administrative autonomy and not political independence.

At the very least, the power to propose substantial amendments to the

Constitution is shared with the people. We should accord the most benign treatment to the sovereign power of the people to propose substantial amendments to the Constitution especially when the proposed amendments will adversely affect the interest of some members of Congress. A contrary approach will suborn the public weal to private interest and worse, will enable Congress (the delegate) to frustrate the power of the people to determine their destiny (the principal).

All told, the **teaching of the ages** is that constitutional clauses acknowledging the right of the people to exercise initiative and referendum are **liberally and generously construed in favor of the people**. [84] Initiative and referendum powers must be broadly construed to maintain **maximum power in the people**. [85] We followed this orientation in **Subic Bay Metropolitan Authority v. Commission on Elections**. [86] There is not an iota of reason to depart from it.

V

The issues at bar are not political questions.

Petitioners submit that "[t]he validity of the exercise of the right of the sovereign people to amend the Constitution and their will, as expressed by the fact that over six million registered voters indicated their support of the Petition for Initiative, is a **purely political question** which is beyond even the very long arm of this Honorable Court's power of judicial review. Whether or not the 1987 Constitution should be amended is a matter which the people and the people alone must resolve in their sovereign capacity." [87] They argue that "[t]he power to propose amendments to the Constitution is a right explicitly bestowed upon the sovereign people. Hence, the determination by the people to exercise their right to propose amendments under the system of initiative is a sovereign act and falls squarely within the ambit of a 'political question.'" [88]

The petitioners cannot be sustained. This issue has long been interred by **Sanidad v. Commission on Elections**, *viz*: [89]

> Political questions are neatly associated with the wisdom, *not* the legality of a particular act. Where the *vortex* of the controversy refers to the legality or validity of the contested act, that matter is definitely justiciable or non-political. What is in the heels of the Court is not the wisdom of the act of the incumbent President in proposing amendments to the Constitution, *but* his constitutional authority to perform such act or to assume the power of a constituent assembly. Whether the amending process confers on the President that power to propose amendments is therefore a downright justiciable question. Should the contrary be found, the actuation of the President would merely be a *brutum fulmen*. If the Constitution provides how it may be amended, the judiciary as the interpreter of that Constitution, can declare whether the procedure followed or the authority assumed was valid or not.
>
> We cannot accept the view of the Solicitor General, in pursuing his theory of non-justiciability, that the question of the President's authority to propose amendments and the regularity of the procedure adopted for submission of the proposals to the people ultimately lie in the judgment of the latter. A clear Descartes fallacy of *vicious cycle*. Is it not that the people themselves, by their sovereign act, provided for the authority and procedure for the amending process when they ratified the present Constitution in 1973? Whether, therefore, that constitutional provision has

> been followed or not is indisputably a proper subject of inquiry, not by the people themselves — of course — who exercise no power of judicial review, but by the Supreme Court in whom the people themselves vested that power, a power which includes the competence to determine whether the constitutional norms for amendments have been observed or not. And, this inquiry must be done a *priori* not a *posteriori*, *i.e.*, before the submission to and ratification by the people.

In the instant case, the Constitution sets in black and white the requirements for the exercise of the people's initiative to amend the Constitution. The amendments must be proposed by the people "upon a petition of **at least twelve *per centum*** of the total number of registered voters, of which every legislative district must be represented by **at least three *per centum*** of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution **nor oftener than once every five years thereafter**." [90] Compliance with these requirements is clearly a justiciable and not a political question. Be that as it may, how the issue will be resolved by the people is addressed to them and to them alone.

VI

Whether the Petition for Initiative filed before the COMELEC complied with Section 2, Article XVII of the Constitution and R.A. 6735 involves contentious issues of fact which should first be resolved by the COMELEC.

Oppositors-intervenors impugn the Petition for Initiative as it allegedly lacks the required number of signatures under Section 2, Article XVII of the Constitution. Said provision requires that the petition for initiative be supported by at least twelve *per cent* (12%) of the total number of registered voters, of which every legislative district must be represented by at least three *per cent* (3%) of the registered voters therein. Oppositors-intervenors contend that **no proper verification of signatures** was done in several legislative districts. They assert that mere verification of the names listed on the signature sheets without verifying the signatures reduces the signatures submitted for their respective legislative districts to mere scribbles on a piece of paper.

Oppositor-intervenor ONEVOICE, Inc., submitted to this Court a certification dated August 23, 2006 issued by Atty. Marlon S. Casquejo, Election Officer IV, Third District and OIC, First and Second District, Davao City, stating that his office has not verified the signatures submitted by the proponents of the people's initiative. The certification reads:

> This is to CERTIFY that this office (First, Second and Third District, Davao City) HAS **NOT VERIFIED** the signatures of registered voters as per documents submitted in this office by the proponents of the People's Initiative. Consequently, **NO ELECTION DOCUMENTS AND/OR ORDER ISSUED BY HIGHER SUPERIORS** used as basis for such verification of signatures. [91]

Senate Minority Leader Aquilino Pimentel, Jr., among others, further clarified that although Atty. Casquejo and Reynne Joy B. Bullecer, Acting Election Officer IV, First District, Davao City, later issued certifications stating that the Office of the City Election Officer has examined the list of individuals appearing in the signature sheets, [92] the certifications reveal that the office had verified only the names of the signatories, but not their signatures. Oppositors-intervenors submit that not only the names of the signatories should be verified, but also their signatures to ensure the identities of the persons affixing their signatures on the signature sheets.

Oppositor-intervenor Luwalhati Antonino also alleged that petitioners failed to obtain the

signatures of at least three *per cent* (3%) of the total number of registered voters in the First Legislative District of South Cotabato. For the First District of South Cotabato, petitioners submitted 3,182 signatures for General Santos City, 2,186 signatures for Tupi, 3,308 signatures for Tampakan and 10,301 signatures for Polomolok, or 18,977 signatures out of 359,488 registered voters of said district. Antonino, however, submitted to this Court a copy of the certification by Glory D. Rubio, Election Officer III, Polomolok, dated May 8, 2006, showing that the signatures from Polomolok were not verified because the Book of Voters for the whole municipality was in the custody of the Clerk of Court of the Regional Trial Court, Branch 38, Polomolok, South Cotabato. [93] Excluding the signatures from Polomolok from the total number of signatures from the First District of South Cotabato would yield only a total of 8,676 signatures which falls short of the three *per cent* (3%) requirement for the district.

Former President Joseph Ejercito Estrada and Pwersa ng Masang Pilipino likewise submitted to this Court a certification issued by Atty. Stalin A. Baguio, City Election Officer IV, Cagayan de Oro City, stating that the list of names appearing on the signature sheets corresponds to the names of registered voters in the city, thereby implying that they have not actually verified the signatures. [94]

The argument against the sufficiency of the signatures is further bolstered by Alternative Law Groups, Inc., which submitted copies of similarly worded certifications from the election officers from Zamboanga del Sur [95] and from Compostela Valley. [96] Alternative Law Groups, Inc., further assails the regularity of the verification process as it alleged that verification in some areas were conducted by Barangay officials and not by COMELEC election officers. It filed with this Court copies of certifications from Sulu and Sultan Kudarat showing that the verification was conducted by local officials instead of COMELEC personnel. [97]

Petitioners, on the other hand, maintain that the verification conducted by the election officers sufficiently complied with the requirements of the Constitution and the law on initiative.

Contravening the allegations of oppositors-intervenors on the lack of verification in Davao City and in Polomolok, South Cotabato, petitioner Aumentado claimed that the same election officers cited by the oppositors-intervenors also issued certifications showing that they have verified the signatures submitted by the proponents of the people's initiative. He presented copies of the certifications issued by Atty. Marlon S. Casquejo for the Second and Third Legislative Districts of Davao City stating that he verified the signatures of the proponents of the people's initiative. His certification for the Second District states:

> This is to CERTIFY that this Office has examined the list of individuals as appearing in the Signature Sheets of the Registered Voters of District II, Davao City, submitted on April 7, 2006 by MR. NONATO BOLOS, Punong Barangay, Centro, Davao City for verification which consists of THIRTY THOUSAND SIX HUNDRED SIXTY-TWO (30,662) signatures.
>
> Anent thereto, it appears that of the THIRTY THOUSAND SIX HUNDRED SIXTY-TWO (30,662) individuals, only TWENTY-TWO THOUSAND SIX HUNDRED SIXTY-EIGHT (22,668) individuals were found to be REGISTERED VOTERS, in the Computerized List of Voters of SECOND CONGRESSIONAL DISTRICT, DAVAO CITY. [98]

It was also shown that Atty. Casquejo had issued a clarificatory certification regarding the verification process conducted in Davao City. It reads:

> Regarding the verification of the signatures of registered voters, this Office has previously issued two (2) separate certifications for the 2nd and 3rd Districts of Davao City on April 20, 2006 and April 26, 2006, respectively, specifically relating to the voters who supported the people's initiative. It was stated therein that the names submitted, comprising 22,668 individual voters in the 2nd District and 18,469 individual voters in the 3rd District, were found [to] be registered voters of the respective districts mentioned as verified by this Office based on the Computerized List of Voters.
>
> It must be clarified that the August 23, 2006 Certification was issued in error and by mistake for the reason that the signature verification has not been fully completed as of that date.
>
> I hereby CERTIFY that this Office has examined the signatures of the voters as appearing in the signature sheets and has compared these with the signatures appearing in the book of voters and computerized list of voters . . . [99]

Petitioner Aumentado also submitted a copy of the certification dated May 8, 2006 issued by Polomolok Election Officer Glory D. Rubio to support their claim that said officer had conducted a verification of signatures in said area. The certification states:

> This is to certify further, that the total 68,359 registered voters of this municipality, as of the May 10, 2004 elections, 10,804 names with signatures were submitted for verification and out of which 10,301 were found to be legitimate voters as per official list of registered voters, which is equivalent to 15.07% of the total number of registered voters of this Municipality. [100]

In addition to the lack of proper verification of the signatures in numerous legislative districts, allegations of fraud and irregularities in the collection of signatures in Makati City were cited by Senator Pimentel, among others, to *wit*:

> (1) No notice was given to the public, for the benefit of those who may be concerned, by the Makati COMELEC Office that signature sheets have already been submitted to it for "verification." The camp of Mayor Binay was able to witness the "verification process" only because of their pro-active stance;
>
> (2) In District 1, the proponents of charter change submitted 43,405 signatures for verification. 36,219 alleged voters' signatures (83% of the number of signatures submitted) were rejected outright. 7,186 signatures allegedly "passed" COMELEC's initial scrutiny. However, upon examination of the signature sheets by Atty. Mar-len Abigail Binay, the said 7,186 signatures could not be accounted for. Atty. Binay manually counted 2,793 signatures marked with the word "OK" and 3,443 signatures marked with a check, giving only 6,236 "apparently verified signatures." Before the COMELEC officer issued the Certification, Atty. Binay already submitted to the said office not less than 55 letters of "signature withdrawal," but no action was ever taken thereon;
>
> (3) In District 2, 29,411 signatures were submitted for verification. 23,521 alleged voters' signatures (80% of those submitted) were rejected outright. Of the 5,890 signatures which allegedly passed the COMELEC's initial scrutiny, some more will surely fail upon closer examination;
>
> (4) In the absence of clear, transparent, and uniform rules the COMELEC personnel did not know how to treat the objections and other observations coming from the camp of Mayor Binay. The oppositors too did not know where to go for

their remedy when the COMELEC personnel merely "listened" to their objections and other observations. As mentioned earlier, the COMELEC personnel did not even know what to do with the many "letters of signature withdrawal" submitted to it;

(5) Signatures of people long dead, in prison, abroad, and other forgeries appear on the Sigaw ng Bayan Signature Sheets. There is even a 15-year old alleged signatory;

(6) There are Signature Sheets obviously signed by one person;

(7) A Calara M. Roberto and a Roberto M. Calara both allegedly signed the Signature Sheets. [101]

Also, there are allegations that many of the signatories did not understand what they have signed as they were merely misled into signing the signature sheets. Opposed to these allegations are rulings that a person who affixes his signature on a document raises the presumption that the person so signing has knowledge of what the document contains. Courts have recognized that there is great value in the stability of records, so to speak, that no one should commit herself or himself to something in writing unless she or he is fully aware and cognizant of the effect it may have upon her on him. [102] In the same vein, we have held that a person is presumed to have knowledge of the contents of a document he has signed. [103] But as this Court is not a trier of facts, it cannot resolve the issue.

In sum, **the issue** of whether the petitioners have complied with the constitutional requirement that the petition for initiative be signed by at least twelve *per cent* (12%) of the total number of registered voters, of which every legislative district must be represented by at least three *per cent* (3%) of the registered voters therein, **involves contentious facts. Its resolution will require presentation of evidence and their calibration by the COMELEC according to its rules**. During the oral argument on this case, the **COMELEC**, through Director Alioden Dalaig of its Law Department, **admitted** that it has not examined the documents submitted by the petitioners in support of the petition for initiative, as well as the documents filed by the oppositors to buttress their claim that the required number of signatures has not been met. The exchanges during the oral argument likewise clearly show the need for further clarification and presentation of evidence to prove certain material facts. [104]

The **only basis used by the COMELEC** to dismiss the petition for initiative was this Court's ruling in **Santiago v. COMELEC** that R.A. 6735 was insufficient. **It has yet to rule on the sufficiency of the form and substance of the petition**. I respectfully submit that this **issue should be properly litigated before the COMELEC** where both parties will be given full opportunity to prove their allegations.

For the same reasons, the sufficiency of the Petition for Initiative and its compliance with the requirements of R.A. 6735 on initiative and its implementing rules is a question that should be resolved by the COMELEC at the first instance, as it is the body that is mandated by the Constitution to administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall. [105]

VII

COMELEC gravely abused its discretion when it denied due course to the Lambino and Aumentado petition.

In denying due course to the Lambino and Aumentado petition, COMELEC **relied** on this Court's ruling in **Santiago** permanently enjoining it from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution until a sufficient law shall

have been validly enacted to provide for the implementation of the system.

Again, I respectfully submit that COMELEC's reliance on **Santiago** constitutes grave abuse of discretion amounting to lack of jurisdiction. The **Santiago** case **did not establish the firm doctrine** that R.A. 6735 is not a sufficient law to implement the constitutional provision allowing people's initiative to amend the Constitution. To recapitulate, the records show that in the **original decision, eight (8) justices** [106] voted that R.A. 6735 was not a sufficient law; five (5) justices [107] voted that said law was sufficient; and one (1) justice [108] abstained from voting on the issue holding that unless and until a proper initiatory pleading is filed, the said issue is not ripe for adjudication. [109]

Within the reglementary period, the respondents filed their motion for reconsideration. On June 10, 1997, the Court denied the motion. Only thirteen (13) justices resolved the motion for Justice Torres inhibited himself. [110] **Of the original majority of eight (8) justices, only six (6) reiterated their ruling that R.A. 6735 was an insufficient law**. Justice Hermosisima, originally part of the majority of eight (8) justices, changed his vote and joined the minority of five (5) justices. He opined without any equivocation that R.A. 6735 was a sufficient law, thus:

> It is one thing to utter a happy phrase from a protected cluster; another to think under fire — to think for action upon which great interests depend." So said Justice Oliver Wendell Holmes, and so I am guided as I reconsider my concurrence to the holding of the majority that "R.A. No. 6735 is inadequate to cover the system of initiative on amendments to the Constitution and to have failed to provide sufficient standard for subordinate legislation" and now to interpose my dissent thereto.
>
> xxx xxx xxx
>
> WHEREFORE, I vote to dismiss the Delfin petition.
>
> **I vote, however, to declare R.A. No. 6735 as adequately providing the legal basis for the exercise by the people of their right to amend the Constitution through initiative proceedings** and to uphold the validity of COMELEC Resolution No. 2300 insofar as it does not sanction the filing of the initiatory petition for initiative proceedings to amend the Constitution without the required names and/or signatures of at least 12% of all the registered voters, of which every legislative district must be represented by at least 3% of the registered voters therein. (*emphasis supplied*)

Justice Vitug remained steadfast in refusing to rule on the sufficiency of R.A. 6735. In fine, the **final vote** on whether R.A. 6735 is a sufficient law was **6-6** with one (1) justice inhibiting himself and another justice refusing to rule on the ground that the issue was not ripe for adjudication.

It ought to be beyond debate that the six (6) justices who voted that R.A. 6735 is an insufficient law failed to establish a doctrine that could serve as a precedent. Under any alchemy of law, **a deadlocked vote of six (6) is not a majority and a non-majority cannot write a rule with precedential value**. The opinion of the late Justice Ricardo J. Francisco is instructive, *viz*:

> As it stands, of the thirteen justices who took part in the deliberations on the issue of whether the motion for reconsideration of the March 19, 1997 decision should be granted or not, only the following justices sided with Mr. Justice Davide, namely: Chief Justice Narvasa, and Justices Regalado, Romero, Bellosillo and

> Kapunan. Justices Melo, Puno, Mendoza, Hermosisima, Panganiban and the undersigned voted to grant the motion; while Justice Vitug "maintained his opinion that the matter was not ripe for judicial adjudication." In other words, only five, out of the other twelve justices, joined Mr. Justice Davide's June 10, 1997 ponencia finding R.A. No. 6735 unconstitutional for its failure to pass the so called "completeness and sufficiency standards" tests. The "concurrence of a majority of the members who actually took part in the deliberations" which Article VII, Section 4(2) of the Constitution requires to declare a law unconstitutional was, beyond dispute, not complied with. And even assuming, for the sake of argument, that the constitutional requirement on the concurrence of the "majority" was initially reached in the March 19, 1997 ponencia, the same is inconclusive as it was still open for review by way of a motion for reconsideration. It was only on June 10, 1997 that the constitutionality of R.A. No. 6735 was settled with finality, sans the constitutionally required "majority." The Court's declaration, therefore, is manifestly grafted with infirmity and wanting in force necessitating, in my view, the reexamination of the Court's decision in G.R. No. 127325. It behooves the Court "not to tarry any longer" nor waste this opportunity accorded by this new petition (G.R. No. 129754) to relieve the Court's pronouncement from constitutional infirmity.

The jurisprudence that an equally divided Court can never set a precedent is well-settled. Thus, in the United States, an affirmance in the **Federal Supreme Court** upon **equal division of opinion** is not an authority for the determination of other cases, either in that Court or in the inferior federal courts. In **Neil v. Biggers**, [111] which was a *habeas corpus* state proceeding by a state prisoner, the **U.S. Supreme Court** held that its **equally divided affirmance** of petitioner's state court conviction was not an "actual adjudication" barring subsequent consideration by the district court on *habeas corpus*. In discussing the **non-binding effect of an equal division ruling**, the Court reviewed the history of cases explicating the disposition "affirmed by an equally divided Court:"

> In this light, we review our cases explicating the disposition "affirmed by an equally divided Court." On what was apparently the **first occasion** of an equal division, **The Antelope, 10 Wheat, 66, 6 L. Ed. 268 (1825)**, the Court simply affirmed on the point of division without much discussion. **Id., at 126-127**. Faced with a similar division during the **next** Term, the Court again affirmed, Chief Justice Marshall explaining that "the principles of law which have been argued, cannot be settled; but the judgment is affirmed, the court being divided in opinion upon it." **Etting v. Bank of United States, 11 Wheat. 59, 78, 6 L. Ed. 419 (1826)**. As was later elaborated in such cases, it is the appellant or petitioner who asks the Court to overturn a lower court's decree. "If the judges are divided, the reversal cannot be had, for no order can be made. The judgment of the court below, therefore, stands in full force. It is indeed, the settled practice in such case to enter a judgment of affirmance; but this is only the most convenient mode of expressing the fact that the cause is finally disposed of in conformity with the action of the court below, and that that court can proceed to enforce its judgment. The legal effect would be the same if the appeal, or writ of error, were dismissed." **Durant v. Essex Co., 7 Wall. 107, 112, 19 L. Ed. 154 (1869)**. Nor is an affirmance by an equally divided Court entitled to precedential weight. **Ohio ex rel. Eaton v. Price, 364 U.S. 263, 264, 80 S. Ct. 1463, 1464, 4 L. Ed. 2d 1708 (1960). . . .**"

This doctrine established in **Neil** has not been overturned and has been **cited with approval** in a number of subsequent cases, [112] and has been **applied in various state jurisdictions**.

In the case of **In the Matter of the Adoption of Erin G., a Minor Child**,[113] wherein a putative father sought to set aside a decree granting petition for adoption of an Indian child on grounds of noncompliance with the requirements of Indian Child Welfare Act (ICWA), the **Supreme Court of Alaska** held that its decision in **In re Adoption of T.N.F. (T.N.F.)**,[114] **which lacked majority opinion supporting holding** that an action such as the putative father's would be governed by the state's one-year statute of limitations, was not entitled to *stare decisis* effect. In **T.N.F., a majority of the justices sitting did not agree on a common rationale**, as two of four participating justices agreed that the state's one-year statute of limitations applied, one justice concurred in the result only, and one justice dissented. There was no "narrower" reasoning agreed upon by all three affirming justices. The concurring justice expressed no opinion on the statute of limitations issue, and in agreeing with the result, he reasoned that ICWA did not give the plaintiff standing to sue.[115] The two-justice plurality, though agreeing that the state's one-year statute of limitations applied, specifically disagreed with the concurring justice on the standing issue.[116] Because a majority of the participating justices in **T.N.F.** did not agree on any one ground for affirmance, it was not accorded *stare decisis* effect by the state Supreme Court.

The **Supreme Court of Michigan** likewise ruled that the doctrine of *stare decisis* **does not apply to plurality decisions** in which no majority of the justices participating agree to the reasoning and as such are not authoritative interpretations binding on the Supreme Court.[117]

In **State ex rel. Landis v. Williams**,[118] the **Supreme Court of Florida**, in an **equally divided** opinion on the matter,[119] held that chapter 15938, Acts of 1933 must be allowed to stand, dismissing a *quo warranto* suit without prejudice. The Court held:

> In a cause of original jurisdiction in this court a statute cannot be declared unconstitutional nor its enforcement nor operation judicially interfered with, except by the concurrence of a majority of the members of the Supreme Court sitting in the cause wherein the constitutionality of the statute is brought in question or judicial relief sought against its enforcement. Section 4 of Article 5, state Constitution.
>
> Therefore in this case the concurrence of a majority of the members of this court in holding unconstitutional said chapter 15938, supra, not having been had, it follows that the statute in controversy must be allowed to stand and accordingly be permitted to be enforced as a presumptively valid act of the Legislature, and that this proceeding in *quo warranto* must be dismissed without prejudice. **Spencer v. Hunt (Fla.) 147 So. 282**. This decision is not to be regarded as a judicial precedent on the question of constitutional law involved concerning the constitutionality *vel non* of chapter 15938. **State ex rel. Hampton v. McClung, 47 Fla. 224, 37 So. 51**.
>
> *Quo warranto* proceeding dismissed without prejudice by equal division of the court on question of constitutionality of statute involved.

In **U.S. v. Pink**,[120] the Court held that the affirmance by the U.S. Supreme Court by an **equally divided vote** of a decision of the New York Court of Appeals that property of a New York branch of a Russian insurance company was outside the scope of the Russian Soviet government's decrees terminating existence of insurance companies in Russia and seizing their assets, while conclusive and binding upon the parties as respects the controversy in that action, **did not constitute an authoritative "precedent."**

In **Berlin v. E.C. Publications, Inc.**,[121] the **U.S. Court of Appeals Second Circuit**, in holding that printed lyrics which had the same meter as plaintiffs' lyrics, but which were in

form a parody of the latter, did not constitute infringement of plaintiffs' copyrights, ruled that the prior case of **Benny v. Loew's, Inc.**,[122] which was **affirmed by an equally divided court, was not binding** upon it, *viz*:

> Under the precedents of this court, and, as seems justified by reason as well as by authority, an affirmance by an equally divided court is as between the parties, a conclusive determination and adjudication of the matter adjudged; but the principles of law involved not having been agreed upon by a majority of the court sitting prevents the case from becoming an authority for the determination of other cases, either in this or in inferior courts.[123]

In **Perlman v. First National Bank of Chicago**,[124] the **Supreme Court of Illinois** dismissed the appeal as it was unable to reach a decision because two judges recused themselves and the remaining members of the Court were so divided, it was impossible to secure the concurrence of four judges as is constitutionally required. **The Court followed the procedure employed by the U.S. Supreme Court when the Justices of that Court are equally divided**, *i.e.* affirm the judgment of the court that was before it for review. The affirmance is a conclusive determination and adjudication as between the parties to the immediate case, it is not authority for the determination of other cases, either in the Supreme Court or in any other court. It is not "entitled to precedential weight." The legal effect of such an affirmance is the same as if the appeal was dismissed.[125]

The same rule is settled in the **English Courts**. Under English precedents,[126] an affirmance by an equally divided Court is, as between the parties, a conclusive determination and adjudication of the matter adjudged; but the principles of law involved not having been agreed upon by a majority of the court sitting prevents the case from becoming an authority for the determination of other cases, either in that or in inferior courts.

After a tour of these cases, we can safely conclude that the **prevailing doctrine** is that, **the affirmance by an equally divided court merely disposes of the present controversy as between the parties and settles no issue of law**; the affirmance leaves unsettled the principle of law presented by the case **and is not entitled to precedential weight or value**. In other words, the decision only has *res judicata* and not *stare decisis* effect. **It is not conclusive and binding upon other parties as respects the controversies in other actions**.

Let us now examine the **patent differences** between the petition at bar and the **Delfin Petition** in the **Santiago** case which will prevent the Santiago ruling from binding the present petitioners. To start with, the parties are different. More importantly, the **Delfin Petition** did not contain the signatures of the required number of registered voters under the Constitution: the requirement that twelve *per cent* (12%) of all the registered voters in the country wherein each legislative district is represented by at least three *per cent* (3%) of all the registered voters therein was not complied with. For this reason, we ruled unanimously that it was not the initiatory petition which the COMELEC could properly take cognizance of. **In contrast**, the present petition appears to be accompanied by the signatures of the required number of registered voters. Thus, while the **Delfin Petition** prayed that an Order be issued fixing the time and dates for signature gathering all over the country, the Lambino and Aumentado petition, prayed for the calling of a plebiscite to allow the Filipino people to express their sovereign will on the proposition. COMELEC cannot close its eyes to these material differences.

Plainly, the COMELEC committed grave abuse of discretion amounting to lack of jurisdiction in denying due course to the Lambino and Aumentado petition on the basis of its mistaken notion that **Santiago** established the doctrine that R.A. 6735 was an insufficient law. As aforestressed, that ruling of six (6) justices who do not represent the majority lacks precedential status and is non-binding on the present petitioners.

The Court's dismissal of the PIRMA petition is of no moment. Suffice it to say that we dismissed the **PIRMA** petition on the principle of ***res judicata***. This was stressed by former Chief Justice Hilario G. Davide Jr., *viz*:

> The following are my reasons as to why this petition must be summarily dismissed:
>
> ***First*, it is barred by *res judicata***. No one aware of the pleadings filed here and in *Santiago v. COMELEC* (G.R. No. 127325, 19 March 1997) may plead ignorance of the fact that the former is substantially identical to the latter, except for the reversal of the roles played by the principal parties and inclusion of additional, yet not indispensable, parties in the present petition. But plainly, the same issues and reliefs are raised and prayed for in both cases.
>
> The principal petitioner here is the PEOPLE'S INITIATIVE FOR REFORM, MODERNIZATION, AND ACTION (PIRMA) and spouses ALBERTO PEDROSA and CARMEN PEDROSA. PIRMA is self-described as "a non-stock, non-profit organization duly organized and existing under Philippine laws with office address at Suite 403, Fedman Suites, 199 Salcedo Street, Legaspi Village, Makati City," with "ALBERTO PEDROSA and CARMEN PEDROSA" as among its "officers." In *Santiago*, the PEDROSAS were made respondents as founding members of PIRMA which, as alleged in the body of the petition therein, "proposes to undertake the signature drive for a people's initiative to amend the Constitution." In *Santiago* then, the PEDROSAS were sued in their capacity as founding members of PIRMA.
>
> The decision in *Santiago* specifically declared that PIRMA was duly represented at the hearing of the Delfin petition in the COMELEC. In short, PIRMA was intervenor-petitioner therein. Delfin alleged in his petition that he was a founding member of the Movement for People's Initiative, and under footnote no. 6 of the decision, it was noted that said movement was "[l]ater identified as the People's Initiative for Reforms, Modernization and Action, or PIRMA for brevity." In their Comment to the petition in *Santiago*, the PEDROSAS did not deny that they were founding members of PIRMA, and by their arguments, demonstrated beyond a shadow of a doubt that they had joined Delfin or his cause.
>
> No amount of semantics may then shield herein petitioners PIRMA and the PEDROSAS, as well as the others joining them, from the operation of the principle of *res judicata*, which needs no further elaboration. (*emphasis supplied*)

Justice Josue N. Bellosillo adds:

> The essential requisites of *res judicata* are: (1) the former judgment must be final; (2) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be between the first and second actions identity of parties, identity of subject matter, and identity of causes of action. [127]
>
> Applying these principles in the instant case, we hold that all the elements of *res judicata* are present. For sure, our Decision in *Santiago v. COMELEC,* which was promulgated on 19 March 1997, and the motions for reconsideration thereof

denied with finality on 10 June 1997, is undoubtedly final. The said Decision was rendered by this Court which had jurisdiction over the petition for prohibition under Rule 65. Our judgment therein was on the merits, *i.e.*, rendered only after considering the evidence presented by the parties as well as their arguments in support of their respective claims and defenses. And, as between *Santiago v. COMELEC* case and COMELEC Special Matter No. 97-001 subject of the present petition, there is identity of parties, subject matter and causes of action.

Petitioners contend that the parties in *Santiago v. COMELEC* are not identical to the parties in the instant case as some of the petitioners in the latter case were not parties to the former case. However, a perusal of the records reveals that the parties in *Santiago v. COMELEC* included the COMELEC, Atty. Jesus S. Delfin, spouses Alberto and Carmen Pedrosa, in their capacities as founding members of PIRMA, as well as Atty. Pete Quirino-Quadra, another founding member of PIRMA, representing PIRMA, as respondents. In the instant case, Atty. Delfin was never removed, and the spouses Alberto and Carmen Pedrosa were joined by several others who were made parties to the petition. In other words, what petitioners did was to make it appear that the PIRMA Petition was filed by an entirely separate and distinct group by removing some of the parties involved in *Santiago v. COMELEC* and adding new parties. But as we said in *Geralde v. Sabido*[128] —

> A party may not evade the application of the rule of *res judicata* by simply including additional parties in the subsequent case or by not including as parties in the later case persons who were parties in the previous suit. The joining of new parties does not remove the case from the operation of the rule on *res judicata* if the party against whom the judgment is offered in evidence was a party in the first action; otherwise, the parties might renew the litigation by simply joining new parties.

The fact that some persons or entities joined as parties in the PIRMA petition but were not parties in *Santiago v. COMELEC* does not affect the operation of the prior judgment against those parties to the PIRMA Petition who were likewise parties in *Santiago v. COMELEC,* as they are bound by such prior judgment.

Needless to state, the dismissal of the PIRMA petition which was based on ***res judicata*** binds only PIRMA but not the petitioners.

VIII

Finally, let the people speak.

"It is a Constitution we are expounding" solemnly intoned the great **Chief Justice John Marshall** of the United States in the 1819 case of **M'cCulloch v. Maryland**.[129] Our Constitution is not a mere collection of slogans. Every syllable of our Constitution is suffused with significance and requires our full fealty. Indeed, the rule of law will wither if we allow the commands of our Constitution to underrule us.

The **first principle** enthroned by blood in our Constitution is the **sovereignty of the people**. We ought to be concerned with this first principle, *i.e.*, the inherent right of the sovereign people to decide whether to amend the Constitution. Stripped of its abstractions, **democracy** is all about who has the sovereign right to make decisions for the people and our Constitution clearly and categorically says it is no other than the people themselves from whom all government authority emanates. **This right of the people to make decisions is the essence of sovereignty, and it cannot receive any minimalist interpretation from this Court**. If there is any principle in the Constitution that cannot be diluted and is non-negotiable, it is this sovereign right of the people to decide.

This Court should always be in lockstep with the people in the exercise of their sovereignty. Let them who will diminish or destroy the sovereign right of the people to decide be warned. Let not their sovereignty be diminished by those who belittle their brains to comprehend changes in the Constitution as if the people themselves are not the source and author of our Constitution. Let not their sovereignty be destroyed by the masters of manipulation who misrepresent themselves as the spokesmen of the people.

Be it remembered that a petition for people's initiative that complies with the requirement that it "must be signed by at least 12% of the total number of registered voters of which every legislative district is represented by at least 3% of the registered voters therein" **is but the first step in a long journey** towards the amendment of the Constitution. Lest it be missed, the case at bar involves but a proposal to amend the Constitution. The proposal **will still be debated by the people** and at this time, there is yet no fail-safe method of telling what will be the result of the debate. There will still be a **last step** to the process of amendment which is the ratification of the proposal by a **majority of the people in a plebiscite** called for the purpose. **Only when the proposal is approved by a majority of the people in the plebiscite will it become an amendment to the Constitution. All the way, we cannot tie the tongues of the people. It is the people who decide for the people are not an obscure footnote in our Constitution**.

The people's voice is sovereign in a democracy. Let us hear them. Let us heed them. Let us not only sing paens to the people's sovereignty. Yes, it is neither too soon nor too late to let the people speak.

IN VIEW WHEREOF, I vote to REVERSE and SET ASIDE the resolution of the Commission on Elections dated August 31, 2006, denying due course to the Petition for Initiative filed by Raul L. Lambino and Erico B. Aumentado in their own behalf and together with some 6.3 million registered voters who affixed their signatures thereon and to REMAND the petition at bar to the Commission on Elections for further proceedings.

QUISUMBING, *J.*:

1. With due respect to the main opinion written by *J.* Antonio T. Carpio, and the dissent of *J.* Reynato S. Puno, I view the matter before us in this petition as one mainly involving a complex political question. [1] While admittedly the present Constitution lays down certain numerical requirements for the conduct of a People's Initiative, such as the percentages of signatures — being 12% of the total number of registered voters, provided each legislative district is represented by at least 3% — they are not the main points of controversy. Stated in simple terms, what this Court must decide is whether the Commission on Elections gravely abused its discretion when it denied the petition to submit the proposed changes to the Constitution directly to the vote of the sovereign people in a plebiscite. Technical questions, *e.g.* whether petitioners should have filed a Motion for Reconsideration before coming to us, are of no moment in the face of the transcendental issue at hand. What deserve our full attention are the issues concerning the applicable rules as well as statutory and constitutional limitations on the conduct of the People's Initiative.

2. It must be stressed that no less than the present Constitution itself empowers the people to "directly" propose amendments through their own "initiative." The subject of the instant petition is by way of exercising that initiative in order to change our form of government from presidential to parliamentary. Much has been written about the fulsome powers of the people in a democracy. But the most basic concerns the idea that sovereignty resides in the people and that all government authority emanates from them.

Clearly, by the power of popular initiative, the people have the sovereign right to change the present Constitution. Whether the initial moves are done by a Constitutional Convention, a Constitutional Assembly, or a People's Initiative, in the end every amendment — however insubstantial or radical — must be submitted to a plebiscite. Thus, it is the ultimate will of the people expressed in the ballot, that matters. [2]

3. I cannot fault the COMELEC, frankly, for turning down the petition of Messrs. Lambino, et al. For the COMELEC was just relying on precedents, with the common understanding that, pursuant to the cases of *Santiago v. COMELEC* [3] and *PIRMA v. COMELEC*, [4] the COMELEC had been permanently enjoined from entertaining any petition for a people's initiative to amend the Constitution by no less than this Court. In denying due course below to Messrs. Lambino and Aumentado's petition, I could not hold the COMELEC liable for grave abuse of discretion when they merely relied on this Court's unequivocal rulings. Of course, the *Santiago* and the *PIRMA* decisions could be reviewed and reversed by this Court, as *J.* Reynato S. Puno submits now. But until the Court does so, the COMELEC was duty bound to respect and obey this Court's mandate, for the rule of law to prevail.

4. Lastly, I see no objection to the remand to the COMELEC of the petition of Messrs. Lambino and Aumentado and 6.327 million voters, for further examination of the factual requisites before a plebiscite is conducted. On page 4 of the assailed Resolution of the respondent dated August 31, 2006, the COMELEC tentatively expressed its view that "even if the signatures in the instant Petition appear to meet the required minimum *per centum* of the total number of registered voters", the COMELEC could not give the Petition due course because of our view that R.A. No. 6735 was inadequate. That, however, is now refuted by Mr. Justice Puno's scholarly ponencia. Now that we have revisited the *Santiago v. COMELEC* decision, there is only one clear task for COMELEC. In my view, the only doable option left for the COMELEC, once factual issues are heard and resolved, is to give due course to the petition for the initiative to amend our Constitution so that the sovereign people can vote on whether a parliamentary system of government should replace the present presidential system.

5. I am therefore in favor of letting the sovereign people speak on their choice of the form of government as a political question soonest. (This I say without fear of media opinion that our judicial independence has been tainted or imperiled, for it is not.) Thus I vote for the remand of the petition. Thereafter, as prayed for, COMELEC should forthwith certify the Petition as sufficient in form and substance and call for the holding of a plebiscite within the period mandated by the basic law, not earlier than sixty nor later than ninety days from said certification. Only a credible plebiscite itself, conducted peacefully and honestly, can bring closure to the instant political controversy.

YNARES-SANTIAGO, *J.:*

I agree with the *ponencia* of our esteemed colleague, Justice Reynato Puno, that the Court's ruling in *Santiago v. COMELEC* [1] is not a binding precedent. However, it is my position that even if *Santiago* were reversed and Republic Act No. 6735 (R.A. 6735) be held as sufficient law for the purpose of people's initiative to amend the Constitution, the petition for initiative in this case must nonetheless be dismissed.

There is absolutely no showing here that petitioners complied with R.A. 6735, even as they blindly invoke the said law to justify their alleged people's initiative. Section 5(b) of R.A. 6735 requires that "[a] **petition for an initiative** on the 1987 Constitution must have at least twelve *per centum* (12%) of the total number of registered voters **as signatories**, of which every legislative district must be represented by at least three *per centum* (3%) of the

registered voters therein." On the other hand, Section 5(c) [2] of the same law requires that the petition should state, among others, the proposition [3] or the "contents or text of the proposed law sought to be enacted, approved or rejected, amended or repealed." If we were to apply Section 5(c) to an initiative to amend the Constitution, as petitioners submit, the petition for initiative signed by the required number of voters should incorporate therein a text of the proposed changes to the Constitution. However, such requirement was not followed in the case at bar.

During the oral arguments, petitioner Lambino admitted that they printed a mere 100,000 copies of the text of the proposed changes to the Constitution. According to him, these were subsequently distributed to their agents all over the country, for attachment to the sheets of paper on which the signatures were to be affixed. Upon being asked, however, if he in fact knew whether the text was actually attached to the signature sheets which were distributed for signing, he said that he **merely assumed** that they were. In other words, he could not tell the Court for certain whether their representatives complied with this requirement.

The petition filed with the COMELEC, as well as that which was shown to this Court, indubitably establish that the full text of the proposed changes was not attached to the signature sheets. All that the signature sheets contained was the general proposition and abstract, which falls short of the full text requirement of R.A. 6735.

The necessity of setting forth the text of the proposed constitutional changes in the petition for initiative to be signed by the people cannot be seriously disputed. To begin with, Article XVII, Section 2 of the Constitution unequivocally states that "[a]mendments to this Constitution may likewise be **directly proposed** by the people through initiative **upon a petition** of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein." Evidently, for the people to propose amendments to the Constitution, they must, in the first instance, know exactly what they are proposing. It is not enough that they merely possess a general idea of the proposed changes, as the Constitution speaks of a "direct" proposal by the people.

Although the framers of the Constitution left the matter of implementing the constitutional right of initiative to Congress, it might be noted that they themselves reasonably assumed that the draft of the proposed constitutional amendments would be shown to the people during the process of signature gathering. Thus —

> MR. RODRIGO. Section 2 of the complete committee report provides: "upon petition of at least 10 percent of the registered voters." How will we determine that 10 percent has been achieved? How will the voters manifest their desire, is it by signature?
>
> MR. SUAREZ. Yes, by signatures.
>
> MR. RODRIGO. Let us look at the mechanics. Let us say some voters want to propose a constitutional amendment. Is the draft of the proposed constitutional amendment ready to be shown to the people when they are asked to sign?
>
> MR. SUAREZ. That can be reasonably assumed, Madam President.
>
> MR. RODRIGO: What does the sponsor mean? The draft is ready and shown to them before they sign. Now, who prepares the draft?
>
> MR. SUAREZ: The people themselves, Madam President. [4]

It may thus be logically assumed that even without Section 5(c) of R.A. 6735, the full text of the proposed changes must necessarily be stated in or attached to the initiative petition. The signatories to the petition must be given an opportunity to fully comprehend the meaning and effect of the proposed changes to enable them to make a free, intelligent and well-informed choice on the matter.

Needless to say, the requirement of setting forth the complete text of the proposed changes in the petition for initiative is a safeguard against fraud and deception. If the whole text of the proposed changes is contained in or attached to the petition, intercalations and riders may be duly avoided. Only then can we be assured that the proposed changes are truly of the people and that the signatories have been fully apprised of its implications.

If a statutory provision is essential to guard against fraud, corruption or deception in the initiative and referendum process, such provision must be viewed as an indispensable requirement and failure to substantially comply therewith is fatal. [5] The failure of petitioners in this case to comply with the full text requirement resultantly rendered their petition for initiative fatally defective.

The petition for initiative is likewise irretrievably infirm because it violates the one subject rule under Section 10(a) of R.A. 6735:

> SEC. 10. *Prohibited Measures*. — The following cannot be the subject of an initiative or referendum petition:
>
> (a) No petition embracing more than one subject shall be submitted to the electorate; . . .

The one subject rule, as relating to an initiative to amend the Constitution, has the same object and purpose as the one subject-one bill rule embodied in Article VI, Section 26(1) [6] of the Constitution. [7] To elaborate, the one subject-one bill rule was designed to do away with the practice of inserting two or more unrelated provisions in one bill, so that those favoring one provision would be compelled to adopt the others. By this process of log-rolling, the adoption of both provisions could be accomplished and ensured, when neither, if standing alone, could succeed on its own merits.

As applied to the initiative process, the one subject rule is essentially designed to prevent surprise and fraud on the electorate. It is meant to safeguard the integrity of the initiative process by ensuring that no unrelated riders are concealed within the terms of the proposed amendment. This in turn guarantees that the signatories are fully aware of the nature, scope and purpose of the proposed amendment.

Petitioners insist that the proposed changes embodied in their petition for initiative relate only to one subject matter, that is — the shift from presidential to a parliamentary system of government. According to petitioners, all of the other proposed changes are merely incidental to this main proposal and are reasonably germane and necessary thereto. [8] An examination of the text of the proposed changes reveals, however, that this is not the case.

The proposed changes to the Constitution cover other subjects that are beyond the main proposal espoused by the petitioners. Apart from a shift from the presidential to a parliamentary form of government, the proposed changes include the abolition of one House of Congress, [9] and the convening of a constituent assembly to propose additional amendments to the Constitution. [10] Also included within its terms is an omnibus declaration that those constitutional provisions under Articles VI and VII, which are

inconsistent with the unicameral-parliamentary form of government, shall be deemed amended to conform thereto.

It is not difficult to see that while the proposed changes appear to relate only to a shift in the form of government, it actually seeks to affect other subjects that are not reasonably germane to the constitutional alteration that is purportedly sought. For one, a shift to a parliamentary system of government does not necessarily result in the adoption of a unicameral legislature. A parliamentary system can exist in many different "hybrid" forms of government, which may or may not embrace unicameralism. [11] In other words, the shift from presidential to parliamentary structure and from a bicameral to a unicameral legislature is neither the cause nor effect of the other.

I also fail to see the relation of convening a constituent assembly with the proposed change in our system of government. As a subject matter, the convening of a constituent assembly to amend the Constitution presents a range of issues that is far removed from the subject of a shift in government. Besides, the constituent assembly is supposed to convene and propose amendments to the Constitution **after** the proposed change in the system of government has already taken place. This only goes to show that the convening of the constituent assembly is not necessary to effectuate a change to a parliamentary system of government.

The omnibus statement that all provisions under Articles VI and VII which are inconsistent with a unicameral-parliamentary system of government shall be deemed amended is equally bothersome. The statement does not specify what these inconsistencies and amendments may be, such that everyone is left to guess the provisions that could eventually be affected by the proposed changes. The subject and scope of these automatic amendments cannot even be spelled out with certainty. There is thus no reasonable measure of its impact on the other constitutional provisions.

The foregoing proposed changes cannot be the subject of a people's initiative under Section 2, Article XVII of the Constitution. Taken together, the proposed changes indicate that the intendment is not simply to effect *substantial amendments* to the Constitution, but a revision thereof. The distinction between an amendment and revision was explained by Dean Vicente G. Sinco, as follows:

> "Strictly speaking, the act of revising a constitution involves alterations of different portions of the entire document. It may result in the rewriting either of the whole constitution, or the greater portion of it, or perhaps only some of its important provisions. But whatever results the revision may produce, the factor that characterizes it as an act of revision is the original intention and plan authorized to be carried out. That intention and plan must contemplate a consideration of all the provisions of the constitution to determine which one should be altered or suppressed or whether the whole document should be replaced with an entirely new one.
>
> The act of amending a constitution, on the other hand, envisages a change of only a few specific provisions. The intention of an act to amend is not to consider the advisability of changing the entire constitution or of considering that possibility. The intention rather is to improve specific parts of the existing constitution or to add to it provisions deemed essential on account of changed conditions or to suppress portions of it that seem obsolete, or dangerous, or misleading in their effect." [12]

The foregoing traditional exposition of the difference between amendment and revision has

indeed guided us throughout our constitutional history. However, the distinction between the two terms is not, to my mind, as significant in the context of our past constitutions, as it should be now under the 1987 Constitution. The reason for this is apparent. Under our past constitutions, it was Congress alone, acting either as a constituent assembly or by calling out a constitutional convention, that exercised authority to either amend or revise the Constitution through the procedures therein described. Although the distinction between the two terms was theoretically recognized under both the 1935 and 1973 Constitutions, the need to highlight the difference was not as material because it was only Congress that could effect constitutional changes by choosing between the two modalities.

However, it is different now under the 1987 Constitution. Apart from providing for the two modes of either Congress constituting itself as a constituent assembly or calling out for a constitutional convention, a third mode was introduced for proposing changes to the Constitution. This mode refers to the people's right to propose amendments to the fundamental law through the filing of a petition for initiative.

Otherwise stated, our experience of what constitutes amendment or revision under the past constitutions is not determinative of what the two terms mean now, as related to the exercise of the right to propose either amendments or revision. The changes introduced to both the Constitutions of 1935 and 1973 could have indeed been deemed an amendment or revision, **but the authority for effecting either would never have been questioned since the same belonged solely to Congress**. In contrast, the 1987 Constitution clearly limits the right of the people to directly propose constitutional changes to amendments only. We must consequently not be swayed by examples of constitutional changes effected prior to the present fundamental law, in determining whether such changes are revisory or amendatory in nature.

In this regard, it should be noted that the distinction laid down by Justice Felix Q. Antonio in ***Javellana v. Executive Secretary*** [13] related to the procedure to be followed in ratifying a completely new charter proposed by a constitutional convention. The authority or right of the constitutional convention itself to effect such a revision was not put in issue in that case. As far as determining what constitutes "amendments" for the purpose of a people's initiative, therefore, we have neither relevant precedent nor prior experience. We must thus confine ourselves to Dean Sinco's basic articulation of the two terms.

It is clear from Dean Sinco's explanation that a revision may either be of the whole or only part of the Constitution. The part need not be a substantial part as a change may qualify as a revision even if it only involves some of the important provisions. For as long as the intention and plan to be carried out contemplate a consideration of all the provisions of the Constitution "to determine which should be altered or suppressed, or whether the whole document should be replaced with an entirely new one," the proposed change may be deemed a revision and not merely an amendment.

Thus, it is not by the sheer number alone of the proposed changes that the same may be considered as either an amendment or revision. In so determining, another overriding factor is the "original intention and plan authorized to be carried out" by the proposed changes. If the same relates to a re-examination of the entire document to see which provisions remain relevant or if it has far-reaching effects on the entire document, then the same constitutes a revision and not a mere amendment of the Constitution.

From the foregoing, it is readily apparent that a combination of the quantitative and qualitative test is necessary in assessing what may be considered as an amendment or revision. It is not enough that we focus simply on the physical scope of the proposed

changes, but also consider what it means in relation to the entire document. No clear demarcation line can be drawn to distinguish the two terms and each circumstance must be judged on the basis of its own peculiar conditions. The determination lies in assessing the impact that the proposed changes may have on the entire instrument, and not simply on an arithmetical appraisal of the specific provisions which it seeks to affect.

In ***McFadden v. Jordan***, [14] the California Supreme Court laid down the groundwork for the combination of quantitative and qualitative assessment of proposed constitutional changes, in order to determine whether the same is revisory or merely amendatory. In that case, the *McFadden* court found the proposed changes extensive since at least 15 of the 25 articles contained in the California Constitution would either be repealed in their entirety or substantially altered, and four new topics would be introduced. However, it went on to consider the qualitative effects that the proposed initiative measure would have on California's basic plan of government. It observed that the proposal would **alter the checks and balances inherent in such plan**, by delegating far-reaching and mixed powers to an independent commission created under the proposed measure. Consequently, the proposal in *McFadden* was not only deemed as broad and numerous in physical scope, but was also held as having a substantive effect on the fundamental governmental plan of the State of California.

The dual aspect of the amendment/revision analysis was reiterated by the California Supreme Court in ***Raven v. Deukmejian***. [15] Proposition 115, as the initiative in that case was called, would vest in the United States Supreme Court all judicial interpretative powers of the California courts over fundamental criminal defense rights in that state. It was observed that although quantitatively, the proposition did "not seem so extensive as to change directly the substantial entirety of the Constitution by the deletion or alteration of numerous existing provisions," the same, nonetheless, "would substantially alter the substance and integrity of the state Constitution as a document of independent force and effect." Quoting ***Amador Valley Joint Union High School District v. State Board of Equalization***, [16] the ***Raven*** court said:

> ". . . apart from a measure effecting widespread deletions, additions and amendments involving many constitutional articles, 'even a relatively simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision also. . . [A]n enactment which purported to vest all judicial power in the Legislature would amount to a revision without regard either to the length or complexity of the measure or the number of existing articles or sections affected by such change.'" (Underscoring supplied and citations omitted)

Thus, in resolving the amendment/revision issue, the California Court examines both the quantitative and qualitative effects of a proposed measure on its constitutional scheme. Substantial changes in either respect could amount to a revision. [17]

I am persuaded that we can approach the present issue in the same manner. The experience of the courts in California is not far removed from the standards expounded on by Dean Sinco when he set out to differentiate between amendment and revision. It is actually consistent, not only with our traditional concept of the two terms, but also with the mindset of our constitutional framers when they referred to the disquisition of Justice Antonio in ***Javellana***. [18] We must thus consider whether the proposed changes in this case affect our Constitution in both its substantial physical entirety and in its basic plan of government.

The question posed is: do the proposed changes, regardless of whether these are simple or substantial, amount to a revision as to be excluded from the people's right to directly propose amendments to the fundamental law?

As indicated earlier, we may apply the quantitative/qualitative test in determining the nature of the proposed changes. These tests are consistent with Dean Sinco's traditional concept of amendment and revision when he explains that, quantitatively, revision "may result in the rewriting either of the whole constitution, or the greater part of it, or perhaps only some of its provisions." In any case, he continues, "the factor that characterizes it as an act of revision is the original intention and plan authorized to be carried out." Unmistakably, the latter statement refers to the qualitative effect of the proposed changes.

It may thus be conceded that, ***quantitatively***, the changes espoused by the proponents in this case will affect only two (2) out of the eighteen (18) articles of the 1987 Constitution, namely, Article VI (Legislative Department) and Article VII (Executive Department), as well as provisions that will ensure the smooth transition from a presidential-bicameral system to a parliamentary-unicameral structure of government. The quantitative effect of the proposed changes is neither broad nor extensive and will not affect the substantial entirety of the 1987 Constitution.

However, it is my opinion that the proposed changes will have serious ***qualitative*** consequences on the Constitution. The initiative petition, if successful, will undoubtedly alter, not only our basic governmental plan, but also redefine our rights as citizens in relation to government. The proposed changes will set into motion a ripple effect that will strike at the very foundation of our basic constitutional plan. It is therefore an impermissible constitutional revision that may not be effected through a people's initiative.

Petitioners' main proposal pertains to the shifting of our form of government from the presidential to the parliamentary system. An examination of their proposal reveals that there will be a fusion of the executive and legislative departments into one parliament that will be elected on the basis of proportional representation. No term limits are set for the members of parliament except for those elected under the party-list system whose terms and number shall be provided by law. There will be a President who shall be the head of state, but the head of government is the Prime Minister. The latter and his cabinet shall be elected from among the members of parliament and shall be responsible to parliament for the program of government.

The preceding proposal indicates that, under the proposed system, the executive and legislature shall be one and the same, such that parliament will be the paramount governing institution. What this implies is that there will be no separation between the law-making and enforcement powers of the state, that are traditionally delineated between the executive and legislature in a presidential form of government. Necessarily, the checks and balances inherent in the fundamental plan of our U.S.-style presidential system will be eliminated. The workings of government shall instead be controlled by the internal political dynamics prevailing in the parliament.

Our present governmental system is built on the separation of powers among the three branches of government. The legislature is generally limited to the enactment of laws, the executive to the enforcement of laws and the judiciary to the application of laws. This separation is intended to prevent a concentration of authority in one person or group that might lead to an irreversible error or abuse in its exercise to the detriment of our republican institutions. In the words of Justice Laurel, the doctrine of separation of powers is intended to secure action, to forestall overaction, to prevent despotism and obtain efficiency. [19]

In the proposed parliamentary system, there is an obvious lack of formal institutional checks on the legislative and executive powers of the state, since both the Prime Minister and the members of his cabinet are drawn from parliament. There are no effective limits to what the Prime Minister and parliament can do, except the will of the parliamentary majority. This goes against the central principle of our present constitutional scheme that distributes the powers of government and provides for counteraction among the three branches. Although both the presidential and parliamentary systems are theoretically consistent with constitutional democracy, the underlying tenets and resulting governmental framework are nonetheless radically different.

Consequently, the shift from presidential to parliamentary form of government cannot be regarded as anything but a drastic change. It will require a total overhaul of our governmental structure and involve a re-orientation in the cardinal doctrines that govern our constitutional set-up. As explained by Fr. Joaquin Bernas, S.J., a switch from the presidential system to a parliamentary system would be a revision because of its over-all impact on the entire constitutional structure. [20] It cannot, by any standard, be deemed as a mere constitutional amendment.

> An amendment envisages an alteration of one or a few specific and separable provisions. The guiding original intention of an amendment is to improve specific parts or to add new provisions deemed necessary to meet new conditions or to suppress specific portions that may have become obsolete or that are judged to be dangerous. In revision, however, the guiding original intention and plan contemplates a re-examination of the entire document, or of provisions of the document which have over-all implications for the entire document, to determine how and to what extent they should be altered. [21] (Underscoring supplied)

The inclusion of a proposal to convene a constituent assembly likewise shows the intention of the proponents to effect even more far-reaching changes in our fundamental law. If the original intent were to simply shift the form of government to the parliamentary system, then there would have been no need for the calling out of a constituent assembly to propose further amendments to the Constitution. It should be noted that, once convened, a constituent assembly can do away and replace any constitutional provision which may not even have a bearing on the shift to a parliamentary system of government. The inclusion of such a proposal reveals the proponents' plan to consider all provisions of the constitution, either to determine which of its provisions should be altered or suppressed or whether the whole document should be replaced with an entirely new one.

Consequently, it is not true that only Articles VI and VII are covered by the alleged people's initiative. The proposal to convene a constituent assembly, **which by its terms is mandatory**, will practically jeopardize the future of the entire Constitution and place it on shaky grounds. The plan of the proponents, as reflected in their proposed changes, goes beyond the shifting of government from the presidential to the parliamentary system. Indeed, it could even extend to the "fundamental nature of our state as a democratic and republican state."

To say that the proposed changes will affect only the constitution of government is therefore a fallacy. To repeat, the combined effect of the proposed changes to Articles VI and VII and those pertaining to the Transitory Provisions under Article XVIII indubitably establish the intent and plan of the proponents to possibly affect even the constitutions of liberty and sovereignty. Indeed, no valid reason exists for authorizing further amendments or revisions to the Constitution if the intention of the proposed changes is truly what it purports to be.

There is no question here that only amendments to the Constitution may be undertaken through a people's initiative and not a revision, as textually reflected in the Constitution itself. This conclusion is inevitable especially from a comparative examination of Section 2 in relation to Sections 1 and 4 of Article XVII, which state:

> SECTION 1. Any amendment to, or revision of, this Constitution may be proposed by:
>
> (1) The Congress, upon a vote of three-fourths of all its Members; or
>
> (2) A constitutional convention.
>
> SECTION 2. Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.
>
> The Congress shall provide for the implementation of the exercise of this right.
>
> xxx xxx xxx
>
> SECTION 4. Any amendment to, or revision of, this Constitution under Section 1 hereof shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the approval of such amendment or revision.
>
> Any amendment under Section 2 hereof shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the certification by the Commission of Elections of the sufficiency of the petition. (Underscoring supplied)

It is clear that the right of the people to directly propose changes to the Constitution is limited to amendments and does not include a revision thereof. Otherwise, it would have been unnecessary to provide for Section 2 to distinguish its scope from the rights vested in Congress under Section 1. The latter lucidly states that Congress may propose both amendments and a revision of the Constitution by either convening a constituent assembly or calling for a constitutional convention. Section 2, on the other hand, textually commits to the people the right to propose **only amendments** by direct action.

To hold, therefore, that Section 2 allows substantial amendments amounting to revision obliterates the clear distinction in scope between Sections 1 and 2. The intention, as may be seen from a cursory perusal of the above provisions, is to provide differing fields of application for the three modes of effecting changes to the Constitution. We need not even delve into the intent of the constitutional framers to see that the distinction in scope is definitely marked. We should thus apply these provisions with a discerning regard for this distinction. Again, *McFadden*[22] is instructive:

> ". . . The differentiation required is not merely between two words; more accurately it is between two procedures and between their respective fields of application. Each procedure, if we follow elementary principles of statutory construction, must be understood to have a substantial field of application, not to be . . . a mere alternative procedure in the same field. Each of the two words, then, must be understood to denote, respectively, not only a procedure but also a field of

> application appropriate to its procedure. The people of this state have spoken; they made it clear when they adopted article XVIII and made amendment relatively simple but provided the formidable bulwark of a constitutional convention as a protection against improvident or hasty (or any other) revision, that they understood that there was a real difference between amendment and revision. We find nothing whatsoever in the language of the initiative amendment of 1911 (art. IV, § 1) to effect a breaking down of that difference. On the contrary, the distinction appears to be . . . scrupulously preserved by the express declaration in the amendment . . . that the power to propose and vote on "amendments to the Constitution" is reserved directly to the people in initiative proceedings, while leaving unmentioned the power and the procedure relative to constitutional revision, which revisional power and procedure, it will be remembered, had already been specifically treated in section 2 of article XVIII. Intervenors' contention — that any change less than a total one is but amendatory — would reduce to the rubble of absurdity the bulwark so carefully erected and preserved. Each situation involving the question of amendment, as contrasted with revision, of the Constitution must, we think, be resolved upon its own facts."

Thus, our people too have spoken when they overwhelmingly ratified the 1987 Constitution, with the provisions on amendments and revisions under Article XVII. The voice and will of our people cannot be any clearer when they limited people's initiative to mere amendments of the fundamental law and excluded revisions in its scope. In this regard, the task of the Court is to give effect to the people's voice, as expressed unequivocally through the Constitution.

Article XVII on amendments and revisions is called a "constitution of sovereignty" because it defines the constitutional meaning of "sovereignty of the people." It is through these provisions that the sovereign people have allowed the expression of their sovereign will and have canalized their powers which would otherwise be plenary. By approving these provisions, the sovereign people have decided to limit themselves and future generations in the exercise of their sovereign power. [23] They are thus bound by the constitution and are powerless, whatever their numbers, to change or thwart its mandates, except through the means prescribed by the Constitution itself. [24]

It is thus misplaced to argue that the people may propose revisions to the Constitution through people's initiative because their representatives, whose power is merely delegated, may do so. **While Section 1 of Article XVII may be considered as a provision *delegating* the sovereign powers of amendment and revision to Congress, Section 2, in contrast, is a *self-limitation* on that sovereign power**. In the words of Cooley:

> . . . Although by their constitutions the people have delegated the exercise of sovereign powers to the several departments, they have not thereby divested themselves of the sovereignty. They retain in their own hands, so far as they have thought it needful to do so, a power to control the governments they create, and the three departments are responsible to and subject to be ordered, directed, changed or abolished by them. But this control and direction must be exercised in the legitimate mode previously agreed upon. The voice of the people, acting in their sovereign capacity, can be of legal force only when expressed at the times and under the conditions which they themselves have prescribed and pointed out by the Constitution, or which, consistently with the Constitution, have been prescribed and pointed out for them by statute; and if by any portion of the people, however large, an attempt should be made to interfere with the regular working of the agencies of government at any other time or in any other mode than as allowed by

existing law, either constitutional or statutory, it would be revolutionary in character, and must be resisted and repressed by the officers who, for the time being, represent legitimate government. [25] (Underscoring supplied)

Consequently, there is here no case of "the spring rising above its source." Nor is it one where the people's sovereign power has been relegated to a lesser plane than that of Congress. In choosing to exercise self-limitation, there is no absence or lack of even a fraction of the sovereign power of the people since **self-limitation itself is an expression of that sovereign power**. The people have chosen to delegate and limit their sovereign power by virtue of the Constitution and are bound by the parameters that they themselves have ordained. Otherwise, if the people choose to defy their self-imposed constitutional restraints, we will be faced with a revolutionary situation. [26]

It has repeatedly been emphasized that ours is a **democratic** and republican state. [27] Even as we affirm, however, that aspect of direct democracy, we should not forget that, first and foremost, we are a **constitutional** democracy. To uphold direct democracy at the expense of the fundamental law is to sanction, not a constitutional, but an extra-constitutional recourse. This is clearly beyond the powers of the Court who, by sovereign mandate, is the guardian and keeper of the Constitution.

IN VIEW OF THE FOREGOING, I vote to DISMISS the petition in G.R. No. 174153.

SANDOVAL-GUTIERREZ, *J., concurring:*

Vox populi vox Dei — the voice of the people is the voice of God. Caution should be exercised in choosing one's battlecry, lest it does more harm than good to one's cause. In its original context, the complete version of this Latin phrase means exactly the opposite of what it is frequently taken to mean. It originated from a holy man, the monk Alcuin, who advised Charlemagne, "*nec audiendi qui solent dicere **vox populi vox Dei** quum tumultuositas vulgi semper insaniae proxima sit*," meaning, "**And those people should not be listened to who keep on saying, 'The voice of the people is the voice of God,' since the riotousness of the crowd is always very close to madness**." [1] Perhaps, it is by providence that the true meaning of the Latin phrase is revealed upon petitioners and their allies — that they may reflect upon the **sincerity** and **authenticity** of their "**people's initiative**."

History has been a witness to countless iniquities committed in the name of God. Wars were waged, despotism tolerated and oppressions justified — all these transpired as man boasted of God's imprimatur. Today, petitioners and their allies hum the same rallying call, convincing this Court that the people's initiative is the "**voice of the people**" and, therefore, the "**voice of God**." After a thorough consideration of the petitions, I have come to realize that man, with his ingenuity and arrogance, has perfected the craft of imitating the voice of God. It is against this kind of genius that the Court must guard itself.

The facts of the case are undisputed.

In 1996, the *Movement for People's Initiative* sought to exercise the power of initiative under Section 2, Article XVII of the Constitution which reads:

> **Section 2.** Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No

amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter,

The Congress shall provide for the implementation of the exercise of this right.

The exercise was thwarted by a petition for prohibition filed with this Court by Senator Miriam Defensor Santiago, *et al.*, entitled *"Miriam Defensor Santiago, Alexander Padilla and Maria Isabel Ongpin, petitioners, v. Commission on Elections (COMELEC), Jesus Delfin, Alberto Pedrosa and Carmen Pedrosa, in their capacities as founding members of the People's Initiative for Reforms, Modernization and Action (PIRMA), respondents."*[2] The case was docketed as G.R. No. 127325. On March 19, 1997, this Court rendered its Decision in favor of petitioners, holding that Republic Act No. 6735 (R.A. No. 6735), *An Act Providing for a System of Initiative and Referendum and Appropriating Funds Therefor*, is "**incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned**." A majority of eight (8) Justices fully concurred with this ruling, while five (5) subscribed to the opposite view. One (1) opined that there is no need to rule on the adequacy of R.A. No. 6735.

On motion for reconsideration, two (2) of the eight (8) Justices reconsidered their positions. One (1) filed an inhibition and the other one (1) joined the minority opinion. As a consequence, of the thirteen (13) Justices who participated in the deliberation, six (6) voted in favor of the majority opinion, while the other six (6) voted in favor of the minority opinion.[3]

A few months thereafter, or on September 23, 1997, the Court dismissed a similar case, entitled *People's Initiative for Reform, Modernization and Action (PIRMA) v. Commission on Elections*[4] on the ground that the COMELEC did not commit grave abuse of discretion when it dismissed *PIRMA's Petition for Initiative to Propose Amendments to the Constitution* "**it appearing that that it only complied with the dispositions in the Decision of the Court in G.R. no. 127325 (*Santiago v. COMELEC*) promulgated on March 19, 1997, and its Resolution of June 10, 1997**." Seven (7) Justices voted that there was no need to re-examine its ruling, as regards the issue of the sufficiency of R.A. No. 6735. Another Justice concurred, but on the different premise that the case at bar is not the proper vehicle for such re-examination. Five (5) Justice opined otherwise.

This time, another group known as *Sigaw ng Bayan*, in coordination with the Union of Local Authorities of the Philippines (ULAP), have gathered signatures in support of the proposed amendments to the Constitution, which entail a change in the form of government from **bicameral-presidential** to **unicameral-parliamentary**, thus:

> **A. Sections 1, 2, 3, 4, 5, 6 and 7 of Article VI shall be amended to read as follows:**
>
> Section 1. (1) The legislative and executive powers shall be vested in a unicameral Parliament which shall be composed of as many members as may be provided by law, to be apportioned among the provinces, representative districts, and cities in accordance with the number of their respective inhabitants, with at least three hundred thousand inhabitants per district, and on the basis of a uniform and progressive ratio. Each district shall comprise, as far as practicable, contiguous, compact and adjacent territory, and each province must have at least one member.
>
> (2) Each Member of Parliament shall be a natural-born citizen of the Philippines, at least twenty-five years old on the day of the election, a resident of his district for at least one year prior thereto, and shall be elected by the qualified

voters of his district for a term of five years without limitation as to the number thereof, except those under the party-list system which shall be provided for by law and whose number shall be equal to twenty per centum of the total membership coming from the parliamentary districts.

B. Sections 1, 2, 3 and 4 of Article VII of the 1987 Constitution are hereby amended to read, as follows:

Section 1. There shall be a President who shall be the Head of State. The executive power shall be exercised by a Prime Minister, with the assistance of the Cabinet. The Prime Minister shall be elected by a majority of all the Members of Parliament from among themselves. He shall be responsible to the Parliament for the program of government.

C. For the purpose of insuring an orderly transition from the bicameral-Presidential to a unicameral-Parliamentary form of government, there shall be a new Article XVIII, entitled "Transitory Provisions," which shall read, as follows:

Section 1. (1) The incumbent President and Vice President shall serve until the expiration of their term at noon on the thirtieth day of June 2010 and shall continue to exercise their powers under the 1987 Constitution unless impeached by a vote of two thirds of all the members of the interim parliament.

(2) In case of death, permanent disability, resignation or removal from office of the incumbent President, the incumbent Vice President shall succeed as President. In case of death, permanent disability, resignation or removal from office of both the incumbent President and Vice President, the interim Prime Minister shall assume all the powers and responsibilities of Prime Minister under Article VII as amended.

Section 2. Upon the expiration of the term of the incumbent President and Vice President, with the exception of Sections 1, 2, 3, 4, 5, 6 and 7 of Article VI of the 1987 Constitution which shall hereby be amended and Sections 18 and 24 which shall be deleted, all other Sections of Article VI are hereby retained and renumbered sequentially as Section 2, *ad seriatium* up to 26, unless they are inconsistent with the Parliamentary system of government, in which case, they shall be amended to conform with a unicameral parliamentary form of government; provided, however, that any and all references therein to "Congress," "Senate," "House of Representatives" and "Houses of Congress" shall be changed to read "Parliament;" that any and all references therein to "Member(s) of Congress," "Senator(s)" or "Member(s) of Parliament" and any and all references to the "President" and/or "Acting President" shall be changed to read "Prime Minister."

Section 3. Upon the expiration of the term of the incumbent President and Vice President, with the exception of Sections 1, 2, 3 and 4 of Article VII of the 1987 Constitution which are hereby be amended and Sections 7, 8, 9, 10, 11 and 12 which are hereby deleted, all other Sections of Article VII shall be retained and renumbered sequentially as Section 2, *ad seriatim* up to 14, unless they shall be inconsistent with Section 1 hereof, in which case they shall be deemed amended so as to conform to a unicameral Parliamentary System of government; provided, however, that any and all references therein to "Congress," "Senate," "House of Representatives" and "Houses of Congress" shall be changed to read "Parliament;" that any and all references therein to "Member(s) of Congress," "Senator(s)" or "Member(s) of the House of Representatives" shall be changed to read as "Member(s) of Parliament" and any and all references to the "President" and/or

"Acting President" shall be changed to read "Prime Minister."

Section 4. (1) There shall exist, upon the ratification of these amendments, an interim Parliament which shall continue until the Members of the regular Parliament shall have been elected and shall have qualified. It shall be composed of the incumbent Members of the Senate and the House of Representatives and the incumbent Members of the Cabinet who are heads of executive departments.

(2) The incumbent Vice President shall automatically be a Member of Parliament until noon of the thirtieth day of June 2010. He shall also be a member of the cabinet and shall head a ministry. He shall initially convene the interim Parliament and shall preside over its sessions for the election of the interim Prime Minister and until the Speaker shall have been elected by a majority vote of all the members of the interim Parliament from among themselves.

(3) Senators whose term of office ends in 2010 shall be Members of Parliament until noon of the thirtieth day of June 2010.

(4) Within forty-five days from ratification of these amendments, the interim Parliament shall convene to propose amendments to, or revisions of, this Constitution consistent with the principles of local autonomy, decentralization and a strong bureaucracy.

Section 5. (1) The incumbent President, who is the Chief Executive, shall nominate, from among the members of the interim Parliament, an interim Prime Minister, who shall be elected by a majority vote of the members thereof. The interim Prime Minister shall oversee the various ministries and shall perform such powers and responsibilities as may be delegated to him by the incumbent President."

(2) The interim Parliament shall provide for the election of the members of Parliament which shall be synchronized and held simultaneously with the election of all local government officials. The duty elected Prime Minister shall continue to exercise and perform the powers, duties and responsibilities of the interim Prime Minister until the expiration of the term of the incumbent President and Vice President.

Sigaw ng Bayan prepared signature sheets, and written on its upper right hand portion is the abstract of the proposed amendments, quoted as follows:

> ***Abstract***: **Do you approve of the amendment of Article VI and VII of the 1987 Constitution, changing the form of government from the present bicameral-presidential to a unicameral-parliamentary system of government, in order to achieve greater efficiency, simplicity and economy in government; and providing an Article XVIII as Transitory Provisions for the orderly shift from one system to another?**

On August 25, 2006, Raul L. Lambino and Enrico B. Aumentado, herein petitioners, filed with the COMELEC a *Petition for Initiative to Amend the Constitution*.[5] Five (5) days thereafter, they filed an Amended Petition alleging that they are filing the petition **in their own behalf** and **together with some 6.3 million registered voters who have affixed their signatures on the signature sheets attached thereto**. They claimed that the signatures of registered voters appearing on the signature sheets, constituting at least twelve *per cent* (12%) of all registered voters in the country, wherein each legislative district is represented by at least three *per cent* (3%) of all the registered voters, were verified by

their respective city or municipal election officers.

Several organizations opposed the petition. [6]

In a Resolution dated August 31, 2006, the COMELEC denied due course to the petition, citing as basis this Court's ruling in *Santiago*, permanently enjoining it "**from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the system**."

Hence, the present petition for *certiorari* and *mandamus* praying that this Court set aside the COMELEC Resolution and direct the latter to comply with Section 4, Article XVII of the Constitution, which provides:

> **Sec. 4** . . .
>
> **Any amendment under Section 2 hereof shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the certification by the Commission on Elections of the sufficiency of the petition.**

I vote to dismiss the petition of Lambino, et al. in G.R. No. 174153 and grant the petition of Mar-len Abigail Binay, et al. in G.R. No. 174299. Here, petitioners pray that the COMELEC Chairman and Commissioners be required to show why they should not be punished for contempt [7] of court for disregarding the permanent injunction issued by this Court in *Santiago*.

I

Respondent COMELEC did not act with grave abuse of discretion

Without necessarily brushing aside the other important issues, I believe the resolution of the present petition hinges on this singular issue — *did the COMELEC commit grave abuse of discretion when it denied Lambino, et al.'s petition for initiative to amend the Constitution on the basis of this Court's Decision in Santiago v. COMELEC?*

In other words, regardless of how the other remaining issues are resolved, still, the ultimate yardstick is the attendance of "grave abuse of discretion" on the part of the COMELEC.

Jurisprudence teaches that an act of a court or tribunal may only be considered as committed in grave abuse of discretion when the same was performed in a **capricious** or **whimsical** exercise of judgment. The abuse of discretion must be so patent and gross as to amount to an **evasion of a positive duty** or to a **virtual refusal to perform a duty** enjoined by law, or **to act at all in contemplation of law**, as where the power is exercised in an **arbitrary** and **despotic** manner by reason of **passion** or **personal hostility**. [8]

The Resolution of respondent COMELEC denying due course to the petition for initiative on the basis of a case (*Santiago*) decided by this Court cannot, in any way, be characterized as "**capricious or whimsical**," "**patent and gross**," or "**arbitrary and despotic**." On the contrary, it was the most prudent course to take. It must be stressed that in *Santiago*, this Court permanently enjoins respondent COMELEC "**from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted**." It being a fact that Congress has not enacted a sufficient law, respondent COMELEC has no alternative but to adhere to *Santiago*.

Otherwise, it is vulnerable to a citation for contempt. As succinctly stated by Chief Justice Artemio V. Panganiban (then Associate Justice) in his Separate Opinion in the subsequent case of *PIRMA vs. COMELEC*: [9]

> . . . I cannot fault the Comelec for complying with the ruling even if it, too, disagreed with said decision's *ratio decidendi*. Respondent Comelec was directly enjoined by the highest Court of the land. It had no choice but to obey. Its obedience cannot constitute grave abuse of discretion. Refusal to act on the PIRMA petition was the only recourse open to the Comelec. Any other mode of action would have constituted defiance of the Court and would have been struck down as grave abuse of discretion and contumacious disregard of this Court's supremacy as the final arbiter of justiciable controversies.

It need not be emphasized that in our judicial hierarchy, this Court reigns supreme. All courts, tribunals and administrative bodies exercising quasi-judicial functions are obliged to conform to its pronouncements. **It has the last word on what the law is; it is the final arbiter of any justifiable controversy. In other words, there is only one Supreme Court from whose decisions all other courts should take their bearings**. [10] As a warning to lower court judges who would not adhere to its rulings, this Court, in *People v. Santos*, [11] held:

> Now, if a judge of a lower Court feels, in the fulfillment of his mission of deciding cases, that the application of a doctrine promulgated by this Superiority is against his way of reasoning, or against his conscience, he may state his opinion on the matter, but rather than disposing of the case in accordance with his personal views he must first think that it is his duty to apply the law as interpreted by the Highest Court of the Land, and that any deviation from a principle laid down by the latter would unavoidably cause, as a sequel, unnecessary inconveniences, delays and expenses to the litigants. And if despite of what is here said, a Judge still believes that he cannot follow Our rulings, then he has no other alternative than to place himself in the position that he could properly avoid the duty of having to render judgment on the case concerned (Art. 9, C.C.), and he has only one legal way to do that.

Clearly, respondent COMELEC did not gravely abuse its discretion in dismissing the petition of Lambino, et al. for it merely followed this Court's ruling in *Santiago*.

Significantly, in *PIRMA vs. COMELEC*, [12] a **unanimous Court** implicitly recognized that its ruling in *Santiago* is the established doctrine and that the COMELEC did not commit grave abuse of discretion in invoking it, thus:

> **The Court ruled, first, by a unanimous vote, that no grave abuse of discretion could be attributed to the public respondent COMELEC in dismissing the petition filed by PIRMA therein, it appearing that it only complied with the dispositions of this Court in G.R. No. 127325 promulgated on March 19, 1997, and its resolution on June 10, 1997.**

Indeed, I cannot characterize as a "grave abuse of discretion" the COMELEC's obedience and respect to the pronouncement of this Court in *Santiago*.

II

The doctrine of stare decisis bars the re-examination of Santiago

It cannot be denied that in *Santiago*, a majority of the members of this Court or eight (8)

Justices (as against five (5) Justices) concurred in declaring R.A. No. 6735 an insufficient law. When the motion for reconsideration was **denied** via an equally-divided Court or a 6-6 vote, it does not mean that the Decision was overturned. It only shows that the opposite view fails to muster enough votes to modify or reverse the majority ruling. Therefore, the original Decision was upheld. [13] In *Ortigas and Company Limited Partnership vs. Velasco*, [14] this Court ruled that **the denial of a motion or reconsideration signifies that the ground relied upon have been found, upon due deliberation, to be without merit, as not being of sufficient weight to warrant a modification of the judgment or final order**.

With *Santiago* being the only impediment to the instant petition for initiative, petitioners persistently stress that the doctrine of *stare decisis* does not bar its re-examination.

I am not convinced.

The maxim *stare decisis et non quieta movere translates* "**stand by the decisions and disturb not what is settled**." [15] As used in our jurisprudence, it means that "**once this Court has laid down a principle of law as applicable to a certain state of facts, it would adhere to that principle and apply it to all future cases in which the facts are substantially the same as in the earlier controversy**." [16]

There is considerable literature about whether this doctrine of *stare decisis* is a good or bad one, but the doctrine is usually justified by arguments which focus on the **desirability of stability** and **certainty** in the law and also by **notions of justice and fairness**. Justice Benjamin Cardozo in his treatise, *The Nature of the Judicial Process* stated:

> It will not do to decide the same question one way between one set of litigants and the opposite way between another. '**If a group of cases involves the same point, the parties expect the same decision. It would be a gross injustice to decide alternate cases on opposite principles. If a case was decided against me yesterday when I was a defendant, I shall look for the same judgment today if I am plaintiff. To decide differently would raise a feeling of resentment and wrong in my breast; it would be an infringement, material and moral, of my rights**." Adherence to precedent must then be the rule rather than the exception if litigants are to have faith in the even-handed administration of justice in the courts. [17]

That the doctrine of *stare decisis* is related to **justice** and **fairness** may be appreciated by considering the observation of American philosopher William K. Frankena as to what constitutes injustice:

> **The paradigm case of injustice is that in which there are two similar individuals in similar circumstances and one of them is treated better or worse than the other**. In this case, the cry of injustice rightly goes up against the responsible agent or group; and unless that agent or group can establish that there is some relevant dissimilarity after all between the individuals concerned and their circumstances, he or they will be guilty as charged. [18]

Although the doctrine of *stare decisis* does not prevent re-examining and, if need be, overruling prior decisions, "It is . . . a fundamental jurisprudential policy that prior applicable precedent usually must be followed even though the case, if considered anew, might be decided differently by the current justices. **This policy . . . 'is based on the assumption that certainty, predictability and stability in the law are the major objectives of**

the legal system; i.e., that parties should be able to regulate their conduct and enter into relationships with reasonable assurance of the governing rules of law.[19] Accordingly, a party urging overruling a precedent faces a rightly onerous task, the difficulty of which is roughly proportional to a number of factors, including the **age of the precedent**, the **nature and extent of public and private reliance on it**, and its consistency or inconsistency with other related rules of law. Here, petitioners failed to discharge their task.

Santiago v. COMELEC was decided by this Court on March 19, 1997 or more than nine (9) years ago. During that span of time, the Filipino people, specifically the law practitioners, law professors, law students, the entire judiciary and litigants have recognized this Court's Decision as a precedent. In fact, the *Santiago* doctrine was applied by this Court in the subsequent case of PIRMA. Even the legislature has relied on said Decision, thus, several bills have been introduced in both Houses of Congress to cure the deficiency. I cannot fathom why it should be overturned or set aside merely on the basis of the petition of Lambino, et al. Indeed, this Court's conclusion in *Santiago* that R.A. No. 6735 is incomplete, inadequate or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned remains a precedent and must be upheld.

III

The proposed constitutional changes constitute revisions and not mere amendments

Article XVII of the 1987 Constitution lays down the means for its amendment and revision. Thus:

> **Section 1.** **Any amendment to, or revision** of, this Constitution may be proposed by:
>
> **(1)** The Congress, upon a vote of three-fourths of all its members; or
>
> **(2)** A Constitutional Convention.
>
> **Section 2.** **Amendments** to this Constitution may likewise be directly proposed by the people through **initiative** upon a petition of at least twelve *per centum* of the total number of registered votes, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. . . . . (Emphasis supplied)

At the outset, it must be underscored that **initiative and referendum**, as means by which the people can directly propose changes to the Constitution, were not provided for in the 1935 and 1973 Constitutions. Thus, under these two (2) Constitutions, there was no demand to draw the distinction between an amendment and a revision, both being governed by a uniform process. This is not so under our present Constitution. The distinction between an amendment and a revision becomes crucial because only **amendments** are allowed under the system of people's initiative. **Revisions** are within the exclusive domain of Congress, upon a vote of three-fourths of all its members, or of a Constitutional Convention.

The deliberations of the 1986 Constitutional Commission is explicit that Section 2, Article XVII covers only **amendments**, thus:

> The sponsor, Commissioner Suarez, is recognized.
>
> MR. SUAREZ:

Thank you, Madam President.

May we respectfully call the attention of the Members of the Commission that pursuant to the mandate given us last night, we submitted this afternoon a complete Committee Report No. 7 which embodies the proposed provision governing initiative. This is now covered by Section 2 of the complete committee report. With the permission of the Members, may I quote Section 2:

The people may, after five years from the date of the last plebiscite held, directly propose amendments to this Constitution thru initiative upon petition of at least ten percent of the registered voters.

This completes the blanks appearing in the original Committee Report No. 7. This proposal was suggested on the theory that this matter of initiative which came about because of the extraordinary developments this year, has to be separated from the traditional modes of amending the Constitution as embodied in Section 1. **The committee members felt that this system of initiative should be limited to amendments to the Constitution and should not extend to the revision of the entire Constitution, so we removed it from the operation of Section 1 of the proposed Article on Amendment or Revision**.

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MR. MAAMBONG:

Madam President, will the distinguished proponent of the amendment yield to a few questions?

MR. DAVIDE:

With pleasure, Madam President.

MR. MAAMBONG:

My first question, Commissioner Davide's proposed amendment on line I refers to "amendments." Does it not cover the word "revision" as defined by Commissioner Padilla when he made the distinction between the words "amendments" and "revision?"

MR. DAVIDE:

No, it does not, because "amendments" and "revision" should be covered by Section 1. **So insofar as initiative is concerned, it can only relate to "amendments" not "revision"**

MR. MAAMBONG:

Thank you. [20]

Considering that the initiative on the Constitution only permits amendments, it is imperative to examine whether petitioners' proposed changes partake of the nature of amendments, not revisions.

The petition for initiative filed with the COMELEC by Lambino, et al. sought to amend the following provisions of the 1987 Constitution: Sections 1, 2, 3, 4, 5, 6, and 7 of Article VI (The Legislative Department); Sections 1, 2, 3 and 4 of Article VII (The Executive Department). It further includes Article XVIII (Transitory Provisions) for the purpose of

insuring an orderly transition from the bicameral-presidential to a unicameral-parliamentary form of government.

Succinctly, the proposals envision a change in the form of government, from bicameral-presidential to unicameral-parliamentary; conversion of the present Congress of the Philippines to an Interim National Assembly; change in the terms of Members of Parliament; and the election of a Prime Minister who shall be vested with executive power.

Petitioners contend that the proposed changes are in the nature of amendments, hence, within the coverage of a "people's initiative."

I disagree.

The noted constitutionalist, Father Joaquin G. Bernas, S.J., who was also a member of the 1986 Constitutional Commission, characterized an amendment and a revision to the Constitution as follows:

> An amendment envisages an alteration of **one or a few specific and separable provisions**. The guiding original intention of an amendment is to improve specific parts or to add new provisions deemed necessary to meet new conditions or to suppress specific portions that may have become obsolete or that are judged to be dangerous. **In revision however, the guiding original intention and plan contemplates a re-examination of the entire document, or of provisions of the document which have over-all implications for the document to determine how and to what extent they should be altered**. [21]

Obviously, both "revision" and amendment" connote change; any distinction between the two must be based upon the degree of change contemplated. In *Kelly v. Laing,* [22] the Supreme Court of Michigan made the following comparison of the two terms:

> "Revision" and "amendment" have the common characteristics of working changes in the charter, and are sometimes used in exactly the same sense but there is an essential difference between them.
>
> **"Revision" implies a reexamination of the whole law and a redraft without obligation to maintain the form, scheme, or structure of the old**. As applied to fundamental law, such as a constitution or charter, it suggests a convention to examine the whole subject and to prepare and submit a new instrument whether the desired changes from the old are few or many. **Amendment implies continuance of the general plan and purpose of the law, with corrections to better accomplish its purpose**. Basically, revision suggests fundamental change, while amendment is a correction of detail.

Although there are some authorities which indicate that a change in a city's form of government may be accomplished by a process of "amendment," the cases which so hold seem to involve statutes which only distinguish between amendment and totally new charters. [23] However, as in Maine law, where the statute authorizing the changes distinguishes between "charter amendment" and "charter revision," it has been held that "**(a) change in the form of government of a home rule city may be made only by revision of the city charter, not by its amendment**." [24]

In summary, it would seem that any major change in governmental form and scheme would probably be interpreted as a "revision" and should be achieved through the more thorough process of deliberation.

Although, at first glance, petitioners' proposed changes appear to cover isolated and

specific provisions only, however, upon careful scrutiny, it becomes clear that **the proposed changes will alter the very structure of our government and create multifarious ramifications**. In other words, the proposed changes will have a "domino effect" or, more appropriately, "**ripple effect**" on other provisions of the Constitution.

At this juncture, it must be emphasized that the power reserved to the people to effect changes in the Constitution includes the power to amend any section in such a manner that the proposed change, if approved, would "**be complete within itself, relate to one subject and not substantially affect any other section or article of the Constitution or require further amendments to the Constitution to accomplish its purpose**." [25] This is clearly not the case here.

Firstly, a shift from a presidential to a parliamentary form of government affects the well-enshrined doctrine of separation of powers of government, embodied in our Constitution, by providing for an Executive, Legislative and Judiciary Branches. In a Parliamentary form of government, the Executive Branch is to a certain degree, dependent on the direct or indirect support of the Parliament, as expressed through a "vote of confidence." **To my mind, this doctrine of separation of powers is so interwoven in the fabric of our Constitution, that any change affecting such doctrine must necessarily be a revision**.

In *McFadden vs. Jordan*, [26] the California Supreme Court ruled as follows:

> It is thus clear that that a **revision** of the Constitution may be accomplished only through ratification by the people of a revised constitution proposed by a convention called for that purpose . . . . **Consequently, if the scope of the proposed initiative measure now before us is so broad that if such measure became law a substantial revision of our present state Constitution would be effected, then the measure may not properly be submitted to the electorate until and unless it is first agreed upon by a constitutional convention**. . . . .

Secondly, the shift from a bicameral to a unicameral form of government is not a mere amendment, but is in actuality a revision, as set forth in *Adams v. Gunter* [27] :

> The proposal here to amend Section I of Article III of the 1968 Constitution **to provide for a Unicameral Legislature affects not only many other provisions of the Constitution but provides for a change in the form of the legislative branch of government**, which has been in existence in the United States Congress and in all of the states of the nation, except one, since the earliest days. **It would be difficult to visualize a more revolutionary change**. The concept of a House and a Senate is basic in the American form of government. **It would not only radically change the whole pattern of the government in this state and tear apart the whole fabric of the Constitution, but would even affect the physical facilities necessary to carry on government**.

Thirdly, the proposed changes, on their face, signify revisions rather than amendments, especially, with the inclusion of the following "omnibus provision":

> C. For the purpose of insuring an orderly transition from the bicameral-Presidential to a unicameral-Parliamnetary form of government, there shall be a new Article XVIII, entitled "Transitory Provisions" which shall read, as follows:

xxx xxx xxx

> Section 3. Upon the expiration of the term of the incumbent President and Vice-President, with the exceptions of Section 1, 2, 3 and 4 of Article VII of the 1987 Constitution which are hereby amended . . . **and all other Sections of Article VII** shall be retained and numbered sequentially as Section 2, ad seriatim up to 14, **unless they shall be inconsistent with Section 1 hereof, in which case they shall be deemed amended so as to conform to a unicameral Parliamentary system of government** . . . .
>
> xxx xxx xxx
>
> Section 4. (1) . . .
>
> (3) Within forty-five days from ratification of these amendments, the **Interim Parliament** shall convene to propose amendments to, or revisions of, this Constitution, consistent with the principles of local autonomy, decentralization and a strong bureaucracy.

The above provisions will necessarily result in a "ripple effect" on the other provisions of the Constitution to make them conform to the qualities of unicameral-parliamentary form of government. With one sweeping stroke, these proposed provisions ***automatically*** revise some provisions of the Constitution. In *McFadden*, the same practice was considered by the Court to be in the nature of **substantial revision, necessitating a constitutional convention**. I quote the pertinent portion of its ruling, thus:

> There is in the measure itself, **no attempt to enumerate the various and many articles and sections of our present Constitution which would be affected, replaced or repealed**. It purports only to add one new article but its framers found it necessary to include the omnibus provision (subdivision (7) of section XII) that "**If any section, subsection, sentence, clause or phrase of the constitution is in conflict with any of the provisions of this article, such section, subsection, sentence, clause, or phrase is to the extent of such conflict hereby repealed. . . . Consequently, if the scope of the proposed intitiative measure now before us is so broad that if such measure become law a substantial revision of our present state Constitution would be be effected, then the measure may not properly be submitted to the electorate until and unless it is first agreed upon by a constitutional convention**. [28]

Undoubtedly, the changes proposed by the petitioners are not mere amendments which will only affect the Articles or Sections sought to be changed. Rather, they are in the nature of revisions which will affect considerable portions of the Constitution resulting in the alteration of our form of government. The proposed changes cannot be taken in isolation since these are connected or "interlocked" with the other provisions of our Constitution. Accordingly, it has been held that: "**If the changes attempted are so sweeping that it is necessary to include the provisions interlocking them, then it is plain that the plan would constitute a recasting of the whole Constitution and this, we think, it was intended to be accomplished only by a convention under Section 2 which has not yet been disturbed**." [29]

I therefore conclude that since the proposed changes partake of the nature of a revision of the Constitution, then they cannot be the subject of an initiative. On this matter, Father Bernas expressed this insight:

> But why limit initiative and referendum to simple amendments? The answer, which

one can easily glean from the rather long deliberation on initiative and referendum in the 1986 Constitutional Commission, is practicality. In other words, who is to formulate the revision or how is it to be formulated? Revision, as concretely being proposed now, is nothing less **than a rebuilding of the Philippine constitutional structure**. Who were involved in formulating the structure? What debates ensued? What records are there for future use in interpreting the provisions which may be found to be unclear?

In a deliberative body like Congress or a Constitutional Convention, decisions are reached after much purifying debate. And while the deliberations proceed, the public has the opportunity to get involved. It is only after the work of an authorized body has been completed that it is presented to the electorate for final judgment. **Careful debate is important because the electorate tends to accept what is presented to it even sight unseen**.[30]

IV

R.A. No. 6735 is insufficient to implement the People's initiative

Section 2, Article XVII of the 1987 Constitution reads:

> **Section 2**. Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter,
>
> **The Congress shall provide for the implementation of the exercise of this right**.

On its face, Section 2 is not a self-executory provision. This means that an enabling law is imperative for its implementation. Thus, Congress enacted R.A. No. 6735 in order to breathe life into this constitutional provision. However, as previously narrated, this Court struck the law in *Santiago* for being **incomplete, inadequate**, or **wanting in essential terms and conditions** insofar as initiative on amendments to the Constitution is concerned.

The passage of time has done nothing to change the applicability of R.A. No. 6735. Congress neither amended it nor passed a new law to supply its deficiencies.

Notwithstanding so, this Court is being persuaded to take a 360-degree turn, enumerating three (3) justifications why R.A. No. 6735 must be considered a sufficient law, thus:

> 1) The **text** of R.A. No. 6735 is **replete with references to the right of people to initiate** changes to the Constitution;
>
> 2) The **legislative history** of R.A. No. 6735 reveals the **clear intent** of the lawmakers to use it as instrument to implement the people's initiative; and
>
> 3) The **sponsorship speeches** by the authors of R.A. No. 6735 demonstrate the **legislative intent** to use it as instrument to implement people's initiative.

I regret to say that the foregoing justifications are wanting.

A thorough reading of R.A. No. 6735 leads to the conclusion that it covers only initiatives on **national** and **local legislation**. Its references to initiatives on the Constitution are **few**,

isolated and **misplaced**. Unlike in the initiatives on national and local legislation, where R.A. No. 6735 provides a detailed, logical, and exhaustive enumeration on their implementation,[31] however, as regards initiative on the Constitution, the law merely:

(a) mentions the word "Constitution" in Section 2;[32]

(b) defines "initiative on the Constitution" and includes it in the enumeration of the three systems of initiative in Section 3;[33]

(c) speaks of "plebiscite" as the process by which the proposition in an initiative on the Constitution may be approved or rejected by the people;[34]

(d) reiterates the constitutional requirements as to the number of voters who should sign the petition;[35] and

(e) provides the date for the effectivity of the approved proposition.[36]

In other words, R.A. No. 6735 does not specify the procedure how initiative on the Constitution may be accomplished. This is not the enabling law contemplated by the Constitution. As pointed out by oppositor-intervenor Alternative Law Groups Inc., since the promulgation of the Decision in *Santiago*, various bills have been introduced in both Houses of Congress providing for a **complete** and **adequate process** for people's initiative, such as:

- Names, signatures and addresses of petitioners who shall be registered voters;
- A statement of the provision of the Constitution or any part thereof sought to be amended and the proposed amendment;
- The manner of initiation — in a congressional district through a petition by any individual, group, political party or coalition with members in the congressional district;
- The language used: the petition should be printed in English and translated in the local language;
- Signature stations to be provided for;
- Provisions pertaining to the need and manner of posting, that is, after the signatures shall have been verified by the Commission, the verified signatures shall be posted for at least thirty days in the respective municipal and city halls where the signatures were obtained;
- Provisions pertaining to protests allowed any protest as to the authenticity of the signatures to be filed with the COMELEC and decided within sixty (60) days from the filing of said protest.

None of the above necessary details is provided by R.A. No. 6735, thus, demonstrating its **incompleteness and inadequacy**.

V

Petitioners are not Proper Parties to File the Petition for Initiative

VI

The Petition for Initiative Filed with the COMELEC Does not Comply with Section 2, Article XVII of the Constitution and R.A. No. 6735

I shall discuss the above issues together since they are interrelated and inseparable. The determination of whether petitioners are proper parties to file the petition for initiative in behalf of the alleged 6.3 million voters **will require an examination of whether they have complied with the provisions of Section 2, Article XVII of the Constitution**.

To reiterate, Section 2, Article XVII of the Constitution provides:

> Section 2. Amendments to this Constitution may likewise be **directly proposed by the people through initiative upon a petition of at least twelve per centum of the total number of registered voters,** of which **every legislative district must be represented by at least three per centum of the registered voters therein**. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.
>
> The Congress shall provide for the implementation of the exercise of this right. (Underscoring supplied)

The mandate of the above constitutional provisions is definite and categorical. For a **people's initiative** to prosper, the following requisites must be present:

1. It is "**the people**" **themselves** who must "**directly propose**" "**amendments**" to the Constitution;
2. The **proposed amendments** must be contained in "**a petition of at least twelve per centum of the total number of registered voters**;" and
3. The required minimum of 12% of the total number of registered voters "**must be represented by at least three per centum of the registered voters**" of "**every legislative district**."

In this case, however, the above requisites are **not** present.

The petition for initiative was filed with the COMELEC by petitioners Lambino and Aumentado, **two registered voters**. As shown in the "*Verification/Certification with Affidavit of Non-Forum Shopping*" contained in their petition, they alleged under oath that they have caused the preparation of the petition in their personal capacity as registered voters "and **as representatives**" of the supposed 6.3 million registered voters. This goes to show that the questioned petition was **not** initiated **directly** by the 6.3 million people who allegedly comprised at least 12% of the total number of registered voters, as required by Section 2. Moreover, **nowhere in the petition itself could be found the signatures of the 6.3 million registered voters**. Only the signatures of petitioners Lambino and Aumentado were affixed therein "**as representatives**" of those 6.3 million people. Certainly, that is **not** the **petition for people's initiative** contemplated by the Constitution.

Petitioners Lambino and Aumentado have **no authority** whatsoever to file the petition "**as representatives**" of the alleged 6.3 million registered voters. **Such act of representation is constitutionally proscribed**. To repeat, Section 2 strictly requires that amendments to the Constitution shall be "**directly proposed by the people through initiative upon a petition of at least twelve per centum of the total number of registered voters**." Obviously, the phrase "**directly** proposed by the people" **excludes** any

person acting as representative or agent of the 12% of the total number of registered voters. The Constitution has bestowed upon the people the right to **directly** propose amendments to the Constitution. Such right cannot be usurped by anyone under the guise of being the people's representative. Simply put, Section 2 does not recognize acts of representation. For it is only "**the people**" (comprising the minimum of 12% of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters therein) who are the **proper parties** to initiate a petition proposing amendments to the Constitution. Verily, the petition filed with the COMELEC by herein petitioners Lambino and Aumentado is **not** a people's initiative. Necessarily, it must fail.

Cororarilly, the plea that this Court should "hear" and "heed" "the people's voice" is baseless and misleading. **There is no people's voice to be heard and heeded as this petition for initiative is not truly theirs, but only of petitioners Lambino and Aumentado and their allies**.

VII

The issues at bar are not political questions.

Lambino and Aumentado, petitioners in G.R. No. 174153, vehemently argue that: **(1)** "[t]he validity of the exercise of the right of the sovereign people to amend the Constitution and their will, as expressed by the fact that over six million registered voters indicated their support of the Petition for initiative is a **purely political question**;" and (2) "[t]he power to propose amendments to the Constitution is a right explicitly bestowed upon the sovereign people. Hence, the determination by the people to exercise their right to propose amendments under the system of initiative is a sovereign act and falls squarely within the ambit of a **political question**."

The "political question doctrine" was first enunciated by the US Supreme Court in *Luther v. Borden*.[37] Faced with the difficult question of whether the Supreme Court was the appropriate institution to define the substantive content of republicanism, the US Supreme Court, speaking thru Mr. Justice Roger B. Taney, concluded that "**the sovereignty in every State resides in the people, as to how and whether they exercised it, was under the circumstances of the case, a political question to be settled by the political power**." In other words, the responsibility of settling certain constitutional questions was left to the legislative and executive branches of the government.

The *Luther* case arose from the so-called "Dorr Rebellion" in the State of Rhode Island. Due to increased migration brought about by the Industrial Revolution, the urban population of Rhode Island increased. However, under the 1663 Royal Charter which served as the State Constitution, voting rights were largely limited to residents of the rural districts. This severe mal-apportionment of suffrage rights led to the "Dorr Rebellion." Despairing of obtaining remedies for their disenfranchisement from the state government, suffrage reformers invoked their rights under the American Declaration of Independence to "alter or abolish" the government and to institute a new one. The reformers proceeded to call for and hold an extralegal constitutional convention, drafted a new State Constitution, submitted the document for popular ratification, and held elections under it. The State government, however, refused to cede power, leading to an anomalous situation in that for a few months in 1842, there were two opposing state governments contending for legitimacy and possession of state of offices.

The Rhode Island militia, under the authority of martial law, entered and searched the house of Martin Luther, a Dorr supporter. He brought suit against Luther Borden, a militiaman.

Before the US Supreme Court, Luther's counsel argued that since the State's archaic Constitution prevented a fair and peaceful address of grievances through democratic processes, the people of Rhode Island had instead chosen to exercise their inherent right in popular sovereignty of replacing what they saw as an oppressive government. **The US Supreme Court deemed the controversy as non-justiciable and inappropriate for judicial resolution**.

In *Colgrove v. Green*, [38] Mr. Justice Felix Frankfurter, coined the phrase "political thicket" to describe situations where Federal courts should not intervene in political questions which they have neither the competence nor the commission to decide. In *Colgrove*, the US Supreme Court, with a narrow 4-3 vote branded the apportionment of legislative districts in Illinois "**as a political question and that the invalidation of the districts might, in requiring statewide elections, create an evil greater than that sought to be remedied**."

While this Court has adopted the use of Frankfurter's "political thicket," nonetheless, it has sought to come up with a definition of the term "political question." Thus, in *Veer v. Avelino*, [39] this Court ruled that properly, political questions are "**those questions which, under the Constitution, are to be decided by the people in their sovereign capacity or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government**." In *Tañada and Macapagal v. Cuenco*, [40] the Court held that the term political question connotes, in legal parlance, what it means in ordinary parlance, namely, a **question of policy. It is concerned with issues dependent upon the wisdom, not legality, of a particular measure**.

In *Aquino v. Enrile*, [41] this Court adopted the following guidelines laid down in *Baker v. Carr* [42] in determining whether a question before it is political, rather than judicial in nature, to wit:

1) there is a textually demonstrable constitutional commitment of the issue to a coordinate political department; or

2) there is a lack of judicially discoverable and manageable standards for resolving it; or

3) there is the sheer impossibility of deciding the matter without an initial policy determination of a kind clearly for non-judicial discretion; or

4) there is the sheer impossibility of the Court's undertaking an independent resolution without expressing lack of respect due the coordinate branches of government; or

5) there is an unusual need for unquestioning adherence to a political decision already made; or

6) there exists the potentiality of embarrassment arising from multifarious pronouncements by various departments on one question.

None of the foregoing standards is present in the issues raised before this Court. Accordingly, **the issues are justiciable. What is at stake here is the legality and not the wisdom of the act complained of**.

Moreover, even assuming *arguendo* that the issues raised before this Court are political in nature, it is not precluded from resolving them under its expanded jurisdiction conferred

upon it by Section 1, Article VIII of the Constitution, following *Daza v. Singson*.[43] As pointed out in *Marcos v. Manglapus*,[44] the present Constitution limits resort to the political question doctrine and broadens the scope of judicial power which the Court, under previous charters, would have normally and ordinarily left to the political departments to decide.

CONCLUSION

In fine, considering the political scenario in our country today, it is my view that the so-called people's initiative to amend our Constitution from bicameral-presidential to unicameral-parliamentary is actually not an initiative of the people, but an initiative of some of our politicians. It has not been shown by petitioners, during the oral arguments in this case, that the 6.3 million registered voters who affixed their signatures understood what they signed. In fact, petitioners admitted that the Constitutional provisions sought to be amended and the proposed amendments were not explained to all those registered voters. Indeed, there will be no means of knowing, to the point of judicial certainty, whether they really understood what petitioners and their group asked them to sign.

Let us not repeat the mistake committed by this Court in *Javellana v. The Executive Secretary*.[45] The Court then ruled that "This being the vote of the majority, there is no further judicial obstacle to the new Constitution being considered in force and effect," although it had notice that the Constitution proposed by the 1971 Constitutional Convention was not validly ratified by the people in accordance with the 1935 Constitution. The Court concluded, among others, that the *viva voce* voting in the Citizens' Assemblies "was and is null and void *ab initio*." That was during martial law when perhaps majority of the justices were scared of the dictator. Luckily at present, we are not under a martial law regime. There is, therefore, no reason why this Court should allow itself to be used as a legitimizing authority by the so-called people's initiative for those who want to perpetuate themselves in power.

At this point, I can say without fear that there is nothing wrong with our present government structure. Consequently, we must not change it. America has a presidential type of government. Yet, it thrives ideally and has become a super power. **It is then safe to conclude that what we should change are some of the people running the government, NOT the SYSTEM**.

According to petitioners, the proposed amendment would effect a more efficient, more economical and more responsive government.

Is there hope that a new breed of politicians, more qualified and capable, may be elected as members and leaders of the unicameral-parliament? Or will the present members of the Lower House continue to hold their respective positions with limitless terms?

Will the new government be more responsive to the needs of the poor and the marginalized? Will it be able to provide homes for the homeless, food for the hungry, jobs for the jobless and protection for the weak?

This is a defining moment in our history. The issue posed before us is crucial with transcendental significance. And history will judge us on how we resolve this issue — shall we allow the revision of our Constitution, of which we are duty bound to guard and revere, on the basis of a doubtful people's initiative?

Amending the Constitution involving a change of government system or structure is a herculean task affecting the entire Filipino people and the future generations. Let us, therefore, entrust this duty to more knowledgeable people elected as members of a

Constitutional Convention.

Yes, the voice of the people is the voice of God. **But under the circumstances in this case, the voice of God is not audible**.

WHEREFORE, I vote to DISMISS the petition in G.R. No. 174153 and to GRANT the petition in G.R. No. 174299.

CORONA, *J., dissenting*:

The life of the law is not logic but experience. [1] Our collective experience as a nation breathes life to our system of laws, especially to the Constitution. These cases promise to significantly contribute to our collective experience as a nation. Fealty to the primary constitutional principle that the Philippines is not merely a republican State but a democratic one as well behooves this Court to affirm the right of the people to participate directly in the process of introducing changes to their fundamental law. These petitions present such an opportunity. Thus, this is an opportune time for this Court to uphold the sovereign rights of the people.

I agree with the opinion of Mr. Justice Reynato Puno who has sufficiently explained the rationale for upholding the people's initiative. However, I wish to share my own thoughts on certain matters I deem material and significant.

SANTIAGO DOES NOT APPLY TO THIS CASE BUT ONLY TO THE 1997 DELFIN PETITION

The COMELEC denied the petition for initiative filed by petitioners purportedly on the basis of this Court's ruling in *Santiago v. COMELEC* [2] that: (1) RA 6753 was inadequate to cover the system of initiative regarding amendments to the Constitution and (2) the COMELEC was permanently enjoined from entertaining or taking cognizance of any petition for initiative regarding amendments to the Constitution until a sufficient law was validly enacted to provide for the implementation of the initiative provision.

However, *Santiago* should not apply to this case but only to the petition of Delfin in 1997. It would be unreasonable to make it apply to all petitions which were yet unforeseen in 1997. The fact is that *Santiago* was focused on the Delfin petition alone.

Those who oppose the exercise of the people's right to initiate changes to the Constitution via initiative claim that *Santiago* barred any and all future petitions for initiative by virtue of the doctrines of *stare decisis* and *res judicata*. The argument is flawed.

The *ponencia* of Mr. Justice Puno has amply discussed the arguments relating to *stare decisis*. Hence, I will address the argument from the viewpoint of *res judicata*.

Res judicata is the rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. [3] It has the following requisites: (1) the former judgment or order must be final; (2) it must have been rendered by a court having jurisdiction of the subject matter and of the parties; (3) it must be a judgment or order on the merits and (4) there must be identity of parties, of subject matter, and of cause of action between the first and second actions. [4]

There is no identity of parties in *Santiago* and the instant case. While the COMELEC was also the respondent in *Santiago*, the petitioners in that case and those in this case are

different. More significantly, there is no identity of causes of action in the two cases. *Santiago* involved amendments to Sections 4 and 7 of Article VI, Section 4 of Article VII and Section 8 of Article X of the Constitution while the present petition seeks to amend Sections 1 to 7 of Article VI and Sections 1 to 4 of the 1987 Constitution. Clearly, therefore, the COMELEC committed grave abuse of discretion when it ruled that the present petition for initiative was barred by *Santiago* and, on that ground, dismissed the petition.

The present petition and that in *Santiago* are materially different from each other. They are not based on the same facts. There is thus no cogent reason to frustrate and defeat the present direct action of the people to exercise their sovereignty by proposing changes to their fundamental law.

PEOPLE'S INITIATIVE SHOULD NOT BE SUBJECTED TO CONDITIONS

People's initiative is an option reserved by the people for themselves exclusively. Neither Congress nor the COMELEC has the power to curtail or defeat this exclusive power of the people to change the Constitution. Neither should the exercise of this power be made subject to any conditions, as some would have us accept.

Oppositors to the people's initiative point out that this Court ruled in *Santiago* that RA 6735 was inadequate to cover the system of initiative on amendments to the Constitution and, thus, no law existed to enable the people to directly propose changes to the Constitution. This reasoning is seriously objectionable.

The pronouncement on the insufficiency of RA 6735 was, to my mind, out of place. It was unprecedented and dangerously transgressed the domain reserved to the legislature.

While the legislature is authorized to establish procedures for determining the validity and sufficiency of a petition to amend the constitution, [5] that procedure cannot unnecessarily restrict the initiative privilege. [6] In the same vein, this Court cannot unnecessarily and unreasonably restrain the people's right to directly propose changes to the Constitution by declaring a law inadequate simply for lack of a sub-heading and other grammatical but insignificant omissions. Otherwise, the constitutional intent to empower the people will be severely emasculated, if not rendered illusory.

PEOPLE'S RIGHT AND POWER TO PROPOSE CHANGES TO THE CONSTITUTION DIRECTLY SHOULD NOT BE UNREASONABLY CURTAILED

If Congress and a constitutional convention, both of which are mere **representative** bodies, can propose changes to the Constitution, there is no reason why the supreme body politic itself — the people — may not do so **directly**.

Resort to initiative to amend the constitution or enact a statute is an exercise of "direct democracy" as opposed to "representative democracy." The system of initiative allows citizens to directly propose constitutional amendments for the general electorate to adopt or reject at the polls, particularly in a plebiscite. While representative government was envisioned to "refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations," [7] the exercise of "direct democracy" through initiative reserves direct lawmaking power to the people by providing them a method to make new laws via

the constitution, or alternatively by enacting statutes. [8] Efforts of the represented to control their representatives through initiative have been described as curing the problems of democracy with more democracy. [9]

The Constitution celebrates the sovereign right of the people and declares that "sovereignty resides in the people and all government authority emanates from them." [10] Unless the present petition is granted, this constitutional principle will be nothing but empty rhetoric, devoid of substance for those whom it seeks to empower.

The right of the people to pass legislation and to introduce changes to the Constitution is a fundamental right and must be jealously guarded. [11] The people should be allowed to directly seek redress of the problems of society and representative democracy with the constitutional tools they have reserved for their use alone.

Accordingly, I vote to GRANT the petition in G.R. No. 174513.

CALLEJO, SR., *J., concurring*:

I am convinced beyond cavil that the respondent Commission on Elections (COMELEC) did not commit an abuse of its discretion in dismissing the amended petition before it. The proposals of petitioners incorporated in said amended petition are for the revision of the 1987 Constitution. Further, the amended petition before the respondent COMELEC is insufficient in substance.

The Antecedents

On August 25, 2006, petitioners Raul L. Lambino and Erico B. Aumentado filed with the COMELEC a petition entitled "IN THE MATTER OF PROPOSING AMENDMENTS TO THE 1987 CONSTITUTION THROUGH A PEOPLE'S INITIATIVE: A SHIFT FROM A BICAMERAL PRESIDENTIAL TO A UNICAMERAL PARLIAMENTARY GOVERNMENT BY AMENDING ARTICLES VI AND VII; AND PROVIDING TRANSITORY PROVISIONS FOR THE ORDERLY SHIFT FROM THE PRESIDENTIAL TO THE PARLIAMENTARY SYSTEM." The case was docketed as EM (LD)-06-01. On August 30, 2006, petitioners filed an amended petition. For brevity, it is referred to as the petition for initiative.

Petitioners alleged therein, *inter alia*, that they filed their petition in their own behalf and together with those who have affixed their signatures to the signature sheets appended thereto who are Filipino citizens, residents and registered voters of the Philippines, and they constitute at least twelve percent (12%) of all the registered voters in the country, wherein each legislative district is represented by at least three percent (3%) of all the registered voters therein.

Petitioners further alleged therein that the filing of the petition for initiative is based on their constitutional right to propose amendments to the 1987 Constitution by way of people's initiative, as recognized in Section 2, Article XVII thereof, which provides:

> SEC. 2. Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.
>
> The Congress shall provide for the implementation of the exercise of this right."

According to petitioners, while the above provision states that "(T)he Congress shall provide for the implementation of the exercise of this right," the provisions of Section 5(b) and (c), along with Section 7 of Republic Act (RA) 6735, [1] are sufficient enabling details for the people's exercise of the power. The said sections of RA 6735 state:

> Sec. 5. *Requirements*. — (a) To exercise the power . . .
>
> (b) A petition for an initiative on the 1987 Constitution must have at least twelve per centum (12%) of the total number of registered voters as signatories, of which every legislative district must be represented by at least three per centum (3%) of the registered voters therein. Initiative on the Constitution may be exercised only after five (5) years from the ratification of the 1987 Constitution and only once every five (5) years thereafter.
>
> (c) The petition shall state the following:
>
> c.1. contents or text of the proposed law sought to be enacted, approved or rejected, amended or repealed, as the case may be;
>
> c.2. the proposition;
>
> c.3. the reason or reasons therefor;
>
> c.4. that it is not one of the exceptions provided herein;
>
> c.5. signatures of the petitioners or registered voters; and
>
> c.6. an abstract or summary in not more than one hundred (100) words which shall be legibly written or printed at the top of every page of the petition.
>
> xxx xxx xxx
>
> Sec. 7. *Verification of Signatures*. — The Election Registrar shall verify the signatures on the basis of the registry list of voters, voters' affidavits and voters identification cards used in the immediately preceding election.

They also alleged that the COMELEC has the authority, mandate and obligation to give due course to the petition for initiative, in compliance with the constitutional directive for the COMELEC to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall." [2]

Petitioners incorporated in their petition for initiative the changes they proposed to be incorporated in the 1987 Constitution and prayed that the COMELEC issue an order:

> 1. Finding the Petition to be sufficient pursuant to Section 4, Article XVII of the 1987 Constitution;
>
> 2. Directing the publication of the Petition in Filipino and English at least twice in newspapers of general and local circulation; and
>
> 3. Calling a plebiscite to be held not earlier than sixty nor later than ninety days after the Certification by this Honorable Commission of the sufficiency of this Petition, to allow the Filipino people to express their sovereign will on the proposition.
>
> Petitioners pray for such other reliefs deemed just and equitable in the premises.

The Ruling of the respondent COMELEC

On August 31, 2006, the COMELEC promulgated the assailed Resolution denying due course and dismissing the petition for initiative. The COMELEC ruled that:

> We agree with the petitioners that this Commission has the solemn Constitutional duty to enforce and administer all laws and regulations relative to the conduct of, as in this case, initiative.
>
> This mandate, however, should be read in relation to the other provisions of the Constitution particularly on initiative.
>
> Section 2, Article XVII of the 1987 Constitution provides:
>
> > "Sec. 2. Amendments to this Constitution may, likewise, be directly proposed by the people through initiative, upon a petition of at least twelve per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters therein. . . . .
> >
> > The Congress shall provide for the implementation of the exercise of this right."
>
> The aforequoted provision of the Constitution being a non-self-executory provision needed an enabling law for its implementation. Thus, in order to breathe life into the constitutional right of the people under a system of initiative to directly propose, enact, approve or reject, in whole or in part, the Constitution, laws, ordinances, or resolution, Congress enacted RA 6735.
>
> However, the Supreme Court, in the landmark case of *Santiago v. Commission on Elections* struck down the said law for being incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned
>
> The Supreme Court, likewise, declared that this Commission should be permanently enjoined from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the system.
>
> Thus, even if the signatures in the instant Petition appear to meet the required minimum per centum of the total number of registered voters, of which every legislative district is represented by at least three per centum of the registered voters therein, still the Petition cannot be given due course since the Supreme Court categorically declared RA 6735 as inadequate to cover the system of initiative on amendments to the Constitution.
>
> This Commission is not unmindful of the transcendental importance of the right of the people under a system of initiative. However, neither can we turn a blind eye to the pronouncement of the High Court that in the absence of a valid enabling law, this right of the people remains nothing but an "empty right," and that this Commission is permanently enjoined from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution. (Citations omitted.)

Aggrieved, petitioners elevated the case to this Court on a petition for *certiorari* and *mandamus* under Rule 65 of the Rules of Court.

The Petitioners' Case

In support of their petition, petitioners alleged, *inter alia*, that:

I.

THE HONORABLE PUBLIC RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION IN REFUSING TO TAKE COGNIZANCE OF, AND TO GIVE DUE COURSE TO THE PETITION FOR INITIATIVE, BECAUSE THE CITED SANTIAGO RULING OF 19 MARCH 1997 CANNOT BE CONSIDERED THE MAJORITY OPINION OF THE SUPREME COURT *EN BANC*, CONSIDERING THAT UPON ITS RECONSIDERATION AND FINAL VOTING ON 10 JUNE 1997, NO MAJORITY VOTE WAS SECURED TO DECLARE REPUBLIC ACT NO. 6735 AS INADEQUATE, INCOMPLETE AND INSUFFICIENT IN STANDARD.

II.

THE 1987 CONSTITUTION, REPUBLIC ACT NO. 6735, REPUBLIC ACT NO. 8189 AND EXISTING APPROPRIATION OF THE COMELEC PROVIDE FOR SUFFICIENT DETAILS AND AUTHORITY FOR THE EXERCISE OF PEOPLE'S INITIATIVE, THUS, EXISTING LAWS TAKEN TOGETHER ARE ADEQUATE AND COMPLETE.

III.

THE HONORABLE PUBLIC RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION IN REFUSING TO TAKE COGNIZANCE OF, AND IN REFUSING TO GIVE DUE COURSE TO THE PETITION FOR INITIATIVE, THEREBY VIOLATING AN EXPRESS CONSTITUTIONAL MANDATE AND DISREGARDING AND CONTRAVENING THE WILL OF THE PEOPLE.

A.

THE *SANTIAGO* RULING OF 19 MARCH 1997 IS NOT APPLICABLE TO THE INSTANT PETITION FOR INITIATIVE FILED BY THE PETITIONERS.

1.

THE FRAMERS OF THE CONSTITUTION INTENDED TO GIVE THE PEOPLE THE POWER TO PROPOSE AMENDMENTS AND THE PEOPLE THEMSELVES ARE NOW GIVING VIBRANT LIFE TO THIS CONSTITUTIONAL PROVISION

2.

PRIOR TO THE QUESTIONED *SANTIAGO* RULING OF 19 MARCH 1997, THE RIGHT OF THE PEOPLE TO EXERCISE THE SOVEREIGN POWER OF INITIATIVE AND RECALL HAS BEEN INVARIABLY UPHELD

3.

THE EXERCISE OF THE INITIATIVE TO PROPOSE AMENDMENTS IS A POLITICAL QUESTION WHICH SHALL BE DETERMINED SOLELY BY THE SOVEREIGN PEOPLE.

4.

BY SIGNING THE SIGNATURE SHEETS ATTACHED TO THE PETITION FOR INITIATIVE DULY VERIFIED BY THE ELECTION

OFFICERS, THE PEOPLE HAVE CHOSEN TO PERFORM THIS SACRED EXERCISE OF THEIR SOVEREIGN POWER.

B.

THE *SANTIAGO* RULING OF 19 MARCH 1997 IS NOT APPLICABLE TO THE INSTANT PETITION FOR INITIATIVE FILED BY THE PETITIONERS

C.

THE PERMANENT INJUNCTION ISSUED IN *SANTIAGO V. COMELEC* ONLY APPLIES TO THE DELFIN PETITION.

1.

IT IS THE DISPOSITIVE PORTION OF THE DECISION AND NOT OTHER STATEMENTS IN THE BODY OF THE DECISION THAT GOVERNS THE RIGHTS IN CONTROVERSY.

IV.

THE HONORABLE PUBLIC RESPONDENT FAILED OR NEGLECTED TO ACT OR PERFORM A DUTY MANDATED BY LAW.

A.

THE MINISTERIAL DUTY OF THE COMELEC IS TO SET THE INITIATIVE FOR PLEBISCITE. [3]

Petitioners Failed to Allege and Demonstrate All the Essential Facts To Establish the Right to a Writ of *Certiorari*

Section 1, Rule 65 of the Rules of Court reads:

> Sec. 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

A writ for *certiorari* may issue only when the following requirements are set out in the petition and established:

> (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions;
>
> (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and

(3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. . . . [4]

The Court has invariably defined "grave abuse of discretion," thus:

> By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For *certiorari* to lie, there must be a capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions. [5]

There is thus grave abuse of discretion on the part of the COMELEC when it acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment amounting to lack of jurisdiction. Mere abuse of discretion is not enough. [6] The only question involved is jurisdiction, either the lack or excess thereof, and abuse of discretion warrants the issuance of the extraordinary remedy of *certiorari* only when the same is grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility. A writ of *certiorari* is a remedy designed for the correction of errors of jurisdiction and not errors of judgment. [7] An error of judgment is one in which the court may commit in the exercise of its jurisdiction, which error is reversible only by an appeal. [8]

In the present case, it appears from the assailed Resolution of the COMELEC that it denied the petition for initiative solely in obedience to the mandate of this Court in *Santiago v. Commission on Elections*. [9] In said case, the Court *En Banc* permanently enjoined the COMELEC *from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the syste*m. When the COMELEC denied the petition for initiative, there was as yet no valid law enacted by Congress to provide for the implementation of the system.

It is a travesty for the Court to declare the act of the COMELEC in denying due course to the petition for initiative as "capricious, despotic, oppressive or whimsical exercise of judgment as is equivalent to lack of jurisdiction." In fact, in so doing, the COMELEC merely followed or applied, as it ought to do, the Court's ruling in *Santiago* to the effect that Section 2, Article XVII of the Constitution on the system of initiative is a non self-executory provision and requires an enabling law for its implementation. In relation thereto, RA 6735 was found by the Court to be "incomplete, inadequate, or wanting in essential terms and conditions" to implement the constitutional provision on initiative. Consequently, the COMELEC was "**permanently enjoined from entertaining or taking cognizance of *any* petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the system**." The decision of the Court *En Banc* interpreting RA 6735 forms part of the legal system of the Philippines. [10] And no doctrine or principle laid down by the Court *En Banc* may be modified or reversed except by the Court *En Banc*, [11] certainly not by the COMELEC. Until the Court *En Banc* modifies or reverses its decision, the COMELEC is bound to follow the same. [12] As succinctly held in *Fulkerson v. Thompson*: [13]

> Whatever was before the Court, and is disposed of, is considered as finally settled. The inferior court is bound by the judgment or decree as the law of the case, and must carry it into execution according to the mandate. The inferior court cannot vary it, or judicially examine it for any other purpose than execution. It can give no other or further relief as to any matter decided by the Supreme Court even where

there is error apparent; or in any manner intermeddle with it further than to execute the mandate and settle such matters as have been remanded, not adjudicated by the Supreme Court. . . .

The principles above stated are, we think, conclusively established by the authority of adjudged cases. And any further departure from them would inevitably mar the harmony of the whole judiciary system, bring its parts into conflict, and produce therein disorganization, disorder, and incalculable mischief and confusion. Besides, any rule allowing the inferior courts to disregard the adjudications of the Supreme Court, or to refuse or omit to carry them into execution would be repugnant to the principles established by the constitution, and therefore void. [14]

At this point, it is well to recall the factual context of *Santiago* as well as the pronouncement made by the Court therein. Like petitioners in the instant case, in *Santiago*, Atty. Jesus Delfin, the People's Initiative for Reforms, Modernization and Action (PIRMA), et al., invoked Section 2, Article XVII of the Constitution as they filed with the COMELEC a "Petition to Amend the Constitution, to Lift Term Limits of Elective Officials, By People's Initiative" (the Delfin petition). They asked the COMELEC to issue an order fixing the time and date for signature gathering all over the country; causing the necessary publications of said order and their petition in newspapers of general and local circulation and instructing municipal election registrars in all regions all over the country and to assist petitioners in establishing signing stations. Acting thereon, the COMELEC issued the order prayed for.

Senator Miriam Santiago, *et al*. forthwith filed with this Court a petition for prohibition to enjoin the COMELEC from implementing its order. The Court, speaking through Justice Hilario G. Davide, Jr. (later Chief Justice), granted the petition as it declared:

1. RA 6735 "incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned";

2. COMELEC Resolution No. 2300 [15] invalid insofar as it prescribed rules and regulations on the conduct of initiative on amendments to the Constitution because the COMELEC is without authority to promulgate the rules and regulations to implement the exercise of the right of the people to directly propose amendments to the Constitution through the system of initiative; and

3. The Delfin petition insufficient as it did not contain the required number of signatures of registered voters.

The Court concluded in *Santiago* that "the COMELEC should be permanently enjoined from entertaining or taking cognizance of *any* petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the system." The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered:

a) GRANTING the instant petition;

b) DECLARING RA 6735 inadequate to cover the system of initiative on amendments to the Constitution, and to have failed to provide sufficient standard for subordinate legislation;

c) DECLARING void those parts of Resolution No. 2300 of the

Commission on Elections prescribing rules and regulations on the conduct of initiative or amendments to the Constitution; and

d) ORDERING the Commission on Elections to forthwith DISMISS the Delfin petition (UND-96-037).

The Temporary Restraining Order issued on December 18, 1996 is made permanent as against the Commission on Elections, but is LIFTED as against private respondents. [16]

The Court reiterated its ruling in *Santiago* in another petition which was filed with the Court by PIRMA and the spouses Alberto and Carmen Pedrosa (who were parties in *Santiago*) docketed as *PIRMA v. Commission on Elections*. [17] The said petitioners, undaunted by *Santiago* and claiming to have gathered 5,793,213 signatures, filed a petition with the COMELEC praying, *inter alia*, that COMELEC officers be ordered to verify all the signatures collected in behalf of the petition and, after due hearing, that it (COMELEC) declare the petition sufficient for the purpose of scheduling a plebiscite to amend the Constitution. Like the Delfin petition in *Santiago*, the PIRMA petition proposed to submit to the people in a plebiscite the amendment to the Constitution on the lifting of the term limits of elected officials.

The opinion of the minority that there was no doctrine enunciated by the Court in PIRMA has no basis. The COMELEC, in its Resolution dated July 8, 1997, dismissed the PIRMA petition citing the permanent restraining order issued against it by the Court in *Santiago*. PIRMA and the spouses Pedrosa forthwith elevated the matter to the Court alleging grave abuse of discretion on the part of the COMELEC in refusing to exercise jurisdiction over, and thereby dismissing, their petition for initiative to amend the Constitution.

The Court dismissed outright, *by a unanimous vote*, the petition filed by PIRMA and the spouses Albert Pedrosa. The Court declared that the COMELEC merely complied with the dispositions in the decision of the Court in *Santiago* and, hence, cannot be held to have committed a grave abuse of its discretion in dismissing the petition before it:

The Court ruled, first, by a unanimous vote, that no grave abuse of discretion could be attributed to the public respondent COMELEC in dismissing the petition filed by PIRMA therein, it appearing that it only complied with the dispositions in the Decision of this Court in G.R. No. 127325, promulgated on March 19, 1997, and its Resolution of June 10, 1997.

The Court next considered the question of whether there was need to resolve the second issue posed by the petitioners, namely, that the Court re-examine its ruling as regards R.A. 6735. On this issue, the Chief Justice and six (6) other members of the Court, namely, Regalado, Davide, Romero, Bellosillo, Kapunan and Torres, *JJ.*, voted that there was no need to take it up. Vitug, *J.*, agreed that there was no need for re-examination of said second issue since the case a bar is not the proper vehicle for that purpose. Five (5) other members of the Court, namely, Melo, Puno, Francisco, Hermosisima and Panganiban, *JJ.*, opined that there was need for such a re-examination. . . .

WHEREFORE, the petition is DISMISSED. [18] (Underscoring supplied.)

In the present case, the Office of the Solicitor General (OSG) takes the side of petitioners and argues that the COMELEC should not have applied the ruling in *Santiago* to the petition for initiative because the permanent injunction therein referred only to the Delfin petition. The OSG buttresses this argument by pointing out that the Temporary Restraining Order

dated December 18, 1996 that was made permanent in the dispositive portion referred only to the Delfin petition.

The OSG's attempt to isolate the dispositive portion from the body of the Court's decision in *Santiago* is futile. It bears stressing that the dispositive portion must not be read separately but in connection with the other portions of the decision of which it forms a part. To get to the true intent and meaning of a decision, no specific portion thereof should be resorted to but the same must be considered in its entirety. Hence, a resolution or ruling may and does appear in other parts of the decision and not merely in the *fallo* thereof. [19]

The pronouncement in the body of the decision in *Santiago* permanently enjoining the COMELEC "from entertaining or taking cognizance of *any* petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the system" is thus as much a part of the Court's decision as its dispositive portion. **The ruling of this Court is of the nature of an *in rem* judgment barring any and all Filipinos from filing a petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted**. Clearly, the COMELEC, in denying due course to the present petition for initiative on amendments to the Constitution conformably with the Court's ruling in *Santiago* did not commit grave abuse of discretion. On the contrary, its actuation is in keeping with the salutary principle of hierarchy of courts. For the Court to find the COMELEC to have abused its discretion when it dismissed the amended petition based on the ruling of this Court in *Santiago* would be sheer judicial apostasy.

As eloquently put by Justice J.B.L. Reyes, "there is only one Supreme Court from whose decisions all other courts should take their bearings." [20] This truism applies with equal force to the COMELEC as a quasi-judicial body for, after all, judicial decisions applying or interpreting laws or the Constitution "assume the same authority as the statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria which must control the actuations not only of those called upon to abide thereby but also of those duty bound to enforce obedience thereto." [21]

Petitioners Cannot Ascribe Grave Abuse of Discretion on the COMELEC Based on the Minority Opinion in *Santiago*

It is elementary that the opinion of the majority of the members of the Court, not the opinion of the minority, prevails. As a corollary, the decision of the majority cannot be modified or reversed by the minority of the members of the Court.

However, to eschew the binding effect of *Santiago*, petitioners argue, albeit unconvincingly, that the Court's declaration therein on the inadequacy, incompleteness and insufficiency of RA 6735 to implement the system of initiative to propose constitutional amendments did not constitute the majority opinion. This contention is utterly baseless.

Santiago was concurred in, without any reservation, by eight Justices, [22] or the majority of the members of the Court, who actually took part in the deliberations thereon. On the other hand, five Justices, [23] while voting for the dismissal of the Delfin petition on the ground of insufficiency, dissented from the majority opinion as they maintained the view that RA 6735 was sufficient to implement the system of initiative.

Given that a clear majority of the members of the Court, eight Justices, concurred in the decision in *Santiago*, the pronouncement therein that RA 6735 is "incomplete, inadequate, or

wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned" constitutes a definitive ruling on the matter.

In the Resolution dated June 10, 1997, the motions for reconsideration of the *Santiago* decision were denied with finality as only six Justices, or less than the majority, voted to grant the same. The Resolution expressly stated that the motion for reconsideration failed "to persuade the requisite majority of the Court to modify or reverse the Decision of 19 March 1977." [24] In fine, the pronouncement in *Santiago* as embodied in the Decision of March 19, 1997 remains the definitive ruling on the matter.

It bears stressing that in *PIRMA*, petitioners prayed for the Court to resolve the issue posed by them and to re-examine its ruling as regards RA 6735. By a vote of seven members of the Court, including Justice Justo P. Torres, Jr. and Justice Jose C. Vitug, the Court voted that there was no need to resolve the issue. Five members of the Court opined that there was a need for the re-examination of said ruling. Thus, the pronouncement of the Court in *Santiago* remains the law of the case and binding on petitioners.

If, as now claimed by the minority, there was no doctrine enunciated by the Court in *Santiago*, the Court should have resolved to set aside its original resolution dismissing the petition and to grant the motion for reconsideration and the petition. But the Court did not. The Court positively and unequivocally declared that the COMELEC merely followed the ruling of the Court in *Santiago* in dismissing the petition before it. No less than Senior Justice Reynato S. Puno concurred with the resolution of the Court. It behooved Justice Puno to dissent from the ruling of the Court on the motion for reconsideration of petitioners precisely on the ground that there was no doctrine enunciated by the Court in *Santiago*. He did not. Neither did Chief Justice Artemio V. Panganiban, who was a member of the Court.

That RA 6735 has failed to validly implement the people's right to directly propose constitutional amendments through the system of initiative had already been conclusively settled in *Santiago* as well as in *PIRMA*. Heeding these decisions, several lawmakers, including no less than Solicitor General Antonio Eduardo Nachura when he was then a member of the House of Representatives, [25] have filed separate bills to implement the system of initiative under Section 2, Article XVII of the Constitution.

In the present Thirteenth (13th) Congress, at least seven (7) bills are pending. In the Senate, the three (3) pending bills are: Senate Bill No. 119 entitled An Act Providing for People's Initiative to Amend the Constitution introduced by Senator Luisa "Loi" P. Ejercito Estrada; Senate Bill No. 2189 entitled An Act Providing for People's Initiative to Amend the Constitution introduced by Senator Miriam Defensor Santiago; and Senate Bill No. 2247 entitled An Act Providing for a System of People's Initiative to Propose Amendments to the Constitution introduced by Senator Richard Gordon.

In the House of Representatives, there are at least four (4) pending bills: House Bill No. 05281 filed by Representative Carmen Cari, House Bill No. 05017 filed by Representative Imee Marcos, House Bill No. 05025 filed by Representative Roberto Cajes, and House Bill No. 05026 filed by Representative Edgardo Chatto. These House bills are similarly entitled An Act Providing for People's Initiative to Amend the Constitution.

The respective explanatory notes of the said Senate and House bills uniformly recognize that there is, to date, no law to govern the process by which constitutional amendments are introduced by the people directly through the system of initiative. Ten (10) years after *Santiago* and absent the occurrence of any compelling supervening event, *i.e.*, passage of a

law to implement the system of initiative under Section 2, Article XVII of the Constitution, that would warrant the re-examination of the ruling therein, it behooves the Court to apply to the present case the salutary and well-recognized doctrine of *stare decisis*. As earlier shown, Congress and other government agencies have, in fact, abided by *Santiago*. *The Court can do no less with respect to its own ruling*.

Contrary to the stance taken by petitioners, the validity or constitutionality of a law cannot be made to depend on the individual opinions of the members who compose it — the Supreme Court, as an institution, has already determined RA 6735 to be "incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned" and therefore the same remains to be so regardless of any change in the Court's composition. [26] Indeed, it is vital that there be stability in the courts in adhering to decisions deliberately made after ample consideration. *Parties should not be encouraged to seek re-examination of determined principles and speculate on fluctuation of the law with every change in the expounders of it*. [27]

Proposals to Revise the Constitution, As in the Case of the Petitioners' Proposal to Change the Form of Government, Cannot be Effected Through the System of Initiative, Which by Express Provision of Section 2, Article XVII of the Constitution, is Limited to Amendments

Even granting *arguendo* the Court, in the present case, abandons its pronouncement in *Santiago* and declares RA 6735, taken together with other extant laws, sufficient to implement the system of initiative, still, the amended petition for initiative cannot prosper. Despite the denomination of their petition, the proposals of petitioners to change the form of government from the present bicameral-presidential to a unicameral-parliamentary system of government are actually for the *revision* of the Constitution.

Petitioners propose to "amend" Articles VI and VII of the Constitution in this manner:

> **A. Sections 1, 2, 3, 4, 5, 6 and 7 of Article VI shall be amended to read as follows:**
>
> "Section 1. (1) The legislative and executive powers shall be vested in a unicameral Parliament which shall be composed of as many members as may be provided by law, to be apportioned among the provinces, representative districts, and cities in accordance with the number of their respective inhabitants, with at least three hundred thousand inhabitants per district, and on the basis of a uniform and progressive ratio. Each district shall comprise, as far as practicable, contiguous, compact and adjacent territory, and each province must have at least one member.
>
> "(2) Each Member of Parliament shall be a natural-born citizen of the Philippines, at least twenty-five years old on the day of the election, a resident of his district for at least one year prior thereto, and shall be elected by the qualified voters of his district for a term of five years without limitation as to the number thereof, except those under the party-list system which shall be provided for by law and whose number shall be equal to twenty per centum of the total membership coming from the parliamentary districts."
>
> **B. Sections 1, 2, 3 and 4 of Article VII of the 1987 Constitution are hereby amended to read, as follows:**

"Section 1. There shall be a President who shall be the Head of State. The executive power shall be exercised by a Prime Minister, with the assistance of the Cabinet. The Prime Minister shall be elected by a majority of all the Members of Parliament from among themselves. He shall be responsible to the Parliament for the program of government.

C. For the purpose of insuring an orderly transition from the bicameral-Presidential to a unicameral-Parliamentary form of government, there shall be a new Article XVIII, entitled "Transitory Provisions," which shall read as follows:

Section 1. (1) The incumbent President and Vice President shall serve until the expiration of their term at noon on the thirtieth day of June 2010 and shall continue to exercise their powers under the 1987 Constitution unless impeached by a vote of two thirds of all the members of the interim parliament.,

(2) In case of death, permanent disability, resignation or removal from office of the incumbent President, the incumbent Vice President shall succeed as President. In case of death, permanent disability, resignation or removal from office of both the incumbent President and Vice President, the interim Prime Minister shall assume all the powers and responsibilities of Prime Minister under Article VII as amended.

Section 2. "Upon the expiration of the term of the incumbent President and Vice President, with the exception of Sections 1, 2, 3, 4, 5, 6 and 7 of Article VI of the 1987 Constitution which shall hereby be amended and Sections 18 and 24 which shall be deleted, all other Sections of Article VI are hereby retained and renumbered sequentially as Section 2, ad seriatim up to 26, unless they are inconsistent with the Parliamentary system of government, in which case, they shall be amended to conform with a unicameral parliamentary form of government; provided, however, that any and all references therein to "Congress," "Senate," "House of Representatives" and "House of Congress," "Senator[s] or "Member[s] of the House of Representatives" and "House of Congress" shall be changed to read "Parliament"; that any and all references therein to "Member[s] of the House of Representatives" shall be changed to read as "Member[s] of Parliament" and any and all references to the "President" and or "Acting President" shall be changed to read "Prime Minister."

Section 3. "Upon the expiration of the term of the incumbent President and Vice President, with the exception of Sections 1, 2, 3 and 4 of Article VII of the 1987 Constitution which are hereby amended and Sections 7, 8, 9, 10, 11 and 12 which are hereby deleted, all other Sections of Article VII shall be retained and renumbered sequentially as Section 2, ad seriatim up to 14, unless they shall be inconsistent with Section 1 hereof, in which case they shall be deemed amended so as to conform to a unicameral Parliamentary System of government; provided, however, that any and all references therein to "Congress," "Senate," "House of Representatives" and "Houses of Congress" shall be changed to read "Parliament"; that any and all references therein to "Member[s] of Congress," "Senator[s]" or "Member[s] of the House of Parliament" and any and all references to the "President" and of "Acting President" shall be changed to read "Prime Minister."

Section 4. (1) There shall exist, upon the ratification of these amendments, an interim Parliament which shall continue until the Members of the regular Parliament shall have been elected and shall have qualified. It shall be composed of the incumbent Members of the Senate and the House of Representatives and the incumbent Members of the Cabinet who are heads of executive departments.

(2) The incumbent Vice President shall automatically be a Member of Parliament until noon of the thirtieth day of June 2010. He shall also be a member of the cabinet and shall head a ministry. He shall initially convene the interim Parliament and shall preside over its session for the election of the interim Prime Minister and until the Speaker shall have been elected by a majority vote of all the members of the interim Parliament from among themselves.

(3) Senators whose term of office ends in 2010 shall be Members of Parliament until noon of the thirtieth day of June 2010.

(4) Within forty-five days from ratification of these amendments, the interim Parliament shall convene to propose amendments to, or revisions of, this Constitution consistent with the principles of local autonomy, decentralization and a strong bureaucracy.

"Section 5. (1) The incumbent President, who is the Chief Executive, shall nominate, from among the members of the interim Parliament, an interim Prime Minister, who shall be elected by a majority vote of the members thereof. The interim Prime Minister shall oversee the various ministries and shall perform such powers and responsibilities as may be delegated to him by the incumbent President."

(2) The interim Parliament shall provide for the election of the members of Parliament, which shall be synchronized and held simultaneously with the election of all local government officials. ~~[Thereafter, the Vice-President, as Member of Parliament, shall immediately convene the Parliament and shall initially preside over its session for the purpose of electing the Prime Minister, who shall be elected by a majority vote of all its members, from among themselves.]~~ The duly-elected Prime Minister shall continue to exercise and perform the powers, duties and responsibilities of the interim Prime Minister until the expiration of the term of the incumbent President and Vice President. [28]

Petitioners claim that the required number of signatures of registered voters have been complied with, i.e., the signatories to the petition constitute twelve percent (12%) of all the registered voters in the country, wherein each legislative district is represented by at least three percent (3%) of all the registered voters therein. Certifications allegedly executed by the respective COMELEC Election Registrars of each municipality and city verifying these signatures were attached to the petition for initiative. The verification was allegedly done on the basis of the list of registered voters contained in the official COMELEC list used in the immediately preceding election.

The proposition, as formulated by petitioners, to be submitted to the Filipino people in a plebiscite to be called for the said purpose reads:

> DO YOU APPROVE THE AMENDMENT OF ARTICLES VI AND VII OF THE 1987 CONSTITUTION, CHANGING THE FORM OF GOVERNMENT FROM THE PRESENT BICAMERAL-PRESIDENTIAL TO A UNICAMERAL-PARLIAMENTARY SYSTEM, AND PROVIDING ARTICLE XVIII AS TRANSITORY PROVISIONS FOR THE ORDERLY SHIFT FROM ONE SYSTEM TO THE OTHER? [29]

According to petitioners, the proposed amendment of Articles VI and VII would effect a more efficient, more economical and more responsive government. The parliamentary system would allegedly ensure harmony between the legislative and executive branches of government, promote greater consensus, and provide faster and more decisive

governmental action.

Sections 1 and 2 of Article XVII pertinently read:

Article XVII

SECTION 1. Any amendment to, or revision of, this Constitution may be proposed by:

(1) The Congress, upon a vote of three-fourths of all its Members; or

(2) A constitutional convention.

SECTION 2. Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.

The Congress shall provide for the implementation of the exercise of this right.

It can be readily gleaned that the above provisions set forth different modes and procedures for proposals for the amendment and revision of the Constitution:

1. Under Section 1, Article XVII, any amendment to, or revision of, the Constitution may be proposed by —

   a. Congress, upon a vote of three-fourths of all its members; or

   b. A constitutional convention.

2. Under Section 2, Article XVII, amendments to the Constitution may be likewise directly proposed by the people through initiative.

The framers of the Constitution deliberately adopted the terms "amendment" and "revision" and provided for their respective modes and procedures for effecting changes of the Constitution fully cognizant of the distinction between the two concepts. Commissioner Jose E. Suarez, the Chairman of the Committee on Amendments and Transitory Provisions, explained:

MR. SUAREZ. One more point, and we will be through.

We mentioned the possible use of only one term and that is, "amendment." However, the Committee finally agreed to use the terms — "amendment" or "revision" when our attention was called by the honorable Vice-President to the substantial difference in the connotation and significance between the said terms. As a result of our research, we came up with the observations made in the famous — or notorious — Javellana doctrine, particularly the decision rendered by Honorable Justice Makasiar, wherein he made the following distinction between "amendment" and "revision" of an existing Constitution: "Revision" may involve a rewriting of the whole Constitution. On the other hand, the act of amending a constitution envisages a change of specific provisions only. The intention of an act to amend is not the change of the entire Constitution, but only the improvement of specific parts or the addition of provisions deemed essential as a consequence of new conditions or the elimination of parts already considered obsolete or unresponsive to the needs of the times.

The 1973 Constitution is not a mere amendment to the 1935 Constitution. It is a

completely new fundamental Charter embodying new political, social and economic concepts.

So, the Committee finally came up with the proposal that these two terms should be employed in the formulation of the Article governing amendments or revisions to the new Constitution. [30]

Further, the framers of the Constitution deliberately omitted the term "revision" in Section 2, Article XVII of the Constitution because it was their intention to reserve the power to propose a revision of the Constitution to Congress or the constitutional convention. Stated in another manner, it was their manifest intent that revision thereof shall not be undertaken through the system of initiative. Instead, the revision of the Constitution shall be done either by Congress or by a constitutional convention.

It is significant to note that, originally, the provision on the system of initiative was included in Section 1 of the draft Article on Amendment or Revision proposed by the Committee on Amendments and Transitory Provisions. The original draft provided:

SEC. 1. Any amendment to, or revision of, this Constitution may be proposed:

(a) by the National Assembly upon a vote of three-fourths of all its members; or

(b) by a constitutional convention; or

(c) directly by the people themselves thru initiative as provided for in Article __ Section __ of the Constitution. [31]

However, after deliberations and interpellations, the members of the Commission agreed to remove the provision on the system of initiative from Section 1 and, instead, put it under a separate provision, Section 2. It was explained that the removal of the provision on initiative from the other "traditional modes" of changing the Constitution was precisely to limit the former (system of initiative) to amendments to the Constitution. It was emphasized that the system of initiative should *not* extend to revision.

MR. SUAREZ. Thank you, Madam President.

May we respectfully call the attention of the Members of the Commission that pursuant to the mandate given to us last night, we submitted this afternoon a complete Committee Report No. 7 which embodies the proposed provision governing the matter of initiative. This is now covered by Section 2 of the complete committee report. With the permission of the Members, may I quote Section 2:

> The people may, after five years from the date of the last plebiscite held, directly propose amendments to this Constitution thru initiative upon petition of at least ten percent of the registered voters.

This completes the blanks appearing in the original Committee Report No. 7. This proposal was suggested on the theory that this matter of initiative, which came about because of the extraordinary developments this year, has to be separated from the traditional modes of amending the Constitution as embodied in Section 1. The committee members felt that this system of initiative should be limited to amendments to the Constitution and should **not** extend to the revision of the entire Constitution, so we removed it from the operation of Section 1 of the proposed Article on Amendment or Revision. . . . [32]

The intention to exclude "revision" of the Constitution as a mode that may be undertaken

through the system of initiative was reiterated and made clear by Commissioner Suarez in response to a suggestion of Commissioner Felicitas Aquino:

> MR. SUAREZ. Section 2 must be interpreted together with the provisions of Section 4, except that in Section 4, as it is presently drafted, there is no take-off date for the 60-day and 90-day periods.
>
> MS. AQUINO. Yes. In other words, Section 2 is another alternative mode of proposing amendments to the Constitution which would further require the process of submitting it in a plebiscite, in which case it is not self-executing.
>
> MR. SUAREZ. No, not unless we settle and determine the take-off period.
>
> MS. AQUINO. In which case, I am seriously bothered by providing this process of initiative as a separate section in the Article on Amendment. Would the sponsor be amenable to accepting an amendment in terms of realigning Section 2 as another subparagraph (c) of Section 1, instead of setting it up as another separate section as if it were a self-executing provision?
>
> MR SUAREZ. We would be amenable except that, as we clarified a while ago, this process of initiative is limited to the matter of amendment and should not expand into a revision which contemplates a total overhaul of the Constitution. That was the sense conveyed by the Committee.
>
> MS. AQUINO. In other words, the Committee was attempting to distinguish the coverage of modes (a) and (b) in Section 1 to include the process of revision; whereas, the process of initiation to amend, which is given to the public, would only apply to amendments?
>
> MR. SUAREZ. That is right. Those were the terms envisioned by the Committee. [33]

Then Commissioner Hilario P. Davide, Jr. (later Chief Justice) also made the clarification with respect to the observation of Commissioner Regalado Maambong:

> MR. MAAMBONG. My first question: Commissioner Davide's proposed amendment on line 1 refers to "amendments." Does it not cover the word "revision" as defined by Commissioner Padilla when he made the distinction between the words "amendments" and "revision"?
>
> MR. DAVIDE. No, it does not, because "amendments" and "revision" should be covered by Section 1. So insofar as initiative is concerned, it can only relate to "amendments" not "revision." [34]

After several amendments, the Commission voted in favor of the following wording of Section 2:

> AMENDMENTS TO THIS CONSTITUTION MAY LIKEWISE BE DIRECTLY PROPOSED BY THE PEOPLE THROUGH INITIATIVE UPON A PETITION OF AT LEAST TWELVE PERCENT OF THE TOTAL NUMBER OF REGISTERED VOTERS OF WHICH EVERY LEGISLATIVE DISTRICT MUST BE REPRESENTED BY AT LEAST THREE PERCENT OF THE REGISTERED VOTERS THEREOF. NO AMENDMENT UNDER THIS SECTION SHALL BE AUTHORIZED WITHIN FIVE YEARS FOLLOWING THE RATIFICATION OF THIS CONSTITUTION NOR OFTENER THAN ONCE EVERY FIVE YEARS THEREAFTER.
>
> THE NATIONAL ASSEMBLY SHALL BY LAW PROVIDE FOR THE

IMPLEMENTATION OF THE EXERCISE OF THIS RIGHT.

Sections 1 and 2, Article XVII as eventually worded read:

Article XVII

SECTION 1. Any amendment to, or revision of, this Constitution may be proposed by:

(3) The Congress, upon a vote of three-fourths of all its Members; or

(4) A constitutional convention.

SEC. 2. Amendments to this Constitution may likewise be directly proposed by the people through initiative, upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.

The Congress shall provide for the implementation of the exercise of this right.

The final text of Article XVII on Amendments or Revisions clearly makes a substantial differentiation not only between the two terms but also between two procedures and their respective fields of application. Ineluctably, the system of initiative under Section 2, Article XVII as a mode of effecting changes in the Constitution is strictly limited to amendments — not to a revision — thereof.

As opined earlier, the framers of the Constitution, in providing for "amendment" and "revision" as different modes of changing the fundamental law, were cognizant of the distinction between the two terms. They particularly relied on the distinction made by Justice Felix Antonio in his concurring opinion in *Javellana v. Executive Secretary*,[35] the controversial decision which gave imprimatur to the 1973 Constitution of former President Ferdinand E. Marcos, as follows:

> There is clearly a distinction between revision and amendment of an existing constitution. Revision may involve a rewriting of the whole constitution. The act of amending a constitution, on the other hand, envisages a change of only specific provisions. The intention of an act to amend is not the change of the entire constitution, but only the improvement of specific parts of the existing constitution of the addition of provisions deemed essential as a consequence of new conditions or the elimination of parts already considered obsolete or unresponsive to the needs of the times. The 1973 Constitution is not a mere amendment to the 1935 Constitution. It is a completely new fundamental charter embodying new political, social and economic concepts.[36]

Other elucidation on the distinction between "amendment" and "revision" is enlightening. For example, Dean Vicente G. Sinco, an eminent authority on political law, distinguished the two terms in this manner:

> Strictly speaking, the act of revising a constitution involves alterations of different portions of the entire document. It may result in the rewriting either of the whole constitution, or the greater portion of it, or perhaps only some of its important provisions. But whatever results the revisions may produce, the factor that characterizes it as an act of revision is the original intention and plan authorized to be carried out. That intention and plan must contemplate a consideration of all the provisions of the constitution to determine which one should be altered or

> suppressed or whether the whole document should be replaced with an entirely new one.
>
> The act of amending a constitution, on the other hand, envisages a change of only a few specific provisions. The intention of an act to amend is not to consider the advisability of changing the entire constitution or of considering that possibility. The intention rather is to improve the specific parts of the existing constitution or to add to it provisions deemed essential on account of changed conditions or to suppress portions of it that seemed obsolete, or dangerous, or misleading in their effect. [37]

In the United States, the Supreme Court of Georgia in *Wheeler v. Board of Trustees* [38] had the occasion to make the distinction between the two terms with respect to Ga.L. 1945, an instrument which "amended" the 1877 Constitution of Georgia. It explained the term "amendment:"

> "Amendment" of a statute implies its survival and not destruction. It repeals or changes some provision, or adds something thereto. A law is amended when it is in whole or in part permitted to remain, and something is added to or taken from it, or it is in some way changed or altered to make it more complete or perfect, or to fit it the better to accomplish the object or purpose for which it was made, or some other object or purpose. [39]

On the other hand, the term "revision" was explained by the said US appellate court:

> . . . When a house is completely demolished and another is erected on the same location, do you have a changed, repaired and altered house, or do you have a new house? Some of the materials contained in the old house may be used again, some of the rooms may be constructed the same, but this does not alter the fact that you have altogether another or a new house. We conclude that the instrument as contained in Ga.L. 1945, pp. 8 to 89, inclusive, is not an amendment to the constitution of 1877; but on the contrary it is a completely revised or new constitution. [40]

Fairly recently, Fr. Joaquin Bernas, SJ, a member of the Constitutional Commission, expounded on the distinction between the two terms thus:

> An amendment envisages an alteration of one or a few specific and separable provisions. The guiding original intention of an amendment is to improve specific parts or to add new provisions deemed necessary to meet new conditions or to suppress specific portions that may have become obsolete or that are judged to be dangerous. In revision, however, the guiding original intention and plan contemplate a re-examination of the entire document — or of provisions of the document (which have overall implications for the entire document or for the fundamental philosophical underpinnings of the document) — to determine how and to what extent it should be altered. Thus, for instance, a switch from the presidential system to a parliamentary system would be a revision because of its overall impact on the entire constitutional structure. So would a switch from a bicameral system to a unicameral system because of its effect on other important provisions of the Constitution.
>
> It is thus clear that what distinguishes revision from amendment is not the quantum of change in the document. Rather, it is the fundamental qualitative alteration that effects revision. Hence, I must reject the puerile argument that the use of the plural form of "amendments" means that a revision can be achieved by the introduction of a multiplicity of amendments! [41]

Given that revision necessarily entails a more complex, substantial and far-reaching effects on the Constitution, the framers thereof wisely withheld the said mode from the system of initiative. It should be recalled that it took the framers of the present Constitution four months from June 2, 1986 until October 15, 1986 to come up with the draft Constitution which, as described by the venerable Justice Cecilia Muñoz Palma, the President of the Constitutional Commission of 1986, "gradually and painstakingly took shape through the crucible of sustained sometimes passionate and often exhilarating debates that intersected all dimensions of the national life." [42]

Evidently, the framers of the Constitution believed that a revision thereof should, in like manner, be a product of the same extensive and intensive study and debates. Consequently, while providing for a system of initiative where the people would directly propose amendments to the Constitution, they entrusted the formidable task of its revision to a deliberative body, the Congress or Constituent Assembly.

The Constitution is the fundamental law of the state, containing the principles upon which the government is founded, and regulating the division of sovereign powers, directing to what persons each of those powers is to be confided and the manner in which it is to be exercised. [43] The Philippines has followed the American constitutional legal system in the sense that the term *constitution* is given a more restricted meaning, *i.e.*, as a written organic instrument, under which governmental powers are both conferred and circumscribed. [44]

The Constitution received its force from the express will of the people. **An overwhelming 16,622,111, out of 21,785,216 votes cast during the plebiscite, or 76.30% ratified the present Constitution on February 2, 1987.** [45] In expressing that will, the Filipino people have incorporated therein the method and manner by which the same can be amended and revised, and when the electorate have incorporated into the fundamental law the particular manner in which the same may be altered or changed, then any course which disregards that express will is a direct violation of the fundamental law. [46]

Further, these provisions having been incorporated in the Constitution, where the validity of a constitutional amendment or revision depends upon whether such provisions have been complied with, such question presents for consideration and determination a judicial question, and the courts are the only tribunals vested with power under the Constitution to determine such question. [47]

Earlier, it was mentioned that Article XVII, by the use of the terms "amendment" and "revision," clearly makes a differentiation not only between the two terms but also between two procedures and their respective fields of application. On this point, the case of *McFadden v. Jordan* [48] is instructive. In that case, a "purported initiative amendment" (referred to as the proposed measure) to the State Constitution of California, then being proposed to be submitted to the electors for ratification, was sought to be enjoined. The proposed measure, denominated as "California Bill of Rights," comprised a single new article with some 208 subsections which would repeal or substantially alter at least 15 of the 25 articles of the California State Constitution and add at least four new topics. Among the likely effects of the proposed measure were to curtail legislative and judicial functions, legalize gaming, completely revise the taxation system and reduce the powers of cities, counties and courts. The proposed measure also included diverse matters as ministers, mines, civic centers, liquor control and naturopaths.

The Supreme Court of California enjoined the submission of the proposed measure to the electors for ratification because it was not an "amendment" but a "revision" which could only

be proposed by a convention. It held that from an examination of the proposed measure itself, considered in relation to the terms of the California State Constitution, it was clear that the proposed initiative enactment amounted substantially to an attempted revision, rather than amendment, thereof; and that inasmuch as the California State Constitution specifies (Article XVIII §2 thereof) that it may be revised by means of constitutional convention but does not provide for revision by initiative measure, the submission of the proposed measure to the electorate for ratification must be enjoined.

As piercingly enunciated by the California State Supreme Court in *McFadden, the differentiation required (between amendment and revision) is not merely between two words; more accurately it is between two procedures and between their respective fields of application. Each procedure, if we follow elementary principles of statutory construction, must be understood to have a substantial field of application, not to be a mere alternative procedure in the same field. Each of the two words, then, must be understood to denote, respectively, not only a procedure but also a field of application appropriate to its procedure*. [49]

Provisions regulating the time and mode of effecting organic changes are in the nature of safety-valves — they must not be so adjusted as to discharge their peculiar function with too great facility, lest they become the ordinary escape-pipes of party passion; nor, on the other hand, must they discharge it with such difficulty that the force needed to induce action is sufficient also to explode the machine. Hence, the problem of the Constitution maker is, in this particular, one of the most difficult in our whole system, to reconcile the requisites for progress with the requisites for safety. [50]

Like in *McFadden*, the present petition for initiative on amendments to the Constitution is, despite its denomination, one for its revision. It purports to seek the amendment only of Articles VI and VII of the Constitution as well as to provide transitory provisions. However, as will be shown shortly, the amendment of these two provisions will necessarily affect other numerous provisions of the Constitution particularly those pertaining to the specific powers of Congress and the President. These powers would have to be transferred to the Parliament and the Prime Minister and/or President, as the case may be. More than one hundred (100) sections will be affected or altered thereby:

1. Section 19 of Article III (Bill of Rights) on the power of Congress to impose the death penalty for compelling reasons involving heinous crimes;

2. Section 2 of Article V (Suffrage) on the power of Congress to provide for securing the secrecy and sanctity of the ballot as well as a system for absentee voting;

3. All 32 Sections of Article VI on the Legislative Department;

4. All 23 Sections of Article VII on the Executive Department;

5. The following Sections of Article VIII (Judicial Department):

    - Section 2 on power of Congress to define, prescribe and apportion the jurisdiction of various courts;

    - Section 7 on the power of Congress to prescribe the qualifications of judges of lower courts;

    - Section 8 on the composition of Judicial Bar Council (JBC) which includes representatives of Congress as *ex officio* members and on the power of the President to appoint the regular members of the

JBC;

- Section 9 on the power of the President to appoint the members of the Supreme Court and judges of lower courts;
- Section 16 on duty of Supreme Court to make annual report to the President and Congress.

6. The following Sections of Article IX (Constitutional Commissions);
   - (B) Section 3 on duty of Civil Service Commission to make annual report to the President and Congress;
   - (B) Section 5 on power of Congress to provide by law for the standardization of compensation of government officials;
   - (B) Section 8 which provides in part that "no public officer shall accept, without the consent of Congress, any present, emolument, etc. . . ."
   - (C) Section 1 on the power of the President to appoint the Chairman and Commissioners of the Commission on Elections with the consent of the Commission on Appointments;
   - (C) Section 2 (7) on the power of the COMELEC to recommend to Congress measures to minimize election spending . . .;
   - (C) Section 2 (8) on the duty of the COMELEC to recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action . . .;
   - (C) Section 2 (9) on the duty of the COMELEC to submit to the President and Congress a report on the conduct of election, plebiscite, etc.;
   - (C) Section 5 on the power of the President, with the favorable recommendation of the COMELEC, to grant pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules and regulations;
   - (C) Section 7 which recognizes as valid votes cast in favor of organization registered under party-list system;
   - (C) Section 8 on political parties, organizations or coalitions under the party-list system;
   - (D) Section 1 (2) on the power of the President to appoint the Chairman and Commissioners of the Commission on Audit (COA) with the consent of the Commission of Appointments;
   - Section 4 on duty of the COA to make annual report to the President and Congress.

7. The following Sections of Article X (Local Government):
   - Section 3 on the power of Congress to enact a local government code;
   - Section 4 on the power of the President to exercise general supervision over local government units (LGUs);
   - Section 5 on the power of LGUs to create their own sources of income .

. ., subject to such guidelines as Congress may provide;

- Section 11 on the power of Congress to create special metropolitan political subdivisions;
- Section 14 on the power of the President to provide for regional development councils . . .;
- Section 16 on the power of the President to exercise general supervision over autonomous regions;
- Section 18 on the power of Congress to enact organic act for each autonomous region as well as the power of the President to appoint the representatives to the regional consultative commission;
- Section 19 on the duty of the first Congress elected under the Constitution to pass the organic act for autonomous regions in Muslim Mindanao and the Cordilleras.

8. The following Sections of Article XI (Accountability of Public Officers):

- Section 2 on the impeachable officers (President, Vice-President, etc.);
- Section 3 on impeachment proceedings (exclusive power of the House to initiate complaint and sole power of the Senate to try and decide impeachment cases);
- Section 9 on the power of the President to appoint the Ombudsman and his deputies;
- Section 16 which provides in part that ". . . no loans or guaranty shall be granted to the President, Vice-President, etc.
- Section 17 on mandatory disclosure of assets and liabilities by public officials including the President, Vice-President, etc.

9. The following Sections of Article XII (National Economy and Patrimony):

- Section 2 on the power of Congress to allow, by law, small-scale utilization of natural resources and power of the President to enter into agreements with foreign-owned corporations and duty to notify Congress of every contract;
- Section 3 on the power of Congress to determine size of lands of public domain;
- Section 4 on the power of Congress to determine specific limits of forest lands;
- Section 5 on the power of Congress to provide for applicability of customary laws;
- Section 9 on the power of Congress to establish an independent economic and planning agency to be headed by the President;
- Section 10 on the power of Congress to reserve to Filipino citizens or domestic corporations(at least 60% Filipino-owned) certain areas of investment;

- Section 11 on the sole power of Congress to grant franchise for public utilities;
- Section 15 on the power of Congress to create an agency to promote viability of cooperatives;
- Section 16 which provides that Congress shall not, except by general law, form private corporations;
- Section 17 on the salaries of the President, Vice-President, etc. and the power of Congress to adjust the same;
- Section 20 on the power of Congress to establish central monetary authority.

10. The following Sections of Article XIII (Social Justice and Human Rights):

- Section 1 on the mandate of Congress to give highest priority to enactment of measures that protect and enhance the right of people . . .
- Section 4 on the power of Congress to prescribe retention limits in agrarian reform;
- Section 18 (6) on the duty of the Commission on Human Rights to recommend to Congress effective measures to promote human rights;
- Section 19 on the power of Congress to provide for other cases to fall within the jurisdiction of the Commission on Human Rights.

11. The following Sections of Article XIV (Education, Science and Technology, etc.):

- Section 4 on the power of Congress to increase Filipino equity participation in educational institutions;
- Section 6 which provides that subject to law and as Congress may provide, the Government shall sustain the use of Filipino as medium of official communication;
- Section 9 on the power of Congress to establish a national language commission;
- Section 11 on the power of Congress to provide for incentives to promote scientific research.

12. The following Sections of Article XVI (General Provisions):

- Section 2 on the power of Congress to adopt new name for the country, new national anthem, etc.;
- Section 5 (7) on the tour of duty of the Chief of Staff which may be extended by the President in times of war or national emergency declared by Congress;
- Section 11 on the power of Congress to regulate or prohibit monopolies in mass media;
- Section 12 on the power of Congress to create consultative body to

advise the President on indigenous cultural communities.

13. The following Sections of Article XVII (Amendments or Revisions):

- Section 1 on the amendment or revision of Constitution by Congress;
- Section 2 on the duty of Congress to provide for the implementation of the system of initiative;
- Section 3 on the power of Congress to call constitutional convention to amend or revise the Constitution.

14. All 27 Sections of Article XVIII (Transitory Provisions).

The foregoing enumeration negates the claim that "the big bulk of the 1987 Constitution will not be affected." [51] Petitioners' proposition, while purportedly seeking to amend only Articles VI and VII of the Constitution and providing transitory provisions, will, in fact, affect, alter, replace or repeal other numerous articles and sections thereof. More than the quantitative effects, however, the revisory character of petitioners' proposition is apparent from the *qualitative* effects it will have on the fundamental law.

I am not impervious to the commentary of Dean Vicente G. Sinco that the revision of a constitution, in its strict sense, refers to a consideration of the **entire** constitution and the procedure for effecting such change; while **amendment** refers only to particular provisions to be added to or to be altered in a constitution. [52]

For clarity and accuracy, however, it is necessary to reiterate below Dean Sinco's more comprehensive differentiation of the terms:

> Strictly speaking, the act of revising a constitution involves alterations of different portions of the entire document. It may result in the rewriting either of the whole constitution, or the greater portion of it, or perhaps only some of its important provisions. But whatever results the revisions may produce, the factor that characterizes it as an act of revision is the original intention and plan authorized to be carried out. That intention and plan must contemplate a consideration of all the provisions of the constitution to determine which one should be altered or suppressed or whether the whole document should be replaced with an entirely new one.
>
> The act of amending a constitution, on the other hand, envisages a change of only a few specific provisions. The intention of an act to amend is not to consider the advisability of changing the entire constitution or of considering that possibility. The intention rather is to improve the specific parts of the existing constitution or to add to it provisions deemed essential on account of changed conditions or to suppress portions of it that seemed obsolete, or dangerous, or misleading in their effect. [53]

A change in the form of government from bicameral-presidential to unicameral-parliamentary, following the above distinction, entails a revision of the Constitution as it will involve "alteration of different portions of the entire document" and "may result in the rewriting of the whole constitution, or the greater portion of it, or perhaps only some of its important provisions."

More importantly, such shift in the form of government will, without doubt, fundamentally change the basic plan and substance of the present Constitution. The tripartite system ordained by our fundamental law divides governmental powers into three distinct but co-

equal branches: the legislative, executive and judicial. Legislative power, vested in Congress which is a bicameral body consisting of the House of Representatives and the Senate, is the power to make laws and to alter them at discretion. Executive power, vested in the President who is directly elected by the people, is the power to see that the laws are duly executed and enforced. Judicial power, vested in the Supreme Court and the lower courts, is the power to construe and apply the law when controversies arise concerning what has been done or omitted under it. This separation of powers furnishes a system of checks and balances which guards against the establishment of an arbitrary or tyrannical government.

Under a unicameral-parliamentary system, however, the tripartite separation of power is dissolved as there is a fusion between the executive and legislative powers. Essentially, the President becomes a mere "symbolic head of State" while the Prime Minister becomes the head of government who is elected, not by direct vote of the people, but by the members of the Parliament. The Parliament is a unicameral body whose members are elected by legislative districts. The Prime Minister, as head of government, does not have a fixed term of office and may only be removed by a vote of confidence of the Parliament. Under this form of government, the system of checks and balances is emasculated.

Considering the encompassing scope and depth of the changes that would be effected, not to mention that the Constitution's basic plan and substance of a tripartite system of government and the principle of separation of powers underlying the same would be altered, if not entirely destroyed, there can be no other conclusion than that the proposition of petitioners Lambino, *et al*. would constitute a revision of the Constitution rather than an amendment or "such an addition or change within the lines of the original instrument as will effect an improvement or better carry out the purpose for which it was framed." [54] As has been shown, the effect of the adoption of the petitioners' proposition, rather than to "within the lines of the original instrument" constitute "an improvement or better carry out the purpose for which it was framed," is to "substantially alter the purpose and to attain objectives clearly beyond the lines of the Constitution as now cast." [55]

To paraphrase *McFadden*, petitioners' contention that any change less than a total one is amendatory would reduce to the rubble of absurdity the bulwark so carefully erected and preserved. A case might, conceivably, be presented where the question would be occasion to undertake to define with nicety the line of demarcation; but we have no case or occasion here.

As succinctly by Fr. Joaquin Bernas, "a switch from the presidential system to a parliamentary system would be a revision because of its overall impact on the entire constitutional structure. So would a switch from a bicameral system to a unicameral system because of its effect on other important provisions of the Constitution. It is thus clear that what distinguishes revision from amendment is not the quantum of change in the document. Rather, it is the fundamental qualitative alteration that effects revision." [56]

The petition for initiative on amendments to the Constitution filed by petitioners Lambino, *et al.*, being in truth and in fact a proposal for the revision thereof, is barred from the system of initiative upon any legally permissible construction of Section 2, Article XVII of the Constitution.

The Petition for Initiative on Amendments to the Constitution is, on its Face, Insufficient in Form and Substance

Again, even granting *arguendo* RA 6735 is declared sufficient to implement the system of

initiative and that COMELEC Resolution No. 2300, as it prescribed rules and regulations on the conduct of initiative on amendments to the Constitution, is valid, still, the petition for initiative on amendments to the Constitution must be dismissed for being insufficient in form and substance.

Section 5 of RA 6735 requires that a petition for initiative on the Constitution must state the following:

> 1. Contents or text of the proposed law sought to be enacted, approved or rejected, amended or repealed, as the case may be;
>
> 2. The proposition;
>
> 3. The reason or reasons therefor;
>
> 4. That it is not one of the exceptions provided herein;
>
> 5. Signatures of the petitioners or registered voters; and
>
> 6. An abstract or summary proposition in not more than one hundred (100) words which shall be legibly written or printed at the top of every page of the petition.

Section 7 thereof requires that the signatures be verified in this wise:

> SEC. 7. *Verification of Signatures*. — The Election Registrar shall verify the signatures on the basis of the registry list of voters, voters' affidavits and voters' identification cards used in the immediately preceding election.

The law mandates upon the election registrar to *personally* verify the signatures. This is a solemn and important duty imposed on the election registrar which he cannot delegate to any other person, even to *barangay* officials. Hence, a verification of signatures made by persons other than the election registrars has no legal effect.

In patent violation of the law, several certifications submitted by petitioners showed that the verification of signatures was made, not by the election registrars, but by *barangay* officials. For example, the certification of the election officer in Lumbatan, Lanao del Sur reads in full:

> LOCAL ELECTION OFFICER'S CERTIFICATION [57]
>
> THIS IS TO CERTIFY that based on the verifications made by the Barangay Officials in this City/Municipality, as attested to by two (2) witnesses from the same *Barangays*, which is part of the 2nd Legislative District of the Province of Lanao del Sur, the names appearing on the attached signature sheets relative to the proposed initiative on Amendments to the 1987 Constitution, are those of *bonafide* resident of the said *Barangays* and correspond to the names found in the official list of registered voters of the Commission on Elections and/or voters' affidavit and/or voters' identification cards.
>
> It is further certified that the total number of signatures of the registered voters for the City/Municipality of LUMBATAN, LANAO DEL SUR as appearing in the affixed signatures sheets is ONE THOUSAND ONE HUNDRED EIGHTY (1,180).
>
> April 2, 2006
>
> IBRAHIM M. MACADATO

Election Officer

(Underscoring supplied)

The ineffective verification in almost all the legislative districts in the Autonomous Region of Muslim Mindanao (ARMM) alone is shown by the certifications, similarly worded as above-quoted, of the election registrars of Buldon, Maguindanao; [58] Cotabato City (Special Province); [59] Datu Odin Sinsuat, Maguindanao; [60] Matanog, Maguindanao; [61] Parang, Maguindanao; [62] Kabantalan, Maguindanao; [63] Upi, Maguinadano; [64] Barira, Maguindanao; [65] Sultan, Mastura; [66] Ampatuan, Maguindanao; [67] Buluan, Maguindanao; [68] Datu Paglas, Maguindanao; [69] Datu Piang, Maguindanao; [70] Shariff Aguak, Maguindanao; [71] Pagalungan, Maguindanao; [72] Talayan, Maguindanao; [73] Gen. S.K. Pendatun, Maguindanao; [74] Mamasapano, Maguindanao; [75] Talitay, Maguindanao; [76] Guindulungan, Maguindanao; [77] Datu Saudi Ampatuan, Maguindanao; [78] Datu Unsay, Maguindanao; [79] Pagagawan, Maguindanao; [80] Rajah Buayan, Maguindanao; [81] Indanan, Sulu; [82] Jolo, Sulu; [83] Maimbung, Sulu; [84] Hadji Panglima, Sulu; [85] Pangutaran, Sulu; [86] Parang, Sulu; [87] Kalingalan Caluang, Sulu; [88] Luuk, Sulu; [89] Panamao, Sulu; [90] Pata, Sulu; [91] Siasi, Sulu; [92] Tapul, Sulu; [93] Panglima Estino, Sulu; [94] Lugus, Sulu; [95] and Pandami, Sulu. [96]

Section 7 of RA 6735 is clear that the verification of signatures shall be done by the election registrar, and by no one else, including the *barangay* officials. The foregoing certifications submitted by petitioners, instead of aiding their cause, justify the outright dismissal of their petition for initiative. Because of the illegal verifications made by *barangay* officials in the above-mentioned legislative districts, it necessarily follows that the petition for initiative has failed to comply with the requisite number of signatures, i.e., at least twelve percent (12%) of the total number of registered voters, of which every legislative district must be represented by at least three percent (3%) of the registered voters therein.

Petitioners cannot disclaim the veracity of these damaging certifications because they themselves submitted the same to the COMELEC and to the Court in the present case to support their contention that the requirements of RA 6735 had been complied with and that their petition for initiative is on its face sufficient in form and substance. They are in the nature of judicial admissions which are conclusive and binding on petitioners. [97] This being the case, the Court must forthwith order the dismissal of the petition for initiative for being, on its face, insufficient in form and substance. The Court should make the adjudication entailed by the facts here and now, without further proceedings, as it has done in other cases. [98]

It is argued by petitioners that, assuming *arguendo* that the COMELEC is correct in relying on *Santiago* that RA 6735 is inadequate to cover initiative to the Constitution, this cannot be used to legitimize its refusal to heed the people's will. The fact that there is no enabling law should not prejudice the right of the sovereign people to propose amendments to the Constitution, which right has already been exercised by 6,327,952 voters. The collective and resounding act of the particles of sovereignty must not be set aside. Hence, the COMELEC should be ordered to comply with Section 4, Article XVII of the 1987 Constitution via a writ of *mandamus*. The submission of petitioners, however, is unpersuasive.

Mandamus is a proper recourse for citizens who act to enforce a public right and to compel the persons of a public duty most especially when mandated by the Constitution. [99] However, under Section 3, Rule 65 of the 1997 Rules of Court, for a petition for *mandamus* to prosper, it must be shown that the subject of the petition is a ministerial act or duty and not purely discretionary on the part of the board, officer or person, and that petitioner has a well-defined, clear and certain right to warrant the grant thereof. A purely ministerial act or

duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public official and gives him the right to decide how or when the duty should be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of an official discretion nor judgment. [100]

To stress, in a petition for *mandamus*, petitioner must show a well defined, clear and certain right to warrant the grant thereof. [101] In this case, petitioners failed to establish their right to a writ of *mandamus* as shown by the foregoing disquisitions.

Remand of the Case to the COMELEC is Not Authorized by RA 6735 and COMELEC Resolution No. 2300

The dissenting opinion posits that the issue of whether or not the petition for initiative has complied with the requisite number of signatures of at least twelve percent (12%) of the total number of registered voters, of which every legislative district must be represented by at least three percent (3%) of the registered voters therein, involves **contentious facts**. The dissenting opinion cites the petitioners' claim that they have complied with the same while the oppositors-intervenors have vigorously refuted this claim by alleging, *inter alia*, that the signatures were not properly verified or were not verified at all. Other oppositors-intervenors have alleged that the signatories did not fully understand what they have signed as they were misled into signing the signature sheets.

According to the dissenting opinion, the sufficiency of the petition for initiative and its compliance with the requirements of RA 6735 on initiative and its implementing rules is a question that should be resolved by the COMELEC at the first instance. It thus remands the case to the COMELEC for further proceedings.

To my mind, the remand of the case to the COMELEC is not warranted. There is nothing in RA 6735, as well as in COMELEC Resolution No. 2300, granting that it is valid to implement the former statute, that authorizes the COMELEC to conduct any kind of hearing, whether full-blown or trial-type hearing, summary hearing or administrative hearing, on a petition for initiative.

Section 41 of COMELEC Resolution No. 2300 provides that "[a]n initiative shall be conducted under the control and supervision of the Commission in accordance with Article III hereof." Pertinently, Sections 30, 31 and 32 of Article III of the said implementing rules provide as follows:

> Sec. 30. *Verification of signatures*. — The Election Registrar shall verify the signatures on the basis of the registry list of voters, voters' affidavits and voters' identification cards used in the immediately preceding election.
>
> Sec. 31. *Determination by the Commission*. — The Commission shall act on the findings of the sufficiency or insufficiency of the petition for initiative or referendum.
>
> If it should appear that the required number of signatures has not been obtained, the petition shall be deemed defeated and the Commission shall issue a declaration to that effect.
>
> If it should appear that the required number of signatures has been obtained, the

> Commission shall set the initiative or referendum in accordance with the succeeding sections.
>
> Sec. 32. *Appeal*. — The decision of the Commission on the findings of the sufficiency and insufficiency of the petition for initiative or referendum may be appealed to the Supreme Court within thirty (30) days from notice hereof.

Clearly, following the foregoing procedural rules, the COMELEC is not authorized to conduct any kind of hearing to receive any evidence for or against the sufficiency of the petition for initiative. Rather, the foregoing rules require of the COMELEC to determine the sufficiency or insufficiency of the petition for initiative **on its face**. And it has already been shown, by the annexes submitted by the petitioners themselves, their petition is, on its face, insufficient in form and substance. The remand of the case to the COMELEC for reception of evidence of the parties on the contentious factual issues is, in effect, an amendment of the abovequoted rules of the COMELEC by this Court which the Court is not empowered to do.

The Present Petition Presents a Justiciable Controversy; Hence, a Non-Political Question. Further, the People, Acting in their Sovereign Capacity, Have Bound Themselves to Abide by the Constitution

Political questions refer to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of government. [102] A political question has two aspects: (1) those matters that are to be exercised by the people in their primary political capacity; and (2) matters which have been specifically designated to some other department or particular office of the government, with discretionary power to act. [103]

In his concurring and dissenting opinion in *Arroyo v. De Venecia*, [104] Senior Associate Justice Reynato S. Puno explained the doctrine of political question vis-à-vis the express mandate of the present Constitution for the courts to determine whether or not there has been a grave abuse of discretion on the part of any branch or instrumentality of the Government:

> In the Philippine setting, there is more compelling reason for courts to categorically reject the political question defense when its interposition will cover up abuse of power. For Section 1, Article VIII of our Constitution was *intentionally* cobbled to empower courts ". . . 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." This power is new and was not granted to our courts in the 1935 and 1972 Constitutions. It was also not xeroxed from the US Constitution or any foreign state constitution. The CONCOM [Constitutional Commission] granted this enormous power to our courts in view of our experience under martial law where abusive exercises of state power were shielded from judicial scrutiny by the misuse of the political question doctrine. Led by the eminent former Chief Justice Roberto Concepcion, the CONCOM expanded and sharpened the checking powers of the judiciary vis-à-vis the Executive and the Legislative departments of government. In cases involving the proclamation of martial law and suspension of the privilege of *habeas corpus*, it is now beyond dubiety that the government can no longer invoke the political question defense.

> To a great degree, it diminished its [political question doctrine] use as a shield to protect other abuses of government by allowing courts to penetrate the shield with new power to review acts of any branch or instrumentality of the government ". . . to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction."

Even if the present petition involves the act, not of a governmental body, but of purportedly more than six million registered voters who have signified their assent to the proposal to amend the Constitution, the same still constitutes a justiciable controversy, hence, a non-political question. There is no doubt that the Constitution, under Article XVII, has explicitly provided for the manner or method to effect amendments thereto, or revision thereof. The question, therefore, of whether there has been compliance with the terms of the Constitution is for the Court to pass upon. [105]

In the United States, in *In re McConaughy*, [106] the State Supreme Court of Minnesota exercised jurisdiction over the petition questioning the result of the general election holding that "an examination of the decisions shows that the courts have almost uniformly exercised the authority to determine the validity of the proposal, submission, or ratification of constitutional amendments." The cases cited were *Dayton v. St. Paul*, [107] *Rice v. Palmer*, [108] *Bott v. Wurtz*, [109] *State v. Powell*, [110] among other cases.

There is no denying that "the Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them." [111] However, I find to be tenuous the asseveration that "the argument that the people through initiative cannot propose substantial amendments to change the Constitution turns sovereignty in its head. At the very least, the submission constricts the democratic space for the exercise of the direct sovereignty of the people." [112] In effect, it is theorized that despite the unambiguous text of Section 2, Article XVII of the Constitution withholding the power to revise it from the system of initiative, the people, in their sovereign capacity, can conveniently disregard the said provision.

I strongly take exception to the view that the people, in their sovereign capacity, can disregard the Constitution altogether. Such a view directly contravenes the fundamental constitutional theory that while indeed "the ultimate sovereignty is in the people, from whom springs all legitimate authority"; nonetheless, "by the Constitution which they establish, they not only tie up the hands of their official agencies, but their own hands as well; and neither the officers of the state, nor the whole people as an aggregate body, are at liberty to take action in opposition to this fundamental law." [113] The Constitution, it should be remembered, "is the protector of the people, placed on guard by them to save the rights of the people against injury by the people." [114] This is the essence of constitutionalism:

> Through constitutionalism we placed limits on both our political institutions and ourselves, hoping that democracies, historically always turbulent, chaotic and even despotic, might now become restrained, principled, thoughtful and just. So we bound ourselves over to a law that we made and promised to keep. And though a government of laws did not displace governance by men, it did mean that now men, democratic men, would try to live by their word. [115]

Section 2, Article XVII of the Constitution on the system of initiative is limited only to proposals to amend to the Constitution, and does not extend to its revision. The Filipino people have bound themselves to observe the manner and method to effect the changes of the Constitution. They opted to limit the exercise of the right to directly propose

amendments to the Constitution through initiative, but did not extend the same to the revision thereof. The petition for initiative, as it proposes to effect the revision thereof, contravenes the Constitution. The fundamental law of the state prescribes the limitations under which the electors of the state may change the same, and, unless such course is pursued, the mere fact that a majority of the electors are in favor of a change and have so expressed themselves, does not work a change. Such a course would be revolutionary, and the Constitution of the state would become a mere matter of form. [116]

The very term Constitution implies an instrument of a permanent and abiding nature, and the provisions contained therein for its revision indicated the will of the people that the underlying principles upon which it rests, as well as the substantial entirety of the instrument, shall be of a like permanent and abiding nature. [117]

The Filipino people have incorporated the safety valves of amendment and revision in Article XVII of the Constitution. The Court is mandated to ensure that these safety valves embodied in the Constitution to guard against improvident and hasty changes thereof are not easily trifled with. To be sure, by having overwhelmingly ratified the Constitution, the Filipino people believed that it is "a good Constitution" and in the words of the learned Judge Cooley:

> . . . should be beyond the reach of temporary excitement and popular caprice or passion. It is needed for stability and steadiness; it must yield to the thought of the people; not to the whim of the people, or the thought evolved in excitement or hot blood, but the sober second thought, which alone, if the government is to be safe, can be allowed efficiency. Changes in government are to be feared unless the benefit is certain. As Montaign says: "All great mutations shake and disorder a state. Good does not necessarily succeed evil; another evil may succeed and worse. [118]

Indisputably, the issues posed in the present case are of transcendental importance. Accordingly, I have approached and grappled with them with full appreciation of the responsibilities involved in the present case, and have given to its consideration the earnest attention which its importance demands. I have sought to maintain the supremacy of the Constitution at whatever hazard. I share the concern of Chief Justice Day in *Koehler v. Hill*: [119] "**it is for the protection of minorities that constitutions are framed. Sometimes constitutions must be interposed for the protection of majorities even against themselves. Constitutions are adopted in times of public repose, when sober reason holds her citadel, and are designed to check the surging passions in times of popular excitement. But if courts could be coerced by popular majorities into a disregard of their provisions, constitutions would become mere 'ropes of sand,' and there would be an end of social security and of constitutional freedom. The cause of temperance can sustain no injury from the loss of this amendment which would be at all comparable to the injury to republican institutions which a violation of the constitution would inflict. That large and respectable class of moral reformers which so justly demands the observance and enforcement of law, cannot afford to take its first reformatory step by a violation of the constitution. How can it consistently demand of others obedience to a constitution which it violates itself? The people can in a short time re-enact the amendment. In the manner of a great moral reform, the loss of a few years is nothing. The constitution is the palladium of republican freedom. The young men coming forward upon the stage of political action must be educated to venerate it; those already upon the stage must be taught to obey it. Whatever interest may be advanced or may suffer, whoever or whatever may be**

'voted up or voted down,' no sacrilegious hand must be laid upon the constitution." [120]

WHEREFORE, I vote to DISMISS the petition in G.R. No. 174153 and to GRANT the petition in G.R. No. 174299.

AZCUNA, *J.*:

"Why, friends, you go to do you know not what."

— Shakespeare, Julius Caesar, Act III, Sc. 2.

Article XVII of the Constitution states:

AMENDMENTS OR REVISIONS

Section 1. Any amendment to, or revision of, this Constitution may be proposed by:

(1) The Congress, upon a vote of three-fourths of all its members; or

(2) A constitutional convention.

Sec. 2. Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered votes therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.

The Congress shall provide for the implementation of the exercise of this right.

Sec. 3. The Congress may, by a vote of two-thirds of all its Members, call a constitutional convention, or by a majority vote of all its Members, submit to the electorate the question of calling such a convention.

Sec. 4. Any amendment to, or revision of, this Constitution under Section 1 hereof shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the approval of such amendment or revision.

Any amendment under Section 2 hereof shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the certification by the Commission on Elections of the sufficiency of the petition.

This Article states the procedure for changing the Constitution.

Constitutions have three parts — the Constitution of Liberty, which states the fundamental rights of the people; the Constitution of Government, which establishes the structure of government, its branches and their operation; and the Constitution of Sovereignty, which provides how the Constitution may be changed.

Article XVII is the Constitution of Sovereignty.

As a result, the powers therein provided are called constituent powers. So when Congress acts under this provision, it acts not as a legislature exercising legislative powers. It acts as

a constituent body exercising constituent powers.

The rules, therefore, governing the exercise of legislative powers do not apply, or do not apply strictly, to the actions taken under Article XVII.

Accordingly, since Article XVII states that Congress shall provide for the implementation of the exercise of the people's right directly to propose amendments to the Constitution through initiative, the act of Congress pursuant thereto is not strictly a legislative action but partakes of a constituent act.

As a result, Republic Act No. 6735, the act that provides for the exercise of the people of the right to propose a law or amendments to the Constitution is, with respect to the right to propose amendments to the Constitution, a constituent measure, not a mere legislative one.

The consequence of this special character of the enactment, insofar as it relates to proposing amendments to the Constitution, is that the requirements for statutory enactments, such as sufficiency of standards and the like, do not and should not strictly apply. As long as there is a sufficient and clear intent to provide for the implementation of the exercise of the right, it should be sustained, as it is simply a compliance of the mandate placed on Congress by the Constitution.

Seen in this light, the provisions of Republic Act No. 6735 relating to the procedure for proposing amendments to the Constitution, can and should be upheld, despite shortcomings perhaps in legislative headings and standards.

For this reason, I concur in the view that *Santiago v. Comelec* [1] should be re-examined and, after doing so, that the pronouncement therein regarding the insufficiency or inadequacy of the measure to sustain a people's initiative to amend the Constitution should be reconsidered in favor of allowing the exercise of this sovereign right.

And applying the doctrine stated in *Senarillos v. Hermosisima*, [2] penned by Justice J.B.L. Reyes, in relation to Article 8 of the Civil Code, that a decision of this Court interpreting a law forms part of the law interpreted as of the time of its enactment, Republic Act No. 6735 should be deemed sufficient and adequate from the start.

This next point to address, there being a sufficient law, is whether the petition for initiative herein involved complies with the requirements of that law as well as those stated in Article XVII of the Constitution.

True it is that ours is a democratic state, as explicitated in the Declaration of Principles, to emphasize precisely that there are instances recognized and provided for in the Constitution where our people directly exercise their sovereign powers, new features set forth in this People Power Charter, namely, the powers of recall, initiative and referendum.

Nevertheless, this democratic nature of our polity is that of a democracy **under the rule of law**. This equally important point is emphasized in the very Preamble to the Constitution, which states:

> ". . . the blessings of . . . democracy under the rule of law . . . ."

Such is the case with respect to the power to initiate changes in the Constitution. The power is subject to limitations under the Constitution itself, thus: The power could not be exercised for the first five years after the Constitution took effect and thereafter can only be exercised once every five years; the power only extends to proposing amendments but not

revisions; and the power needs an act of Congress providing for its implementation, which act is directed and mandated.

The question, therefore, arises whether the proposed changes in the Constitution set forth in the petition for initiative herein involved are mere amendments or rather are revisions.

Revisions are changes that affect the entire Constitution and not mere parts of it.

The reason why revisions are not allowed through direct proposals by the people through initiative is a practical one, namely, there is no one to draft such extensive changes, since 6.3 million people cannot conceivably come up with a single extensive document through a direct proposal from each of them. Someone would have to draft it and that is not authorized as it would not be a direct proposal from the people. Such **indirect** proposals can only take the form of proposals from Congress as a Constituent Assembly under Article XVII, or a Constitutional Convention created under the same provision. Furthermore, there is a need for such deliberative bodies for revisions because their proceedings and debates are duly and officially recorded, so that future cases of interpretations can be properly aided by resort to the record of their proceedings.

Even a cursory reading of the proposed changes contained in the petition for initiative herein involved will show on its face that the proposed changes constitute a revision of the Constitution. The proposal is to change the system of government from that which is bicameral-presidential to one that is unicameral-parliamentary.

While purportedly only Articles VI, VII, and XVIII are involved, the fact is, as the petition and text of the proposed changes themselves state, every provision of the Constitution will have to be examined to see if they conform to the nature of a unicameral-parliamentary form of government and changed accordingly if they do not so conform to it. For example, Article VIII on Judicial Department cannot stand as is, in a parliamentary system, for under such a system, the Parliament is supreme, and thus the Court's power to declare its act a grave abuse of discretion and thus void would be an anomaly.

Now, who is to do such examination and who is to do such changes and how should the changes be worded? The proposed initiative does not say who nor how.

Not only, therefore, is the proposed initiative, on this score, a prohibited revision but it also suffers from being incomplete and insufficient on its very face.

It, therefore, in that form, cannot pass muster the very limits contained in providing for the power under the Constitution.

Neither does it comply with Republic Act No. 6735, which states in Section 10 that not more than one subject shall be proposed as an amendment or amendments to the Constitution. The petition herein would propose at the very least two subjects — a unicameral legislature and a parliamentary form of government. Again, for this clear and patent violation of the very act that provides for the exercise of the power, the proposed initiative cannot lie.

This does not mean, however, that all is lost for petitioners.

For the proposed changes can be separated and are, in my view, separable in nature — a unicameral legislature is one; a parliamentary form of government is another. The first is a mere amendment and contains only one subject matter. The second is clearly a revision that affects every article and every provision in the Constitution to an extent not even the proponents could at present fully articulate. Petitioners Lambino, et al. thus go about proposing changes the nature and extent of which they do not as yet know exactly what.

The proposal, therefore, contained in the petition for initiative, regarding a change in the legislature from a bicameral or two-chamber body to that of a unicameral or one-chamber body, is sustainable. The text of the changes needed to carry it out are perfunctory and ministerial in nature. Once it is limited to this proposal, the changes are simply one of deletion and insertions, the wordings of which are practically automatic and non-discretionary.

As an example, I attach to this opinion an Appendix "A" showing how the Constitution would read if we were to change Congress from one consisting of the Senate and the House of Representatives to one consisting only of the House of Representatives. It only affects Article VI on the Legislative Department, some provisions on Article VII on the Executive Department, as well as Article XI on the Accountability of Public Officers, and Article XVIII on Transitory Provisions. These are mere amendments, substantial ones indeed but still only amendments, and they address only one subject matter.

Such proposal, moreover, complies with the intention and rationale behind the present initiative, which is to provide for simplicity and economy in government and reduce the stalemates that often prevent needed legislation.

For the nonce, therefore, I vote to **DISMISS** the petition, without prejudice to the filing of an appropriate initiative to propose amendments to the Constitution to change Congress into a unicameral body. This is not say that I favor such a change. Rather, such a proposal would come within the purview of an initiative allowed under Article XVII of the Constitution and its implementing Republic Act, and should, therefore, be submitted to our people in a plebiscite for them to decide in their sovereign capacity. After all is said and done, this is what democracy under the rule of law is about.

TINGA, *J.*:

I join in full the opinion of Senior Associate Justice Puno. Its enviable sang-froid, inimitable lucidity, and luminous scholarship are all so characteristic of the author that it is hardly a waste of pen and ink to write separately if only to express my deep admiration for his disquisition. It is compelling because it derives from the fundamental democratic ordinance that sovereignty resides in the people, and it seeks to effectuate that principle through the actual empowerment of the sovereign people. Justice Puno's opinion will in the short term engender reactions on its impact on present attempts to amend the Constitution, but once the political passion of the times have been shorn, it will endure as an unequivocal message to the *taongbayan* that they are to be trusted to chart the course of their future.

Nothing that I inscribe will improve on Justice Puno's opinion. I only write separately to highlight a few other points which also inform my vote to grant the petitions.

I.

I agree with Justice Puno that *Santiago v. COMELEC*[1] and *PIRMA v. COMELEC*[2] had not acquired value as precedent and should be reversed in any case. I add that the Court has long been mindful of the rule that it necessitates a majority, and not merely a plurality, in order that a decision can stand as precedent. That principle has informed the members of this Court as they deliberated and voted upon contentious petitions, even if this consideration is not ultimately reflected on the final draft released for promulgation.

The curious twist to *Santiago* and *PIRMA* is that for all the denigration heaped upon Rep.

Act No. 6735 in those cases, the Court did not invalidate any provision of the statute. All the Court said then was that the law was "inadequate". Since this "inadequate" law was not annulled by the Court, or repealed by Congress, it remained part of the statute books. [3]

I maintain that even if Rep. Act No. 6735 is truly "inadequate", the Court in *Santiago* should not have simply let the insufficiency stand given that it was not minded to invalidate the law itself. Article 9 of the Civil Code provides that "[n]o judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws." [4] As explained by the Court recently in *Reyes v. Lim*, [5] "[Article 9] calls for the application of equity, which[, in the revered Justice Cardozo's words,] 'fills the open spaces in the law.'" [6] Certainly, any court that refuses to rule on an action premised on Rep. Act No. 6735 on the ground that the law is "inadequate" would have been found in grave abuse of discretion. The previous failure by the Court to "fill the open spaces" in *Santiago* further highlights that decision's status as an unfortunate aberration.

I am mindful of the need to respect *stare decisis*, to the point of having recently decried a majority ruling that was clearly minded to reverse several precedents but refused to explicitly say so. [7] Yet the principle is not immutable. [8] The passionate words of Chief Justice Panganiban in *Osmeña v. COMELEC* [9] bear quoting:

> Before I close, a word about stare decisis. In the present case, the Court is maintaining the ad ban to be consistent with its previous holding in *NPC vs. Comelec*. Thus, respondent urges reverence for the stability of judicial doctrines. I submit, however, that more important than consistency and stability are the verity, integrity and correctness of jurisprudence. As Dean Roscoe Pound explains, "Law must be stable but it cannot stand still." Verily, it must correct itself and move in cadence with the march of the electronic age. Error and illogic should not be perpetuated. After all, the Supreme Court, in many cases, has deviated from stare decisis and reversed previous doctrines and decisions.[[10]] It should do no less in the present case. [11]

Santiago established a tenet that the Supreme Court may affirm a law as constitutional, yet declare its provisions as inadequate to accomplish the legislative purpose, then barred the enforcement of the law. That ruling is erroneous, illogical, and should not be perpetuated.

II.

Following Justice Puno's clear demonstration why *Santiago* should not be respected as precedent, I agree that the COMELEC's failure to take cognizance of the petitions as mandated by Rep. Act No. 6735 constitutes grave abuse of discretion correctible through the petitions before this Court.

The Court has consistently held in cases such as *Abes v. COMELEC* [12] , *Sanchez v. COMELEC* [13] , and *Sambarani v. COMELEC* [14] that "the functions of the COMELEC under the Constitution are essentially executive and administrative in nature". [15] More pertinently, in *Buac v. COMELEC* [16] , the Court held that the jurisdiction of the COMELEC relative to the enforcement and administration of a law relative to a plebiscite fell under the jurisdiction of the poll body under its constitutional mandate "to enforce and administer all laws and regulations relative to the conduct of a . . . plebiscite". [17]

Rep. Act No. 6735 is a law relative to the conduct of a plebiscite. The primary task of the COMELEC under Rep. Act No. 6735 is to enforce and administer the said law, functions that are essentially executive and administrative in nature. Even the subsequent duty of the COMELEC of determining the sufficiency of the petitions after they have been filed is

administrative in character. By any measure, the COMELEC's failure to perform its executive and administrative functions under Rep. Act No. 6735 constitutes grave abuse of discretion.

///.

It has been argued that the subject petitions for initiative are barred under Republic Act No. 6735 as they allegedly embrace more than one subject. Section 10 of Rep. Act No. 6735 classifies as a "prohibited measure," a petition submitted to the electorate that embraces more than one subject. [18] On this point, reliance is apparently placed on the array of provisions which are to be affected by the amendments proposed in the initiative petition.

Section 10 of Rep. Act No. 6735 is a reflection of the long-enshrined constitutional principle that the laws passed by Congress "shall embrace only one subject which shall be expressed in the title thereof". [19] The one-subject requirement under the Constitution is satisfied if all the parts of the statute are related, and are germane to the subject matter expressed in the title, or as long as they are not inconsistent with or foreign to the general subject and title. [20] An act having a single general subject, indicated in the title, may contain any number of provisions, no matter how diverse they may be, so long as they are not inconsistent with or foreign to the general subject, and may be considered in furtherance of such subject by providing for the method and means of carrying out the general object. [21]

The precedents governing the one-subject, one-title rule under the Constitution should apply as well in the interpretation of Section 10 of Rep. Act No. 6735. For as long as it can be established that an initiative petition embraces a single general subject, the petition may be allowed no matter the number of constitutional provisions proposed for amendment if the amendments are germane to the subject of the petition.

Both the Sigaw ng Bayan and the Lambino initiative petitions expressly propose the changing of the form of government from bicameral-presidential to unicameral-parliamentary. Such a proposal may strike as comprehensive, necessitating as it will the reorganization of the executive and legislative branches of government, nevertheless it ineluctably encompasses only a single general subject still.

The 1987 Constitution (or any constitution for that matter) is susceptible to division into several general spheres. To cite the broadest of these spheres by way of example, Article III enumerates the guaranteed rights of the people under the Bill of Rights; Articles VI, VII and VIII provide for the organizational structure of government; while Articles II, XII, XIII & XIV, XV and XVI enunciate policy principles of the State. What would clearly be prohibited under Section 10 of Rep. Act No. 6735 is an initiative petition that seeks to amend provisions which do not belong to the same sphere. For example, had a single initiative petition sought not only to change the form of government from presidential to parliamentary but also to amend the Bill of Rights, said petition would arguably have been barred under Section 10, as that petition ostensibly embraces more than one subject, with each subject bearing no functional relation to the other. But that is not the case with the present initiative petitions.

Neither can it be argued that the initiative petitions embrace more than one subject since the proposed amendments seek to affect two separate branches of government. The very purpose of the initiative petitions is to fuse the powers of the executive and legislative branches of government; hence, the amendments intended to effect such general intent necessarily affects the two branches. If it required that to propose a shift in government from presidential to parliamentary, the amendments to Article VII (Executive Branch) have to be segregated to a different petition from that which would propose amendments to Article VI (Legislative Branch), then the result would be two initiative petitions — both

subject to separate authentications, consideration and even plebiscites, all to effect one general proposition. This scenario, which entertains the possibility that one petition would ultimately fail while the other succeeds, could thus allow for the risk that the executive branch could be abolished without transferring executive power to the legislative branch. An absurd result, indeed.

I am not even entirely comfortable with the theoretical underpinnings of Section 10. The Constitution indubitably grants the people the right to seek amendment of the charter through initiative, and mandates Congress to "provide for the implementation of the exercise of this right." In doing so, Congress may not restrict the right to initiative on grounds that are not provided for in the Constitution. If for example the implementing law also provides that certain provisions of the Constitution may not be amended through initiative, that prohibition should not be sustained. Congress is tasked with the implementation, and not the restriction of the right to initiative.

The one-subject requirement under Section 10 is not provided for as a bar to amendment under the Constitution. Arguments can be supplied for the merit of such a requirement, since it would afford a measure of orderliness when the vital question of amending the Constitution arises. The one-subject requirement does allow the voters focus when deliberating whether or not to vote for the amendments. These factors of desirability nonetheless fail to detract from the fact that the one-subject requirement imposes an additional restriction on the right to initiative not contemplated by the Constitution. Short of invalidating the requirement, a better course of action would be to insist upon its liberal interpretation. After all, the Court has consistently adhered to a liberal interpretation of the one-subject, one-title rule. [22] There is no cause to adopt a stricter interpretative rule with regard to the one-subject rule under Section 10 of Rep. Act No. 6735

IV.

During the hearing on the petitions, the argument was raised that provisions of the Constitution amended through initiative would not have the benefit of a reference source from the record of a deliberative body such as Congress or a constitutional convention. It was submitted that this consideration influenced the Constitutional Commission as it drafted Section 2, Article XVII, which expressly provided that only amendments, and not revisions, may be the subject of initiative petitions.

This argument clearly proceeds from a premise that accords supreme value to the record of deliberations of a constitutional convention or commission in the interpretation of the charter. Yet if the absence of a record of deliberations stands as so serious a flaw as to invalidate or constrict processes which change a constitution or its provisions, then the entire initiative process authorized by the Constitution should be scarlet-marked as well.

Even if this position can be given any weight in the consideration of these petitions, I would like to point out that resort to the records of deliberations is only one of many aids to constitutional construction. For one, it should be abhorred if the provision under study is itself clear, plain, and free from ambiguity. As the Court held in *Civil Liberties Union v. Executive Secretary*: [23]

> While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the

> meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk . . . We think it safer to construe the constitution from what appears upon its face." [24]

Even if there is need to refer to extrinsic sources in aid of constitutional interpretation, the constitutional record does not provide the exclusive or definitive answer on how to interpret the provision. The intent of a constitutional convention is not controlling by itself, and while the historical discussion on the floor of the constitutional convention is valuable, it is not necessarily decisive. The Court has even held in *Veer v. Avelino* [25] that "the proceedings of the [constitutional] convention are less conclusive of the proper construction of the fundamental law than are legislative proceedings of the proper construction of a statute, since in the latter case it is the intent of the legislature that courts seek, while in the former courts are endeavoring to arrive at the intent of the people through the discussions and deliberations of their representatives." [26] The proper interpretation of a constitution depends more on how it was understood by the people adopting it than the framers' understanding thereof. [27]

If there is fear in the absence of a constitutional record as guide for interpretation of any amendments adopted via initiative, such absence would not preclude the courts from interpreting such amendments in a manner consistent with how courts generally construe the Constitution. For example, reliance will be placed on the other provisions of the Constitution to arrive at a harmonized and holistic constitutional framework. The constitutional record is hardly the Rosetta Stone that unlocks the meaning of the Constitution.

V.

I fully agree with Justice Puno that all issues relating to the sufficiency of the initiative petitions should be remanded to the COMELEC. Rep. Act No. 6735 clearly reposes on the COMELEC the task of determining the sufficiency of the petitions, including the ascertainment of whether twelve percent (12%) of all registered voters, including three percent (3%) of registered voters in every legislative district have indeed signed the initiative petitions. [28] It should be remembered that the COMELEC had dismissed the initiative petitions outright, and had yet to undertake the determination of sufficiency as required by law.

It has been suggested to the end of leading the Court to stifle the initiative petitions that the Court may at this juncture pronounce the initiative petitions as insufficient. The derivation of the factual predicates leading to the suggestion is uncertain, considering that the trier of facts, the COMELEC in this instance, has yet to undertake the necessary determination. Still, the premise has been floated that petitioners have made sufficient admissions before this Court that purportedly established the petitions are insufficient.

That premise is highly dubitable. Yet the more fundamental question that we should ask, I submit, is whether it serves well on the Court to usurp trier of facts even before the latter exercises its functions? If the Court, at this stage, were to declare the petitions as insufficient, it would be akin to the Court pronouncing an accused as guilty even before the lower court trial had began.

Matugas v. COMELEC [29] inveighs against the propriety of the Court uncharacteristically assuming the role of trier of facts, and resolving factual questions not previously adjudicated by the lower courts or tribunals:

> [P]etitioner in this case cannot "enervate" the COMELEC's findings by introducing new evidence before **this Court, which in any case is not a trier of facts, and then ask it to substitute its own judgment and discretion for that of the COMELEC**.
>
> The rule in appellate procedure is that a factual question may not be raised for the first time on appeal, and documents forming no part of the proofs before the appellate court will not be considered in disposing of the issues of an action. This is true whether the decision elevated for review originated from a regular court or an administrative agency or quasi-judicial body, and whether it was rendered in a civil case, a special proceeding, or a criminal case. Piecemeal presentation of evidence is simply not in accord with orderly justice. [30]

Any present determination by the Court on the sufficiency of the petitions constitutes in effect a trial *de novo*, the Justices of the Supreme Court virtually descending to the level of trial court judges. This is an unbecoming recourse, and it simply is not done.

VI.

The worst position this Court could find itself in is to acquiesce to a plea that it make the choice whether to amend the Constitution or not. This is a matter which should not be left to fifteen magistrates who have not been elected by the people to make the choice for them.

A vote to grant the petitions is not a vote to amend the 1987 Constitution. It is merely a vote to allow the people to directly exercise that option. In fact, the position of Justice Puno which I share would not even guarantee that the Lambino and Sigaw ng Bayan initiative petitions would be submitted to the people in a referendum. The COMELEC will still have to determine the sufficiency of the petition. Among the questions which still have to be determined by the poll body in considering the sufficiency of the petitions is whether twelve percent (12%) of all registered voters nationwide, including three percent (3%) of registered voters in every legislative district, have indeed signed the initiative petitions. [31]

And even should the COMELEC find the initiative petitions sufficient, the matter of whether the Constitution should be amended would still depend on the choice of the electorate. The oppositors are clearly queasy about some of the amendments proposed, or the imputed motives behind the amendments. A referendum, should the COMELEC find the petitions as sufficient, would allow them to convey their uneasiness to the public at large, as well as for the proponents of the amendment to defend their proposal. The campaign period alone would allow the public to be involved in the significant deliberation on the course our nation should take, with the ensuing net benefit of a more informed, more politically aware populace. And of course, the choice on whether the Constitution should be amended would lie directly with the people. The initiative process involves participatory democracy at its most elemental; wherein the **consequential debate** would not be confined to the august halls of Congress or the hallowed chambers of this Court, as it would spill over to the public squares and town halls, the academic yards and the Internet blogosphere, the dining areas in the homes of the affluent and the impoverished alike.

The prospect of informed and widespread discussion on constitutional change engaged in by a people who are actually empowered in having a say whether these changes should be enacted, gives fruition to the original vision of pure democracy, as formulated in Athens two and a half millennia ago. The great hero of Athenian democracy, Pericles, was recorded as saying in his famed Funeral Oration, "*We differ from other states in regarding the man who*

keeps aloof from public life not as 'private' but as useless; ***we decide or debate, carefully and in person all matters of policy, and we hold, not that words and deeds go ill together, but that acts are foredoomed to failure when undertaken undiscussed***." [32]

Unfortunately, given the highly politicized charge of the times, it has been peddled that an act or vote that assists the initiative process is one for the willful extinction of democracy or democratic institutions. Such a consideration should of course properly play its course in the public debates and deliberations attendant to the initiative process. Yet as a result of the harum-scarum, the temptation lies heavy for a member of this Court perturbed with the prospect of constitutional change to relieve those anxieties by simply voting to enjoin any legal procedure that initiates the amendment or revision of the fundamental law, even at the expense of the people's will or what the Constitution allows. A vote so oriented takes the conservative path of least resistance, even as it may gain the admiration of those who do not want to see the Constitution amended.

Still, the biases we should enforce as magistrates are those of the Constitution and the elements of democracy on which our rule of law is founded. Direct democracy, as embodied in the initiative process, is but a culmination of the evolution over the centuries of democratic rights of choice and self-governance. The reemergence of the Athenian democratic ideal after centuries of tyrannical rules arrived very slowly, the benefits parceled out at first only to favored classes. The Magna Carta granted limited rights to self-determination and self-governance only to a few English nobles; the American Constitution was originally intended to give a meaningful voice only to free men, mostly Caucasian, who met the property-holding requirements set by the states for voting. Yet even the very idea of popular voting, limited as it may have already been within the first few years of the American Union, met resistance from no less a revered figure as Alexander Hamilton, to whom the progressive historian Howard Zinn attributes these disconcerting words:

> The voice of the people has been said to be the voice of God; and however generally this maxim has been quoted and believed, it is not true in fact. The people are turbulent and changing; they seldom judge or determine right. Give therefore to the first class a distinct permanent share in the government. . . Can a democratic assembly who annually revolve in the mass of the people be supposed steadily to pursue the public good? Nothing but a permanent body can check the imprudence of democracy. . . [33]

This utterly paternalistic and bigoted view has not survived into the present age of modern democracy where a person's poverty, color, or gender no longer impedes the exercise of full democratic rights. Yet a democracy that merely guarantees its citizens the right to live their lives freely is incomplete if there is no corresponding allowance for a means by which the people have a direct choice in determining their country's direction. Initiative as a mode of amending a constitution may seem incompatible with representative democracy, yet it embodies an even purer form of democracy. Initiative, which our 1987 Constitution saw fit to grant to the people, is a progressive measure that is but a continuation of the line of evolution of the democratic ideal.

By allowing the sovereign people to directly propose and enact constitutional amendments, the initiative process should be acknowledged as the purest implement of democratic rule under law. This right granted to over sixty million Filipinos cannot be denied by the votes of less than eight magistrates for reasons that bear no cogitation on the Constitution.

I VOTE to GRANT the petitions.

CHICO-NAZARIO, *J., dissenting*:

> "*The people made the constitution, and the people can unmake it. It is the creature of their will, and lives only by their will. But this supreme and irresistible power to make or unmake, resides only in the whole body of the people; not in any subdivision of them*."
>
> — Marshall, C.J., *Cohens v. Virginia* (1821, US) 6 Wheat 264, 389, 5 L ed. 257, 287.

I express my concurrence in the discussions and conclusions presented in the persuasive and erudite dissent of Justice Reynato S. Puno. However, I make some additional observations in connection with my concurrence.

While it is but proper to accord great respect and reverence to the Philippine Constitution of 1987 for being the supreme law of the land, we should not lose sight of the truth that there is an ultimate authority to which the Constitution is also subordinate — ***the will of the people***. No less than its very first paragraph, the Preamble, [1] expressly recognizes that the Constitution came to be because it was ordained and promulgated by the sovereign Filipino people. It is a principle reiterated yet again in Article II, Section 1, of the Constitution, which explicitly declares that "[t]he Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them." Thus, the resolution of the issues and controversies raised by the instant Petition should be guided accordingly by the foregoing principle.

If the Constitution is the expression of the will of the sovereign people, then, in the event that the people change their will, so must the Constitution be revised or amended to reflect such change. Resultantly, the right to revise or amend the Constitution inherently resides in the sovereign people whose will it is supposed to express and embody. The Constitution itself, under Article XVII, provides for the means by which the revision or amendment of the Constitution may be proposed and ratified.

Under Section 1 of the said Article, proposals to amend or revise the Constitution may be made (a) by Congress, upon a vote of three-fourths of all its Members, or (b) by constitutional convention. The Congress and the constitutional convention possess the power to propose amendments to, or revisions of, the Constitution not simply because the Constitution so provides, but because the sovereign people had chosen to delegate their inherent right to make such proposals to their representatives either through Congress or through a constitutional convention.

On the other hand, the sovereign people, well-inspired and greatly empowered by the People Power Revolution of 1986, reserved to themselves the right to directly propose amendments to the Constitution through initiative, to wit —

> SEC. 2. Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.
>
> The Congress shall provide for the implementation of the exercise of this right. [2]

The afore-quoted section does not confer on the Filipino people the right to amend the Constitution because, as previously discussed, such right is inherent in them. The section

only reduces into writing this right to initiate amendments to the Constitution where they collectively and willfully agreed in the manner by which they shall exercise this right: (a) through the filing of a petition; (b) supported by at least twelve percent (12%) of the total number of registered voters nationwide; (c) with each legislative district represented by at least three percent (3%) of the registered voters therein; (d) subject to the limitation that no such petition may be filed within five years after the ratification of the Constitution, and not oftener than once every five years thereafter; and (e) a delegation to Congress of the authority to provide the formal requirements and other details for the implementation of the right.

It is my earnest opinion that the right of the sovereign people to directly propose amendments to the Constitution through initiative is more superior than the power they delegated to Congress or to a constitutional convention to amend or revise the Constitution. The initiative process gives the sovereign people the voice to express their collective will, and when the people speak, we must be ready to listen. Article XVII, Section 2 of the Constitution recognizes and guarantees the sovereign people's right to initiative, rather than limits it. The enabling law which Congress has been tasked to enact must give life to the said provision and make the exercise of the right to initiative possible, not regulate, limit, or restrict it in any way that would render the people's option of resorting to initiative to amend the Constitution more stringent, difficult, and less feasible, as compared to the other constitutional means to amend or revise the Constitution. **In fact, it is worth recalling that under Article VI, Section 1 of the Constitution, the legislative power of Congress is limited to the extent reserved to the people by the provisions on initiative and referendum**.

It is with this frame of mind that I review the issues raised in the instant Petitions, and which has led me to the conclusions, in support of the dissent of Justice Puno, that (a) The Commission on Election (COMELEC) had indeed committed grave abuse of discretion in summarily dismissing the petition for initiative to amend the Constitution filed by herein petitioners Raul L. Lambino and Erico B. Aumentado; (b) The Court should revisit the pronouncements it made in *Santiago v. Commission on Elections*; [3] (c) It is the sovereign people's inherent right to propose changes to the Constitution, regardless of whether they constitute merely amendments or a total revision thereof; and (d) The COMELEC should take cognizance of Lambino and Aumentado's petition for initiative and, in the exercise of its jurisdiction, determine the factual issues raised by the oppositors before this Court.

I

The COMELEC had indeed committed grave abuse of discretion when it summarily dismissed Lambino and Aumentado's petition for initiative entirely on the basis of the *Santiago* case which, allegedly, permanently enjoined it from entertaining or taking cognizance of any petition for initiative to amend the Constitution in the absence of a sufficient law.

After a careful reading, however, of the *Santiago* case, I believe in earnest that the permanent injunction actually issued by this Court against the COMELEC pertains only to the petition for initiative filed by Jesus S. Delfin, and not to all subsequent petitions for initiative to amend the Constitution.

The Conclusion [4] in the majority opinion in the *Santiago* case reads —

CONCLUSION

> This petition must then be granted, and the COMELEC should be permanently enjoined from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the system.
>
> We feel, however, that the system of initiative to propose amendments to the Constitution should no longer be kept in the cold; it should be given flesh and blood, energy and strength. Congress should not tarry any longer in complying with the constitutional mandate to provide for the implementation of the right of the people under that system.
>
> WHEREFORE, judgment is hereby rendered
>
> a) GRANTING the instant petition;
>
> b) DECLARING R.A. No. 6735 inadequate to cover the system of initiative on amendments to the Constitution, and to have failed to provide sufficient standard for subordinate legislation;
>
> c) DECLARING void those parts of Resolution No. 2300 of the Commission on Elections prescribing rules and regulations on the conduct of initiative or amendments to the Constitution; and
>
> d) ORDERING the Commission on Elections to forthwith DISMISS the DELFIN petition (UND-96-037).
>
> The Temporary Restraining Order issued on 18 December 1996 is made permanent as against the Commission on Elections, but is LIFTED as against private respondents.
>
> Resolution on the matter of contempt is hereby reserved.

It is clear from the *fallo*, as it is reproduced above, that the Court made permanent the Temporary Restraining Order (TRO) it issued on 18 December 1996 against the COMELEC. The said TRO enjoined the COMELEC from proceeding with the Delfin Petition, and Alberto and Carmen Pedrosa from conducting a signature drive for people's initiative. [5] It was this restraining order, more particularly the portion thereof referring to the Delfin Petition, which was expressly made permanent by the Court. It would seem to me that the COMELEC and all other oppositors to Lambino and Aumentado's petition for initiative gave unwarranted significance and weight to the first paragraph of the Conclusion in the *Santiago* case. **The first and second paragraphs of the Conclusion, preceding the dispositive portion, merely express the opinion of the *ponente*; while the definite orders of the Court for implementation are found in the dispositive portion**.

We have previously held that —

> The dispositive portion or the *fallo* is what actually constitutes the resolution of the court and which is the subject of execution, although the other parts of the decision may be resorted to in order to determine the *ratio decidendi* for such a resolution. Where there is conflict between the dispositive part and the opinion of the court contained in the text of the decision, the former must prevail over the latter on the theory that the dispositive portion is the final order while the opinion is merely a statement ordering nothing. Hence execution must conform more particularly to that ordained or decreed in the dispositive portion of the decision. [6]

Is there a conflict between the first paragraph of the Conclusion and the dispositive portion of the *Santiago* case? Apparently, there is. The first paragraph of the Conclusion states that

the COMELEC should be permanently enjoined from entertaining or taking cognizance of ***any*** petition for initiative on amendments to the Constitution until the enactment of a valid law. On the other hand, the *fallo* only makes permanent the TRO [7] against COMELEC enjoining it from proceeding with the ***Delfin Petition***. While the permanent injunction contemplated in the Conclusion encompasses all petitions for initiative on amendments to the Constitution, the *fallo* is expressly limited to the Delfin Petition. To resolve the conflict, the final order of the Court as it is stated in the dispositive portion or the *fallo* should be controlling.

Neither can the COMELEC dismiss Lambino and Aumentado's petition for initiative on the basis of this Court's Resolution, dated 23 September 1997, in the case of *People's Initiative for Reform, Modernization and Action (PIRMA) v. The Commission on Elections, et al*. [8] The Court therein found that the COMELEC did not commit grave abuse of discretion in dismissing the PIRMA Petition for initiative to amend the Constitution for it only complied with the Decision in the *Santiago* case.

It is only proper that the *Santiago* case should also bar the PIRMA Petition on the basis of *res judicata* because PIRMA participated in the proceedings of the said case, and had knowledge of and, thus, must be bound by the judgment of the Court therein. As explained by former Chief Justice Hilario G. Davide, Jr. in his separate opinion to the Resolution in the PIRMA case —

> *First*, it is barred by *res judicata*. No one aware of the pleadings filed here and in *Santiago v. COMELEC* (G.R. No. 127325, 19 March 1997) may plead ignorance of the fact that the former is substantially identical to the latter, except for the reversal of the roles played by the principal parties and inclusion of additional, yet not indispensable, parties in the present petition. But plainly, the same issues and reliefs are raised and prayed for in both cases.
>
> The principal petitioner here is the PEOPLE'S INITIATIVE FOR REFORM, MODERNIZATION, AND ACTION (PIRMA) and Spouses ALBERTO PEDROSA and CARMEN PEDROSA. PIRMA is self-described as "a non-stock, non-profit organization duly organized and existing under Philippine laws with office address at Suite 403, Fedman Suites, 199 Salcedo Street, Legaspi Village, Makati City," with "ALBERTO PEDROSA and CARMEN PEDROSA" as among its "officers." In *Santiago*, the PEDROSAS were made respondents as founding members of PIRMA which, as alleged in the body of the petition therein, "proposes to undertake the signature drive for a people's initiative to amend the Constitution." In *Santiago* then, the PEDROSAS were sued in their capacity as <u>founding members</u> of PIRMA.
>
> The decision in *Santiago* specifically declared that PIRMA was duly represented at the hearing of the Delfin petition in the COMELEC. In short, PIRMA was intervenor-petitioner therein. <u>Delfin</u> alleged in his petition that he was a founding member of the Movement for People's Initiative, and under footnote no. 6 of the decision, it was noted that said movement was "[l]ater identified as the People's Initiative for Reforms, Modernization and Action, or PIRMA for brevity." In their Comment to the petition in *Santiago*, the PEDROSA'S did not deny that they were founding members of PIRMA, and by their arguments, demonstrated beyond a shadow of a doubt that they had joined Delfin or his cause.
>
> No amount of semantics may then shield herein petitioners PIRMA and the PEDROSAS, as well as the others joining them, from the operation of the principle of *res judicata*, which needs no further elaboration. [9]

While the *Santiago* case bars the *PIRMA* case because of *res judicata*, the same cannot be

said to the Petition at bar. *Res judicata* is an absolute bar to a subsequent action for the same cause; and its requisites are: (a) the former judgment or order must be final; (b) the judgment or order must be one on the merits; (c) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (d) there must be between the first and second actions, identity of parties, of subject matter and of causes of action. [10]

Even though it is conceded that the first three requisites are present herein, the last has not been complied with. Undoubtedly, the *Santiago* case and the present Petition involve different parties, subject matter, and causes of action, and the former should not bar the latter.

In the *Santiago* case, the petition for initiative to amend the Constitution was filed by Delfin alone. His petition does not qualify as the initiatory pleading over which the COMELEC can acquire jurisdiction, being unsupported by the required number of registered voters, and actually imposing upon the COMELEC the task of gathering the voters' signatures. In the case before us, the petition for initiative to amend the Constitution was filed by Lambino and Aumentado, on behalf of the 6.3 million registered voters who affixed their signatures on the signature sheets attached thereto. Their petition prays that the COMELEC issue an Order —

1. Finding the petition to be sufficient pursuant to Section 4, Article XVII of the 1987 Constitution;

2. Directing the publication of the petition in Filipino and English at least twice in newspapers of general and local circulation; and

3. Calling a plebiscite to be held not earlier than sixty nor later than ninety days after the Certification by the COMELEC of the sufficiency of the petition, to allow the Filipino people to express their sovereign will on the proposition.

Although both cases involve the right of the people to initiate amendments to the Constitution, the personalities concerned and the other factual circumstances attendant in the two cases differ. Also dissimilar are the particular prayer and reliefs sought by the parties from the COMELEC, as well as from this Court.

For these reasons, I find that the COMELEC acted with grave abuse of discretion when it summarily dismissed the petition for initiative filed by Lambino and Aumentado. It behooves the COMELEC to accord due course to a petition which on its face complies with the rudiments of the law. COMELEC was openly negligent in summarily dismissing the Lambino and Aumentado petition. The haste by which the instant Petition was struck down is characteristic of bad faith, which, to my mind, is a patent and gross evasion of COMELEC's positive duty. It has so obviously copped out of its duty and responsibility to determine the sufficiency thereof and sought protection and justification for its craven decision in the supposed permanent injunction issued against it by the Court in the *Santiago* case. The COMELEC had seemingly expanded the scope and application of the said permanent injunction, reading into it more than what it actually states, which is surprising, considering that the Chairman and majority of the members of COMELEC are lawyers who should be able to understand and appreciate, more than a lay person, the legal consequences and intricacies of the pronouncements made by the Court in the *Santiago* case and the permanent injunction issued therein.

No less than the Constitution itself, under the second paragraph of Article XVII, Section 4, imposes upon the COMELEC the mandate to set a date for plebiscite after a positive

determination of the sufficiency of a petition for initiative on amendments to the Constitution, *viz* —

> SEC. 4. . . .
>
> Any amendment under Section 2 hereof shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the certification by the Commission on Elections of the sufficiency of the petition.

As a rule, the word "shall" commonly denotes an imperative obligation and is inconsistent with the idea of discretion, and that the presumption is that the word "shall" when used, is mandatory. [11] Under the above-quoted constitutional provision, it is the mandatory or imperative obligation of the COMELEC to (a) determine the sufficiency of the petition for initiative on amendments to the Constitution and issue a certification on its findings; and (b) in case such petition is found to be sufficient, to set the date for the plebiscite on the proposed amendments not earlier than 60 days nor later than 90 days after its certification.

The COMELEC should not be allowed to shun its constitutional mandate under the second paragraph of Article XVII, Section 4, through the summary dismissal of the petition for initiative filed by Lambino and Aumentado, when such petition is supported by 6.3 million signatures of registered voters. Should all of these signatures be authentic and representative of the required percentages of registered voters for every legislative district and the whole nation, then the initiative is a true and legitimate expression of the will of the people to amend the Constitution, and COMELEC had caused them grave injustice by silencing their voice based on a patently inapplicable permanent injunction.

II

We should likewise take the opportunity to revisit the pronouncements made by the Court in its Decision in the *Santiago* case, especially as regards the supposed insufficiency or inadequacy of Republic Act No. 6735 as the enabling law for the implementation of the people's right to initiative on amendments to the Constitution.

The declaration of the Court that Republic Act No. 6735 is insufficient or inadequate actually gave rise to more questions rather than answers, due to the fact that there has never been a judicial precedent wherein the Court invalidated a law for insufficiency or inadequacy. The confusion over such a declaration thereby impelled former Chief Justice Davide, Jr., the *ponente* in the *Santiago* case, to provide the following clarification in his separate opinion to the Resolution in the *PIRMA* case, thus —

> Simply put, *Santiago* did, in reality, declare as unconstitutional that portion of R.A. No. 6735 relating to Constitutional initiatives for failure to comply with the "completeness and sufficient standard tests" with respect to permissible delegation of legislative power or subordinate legislation. However petitioners attempt to twist the language in *Santiago*, the conclusion is inevitable; the portion of R.A. No. 6735 was held to be unconstitutional.

It is important to note, however, that while the Decision in the *Santiago* case pronounced repeatedly that Republic Act No. 6735 was insufficient and inadequate, there is no categorical declaration therein that the said statute was unconstitutional. The express finding that Republic Act No. 6735 is unconstitutional can only be found in the separate opinion of former Chief Justice Davide to the Resolution in the *PIRMA* case, which was not concurred in by the other members of the Court.

Even assuming *arguendo* that the declaration in the *Santiago* case, that Republic Act No. 6735 is insufficient and inadequate, is already tantamount to a declaration that the statute is unconstitutional, it was rendered in violation of established rules in statutory construction, which state that —

> [A]ll presumptions are indulged in favor of constitutionality; one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt (*Victoriano v. Elizalde Rope Workers' Union*, 59 SCRA 54 [19741). In fact, this Court does not decide questions of a constitutional nature unless that question is properly raised and presented in appropriate cases and is necessary to a determination of the case, i.e., the issue of constitutionality must be lis mota presented (*Tropical Homes v. National Housing Authority*, 152 SCRA 540 [1987]).

First, the Court, in the *Santiago* case, could have very well avoided the issue of constitutionality of Republic Act No. 6735 by ordering the COMELEC to dismiss the Delfin petition for the simple reason that it does not constitute an initiatory pleading over which the COMELEC could acquire jurisdiction. And second, the unconstitutionality of Republic Act No. 6735 has not been adequately shown. It was by and large merely inferred or deduced from the way Republic Act No. 6735 was worded and the provisions thereof arranged and organized by Congress. The dissenting opinions rendered by several Justices in the *Santiago* case reveal the other side to the argument, adopting the more liberal interpretation that would allow the Court to sustain the constitutionality of Republic Act No. 6735. It would seem that the majority in the *Santiago* case failed to heed the rule that all presumptions should be resolved in favor of the constitutionality of the statute.

The Court, acting *en banc* on the Petition at bar, can revisit its Decision in the *Santiago* case and again open to judicial review the constitutionality of Republic Act No. 6735; in which case, I shall cast my vote in favor of its constitutionality, having satisfied the completeness and sufficiency of standards tests for the valid delegation of legislative power. I fully agree in the conclusion made by Justice Puno on this matter in his dissenting opinion [12] in the Santiago case, that reads —

> R.A. No. 6735 sufficiently states the policy and the standards to guide the COMELEC in promulgating the law's implementing rules and regulations of the law. As aforestated, Section 2 spells out the policy of the law; *viz*: "The power of the people under a system of initiative and referendum to directly propose, enact, approve or reject, in whole or in part, the Constitution, laws, ordinances, or resolutions passed by any legislative body upon compliance with the requirements of this Act is hereby affirmed, recognized and guaranteed." Spread out all over R.A. No. 6735 are the standards to canalize the delegated power to the COMELEC to promulgate rules and regulations from overflowing. Thus, the law states the number of signatures necessary to start a people's initiative, directs how initiative proceeding is commenced, what the COMELEC should do upon filing of the petition for initiative, how a proposition is approved, when a plebiscite may be held, when the amendment takes effect, and what matters may not be the subject of any initiative. By any measure, these standards are adequate.

III

The dissent of Justice Puno has already a well-presented discourse on the difference between an "amendment" and a "revision" of the Constitution. Allow me also to articulate my additional thoughts on the matter.

Oppositors to Lambino and Aumentado's petition for initiative argue that the proposed changes therein to the provisions of the Constitution already amount to a revision thereof,

which is not allowed to be done through people's initiative; Article XVII, Section 2 of the Constitution on people's initiative refers only to proposals for amendments to the Constitution. They assert the traditional distinction between an amendment and a revision, with amendment referring to isolated or piecemeal change only, while revision as a revamp or rewriting of the whole instrument. 13

However, as pointed out by Justice Puno in his dissent, there is no quantitative or qualitative test that can establish with definiteness the distinction between an amendment and a revision, or between a substantial and simple change of the Constitution.

The changes proposed to the Constitution by Lambino and Aumentado's petition for initiative basically affect only Article VI on the Legislative Department and Article VII on the Executive Department. While the proposed changes will drastically alter the constitution of our government by vesting both legislative and executive powers in a unicameral Parliament, with the President as the Head of State and the Prime Minister exercising the executive power; they would not essentially affect the other 16 Articles of the Constitution. The 100 or so changes counted by the oppositors to the other provisions of the Constitution are constituted mostly of the nominal substitution of one word for the other, such as Parliament for Congress, or Prime Minister for President. As eloquently pointed out in the dissent of Justice Puno, the changes proposed to transform our form of government from bicameral-presidential to unicameral-parliamentary, would not affect the fundamental nature of our state as a democratic and republican state. It will still be a representative government where officials continue to be accountable to the people and the people maintain control over the government through the election of members of the Parliament.

Furthermore, should the people themselves wish to change a substantial portion or even the whole of the Constitution, what or who is to stop them? Article XVII, Section 2 of the Constitution which, by the way it is worded, refers only to their right to initiative on amendments of the Constitution? The delegates to the Constitutional Convention who, according to their deliberations, purposely limited Article XVII, Section 2 of the Constitution to amendments? This Court which has the jurisdiction to interpret the provision? Bearing in mind my earlier declaration that the will of the sovereign people is supreme, there is nothing or no one that can preclude them from initiating changes to the Constitution if they choose to do so. To reiterate, the Constitution is supposed to be the expression and embodiment of the people's will, and should the people's will clamor for a revision of the Constitution, it is their will which should prevail. Even the fact that the people ratified the 1987 Constitution, including Article XVII, Section 2 thereof, as it is worded, should not prevent the exercise by the sovereign people of their inherent right to change the Constitution, even if such change would be tantamount to a substantial amendment or revision thereof, for their actual exercise of the said right should be a clear renunciation of the limitation which the said provision imposes upon it. It is the inherent right of the people as sovereign to change the Constitution, regardless of the extent thereof.

IV

Lastly, I fail to see the injustice in allowing the COMELEC to give due course to and take cognizance of Lambino and Aumentado's petition for initiative to amend the Constitution. I reiterate that it would be a greater evil if one such petition which is ostensibly supported by the required number of registered voters all over the country, be summarily dismissed.

Giving due course and taking cognizance of the petition would not necessarily mean that the same would be found sufficient and set for plebiscite. The COMELEC still faces the task

of reviewing the petition to determine whether it complies with the requirements for a valid exercise of the right to initiative. Questions raised by the oppositors to the petition, such as those on the authenticity of the registered voters' signatures or compliance with the requisite number of registered voters for every legislative district, are already factual in nature and require the reception and evaluation of evidence of the parties. Such questions are best presented and resolved before the COMELEC since this Court is not a trier of facts.

In view of the foregoing, I am of the position that the Resolution of the COMELEC dated 31 August 2006 denying due course to the Petition for Initiative filed by Lambino and Aumentado be reversed and set aside for having been issued in grave abuse of discretion, amounting to lack of jurisdiction, and that the Petition be remanded to the COMELEC for further proceedings.

In short, I vote to GRANT the petition for Initiative of Lambino and Aumentado.

VELASCO, JR., *J.*:

Introduction

> The fate of every democracy, of every government based on the Sovereignty of the people, depends on the choices it makes between these opposite principles: absolute power on the one hand, and on the other the restraints of legality and the authority of tradition.
>
> — John Acton

In this thorny matter of the people's initiative, I concur with the erudite and highly persuasive opinion of Justice Reynato S. Puno upholding the people's initiative and raise some points of my own.

The issue of the people's power to propose amendments to the Constitution was once discussed in the landmark case of *Santiago v. COMELEC*.[1] Almost a decade later, the issue is once again before the Court, and I firmly believe it is time to reevaluate the pronouncements made in that case.

The issue of Charter Change is one that has sharply divided the nation, and its proponents and opponents will understandably take all measures to advance their position and defeat that of their opponents. The wisdom or folly of Charter Change does not concern the Court. The only thing that the Court must review is the validity of the present step taken by the proponents of Charter Change, which is the People's Initiative, as set down in Article XVII, Sec. 2 of the 1987 Constitution:

> Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.
>
> The Congress shall provide for the implementation of the exercise of this right.

In the *Santiago* case, the Court discussed whether the second paragraph of that section had been fulfilled. It determined that Congress **had not** provided for the implementation of the exercise of the people's initiative, when it held that Republic Act No. 6735, or "The Initiative and Referendum Act," was "inadequate to cover the system of initiative on amendments to the Constitution, and to have failed to provide sufficient standard for

subordinate legislation." [2]

With all due respect to those Justices who made that declaration, I must disagree.

Republic Act No. 6735 is the proper law for proposing constitutional amendments and it should not have been considered inadequate.

The decision in *Santiago* focused on what it perceived to be fatal flaws in the drafting of the law, in the failings of the way the law was structured, to come to the conclusion that the law was inadequate. The Court itself recognized the legislators' intent, but disregarded this intent. The law was found wanting. The Court then saw the inclusion of the Constitution in RA 6735 as an afterthought. However, it **was** included, and it should not be excluded by the Court via a strained analysis of the law. The difficult construction of the law should not serve to frustrate the intent of the framers of the 1987 Constitution: to give the people the power to propose amendments as they saw fit. It is a basic precept in statutory construction that the intent of the legislature is the controlling factor in the interpretation of a statute. [3] The intent of the legislature was clear, and yet RA 6735 was declared inadequate. It was not specifically struck down or declared unconstitutional, merely incomplete. The Court focused on what RA 6735 was not, and lost sight of what RA 6735 was.

It is my view that the reading of RA 6735 in *Santiago* should have been more flexible. It is also a basic precept of statutory construction that statutes should be construed not so much according to the letter that *killeth* but in line with the purpose for which they have been enacted. [4] The reading of the law should not have been with the view of its defeat, but with the goal of upholding it, especially with its avowed noble purpose.

Congress has done its part in empowering the people themselves to propose amendments to the Constitution, in accordance with the Constitution itself. It should not be the Supreme Court that stifles the people, and lets their cries for change go unheard, especially when the Constitution itself grants them that power.

The court's ruling in the *Santiago* case does not bar the present petition because the *fallo* in the *Santiago* case is limited to the Delfin petition.

The *Santiago* case involved a petition for prohibition filed by Miriam Defensor-Santiago, et al., against the COMELEC, et al., which sought to prevent the COMELEC from entertaining the "Petition to Amend the Constitution, to Lift Term Limits of Elective Officials, by People's Initiative" filed by Atty. Jesus Delfin. In the body of the judgment, the Court made the following conclusion, viz:

> This petition must then be granted **and the COMELEC should be permanently enjoined from entertaining or taking cognizance of any petition or initiative on amendments on the Constitution** until a sufficient law shall have been validly enacted to provide for the implementation of the system (emphasis supplied).
>
> We feel, however, that the system of initiative to propose amendments to the Constitution should no longer be kept in the cold; it should be given flesh and blood, energy and strength. Congress should not tarry any longer in complying with the constitutional mandate to provide for the implementation of the right of the

people under that system.

In the said case, the Court's *fallo* states as follows:

> WHEREFORE, judgment is hereby rendered
>
> a) GRANTING the instant petition;
>
> b) DECLARING R.A. 6735 inadequate to cover the system of initiative on amendments to the Constitution, and to have failed to provide sufficient standard for subordinate legislation;
>
> c) DECLARING void those parts of Resolutions No. 2300 of the Commission on Elections prescribing rules and regulations on the conduct of initiative or amendments to the Constitution; and
>
> d) ORDERING the Commission on Elections to forthwith DISMISS the DELFIN petition (UND-96-037).
>
> The Temporary Restraining Order issued on 18 December 1996 is made permanent as against the Commission on Elections, but is LIFTED against private respondents.
>
> Resolution on the matter of contempt is hereby reserved.
>
> SO ORDERED.

The question now is if the ruling in *Santiago* is decisive in this case. It is elementary that when there is conflict between the dispositive portion or *fallo* of the decision and the opinion of the court contained in the text or body of the judgment, the former prevails over the latter. An order of execution is based on the disposition, not on the body, of the decision. [5] The dispositive portion is its decisive resolution; thus it is the subject of execution. The other parts of the decision may be resorted to in order to determine the *ratio decidendi* for the disposition. **Where there is conflict between the dispositive part and the opinion of the court contained in the text or body of the decision, the former must prevail over the latter on the theory that the dispositive portion is the final order, while the opinion is merely a statement ordering nothing**. Hence, the execution must conform with that which is ordained or decreed in the dispositive portion of the decision. [6]

A judgment must be distinguished from an opinion. The latter is an informal expression of the views of the court and cannot prevail against its final order or decision. While the two may be combined in one instrument, the opinion forms no part of the judgment. So there is a distinction between the findings and conclusions of a court and its Judgment. While they may constitute its decision and amount to the rendition of a judgment, they are not the judgment itself. It is not infrequent that the grounds of a decision fail to reflect the exact views of the court, especially those of concurring justices in a collegiate court. We often encounter in judicial decisions, lapses, findings, loose statements and generalities which do not bear on the issues or are apparently opposed to the otherwise sound and considered result reached by the court as expressed in the dispositive part, so called, of the decision. [7]

Applying the foregoing argument to the *Santiago* case, it immediately becomes apparent that the disposition in the latter case categorically made permanent the December 18, 1996 Temporary Restraining Order issued against the COMELEC in the Delfin petition but did NOT formally incorporate therein any directive PERMANENTLY enjoining the COMELEC "from entertaining or taking cognizance of any petition for initiative on amendments." Undeniably,

the perpetual proscription against the COMELEC from assuming jurisdiction over any other petition on Charter Change through a People's Initiative is just a conclusion and cannot bind the poll body, for such unending ban would trench on its constitutional power to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite initiative, referendum and recall under Section 2, Article IX of the Constitution. RA 6735 gave the COMELEC the jurisdiction to determine the sufficiency of the petition on the initiative under Section 8, Rule 11 and the form of the petition under Section 3, Rule I; hence, it cannot be barred from entertaining any such petition.

In sum, the COMELEC still retains its jurisdiction to take cognizance of any petition on initiative under RA 6735 and it can rule on the petition and its action can only be passed upon by the Court when the same is elevated through a petition for *certiorari*. COMELEC cannot be barred from acting on said petitions since jurisdiction is conferred by law (RA 6735) and said law has not been declared unconstitutional and hence still valid though considered inadequate in the *Santiago* case.

Respondents, however, claim that the Court in the subsequent case of *PIRMA v. Commission on Elections* [8] confirmed the statement of the Court in the *Santiago* case that the COMELEC was "permanently enjoined from entertaining or taking cognizance of any petition for initiative on amendments." Much reliance is placed on the ruling contained in a Minute Resolution which reads:

> The Court ruled, first, by a unanimous vote, that no grave abuse of Discretion could be attributed to the public respondent COMELEC in Dismissing the petition filed by PIRMA therein, it appearing that it only Complied with the DISPOSITIONS in the Decision of this Court in G.R. No. 127325, promulgated on March 19, 1997, and its Resolution of June 10, 1997.

Take note that the Court specifically referred to "dispositions" in the March 19, 1997 Decision. To reiterate, the dispositions in the *Santiago* case decision refer specifically to the December 18, 1996 TRO being made permanent against the COMELEC but do not pertain to a permanent injunction against any other petition for initiative on amendment. Thus, what was confirmed or even affirmed in the Minute Resolution in the PIRMA case pertains solely to the December 18, 1996 TRO which became permanent, the declaration of the inadequacy of RA 6735, and the annulment of certain parts of Resolution No. 2300 but certainly not the alleged perpetual injunction against the initiative petition. Thus, the resolution in the PIRMA case cannot be considered *res judicata* to the Lambino petition.

Amendment or Revision

One last matter to be considered is whether or not the petition may be allowed under RA 6735, since only amendments to the Constitution may be the subject of a people's initiative.

The Lambino petition cannot be considered an act of revising the Constitution; it is merely an attempt to amend it. The term amendment has to be liberally construed so as to effectuate the people's efforts to amend the Constitution.

As an eminent constitutionalist, Dean Vicente G. Sinco, [9] explained:

> Strictly speaking, the act of revising a constitution involves alterations of different portions of the entire document. It may result in the rewriting either of the whole constitution, or the greater portion of it, or perhaps only some of its important provisions. But whatever results the revision may produce, the factor that characterizes it as an act of revision is the original intention and plan authorized to

be carried out. That intention and plan must contemplate a consideration of all the provisions of the constitution to determine which one should be altered or suppressed or whether the whole document should be replaced with an entirely new one.

The act of amending a constitution, on the other hand, envisages a change of only a few specific provisions. The intention of an act to amend is not to consider the advisability of changing the entire constitution or of considering that possibility. The intention rather is to improve specific parts of the existing constitution or to add to it provisions deemed essential on account of changed conditions or to suppress portions of it that seem obsolete, or dangerous, or misleading in their effect.

In this case, the Lambino petition is not concerned with rewriting the entire Constitution. It was never its intention to revise the whole Constitution. It merely concerns itself with amending a few provisions in our fundamental charter.

When there are gray areas in legislation, especially in matters that pertain to the sovereign people's political rights, courts must lean more towards a more liberal interpretation favoring the people's right to exercise their sovereign power.

Conclusion

Sovereignty residing in the people is the highest form of sovereignty and thus deserves the highest respect even from the courts. It is not something that can be overruled, set aside, ignored or stomped over by whatever amount of technicalities, blurred or vague provisions of the law.

As I find RA 6735 to be adequate as the implementing law for the People's Initiative, I vote to grant the petition in G.R. No. 174153 and dismiss the petition in G.R. No. 174299. The Amended Petition for Initiative filed by petitioners Raul L. Lambino and Erico B. Aumentado should be remanded to the COMELEC for determination whether or not the petition is sufficient under RA 6735, and if the petition is sufficient, to schedule and hold the necessary plebiscite as required by RA 6735.

It is time to let the people's voice be heard once again as it was twenty years ago. And should this voice demand a change in the Constitution, the Supreme Court should not be one to stand in its way.

Footnotes

1. Including *Sigaw ng Bayan* and Union of Local Authorities of the Philippines (ULAP).

2. This provision states: "*Requirements*. — . . .

(b) A petition for an initiative on the 1987 Constitution must have at least twelve per centum (12%) of the total number of registered voters as signatories, of which every legislative district must be represented by at least three per centum (3%) of the registered voters therein. Initiative on the Constitution may be exercised only after five (5) years from the ratification of the 1987 Constitution and only once every five (5) years thereafter.

(c) The petition shall state the following:

c.1. contents or text of the proposed law sought to be enacted, approved or

rejected, amended or repealed, as the case may be;

c.2. the proposition;

c.3. the reason or reasons therefor;

c.4. that it is not one of the exceptions provided herein;

c.5. signatures of the petitioners or registered voters; and

c.6. an abstract or summary in not more than one hundred (100) words which shall be legibly written or printed at the top of every page of the petition."

3. This provision states: "*Verification of Signatures*. — The Election Registrar shall verify the signatures on the basis of the registry list of voters, voters' affidavits and voters identification cards used in the immediately preceding election."

4. Sections 1, 2, 3, 4, 5, 6 and 7 of Article VI will be changed thus:

Section 1. (1) The legislative and executive powers shall be vested in a unicameral Parliament which shall be composed of as many members as may be provided by law, to be apportioned among the provinces, representative districts, and cities in accordance with the number of their respective inhabitants, with at least three hundred thousand inhabitants per district, and on the basis of a uniform and progressive ratio. Each district shall comprise, as far as practicable, contiguous, compact and adjacent territory, and each province must have at least one member.

(2) Each Member of Parliament shall be a natural-born citizen of the Philippines, at least twenty-five years old on the day of the election, a resident of his district for at least one year prior thereto, and shall be elected by the qualified voters of his district for a term of five years without limitation as to the number thereof, except those under the party-list system which shall be provided for by law and whose number shall be equal to twenty per centum of the total membership coming from the parliamentary districts.

5. Sections 1, 2, 3, and 4 of Article VII will be changed thus:

Section 1. There shall be a President who shall be the Head of State. The executive power shall be exercised by a Prime Minister, with the assistance of the Cabinet. The Prime Minister shall be elected by a majority of all the Members of Parliament from among themselves. He shall be responsible to the Parliament for the program of government.

6. Sections 1-5 of the Transitory Provisions read:

Section 1. (1) The incumbent President and Vice President shall serve until the expiration of their term at noon on the thirtieth day of June 2010 and shall continue to exercise their powers under the 1987 Constitution unless impeached by a vote of two thirds of all the members of the interim parliament.

(2) In case of death, permanent disability, resignation or removal from office of the incumbent President, the incumbent Vice President shall succeed as President. In case of death, permanent disability, resignation or removal from office of both the incumbent President and Vice President, the interim Prime Minister shall assume all the powers and responsibilities of Prime Minister under Article VII as amended.

Section 2. Upon the expiration of the term of the incumbent President and Vice President, with the exception of Sections 1, 2, 3, 4, 5, 6 and 7 of Article VI of the 1987 Constitution which shall hereby be amended and Sections 18 and 24 which shall be deleted, all other sections of Article VI are hereby retained and renumbered sequentially as

Section 2, *ad seriatim* up to 26, unless they are inconsistent with the Parliamentary system of government, in which case, they shall be amended to conform with a unicameral parliamentary form of government; provided, however, that any and all references therein to "Congress", "Senate", "House of Representatives" and "Houses of Congress" shall be changed to read "Parliament"; that any and all references therein to "Member[s] of Congress", "Senator[s]" or "Member[s] of the House of Representatives" shall be changed to read as "Member[s] of Parliament" and any and all references to the "President" and or "Acting President" shall be changed to read "Prime Minister".

Section 3. Upon the expiration of the term of the incumbent President and Vice President, with the exception of Sections 1, 2, 3 and 4 of Article VII of the 1987 Constitution which are hereby amended and Sections 7, 8, 9, 10, 11 and 12 which are hereby deleted, all other Sections of Article VII shall be retained and renumbered sequentially as Section 2, *ad seriatim* up to 14, unless they shall be inconsistent with Section 1 hereof, in which case they shall be deemed amended so as to conform to a unicameral Parliamentary System of government; provided however that any and all references therein to "Congress", "Senate", "House of Representatives" and "Houses of Congress" shall be changed to read "Parliament"; that any and all references therein to "Member[s] of Congress", "Senator[s]" or "Member[s] of the House of Representatives" shall be changed to read as "Member[s] of Parliament" and any and all references to the "President" and or "Acting President" shall be changed to read "Prime Minister".

Section 4. (1) There shall exist, upon the ratification of these amendments, an interim Parliament which shall continue until the Members of the regular Parliament shall have been elected and shall have qualified. It shall be composed of the incumbent Members of the Senate and the House of Representatives and the incumbent Members of the Cabinet who are heads of executive departments.

(2) The incumbent Vice President shall automatically be a Member of Parliament until noon of the thirtieth day of June 2010. He shall also be a member of the cabinet and shall head a ministry. He shall initially convene the interim Parliament and shall preside over its sessions for the election of the interim Prime Minister and until the Speaker shall have been elected by a majority vote of all the members of the interim Parliament from among themselves.

(3) Within forty-five days from ratification of these amendments, the interim Parliament shall convene to propose amendments to, or revisions of, this Constitution consistent with the principles of local autonomy, decentralization and a strong bureaucracy.

Section 5. (1) The incumbent President, who is the Chief Executive, shall nominate, from among the members of the interim Parliament, an interim Prime Minister, who shall be elected by a majority vote of the members thereof. The interim Prime Minister shall oversee the various ministries and shall perform such powers and responsibilities as may be delegated to him by the incumbent President.

(2) The interim Parliament shall provide for the election of the members of Parliament, which shall be synchronized and held simultaneously with the election of all local government officials. Thereafter, the Vice President, as Member of Parliament, shall immediately convene the Parliament and shall initially preside over its session for the purpose of electing the Prime Minister, who shall be elected by a majority vote of all its members, from among themselves. The duly elected Prime Minister shall continue to exercise and perform the powers, duties and responsibilities of the interim Prime Minister until the expiration of the term of incumbent President and Vice President. As revised,

Article XVIII contained a new paragraph in Section 4 (paragraph 3) and a modified paragraph 2, Section 5, thus:

Section 4. . . .

(3) Senators whose term of office ends in 2010 shall be Members of Parliament until noon of the thirtieth day of June 2010.

xxx xxx xxx

Section 5. . . .

(2) The interim Parliament shall provide for the election of the members of Parliament, which shall be synchronized and held simultaneously with the election of all local government officials. The duly elected Prime Minister shall continue to exercise and perform the powers, duties and responsibilities of the interim Prime Minister until the expiration of the term of the incumbent President and Vice President.

7. Footnotes text is not found in the original copy.

8. 336 Phil. 848 (1997); Resolution dated 10 June 1997.

9. The COMELEC held:

We agree with the Petitioners that this Commission has the solemn Constitutional duty to enforce and administer all laws and regulations relative to the conduct of, as in this case, initiative.

This mandate, however, should be read in relation to the other provisions of the Constitution particularly on initiative.

Section 2, Article XVII of the 1987 Constitution provides:

Sec. 2. Amendments to this Constitution may likewise be directly proposed by the people through initiative, upon a petition of at least twelve per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters therein. . . . .

The Congress shall provide for the implementation of the exercise of this right.

The afore-quoted provision of the Constitution being a non self-executory provision needed an enabling law for its implementation. Thus, in order to breathe life into the constitutional right of the people under a system of initiative to directly propose, enact, approve or reject, in whole or in part, the Constitution, laws, ordinances, or resolution, Congress enacted Republic Act No. 6735.

However, the Supreme Court, in the landmark case of *Santiago vs. Commission on Elections* struck down the said law for being incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned.

The Supreme Court likewise declared that this Commission should be permanently enjoined from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the system.

Thus, even if the signatures in the instant Petition appear to meet the required minimum *per centum* of the total number of registered voters, of which every legislative district is represented by at least three *per centum* of the registered voters therein, still the

Petition cannot be given due course since the Supreme Court categorically declared R.A. No. 6735 as inadequate to cover the system of initiative on amendments to the Constitution.

This Commission is not unmindful of the transcendental importance of the right of the people under a system of initiative. However, neither can we turn a blind eye to the pronouncement of the High Court that in the absence of a valid enabling law, this right of the people remains nothing but an "empty right", and that this Commission is permanently enjoined from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution.

Considering the foregoing, We are therefore constrained not to entertain or give due course to the instant Petition.

10. Arturo M. De Castro; Ronald L. Adamat, Rolando Manuel Rivera, Ruelo Baya; Philippine Transport and General Workers Organization (PTGWO); Trade Union Congress of the Philippines; Sulong Bayan Movement Foundation, Inc.

11. Onevoice Inc., Christian S. Monsod, Rene B. Azurin, Manuel L. Quezon III, Benjamin T. Tolosa, Jr., Susan V. Ople and Carlos P. Medina, Jr.; Alternative Law Groups, Inc.; Atty. Pete Quirino Quadra; Bayan, Bayan Muna, Kilusang Mayo Uno, Head, Ecumenical Bishops Forum, Migrante, Gabriela, Gabriela Women's Party, Anakbayan, League of Filipino Students, Jojo Pineda, Dr. Darby Santiago, Dr. Reginald Pamugas; Loreta Ann P. Rosales, and Mario Joyo Aguja, Ana Theresa Hontiveros-Baraquel, Luwalhati Ricasa Antonino; Philippine Constitution (PHILCONSA), Conrado F. Estrella, Tomas C. Toledo, Mariano M. Tajon, Froilan M. Bacungan, Joaquin T. Venus, Jr., Fortunato P. Aguas, and Amado Gat Inciong; Senate of the Philippines; Jose Anselmo I. Cadiz, Byron D. Bocar, Ma. Tanya Karina A. Lat, Antonio L. Salvador and Randall C. Tabayoyong, Integrated Bar of the Philippines, Cebu City and Cebu Province Chapters; Senate Minority Leader Aquilino Q. Pimentel, Jr., and Senators Sergio R. Osmena III, Jamby Madrigal, Jinggoy Estrada, Alfredo S. Lim and Panfilo Lacson; Joseph Ejercito Estrada and Pwersa ng Masang Pilipino.

12. This provision states: "Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years."

13. I RECORD, 387-388.

14. During the deliberations of the Constitutional Commission, Commissioner Rene V. Sarmiento made the following report (I RECORD 389):

MR. SARMIENTO: Madam President, I am happy that the Committee on Amendments and Transitory Provisions decided to retain the system of initiative as a mode of amending the Constitution. I made a survey of American constitutions and I discovered that 13 States provide for a system of initiative as a mode of amending the Constitution — Arizona, Arkansas, California, Colorado, Massachusetts, Michigan, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oklahoma and Oregon. The initiative for ordinary laws only is used in Idaho, Maine, Montana and South Dakota. So, I am happy that this was accepted or retained by the Committee.

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The Americans in turn copied the concept of initiatives from the Swiss beginning in

1898 when South Dakota adopted the initiative in its constitution. The Swiss cantons experimented with initiatives in the 1830s. In 1891, the Swiss incorporated the initiative as a mode of amending their national constitution. Initiatives promote "direct democracy" by allowing the people to directly propose amendments to the constitution. In contrast, the traditional mode of changing the constitution is known as "indirect democracy" because the amendments are referred to the voters by the legislature or the constitutional convention.

15. Florida requires only that the title and summary of the proposed amendment are "printed in clear and unambiguous language." *Advisory Opinion to the Attorney General RE Right of Citizens to Choose Health Care Providers*. No. 90160, 22 January 1998, Supreme Court of Florida.

16. *State ex. rel Patton v. Myers*, 127 Ohio St. 95, 186 N.E. 872 (1933); *Whitman v. Moore*, 59 Ariz. 211, 125 P.2d 445 (1942); *Heidtman v. City of Shaker Heights*, 99 Ohio App. 415, 119 N.E. 2d 644 (1954); *Christen v. Baker*, 138 Colo. 27, 328 P.2d 951 (1958); *Stop the Pay Hike Committee v. Town Council of Town of Irvington*, 166 N.J. Super. 197, 399 A.2d 336 (1979); *State ex rel Evans v. Blackwell*, Slip copy, 2006 WL 1102804 (Ohio App. 10 Dist.), 2006-Ohio-2076.

17. 407 Mass. 949, 955 (1990). Affirmed by the District Court of Massachusetts in *Henry v. Conolly*, 743 F. Supp. 922 (1990) and by the Court of Appeals, First Circuit, in *Henry v. Conolly*, 9109 F. 2d. 1000 (1990), and cited in *Marino v. Town Council of Southbridge*, 13 Mass.L.Rptr. 14 (2001).

18. 89 P.3d 1227, 1235 (2004).

19. *Stumpf v. Law*, 839 P. 2d 120, 124 (1992).

20. Exhibit "B" of the Lambino Group's Memorandum filed on 11 October 2006.

21. Annex "B" of the Comment/Opposition in Intervention of Atty. Pete Quirino-Quadra filed on 7 September 2006.

22. www.ulap.gov.ph.

23. www.ulap.gov.ph/reso2006-02.html.

24. The full text of the proposals of the Consultative Commission on Charter Change can be downloaded at its official website at www.concom.ph.

25. The Lambino Group's Memorandum, p 5.

26. Under the proposed Section 1(2), Article VI of the Constitution, members of Parliament shall be elected for a term of five years "without limitation as to the number thereof."

27. Under the proposed Section 4(1), Article XVIII, Transitory Provisions of the Constitution, the interim Parliament "shall continue until the Members of the regular Parliament shall have been elected and shall have qualified." Also, under the proposed Section 5(2), Article XVIII, of the same Transitory Provisions, the interim Parliament "shall provide for the election of the members of Parliament."

28. Under the proposed Section 4(3), Article XVIII, Transitory Provisions of the Constitution, the interim Parliament, within 45 days from ratification of the proposed changes, "shall convene to propose amendments to, or revisions of, this Constitution."

29. 448 So.2d 984, 994 (1984), internal citations omitted.

30. 698 P.2d 1173, 1184 (1985).

31. I RECORD 386, 392, 402-403.

32. 196 P.2d 787, 790 (1948). *See* also *Lowe v. Keisling*, 130 Or.App. 1, 882 P.2d 91 (1994).

33. 392 P.2d 636, 638 (1964).

34. 930 P.2d 186, 196 (1996), internal citations omitted.

35. *Livermore v. Waite*, 102 Cal. 113, 118-119 (1894).

36. *Amador Valley Joint Union High School District v. State Board of Equalization*, 583 P.2d 1281, 1286 (1978).

37. *Id*.

38. *Legislature of the State of California v. EU*, 54 Cal.3d 492, 509 (1991).

39. *California Association of Retail Tobacconists v. State*, 109 Cal.App.4th 792, 836 (2003).

40. *See* note 44, *infra*.

41. Joaquin Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, p. 1294 (2003).

42. 238 So.2d 824 (1970).

43. *Id*. at 830-832.

44. As stated by Associate Justice Romeo J. Callejo, Sr. during the 26 September 2006 oral arguments.

45. *Francisco, Jr. v. House of Representatives*, G.R. No. 160261, 10 November 2003, 415 SCRA 44; *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, 142 Phil. 393 (1970); *Gold Creek Mining Corporation v. Rodriguez*, 66 Phil. 259 (1938).

46. 882 P.2d 91, 96-97 (1994). On the merits, the Court in *Lowe v. Keisling* found the amendment in question was not a revision.

47. Section 1, Article V of the Constitution.

48. Section 11(1), Article XVI of the Constitution.

49. Section 2, Article VII of the Constitution.

50. This section provides: "The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them."

51. *Spouses Mirasol v. Court of Appeals*, 403 Phil. 760 (2001); *Intia Jr. v. COA*, 366 Phil. 273 (1999).

52. G.R. No. 129754, Resolution dated 23 September 1997.

53. Presidential Proclamation No. 58 dated February 11, 1987, entitled "Proclaiming the Ratification of the Constitution of the Republic of the Philippines Adopted by the Constitutional Commission of 1986, including the Ordinance Appended thereto. ″

PANGANIBAN, C.J., concurring:

1. Chief Justice McLachlin spoke on "Liberty, Prosperity and the Rule of Law" in her speech before the Global Forum on Liberty and Prosperity held on October 18-20, 2006 in Manila.

She further stated: "Without the rule of law, government officials are not bound by standards of conduct. Without the rule of law, the dignity and equality of all people is not affirmed and their ability to seek redress for grievances and societal commitments is limited. Without the rule of law, we have no means of ensuring meaningful participation by people in formulating and enacting the norms and standards which organize the kinds of societies in which we want to live."

2. GR No. 127325, March 19, 1997, 336 Phil. 848. For ease of reference, my Separate Opinion is reproduced in full:

"Our distinguished colleague, Mr. Justice Hilario G. Davide Jr., writing for the majority, holds that:

'(1) The Comelec acted without jurisdiction or with grave abuse of discretion in entertaining the 'initiatory' Delfin Petition.

'(2) While the Constitution allows amendments to 'be directly proposed by the people through initiative,' there is no implementing law for the purpose. RA 6735 is 'incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned.'

'(3) Comelec Resolution No. 2300, 'insofar as it prescribes rules and regulations on the conduct of initiative on amendments to the Constitution, is void.'

"I concur with the first item above. Until and unless an initiatory petition can show the required number of signatures — in this case, 12% of all the registered voters in the Philippines with at least 3% in every legislative district — no public funds may be spent and no government resources may be used in an initiative to amend the Constitution. Verily, the Comelec cannot even entertain any petition absent such signatures. However, I dissent most respectfully from the majority's two other rulings. Let me explain.

"Under the above restrictive holdings espoused by the Court's majority, the Constitution cannot be amended at all through a people's initiative. Not by Delfin, not by PIRMA, not by anyone, not even by all the voters of the country acting together. This decision will effectively but unnecessarily curtail, nullify, abrogate and render inutile the people's right to change the basic law. At the very least, the majority holds the right hostage to congressional discretion on whether to pass a new law to implement it, when there is already one existing at present. This right to amend through initiative, it bears stressing, is guaranteed by Section 2, Article XVII of the Constitution, as follows:

'SEC. 2. Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.'

"With all due respect, I find the majority's position all too sweeping and all too extremist. It is equivalent to burning the whole house to exterminate the rats, and to killing the patient to relieve him of pain. What Citizen Delfin wants the Comelec to do we should reject. But we should not thereby preempt any future effort to exercise the right of initiative correctly and judiciously. The fact that the Delfin Petition proposes a misuse of initiative does not justify a ban against its proper use. Indeed, there is a right way to do the right thing at the right time and for the right reason.

Taken Together and Interpreted Properly,
the Constitution, R.A. 6735 and Comelec Resolution

2300 Are Sufficient to Implement Constitutional Initiatives

"While R.A. 6735 may not be a perfect law, it was — as the majority openly concedes — intended by the legislature to cover and, I respectfully submit, it contains enough provisions to effectuate an initiative on the Constitution. I completely agree with the inspired and inspiring opinions of Mr. Justice Reynato S. Puno and Mr. Justice Ricardo J. Francisco that RA 6735, the Roco law on initiative, sufficiently implements the right of the people to initiate amendments to the Constitution. Such views, which I shall no longer repeat nor elaborate on, are thoroughly consistent with this Court's unanimous en banc rulings in *Subic Bay Metropolitan Authority vs. Commission on Elections*, that "provisions for initiative . . . are (to be) liberally construed to effectuate their purposes, to facilitate and not hamper the exercise by the voters of the rights granted thereby"; and in *Garcia vs. Comelec*, that any "effort to trivialize the effectiveness of people's initiatives ought to be rejected."

"No law can completely and absolutely cover all administrative details. In recognition of this, R.A. 6735 wisely empowered the Commission on Election "to promulgate such rules and regulations as may be necessary to carry out the purposes of this Act." And pursuant thereto, the Comelec issued its Resolution 2300 on 16 January 1991. Such Resolution, by its very words, was promulgated "to govern the conduct of initiative on the Constitution and initiative and referendum on national and local laws," not by the incumbent Commission on Elections but by one then composed of Acting Chairperson Haydee B. Yorac, Comms. Alfredo E. Abueg, Jr., Leopoldo L. Africa, Andres R. Flores, Dario C. Rama and Magdara B. Dimaampao. All of these Commissioners who signed Resolution 2300 have retired from the Commission, and thus we cannot ascribe any vile motive unto them, other than an honest, sincere and exemplary effort to give life to a cherished right of our people.

"The majority argues that while Resolution 2300 is valid in regard to national laws and local legislations, it is void in reference to constitutional amendments. There is no basis for such differentiation. The source of and authority for the Resolution is the same law, R.A. 6735.

"I respectfully submit that taken together and interpreted properly and liberally, the Constitution (particularly Art. XVII, Sec. 2), R.A. 6735 and Comelec Resolution 2300 provide more than sufficient authority to implement, effectuate and realize our people's power to amend the Constitution.

Petitioner Delfin and the Pedrosa Spouses Should Not Be Muzzled

"I am glad the majority decided to heed our plea to lift the temporary restraining order issued by this Court on 18 December 1996 insofar as it prohibited Petitioner Delfin and the Spouses Pedrosa from exercising their right of initiative. In fact, I believe that such restraining order as against private respondents should not have been issued, in the first place. While I agree that the Comelec should be stopped from using public funds and government resources to help them gather signatures, I firmly believe that this Court has no power to restrain them from exercising their right of initiative. The right to propose amendments to the Constitution is really a species of the right of free speech and free assembly. And certainly, it would be tyrannical and despotic to stop anyone from speaking freely and persuading others to conform to his/her beliefs. As the eminent Voltaire once said, 'I may disagree with what you say, but I will defend to the death your right to say it.' After all, freedom is not really for the thought we agree with, but as Justice Holmes wrote, 'freedom for the thought that we hate.'

Epilogue

"By way of epilogue, let me stress the guiding tenet of my Separate Opinion. Initiative, like referendum and recall, is a new and treasured feature of the Filipino constitutional system. All three are institutionalized legacies of the world-admired EDSA people power. Like elections and plebiscites, they are hallowed expressions of popular sovereignty. They are sacred democratic rights of our people to be used as their final weapons against political excesses, opportunism, inaction, oppression and misgovernance; as well as their reserved instruments to exact transparency, accountability and faithfulness from their chosen leaders. While on the one hand, their misuse and abuse must be resolutely struck down, on the other, their legitimate exercise should be carefully nurtured and zealously protected.

"WHEREFORE, I vote to GRANT the petition of Sen. Miriam D. Santiago et al. and to DIRECT Respondent Commission on Elections to DISMISS the Delfin Petition on the ground of prematurity, but not on the other grounds relied upon by the majority. I also vote to LIFT the temporary restraining order issued on 18 December 1996 insofar as it prohibits Jesus Delfin, Alberto Pedrosa and Carmen Pedrosa from exercising their right to free speech in proposing amendments to the Constitution."

3. GR No. 129754, September 23, 1997 (still unpublished in the *Philippine Reports* or in the *Supreme Court Reports Annotated*). Again, for ease of reference, I reproduce my Separate Opinion in full:

"Petitioners assail the July 8, 1997 Resolution of Respondent Commission dismissing their petition for a people's initiative to amend the Constitution. Said petition before the Comelec (henceforth, PIRMA petition) was backed up by nearly six (6) million signatures constituting about 16% of the registered voters of the country with at least 3% in each legislative district. The petition now before us presents two grounds:

"1. In refusing to act on the PIRMA petition, the Comelec allegedly acted with grave abuse of discretion amounting to lack or excess of jurisdiction; and

"2. In declaring R.A. 6735 "inadequate to cover its system of initiative on amendments to the Constitution" and "declaring void those parts of Resolution 2300 of the Commission on Elections prescribing rules and regulations on the conduct of [an] initiative [on] amendments to the Constitution," the Supreme Court's Decision in G.R. No. 127325 entitled *Miriam Defensor Santiago vs. Commission on Elections* (hereafter referred to as *Santiago*) should be reexamined because said Decision is allegedly "unconstitutional," and because, in any event, the Supreme Court itself, in reconsidering the said issue per its June 10, 1997 Resolution, was deadlocked at six votes one each side.

"The following in my position on each of these two issues:

First Issue:

No Grave Abuse of Discretion

in Comelec's Refusal to Act

"The Respondent Commission's refusal to act on the "prayers" of the PIRMA petition cannot in any wise be branded as "grave abuse of discretion." Be it remembered that the Court's Decision in *Santiago* permanently enjoined the Comelec "from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution . . . ." While concededly, petitioners in this case were not direct parties in *Santiago*, nonetheless the Court's injunction against the Comelec covered ANY petition, not just the Delfin

petition which was the immediate subject of said case. **As a dissenter in Santiago, I believed, and still do, that the majority gravely erred in rendering such a sweeping injunction, but I cannot fault the Comelec for complying with the ruling even if it, too, disagreed with said decision's *ratio decidendi*. Respondent Comelec was directly enjoined by the highest Court of the land. It had no choice but to obey. Its obedience cannot constitute grave abuse of discretion**. Refusal to act on the PIRMA petition was the only recourse open to the Comelec. Any other mode of action would have constituted defiance of the Court and would have been struck down as grave abuse of discretion and contumacious disregard of this Court's supremacy as the final arbiter of justiciable controversies.

Second Issue:

Sufficiency of RA 6735

"**I repeat my firm legal position that RA 6735 is adequate to cover initiatives on the Constitution, and that whatever administrative details may have been omitted in said law are satisfactorily provided by Comelec Resolution 2300**. The promulgation of Resolution 2300 is sanctioned by Section 2, Article IX-C of the Constitution, which vests upon the Comelec the power to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, **initiative**, referendum and recall." The Omnibus Election Code likewise empowers the electoral body to "promulgate rules and regulations implementing the provisions of this Code or other laws which the Commission is required to enforce and administer . . . ." Finally and most relevantly, Section 20 of Ra 6735 specifically authorizes Comelec "to promulgate rules and regulations as may be necessary to carry out the purposes of this Act."

"In my dissent in *Santiago*, I wrote that "there is a **right way** to do the **right thing** at the **right time** and for the **right reason**." Let me explain further.

The Right Thing

"A people's initiative is direct democracy in action. It is the right thing that citizens may avail themselves of to articulate their will. It is a new and treasured feature of the Filipino constitutional system. Even the majority implicitly conceded its value and worth in our legal firmament when it implored Congress "not to tarry any longer in complying with the constitutional mandate to provide for implementation of the right (of initiative) of the people . . . ." Hence, in the *en banc* case of *Subic Bay Metropolitan Authority vs. Comelec*, [G.R. No. 125416, September 26, 1996], this Court unanimously held that "(l)ike elections, initiative and referendum are powerful and valuable modes of expressing popular sovereignty. And this Court as a matter of policy and doctrine will exert every effort to nurture, protect and promote their legitimate exercise."

The Right Way

"From the outset, I have already maintained the view that "taken together and interpreted properly and liberally, the Constitution (particularly Art. XVII, Sec. 2), RA 6735 and Comelec Resolution 2300 provide more than sufficient authority to implement, effectuate and realize our people's power to amend the Constitution." Let me now demonstrate the adequacy of RA 6735 by outlining, in concrete terms, the steps to be taken — the right way — to amend the Constitution through a people's initiative.

"Pursuant to Section 3(f) of the law, the Comelec shall prescribe the form of the petition which shall contain the proposition and the required number of signatories. Under Sec. 5(c) thereof, the petition shall state the following:

'c.1 contents or text of the [provision or provisions] sought to be . . . amended, . . .;

c.2 the proposition [in full text];

c.3 the reason or reasons therefor [fully and clearly explained];

c.4 that it is not one of exceptions provided herein;

c.5 signatures of the petitioners or registered voters; and

c.6 an abstract or summary proposition in not more than one hundred (100) words which shall be legibly written or printed at the top of every page of the petition.'

"Section 8(f) of Comelec Resolution 2300 additionally requires that the petition include a formal designation of the duly authorized representatives of the signatories.

"Being a constitutional requirement, the number of signatures becomes a condition precedent to the filing of the petition, and is jurisdictional. Without such requisite signatures, the Commission shall *motu proprio* reject the petition.

"Where the initiators have substantially complied with the above requirements, they may thence file the petition with the Comelec which is tasked to determine the sufficiency thereof and to verify the signatures on the basis of the registry list of voters, voters' affidavits and voters' identification cards. In deciding whether the petition is sufficient, the Comelec shall also determine if the proposition is proper for an initiative, *i.e.*, if it consists of an amendment, not a revision, of the Constitution. Any decision of the electoral body may be appealed to the Supreme Court within thirty (30) days from notice.

"Within thirty (30) days from receipt of the petition, and after the determination of its sufficiency, the Comelec shall publish the same in Filipino and English at least twice in newspapers of general and local circulation, and set the date of the plebiscite. The conduct of the plebiscite should not be earlier than sixty (60) days, but not later than ninety (90) days after certification by the Comelec of the sufficiency of the petition. The proposition, if approved by a majority of the votes cast in the plebiscite, becomes effective as of the day of the plebiscite.

"From the foregoing, it should be clear that my position upholding the adequacy of RA 6735 and the validity of Comelec Resolution 2300 will not *ipso facto* validate the PIRMA petition and automatically lead to a plebiscite to amend the Constitution. Far from it. Among others, PIRMA must still satisfactorily hurdle the following searching issues:

1. Does the proposed change — the lifting of the term limits of elective officials — constitute a mere amendment and not a revision of the Constitution?

2. Which registry of voters will be used to verify the signatures in the petition? This question is relevant considering that under RA 8189, the old registry of voters used in the 1995 national elections was voided after the barangay elections on May 12, 1997, while the new list may be used starting only in the elections of May 1998.

3. Does the clamor for the proposed change in the Constitution really emanate from the people who signed the petition for initiative? Or it is the beneficiaries of term extension who are in fact orchestrating such move to advance their own political self-interest?

4. Are the six million signatures genuine and verifiable? Do they really belong to qualified warm bodies comprising at least 12% of the registered voters nationwide, of which every legislative district is represented by at least 3% of the registered voters therein?

"I shall expound on the third question in the next section, The Right Reason. Question Nos. 1 and 2 above, while important, are basically legal in character and can be determined by argumentation and memoranda. However, Question No. 4 involves not only legal issues but gargantuan hurdles of factual determination. This to my mind is the crucible, the litmus test, of a people's petition for initiative. If herein petitioners, led by PIRMA, succeed in *proving* — not just alleging — that six million voters of this country indeed want to amend the Constitution, what power on earth can stop them? Not this Court, not the Comelec, not even the President or Congress.

"It took only one million people to stage a peaceful revolution at EDSA, and the very rafters and foundations of the martial law society trembled, quaked and crumbled. On the other hand, PIRMA and its co-petitioners are claiming that they have gathered six million signatures. If, as claimed by many, these six million signatures are fraudulent, then let them be exposed and damned for all history in a signature-verification process conducted under our open system of legal advocacy.

"More than anything else, it is the truth that I, as a member of this Court and as a citizen of this country, would like to seek: Are these six million signatures real? By insisting on an entirely new doctrine of statutory inadequacy, the majority effectively suppressed the quest for that truth.

The Right Reason

"As mentioned, the third question that must be answered, even if the adequacy of RA 6735 and the validity of Comelec Resolution 2300 were upheld by the majority is: Does the clamor for the proposed change to the Constitution really emanate from the people who signed the petition for initiative? Or is it the beneficiaries of term extension who are in fact orchestrating such move to advance their own political self-interests? In other words, is PIRMA's exercise of the right to initiative being done in accordance with our Constitution and our laws? Is such attempted exercise legitimate?

"In *Garcia vs. Commission on Elections*, we described initiative, along with referendum, as the 'ultimate weapon of the people to negate government malfeasance and misfeasance.' In *Subic Bay*, we specified that 'initiative is entirely the work of the electorate . . . a process of lawmaking by the people themselves without the participation and against the wishes of their elected representatives.' **As ponente of *Subic Bay*, I stand foursquare on this principle: The right to amend through initiative belongs only to the people — not to the government and its minions**. This principle finds clear support from utterances of many constitutional commissioners like those quoted below:

"[Initiative is] a reserve power of the sovereign people, when they are dissatisfied with the National Assembly . . . [and] precisely a fallback position of the people in the event that they are dissatisfied." — Commissioner Ople

"[Initiative is] a check on a legislative that is not responsive [and resorted to] only if the legislature is not as responsive to the vital and urgent needs of people." — Commissioner Gascon

"[Initiative is an] extraordinary power given to the people [and] reserved for the people [which] should not be frivolously resorted to." — Commissioner Romulo

"Indeed, if the powers-that-be desire to amend the Constitution, or even to revise it, our Charter itself provides them other ways of doing so, namely, by calling a constitutional convention or constituting Congress into a constituent assembly. These are officialdom's weapons. But initiative belongs to the people.

"In the present case, are PIRMA and its co-petitioners legitimate people's organizations or are they merely fronts for incumbents who want to extend their terms? This is a factual question which, unfortunately, cannot be *judicially* answered anymore, because the Supreme Court majority ruled that the law that implements it, RA 6735, is inadequate or insufficient insofar as initiatives to the Constitutions are concerned. With such ruling, the majority effectively abrogated a constitutional right of our people. That is why in my Separate Opinion in *Santiago*, I exclaimed that such precipitate action "is equivalent to burning the whole house to exterminate the rats, and to killing the patient to relieve him of pain." I firmly maintain that to defeat PIRMA's effort, there is no need to "burn" the constitutional right to initiative. If PIRMA's exercise is not "legitimate," it can be exposed as such in the ways I have discussed — short of abrogating the right itself. On the other hand, if PIRMA's position is proven to be legitimate — if it hurdles the four issues I outlined earlier — by all means, we should allow and encourage it. But the majority's theory of statutory inadequacy has pre-empted — unnecessarily and invalidly, in my view — any judicial determination of such legitimacy or illegitimacy. It has silenced the quest for truth into the interstices of the PIRMA petition.

The Right Time

"The Constitution itself sets a time limitation on when changes thereto may be proposed. Section 2 of Article XVII precludes amendments "within five years following [its] ratification . . . nor oftener than once every five years thereafter." Since its ratification, the 1987 Constitution has never been amended. Hence, the five-year prohibition is now inoperative and amendments may theoretically be proposed at any time.

"Be that as it may, I believe — given the present circumstances — that there is no more time to lift term limits to enable incumbents to seek reelection in the May 11, 1998 polls. Between today and the next national elections, less than eight (8) months remain. *Santiago*, where the single issue of the sufficiency of RA 6735 was resolved, took this Court three (3) months, and another two (2) months to decide the motion for reconsideration. The instant case, where the same issue is also raised by the petitioners, took two months, not counting a possible motion for reconsideration. These time spans could not be abbreviated any further, because due process requires that all parties be given sufficient time to file their pleadings.

"Thus, even if the Court were to rule now in favor of the adequacy of RA 6735 — as I believe it should — and allow the Comelec to act on the PIRMA petition, such eight-month period will not be enough to tackle the four weighty issues I mentioned earlier, considering that two of them involve tedious factual questions. The Comelec's decision on any of these issues can still be elevated to this Court for review, and reconsiderations on our decisions on each of those issues may again be sought.

"Comelec's herculean task alone of verifying each of the six million signatures is enormously time-consuming, considering that any person may question the authenticity of each and every signature, initially before the election registrar, then before the Comelec on appeal and finally, before this Court in a separate proceeding. Moreover, the plebiscite itself — assuming such stage can be reached — may be scheduled only after sixty (60) but not more than ninety (90) days, from the time the Comelec and this Court, on appeal, finally declare the petition to be sufficient.

"Meanwhile, under Comelec Resolution 2946, political parties, groups organizations or coalitions may start selecting their official candidates for President, Vice President and Senators on November 27, 1997; the period for filing certificates of candidacy is from January 11 to February 9, 1998; the election period and campaign for national officials start on February 10, 1998, while the campaign period for other elective officials, on March 17, 1998. This means, by the time PIRMA's proposition is ready — if ever — for

submission directly to the voters at large, it will have been overcome by the elections. Time will simply run out on PIRMA, *if the intention is to lift term limits in time for the 1998 elections*.

"That term limits may no longer be lifted prior to the 1998 elections via a people's initiative does not detract one whit from (1) my firm conviction that RA 6735 is sufficient and adequate to implement this constitutional right and, more important, (2) my faith in the power of the people to initiate changes in local and national laws and the Constitution. In fact, I think the Court can deliberate on these two items even more serenely and wisely now that the debates will be free from the din and distraction of the 1998 elections. After all, jurisprudence is not merely for the here and now but, more so, for the hereafter and the morrow. Let me therefore stress, by way of epilogue, my unbending credo in favor of our people's right to initiative.

Epilogue

"I believe in democracy — in our people's natural right to determine our own destiny.

"I believe in the process of initiative as a democratic method of enabling our people to express their will and chart their history. Initiative is an alternative to bloody revolution, internal chaos and civil strife. It is an inherent right of the people — as basic as the right to elect, the right to self-determination and the right to individual liberties. I believe that Filipinos have the ability and the capacity to rise above themselves, to use this right of initiative wisely and maturely, and to choose what is best for themselves and their posterity.

"Such beliefs, however, should not be equated with a desire to perpetuate a particular official or group of officials in power. Far from it. Such perpetuation is anathema to democracy. My firm conviction that there is an adequate law implementing the constitutional right of initiative does not *ipso facto* result in the victory of the PIRMA petition or of any proposed constitutional change. There are, after all, sufficient safeguards to guarantee the *proper use* of such constitutional right and to forestall its misuse and abuse. *First*, initiative cannot be used to revise the Constitution, only to amend it. *Second*, the petitioners' signatures must be validated against an existing list of voters and/or voters' identification cards. *Third*, initiative is a reverse power of and by the people, not of incumbent officials and their machinators. *Fourth* and most important of all, the signatures must be verified as real and genuine; not concocted, fictitious or fabricated. The only legal way to do this is to enable the Commission on Elections to conduct a nationwide verification process as mandated by the Constitution and the law. Such verification, it bears stressing, is subject to review by this Court.

"There were, by the most generous estimate, only a million people who gathered at EDSA in 1986, and yet they changed the history of our country. PIRMA claims six times that number, not just from the National Capital Region but from all over the country. Is this claim through the invention of its novel theory of statutory insufficiency, the Court's majority has stifled the only legal method of determining whether PIRMA is real or not, whether there is indeed a popular clamor to lift term limits of elected officials, and whether six million voters want to initiate amendments to their most basic law. In suppressing a judicial answer to such questions, the Court may have unwittingly yielded to PIRMA the benefit of the legal presumption of legality and regularity. In its misplaced zeal to exterminate the rats, it burned down the whole house. It unceremoniously divested the people of a basic constitutional right.

"In the ultimate, the mission of the judiciary is to discover truth and to make it prevail.

This mission is undertaken not only to resolve the vagaries of present events but also to build the pathways of tomorrow. The sum total of the entire process of adversarial litigation is the verity of facts and the application of law thereto. By the majority cop-out in this mission of discovery, our country and our people have been deprived not only of a basic constitutional right, as earlier noted, but also of the judicial opportunity to verify the truth."

4. *Republic v. COCOFED*, 423 Phil. 735, December 14, 2001.

5. Well-entrenched is this definition of grave abuse of discretion. *Id.*; *Benito v. Comelec*, 349 SCRA 705, January 19, 2001; *Defensor-Santiago v. Guingona Jr.*, 359 Phil. 276, November 18, 1998; and *Philippine Airlines, Inc. v. Confesor*, 231 SCRA 41, March 10, 1994.

6. In *PIRMA*, I submitted as follows: "I believed, and still do, that the majority gravely erred in rendering such a sweeping injunction [that covered ANY petition, not just the Delfin petition], but I cannot fault the Comelec for complying with the ruling even if it, too, disagreed with said decision's ratio decidendi. Respondent Comelec was directly enjoined by the highest Court of the land. It had no choice but to obey. Its obedience cannot constitute grave abuse of discretion. Refusal to act on the PIRMA petition was the only recourse open to the Comelec. Any other mode of action would have constituted defiance of the Court and would have been struck down as grave abuse of discretion and contumacious disregard of this Court's supremacy as the final arbiter of justiciable controversies."

7. 42 Am. Jr. 2d, §26, citing *Birmingham Gas Co. v. Bessemer*, 250 Ala 137, 33 So 2d 475, 250 Ala 137; *Tacker v. Board of Comrs.*, 127 Fla 248, 170 So 458; *Hoxie V. Scott*, 45 Neb 199, 63 NW 387; *Gill v. Board of Comrs.*, 160 NC 176, 76, SE 204.

8. *Partido ng Manggagawa v. Comelec*, GR No. 164702, March 15, 2006.

9. Article XVII (AMENDMENTS OR REVISIONS)

"SEC. 1. Any amendment to, or revision of, this Constitution may be proposed by:

(1) The Congress, upon the vote of three-fourths of all its Members; or

(2) A constitutional convention.

"SEC. 2. Amendments to this Constitution may likewise be directly proposed by the people though initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.

"SEC. 3. The Congress may, by a vote of two-thirds of all its Members, call a constitutional convention, or by a majority vote of all its Members, submit to the electorate the question of calling such a convention.

"SEC. 4. Any amendment to, or revision of, this Constitution under Section 1 hereof shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the approval of such amendment or revision.

"Any amendment under Section 2 hereof shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the certification by the Commission on Elections of the sufficiency of the petition."

10. Republic Act 6735, Sec. 10, provides:

"SEC. 10. Prohibited Measures. — The following cannot be the subject of an initiative or referendum petition:

(a) No petition embracing more than one subject shall be submitted to the electorate; and

(b) Statutes involving emergency measures, the enactment of which are specifically vested in Congress by the Constitution, cannot be subject to referendum until ninety (90) days after its effectivity."

11. The principle of separation of powers operates at the core of a presidential form of government. Thus, legislative power is given to the legislature; executive power, to a separate executive (from whose prominent position in the system, the presidential nomenclature is derived); and judicial power, to an independent judiciary. This system embodies interdependence by separation.

On the other hand, a parliamentary system personifies interdependence by integration, its essential features being the following: "(1) The members of the government or cabinet or the executive arm are, as a rule, simultaneously members of the legislature. (2) The government or cabinet, consisting of the political leaders of the majority party or of a coalition who are also members of the legislative, is in effect a committee of the legislature. (3) The government or cabinet has a pyramidal structure, at the apex of which is the Prime Minister or his equivalent. (4) The government or cabinet remains in power only for as long as it enjoys the support of the majority of the legislature. (5) Both government and legislature are possessed of control devices with which each can demand of the other immediate political responsibility." These control devices are a vote of no-confidence (censure), whereby the government may be ousted by the legislature; and the power of the government to dissolve the legislature and call for new elections. (J. BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES A COMMENTARY, Vol. II, 17-18 (1988 ed.).

With respect to the transformation from a bicameral to a unicameral legislature, the change involves the form of representation and the lawmaking process.

12. Attached to the Opposition-in-Intervention of Intervenors One Voice Inc., etc., is a photocopy of the Certification dated August 23, 2006, issued by Atty. Marlon S. Casquejo, the election officer for the 3rd District and the officer-in-charge for the 1st and the 2nd Districts of Davao City. The Certification states that "this office (First, Second and Third District, Davao City) has not verified the signatures of registered voters . . . ."

13. In *People v. Veneracion*, the Court held: "Obedience to the rule of law forms the bedrock of our system of justice. If judges, under the guide of religious or political beliefs were allowed to roam unrestricted beyond boundaries within which they are required by law to exercise the duties of their office, then law becomes meaningless. A government of laws, not of men, excludes the exercise of broad discretionary powers by those acting under its authority. Under this system, judges are guided by the Rule of Law, and ought 'to protect and enforce it without fear or favor,' resist encroachments by governments, political parties, or even the interference of their own personal beliefs." (249 SCRA 244, October 13, 1995, per Kapunan, *J.*)

14. An American professor on legal philosophy, A. Altman, puts it thus: "By ratifying the constitution that included an explicit amendment process, the sovereign people committed themselves to following the rule of law, even when they wished to make changes in the basic system of government." A. ALTMAN, ARGUING ABOUT LAW 94 (2001).

15. *See* my Separate Opinion in *Francisco Jr. v. House of Representatives*, 415 SCRA 45, November 10, 2003.

16. *See*, for instance, the front page Malaya report entitled "Lobbyists soil dignity of Supreme Court" (October 23, 2006).

17. Lk 8:17.

PUNO, J., dissenting:

1. *M'cCulloch v. Maryland*, 17 U.S. (4 Wheat) 316, 407 (1819).

2. Section 1, Article II, 1987 Constitution.

3. 270 SCRA 106, March 19, 1997.

4. *Id*. at 153.

5. *Id*. at 157.

6. Justice Teodoro R. Padilla did not take part in the deliberation as he was related to a co-petitioner and co-counsel of petitioners.

7. Justice Davide *(ponente)*, Chief Justice Narvasa, and Justices Regalado, Romero, Bellosillo, and Kapunan.

8. Resolution dated June 10, 1997, G.R. No. 127325.

9. *People's Initiative for Reforms, Modernization and Action (PIRMA) v. Commission on Elections*, G.R. No. 129754, September 23, 1997.

10. Amended Petition for Initiative, pp. 4-7.

11. G.R. No. 127325, March 19, 1997, 270 SCRA 106.

12. Petition, pp. 12-14.

13. Advisory issued by Court, dated September 22, 2006.

14. Exhibit "B," Memorandum of Petitioner Lambino.

15. Barnhart, Principled Pragmatic *Stare Decisis* in Constitutional Cases, 80 Notre Dame Law Rev., 1911-1912, (May 2005).

16. *Ibid*.

17. *Id*. at 1913.

18. Consovoy, The Rehnquist Court and the End of Constitutional *Stare Decisis*: Casey, Dickerson and the Consequences of Pragmatic Adjudication, 53 Utah Law Rev. 53, 67 (2002).

19. *Id*. at 68.

20. *Id*. at 69.

21. *Id*. at 67.

22. *Id*. at 69.

23. Consovoy, *supra* note 18, at 57.

24. *Id*. at 58.

25. *Id*. at 64.

26. *Burnet v. Coronado Oil & Gas Co*., 285 U.S. 405-06 (1932) (Justice Brandeis, dissenting).

27. *Graves v. New York ex rel. O'Keefe*, 306 U.S. 466, 491-492 (Justice Frankfurter, concurring).

28. *Commissioner of Internal Revenue v. Fink*, 483 U.S. 89 (1987) (Justice Stevens, dissenting).

29. Barnhart, *supra* note 15, at 1922.

30. *Id*. at 1921.

31. Filippatos, The Doctrine of *Stare Decisis* and the Protection of Civil Rights and Liberties in the Rehnquist Court, 11 Boston College Third World Law Journal, 335, 343 (Summer 1991).

32. 347 U.S. 483 (1954).

33. 163 U.S. 537 (1896).

34. G.R. No. 127882, December 1, 2004, 445 SCRA 1.

35. G.R. No. 139465, October 17, 2000, 343 SCRA 377.

36. Barnhart, *supra* note 15, at 1915.

37. 112 S.Ct. 2791 (1992).

38. Section 5(b).

39. *Ibid*.

40. *Santiago v. Commission on Elections, supra* note 11, at 145.

41. 85 RECORD OF THE HOUSE OF REPRESENTATIVES 140-142 (February 14, 1989).

42. 85 RECORD OF THE HOUSE OF REPRESENTATIVES 142-143 (February 14, 1989).

43. *Zeringue v. State Dept. of Public Safety*, 467 So. 2d 1358.

44. I RECORD, CONSTITUTIONAL COMMISSION 386, 392 (July 9, 1986).

45. *Id*. at 400, 402-403.

46. V RECORD, CONSTITUTIONAL COMMISSION 806 (October 10, 1986).

47. Opposition-in-Intervention filed by ONEVOICE, p. 39.

48. Opposition-in-Intervention filed by Alternative Law Groups, Inc., p. 30.

49. Introduction to Political Science, pp. 397-398.

50. Section 1, Art. II of the 1987 Constitution.

51. Eighth Edition, p. 89 (2004).

52. *Ibid*.

53. *Id*. at 1346.

54. *Ibid*.

55. Third Edition, p. 67 (1969).

56. *Id*. at 68.

57. *Id*. at 1115.

58. Vicente G. Sinco, PHILIPPINE POLITICAL LAW, 2nd ed., p. 46.

59. Concurring Opinion of Mr. Justice Felix Q. Antonio in *Javellana v. The Executive Secretary*, No. L-361432, March 31, 1973, 50 SCRA 30, 367-368.

60. J. M. Aruego, THE NEW PHILIPPINE CONSTITUTION EXPLAINED, iii-iv (1973).

61. E. Quisumbing-Fernando, PHILIPPINE CONSTITUTIONAL LAW, pp. 422-425 (1984).

62. N. Gonzales, PHILIPPINE POLITICAL LAW 30 (1969 ed.).

63. *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, February 22, 1991, 194 SCRA 317, 337 quoting *Commonwealth v. Ralph*, 111 Pa. 365, 3 Alt. 220 (1886).

64. L-36142, March 31, 1973, 50 SCRA 30, 367.

65. I RECORD, CONSTITUTIONAL COMMISSION 373 (July 8, 1986).

66. The opinion was actually made by Justice Felix Antonio.

67. *Javellana v. Executive Secretary, supra* note 64, citing *Wheeler v. Board of Trustees*, 37 S.E.2d 322, 327 (1946).

68. T. M. COOLEY, I A TREATISE ON CONSTITUTIONAL LIMITATIONS 143-144 (8th ed. 1927).

69. H.C. Black, HANDBOOK OF AMERICAN CONSTITUTIONAL LAW S. 47, p. 67 (2nd ed. 1897).

70. V. Sinco, *supra* note 58.

71. *Ibid*.

72. No. L-1232, 79 Phil. 819, 826 (1948).

73. IV RECORD, CONSTITUTIONAL COMMISSION 735 (September 17, 1986).

74. *Id*. at 752.

75. *Id*. at 769.

76. *Id*. at 767-769.

77. *Id*. at 377.

78. *Id*. at 395.

79. Sinco, *supra* note 58, at 22.

80. *Id*. at 20-21.

81. *Frivaldo v. Commission on Elections*, G.R. No. 120295, June 28, 1996, 257 SCRA 727.

82. G. WOOD, THE CREATION OF THE AMERICAN REPUBLIC, 530.

83. Sinco, *supra* note 58, at 29.

84. *State v. Moore*, 103 Ark 48, 145 SW 199 (1912); *Whittemore v. Seydel*, 74 Cal App 2d 109 (1946).

85. *Town of Whitehall v. Preece*, 1998 MT 53 (1998).

86. G.R. No. 125416, September 26, 1996, 262 SCRA 492, 516-517, *citing* 42 Am. Jur. 2d, p. 653.

87. Memorandum for petitioner Aumentado, pp. 151-152.

88. *Id*. at 153-154.

89. L-44640, October 12, 1976, 73 SCRA 333, 360-361.

90. Section 2, Article XVII, 1987 Constitution.

91. Annex "3," Opposition-In-Intervention of Oppositors-Intervenors ONEVOICE, INC., *et al*.

92. Certification dated April 21, 2006 issued by Reynne Joy B. Bullecer, Annex "B," Memorandum of Oppositor-Intervenor Pimentel, *et al*.; Certification dated April 20, 2006 issued by Atty. Marlon S. Casquejo, Annex "C," Memorandum of Oppositor-Intervenor Pimentel, *et al*.; Certification dated April 26, 2006 issued by Atty. Marlon S. Cascuejo, Annex "D," Memorandum of Oppositor-Intervenor Pimentel, *et al*.

93. Annex "1," Memorandum of Oppositor-Intervenor Antonino.

94. Annex "10-A," Memorandum of Oppositor-Intervenor Joseph Ejercito Estrada, *et al*.

95. Annexes 1-29, Memorandum of Oppositor-Intervenor Alternative Law Groups, Inc.

96. Annexes 30-31, *Id*.

97. Annexes 44-64, *Id*.

98. Consolidated Reply of Petitioner Aumentado, p. 54.

99. Exhibit "E," Memorandum of Petitioner Lambino.

100. Annex "A," Consolidated Response of Petitioner Aumentado.

101. Memorandum of Oppositor-Intervenor Pimentel, *et al*., pp. 12-13.

102. *Helvey v. Wiseman*, 199 F. Supp. 200, 8 A.F.T.2d 5576 (1961).

103. *BNO Leasing Corp. v. Hollins & Hollins, Inc*., 448 So.2d 1329 (1984).

104. ASSOCIATE JUSTICE CARPIO:

How many copies of the petition, that you mention(ed), did you print?

ATTY. LAMBINO:

We printed 100 thousand of this petition last February and we distributed to the different organizations that were volunteering to support us.

ASSOCIATE JUSTICE CARPIO:

So, you are sure that you personally can say to us that 100 thousand of these

were printed?

ATTY. LAMBINO:

It could be more than that, Your Honor.

xxx xxx xxx

ASSOCIATE JUSTICE CARPIO:

But you asked your friends or your associates to re-print, if they can(?)

ATTY. LAMBINO:

Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:

Okay, so you got 6.3 Million signatures, but you only printed 100 thousand. So you're saying, how many did your friends print of the petition?

ATTY. LAMBINO:

I can no longer give a specific answer to that, Your Honor. I relied only to the assurances of the people who are volunteering that they are going to reproduce the signature sheets as well as the draft petition that we have given them, Your Honor.

xxx xxx xxx

ASSOCIATE JUSTICE CARPIO:

Did you also show this amended petition to the people?

ATTY. LAMBINO:

Your Honor, the amended petition reflects the copy of the original petition that we circulated, because in the original petition that we filed before the COMELEC, we omitted a certain paragraph that is, Section 4 paragraph 3 which were part of the original petition that we circulated and so we have to correct that oversight because that is what we have circulated to the people and we have to correct that. . .

ASSOCIATE JUSTICE CARPIO:

But you just stated now that what you circulated was the petition of August 25, now you are changing your mind, you're saying what you circulated was the petition of August 30, is that correct?

ATTY. LAMBINO:

In effect, yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:

So, you circulated the petition of August 30, but what you filed in the COMELEC on August 25 was a different petition, that's why you have to amend it?

ATTY. LAMBINO:

We have to amend it, because there was an oversight, Your Honor, that we have omitted one very important paragraph in Section 4 of our proposition.

xxx xxx xxx

ASSOCIATE JUSTICE CARPIO:

Okay, let's be clear. What did you circulate when you gathered the signatures, the August 25 which you said you circulated or the August 30?

ATTY. LAMBINO:

Both the August 25 petition that included all the provisions, Your Honor, and as amended on August 30. Because we have to include the one that we have inadvertently omitted in the August 25 petition, Your Honor.

xxx xxx xxx

ASSOCIATE JUSTICE CARPIO:

And (you cannot tell that) you can only say for certain that you printed 100 thousand copies?

ATTY. LAMBINO:

That was the original printed matter that we have circulated by the month of February, Your Honor, until some parts of March, Your Honor.

ASSOCIATE JUSTICE CARPIO:

That is all you can assure us?

ATTY. LAMBINO:

That is all I can assure you, Your Honor, except that I have asked some friends, like for example (like) Mr. Liberato Laos to help me print out some more of this petition. . . (TSN, September 26, 2006, pp. 7-17)

105. Section 2 (1), Article IX-C, 1987 Constitution.

106. Chief Justice Andres R. Narvasa and Justices Hilario G. Davide, Jr., Florenz D. Regalado, Flerida Ruth P. Romero, Josue N. Bellosillo, Santiago M. Kapunan, Regino C. Hermosisima, Jr. and Justo P. Torres.

107. Justices Jose A.R. Melo, Reynato S. Puno, Vicente V. Mendoza, Ricardo J. Francisco and Artemio V. Panganiban.

108. Justice Jose C. Vitug.

109. Only fourteen (14) justices participated in the deliberations as Justice Teodoro R. Padilla took no part on account of his relationship with the lawyer of one of the parties.

110. Citing conscience as ground.

111. 409 U.S. 188, 93 S. Ct. 375, 34 L. Ed. 2d 401 (1972).

112. *Trans World Airlines, Inc. v. Hardison*, 97 S. Ct. 2264 (1977); *Arkansas Writers' Project, Inc. v. Ragland*, 107 S. Ct. 1722, 1730 n. 7, 95 L. Ed. 2d (1987); *France v. Nelson*, 292 Ark. 219, 729 S.W. 2d 161 (1987).

113. 40 P. 3d 886 (2006).

114. 781 P. 2d 973 (Alaska, 1989).

115. *Id*. at 982-84 (Compton, *J*., concurring).

116. *Id*. at 975-78.

117. *Negri v. Slotkin*, 244 N.W. 2d 98 (1976).

118. 112 Fla. 734, 151 So. 284 (1933).

119. Penned by Justice Whitfield, and concurred in by Chief Justice Davis and Justice Terrell; Justices Ellis, Brown and Buford are of the opinion that chapter 15938, Acts of 1933, is a special or local law not duly advertised before its passage, as required by sections 20 and 21 of article 3 of the state Constitution, and therefore invalid. This evenly divided vote resulted in the affirmance of the validity of the statute but did not constitute a binding precedent on the Court.

120. 62 S. Ct. 552 (1942).

121. 329 F. 2d 541 (1964).

122. 239 F. 2d 532 (9th Cir. 1956).

123. Citing *Hertz v. Woodman*, 218 U.S. 205, 30 S. Ct. 621 (1910).

124. 331 N.E. 2d 65 (1975).

125. *Neil v. Biggers, supra* note 108.

126. *Catherwood v. Caslon*, 13 Mees. & W. 261; *Beamish v. Beamish*, 9 H. L. Cas. 274.

127. *Maglalang v. Court of Appeals*, G.R. No. 85692, July 31, 1989, 175 SCRA 808, 811, 812; *Development Bank of the Philippines v. Pundogar*, G.R. No. 96921, January 29, 1993, 218 SCRA 118.

128. No. L-35440, August 19, 1982, 115 SCRA 839, *citing Anticamara v. Ong*, No. L-29689, April 14, 1978, 82 SCRA 337.

129. *Supra* note 1.

QUISUMBING, J.:

1. Political questions have been defined as "Questions of which the courts of justice will refuse to take cognizance, or to decide, on account of their purely political character, or because their determination would involve an encroachment upon the executive or legislative powers; *e.g.*, what sort of government exists in a state. . . ." Black's Law Dictionary, p. 1319 citing *Kenneth v. Chambers*, 14 How. 38, 14 L.Ed. 316.

2. See 1987 Const., Art. XVII, Sec. 2.

3. G.R. No. 127325, March 19, 1997, 270 SCRA 106.

4. G.R. No. 129754, September 23, 1997.

YNARES-SANTIAGO, J.:

1. G.R. No. 127325, March 19, 1997, 270 SCRA 106.

2. SEC. 5. *Requirements.*— . . .

(c) The petition shall state the following:

c.1. contents or text of the proposed law sought to be enacted, approved or rejected, amended or repealed, as the case may be;

c.2. the proposition;

c.3. the reason or reasons therefore;

c.4. that it is not one of the exceptions provided herein;

c.5. signatures of the petitioners or registered voters; and

c.6. an abstract or summary proposition in not more than one hundred (100) words which shall be legibly written or printed at the top of every page of the petition.

3. SEC. 3. *Definition of Terms*. — For purposes of this Act, the following terms shall mean: . . .

(d) "Proposition" is the measure proposed by the voters.

4. I RECORD, CONSTITUTIONAL COMMISSION 387-389 (July 9, 1986).

5. *Community Gas and Service Company, Inc. v. Walbaum*, 404 P.2d 1014, 1965 OK 118 (1965).

6. *Section 26*. (1) Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.

7. The late Senator (then Congressman) Raul S. Roco stated this fact in his sponsorship presentation of H.B. No. 21505, thus:

xxx xxx xxx

D. *Prohibited Subjects*.

The bill provides for two kinds of measures which cannot be the subject of an initiative or referendum petition. A petition that embraces more than one subject cannot be submitted to the electorate as it would be violative of the constitutional proscription on passing bills containing more than one subject, and statutes involving emergency measures cannot be subject to referendum until 90 days after its effectivity. [JOURNAL AND RECORD OF THE HOUSE OF REPRESENTATIVES, SECOND REGULAR SESSION, VOL. 6, p. 975 (February 14, 1989).]

8. Memorandum of petitioner Aumentado, p. 117.

9. The proposed Section 4(3) of Article XVIII of the Constitution states that Senators whose term of office ends in 2010 shall be members of parliament until noon of the thirtieth day of June 2010. No counterpart provision was provided for members of the House of Representatives who, as members of the interim parliament under the proposed changes, shall schedule the elections for the regular parliament in its discretion.

10. The proposed Section 4(3), Article XVIII of the Constitution states that the interim parliament shall convene to propose amendments to, or revisions of, the Constitution within 45 days from ratification of the proposed changes.

11. The United Kingdom, for instance, has a two-house parliament, the House of Lords and the House of Commons.

12. Philippine Political Law [1954 ed.], Vicente G. Sinco, pp. 43-44, quoted in Separate Opinion of *J.* Hilario G. Davide, Jr. in *PIRMA v. COMELEC*, G.R. No. 129754, September 23, 1997, p. 7.

13. 151-A Phil. 35 (1973).

14. 196 P. 2d 787 (Cal. 1948), cert. denied, 336 U.S. 918 (1949).

15. 801 P. 2d 1077 (Cal. 1990).

16. 583 P. 2d 1281 (Cal. 1982).

17. *Raven v. Deukmeijan, supra*, citing *Brosnahan v. Brown*, 651 P. 2d 274 (Cal. 1982).

18. *Supra* note 13. It may well be pointed out that in making the distinction between amendment and revision, Justice Antonio relied not only in the analogy presented in *Wheeler v. Board of Trustees*, 37 S.E. 2d 322, but cited also the seminal ruling of the California Supreme Court in *McFadden v. Jordan, supra*.

19. Philippine Political Law, 1995 ed., Justice Isagani A. Cruz, p. 71, citing *Pangasinan Transportation Co. v. PSC,* 40 O.G., 8th Supp. 57.

20. The 1987 Constitution of the Philippines: A Commentary, 1996 ed., Fr. Joaquin G. Bernas, S.J., p. 1161.

21. *Id*.

22. *Supra* note 14.

23. The Constitution of the Republic of the Philippines, Vol. II, 1st ed., Fr. Joaquin G. Bernas, S.J., p. 567, citing B. Schwartz, I The Powers of Government (1963).

24. 16 C.J.S. §3 at 24.

25. 14 T.M. Cooley, II Constitutional Limitations, 8th ed. (1927), p. 1349.

26. A bogus revolution, Philippine Daily Inquirer, September 11, 2006, Fr. Joaquin Bernas, S.J., p. A15.

27. Article II, Section 1 of the 1987 Constitution.

SANDOVAL-GUTIERREZ, J., concurring:

1. Works, Letter 164.

http://en.wikipedia.org/wiki/List_of_Latin_phrases_%28P%E2%80%93Z%29#endnote_ODoQ.

2. G.R. No. 127325, March 19, 1997, 270 SCRA 106.

3. Resolution dated June 10, 1997, G.R. No. 127325.

4. G.R. No. 129754, September 23, 1997. Joining PIRMA as petitioners were its founding members, spouses Alberto Pedrosa and Carmen Pedrosa.

5. Entitled "*In the Matter of Proposing Amendments to the 1987 Constitution through a People's Initiative: A Shift from a Bicameral Presidential to a Unicameral Parliamentary Government by Amending Articles VI and VII; and Providing Transitory Provisions for the Orderly Shift from the Presidential to the Parliamentary System*."

6. Among them ONEVOICE, Inc., Christian S. Monsod, Rene B. Azurin, Manuel L. Quezon III, Benjamin T. Tolosa, Jr., Susan V. Ople, and Carlos P. Medina, Jr., Alternative Law Groups, Inc., Senate Minority Leader Aquilino Q. Pimentel, Jr., and Senators Sergio Osmeña III, Jamby A.S. Madrigal, Alfredo S. Lim, Panfilo M. Lacson, Luisa P. Ejercito-Estrada, and Jinggoy Estrada, Representatives Loretta Ann P. Rosales, Mario Joyo Aguja, and Ana Theresia Hontiveros-Baraquel, Bayan, Kilusang Mayo Uno, Ecumenical Bishops Forum, Migrante, Gabriela, Gabriela Women's Party, Anakbayan, League of Filipino Students, Leonardo San Jose, Jojo Pineda, Drs. Darby Santiago and Reginald Pamugas, and Attys. Pete Quirino-Quadra, Jose Anselmo I. Cadiz, Byron D. Bocar, Ma. Tanya Karina A. Lat,

Antonio L. Salvador, and Randall C. Tabayoyong.

7. "**Grounds for contempt**

3. From the time the so-called People's Initiative (hereafter PI) now subject of Lambino v. Comelec, was initiated, **respondents did nothing to stop what was clearly lawless, and even arguably winked at, as it were, if not condoned and allowed, the waste and misuse of its personnel, time, facilities and resources on an enterprise that had no legal basis and in fact was permanently enjoined by this Honorable Court in 1997**. Seemingly mesmerized, it is time to disenthrall them.

3.1. For instance, undersigned counsel happened to be in the Senate on August 29, 2006 (on other business) when respondent Chair sought to be stopped by the body from commenting on PI out of prudential considerations, could not be restrained. **On contentious issues, he volunteered that Sigaw ng Bayan would not cheat in Makati as it was the opposition territory and that the fact that out of 43,405 signatures, only 7,186 were found authentic in one Makati District, to him, showed the "efficiency" of Comelec personnel. He could not appreciate 1) that Sigaw had no choice but to get the constitutionality-required 3% in every district, [Const., Art. VII, Sec. 2] friendly or otherwise, including administration critics' turfs, and 2) that *falsus in 36,319 (93.30%) falsus in omnibus*, in an exercise that could never be free, orderly, honest and credible, another constitutional requirement**. [*Nothing has been heard about probing and prosecuting the falsifiers*.]

xxx xxx xxx

3.2. It was excessively obvious to undersigned and other observers that **respondent Chairman**, straining at the leash, **was lawyering for Sigaw ng Bayan in the Senate! It was discomfiting that he would gloss over the seeming wholesale falsification of 96.30% of the signatures in an exercise with no credibility! Even had he been asked, he should have pled to be excused from answering as the matter could come up before the Comelec for an official collegial position** (different from conceding that it is enjoined).

xxx xxx xxx

4. **Respondents Commissioners Borra and Romeo A. Brawner, for their part, even issued widely-publicized written directives to the field, [*Annex C, as to Commissioner Brawner; that as to Commissioner Borra will follow*.] while the Commission itself was trying to be careful not to be explicit in what it was abetting implicitly, in hypocritical defiance of the injunction of 1997.**

8. *Intestate Estate of Carmen de Luna v. Intermediate Appellate Court*, G.R. No. 72424, February 13, 1989, 170 SCRA 246.

9. *Supra*.

10. *Development Bank of the Philippines v. NLRC,* March 1, 1995, 242 SCRA 59; *Albert v. Court of First Instance of Manila (Branch VI)*, L-26364, May 29, 1968, 23 SCRA 948.

11. 56 O.G. 3546 cited in *Albert v. Court of First Instance of Manila (Branch VI), id*.

12. *Supra*.

13. Separate Opinion of Justice Ricardo J. Francisco, G.R. No. 129754, September 23, 1997.

14. G.R. No. 109645, March 4, 1996, 254 SCRA 234.

15. *Philippine National Bank v. Palma*, G.R. No. 157279, August 9, 2005, 466 CSRA 307, citing Moreno, *Philippine Law Dictionary* (1988), 3rd ed. (citing *Santiago v. Valenzuela*, 78 Phil. 397, [1947]).

16. *Id.*, citing *Dela Cruz v. Court of Appeals*, G.R. No. 126183, March 25, 1999, 305 SCRA 303, citing *Government v. Jalandoni*, No. 837-R, August 30, 1947, 44 O.G. 1840.

17. Benjamin N. Cardozo, *The Nature of the Judicial Process* (New Haven and London: Yale University Press, 1921), pp. 33-34.

18. William K. Frankena, Ethics, 2nd ed. (Englewood Cliffs, N.J.: Prentice Hall Inc.,) 1973, p. 49.

19. *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, 296.

20. July 9, 1986. Records of the Constitutional Commission, No. 26.

21. Bernas, THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY, 1996 Ed., p. 1161.

22. 242 N. W. 891 259 Mich 212.

23. *State v. Orange* [Tex. x. Civ. App.] 300 SW 2d 705, *People v. Perkins* 137, p. 55.

24. *City of Midland v. Arbury* 38 Mich. App. 771, 197 N.W. 2d 134.

25. *Adams v. Gunter Fla*, 238 So. 2d 824.

26. 196 P.2d 787.

27. *Adams v. Gunter Fla*. 238 So.2d 824.

28. *Mc Fadden v. Jordan, supra*.

29. *Rivera-Cruz v. Gray*, 104 So.2d 501, p. 505 (Fla. 1958).

30. Joaquin Bernas, Sounding Board: AMENDMENT OR REVISION, *Philippine Daily Inquirer, September 25, 2006*.

31. See Sections 8-12 for national initiative and referendum, and sections 13-19 for local initiative and referendum.

32. Section 2. Statement of Policy. — The power of the people under a system of initiative and referendum to directly propose, enact, approve or reject, in whole or in part, the Constitution, laws, ordinances, or resolutions passed by any legislative body upon compliance with the requirements of this Act is hereby affirmed, recognized and guaranteed.

33. Section 3. Definition of terms. —

xxx xxx xxx

a.1. Initiative on the Constitution which refers to a petition proposing amendments to the Constitution;

xxx xxx xxx

34. See Section 3(e).

35. Section 5 (b) — A petition for an initiative on the 1987 Constitution must have at least twelve *per centum* (12%) of the total number of registered voters as signatories, of which every legislative district must be represented by at least three *per centum* (3%) of the registered voters therein. Initiative on the Constitution may be exercised only after five (5) years from the ratification of the 1987 Constitution and only once every five (5) years thereafter.

xxx xxx xxx

36. Section 9 (b) — The proposition in an initiative on the Constitution approved by a majority of the votes cast in the plebiscite shall become effective as to the day of the plebiscite.

37. 7 How (48 US) 1 (1849).

38. 328 US 549 (1946).

39. 77 Phil. 192 (1946).

40. 103 Phi. 1051 (1957).

41. G.R. No. 35546, September 17, 1974, 50 SCRA 559.

42. 369 US 186 (1962).

43. G.R. No. 85344, December 21, 1989, 180 SCRA 496.

44. G.R. No. 88211, September 15, 1989, 177 SCRA 668.

45. Nos. L-36142, L-36164, L-36165, L-36236, and L-36283, March 31, 1973, 50 SCRA 30.

CORONA, J., dissenting:

1. *Abrams v. United States*, 250 U.S. 616.

2. 336 Phil. 848 (1997).

3. *Santos v. Court of Appeals*, G.R. No. 134787, 15 November 2005, 475 SCRA 1.

4. Feria and Noche, CIVIL PROCEDURE ANNOTATED, vol. I, 2001 edition, p. 419.

5. Sec. 30, Petitions and initiatives by the people, 16 Am Jur 2d 380, citing *State ex rel. Stenberg v. Beermann*, 240 Neb. 754, 485 N.W. 2d 151 (1992).

6. *Id*. citing *Coalition for Political Honesty v. State Board of Elections*, 83 Ill. 2d 236, 47 Ill. Dec. 363, 415 N.E. 2d 368 (1980).

7. Balitzer, Alfred, *The Initiative and Referendum: A Study and Evaluation of Direct Legislation*, The California Roundtable 13 (1981). The American Founding Fathers recognized that direct democracy posed a profound threat to individual rights and liberty. The U.S. Constitution was "designed to provide a system of government that would prevent either a tyranny of the majority or a tyranny of the few." James Madison "warned against the power of a majority or a minority of the population 'united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interest of the community.'

8. Gilbert Hahn & Steven C. Morton, *Initiative and Referendum — Do They Encourage or Impair Better State Government?* 5 FLA. ST. U. L. REV. 925, 927 (1977).

9. Florida Advisory Council on Intergovernmental Relations, Initiatives and Referenda: Issues in Citizen Lawmaking (1986).

10. Sec. 1, Article II, Constitution.

11. *In re Initiative Petition No. 362 State Question* 669, 899 P.2d 1145 (Okla. 1995).

CALLEJO, SR., J., concurring:

1. Entitled An Act Providing for a System of Initiative and Referendum and Appropriating Funds Therefor.

2. Section 2(1), Article IX-C, 1987 Constitution.

3. Petition, pp. 12-14.

4. *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 129368, August 25, 2003, 409 SCRA 455, 480.

5. *Rodson Philippines, Inc. v. Court of Appears*, G.R. No. 141857, June 9, 2004, 431 SCRA 469, 480.

6. *People v. Court of Appeals*, G.R. No. 144332, June 10, 2004, 431 SCRA 610.

7. *Philippine Rabbit Bus Lines, Inc. v. Galauran & Pilares Construction Co.*, G.R. No. L-35630, November 25, 1982, 118 SCRA 664.

8. *People v. Court of Appeals, supra*.

9. G.R. No. 127325, March 19, 1997, 270 SCRA 106.

10. Article 8, New Civil Code provides that "[j]udicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."

11. *Suson v. Court of Appeals*, G.R. No. 126749, August 27, 1997, 278 SCRA 284.

12. *Calderon v. Carale*, G.R. No. 91636, April 23, 1992, 208 SCRA 254.

13. 974 S.W.2d 451 (1998).

14. *Id.* at 453.

15. Entitled In Re: Rules and Regulations Governing the Conduct of Initiative in the Constitution, and Initiative and Referendum on National and Local Laws.

16. *Supra* note 10, p. 157.

17. G.R. No. 129754.

18. Minute Resolution, September 23, 1997, pp. 1-2.

19. *Republic v. De los Angeles*, No. L-26112, October 4, 1971, 41 SCRA 422.

20. *Albert v. Court of First Instance of Manila*, No. L-26364, May 29, 1968, 23 SCRA 948.

21. *Philippine Constitution Association v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506.

22. Then Chief Justice Andres R. Narvasa, Justices Florenz D. Regalado, Flerida Ruth P. Romero, Josue N. Bellosillo, Santiago M. Kapunan and Justo P. Torres, Jr. fully concurred in the *ponencia* of Justice Davide.

23. Justices Jose A.R. Melo, Vicente V. Mendoza, Reynato S. Puno, Ricardo J. Francisco, Jr. and Artemio V. Panganiban (now Chief Justice).

24. The voting on the motion for reconsideration was as follows: Six Justices, namely, Chief Justice Narvasa, and Justices Regalado, Davide, Jr., Romero, Bellosillo and Kapunan, voted to deny the motions for lack of merit; and six Justices, namely, Justices Melo, Puno, Mendoza, Francisco, Jr., Regino C. Hermosisima and Panganiban voted to grant the same. Justice Vitug maintained his opinion that the matter was not ripe for judicial adjudication. Justices Teodoro R. Padilla and Torres inhibited from participation in the deliberations.

25. House Bill No. 457 filed by then Rep. Nachura during the Twelfth Congress.

26. See *Pagdayawon v. Secretary of Justice*, G.R. No. 154569, September 23, 2002, 389 SCRA 480.

27. *London Street Tramways Co., Ltd. v. London County Council*, [1898] A.C. 375, cited in COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS 117-118.

28. Amended Petition for Initiative, pp. 4-7.

29. *Id*. at 7.

30. I RECORDS OF THE CONSTITUTIONAL COMMISSION 373.

31. *Id*. at 371.

32. *Id*. at 386.

33. *Id*. at 392.

34. *Id*. at 402-403.

35. No. L-36142, March 31, 1973, 50 SCRA 30.

36. *Id*. at 367.

37. SINCO, PHILIPPINE POLITICAL LAW 43-44.

38. 37 S.E.2d 322 (1946).

39. *Id*. at 330.

40. *Id*.

41. Sounding Board, Philippine Daily Inquirer, April 3, 2006.

42. Introduction to the Journal of the Constitutional Commission.

43. BLACK, CONSTITUTIONAL LAW 1-2, citing 1 BOUV. INST. 9.

44. SCHWARTZ, CONSTITUTIONAL LAW 1.

45. Proclamation No. 58, 83 O.G. No. 23, pp. 2703-2704, June 8, 1987.

46. See *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1909).

47. *Id*.

48. 196 P.2d 787 (1948).

49. *Id*. at 798.

50. *Ellingham v. Dye*, 99 N.E. 1 (1912).

51. Dissenting Opinion of Justice Puno, p. 36.
52. *Id.* at 39.
53. *Supra* note 38.
54 *McFadden v. Jordan, supra* note 48.
55. *Id.* at 799.
56. *Supra* note 41.
57. Annex "1363."
58. Annex "1368."
59. Annex "1369."
60. Annex "1370."
61. Annex "1371."
62. Annex "1372."
63. Annex "1374."
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83. Annex "1398."

84. Annex "1399."

85. Annex "1400."

86. Annex "1401."

87. Annex "1402."

88. Annex "1404."

89. Annex "1405."

90. Annex "1406."

91. Annex "1407."

92. Annex "1408."

93. Annex "1409."

94. Annex "1410."

95. Annex "1411."

96. Annex "1412."

97. *Arroyo, Jr. v. Taduran*, G.R. No. 147012, January 29, 2004, 421 SCRA 423.

98. See, for example, *Mendoza v. Court of Appeals*, No. L-62089, March 9, 1988, 158 SCRA 508.

99. *Licaros v. Sandiganbayan*, G.R. No. 145851, November 22, 2001, 370 SCRA 394.

100. *Codilla, Sr. v. De Venecia*, G.R. No. 150605, December 10, 2002, 393 SCRA 639.

101. *Teope v. People*, G.R. No. 149687, April 14, 2004, 427 SCRA 540.

102. *Tañada v. Cuenco*, 103 Phil. 1051 (1957).

103. *Id.*

104. G.R. No. 127255, August 14, 1997, 277 SCRA 268, 311-312.

105. Dissenting Opinion of Justice Fernando in *Javellana v. Executive Secretary, supra* note 36.

106. 119 N.W. 408 (1909).

107. 22 Minn. 400 (1876).

108. 96 S.W. 396 (1906).

109. 63 N.J. Law 289.

110. 77 Miss. 543 (1900).

111. Section 1, Article II, 1987 Constitution.

112. Dissenting Opinion of Justice Puno, p. 49.

113. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS 56, cited in *Ellingham*

v. Dye, supra.

114. *Hunter v. Colfax Consol. Coal. Co.*, 154 N.W. 1037 (1915).

115. ALTMAN, ARGUING ABOUT THE LAW 94 (2001), citing AGRESTO, THE SUPREME COURT AND CONSTITUTIONAL DEMOCRACY (1984).

116. *McBee v. Brady*, 100 P. 97 (1909).

117. *McFadden v. Jordan, supra* note 48.

118. Cooley, Am.Law.Rev. 1889, p. 311, cited in *Ellingham v. Dye, supra*.

119. 15 N.W. 609 (1883).

120. *Id.* at 630.

AZCUNA, J.:

1. G.R. No. 127325, March 19, 1997 and June 10, 1997.

2. 100 Phil. 501 (1956).

TINGA, J.:

1. G.R. No. 127325, 19 March 1997, 270 SCRA 106.

2. G.R. No. 129754, 23 September 1997.

3. Petitioner Aumentado aptly refers to the comment of the late Senator Raul Roco that the *Santiago* ruling "created a third specie of invalid laws, a mongrel type of constitutional but inadequate and, therefore, invalid law." Memorandum for Aumentado, p. 54.

4. See CIVIL CODE, Art. 9.

5. 456 Phil. 1 (2003).

6. *Id.*, at 10; citing I ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES 43 (1990) and JUSTICE BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 113 (1921).

7. See Dissenting Opinion, *Manila International Airport Authority v. City of Parañaque*, G.R. No. 155650, 20 July 2006. In my *ponencia* in *Globe Telecom v. NTC*, G.R. No. 143964, 26 July 2004, 435 SCRA 110, I further observed that while an administrative agency was not enslaved to obey its own precedent, it was "essential, for the sake of clarity and intellectual honesty, that if an administrative agency decides inconsistently with previous action, that it explain thoroughly why a different result is warranted, or if need be, why the previous standards should no longer apply or should be overturned." *Id.*, at 144. Happily, Justice Puno's present opinion expressly elucidates why *Santiago* should be reversed.

8. As Justice Frankfurter once wrote: "We recognize that *stare decisis* embodies an important social policy. It represents an element of continuity in law, and is rooted in the psychologic need to satisfy reasonable expectations. But *stare decisis* is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience. . . This Court, unlike the House of Lords, has from the beginning rejected a doctrine of disability at self-correction." *Helvering v. Hallock*, 309 U.S. 106, 119-121 (1940).

9. 351 Phil. 692 (1998).

10. As Chief Justice Panganiban then cited: "For instance, *Ebralinag vs. Davision Superintendent of Schools of Cebu*, 219 SCRA 256, March 1, 1993, reversed the Court's 34-year-old doctrine laid down in *Gerona vs. Secretary of Education*, 106 Phil 2, August 12, 1959, and upheld the right of Jehovah's Witnesses "to refuse to salute the Philippine flag on account of their religious beliefs." Similarly, *Olaguer vs. Military Commission*, 150 SCRA 144, May 22, 1987, abandoned the 12-year-old ruling in *Aquino Jr. vs. Military Commission*, 63 SCRA 546, May 9, 1975, which recognized the jurisdiction of military tribunals to try civilians for offenses allegedly committed during martial law. The Court likewise reversed itself in *EPZA vs. Dulay*, 149 SCRA 305, April 29, 1987, when it vacated its earlier ruling in *National Housing Authority vs. Reyes*, 123 SCRA 245, June 29, 1983, on the validity of certain presidential decrees regarding the determination of just compensation. In the much earlier case of *Philippine Trust Co. vs. Mitchell*, 59 Phil. 30, December 8, 1933, the Court revoked its holding in Involuntary Insolvency of Mariano Velasco & Co., 55 Phil 353, November 29, 1930, regarding the relation of the insolvency law with the then Code of Civil Procedure and with the Civil Code. Just recently, the Court, in *Kilosbayan vs. Morato*, 246 SCRA 540, July 17, 1995, also abandoned the earlier grant of standing to petitioner-organization in *Kilosbayan vs. Guingona*, 232 SCRA 110, May 5, 1994." *Id.*, at 780.

11. *Ibid*.

12. 129 Phil. 507, 516 (1967).

13. G.R. Nos. L-78461, L-79146, & L-79212, 12 August 1987, 153 SCRA 67, 75.

14. G.R. No. 160427, 15 September 2004, 438 SCRA 319, 326.

15. *Ibid*.

16. G.R. No. 155855, 26 January 2004, 421 SCRA 92.

17. *Id.*, at 104. Relatedly, the Court held that "[c]ontests which do not involve the election, returns and qualifications of elected officials are not subjected to the exercise of the judicial or quasi-judicial powers of courts or administrative agencies". *Ibid*.

18. See *e.g.*, Memorandum of Oppositors-Intervenors Senators Pimentel, Jr., et. al., pp. 19-22; Memorandum for Intervenor Senate of the Philippines, pp. 34-35.

19. See 1987 CONST., Art. VI, Sec. 26(1). See also Section 19[1]. 1987 CONST, Art. VIII.

20. See *e.g.*, *Sumulong v. COMELEC*, 73 Phil. 288, 291 (1941); *Cordero v. Hon. Jose Cabatuando, et al.*, 116 Phil. 736, 741 (1962).

21. See *Tio v. VRB*, G.R. No. L-75697, 18 June 1987, 151 SCRA 208, 214-215; citing *Public Service Co., Recktenwald*, 290 Ill. 314, 8 A.L.R. 466, 470. See also *Fariñas v. Executive Secretary*, G.R. Nos. 147387 & 152161, 10 December 2003, 417 SCRA 503, 519.

22. "As a policy, this Court has adopted a liberal construction of the one title — one subject rule." *Tatad v. Secretary of Department of Energy*, 346 Phil. 321, 359 (1997).

23. *Civil Liberties Union v. Executive Secretary*, G.R. Nos. 83896 & 83815; 22 February 1991, 194 SCRA 317.

24. *Id.* at 337. I have previously expressed my own doubts in relying on the constitutional or legislative deliberations as a definitive source of construction. "It is easy to selectively cite passages, sometimes out of their proper context, in order to assert a misleading interpretation. The effect can be dangerous. Minority or solitary views, anecdotal

ruminations, or even the occasional crude witticisms, may improperly acquire the mantle of legislative intent by the sole virtue of their publication in the authoritative congressional record. Hence, resort to legislative deliberations is allowable when the statute is crafted in such a manner as to leave room for doubt on the real intent of the legislature." *Southern Cross Cement Corporation v. Phil. Cement Manufacturers*, G.R. No. G.R. No. 158540, 8 July 2004, 434 SCRA 65, 95.

25. 77 Phil. 192 (1946).

26. *Id*. at 215.

27. *Civil Liberties Union v. Executive Secretary, supra* note 23, at 338; citing *Household Finance Corporation v. Shaffner*, 203 S.W. 2d 734, 356 Mo. 808.

28. See Sections 5(b) & 8, Rep. Act No. 6735. See also 1987 CONST., Sec. 2, Art. XVI.

29. G.R. No. 151944, January 20, 2004, 420 SCRA 365.

30. *Id*., at 377. Emphasis supplied.

31. See Sections 5(b) & 8, Rep. Act No. 6735. See also 1987 CONST., Sec. 2, Art. XVI.

32. From the "Funeral Oration" by Pericles, as recorded by Thucydides in the History of the Peloponnesian War.

33. H. Zinn, A PEOPLE'S HISTORY OF THE UNITED STATES (1980 ed.), at 95.

CHICO-NAZARIO, J., dissenting:

1. The full text of the Preamble reads:

> We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.

2. Article XVII, Constitution.

3. G.R. No. 127325, 19 March 1997, 270 SCRA 106.

4. *Id*. at 157.

5. *Id*. at 124.

6. *Olac v. Rivera*, G.R. No. 84256, 2 September 1992, 213 SCRA 321, 328-329; *See* also the more recent cases of *Republic v. Nolasco*, G.R. No. 155108, 27 April 2005, 457 SCRA 400; and *PH Credit Corporation v. Court of Appeals*, 421 Phil. 821 (2001).

7. *Supra* note 2 at 124.

8. G.R. No. 129754.

9. Separate Opinion of former Chief Justice Hilario G. Davide, Jr. to the Resolution, dated 23 September 1997, in G.R. No. 129754, *PIRMA v. COMELEC*, pp. 2-3.

10. *Mirpuri v. Court of Appeals*, 376 Phil. 628, 650 (1999).

11. *Pioneer Texturizing Corporation v. NLRC*, G.R. No. 118651, 16 October 1997.

12. *Santiago v. Comelec, supra* note 2 at 170-171.

13. Isagani A. Cruz, *Philippine Political Law*, 1996 ed., p. 352.

VELASCO, JR., J.:

1. G.R. No. 127535, March 19, 1997, 270 SCRA 106.

2. *Id*.

3. *Commission on Audit of the Province of Cebu v. Province of Cebu*, G.R. No. 141386, November 29, 2001, 371 SCRA 196, 202.

4. *United Harbor Pilots' Association of the Philippines, Inc. v. Association of International Shipping Lines, Inc.*, G.R. No. 133763, November 13, 2002, 391 SCRA 522, 533.

5. *PH Credit Corporation v. Court of Appeals and Carlos M. Farrales*, G.R. No. 109648, November 22, 2001, 370 SCRA 155, 166-167.

6. *Id*.

7. *Florentino v. Rivera, et al.*, G.R. No. 167968, January 23, 2006.

8. G.R. No. 129754.

9. Sinco, Vicente G. *Philippine Political Law, Principles and Concept,* 1962, at 46.