

**REPUBLIC OF THE PHILIPPINES  
Supreme Court  
Manila**

**EN BANC**

**RAUL L. LAMBINO and  
ERICO B. AUMENTADO,  
TOGETHER WITH 6,327,952  
REGISTERED VOTERS,  
Petitioners,**

**G.R. No. 174153**

**- versus-**

**THE COMMISSION ON  
ELECTIONS,  
Respondent.**

**MAR-LEN ABIGAIL BINAY,  
SOFRONIO UNTALAN, JR.,  
RENE A.V. SAGUISAG,  
Petitioners,**

**G.R. No. 174299**

**- versus-**

**THE 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 AND  
NICODEMO T. FERRER, AND  
JOHN DOE AND PETER DOE.  
Respondents.**

**ALTERNATIVE LAW GROUPS, INC. (ALG),  
Intervenor-Oppositor.**

**X-----X**

**MEMORANDUM**

INTERVENOR-OPPOSITOR, **ALTERNATIVE LAW GROUPS, INC.**, by  
counsel, respectfully states that:

## **PREFATORY STATEMENT**

**Petitioners Raul L. Lambino and Erico B. Aumentado boast of the alleged six million signatures, which were purportedly duly verified by the election officers of the respondent Commission on Elections. In fact, the petitioners capitalize on this alleged verification as the main distinction between the present petition and the petition filed by PIRMA in *PIRMA v COMELEC* (GR No. 129754, September 23, 1997).**

**This is the ultimate deception in the web of lies that constitute this fake people's initiative.**

**A review of the records that are on file with the respondent COMELEC, reveals the following, among others:**

**1. Many certifications issued by the election officers merely certify that the names appearing on the signature sheets are names of registered voters. The signatures were not verified.**

**2. Many certifications issued by the election officers state that the "verification" was done by the barangay officials, not by the election officers.**

**3. Many certifications reveal the direct participation of the mayors and officials of the Department of the Interior and Local Government in bringing the signatures to the election officers for verification.**

**As will be shown below, this flawed verification is evident not only in isolated cases but in entire legislative districts, debunking the petitioners' allegation that they have duly complied with the requirements for a valid people's initiative.**

**ONLY NAMES, NOT SIGNATURES, WERE VERIFIED.**

Many certifications issued by the election officers only certify that the names appearing on the signature sheets are names of registered voters. The case of Zamboanga del Sur is illustrative of this type of certification.

For the first legislative district of Zamboanga del Sur, the petitioners submitted twelve (12) certifications from the election officers (Annexes 1067-1078 of the petition for initiative). For the second legislative district of the same province, the petitioners submitted fifteen (15) certifications from the election officers (Annexes 1079-1093).

All these certifications merely state that the names appearing on the signature sheets that were submitted to the election officers were names

of bona fide residents of the respective municipalities and/or names that correspond to the names found in the official list of registered voters. There is nothing in the certifications saying that the election officers verified the signatures appearing on the signature sheets against the signatures that they have on record. On the contrary, the certifications in the municipalities of Midsalip (Annex 1071), Tambulig (Annex 1075), Tukuran (Annex 1076), Josefina (Annex 1077), San Miguel (Annex 1086), Tabina (Annex 1088), and Guipos (Annex 1092) categorically state the following:

This is to certify likewise that the matching conducted by this office was exclusively limited to the name and demographic data and shall not in anyway be construed as signature verification.

Clearly, the alleged 58,513 signatures for the first legislative district of Zamboanga del Sur, and the alleged 40,247 signatures for the second legislative district of the same province (as stated in the petitioners' List of Signature Sheets Per City/Municipality with Number of COMELEC Verified Signatures as Percentages of Registered Voters) should be considered mere scribbles on scraps of paper without any legal significance.

For the Honorable Court's easy reference, copies of pages 71 and 72 of the petitioners' List of Signature Sheets Per City/Municipality with Number of COMELEC Verified Signatures as Percentages of Registered Voters are attached to this Memorandum as Annexes 1 and 2, respectively.

The certifications for the first and second legislative districts of Zamboanga del Sur are attached as Annexes 3-29.

The same certifications were issued for the Province of Compostela Valley. All five (5) certifications for the first legislative district (Annexes 1209-1213 of the petition for initiative) and all six (6) certifications for the second legislative district (Annexes 1214-1219 of the petition for initiative) of the province merely state that the names appearing on the signature sheets that were submitted to the election officers were names of bona fide residents of the respective municipalities and/or names that correspond to the names found in the official list of registered voters. There is nothing in the certifications saying that the election officers verified the signatures appearing on the signature sheets against the signatures that they have on record.

Certainly, the alleged 20,783 signatures for the first district and the 33,644 signatures for the second district of Compostela Valley should not be given any credence.

For the Honorable Court's easy reference, a copy of page 83 of the petitioners' List of Signature Sheets Per City/Municipality with Number of COMELEC Verified Signatures as Percentages of Registered Voters is attached to this Memorandum as Annexes 30. The certifications for the first and second legislative districts of Compostela Valley are attached as Annexes 31-41.

**BARANGAY OFFICIALS, NOT ELECTION OFFICERS,  
CONDUCTED THE "VERIFICATION".**

Many certifications issued by the election officers state the following:

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 \_\_\_\_ Legislative District of the Province/City of \_\_\_\_\_, the names appearing on the attached signature sheets relative to the proposed Initiative on Amendments to the 1987 Constitution, are those of bona fide residents of the said Barangays and correspond to the names found in the official list of registered voters of the Commission on Elections, and/or the voters' affidavits and/or voters' identification cards.

Aside from being limited to the names appearing on the signature sheets, these certifications clearly show that the "verification" of the names was done by the barangay officials, and not by the election officers themselves. The certification was issued, thus, based merely on the "verification" conducted by the barangay officials.

The Provinces of Sulu and Sultan Kudarat are illustrative of this type of certification.

For the lone legislative district of the Province of Sultan Kudarat, the petitioners submitted twelve (12) certifications from the election officers (Annexes 1250-1261 of the petition for initiative). For the second legislative district of the Province of Sulu, the petitioners submitted nine (9) certifications from the election officers (Annexes 1404-1412 of the petition for initiative).

All these certifications were issued by the election officers on the basis of the alleged verification conducted by the barangay officials. There is no statement in the certifications that the election officers made the verification themselves.

Hence, the alleged 57,745 signatures for the lone district of Sultan Kudarat and the 14,863 signatures for the second district of Sulu (as stated in the petitioners' List of Signature Sheets Per City/Municipality with Number of COMELEC Verified Signatures as Percentages of Registered Voters) should be considered worthless insofar as the requirements for the people's initiative are concerned.

For the Honorable Court's easy reference, copies of page 86 and 98 of the petitioners' List of Signature Sheets Per City/Municipality with Number of COMELEC Verified Signatures as Percentages of Registered Voters are attached to this Memorandum as Annexes 42 and 43, respectively. The certifications for the lone district of Sultan Kudarat are attached as Annexes 44-55, and the certifications for the second legislative districts of Sulu are attached as Annexes 56-64.

THERE ARE MANY OTHER LEGISLATIVE DISTRICTS WITH DEFECTIVE CERTIFICATIONS SIMILAR TO THE CERTIFICATIONS DESCRIBED ABOVE. THEY ARE TOO NUMEROUS TO CITE, AND THE RECORDS ARE TOO VOLUMINOUS TO ATTACH TO THIS MEMORANDUM. FOR THE RECORD, HOWEVER, LET IT BE STATED THAT THE FOLLOWING

LEGISLATIVE DISTRICTS (AND THIS LIST IS NOT EXCLUSIVE) DO NOT HAVE A SINGLE SIGNATURE PROPERLY VERIFIED (i.e., all certifications submitted are defective)<sup>1</sup>:

AGUSAN DEL NORTE, First District

BUKIDNON, First District

BUKIDNON, Second District

BUKIDNON, Third District

CAMIGUIN, Lone District

LANAO DEL NORTE, First District

MISAMIS OCCIDENTAL, Second District

**MAYORS AND DILG PERSONNEL BROUGHT  
THE SIGNATURES TO THE ELECTION OFFICERS.**

Contrary to the petitioners' claim that the present petition is a genuine initiative of the people, the active participation (in fact, leadership) of the local chief executives and officers of the Department of the Interior and Local Government (DILG) is clearly evident from the certifications.

The certifications for the municipalities of Samal, Bagac, Orion, and Pilar, Province of Bataan, all state that the certifications were issued upon the request of the municipal mayors of the respective municipality. With the exception of the certification for Samal, the certifications also state

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<sup>1</sup> The Intervenor-Oppositor can submit the complete records of these districts if required by the Honorable Court.

that the signatures were submitted by the municipal mayors to the offices of the election officers. Copies of these certifications are attached to this Memorandum as Annexes 65-68.

The same statement (that the certifications were issued to the mayors) is contained in the certifications for San Marcelino, Subic, Candelaria and Iba, Province of Zambales. Copies of these certifications are attached to this Memorandum as Annexes 69-72.

For Labo, Camarines Sur, and Pagbilao, Quezon, the certifications that were submitted by the petitioners, were, in fact, letters by the election officers addressed to the municipal mayors of the said municipalities. Copies of these certifications are attached to this Memorandum as Annexes 73-74.

For M'Lang, Cotabato, the certification issued by the election registrar clearly identifies the representative of the DILG as the person who submitted the signatures to the office of the election officer. A copy of this certification is attached to this Memorandum as Annex 75. The certification for Aurora, Zamboanga del Sur (attached as Annex 3 to this Memorandum) states that the list was "submitted by the barangay officials thru the Municipal Local Government Officer (MLGOO)-DILG." The certification for Mahayag, Zamboanga del Sur (attached as Annex 6 to this Memorandum) states that the signature sheets were "received from the DILG officer". The certification for Ramon Magsaysay, Zamboanga del

Sur (attached as Annex 10 to this Memorandum) states that the names were "submitted to this office for verification by the DILG Officer."

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**In *Santiago v. COMELEC* (G.R. 127325, March 19, 1997), the Honorable Court has declared Republic Act No. 6735, An Act Providing for a System of Initiative and Referendum and Appropriating Funds Therefor, "incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned."**

Almost ten (10) years after the said decision, the petitioners Raul L. Lambino and Erico B. Aumentado come to this Honorable Court not to humbly ask for a re-examination of the ruling in ***Santiago v. COMELEC***, but to arrogantly question the validity of the said ruling as a decision of the Court. The petitioners take the position that ***Santiago v. COMELEC*** must be considered only as the separate opinion of the former Chief Justice Hilario Davide, Jr..

The primary issue then in this case is not whether R.A. 6735 is adequate to cover initiatives to amend the Constitution, but whether there is a need for the Honorable Court to re-examine ***Santiago v. COMELEC***.

The Intervenor respectfully submits that the petitioners failed to show sufficient justification for such re-examination.

### **The Intervenor**

1. Intervenor **Alternative Law Groups, Inc. (ALG)** is a non-stock, non-profit corporation duly organized and existing under Philippine laws, with address at Room 215, Institute of Social Order, Ateneo de Manila University, Loyola Heights, Quezon City. The petitioner is a coalition of eighteen (18) legal resource non-governmental organizations that engage in developmental or alternative lawyering and work with the poor and marginalized groups in different parts of the country.

2. The petitioner has the following organizations as members:
- 2.1. **Albert Schweitzer Association, Philippines, Inc. (ASAP)**, a non-government organization that provides free legal assistance to children-in-conflict-with-law. The core of ASAP consists of young professionals and lawyers who offer volunteer services, pursuant to the organization's credo that no child should be unnecessarily detained due to circumstances beyond his/her control. ASAP also works toward the reintegration of former child detainees into their families and into society in general.
  - 2.2. **Alternative Law Research and Development Center, Inc., (ALTERLAW)**, a legal-resource non-government organization that is committed to the promotion and protection of human rights and responding to issues of social inequity in a pro-active, creative and progressive manner. Since its establishment in 1992, ALTERLAW has worked for the rights of marginalized groups including the migrant workers, urban poor, children, informal sector.
  - 2.3. **Ateneo Human Rights Center (AHRC)**, one of the first university-based institutions engaged in the promotion of peace, development and human rights in the Philippines. Established in October 1986, the Center seeks to realize its mandate of protecting and promoting human rights advocates among lawyers, law students and grassroots leaders, the monitoring of the human rights situation in the Philippines and abroad, research and publication, public education on peace, development and human rights, legal assistance to indigent victims of human rights abuses, law school curriculum development and values formation.
  - 2.4. **Balay Alternative Legal Advocates for Development in Mindanaw, Inc. (BALAOD Mindanaw)**, a non-stock, non-profit organization that aims to help in the advancement of the legal and justice issues of different marginalized sectors and communities in Mindanao in the context of active peoples'

participation in governance. BALAOD promotes paralegal formation, provides other legal services to marginalized sectors and communities, conducts capability-building interventions on local legislation and dispute resolution, provides a venue for networking and alternative legal assistance for law practitioners, law schools and law students, and facilitates the creation of a favorable policy environment responsive to the needs of marginalized sectors and communities.

2.5. **Children’s Legal Bureau (CLB), Inc.**, a Cebu-based non-stock, non-profit organization envisioning a just world for children. CLB is committed to empower communities in promoting justice for children through legal aid, training, advocacy and networking. Its services include providing legal services to abused children and children in conflict with the law, providing paralegal trainings to communities and children, policy development and advocacy related to child’s rights.

2.6. **Environmental Legal Assistance Center (ELAC)**, a non-governmental organization that was organized to address the emerging challenge of environment lawyering especially in the rural areas where degradation of the environment is most felt. It aims to protect and assert environmental rights and equitable access to and control of natural resource use by communities in Palawan and the Visayas through effective developmental legal assistance and community-based resource management. ELAC envisions communities that are empowered and self determining stewards of natural resources.

2.7. **Free Rehabilitation, Economic, Education and Legal Assistance Volunteers Association, Inc. (FREELAVA)**, a non-government organization established in Cebu City in 1983. It is an umbrella organization composed mostly of community-based groups pooling their resources together to assist the disadvantaged and the unprivileged sectors in society. Using free legal aid, rehabilitation of offenders and crime prevention programs, and covering the entire Province of Cebu, the target groups for its programs and services include: children and youth, children in conflict with law (CICL), former CICL, women and the urban poor.

2.8. **Kaisahan Tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan (KAISAHAN)**, a social development organization promoting a sustainable and humane society through the empowerment of marginalized sectors in rural areas, especially among farmers and farm workers, to undertake their own development, participate fully in democratic processes and demand their rightful share in the stewardship of the land and the fruits of their labor. Its mission is to facilitate agrarian reform implementation and sustainable rural development with various stakeholders at the national and local level, especially farmers, farm workers toward the formation of sustainable integrated area a development (SIAD) communities.

2.9. **Kanlungan Center Foundation, Inc. (KANLUNGAN)**, a non-stock, non-profit center for migrant workers that provides legal assistance, education & training, welfare assistance, counseling organizing families, information/advocacy and temporary shelter for women.

2.10. **Legal Rights and Natural Resources Center –Kasama sa Kalikasan/Friends of the Earth-Philippines, Inc. (LRC-KSK/FOEI-Phils.)**, a policy and legal research and advocacy institution that was organized as a non-

stock, non-profit, non-partisan, cultural, scientific and research foundation duly registered with the Securities and Exchange Commission. The organization is also the official Philippine affiliate of Friends of the Earth International. The goal of LRC-KSK is to empower the marginalized and disenfranchised peoples directly dependent on our natural resources so as to be able to effect ecologically sustainable, culturally appropriate, economically viable, gender sensitive, equitable uses, management, conservation and development of our natural resources.

2.11. **Paglilingkod Batas Pangkapatiran Foundation (PBPF)**, a Mindanao-based non-governmental organization which seeks to capacitate people's organizations so that they can effect legal change to serve the community's interests for genuine empowerment and equity-led development. Established in April of 1990, the organization serves communities throughout Mindanao where it provides paralegal formation, legal assistance and support through research and litigation. It has four (4) major areas of work: environment, women and children and governance.

2.12. **Participatory Research Organization of Communities and Education Towards Struggle for Self-Reliance (PROCESS) Foundation-PANAY, Inc.**, a non-government organization operating in Iloilo City, Antique, and other areas in Panay Island. It seeks to empower the grassroots and deprived sectors of society so that they can take control of their own destinies towards a sustainable and ecologically sound environment.

2.13. **Pilipina Legal Resources Center (PLRC)**, a non-profit, social development agency that uses legal resources for the empowerment and development of women and disadvantaged communities. Organized in 1982 in Davao City, PLRC has engaged in legislative and policy reform, advocacy for judicial reform, legal literacy, organizational development, research, organizing and network building and technical support. Its current programs are focused on women's rights and reproductive rights, women in politics and governance, judicial reform in the Shari'a Courts, and peace building in Mindanao.

2.14. **Sentro ng Alternatibong Lingap Panligal (SALIGAN)**, a legal resource non-governmental organization doing developmental legal work with farmers, workers, the urban poor, women, and local communities. Founded in 1987, SALIGAN operates in different areas throughout the Philippines, through its main office in Quezon City and its branches in Bicol Region and in Mindanao. SALIGAN's programs include Legal Education, Litigation, Policy Reform Work and Research and Publications.

2.15. **Tanggapang Panligal ng Katutubong Pilipino (PANLIPI)**, an organization of lawyers and indigenous people's advocates that pioneered and continues to engage in development work among indigenous peoples in the Philippines. It was established in 1985 and had since implemented programs for the development of IP communities through: Developmental Legal Assistance, Legal Education and Outreach, Institutional Capability Building, Ancestral Domains Delineation and Resource Management Planning.

2.16. **Tanggol Kalikasan (TK)**, a public interest environmental law office which envisions an empowered society that relates with its environment in just and sustainable manner for the equitable benefit of all Filipinos. Tanggol Kalikasan's mission is to facilitate the empowerment of communities and

institutions to manage their ecosystems through law and other creative mechanisms. Conscious of the power of an organized and informed citizenry, TK's programs are aimed at encouraging greater citizen's participation in environmental law enforcement and policy-making in resource allocation.

2.17. **Women's Legal Bureau (WLB)**, a non-government legal organization promoting and fighting for women's human rights in accordance with feminist and development perspectives and principles. Specifically, its mission is to provide feminist legal services and actively engage in advocacy together with other women's groups to transform the law and the legal system in furtherance of the right of women to self-determination and the advancement of their dignity, rights and leadership. For most of its 12 years of operations, WLB has been at the forefront of pioneering initiatives to promote and protect women's human rights in the country.

2.18. **Women's Legal Education, Advocacy and Defense Foundation, Inc. (WomenLEAD)**, a feminist legal resource institution for women committed to advancing women's human rights through feminist methodologies in the critique and analysis of law and the legal system. Through its core program (Feminist Counseling and Legal Services), WomenLEAD's core of lawyers and paralegals engage in litigation to challenge laws, and the legal culture which reinforces biases against women. Its other programs include training and education, campaign on women's issues, and research and publication.

3. With the exception of the Ateneo Human Rights Center (AHRC), all ALG member organizations are also duly registered organizations. The AHRC does not have a legal personality separate from the Ateneo de Manila University, but it enjoys autonomy in its programs and operations. ALG member organizations are composed of Filipino citizens.

4. The Intervenor files this Opposition in Intervention as a real party in interest, being one of the Oppositors-Intervenors to the Petition filed by the petitioners in this case before the Commission on Election. It was the dismissal of the said Petition that gave rise to this present action before this Honorable Court. The Intervenor also files this Opposition in Intervention as representative of its member organizations and these organizations' individual members, as akin to a class suit in their capacity as taxpayers, registered voters and citizens, for themselves and in behalf of all persons similarly situated. The so-called people's initiative covered by the Petition, if conducted, would entail expenses to

the national treasury, at the expense of taxpayers. The Intervenor and the persons it represents have direct personal interest to uphold compliance by respondent COMELEC with existing law and jurisprudence. Since the Intervenor files this Opposition on behalf of registered voters, there is direct interest to safeguard the constitutionally enshrined system of initiative to amend the Constitution.

5. The petitioner can be served summons and other processes through the undersigned counsel at the address stated below.

### **ISSUE**

**THE MAIN ISSUE IN THIS CASE IS WHETHER OR NOT THERE IS A NEED FOR THE HONORABLE COURT TO RE-EXAMINE ITS RULING IN *SANTIAGO V. COMELEC*.**

**The Intervenor respectfully submits that the Petitioners failed to show sufficient justification for a re-examination of *Santiago v. COMELEC*. Specifically:**

#### **I.**

**The petition is anchored on the erroneous premise that *Santiago v. COMELEC* is not a decision of the Honorable Court but a mere separate opinion.**

#### **II.**

**There is no grave abuse of discretion on the part of respondent COMELEC, which is required to justify the extraordinary remedies of Certiorari and Mandamus.**

#### **III.**

**The ruling in *Santiago v. COMELEC* must be respected following the principle of *stare decisis*.**

#### **IV.**

**The petition is based on a misinterpretation of the Constitutional provisions on initiative, and is an attempt to misuse the said provisions.**

## DISCUSSION

### **THE PETITION IS ANCHORED ON THE ERRONEOUS PREMISE THAT *SANTIAGO V. COMELEC* IS NOT A DECISION OF THE HONORABLE COURT BUT A MERE SEPARATE OPINION.**

In *Santiago v COMELEC* (G.R. 127325, March 19, 1997), the Supreme Court declared R.A. 6735 “incomplete, inadequate, or wanting in essential terms and conditions” thus:

The foregoing brings us to the conclusion 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. Its lacunae on this substantive matter are fatal and cannot be cured by “empowering” the COMELEC “to promulgate such rules and regulations as may be necessary to carry out the purposes of [the] Act.

The rule is that what has been delegated, cannot be delegated or as expressed in a Latin maxim: *potestas delegata non delegari potest*. The recognized exceptions to the rule are as follows:

- (1) Delegation of tariff powers to the President under Section 28(2) of Article VI of the Constitution;
- (2) Delegation of emergency powers to the President under Section 23(2) of Article VI of the Constitution;
- (3) Delegation to the people at large;
- (4) Delegation to local governments; and
- (5) Delegation to administrative bodies.

Empowering the COMELEC, an administrative body exercising quasi-judicial functions, to promulgate rules and regulations is a form of delegation of legislative authority under no. 5 above. However, in every case of permissible delegation, there must be a showing that the delegation itself is valid. It is valid only if the law (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard -- the limits of which are sufficiently determinate and determinable -- to which the delegate must conform in the performance of his functions. A sufficient standard is one which defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected.

Insofar as initiative to propose amendments to the Constitution is concerned, R.A. No. 6735 miserably failed to satisfy both requirements in subordinate legislation. The delegation of the power to the COMELEC is then invalid.<sup>2</sup>

Clearly disagreeing with the *Santiago* Decision, petitioners deliberately chose to ignore and disobey it and proceeded with their self-proclaimed people's initiative. This, without any valid law on the matter nor implementing rules to regulate their conduct.

Indeed, petitioners' contempt for the Court's Decision in *Santiago* is crystallized in the fanciful – if not derisive – theory it now peddles before the Court which characterizes its Decision as a mere "separate opinion"<sup>3</sup> of former Chief Justice Davide. In fact, the petitioners do not hide their direct challenge to the validity of *Santiago* as the Court's decision, referring to it as "the questioned *Santiago* ruling".<sup>4</sup>

The petitioners' theory obviously has no legal basis whatsoever. Indeed, Decisions concurred in by at least a majority of the Members of the Court who actually took part in the deliberations are nothing less than Decisions of the Court itself. Petitioners gravely err and risk contempt by asserting that a majority Decision is not an act of the Court. Worse, inherent in petitioners' assertions is an absurd belief that the Supreme Court could only speak through a unanimous Decision inasmuch as a Decision made by any number less than all Members of the Court is a mere separate opinion. Nothing could be more wrong.

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<sup>2</sup> *Santiago v COMELEC* (G.R. 127325, March 19, 1997)

<sup>3</sup> Petition, page 11.

The 1987 Constitution is clear on this matter:

Article VIII

XXX

Sec. 4. X X X

(2) ALL CASES INVOLVING THE CONSTITUTIONALITY OF A TREATY, INTERNATIONAL OR EXECUTIVE AGREEMENT, OR LAW, WHICH SHALL BE HEARD BY THE SUPREME COURT EN BANC, AND ALL OTHER CASES WHICH UNDER THE RULES OF COURT ARE REQUIRED TO BE HEARD EN BANC, INCLUDING THOS INVOLVING THE CONSTITUTIONALITY, APPLICATION, OR OPERATION OF PRESIDENTIAL DECREES, PROCLAMATIONS, ORDERS, INSTRUCTIONS, ORDINANCES, AND OTHER REGULATIONS, **SHALL BE DECIDED WITH THE CONCURRENCE OF A MAJORITY OF THE MEMBERS WHO ACTUALLY TOOK PART IN THE DELIBERATIONS ON THE ISSUES IN THE CASE AND VOTED THEREON.**

X X X

**(Emphasis supplied.)**

Indeed, it is precisely because they were acts of the Court **as a whole** that the declarations in the March 19, 1997 Decision in *Santiago* could not be overturned or modified except by a subsequent Decision of a majority of the Court. As it turned out, the six (6) votes to grant the Motion for Reconsideration in G.R. 127325 were not enough to change the Court's previous Decision.

Justice Bellosillo's opinion in ***PIRMA v. COMELEC*** (G.R. No. 129754) is instructive:

The contention of the Solicitor General that there is no definitive judgment in *Santiago v COMELEC* that R.A. No. 6735 was inadequate or unconstitutional as the implementing law of the constitutional provisions on people's initiative because during the voting on the motion for reconsideration only six (6) Justices out of

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<sup>4</sup> *Id.*, page 33.

the original eight (8) voted to maintain the decision is misplaced, to say the least. To begin with, petitioners as well as the Solicitor General proceed on the wrong premise, i.e., that only six (6) Justices voted to maintain the Santiago decision when in fact seven (7), including Justice Vitug, voted to sustain the decision. In *Santiago v COMELEC* we already categorically stated 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." We could not have been more direct and precise. And since a sufficient number of votes, i.e., eight (8), already declared that R.A. 6735 was "insufficient" or "inadequate," and therefore did not comply with the constitutional standards, we also concluded that it was unconstitutional. In the resolution of the motions for reconsideration, movants unfortunately failed to muster enough votes to reverse our ruling, hence, our Decision stands. It was not reversed by the requisite number of votes. As we explained in our Resolution of 10 June 1997 –

Thirteen (13) Members having taken part in the deliberation, and only six (6) having voted to grant the motions for reconsideration, said motions should be as there are hereby DENIED WITH FINALITY, the arguments therein set forth not being sufficient cogency to persuade the requisite majority of the Court to modify or reverse the Decision of 19 March 1997.

Obviously, since there were only six (6) Justices who voted to grant the motions for reconsideration out of the thirteen (13) who participated in the deliberations, the holding 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" stays, and in fact has become final.<sup>5</sup>

The petitioners conveniently ignore the Court's resolution in ***PIRMA v COMELEC***, where eight (8) members of the Honorable Court<sup>6</sup> voted that there was no need to even take up the issue posed by the petitioners, namely, that the Court re-examine its ruling as regards R.A. 6735. With this ruling in ***PIRMA, Santiago*** was affirmed with more votes. In the present case, the petitioners do not even present the issue of re-examination of ***Santiago***, and yet, they impugn the validity of the said ruling as a Court decision.

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<sup>5</sup> *PIRMA v. COMELEC* (GR No. 129754, September 23, 1997)

**THERE IS NO GRAVE ABUSE OF DISCRETION ON THE PART OF RESPONDENT COMELEC, WHICH IS REQUIRED TO JUSTIFY THE EXTRAORDINARY REMEDIES OF CERTIORARI AND MANDAMUS.**

**There is no grave abuse of discretion.**

Petitioners claim to have brought a petition for certiorari before the Honorable Supreme Court. And yet, they have apparently failed to bring as well a clear showing that respondent COMELEC committed any grave abuse of discretion by refusing to grant the plebiscite they seek. For lack of this essential requisite, the present petition must fail. To be sure, far from abusing its discretion, the COMELEC simply discharged its duty when it complied with the existing law on the matter of people's initiative.

Petitioners should be reminded that in a special civil action for certiorari, the focal issue relates to the matter of jurisdiction in which the petitioner asserts lack or excess of jurisdiction, or grave abuse of discretion amounting to lack or excess of jurisdiction, on the part of the respondent. The special civil action for certiorari is intended only to keep a tribunal, board or officer within the limits of its jurisdiction, to prevent acts in excess of authority or jurisdiction, as well as to correct manifest abuses of discretion when appeal is not a speedy or an adequate remedy. Undoubtedly, it is an extraordinary remedy and its use restricted only to extraordinary cases such as when the actions of the tribunal, board of officer exercising judicial or quasi-judicial functions are wholly void.

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<sup>6</sup> Narvasa, CJ, Regalado, Davide, Romero, Bellosillo, Kapunan, Torres, and Vitug, JJ.

A **review** includes digging into the merits and unearthing errors of judgment, while **certiorari** deals exclusively with grave abuse of discretion, which may not exist even when the decision is otherwise erroneous. Certiorari implies an indifferent disregard of the law, arbitrariness and caprice, an omission to weigh pertinent considerations, a decision arrived at without rational deliberation. (Aratuc v COMELEC, 88 SCRA 251, 271)

Applying these standards to the case at bar, there is obviously no abuse (much less grave abuse) of discretion where the COMELEC simply complied with the decision of the Honorable Supreme Court in *Santiago v COMELEC*, including the permanent injunction imposed upon it. There being no abuse of discretion on the part of public respondent, the present petition should be dismissed.

It is noteworthy that after its initial failure in G.R. No. 127325, PIRMA subsequently made its way to the Supreme Court and, like petitioners herein, accused the COMELEC of grave abuse of discretion in dismissing its petition for a people's initiative. Similar to petitioners who claim to have brought with them more than 6 million signatures, PIRMA then claimed to have more than 5 million signatures supporting its cause. Nevertheless, as the COMELEC simply complied with the *Santiago* Decision, the Supreme Court **unanimously** held "that no grave abuse of discretion could be attributed to the public respondent COMELEC."<sup>7</sup>

In exactly the same way, the COMELEC in the case at bar acted properly when it rejected petitioner's petition for a plebiscite. No abuse of discretion

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<sup>7</sup> PIRMA v COMELEC, G.R. No. 129754, September 23, 1997.

whatsoever could be attributed to it. On this argument alone, the present petition must fail.

**Mandamus will not lie.**

The remedy of mandamus may be resorted to only 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.

Being an extraordinary remedy, it is essential that the applicant has a clear legal right to the thing demanded, and it must be imperative duty of the respondent to perform the act required. The writ will not issue to compel an official to do anything which is not his duty to do, or to give the applicant anything to which he is not entitled by law. Mandamus is simply a command to exercise a power already possessed and to perform a duty already imposed.

As will be shown below, there is no enabling law to operationalize the system of initiative and thus, the COMELEC has no duty to entertain petitioners' project of a people's initiative. Quite simply, there is no ministerial duty to be imposed upon the COMELEC. On the contrary, there is a standing order from the Honorable Court for COMELEC not to entertain or take cognizance of any petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted.<sup>8</sup>

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<sup>8</sup> *Santiago v. COMELEC*, March 19, 1997.

The petitioners attempt to evade this legal roadblock by asserting that the permanent injunction issued in ***Santiago*** only applies to the Delfin petition.<sup>9</sup> The petitioners even went to the extent of saying that only the dispositive portion, and not statements in the body of the decision governs.<sup>10</sup> Obviously, the petitioners seek to avoid the application of the “Conclusion” in the ***Santiago*** ruling, to wit:

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.

Following the theory of the petitioners, said “Conclusion” should be ignored and the dispositive portion referring to the Delfin petition should be given effect. Like the other theories presented by the petitioners, this theory is clearly wrong. Petitioners misread, deliberately or otherwise, the basis for the ***Santiago*** ruling. The decision was premised primarily on the absence of a sufficient enabling law on people’s initiative to amend the Constitution, not on the faults of the Delfin petition. Hence, when it was PIRMA’s turn to file a different petition, the Court maintained and affirmed ***Santiago***.

If the petitioners’ argument is sustained, nothing will prevent the filing of numerous petitions for initiative to amend the Constitution, year in and year out, simply because the decision in ***Santiago***, following petitioners’ argument, cannot cover them. What petitioners ignore is the fact that the absence of an enabling law can only be addressed by legislation, not by the successive filing of petitions. This brings the discussion to the next issue.

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<sup>9</sup> Petition, page 49.

<sup>10</sup> Petition, p. 51

**THE RULING IN *SANTIAGO V. COMELEC* MUST BE RESPECTED FOLLOWING THE PRINCIPLE OF *STARE DECISIS*.**

It is undeniable that in *Santiago v. Comelec* (G.R. No. 127325. March 19, 1997), the Supreme Court, through former Chief Justice Hilario Davide decreed with finality the inadequacy and insufficiency of R.A. 6735. In the case of *PIRMA v. COMELEC* (G.R. No. 129754. September 23, 1997), Chief Justice Davide, in a Separate Opinion, clarified that *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.

The present petition then makes a mockery of the judicial process and breaches the principle of *stare decisis et non quieta movere*. R.A. 6735 was examined three times by the Supreme Court in 1997; three times it was considered to have failed the constitutional tests of completeness and sufficiency. Now, nine years later, the petitioners, without asking that it be re-examined, arrogantly questions its application.

Time and again, the Supreme Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. Stand by the

decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. (Ty vs. Banco Filipino Savings & Mortgage Bank G.R. No 144705. November 15, 2005)

In 1997, the Honorable Court has categorically declared that while the Constitution has recognized or granted the right to a people's initiative, the people cannot exercise it if Congress, for whatever reason, does not provide for its implementation. It has also concluded 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. In 1997, there was no law providing for the procedure to change the Constitution by way of a people's initiative. There is still no such law up to now. The present petition cannot change that fact.

The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit:

ART.8. Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.

It enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. (Castillo v. Sadiganbayan, 377 SCRA 509, 515).

To overturn the pronouncements in ***Santiago*** in the face of similar facts will surely diminish the weight of precedence with our courts and will certainly have far-reaching consequences beyond the present issue.

R.A. No. 6735 has been declared inadequate and insufficient. No law has yet been found to fill such inadequacy. It is now within the domain of Congress, and not the power of the Court, to come up with a law that will truly make Constitutional amendments through a people's initiative possible. The Honorable Court should allow Congress to fulfill its mandate under the Constitution, especially in view of the legislators' efforts to legislate an enabling law, heeding the Court's pronouncements in ***Santiago***.

At present, there are at least three (3) bills pending before the Senate<sup>11</sup>, and at least four (4) bills pending before the House of Representatives<sup>12</sup>, all proposing an enabling law for initiative to amend the Constitution. These were filed by our legislators in recognition of the absence of a sufficient enabling law for initiative to amend the Constitution, as declared by the Honorable Court in ***Santiago***. The Court should now yield to the Legislature and give it the opportunity to correct the error that it committed in enacting R.A. 6735.

The Court's ruling in ***Santiago*** is very emphatic:

The foregoing brings us to the conclusion 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. Its lacunae on this substantive matter are fatal and cannot be cured by "empowering" the COMELEC "to promulgate such rules and regulations as may be necessary to carry out the

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<sup>11</sup> Senate Bills No. 119, 2189, 2247

<sup>12</sup> House Bills No. 05281, 05017, 05025, 05026.

purposes of [the] Act.

The rule is that what has been delegated, cannot be delegated or as expressed in a Latin maxim: *potestas delegata non delegari potest*. The recognized exceptions to the rule are as follows:

(1) Delegation of tariff powers to the President under Section 28(2) of Article VI of the Constitution;

(2) Delegation of emergency powers to the President under Section 23(2) of Article VI of the Constitution;

(3) Delegation to the people at large;

(4) Delegation to local governments; and

(5) Delegation to administrative bodies.

Empowering the COMELEC, an administrative body exercising quasi-judicial functions, to promulgate rules and regulations is a form of delegation of legislative authority under no. 5 above. However, in every case of permissible delegation, there must be a showing that the delegation itself is valid. It is valid only if the law (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard -- the limits of which are sufficiently determinate and determinable -- to which the delegate must conform in the performance of his functions. A sufficient standard is one which defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected.

**Insofar as initiative to propose amendments to the Constitution is concerned, R.A. No. 6735 miserably failed to satisfy both requirements in subordinate legislation. The delegation of the power to the COMELEC is then invalid.**

### III

**COMELEC RESOLUTION NO. 2300, INSO FAR AS IT PRESCRIBES RULES AND REGULATIONS ON THE CONDUCT OF INITIATIVE ON AMENDMENTS TO THE CONSTITUTION, IS VOID.**

It logically follows that the COMELEC cannot validly promulgate 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. It does not have that power under R.A. No. 6735. Reliance on the COMELEC's power under Section 2(1) of Article IX-C of the Constitution is misplaced, for the laws and regulations referred to therein are those promulgated by the COMELEC under (a) Section 3 of Article IX-C of the Constitution, or (b) a law where subordinate legislation is authorized and which satisfies the "completeness" and the "sufficient standard" tests.<sup>13</sup> (Emphasis supplied.)

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<sup>13</sup> Santiago, *supra*.

In *PIRMA*, Chief Justice Davide clarified that *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.

With these pronouncements of the Honorable Court, there should be no other conclusion than that R.A. 6735 and COMELEC Resolution No. 2300 are void insofar as the exercise of initiative to amend the Constitution is concerned. This being the case, the Court cannot now resurrect these laws, insofar as the dead portions are concerned. To do so will amount to legislation, which is clearly outside the powers allocated by the Constitution to the Judiciary.

This leads to an important observation. Compared to the Delfin petition, the present “people’s initiative” is at a worse situation. For the Delfin petition at least had the benefit of the operation of R.A. 6735 and COMELEC Resolution No. 2300, before they were declared void insofar as initiatives to amend the Constitution are concerned.

It is therefore disturbing that petitioners, while claiming to have spearheaded their own people’s initiative to revise the Constitution, fail to identify the enabling law which justifies their project. Instead, petitioners rely on R.A. 6735, and by doing so, arrogate upon themselves the authority to overrule the Honorable Supreme Court which has repeatedly held that R.A. 6735 is “incomplete, inadequate, or wanting in essential terms and conditions.”

Presently, a valid law has yet to be passed relating to the exercise of the people's right to propose amendments to the Constitution. Until this is done, petitioners can only pretend that they are engaged in a **bona fide** people's initiative. Even the fanciful reliance on more than 6 million signatures is of no consequence, for such purported support, no matter how many, can neither give birth to a valid enabling law nor cure the deficiency of R.A. 6735.

Indeed, the futility of the present petition is insurmountable. Even assuming the Supreme Court now proclaims R.A. 6735 to be sufficient, such ruling will not revive the voided provisions of COMELEC Resolution No. 2300. Furthermore, such proclamation of adequacy should be prospective and cannot validate a process which took place at a time when there was no enabling law and a set of valid rules.

**THE PETITION IS BASED ON A MISINTERPRETATION OF THE CONSTITUTIONAL PROVISIONS ON INITIATIVE, AND IS AN ATTEMPT TO MISUSE THE SAID PROVISIONS.**

As a desperate attempt to save their "people's initiative", the petitioners now contend that even without an enabling law, the right of the people to amend the Constitution through initiative exists and should be allowed. The petitioners sink deeper in their legal quicksand.

In *Santiago*, the need for an enabling law before the right to amend the Constitution through initiative was not in dispute. Even the minority justified their position with the framework that an enabling law is needed. Thus, they assert that R.A. 6735 was a sufficient enabling law. The main issue in

**Santiago** was whether R.A. 6735 was an adequate enabling law, not whether there is a need for an enabling law.

It is true that the right to amend the Constitution is a right that the people have reserved for themselves as part of their sovereignty. It is likewise true that as part of this reservation, and aside from the requirement of ratification, the people have provided the process of initiative as a means whereby they can directly participate in the process of initiating amendments to the Constitution. What should be clear to the petitioners, however, is that an essential part of this reservation is a self-imposed limitation on the exercise of this direct action. By adopting the article on amendments as part of the ratified Constitution, the sovereign people have imposed limitations on the exercise of their sovereign authority to change the Constitution.

Two clear limitations have been imposed. First, initiative can only be exercised after the Congress shall have provided the mechanics for its implementation. Second, initiative can only be used for amendments, not for revisions. These limitations will be discussed next.

It is precisely because of the importance of the power of the people to change the fundamental law that its exercise must be limited and safeguarded from usurpation and abuse. Part of the limitation is to ensure that the people will be the genuine source of the initiative. The people have delegated the power to lay down the limitations and the safeguards to Congress, as part of the mandate to provide for the implementation of the right. While it is true that in the people lies supreme power, so too is the need to assure its integrity. Beyond the letter of the Constitution, the near-sacred right of the people for self-

determination demands the promulgation of complete, clear and precise rules for its exercise.

In this case, the petition itself clearly shows that the initiative did not come from the people. The petition that was filed with the COMELEC stated that “the foregoing proposed amendments have been earlier endorsed and proposed by the House of Representatives Committee on Constitutional Amendments, and substantially recommended by the Constitutional Consultative Commission.”<sup>14</sup> Resolution No. 2006-002 of the Union of Local Authorities of the Philippines (ULAP), attached to the petition filed with COMELEC, is more telling. The preambular clauses state:

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.

Petitioner Lambino’s active involvement as a Presidential appointee in the Consultative Commission, and the Charter Change Advocacy Commission, both created by the President, and petitioner Aumentado’s leadership position in ULAP as its National President, puts to question – to say the least – the real power behind the initiative. Doubtless, this initiative came not from the people.

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<sup>14</sup> Petition filed with COMELEC, p. 7.

The second limitation on the right to amend the Constitution involves the coverage of the right, i.e., it can only cover amendments, not revisions.

***A plain reading of Article XVII, Section 2 shows that changing the Constitution through a people's initiative is limited to amendment.***

The petitioners anchor their cause of action to Article XVII, Section 2 of the 1987 Constitution which 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 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."*

However, under this provision, it is clear that **only amendments** to the Constitution are subject of a people's initiative. Revisions, such as the change of form of government from a bicameral-presidential to a unicameral-parliamentary system, are not the proper subjects of people's initiative.

A reading of Sections 1 and 2 of Article XVII provides for a distinction between the different modes of changing the constitution in relation to the kind of change that can be undertaken. Section 1 refers to both amendment or revision which can be done through two methods: (1) a vote of three-fourths of

all members of Congress<sup>15</sup> or (2) a constitutional convention. Section 2, on the other hand refers to the mode of changing the constitution through a people's initiative but clearly limits the operation of the section to amendments of the Constitution.

By invoking Section 2 of Article XVII, Petitioners are clearly limited by the text of the Constitution. Basic in constitutional interpretation is that no meaning is to be given contrary to the text of the constitution so as to render meaningless other provisions in the same document. The primary source from which to ascertain constitutional intent or purpose is the language of the entire Constitution itself.<sup>16</sup> The plain, clear and unambiguous language of the Constitution should be construed in that sense, and should not be given a construction that changes such meaning.<sup>17</sup> In *Francisco vs. House of Representatives*,<sup>18</sup> the Honorable Supreme Court stated:

*"To determine the merits of the issues raised in the instant petitions, this Court must necessarily turn to the Constitution itself which employs the well-settled principles of constitutional construction.*

*"First, verba legis, that is, wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed. Thus, in *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, this Court, speaking through Chief Justice Enrique Fernando, declared:*

**'We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin. It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its**

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<sup>16</sup> JM Tuason and Company, Inc. v Land Tenure Administration, 31 SCRA 413 (1970).

<sup>17</sup> Occena v Commission on Elections, 95 SCRA 755 (1980)

<sup>18</sup> G.R. No. 160261, November 10, 2003, consolidated cases.

*language as much as possible should be understood in the sense they have in common use. **What it says according to the text of the provision to be construed compels acceptance** and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus these are the cases where the need for construction is reduced to a minimum.'* (Emphasis and underscoring supplied)

"Second, where there is ambiguity, *ratio legis est anima*. The words of the Constitution should be interpreted in accordance with the intent of its framers. And so did this Court apply this principle in *Civil Liberties Union v. Executive Secretary* in this wise:

'A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration. Thus, it has been held that the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. **The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.** (Emphasis and underscoring supplied)

"As it did in *Nitafan v. Commissioner on Internal Revenue* where, speaking through Madame Justice Amuerfina A. Melencio-Herrera, it declared:

*x x x* **The ascertainment of that intent is but in keeping with the fundamental principle of constitutional construction that the intent of the framers of the organic law and of the people adopting it should be given effect.** The primary task in constitutional construction is to ascertain and thereafter assure the realization of the purpose of the framers and of the people in the adoption of the Constitution. **It may also be safely assumed that the people in ratifying the Constitution were guided mainly by the explanation offered by the framers.** (Emphasis and underscoring supplied)

"Finally, *ut magis valeat quam pereat*. The Constitution is to be interpreted as a whole. Thus, in *Chiongbian v. De Leon*, this Court, through Chief Justice Manuel Moran declared:

*x x x* **[T]he members of the Constitutional Convention could not have dedicated a provision of our Constitution merely for the benefit of one person without considering that it could also affect others. When they adopted subsection 2, they permitted, if**

**not willed, that said provision should function to the full extent of its substance and its terms, not by itself alone, but in conjunction with all other provisions of that great document.** (Emphasis and underscoring supplied)

"Likewise, still in *Civil Liberties Union v. Executive Secretary*, this Court affirmed that:

***It is a well-established rule in constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.***

"In other words, the court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory." (Emphasis theirs)

***A review of the Records of the Constitutional Commission also shows that there was a deliberate intent to limit the operation of Section 2 to proposals for amending the Constitution.***

The Records of the Constitutional Commission also make clear the intention of the framers of the Constitution to the operation of Section 2 to amendments, to wit:

*"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 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 I of the proposed Article on Amendment or Revision.** Also this power could be susceptible to abuse to such an extent that it could very well happen that the initiative method of amendment could be exercised, say, twice or thrice in a matter of one year; thus, a necessity for putting limitations to its exercise...

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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...<sup>19</sup> (emphasis supplied)

**The proposed changes in the Petition is not an amendment but amounts to a revision in the constitution.**

The wisdom of the framers of the Constitution reiterates the distinction recognized by the Supreme Court in the case of *Javellana vs. Executive Secretary*<sup>20</sup>, between a revision and an amendment.

**"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**

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<sup>19</sup> July 9, 1986, R.C.C. NO. 26.

<sup>20</sup> 50 SCRA 367.

**entire constitution, but only the improvement of specific parts of the existing constitution 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.**" (emphasis supplied)

The distinction made in *Javellana* was also noted during the deliberations of the Commission with regard to the drafting of Article XVII:

*"THE PRESIDING OFFICER (Mr. de los Reyes): The sponsor may proceed with his sponsorship speech on Proposed Resolution No. 322.*

*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 Chapter 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.***

*Thank you, Mr. Presiding Officer. (emphasis supplied)*<sup>21</sup>

In *Santiago vs. COMELEC*,<sup>22</sup> the Supreme Court stated:

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<sup>21</sup> July 8, 1986

<sup>22</sup> G.R. No. 127325. March 19, 1997.

***"...As pointed out earlier, initiative on the Constitution is confined only to proposals to AMEND. The people are not accorded the power to "directly propose, enact, approve, or reject, in whole or in part, the Constitution" through the system of initiative. They can only do so with respect to "laws, ordinances, or resolutions." (emphasis supplied)***

In the case at bar, the proposed changes to the 1987 Constitution can not be considered as mere amendments as it involves the overhauling of the entire political structure. Although the petitioners have identified only Articles VI and VII to be revised, these changes shall necessarily affect other provisions within the Constitution.

The proposed provisions are replicated to show the absurdity in the petitioners' proposition that these are mere amendments and not revisions:

*"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.*

xxx                      xxx                      xxx

*"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 the government."*

Under this proposed parliamentary system, there is no separation of powers between the legislative and executive branches of the government. Under this system, the President becomes the head of state, a mere figure head. The Prime Minister meanwhile becomes the head of government, holding the powers of the President under the present Constitution, elected by the Members

of Parliament, and not through the direct vote of the electorate. The legislative districts shall also be changed from two hundred fifty thousand inhabitants to three hundred thousand inhabitants. Because there is no fixed term under the parliamentary system, the executive branch of the government shall only be removed from office by a vote of confidence of the Parliament. The present bicameral structure shall also be replaced with a unicameral system, further diminishing the established checks and balances under the present government.

Therefore, 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. Using the initiative to effect these changes is clearly violative of Article XVII, Sec. 2 of the Constitution.

As Fr. Joaquin Bernas, a known constitutionalist and one of the framers of the 1987 Constitution, pointed out:

*"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 condition 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 implication 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.**"<sup>23</sup> (emphasis supplied)*

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<sup>23</sup> Bernas, Joaquin, S.J., *The 1987 Constitution on the Republic of the Philippines, A Commentary*, 2003 ed., p. 1294.

Given that the proposed changes of the petitioner shall constitute a revision of the Constitution, then it is Article XVII, Section 1 of the 1987 Constitution that should apply, wherein revisions shall be undertaken either through a three-fourths vote of all members of Congress, or by a constitutional convention. Hence, the present petition proposing the constitutional amendment through the alleged people's initiative should be dismissed outright.

***Nothing in the petition establishes that the people have truly and knowingly consented to an initiative towards amending the Constitution.***

The very essence of people's initiative is primarily based on the sovereign power. It belongs to the people, not to the government. As discussed earlier, people's initiative has two main steps: (1) Formulation of the proposed amendment; and (2) Gathering 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. Both the two steps mentioned should be initiated and be done by the people themselves and not by the government.

In Justice Panganiban's Separate Opinion in *PIRMA vs. COMELEC*,<sup>24</sup> he said:

'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

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<sup>24</sup> GR No. 129754, September 23, 1997

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.”** (emphasis supplied)

Despite the legal obstacles surrounding the proposed charter change, the alleged nationwide signature campaign for the people’s initiative to propose changes in the Constitution was hastily executed. The Petition that is being used as the basis of the signature campaign contains the following:

*"PROPOSITION: Do you approve of the amendment [to] 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 Article XVIII as transitory provisions for the orderly shift from one system to another?"*

This proposition envisions a fundamental change in Philippine system of government. Essentially, it will change a system of government that has governed the Philippines for almost a hundred years. Yet despite this and numerous oppositions, the information campaign that is being conducted by the government has not fully informed the public of the nature and effects of this change. The manner by which the signature campaign has been conducted is not conducive to having an informed choice. The haste that characterized this present charter change move leaves so many doubts as to its real intention.

It bears stressing that the right of initiative belongs to the people, a weapon that they, in their sovereign capacity, can use against government misdeeds. As such the proposed change must come from the will of the people themselves. This necessarily means that the approval of the people is a product

of an informed decision and not a simple exercise of wide-spread signature campaign to gain the needed number. The right of initiative was enshrined in our Constitution to protect the people, and not incumbent government officials and their minions. As then Justice (now Chief Justice) Panganiban eloquently stated in *Santiago vs. COMELEC*<sup>25</sup>:

“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.” (emphasis supplied)

The people’s initiative in question as carried out by the petitioners and the manner that it had been hurriedly conducted is not the very essence of people’s initiative as enshrined and intended by our Constitution.

The present petition before the Honorable Court is another manifestation of the disregard of the people’s sentiments. According to the title chosen by petitioners for their petition, the petitioners are composed of a certain Raul L. Lambino, Erico B. Aumentado **together with 6,527,952 registered voters.** And yet, only two out of the more than 6 million petitioners verified the petition and swore to a certification of non-forum shopping. This violates the rule that the certificate of non-forum shopping should be signed by all the petitioners in a case, and the signing by only one of them is insufficient. (Efren Loquias, et al. v

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<sup>25</sup> Ibid.

Office of the Ombudsman, et al, 338 SCRA 62 [2000]) For this, the petition should be dismissed outright.

Clearly, the verification and certification of non-forum shopping of only two (2) of the allegedly six million (6,000,000) petitioners or .00000031 of the total petitioners is grossly insufficient to support the present petition. This is especially true considering that there is no showing whatsoever that either Lambino or Aumentado has been authorized by any of their claimed co-petitioners to bring the petition before the Court. The fatal nature of this defect is confirmed by petitioners' contention that the insufficiency of R.A. 6735 should not prejudice the exercise by six million three hundred twenty seven thousand nine hundred fifty two (6,327,952) voters. And yet, with their petition, there is only the say so of two persons, both without any manifest authority, of the (1) existence and (2) acquiescence of their more than 6 million co-petitioners to file the instant petition. For this reason, the insufficiency of the verification and certification of non-forum shopping, is as fatal as it is substantive to the viability of the petition.

### **Final Word**

Lest it escape the attention of the Honorable Court and the public, the petitioners rely on the case of ***Javellana v. Executive Secretary*** (GR No. L-36142, March 31, 1973), invoke "the sovereign will of the people", and boldly assert that "it is the people who should always be the ultimate and supreme objective."<sup>26</sup> We must all be reminded that it was through ***Javellana v. Executive Secretary*** that the 1973 Constitution was declared to be "in full force and effect" and it was through the same case that the Supreme Court

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<sup>26</sup> *Id.*, p. 31-32.

legitimized President Marcos' efforts to change the Constitution. The same case served as one of the important legal pillars of the two decades of martial rule.

We implore the Honorable Court not to repeat history.

## **P R A Y E R**

WHEREFORE, the Intervenor respectfully prays that the Honorable Court dismiss the Petition of Raul Lambino and Erico Aumentado for utter lack of merit.

The Intervenor prays for other just and equitable remedies.

Quezon City for Manila, 5 September 2006.

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## **MANIFESTATION**

Pursuant to Rule 13, section 11 of the Rules of Court, petitioner respectfully manifests that the other parties were served their respective copies of this Opposition in Intervention by means of registered mail because of the lack of time and the considerable distance between the parties' respective offices.

**MARLON J. MANUEL**

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