

Chapter III

THE “CHA-CHA” BATTLES

During my three years in the Court, I think that the most controversial cases that generated much public and media attention were the so-called Charter change (or “Cha-cha”) suits, namely, *Santiago v. Commission on Elections*^[105] and *People’s Initiative for Reform, Modernization and Action* (hereafter, PIRMA) *v. Commission on Elections*.^[106]

Santiago v. Comelec

In the first case, Senator Miriam Defensor Santiago, Atty. Alexander Padilla and Mrs. Maria Isabel Ongpin sought to prohibit the Commission on Elections and Jesus Delfin from conducting a people’s initiative to amend the Constitution, an amendment that would have enabled an incumbent President to run for reelection.

In a March 19, 1997 Decision written by Justice Davide (and fully concurred in by a total of eight justices -- Chief Justice Narvasa and Justices Regalado, Romero, Bellosillo, Kapunan, Hermosisima and Torres), the Court ruled that RA 6735, the law regulating the people’s right of initiative, was “inadequate to cover the system of initiative on amendments to the Constitution and to have failed to provide sufficient standard for subordinate legislation.”

Justices Puno, Francisco and I wrote Dissenting Opinions in which we were joined by Justices Melo and Mendoza -- a total of five members. Justice Padilla did not take part because he was related to Petitioner Alexander Padilla. Justice Vitug rendered a Separate

Opinion, in which he voted “for granting the instant petition,” but pointed out that “the earlier Temporary Restraining Order issued by the Court did not proscribe the exercise by the Pedrosas of their right to campaign for constitutional amendments.”

The dissenters agreed with the ruling of the majority that the Comelec could not entertain a petition to initiate amendments to the Constitution through a people’s initiative, *until and unless such petition could show that it carried the number of signatures required by the fundamental law*; that is, at least 12 percent of all registered voters in the Philippines, with at least 3 percent in every legislative district. *But they vehemently disagreed with the thesis of the majority that RA 6735 was “inadequate” or “insufficient.”* Justice Puno said “that [since] the intent of RA No. 6735 is to implement the people’s initiative to amend the Constitution, it is our bounden duty to interpret the law as it was intended by the legislature.” He argued that the Pedrosas could not be stopped by the Court from exercising their constitutional right to initiate amendments, stressing that the tribunal “cannot seal the lips of people who are pro-change but not those who are anti-change without converting the debate on Charter change into a sterile talkathon.”

In my Dissent, I said that the ruling of the majority unduly restricted the people’s right to amend the Constitution through their own initiative, *viz:*

“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.*”

Totally distraught by the concept of “insufficient” law propounded by the majority, I asked my research staff to look into treatises and precedents to shed light on this rather novel concept, but they found no credible authorities. I thought that such a new theory of constitutional law should not diminish the people’s right to an initiative, which was after all an institutionalization of “people power,” the political process that made the Philippines the talk of the world. By way of epilogue, I concluded:

“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.*”

Not satisfied with the Court’s ruling, the respondents filed separate Motions for Reconsideration (MR). Six members of the Court (*CJ* Narvasa and *JJ.* Regalado, Davide, Romero, Bellosillo and Kapunan) voted to deny the motion. Another six (*JJ.* Melo, Puno, Mendoza, Francisco, Hermosisima and I) voted to grant it. Justice Padilla was on sick leave, Justice Torres inhibited himself from participation, while Justice Vitug “maintained his opinion that the matter is not ripe for judicial adjudication.” Since the motions failed to get a majority vote from the thirteen justices participating in the deliberation, they were “denied with finality.”

Justices Davide, Puno, Francisco and Hermosisima wrote Separate Opinions on the MRs. Justice Davide clarified that in declaring RA 6735 to be inadequate, the Court really meant that it was unconstitutional for failing to comply with the completeness and

“sufficient standard” tests in purporting to delegate a delegable legislative power. Justice Puno, on the other hand, stressed that the clear intent of the Congress in enacting RA 6735 was to implement the provisions of the Constitution granting the people a new right, that of initiating and approving amendments to the Constitution. Such intent, he said, the Court had a duty to effectuate.

PIRMA v. Comelec

But the razor-thin vote denying the MRs did not daunt PIRMA, led by Spouses Alberto and Carmen Pedrosa, from pursuing the people’s constitutional right to propose amendments to the Constitution. On June 23, 1997, PIRMA filed a new petition before the Comelec, this time accompanied by nearly six million signatures, to show compliance with the constitutional requirement (of at least 12 percent of all the registered voters nationwide with at least 3 percent in each legislative district). However, on July 8, 1997, the Comelec dismissed the petition “in accordance with the permanent restraining order of the Honorable Supreme Court” earlier issued in *Santiago*. On July 25, 1997, PIRMA elevated the matter to the Supreme Court, accusing the Comelec of grave abuse of discretion (1) in dismissing its petition and (2) in declaring RA 6735 “inadequate to cover its system of initiative on amendments to the Constitution.”

In a minute Resolution dated September 23, 1997, “the Court ruled, first, by unanimous vote, that no grave abuse of discretion could be attributed to the public respondent Comelec in dismissing the petition.” Regarding the Court’s ruling that RA 6735 was insufficient, seven members of the Court (*CJ* Narvasa and *JJ*. Regalado, Davide, Romero, Bellosillo, Kapunan and Torres) voted that “there was no need for

re-examination of the second issue.” Justice Vitug agreed with them for the reason that “the case at bar is not the proper vehicle for the purpose.” The five who disagreed with the majority (JJ. Melo, Puno, Francisco, Hermosisima and I) opined that there was a need for such reexamination. Justice Mendoza was on leave. Separate Opinions were written by Justices Davide, Bellosillo, Vitug, Kapunan, Francisco and myself.

Justice Davide opined that the elements of *res judicata* had set in. He said that *Santiago v. Comelec* actually included, as respondents, Atty. Jesus Delfin and Spouses Alberto and Carmen Pedrosa, all in their capacities as founding members of PIRMA. In *PIRMA*, Atty. Delfin was excluded, while the Pedrosa spouses were joined by several others as petitioners. Justice Bellosillo iterated the doctrine that a “party may not evade the application of the rule on *res judicata* by simply including additional parties in the subsequent case and by not including as parties in the later case persons who were parties in the previous suit.” Other than the substantial identity of parties, the PIRMA and Delfin petitions had only one cause of action and relief sought -- to set in motion the process of amending the Constitution through the people’s initiative.

My points, summarized hereinbelow, revolved around one particular statement in my Dissent in *Santiago*: “there is a right way to do the right thing at the right time for the right reason.”[\[107\]](#)

The people’s initiative as a means of proposing amendments to our Constitution was the *right thing* that citizens could avail themselves of in order to articulate their will. Republic Act 6735 and Comelec Resolution 2300 provided the sufficient authority, or the *right way*, to implement this novel provision in our fundamental law. Both adequately laid

down the requisites of a petition for initiative and the procedure that the Comelec should undertake relative thereto. At the same time, I stressed that the adequacy of the law would not *ipso facto* validate the PIRMA petition and

automatically lead to a plebiscite. There was a need to address at least four other questions:

(1) Does the proposed change constitute an amendment, not a revision, of the Constitution? (2) Which registry of voters will be used to verify the signatures in the petition?^[108] (3) Are the signatories to the petition the true source of the clamor for the proposed Charter change? and (4) Are the six million signatures^[109] attached to the PIRMA petition genuine and verifiable?

Initiative and referendum, I wrote, were the “ultimate weapon[s] of the people to negate government malfeasance and misfeasance.”^[110] I stressed that the right of initiative belonged to the people, not to the government and its minions, for whom the avenue for proposing Charter changes was either a constitutional convention or Congress turned into a constituent assembly.

Thus, the proposed change -- *the right reason* -- must originate from the will of the people themselves. Furthermore, the exercise of initiative must be at the appropriate or *right time*. Under the Constitution, amendments thereto may not be introduced “within five years following [its] ratification x x x nor oftener than once every five years thereafter.” The five-year prohibition was already inoperative. However, given the circumstance then prevailing -- less than eight months to go before the May 1998 national elections -- I pointed out that there was no more time to give due course to PIRMA’s petition proposing to lift the term limits of elective officials in order to allow incumbents to seek reelection in the said polls. In any event, this lack of time should not have prevented the Court from declaring that RA 6735 was sufficient to implement the people’s right of initiative.

As I said earlier, no case in the Supreme Court during my last three years of incumbency has elicited more controversy and more critical outbursts from the media and the public than these Cha-cha cases. The votings were quite close, but in the end the rulings were quite definitive and the vote, decisive. While the Motion for Reconsideration in *Santiago* was denied through a balanced 6-6 vote, the denial of the petition in the later case of *PIRMA* was firm at 8 (including *J. Vitug*) to 5 (or even 6 if *J. Mendoza*, who had previously voted with the dissenters, were included). In the end, the rule of law prevailed. And even if I voted with the minority, I am still satisfied that all voices were heard and that the decision was carried through in accordance with the highest tradition of the rule of law.

No Partisan Alignment

In the midst of the controversy, some critics accused henchmen of then President Fidel V. Ramos of pressuring or even intimidating some justices to favor *PIRMA*. Indeed, if all the Ramos appointees lined up their votes solidly, *PIRMA* would have won a reexamination of the novel *Santiago* doctrine of statutory insufficiency. But Justice Kapunan, a Ramos appointee, consistently voted against *PIRMA* and *Delfin*; and, in the final vote on September 23, 1997, three Ramos appointees -- Justices *Vitug*, *Kapunan* and *Torres* -- sided with the majority, thereby decisively ending the controversy and the vicious but erroneous charge of partisan alignments in the Court.

Furthermore, even the dissenters did not give unqualified support to *PIRMA*. In my case I explained, in both of my Separate Opinions dated March 19, 1997 and September 23, 1997, that while I disagreed most certainly with the theory of statutory

insufficiency espoused by the majority, I did not say that, as a necessary consequence, I favored an outright grant of the PIRMA petition. I carefully elucidated:

“[M]y position upholding the adequacy of RA 6735 x x x 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 is it the beneficiaries of term extension who are in fact orchestrating such move to advance their own political self-interests?
- “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?”

That was why in the epilogue to my Separate Opinion dated September 23, 1997, I stressed my faith in initiative as a democratic method by which our people may express their will. My position on the entire Cha-cha controversy was best expressed by my closing statement, which I quote in full:

“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 reserve 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 true? Or is it just an empty boast? By preventing the verification of 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.”

[105] 270 SCRA 106, March 19, 1997, and Resolution in GR No. 127325 dated June 10, 1997.

[106] GR No. 129754, September 23, 1997.

[107] Daniel Goleman, in his best-selling book *Emotional Intelligence* (pp. ix and xiii), 1996 ed., credited a similar quote to Aristotle who in *The Nicomachean Ethics* described the rare skill “to be angry with the right person, to the right degree, at the right time, for the right purpose, and in the right way.”

[108] This was relevant, considering that RA 8189 voided the old registry of voters used in the 1995 national elections, while the new list may only be used starting in the May 1998 elections.

[109] Under § 2, Art. XVII of the Constitution, the proposed constitutional amendment must be initiated by at least 12 percent of the total number of registered voters, of which every legislative district must be represented by at least 3 percent of the registered voters therein.

[110] *Garcia v. Comelec*, 237 SCRA 279, 289, September 30, 1994.