

STATEMENT OF FORMER JUSTICE VICENTE V. MENDOZA  
BEFORE THE SENATE COMMITTEE ON CONSTITUTIONAL  
AMENDMENTS, REVISION OF CODES AND LAWS, ON  
DECEMBER 11, 2006, ON S. NO. 2 AND S. NO. 2209 BOTH  
CALLING FOR A CONSTITUTIONAL CONVENTION AND ON  
H. CT. RES. NO. 26 AND P. S. RES. NO. 580 BOTH SEEKING TO  
CONVENE CONGRESS TO PROPOSE AMENDMENTS TO OR  
REVISIONS OF THE CONSTITUTION OF THE PHILIPPINES

### **The Need for Continuity and Change**

The amendment or revision of the Constitution exemplifies the creative element of law, enabling it to serve as anchor while itself subject to change. For though law must be stable, it cannot stand still. No one has articulated this basic dilemma with greater force and cogency than Alfred North Whitehead who, in his study of symbolism, said:

The art of a free society consists first in the maintenance of the symbolic code; and secondly in fearlessness of revision, to secure that the code serves those purposes which satisfy an enlightened reason. Those societies which cannot combine reverence to their symbols with freedom of revision, must ultimately decay either from anarchy, or from slow atrophy of a life stifled by useless shadows.<sup>1</sup>

### **Amendment Clause An Essential Part of the Constitution**

To be sure, there are two ways by which the Constitution may be changed: **formally** through its amendment or revision as provided in Art.

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<sup>1</sup> ALFRED NORTH WHITEHEAD, *SYMBOLISM, ITS MEANING AND EFFECT* 88 (1927), *quoted in* PAUL A. FREUND, *THE SUPREME COURT OF THE UNITED STATES* 176 (1961)

XVII, or **informally** through judicial interpretation of its broad and open ended provisions which results without a single word being altered. Our concern at the moment is with the formal method of change.

As is true of any written constitution, the amendment clause is an essential part thereof for two reasons. First, the more definite and rigid the provisions of a constitution are -- thus precluding interpretation by the courts -- the greater is the need for such a clause. Second, the clause serves as a safety valve against violent change or even revolution by providing a procedure for orderly change.

### **Formal Amendment Process, Neither Impossible Nor Easy**

The text Amendment Clause (Art. XVII) reads:

#### AMENDMENT OR REVISION

SEC. 1. Any amendment to, or revision of, this Constitution may be proposed by:

(1) The Congress, upon the vote of three-fourths of all its Members; or

(2) A constitutional convention.

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

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

SEC. 3. The Congress may, by a vote of two-thirds of all its Members, call a constitutional convention, or by a majority vote of all its Members, submit to the electorate the question of calling such a convention.

SEC. 4. Any amendment to, or revision of, this Constitution under Section 1 hereof shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the approval of such amendment or revision.

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

~~The purpose of the Amendment Clause is to provide a procedure for the orderly change of the Constitution.~~ As Professor Dellinger has written, "the formal amendment process represents a domestication of the right to revolution."<sup>2</sup> At the same time, the Amendment Clause functions as a safeguard against the frenzy of the moment by requiring the vote of extraordinary majorities and popular ratification for amending or revising the Constitution.

### **Stages of the Amendment Process**

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<sup>2</sup> Walter Dellinger, *Legitimacy of Constitutional Change: Rethinking the Amendment Process*, 97 HARV. L. REV. 386, 431 (1983).

