

PANGANIBAN, J., separate concurring and dissenting opinion

Our distinguished colleague, Mr. Justice Hilario G. Davide Jr., writing for the majority, holds that:

- (1) The Comelec acted without jurisdiction or with grave abuse of discretion in entertaining the "initiatory" Delfin Petition.
- (2) While the Constitution allows amendments to "be directly proposed by the people through initiative." There is no implementing law for the purpose. RA 6735 is "incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned."
- (3) Comelec Resolution No. 2300, "insofar as it prescribes rules and regulations on the conduct of initiative on amendments to the Constitution, is void."

I concur with first item above. Until and unless an initiatory petition can show the required number of signatures -- in this case, 12% of all the registered voters in the Philippines with at least 3% in every legislative district -- no public funds, may be spent and no government resources may be used in an initiative to amend the Constitution. Verily, the Comelec cannot even entertain any petition absent such signatures. However, I dissent most respectfully from the majority's two other rulings. Let me explain.

Under the above restrictive holding espoused by the Court's majority, the Constitution cannot be amended at all through a people's initiative. Not by Delfin, not by Pirma, not by anyone, not even by all the voters of the country acting together. This decision will effectively but unnecessarily curtail, nullify, abrogate and render inutile the people's right to change the basic law. At the very least, the majority holds the right hostage to congressional discretion on whether to pass a new law to implement it, when there is already one existing at present. This right to amend through initiative, it bears stressing, is guaranteed by Section 2, Article XVII of the Constitution, as follows:

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

With all due respect, I find the majority's position all too sweeping and all too extremist. It is equivalent to burning the whole house to exterminate the rats, and to killing the patient to relieve him of pain. What Citizen Delfin wants the Comelec to do we should reject. But we should not thereby preempt any future effort to exercise the right of initiative *correctly and judiciously. The fact that the Delfin Petition proposes a misuse of initiative does not justify a ban against its proper use. Indeed, there is a right way to do the right thing at the right time and for the right reason.*

**Taken Together and Implementing Properly,
the Constitution, RA 6735 and Comelec Resolution
2300 Are Sufficient to Implement Constitutional Initiatives**

While RA 6735 may not be a perfect law, it was -- as the majority openly concedes -- intended by the legislature to cover and, I respectfully submit, it contains enough provisions to effectuate an initiative on the Constitution.^[1] I completely agree with the inspired and inspiring opinions of Mr.

Justice Reynato S. Puno and Mr. Justice Ricardo J. Francisco that RA 6735, the Roco law on initiative, sufficiently implements the right of the people to initiate amendments to the Constitution. Such views, which I shall no longer repeat nor elaborate on, are thoroughly consistent with this Court's unanimous en banc rulings in Subic Bay Metropolitan Authority vs. Commission on Elections,^[2] that "provisions for initiative x x x are (to be) liberally construed to effectuate their purposes, to facilitate and not hamper the exercise by the voters of the rights granted thereby"; and in Garcia vs. Comelec,^[3] that any "effort to trivialize the effectiveness of people's initiative ought to be rejected."

No law can completely and absolutely cover all administrative details. In recognition of this, RA 6735 wisely empowered^[4] the Commission on Election "to promulgate such rules and regulations as may be necessary to carry out the purposes of this Act." And pursuant thereto, the Comelec issued its Resolution 2300 on 16 January 1991. Such Resolution, by its very words, was promulgated "to govern the conduct of initiative *on the Commission* and initiative and referendum on national and local news," not by the incumbent Commission on Elections but by one then composed of Acting Chairperson Haydee b. Yorac, Comms. Alfredo E. Abueg Jr., Leopoldo L. Africa, Andres R. Flores, Dario C. Rama and Magdara B. Dimaampao. All of these Commissioners who signed Resolution 2300 have retired from the Commission, and thus we cannot ascribe any vile motive unto them, other than an honest, sincere and exemplary effort to give life to a cherished right of our people.

The majority argues that while Resolution 2300 is valid in regard to national laws and local legislations, it is void in reference to constitutional amendments. There is no basis for such differentiation. The source of and authority for the Resolution is the same law, RA 6735.

I respectfully submit that taken together and interpreted properly and liberally, the Constitution (particularly Art. XVII, Sec. 2), RA 6735 and Comelec Resolution 2300 provide more than sufficient authority to implement, effectuate and realize our people's power to amend the Constitution.

Petitioner Delfin and the Pedrosa Spouses Should Not Be Muzzled

I am glad the majority decided to heed our plea to lift the temporary restraining order issued by this Court on 18 December 1996 insofar as it prohibited Petitioner Delfin and the Spouses Pedrosa from exercising their right of initiative. In fact, I believe that such restraining order as against private respondents should not have been issued, in the first place. While I agree that the Comelec should be stopped from using public funds and government resources to help them gather signatures, I firmly believe that this Court has no power to restrain them from exercising their right of initiative. The right to propose amendments to the Constitution is really a species of the right of free speech and free assembly. And certainly, it would be tyrannical and despotic to stop anyone from speaking freely and persuading others to conform to his/her beliefs. As the eminent Voltaire once said, "I may disagree with what you say, but I will defend to the death your right to say it." After all, freedom is not really for the thought we agree with, but as Justice Holmes wrote, "freedom for the thought that we hate."^[5]

Epilogue

By way of epilogue, let me stress the guiding tenet of my Separate Opinion. Initiative, like referendum and recall, is a new and treasured feature of the Filipino constitutional system. All three are institutionalized legacies of the world-admired EDSA people power. Like elections and plebiscites, they are hallowed expressions of popular sovereignty. They are sacred democratic rights of our people to be used as their final weapons against political excesses, opportunism,

inaction, oppression and misgovernance; as well as their reserved instruments to exact transparency, accountability and faithfulness from their chosen leaders. *While on the one hand, their misuse and abuse must be resolutely struck down, on the other, their legitimate exercise should be carefully nurtured and zealously protected.*

WHEREFORE, I vote to GRANT the petition of Sen. Miriam D. Santiago *et al.* and to DIRECT Respondent Commission on Elections to DISMISS the Delfin Petition on the ground of prematurity, but not on the other grounds relied upon by the majority. I also vote to LIFT the temporary restraining order issued on 18 December 1996 insofar as it prohibits Jesus Delfin, Alberto Pedrosa and Carmen Pedrosa from exercising their right to free speech in proposing amendments to the Constitution.

[1] Apart from its text on "national initiative" which could be used by analogy, RA 6735 contains sufficient provisions covering initiative on the Constitution, which are clear enough and speak for themselves, like:

SEC. 2. Statement of Policy. -- The power of the people under a system of initiative and referendum to directly propose, enact, approve or reject, in whole or in part, *the Constitution*, laws, ordinances, or resolution passed by any legislative body upon compliance with the requirements of this Act is hereby affirmed, recognized and guaranteed.

SEC. 3. Definition of Terms. -- For purposes of this Act, the following terms shall mean:

(a) "Initiative" is the power of the people to propose *amendments to the Constitution* or to propose and enact legislation's through an election called for the purpose.

There are three (3) systems of initiative, namely:

- a.1. *Initiative on the Constitution* which refers to a petition proposing amendments to the Constitution;
- a.2. Initiative on statutes which refers to a petition proposing to enact a national legislation; and
- a.3. Initiative on local legislation which refers to a petition proposing to enact a regional, provincial, city, municipal, or barangay law, resolution or ordinance.

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(e) "Plebiscite" is the electoral process by which *an initiative on the Constitution* is approved or rejected by the people.

(f) "Petition" is the written instrument containing the proposition and the required number of signatories. It shall be in a form to be determined by and submitted to the Commission on Elections, hereinafter referred to as the Commission

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SEC. 5. *Requirements.* -- xxx

(b) A *petition for an initiative on the 1987 Constitution* must have at least twelve *per centum* (12%) of the total number of registered voters as signatories, of which every legislative district must be represented by at least three *per centum* (3%) of the registered voters therein. Initiative on the Comstitution may be exercised only after five (5) years from the ratification of the 1987 Constitution and only once every five (5) years thereafter.

SEC. 9. Effectivity of Initiative or Referendum Proposition. --

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(b) The proposition in *an initiative on the Constitution* approved by a majority of the votes casts in the plebiscite shall become effective as to the day of the plebiscite.

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(c) The petition shall state the following:

- c.1. contents or text of the proposed law sought to be enacted, approved or rejected, amended or repealed, as the case may be;
- c.2. the proposition;

c.3. the reason or reasons therefor;

c.4. that it is not one of the exceptions provided herein;

c.5. signatures of the petitioners or registered voters; and

c.6. an abstract or summary proposition in not more than one hundred (100) words which shall be legibly written or printed at the top of every page of the petition.

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SEC. 19. *Applicability of the Omnibus Election Code.* -- The Omnibus Election Code and other election laws, not inconsistent with the provisions of this Act, shall apply to all initiatives and referenda.

SEC. 20. *Rules and Regulations.* -- The Commission is hereby empowered to promulgate such rules and regulations as may be necessary to carry out the purposes of this Act. (Italics supplied)

^[2] G.R. No. 125416, September 26, 1996.

^[3] 237 SCRA 279, 282, September 30, 1994.

^[4] Sec. 20, R.A. 6735.

^[5] United States vs. Rosika Schwimmer, 279 U.S. 644, 655 (1929).