EN BANC

[G.R. No. 127325. March 19, 1997]

MIRIAM DEFENSOR SANTIAGO, ALEXANDER PADILLA and MARIA ISABEL ONGPIN, *petitioners, vs.* COMMISSION ON ELECTIONS, JESUS DELFIN, ALBERTO PEDROSA & CARMEN PEDROSA, in their capacities as founding members of the People's Initiative for Reforms, Modernization and Action (PIRMA), *respondents,* SENATOR RAUL S. ROCO, DEMOKRASYA-IPAGTANGGOL ANG KONSTITUSYON (DIK), MOVEMENT OF ATTORNEYS FOR BROTHERHOOD INTEGRITY AND NATIONALISM, INC. (MABINI), INTEGRATED BAR OF THE PHILIPPINES (IBP) and LABAN NG DEMOKRATIKONG PILIPINO (LABAN), *petitioners-intervenors.*

D E C I S I O N

DAVIDE, JR., *J.*:

The heart of this controversy brought to us by way of a petition for prohibition under Rule 65 of the Rules of Court is the right of the people to directly propose amendments to the Constitution through the system of *initiative* under Section 2 of Article XVII of the 1987 Constitution. Undoubtedly, this demands special attention, as this system of initiative was unknown to the people of this country, except perhaps to a few scholars, before the drafting of the 1987 Constitution. The 1986 Constitutional Commission itself, through the original proponent[1] and the main sponsor[2] of the proposed Article on Amendments or Revision of the Constitution, characterized this system as "innovative".[3] Indeed it is, for both under the 1935 and 1973 Constitutions, only two methods of proposing amendments to, or revision of, the Constitution were recognized, *viz.*, (1) by Congress upon a vote of three-fourths of all its members and (2) by a constitutional convention.[4] For this and the other reasons hereafter discussed, we resolved to give due course to this petition.

On 6 December 1996, private respondent Atty. Jesus S. Delfin filed with public respondent Commission on Elections (hereafter, COMELEC) a "Petition to Amend the Constitution, to Lift Term Limits of Elective Officials, by People's Initiative" (hereafter, Delfin Petition)[5] wherein Delfin asked the COMELEC for an order

1. Fixing the time and dates for signature gathering all over the country;
2. Causing the necessary publications of said Order and the attached "Petition for Initiative on the 1987 Constitution, in newspapers of general and local circulation;
3. Instructing Municipal Election Registrars in all Regions of the Philippines, to assist Petitioners and volunteers, in establishing signing stations at the time and on the dates designated for the purpose.

Delfin alleged in his petition that he is a founding member of the Movement for People's Initiative,[6] a group of citizens desirous to avail of the system intended to institutionalize people power; that he and the members of the Movement and other volunteers intend to exercise the power to directly propose amendments to the Constitution granted under Section 2, Article XVII of

the Constitution; that the exercise of that power shall be conducted in proceedings under the control and supervision of the COMELEC; that, as required in COMELEC Resolution No. 2300, signature stations shall be established all over the country, with the assistance of municipal election registrars, who shall verify the signatures affixed by individual signatories; that before the Movement and other volunteers can gather signatures, it is necessary that the time and dates to be designated for the purpose be first fixed in an order to be issued by the COMELEC; and that to adequately inform the people of the electoral process involved, it is likewise necessary that the said order, as well as the Petition on which the signatures shall be affixed, be published in newspapers of general and local circulation, under the control and supervision of the COMELEC.

The Delfin Petition further alleged that the provisions sought to be amended are Sections 4 and 7 of Article VI,[7] Section 4 of Article VII,[8] and Section 8 of Article X[9] of the Constitution. Attached to the petition is a copy of a "Petition for Initiative on the 1987 Constitution"[10] embodying the proposed amendments which consist in the deletion from the aforecited sections of the provisions concerning term limits, and with the following proposition:

DO YOU APPROVE OF LIFTING THE TERM LIMITS OF ALL ELECTIVE GOVERNMENT OFFICIALS, AMENDING FOR THE PURPOSE SECTIONS 4 AND 7 OF ARTICLE VI, SECTION 4 OF ARTICLE VII, AND SECTION 8 OF ARTICLE X OF THE 1987 PHILIPPINE CONSTITUTION?

According to Delfin, the said Petition for Initiative will first be submitted to the people, and after it is signed by at least twelve per cent of the total number of registered voters in the country it will be formally filed with the COMELEC.

Upon the filing of the Delfin Petition, which was forthwith given the number UND 96-037 (INITIATIVE), the COMELEC, through its Chairman, issued an Order[11] (a) directing Delfin "to cause the publication of the petition, together with the attached Petition for Initiative on the 1987 Constitution (including the proposal, proposed constitutional amendment, and the signature form), and the notice of hearing in three (3) daily newspapers of general circulation at his own expense" not later than 9 December 1996; and (b) setting the case for hearing on 12 December 1996 at 10:00 a.m.

At the hearing of the Delfin Petition on 12 December 1996, the following appeared: Delfin and Atty. Pete Q. Quadra; representatives of the People's Initiative for Reforms, Modernization and Action (PIRMA); intervenor-oppositor Senator Raul S. Roco, together with his two other lawyers; and representatives of, or counsel for, the Integrated Bar of the Philippines (IBP), Demokrasya-Ipagtanggol ang Konstitusyon (DIK), Public Interest Law Center, and Laban ng Demokratikong Pilipino (LABAN).[12] Senator Roco, on that same day, filed a Motion to Dismiss the Delfin Petition on the ground that it is not the initiatory petition properly cognizable by the COMELEC.

After hearing their arguments, the COMELEC directed Delfin and the oppositors to file their "memoranda and/or oppositions/memoranda" within five days.[13]

On 18 December 1996, the petitioners herein -- Senator Miriam Defensor Santiago, Alexander Padilla, and Maria Isabel Ongpin -- filed this special civil action for prohibition raising the following arguments:

(1) The constitutional provision on people's *initiative* to amend the Constitution can only be implemented by law to be passed by Congress. No such law has been passed; in fact, Senate Bill No. 1290 entitled *An Act Prescribing and Regulating Constitutional Amendments by People's Initiative,* which petitioner Senator Santiago filed on 24 November 1995, is still pending before the Senate Committee on Constitutional Amendments.

(2) It is true that R.A. No. 6735 provides for three systems of initiative, namely, initiative on the Constitution, on statutes, and on local legislation. However, it failed to provide any subtitle on initiative on the Constitution, unlike in the other modes of initiative, which are specifically provided for in Subtitle II and Subtitle III. This deliberate omission indicates that the matter of people's *initiative* to amend the Constitution was left to some future law. Former Senator Arturo Tolentino stressed this deficiency in the law in his privilege speech delivered before the Senate in 1994: "There is not a single word in that law which can be considered as implementing [the provision on constitutional initiative]. Such implementing provisions have been obviously left to a separate law."

(3) Republic Act No. 6735 provides for the effectivity of the law after publication in print media. This indicates that the Act covers only laws and not constitutional amendments because the latter take effect only upon ratification and not after publication.

(4) COMELEC Resolution No. 2300, adopted on 16 January 1991 to govern "the conduct of initiative on the Constitution and initiative and referendum on national and local laws, is *ultra vires* insofar as *initiative* on amendments to the Constitution is concerned, since the COMELEC has no power to provide rules and regulations for the exercise of the right of initiative to amend the Constitution. Only Congress is authorized by the Constitution to pass the implementing law.

(5)The people's initiative is limited to *amendments* to the Constitution, not to *revision* thereof. Extending or lifting of term limits constitutes a *revision* and is, therefore, outside the power of the people's initiative.

(6) Finally, Congress has not yet appropriated funds for people's initiative; neither the COMELEC nor any other government department, agency, or office has realigned funds for the purpose.

To justify their recourse to us via the special civil action for prohibition, the petitioners allege that in the event the COMELEC grants the Delfin Petition, the people's initiative spearheaded by PIRMA would entail expenses to the national treasury for general re-registration of voters amounting to at least P180 million, not to mention the millions of additional pesos in expenses which would be incurred in the conduct of the initiative itself. Hence, the transcendental importance to the public and the nation of the issues raised demands that this petition for prohibition be settled promptly and definitely, brushing aside technicalities of procedure and calling for the admission of a taxpayer's and legislator's suit.[14] Besides, there is no other plain, speedy, and adequate remedy in the ordinary course of law.

On 19 December 1996, this Court (a) required the respondents to comment on the petition within a non-extendible period of ten days from notice; and (b) issued a temporary restraining order, effective immediately and continuing until further orders, enjoining public respondent COMELEC from proceeding with the Delfin Petition, and private respondents Alberto and Carmen Pedrosa from conducting a signature drive for people's initiative to amend the Constitution.

On 2 January 1997, private respondents, through Atty Quadra, filed their Comment[15] on the petition. They argue therein that:

1. IT IS NOT TRUE THAT "IT WOULD ENTAIL EXPENSES TO THE NATIONAL TREASURY FOR GENERAL REGISTRATION OF VOTERS AMOUNTING TO AT LEAST PESOS: ONE HUNDRED EIGHTY MILLION (₱180,000,000.00)" IF THE "COMELEC GRANTS THE PETITION FILED BY RESPONDENT DELFIN BEFORE THE COMELEC."

2. NOT A SINGLE CENTAVO WOULD BE SPENT BY THE NATIONAL GOVERNMENT IF THE COMELEC GRANTS THE PETITION OF RESPONDENT DELFIN. ALL EXPENSES IN THE SIGNATURE GATHERING ARE ALL FOR THE ACCOUNT OF RESPONDENT DELFIN AND HIS VOLUNTEERS PER THEIR PROGRAM OF ACTIVITIES AND EXPENDITURES SUBMITTED TO

THE COMELEC. THE ESTIMATED COST OF THE DAILY PER DIEM OF THE SUPERVISING SCHOOL TEACHERS IN THE SIGNATURE GATHERING TO BE DEPOSITED and TO BE PAID BY DELFIN AND HIS VOLUNTEERS IS ₱2,571, 200.00;

3. THE PENDING PETITION BEFORE THE COMELEC IS ONLY ON THE SIGNATURE GATHERING WHICH BY LAW COMELEC IS DUTY BOUND "TO SUPERVISE CLOSELY" PURSUANT TO ITS "INITIATORY JURISDICTION" UPHELD BY THE HONORABLE COURT IN ITS RECENT SEPTEMBER 26, 1996 DECISION IN THE CASE OF *SUBIC BAY METROPOLITAN AUTHORITY VS. COMELEC, ET AL*. G.R. NO. 125416;

4. REP. ACT NO. 6735 APPROVED ON AUGUST 4, 1989 IS THE ENABLING LAW IMPLEMENTING THE POWER OF PEOPLE INITIATIVE TO PROPOSE AMENDMENTS TO THE CONSTITUTION. SENATOR DEFENSOR-SANTIAGO'S SENATE BILL NO. 1290 IS A DUPLICATION OF WHAT ARE ALREADY PROVIDED FOR IN REP. ACT NO. 6735;

5. COMELEC RESOLUTION NO. 2300 PROMULGATED ON JANUARY 16, 1991 PURSUANT TO REP. ACT 6735 WAS UPHELD BY THE HONORABLE COURT IN THE RECENT SEPTEMBER 26, 1996 DECISION IN THE CASE OF *SUBIC BAY METROPOLITAN AUTHORITY VS. COMELEC, ET AL*. G.R. NO. 125416 WHERE THE HONORABLE COURT SAID: "THE COMMISSION ON ELECTIONS CAN DO NO LESS BY SEASONABLY AND JUDICIOUSLY PROMULGATING GUIDELINES AND RULES FOR BOTH NATIONAL AND LOCAL USE, IN IMPLEMENTING OF THESE LAWS."

6. EVEN SENATOR DEFENSOR-SANTIAGO'S SENATE BILL NO. 1290 CONTAINS A PROVISION DELEGATING TO THE COMELEC THE POWER TO "PROMULGATE SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO CARRY OUT THE PURPOSES OF THIS ACT." (SEC. 12, S.B. NO. 1290, ENCLOSED AS ANNEX E, PETITION);

7. THE LIFTING OF THE LIMITATION ON THE TERM OF OFFICE OF ELECTIVE OFFICIALS PROVIDED UNDER THE 1987 CONSTITUTION IS NOT A "REVISION" OF THE CONSTITUTION. IT IS ONLY AN AMENDMENT. "AMENDMENT ENVISAGES AN ALTERATION OF ONE OR A FEW SPECIFIC PROVISIONS OF THE CONSTITUTION. REVISION CONTEMPLATES A RE-EXAMINATION OF THE ENTIRE DOCUMENT TO DETERMINE HOW AND TO WHAT EXTENT IT SHOULD BE ALTERED." (PP. 412-413, 2ND. ED. 1992, 1097 PHIL. CONSTITUTION, BY JOAQUIN G. BERNAS, S.J.).

Also on 2 January 1997, private respondent Delfin filed in his own behalf a Comment[16] which starts off with an assertion that the instant petition is a "knee-jerk reaction to a draft 'Petition for Initiative on the 1987 Constitution' ... which is not formally filed yet." What he filed on 6 December 1996 was an "Initiatory Pleading" or "Initiatory Petition," which was legally necessary to start the signature campaign to amend the Constitution or to put the movement to gather signatures under COMELEC power and function. On the substantive allegations of the petitioners, Delfin maintains as follows:

(1) Contrary to the claim of the petitioners, there is a law, R.A. No. 6735, which governs the conduct of *initiative* to amend the Constitution. The absence therein of a subtitle for such initiative is not fatal, since subtitles are not requirements for the validity or sufficiency of laws.

(2) Section 9(b) of R.A. No. 6735 specifically provides that the proposition in an *initiative* to amend the Constitution approved by the majority of the votes cast in the plebiscite shall become effective as of the day of the plebiscite.

(3) The claim that COMELEC Resolution No. 2300 is *ultra vires* is contradicted by (a) Section 2, Article

IX-C of the Constitution, which grants the COMELEC the power to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, *initiative*, referendum, and recall; and (b) Section 20 of R.A. 6735, which empowers the COMELEC to promulgate such rules and regulations as may be necessary to carry out the purposes of the Act.

(4) The proposed initiative does not involve a revision of, but mere amendment to, the Constitution because it seeks to alter only a few specific provisions of the Constitution, or more specifically, only those which lay term limits. It does not seek to reexamine or overhaul the entire document.

As to the public expenditures for registration of voters, Delfin considers petitioners' estimate of ₱180 million as unreliable, for only the COMELEC can give the exact figure. Besides, if there will be a plebiscite it will be simultaneous with the 1997 Barangay Elections. In any event, fund requirements for *initiative* will be a priority government expense because it will be for the exercise of the sovereign power of the people.

In the Comment[17] for the public respondent COMELEC, filed also on 2 January 1997, the Office of the Solicitor General contends that:

(1) R.A. No. 6735 deals with, *inter alia*, people's *initiative* to amend the Constitution. Its Section 2 on Statement of Policy explicitly affirms, recognizes, and guarantees that power; and its Section 3, which enumerates the three systems of *initiative*, includes initiative on the Constitution and defines the same as the power to propose amendments to the Constitution. Likewise, its Section 5 repeatedly mentions *initiative* on the Constitution.

(2) A separate subtitle on *initiative* on the Constitution is not necessary in R.A. No. 6735 because, being national in scope, that system of *initiative* is deemed included in the subtitle on National Initiative and Referendum; and Senator Tolentino simply overlooked pertinent provisions of the law when he claimed that nothing therein was provided for *initiative* on the Constitution.

(3) Senate Bill No. 1290 is neither a competent nor a material proof that R.A. No. 6735 does not deal with *initiative* on the Constitution.

(4) Extension of term limits of elected officials constitutes a mere amendment to the Constitution, not a revision thereof.

(5) COMELEC Resolution No. 2300 was validly issued under Section 20 of R.A. No. 6735 and under the Omnibus Election Code. The rule-making power of the COMELEC to implement the provisions of R.A. No. 6735 was in fact upheld by this Court in *Subic Bay Metropolitan Authority vs. COMELEC* .

On 14 January 1997, this Court (a) confirmed *nunc pro tunc* the temporary restraining order; (b) noted the aforementioned Comments and the Motion to Lift Temporary Restraining Order filed by private respondents through Atty. Quadra, as well as the latter's Manifestation stating that he is the counsel for private respondents Alberto and Carmen Pedrosa only and the Comment he filed was for the Pedrosas; and (c) granted the Motion for Intervention filed on 6 January 1997 by Senator Raul Roco and allowed him to file his Petition in Intervention not later than 20 January 1997; and (d) set the case for hearing on 23 January 1997 at 9:30 a.m.

On 17 January 1997, the *Demokrasya-Ipagtanggol ang Konstitusyon* (DIK) and the Movement of Attorneys for Brotherhood Integrity and Nationalism, Inc. (MABINI), filed a Motion for Intervention. Attached to the motion was their Petition in Intervention, which was later replaced by an Amended Petition in Intervention wherein they contend that:

(1) The Delfin proposal does not involve a mere amendment to, but a revision of, the Constitution because, in

the words of Fr. Joaquin Bernas, S.J.,[18] it would involve a change from a political philosophy that rejects unlimited tenure to one that accepts unlimited tenure; and although the change might appear to be an isolated one, it can affect other provisions, such as, on synchronization of elections and on the State policy of guaranteeing equal access to opportunities for public service and prohibiting political dynasties.[19] A *revision* cannot be done by *initiative* which, by express provision of Section 2 of Article XVII of the Constitution, is limited to amendments.

(2) The prohibition against reelection of the President and the limits provided for all other national and local elective officials are based on the philosophy of governance, "to open up the political arena to as many as there are Filipinos qualified to handle the demands of leadership, to break the concentration of political and economic powers in the hands of a few, and to promote effective proper empowerment for participation in policy and decision-making for the common good"; hence, to remove the term limits is to negate and nullify the noble vision of the 1987 Constitution.

(3) The Delfin proposal runs counter to the purpose of initiative, particularly in a conflict-of-interest situation. *Initiative* is intended as a fallback position that may be availed of by the people only if they are dissatisfied with the performance of their elective officials, but not as a premium for good performance.[20]

(4) R.A. No. 6735 is deficient and inadequate in itself to be called the enabling law that implements the people's *initiative* on amendments to the Constitution. It fails to state (a) the proper parties who may file the petition, (b) the appropriate agency before whom the petition is to be filed, (c) the contents of the petition, (d) the publication of the same, (e) the ways and means of gathering the signatures of the voters nationwide and 3% per legislative district, (f) the proper parties who may oppose or question the veracity of the signatures, (g) the role of the COMELEC in the verification of the signatures and the sufficiency of the petition, (h) the appeal from any decision of the COMELEC, (I) the holding of a plebiscite, and (g) the appropriation of funds for such people's initiative. Accordingly, there being no enabling law, the COMELEC has no jurisdiction to hear Delfin's petition.

(5) The deficiency of R.A. No. 6735 cannot be rectified or remedied by COMELEC Resolution No. 2300, since the COMELEC is without authority to legislate the procedure for a people's *initiative* under Section 2 of Article XVII of the Constitution. That function exclusively pertains to Congress. Section 20 of R.A. No. 6735 does not constitute a legal basis for the Resolution, as the former does not set a sufficient standard for a valid delegation of power.

On 20 January 1997, Senator Raul Roco filed his Petition in Intervention.[21] He avers that R.A. No. 6735 is the enabling law that implements the people's right to initiate constitutional amendments. This law is a consolidation of Senate Bill No. 17 and House Bill No. 21505; he co-authored the House Bill and even delivered a sponsorship speech thereon. He likewise submits that the COMELEC was empowered under Section 20 of that law to promulgate COMELEC Resolution No. 2300. Nevertheless, he contends that the respondent Commission is without jurisdiction to take cognizance of the Delfin Petition and to order its publication because the said petition is not the initiatory pleading contemplated under the Constitution, Republic Act No. 6735, and COMELEC Resolution No. 2300. What vests jurisdiction upon the COMELEC in an initiative on the Constitution is the filing of a petition for initiative which is signed by the required number of registered voters. He also submits that the proponents of a constitutional amendment cannot avail of the authority and resources of the COMELEC to assist them is securing the required number of signatures, as the COMELEC's role in an initiative on the Constitution is limited to the determination of the sufficiency of the initiative petition and the call and supervision of a plebiscite, if warranted.

On 20 January 1997, LABAN filed a Motion for Leave to Intervene.

The following day, the IBP filed a Motion for Intervention to which it attached a Petition in Intervention raising the following arguments:

(1) Congress has failed to enact an enabling law mandated under Section 2, Article XVII of the 1987 Constitution.

(2) COMELEC Resolution No. 2300 cannot substitute for the required implementing law on the initiative to amend the Constitution.

(3) The Petition for Initiative suffers from a fatal defect in that it does not have the required number of signatures.

(4) The petition seeks, in effect a revision of the Constitution, which can be proposed only by Congress or a constitutional convention.[22]

On 21 January 1997, we promulgated a Resolution (a) granting the Motions for Intervention filed by the DIK and MABINI and by the IBP, as well as the Motion for Leave to Intervene filed by LABAN; (b) admitting the Amended Petition in Intervention of DIK and MABINI, and the Petitions in Intervention of Senator Roco and of the IBP; (c) requiring the respondents to file within a nonextendible period of five days their Consolidated Comments on the aforesaid Petitions in Intervention; and (d) requiring LABAN to file its Petition in Intervention within a nonextendible period of three days from notice, and the respondents to comment thereon within a nonextendible period of five days from receipt of the said Petition in Intervention.

At the hearing of the case on 23 January 1997, the parties argued on the following pivotal issues, which the Court formulated in light of the allegations and arguments raised in the pleadings so far filed:

1. Whether R.A. No. 6735, entitled An Act Providing for a System of Initiative and Referendum and Appropriating Funds Therefor, was intended to include or cover *initiative* on amendments to the Constitution; and if so, whether the Act, as worded, adequately covers such *initiative*.

2. Whether that portion of COMELEC Resolution No. 2300 (In re: Rules and Regulations Governing the Conduct of Initiative on the Constitution, and Initiative and Referendum on National and Local Laws) regarding the conduct of initiative on amendments to the Constitution is valid, considering the absence in the law of specific provisions on the conduct of such initiative.

3. Whether the lifting of term limits of elective national and local officials, as proposed in the draft "Petition for Initiative on the 1987 Constitution," would constitute a revision of, or an amendment to, the Constitution.

4. Whether the COMELEC can take cognizance of, or has jurisdiction over, a petition solely intended to obtain an order (a) fixing the time and dates for signature gathering; (b) instructing municipal election officers to assist Delfin's movement and volunteers in establishing signature stations; and (c) directing or causing the publication of, *inter alia*, the unsigned proposed Petition for Initiative on the 1987 Constitution.

5. Whether it is proper for the Supreme Court to take cognizance of the petition when there is a pending case before the COMELEC.

After hearing them on the issues, we required the parties to submit simultaneously their respective memoranda within twenty days and requested intervenor Senator Roco to submit copies of the deliberations on House Bill No. 21505.

On 27 January 1997, LABAN filed its Petition in Intervention wherein it adopts the allegations and arguments in the main Petition. It further submits that the COMELEC should have dismissed

the Delfin Petition for failure to state a sufficient cause of action and that the Commission's failure or refusal to do so constituted grave abuse of discretion amounting to lack of jurisdiction.

On 28 January 1997, Senator Roco submitted copies of portions of both the Journal and the Record of the House of Representatives relating to the deliberations of House Bill No. 21505, as well as the transcripts of stenographic notes on the proceedings of the Bicameral Conference Committee, Committee on Suffrage and Electoral Reforms, of 6 June 1989 on House Bill No. 21505 and Senate Bill No. 17.

Private respondents Alberto and Carmen Pedrosa filed their Consolidated Comments on the Petitions in Intervention of Senator Roco, DIK and MABINI, and IBP.[23] The parties thereafter filed, in due time, their separate memoranda.[24]

As we stated in the beginning, we resolved to give due course to this special civil action.

For a more logical discussion of the formulated issues, we shall first take up the fifth issue which appears to pose a prejudicial procedural question.

I

THE INSTANT PETITION IS VIABLE DESPITE THE PENDENCY IN THE COMELEC OF THE DELFIN PETITION.

Except for the petitioners and intervenor Roco, the parties paid no serious attention to the fifth issue, *i.e.*, whether it is proper for this Court to take cognizance of this special civil action when there is a pending case before the COMELEC. The petitioners provide an affirmative answer. Thus:

28. The Comelec has no jurisdiction to take cognizance of the petition filed by private respondent Delfin. This being so, it becomes imperative to stop the Comelec from proceeding any further, and under the Rules of Court, Rule 65, Section 2, a petition for prohibition is the proper remedy.

29. The writ of prohibition is an extraordinary judicial writ issuing out of a court of superior jurisdiction and directed to an inferior court, for the purpose of preventing the inferior tribunal from usurping a jurisdiction with which it is not legally vested. (*People v. Vera, supra*., p. 84). In this case the writ is an urgent necessity, in view of the highly divisive and adverse environmental consequences on the body politic of the questioned Comelec order. The consequent climate of legal confusion and political instability begs for judicial statesmanship.

30. In the final analysis, when the system of constitutional law is threatened by the political ambitions of man, only the Supreme Court can save a nation in peril and uphold the paramount majesty of the Constitution.[25]

It must be recalled that intervenor Roco filed with the COMELEC a motion to dismiss the Delfin Petition on the ground that the COMELEC has no jurisdiction or authority to entertain the petition.[26] The COMELEC made no ruling thereon evidently because after having heard the arguments of Delfin and the oppositors at the hearing on 12 December 1996, it required them to submit within five days their memoranda or oppositions/memoranda.[27] Earlier, or specifically on 6 December 1996, it practically gave due course to the Delfin Petition by ordering Delfin to cause the publication of the petition, together with the attached Petition for Initiative, the signature form, and the notice of hearing; and by setting the case for hearing. The COMELEC's failure to act on Roco's

motion to dismiss and its insistence to hold on to the petition rendered ripe and viable the instant petition under Section 2 of Rule 65 of the Rules of Court, which provides:

SEC. 2. *Petition for prohibition*. -- Where the proceedings of any tribunal, corporation, board, or person, whether exercising functions judicial or ministerial, are without or in excess of its or his jurisdiction, or with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered commanding the defendant to desist from further proceedings in the action or matter specified therein.

It must also be noted that intervenor Roco claims that the COMELEC has no jurisdiction over the Delfin Petition because the said petition is not supported by the required minimum number of signatures of registered voters. LABAN also asserts that the COMELEC gravely abused its discretion in refusing to dismiss the Delfin Petition, which does not contain the required number of signatures. In light of these claims, the instant case may likewise be treated as a special civil action for *certiorari* under Section I of Rule 65 of the Rules of Court.

In any event, as correctly pointed out by intervenor Roco in his Memorandum, this Court may brush aside technicalities of procedure in cases of transcendental importance. As we stated in *Kilosbayan, Inc. v. Guingona, Jr.*:[28]

A party's standing before this Court is a procedural technicality which it may, in the exercise of its discretion, set aside in view of the importance of issues raised. In the landmark *Emergency Powers Cases*, this Court brushed aside this technicality because the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure.

II

R.A. NO. 6735 INTENDED TO INCLUDE THE SYSTEM OF INITIATIVE ON AMENDMENTS TO THE CONSTITUTION, BUT IS, UNFORTUNATELY, INADEQUATE TO COVER THAT SYSTEM.

Section 2 of Article XVII of the Constitution provides:

SEC. 2. Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. 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.

This provision is not self-executory. In his book,[29] Joaquin Bernas, a member of the 1986 Constitutional Commission, stated:

Without implementing legislation Section 2 cannot operate. Thus, although this mode of amending the Constitution is a mode of amendment which bypasses congressional action, in the last analysis it still is dependent on congressional action.

Bluntly stated, the right of the people to directly propose amendments to the Constitution through

the system of initiative would remain entombed in the cold niche of the Constitution until Congress provides for its implementation. Stated otherwise, while the Constitution has recognized or granted that right, the people cannot exercise it if Congress, for whatever reason, does not provide for its implementation.

This system of initiative was originally included in Section 1 of the draft Article on Amendment or Revision proposed by the Committee on Amendments and Transitory Provisions of the 1986 Constitutional Commission in its Committee Report No. 7 (Proposed Resolution No. 332).[30] That section reads as follows:

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

(a) by the National Assembly upon a vote of three-fourths of all its members; or

(b) by a constitutional convention; or

(c) directly by the people themselves thru initiative as provided for in Article ____ Section ____ of the Constitution.[31]

After several interpellations, but before the period of amendments, the Committee submitted a new formulation of the concept of initiative which it denominated as Section 2; thus:

MR. SUAREZ. Thank you, Madam President. May we respectfully call 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.[32]

The interpellations on Section 2 showed that the details for carrying out Section 2 are left to the legislature. Thus:

FR. BERNAS. Madam President, just two simple, clarificatory questions.

First, on Section 1 on the matter of initiative upon petition of at least 10 percent, there are no details in the provision on how to carry this out. Do we understand, therefore, that we are leaving this matter to the legislature?

MR. SUAREZ. That is right, Madam President.

FR. BERNAS. And do we also understand, therefore, that for as long as the legislature does not pass the necessary implementing law on this, this will not operate?

MR. SUAREZ. That matter was also taken up during the committee hearing, especially with respect to the budget appropriations which would have to be legislated so that the plebiscite could be called. We deemed it best that this matter be left to the legislature. The Gentleman is right. In any event, as envisioned, no amendment through the power of initiative can be called until after five years from the date of the ratification of this Constitution. Therefore, the first amendment that could be proposed through the exercise of this initiative power would be after five years. It is reasonably expected that within that five-year period, the

National Assembly can come up with the appropriate rules governing the exercise of this power.

FR. BERNAS. Since the matter is left to the legislature - the details on how this is to be carried out - is it possible that, in effect, what will be presented to the people for ratification is the work of the legislature rather than of the people? Does this provision exclude that possibility?

MR. SUAREZ. No, it does not exclude that possibility because even the legislature itself as a body could propose that amendment, maybe individually or collectively, if it fails to muster the three-fourths vote in order to constitute itself as a constituent assembly and submit that proposal to the people for ratification through the process of an initiative.

x x x

MS. AQUINO. Do I understand from the sponsor that the intention in the proposal is to vest constituent power in the people to amend the Constitution?

MR. SUAREZ. That is absolutely correct, Madam President.

MS. AQUINO. I fully concur with the underlying precept of the proposal in terms of institutionalizing popular participation in the drafting of the Constitution or in the amendment thereof, but I would have a lot of difficulties in terms of accepting the draft of Section 2, as written. Would the sponsor agree with me that in the hierarchy of legal mandate, constituent power has primacy over all other legal mandates?

MR. SUAREZ. The Commissioner is right, Madam President.

MS. AQUINO. And would the sponsor agree with me that in the hierarchy of legal values, the Constitution is source of all legal mandates and that therefore we require a great deal of circumspection in the drafting and in the amendments of the Constitution?

MR. SUAREZ. That proposition is nondebatable.

MS. AQUINO. Such that in order to underscore the primacy of constituent power we have a separate article in the constitution that would specifically cover the process and the modes of amending the Constitution?

MR. SUAREZ. That is right, Madam President.

MS. AQUINO. Therefore, is the sponsor inclined, as the provisions are drafted now, to again concede to the legislature the process or the requirement of determining the mechanics of amending the Constitution by people's initiative?

MR. SUAREZ. The matter of implementing this could very well be placed in the hands of the National Assembly, not unless we can incorporate into this provision the mechanics that would adequately cover all the conceivable situations.[33]

It was made clear during the interpellations that the aforementioned Section 2 is limited to proposals to AMEND -- not to REVISE -- the Constitution; thus:

MR. SUAREZ. ... This proposal was suggested on the theory that this matter of initiative, which came about because of the extraordinary developments this year, has to be separated from the traditional modes of amending the Constitution as embodied in Section 1. The committee members felt that this system of initiative should not extend to the revision of the entire Constitution, so we removed it from the operation of Section 1 of the proposed Article on Amendment or Revision.[34]

x x x

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

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

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

MR. SUAREZ.That is right. Those were the terms envisioned in the Committee.[35]

Amendments to the proposed Section 2 were thereafter introduced by then Commissioner Hilario G. Davide, Jr., which the Committee accepted. Thus:

MR. DAVIDE. Thank you Madam President. I propose to substitute the entire Section 2 with the following:

x x x

MR. DAVIDE. Madam President, I have modified the proposed amendment after taking into account the modifications submitted by the sponsor himself and the honorable Commissioners Guingona, Monsod, Rama, Ople, de los Reyes and Romulo. The modified amendment in substitution of the proposed Section 2 will now read as follows: "SECTION 2. -- AMENDMENTS TO THIS CONSTITUTION MAY LIKEWISE BE DIRECTLY PROPOSED BY THE PEOPLE THROUGH INITIATIVE UPON A PETITION OF AT LEAST TWELVE PERCENT OF THE TOTAL NUMBER OF REGISTERED VOTERS, OF WHICH EVERY LEGISLATIVE DISTRICT MUST BE REPRESENTED BY AT LEAST THREE PERCENT OF THE REGISTERED VOTERS THEREOF. NO AMENDMENT UNDER THIS SECTION SHALL BE AUTHORIZED WITHIN FIVE YEARS FOLLOWING THE RATIFICATION OF THIS CONSTITUTION NOR OFTENER THAN ONCE EVERY FIVE YEARS THEREAFTER.

THE NATIONAL ASSEMBLY SHALL BY LAW PROVIDE FOR THE IMPLEMENTATION OF THE EXERCISE OF THIS RIGHT.

MR. SUAREZ. Madam President, considering that the proposed amendment is reflective of the sense contained in Section 2 of our completed Committee Report No. 7, we accept the proposed amendment.[36]

The interpellations which ensued on the proposed modified amendment to Section 2 clearly showed that it was a legislative act which must implement the exercise of the right. Thus:

MR. ROMULO. Under Commissioner Davide's amendment, is it possible for the legislature to set forth certain procedures to carry out the initiative...?

MR. DAVIDE. It can.

x x x

MR. ROMULO. But the Commissioner's amendment does not prevent the legislature from asking another body to set the proposition in proper form.

MR. DAVIDE. The Commissioner is correct. In other words, the implementation of this particular right would be subject to legislation, provided the legislature cannot determine anymore the percentage of the requirement.

MR. ROMULO. But the procedures, including the determination of the proper form for submission to the people, may be subject to legislation.

MR. DAVIDE. As long as it will not destroy the substantive right to initiate. In other words, none of the procedures to be proposed by the legislative body must diminish or impair the right conceded here.

MR. ROMULO. In that provision of the Constitution can the procedures which I have discussed be legislated?

MR. DAVIDE. Yes.[37]

Commissioner Davide also reaffirmed that his modified amendment strictly confines *initiative* to AMENDMENTS to -- NOT REVISION of -- the Constitution. Thus:

MR. DAVIDE. With pleasure, Madam President.

MR. MAAMBONG. My first question: Commissioner Davide's proposed amendment on line 1 refers to "amendment." 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."[38]

Commissioner Davide further emphasized that the process of proposing amendments through *initiative* must be more rigorous and difficult than the initiative on legislation. Thus:

MR. DAVIDE. A distinction has to be made that under this proposal, what is involved is an amendment to the Constitution. To amend a Constitution would ordinarily require a proposal by the National Assembly by a vote of three-fourths; and to call a constitutional convention would require a higher number. Moreover, just to submit the issue of calling a constitutional convention, a majority of the National Assembly is required, the import being that the process of amendment must be made more rigorous and difficult than probably initiating an ordinary legislation or putting an end to a law proposed by the National Assembly by way of a referendum. I cannot agree to reducing the requirement approved by the Committee on the Legislative because it would require another voting by the Committee, and the voting as precisely based on a requirement of 10 percent. Perhaps, I might present such a proposal, by way of an amendment, when the Commission shall take up the Article on the Legislative or on the National Assembly on plenary sessions.[39]

The Davide modified amendments to Section 2 were subjected to amendments, and the final version, which the Commission approved by a vote of 31 in favor and 3 against, reads as follows:

MR. DAVIDE. Thank you Madam President. Section 2, as amended, reads as follows: "AMENDMENT TO THIS CONSTITUTION MAY LIKEWISE BE DIRECTLY PROPOSED BY THE PEOPLE THROUGH INITIATIVE UPON A PETITION OF AT LEAST TWELVE PERCENT OF THE TOTAL NUMBER OF REGISTERED VOTERS, OF WHICH EVERY LEGISLATIVE DISTRICT MUST BE REPRESENTED BY AT LEAST THREE PERCENT OF THE REGISTERED VOTERS THEREOF. NO AMENDMENT UNDER THIS SECTION SHALL BE AUTHORIZED WITHIN FIVE YEARS FOLLOWING THE RATIFICATION OF THIS CONSTITUTION NOR OFTENER THAN ONCE EVERY FIVE YEARS THEREAFTER.

THE NATIONAL ASSEMBLY SHALL BY LAW PROVIDE FOR THE IMPLEMENTATION OF THE EXERCISE OF THIS RIGHT.[40]

The entire proposed Article on Amendments or Revisions was approved on second reading on 9 July 1986.[41] Thereafter, upon his motion for reconsideration, Commissioner Gascon was allowed to introduce an amendment to Section 2 which, nevertheless, was withdrawn. In view thereof, the Article was again approved on Second and Third Readings on 1 August 1986.[42]

However, the Committee on Style recommended that the approved Section 2 be amended by changing "percent" to "per centum" and "thereof" to "therein" and deleting the phrase "by law" in the second paragraph so that said paragraph reads: The Congress[43] shall provide for the implementation of the exercise of this right.[44] This amendment was approved and is the text of the present second paragraph of Section 2.

The conclusion then is inevitable that, indeed, the system of initiative on the Constitution under Section 2 of Article XVII of the Constitution is not self-executory.

Has Congress "provided" for the implementation of the exercise of this right? Those who answer the question in the affirmative, like the private respondents and intervenor Senator Roco, point to us R.A. No. 6735.

There is, of course, no other better way for Congress to implement the exercise of the right than through the passage of a statute or legislative act. This is the essence or rationale of the last minute amendment by the Constitutional Commission to substitute the last paragraph of Section 2 of Article XVII then reading:

The Congress[45] shall by law provide for the implementation of the exercise of this right.

with

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

This substitute amendment was an investiture on Congress of a power to provide for the rules implementing the exercise of the right. The "rules" means "the details on how [the right] is to be carried out."[46]

We agree that R.A. No. 6735 was, as its history reveals, intended to cover *initiative* to propose amendments to the Constitution. The Act is a consolidation of House Bill No. 21505 and Senate Bill No. 17. The former was prepared by the Committee on Suffrage and Electoral Reforms of the House of Representatives on the basis of two House Bills referred to it, *viz.*, (a) House Bill No. 497,[47] which dealt with the initiative and referendum mentioned in Sections 1 and 32 of Article VI of the Constitution; and (b) House Bill No. 988,[48] which dealt with the subject matter of House Bill No. 497, as well as with initiative and referendum under Section 3 of Article X (Local Government) and initiative provided for in Section 2 of Article XVII of the Constitution. Senate Bill No. 17[49] solely dealt with initiative and referendum concerning ordinances or resolutions of local government units. The Bicameral Conference Committee consolidated Senate Bill No. 17 and House Bill No. 21505 into a draft bill, which was subsequently approved on 8 June 1989 by the Senate[50] and by the House of Representatives.[51] This approved bill is now R.A. No. 6735.

But is R.A. No. 6735 a full compliance with the power and duty of Congress to "provide for the implementation of the exercise of the right?"

A careful scrutiny of the Act yields a negative answer.

First. Contrary to the assertion of public respondent COMELEC, Section 2 of the Act does not suggest an initiative on amendments to the Constitution. The said section reads:

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

The inclusion of the word "Constitution" therein was a delayed afterthought. That word is neither germane nor relevant to said section, which exclusively relates to initiative and referendum on national laws and local laws, ordinances, and resolutions. That section is silent as to amendments on the Constitution. 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."

The foregoing conclusion is further buttressed by the fact that this section was lifted from Section 1 of Senate Bill No. 17, which solely referred to a statement of policy on local initiative and referendum and appropriately used the phrases "propose and enact," "approve or reject" and "in whole or in part."[52]

Second. It is true that Section 3 (Definition of Terms) of the Act defines *initiative* on amendments to the Constitution and mentions it as one of the three systems of *initiative*, and that Section 5 (Requirements) restates the constitutional requirements as to the percentage of the registered voters who must submit the proposal. But unlike in the case of the other systems of *initiative*, the Act does not provide for the contents of a petition for initiative on the Constitution. Section 5, paragraph (c) requires, among other things, statement of the proposed law sought to be enacted, approved or rejected, amended or repealed, as the case may be. It does not include, as among the contents of the petition, the provisions of the Constitution sought to be amended, in the case of initiative on the Constitution. Said paragraph (c) reads in full as follows:

(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 therein;

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

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

The use of the clause "proposed laws sought to be enacted, approved or rejected, amended or repealed" only strengthens the conclusion that Section 2, quoted earlier, excludes initiative on amendments to the Constitution.

Third. While the Act provides subtitles for National Initiative and Referendum (Subtitle II) and for Local Initiative and Referendum (Subtitle III), no subtitle is provided for *initiative* on the Constitution. This conspicuous silence as to the latter simply means that the main thrust of the Act

is initiative and referendum on national and local laws. If Congress intended R.A. No. 6735 to fully provide for the implementation of the *initiative* on amendments to the Constitution, it could have provided for a subtitle therefor, considering that in the order of things, the primacy of interest, or hierarchy of values, the right of the people to directly propose amendments to the Constitution is far more important than the initiative on national and local laws.

We cannot accept the argument that the *initiative* on amendments to the Constitution is subsumed under the subtitle on National Initiative and Referendum because it is national in scope. Our reading of Subtitle II (National Initiative and Referendum) and Subtitle III (Local Initiative and Referendum) leaves no room for doubt that the classification is not based on the *scope* of the initiative involved, but on its *nature* and *character*. It is "national initiative," if what is proposed to be adopted or enacted is a national law, or a law which only Congress can pass. It is "local initiative" if what is proposed to be adopted or enacted is a law, ordinance, or resolution which only the legislative bodies of the governments of the autonomous regions, provinces, cities, municipalities, and barangays can pass. This classification of initiative into *national* and *local* is actually based on Section 3 of the Act, which we quote for emphasis and clearer understanding:

SEC. 3. *Definition of terms* --

x x x

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. (Underscoring supplied).

Hence, to complete the classification under subtitles there should have been a subtitle on initiative on amendments to the Constitution.[53]

A further examination of the Act even reveals that the subtitling is not accurate. Provisions not germane to the subtitle on National Initiative and Referendum are placed therein, like (1) paragraphs (b) and (c) of Section 9, which reads:

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

(c) A national or local initiative proposition approved by majority of the votes cast in an election called for the purpose shall become effective fifteen (15) days after certification and proclamation of the Commission. (Underscoring supplied).

(2) that portion of Section 11 (Indirect Initiative) referring to indirect initiative with the legislative bodies of local governments; thus:

SEC. 11. *Indirect Initiative*. -- Any duly accredited people's organization, as defined by law, may file a petition for indirect initiative with the House of Representatives, and other legislative bodies....

and (3) Section 12 on Appeal, since it applies to decisions of the COMELEC on the findings of sufficiency or insufficiency of the petition for initiative or referendum, which could be petitions for both national and local *initiative* and referendum.

Upon the other hand, Section 18 on "Authority of Courts" under subtitle III on Local Initiative and Referendum is misplaced,[54] since the provision therein applies to both national and local initiative and referendum. It reads:

SEC. 18. *Authority of Courts*. -- Nothing in this Act shall prevent or preclude the proper courts from declaring null and void any proposition approved pursuant to this Act for violation of the Constitution or want of capacity of the local legislative body to enact the said measure.

Curiously, too, while R.A. No. 6735 exerted utmost diligence and care in providing for the details in the implementation of initiative and referendum on national and local legislation thereby giving them special attention, it failed, rather intentionally, to do so on the system of initiative on amendments to the Constitution. Anent the initiative on national legislation, the Act provides for the following:

(a) The required percentage of registered voters to sign the petition and the contents of the petition;

(b) The conduct and date of the initiative;

(c) The submission to the electorate of the proposition and the required number of votes for its approval;

(d) The certification by the COMELEC of the approval of the proposition;

(e) The publication of the approved proposition in the Official Gazette or in a newspaper of general circulation in the Philippines; and

(f) The effects of the approval or rejection of the proposition.[55]

As regards local initiative, the Act provides for the following:

(a) The preliminary requirement as to the number of signatures of registered voters for the petition;

(b) The submission of the petition to the local legislative body concerned;

(c) The effect of the legislative body's failure to favorably act thereon, and the invocation of the power of initiative as a consequence thereof;

(d) The formulation of the proposition;

(e) The period within which to gather the signatures;

(f) The persons before whom the petition shall be signed;

(g) The issuance of a certification by the COMELEC through its official in the local government unit concerned as to whether the required number of signatures have been obtained;

(h) The setting of a date by the COMELEC for the submission of the proposition to the registered voters for their approval, which must be within the period specified therein;

(i) The issuance of a certification of the result;

(j) The date of effectivity of the approved proposition;

(k) The limitations on local initiative; and

(l) The limitations upon local legislative bodies.[56]

Upon the other hand, as to *initiative* on amendments to the Constitution, R.A. No. 6735, in all of its twenty-three sections, merely (a) mentions, the word "Constitution" in Section 2; (b) defines "initiative on the Constitution" and includes it in the enumeration of the three systems of initiative in Section 3; (c) speaks of "plebiscite" as the process by which the proposition in an initiative on the Constitution may be approved or rejected by the people; (d) reiterates the constitutional requirements as to the number of voters who should sign the petition; and (e) provides for the date of effectivity of the approved proposition.

There was, therefore, an obvious downgrading of the more important or the paramount system of initiative. R.A. No. 6735 thus delivered a humiliating blow to the system of initiative on amendments to the Constitution by merely paying it a reluctant lip service.[57]

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.[58]

The rule is that what has been delegated, cannot be delegated or as expressed in a Latin maxim: *potestas delegata non delegari potest*.[59] 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.[60]

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.[61] 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.[62]

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, INSOFAR 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.

IV

COMELEC ACTED WITHOUT JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN ENTERTAINING THE DELFIN PETITION.

Even if it be conceded *ex gratia* that R.A. No. 6735 is a full compliance with the power of Congress to implement the right to initiate constitutional amendments, or that it has validly vested upon the COMELEC the power of subordinate legislation and that COMELEC Resolution No. 2300 is valid, the COMELEC acted without jurisdiction or with grave abuse of discretion in entertaining the Delfin Petition.

Under Section 2 of Article XVII of the Constitution and Section 5(b) of R.A. No. 6735, a petition for initiative on the Constitution must be signed by at least 12% of the total number of registered voters of which every legislative district is represented by at least 3% of the registered voters therein. The Delfin Petition does not contain signatures of the required number of voters. Delfin himself admits that he has not yet gathered signatures and that the purpose of his petition is primarily to obtain assistance in his drive to gather signatures. Without the required signatures, the petition cannot be deemed validly initiated.

The COMELEC acquires jurisdiction over a petition for initiative only after its filing. The petition then is the *initiatory pleading*. Nothing before its filing is cognizable by the COMELEC, sitting *en banc*. The only participation of the COMELEC or its personnel before the filing of such petition are (1) to prescribe the form of the petition;[63] (2) to issue through its Election Records and Statistics Office a certificate on the total number of registered voters in each legislative district;[64] (3) to assist, through its election registrars, in the establishment of signature stations;[65] and (4) to verify, through its election registrars, the signatures on the basis of the registry list of voters, voters' affidavits, and voters' identification cards used in the immediately preceding election.[66]

Since the Delfin Petition is not the initiatory petition under R.A. No. 6735 and COMELEC Resolution No. 2300, it cannot be entertained or given cognizance of by the COMELEC. The latter knew that the petition does not fall under any of the actions or proceedings under the COMELEC Rules of Procedure or under Resolution No. 2300, for which reason it did not assign to the petition a docket number. Hence, the said petition was merely entered as UND, meaning, undocketed. That petition was nothing more than a mere scrap of paper, which should not have been dignified by the Order of 6 December 1996, the hearing on 12 December 1996, and the order directing Delfin and the oppositors to file their memoranda or oppositions. In so dignifying it, the COMELEC acted without jurisdiction or with grave abuse of discretion and merely wasted its time, energy, and resources.

The foregoing considered, further discussion on the issue of whether the proposal to lift the term limits of the elective national and local officials is an amendment to, and not a revision of, the Constitution is rendered unnecessary, if not academic.

CONCLUSION

This petition must then be granted, and the COMELEC should be permanently enjoined from

entertaining or taking cognizance of any petition for initiative on amendments on the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the system.

We feel, however, that the system of initiative to propose amendments to the Constitution should no longer be kept in the cold; it should be given flesh and blood, energy and strength. Congress should not tarry any longer in complying with the constitutional mandate to provide for the implementation of the right of the people under that system.

WHEREFORE, judgment is hreby rendered

a) GRANTING the instant petition;

b) DECLARING R.A. No. 6735 inadequate to cover the system of initiative on amendments to the Constitution, and to have failed to provide sufficient standard for subordinate legislation;

c) DECLARING void those parts of Resolutions No. 2300 of the Commission on Elections prescribing rules and regulations on the conduct of initiative or amendments to the Constitution; and

d) ORDERING the Commission on Elections to forthwith DISMISS the DELFIN petition (UND-96-037).

The Temporary Restraining Order issued on 18 December 1996 is made permanent as against the Commission on Elections, but is LIFTED against private respondents.

Resolution on the matter of contempt is hereby reserved.

SO ORDERED.

Narvasa, C.J., Regalado, Romero, Bellosillo,Kapunan, Hermosisima, Jr. and *Torres Jr., JJ.,* concur.

Padilla, J., took no part; related to a co-petitioner and co-counsel of the petitioners.

Melo and *Mendoza, JJ.,* joins the separate, concurring opinions of Justices Puno, Francisco and Panganiban.

Puno, Vitug, , Francisco and *Panganiban, JJ.,* has separate opinions.

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[1] Commissioner Blas Ople.

[2] Commissioner Jose Suarez.

[3] I Record of the Constitutional Commission, 371, 378.

[4] Section 1, Article XV of the 1935 Constitution and Section 1(1), Article XVI of the 1973 Constitution.

[5] Annex “A” of Petition, *Rollo*, 15.

[6] Later identified as the People’s Initiative for Reforms, Modernization and Action, or PIRMA for brevity.

[7] These sections read:

SEC. 4. The term of office of the Senators shall be six years and shall commence, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

No Senator shall serve for more than two consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

x x x

SEC. 7. The Members of the House of Representatives shall be elected for a term of three years which shall begin,

unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

No Member of the House of Representatives shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

[8] The section reads:

SEC. 4. The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date six years thereafter. The President shall not be eligible for any reelection. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

No Vice-President shall serve for more than two successive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected.

[9] The section reads:

SEC. 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

[10] *Rollo*, 19.

[11] Annex "B" of Petition, *Rollo*, 25.

[12] Order of 12 December 1996, Annex "B-1" of Petition, *Rollo*, 27.

[13] *Id.*

[14] Citing Araneta *v*. Dinglasan, 84 Phil. 368 [1949]; Sanidad *v*. COMELEC, 73 SCRA 333 [1976].

[15] *Rollo*, 68.

[16] *Rollo*, 100.

[17] *Rollo*, 130.

[18] A Member of the 1986 Constitutional Commission.

[19] Section 26, Article II, Constitution.

[20] Citing Commissioner Ople of the Constitutional Commission, I Record of the Constitutional Commission, 405.

[21] *Rollo*, 239.

[22] *Rollo*, 304.

[23] *Rollo*, 568.

[24] These were submitted on the following dates:

(a) Private respondent Delfin - 31 January 1997 *(Rollo*, 429);
(b) Private respondents Alberto and Carmen Pedrosa - 10 February 1997 (*Id.,* 446);
(c) Petitioners - 12 February 1997 (*Id.,* 585);
(d) IBP - 12 February 1997 (*Id*., 476);
(e) Senator Roco - 12 February 1997 (*Id*., 606);
(f) DIK and MABINI - 12 February 1997 (*Id*., 465);
(g) COMELEC - 12 February 1997 (*Id.*, 489);

(h) LABAN - 13 February 1997 (*Id.,* 553).

[25] *Rollo*, 594.

[26] Annex "D" of Roco's Motion for Intervention in this case, *Rollo*, 184.

[27] *Rollo*, 28.

[28] 232 SCRA 110, 134 [1994].

[29] II The Constitution of the Republic of the Philippines, A Commentary 571 [1988].

[30] I Record of the Constitutional Commission 370-371.

[31] *Id.*, 371.

[32] *Id.*, 386.

[33] *Id*., 391-392. (Underscoring supplied for emphasis).

[34] *Id.,* 386.

[35] *Id*., 392.

[36] *Id.,* 398-399.

[37] *Id.*, 399. Underscoring supplied.

[38] *Id.*, 402-403.

[39] *Id.*, 401-402.

[40] *Id.*, 410.

[41] *Id.*, 412.

[42] II Record of the Constitutional Commission 559-560.

[43] The Congress originally appeared as The National Assembly. The change came about as a logical consequence of the amended Committee Report No. 22 of the Committee on Legislative which changed The National Assembly to "The Congress of the Philippines" in view of the approval of the amendment to adopt the bicameral system (II Record of the Constitutional Commission 102-105). The proposed new Article on the Legislative Department was, after various amendments approved on Second and Third Readings on 9 October 1986 (*Id.*, 702-703).

[44] V Record of the Constitutional Commission 806.

[45] See footnote No. 42.

[46] As stated by Commissioner Bernas in his interpellation of Commissioner Suarez, footnote 28.

[47] Entitled "Initiative and Referendum Act of 1987," introduced by then Congressmen Raul Roco, Raul del Mar and Narciso Monfort.

[48] Entitled "An Act Implementing the Constitutional Provisions on Initiative and Referendum and for Other Purposes," introduced by Congressmen Salvador Escudero.

[49] Entitled "An Act Providing for a System of Initiative and Referendum, and the Exceptions Therefrom, Whereby People in Local Government Units Can Directly Propose and Enact Resolutions and Ordinances or Approve or Reject Any Ordinance or Resolution Passed By the Local Legislative Body," introduced by Senators Gonzales, Romulo, Pimentel, Jr., and Lina, Jr.

[50] IV Record of the Senate, No. 143, pp. 1509-1510.

[51] VIII Journal and Record of the House of Representatives, 957-961.

[52] That section reads:

Section 1. *Statement of Policy*. The power of the people under a system of initiative and referendum to directly

propose and enact resolutions and ordinances or approve or reject, in whole or in part, any ordinance or resolution passed by any local legislative body upon compliance with the requirements of this Act is hereby affirmed, recognized and guaranteed.

[53] It must be pointed out that Senate Bill No. 17 and House Bill No. 21505, as approved on Third Reading, did not contain any subtitles.

[54] If some confusion attended the preparation of the subtitles resulting in the leaving out of the more important and paramount system of *initiative* on amendments to the Constitution, it was because there was in the Bicameral Conference Committee an initial agreement for the Senate panel to draft that portion on local initiative and for the House of Representatives panel to draft that portion covering national initiative and initiative on the Constitution; eventually, however, the Members thereof agreed to leave the drafting of the consolidated bill to their staff. Thus:

CHAIRMAN GONZALES.

... All right, and we can agree, we can agree. So ang mangyayari dito, ang magiging basic nito, let us not discuss anymore kung alin ang magiging basic bill, ano, whether it is the Senate Bill or whether it is the House Bill. Logically it should be ours sapagkat una iyong sa amin, eh. It is one of the first bills approved by the Senate kaya ang number niyan, makikita mo, 17, eh. Huwag na nating pag-usapan. Now, if you insist, really iyong features ng national at saka constitutional, okay. Pero gagawin na nating consolidation of both bills. (TSN, proceedings of the Bicameral Conference Committee on 6 June 1989 submitted by Nora, R, pp. I-4 - I-5).

x x x

HON. ROCO. So how do we proceed from this? The staff will consolidate.

HON. GONZALES. Gumawa lang ng isang draft. Submit it to the Chairman, kami na ang bahalang magconsult sa aming mga members na kung okay,

HON. ROCO. Within today?

HON. GONZALES. Within today and early tomorrow. Hanggang Huwebes lang tayo, eh.

HON. AQUINO. Kinakailangang palusutin natin ito. Kung mabigyan tayo ng kopya bukas and you are not objecting naman kayo naman ganoon din.

HON. ROCO. Editing na lang because on a physical consolidation nga ito, eh. Yung mga provisions naman namin wala sa inyo. (TSN, proceedings of Bicameral Conference Committee of 6 June 1989, submitted by E.S. Bongon, pp. III-4 - III-5).

[55] Sec. 5(a & c), Sec. 8, Section 9(a).

[56] Sections 13, 14, 15 and 16.

[57] It would thus appear that the Senate's "cautious approach" in the implementation of the system of initiative as a mode of proposing amendments to the Constitution, as expressed by Senator Gonzales in the course of his sponsorship of Senate Bill No. 17 in the Bicameral Conference Committee meeting and in his sponsorship of the Committee's Report, might have insidiously haunted the preparation of the consolidated version of Senate Bill No. 17 and House Bill No. 21505. In the first he said:

Senate Bill No. 17 recognizes the initiatives and referendum are recent innovations in our political system. And recognizing that, it has adopted a cautious approach by: first, allowing them only when the local legislative body had refused to act; second, not more frequently than once a year; and, third, limiting them to the national level. (I Record of the Senate, No. 33, p. 871).

x x x

First, as I have said Mr. President, and I am saying for the nth time, that we are introducing a novel and new system in politics. We have to adopt first a cautious approach. We feel it is prudent and wise at this point in time, to limit those powers that may be the subject of initiatives and referendum to those exercisable or within the authority of the local government units. *(Id*., p. 880).

In the second he stated:

But at any rate, as I have said, because this is new in our political system, the Senate decided on a more cautious approach and limiting it only to the local general units. (TSN of the proceedings of the Bicameral Conference Committee on 6 June 1989, submitted by stenographer Nora R., pp. I-2 to I-3).

In the last he declared:

> The initiatives and referendum are new tools of democracy; therefore, we have decided to be cautious in our approach. Hence, 1) we limited initiative and referendum to the local government units; 2) that initiative can only be exercised if the local legislative cannot be exercised more frequently that once every year. (IV Records of the Senate, No. 143, pp. 15-9-1510).

[58] Section 20, R.A. No. 6735.

[59] People *v*. Rosenthal, 68 Phil. 328 [1939]; ISAGANI A. CRUZ, Philippine Political Law 86 [1996] (hereafter CRUZ).

[60] People *v*. Vera, 65 Phil. 56 [1937]; CRUZ, *supra*, 87.

[61] Pelaez *v*. Auditor General, 122 Phil. 965, 974 [1965].

[62] Edu *v*. Ericta, 35 SCRA 481, 497 [1970].

[63] Sec. 7, COMELEC Resolution No. 2300.

[64] Sec. 28, *id*.

[65] Sec. 29, *id*.

[66] Sec. 30, *id*.