

Republic of the Philippines
COMMISSION ON ELECTIONS
Manila

**IN THE MATTER OF PROPOSING
AMENDMENTS TO THE 1987 CONSTITUTION
THROUGH A PEOPLE'S INITIATIVE:
A SHIFT FROM A BICAMERAL PRESIDENTIAL TO
A UNICAMERAL PARLIAMENTARY
GOVERNMENT BY AMENDING ARTICLES
VI AND VII; AND PROVIDING TRANSITORY
PROVISIONS FOR THE ORDERLY SHIFT FROM
THE PRESIDENTIAL TO THE PARLIAMENTARY
SYSTEM**

Case No. _____

**RANDOLF S. DAVID, LORETTA
ANN P. ROSALES, MARIO JOYO
AGUJA, and ANA THERESIA
HONTIVEROS-BARAQUEL,
*Oppositors.***

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OPPOSITION

OPPOSITORS, by counsel, to this Honorable Commission on Elections, by way of opposition to the Petition dated 25 August 2006 filed by Raul L. Lambino and Erico B. Aumentado (the "assailed petition"), most respectfully aver:

PARTIES

1. Oppositor Randolph S. David is a Filipino citizen, a taxpayer and of legal age. His principal address is at 17 Gomburza Street, U.P. Diliman, Quezon City, where he may be served with summons and other processes of this Honorable Commission.
2. Oppositors Reps. Loretta Ann P. Rosales, Mario Joyo Aguja, and Ana Theresia Hontiveros-Baraquel are Filipino citizens, taxpayers, of legal age and incumbent members of the House of Representatives. They hold office at the House of Representatives, Batasan Hills, Quezon City, where they may be served with summons and other processes of this Honorable Commission.

3. Petitioners Raul L. Lambino and Erico B. Aumentado are both Filipino citizens, of legal age, registered voters, they may be served with summons and other processes of this Honorable Commission through their respective counsels at No. 12 Fourth Street, St. Ignatius Village, Quezon City and at Autoland Building, 1616 Quezon Avenue, South Triangle, Quezon City.

GROUNDS FOR OPPOSITION

- I. The process of people's initiative cannot be undertaken, in light of the absence of an adequate law to cover the system of initiative on amendments to the Constitution.
- II. The process of people's initiative cannot be used to introduce revisions to the Constitution as such process is limited only to introducing amendments.
- III. A "people's initiative" undertaken by the Executive branch with the use of government resources and personnel and with the expenditure of public funds runs afoul of the spirit and nature of a genuinely people-initiated process contemplated by Article XVII, Section 2 of the Constitution.

DISCUSSION

There is, as yet, no enabling law to implement the system of people's initiative as a means for introducing amendments to the Constitution.

4. In their petition, petitioners claim that RA 6735 contains "sufficient enabling details for the people's exercise of the power (to amend the Constitution)" and come to the conclusion that this Honorable Commission has the authority, mandate, and obligation to give due course to the petition. This assertion ignores the unequivocal ruling of the Supreme Court in *Defensor-Santiago v. COMELEC*¹, and betrays petitioners' lack of appreciation for the fundamental principle of *stare decisis*.
5. The Constitution, in referring to amendment of the Constitution by

¹ 270 SCRA 106

- way of people's initiative, in Article XVII, Section 2, explicitly states that "Congress shall provide for the implementation of the exercise of this right." The Supreme Court had occasion to determine whether or not the legislature had complied with this directive in the case of *Defensor-Santiago v. COMELEC*,² where the Court held that "x x x 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."
6. In 1989, Congress attempted to provide an enabling law with the passage of Republic Act No. 6735. However, in the same case of *Defensor-Santiago*, the Court clearly and expressly declared that the said law is "incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned," and that furthermore "[i]ts 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.'"³
 7. Consistent with this conclusion, the Court permanently enjoined this Honorable Commission 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."⁴ Up to the present, however, nine years after the *Defensor-Santiago* decision was handed down, Congress has not seen fit to pass such a law.
 8. Clearly therefore, in the absence of an adequate and sufficient law implementing Article XVII, Section 2, the power of people's initiative cannot be exercised for the purpose of introducing amendments to the Constitution. It follows therefore that this Honorable Commission cannot entertain the so-called "people's initiative" currently being submitted to it for verification.

² *Supra.*

³ *Ibid.*

⁴ *Ibid.*

The process of people's initiative allows only for the proposal of amendments to the Constitution, and may not be employed to introduce revisions.

9. In the assailed petition, there is uniform and constant use of the term "amendments", to wit: "*The Petitioners, in subscribing to and filing this Petition invoke their constitutional right to propose **amendments** to the 1987 Constitution by way of people's initiative xxx (emphasis provided)*". Their detailed description of the proposed changes was likewise given the heading "Proposed Amendments".
10. Petitioners' insistence on the use of the word "amendment" displays a wantonly irresponsible, if not a deliberately malicious, disregard for the distinction between "amendments" and "revisions" of the Constitution. A perusal of the Record of the Constitutional Commission will reveal that these terms may not be deployed carelessly or interchanged at will. To quote from the record:

MR. SUAREZ: We mentioned the possible use of only one term and that is "amendment." However, the Committee finally agreed to use the terms - "amendment" or "revision" when our attention was called by the honorable Vice-President to the substantial difference in the connotation and significance between the said terms. As a result of our research, we came up with our observations made in the famous - or notorious - Javellana doctrine, particularly the decision rendered by Honorable Justice Makasiar, wherein he made the following distinction between "amendment" and "revision" of an existing Constitution: "Revision" may involve a rewriting of the whole Constitution. On the other hand, the act of amending a constitution envisages a change of specific provisions only. The intention of an act to amend is not the change of the entire Constitution, but only the improvement of specific parts or the addition of provisions deemed essential as a consequence of new conditions or the elimination of parts already considered obsolete or unresponsive to the needs of the times. ⁵

⁵ 25 RECORD OF THE CONSTITUTIONAL CONVENTION 373, 8 July 1986.

11. Section 2 of Art. XVII of the 1987 Constitution, which outlines the process of people's initiative, uses only the term "amendments" and not "revision". This specificity in terminology is deliberate. While Congress and a Constitutional Convention may propose both amendments and revisions, the electorate can propose through initiative only amendments.⁶
12. Applying the distinction made by the Code Commission, it cannot be gainsaid that a change that seeks to overhaul the entire structure of governance – specifically, a proposition to shift from a presidential to a parliamentary form of government –, and abandoning in the process the fundamental principle of separation of powers, partakes of the nature of a "revision." It constitutes neither an "improvement of specific parts" nor a simple addition of "provisions deemed essential". Petitioners' labeling of their proposed changes as "amendments" reveals that either they are utterly ignorant of this basic difference, or worse, are cognizant of the constitutional limitations and are deliberately and maliciously attempting to circumvent them. This patently erroneous application of the term "amendments" to the broad and sweeping proposals contained in the assailed petition should not be allowed to have the effect of avoiding the clear mandate of the Constitution.

The provision was intended to allow "the people" to directly propose amendments to the Constitution. It cannot be undertaken by the Executive Branch.

13. Petitioners insinuate that their proposal to change the charter is supported by millions of Filipinos desirous of shifting to a Parliamentary form of government. They imply that this support arises spontaneously from the grassroots, without any intervention from the Executive Branch and independent of the machinations of those in power. The actual factual background of the signature campaign to reach the constitutional threshold for People's Initiative, however, militates against this theory. On 28 March 2006, a group calling itself Sigaw ng Bayan, started going around various barangays in Manila collecting signatures on forms with no

⁶ Bernas, II THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1300 (2003 ed.)

specific information as to what these signatures would be for. Most tellingly, members of this group were accompanied by barangay and city officials ostensibly upon the instructions of the Department of Interior and Local Government (DILG). They went from house to house, using a combination of threats, cajolery, and deception to gather signatures from the residents therein. This voluminous set of signatures is now being presented before this Honorable Commission by the petitioners, who now call it the manifestation of a people's initiative.

14. The 1935 and the 1973 Constitutions provided for two means by which proposals for amendments to the Constitution could be made – a Constitutional Convention, or alternatively, direct action by the legislature acting as a constituent assembly. The present Constitution added a third, innovative mode to these two traditional means, the process of people's initiative.

15. The innovation, now provided for under Article XVII, Section 2 of the Constitution, was intended to “[provide] a channel for expression of the sovereign will of the people.”⁷ Clearly therefore, people's initiative is intended to allow the people, that is, ordinary citizens, to directly propose amendments to the Constitution without having to go through government institutional processes, i.e. Congress. This is abundantly clear from the following exchange between Commissioner Jose Suarez, the sponsor of the people's initiative provision, and Commissioner Jose Bengzon, Jr.⁸ –

“MR. BENGZON. Is Section 1, paragraphs (a) and (b) not sufficient channel for expression of the will of the people, particularly in the amendment or revision of the Constitution?”

MR. SUAREZ. Under normal circumstances, yes. But we know what happened during the 20 years under the Marcos administration. So, **if the National Assembly, in a manner of speaking, is operating under the thumb of the Prime Minister or the President** as the case may be, and the required number of votes could not be obtained, **we would have to provide a safety valve in order that the people could ventilate in a very peaceful way their desire for amendment to the**

⁷ 25 RECORD OF THE CONSTITUTIONAL COMMISSION 377, 8 July 1986

⁸ 25 RECORD OF THE CONSTITUTIONAL COMMISSION 377, 8 July 1986

Constitution.

It is very possible that although the people may be pressuring the National Assembly to constitute itself as a constituent assembly or to call a constitutional convention, the members thereof would not heed the people's desire and clamor. So **this is a third avenue that we are providing for what is now popularly known as the people's power.** [emphasis supplied]

16. Several other Commissioners likewise emphasized that people's initiative was meant to be exercised by individual citizens and citizens' organizations. Commissioner Blas F. Ople, the original author of the provision made it clear that "[the] power to propose amendments x x x we now vest x x x in the people and their organizations x x x."⁹ On the same note, Commissioner Jaime Tadeo stated "*[ang] system of initiative ay lalong iiral sa magsasaka at manggagawa na siyang pinakamalaking sector para magkaroon siya ng tinatawag na people power.*"¹⁰
17. It is apparent from the foregoing that Article XVII, Section 2 was envisioned to be an alternative avenue for "the people" to propose amendments to the Constitution. It was never intended to be used as yet another means by which those in government, i.e. the Executive, could push for amendments to the organic law. After all, government has ample recourse under Article XVII, Section 1, by invoking the power of Congress.
18. As such, the current actions of the Executive, specifically the DILG, in spearheading the so-called people's initiative by utilizing government personnel, resources, funds, and structures (the barangays) go against the clear intent of the provision, and cannot be allowed to prosper. To quote again from Justice Panganiban's opinion in *Defensor-Santiago v. COMELEC*,¹¹ "[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." In other words, government action must come *after* the initiative has been undertaken and the required

⁹ 25 RECORD OF THE CONSTITUTIONAL COMMISSION 378, 8 July 1986

¹⁰ 26 RECORD OF THE CONSTITUTIONAL COMMISSION 397, 9 July 1986

¹¹ *Ibid.*

number of signatures has been obtained. Government resources cannot be utilized to undertake the initiative, much less, initiate it.

PRAYER

Wherefore, on the basis of the foregoing premises, it is most respectfully prayed that the assailed petition be **DISMISSED** with prejudice.

28 August 2006, Quezon City for City of Manila.

By the Counsel for the Oppositors:

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MANIFESTATION

Pursuant to Rule 13, section 11 of the Rules of Court, Oppositors respectfully manifest that the Petitioners were served their copies of this Opposition by means of registered mail because of the lack of messengerial staff to effect personal service, the lack of material time, and the considerable distance between the parties' respective offices.

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