

ERNESTO B. FRANCISCO, JR., PETITIONER, NAGMAMALASAKIT NA MGA MANANANGGOL NG MGA MANGGAGAWANG PILIPINO, INC., ITS OFFICERS AND MEMBERS, PETITIONER-IN-INTERVENTION, WORLD WAR II V...

G.R. No. 160261. November 10, 2003

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

There can be no constitutional crisis arising from a conflict, no matter how passionate and seemingly irreconcilable it may appear to be, over the determination by the independent branches of government of the nature, scope and extent of their respective constitutional powers where the Constitution itself provides for the means and bases for its resolution.

Our nation's history is replete with vivid illustrations of the often frictional, at times turbulent, dynamics of the relationship among these co-equal branches. This Court is confronted with one such today involving the legislature and the judiciary which has drawn legal luminaries to chart antipodal courses and not a few of our countrymen to vent cacophonous sentiments thereon.

There may indeed be some legitimacy to the characterization that the present controversy subject of the instant petitions - whether the filing of the second impeachment complaint against Chief Justice Hilario G. Davide, Jr. with the House of Representatives falls within the one year bar provided in the Constitution, and whether the resolution thereof is a political question - has resulted in a political crisis. Perhaps even more truth to the view that it was brought upon by a political crisis of conscience.

In any event, it is with the absolute certainty that our Constitution is sufficient to address all the issues which this controversy spawns that this Court unequivocally pronounces, at the first instance, that the feared resort to extra-constitutional methods of resolving it is neither necessary nor legally permissible. Both its resolution and protection of the public interest lie in adherence to, not departure from, the Constitution.

In passing over the complex issues arising from the controversy, this Court is ever mindful of the essential truth that the inviolate doctrine of separation of powers among the legislative, executive or judicial branches of government by no means prescribes for absolute autonomy in the discharge by each of that part of the governmental power assigned to it by the sovereign people.

At the same time, the corollary doctrine of checks and balances which has been carefully calibrated by the Constitution to temper the official acts of each of these three branches must be given effect without destroying their indispensable co-equality.

Taken together, these two fundamental doctrines of republican government, intended as they are to insure that governmental power is wielded only for the good of the people, mandate a relationship of interdependence and coordination among these branches where the delicate functions of enacting, interpreting and enforcing laws are

harmonized to achieve a unity of governance, guided only by what is in the greater interest and well-being of the people. Verily, *salus populi est suprema lex*.

Article XI of our present 1987 Constitution provides:

ARTICLE XI

Accountability of Public Officers

SECTION 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

SECTION 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

SECTION 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

(7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment according to law.

(8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section. (Emphasis and underscoring supplied)

Following the above-quoted Section 8 of Article XI of the Constitution, the 12th Congress of the House of Representatives adopted and approved the Rules of Procedure in Impeachment Proceedings (House Impeachment Rules) on November 28, 2001, superseding the previous House Impeachment Rules^[1] approved by the 11th Congress. The relevant distinctions between these two Congresses' House Impeachment Rules are shown in the

following tabulation:

11[TH] CONGRESS RULES

12[TH] CONGRESS NEW RULES

RULE II

INITIATING IMPEACHMENT

Section 2. Mode of Initiating Impeachment . - Impeachment shall be initiated only by a verified complaint for impeachment filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof or by a verified complaint or resolution of impeachment filed by at least one-third (1/3) of all the Members of the House.

RULE V

BAR AGAINST INITIATION OF

IMPEACHMENT

PROCEEDINGS AGAINST THE

SAME OFFICIAL

Section 16. - Impeachment Proceedings Deemed Initiated. - In cases where a Member of the House files a verified complaint of impeachment or a citizen files a verified complaint that is endorsed by a Member of the House through a resolution of endorsement against an impeachable officer, impeachment proceedings against such official are deemed initiated on the day the Committee on Justice finds that the verified complaint and/or resolution against such official, as the case may be, is sufficient in substance, or on the date the House votes to overturn or affirm the finding of the said Committee that the verified complaint and/or resolution, as the case may be, is not sufficient in substance.

In cases where a verified complaint or a resolution of impeachment is filed or endorsed, as the case may be, by at least one-third (1/3) of the Members of the House, impeachment proceedings are deemed initiated at the time of the filing of such verified complaint or resolution of impeachment with the Secretary General.

RULE V

BAR AGAINST IMPEACHMENT

Section 14. Scope of Bar . - No impeachment proceedings shall be initiated against the same official more than once within the period of one (1) year.

Section 17. Bar Against Initiation Of Impeachment Proceedings. - Within a period of one (1) year from the date impeachment proceedings are deemed initiated as provided in Section 16 hereof, no impeachment proceedings, as such, can be initiated against the same official. (*Italics in the original; emphasis and underscoring supplied*)

On July 22, 2002, the House of Representatives adopted a Resolution,[2] sponsored by Representative Felix William D. Fuentebella, which directed the Committee on Justice "to conduct an investigation, in aid of legislation, on the manner of disbursements and expenditures by the Chief Justice of the Supreme Court of the Judiciary Development Fund (JDF)."[3]

On June 2, 2003, former President Joseph E. Estrada filed an impeachment complaint[4] (first impeachment complaint) against Chief Justice Hilario G. Davide Jr. and seven Associate Justices[5] of this Court for "culpable violation of the Constitution, betrayal of the public trust and other high crimes." [6] The complaint was endorsed by Representatives Rolex T. Suplico, Ronaldo B. Zamora and Didagen Piang Dilangalen,[7] and was referred to the House Committee on Justice on August 5, 2003[8] in accordance with Section 3(2) of Article XI of the

Constitution which reads:

Section 3(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

The House Committee on Justice ruled on October 13, 2003 that the first impeachment complaint was "sufficient in form,"[9] but voted to dismiss the same on October 22, 2003 for being insufficient in substance.[10] To date, the Committee Report to this effect has not yet been sent to the House in plenary in accordance with the said Section 3(2) of Article XI of the Constitution.

Four months and three weeks since the filing on June 2, 2003 of the first complaint or on October 23, 2003, a day after the House Committee on Justice voted to dismiss it, the second impeachment complaint[11] was filed with the Secretary General of the House[12] by Representatives Gilberto C. Teodoro, Jr. (First District, Tarlac) and Felix William B. Fuentebella (Third District, Camarines Sur) against Chief Justice Hilario G. Davide, Jr., founded on the alleged results of the legislative inquiry initiated by above-mentioned House Resolution. This second impeachment complaint was accompanied by a "Resolution of Endorsement/Impeachment" signed by at least one-third (1/3) of all the Members of the House of Representatives.[13]

Thus arose the instant petitions against the House of Representatives, et. al., most of which petitions contend that the filing of the second impeachment complaint is unconstitutional as it violates the provision of Section 5 of Article XI of the Constitution that "[n]o impeachment proceedings shall be initiated against the same official more than once within a period of one year."

In G.R. No. 160261, petitioner Atty. Ernesto B. Francisco, Jr., alleging that he has a duty as a member of the Integrated Bar of the Philippines to use all available legal remedies to stop an unconstitutional impeachment, that the issues raised in his petition for Certiorari, Prohibition and Mandamus are of transcendental importance, and that he "himself was a victim of the capricious and arbitrary changes in the Rules of Procedure in Impeachment Proceedings introduced by the 12[th][14] Congress," posits that his right to bring an impeachment complaint against then Ombudsman Aniano Desierto had been violated due to the capricious and arbitrary changes in the House Impeachment Rules adopted and approved on November 28, 2001 by the House of Representatives and prays that (1) Rule V, Sections 16 and 17 and Rule III, Sections 5, 6, 7, 8, and 9 thereof be declared unconstitutional; (2) this Court issue a writ of mandamus directing respondents House of Representatives et. al. to comply with Article IX, Section 3 (2), (3) and (5) of the Constitution, to return the second impeachment complaint and/or strike it off the records of the House of Representatives, and to promulgate rules which are consistent with the Constitution; and (3) this Court permanently enjoin respondent House of Representatives from proceeding with the second impeachment complaint.

In G.R. No. 160262, petitioners Sedfrey M. Candelaria, et. al., as citizens and taxpayers, alleging that the issues of the case are of transcendental importance, pray, in their petition for Certiorari/Prohibition, the issuance of a writ "perpetually" prohibiting respondent House of Representatives from filing any Articles of Impeachment against the Chief Justice with the Senate; and for the issuance of a writ "perpetually" prohibiting respondents Senate and Senate President Franklin Drilon from accepting any Articles of Impeachment against the Chief Justice or, in the event that the Senate has accepted the same, from proceeding with the impeachment trial.

In G.R. No. 160263, petitioners Arturo M. de Castro and Soledad Cagampang, as citizens, taxpayers, lawyers and

members of the Integrated Bar of the Philippines, alleging that their petition for Prohibition involves public interest as it involves the use of public funds necessary to conduct the impeachment trial on the second impeachment complaint, pray for the issuance of a writ of prohibition enjoining Congress from conducting further proceedings on said second impeachment complaint.

In G.R. No. 160277, petitioner Francisco I. Chavez, alleging that this Court has recognized that he has locus standi to bring petitions of this nature in the cases of Chavez v. PCGG[15] and Chavez v. PEA-Amari Coastal Bay Development Corporation,[16] prays in his petition for Injunction that the second impeachment complaint be declared unconstitutional.

In G.R. No. 160292, petitioners Atty. Harry L. Roque, et. al., as taxpayers and members of the legal profession, pray in their petition for Prohibition for an order prohibiting respondent House of Representatives from drafting, adopting, approving and transmitting to the Senate the second impeachment complaint, and respondents De Venecia and Nazareno from transmitting the Articles of Impeachment to the Senate.

In G.R. No. 160295, petitioners Representatives Salacnib F. Bateria and Deputy Speaker Raul M. Gonzalez, alleging that, as members of the House of Representatives, they have a legal interest in ensuring that only constitutional impeachment proceedings are initiated, pray in their petition for Certiorari/Prohibition that the second impeachment complaint and any act proceeding therefrom be declared null and void.

In G.R. No. 160310, petitioners Leonilo R. Alfonso et al., claiming that they have a right to be protected against all forms of senseless spending of taxpayers' money and that they have an obligation to protect the Supreme Court, the Chief Justice, and the integrity of the Judiciary, allege in their petition for Certiorari and Prohibition that it is instituted as "a class suit" and pray that (1) the House Resolution endorsing the second impeachment complaint as well as all issuances emanating therefrom be declared null and void; and (2) this Court enjoin the Senate and the Senate President from taking cognizance of, hearing, trying and deciding the second impeachment complaint, and issue a writ of prohibition commanding the Senate, its prosecutors and agents to desist from conducting any proceedings or to act on the impeachment complaint.

In G.R. No. 160318, petitioner Public Interest Center, Inc., whose members are citizens and taxpayers, and its co-petitioner Crispin T. Reyes, a citizen, taxpayer and a member of the Philippine Bar, both allege in their petition, which does not state what its nature is, that the filing of the second impeachment complaint involves paramount public interest and pray that Sections 16 and 17 of the House Impeachment Rules and the second impeachment complaint/Articles of Impeachment be declared null and void.

In G.R. No. 160342, petitioner Atty. Fernando P. R. Perito, as a citizen and a member of the Philippine Bar Association and of the Integrated Bar of the Philippines, and petitioner Engr. Maximo N. Menez, Jr., as a taxpayer, pray in their petition for the issuance of a Temporary Restraining Order and Permanent Injunction to enjoin the House of Representatives from proceeding with the second impeachment complaint.

In G.R. No. 160343, petitioner Integrated Bar of the Philippines, alleging that it is mandated by the Code of Professional Responsibility to uphold the Constitution, prays in its petition for Certiorari and Prohibition that Sections 16 and 17 of Rule V and Sections 5, 6, 7, 8, 9 of Rule III of the House Impeachment Rules be declared unconstitutional and that the House of Representatives be permanently enjoined from proceeding with the second impeachment complaint.

In G.R. No. 160360, petitioner-taxpayer Atty. Claro Flores prays in his petition for Certiorari and Prohibition that the House Impeachment Rules be declared unconstitutional.

In G.R. No. 160365, petitioners U.P. Law Alumni Cebu Foundation Inc., et. al., in their petition for Prohibition

and Injunction which they claim is a class suit filed in behalf of all citizens, citing *Oposa v. Factoran*[17] which was filed in behalf of succeeding generations of Filipinos, pray for the issuance of a writ prohibiting respondents House of Representatives and the Senate from conducting further proceedings on the second impeachment complaint and that this Court declare as unconstitutional the second impeachment complaint and the acts of respondent House of Representatives in interfering with the fiscal matters of the Judiciary.

In G.R. No. 160370, petitioner-taxpayer Father Ranhilio Callangan Aquino, alleging that the issues in his petition for Prohibition are of national and transcendental significance and that as an official of the Philippine Judicial Academy, he has a direct and substantial interest in the unhampered operation of the Supreme Court and its officials in discharging their duties in accordance with the Constitution, prays for the issuance of a writ prohibiting the House of Representatives from transmitting the Articles of Impeachment to the Senate and the Senate from receiving the same or giving the impeachment complaint due course.

In G.R. No. 160376, petitioner Nilo A. Malanyaon, as a taxpayer, alleges in his petition for Prohibition that respondents Fuentebella and Teodoro at the time they filed the second impeachment complaint, were "absolutely without any legal power to do so, as they acted without jurisdiction as far as the Articles of Impeachment assail the alleged abuse of powers of the Chief Justice to disburse the (JDF)."

In G.R. No. 160392, petitioners Attorneys Venicio S. Flores and Hector L. Hofileña, alleging that as professors of law they have an abiding interest in the subject matter of their petition for Certiorari and Prohibition as it pertains to a constitutional issue "which they are trying to inculcate in the minds of their students," pray that the House of Representatives be enjoined from endorsing and the Senate from trying the Articles of Impeachment and that the second impeachment complaint be declared null and void.

In G.R. No. 160397, petitioner Atty. Dioscoro Vallejos, Jr., without alleging his locus standi, but alleging that the second impeachment complaint is founded on the issue of whether or not the Judicial Development Fund (JDF) was spent in accordance with law and that the House of Representatives does not have exclusive jurisdiction in the examination and audit thereof, prays in his petition "To Declare Complaint Null and Void for Lack of Cause of Action and Jurisdiction" that the second impeachment complaint be declared null and void.

In G.R. No. 160403, petitioner Philippine Bar Association, alleging that the issues raised in the filing of the second impeachment complaint involve matters of transcendental importance, prays in its petition for Certiorari/Prohibition that (1) the second impeachment complaint and all proceedings arising therefrom be declared null and void; (2) respondent House of Representatives be prohibited from transmitting the Articles of Impeachment to the Senate; and (3) respondent Senate be prohibited from accepting the Articles of Impeachment and from conducting any proceedings thereon.

In G.R. No. 160405, petitioners Democrit C. Barcenas et. al. , as citizens and taxpayers, pray in their petition for Certiorari/Prohibition that (1) the second impeachment complaint as well as the resolution of endorsement and impeachment by the respondent House of Representatives be declared null and void and (2) respondents Senate and Senate President Franklin Drilon be prohibited from accepting any Articles of Impeachment against the Chief Justice or, in the event that they have accepted the same, that they be prohibited from proceeding with the impeachment trial.

Petitions bearing docket numbers G.R. Nos. 160261, 160262 and 160263, the first three of the eighteen which were filed before this Court,[18] prayed for the issuance of a Temporary Restraining Order and/or preliminary injunction to prevent the House of Representatives from transmitting the Articles of Impeachment arising from the second impeachment complaint to the Senate. Petition bearing docket number G.R. No. 160261 likewise prayed for the declaration of the November 28, 2001 House Impeachment Rules as null and void for being

unconstitutional.

Petitions bearing docket numbers G.R. Nos. 160277, 160292 and 160295, which were filed on October 28, 2003, sought similar relief. In addition, petition bearing docket number G.R. No. 160292 alleged that House Resolution No. 260 (calling for a legislative inquiry into the administration by the Chief Justice of the JDF) infringes on the constitutional doctrine of separation of powers and is a direct violation of the constitutional principle of fiscal autonomy of the judiciary.

On October 28, 2003, during the plenary session of the House of Representatives, a motion was put forth that the second impeachment complaint be formally transmitted to the Senate, but it was not carried because the House of Representatives adjourned for lack of quorum,[19] and as reflected above, to date, the Articles of Impeachment have yet to be forwarded to the Senate.

Before acting on the petitions with prayers for temporary restraining order and/or writ of preliminary injunction which were filed on or before October 28, 2003, Justices Puno and Vitug offered to recuse themselves, but the Court rejected their offer. Justice Panganiban inhibited himself, but the Court directed him to participate.

Without necessarily giving the petitions due course, this Court in its Resolution of October 28, 2003, resolved to (a) consolidate the petitions; (b) require respondent House of Representatives and the Senate, as well as the Solicitor General, to comment on the petitions not later than 4:30 p.m. of November 3, 2003; (c) set the petitions for oral arguments on November 5, 2003, at 10:00 a.m.; and (d) appointed distinguished legal experts as amici curiae.[20] In addition, this Court called on petitioners and respondents to maintain the status quo, enjoining all the parties and others acting for and in their behalf to refrain from committing acts that would render the petitions moot.

Also on October 28, 2003, when respondent House of Representatives through Speaker Jose C. De Venecia, Jr. and/or its co-respondents, by way of special appearance, submitted a Manifestation asserting that this Court has no jurisdiction to hear, much less prohibit or enjoin the House of Representatives, which is an independent and co-equal branch of government under the Constitution, from the performance of its constitutionally mandated duty to initiate impeachment cases. On even date, Senator Aquilino Q. Pimentel, Jr., in his own behalf, filed a Motion to Intervene (Ex Abudante Cautela)[21] and Comment, praying that "the consolidated petitions be dismissed for lack of jurisdiction of the Court over the issues affecting the impeachment proceedings and that the sole power, authority and jurisdiction of the Senate as the impeachment court to try and decide impeachment cases, including the one where the Chief Justice is the respondent, be recognized and upheld pursuant to the provisions of Article XI of the Constitution." [22]

Acting on the other petitions which were subsequently filed, this Court resolved to (a) consolidate them with the earlier consolidated petitions; (b) require respondents to file their comment not later than 4:30 p.m. of November 3, 2003; and (c) include them for oral arguments on November 5, 2003.

On October 29, 2003, the Senate of the Philippines, through Senate President Franklin M. Drilon, filed a Manifestation stating that insofar as it is concerned, the petitions are plainly premature and have no basis in law or in fact, adding that as of the time of the filing of the petitions, no justiciable issue was presented before it since (1) its constitutional duty to constitute itself as an impeachment court commences only upon its receipt of the Articles of Impeachment, which it had not, and (2) the principal issues raised by the petitions pertain exclusively to the proceedings in the House of Representatives.

On October 30, 2003, Atty. Jaime Soriano filed a "Petition for Leave to Intervene" in G.R. Nos. 160261, 160262, 160263, 160277, 160292, and 160295, questioning the status quo Resolution issued by this Court on October 28,

2003 on the ground that it would unnecessarily put Congress and this Court in a "constitutional deadlock" and praying for the dismissal of all the petitions as the matter in question is not yet ripe for judicial determination.

On November 3, 2003, Attorneys Romulo B. Macalintal and Pete Quirino Quadra filed in G.R. No. 160262 a "Motion for Leave of Court to Intervene and to Admit the Herein Incorporated Petition in Intervention."

On November 4, 2003, Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc. filed a Motion for Intervention in G.R. No. 160261. On November 5, 2003, World War II Veterans Legionnaires of the Philippines, Inc. also filed a "Petition-in-Intervention with Leave to Intervene" in G.R. Nos. 160261, 160262, 160263, 160277, 160292, 160295, and 160310.

The motions for intervention were granted and both Senator Pimentel's Comment and Attorneys Macalintal and Quadra's Petition in Intervention were admitted.

On November 5-6, 2003, this Court heard the views of the amici curiae and the arguments of petitioners, intervenors Senator Pimentel and Attorney Makalintal, and Solicitor General Alfredo Benipayo on the principal issues outlined in an Advisory issued by this Court on November 3, 2003, to wit:

Whether the certiorari jurisdiction of the Supreme Court may be invoked; who can invoke it; on what issues and at what time; and whether it should be exercised by this Court at this time.

In discussing these issues, the following may be taken up:

a)

locus standi of petitioners;

b)

ripeness (prematurity; mootness);

c)

political question/justiciability;

d)

House's "exclusive" power to initiate all cases of impeachment;

e)

Senate's "sole" power to try and decide all cases of impeachment;

f)

constitutionality of the House Rules on Impeachment vis-a-vis Section 3(5) of Article XI of the Constitution; and

g)

judicial restraint (*Italics in the original*)

In resolving the intricate conflux of preliminary and substantive issues arising from the instant petitions as well as the myriad arguments and opinions presented for and against the grant of the reliefs prayed for, this Court has sifted and determined them to be as follows: (1) the threshold and novel issue of whether or not the power of judicial review extends to those arising from impeachment proceedings; (2) whether or not the essential pre-requisites for the exercise of the power of judicial review have been fulfilled; and (3) the substantive issues yet

remaining. These matters shall now be discussed in seriatim.

Judicial Review

As reflected above, petitioners plead for this Court to exercise the power of judicial review to determine the validity of the second impeachment complaint.

This Court's power of judicial review is conferred on the judicial branch of the government in Section 1, Article VIII of our present 1987 Constitution:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. (Emphasis supplied)

Such power of judicial review was early on exhaustively expounded upon by Justice Jose P. Laurel in the definitive 1936 case of *Angara v. Electoral Commission*[23] after the effectivity of the 1935 Constitution whose provisions, unlike the present Constitution, did not contain the present provision in Article VIII, Section 1, par. 2 on what judicial power includes. Thus, Justice Laurel discoursed:

x x x In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.

As any human production, our Constitution is of course lacking perfection and perfectibility, but as much as it was within the power of our people, acting through their delegates to so provide, that instrument which is the expression of their sovereignty however limited, has established a republican government intended to operate and function as a harmonious whole, under a system of checks and balances, and subject to specific limitations and restrictions provided in the said instrument. The Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment, and the principles of good government mere political apothegms. Certainly, the limitations and restrictions embodied in our Constitution are real as they should be in any living constitution. In the United States where no express constitutional grant is found in their constitution, the possession of this moderating power of the courts, not to speak of its historical origin and development there, has been set at rest by popular acquiescence for a period of more than one and a half centuries. In our case, this moderating power is granted, if not expressly, by clear implication from section 2 of article VIII of our Constitution.

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution. Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties,

and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.[24] (*Italics in the original; emphasis and underscoring supplied*)

As pointed out by Justice Laurel, this "moderating power" to "determine the proper allocation of powers" of the different branches of government and "to direct the course of government along constitutional channels" is inherent in all courts[25] as a necessary consequence of the judicial power itself, which is "the power of the court to settle actual controversies involving rights which are legally demandable and enforceable." [26]

Thus, even in the United States where the power of judicial review is not explicitly conferred upon the courts by its Constitution, such power has "been set at rest by popular acquiescence for a period of more than one and a half centuries." To be sure, it was in the 1803 leading case of *Marbury v. Madison*[27] that the power of judicial review was first articulated by Chief Justice Marshall, to wit:

It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank.

Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.[28] (*Italics in the original; emphasis supplied*)

In our own jurisdiction, as early as 1902, decades before its express grant in the 1935 Constitution, the power of judicial review was exercised by our courts to invalidate constitutionally infirm acts.[29] And as pointed out by noted political law professor and former Supreme Court Justice Vicente V. Mendoza,[30] the executive and legislative branches of our government in fact effectively acknowledged this power of judicial review in Article 7 of the Civil Code, to wit:

Article 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary.

When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.

Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution. (*Emphasis supplied*)

As indicated in *Angara v. Electoral Commission*,[31] judicial review is indeed an integral component of the delicate system of checks and balances which, together with the corollary principle of separation of powers, forms the bedrock of our republican form of government and insures that its vast powers are utilized only for the benefit of the people for which it serves.

The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be

absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. x x x And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.[32](Emphasis and underscoring supplied)

In the scholarly estimation of former Supreme Court Justice Florentino Feliciano, "x x x judicial review is essential for the maintenance and enforcement of the separation of powers and the balancing of powers among the three great departments of government through the definition and maintenance of the boundaries of authority and control between them." [33] To him, "[j]udicial review is the chief, indeed the only, medium of participation - or instrument of intervention - of the judiciary in that balancing operation." [34]

To ensure the potency of the power of judicial review to curb grave abuse of discretion by "any branch or instrumentalities of government," the afore-quoted Section 1, Article VIII of the Constitution engraves, for the first time into its history, into block letter law the so-called "expanded certiorari jurisdiction" of this Court, the nature of and rationale for which are mirrored in the following excerpt from the sponsorship speech of its proponent, former Chief Justice Constitutional Commissioner Roberto Concepcion:

x x x

The first section starts with a sentence copied from former Constitutions. It says:

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

I suppose nobody can question it.

The next provision is new in our constitutional law. I will read it first and explain.

Judicial power includes the duty of courts of justice to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part or instrumentality of the government.

Fellow Members of this Commission, this is actually a product of our experience during martial law. As a matter of fact, it has some antecedents in the past, but the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political questions and got away with it. As a consequence, certain principles concerning particularly the writ of habeas corpus, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime. x x x

x x x

Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question[35] (Italics in the

original; emphasis and underscoring supplied)

To determine the merits of the issues raised in the instant petitions, this Court must necessarily turn to the Constitution itself which employs the well-settled principles of constitutional construction.

First, *verba legis*, that is, wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed. Thus, in *J.M. Tuason & Co., Inc. v. Land Tenure Administration*,^[36] this Court, speaking through Chief Justice Enrique Fernando, declared:

We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin. It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus these are the cases where the need for construction is reduced to a minimum^[.37](Emphasis and underscoring supplied)

Second, where there is ambiguity, *ratio legis est anima*. The words of the Constitution should be interpreted in accordance with the intent of its framers. And so did this Court apply this principle in *Civil Liberties Union v. Executive Secretary*^[38] in this wise:

A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration. Thus, it has been held that the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.^[39] (Emphasis and underscoring supplied)

As it did in *Nitafan v. Commissioner on Internal Revenue*^[40]where, speaking through Madame Justice Amuerfina A. Melencio-Herrera, it declared:

x x x The ascertainment of that intent is but in keeping with the fundamental principle of constitutional construction that the intent of the framers of the organic law and of the people adopting it should be given effect. The primary task in constitutional construction is to ascertain and thereafter assure the realization of the purpose of the framers and of the people in the adoption of the Constitution. It may also be safely assumed that the people in ratifying the Constitution were guided mainly by the explanation offered by the framers.^[41] (Emphasis and underscoring supplied)

Finally, *ut magis valeat quam pereat*. The Constitution is to be interpreted as a whole. Thus, in *Chiongbian v. De Leon*,^[42] this Court, through Chief Justice Manuel Moran declared:

x x x [T]he members of the Constitutional Convention could not have dedicated a provision of our Constitution merely for the benefit of one person without considering that it could also affect others. When they adopted subsection 2, they permitted, if not willed, that said provision should function to the full extent of its substance and its terms, not by itself alone, but in conjunction with all other provisions of that great document.^[43] (Emphasis and underscoring supplied)

Likewise, still in *Civil Liberties Union v. Executive Secretary*,^[44] this Court affirmed that:

It is a well-established rule in constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.

In other words, the court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory.[45] (Emphasis supplied)

If, however, the plain meaning of the word is not found to be clear, resort to other aids is available. In still the same case of *Civil Liberties Union v. Executive Secretary*, this Court expounded:

While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face." The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framers's understanding thereof.[46] (Emphasis and underscoring supplied)

It is in the context of the foregoing backdrop of constitutional refinement and jurisprudential application of the power of judicial review that respondents Speaker De Venecia, et. al. and intervenor Senator Pimentel raise the novel argument that the Constitution has excluded impeachment proceedings from the coverage of judicial review.

Briefly stated, it is the position of respondents Speaker De Venecia et. al. that impeachment is a political action which cannot assume a judicial character. Hence, any question, issue or incident arising at any stage of the impeachment proceeding is beyond the reach of judicial review.[47]

For his part, intervenor Senator Pimentel contends that the Senate's "sole power to try" impeachment cases[48] (1) entirely excludes the application of judicial review over it; and (2) necessarily includes the Senate's power to determine constitutional questions relative to impeachment proceedings.[49]

In furthering their arguments on the proposition that impeachment proceedings are outside the scope of judicial review, respondents Speaker De Venecia, et. al. and intervenor Senator Pimentel rely heavily on American authorities, principally the majority opinion in the case of *Nixon v. United States*.^[50] Thus, they contend that the exercise of judicial review over impeachment proceedings is inappropriate since it runs counter to the framers' decision to allocate to different fora the powers to try impeachments and to try crimes; it disturbs the system of checks and balances, under which impeachment is the only legislative check on the judiciary; and it would create a lack of finality and difficulty in fashioning relief.^[51] Respondents likewise point to deliberations on the US Constitution to show the intent to isolate judicial power of review in cases of impeachment.

Respondents' and intervenors' reliance upon American jurisprudence, the American Constitution and American authorities cannot be credited to support the proposition that the Senate's "sole power to try and decide impeachment cases," as provided for under Art. XI, Sec. 3(6) of the Constitution, is a textually demonstrable constitutional commitment of all issues pertaining to impeachment to the legislature, to the total exclusion of the power of judicial review to check and restrain any grave abuse of the impeachment process. Nor can it reasonably

support the interpretation that it necessarily confers upon the Senate the inherently judicial power to determine constitutional questions incident to impeachment proceedings.

Said American jurisprudence and authorities, much less the American Constitution, are of dubious application for these are no longer controlling within our jurisdiction and have only limited persuasive merit insofar as Philippine constitutional law is concerned. As held in the case of *Garcia vs. COMELEC*,^[52] "[i]n resolving constitutional disputes, [this Court] should not be beguiled by foreign jurisprudence some of which are hardly applicable because they have been dictated by different constitutional settings and needs."^[53] Indeed, although the Philippine Constitution can trace its origins to that of the United States, their paths of development have long since diverged. In the colorful words of Father Bernas, "[w]e have cut the umbilical cord."

The major difference between the judicial power of the Philippine Supreme Court and that of the U.S. Supreme Court is that while the power of judicial review is only impliedly granted to the U.S. Supreme Court and is discretionary in nature, that granted to the Philippine Supreme Court and lower courts, as expressly provided for in the Constitution, is not just a power but also a duty, and it was given an expanded definition to include the power to correct any grave abuse of discretion on the part of any government branch or instrumentality.

There are also glaring distinctions between the U.S. Constitution and the Philippine Constitution with respect to the power of the House of Representatives over impeachment proceedings. While the U.S. Constitution bestows sole power of impeachment to the House of Representatives without limitation,^[54] our Constitution, though vesting in the House of Representatives the exclusive power to initiate impeachment cases,^[55] provides for several limitations to the exercise of such power as embodied in Section 3(2), (3), (4) and (5), Article XI thereof. These limitations include the manner of filing, required vote to impeach, and the one year bar on the impeachment of one and the same official.

Respondents are also of the view that judicial review of impeachments undermines their finality and may also lead to conflicts between Congress and the judiciary. Thus, they call upon this Court to exercise judicial statesmanship on the principle that "whenever possible, the Court should defer to the judgment of the people expressed legislatively, recognizing full well the perils of judicial willfulness and pride."^[56]

But did not the people also express their will when they instituted the above-mentioned safeguards in the Constitution? This shows that the Constitution did not intend to leave the matter of impeachment to the sole discretion of Congress. Instead, it provided for certain well-defined limits, or in the language of *Baker v. Carr*,^[57] "judicially discoverable standards" for determining the validity of the exercise of such discretion, through the power of judicial review.

The cases of *Romulo v. Yniguez*^[58] and *Alejandrino v. Quezon*,^[59] cited by respondents in support of the argument that the impeachment power is beyond the scope of judicial review, are not in point. These cases concern the denial of petitions for writs of mandamus to compel the legislature to perform non-ministerial acts, and do not concern the exercise of the power of judicial review.

There is indeed a plethora of cases in which this Court exercised the power of judicial review over congressional action. Thus, in *Santiago v. Guingona, Jr.*,^[60] this Court ruled that it is well within the power and jurisdiction of the Court to inquire whether the Senate or its officials committed a violation of the Constitution or grave abuse of discretion in the exercise of their functions and prerogatives. In *Tanada v. Angara*,^[61] in seeking to nullify an act of the Philippine Senate on the ground that it contravened the Constitution, it held that the petition raises a justiciable controversy and that when an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. In *Bondoc v. Pineda*,^[62] this Court declared null and void a resolution of the House of Representatives withdrawing the

nomination, and rescinding the election, of a congressman as a member of the House Electoral Tribunal for being violative of Section 17, Article VI of the Constitution. In *Coseteng v. Mitra*,^[63] it held that the resolution of whether the House representation in the Commission on Appointments was based on proportional representation of the political parties as provided in Section 18, Article VI of the Constitution is subject to judicial review. In *Daza v. Singson*,^[64] it held that the act of the House of Representatives in removing the petitioner from the Commission on Appointments is subject to judicial review. In *Tanada v. Cuenco*,^[65] it held that although under the Constitution, the legislative power is vested exclusively in Congress, this does not detract from the power of the courts to pass upon the constitutionality of acts of Congress. In *Angara v. Electoral Commission*,^[66] it ruled that confirmation by the National Assembly of the election of any member, irrespective of whether his election is contested, is not essential before such member-elect may discharge the duties and enjoy the privileges of a member of the National Assembly.

Finally, there exists no constitutional basis for the contention that the exercise of judicial review over impeachment proceedings would upset the system of checks and balances. Verily, the Constitution is to be interpreted as a whole and "one section is not to be allowed to defeat another."^[67] Both are integral components of the calibrated system of independence and interdependence that insures that no branch of government act beyond the powers assigned to it by the Constitution.

Essential Requisites for Judicial Review

As clearly stated in *Angara v. Electoral Commission*, the courts' power of judicial review, like almost all powers conferred by the Constitution, is subject to several limitations, namely: (1) an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.

x x x Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.^[68] (*Italics in the original*)

Standing

Locus standi or legal standing or has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.^[69]

Intervenor Soriano, in praying for the dismissal of the petitions, contends that petitioners do not have standing since only the Chief Justice has sustained and will sustain direct personal injury. *Amicus curiae* former Justice Minister and Solicitor General Estelito Mendoza similarly contends.

Upon the other hand, the Solicitor General asserts that petitioners have standing since this Court had, in the past,

accorded standing to taxpayers, voters, concerned citizens, legislators in cases involving paramount public interest[70] and transcendental importance,[71] and that procedural matters are subordinate to the need to determine whether or not the other branches of the government have kept themselves within the limits of the Constitution and the laws and that they have not abused the discretion given to them.[72] Amicus curiae Dean Raul Pangalangan of the U.P. College of Law is of the same opinion, citing transcendental importance and the well-entrenched rule exception that, when the real party in interest is unable to vindicate his rights by seeking the same remedies, as in the case of the Chief Justice who, for ethical reasons, cannot himself invoke the jurisdiction of this Court, the courts will grant petitioners standing.

There is, however, a difference between the rule on real-party-in-interest and the rule on standing, for the former is a concept of civil procedure[73] while the latter has constitutional underpinnings.[74] In view of the arguments set forth regarding standing, it behooves the Court to reiterate the ruling in *Kilosbayan, Inc. v. Morato*[75] to clarify what is meant by locus standi and to distinguish it from real party-in-interest.

The difference between the rule on standing and real party in interest has been noted by authorities thus: "It is important to note . . . that standing because of its constitutional and public policy underpinnings, is very different from questions relating to whether a particular plaintiff is the real party in interest or has capacity to sue. Although all three requirements are directed towards ensuring that only certain parties can maintain an action, standing restrictions require a partial consideration of the merits, as well as broader policy concerns relating to the proper role of the judiciary in certain areas.

Standing is a special concern in constitutional law because in some cases suits are brought not by parties who have been personally injured by the operation of a law or by official action taken, but by concerned citizens, taxpayers or voters who actually sue in the public interest. Hence the question in standing is whether such parties have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."

x x x

On the other hand, the question as to "real party in interest" is whether he is "the party who would be benefited or injured by the judgment, or the 'party entitled to the avails of the suit.'"[76] (Citations omitted)

While rights personal to the Chief Justice may have been injured by the alleged unconstitutional acts of the House of Representatives, none of the petitioners before us asserts a violation of the personal rights of the Chief Justice. On the contrary, they invariably invoke the vindication of their own rights - as taxpayers; members of Congress; citizens, individually or in a class suit; and members of the bar and of the legal profession - which were supposedly violated by the alleged unconstitutional acts of the House of Representatives.

In a long line of cases, however, concerned citizens, taxpayers and legislators when specific requirements have been met have been given standing by this Court.

When suing as a citizen, the interest of the petitioner assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of.[77] In fine, when the proceeding involves the assertion of a public right,[78] the mere fact that he is a citizen satisfies the requirement of personal interest.

In the case of a taxpayer, he is allowed to sue where there is a claim that public funds are illegally disbursed, or that public money is being deflected to any improper purpose, or that there is a wastage of public funds through

the enforcement of an invalid or unconstitutional law.[79] Before he can invoke the power of judicial review, however, he must specifically prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation and that he would sustain a direct injury as a result of the enforcement of the questioned statute or contract. It is not sufficient that he has merely a general interest common to all members of the public.[80]

At all events, courts are vested with discretion as to whether or not a taxpayer's suit should be entertained.[81] This Court opts to grant standing to most of the petitioners, given their allegation that any impending transmittal to the Senate of the Articles of Impeachment and the ensuing trial of the Chief Justice will necessarily involve the expenditure of public funds.

As for a legislator, he is allowed to sue to question the validity of any official action which he claims infringes his prerogatives as a legislator.[82] Indeed, a member of the House of Representatives has standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in his office.[83]

While an association has legal personality to represent its members,[84] especially when it is composed of substantial taxpayers and the outcome will affect their vital interests,[85] the mere invocation by the Integrated Bar of the Philippines or any member of the legal profession of the duty to preserve the rule of law and nothing more, although undoubtedly true, does not suffice to clothe it with standing. Its interest is too general. It is shared by other groups and the whole citizenry. However, a reading of the petitions shows that it has advanced constitutional issues which deserve the attention of this Court in view of their seriousness, novelty and weight as precedents.[86] It, therefore, behooves this Court to relax the rules on standing and to resolve the issues presented by it.

In the same vein, when dealing with class suits filed in behalf of all citizens, persons intervening must be sufficiently numerous to fully protect the interests of all concerned[87] to enable the court to deal properly with all interests involved in the suit,[88] for a judgment in a class suit, whether favorable or unfavorable to the class, is, under the *res judicata* principle, binding on all members of the class whether or not they were before the court.[89] Where it clearly appears that not all interests can be sufficiently represented as shown by the divergent issues raised in the numerous petitions before this Court, G.R. No. 160365 as a class suit ought to fail. Since petitioners additionally allege standing as citizens and taxpayers, however, their petition will stand.

The Philippine Bar Association, in G.R. No. 160403, invokes the sole ground of transcendental importance, while Atty. Dioscoro U. Vallejos, in G.R. No. 160397, is mum on his standing.

There being no doctrinal definition of transcendental importance, the following instructive determinants formulated by former Supreme Court Justice Florentino P. Feliciano are instructive: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised.[90] Applying these determinants, this Court is satisfied that the issues raised herein are indeed of transcendental importance.

In not a few cases, this Court has in fact adopted a liberal attitude on the *locus standi* of a petitioner where the petitioner is able to craft an issue of transcendental significance to the people, as when the issues raised are of paramount importance to the public.[91] Such liberality does not, however, mean that the requirement that a party should have an interest in the matter is totally eliminated. A party must, at the very least, still plead the existence of such interest, it not being one of which courts can take judicial notice. In petitioner Vallejos' case, he failed to allege any interest in the case. He does not thus have standing.

With respect to the motions for intervention, Rule 19, Section 2 of the Rules of Court requires an intervenor to

possess a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof. While intervention is not a matter of right, it may be permitted by the courts when the applicant shows facts which satisfy the requirements of the law authorizing intervention.[92]

In Intervenor Attorneys Romulo Macalintal and Pete Quirino Quadra's case, they seek to join petitioners Candelaria, et. al. in G.R. No. 160262. Since, save for one additional issue, they raise the same issues and the same standing, and no objection on the part of petitioners Candelaria, et. al. has been interposed, this Court as earlier stated, granted the Motion for Leave of Court to Intervene and Petition-in-Intervention.

Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc., et. al. sought to join petitioner Francisco in G.R. No. 160261. Invoking their right as citizens to intervene, alleging that "they will suffer if this insidious scheme of the minority members of the House of Representatives is successful," this Court found the requisites for intervention had been complied with.

Alleging that the issues raised in the petitions in G.R. Nos. 160261, 160262, 160263, 160277, 160292, 160295, and 160310 were of transcendental importance, World War II Veterans Legionnaires of the Philippines, Inc. filed a "Petition-in-Intervention with Leave to Intervene" to raise the additional issue of whether or not the second impeachment complaint against the Chief Justice is valid and based on any of the grounds prescribed by the Constitution.

Finding that Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc., et al. and World War II Veterans Legionnaires of the Philippines, Inc. possess a legal interest in the matter in litigation the respective motions to intervene were hereby granted.

Senator Aquilino Pimentel, on the other hand, sought to intervene for the limited purpose of making of record and arguing a point of view that differs with Senate President Drilon's. He alleges that submitting to this Court's jurisdiction as the Senate President does will undermine the independence of the Senate which will sit as an impeachment court once the Articles of Impeachment are transmitted to it from the House of Representatives. Clearly, Senator Pimentel possesses a legal interest in the matter in litigation, he being a member of Congress against which the herein petitions are directed. For this reason, and to fully ventilate all substantial issues relating to the matter at hand, his Motion to Intervene was granted and he was, as earlier stated, allowed to argue.

Lastly, as to Jaime N. Soriano's motion to intervene, the same must be denied for, while he asserts an interest as a taxpayer, he failed to meet the standing requirement for bringing taxpayer's suits as set forth in *Dumlao v. Comelec*,[93] to wit:

x x x While, concededly, the elections to be held involve the expenditure of public moneys, nowhere in their Petition do said petitioners allege that their tax money is "being extracted and spent in violation of specific constitutional protection against abuses of legislative power," or that there is a misapplication of such funds by respondent COMELEC, or that public money is being deflected to any improper purpose. Neither do petitioners seek to restrain respondent from wasting public funds through the enforcement of an invalid or unconstitutional law.[94](Citations omitted)

In praying for the dismissal of the petitions, Soriano failed even to allege that the act of petitioners will result in illegal disbursement of public funds or in public money being deflected to any improper purpose. Additionally, his mere interest as a member of the Bar does not suffice to clothe him with standing.

Ripeness and Prematurity

In *Tan v. Macapagal*,[95] this Court, through Chief Justice Fernando, held that for a case to be considered ripe for

adjudication, "it is a prerequisite that something had by then been accomplished or performed by either branch before a court may come into the picture." [96] Only then may the courts pass on the validity of what was done, if and when the latter is challenged in an appropriate legal proceeding.

The instant petitions raise in the main the issue of the validity of the filing of the second impeachment complaint against the Chief Justice in accordance with the House Impeachment Rules adopted by the 12th Congress, the constitutionality of which is questioned. The questioned acts having been carried out, i.e., the second impeachment complaint had been filed with the House of Representatives and the 2001 Rules have already been already promulgated and enforced, the prerequisite that the alleged unconstitutional act should be accomplished and performed before suit, as *Tan v. Macapagal* holds, has been complied with.

Related to the issue of ripeness is the question of whether the instant petitions are premature. Amicus curiae former Senate President Jovito R. Salonga opines that there may be no urgent need for this Court to render a decision at this time, it being the final arbiter on questions of constitutionality anyway. He thus recommends that all remedies in the House and Senate should first be exhausted.

Taking a similar stand is Dean Raul Pangalangan of the U.P. College of Law who suggests to this Court to take judicial notice of on-going attempts to encourage signatories to the second impeachment complaint to withdraw their signatures and opines that the House Impeachment Rules provide for an opportunity for members to raise constitutional questions themselves when the Articles of Impeachment are presented on a motion to transmit to the same to the Senate. The dean maintains that even assuming that the Articles are transmitted to the Senate, the Chief Justice can raise the issue of their constitutional infirmity by way of a motion to dismiss.

The dean's position does not persuade. First, the withdrawal by the Representatives of their signatures would not, by itself, cure the House Impeachment Rules of their constitutional infirmity. Neither would such a withdrawal, by itself, obliterate the questioned second impeachment complaint since it would only place it under the ambit of Sections 3(2) and (3) of Article XI of the Constitution [97] and, therefore, petitioners would continue to suffer their injuries.

Second and most importantly, the futility of seeking remedies from either or both Houses of Congress before coming to this Court is shown by the fact that, as previously discussed, neither the House of Representatives nor the Senate is clothed with the power to rule with definitiveness on the issue of constitutionality, whether concerning impeachment proceedings or otherwise, as said power is exclusively vested in the judiciary by the earlier quoted Section I, Article VIII of the Constitution. Remedy cannot be sought from a body which is bereft of power to grant it.

Justiciability

In the leading case of *Tanada v. Cuenco*, [98] Chief Justice Roberto Concepcion defined the term "political question," viz:

[T]he term "political question" connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy. In other words, in the language of *Corpus Juris Secundum*, it refers to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government." It is concerned with issues dependent upon the wisdom, not legality, of a particular measure. [99] (*Italics in the original*)

Prior to the 1973 Constitution, without consistency and seemingly without any rhyme or reason, this Court vacillated on its stance of taking cognizance of cases which involved political questions. In some cases, this Court

hid behind the cover of the political question doctrine and refused to exercise its power of judicial review.[100] In other cases, however, despite the seeming political nature of the therein issues involved, this Court assumed jurisdiction whenever it found constitutionally imposed limits on powers or functions conferred upon political bodies.[101] Even in the landmark 1988 case of *Javellana v. Executive Secretary*[102] which raised the issue of whether the 1973 Constitution was ratified, hence, in force, this Court shunted the political question doctrine and took cognizance thereof. Ratification by the people of a Constitution is a political question, it being a question decided by the people in their sovereign capacity.

The frequency with which this Court invoked the political question doctrine to refuse to take jurisdiction over certain cases during the Marcos regime motivated Chief Justice Concepcion, when he became a Constitutional Commissioner, to clarify this Court's power of judicial review and its application on issues involving political questions, viz:

MR. CONCEPCION. Thank you, Mr. Presiding Officer.

I will speak on the judiciary. Practically, everybody has made, I suppose, the usual comment that the judiciary is the weakest among the three major branches of the service. Since the legislature holds the purse and the executive the sword, the judiciary has nothing with which to enforce its decisions or commands except the power of reason and appeal to conscience which, after all, reflects the will of God, and is the most powerful of all other powers without exception. x x x And so, with the body's indulgence, I will proceed to read the provisions drafted by the Committee on the Judiciary.

The first section starts with a sentence copied from former Constitutions. It says:

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

I suppose nobody can question it.

The next provision is new in our constitutional law. I will read it first and explain.

Judicial power includes the duty of courts of justice to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part or instrumentality of the government.

Fellow Members of this Commission, this is actually a product of our experience during martial law. As a matter of fact, it has some antecedents in the past, but the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political questions and got away with it. As a consequence, certain principles concerning particularly the writ of habeas corpus, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime. I am sure the members of the Bar are familiar with this situation. But for the benefit of the Members of the Commission who are not lawyers, allow me to explain. I will start with a decision of the Supreme Court in 1973 on the case of *Javellana vs. the Secretary of Justice*, if I am not mistaken. Martial law was announced on September 22, although the proclamation was dated September 21. The obvious reason for the delay in its publication was that the administration had apprehended and detained prominent newsmen on September 21. So that when martial law was announced on September 22, the media hardly published anything about it. In fact, the media could not publish any story not

only because our main writers were already incarcerated, but also because those who succeeded them in their jobs were under mortal threat of being the object of wrath of the ruling party. The 1971 Constitutional Convention had begun on June 1, 1971 and by September 21 or 22 had not finished the Constitution; it had barely agreed in the fundamentals of the Constitution. I forgot to say that upon the proclamation of martial law, some delegates to that 1971 Constitutional Convention, dozens of them, were picked up. One of them was our very own colleague, Commissioner Calderon. So, the unfinished draft of the Constitution was taken over by representatives of Malacañang. In 17 days, they finished what the delegates to the 1971 Constitutional Convention had been unable to accomplish for about 14 months. The draft of the 1973 Constitution was presented to the President around December 1, 1972, whereupon the President issued a decree calling a plebiscite which suspended the operation of some provisions in the martial law decree which prohibited discussions, much less public discussions of certain matters of public concern. The purpose was presumably to allow a free discussion on the draft of the Constitution on which a plebiscite was to be held sometime in January 1973. If I may use a word famous by our colleague, Commissioner Ople, during the interregnum, however, the draft of the Constitution was analyzed and criticized with such a telling effect that Malacañang felt the danger of its approval. So, the President suspended indefinitely the holding of the plebiscite and announced that he would consult the people in a referendum to be held from January 10 to January 15. But the questions to be submitted in the referendum were not announced until the eve of its scheduled beginning, under the supposed supervision not of the Commission on Elections, but of what was then designated as "citizens assemblies or barangays." Thus the barangays came into existence. The questions to be propounded were released with proposed answers thereto, suggesting that it was unnecessary to hold a plebiscite because the answers given in the referendum should be regarded as the votes cast in the plebiscite. Thereupon, a motion was filed with the Supreme Court praying that the holding of the referendum be suspended. When the motion was being heard before the Supreme Court, the Minister of Justice delivered to the Court a proclamation of the President declaring that the new Constitution was already in force because the overwhelming majority of the votes cast in the referendum favored the Constitution. Immediately after the departure of the Minister of Justice, I proceeded to the session room where the case was being heard. I then informed the Court and the parties the presidential proclamation declaring that the 1973 Constitution had been ratified by the people and is now in force.

A number of other cases were filed to declare the presidential proclamation null and void. The main defense put up by the government was that the issue was a political question and that the court had no jurisdiction to entertain the case.

x x x

The government said that in a referendum held from January 10 to January 15, the vast majority ratified the draft of the Constitution. Note that all members of the Supreme Court were residents of Manila, but none of them had been notified of any referendum in their respective places of residence, much less did they participate in the alleged referendum. None of them saw any referendum proceeding.

In the Philippines, even local gossips spread like wild fire. So, a majority of the members of the Court felt that there had been no referendum.

Second, a referendum cannot substitute for a plebiscite. There is a big difference between a referendum and a plebiscite. But another group of justices upheld the defense that the issue was a political question. Whereupon, they dismissed the case. This is not the only major case in which the plea of "political question" was set up. There have been a number of other cases in the past.

x x x The defense of the political question was rejected because the issue was clearly justiciable.

x x x

x x x When your Committee on the Judiciary began to perform its functions, it faced the following questions: What is judicial power? What is a political question?

The Supreme Court, like all other courts, has one main function: to settle actual controversies involving conflicts of rights which are demandable and enforceable. There are rights which are guaranteed by law but cannot be enforced by a judiciary party. In a decided case, a husband complained that his wife was unwilling to perform her duties as a wife. The Court said: "We can tell your wife what her duties as such are and that she is bound to comply with them, but we cannot force her physically to discharge her main marital duty to her husband. There are some rights guaranteed by law, but they are so personal that to enforce them by actual compulsion would be highly derogatory to human dignity."

This is why the first part of the second paragraph of Section I provides that:

Judicial power includes the duty of courts to settle actual controversies involving rights which are legally demandable or enforceable . . .

The courts, therefore, cannot entertain, much less decide, hypothetical questions. In a presidential system of government, the Supreme Court has, also another important function. The powers of government are generally considered divided into three branches: the Legislative, the Executive and the Judiciary. Each one is supreme within its own sphere and independent of the others. Because of that supremacy power to determine whether a given law is valid or not is vested in courts of justice.

Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question.

I have made these extended remarks to the end that the Commissioners may have an initial food for thought on the subject of the judiciary.[103] (*Italics in the original; emphasis supplied*)

During the deliberations of the Constitutional Commission, Chief Justice Concepcion further clarified the concept of judicial power, thus:

MR. NOLLEDO. The Gentleman used the term "judicial power" but judicial power is not vested in the Supreme Court alone but also in other lower courts as may be created by law.

MR. CONCEPCION. Yes.

MR. NOLLEDO. And so, is this only an example?

MR. CONCEPCION. No, I know this is not. The Gentleman seems to identify political questions with jurisdictional questions. But there is a difference.

MR. NOLLEDO. Because of the expression "judicial power"?

MR. CONCEPCION. No. Judicial power, as I said, refers to ordinary cases but where there is a question as to whether the government had authority or had abused its authority to the extent of lacking jurisdiction or excess of jurisdiction, that is not a political question. Therefore, the court has the duty to decide.

x x x

FR. BERNAS. Ultimately, therefore, it will always have to be decided by the Supreme Court according to the new numerical need for votes.

On another point, is it the intention of Section 1 to do away with the political question doctrine?

MR. CONCEPCION. No.

FR. BERNAS. It is not.

MR. CONCEPCION. No, because whenever there is an abuse of discretion, amounting to a lack of jurisdiction. . .

FR. BERNAS. So, I am satisfied with the answer that it is not intended to do away with the political question doctrine.

MR. CONCEPCION. No, certainly not.

When this provision was originally drafted, it sought to define what is judicial power. But the Gentleman will notice it says, "judicial power includes" and the reason being that the definition that we might make may not cover all possible areas.

FR. BERNAS. So, this is not an attempt to solve the problems arising from the political question doctrine.

MR. CONCEPCION. It definitely does not eliminate the fact that truly political questions are beyond the pale of judicial power.[104] (Emphasis supplied)

From the foregoing record of the proceedings of the 1986 Constitutional Commission, it is clear that judicial power is not only a power; it is also a duty, a duty which cannot be abdicated by the mere specter of this creature called the political question doctrine. Chief Justice Concepcion hastened to clarify, however, that Section 1, Article VIII was not intended to do away with "truly political questions." From this clarification it is gathered that there are two species of political questions: (1) "truly political questions" and (2) those which "are not truly political questions."

Truly political questions are thus beyond judicial review, the reason for respect of the doctrine of separation of powers to be maintained. On the other hand, by virtue of Section 1, Article VIII of the Constitution, courts can review questions which are not truly political in nature.

As pointed out by amicus curiae former dean Pacifico Agabin of the UP College of Law, this Court has in fact in a number of cases taken jurisdiction over questions which are not truly political following the effectivity of the present Constitution.

In *Marcos v. Manglapus*,[105] this Court, speaking through Madame Justice Irene Cortes, held:

The present Constitution limits resort to the political question doctrine and broadens the scope of judicial inquiry into areas which the Court, under previous constitutions, would have normally left to the political departments to decide.[106] x x x

In *Bengzon v. Senate Blue Ribbon Committee*,[107] through Justice Teodoro Padilla, this Court declared:

The "allocation of constitutional boundaries" is a task that this Court must perform under the Constitution. Moreover, as held in a recent case, "(t)he political question doctrine neither interposes an obstacle to judicial determination of the rival claims. The jurisdiction to delimit constitutional boundaries has been given to this Court. It cannot abdicate that obligation mandated by the 1987 Constitution, although said provision by no means does away with the applicability of the principle in appropriate cases."[108] (Emphasis and

underscoring supplied)

And in *Daza v. Singson*,^[109] speaking through Justice Isagani Cruz, this Court ruled:

In the case now before us, the jurisdictional objection becomes even less tenable and decisive. The reason is that, even if we were to assume that the issue presented before us was political in nature, we would still not be precluded from resolving it under the expanded jurisdiction conferred upon us that now covers, in proper cases, even the political question.^[110] x x x (Emphasis and underscoring supplied.)

Section 1, Article VIII, of the Court does not define what are justiciable political questions and non-justiciable political questions, however. Identification of these two species of political questions may be problematic. There has been no clear standard. The American case of *Baker v. Carr*^[111] attempts to provide some:

x x x Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for questioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.^[112] (Underscoring supplied)

Of these standards, the more reliable have been the first three: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) the lack of judicially discoverable and manageable standards for resolving it; and (3) the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion. These standards are not separate and distinct concepts but are interrelated to each in that the presence of one strengthens the conclusion that the others are also present.

The problem in applying the foregoing standards is that the American concept of judicial review is radically different from our current concept, for Section 1, Article VIII of the Constitution provides our courts with far less discretion in determining whether they should pass upon a constitutional issue.

In our jurisdiction, the determination of a truly political question from a non-justiciable political question lies in the answer to the question of whether there are constitutionally imposed limits on powers or functions conferred upon political bodies. If there are, then our courts are duty-bound to examine whether the branch or instrumentality of the government properly acted within such limits. This Court shall thus now apply this standard to the present controversy.

These petitions raise five substantial issues:

- Whether the offenses alleged in the Second impeachment complaint constitute valid impeachable offenses under the Constitution.
- Whether the second impeachment complaint was filed in accordance with Section 3(4), Article XI of the Constitution.
- Whether the legislative inquiry by the House Committee on Justice into the Judicial Development Fund is an unconstitutional infringement of the constitutionally mandated fiscal autonomy of the judiciary.
- Whether Sections 15 and 16 of Rule V of the Rules on Impeachment adopted by the 12th Congress are unconstitutional for violating the provisions of Section 3, Article XI of the Constitution.
- Whether the second impeachment complaint is barred under Section 3(5) of Article XI of the Constitution.

The first issue goes into the merits of the second impeachment complaint over which this Court has no jurisdiction. More importantly, any discussion of this issue would require this Court to make a determination of what constitutes an impeachable offense. Such a determination is a purely political question which the Constitution has left to the sound discretion of the legislation. Such an intent is clear from the deliberations of the Constitutional Commission.[113]

Although Section 2 of Article XI of the Constitution enumerates six grounds for impeachment, two of these, namely, other high crimes and betrayal of public trust, elude a precise definition. In fact, an examination of the records of the 1986 Constitutional Commission shows that the framers could find no better way to approximate the boundaries of betrayal of public trust and other high crimes than by alluding to both positive and negative examples of both, without arriving at their clear cut definition or even a standard therefor.[114] Clearly, the issue calls upon this court to decide a non- justiciable political question which is beyond the scope of its judicial power under Section 1, Article VIII.

Lis Mota

It is a well-settled maxim of adjudication that an issue assailing the constitutionality of a governmental act should be avoided whenever possible. Thus, in the case of *Sotto v. Commission on Elections*,[115] this Court held:

x x x It is a well-established rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid, unless such question is raised by the parties and that when it is raised, if the record also presents some other ground upon which the court may rest its judgment, that course will be adopted and the constitutional question will be left for consideration until a case arises in which a decision upon such question will be unavoidable.[116] [Emphasis and underscoring supplied]

The same principle was applied in *Luz Farms v. Secretary of Agrarian Reform*,[117] where this Court invalidated Sections 13 and 32 of Republic Act No. 6657 for being confiscatory and violative of due process, to wit:

It has been established that this Court will assume jurisdiction over a constitutional question only if it is shown that the essential requisites of a judicial inquiry into such a question are first satisfied. Thus, there must be an actual case or controversy involving a conflict of legal rights susceptible of judicial determination, the constitutional question must have been opportunely raised by the proper party, and the resolution of the question is unavoidably necessary to the decision of the case itself.[118] [Emphasis supplied]

Succinctly put, courts will not touch the issue of constitutionality unless it is truly unavoidable and is the very *lis mota* or crux of the controversy.

As noted earlier, the instant consolidated petitions, while all seeking the invalidity of the second impeachment complaint, collectively raise several constitutional issues upon which the outcome of this controversy could possibly be made to rest. In determining whether one, some or all of the remaining substantial issues should be passed upon, this Court is guided by the related cannon of adjudication that "the court should not form a rule of constitutional law broader than is required by the precise facts to which it is applied." [119]

In G.R. No. 160310, petitioners Leonilo R. Alfonso, et al. argue that, among other reasons, the second impeachment complaint is invalid since it directly resulted from a Resolution[120] calling for a legislative inquiry into the JDF, which Resolution and legislative inquiry petitioners claim to likewise be unconstitutional for being: (a) a violation of the rules and jurisprudence on investigations in aid of legislation; (b) an open breach of the doctrine of separation of powers; (c) a violation of the constitutionally mandated fiscal autonomy of the judiciary; and (d) an assault on the independence of the judiciary.[121]

Without going into the merits of petitioners Alfonso, et. al.'s claims, it is the studied opinion of this Court that the

issue of the constitutionality of the said Resolution and resulting legislative inquiry is too far removed from the issue of the validity of the second impeachment complaint. Moreover, the resolution of said issue would, in the Court's opinion, require it to form a rule of constitutional law touching on the separate and distinct matter of legislative inquiries in general, which would thus be broader than is required by the facts of these consolidated cases. This opinion is further strengthened by the fact that said petitioners have raised other grounds in support of their petition which would not be adversely affected by the Court's ruling.

En passant, this Court notes that a standard for the conduct of legislative inquiries has already been enunciated by this Court in *Bengzon, Jr. v. Senate Blue Ribbon Commtee*,^[122] viz:

The 1987 Constitution expressly recognizes the power of both houses of Congress to conduct inquiries in aid of legislation. Thus, Section 21, Article VI thereof provides:

The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

The power of both houses of Congress to conduct inquiries in aid of legislation is not, therefore absolute or unlimited. Its exercise is circumscribed by the afore-quoted provision of the Constitution. Thus, as provided therein, the investigation must be "in aid of legislation in accordance with its duly published rules of procedure" and that "the rights of persons appearing in or affected by such inquiries shall be respected." It follows then that the right rights of persons under the Bill of Rights must be respected, including the right to due process and the right not be compelled to testify against one's self.^[123]

In G.R. No. 160262, intervenors Romulo B. Macalintal and Pete Quirino Quadra, while joining the original petition of petitioners Candelaria, et. al., introduce the new argument that since the second impeachment complaint was verified and filed only by Representatives Gilberto Teodoro, Jr. and Felix William Fuentebella, the same does not fall under the provisions of Section 3 (4), Article XI of the Constitution which reads:

Section 3(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

They assert that while at least 81 members of the House of Representatives signed a Resolution of Endorsement/Impeachment, the same did not satisfy the requisites for the application of the afore-mentioned section in that the "verified complaint or resolution of impeachment" was not filed "by at least one-third of all the Members of the House." With the exception of Representatives Teodoro and Fuentebella, the signatories to said Resolution are alleged to have verified the same merely as a "Resolution of Endorsement." Intervenors point to the "Verification" of the Resolution of Endorsement which states that:

"We are the proponents/sponsors of the Resolution of Endorsement of the abovementioned Complaint of Representatives Gilberto Teodoro and Felix William B. Fuentebella x x x"^[124]

Intervenors Macalintal and Quadra further claim that what the Constitution requires in order for said second impeachment complaint to automatically become the Articles of Impeachment and for trial in the Senate to begin "forthwith," is that the verified complaint be "filed," not merely endorsed, by at least one-third of the Members of the House of Representatives. Not having complied with this requirement, they concede that the second impeachment complaint should have been calendared and referred to the House Committee on Justice under Section 3(2), Article XI of the Constitution, viz:

Section 3(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be

included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

Intervenors' foregoing position is echoed by Justice Maambong who opined that for Section 3 (4), Article XI of the Constitution to apply, there should be 76 or more representatives who signed and verified the second impeachment complaint as complainants, signed and verified the signatories to a resolution of impeachment. Justice Maambong likewise asserted that the Resolution of Endorsement/Impeachment signed by at least one-third of the members of the House of Representatives as endorsers is not the resolution of impeachment contemplated by the Constitution, such resolution of endorsement being necessary only from at least one Member whenever a citizen files a verified impeachment complaint.

While the foregoing issue, as argued by intervenors Macalintal and Quadra, does indeed limit the scope of the constitutional issues to the provisions on impeachment, more compelling considerations militate against its adoption as the *lis mota* or crux of the present controversy. Chief among this is the fact that only Attorneys Macalintal and Quadra, intervenors in G.R. No. 160262, have raised this issue as a ground for invalidating the second impeachment complaint. Thus, to adopt this additional ground as the basis for deciding the instant consolidated petitions would not only render for naught the efforts of the original petitioners in G.R. No. 160262, but the efforts presented by the other petitioners as well.

Again, the decision to discard the resolution of this issue as unnecessary for the determination of the instant cases is made easier by the fact that said intervenors Macalintal and Quadra have joined in the petition of Candelaria, et. al., adopting the latter's arguments and issues as their own. Consequently, they are not unduly prejudiced by this Court's decision.

In sum, this Court holds that the two remaining issues, inextricably linked as they are, constitute the very *lis mota* of the instant controversy: (1) whether Sections 15 and 16 of Rule V of the House Impeachment Rules adopted by the 12th Congress are unconstitutional for violating the provisions of Section 3, Article XI of the Constitution; and (2) whether, as a result thereof, the second impeachment complaint is barred under Section 3(5) of Article XI of the Constitution.

Judicial Restraint

Senator Pimentel urges this Court to exercise judicial restraint on the ground that the Senate, sitting as an impeachment court, has the sole power to try and decide all cases of impeachment. Again, this Court reiterates that the power of judicial review includes the power of review over justiciable issues in impeachment proceedings.

On the other hand, respondents Speaker De Venecia et. al. argue that "[t]here is a moral compulsion for the Court to not assume jurisdiction over the impeachment because all the Members thereof are subject to impeachment."^[125] But this argument is very much like saying the Legislature has a moral compulsion not to pass laws with penalty clauses because Members of the House of Representatives are subject to them.

The exercise of judicial restraint over justiciable issues is not an option before this Court. Adjudication may not be declined, because this Court is not legally disqualified. Nor can jurisdiction be renounced as there is no other tribunal to which the controversy may be referred."^[126] Otherwise, this Court would be shirking from its duty vested under Art. VIII, Sec. 1(2) of the Constitution. More than being clothed with authority thus, this Court is duty-bound to take cognizance of the instant petitions.^[127] In the august words of amicus curiae Father Bernas, "jurisdiction is not just a power; it is a solemn duty which may not be renounced. To renounce it, even if it is

vexatious, would be a dereliction of duty."

Even in cases where it is an interested party, the Court under our system of government cannot inhibit itself and must rule upon the challenge because no other office has the authority to do so.[128] On the occasion that this Court had been an interested party to the controversy before it, it has acted upon the matter "not with officiousness but in the discharge of an unavoidable duty and, as always, with detachment and fairness." [129] After all, "by [his] appointment to the office, the public has laid on [a member of the judiciary] their confidence that [he] is mentally and morally fit to pass upon the merits of their varied contentions. For this reason, they expect [him] to be fearless in [his] pursuit to render justice, to be unafraid to displease any person, interest or power and to be equipped with a moral fiber strong enough to resist the temptations lurking in [his] office." [130]

The duty to exercise the power of adjudication regardless of interest had already been settled in the case of *Abbas v. Senate Electoral Tribunal*. [131] In that case, the petitioners filed with the respondent Senate Electoral Tribunal a Motion for Disqualification or Inhibition of the Senators- Members thereof from the hearing and resolution of SET Case No. 002-87 on the ground that all of them were interested parties to said case as respondents therein. This would have reduced the Tribunal's membership to only its three Justices-Members whose disqualification was not sought, leaving them to decide the matter. This Court held:

Where, as here, a situation is created which precludes the substitution of any Senator sitting in the Tribunal by any of his other colleagues in the Senate without inviting the same objections to the substitute's competence, the proposed mass disqualification, if sanctioned and ordered, would leave the Tribunal no alternative but to abandon a duty that no other court or body can perform, but which it cannot lawfully discharge if shorn of the participation of its entire membership of Senators.

To our mind, this is the overriding consideration -- that the Tribunal be not prevented from discharging a duty which it alone has the power to perform, the performance of which is in the highest public interest as evidenced by its being expressly imposed by no less than the fundamental law.

It is aptly noted in the first of the questioned Resolutions that the framers of the Constitution could not have been unaware of the possibility of an election contest that would involve all Senators--elect, six of whom would inevitably have to sit in judgment thereon. Indeed, such possibility might surface again in the wake of the 1992 elections when once more, but for the last time, all 24 seats in the Senate will be at stake. Yet the Constitution provides no scheme or mode for settling such unusual situations or for the substitution of Senators designated to the Tribunal whose disqualification may be sought. Litigants in such situations must simply place their trust and hopes of vindication in the fairness and sense of justice of the Members of the Tribunal. Justices and Senators, singly and collectively.

Let us not be misunderstood as saying that no Senator-Member of the Senate Electoral Tribunal may inhibit or disqualify himself from sitting in judgment on any case before said Tribunal. Every Member of the Tribunal may, as his conscience dictates, refrain from participating in the resolution of a case where he sincerely feels that his personal interests or biases would stand in the way of an objective and impartial judgment. What we are merely saying is that in the light of the Constitution, the Senate Electoral Tribunal cannot legally function as such, absent its entire membership of Senators and that no amendment of its Rules can confer on the three Justices-Members alone the power of valid adjudication of a senatorial election contest.

More recently in the case of *Estrada v. Desierto*, [132] it was held that:

Moreover, to disqualify any of the members of the Court, particularly a majority of them, is nothing short of pro tanto depriving the Court itself of its jurisdiction as established by the fundamental law. Disqualification of a judge is a deprivation of his judicial power. And if that judge is the one designated by the Constitution to exercise the jurisdiction of his court, as is the case with the Justices of this Court, the deprivation of his or their judicial power is equivalent to the deprivation of the judicial power of the court itself. It affects the very heart

of judicial independence. The proposed mass disqualification, if sanctioned and ordered, would leave the Court no alternative but to abandon a duty which it cannot lawfully discharge if shorn of the participation of its entire membership of Justices.[133] (*Italics in the original*)

Besides, there are specific safeguards already laid down by the Court when it exercises its power of judicial review.

In *Demetria v. Alba*,[134] this Court, through Justice Marcelo Fernan cited the "seven pillars" of limitations of the power of judicial review, enunciated by US Supreme Court Justice Brandeis in *Ashwander v. TVA* [135] as follows:

- The Court will not pass upon the constitutionality of legislation in a friendly, non-adversary proceeding, declining because to decide such questions `is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act.'
- The Court will not `anticipate a question of constitutional law in advance of the necessity of deciding it.' . . . `It is not the habit of the Court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case.'
- The Court will not `formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'
- The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter. Appeals from the highest court of a state challenging its decision of a question under the Federal Constitution are frequently dismissed because the judgment can be sustained on an independent state ground.
- The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation. Among the many applications of this rule, none is more striking than the denial of the right of challenge to one who lacks a personal or property right. Thus, the challenge by a public official interested only in the performance of his official duty will not be entertained . . . In *Fairchild v. Hughes*, the Court affirmed the dismissal of a suit brought by a citizen who sought to have the Nineteenth Amendment declared unconstitutional. In *Massachusetts v. Mellon*, the challenge of the federal Maternity Act was not entertained although made by the Commonwealth on behalf of all its citizens.
- The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.
- When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided (citations omitted).

The foregoing "pillars" of limitation of judicial review, summarized in *Ashwander v. TVA* from different decisions of the United States Supreme Court, can be encapsulated into the following categories:

- that there be absolute necessity of deciding a case
- that rules of constitutional law shall be formulated only as required by the facts of the case

- that judgment may not be sustained on some other ground
- that there be actual injury sustained by the party by reason of the operation of the statute
- that the parties are not in estoppel
- that the Court upholds the presumption of constitutionality

As stated previously, parallel guidelines have been adopted by this Court in the exercise of judicial review:

- actual case or controversy calling for the exercise of judicial power
- the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement
- the question of constitutionality must be raised at the earliest possible opportunity
- the issue of constitutionality must be the very *lis mota* of the case.[136]

Respondents Speaker de Venecia, et. al. raise another argument for judicial restraint the possibility that "judicial review of impeachments might also lead to embarrassing conflicts between the Congress and the [J]udiciary." They stress the need to avoid the appearance of impropriety or conflicts of interest in judicial hearings, and the scenario that it would be confusing and humiliating and risk serious political instability at home and abroad if the judiciary countermanded the vote of Congress to remove an impeachable official.[137] Intervenor Soriano echoes this argument by alleging that failure of this Court to enforce its Resolution against Congress would result in the diminution of its judicial authority and erode public confidence and faith in the judiciary.

Such an argument, however, is specious, to say the least. As correctly stated by the Solicitor General, the possibility of the occurrence of a constitutional crisis is not a reason for this Court to refrain from upholding the Constitution in all impeachment cases. Justices cannot abandon their constitutional duties just because their action may start, if not precipitate, a crisis.

Justice Feliciano warned against the dangers when this Court refuses to act.

x x x Frequently, the fight over a controversial legislative or executive act is not regarded as settled until the Supreme Court has passed upon the constitutionality of the act involved, the judgment has not only juridical effects but also political consequences. Those political consequences may follow even where the Court fails to grant the petitioner's prayer to nullify an act for lack of the necessary number of votes. Frequently, failure to act explicitly, one way or the other, itself constitutes a decision for the respondent and validation, or at least quasi-validation, follows."[138]

Thus, in *Javellana v. Executive Secretary*[139] where this Court was split and "in the end there were not enough votes either to grant the petitions, or to sustain respondent's claims,"[140] the pre-existing constitutional order was disrupted which paved the way for the establishment of the martial law regime.

Such an argument by respondents and intervenor also presumes that the coordinate branches of the government would behave in a lawless manner and not do their duty under the law to uphold the Constitution and obey the laws of the land. Yet there is no reason to believe that any of the branches of government will behave in a precipitate manner and risk social upheaval, violence, chaos and anarchy by encouraging disrespect for the fundamental law of the land.

Substituting the word public officers for judges, this Court is well guided by the doctrine in *People v. Veneracion*, to wit:[141]

Obedience to the rule of law forms the bedrock of our system of justice. If [public officers], under the guise of religious or political beliefs were allowed to roam unrestricted beyond boundaries within which they are required by law to exercise the duties of their office, then law becomes meaningless. A government of laws, not of men excludes the exercise of broad discretionary powers by those acting under its authority. Under this system, [public officers] are guided by the Rule of Law, and ought "to protect and enforce it without fear or favor," resist encroachments by governments, political parties, or even the interference of their own personal beliefs.[142]

Constitutionality of the Rules of Procedure
for Impeachment Proceedings
adopted by the 12th Congress

Respondent House of Representatives, through Speaker De Venecia, argues that Sections 16 and 17 of Rule V of the House Impeachment Rules do not violate Section 3 (5) of Article XI of our present Constitution, contending that the term "initiate" does not mean "to file;" that Section 3 (1) is clear in that it is the House of Representatives, as a collective body, which has the exclusive power to initiate all cases of impeachment; that initiate could not possibly mean "to file" because filing can, as Section 3 (2), Article XI of the Constitution provides, only be accomplished in 3 ways, to wit: (1) by a verified complaint for impeachment by any member of the House of Representatives; or (2) by any citizen upon a resolution of endorsement by any member; or (3) by at least 1/3 of all the members of the House. Respondent House of Representatives concludes that the one year bar prohibiting the initiation of impeachment proceedings against the same officials could not have been violated as the impeachment complaint against Chief Justice Davide and seven Associate Justices had not been initiated as the House of Representatives, acting as the collective body, has yet to act on it.

The resolution of this issue thus hinges on the interpretation of the term "initiate." Resort to statutory construction is, therefore, in order.

That the sponsor of the provision of Section 3(5) of the Constitution, Commissioner Florenz Regalado, who eventually became an Associate Justice of this Court, agreed on the meaning of "initiate" as "to file," as proffered and explained by Constitutional Commissioner Maambong during the Constitutional Commission proceedings, which he (Commissioner Regalado) as *amicus curiae* affirmed during the oral arguments on the instant petitions held on November 5, 2003 at which he added that the act of "initiating" included the act of taking initial action on the complaint, dissipates any doubt that indeed the word "initiate" as it twice appears in Article XI (3) and (5) of the Constitution means to file the complaint and take initial action on it.

"Initiate" of course is understood by ordinary men to mean, as dictionaries do, to begin, to commence, or set going. As Webster's Third New International Dictionary of the English Language concisely puts it, it means "to perform or facilitate the first action," which jibes with Justice Regalado's position, and that of Father Bernas, who elucidated during the oral arguments of the instant petitions on November 5, 2003 in this wise:

Briefly then, an impeachment proceeding is not a single act. It is a complex of acts consisting of a beginning, a middle and an end. The end is the transmittal of the articles of impeachment to the Senate. The middle consists of those deliberative moments leading to the formulation of the articles of impeachment. The beginning or the initiation is the filing of the complaint and its referral to the Committee on Justice.

Finally, it should be noted that the House Rule relied upon by Representatives Cojuangco and Fuentebella says that impeachment is "deemed initiated" when the Justice Committee votes in favor of impeachment or when the House reverses a contrary vote of the Committee. Note that the Rule does not say "impeachment proceedings" are initiated but rather are "deemed initiated." The language is recognition that initiation happened earlier, but by legal fiction there is an attempt to postpone it to a time after actual initiation.

(Emphasis and underscoring supplied)

As stated earlier, one of the means of interpreting the Constitution is looking into the intent of the law. Fortunately, the intent of the framers of the 1987 Constitution can be pried from its records:

MR. MAAMBONG. With reference to Section 3, regarding the procedure and the substantive provisions on impeachment, I understand there have been many proposals and, I think, these would need some time for Committee action.

However, I would just like to indicate that I submitted to the Committee a resolution on impeachment proceedings, copies of which have been furnished the Members of this body. This is borne out of my experience as a member of the Committee on Justice, Human Rights and Good Government which took charge of the last impeachment resolution filed before the First Batasang Pambansa. For the information of the Committee, the resolution covers several steps in the impeachment proceedings starting with initiation, action of the Speaker committee action, calendaring of report, voting on the report, transmittal referral to the Senate, trial and judgment by the Senate.

x x x

MR. MAAMBONG. Mr. Presiding Officer, I am not moving for a reconsideration of the approval of the amendment submitted by Commissioner Regalado, but I will just make of record my thinking that we do not really initiate the filing of the Articles of Impeachment on the floor. The procedure, as I have pointed out earlier, was that the initiation starts with the filing of the complaint. And what is actually done on the floor is that the committee resolution containing the Articles of Impeachment is the one approved by the body.

As the phraseology now runs, which may be corrected by the Committee on Style, it appears that the initiation starts on the floor. If we only have time, I could cite examples in the case of the impeachment proceedings of President Richard Nixon wherein the Committee on the Judiciary submitted the recommendation, the resolution, and the Articles of Impeachment to the body, and it was the body who approved the resolution. It is not the body which initiates it. It only approves or disapproves the resolution. So, on that score, probably the Committee on Style could help in rearranging these words because we have to be very technical about this. I have been bringing with me The Rules of the House of Representatives of the U.S. Congress. The Senate Rules are with me. The proceedings on the case of Richard Nixon are with me. I have submitted my proposal, but the Committee has already decided. Nevertheless, I just want to indicate this on record.

x x x

MR. MAAMBONG. I would just like to move for a reconsideration of the approval of Section 3 (3). My reconsideration will not at all affect the substance, but it is only in keeping with the exact formulation of the Rules of the House of Representatives of the United States regarding impeachment.

I am proposing, Madam President, without doing damage to any of this provision, that on page 2, Section 3 (3), from lines 17 to 18, we delete the words which read: "to initiate impeachment proceedings" and the comma (,) and insert on line 19 after the word "resolution" the phrase WITH THE ARTICLES, and then capitalize the letter "i" in "impeachment" and replace the word "by" with OF, so that the whole section will now read: "A vote of at least one-third of all the Members of the House shall be necessary either to affirm a resolution WITH THE ARTICLES of Impeachment OF the Committee or to override its contrary resolution. The vote of each Member shall be recorded."

I already mentioned earlier yesterday that the initiation, as far as the House of Representatives of the United States is concerned, really starts from the filing of the verified complaint and every resolution to impeach always carries with it the Articles of Impeachment. As a matter of fact, the words "Articles of Impeachment" are mentioned on line 25 in the case of the direct filing of a verified complaint of one-third of all the Members of the House. I will mention again, Madam President, that my amendment will not vary the substance in any way. It is only in keeping with the uniform procedure of the House of Representatives of the United States

Congress. Thank you, Madam President.[143] (Italics in the original; emphasis and underscoring supplied)

This amendment proposed by Commissioner Maambong was clarified and accepted by the Committee on the Accountability of Public Officers.[144]

It is thus clear that the framers intended "initiation" to start with the filing of the complaint. In his amicus curiae brief, Commissioner Maambong explained that "the obvious reason in deleting the phrase "to initiate impeachment proceedings" as contained in the text of the provision of Section 3 (3) was to settle and make it understood once and for all that the initiation of impeachment proceedings starts with the filing of the complaint, and the vote of one-third of the House in a resolution of impeachment does not initiate the impeachment proceedings which was already initiated by the filing of a verified complaint under Section 3, paragraph (2), Article XI of the Constitution. "[145]

Amicus curiae Constitutional Commissioner Regalado is of the same view as is Father Bernas, who was also a member of the 1986 Constitutional Commission, that the word "initiate" as used in Article XI, Section 3(5) means to file, both adding, however, that the filing must be accompanied by an action to set the complaint moving.

During the oral arguments before this Court, Father Bernas clarified that the word "initiate," appearing in the constitutional provision on impeachment, viz:

Section 3 (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

x x x

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year, (Emphasis supplied)

refers to two objects, "impeachment case" and "impeachment proceeding."

Father Bernas explains that in these two provisions, the common verb is "to initiate." The object in the first sentence is "impeachment case." The object in the second sentence is "impeachment proceeding." Following the principle of *reddendo singula singulis*, the term "cases" must be distinguished from the term "proceedings." An impeachment case is the legal controversy that must be decided by the Senate. Above-quoted first provision provides that the House, by a vote of one-third of all its members, can bring a case to the Senate. It is in that sense that the House has "exclusive power" to initiate all cases of impeachment. No other body can do it. However, before a decision is made to initiate a case in the Senate, a "proceeding" must be followed to arrive at a conclusion. A proceeding must be "initiated." To initiate, which comes from the Latin word *initium*, means to begin. On the other hand, proceeding is a progressive noun. It has a beginning, a middle, and an end. It takes place not in the Senate but in the House and consists of several steps: (1) there is the filing of a verified complaint either by a Member of the House of Representatives or by a private citizen endorsed by a Member of the House of the Representatives; (2) there is the processing of this complaint by the proper Committee which may either reject the complaint or uphold it; (3) whether the resolution of the Committee rejects or upholds the complaint, the resolution must be forwarded to the House for further processing; and (4) there is the processing of the same complaint by the House of Representatives which either affirms a favorable resolution of the Committee or overrides a contrary resolution by a vote of one-third of all the members. If at least one third of all the Members upholds the complaint, Articles of Impeachment are prepared and transmitted to the Senate. It is at this point that the House "initiates an impeachment case." It is at this point that an impeachable public official is successfully impeached. That is, he or she is successfully charged with an impeachment "case" before the Senate as impeachment court.

Father Bernas further explains: The "impeachment proceeding" is not initiated when the complaint is transmitted

to the Senate for trial because that is the end of the House proceeding and the beginning of another proceeding, namely the trial. Neither is the "impeachment proceeding" initiated when the House deliberates on the resolution passed on to it by the Committee, because something prior to that has already been done. The action of the House is already a further step in the proceeding, not its initiation or beginning. Rather, the proceeding is initiated or begins, when a verified complaint is filed and referred to the Committee on Justice for action. This is the initiating step which triggers the series of steps that follow.

The framers of the Constitution also understood initiation in its ordinary meaning. Thus when a proposal reached the floor proposing that "A vote of at least one-third of all the Members of the House shall be necessary... to initiate impeachment proceedings," this was met by a proposal to delete the line on the ground that the vote of the House does not initiate impeachment proceeding but rather the filing of a complaint does.^[146] Thus the line was deleted and is not found in the present Constitution.

Father Bernas concludes that when Section 3 (5) says, "No impeachment proceeding shall be initiated against the same official more than once within a period of one year," it means that no second verified complaint may be accepted and referred to the Committee on Justice for action. By his explanation, this interpretation is founded on the common understanding of the meaning of "to initiate" which means to begin. He reminds that the Constitution is ratified by the people, both ordinary and sophisticated, as they understand it; and that ordinary people read ordinary meaning into ordinary words and not abstruse meaning, they ratify words as they understand it and not as sophisticated lawyers confuse it.

To the argument that only the House of Representatives as a body can initiate impeachment proceedings because Section 3 (1) says "The House of Representatives shall have the exclusive power to initiate all cases of impeachment," This is a misreading of said provision and is contrary to the principle of *reddendo singula singulis* by equating "impeachment cases" with "impeachment proceeding."

From the records of the Constitutional Commission, to the amicus curiae briefs of two former Constitutional Commissioners, it is without a doubt that the term "to initiate" refers to the filing of the impeachment complaint coupled with Congress' taking initial action of said complaint.

Having concluded that the initiation takes place by the act of filing and referral or endorsement of the impeachment complaint to the House Committee on Justice or, by the filing by at least one-third of the members of the House of Representatives with the Secretary General of the House, the meaning of Section 3 (5) of Article XI becomes clear. Once an impeachment complaint has been initiated, another impeachment complaint may not be filed against the same official within a one year period.

Under Sections 16 and 17 of Rule V of the House Impeachment Rules, impeachment proceedings are deemed initiated (1) if there is a finding by the House Committee on Justice that the verified complaint and/or resolution is sufficient in substance, or (2) once the House itself affirms or overturns the finding of the Committee on Justice that the verified complaint and/or resolution is not sufficient in substance or (3) by the filing or endorsement before the Secretary-General of the House of Representatives of a verified complaint or a resolution of impeachment by at least 1/3 of the members of the House. These rules clearly contravene Section 3 (5) of Article XI since the rules give the term "initiate" a meaning different meaning from filing and referral.

In his amicus curiae brief, Justice Hugo Gutierrez posits that this Court could not use contemporaneous construction as an aid in the interpretation of Sec.3 (5) of Article XI, citing *Vera v. Avelino*^[147] wherein this Court stated that "their personal opinions (referring to Justices who were delegates to the Constitution Convention) on the matter at issue expressed during this Court's our deliberations stand on a different footing from the properly recorded utterances of debates and proceedings." Further citing said case, he states that this

Court likened the former members of the Constitutional Convention to actors who are so absorbed in their emotional roles that intelligent spectators may know more about the real meaning because of the latter's balanced perspectives and disinterestedness.[148]

Justice Gutierrez's statements have no application in the present petitions. There are at present only two members of this Court who participated in the 1986 Constitutional Commission - Chief Justice Davide and Justice Adolf Azcuna. Chief Justice Davide has not taken part in these proceedings for obvious reasons. Moreover, this Court has not simply relied on the personal opinions now given by members of the Constitutional Commission, but has examined the records of the deliberations and proceedings thereof.

Respondent House of Representatives counters that under Section 3 (8) of Article XI, it is clear and unequivocal that it and only it has the power to make and interpret its rules governing impeachment. Its argument is premised on the assumption that Congress has absolute power to promulgate its rules. This assumption, however, is misplaced.

Section 3 (8) of Article XI provides that "The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section." Clearly, its power to promulgate its rules on impeachment is limited by the phrase "to effectively carry out the purpose of this section." Hence, these rules cannot contravene the very purpose of the Constitution which said rules were intended to effectively carry out. Moreover, Section 3 of Article XI clearly provides for other specific limitations on its power to make rules, viz:

Section 3. (1) x x x

(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary to either affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

It is basic that all rules must not contravene the Constitution which is the fundamental law. If as alleged Congress had absolute rule making power, then it would by necessary implication have the power to alter or amend the meaning of the Constitution without need of referendum.

In *Osmeña v. Pendatun*,^[149] this Court held that it is within the province of either House of Congress to interpret its rules and that it was the best judge of what constituted "disorderly behavior" of its members. However, in *Paceta v. Secretary of the Commission on Appointments*,^[150] Justice (later Chief Justice) Enrique Fernando, speaking for this Court and quoting Justice Brandeis in *United States v. Smith*,^[151] declared that where the construction to be given to a rule affects persons other than members of the Legislature, the question becomes judicial in nature. In *Arroyo v. De Venecia*,^[152] quoting *United States v. Ballin, Joseph & Co.*,^[153] Justice

Vicente Mendoza, speaking for this Court, held that while the Constitution empowers each house to determine its rules of proceedings, it may not by its rules ignore constitutional restraints or violate fundamental rights, and further that there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. It is only within these limitations that all matters of method are open to the determination of the Legislature. In the same case of *Arroyo v. De Venecia*, Justice Reynato S. Puno, in his Concurring and Dissenting Opinion, was even more emphatic as he stressed that in the Philippine setting there is even more reason for courts to inquire into the validity of the Rules of Congress, viz:

With due respect, I do not agree that the issues posed by the petitioner are non-justiciable. Nor do I agree that we will trivialize the principle of separation of power if we assume jurisdiction over the case at bar. Even in the United States, the principle of separation of power is no longer an impregnable impediment against the interposition of judicial power on cases involving breach of rules of procedure by legislators.

Rightly, the ponencia uses the 1891 case of *US v Ballin* (144 US 1) as a window to view the issues before the Court. It is in *Ballin* where the US Supreme Court first defined the boundaries of the power of the judiciary to review congressional rules. It held:

"x x x

"The Constitution, in the same section, provides, that each house may determine the rules of its proceedings." It appears that in pursuance of this authority the House had, prior to that day, passed this as one of its rules:

Rule XV

3. On the demand of any member, or at the suggestion of the Speaker, the names of members sufficient to make a quorum in the hall of the House who do not vote shall be noted by the clerk and recorded in the journal, and reported to the Speaker with the names of the members voting, and be counted and announced in determining the presence of a quorum to do business. (House Journal, 230, Feb. 14, 1890)

The action taken was in direct compliance with this rule. The question, therefore, is as to the validity of this rule, and not what methods the Speaker may of his own motion resort to for determining the presence of a quorum, nor what matters the Speaker or clerk may of their own volition place upon the journal. Neither do the advantages or disadvantages, the wisdom or folly, of such a rule present any matters for judicial consideration. With the courts the question is only one of power. The Constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceedings established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the House, and it is no impeachment of the rule to say that some other way would be better, more accurate, or even more just. It is no objection to the validity of a rule that a different one has been prescribed and in force for a length of time. The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the House, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal."

Ballin, clearly confirmed the jurisdiction of courts to pass upon the validity of congressional rules, i.e, whether they are constitutional. Rule XV was examined by the Court and it was found to satisfy the test: (1) that it did not ignore any constitutional restraint; (2) it did not violate any fundamental right; and (3) its method had a reasonable relationship with the result sought to be attained. By examining Rule XV, the Court did not allow its jurisdiction to be defeated by the mere invocation of the principle of separation of powers.[154]

x x x

In the Philippine setting, there is a more compelling reason for courts to categorically reject the political question defense when its interposition will cover up abuse of power. For section 1, Article VIII of our Constitution was intentionally cobbled to empower courts "x x x to determine whether or not there has been a

grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government." This power is new and was not granted to our courts in the 1935 and 1972 Constitutions. It was not also xeroxed from the US Constitution or any foreign state constitution. The CONCOM granted this enormous power to our courts in view of our experience under martial law where abusive exercises of state power were shielded from judicial scrutiny by the misuse of the political question doctrine. Led by the eminent former Chief Justice Roberto Concepcion, the CONCOM expanded and sharpened the checking powers of the judiciary vis-à-vis the Executive and the Legislative departments of government.[155]

x x x

The Constitution cannot be any clearer. What it granted to this Court is not a mere power which it can decline to exercise. Precisely to deter this disinclination, the Constitution imposed it as a duty of this Court to strike down any act of a branch or instrumentality of government or any of its officials done with grave abuse of discretion amounting to lack or excess of jurisdiction. Rightly or wrongly, the Constitution has elongated the checking powers of this Court against the other branches of government despite their more democratic character, the President and the legislators being elected by the people.[156]

x x x

The provision defining judicial power as including the 'duty of the courts of justice. . . to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government' constitutes the capstone of the efforts of the Constitutional Commission to upgrade the powers of this court vis-à-vis the other branches of government. This provision was dictated by our experience under martial law which taught us that a stronger and more independent judiciary is needed to abort abuses in government. x x x

x x x

In sum, I submit that in imposing to this Court the duty to annul acts of government committed with grave abuse of discretion, the new Constitution transformed this Court from passivity to activism. This transformation, dictated by our distinct experience as nation, is not merely evolutionary but revolutionary. Under the 1935 and the 1973 Constitutions, this Court approached constitutional violations by initially determining what it cannot do; under the 1987 Constitution, there is a shift in stress - this Court is mandated to approach constitutional violations not by finding out what it should not do but what it must do. The Court must discharge this solemn duty by not resuscitating a past that petrifies the present.

I urge my brethren in the Court to give due and serious consideration to this new constitutional provision as the case at bar once more calls us to define the parameters of our power to review violations of the rules of the House. We will not be true to our trust as the last bulwark against government abuses if we refuse to exercise this new power or if we wield it with timidity. To be sure, it is this exceeding timidity to unsheathe the judicial sword that has increasingly emboldened other branches of government to denigrate, if not defy, orders of our courts. In Tolentino, I endorsed the view of former Senator Salonga that this novel provision stretching the latitude of judicial power is distinctly Filipino and its interpretation should not be depreciated by undue reliance on inapplicable foreign jurisprudence. In resolving the case at bar, the lessons of our own history should provide us the light and not the experience of foreigners.[157] (*Italics in the original emphasis and underscoring supplied*)

Thus, the ruling in *Osmena v. Pendatun* is not applicable to the instant petitions. Here, the third parties alleging the violation of private rights and the Constitution are involved.

Neither may respondent House of Representatives' rely on *Nixon v. US* [158] as basis for arguing that this Court may not decide on the constitutionality of Sections 16 and 17 of the House Impeachment Rules. As already observed, the U.S. Federal Constitution simply provides that "the House of Representatives shall have the sole power of impeachment." It adds nothing more. It gives no clue whatsoever as to how this "sole power" is to be

exercised. No limitation whatsoever is given. Thus, the US Supreme Court concluded that there was a textually demonstrable constitutional commitment of a constitutional power to the House of Representatives. This reasoning does not hold with regard to impeachment power of the Philippine House of Representatives since our Constitution, as earlier enumerated, furnishes several provisions articulating how that "exclusive power" is to be exercised.

The provisions of Sections 16 and 17 of Rule V of the House Impeachment Rules which state that impeachment proceedings are deemed initiated (1) if there is a finding by the House Committee on Justice that the verified complaint and/or resolution is sufficient in substance, or (2) once the House itself affirms or overturns the finding of the Committee on Justice that the verified complaint and/or resolution is not sufficient in substance or (3) by the filing or endorsement before the Secretary-General of the House of Representatives of a verified complaint or a resolution of impeachment by at least 1/3 of the members of the House thus clearly contravene Section 3 (5) of Article XI as they give the term "initiate" a meaning different from "filing."

Validity of the Second Impeachment Complaint

Having concluded that the initiation takes place by the act of filing of the impeachment complaint and referral to the House Committee on Justice, the initial action taken thereon, the meaning of Section 3 (5) of Article XI becomes clear. Once an impeachment complaint has been initiated in the foregoing manner, another may not be filed against the same official within a one year period following Article XI, Section 3(5) of the Constitution.

In fine, considering that the first impeachment complaint, was filed by former President Estrada against Chief Justice Hilario G. Davide, Jr., along with seven associate justices of this Court, on June 2, 2003 and referred to the House Committee on Justice on August 5, 2003, the second impeachment complaint filed by Representatives Gilberto C. Teodoro, Jr. and Felix William Fuentebella against the Chief Justice on October 23, 2003 violates the constitutional prohibition against the initiation of impeachment proceedings against the same impeachable officer within a one-year period.

Conclusion

If there is anything constant about this country, it is that there is always a phenomenon that takes the center stage of our individual and collective consciousness as a people with our characteristic flair for human drama, conflict or tragedy. Of course this is not to demean the seriousness of the controversy over the Davide impeachment. For many of us, the past two weeks have proven to be an exasperating, mentally and emotionally exhausting experience. Both sides have fought bitterly a dialectical struggle to articulate what they respectively believe to be the correct position or view on the issues involved. Passions had ran high as demonstrators, whether for or against the impeachment of the Chief Justice, took to the streets armed with their familiar slogans and chants to air their voice on the matter. Various sectors of society - from the business, retired military, to the academe and denominations of faith - offered suggestions for a return to a state of normalcy in the official relations of the governmental branches affected to obviate any perceived resulting instability upon areas of national life.

Through all these and as early as the time when the Articles of Impeachment had been constituted, this Court was specifically asked, told, urged and argued to take no action of any kind and form with respect to the prosecution by the House of Representatives of the impeachment complaint against the subject respondent public official. When the present petitions were knocking so to speak at the doorsteps of this Court, the same clamor for non-interference was made through what are now the arguments of "lack of jurisdiction," "non-justiciability," and "judicial self-restraint" aimed at halting the Court from any move that may have a bearing on the impeachment proceedings.

This Court did not heed the call to adopt a hands-off stance as far as the question of the constitutionality of initiating the impeachment complaint against Chief Justice Davide is concerned. To reiterate what has been already explained, the Court found the existence in full of all the requisite conditions for its exercise of its constitutionally vested power and duty of judicial review over an issue whose resolution precisely called for the construction or interpretation of a provision of the fundamental law of the land. What lies in here is an issue of a genuine constitutional material which only this Court can properly and competently address and adjudicate in accordance with the clear-cut allocation of powers under our system of government. Face-to-face thus with a matter or problem that squarely falls under the Court's jurisdiction, no other course of action can be had but for it to pass upon that problem head on.

The claim, therefore, that this Court by judicially entangling itself with the process of impeachment has effectively set up a regime of judicial supremacy, is patently without basis in fact and in law.

This Court in the present petitions subjected to judicial scrutiny and resolved on the merits only the main issue of whether the impeachment proceedings initiated against the Chief Justice transgressed the constitutionally imposed one-year time bar rule. Beyond this, it did not go about assuming jurisdiction where it had none, nor indiscriminately turn justiciable issues out of decidedly political questions. Because it is not at all the business of this Court to assert judicial dominance over the other two great branches of the government. Rather, the *raison d'être* of the judiciary is to complement the discharge by the executive and legislative of their own powers to bring about ultimately the beneficent effects of having founded and ordered our society upon the rule of law.

It is suggested that by our taking cognizance of the issue of constitutionality of the impeachment proceedings against the Chief Justice, the members of this Court have actually closed ranks to protect a brethren. That the members' interests in ruling on said issue is as much at stake as is that of the Chief Justice. Nothing could be farther from the truth.

The institution that is the Supreme Court together with all other courts has long held and been entrusted with the judicial power to resolve conflicting legal rights regardless of the personalities involved in the suits or actions. This Court has dispensed justice over the course of time, unaffected by whomsoever stood to benefit or suffer therefrom, unfraid by whatever imputations or speculations could be made to it, so long as it rendered judgment according to the law and the facts. Why can it not now be trusted to wield judicial power in these petitions just because it is the highest ranking magistrate who is involved when it is an incontrovertible fact that the fundamental issue is not him but the validity of a government branch's official act as tested by the limits set by the Constitution? Of course, there are rules on the inhibition of any member of the judiciary from taking part in a case in specified instances. But to disqualify this entire institution now from the suit at bar is to regard the Supreme Court as likely incapable of impartiality when one of its members is a party to a case, which is simply a non sequitur.

No one is above the law or the Constitution. This is a basic precept in any legal system which recognizes equality of all men before the law as essential to the law's moral authority and that of its agents to secure respect for and obedience to its commands. Perhaps, there is no other government branch or instrumentality that is most zealous in protecting that principle of legal equality other than the Supreme Court which has discerned its real meaning and ramifications through its application to numerous cases especially of the high-profile kind in the annals of jurisprudence. The Chief Justice is not above the law and neither is any other member of this Court. But just because he is the Chief Justice does not imply that he gets to have less in law than anybody else. The law is solicitous of every individual's rights irrespective of his station in life.

The Filipino nation and its democratic institutions have no doubt been put to test once again by this impeachment

case against Chief Justice Hilario Davide. Accordingly, this Court has resorted to no other than the Constitution in search for a solution to what many feared would ripen to a crisis in government. But though it is indeed immensely a blessing for this Court to have found answers in our bedrock of legal principles, it is equally important that it went through this crucible of a democratic process, if only to discover that it can resolve differences without the use of force and aggression upon each other.

WHEREFORE, Sections 16 and 17 of Rule V of the Rules of Procedure in Impeachment Proceedings which were approved by the House of Representatives on November 28, 2001 are unconstitutional. Consequently, the second impeachment complaint against Chief Justice Hilario G. Davide, Jr. which was filed by Representatives Gilberto C. Teodoro, Jr. and Felix William B. Fuentebella with the Office of the Secretary General of the House of Representatives on October 23, 2003 is barred under paragraph 5, section 3 of Article XI of the Constitution.

SO ORDERED.

Davide, Jr., C.J., no part.

Bellosillo, J., see separate opinion.

Puno, and Ynares-Santiago, JJ., see concurring and dissenting opinion.

Vitug, J., please see separate opinion (concurring).

Panganiban, and Callejo, Sr., JJ., see separate concurring opinion.

Sandoval-Gutierrez, J., see separate and concurring opinion

Quisumbing, J., concurring separate opinion received.

Carpio, J., concur.

Austria-Martinez, J., concur in the majority opinion and in the separate opinion of Justice Vitug. Corona, J., will write a separate concurring opinion.

Azcuna, J., concur in the separate opinion.

Tinga, J., concur. Please see separate opinion.

[1] Rollo, G.R. No. 160261 at 180-182; Annex "H."

[2] Per Special Appearance with Manifestation of House Speaker Jose C. De Venecia, Jr. (Rollo, G.R. No. 160261 at 325-363) the pertinent House Resolution is HR No. 260, but no copy of the same was submitted before this Court.

[3]Id. at 329. Created through PD No. 1949 (July 18, 1984), the JDF was established "to help ensure and guarantee the independence of the Judiciary as mandated by the Constitution and public policy and required by the impartial administration of justice" by creating a special fund to augment the allowances of the members and personnel of the Judiciary and to finance the acquisition, maintenance and repair of office equipment and facilities."

[4] Rollo, G.R. No. 160261 at 120-139; Annex "E."

[5] The initial complaint impleaded only Justices Artemio V. Panganiban, Josue N. Bellosillo, Reynato S. Puno, Antonio T. Carpio and Renato C. Corona, and was later amended to include Justices Jose C. Vitug, and Leonardo A. Quisumbing.

[6] Supra note 4 at 123-124.

[7]Rollo, G.R. No. 160403 at 48-53; Annex "A."

[8] http://www.congress.gov.ph/search/bills/hist_show.php?bill_no=RPT9999

[9] Rollo, G.R. No. 160262 at 8.

[10] Rollo, G.R. No. 160295 at 11.

[11] Rollo, G.R. No. 160262 at 43-84; Annex "B."

[12] Supra note 2.

[13] A perusal of the attachments submitted by the various petitioners reveals the following signatories to the second impeachment complaint and the accompanying Resolution/Endorsement. 1. Gilbert Teodoro, Jr., NPC, Tarlac (principal complainant) 2. Felix Fuentebella, NPC, Camarines Sur (second principal complainant) 3. Julio Ledesma, IV, NPC, Negros Occidental 4. Henry Lanot, NPC, Lone District of Pasig City 5. Kim Bernardo-Lokin, Party List- CIBAC 6. Marcelino Libanan, NPC, Lone District of Eastern Samar, (Chairman, House Committee on Justice) 7. Emmylou Talino-Santos, Independent, 1[st] District, North Cotabato 8. Douglas RA. Cagas, NPC, 1st District, Davao del Sur 9. Sherwin Gatchalian, NPC, 1[st] District, Valenzuela City 10. Luis Bersamin, Jr., PDSP-PPC, Lone District of Abra 11. Nerissa Soon-Ruiz Alayon, 6[th] District, Cebu 12. Ernesto Nieva, Lakas, 1[st] District, Manila 13. Edgar R. Erice, Lakas, 2[nd] District, Kalookan City 14. Ismael Mathay III, Independent, 2 [nd] District, Quezon City 15. Samuel Dangwa, Reporma, Lone District of Benguet 16. Alfredo Maraño, Jr., NPC, 2[nd] District, Negros Occidental 17. Cecilia Jalosjos-Carreon, Reporma, 1[st] District, Zamboanga del Norte 18. Agapito A. Aquino, LDP, 2 [nd] District, Makati City 19. Fausto L. Seachon, Jr., NPC, 3[rd] District, Masbate 20. Georgilu Yumul-Hermida, Pwersa ng Masa, 4[th] District, Quezon 21. Jose Carlos Lacson, Lakas, 3 [rd] District, Negros Occidental 22. Manuel C. Ortega, NPC, 1[st] District, La Union 23. Uliran Joaquin, NPC, 1[st] District, Laguna 24. Soraya C. Jaafar, Lakas, Lone District of Tawi-Tawi 25. Wilhelmino Sy-Alvarado, Lakas, 1[st] District, Bulacan 26. Claude P. Bautista, NPC, 2[nd] District, Davao Del Sur 27. Del De Guzman, Lakas, Lone District of Marikina City 28. Zeneida Cruz-Ducut, NPC, 2[nd] District, Pampanga 29. Augusto Baculio, Independent-LDP, 2[nd] District, Misamis Oriental 30. Faustino Dy III, NPC-Lakas, 3[rd] District, Isabela 31. Agosto Boboy Syjuco, Lakas, 2[nd] District, Iloilo 32. Rozzano Rufino B. Biazon, LDP, Lone District of Muntinlupa City 33. Leovigildo B. Banaag, NPC-Lakas, 1[st] District, Agusan del Norte 34. Eric Singson, LP, 2[nd] District, Ilocos Sur 35. Jacinto Paras, Lakas, 1[st] District, Negros Oriental 36. Jose Solis, Independent, 2[nd] District, Sorsogon 37. Renato B. Magtubo, Party List-Partido ng Manggagawa 38. Herminio G. Teves, Lakas, 3 [rd] District, Negros Oriental 39. Amado T. Espino, Jr., Lakas, 2[nd] District, Pangasinan 40. Emilio Macias, NPC, 2 [nd] District, Negros Oriental 41. Arthur Y. Pingoy, Jr., NPC, 2[nd] District, South Cotabato 42. Francis Nepomuceno, NPC, 1[st] District, Pampanga 43. Conrado M. Estrella III, NPC, 6[th] District, Pangasinan 44. Elias Bulut, Jr., NPC, Lone District of Apayao 45. Jurdin Jesus M. Romualdo, NPC, Lone District of Camiguin 46. Juan Pablo Bondoc, NPC, 4[th] District, Pampanga 47. Generoso DC. Tulagan, NPC, 3[rd] District, Pangasinan 48. Perpetuo Ylagan, Lakas, Lone District of Romblon 49. Michael Duavit, NPC, 1[st] District, Rizal 50. Joseph Ace H. Durano, NPC, 5[th] District, Cebu 51. Jesli Lapus, NPC, 3[rd] District, Tarlac 52. Carlos Q. Cojuangco, NPC, 4[th] District, Negros Occidental 53. Georgidi B. Aggabao, NPC, 4[th] District, Santiago, Isabela 54. Francis Escudero, NPC, 1[st] District, Sorsogon 55. Rene M. Velarde, Party List-Buhay 56. Celso L. Lobregat, LDP, Lone District of Zamboanga City 57. Alipio Cirilo V. Badelles, NPC, 1[st] District, Lanao del Norte 58. Didagen P. Dilangalen, Pwersa ng Masa, Lone District of Maguindanao 59. Abraham B. Mitra, LDP, 2[nd] District, Palawan 60. Joseph Santiago, NPC, Lone District of Catanduanes 61. Darlene Antonino-Custodio, NPC, 1 [st] District of South Cotabato & General Santos City 62. Aleta C. Suarez, LP, 3[rd] District, Quezon 63. Rodolfo G. Plaza, NPC, Lone District of Agusan del Sur 64. JV Bautista, Party List- Sanlakas 65. Gregorio Ipong, NPC, 2[nd] District, North Cotabato 66. Gilbert C. Remulla, LDP, 2[nd] District, Cavite 67. Rolex T. Suplico, LDP, 5[th] District, Iloilo 68. Celia Layus, NPC, Cagayan 69. Juan Miguel Zubiri, Lakas, 3[rd] District, Bukidnon 70. Benasing Macarambon Jr., NPC, 2[nd] District, Lanao del Sur 71.

Josefina Joson, NPC, Lone District of Nueva Ecija 72. Mark Cojuangco, NPC, 5[th] District, Pangasinan 73. Mauricio Domogan, Lakas, Lone District of Baguio City 74. Ronaldo B. Zamora, Pwersa ng Masa, Lone District of San Juan 75. Angelo O. Montilla, NPC, Lone District of Sultan Kudarat 76. Roseller L. Barinaga, NPC, 2 [nd] District, Zamboanga del Norte 77. Jesnar R. Falcon, NPC, 2[nd] District, Surigao del Sur 78. Ruy Elias Lopez, NPC, 3[rd] District, Davao City.

[14] Rollo, G.R. No. 160261 at 5. Petitioner had previously filed two separate impeachment complaints before the House of Representatives against Ombudsman Aniano Desierto.

[15] 299 SCRA 744 (1998). In *Chavez v. PCGG*, petitioner Chavez argued that as a taxpayer and a citizen, he had the legal personality to file a petition demanding that the PCGG make public any and all negotiations and agreements pertaining to the PCGG's task of recovering the Marcoses' ill-gotten wealth. Petitioner Chavez further argued that the matter of recovering the ill-gotten wealth of the Marcoses is an issue of transcendental importance to the public. The Supreme Court, citing *Tañada v. Tuvera*, 136 SCRA 27 (1985), *Legaspi v. Civil Service Commission*, 150 SCRA 530 (1987) and *Albano v. Reyes*, 175 SCRA 264 (1989) ruled that petitioner had standing. The Court, however, went on to elaborate that in any event, the question on the standing of petitioner Chavez was rendered moot by the intervention of the Jopsons who are among the legitimate claimants to the Marcos wealth.

[16] 384 SCRA 152 (2002). In *Chavez v. PEA-Amari Coastal Bay Development Corporation*, wherein the petition sought to compel the Public Estates Authority (PEA) to disclose all facts on its then on-going negotiations with Amari Coastal Development Corporation to reclaim portions of Manila Bay, the Supreme Court said that petitioner Chavez had the standing to bring a taxpayer's suit because the petition sought to compel PEA to comply with its constitutional duties.

[17] 224 SCRA 792 (1993).

[18] Subsequent petitions were filed before this Court seeking similar relief. Other than the petitions, this Court also received Motions for Intervention from among others, Sen. Aquilino Pimentel, Jr., and Special Appearances by House Speaker Jose C. de Venecia, Jr., and Senate President Franklin Drilon.

[19] *Supra* note 2 at 10.

[20] Justice Florenz D. Regalado, Former Constitutional Commissioners Justice Regalado E. Maambong and Father Joaquin G. Bernas, SJ, Justice Hugo E. Gutierrez, Jr., Former Minister of Justice and Solicitor General Estelito P. Mendoza, Deans Pacifico Agabin and Raul C. Pangalangan, and Former Senate President Jovito R. Salonga,.

[21] Rollo, G.R. No. 160261 at 275-292.

[22] *Id.* at 292.

[23] 63 Phil 139 (1936).

[24] *Id.* at 157-159.

[25] *Vide* *Alejandrino v. Quezon*, 46 Phil 83 (1924); *Tañada v. Cuenco*, 103 Phil 1051 (1957); *Ynot v. Intermediate Appellate Court*, 148 SCRA 659, 665 (1987).

[26] Const., art. VIII, sec. 1.

[27] 5 US 137 (1803).

[28] Id. at 180.

[29] In *In re Prautch*, 1 Phil 132 (1902), this Court held that a statute allowing for imprisonment for non-payment of a debt was invalid. In *Casanovas v. Hord*, 8 Phil 125 (1907), this Court invalidated a statute imposing a tax on mining claims on the ground that a government grant stipulating that the payment of certain taxes by the grantee would be in lieu of other taxes was a contractual obligation which could not be impaired by subsequent legislation. In *Concepcion v. Paredes*, 42 Phil 599 (1921), Section 148 (2) of the Administrative Code, as amended, which provided that judges of the first instance with the same salaries would, by lot, exchange judicial districts every five years, was declared invalid for being a usurpation of the power of appointment vested in the Governor General. In *McDaniel v. Apacible*, 42 Phil 749 (1922), Act No. 2932, in so far as it declares open to lease lands containing petroleum which have been validly located and held, was declared invalid for being a deprivation of property without due process of law. In *U.S. v. Ang Tang Ho*, 43 Phil 1 (1922), Act No. 2868, in so far as it authorized the Governor-General to fix the price of rice by proclamation and to make the sale of rice in violation of such a proclamation a crime, was declared an invalid delegation of legislative power.

[30] Vicente V. Mendoza, *Sharing The Passion and Action of our Time* 62-53 (2003).

[31] *Supra* note 23.

[32] Id. at 156-157.

[33] Florentino P. Feliciano, *The Application of Law: Some Recurring Aspects Of The Process Of Judicial Review And Decision Making*, 37 AMJJUR 17, 24 (1992).

[34] *Ibid.*

[35] I Record of the Constitutional Commission 434-436 (1986).

[36] 31 SCRA 413 (1970)

[37] Id. at 422-423; *Vide Baranda v. Gustilo*, 165 SCRA 757, 770 (1988); *Luz Farms v. Secretary of the Department of Agrarian Reform*, 192 SCRA 51 (1990); *Ordillo v. Commission on Elections*, 192 SCRA 100 (1990).

[38] 194 SCRA 317 (1991).

[39] Id. at 325 citing *Maxwell v. Dow*, 176 US 581.

[40] 152 SCRA 284 (1987).

[41] Id. at 291 citing *Gold Creek Mining v. Rodriguez*, 66 Phil 259 (1938), *J.M. Tuason & Co., Inc v. Land Tenure Administration*, *supra* note 36, and *I Tañada and Fernando*, *Constitution of the Philippines* 21 (Fourth Ed.).

[42] 82 Phil 771 (1949).

[43] Id. at 775.

[44] *Supra* note 38.

[45] Id. at 330-331.

[46] Id. at 337-338 citing 16 CJS 2.31; *Commonwealth v. Ralph*, 111 Pa. 365, 3 Atl. 220 and *Household Finance Corporation v. Shaffner*, 203, SW 2d, 734, 356 Mo. 808.

[47] Supra note 2.

[48] Citing Section 3 (6), Article VIII of the Constitution provides:

(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

[49] Supra note 21.

[50] 506 U.S. 224 (1993).

[51] Supra note 2 at 349-350 citing Gerhardt, Michael J. The Federal Impeachment Process: A Constitutional and Historical Analysis, 1996, p. 119.

[52] 227 SCRA 100 (1993).

[53] Id. at 112.

[54] US Constitution. Section 2. x x x The House of Representatives shall have the sole Power of Impeachment.

[55] 1987 Constitution, Article XI, Section 3 (1). The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

[56] Supra note 2 at 355 citing Agresto, The Supreme Court and Constitutional Democracy, 1984, pp. 112-113.

[57] 369 U.S. 186 (1962).

[58] 141 SCRA 263 (1986).

[59] Supra note 25.

[60] 298 SCRA 756 (1998).

[61] 272 SCRA 18 (1997).

[62] 201 SCRA 792 (1991).

[63] 187 SCRA 377 (1990).

[64] 180 SCRA 496 (1989).

[65] Supra note 25.

[66] Supra note 23.

[67] Civil Liberties Union v. Executive Secretary, supra note 38 at 330-331.

[68] Id. at 158-159.

[69] IBP v. Zamora, 338 SCRA 81 (2000) citing Joya v. PCGG, 225 SCRA 568 (1993); House International Building Tenants Association, Inc. v. Intermediate Appellate Court, 151 SCRA 703 (1987); Baker v. Carr, supra note 57.

[70] Citing *Kilosbayan, Inc. v. Morato*, 250 SCRA 130 (1995).

[71] Citing *Tatad v. Secretary of the Department of Energy*, 281 SCRA 330 (1997).

[72] Citing *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas*, 163 SCRA 371, 378 (1988).

[73] Rule 3, Section 2. Parties in interest. -- A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

[74] *JG Summit Holdings, Inc. v. Court of Appeals*, 345 SCRA 143, 152 (2000).

[75] 246 SCRA 540 (1995).

[76] *Id.* at 562-564.

[77] *Agan v. PIATCO*, G.R. No. 155001, May 5, 2003 citing *BAYAN v. Zamora*, 342 SCRA 449, 562-563 (2000) and *Baker v. Carr*, supra note 57; *Vide Gonzales v. Narvasa*, 337 SCRA 733 (2000); *TELEBAP v. COMELEC*, 289 SCRA 337 (1998).

[78] *Chavez v. PCGG*, supra note 15.

[79] *Del Mar v. PAGCOR* 346 SCRA 485, 501 (2000) citing *Kilosbayan, Inc., et.al. v. Morato*, supra note 70; *Dumlao v. COMELEC*, 95 SCRA 392 (1980); *Sanidad v. Comelec*, 73 SCRA 333 (1976); *Philconsa v. Mathay*, 18 SCRA 300 (1966); *Pascual v. Secretary of Public Works*, 110 Phil 331 (1960); *Vide Gonzales v. Narvasa*, supra note 77; *Pelaez v. Auditor General*, 15 SCRA 569 (1965); *Philconsa v. Gimenez*, 15 SCRA 479 (1965); *Iloilo Palay & Corn Planters Association v. Feliciano*, 13 SCRA 377 (1965).

[80] *BAYAN v. Zamora*, supra note 77 citing *Bugnay v. Laron*, 176 SCRA 240, 251-252 (1989); *Vide Del Mar v. PAGCOR*, supra note 79; *Gonzales v. Narvasa*, supra note 77; *TELEBAP v. COMELEC*, supra note 77; *Kilosbayan, Inc. v. Morato*, supra note 70; *Joya v. PCGG*, supra note 69; *Dumlao v. COMELEC*, supra note 79; *Sanidad v. COMELEC*, supra note 79; *Philconsa v. Mathay*, supra note 79; *Pelaez v. Auditor General*, supra note 79; *Philconsa v. Gimenez*, supra note 79; *Iloilo Palay & Corn Planters Association v. Feliciano*, supra note 79; *Pascual v. Sec. of Public Works*, supra note 79.

[81] *Gonzales v. Narvasa*, supra note 77 citing *Dumlao v. COMELEC*, supra note 79; *Sanidad v. COMELEC*, supra note 79; *Tan v. Macapagal*, 43 SCRA 677 (1972).

[82] *Tatad v. Garcia, Jr.*, 243 SCRA 436 (1995); *Kilosbayan, Inc. v. Morato*, supra note 70 at 140-141 citing *Philconsa v. Enriquez*, 235 SCRA 506 (1994); *Guingona v. PCGG*, 207 SCRA 659 (1992); *Gonzales v. Macaraig*, 191 SCRA 452 (1990); *Tolentino v. COMELEC*, 41 SCRA 702 (1971).

[83] *Del Mar v. PAGCOR*, supra note 79 at 502-503 citing *Philconsa v. Mathay*, supra note 79.

[84] *Chinese Flour Importers Association v. Price Stabilization Board*, 89 Phil 439, 461 (1951) citing *Gallego et al. vs. Kapisanan Timbulan ng mga Manggagawa*, 46 Off. Gaz, 4245.

[85] *Philippine Constitution Association v. Gimenez*, supra note 79 citing *Gonzales v. Hechanova*, 118 Phil. 1065 (1963); *Pascual v. Secretary*, supra note 79.

[86] *Integrated Bar of the Philippines v. Zamora*, 338 SCRA 81 (2000).

[87] *MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines*, G.R. No. 135306, January 28, 2003, citing *Industrial Generating Co. v. Jenkins* 410 SW 2d 658; *Los Angeles County Winans*, 109 P 640; *Weberpals*

v. Jenny, 133 NE 62.

[88] Mathay v. Consolidated Bank and Trust Company, 58 SCRA 559, 570-571 (1974), citing Moore's Federal Practice 2d ed., Vol. III, pages 3423-3424; 4 Federal Rules Service, pages 454-455; Johnson, et al., vs. Riverland Levee Dist., et al., 117 2d 711, 715; Borlasa v. Polistico, 47 Phil. 345, 348 (1925).

[89] MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, supra note 87, dissenting opinion of Justice Carpio; Bulig-bulig Kita Kamag-Anak Assoc. v. Sulpicio Lines, 173 SCRA 514, 514-515 (1989); Re: Request of the Heirs of the Passengers of Doña Paz, 159 SCRA 623, 627 (1988) citing Moore, Federal Practice, 2d ed., Vol. 3B, 23-257, 23-258; Board of Optometry v. Colet, 260 SCRA 88 (1996), citing Section 12, Rule 3, Rules of Court; Mathay v. Consolidated Bank and Trust Co., supra note 88; Oposa v. Factoran, supra note 17.

[90] Kilosbayan v. Guingona, 232 SCRA 110 (1994).

[91] Kilosbayan, Inc. v. Morato, supra note 70 citing Civil Liberties Union v. Executive Secretary, supra note 38; Philconsa v. Giménez, supra note 79; Iloilo Palay and Corn Planters Association v. Feliciano, supra note 79; Araneta v. Dinglasan, 84 Phil. 368 (1949); vide Tatad v. Secretary of the Department of Energy, 281 SCRA 330 (1997); Santiago v. COMELEC, 270 SCRA 106 (1997); KMU v. Garcia, Jr., 239 SCRA 386 (1994); Joya v. PCGG, 225 SCRA 368 (1993); Carpio v. Executive Secretary, 206 SCRA 290 (1992); Osmeña v. COMELEC, 199 SCRA 750 (1991); Basco v. PAGCOR, 197 SCRA 52 (1991); Guingona v. Carague, 196 SCRA 221 (1991); Daza v. Singson, supra note 64; Dumlao v. COMELEC, supra note 79.

[92] Firestone Ceramics, Inc. v. Court of Appeals, 313 SCRA 522, 531 (1999) citing Gibson vs. Revilla, 92 SCRA 219; Magsaysay-Labrador v. Court of Appeals, 180 SCRA 266, 271 (1989).

[93] Supra note 79.

[94] Id. at 403.

[95] Supra note 81.

[96] Id. at 681.

[97] SECTION 3. x x x

(2)

A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3)

A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

[98] Supra note 25.

[99] Id. at 1067.

[100] Vide *Barcelon v. Baker*, 5 Phil. 87 (1905); *Montenegro v. Castañeda*, 91 Phil. 882 (1952); *De la Llana v. COMELEC*, 80 SCRA 525 (1977).

[101] Vide *Avelino v. Cuenco*, 83 Phil. 17 (1949); *Macias v. COMELEC*, 3 SCRA 1 (1961); *Cunanan v. Tan, Jr.*, 5 SCRA 1 (1962); *Gonzales v. COMELEC*, 21 SCRA 774 (1967); *Lansang v. Garcia*, 42 SCRA 448 (1971); *Tolentino v. COMELEC*, supra note 82.

[102] 50 SCRA 30 (1973).

[103] Record of the Constitution Commission, Vol. 1, July 10, 1986 at 434-436.

[104] Id. at 439-443.

[105] 177 SCRA 668 (1989).

[106] Id. at 695.

[107] 203 SCRA 767 (1991).

[108] Id. at 776 citing *Gonzales v. Macaraig*, 191 SCRA 452, 463 (1990).

[109] Supra note 64.

[110] Id. at 501.

[111] Supra note 57.

[112] Id at 217

[113] 2 Record of the Constitutional Commission at 286.

[114] Id. at 278, 316, 272, 283-284, 286.

[115] 76 Phil 516 (1946).

[116] Id. at 522.

[117] Supra note 37.

[118] Id. at 58 citing *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 175 SCRA 343 (1989).

[119] Vide concurring opinion of Justice Vicente Mendoza in *Estrada v. Desierto*, 353 SCRA 452, 550 (2001); *Demetria v. Alba*, 148 SCRA 208, 210-211 (1987) citing *Ashwander v. TVA*, 297 U.S. 288 (1936).

[120] As adverted to earlier, neither a copy the Resolution nor a record of the hearings conducted by the House Committee on Justice pursuant to said Resolution was submitted to the Court by any of the parties.

[121] Rollo, G.R. No. 160310 at 38.

[122] Supra note 107.

[123] Id. at 777 (citations omitted).

[124] Rollo, G.R. No. 160262 at 73.

[125] Supra note 2 at 342.

[126] Perfecto v. Meer, 85 Phil 552, 553 (1950).

[127] Estrada v. Desierto , 356 SCRA 108, 155-156 (2001); Vide Abbas v. Senate Electoral Tribunal, 166 SCRA 651 (1988); Vargas v. Rilloraza, et al., 80 Phil. 297, 315-316 (1948); Planas v. COMELEC, 49 SCRA 105 (1973), concurring opinion of J. Concepcion.

[128] Philippine Judges Association v. Prado, 227 SCRA 703, 705 (1993).

[129] Ibid.

[130] Ramirez v. Corpuz- Macandog, 144 SCRA 462, 477 (1986).

[131] Supra note 127 .

[132] Estrada v. Desierto , supra note 127.

[133] Id. at 155-156 citing Abbas, et al. v. Senate Electoral Tribunal, supra note 127; Vargas v. Rilloraza, et al., supra note 127.

[134] Supra note 119 at 210-211.

[135] Supra note 119.

[136] Board of Optometry v. Colet, 260 SCRA 88, 103 (1996); Joya v. PCGG, supra note 69 at 575; Macasiano v. National Housing Authority, 224 SCRA 236, 242 (1993); Santos III v. Northwestern Airlines , 210 SCRA 256, 261-262 (1992), National Economic Protectionism Association v. Ongpin, 171 SCRA 657, 665 (1989).

[137] Supra note 2 at 353.

[138] Supra note 33 at 32.

[139] Supra note 102 .

[140] Supra note 33.

[141] 249 SCRA 244, 251 (1995).

[142] Id. at 251.

[143] 2 Records of the Constitutional Commission at 342-416.

[144] Id. at 416.

[145] Commissioner Maambong's Amicus Curiae Brief at 15.

[146] 2 Record of the Constitutional Commission at 375-376, 416

[147] 77 Phil. 192 (1946).

[148] Justice Hugo Guiterrez's Amicus Curiae Brief at 7.

[149] 109 Phil. 863 (1960).

[150] 40 SCRA 58, 68 (1971).

[151] 286 U.S. 6, 33 (1932).

[152] 277 SCRA 268, 286 (1997).

[153] 144 U.S. 1 (1862).

[154] Supra note 152 at 304-306.

[155] Id at 311.

[156] Id. at 313.

[157] Supra note 152 at 314-315.

[158] Supra note 50.

SEPARATE OPINION

BELLOSILLO, J.:

x x x x In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated.

- Justice Jose P. Laurel

A pall of gloom hovers ominously in the horizon. Looming in its midst is the specter of conflict the thunderous echoes of which we listened to intently for the past few days; two great departments of government locked in a virtual impasse, sending them closer to the precipice of constitutional confrontation. Emerging from the shadows of unrest is the national inquest on the conduct of no less than the Chief Justice of this Court. Impeachment, described by Alexis Tocqueville as "the most formidable weapon that has ever been placed in the grasp of the majority," has taken center stage in the national consciousness in view of its far-reaching implications on the life of our nation. Unless the issues involved in the controversial cases are dealt with exceptional sensitivity and sobriety, the tempest of anarchy may fulminate and tear apart the very foundations of our political existence. It will be an unfortunate throwback to the dark days of savagery and brutishness where the hungry mob screaming for blood and a pound of flesh must be fed to be pacified and satiated.

On 2 June 2003 former President Joseph Estrada through counsel filed a verified impeachment complaint before the House of Representatives charging Chief Justice Hilario G. Davide, Jr. and seven (7) Associate Justices of this Court with culpable violation of the Constitution, betrayal of public trust and other high crimes. The complaint was endorsed by Reps. Rolex T. Suplico of Iloilo, Ronaldo B. Zamora of San Juan and Didagen P. Dilangalen of Maguindanao and Cotabato City.

On 13 October 2003, the House Committee on Justice included the impeachment complaint in its Order of Business and ruled that the complaint was "sufficient in form." Subsequently however, on 22 October 2003, the House Committee on Justice recommended the dismissal of the complaint for being "insufficient in substance."

On 23 October 2003, four (4) months after the filing of the first impeachment complaint, a second verified impeachment complaint was filed by Reps. Gilberto C. Teodoro of Tarlac and William Felix D. Fuentebella of Camarines Sur, this time against Chief Justice Hilario G. Davide, Jr. alone. The complaint accused the Chief Justice mainly of misusing the Judiciary Development Fund (JDF). Thereafter, more than eighty (80) members of the Lower House, constituting more than 1/3 of its total membership, signed the resolution endorsing the second

impeachment complaint.

Several petitions for certiorari and prohibition questioning the constitutionality of the second impeachment complaint were filed before this Court. Oral arguments were set for hearing on 5 November 2003 which had to be extended to 6 November 2003 to accommodate the parties and their respective counsel. During the hearings, eight (8) amici curiae appeared to expound their views on the contentious issues relevant to the impeachment.

This Court must hearken to the dictates of judicial restraint and reasoned hesitance. I find no urgency for judicial intervention at this time. I am conscious of the transcendental implications and importance of the issues that confront us, not in the instant cases alone but on future ones as well; but to me, this is not the proper hour nor the appropriate circumstance to perform our duty. True, this Court is vested with the power to annul the acts of the legislature when tainted with grave abuse of discretion. Even so, this power is not lightly assumed or readily exercised. The doctrine of separation of powers imposes upon the courts proper restraint born of the nature of their functions and of their respect for the other departments, in striking down the acts of the legislature as unconstitutional. Verily, the policy is a harmonious blend of courtesy and caution.[1]

All avenues of redress in the instant cases must perforce be conscientiously explored and exhausted, not within the hallowed domain of this Court, but within the august confines of the Legislature, particularly the Senate. As Alexander Hamilton, delegate to the 1787 American Constitutional Convention, once wrote: "The Senate is the most fit depositary of this important trust." [2] We must choose not to rule upon the merits of these petitions at this time simply because, I believe, this is the prudent course of action to take under the circumstances; and, it should certainly not to be equated with a total abdication of our bounden duty to uphold the Constitution.

For considerations of law and judicial comity, we should refrain from adjudicating the issues one way or the other, except to express our views as we see proper and appropriate.

First. The matter of impeachment is a political question that must rightfully be addressed to a political branch of government, which is the Congress of the Philippines. As enunciated in *Integrated Bar of the Philippines v. Zamora*, [3] we do not automatically assume jurisdiction over actual constitutional cases brought before us even in instances that are ripe for resolution -

One class of cases wherein the Court hesitates to rule on are "political questions." The reason is that political questions are concerned with issues dependent upon the wisdom, not the legality, of a particular act or measure being assailed. Moreover, the political question being the function of the separation of powers, the courts will not normally interfere with the workings of another co-equal branch unless the case shows a clear need for the courts to step in to uphold the law and the Constitution.

Clearly, the constitutional power of impeachment rightfully belongs to Congress in a two-fold character: (a) The power to initiate impeachment cases against impeachable officers is lodged in the House of Representatives; and, (b) The power to try and decide impeachment cases belongs solely to the Senate.

In *Baker v. Carr* [4] repeatedly mentioned during the oral arguments, the United States Supreme Court held that political questions chiefly relate to separation of powers issues, the Judiciary being a co-equal branch of government together with the Legislature and the Executive branch, thus calling for judicial deference. A controversy is non-justiciable where there is a "textually demonstrable constitutional commitment of the issue to a coordinate political department, or a lack of judicially discoverable and manageable standards for resolving it." [5]

But perhaps it is *Nixon v. United States* [6] which provides the authority on the "political question" doctrine as applied in impeachment cases. In that case the U.S. Supreme Court applied the *Baker* ruling to reinforce the "political question" doctrine in impeachment cases. Unless it can therefore be shown that the exercise of such

discretion was gravely abused, the Congressional exercise of judgment must be recognized by this Court. The burden to show that the House or the Senate gravely abused its discretion in impeaching a public officer belongs exclusively to the impeachable officer concerned.

Second. At all times, the three (3) departments of government must accord mutual respect to each other under the principle of separation of powers. As a co-equal, coordinate and co-extensive branch, the Judiciary must defer to the wisdom of the Congress in the exercise of the latter's power under the Impeachment Clause of the Constitution as a measure of judicial comity on issues properly within the sphere of the Legislature.

Third. It is incumbent upon the Court to exercise judicial restraint in rendering a ruling in this particular case to preserve the principle of separation of powers and restore faith and stability in our system of government. *Dred Scott v. Sandford*[7] is a grim illustration of how catastrophic improvident judicial incursions into the legislative domain could be. It is one of the most denounced cases in the history of U.S. Supreme Court decision-making. Penned by Chief Justice Taney, the U.S. Supreme Court, by a vote of 7-2, denied that a Negro was a citizen of the United States even though he happened to live in a "free" state. The U.S. High Court likewise declared unconstitutional the law forbidding slavery in certain federal territories. *Dred Scott* undermined the integrity of the U.S. High Court at a moment in history when it should have been a powerful stabilizing force. More significantly, it inflamed the passions of the Northern and Southern states over the slavery issue thus precipitating the American Civil War. This we do not wish to happen in the Philippines!

It must be clarified, lest I be misconstrued, this is not to say that this Court is absolutely precluded from inquiring into the constitutionality of the impeachment process. The present Constitution, specifically under Art. VIII, Sec. 1, introduced the expanded concept of the power of judicial review that now explicitly allows the determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. This is evidently in response to the unedifying experience of the past in frequently resorting to the "political question" doctrine that in no mean measure has emasculated the Court's authority to strike down abuses of power by the government or any of its instrumentalities.

While the impeachment mechanism is by constitutional design a sui generis political process, it is not impervious to judicial interference in case of arbitrary or capricious exercise of the power to impeach by Congress. It becomes the duty of the Court to step in, not for the purpose of questioning the wisdom or motive behind the legislative exercise of impeachment powers, but merely to check against infringement of constitutional standards. In such circumstance, legislative actions "might be so far beyond the scope of its constitutional authority, and the consequent impact on the Republic so great, as to merit a judicial response despite prudential concerns that would ordinarily counsel silence." [8] I must, of course, hasten to add by way of a finale the nature of the power of judicial review as elucidated in *Angara v. Electoral Commission*[9] -

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution (underscoring supplied).

By way of obiter dictum, I find the second impeachment complaint filed against the Chief Justice on 23 October 2003 to be constitutionally infirm. Precisely, Art. 11, Sec. 3, par. (5), of the 1987 Constitution explicitly ordains that "no impeachment proceedings shall be initiated against the same official more than once within a period of

one year." The fundamental contention that the first impeachment complaint is not an "initiated" complaint, hence should not be counted, since the House Committee on Justice found it to be insufficient in substance, is specious, to say the least. It seems plain to me that the term initiation must be understood in its ordinary legal acceptance, which means inception or commencement; hence, an impeachment is initiated upon the filing of a verified complaint, similar to an ordinary action which is initiated by the filing of the complaint in the proper tribunal. This conclusion finds support in the deliberations of the Constitutional Commission, which was quoted extensively in the hearings of 5 and 6 November 2003 -

THE PRESIDING OFFICER (Mr. Trenas). Commissioner Maambong is recognized.

MR. MAAMBONG. Mr. Presiding Officer, I am not moving for a reconsideration of the approval of the amendment submitted by Commissioner Regalado, but I will just make of record my thinking that we do not really initiate the filing of the Articles of Impeachment on the floor. The procedure, as I have pointed out earlier, was that the initiation starts with the filing of the complaint. And what is actually done on the floor is that the committee resolution containing the Articles of Impeachment is the one approved by the body.

As the phraseology now runs, which may be corrected by the Committee on Style, it appears that the initiation starts on the floor. If we only have time, I could cite examples in the case of the impeachment proceedings of President Richard Nixon wherein the Committee on the Judiciary submitted the recommendation, the resolution and the Articles of Impeachment to the body, and it was the body that approved the resolution. It is not the body which initiates it. It only approves or disapproves the resolution. So, on that score, probably the Committee on Style could help in rearranging these words because we have to be very technical about this. I have been bringing with me The Rules of the House of Representatives of the U.S. Congress. The Senate Rules are with me. The proceedings of the case of Richard Nixon are with me. I have submitted my proposal, but the Committee has already decided. Nevertheless, I just want to indicate this on record x x x x (underscoring supplied for emphasis).[10]

As aptly observed by Fr. Joaquin C. Bernas, S.J., "an impeachment proceeding is not a single act; it is a complexus of acts consisting of a beginning, a middle and an end. The end is the transmittal of the articles of impeachment to the Senate. The middle consists of those deliberative moments leading to the formulation of the articles of impeachment. The beginning or the initiation is the filing of the complaint and its referral to the Committee on Justice." [11]

To recapitulate: (a) Impeachment is a political question that is rightfully within the sphere of Congressional prerogatives; (b) As co-equal, coordinate and co-extensive branches of the government, the Legislature and the Judiciary must respect the doctrine of separation of powers at all times; (c) Judicial restraint must be exercised by this Court in the instant cases, as a matter of judicial courtesy; and, (d) While impeachment is essentially a political exercise, judicial interference is allowed in case of arbitrary or capricious exercise of that power as to amount to grave abuse of discretion.

It is lamentable indeed that the life of our nation has been marked by turbulent periods of pain, anxieties and doubt. The instant cases come at a time when scandals of corruption, obscene profligacy and venality in public office appear to be stalking the entire system of government. It is a period of stress with visible signs of creeping hopelessness, and public disenchantment continues to sap the vim and vitality of our institutions. The challenge at present is how to preserve the majesty of the Constitution and protect the ideals of our republican government by averting a complete meltdown of governmental civility and respect for the separation of powers. It is my abiding conviction that the Senate will wield its powers in a fair and objective fashion and in faithful obeisance to their sacred trust to achieve this end.

"The highest proof of virtue," intoned Lord Macaulay, "is to possess boundless power without abusing it." And so

it must be that we yield to the authority of the House of Representatives and the Senate on the matter of the impeachment of one of our Brethren, and unless the exercise of that authority is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction we should refrain from interfering with the prerogatives of Congress. That, I believe, is judicial statesmanship of the highest order which will preserve the harmony among the three separate but co-equal branches of government under our constitutional democracy.

IN VIEW OF THE FOREGOING, I maintain that in disposing of this case we should exercise judicial restraint and leave the matter to the Senate unless such exercise is fraught with grave abuse of discretion. Hence, I find no legal obstacle to dismissing the instant petitions.

[1] See Association of Small Landowners in the Phil., Inc., et al. v. Secretary of Agrarian Reform, G.R. No. 78742, 14 July 1989, 175 SCRA 343.

[2] Hamilton, A., Federalist No. 65, Friday, 7 March 1788.

[3] G.R. No. 141284, 15 August 2000, 338 SCRA 81.

[4] 369 U.S. 186 (1962).

[5] Ibid.

[6] 122 L. Ed. 2d 1, 506 U.S. 224 (1993).

[7] 60 U.S., 393 (1857).

[8] See Concurring Opinion of J. Souter in Nixon v. United States, 122 L. Ed. 2d 1, 506 U.S.224 (1993).

[9] 63 Phil. 139, 158 (1936).

[10] Records of the Constitutional Commission, 28 July 1986, pp. 374-376.

[11] Fr. Joaquin C. Bernas, S.J., "Position Paper on the Impeachment of Chief Justice Davide, Jr.," 5 November 2003.

CONCURRING AND DISSENTING OPINION

PUNO, J.:

Over a century ago, Lord Bryce described the power of impeachment as the "heaviest piece of artillery in the congressional arsenal." Alexander Hamilton warned that any impeachment proceeding "will seldom fail to agitate the passions of the whole community." His word is prophetic for today we are in the edge of a crisis because of the alleged unconstitutional exercise of the power of impeachment by the House of Representatives.

Before the Court are separate petitions for certiorari, prohibition and mandamus filed by different groups seeking to prevent the House of Representatives from transmitting to the Senate the Articles of Impeachment against Chief Justice Hilario G. Davide, Jr., alleging improper use of the Judiciary Development Fund (JDF), and to enjoin the Senate from trying and deciding the case.

Let us first leapfrog the facts. On October 23, 2003, Representatives Gilberto C. Teodoro, Jr., First District, Tarlac, and Felix William B. Fuentebella, Third District, Camarines Sur, filed with the House of Representatives a Complaint for Impeachment against Chief Justice Hilario G. Davide, Jr. The complaint alleged the underpayment

of the cost of living allowance of the members and personnel of the judiciary from the JDF, and unlawful disbursement of said fund for various infrastructure projects and acquisition of service vehicles and other equipment. The complaint was endorsed by one-third (1/3) of all the members of the House of Representatives. It is set to be transmitted to the Senate for appropriate action.

In the succeeding days, several petitions were filed with this Court by members of the bar, members of the House of Representatives, as well as private individuals, all asserting their rights, among others, as taxpayers to stop the illegal spending of public funds for the impeachment proceedings against the Chief Justice. The petitioners contend that the filing of the present impeachment complaint against the Chief Justice is barred under Article XI, Section 3 (5) of the 1987 Constitution which states that "(n)o impeachment proceedings shall be initiated against the same official more than once within a period of one year." They cite the prior Impeachment Complaint filed by Former President Joseph Ejercito Estrada against the Chief Justice and seven associate justices of this Court on June 2, 2003 for allegedly conspiring to deprive him of his mandate as President, swearing in then Vice President Gloria Macapagal-Arroyo to the Presidency, and declaring him permanently disabled to hold office. Said complaint was dismissed by the Committee on Justice of the House of Representatives on October 23, 2003 for being insufficient in substance. The recommendation has still to be approved or disapproved by the House of Representatives in plenary session.

On October 28, 2003, this Court issued a resolution requiring the respondents and the Solicitor General to comment on the petitions and setting the cases for oral argument on November 5, 2003. The Court also appointed the following as amici curiae: Former Senate President Jovito R. Salonga, former Constitutional Commissioner Joaquin G. Bernas, retired Justice Hugo E. Gutierrez, Jr. of the Supreme Court, retired Justice Florenz D. Regalado of the Supreme Court, former Minister of Justice and Solicitor General Estelito P. Mendoza, former Constitutional Commissioner and now Associate Justice of the Court of Appeals, Regalado E. Maambong, Dean Raul C. Pangalangan and former Dean Pacifico A. Agabin of the UP College of Law. The Court further called on the petitioners and the respondents to maintain the status quo and enjoined them to refrain from committing acts that would render the petitions moot.

Both the Senate and the House of Representatives took the position that this Court lacks jurisdiction to entertain the petitions at bar. The Senate, thru its President, the Honorable Franklin Drilon further manifested that the petitions are premature for the Articles of Impeachment have not been transmitted to them. In its Special Appearance, the House alleged that the petitions pose political questions which are non-justiciable.

We then look at the profiles of the problems. On November 5 and 6, 2003, the Court heard the petitions on oral argument. It received arguments on the following issues:

Whether the certiorari jurisdiction of the Supreme Court may be invoked; who can invoke it; on what issues and at what time; and whether it should be exercised by this Court at this time.

a)

locus standi of petitioners;

b)

ripeness (prematurity; mootness);

c)

political question/justiciability;

d)

House's "exclusive" power to initiate all cases of impeachment;

e)

Senate's "sole" power to try and decide all cases of impeachment;

f)

constitutionality of the House Rules on Impeachment vis a vis Section 3 (5) of Article XI of the Constitution; and

g)

judicial restraint.

Due to the constraints of time, I shall limit my Opinion to the hot-button issues of justiciability, jurisdiction and judicial restraint. For a start, let u look to the history of thought on impeachment for its comprehensive understanding.

A. The Origin and Nature of Impeachment:

The British Legacy

The historical roots of impeachment appear to have been lost in the mist of time. Some trace them to the Athenian Constitution.[1] It is written that Athenian public officials were hailed to law courts known as "heliaea" upon leaving office. The citizens were then given the right to charge the said officials before they were allowed to bow out of office.[2]

Undoubtedly, however, the modern concept of impeachment is part of the British legal legacy to the world, especially to the United States.[3] It was originally conceived as a checking mechanism on executive excuses.[4] It was then the only way to hold royal officials accountable.[5] The records reveal that the first English impeachments took place in the reign of Edward III (1327-1377).[6] It was during his kingship that the two houses of Lords and Commons acquired some legislative powers.[7] But it was during the reign of Henry IV (1399-1413) that the procedure was firmly established whereby the House of Commons initiated impeachment proceedings while the House of Lords tried the impeachment cases.[8] Impeachment in England covered not only public officials but private individuals as well. There was hardly any limitation in the imposable punishment.[9]

Impeachment in England skyrocketed during periods of institutional strifes and was most intense prior to the Protestant Revolution. Its use declined when political reforms were instituted.[10] Legal scholars are united in the view that English impeachment partakes of a political proceeding and impeachable offenses are political crimes.[11]

B. Impeachment in the United States:

Its political character

The history of impeachment in colonial America is scant and hardly instructive. In the royal colonies, governors were appointed by the Crown while in the proprietary colonies, they were named by the proprietor.[12] Their tenure was uncertain. They were dismissed for disobedience or inefficiency or political patronage.[13] Judges were either commissioned in England or in some instances appointed by the governor. They enjoyed no security of office.[14]

The first state constitutions relied heavily on common law traditions and the experience of colonial government.[15] In each state, the Constitution provided for a Chief Executive, a legislature and a judiciary.[16] Almost all of the Constitutions provided for impeachment.[17] There were differences in the impeachment process in the various states.[18] Even the grounds for impeachment and their penalties were dissimilar. In most states, the lower house of the legislature was empowered to initiate the impeachment proceedings.[19] In some

states, the trial of impeachment cases was given to the upper house of the legislature; in others, it was entrusted to a combination of these fora. [20] At the national level, the 1781 Articles of Confederation did not contain any provision on impeachment.[21]

Then came the Philadelphia Constitutional Convention of 1787. In crafting the provisions on impeachment, the delegates were again guided by their colonial heritage, the early state constitutions, and common law traditions, especially the British legacy.[22]

The records show that Edmund Randolph of the State of Virginia presented to the Convention what came to be known as the Virginia Plan of structure of government. It was largely the handiwork of James Madison, Father of the American Constitution. It called for a strong national government composed of an executive, a bicameral legislature and a judiciary.[23] The Virginia Plan vested jurisdiction in the judiciary over impeachment of national officers.[24] Charles Pinkney of South Carolina offered a different plan. He lodged the power of impeachment in the lower house of the legislature but the right to try was given to the federal judiciary.[25] Much of the impeachment debates, however, centered on the accountability of the President and how he should be impeached. A Committee called Committee on Detail[26] recommended that the House of Representatives be given the sole power of impeachment. It also suggested that the Supreme Court should be granted original jurisdiction to try cases of impeachment. The matter was further referred to a Committee of Eleven chaired by David Brearley of New Hampshire.[27] It suggested that the Senate should have the power to try all impeachments, with a 2/3 vote to convict. The Vice President was to be ex-officio President of the Senate, except when the President was tried, in which event the Chief Justice was to preside.[28] Gouverneur Morris explained that "a conclusive reason for making the Senate instead of the Supreme Court the Judge of impeachments, was that the latter was to try the President after the trial of the impeachment." [29] James Madison insisted on the Supreme Court and not the Senate as the impeachment court for it would make the President "improperly dependent." [30] Madison's stand was decisively rejected.[31] The draft on the impeachment provisions was submitted to a Committee on Style which finalized them without effecting substantive changes.[32]

Prof. Gerhardt points out that there are eight differences between the impeachment power provided in the US Constitution and the British practice: [33]

First, the Founders limited impeachment only to "[t]he President, Vice President and all civil Officers of the United States." Whereas at the time of the founding of the Republic, anyone (except for a member of the royal family) could be impeached in England. Second, the delegates to the Constitutional Convention narrowed the range of impeachable offenses for public officeholders to "Treason, Bribery, or other high Crimes and Misdemeanors," although the English Parliament always had refused to constrain its jurisdiction over impeachments by restrictively defining impeachable offenses. Third, whereas the English House of Lords could convict upon a bare majority, the delegates to the Constitutional Convention agreed that in an impeachment trial held in the Senate, "no Person shall be convicted [and removed from office] without the concurrence of two thirds of the Members present." Fourth, the House of Lords could order any punishment upon conviction, but the delegates limited the punishments in the federal impeachment process "to removal from Office, and disqualification to hold and enjoy any Office of Honor, Trust, or Profit under the United States." Fifth, the King could pardon any person after an impeachment conviction, but the delegates expressly prohibited the President from exercising such power in the Constitution. Sixth, the Founders provided that the President could be impeached, whereas the King of England could not be impeached. Seventh, impeachment proceedings in England were considered to be criminal, but the Constitution separates criminal and impeachment proceedings. Lastly, the British provided for the removal of their judges by several means, whereas the Constitution provides impeachment as the sole political means of judicial removal.

It is beyond doubt that the metamorphosis which the British concept of impeachment underwent in the

Philadelphia Constitutional Convention of 1789 did not change its political nature. In the Federalist No. 65, Alexander Hamilton observed:

The subject of the Senate jurisdiction [in an impeachment trial] are those offenses which proceed from the misconduct of public man or in other words, form the abuse or violation of some public trust. They are of a political nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself.

Justice James Wilson characterized impeachments as proceedings of a political nature "confined to political characters, to political crimes and misdemeanors, and to political punishments." [34] Another constitutionalist, McDowell emphasized: "To underscore the inherently political nature of impeachment, the Founders went further and provided that the right to a jury trial was to be secured for 'all crimes except in cases of impeachment.' When it came to the President, unlike his powers to interfere with ordinary crimes, the Founders sought to limit his power to interfere with impeachments. His power to grant reprieves and pardons for offenses against the United States was granted broadly 'except in cases of impeachment.'" [35]

A painstaking study of state court decisions in the United States will reveal that almost invariably state courts have declined to review decisions of the legislature involving impeachment cases consistent with their character as political. [36] In the federal level, no less than the US Supreme Court, thru Chief Justice Rehnquist, held in the 1993 case of *Nixon v. United States* [37] that the claim that the US Senate rule which allows a mere committee of senators to hear evidence of the impeached person violates the Constitution is non-justiciable. I quote the ruling in extenso:

x x x

The history and contemporary understanding of the impeachment provisions support our reading of the constitutional language. The parties do not offer evidence of a single word in the history of the Constitutional Convention or in contemporary commentary that even alludes to the possibility of judicial review in the context of the impeachment powers. See 290 US App DC, at 424, 938 F2d, at 243; R. Berger, *Impeachment: The Constitutional Problems* 116 (1973). This silence is quite meaningful in light of the several explicit references to the availability of judicial review as a check on the Legislature's power with respect to bills of attainder, ex post facto laws, and statutes. See the Federalist No. 78 p 524 (J. Cooke ed 1961) ("Limitations ... can be preserved in practice no other way than through the medium of the courts of justice").

The Framers labored over the question of where the impeachment power should lie. Significantly, in at least two considered scenarios the power was placed with the Federal Judiciary. See 1 Farrand 21-22 (Virginia Plan) ; id., at 244 (New Jersey Plan). Indeed, Madison and the Committee of Detail proposed that the Supreme Court should have the power to determine impeachments. See 2 id., at 551 (Madison); id., at 178-179, 186 (Committee of Detail). Despite these proposals, the Convention ultimately decided that the Senate would have "the sole Power to Try all Impeachments." Art I, § 3, cl 6. According to Alexander Hamilton, the Senate was the "most fit depositary of this important trust" because its members are representatives of the people. See The Federalist No. 65, p 440 (J. Cooke ed 1961). The Supreme Court was not the proper body because the Framers "doubted whether the members of that tribunal would, at all times, be endowed with so eminent a portion of fortitude as would be called for in the execution of so difficult a task" or whether the Court "would possess the degree of credit and authority" to carry out its judgment if it conflicted with the accusation brought by the Legislature - the people's representative. See id., at 441. In addition, the Framers believed the Court was too small in number: "The lawful discretion, which a court of impeachments must necessarily have, to doom to honor or to infamy the most confidential and the most distinguished characters of the community, forbids the commitment of the trust to a small number of persons." Id., at 441-442.

There are two additional reasons why the Judiciary, and the Supreme Court in particular, were not chosen to

have any role in impeachments. First, the Framers recognized that most likely there would be two sets of proceedings for individuals who commit impeachable offenses - the impeachment trial and a separate criminal trial. In fact, the Constitution explicitly provides for two separate proceedings. See Art I, § 3, cl 7. The Framers deliberately separated the two forums to avoid raising the specter of bias and to ensure independent judgments: Would it be proper that the persons, who had disposed of his fame and his most valuable rights as a citizen in one trial, should in another trial, for the same offence, be also the disposers of his life and his fortune? Would there not be the greatest reason to apprehend, that error in the first sentence would be the parent of error in the second sentence? That the strong bias of one decision would be apt to overrule the influence of any new lights, which might be brought to vary the complexion of another decision? The Federalist No. 65, p 442 (J. Cooke ed 1961)

Certainly judicial review of the Senate's "trial" would introduce the same risk of bias as would participation in the trial itself.

Second, judicial review would be inconsistent with the Framers' insistence that our system be one of checks and balances. In our constitutional system, impeachment was designed to be the only check on the Judicial Branch by the Legislature. On the topic of judicial accountability, Hamilton wrote:

The precautions for their responsibility are comprised in the article respecting impeachments. They are liable to be impeached for mal-conduct by the house of representatives, and tried by the senate, and if convicted, may be dismissed from office and disqualified for holding any other. This is the only provision on the point, which is consistent with the necessary independence of the judicial character, and is the only one which we find in our own constitution in respect to our own judges. Id., No. 79, pp 532-533 (emphasis added)

Judicial involvement in impeachment proceedings, even if only for purposes of judicial review, is counterintuitive because it would eviscerate the "important constitutional check" placed on the Judiciary by the Framers. See id., No. 81, p 545.

In fine, impeachment is dominantly political in character both in England and in the United States.

C. The Nature of Impeachment in the Philippine Setting

Given its history, let us now consider the nature of impeachment in the Philippine setting, i.e., whether it is likewise political in nature. A revisit of the political question doctrine will not shock us with the unfamiliar. In *Tañada v. Cuenco*,^[38] we held that the term political question connotes what it means in ordinary parlance, namely, a question of policy. It refers to "those questions which under the Constitution, are to be decided by the people in their sovereign capacity; or in regard to which full discretionary authority has been delegated to the legislative or executive branch of government. It is concerned with issues dependent upon the wisdom, not legality of a particular measure." In *Sanidad v. COMELEC*,^[39] we further held that "political questions are not the legality of a particular act. Where the vortex of the controversy refers to the legality or validity of the contested act, the matter is definitely justiciable or non-political."

Over the years, the core concept of political question and its contours underwent further refinement both here and abroad. In the 1962 landmark case of *Baker v. Carr*,^[40] Mr. Justice Brennan, a leading light in the Warren Court known for its judicial activism,^[41] delineated the shadowy umbras and penumbras of a political question. He held:

x x x Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's

undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

The political question problem raises the issue of justiciability of the petitions at bar. Parenthetically, the issue of justiciability is different from the issue of jurisdiction. Justiciability refers to the suitability of a dispute for judicial resolution.[42] Mr. Justice Frankfurter considers political question unfit for adjudication for it compels courts to intrude into the "political thicket." In contrast, jurisdiction refers to the power of a court to entertain, try and decide a case.

C.1. The issues at bar are justiciable

Prescinding from these premises, I shall now grapple with the threshold issue of whether the petitions at bar pose political questions which are non-justiciable or whether they present legal and constitutional issues over which this Court has jurisdiction. The resolution of the issue demands a study that goes beyond the depth of the epidermis. We give the impeachment provisions of our Constitution a historical, textual, legal and philosophical lookover.

The historiography of our impeachment provisions will show that they were liberally lifted from the US Constitution. Following an originalist interpretation, there is much to commend to the thought that they are political in nature and character. The political character of impeachment hardly changed in our 1935, 1973 and 1987 Constitutions. Thus, among the grounds of impeachment are "other high crimes or betrayal of public trust." [43] They hardly have any judicially ascertainable content. The power of impeachment is textually committed to Congress, a political branch of government. The right to accuse is exclusively given to the House of Representatives.[44] The right to try and decide is given solely to the Senate[45] and not to the Supreme Court. The Chief Justice has a limited part in the process - - to preside but without the right to vote when the President is under impeachment.[46] Likewise, the President cannot exercise his pardoning power in cases of impeachment.[47] All these provisions confirm the inherent nature of impeachment as political.

Be that at it may, the purity of the political nature of impeachment has been lost. Some legal scholars characterize impeachment proceedings as akin to criminal proceedings. Thus, they point to some of the grounds of impeachment like treason, bribery, graft and corruption as well defined criminal offenses.[48] They stress that the impeached official undergoes trial in the Senate sitting as an impeachment court.[49] If found guilty, the impeached official suffers a penalty "which shall not be further than removal from office and disqualification to hold any office under the Republic of the Philippines." [50]

I therefore respectfully submit that there is now a commixture of political and judicial components in our reengineered concept of impeachment. It is for this reason and more that impeachment proceedings are classified as sui generis. To be sure, our impeachment proceedings are indigenous, a kind of its own. They have been shaped by our distinct political experience especially in the last fifty years. EDSA People Power I resulted in the radical rearrangement of the powers of government in the 1987 Constitution. Among others, the powers of the President were diminished. Substantive and procedural restrictions were placed in the President's most potent power - - his power as Commander-in-Chief. Thus, he can suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law but only for a period not exceeding sixty days.[51] Within forty-eight hours from such suspension or proclamation, he is required to submit a report to Congress.[52] The sufficiency of the factual basis of the suspension of habeas corpus or the proclamation of martial law may be reviewed by the Supreme Court.[53] Similarly, the powers of the legislature were pruned down. [54] Its power of impeachment was reconfigured to prevent abuses in its exercise. Even while Article XI of the Constitution lodged the exercise of the power of impeachment solely with Congress, nonetheless it defined how the procedure shall be

conducted from the first to the last step. Among the new features of the proceedings is Section 3 (5) which explicitly provides that "no impeachment proceedings shall be initiated against the same official more than once within a period of one year." In contrast, the 1987 Constitution gave the Judiciary more powers. Among others, it expanded the reach and range of judicial power by defining it as including "x x x the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government." [55] Likewise, it expanded the rule making power of the Court. It was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. [56]

In light of our 1987 constitutional canvass, the question is whether this Court can assume jurisdiction over the petitions at bar. As aforesaid, the power of impeachment has both political and non-political aspects. I respectfully submit that the petitions at bar concern its non-political aspect, the issue of whether the impeachment complaint against Chief Justice Davide involving the JDF is already barred by the 1-year rule under Article XI, Section 3(5) of the Constitution. By any standard, this is a justiciable issue. As held in *Casibang v. Aquino*, [57] a justiciable question implies a given right, legally demandable, and enforceable, an act or omission violative of such right, and a remedy granted and sanctioned by law, for said breach of right." The petitions at bar involve the right of the Chief Justice against the initiation of a second impeachment within one year after a first impeachment complaint. The right is guaranteed by no less than the Constitution. It is demandable. It is a right that can be vindicated in our courts.

The contention that Congress, acting in its constitutional capacity as an impeachment body, has jurisdiction over the issues posed by the petitions at bar has no merit in light of our long standing jurisprudence. The petitions at bar call on the Court to define the powers that divide the jurisdiction of this Court as the highest court of the land and Congress as an impeachment court. In the seminal case of *Angara v. Electoral Commission*, [58] we held that "x x x the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituents thereof is the judicial department." So ruled Mr. Justice Laurel as ponente:

x x x

But in the main, the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins. In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.

x x x

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judiciary supremacy" which properly is the power of judicial review under the Constitution.

To be sure, the force to impugn the jurisdiction of this Court becomes more feeble in light of the new Constitution

which expanded the definition of judicial power as including "the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." As well observed by retired Justice Isagani Cruz, this expanded definition of judicial power considerably constricted the scope of political question.[59] He opined that the language luminously suggests that this duty (and power) is available even against the executive and legislative departments including the President and the Congress, in the exercise of their discretionary powers.[60]

We shall not be breaking grounds in striking down an act of a co-equal branch of government or an act of an independent agency of government done in grave abuse of discretion. Article VI, Section 17 of the 1987 Constitution provides, *inter alia*, that the House of Representatives Electoral Tribunal (HRET) shall be the "sole judge" of all contests relating to the election, returns, and qualifications of the members of the House. In *Bondoc v. Pineda, et al.*[61] this Court declared null and void the Resolution of the House of Representatives withdrawing the nomination, and rescinding the election of Congressman Camasura as a member of the HRET. His expulsion from the HRET by the House of Representatives was held not to be for a lawful and valid cause, but to unjustly interfere with the tribunal's disposition of the Bondoc case and deprive Bondoc of the fruits of the HRET's decision in his favor. This Court found that the House of Representatives acted with grave abuse of discretion in removing Congressman Camasura. Its action was adjudged to be violative of the constitutional mandate which created the HRET to be the "sole judge" of the election contest between Bondoc and Pineda. We held that a showing that plenary power is granted either department of government is not an obstacle to judicial inquiry, for the improvident exercise or the abuse thereof may give rise to a justiciable controversy. Since "a constitutional grant of authority is not unusually unrestricted, limitations being provided for as to what may be done and how it is to be accomplished, necessarily then, it becomes the responsibility of the courts to ascertain whether the two coordinate branches have adhered to the mandate of the fundamental law. The question thus posed is judicial rather than political."

We further explained that the power and duty of courts to nullify, in appropriate cases, the actions of the executive and legislative branches does not mean that the courts are superior to the President and the Legislature. It does mean though that the judiciary may not shirk "the irksome task" of inquiring into the constitutionality and legality of legislative or executive action when a justiciable controversy is brought before the courts by someone who has been aggrieved or prejudiced by such action. It is "a plain exercise of judicial power, the power vested in courts to enable them to administer justice according to law. x x x It is simply a necessary concomitant of the power to hear and dispose of a case or controversy properly before the court, to the determination of which must be brought the test and measure of the law."[62]

In *Angara v. Electoral Commission*,[63] we also ruled that the Electoral Commission, a constitutional organ created for the specific purpose of determining contests relating to election returns and qualifications of members of the National Assembly may not be interfered with by the judiciary when and while acting within the limits of authority, but this Court has jurisdiction over the Electoral Commission for the purpose of determining the character, scope and extent of the constitutional grant to the commission as sole judge of all contests relating to the election and qualifications of the members of the National Assembly.

Similarly, in *Arroyo v. House of Representatives Electoral Tribunal (HRET) and Augusto Syjuco*,[64] we nullified the HRET's decision declaring private respondent Syjuco as the duly elected Congressman of Makati for having been rendered in persistent and deliberate violation of the Tribunal's own governing rules and the rules of evidence.

To be sure, this Court has reviewed not just acts of the HRET but also of the House of Representatives itself. We

passed upon the issue of whether the procedure for passing a law provided by the Constitution was followed by the House of Representatives and the Senate in *Tolentino v. Secretary of Finance, et al.*[65] involving R.A. No. 7716 or the VAT law. We ruled that the VAT law satisfied the constitutional provision requiring that all appropriation, revenue and tariff bills originate from the House of Representatives under Article VI, Section 24 of the 1987 Constitution. We also interpreted the constitutional provision requiring the reading of a bill on three separate days "except when the President certifies to the necessity of its immediate enactment, etc." and held that this requirement was satisfied when the bill which became R.A. No. 7716 underwent three readings on the same day as the President certified the bill as urgent. Finally, we interpreted the Rules of the Senate and the House of Representatives and held that there was nothing irregular about the conference committee including in its report an entirely new provision not found either in the House bill or in the Senate bill as this was in accordance with the said Rules.

The recent case of *Macalintal v. COMELEC*[66] on absentee voting affirmed the jurisdiction of this Court to review the acts of the legislature. In said case, the Court settled the question of propriety of the petition which appeared to be visited by the vice of prematurity as there were no ongoing proceedings in any tribunal, board or before a government official exercising judicial, quasi-judicial or ministerial functions as required by Rule 65 of the Rules of Court. The Court considered the importance of the constitutional issues raised by the petitioner, and quoted *Tañada v. Angara*[67] stating that "where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute."

I therefore concur with the majority that the issues posed by the petitions at bar are justiciable and this Court has jurisdiction over them.

D. The Exercise of Jurisdiction: Theory and Limits of Judicial Restraint, Judicial Activism and the Coordinacy Theory of Constitutional Interpretation

The next crucial question is whether the Court should now exercise its jurisdiction. Former Senate President Salonga says not yet and counsels restraint. So do Deans Agabin and Pangalangan of the UP College of Law. To be sure, there is much to commend in judicial restraint. Judicial restraint in constitutional litigation is not merely a practical approach to decision-making. With humility, I wish to discuss its philosophical underpinnings. As a judicial stance, it is anchored on a heightened regard for democracy. It accords intrinsic value to democracy based on the belief that democracy is an extension of liberty into the realm of social decision-making.[68] Deference to the majority rule constitutes the flagship argument of judicial restraint[69] which emphasizes that in democratic governance, majority rule is a necessary principle.[70]

Judicial restraint assumes a setting of a government that is democratic and republican in character. Within this democratic and republican framework, both the apostles of judicial restraint and the disciples of judicial activism agree that government cannot act beyond the outer limits demarcated by constitutional boundaries without becoming subject to judicial intervention. The issue that splits them is the location of those limits. They are divided in delineating the territory within which government can function free of judicial intervention. Cases raising the question of whether an act by Congress falls within the permissible parameters of its discretion provide the litmus test on the correctness of judicial restraint as a school of thought. The democratic value assists the judicial restraintist in arriving at an answer. It nudges the judge who considers democracy as an intrinsic and fundamental value to grant that the discretion of the legislature is large and that he cannot correct any act or enactment that comes before the court solely because it is believed to be unwise. The judge will give to the legislature the leeway to develop social policy and apart from what the Constitution proscribes, concede that the legislature has a "right to be wrong" and will be answerable alone to the people for the exercise of that unique

privilege. It is better for the majority to make a mistaken policy decision, within broad limits, than for a judge to make a correct one.[71] As an unelected official, bereft of a constituency and without any political accountability, the judge considers that respect for majoritarian government compels him to be circumspect in invalidating, on constitutional grounds, the considered judgments of legislative or executive officials, whose decisions are more likely to reflect popular sentiments.[72]

Judicial restraint thus gives due deference to the judiciary's co-equal political branches of government comprised of democratically elected officials and lawmakers, and encourages separation of powers.[73] It is consistent and congruent with the concept of balance of power among the three independent branches of government. It does not only recognize the equality of the other two branches with the judiciary, but fosters that equality by minimizing inter-branch interference by the judiciary. It may also be called judicial respect, that is, respect by the judiciary for other co-equal branches. In one of the earliest scholarly treatments of judicial review, "The Origin and Scope of the American Doctrine of Constitutional Law", published in 1893, Prof. James Bradley Thayer of Harvard established strong support for the rule that courts should invalidate legislative acts only when their unconstitutionality is established with great certainty.[74] Many commentators agree that early notions of judicial review adhered to a "clear-error" rule that courts should not strike down legislation if its constitutionality were merely subject to doubt.[75] For Thayer, full and free play must be allowed to "that wide margin of considerations which address themselves only to the practical judgment of a legislative body." Thayer's thesis of judicial deference had a significant influence on Justices Holmes, Brandeis, and Frankfurter.[76] Justice Frankfurter is the philosopher of the school of thought trumpeting judicial restraint. As he observed "if judges want to be preachers, they should dedicate themselves to the pulpit; if judges want to be primary shapers of policy the legislature is their place.[77] He opined that there is more need for justices of the Supreme Court to learn the virtue of restraint for the cases they consider "leave more scope for insight, imagination and prophetic responsibility." [78]

Adherents of judicial restraint warn that under certain circumstances, the active use of judicial review has a detrimental effect on the capacity of the democratic system to function effectively. Restraintists hold that large-scale reliance upon the courts for resolution of public problems could lead in the long run to atrophy of popular government and collapse of the "broad-based political coalitions and popular accountability that are the lifeblood of the democratic system." [79] They allege that aggressive judicial review saps the vitality from constitutional debate in the legislature.[80] It leads to democratic debilitation where the legislature and the people lose the ability to engage in informed discourse about constitutional norms.[81]

Judicial restraint, however, is not without criticisms. Its unbelievers insist that the concept of democracy must include recognition of those rights that make it possible for minorities to become majorities. They charge that restraintists forget that minority rights are just as important a component of the democratic equation as majority rule is. They submit that if the Court uses its power of judicial review to guarantee rights fundamental to the democratic process - freedoms of speech, press, assembly, association and the right to suffrage - so that citizens can form political coalitions and influence the making of public policy, then the Court would be just as "democratic" as Congress.

Critics of judicial restraint further stress that under this theory, the minority has little influence, if at all it can participate, in the political process. Laws will reflect the beliefs and preferences of the majority, i.e., the mainstream or median groups.[82] The restraintist's position that abridgments of free speech, press, and association and other basic constitutional rights should be given the same deference as is accorded legislation affecting property rights, will perpetuate suppression of political grievances. Judicial restraint fails to recognize that in the very act of adopting and accepting a constitution and the limits it specifies, the majority imposes upon itself a self-denying ordinance. It promises not to do what it otherwise could do: to ride roughshod over the

dissenting minorities.[83] Thus, judicial activists hold that the Court's indispensable role in a system of government founded on doctrines of separation of powers and checks and balances is a legitimator of political claims and a catalyst for the aggrieved to coalesce and assert themselves in the democratic process.[84]

I most respectfully submit, however, that the 1987 Constitution adopted neither judicial restraint nor judicial activism as a political philosophy to the exclusion of each other. The expanded definition of judicial power gives the Court enough elbow room to be more activist in dealing with political questions but did not necessarily junk restraint in resolving them. Political questions are not undifferentiated questions. They are of different variety.

The antagonism between judicial restraint and judicial activism is avoided by the coordinacy theory of constitutional interpretation. This coordinacy theory gives room for judicial restraint without allowing the judiciary to abdicate its constitutionally mandated duty to interpret the constitution. Coordinacy theory rests on the premise that within the constitutional system, each branch of government has an independent obligation to interpret the Constitution. This obligation is rooted on the system of separation of powers.[85] The oath to "support this Constitution," - which the constitution mandates judges, legislators and executives to take - proves this independent obligation. Thus, the coordinacy theory accommodates judicial restraint because it recognizes that the President and Congress also have an obligation to interpret the constitution. In fine, the Court, under the coordinacy theory, considers the preceding constitutional judgments made by other branches of government. By no means however, does it signify complete judicial deference. Coordinacy means courts listen to the voice of the President and Congress but their voice does not silence the judiciary. The doctrine in *Marbury v. Madison*[86] that courts are not bound by the constitutional interpretation of other branches of government still rings true. As well stated, "the coordinacy thesis is quite compatible with a judicial deference that accommodates the views of other branches, while not amounting to an abdication of judicial review." [87]

With due respect, I cannot take the extreme position of judicial restraint that always defers on the one hand, or judicial activism that never defers on the other. I prefer to take the contextual approach of the coordinacy theory which considers the constitution's allocation of decision-making authority, the constitution's judgments as to the relative risks of action and inaction by each branch of government, and the fears and aspirations embodied in the different provisions of the constitution. The contextual approach better attends to the specific character of particular constitutional provisions and calibrates deference or restraint accordingly on a case to case basis. In doing so, it allows the legislature adequate leeway to carry out their constitutional duties while at the same time ensuring that any abuse does not undermine important constitutional principles.[88]

I shall now proceed to balance these constitutional values. Their correct calibration will compel the conclusion that this Court should defer the exercise of its ultimate jurisdiction over the petitions at bar out of prudence and respect to the initial exercise by the legislature of its jurisdiction over impeachment proceedings. First, judicial deferment of judgment gives due recognition to the unalterable fact that the Constitution expressly grants to the House of Representatives the "exclusive" power to initiate impeachment proceedings and gives to the Senate the "sole" power to try and decide said cases. The grant of this power - the right to accuse on the part of the House and the right to try on the part of the Senate - to Congress is not a happenstance. At its core, impeachment is political in nature and hence its initiation and decision are best left, at least initially, to Congress, a political organ of government. The political components of impeachment are dominant and their appreciation are not fit for judicial resolution. Indeed, they are beyond the loop of judicial review. Second, judicial deferment will, at the very least, stop our descent to a constitutional crisis. Only those with the armor of invincible ignorance will cling to the fantasy that a stand-off between this Court and Congress at this time will not tear asunder our tenuous unity. There can be no debate on the proposition that impeachment is designed to protect the principles of separation of powers and checks and balances, the glue that holds together our government. If we weaken the glue, we shall be

flirting with the flame of disaster. An approach that will bring this Court to an irreversible collision with Congress, a collision where there will be no victors but victims alone, is indefensible. The 1924 case of *Alejandrino v. Quezon*[89] teaches us that the system of checks and balances should not disturb or harm the harmony in government. This theme resonates in the 1936 case of *Angara v. Electoral Commission*, where Justice Laurel brightlined the desideratum that the principle of checks and balances is meant "to secure coordination in the workings of the various departments of the government." Our government has three branches but it has but one purpose - - - to preserve our democratic republican form of government - - - and I refuse to adopt an approach that refuses to reconcile the powers of government. Third, the Court should strive to work out a constitutional equilibrium where each branch of government cannot dominate each other, an equilibrium where each branch in the exercise of its distinct power should be left alone yet bereft of a license to abuse. It is our hands that will cobble the components of this delicate constitutional equilibrium. In the discharge of this duty, Justice Frankfurter requires judges to exhibit that "rare disinterestedness of mind and purpose, a freedom from intellectual and social parochialism." The call for that quality of "rare disinterestedness" should counsel us to resist the temptation of unduly inflating judicial power and deflating the executive and legislative powers. The 1987 Constitution expanded the parameters of judicial power, but that by no means is a justification for the errant thought that the Constitution created an imperial judiciary. An imperial judiciary composed of the unelected, whose sole constituency is the blindfolded lady without the right to vote, is counter-majoritarian, hence, inherently inimical to the central ideal of democracy. We cannot pretend to be an imperial judiciary for in a government whose cornerstone rests on the doctrine of separation of powers, we cannot be the repository of all remedies. It is true that this Court has been called the conscience of the Constitution and the last bulwark of constitutional government.[90] But that does not diminish the role of the legislature as co-guardian of the Constitution. In the words of Justice Cardozo, the "legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as courts." [91] Indeed, judges take an oath to preserve and protect the Constitution but so do our legislators. Fourth, we have the jurisdiction to strike down impermissible violations of constitutional standards and procedure in the exercise of the power of impeachment by Congress but the timing when the Court must wield its corrective certiorari power rests on prudential considerations. I agree that judicial review is no longer a matter of power for if it were power alone we can refuse to exercise it and yet be right. As well put by Justice Brandeis, "the most important thing we decide is what not to decide." Indeed, judicial review is now a matter of duty, and it is now wrong to abdicate its exercise. Be that as it may, the timing of its exercise depends on the sense of the situation by the Court and its sense depends on the exigencies created by the motion and movement of the impeachment proceedings and its impact on the interest of our people. We are right in ruling we have jurisdiction but the wrong timing of the exercise of our jurisdiction can negate the existence of our very jurisdiction and with catastrophic consequence. The words of former Senate President Jovito Salonga, an *amicus curiae*, ought to bridle our rush to judgment - - - this Court will eventually have jurisdiction but not yet. I quote his disquisition, viz:

Assuming the question of propriety can be surmounted, should the Supreme Court render a decision at this time?

This brings us back to the realities of the 2nd Impeachment Complaint and the question of propriety posed earlier.

- There are moves going on to get enough members of Congress to withdraw their signatures down to 75 or less, even before the resumption of the sessions on November 10, 2003, so as to render this whole controversy moot and academic. Malacañang is also pushing for a Covenant which may or may not succeed in ending the controversy.

- Assuming the desired number of withdrawals is not achieved and the Covenant does not gain enough support

among the NPC congressmen, there are still a number of steps to be taken in the House in connection with the First Impeachment Complaint - before the Second Impeachment Complaint can be transmitted to the Senate. Moreover, if it is true that the House Committee on Justice has not yet finished its inquiry into the administration of the Judicial Development Fund, the Committee may be persuaded to call the officials of the Commission on Audit to explain the COA Special Audit Report of September 5, 2003 and help the Committee Chair and members to carry out and complete their work, so the Committee can submit its Report to the entire House for its information and approval.

I understand a number of congressmen may also raise the question of compliance with the due process clause in handling the Impeachment Complaint against Chief Justice Davide, particularly the twin requirements of notice and hearing. It may be too early to predict whether the House session on November 10, 2003 (and perhaps in the succeeding days), will be smooth and easy or rough and protracted. Much will depend on developments after this hearing in this Court (on November 5). In politics, it has been said, one day - especially in Congress - can be a long, long time.

- Whatever happens in the House, a lot of things can happen outside - in the streets, in the stock market, in media, in Government and in public assemblies throughout the country. All these will have a great bearing on what happens in the House and in the Senate.

- If the 2nd Impeachment Complaint finally reaches the Senate, a number of things can be done before the Senate is convened as an Impeachment Court. For example, the Senate, which has the primary jurisdiction over the case, can decide the question of whether the one-year ban has been violated or not. Likewise, the Senate can decide whether the Complaint, on its face, has any legal basis. Considering, among other things, that only two congressmen filed the 2nd Impeachment Complaint - the other congressmen were mere endorsers - the Complaint cannot qualify for Senate Impeachment trial as pointed out by Attys. Macalintal and Quadra. Dismissal of the 2nd Impeachment Complaint can be done by the Senate *motu proprio* or through a Motion to Quash filed on behalf of Chief Justice Davide. If the Senate decides that the one-year ban has been violated or that the Complaint on its face has no leg to stand on, this could be the end of the whole controversy.

My point is that there may be no urgent need for this august tribunal to render a decision at this point. The Supreme Court, which has final jurisdiction on questions of constitutionality, should be the final arbiter; it should be the authoritative court of last resort in our system of democratic governance. In my view, all the remedies in the House and in the Senate should be exhausted first. Only when this case is ripe for judicial determination can the Supreme Court speak with great moral authority and command the respect and loyalty of our people.

Few will dispute that former Senate President Salonga has the power of a piercing insight.

CONCLUSION

In summary, I vote as follows:

- grant the locus standi of the petitioners considering the transcendental constitutional issues presented;
- hold that it is within the power of this Court to define the division of powers of the branches of government;
- hold that the alleged violation of Article XI, Section 3 (5) of the Constitution which provides that "no impeachment proceedings shall be initiated against the same official more than once within a period of one year" is a justiciable issue and hence within the competence of this Court to decide; and
- hold that the coordinacy theory of constitutional interpretation and prudential considerations demand that this Court defer the exercise of its certiorari jurisdiction on the issue of alleged violation of Article XI, Section 3 (5) of the Constitution until after the remedies against impeachment still available in both the House of Representatives and the Senate shall have been exhausted.

In light of the above, I vote to dismiss the petitions at bar.

[1] Ferrick, Impeaching Federal Judges: A Study of the Constitutional Provisions, 39 Fordham L Rev. p. 5 (1970).

[2] Ibid.

[3] Schlesinger, Reflections on Impeachment, 67 Geo Wash L Rev. No. 3 (March 1999), p. 693.

[4] Turley, Congress as Grand Jury: The Role of the House of Representatives in the Impeachment of an American President, 67 Geo Wash L. Rev. No. 3 (March 1999) p. 763.

[5] Ibid.

[6] Perrick, op cit ., p. 5.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Turley, op cit ., pp. 763-764.

[11] Gerhardt, The Lessons of Impeachment History, 67 Geo Wash L Rev. 67, No. 3 (March 1999), p. 11. McDowell, "High Crimes and Misdemeanors." Recovering the Intentions of the Founders, 67 Geo Wash L. Rev. 67, No. 3 (March 1999), p. 636-638; Bergeir, Impeachment, The Constitutional Problems, 61 (1973).

[12] Feerick, op cit ., pp. 12-14.

[13] Ibid.

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] Ibid.

[19] Ibid.

[20] Feerick, op cit., pp. 14-15.

[21] Ibid.

[22] Ibid.

[23] Ibid at pp. 15-16.

[24] Ibid.

[25] Ibid.

[26] Ibid, p. 20.

[27] Ibid, p. 21.

[28] Ibid, p. 22.

[29] Ibid., p. 22.

[30] Ibid. pp. 22-23, Delegates Pinkney and Williamson were against the Senate while Delegates Sherman and Morris objected to the Supreme Court.

[31] Ibid.

[32] Ibid.

[33] Gerhardt, op cit., pp. 605-606.

[34] Gerhardt, op cit., p. 609.

[35] McDowell, op. cit. p. 635.

[36] See e.g., *People ex. Rel. Robin v. Hayes*, 82 Misc. 165, 143 N.Y.S. 325 (Sup. Ct. 1913) aff'd 163 App. Div. 725, 149 N.Y.S. 250, appeal dismissed 212 N.Y.S. 603, 106 N.E. 1041 (1914); *State ex rel Trapp v. Chambers*, 96 Okla. 78, 220 P. 8310 (1923); *Ritter v. US*, 84 Ct. Cl. 293 (1936, cert. denied 300 US 668 (1937)).

[37] 38 506 US 224 (1993), 122 L ed. 1, 113 S Ct. 732.

[38] 100 Phil. 1101.

[39] 73 SCRA 333.

[40] 369 US 186 (1962).

[41] "'Judicial activism' is a political, sociological, or pejorative term, not a constitutional one. An activist court answers questions its critics believe it need never have considered; it imposes its policy views not merely on the parties before it but it usurps the legislature's functions. Throughout the 1960s, the Warren Court was brandied as the epitome of activism because of its long line of procedural due process cases, extending the Bill of Rights to the States and its equal protection anti-segregation cases, beginning with *Brown v. Board of Education*. Such decisions have been cited as the hallmark of liberal judicial 'result oriented' activism." Lieberman, *The Evolving Constitution*, pp., 277-278 (1982 ed).

[42] Ibid., p. 290; See also Position Paper of Amicus Curiae Pacifico Agabin, former Dean of the UP College of Law, p. 1.

[43] Art. XI, sec. 3 of the 1987 Constitution.

[44] Ibid, Art. XI, sec. 3(1).

[45] Ibid, Art. XI, sec. 3(6).

[46] Ibid.

[47] Art. VIII, sec. 19 of the 1987 Constitution.

[48] Art. XI, sec. 2 of the 1987 Constitution.

[49] Ibid., sec. 3(6).

[50] Ibid.

[51] Article VII, sec. 18 of the 1987 Constitution.

[52] Ibid.

[53] Ibid.

[54] E.g., the Commission on Appointment ceased to have any power to confirm appointments to the Judiciary.

[55] Art. VIII, sec. 1 of the 1987 Constitution.

[56] Ibid., Art. VIII, sec. 5 (5).

[57] 92 SCRA 642.

[58] 63 Phil. 139 (1936).

[59] Cruz, Philippine Political Law, p. 88 (1998 ed.).

[60] Ibid., p. 89.

[61] 201 SCRA 792 (1991).

[62] Vera v. Avelino, 77 Phil. 192, 203.

[63] 63 Phil. 139 (1936).

[64] 246 SCRA 384 (1995).

[65] 235 SCRA 630 (1994).

[66] G.R. No. 157013, July 10, 2003.

[67] See also Marcos v. Manglapus, 177 SCRA 668 (1989); Bengzon, Jr. v . Senate Blue Ribbon Committee, 203 SCRA 767 (1991); Guingona v. Carague, 196 SCRA 221 (1991); Gonzales v. Macaraig, Jr., 191 SCRA 452 (1990) and Coseteng v. Mitra, Jr., 187 SCRA 377 (1990).

[68] Wallace, C., "The Jurisprudence of Judicial Restraint: A Return to the Moorings", George Washington Law Review, vol. 50, no. 1 (Nov. 1981), pp. 1, 5.

[69] Ducat, C. Constitutional Interpretation: Rights of the Individual, vol. II (1999), E9.

[70] Neuhaus, R., "A New Order of Religious Freedom," The George Washington Law Review (1992), vol. 60 (2), pp. 620, 621, 624-625.

[71] Wallace, C., "The Jurisprudence of Judicial Restraint: A Return to the Moorings", George Washington Law Review, vol. 50, no. 1 (Nov. 1981), pp. 1, 5.

[72] Conkle, D., "A 'Conservative' Judge and the First Amendment: Judicial Restraint and Freedom of Expression", The Georgetown Law Journal, vol. 74, no. 6 (Aug. 1986), pp. 1585, 1586.

[73] Wallace, C., "The Jurisprudence of Judicial Restraint: A Return to the Moorings", The George Washington Law Review, vol. 50, no. 1 (Nov. 1981), pp. 1, 16.

[74] Schapiro, R., "Judicial Deference and Interpretive Coordinacy in State and Federal Constitutional Law", Cornell Law Review, vol. 85, no. 3 (March 2000), pp. 656, 668, citing James B. Thayer, The Origin and Scope of the American Doctrine of Constitutional Law, 7 Harvard Law Review, 129, 140-144 (1893).

[75] Schapiro, R., "Judicial Deference and Interpretive Coordinacy in State and Federal Constitutional Law", Cornell Law Review, vol. 85, no. 3 (March 2000), p. 656, 668, citing William R. Castro, The Supreme Court in the Early Republic: The Chief Justiceships of John Jay and Oliver Ellsworth 222-27 (1995). Other citations omitted.

[76] Bickel, A., The Least Dangerous Branch: The Supreme Court at the Bar of Politics (1962), p. 35.

[77] Neely, Mr. Justice Frankfurter's Iconography of Judging, 82 KY LJ 535 (1994).

[78] Ibid.

[79] Ducat, C. Constitutional Interpretation: Rights of the Individual, vol. II (1999), E9.

[80] Schapiro, R., "Judicial Deference and Interpretive Coordinacy in State and Federal Constitutional Law", Cornell Law Review, vol. 85, no. 3 (March 2000), pp. 656, 702, citing James B. Thayer, The Origin and Scope of the American Doctrine of Constitutional Law, 7 Harvard Law Review, 129, 155-156 (1893).

[81] Schapiro, R., "Judicial Deference and Interpretive Coordinacy in State and Federal Constitutional Law", Cornell Law Review, vol. 85, no. 3 (March 2000), pp. 656, 702, citing James B. Thayer, The Origin and Scope of the American Doctrine of Constitutional Law, 7 Harvard Law Review, 129, 155-156 (1893); see also Mark Tushnet, Policy Distribution and Democratic Debilitation: Comparative Illumination of the Countermajoritarian Difficulty, 94 Michigan Law Review, pp. 245, 299-300 (1995).

[82] McConnell, M., "Religious Freedom at a Crossroads", The University of Chicago Law Review (1992), vol. 59(1), pp. 115, 139.

[83] Neuhaus, R., "A New Order of Religious Freedom," The George Washington Law Review (1992), vol. 60 (2), p. 620, 624-625.

[84] Ducat, C. Constitutional Interpretation: Rights of the Individual, vol. II (1999), E11.

[85] Schapiro, R., "Judicial Deference and Interpretive Coordinacy in State and Federal Constitutional Law", Cornell Law Review, vol. 85, no. 3 (March 2000), p. 656, 702, citing Michael Stokes Paulsen, "The Most Dangerous Branch: Executive Power to Say What Law is", 83 Geo. L.J. 217 (1994).

[86] 5 U.S. 137 (1803).

[87] Schapiro, R., "Judicial Deference and Interpretive Coordinacy in State and Federal Constitutional Law", Cornell Law Review, vol. 85, no. 3 (March 2000), p. 656, 667, citing Michael Stokes Paulsen, "The Most Dangerous Branch: Executive Power to Say What Law is", 83 Geo. L.J. 217, 332 (1994).

[88] Schapiro, R., "Judicial Deference and Interpretive Coordinacy in State and Federal Constitutional Law", Cornell Law Review, vol. 85, no. 3 (March 2000), p. 656, 715-716.

[89] Alejandrino v. Quezon, 46 Phil. 83 (1924).

[90] Zandueta v. de la Cuesta, 66 Phil. 615 (1938).

[91] Missouri, K. & T. Co. v. May, 194 US 267, 270; People v. Crane, 214 N.Y. 154, 174 cited in Cardozo, The Nature of the Judicial Process.

SEPARATE OPINION

VITUG, J.:

"THE PHILIPPINES IS A DEMOCRATIC AND REPUBLICAN STATE. SOVEREIGNTY RESIDES IN THE PEOPLE AND ALL GOVERNMENT AUTHORITY EMANATES FROM THEM."[1]

A Republican form of government rests on the conviction that sovereignty should reside in the people and that all government authority must emanate from them. It abhors the concentration of power on one or a few, cognizant that power, when absolute, can lead to abuse, but it also shuns a direct and unbridled rule by the people, a veritable kindling to the passionate fires of anarchy. Our people have accepted this notion and decided to delegate the basic state authority to principally three branches of government --- the Executive, the Legislative, and the Judiciary - each branch being supreme in its own sphere but with constitutional limits and a firm tripod of checks and balances. The Constitution is the written manifestation of the sovereign will of the people. It is the yardstick upon which every act of governance is tested and measured.

Today, regrettably, a looming threat of an overreaching arm of a "co-equal" branch of government would appear to be perceived by many. On 02 June 2003, a complaint for impeachment was filed before the House of Representatives against the Chief Justice of the Philippines and seven associate justices of the Supreme Court. On 23 October 2003, a second complaint for impeachment was filed by two members of the House, endorsed by at least one-third of its membership, but this time, only against the Chief Justice.

People took to the streets; media reported what it termed to be an inevitable constitutional crisis; the business sector became restive; and various other sectors expressed alarm. The Court itself was swarmed with petitions asking the declaration by it of the total nullity of the second impeachment complaint against the Chief Justice for being violative of the constitutional proscription against the filing of more than one impeachment complaint against the same impeachable officer within a single year.

Thus, once again, yet perhaps one of the toughest test in its more than one hundred years of existence, the Court, has been called upon to act. Involved are no longer just hypothetical principles best left as fodder for academic debate; this time, the core values of separation of powers among the co-equal branches of the government, the principle of checks and balances, and explicit constitutional mandates and concepts come into sharp focus and serious scrutiny.

Must the Supreme Court come into grips and face the matter squarely? Or must it tarry from its duty to act swiftly and decisively under the umbrella of judicial restraint?

The circumstances might demand that the Court must act dispassionately and seasonably.

Nothing in our history suggests that impeachment was existent in the Philippines prior to the 1935 Constitution. Section 21 of the Jones Law only mentions of an executive officer whose official title shall be "the Governor General of the Philippine Islands" and provides that he holds office at the pleasure of the President and until his successor is chosen and qualified.[2] The impeachment provision, which appeared for the first time in the 1935 Constitution was obviously a transplant, among many, of an American precept into the Philippine landscape.

The earliest system of impeachment existed in ancient Greece, in a process called eisangelia.[3] In its modern form, the proceeding first made its appearance in 14th century England in an attempt by the fledgling parliament to gain authority over the advisers, ministers and judges of the monarch who was then considered incapable of any wrongdoing.[4] The first recorded case was in 1376, when Lords Latimer and Neville, together with four commoners, were charged with crimes, i.e., for removing the staple from Calais, for lending the King's money at usurious interest, and for buying Crown debts for small sums and paying themselves in full out of the Treasury.[5] Since the accession of James I in 1603, the process was heavily utilized,[6] its application only declining and eventually becoming lost to obsolescence during the 19[th] century when, with the rise of the doctrine of ministerial responsibility, the parliament, by mere vote of censure or "no confidence", could expeditiously remove

an erring official.[7] It was last used in England in 1806, in an unsuccessful attempt to remove Lord Melville.[8]

While the procedure was dying out in England, the framers of the United States Constitution embraced it as a "method of national inquest into the conduct of public men." [9] The provision in the American Federal Constitution on impeachment simply read -

"The President, Vice-President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, treason, Bribery, or other High Crimes and Misdemeanors." [10]

While the American impeachment procedure was shaped in no small part by the English experience, [11] records of the US Constitutional Convention would reveal that the Framers took pains to distinguish American impeachment from British practice. [12] Some notable differences included the fact that in the United States, the proceedings might be directed against civil officials such as the chief of state, members of the cabinet and those in the judiciary. In England, it could be applied against private citizens, or commoners, for treason and other high crimes and misdemeanors; and to peers, for any crime. [13] While the British parliament had always refused to contain its jurisdiction by restrictively defining impeachable offenses, the US Constitution narrowed impeachable offenses to treason, bribery, or other high crimes and misdemeanors. English impeachments partook the nature of a criminal proceeding; while the US Constitution treated impeachment rather differently. [14] Variations of the process could be found in other jurisdictions. In Belgium, France, India, Italy, and in some states in the United States, it had been the courts, which conducted trial. [15] In Republic of China (Taiwan) and Cuba, it would be an executive body which could initiate impeachment proceedings against erring civil officials. [16]

The 1987 Constitution provides, under its Sections 2 and 3, Article XI, the skeletal constitutional framework of the impeachment process in the Philippines -

Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

Section 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that

purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

(7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial and punishment according to law.

(8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.

As a proceeding, impeachment might be so described thusly - First, it is legal and political in nature and, second, it is sui generis neither a criminal or administrative proceeding, but partaking a hybrid characteristic of both and retaining the requirement of due process basic to all proceedings.[17] Its political nature is apparent from its function as being a constitutional measure designed to protect the State from official delinquencies and malfeasance, the punishment of the offender being merely incidental.[18] Although impeachment is intended to be non-partisan, the power to impeach is nevertheless lodged in the House of Representatives, whose members are highly responsive to political and partisan influences. The trial by the Senate is thought to reduce the likelihood of an impeachment case being decided solely along political lines. With its character of being part criminal and part administrative, carrying the punitive sanction not only of removal and disqualification from office but likewise the stigmatization of the offender,[19] an impeachment proceeding does not exactly do away with basic evidentiary rules and rudimentary due process requirements of notice and hearing.

The House of Representatives is the repository of the power to indict; it has the "exclusive power to initiate all cases of impeachment ." But, unlike the American rule[20] from which ours has been patterned, this power is subject to explicit Constitutional guidelines and proscriptions. Its political discretion extends, albeit within constitutional parameters, to the formulation of its rules of impeachment and the determination of what could constitute impeachable offenses. The impeachable offenses of "bribery," "graft and corruption" and "treason" are clearly defined in criminal statute books. The terms "high crimes," "betrayal of public trust", and "culpable violation of the Constitution," however, elude exact definition, and by their nature, cannot be decided simply by reliance on parsing criminal law books[21] but, although nebulous, all three obviously pertain to 'fitness for public office,' the determination of which allows the exercise of discretion. Excluding any definite checklist of impeachable offenses in the Constitution is a wise measure meant to ensure that the House is not unduly impeded by unwise restrictive measures, which may be rendered obsolete with a changed milieu;[22] otherwise, it would have made more sense to give the power to the judiciary, which is the designated arbiter of cases under traditionally determinate or readily determinable rules.[23] A broad grant of powers, nonetheless, can lead to apprehensions that Congress may extend impeachment to any kind of misuse of office that it may find intolerable. [24] At one point, Gerald Ford has commented that "an impeachable offense is whatever the House of Representatives considers it to be at a given moment." [25]

The discretion, broad enough to be sure, should still be held bound by the dictates of the Constitution that bestowed it. Thus, not all offenses, statutory or perceived, are impeachable offenses. While some particular misconduct might reveal a shortcoming in the integrity of the official, the same may not necessarily interfere with the performance of his official duties or constitute an unacceptable risk to the public so as to constitute an impeachable offense. Other experts suggest the rule of ejusdem generis, i.e. that "other high crimes," "culpable violation of the constitution" and "betrayal of public trust" should be construed to be on the same level and of the same quality as treason or bribery. George Mason has dubbed them to be "great crimes," "great and dangerous offenses," and "great attempts to subvert the Constitution,"[26] which must, according to Alexander Hamilton, be also offenses that proceed from abuse or violation of some public trust, and must "relate chiefly to injuries done

immediately to society itself." [27] These political offenses should be of a nature, which, with peculiar propriety, would cause harm to the social structure. [28] Otherwise, opines James Madison, any unbridled power to define may make impeachment too easy and would effectively make an official's term subject to the pleasure of Congress, thereby greatly undermining the separation of powers. Thus, where the House of Representatives, through its conduct or through the rules it promulgates, transgresses, in any way, the detailed procedure prescribed in the Constitution, the issue is far removed from the sphere of a "political question," which arises with the exercise of a conferred discretion, and transformed into a constitutional issue falling squarely within the jurisdictional ambit of the Supreme Court as being the interpreter of the fundamental law.

The issue of "political question" is traditionally seen as an effective bar against the exercise of judicial review. The term connotes what it means, a question of policy, i.e., those issues which, under the Constitution, are to be decided by the people in their sovereign capacity in regard to which full discretionary authority has been delegated to either the Legislature or Executive branch of the government. It is concerned with the wisdom, not with the legality, of a particular act or measure. [29]

The Court should not consider the issue of "political question" as foreclosing judicial review on an assailed act of a branch of government in instances where discretion has not, in fact, been vested, yet assumed and exercised. Where, upon the other hand, such discretion is given, the "political question doctrine" may be ignored only if the Court sees such review as necessary to void an action committed with grave abuse of discretion amounting to lack or excess of jurisdiction. In the latter case, the constitutional grant of the power of judicial review vested by the Philippine Constitution on the Supreme Court is rather clear and positive, certainly and textually broader and more potent than where it has been borrowed. The Philippine Constitution states [30]---

"Judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

"Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." [31]

Even before it emerged in the 1987 Constitution, early jurisprudence, more than once, supported the principle. In *Avelino vs. Cuenco*, [32] the Court passed upon the internal rules of the Senate to determine whether the election of Senator Cuenco to the Senate Presidency was attended by a quorum. In *Macias vs. COMELEC*, [33] the Court rejected American precedents and held the apportionment of representative districts as not being a political question. In *Tanada vs. Macapagal*, [34] the Supreme Court took cognizance of the dispute involving the formation of the Senate Electoral Tribunal. In *Cunanan vs. Tan*, [35] the Court pronounced judgment on whether the Court had formed the Commission on Appointments in accordance with the directive of the Constitution. In *Lansing vs. Garcia* [36], the Court held that the suspension of the privilege of the writ of habeas corpus was not a political question because the Constitution had set limits to executive discretion.

To be sure, the 1987 Constitution has, in good measure, "narrowed the reach of the 'political question doctrine' by expanding the power of judicial review of the Supreme Court not only to settle actual controversies involving rights which are legally demandable and enforceable but also to determine whether or not grave abuse of discretion has attended an act of any branch or instrumentality of government." [37]

When constitutional limits or proscriptions are expressed, discretion is effectively withheld. Thus, issues pertaining to who are impeachable officers, the number of votes necessary to impeach and the prohibition against initiation of impeachment proceeding twice against the same official in a single year, provided for in Sections 2, 3, 4, and 5 of Article XI of the Constitution, verily are subject to judicial inquiry, and any violation or disregard of these explicit Constitutional mandates can be struck down by the Court in the exercise of judicial power. In so

doing, the Court does not thereby arrogate unto itself, let alone assume superiority over, nor undue interference into the domain of, a co-equal branch of government, but merely fulfills its constitutional duty to uphold the supremacy of the Constitution .[38] The Judiciary may be the weakest among the three branches of government but it concededly and rightly occupies the post of being the ultimate arbiter on, and the adjudged sentinel of, the Constitution.

Recent developments in American jurisprudence, steeped only in cautious traditions, would allow recourse to the judiciary in areas primarily seen as being left to the domain of the discretionary powers of the other two branches of government. In *Nixon vs. United States*[39], Walter L. Nixon, Jr., an impeached federal court judge, assailed the impeachment procedure of the Senate before the Supreme Court. Speaking for the Court, Chief Justice Rehnquist acknowledged that courts defer to the Senate as to the conduct of trial but he, nevertheless, held ---

"In the case before us, there is no separate provision of the Constitution which could be defeated by allowing the Senate final authority to determine the meaning of the word "try" in the Impeachment Trial Clause. We agree with Nixon that courts possess power to review either legislative or executive action that transgresses identifiable textual limits. As we have made clear, "whether the action (of either Legislative or Executive Branch) exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is the responsibility of this Court as the ultimate interpreter of the Constitution."

In his separate opinion, Justice Souter also considered the legal possibility of judicial interference if the Senate trial were to ignore fundamental principles of fairness so as to put to grave doubt the integrity of the trial itself [40]-----

"If the Senate were to act in a manner seriously threatening the integrity of its results, convicting, say, upon a coin toss or upon a summary determination that an officer of the United States was simply "a bad guy" judicial interference might well be appropriate. In such circumstances, the Senate's action might be so far beyond the scope of its constitutional authority and the consequent impact on the Republic so great, as to merit a judicial response despite the prudential concerns that would ordinarily counsel silence."

In the earlier case of *Powell vs. McCormick*,[41] the US Supreme Court has ruled that while Congress possesses the power to exclude and expel its members, judicial review would be proper to determine whether Congress has followed the proper procedure for making the political decision committed to it by the Constitution. Powell has clarified that while the Court cannot interfere with the decision of the House to exclude its members, it nonetheless is within its powers to ensure that Congress follows the constitutional standards for expulsion.[42] Powell demonstrates, first, that whether a matter is a political question depends on the fit between the actual legal procedure chosen by Congress and the circumstances to which Congress attempts to apply the procedure and, second, that the choice and application of a procedure by Congress are reviewable by the federal courts to ensure that Congress has done no more than the Constitution allows.[43]

Summing up, a Constitutional expert, Jonathan Turley observes that there may be judicial review of static constitutional provisions on impeachment while leaving actual decisions of either house unreviewable,[44] and any departure from the constitutionally mandated process would be subject to corrective ruling by the courts.[45]

Petitioners contend that respondents committed grave abuse of discretion when they considered the second complaint for impeachment in defiance of the constitutional prohibition against initiating more than one complaint for impeachment against the same official within a single year. Indeed, Article XI, Section 3 (5) of the 1987 Constitution is explicit. "No impeachment proceedings shall be initiated against the same official more than once within a period of one year." But respondents, citing House Rules of Procedure in Impeachment Proceedings, argue that a complaint is deemed initiated only in three instances: 1) when there is a finding by the Committee on Justice that the verified complaint or resolution is sufficient in substance, 2) when the House votes to overturn or

affirm the finding of the said Committee, and 3), upon filing of the verified complaint or resolution of impeachment with the Secretary general after a verified complaint or resolution of impeachment is filed or endorsed by at least 1/3 of the members of the House.[46] Thus, respondents assert that the first complaint against the Chief Justice could not qualify as an "initiated complaint" as to effectively bar the second complaint. Petitioners, however, insist that "initiation," as so used in the Constitution, should be understood in its simple sense, that is, when the complaint for impeachment is filed before the House and the latter starts to act thereon.

I would second the view[47] that the term "initiate" should be construed as the physical act of filing the complaint, coupled with an action by the House taking cognizance of it, i.e. referring the complaint to the proper Committee. Evidently, the House of Representatives had taken cognizance of the first complaint and acted on it ----1) The complaint was filed on 02 June 2003 by former President Joseph Estrada along with the resolutions of endorsement signed by three members of the House of Representatives; 2) on 01 August 2003, the Speaker of the House directed the chairman of the House Committee on Rules, to include in the Order of Business the complaint; 3) on 13 October 2003, the House Committee on Justice included the complaint in its Order of Business and ruled that the complaint was sufficient in form; and 4) on 22 October 2003, the House Committee on Justice dismissed the complaint for impeachment against the eight justices, including Chief Justice Hilario Davide, Jr., of the Supreme Court, for being insufficient in substance. The following day, on 23 October 2003, the second impeachment complaint was filed by two members of the House of Representatives, accompanied by an endorsement signed by at least one-third of its membership, against the Chief Justice.

Some final thoughts. The provisions expressed in the Constitution are mandatory. The highly political nature of the power to impeach can make the proceeding easily fraught with grave danger. Hamilton uncannily foresaw in the impeachment process a potential cause of great divide ---- "In many cases, it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence, and interest on one side or on the other; and in such cases, there will be the greatest danger that the decision will be regulated more by the comparative strength of the parties than by the real demonstrations of innocence or guilt." [48] This forewarning should emphasize that impeachment is a remedy and a tool for justice and public good and never intended to be used for personal or party gain.

Despite having conceded the locus standi of petitioners and the jurisdiction of the Court, some would call for judicial restraint. I entertain no doubt that the advice is well-meant and understandable. But the social unrest and division that the controversy has generated and the possibility of a worsening political and constitutional crisis, when there should be none, do not appear to sustain that idea; indeed, the circumstances could well be compelling reasons for the Court to put a lid on an impending simmering foment before it erupts. In my view, the Court must do its task now if it is to maintain its credibility, its dependability, and its independence. It may be weak, but it need not be a weakling. The keeper of the fundamental law cannot afford to be a bystander, passively watching from the sidelines, lest events overtake it, make it impotent, and seriously endanger the Constitution and what it stands for. In the words of US Chief Justice Marshall -

"It is most true that this Court will not take jurisdiction if it should not; but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of a jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution." [49]

The issues have polarized the nation, the Court's action will be viewed with criticism, whichever way it goes, but to remain stoic in the face of extant necessity is a greater risk. The Supreme Court is the chosen guardian of the

Constitution. Circumspection and good judgment dictate that the holder of the lamp must quickly protect it from the gusts of wind so that the flame can continue to burn.

I vote to grant the petitions on the foregoing basic issue hereinbefore expressed.

[1] Section 1, Article II, 1987 Constitution.

[2] UP Law Center Constitutional Revision Project, Manila, 1970.

[3] Michael Nelson, ed., "The Presidency A to Z," Washington D.C. Congressional Quarterly (1998)

[4] Ibid.

[5] Numeriano F. Rodriguez, Jr., "Structural Analysis of the 1973 Constitution," Philippine Law Journal, 57:104, March 1982, 1st Quarter.

[6] Nelson, *supra*.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] See Article II, Section 4, US Constitution.

[11] Michael J. Gerhardt, "The Constitutional Limits to Impeachment and its Alternatives," Texas Law Review, Vol. 68 (1989).

[12] Michael J. Gerhardt, "The Lessons of Impeachment History," The George Washington Law Review, Vol. 67 (1999)

[13] Nelson, *supra*.

[14] Other differences include ---- The English House of Lords can convict by mere majority, but the US House of Representatives need to have a concurrence of two-thirds of its members to render a guilty verdict. The House of Lords can order any punishment upon conviction; the US Senate can only order the removal from Office, and the disqualification to hold and enjoy any office of honor, trust and profit. The English monarch can exercise pardon on any convicted official; such power was expressly withheld from the US President. The English monarch can never be impeached, while the American president is not immune from the impeachment process. (Gerhardt, "The Lessons of Impeachment History," *supra*.)

[15] Nelson, *supra*.

[16] Ibid.

[17] Article III, Bill of Rights. Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[18] UP Law Center, *supra*.

[19] Akhil Reed Amar, "On Impeaching Presidents," Hofstra Law Review, Winter 1999, Vol. 28, No. 2.

[20] For example, the constitutional provision reads, "The president, vice- president... may be removed from office, on impeachment for..." The clause not only provides the authority for Congress to impeach and convict on

proof of such conduct, it also undercuts the notion that Congress is obliged to impeach for any particular offense. It goes without saying that if its purpose is to remove seriously unfit public officials to avoid injury to the Republic, impeachment may not be resorted to if injury is not likely to flow from the assailed conduct. As American history would attest, falsehoods, proven to have been committed by public officials in both their private and public capacities, are not always deemed by the US Senate as sufficient to warrant removal from office. Overwhelming consensus further show that impeachment is not required for all impeachable acts or that failure to bring impeachment erring conduct of some erring officials in the past mean that those were not impeachable offenses (Thus, it is argued that the failure to impeach Nixon on the basis of his tax returns should not be taken to mean that merely 'private conduct' is not impeachable. In so deciding not to indict Nixon, other factors were apparently considered by the US House of Representatives, including the sufficiency of the evidence and the need to streamline the already complicated case against Nixon [McGinnis] *infra*).

[21] Amar, *supra*.

[22] John O. McGinnis, "Impeachment: The Structural Understanding," *The George Washington Law Review*, Winter 1999, Vol. 28, No. 2.

[23] *Ibid*.

[24] Stephen B. Presser, "Would George Washington Have Wanted Bill Clinton Impeached?", *The George Washington Law Review*, Vol. 76, 1999.

[25] *Ibid*.

[26] Arthur M. Schlesinger, Jr., "Reflections on Impeachment," *The George Washington Law Review*, Vol. 67 (1999).

[27] Presser, *supra*.

[28] Schlesinger, *supra*.

[29] *Tañada vs. Cuenco*, 103 Phil 1051.

[30] In contrast, Section 2, Article III of the US Federal Constitution granted only limited power to the US Supreme Court---

"The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; --- to all Cases affecting ambassadors, other public ministers and consuls;--- to all cases of admiralty and maritime jurisdiction; --- to controversies to which the United States shall be a Party; --- to controversies between two or more states; --- between a state and citizens of another state;--- between citizens of the same state claiming lands under grants of different states; and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be Party, the supreme Court shall have original jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact with such exceptions, and under such regulations as the Congress shall make.

[31] Section 1, Article 8, 1987 Constitution.

[32] 83 Phil 17.

[33] 3 SCRA 1. (1961).

[34] L-10520, February 28, 1965.

[35] 5 SCRA 1 (1962).

[36] 42 SCRA 448.

[37] Estrada vs. Desierto, 353 SCRA 452.

[38] Angara vs. Electoral Commission, 63 Phil 139.

[39] Nixon vs. United States, 506 U.S. 224 (1993)

[40] Asa Hutchinson, "Did the Senate Trial Satisfy the Constitution and the Demands of Justice?" Hofstra Law Review, Vol. 28 (1999)

[41] 395 US 486 (1969).

[42] Gerhardt, Impeachment and its Alternatives, *supra*.

[43] *Ibid*.

[44] Jonathan Turley, "Congress As Grand Jury: The Role Of The House Of Representatives In The Impeachment Of An American President," The George Washington Law Review, Vol. 67 (1999).

[45] *Ibid*.

[46] Full text of the House Rules states:

Rule V, Bar Against Initiation Of Impeachment Proceedings Against the same official.

Section 16. Impeachment Proceedings Deemed Initiated - In cases where a Member of the House files a verified complaint of impeachment or a citizen filed a verified complaint that is endorsed by a Member of the House through a resolution of endorsement against an impeachable officer, impeachment proceedings against such official are deemed initiated on the day the Committee of Justice finds that the verified complaint and/or resolution against such official, as the case may be, is sufficient in substance or on the date the House votes to overturn or affirm the findings of the said Committee that the verified complaint and/or resolution, as the case may be, is not sufficient in substance.

In cases where a verified complaint or a resolution of Impeachment is filed or endorsed, as the case may be, by at least one-third (1/3) of the Members of the House, Impeachment proceedings are deemed initiated at the time of the filing of such verified complaint or resolution of impeachment with the Secretary General.

[47] Succinctly explained by Fr. Joaquin Bernas, S.J., himself a member of the Constitutional Commission and an *amicus curiae* invited by this Court.

[48] Presser, *supra*.

[49] *Cohens v. Virginia* 19 US (6 Wheat) 265, 404, (1821).

SEPARATE CONCURRING OPINION

PANGANIBAN, J.:

I agree with the incisive ponencia of Mme. Justice Conchita Carpio Morales that the Court has jurisdiction over the Petitions, and that the second Impeachment Complaint is unconstitutional. However, I write to explain a few matters, some of which are uniquely relevant to my participation and vote in these consolidated cases.

Reasons for My Initial Inhibition

It will be recalled that when these consolidated Petitions were first taken up by this Court on October 28, 2003, I immediately inhibited myself, because one of herein petitioners,[1] Dean Antonio H. Abad Jr., was one of my partners when I was still practicing law. In all past litigations before the Court in which he was a party or a counsel, I had always inhibited myself.

Furthermore, one of our eight invited amici curiae was former Senate President Jovito R. Salonga. I had always recused myself from all the cases before the Court in which he was involved. For instance, I did not take part in *Bayan v. Zamora*[2] because of my "close personal and former professional relations with a petitioner, Sen. J.R. Salonga." In *Love God Serve Man*, -- a book I wrote in 1994, prior to my appointment to the Supreme Court -- I explained my deeply rooted personal and professional relationship with Senator Salonga, which for brevity I will just quote in a footnote below.[3]

There is also the lingering thought that the judgment I may make in these consolidated cases may present a conflict of interest because of the following considerations:

- It may personally benefit me, considering that I am one of the eight justices who were charged by former President Joseph Ejercito Estrada in the first Impeachment Complaint; thus, a ruling barring the initiation of the second Impeachment Complaint within one year from that of the first would also proscribe any future indictment against me within the same period.
- As a member of the Court, I used some facilities purchased or constructed with the Judiciary Development Fund (JDF).
- I voted in favor of several unanimous en banc Resolutions of the Court affirming JDF expenditures recommended by some of its committees.[4]

Despite my desired inhibition, however, the Court, in its Resolution dated October 28, 2003, "directed [me] to participate" in these cases. My colleagues believed that these Petitions presented novel and transcendental constitutional questions that necessitated the participation of all justices. Indeed, if the divergent views of several amici curiae, including retired SC members, had been sought, why not relax the stringent requirements of recusation and require the participation of all incumbent associate justices?

And so, by reason of that Resolution, I had joined my colleagues in interacting with the "friends of the Court," the parties and their counsel in the lengthy but enlightening Oral Argument -- which lasted from morning to evening on November 5 and 6, 2003 -- and in the deliberations with my colleagues every day since then, including November 8 (Saturday) and November 9 (Sunday), 2003. Of course, I also meticulously pored over the written submissions of the parties and carefully referred to relevant laws and jurisprudence.

I will no longer argue for or against the thought-provoking historical, philosophical, jurisprudential and prudential reasonings excellently put forward in the ponencia of Justice Conchita Carpio Morales and in the various Separate

Opinions of my colleagues. I will just point out a few items that I believe are markedly relevant to my situation.

Consolations vis-à-vis

My Desired Inhibition

First, although I have been given no choice by the Court except to participate, I still constantly kept in mind the grounds I had initially raised in regard to my recusal. Now, I take the consolation that although Dean Abad is a petitioner here, he however does not have a personal or direct interest in the controversy. Hence, any ruling I make or any vote I cast will not adversely affect him or redound to his direct or pecuniary benefit. On the other hand, Senator Salonga participated in this case neither as a party nor as a counsel, but as an *amicus curiae*. Thus, he is someone who was invited by the Court to present views to enlighten it in resolving the difficult issues in these cases, and not necessarily to advocate the cause of either petitioners or respondents. In fact, as will be shown later, I am taking a position not identical to his.

During the Oral Argument on November 5, 2003, Amicus Joaquin G. Bernas shed some light on my question regarding the conflict of interest problem I have herein referred to earlier. He explained that in *Perfecto v. Meer*,^[5] the Court had issued a judgment that, like in the present case, benefited its members because, *inter alia*, "jurisdiction may not be declined"; and the issue "involved the right of other constitutional officers x x x equally protected by the Constitution."

In addition, Atty. Jose Bernas, counsel for Petitioners Bateria et al.,^[6] also cited *Nitafan v. Commissioner of Internal Revenue*,^[7] in which the Court -- in upholding the intent behind Article VIII, Section 10 of the Constitution -- had in fact ruled in a manner adverse to the interest of its members. This fact shows that in taking action over matters affecting them, justices are capable of ruling against their own interest when impelled by law and jurisprudence.

Furthermore, in *Abbas v. Senate Electoral Tribunal*^[8] (SET), the petitioners therein had sought to disqualify the senators who were members thereof from an election contest before the SET, on the ground that they were interested parties. The Court held that "the proposed mass disqualification, if sanctioned and ordered, would leave the Tribunal no alternative but to abandon a duty that no other court or body can perform, but which it cannot lawfully discharge if shorn of the participation of its entire membership of Senators." The Court further explained:^[9]

"To our mind, this is the overriding consideration -- that the Tribunal be not prevented from discharging a duty which it alone has the power to perform, the performance of which is in the highest public interest as evidenced by its being expressly imposed by no less than the fundamental law."

Moreover, the Court had the occasion to hold recently in *Estrada v. Desierto*^[10] that "to disqualify any of the members of the Court, particularly a majority of them, is nothing short of *pro tanto* depriving the Court itself of its jurisdiction as established by the fundamental law. x x x It affects the very heart of judicial independence."

Indeed, in the instant cases, the judgment will affect not just Supreme Court justices but also other high officials like the President, the Vice President and the members of the various constitutional commissions. Besides, the Petitions are asking for the resolution of transcendental questions, a duty which the Constitution mandates the Court to do. And if the six^[11] other justices -- who, like me, were named respondents in the first Impeachment Complaint -- were also to inhibit themselves due to possible conflict of interest, the Court would be left without a majority (only seven would remain), and thus deprived of its jurisdiction. In a similar vein, the Court had opined in *Perfecto* that "judges would indeed be hapless guardians of the Constitution if they did not perceive and block encroachments upon their prerogatives in whatever form."^[12]

The Court's Assumption
of Jurisdiction Mandated
by the 1987 Constitution

Second, in regard to the merits of the Petitions, unlike the 1973 and the 1935 Constitutions, the 1987 Constitution[13] -- in Article VIII, Section 1 thereof -- imposes upon the Supreme Court the duty to strike down the acts of "any branch or instrumentality of the government" whenever these are performed "with grave abuse of discretion amounting to lack or excess of jurisdiction."

During the Oral Argument on November 5, 2003 when the Court interacted with Justice Florenz D. Regalado, an amicus curiae, I pointed out that this unique provision of our 1987 Constitution differentiated the Philippine concept of judicial review from that held in the United States (US). Unlike the US Constitution, Article VIII, Section 1 of our present Constitution, is very specific as to what our courts must do: not only to settle actual controversies involving legally demandable and enforceable rights, but also to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government."

Article VIII, Section 1, was crafted, precisely to remedy the judicial cop-outs that characterized the Martial Law era, during which the Court had invariably found its hands tied (or had conveniently avoided involvement) when faced with questions that were allegedly political in nature.[14] As a result, the Court at the time was unable to check all the constitutional excesses of the executive and the legislative branches of government.

Thus, during the crafting of the 1987 Constitution, one of the eminent members of the Constitutional Commission, former Chief Justice Roberto Concepcion, actively sought to expand the scope of judicial review in definitive terms. The former Chief Justice, who authored Article VIII, Section 1, explained that the Supreme Court may not under any circumstance evade its duty to settle disputes involving grave abuse of discretion:[15]

"x x x [T]he powers of government are generally considered divided into three branches: the Legislative, the Executive and the Judiciary. Each one is supreme within its own sphere and independent of the others. Because of that supremacy[, the] power to determine whether a given law is valid or not is vested in courts of justice.

"Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

"This is the background of paragraph 2 of Section 1 [of Article VIII of the 1987 Constitution], which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question."(Emphasis supplied.)

In effect, even if the question posed before the Court appears to be political in nature -- meaning, one that involves a subject over which the Constitution grants exclusive and/or sole authority either to the executive or to the legislative branch of the government -- the Court may still resolve the question if it entails a determination of grave abuse of discretion or unconstitutionality. The question becomes justiciable when the Constitution provides conditions, limitations or restrictions in the exercise of a power vested upon a specific branch or instrumentality. When the Court resolves the question, it is not judging the wisdom of an act of a coequal department, but is merely ensuring that the Constitution is upheld.

The US Constitution does not impose upon its judiciary a similar duty to strike down grave abuse of discretion on the part of any government agency. It thus gives its magistrates the luxury of choosing between being passivists or

activists when confronted with "political questions." As I explained during my discourse with Amicus Pacifico Agabin during the Oral Argument on November 6, 2003, many legal scholars characterize the US Supreme Court under Chief Justice Earl Warren as activist, and its present Court under Chief Justice William Rehnquist as generally conservative or passivist.

Further explaining, I said that the Warren Court is widely known for having actively intervened in political, social and economic matters. It issued decisions favoring the poor and the underprivileged; and overhauled jurisprudence on the Bill of Rights to protect ethnic minorities, eliminate racial segregations, and uphold the civil liberties of the people. In contrast, the Rehnquist Court has taken mostly a hands-off stance on these issues and largely deferred to the discretion of the political branches of government in most political issues brought before it.[16]

On the other hand, our Constitution has not given the same luxury of choice to jurists as that given in the US. By imposing upon our judges a duty to intervene and to settle issues of grave abuse of discretion, our Constitution has thereby mandated them to be activists. A duty cannot be evaded. The Supreme Court must uphold the Constitution at all times. Otherwise, it will be guilty of dereliction, of abandonment, of its solemn duty. Otherwise, it will repeat the judicial cop-outs that our 1987 Constitution abhors.

Thus, in *Tañada v. Angara*,[17] the Court clearly and unequivocally ruled that "[w]here an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. The question thus posed is judicial rather than political. The duty (to adjudicate) remains, to assure that the supremacy of the Constitution is upheld. Once a controversy as to the application or the interpretation of a constitutional provision is raised before the Court, it becomes a legal issue which the Court is bound by constitutional mandate to decide."

The Court's Duty to Intervene in Impeachment Cases That Infringe the Constitution

Third, Sen. Aquilino Pimentel Jr., an intervenor, argues that Article XI of the Constitution grants the House of Representatives the "exclusive" power to initiate all cases of impeachment; and the Senate, the "sole" prerogative to try and decide them. He thus concludes that the Supreme Court has no jurisdiction whatsoever to intervene in such proceedings. With due respect, I disagree for the following reasons:

- The Constitution imposes on the Supreme Court the duty to rule on unconstitutional acts of "any" branch or instrumentality of government. Such duty is plenary, extensive and admits of no exceptions. While the Court is not authorized to pass upon the wisdom of an impeachment, it is nonetheless obligated to determine whether any incident of the impeachment proceedings violates any constitutional prohibition, condition or limitation imposed on its exercise. Thus, normally, the Court may not inquire into how and why the House initiates an impeachment complaint. But if in initiating one, it violates a constitutional prohibition, condition or limitation on the exercise thereof, then the Court as the protector and interpreter of the Constitution is duty-bound to intervene and "to settle" the issue. This point was clearly explained by Chief Justice Concepcion in *Javellana v. Executive Secretary*[18] as follows:

"Accordingly, when the grant of power is qualified, conditional or subject to limitations, the issue on whether or not the prescribed qualifications or conditions have been met, or the limitations respected, is justiciable or non-political, the crux of the problem being one of legality or validity of the contested act, not its wisdom. Otherwise, said qualifications, conditions or limitations -- particularly those prescribed or imposed by the Constitution -- would be set at naught. What is more, the judicial inquiry into such issue and the settlement

thereof are the main functions of courts of justice under the Presidential form of government adopted in our 1935 Constitution, and the system of checks and balances, one of its basic predicates. As a consequence, We have neither the authority nor the discretion to decline passing upon said issue, but are under the ineluctable obligation -- made particularly more exacting and peremptory by our oath, as members of the highest Court of the land, to support and defend the Constitution -- to settle it." (Emphasis supplied.)

- The Constitution likewise grants the electoral tribunals of both Houses of Congress the authority to be the "sole" judges of all contests relating to the election, the returns and the qualifications of their respective members. Still, the Supreme Court reviews the decisions of these tribunals on certiorari.[19] Its certiorari power, so exercised, has never been seriously questioned.

- The Constitution has granted many powers and prerogatives exclusively to Congress. However, when these are exercised in violation of the Constitution or with grave abuse of discretion, the jurisdiction of the Court has been invoked; and its decisions thereon, respected by the legislative branch. Thus, in *Avelino v. Cuenco*,[20] the Court ruled on the issue of who was the duly elected President of the Senate, a question normally left to the sole discretion of that chamber; in *Santiago v. Guingona*,[21] on who was the minority floor leader of the Senate; in *Daza v. Singson*[22] and *Coseteng v. Mitra Jr.*,[23] on who were the duly designated members of the Commission on Appointments representing the House of Representatives. It was held in the latter two cases that the Court could intervene because the question involved was "the legality, not the wisdom, of the manner of filling the Commission on Appointment as prescribed by the Constitution."

In the present cases, the main issue is whether, in initiating the second Impeachment Complaint, the House of Representatives violated Article XI, Section 3(5), which provides that "[n]o impeachment proceedings shall be initiated against the same official more than once within a period of one year." The interpretation of this constitutional prohibition or condition as it applies to the second Impeachment Complaint clearly involves the "legality, not the wisdom" of the acts of the House of Representatives. Thus, the Court must "settle it."

Observance of Due Process

During the Initiation of Impeachment

Fourth, during the Oral Argument, Senator Salonga and Petitioner Francisco Chavez denounced the second Impeachment Complaint as violative of due process. They argued that by virtue merely of the endorsement of more than one third of the members of the House of Representatives, the Chief Justice was immediately impeached without being afforded the twin requirements of notice and hearing. The proceedings were therefore null and void ab initio. I must agree.

The due process clause,[24] enshrined in our fundamental law, is a *conditio sine qua non* that cannot be ignored in any proceeding -- administrative, judicial or otherwise.[25] It is deemed written into every law, rule or contract, even though not expressly stated therein. Hence, the House rules on impeachment, insofar as they do not provide the charged official with (1) notice and (2) opportunity to be heard prior to being impeached, are also unconstitutional.

Constitutional Supremacy -- the Bedrock of the Rule of Law

Fifth, I shall no longer belabor the other legal arguments (especially the meaning of the word "initiate") on why the second Impeachment Complaint is null and void for being violative of the one-year bar. Suffice it to say that I concur with Justice Morales. Let me just stress that in taking jurisdiction over this case and in exercising its power of judicial review, the Court is not pretending to be superior to Congress or to the President. It is merely

upholding the supremacy of the Constitution and the rule of law.[26]

To stress this important point, I now quote from Justice Jose P. Laurel in the landmark case *Angara v. Electoral Commission*, [27] which was decided in 1936:

"The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed 'judicial supremacy' which properly is the power of judicial review under the Constitution." (Italics supplied.)

Epilogue

Having firmed up the foregoing position, I must admit that I was initially tempted to adopt the view of Amici Jovito R. Salonga and Raul C. Pangalangan. They maintain that although the Court had jurisdiction over the subject matter and although the second Impeachment Complaint was unconstitutional, the Court should nonetheless "use its power with care and only as a last resort" and allow the House to correct its constitutional errors; or, failing in that, give the Senate the opportunity to invalidate the second Complaint.

This Salonga-Pangalangan thesis, which is being espoused by some of my colleagues in their Separate Opinions, has some advantages. While it preserves the availability of judicial review as a "last resort" to prevent or cure constitutional abuse, it observes, at the same time, interdepartmental courtesy by allowing the seamless exercise of the congressional power of impeachment. In this sense, it also enriches the doctrine of primary jurisdiction by enabling Congress to exercise fully its "exclusive" authority to initiate, try and decide impeachment cases. In short, it gives Congress the primary jurisdiction; and the Court, "appellate" certiorari power, over the case.

Furthermore, the proponents of this deferential position add that the Senate may eventually rule that the second Impeachment Complaint is unconstitutional, and that the matter may thus be settled definitively. Indeed, the parties may be satisfied with the judgment of the Senate and, thus, obviate the need for this Court to rule on the matter. In this way, the latter would not need to grapple with the conflict of interest problem I have referred to earlier.

With due respect, I believe that this stance of "passing the buck" -- even if made under the guise of deference to a coequal department -- is not consistent with the activist duty imposed by the Constitution upon this Court.

In normal times, the Salonga-Pangalangan formula would, perhaps, be ideal. However, the present situation is not ideal. Far from it. The past several weeks have seen the deep polarization of our country. Our national leaders -- from the President, the Senate President and the Speaker of the House -- down to the last judicial employee have been preoccupied with this problem. There have been reported rumblings of military destabilization and civil unrest, capped by an aborted siege of the control tower of the Ninoy Aquino International Airport on November 8, 2003.

Furthermore, any delay in the resolution of the dispute would adversely affect the economy as well as the socio-political life of the nation. A transmittal of the second Impeachment Complaint to the Senate would disrupt that chamber's normal legislative work. The focus would shift to an unsettling impeachment trial that may precipitously divide the nation, as happened during the impeachment of former President Joseph Ejercito Estrada.

A needless trial in the Senate would not only dislocate that chamber's legislative calendar and divide the nation's focus; but also unnecessarily bring anxiety, loss of time and irreparable injury on the part of the Chief Justice,

who would not be able to attend to his normal judicial duties. The transmittal of the second Impeachment Complaint to the Senate would unfairly brand him as the first Supreme Court justice to be impeached!

Moreover, President Gloria Macapagal Arroyo and Senate President Franklin M. Drilon have issued public statements[28] that they will abide by the decision of the Court as the ultimate arbiter and interpreter of the Constitution. Now, therefore, is the ripe time for the Court to decide, and to decide forthrightly and firmly. Merely deferring its decision to a later time is not an assurance of better times for our country and people.

To be sure, the matters raised in the second Impeachment Complaint can be expeditiously taken up by the House of Representatives through an investigation in aid of legislation. The House can then dispassionately look into alleged irregular expenditures of JDF funds, without the rigors, difficulties, tensions and disruptive consequences of an impeachment trial in the Senate. The ultimate aim of discovering how the JDF was used and of crafting legislation to allocate more benefits to judicial employees may be achieved in a more judicious, peaceful and cordial manner.

I close this Opinion with the truism that the judiciary is the "weakest" branch of government. Nonetheless, when ranged against the more powerful branches, it should never cower in silence. Indeed, if the Supreme Court cannot take courage and wade into "grave abuse" disputes involving the purse- disbursing legislative department, how much more deferential will it be when faced with constitutional abuses perpetrated by the even more powerful, sword-wielding executive department?

I respectfully submit that the very same weakness of the Court becomes its strength when it dares speak through decisions that rightfully uphold the supremacy of the Constitution and the rule of law. The strength of the judiciary lies not in its lack of brute power, but in its moral courage to perform its constitutional duty at all times against all odds. Its might is in its being right.

WHEREFORE, I vote to declare the second Impeachment Complaint to be unconstitutional and time-barred by Article XI, Section 3, paragraph 5 of the Constitution.

[1] In GR No. 160292.

[2] 342 SCRA 449, October 10, 2000.

[3] Thus, on pages 23 to 24 of this book, I wrote:

"I can write 'thank you' a thousand and one times but I can never adequately acknowledge the pervading influence of former Senate President Jovito R. Salonga in my life. His very endearing Preface is just one more recent undeserved favor I have received from this great man. To be sure, there are many countless others he has kindly given me in the course of the last 35 years since he was a struggling associate in his prestigious law firm, Salonga Ordoñez and Associates (which he dissolved upon his election to the Senate presidency in 1987, pursuant to his strict self-imposed ethical standards). He taught me not only the rudiments of the philosophy and practice of the noble profession of law but also the more life-moving virtues of integrity, prudence, fairness and temperance. That is why the perceptive reader will probably find some of his words and ideas echoed in this collection. From him I learned that law is not a mere abstract syllogism that is separate from the social milieu. Indeed, 'experience, not logic, has been the life of the law.' It should be used as a brick in building the social structure and as a means of fulfilling the deepest aspirations of the people.

"That we are of different religious faiths -- he being a devout Protestant, a respected leader of the Cosmopolitan Church and I, a fledgling Catholic -- has not adversely affected at all our three and a half decades of enriching friendship and my own regard and esteem for him. This is probably because we never discussed what separates us but only what truly binds us.

"In my professional life as a lawyer, I have been given by him -- unconsciously, I am sure -- the greatest honor I have received so far, not by awarding me a plaque of gold or conferring on me an honorary degree but by asking me to take over, upon the appointment to the Supreme Court of his then lawyer, Justice Abraham Sarmiento, as his personal legal counsel (starting with *Kalaw vs. Salonga, et al.* which we won in both the Commission on Elections and the Supreme Court) and as chief legal counsel of the Liberal Party from 1987 to 1991, during which I had the privilege of lawyering for Rep. Raul Daza (now Speaker Pro-Tempore), Rep. Lorna Verano-Yap, Rep. Alberto Lopez, Gov. Aguedo Agbayani, Gov. Nesthur Gumana, Vice Gov. Ramon Duremdes, to mention but some LP stalwarts at the time. (May I hasten to add, lest my other friends in the House think I neglected them, that I had the honor of serving also as counsel of some non-LP leaders like Rep. Tessie Aquino-Oreta, Rep. Baby Puyat-Reyes and Rep. Michael Mastura.) Few, indeed, are favored with the exuberant feeling of being counsel of one's most esteemed mentor. However, I had to resign from this Liberal Party post upon my assumption as part-time transition president of the Philippine Daily Inquirer in March 1991 and as national vice chairman and chief legal counsel of the Parish Pastoral Council for Responsible Voting (PPCRV) later that year. Both of these positions required my strict neutrality in partisan political activities. And since I assumed these posts, I have refrained from accepting and representing politically focused retainers except that of PPCRV, which anyway is non- partisan, as already mentioned.

"Typical of his intellectual balance and prudence, Senator Salonga did not resent my leaving his political community at this most crucial stage in his public career - just a year before he sought the presidency of the Republic in May 1992. If at all, I feel he respected and fully understood my decision not to work for any particular candidate or political party but to help only in assuring the peaceful and orderly transfer of power in our then still fragile democracy through the holding of free, honest and credible elections at a critical moment in our country's history."

[4] To my recollection, the Court's action has been sought only in certain items chargeable to the 20% portion of the JDF relating to facilities and equipment; furthermore, to my recollection also, no approval has been sought or given with regard to the 80% portion reserved for the cost of living allowances (COLA) of judicial employees.

[5] 85 Phil. 553, February 27, 1950, per Bengzon, J.

[6] In GR No. 160295.

[7] 152 SCRA 284, July 23, 1987, per Melencio-Herrera, J.

[8] 166 SCRA 651, Oct 27, 1988, per Gancayco, J.

[9] *Ibid*, p. 655.

[10] 356 SCRA 108, April 3, 2001, per Puno, J.

[11] Excluding the Chief Justice who took no part in the instant case.

[12] *Supra*.

[13] Art. VIII, Section 1 of the 1987 Constitution, states:

"SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

"Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government."

[14] *Aquino Jr. v. Enrile*, 59 SCRA 183, September 17, 1974; *Dela Llana v. Comelec*, 80 SCRA 525, December

9, 1977.

[15] I Record of the Constitutional Commission 436.

[16] In a stunning surprise to its critics, the Rehnquist Court uncharacteristically became activist in *Bush v. Gore* (No. 00-949, December 12, 2000) by intervening in the 2000 US presidential election.

[17] 338 Phil. 546, May 2, 1997, per Panganiban, J. See also *Tatad v. Secretary of Energy*, 281 SCRA 338, November 5, 1997; *Guingona v. Gonzales*, 219 SCRA 326, March 1, 1993.

[18] 151-A Phil. 35, 134, March 31, 1973.

[19] *Lazatin v. House Electoral Tribunal*, 168 SCRA 391, December 8, 1988; *Robles v. HRET*, 181 SCRA 780, February 5, 1990; *Co v. Electoral Tribunal*, 199 SCRA 692, July 30, 1991; *Bondoc v. Pineda*, 201 SCRA 792, September 26, 1991.

[20] 83 Phil. 17, March 4, 1949.

[21] 359 Phil. 276, November 18, 1998, per Panganiban, J.

[22] 180 SCRA 496, December 21, 1989, per Cruz, J.

[23] 187 SCRA 377, July 12, 1990, per Griño-Aquino, J.

[24] §1, Article III of the Constitution, reads:

"Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

[25] Bernas, *The Constitution of the Republic of the Philippines: A Commentary*, Vol. I, 1987 ed., p. 47. See also *Banco Español v. Palanca*, 37 Phil. 921, March 26, 1918; *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, February 27, 1940; *Tañada v. Tuvera*, 230 Phil. 528, December 29, 1986.

[26] *Santiago v. Guingona*, *supra*.

[27] 63 Phil. 139, 158, July 15, 1936, per Laurel, J.

[28] "Palace to obey SC ruling on impeachment issue," *The Sunday Times*, November 9, 2003; "Barbers: Majority in House favors Gloria's covenant," *Malaya*, November 9, 2003, p. 3; "Moral suasion for anti-Davide solons," *Manila Standard*, November 9, 2003.

CONCURRING AND DISSENTING OPINION

YNARES-SANTIAGO, J.:

The power of impeachment is essentially lodged by the Constitution in Congress. It is the process by which officials of the Government, not removable by other means, may be made to answer for certain offenses. These offenses are specifically enumerated as: culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, and betrayal of public trust. In the exercise of this power, Congress must observe the minimum requirements set by the Constitution. However, in the event that Congress oversteps these limitations, who can review its acts? Can the Supreme Court, under its power of judicial review enshrined in the Constitution, review the acts of a co-equal body? These are the novel issues raised in these petitions.

The petitions before this Court assail the constitutionality of the impeachment complaint against Chief Justice Hilario G. Davide, Jr., contending that, being a second complaint, the same is expressly prohibited under Article

XI, Section 3 (5) of the 1987 Constitution, which provides:

No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

Respondents House of Representative and the Senate filed separate Manifestations both stating that they are not submitting to the jurisdiction of the Court. The House of Representatives invoked its territorial integrity which this Court, as a co-equal body, cannot encroach upon. For its part, the Senate pointed out that the petition as against it was premature inasmuch as it has not received any articles of impeachment.

The Court set the petitions for oral arguments and invited the following as amici curiae:

- Florenz D. Regalado, retired Justice of this Court;
- Regalado E. Maambong, Justice of the Court of Appeals,
- Fr. Joaquin C. Bernas, Dean of the Ateneo School of Law;
- Hugo E. Gutierrez, Jr., retired Justice of this Court;
- Estelito P. Mendoza, former Minister of Justice and Solicitor General;
- Pacifico A. Agabin, former Dean of the University of the Philippines College of Law;
- Raul C. Pangalangan, Dean of the University of the Philippines College of Law; and
- Jovito R. Salonga, former Senate President.

During the oral arguments, the principal issue and sub-issues involved in the several petitions were defined by the Court as follows:

Whether the certiorari jurisdiction of the Supreme Court may be invoked; who can invoke it; on what issues and at what time; and whether it should be exercised by this Court at this time.

a)

Locus standi of petitioners;

b)

Ripeness (prematurity; mootness)

c)

Political question/justiciability;

d)

House's exclusive power to initiate all cases of impeachment;

e)

Senate's sole power to try and decide all cases of impeachment;

f)

Constitutionality of the House Rules of Impeachment vis-à-vis Section 3 (5) of Article XI of the Constitution; and

g)

Judicial restraint.

In the appreciation of legal standing,[1] a developing trend appears to be towards a narrow and exacting approach, requiring that a logical nexus be shown between the status asserted and the claim sought to be adjudicated in order to ensure that one is the proper and appropriate party to invoke judicial power.[2] Nevertheless, it is still within the wide discretion of the Court to waive the requirement and remove the impediment to its addressing and resolving serious constitutional questions raised.[3]

In the case at bar, petitioners allege that they dutifully pay their taxes for the support of the government and to finance its operations, including the payment of salaries and other emoluments of the respondents. They assert their right to be protected against all forms of needless spending of taxpayers' money including the commission of an unconstitutional act, i.e., the filing of two impeachment cases within a period of one year against the Chief Justice of this Court, one of the three independent branches of the government. Considering these serious legal questions which affect public interest, I concur with the ponente that the petitioners, except Atty. Dioscoro U. Vallejos, Jr. in G.R. No. 160397, have satisfactorily established locus standi to file the instant petitions.

I also concur with the ponente that the Court has the power of judicial review. This power of the Court has been expanded by the Constitution not only to settle actual controversies involving rights which are legally demandable and enforceable but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government.[4] The Court is under mandate to assume jurisdiction over, and to undertake judicial inquiry into, what may even be deemed to be political questions provided, however, that grave abuse of discretion - the sole test of justiciability on purely political issues - is shown to have attended the contested act.[5]

The Court checks the exercise of power of the other branches of government through judicial review. It is the final arbiter of the disputes involving the proper allocation and exercise of the different powers under the Constitution. When the Supreme Court reviews the constitutionality of the acts of Congress, it does not thereby assert its superiority over a co-equal branch of government. It merely asserts its solemn and sacred obligation under the Constitution and affirms constitutional supremacy.[6]

Indeed, in the resolution of the principal issue in these petitions, a distinction has to be drawn between the power of the members of the House of Representatives to initiate impeachment proceedings, on the one hand, and the manner in which they have exercised that power. While it is clear that the House has the exclusive power to initiate impeachment cases, and the Senate has the sole power to try and decide these cases, the Court, upon a proper finding that either chamber committed grave abuse of discretion or violated any constitutional provision, may invoke its corrective power of judicial review.

The meaning of the word "initiate" in relation to impeachment is at the center of much debate. The confusion as to the meaning of this term was aggravated by the amendment of the House of Representatives' Rules of Procedure in Impeachment Proceedings. The first set of Rules adopted on May 31, 1988, specifically Rule V, Section 14 and Rule II, Section 2 thereof, provides that impeachment shall be initiated when a verified complaint for impeachment is filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, or when a verified complaint or resolution of impeachment is filed by at least one-third (1/3) of all the Members of the House. This provision was later amended on November 28, 2001. Rule V, Section 16 of the amendatory Rules states that impeachment proceedings under any of the three methods above-stated are deemed initiated on the day that the Committee on Justice finds that the verified complaint and/or resolution against such official is sufficient in substance or on the date the House votes to overturn or affirm the finding of the said Committee that the verified complaint and/or resolution is not sufficient in

substance.

The adoption of the 2001 Rules, at least insofar as initiation of impeachment proceedings is concerned, unduly expanded the power of the House by restricting the constitutional time-bar only to complaints that have been "approved" by the House Committee on Justice. As stated above, the one- year bar is a limitation set by the Constitution which Congress cannot overstep. Indeed, the Records of the Constitutional Commission clearly show that, as defined in Article XI, Section 3 (5), impeachment proceedings begin not on the floor of the House but with the filing of the complaint by any member of the House or any citizen upon a resolution of endorsement by any Member thereof. This is the plain sense in which the word "initiate" must be understood, i.e., to begin or commence the action.

Moreover, the second impeachment complaint was filed by only two complainants, namely Representatives Gilberto G. Teodoro, Jr. and Felix William B. Fuentebella. The rest of the members of the House whose names appear on the attachments thereto merely signed endorsements to the Complaint.

Article XI, Section 3 (3) of the Constitution is explicit:

In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed. (Emphasis provided.)

The mere endorsement of the members of the House, albeit embodied in a verified resolution, did not suffice for it did not constitute filing of the impeachment complaint, as this term is plainly understood. In order that the verified complaint may be said to have been filed by at least 1/3 of the Members, all of them must be named as complainants therein. All of them must sign the main complaint. This was not done in the case of the assailed second impeachment complaint against the Chief Justice. The complaint was not filed by at least one-third of the Members of the House, and therefore did not constitute the Article of Impeachment.

I am constrained to disagree with the majority decision to discard the above issue for being unnecessary for the determination of the instant cases. On the contrary, the foregoing defect in the complaint is a vital issue in the determination of whether or not the House should transmit the complaint to the Senate, and if it does, whether the Senate should entertain it. The Constitution is clear that the complaint for impeachment shall constitute the Articles of Impeachment, without need of referral to the Committee on Justice, when the complaint is filed by at least one-third of all the Members of the House. Being the exception to the general procedure outlined in the Constitution, its formal requisites must be strictly construed.

Furthermore, the mere fact that this issue was raised by intervenors Romulo Macalintal and Pete Quirino-Quadra, and not by the petitioners in G.R. No. 160262, is of no moment. The Court is empowered to decide issues even though they are not raised in the pleadings.[7] In the case at bar, the question is already before this Court and may therefore be resolved.

The impeachment complaint suffers from yet another serious flaw. As one of the amici curiae, former Senate President Jovito Salonga, pointed out, the signing of the impeachment complaint by the purported 1/3 of the Congressmen was done without due process. The Chief Justice, against whom the complaint was brought, was not served notice of the proceedings against him.

No rule is better established, under the due process clause of the constitution, than that which requires notice and opportunity to be heard before any person can be lawfully deprived of his rights.[8] Indeed, when the Constitution says that no person shall be deprived of life, liberty, or property without due process of law,[9] it means that every person shall be afforded the essential element of notice in any proceeding. Any act committed in violation of due

process may be declared null and void.[10]

However, notwithstanding the constitutional and procedural defects in the impeachment complaint, I dissent from the majority when it decided to resolve the issues at this premature stage. I submit that the process of impeachment should first be allowed to run its course. The power of this Court as the final arbiter of all justiciable questions should come into play only when the procedure as outlined in the Constitution has been exhausted. The complaint should be referred back to the House Committee on Justice, where its constitutionality may be threshed out. Thereafter, if the Committee so decides, the complaint will have to be deliberated by the House on plenary session, preparatory to its possible transmittal to the Senate. The questions on the sufficiency of the complaint in form may again be brought to the Senate by way of proper motion, and the Senate may deny the motion or dismiss the complaint depending on the merits of the grounds raised. After the Senate shall have acted in due course, its disposition of the case may be elevated to this Court pursuant to its judicial power of review.

In addition, there are several other remedies that may be availed of or events that may occur that may render the present petitions moot and, in the process, effectively avert this controversy. Dean Raul Pangalangan of the University of the Philippines College of Law, one of the amici curiae, stressed that among the internal measures that the members of Congress could make to address the situation are: (1) attempts to encourage the signatories of the impeachment complaint to withdraw their signatures; (2) the raising by the members of Congress themselves of the Constitutional questions when the Articles of Impeachment are presented in plenary session on a motion to transmit them to the Senate, as required by Section 15, paragraph 2 of the House Rules; and (3) assuming the Articles of Impeachment are transmitted to the Senate, Chief Justice Davide could conceivably raise the same Constitutional issues by way of a motion to dismiss or motion to quash.[11]

Clearly, the unfinished business and loose ends at the House of Representatives and in the Senate, as well as the simmering forces outside of the halls of government could all preempt any decision of this Court at the present time. Senate President Salonga said it best when he commented that the Supreme Court, which has final jurisdiction on questions of constitutionality, should be the final arbiter; it should be the authoritative court of last resort in our system of democratic governance; but all remedies in the House of Representatives and in the Senate should be exhausted first. He goes on to say that only when this case is ripe for judicial determination can this Court speak with great moral authority and command the respect and loyalty of our people.[12]

With these considerations in mind, the Court should recognize the extent and practical limitations of its judicial prerogatives, and identify those areas where it should carefully tread instead of rush in and act accordingly. Considering that power of impeachment was intended to be the legislature's lone check on the judiciary, exercising our power of judicial review over impeachment would place the final reviewing authority with respect to impeachments in the hands of the same body that the impeachment process is meant to regulate.[13] In fact, judicial involvement in impeachment proceedings, even if only for purposes of judicial review is counter-intuitive because it eviscerates the important constitutional check on the judiciary.[14]

A becoming sense of propriety and justice dictates that judicial self-restraint should be exercised; that the impeachment power should remain at all times and under all circumstances with the legislature, where the Constitution has placed it. The common-law principle of judicial restraint serves the public interest by allowing the political processes to operate without undue interference.[15]

The doctrine of separation of powers calls for each branch of government to be left alone to discharge its duties as it sees fit. Being one such branch, the judiciary will neither direct nor restrain executive or legislative action. [16] The legislative and the executive branches are not allowed to seek its advice on what to do or not to do; thus, judicial inquiry has to be postponed in the meantime. Before a court may enter the picture, a prerequisite is that

something has been accomplished or performed by either branch. Then it may pass on the validity of what has been done but, then again, only when properly challenged in an appropriate legal proceeding.[17] Hence, any resolution that this Court might make in this case may amount to nothing more than an attempt at abstraction that can only lead to barren legal dialectics and sterile conclusions, depending on what transpires next at the House of Representatives and the Senate.[18]

IN VIEW WHEREOF, I CONCUR with the majority decision insofar as it held that -

(a) Petitioners in all the above-captioned cases, except Atty. Dioscoro U. Vallejos, Jr. in G.R. No. 160397, have legal standing to institute these petitions; and

(b) The constitutionality of the second impeachment complaint filed by Representatives Gilberto C. Teodoro, Jr. and Felix William B. Fuentebella against Chief Justice Hilario G. Davide, Jr. is a justiciable issue which this Court may take cognizance of.

However, I vote that this Court must observe judicial self-restraint at this time and DISMISS the instant petitions.

[1] Avelino v. Cuenco, 83 Phil 17 (1949); Araneta v. Dinglasan, 84 Phil. 368 (1949); Basco v. PAGCOR, 197 SCRA 52, May 14, 1991; Kapatiran ng Mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan, 163 SCRA 371, June 30, 1988; Tatad v. Secretary of the Department of Energy, 281 SCRA 330, 349 (1997) citing Garcia v. Executive Secretary, 211 SCRA 219 (1992); Osmeña v. COMELEC, 199 SCRA 750 (1991); Chavez v. Presidential Commission on Good Government, 299 SCRA 744 (1998); Chavez v. PEA-Amari Coastal Bay Development Corporation, G.R. No. 133250, 9 July 2002.

[2] Chavez v. Presidential Commission on Good Government, G.R. No. 130716, December 9, 1998.

[3] Lopez, et al. v. Philippine International Air Terminals, Co., Inc., et al., G.R. No. 155661, May 5, 2003 citing Association of Small Landowners in the Philippines, Inc. vs. Secretary of Agrarian Reform, G. R. No. 78742, July 14, 1989; 175 SCRA 343, 364-365 [1989], see also Integrated Bar of the Philippines v. Zamora, et al., G.R. No. 141284, August 15, 2000.

[4] Estrada v. Arroyo, G.R. No. 146738, 2 March 2001.

[5] Concurring opinion of Justice Vitug in the case of Arroyo v. De Venecia, G.R. No. 127255, 14 August 1997

[6] Angara v. Electoral Commission, 63 Phil 139, 158 (1936).

[7] Filoteo, Jr. v. Sandiganbayan, G.R. No. 79543, 16 October 1996, 263 SCRA 222, 268.

[8] Cebu Stevedoring Co., Inc. v. Regional Director / Minister of Labor, G.R. No. L-54285, 8 December 1988, 168 SCRA 315, at 321.

[9] Constitution, Art. III, Sec. 1.

[10] People v. Verra, G.R. No. 134732, 29 May 2002.

[11] Memorandum as Amicus Curiae of Dean Raul C. Pangalangan, p. 19.

[12] Position Paper as Amicus Curiae of Former Senate President Jovito R. Salonga, p. 13.

[13] Nixon v. U.S., 506 U.S. 224 [1993], 122 L. Ed. 2d 1 (1993).

[14] Id.

[15] *Sinaca v. Mula*, G.R. No. 135691, 27 September 1999, 315 SCRA 266, 280.

[16] *Planas v. Gil*, 67 Phil. 62, 73 (1939), cited in *Guingona v. Court of Appeals*, G.R. 125532, 10 July 1998, 292 SCRA 402.

[17] *Id.*

[18] *Angara v. Electoral Commission*, *supra*, cited in *Guingona v. Court of Appeals*, *supra*.

SEPARATE AND CONCURRING OPINION

SANDOVAL-GUTIERREZ, J.:

Never before in the 102-year existence of the Supreme Court has there been an issue as transcendental as the one before us. For the first time, a Chief Justice is subjected to an impeachment proceeding. The controversy caused people, for and against him, to organize and join rallies and demonstrations in various parts of the country. Indeed, the nation is divided which led Justice Jose C. Vitug to declare during the oral arguments in these cases, "God save our country!"

The common thread that draws together the several petitions before this Court is the issue of whether the second impeachment complaint against Chief Justice Hilario G. Davide, Jr. contravenes Section 3 (5), Article XI of the 1987 Constitution, providing that "no impeachment proceedings shall be initiated against the same official more than once within a period of one year."

The antecedents are simple. On June 2, 2003, deposed President Joseph E. Estrada filed with the House of Representatives an impeachment complaint against Chief Justice Davide and seven (7) other Justices of this Court, alleging *inter alia* that they conspired to deprive him of his mandate as President. On October 22, 2003, the House Committee on Justice dismissed the complaint for insufficiency of substance. Pursuant to the Constitution, the House of Representatives in plenary session has still to approve or disapprove the Committee's action.

The next day, on October 23, 2003, Congressmen Gilberto C. Teodoro, Jr. and Felix William B. Fuentebella filed another impeachment complaint, this time against Chief Justice Davide alone, charging him with violations of the Anti-Graft and Corrupt Practices Act and betrayal of public trust with regard to the disposition of the Judicial Development Fund (JDF). At least one- third (1/3) of all the members of the House signed a Resolution endorsing this second impeachment complaint.

Subsequently, the instant petitions were filed with this Court alleging that the filing of the second impeachment complaint against Chief Justice Davide violates Section 3(5), Article XI of the Constitution which provides:

"No impeachment proceedings shall be initiated against the same official more than once within a period of one year."

Both the Senate and the House of Representatives claimed that this Court lacks jurisdiction over the petitions. Senate President Franklin Drilon manifested that the petitions are premature since the Articles of Impeachment have not been transmitted to the Senate. Moreover, the petitions pose political questions which are non-justiciable.

On November 5 and 6, 2003, this Court heard the petitions on oral argument: Present were the *amici curiae* appointed by this Court earlier, namely: Former Senate President Jovito R. Salonga, former Constitutional Commissioner Joaquin G. Bernas, Justice Hugo E. Gutierrez, Jr., former member of this Court, former Minister of Justice and Solicitor General Estelito P. Mendoza, Court of Appeals Justice Regalado E. Maambong, former Constitutional Commissioner, Dean Raul C. Pangalangan, and former Dean Pacifico A. Agabin of the UP College

of Law.

Crucial to the determination of the constitutionality of the second impeachment complaint against Chief Justice Davide are three (3) fundamental issues indicated and discussed below:

I - Whether this Court has jurisdiction over the petitions.

One cornerstone of judicial supremacy is the two-century old case of *Marbury vs. Madison*.^[1] There, Chief Justice John Marshall effectively carried the task of justifying the judiciary's power of judicial review. Cast in eloquent language, he stressed that it is "the province and duty of the judicial department to say what the law is." In applying the rule to particular cases, the judiciary "must of necessity expound and interpret that rule ." If two laws conflict with each other, "the courts must decide on the operation of each." It further stressed that "if a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, the court must decide the case conformably to the Constitution disregarding the law. This is of the very essence of judicial duty."

In our shore, the 1987 Constitution is explicit in defining the scope of judicial power. Section 1, Article VIII provides:

"Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

"Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of Government."

The above provision fortifies the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Under the new definition of judicial power, the courts are authorized not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government." The latter part of the authority represents a broadening of judicial power to enable the courts to review what was before a forbidden territory - the discretion of the political departments of the government.^[2] It speaks of judicial prerogative not only in terms of power but also of duty.^[3]

The petitions at bar present a conflict between Sections 16 and 17 of the Rules of Procedure in Impeachment Proceedings, promulgated by the present Congress of the Philippines, and Section 3(5), Article XI of the Constitution. Is this conflict a justiciable issue?

Justiciability, is different from jurisdiction. Justiciability refers to the suitability of a dispute for a judicial resolution, while jurisdiction refers to the power of a court to try and decide a case. As earlier mentioned, the basic issue posed by the instant petitions is whether the second impeachment complaint against Chief Justice Hilario G. Davide violates the Constitutional provision that "no impeachment proceedings shall be initiated against the same official more than once within the period of one year." Obviously, this is a justiciable issue. Chief Justice Davide, under the Constitution, should not be subjected to a second impeachment proceedings. Thus, on the face of the petitions, he has a right to be protected by the courts.

May this Court assume jurisdiction over this justiciable issue? Justice Isagani A. Cruz aptly wrote that "A judgment of the Congress in an impeachment proceeding is normally not subject to judicial review because of the vesture in the Senate of the "sole power to try and decide all cases of impeachment." x x x But the courts may annul the proceedings if there is a showing of a grave abuse of discretion committed by the Congress or of

non-compliance with the procedural requirements of the Constitution, as where the charges are instituted without a verified complaint, or by less than one-third of all the members of the House of Representatives, or where the judgment of conviction is supported by less than a two-thirds vote in the Senate." [4] He further wrote that the power to impeach is essentially a non-legislative prerogative and can be exercised by the Congress only within the limits of the authority conferred upon it by the Constitution. [5]

The case of *Romulo vs. Yñiguez*, [6] supports such a view. In this case, this Court initially took cognizance of the petition filed by Alberto G. Romulo, et al., in view of the latter's claim that the Rules of Procedure in Impeachment Proceedings are unconstitutional, implying that the Batasan, in the exercise of its powers, transgressed the Constitution. This, according to the Court is "certainly a justiciable question."

Corollarily, in *Santiago vs. Guingona, Jr.*, [7] this Court assumed jurisdiction over a petition alleging that the Constitution has not been observed in the selection of the Senate Minority Leader. This Court held that "jurisdiction over the subject matter of a case is determined by the allegations of the complaint or petition, regardless of whether the plaintiff or petitioner is entitled to the relief asserted. In light of the allegation of petitioners, it is clear that this Court has jurisdiction over the petition. It is well within the power and jurisdiction of the Court to inquire whether indeed the Senate or its officials committed a violation of the Constitution or gravely abused their discretion in the exercise of their functions and prerogatives." In *Montesclaros vs. Commission on Elections*, [8] this Court ruled that "absent a clear violation of specific constitutional limitations or of constitutional rights of private parties, the Court cannot exercise its power of judicial review over the internal processes or procedures of Congress." Stated in converso, the Court can exercise its power of judicial review over the internal processes or procedures of Congress when there exists a clear violation of the Constitution. Also, in *Arroyo vs. De Venecia*, [9] this Court, through Justice Vicente V. Mendoza (now retired), declared that we have no more power to look into the internal proceedings of a House than Members of that House have to look over our shoulders, as long as no violation of constitutional provisions is shown.

In fine, while our assumption of jurisdiction over the present petitions may, at first view, be considered by some as an attempt to intrude into the legislature and to intermeddle with its prerogatives, however, the correct view is that when this Court mediates to allocate constitutional boundaries or invalidates the acts of a coordinate body, what it is upholding is not its own supremacy but the supremacy of the Constitution. [10] If the branches are interdependent, each must have a place where there is finality, an end to discussion, a conclusion. If all three branches are faced with the same question, and if they differ, all three cannot prevail - one must be given way to. Otherwise there will be unresolved conflict and confusion. This may be intolerable in situations where there has to be action. Owing to the nature of the conflict, the duty necessarily redounds to the judiciary.

II - Should this Court exercise self-restraint?

Confronted with an issue involving constitutional infringement, should this Court shackle its hands under the principle of judicial self-restraint? The polarized opinions of the amici curiae is that by asserting its power of judicial review, this Court can maintain the supremacy of the Constitution but at the same time invites a disastrous confrontation with the House of Representatives. A question repeated almost to satiety is - what if the House holds its ground and refuses to respect the Decision of this Court? It is argued that there will be a Constitutional crisis. Nonetheless, despite such impending scenario, I believe this Court should do its duty mandated by the Constitution, seeing to it that it acts within the bounds of its authority.

The 1987 Constitution speaks of judicial prerogative not only in terms of power but also of duty. [11] As the last guardian of the Constitution, the Court's duty is to uphold and defend it at all times and for all persons. It is a duty

this Court cannot abdicate. It is a mandatory and inescapable obligation - made particularly more exacting and peremptory by the oath of each member of this Court.[12] Judicial reluctance on the face of a clear constitutional transgression may bring about the death of the rule of law in this country.

Yes, there is indeed a danger of exposing the Court's inability in giving efficacy to its judgment. But is it not the way in our present system of government? The Legislature enacts the law, the Judiciary interprets it and the Executive implements it. It is not for the Court to withhold its judgment just because it would be a futile exercise of authority. It should do its duty to interpret the law. Alexander Hamilton, in impressing on the perceived weakness of the judiciary, observed in Federalist No. 78 that "the judiciary [unlike the executive and the legislature] has no influence over either the sword or the purse, no direction either of the strength or of the wealth of society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments." Nonetheless, under the unusual circumstances associated with the issues raised, this Court should not shirk from its duty.

One final note on jurisdiction and self-restraint.

There being a clear constitutional infringement, today is an appropriate occasion for judicial activism. To allow this transcendental issue to pass into legal limbo would be a clear case of misguided judicial self-restraint. This Court has assiduously taken every opportunity to maintain the constitutional order, the distribution of public power, and the limitations of that power. Certainly, this is no time for a display of judicial weakness.

While the power to initiate all cases of impeachment is regarded as a matter of "exclusive" concern only of the House of Representatives, over which the other departments may not exercise jurisdiction by virtue of the separation of powers established by the fundamental law, it does not follow that the House of Representatives may not overstep its own powers defined and limited by the Constitution. Indeed, it cannot, under the guise of implementing its Rules, transgress the Constitution, for when it does, its act immediately ceases to be a mere internal concern.

Surely, by imposing limitations on specific powers of the House of Representatives, a fortiori, the Constitution has prescribed a diminution of its "exclusive power." I am sure that the honorable Members of the House who took part in the promulgation and adoption of its internal rules on impeachment did not intend to disregard or disobey the clear mandate of the Constitution - the law of the people. And I confidently believe that they recognize, as fully as this Court does, that the Constitution is the supreme law of the land, equally binding upon every branch or department of the government and upon every citizen, high or low.

It need not be stressed that under our present form of government, the executive, legislative and judicial departments are coequal and co-important. But it does not follow that this Court, whose Constitutional primary duty is to interpret the supreme law of the land, has not the power to declare the House Rules unconstitutional.

Of course, this Court will not attempt to require the House of Representatives to adopt a particular action, but it is authorized and empowered to pronounce an action null and void if found to be contrary to the provisions of the Constitution.

This Court will not even measure its opinion with the opinion of the House, as expressed in its internal rules. But the question of the wisdom, justice and advisability of its particular act must be tested by the provisions of the Constitution. And if its act is then held illegal by this Court, it is not because it has any control over Congress, particularly the House of Representatives, but because the act is forbidden by the fundamental law of the land and the will of the people, declared in such fundamental law, which is paramount and must be obeyed by every

citizen, even by Congress.

At this point, I must emphasize that the jurisdiction of this Court is over the alleged unconstitutional Rules of the House, not over the impeachment proceedings.

III - Whether the filing of the second impeachment is unconstitutional.

Section 3 (5), Article XI of the 1987 Constitution provides:

"No impeachment proceeding shall be initiated against the same official more than once within a period of one year."

Petitioners contend that the filing of the second impeachment complaint against Chief Justice Davide contravenes the above provision because it was initiated within one (1) year from the filing of the first impeachment complaint against him and seven (7) Associate Justices. Several of the amici curiae support petitioners' contention. However, the others argue otherwise, saying that the first impeachment complaint cannot be considered as having been "initiated" because it failed to obtain the endorsement of at least one-third (1/3) of all the Members of the House. This brings us to the vital question, when are impeachment proceedings considered initiated?

The House Rules of Procedure in Impeachment Proceedings provide the instances when impeachment proceedings are deemed initiated, thus:

"BAR AGAINST INITIATION OF IMPEACHMENT PROCEEDINGS AGAINST THE SAME OFFICIAL
"SEC. 16. Impeachment Proceedings Deemed Initiated. In cases where a Member of the House files a verified complaint of impeachment or a citizen files a verified complaint that is endorsed by a Member of the House through a resolution of endorsement against an impeachable officer, impeachment proceedings against such official are deemed initiated on the day the Committee on Justice finds that the verified complaint and/or resolution against such official, as the case may be, is sufficient in substance or on the date the House votes to overturn or affirm the finding of the said Committee that the verified complaint and/or resolution, as the case may be, is not sufficient in substance.

"In cases where a verified complaint or a resolution of impeachment is filed or endorsed, as the case may be, by at least one-third (1/3) of the Member of the House, impeachment proceedings are deemed initiated at the time of the filing of such verified complaint or resolution of impeachment with the Secretary General.

"SEC. 17. Bar against Initiation of Impeachment Proceedings. - Within a period of one (1) year from the date impeachment proceedings are deemed initiated as provided in Section 16 hereof, no impeachment proceedings, as such, can be initiated against the same official."

Under the above Rules, when the verified impeachment complaint is filed by a Member of the House or by a citizen (through a resolution of endorsement by a Member of the House), impeachment proceedings are deemed initiated either (a) on the day the Committee on Justice finds that the verified complaint and/or resolution is sufficient in substance; or (b) on the date the House, through a vote of one-third (1/3),^[13] overturns or affirms the finding of the Committee on Justice that the verified complaint and/or resolution is not sufficient in substance. However, when the verified impeachment complaint or resolution is filed or endorsed by at least one-third (1/3) of all the Members of the House, impeachment proceedings are deemed initiated at the time of the filing of the verified complaint or resolution with the Secretary General.

The House Rules deviate from the clear language of the Constitution and the intent of its Framers. The Rules infuse upon the term "initiate" a meaning more than what it actually connotes.

The ascertainment of the meaning of the provision of the Constitution begins with the language of the document itself.[14] The words of the Constitution should as much as possible be understood in the sense they have in common use and given their ordinary meaning.[15] In other words, the plain, clear and unambiguous language of the Constitution should be understood in the sense it has in common use.[16] The reason for this is because the Constitution is not primarily a lawyer's document but essentially that of the people, in whose consciousness it should ever be present as an important condition for the rule of law to prevail. [17] Black's Law Dictionary defines "initiate" as "commence," "start," "originate" or "introduce,"[18] while Webster's Dictionary[19] defines it as "to do the first act;" "to perform the first rite;" "beginning;" or "commence." It came from the Latin word "initium," meaning "a beginning." Using these definitions, I am convinced that the filing of the verified complaint and its referral to the Committee on Justice constitute the initial step. It is the first act that starts the impeachment proceeding. Fr. Joaquin G. Bernas, S.J., an amicus curiae, explains convincingly that the term "proceeding," which is the object of the term "initiated" in Section 3 (5), Article XI, is a progressive noun that has a beginning, a middle, and an end, thus:

"It [proceeding] consists of several steps.

"First, there is the filing of a verified complaint either by a Member of the House or by a private citizen endorsed by a Member of the House.

"Second, there is the processing of this complaint by the proper Committee. In this step, the Committee either rejects the complaint or upholds it.

"Third, whether the resolution of the Committee rejects or upholds the complaint, the resolution must be forwarded to the House for further processing.

"Fourth, there is the processing of the same complaint by the House of Representatives. The House either affirms a favorable resolution of the Committee or overrides a contrary resolution by a vote of one third of all the members.

"Now we ask, at what stage is the 'impeachment proceeding' initiated?

"Not when the complaint is transmitted to the Senate for trial, because that is the end of the House proceeding and the beginning of another proceeding, namely the trial.

"Not when the House deliberates on the resolution passed on to it by the Committee, because something prior to that has already been done. The action of the House is already a further step in the proceeding, not the initiation or beginning.

"Rather, the proceeding is initiated or begins, when a verified complaint is filed and referred to the Committee on Justice for action. This is the initiating step which triggers the series of steps that follow."

The Records of the 1986 Constitutional Commission support the foregoing theory. The term "initiate" pertains to the initial act of filing the verified complaint and not to the finding of the Committee on Justice that the complaint and/or resolution is sufficient in substance or to the obtention of the one-third (1/3) vote of all the Members of the House as provided by the House Rules. Justice Maambong, then a member of the 1986 Constitutional Commission, explained that "initiation starts with the filing of the complaint." As early as the deliberation stage in the Constitutional Commission, the meaning of the term "initiate" was discussed. Then Commissioner Maambong sought the deletion of the phrase "to initiate impeachment proceedings" in Section 3 (3) of Article XI[20] to avoid any misconception that the obtention of one-third (1/3) of all the Members of the House is necessary to "initiate" impeachment proceedings.

Apparently, Commissioner Maambong was very careful not to give the impression that "initiation" is equivalent

to "impeachment" proper. He stressed that it was the latter which requires the approval of one-third (1/3) of all the Members of the House. According to him, as the phraseology of Section 3 (3) runs, it seems that the initiation starts only on the floor. This prompted him to utter: "x x x I will just make of record my thinking that we do not really initiate the filing of the Articles of Impeachment on the floor. The procedure, as I have pointed out earlier, was that the initiation starts with the filing of the complaint. And what is actually done on the floor is that the committee resolution containing the Articles of Impeachment is the one approved by the body." That Commissioner Maambong gained the concurrence of the Framers of the 1987 Constitution with regard to the rationale of his proposed amendment is shown by the fact that nobody objected to his proposal and it is his amended version which now forms part of the Constitution. We quote the pertinent portions of the deliberation, thus:

"MR. NATIVIDAD. May we have the amendment stated again, so we can understand it. Will the proponent please state the amendment before we vote?

MR. REGALADO. The amendment is on Section 3 (3) which shall read as follows:

`A VOTE OF AT LEAST ONE-THIRD OF ALL THE MEMBERS OF THE HOUSE SHALL BE NECESSARY TO INITIATE IMPEACHMENT PROCEEDINGS, EITHER TO AFFIRM A RESOLUTION OF IMPEACHMENT BY THE COMMITTEE OR TO OVERRIDE ITS CONTRARY RESOLUTION. THE VOTES OF EACH MEMBER SHALL BE RECORDED.'

MR. NATIVIDAD. How many votes are needed to initiate?

MR. BENGZON. One-third.

MR. NATIVIDAD. To initiate is different from to impeach; to impeach is different from to convict. To impeach means to file the case before the Senate.

MR. REGALADO. When we speak of `initiative,' we refer here to the Articles of Impeachment.

MR. NATIVIDAD. So, that is the impeachment itself, because when we impeach, we are charging him with the Articles of Impeachment. That is my understanding.

x x x x x

MR. BENGZON. Mr. Presiding Officer, may we request that Commissioner Maambong be recognized.

THE PRESIDING OFFICER (Mr. Treñas). Commissioner Maambong is recognized.

MR. MAAMBONG. Mr. Presiding Officer, I am not moving for a reconsideration of the approval of the amendment submitted by Commissioner Regalado, but I will just make of record my thinking that we do not really initiate the filing of the Articles of Impeachment on the floor. The procedure, as I have pointed out earlier, was that the initiation starts with the filing of the complaint. And what is actually done on the floor is that the committee resolution containing the Articles of Impeachment is the one approved by the body.

As the phraseology now runs, which may be corrected by the Committee on Style, it appears that the initiation starts on the floor. If we only have time, I could cite examples in the case of the impeachment proceedings of president Richard Nixon wherein the Committee on the Judiciary submitted the recommendation, the resolution, and the Articles of Impeachment to the body, and it was the body who approved the resolution. It is not the body which initiates it. It only approves or disapproves the resolution. So, on that score, probably the Committee on Style could help rearranging these words because we have to be very technical about this. I have been bringing with me the Rules of the House of Representatives of the U.S. Congress. The Senate Rules are with me. The proceedings on the case of Richard Nixon are with me. I have submitted my proposal, but the Committee has already decided. Nevertheless, I just want to indicate this on record.

Thank you, Mr. Presiding Officer.

X X X X X X

MR. MAAMBONG. I would just like to move for a reconsideration of the approval of Section 3 (3). My reconsideration will not at all affect the substance, but it is only in keeping with the exact formulation of the Rules of the House of Representatives of the United States regarding impeachment.

I am proposing, Madam President, without doing damage to any of this provision, that on page 2, Section 3 (3), from lines 17 to 18, we delete the words which read: 'to initiate impeachment proceedings' and the comma (,) and insert on line 19 after the word 'resolution' the phrase WITH THE ARTICLES, and then capitalize the letter 'i' in 'impeachment' and replace the word 'by' with OF, so that the whole section will now read: 'A vote of at least one-third of all the Members of the House shall be necessary either to affirm a resolution WITH THE ARTICLES of Impeachment OF the Committee or to override its contrary resolution. The vote of each member shall be recorded.'

I already mentioned earlier yesterday that the initiation, as far as the House of Representatives of the United States is concerned, really starts from the filing of the verified complaint and every resolution to impeach always carries with it the Articles of Impeachment. As a matter of fact, the words, 'Articles of Impeachment' are mentioned on line 25 in the case of the direct filing of a verified complaint of one-third of all the members of the House. I will mention again, Madame President, that my amendment will not vary the substance in any way. It is only in keeping with the uniform procedure of the House of Representatives of the United States Congress.

Thank you, Madam President.

X X X X X X

THE PRESIDENT. Let us first submit to the body the motion of Commissioner Maambong to reconsider the approval of Section 3 (3).

Is there any objection? (silence) The chair hears none; the motion is approved.

The proposed amendment which has been submitted by Commissioner Maambong was clarified and has been accepted by the Committee on Accountability of Public Officers.

MR. MAAMBONG. Madam President, May I read again the whole section?

THE PRESIDENT. Please proceed.

MR. MAAMBONG. As amended, the whole Section 3 (3) will read: 'A vote of at least one-third of all the Members of the House shall be necessary either to affirm a resolution WITH THE ARTICLES OF Impeachment OF the Committee or to override its contrary resolution. The vote of each member shall be recorded.'

THE PRESIDENT. Is there any objection to this proposed amendment? (Silence) The Chair hear none, the amendment is approved." [21] (Underscoring supplied)

The clear intent of the Framers of our Constitution should be given weight. The primary task in constitutional construction is to ascertain and thereafter assure the realization of the purpose of the Framers and of the people in the adoption of the Constitution. It may be safely assumed that the people, in ratifying the Constitution, were guided mainly by the explanation offered by the Framers.[22] In *Gold Creek Mining Corp. vs. Rodriguez*,[23] the Court, speaking through Mr. Justice (later, Chief Justice) Jose Abad Santos ruled:

"The fundamental principle of constitutional construction is to give effect to the intent of the framers of the organic law and of the people adopting it. The intention to which force is to be given is that which is embodied

and expressed in the constitutional provisions themselves."

The Court thus construes the applicable constitutional provisions, not in accordance with how the executive or the legislative department may want them construed, but in accordance with what they say and provide.

It has also been said that a provision of the Constitution should be construed in light of the objectives it sought to achieve. Section 3 (5), Article XI, also referred as the "anti-harassment clause," was enshrined in the Constitution for the dual objectives of allowing the legislative body to concentrate on its function which is lawmaking and protecting public officials from harassment, thus:

"MR. VILLACORTA. Madam President, I would just like to ask the Committee three questions.

"On Section 3, page 2, lines 12 to 14, the last paragraph reads as follows: 'No impeachment proceedings shall be initiated against the same official more than once within a period of one year.' Does this mean that even if an evidence is discovered to support another charge or ground for impeachment, a second or subsequent proceeding cannot be initiated against the same official within a period of one year? In other words, one year has to elapse before a second or subsequent charge or proceeding can be initiated. The intention may be to protect the public official from undue harassment. On the other hand, is this not undue limitation on the accountability of public officers? Anyway, when a person accepts a public trust, does he not consider taking the risk of accounting for his acts or misfeasance in office?

"MR. ROMULO. Yes, the intention here really is to limit. This is not only to protect public officials who, in this case, are of the highest category from harassment but also to allow the legislative body to do its work which is lawmaking. Impeachment proceedings take a lot of time. And if we allow multiple impeachment charges on the same individual to take place, the legislature will do nothing else but that."

For one, if we construe the term "initiate" as referring to the obtention of one-third (1/3) votes of all the Members of the House or to the date when the Committee on Justice rules that the complaint is sufficient in substance, are we not losing sight of the fact that much time has already been wasted by the House? The getting hold of the one-third (1/3) vote is almost the last step necessary for the accused officer to be considered successfully impeached. The process is almost complete insofar as the House is concerned. The same is true with respect to the proceedings in the Committee on Justice. The hearing, voting and reporting of its resolution to the House definitely take away much of the Members' precious time. Now, if impeachment complaints are only deemed "initiated" during those phases, then the object of allowing the legislature to concentrate on its functions cannot really be achieved. Obviously, impeachment is a long process. To be sure, instead of acting as a legislative body, the House will be spending more time as a prosecutorial body.

For another, to let the accused official go through the above phases is to subject him to additional harassment. As the process progresses, the greater is the harassment caused to the official. One glaring illustration is the present case. It may be recalled that the first impeachment complaint against Chief Justice Davide was referred to the Committee on Justice. On October 22, 2003, the Committee dismissed the complaint for being insufficient in form and substance. The very next day and while the Committee was yet to make a report to the House, Congressmen Teodoro and Fuentesbella immediately filed the second impeachment complaint against the Chief Justice. In short, while the first impeachment complaint was not yet fully disposed of, the Chief Justice was being charged again in another complaint. This is the very situation proscribed by the Constitution. Verily, it inflicts undue strain and harassment upon officials who are saddled with other pressing responsibilities.

Another constitutional objection to the second impeachment complaint raised by petitioners is the fact that only Congressmen Teodoro and Fuentesbella signed it. According to them, this violates Section 3 (4), Article XI of the Constitution which provides:

"(4) In case the verified complaint or resolution of impeachment is filed by at least one-third (1/3) of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed."

Following the above provision, what should have been filed by at least one-third (1/3) of all the Members of the House is a verified complaint or resolution of impeachment. Even Section 15 of the House Rules reechoes the above Constitutional mandate, thus:

"SEC. 15. Endorsement of the Complaint/Resolution to the Senate. - A verified complaint or a resolution of impeachment signed by at least one-third (1/3) of all the Members of the House shall constitute the Articles of Impeachment and shall be filed with the Secretary General. The complaint/resolution must, at the time of filing, be verified and sworn to before the Secretary General by each of the Members who constitute at least one-third (1/3) of all the Members of the House. The contents of the verification shall be as follows:

"We, after being sworn in accordance with law, depose and state: That we are the complainants/signatories in the above-entitled complaint/resolution of impeachment; that we have caused the said complaint/resolution to be prepared and have read the contents thereof; and that the allegations therein are true of our own knowledge and belief on the basis of our reading and appreciation of documents and other records pertinent thereto."

Clearly, the requirement is that the complaint or resolution must at the time of filing be verified and sworn to before the Secretary General of the House by each of the members who constitute at least one-third (1/3) of all the Members of the House.

A reading of the second impeachment complaint shows that of the eighty-one (81) Congressmen, only two, Teodoro and Fuentesbella, actually signed and verified it. What the rest verified is the Resolution of Endorsement. The verification signed by the majority of the Congressmen states: "We are the proponents/sponsors of the Resolution of Endorsement of the abovementioned Complaint of Representatives Gilberto C. Teodoro, Jr. and Felix William B. Fuentesbella x x x." [24] However, this defect is not for this Court to correct considering that it is an incident of the impeachment process solely cognizable by the legislature.

IV - Whether petitioners have
locus standi to bring the
present suits.

It is contended that petitioners have no legal standing to institute the instant petitions because they do not have personal and substantial interest in these cases. In fact, they have not sustained or will suffer direct injury as a result of the act of the House of Representatives being challenged. It is further argued that only Chief Justice Davide has such interest in these cases. But he has not challenged the second impeachment complaint against him.

It would be an unseemly act for the Chief Justice to file a petition with this Court where he is *primus inter pares*. "Delicadeza" and the Rules require him not only to inhibit himself from participating in the deliberations but also from filing his own petition. Fortunately, there are persons equally interested in the cause for which he is fighting. I believe that the locus standi doctrine is not impaired in these petitions.

The petitioners have the legal standing to file the present petitions.

No less than two members of the House of Representatives, namely, Deputy Speaker Raul M. Gonzales and Congressman Salacnib F. Bateria are among the petitioners in these cases. They alleged in their petition that the Constitution reserves to their Chamber, whether acting as a whole or through its members or Committees, the authority to initiate impeachment proceedings. As members of the House, "they have the legal interest in ensuring that only impeachment proceedings that are in accord with the Constitution are initiated. Any illegal act of the

House or its members or Committees pertaining to an impeachment will reflect adversely on them because such act will be deemed an act of the House. Thus they have the right to question the constitutionality of the second impeachment complaint against the Chief Justice, an event of transcendental national concern." [25] They further alleged that it would be futile for them to seek relief in their Chamber prior to the filing of their petition because the Articles of Impeachment, based on the constitutionally infirm second impeachment complaint, will be transmitted to the Senate at their next session. Necessarily, the House will disburse public funds amounting to millions of pesos for the prosecution, as in the case of the impeachment of former President Joseph Ejercito Estrada. Consequently, they stressed they have the standing to file a petition "to stop the illegal disbursement of public funds for an illegal act." [26]

The rest of the petitioners, most of whom are members of the Integrated Bar of the Philippines, similarly contend that as citizens and taxpayers they have the legal standing to bring these suits. They assert that it is their right and duty to see to it that the acts of their public officials should be in accordance with what the Constitution says and that public funds are not spent for an unconstitutional act.

Indeed, the present suits involve matters of first impression and of immense importance to the public considering that, as previously stated, this is the first time a Chief Justice of the Supreme Court is being subjected to an impeachment proceeding which, according to petitioners, is prohibited by the Constitution. Obviously, if such proceeding is not prevented and nullified, public funds amounting to millions of pesos will be disbursed for an illegal act. Undoubtedly, this is a grave national concern involving paramount public interest. The petitions are properly instituted to avert such a situation.

In *Chavez vs. Public Estates Authority*, [27] citing *Chavez vs. PCGG*, [28] we upheld the right of a citizen to bring a taxpayer's suit where, as here, the issues raised are of transcendental importance to the public, thus:

"Besides, petitioner emphasizes, the matter of recovering the ill-gotten wealth of the Marcoses is an issue of 'transcendental importance to the public.' He asserts that ordinary taxpayers have a right to initiate and prosecute actions questioning the validity of acts or orders of government agencies or instrumentalities, if the issues raised are of 'paramount public interest,' and if they 'immediately affect the social, economic and moral well being of the people.

Moreover, the mere fact that he is a citizen satisfies the requirement of personal interest, when the proceeding involves the assertion of a public right, such as in this case. He invokes several decisions of this Court which have set aside the procedural matter of locus standi, when the subject of the case involved public interest.

x x x x x

Indeed, the arguments cited by petitioners constitute the controlling decisional rule as regards his legal standing to institute the instant petition. x x x

In *Tañada vs. Tuvera*, [29] the Court asserted that when the issue concerns a public right and the object of mandamus is to obtain the enforcement of a public duty, the people are regarded as the real parties in interest; and because it is sufficient that petitioner is a citizen and as such is interested in the execution of the laws, he need not show that he has any legal or special interest in the result of the action. In the aforesaid case, the petitioners sought to enforce their right to be informed on matters of public concern, a right then recognized in Section 6, Article IV of the 1973 Constitution, in connection with the rule that laws in order to be valid and enforceable must be published in the Official Gazette or otherwise effectively promulgated. In ruling for the petitioners' legal standing, the Court declared that the right they sought to be enforced 'is a public right recognized by no less than the fundamental law of the land.'

Legaspi vs. Civil Service Commission, [30] while reiterating *Tañada*, further declared that 'when a mandamus proceeding involves the assertion of a public right, the requirement of personal interest is satisfied by the mere

fact that petitioner is a citizen and, therefore, part of the general 'public' which possesses the right.

Further, in *Albano vs. Reyes*,^[31] we said that while expenditure of public funds may not have been involved under the questioned contract for the development, management and operation of the Manila International Container Terminal, 'public interest [was] definitely involved considering the important role [of the subject contract]... in the economic development of the country and the magnitude of the financial consideration involved.' We concluded that, as a consequence, the disclosure provision in the Constitution would constitute sufficient authority for upholding the petitioner's standing."

This Court has adopted a liberal stance on the locus standi of a petitioner where he is able to craft an issue of transcendental significance to the people. In *Tatad vs. Secretary of the Department of Energy*, ^[32] Justice Reynato S. Puno aptly emphasized:

"x x x Respondents further aver that petitioners have no locus standi as they did not sustain nor will they sustain direct injury as a result of the implementation of R.A. No. 8180.

x x x x x

The effort of respondents to question the locus standi of petitioners must also fall on barren ground. In language too lucid to be misunderstood, this Court has brightlined its liberal stance on a petitioner's locus standi where the petitioner is able to craft an issue of transcendental significance to the people. In *Kapitan ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. vs. Tan* (163 SCRA 371 [1988]), we stressed:

`x x x

Objections to taxpayers' suit for lack of sufficient personality, standing or interest are, however, in the main procedural matters. Considering the importance to the public of the cases at bar, and in keeping with the Court's duty, under the 1987 Constitution, to determine whether or not the other branches of government have kept themselves within the limits of the Constitution and the laws and that they have not abused the discretion given to them, the Court has brushed aside technicalities of procedure and has taken cognizance of these petitions."

WHEREFORE, I vote to GRANT the petitions and to declare Sections 16 and 17 of the House Rules of Procedure in Impeachment Proceedings. UNCONSTITUTIONAL.

[1] 1 Cranch 137 [1803].

[2] Cruz, *Philippine Political Law*, 1989 Ed. at 217.

[3] *Santiago vs. Guingona, Jr.*, G.R. No. 134577, November 18, 1998, 298 SCRA 756.

[4] Cruz, *Philippine Political Law*, 1989 Ed. at 320.

[5] Cruz, *Philippine Political Law*, 1989 Ed. at 314-315.

[6] G.R. No. L-71908, February 4, 1986, 141 SCRA 263.

"The rules of public deliberative bodies, whether codified in the form of a 'manual' end formally adopted by the body, or whether consisting of a body of unwritten customs or usages, preserved in memory and by tradition, are matters of which the judicial courts, as a general rule, take no cognizance. It is a principle of the common law of England that the judicial courts have no cognizance of what is termed the *lex et consuetudo parlamenti* . . . And, although this doctrine is not acceded to, in this country, to the extent to which it has gone in England, where the judicial courts have held that they possess no jurisdiction to judge of the powers of the House of Parliament, yet no authority is cited to us, and we do not believe that respectable judicial authority exists, for the proposition that the judicial courts have power to compel legislative, or quasi-legislative bodies

to proceed in the conduct of their deliberations, or in the exercise of their powers, in accordance with their own rules. If the Congress of the United States disregards the constitution of the United States, or, if the legislature of one of the states disregards the constitution of the state, or of the United States, the power resides in the judicial courts to declare its enactments void. If an inferior quasi legislative body, such as the council of a municipal corporation, disregards its own organic law, that is, the charter of the corporations, the judicial courts, for equal, if not for stronger reasons, possess the same power of annulling its ordinances. But we are not aware of any judicial authority, or of any legal principle, which will authorize the judicial courts to annul an act of the legislature, or an ordinance of a municipal council, merely because the one or the other was enacted in disregard of the rules which the legislature, or the municipal council, or either house thereof, had prescribed for its own government."

[7] Supra.

[8] G.R. No. 152295, July 9, 2002, 384 SCRA 269.

[9] G.R. No. 127255, August 14, 1997, 277 SCRA 268.

[10] Angara vs. Electoral Commission, 63 Phil. 139 (1936).

[11] Santiago vs. Guingona, Jr., supra.

[12] Javellana vs. The Executive Secretary, G.R. No. L-36142, March 31, 1973, 50 SCRA 30.

[13] Section 7 of the House Rules of Procedure in Impeachment Proceedings.

[14] J.M. Tuazon & Co., Inc. vs. Land Tenure Administration, G.R. No. L-21064, February 18, 1970, 31 SCRA 413.

[15] Ordillo vs. Commission on Elections, G.R. No. 93054, December 4, 1990, 192 SCRA 100.

[16] Occeña vs. Commission on Elections, G.R. No. L-52265, January 28, 1980, 95 SCRA 755.

[17] Agpalo, Statutory Construction, 1995 Ed. at 344.

[18] At 784.

[19] At 943.

[20] Section 3(3), Article XI now reads:

"SEC. 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

x x x

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Members shall be recorded."

[21] Records of the Constitutional Commission, July 28, 1986 and July 29, 1986.

[22] Nitafan vs. Commissioner of Internal Revenue, G.R. No. L-78780, July 23, 1987, 152 SCRA 284.

[23] 66 Phil. 259 (1938).

[24] G.R. No. 160262, Annex "B".

[25] Petition in G.R. No. 160295 at 6-7.

[26] *Id.*, citing *Bugnay Construction vs. Honorable Crispin C. Laron*, G.R. No. 79983, August 10, 1989, 176 SCRA 240; *Kilosbayan, Inc. vs. Morato*, G.R. No. 118910, November 16, 1995, 250 SCRA 130; *Joya vs. PCGG*, G.R. No. 96541, August 24, 1993, 225 SCRA 568.

[27] G.R. No. 133250, July 9, 2002, 384 SCRA 152.

[28] G.R. No. 130716, December 9, 1998, 299 SCRA 744.

[29] G.R. No. L-63915, April 24, 1985, 136 SCRA 27.

[30] G.R. No. L-72119, May 29, 1987, 150 SCRA 530.

[31] G.R. No. 83551, July 11, 1989, 175 SCRA 264.

[32] G.R. Nos. 124360 & 127867, November 5, 1997, 281 SCRA 330.

SEPARATE OPINION

CORONA, J.:

On July 4, 1946, the flag of the United States fluttered for the last time in our skies. That day ushered in a new period for the Philippine judiciary because, for the first time since 1521, judicial decisions in our country became entirely our own, free finally of the heavy influence of a colonial master and relieved of the "preferable" use of precedents set by US courts. Nevertheless, the vestiges of 50 years of American rule were not about to disappear so soon, nor so easily. The 1935 Constitution then in force carried many provisions lifted from the US Constitution. Today we face the prospects of a constitutional crisis at whose vortex lies the interpretation of certain provisions of that American-influenced Constitution.

A defining moment in history is upon us. The Court has to speak in response to that moment and in defense of the Constitution.

I humbly contribute this separate opinion as a chronicle of my thoughts during our deliberations on the petitions before us. Let it be a living testament, in the immortal words of the great Jesuit historian Horacio de la Costa, that in this particular quest for truth and justice, we in this Court "not only played in tune but managed here and there a brief but brilliant phrase."

THE EXTRAORDINARY REMEDY OF IMPEACHMENT IS INTENDED TO BE ONLY A FINAL OPTION

Incorporated in the 1987 Constitution are devices meant to prevent abuse by the three branches of government. One is the House of Representatives' exclusive power of impeachment for the removal of impeachable officers^[1] from their positions for violating the mandate that public office is a public trust.

Impeachment under the Philippine Constitution, as a remedy for serious political offenses against the people, runs parallel to that of the U.S. Constitution whose framers regarded it as a political weapon against executive tyranny. It was meant "to fend against the incapacity, negligence or perfidy of the Chief Magistrate."^[2] Even if an impeachable official enjoys immunity, he can still be removed in extreme cases to protect the public.^[3] Because of its peculiar structure and purpose, impeachment proceedings are neither civil nor criminal:

James Wilson described impeachment as "confined to political characters, to political crimes and misdemeanors, and to political punishment." According to Justice Joseph Story, in his *Commentaries on the Constitution*, in 1833, impeachment applied to offenses of a political character:

Not but (sic) that crimes of a strictly legal character fall within the scope of the power; but that it has a more enlarged operation, and reaches what are aptly termed political offenses, growing out of personal misconduct or gross neglect, or usurpation, or habitual disregard of the public interests, various in their character, and so indefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law. They must be examined upon very broad and comprehensive principles of public policy and duty. They must be judged by the habits and rules and principles of diplomacy, or departmental operations and arrangements, of parliamentary practice, of executive customs and negotiations, of foreign as well as domestic political movements; and in short, by a great variety of circumstances, as well as those which aggravate as those which extenuate or justify the offensive acts which do not properly belong to the judicial character in the ordinary administration of justice, and are far removed from the reach of municipal jurisprudence.

The design of impeachment is to remove the impeachable officer from office, not to punish him. An impeachable act need not be criminal. That explains why the Constitution states that the officer removed shall nevertheless be subject to prosecution in an ordinary criminal case.[4]

Impeachment has been described as *sui generis* and an "exceptional method of removing exceptional public officials (that must be) exercised by the Congress with exceptional caution." [5] Thus, it is directed only at an exclusive list of officials, providing for complex procedures, exclusive grounds and very stringent limitations. The implied constitutional caveat on impeachment is that Congress should use that awesome power only for protecting the welfare of the state and the people, and not merely the personal interests of a few.

There exists no doubt in my mind that the framers of the Constitution intended impeachment to be an instrument of last resort, a draconian measure to be exercised only when there are no other alternatives available. It was never meant to be a bargaining chip, much less a weapon for political leverage. Unsubstantiated allegations, mere suspicions of wrongdoing and other less than serious grounds, needless to state, preclude its invocation or exercise. According to constitutionalist Joaquin Bernas, S.J.:

for 'graft and corruption' and 'betrayal of public trust' to be grounds for impeachment, their concrete manner of commission must be of the same severity as 'treason' and 'bribery,' offenses that strike at the very heart of the life of the nation.[6]

A great deal of prudence should therefore be exercised not only to initiate but also to proceed with impeachment. Otherwise, the time intended for legislative work (the reason why the Senators and the Congressmen have been elected to the legislature in the first place) is shifted to the impeachment effort. Furthermore, since the impeachable officer accused is among the highest officials of the land, it is not only his reputation which is at stake but also the efficient performance of his governmental functions. There is no denying that the economy suffered a serious blow during the impeachment trial of former Joseph Estrada in 2001. Impeachment must therefore be gravely reflected upon on account of its potentially destructive impact and repercussions on the life of the nation.

JURISDICTION AND JUSTICIABILITY VS. THE POLITICAL QUESTION DOCTRINE

The Court is vested power by the Constitution to rule on the constitutionality or legality of an act, even of a co-equal branch.

Article VIII, Section 4(2) of the Constitution states:

(2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc, and all other cases which under the Rules of Court are required to be heard en banc, including those involving the constitutionality, application, or operation of presidential decrees,

proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

(2)

All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc, and all other cases which under the Rules of Court are required to be heard en banc, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

The Constitution is the basic and paramount law to which all laws, rules and regulations must conform and to which all persons, including the highest officials of the land, must defer. Any act conflicting with the Constitution must be stricken down as all must bow to the mandate of this law. Expediency is not allowed to sap its strength nor greed for power permitted to debase its rectitude. Right or wrong, the Constitution must be upheld as long as it has not been changed by the sovereign people lest its disregard result in the usurpation of the majesty of law by the pretenders to illegitimate power. [7]

While it is the judiciary which sees to it that the constitutional distribution of powers among the three departments of the government is respected and observed, by no means does this mean that it is superior to the other departments. The correct view is that, when the Court mediates to allocate constitutional boundaries or invalidates the acts of a coordinate body, what it is upholding is not its own supremacy but the supremacy of the Constitution. [8]

The concept of the Constitution as the fundamental law, setting forth the criterion for the validity of any public act, whether of the highest official or the lowest functionary, is a cornerstone of our democratic system. This is the rule of law. The three departments of government, each discharging the specific functions with which it has been entrusted, have no choice but to comply completely with it. Whatever limitations are imposed must be observed to the letter. Congress, whether the enactment of statutes or its internal rules of procedure, is not exempt from the restrictions on its authority. And the Court should be ready - not to overpower or subdue - but simply to remind the legislative or even the executive branch about what it can or cannot do under the Constitution. The power of judicial review is a logical corollary of the supremacy of the Constitution. It overrides any government measure that fails to live up to its mandate. Thereby there is a recognition of its being the supreme law.[9]

Article VIII, Section 1 of the Constitution provides:

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

Both the 1935 and the 1973 Constitutions did not have a similar provision with this unique character and magnitude of application. This expanded provision was introduced by Chief Justice Roberto C. Concepcion in the 1986 Constitutional Commission to preclude the Court from using the political question doctrine as a means to avoid having to make decisions simply because they may be too controversial, displeasing to the President or Congress, or inordinately unpopular. The framers of the 1987 Constitution believed that the unrestricted use of the political question doctrine allowed the Court during the Marcos years to conveniently steer clear of issues

involving conflicts of governmental power or even cases where it could have been forced to examine and strike down the exercise of authoritarian control.

Accordingly, with the needed amendment, the Court is now enjoined by its mandate from refusing to invalidate an unauthorized assumption of power by invoking the political question doctrine. Judicial inquiry today covers matters which the Court, under previous Constitutions, would have normally left to the political departments to decide. In the case of *Bondoc vs. Pineda*,^[10] the Court stressed:

But where the political departments exceed the parameters of their authority, then the Judiciary cannot simply bury its head ostrich-like in the sands of political question doctrine.

In fact, even political questions do not prohibit the exercise of the power of judicial review for we have already ruled that our responsibility to interpret the Constitution takes primacy over the political question doctrine. In this connection, we held in *Coseteng vs. Mitra*^[11] that:

Even if the question were political in nature, it would still come within our powers of review under the expanded jurisdiction conferred upon us by Article VIII, Section 1, of the Constitution, which includes the authority to determine whether grave abuse of discretion amounting to excess or lack of jurisdiction has been committed by any branch or instrumentality of the government.

The Court is never concerned with policy matters which, without doubt, are within the exclusive province of the political arms of government. The Court settles no policy issues and declares only what the law is and not what the law ought to be. Under our system of government, policy belongs to the domain of the political branches of government and of the people themselves as the repository of all state power.^[12]

In the landmark case of *Marbury vs. Madison*,^[13] penned by Chief Justice John Marshall, the U.S. Supreme Court explained the concept of judicial power and justiciable issues:

So if a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case, so that the Court must either decide the case conformably to the law, disregarding the Constitution; or conformably to the Constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

And on the importance of our duty to interpret the Constitution, *Marbury* was emphatic:

Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that the court must close their eyes on the constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits and declaring that those limits may be passed at pleasure. ^[14]

The Court has the obligation to decide on the issues before us to preserve the hierarchy of laws and to maintain the supremacy of the rule of the Constitution over the rule of men.

In *Calderon vs. Carale*,^[15] we held:

If the Legislature may declare what a law means, or what a specific portion of the Constitution means, especially after the courts have in actual case ascertained its meaning by interpretation and applied it in a decision, this would surely cause confusion and instability in judicial processes and court decisions. Under

such a system, a final court determination of a case based on a judicial interpretation of the law or of the Constitution may be undermined or even annulled by a subsequent and different interpretation of the law or of the Constitution by the Legislative department. That would be neither wise nor desirable, besides being clearly violative of the fundamental principles of our constitutional system of government, particularly those governing the separation of powers.

Under the new definition of judicial power embodied in Article VIII, Section 1, courts of justice have not only the authority but also the duty to "settle actual controversies involving rights which are legally demandable and enforceable" and "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government."

The Court can therefore, in certain situations provided in the Constitution itself, inquire into the acts of Congress and the President, though with great hesitation and prudence owing to mutual respect and comity. Among these situations, in so far as the pending petitions are concerned, are (1) issues involving constitutionality and (2) grave abuse of discretion amounting to lack of or excess of jurisdiction on the part of any branch of the government. These are the strongest reasons for the Court to exercise its jurisdiction over the pending cases before us.

JUDICIAL RESTRAINT OR DERELICTION OF DUTY?

A side issue that has arisen with respect to this duty to resolve constitutional issues is the propriety of assuming jurisdiction because "one of our own is involved." Some quarters have opined that this Court ought to exercise judicial restraint for a host of reasons, delicadeza included. According to them, since the Court's own Chief Justice is involved, the Associate Justices should inhibit themselves to avoid any questions regarding their impartiality and neutrality.

I disagree. The Court should not evade its duty to decide the pending petitions because of its sworn responsibility as the guardian of the Constitution. To refuse cognizance of the present petitions merely because they indirectly concern the Chief Justice of this Court is to skirt the duty of dispensing fair and impartial justice. Furthermore, refusing to assume jurisdiction under these circumstances will run afoul of the great traditions of our democratic way of life and the very reason why this Court exists in the first place.

This is actually not the first time the Court will decide an issue involving itself. In the 1993 case of *Philippine Judges Association vs. Prado*, [16] we decided the constitutionality of Section 35 of RA 7354 which withdrew the franking privilege of the Supreme Court, the Court of Appeals, the Regional Trial Courts, the Metropolitan Trial Courts, the Municipal Trial Courts and the Land Registration Commission and its Registers of Deeds, along with certain other government offices. The Court ruled on the issue and found that the withdrawal was unconstitutional because it violated the equal protection clause. The Court said:

The Supreme Court is itself affected by these measures and is thus an interested party that should ordinarily not also be a judge at the same time. Under our system of government, however, it cannot inhibit itself and must rule upon the challenge, because no other office has the authority to do so. We shall therefore act upon this matter not with officiousness but in the discharge of an unavoidable duty and, as always, with detachment and fairness.

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We arrive at these conclusions with a full awareness of the criticism it is certain to provoke. While ruling against the discrimination in this case, we may ourselves be accused of similar discrimination through the exercise of our ultimate power in our own favor. This is inevitable. Criticism of judicial conduct, however undeserved, is a fact of life in the political system that we are prepared to accept. As judges, we cannot even debate with our detractors. We can only decide the cases before us as the law imposes on us the duty to be fair

and our own conscience gives us the light to be right (emphasis ours).

This Court has also ruled on the constitutionality of taxing the income of the Supreme Court Justices.[17] The Court recognized that it was faced by a "vexing challenge" since the issue affected all the members of the Court, including those who were sitting there at that time. Yet it still decided the issue, reasoning that "adjudication may not be declined because (a) [we] are not legally disqualified; (b) jurisdiction may not be renounced." Also, this Court had the occasion to rule on the constitutionality of the presidential veto involving certain provisions of the General Appropriations Act of 1992 on the payment of adjusted pension of retired Supreme Court justices.[18]

Thus, vexing or not, as long as the issues involved are constitutional, the Court must resolve them for it to remain faithful to its role as the staunch champion and vanguard of the Constitution. At the center stage in the present petitions is the constitutionality of Rule V, Sections 16 and 17 of the Rules on Impeachment Proceedings of the House of Representatives and, by implication, the second impeachment complaint against Chief Justice Hilario G. Davide Jr. We have the legal and moral obligation to resolve these constitutional issues, regardless of who is involved. As pointed out by the eminent constitutionalist, Joaquin Bernas, S.J., jurisdiction is not mere power; it is a duty which, though vexatious, may not be renounced.

CONSTITUTIONALITY OF RULE V SECTIONS 16 and 17, AND THE SECOND IMPEACHMENT COMPLAINT/THE TIME-BAR ISSUE

Rule V, Section 16 of the Rules on Impeachment Proceedings of the House of Representatives reads:

In cases where a Member of the House files a verified complaint of impeachment or a citizen files a verified complaint that is endorsed against an impeachable officer, impeachment proceedings against such official are deemed initiated on the day the Committee on Justice finds that the verified complaint and/or resolution against such official, as the case may be, is sufficient in substance or on the date the House votes to overturn or affirm the finding of the said Committee that the verified complaint and/or resolution, as the case may be, is not sufficient in substance.

In cases where a verified complaint or a resolution of impeachment is filed or endorsed, as the case may be, by at least one-third (1/3) of the Members of the House, impeachment proceedings are deemed initiated at the time of the filing of such verified complaint or resolution of impeachment with the Secretary General.

Section 17 of the same impeachment rules provides:

Within a period of one (1) year from the date impeachment proceedings are deemed initiated as provided in Section 16 hereof, no impeachment proceedings, as such, can be initiated against the same official.

On the other hand, Article XI, Section 3(5) of the Constitution states:

No impeachment proceedings should be initiated against the same official more than once within a period of one year.

Simply stated, according to the rules of the House of Representatives, impeachment proceedings are deemed initiated if there is a finding by the House Committee on Justice that the verified complaint is sufficient in substance; or once the House itself affirms or overturns the finding of the Committee on Justice; or by the filing or endorsement before the Secretary General of the House of Representatives of a verified complaint or a resolution of impeachment by at least one-third of the Members of the House.

The aforesaid rules of impeachment of the House of Representatives proceed from its rule-making power on impeachment granted by the Constitution:

The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.[19]

The foregoing provision was provided for in the Constitution in the light of the exclusive power of the House of Representatives to initiate all cases of impeachment pursuant to Article XI, Section 3(1) of the said Constitution. But this exclusive power pertaining to the House of Representatives is subject to the limitations that no impeachment proceedings shall be initiated against the same official more than once within a period of one year under Section 3(5) of the same Article XI.

In the light of these provisions, were there two impeachment complaints[20] lodged against the Chief Justice within a period of one year? Considering the House of Representatives' own interpretation of Article XI, Section 3(5) of the Constitution and the diametrically opposite stand of petitioners thereon, it becomes imperative for us to interpret these constitutional provisions, even to the extent of declaring the legislative act as invalid if it contravenes the fundamental law.

Article XI, Section 3(5) is explicit that no impeachment proceedings shall be initiated against the same official more than once within a period of one year. The question is: when are impeachment proceedings deemed initiated?

In *Gold Greek Mining Corporation vs. Rodriguez*[21], the Court ruled that the intent of the framers of the organic law and the people adopting it is a basic premise. Intent is the vital part, the heart, the soul and essence of the law and the guiding star in the interpretation thereof.[22] What it says, according to the text of the provision to be construed, compels acceptance and negates the power of the Court to alter it, based on the postulate that the framers and the people mean what they say.[23]

The initial proposal in the 1986 Constitutional Commission read:

A vote of at least one-third of all the Members of the House shall be necessary either to initiate impeachment proceedings, or to affirm a resolution of impeachment proceedings, or to affirm a resolution of impeachment by the committee or override its contrary resolution. The vote of each Member shall be recorded.

However, Commissioner Regalado Maambong[24] proposed the amendment which is now the existing provision:

A vote of at least one-third of all the Members of the House shall be necessary either to affirm a resolution of the articles of impeachment of the committee or to override its contrary resolution. The vote of each member shall be recorded.

Notably, Commissioner Maambong's proposal eliminated the clause "[a vote of at least one-third of all the Members of the House shall be necessary either] to initiate impeachment proceedings." His point was that, pursuant to the rules and practice of the House of Representatives of the United States, impeachment is not "initiated" by the vote of the House but by the filing of the complaint. Commissioner Maambong's amendment and explanation were approved by the Constitutional Commission without objection. No clearer authority exists on the meaning and intention of the framers of the Constitution.

The issuance of an interpretative rule, embodied in Rule V, Section 16 of the Rules on Impeachment Proceedings of the House of Representatives, vis-à-vis a self-executing provision of the Constitution, has therefore no basis, at least with respect to the term "initiate." A careful reading of Article XI, Section 3(5) of the Constitution shows absolutely no necessity for an interpretative rule. The wording of the constitutional provision is so unequivocal and crystal-clear that it only calls for application and not interpretation.

I acknowledge that Article XI, Section 3(8) of the Constitution provides that the Congress shall promulgate its rules on impeachment. This is correct -- provided such rules do not violate the Constitution.

JUDICIAL REVIEW OF CONGRESS' POWER TO MAKE ITS RULES

Article XI, Section 3(1) of the Constitution provides:

The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

It is argued that because the Constitution uses the word "exclusive," such power of Congress is beyond the scope of judicial inquiry. Impeachment proceedings are supposedly matters particularly and undividedly assigned to a co-equal and coordinate branch of government.

It must be recalled, however, that the President of the Republic of the Philippines under Article VII, Section 18 of the Constitution has the sole and exclusive power to declare martial law. Yet such power is still subject to judicial review:

The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual bases of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision hereon within thirty days from its filing.

Furthermore, in *Bondoc vs. Pineda*, we assumed jurisdiction despite the fact that the electoral tribunal concerned was the "sole" judge of contests relating to elections, returns and qualifications of its members:

Since "a constitutional grant of authority is not usually unrestricted, limitations being provided for as to what may be done and how it is to be accomplished, necessarily then, it becomes the responsibility of the courts to ascertain whether the two coordinate branches have adhered to the mandate of the fundamental law. The question thus posed is judicial rather than political. The duty remains to assure that the supremacy of the Constitution is upheld." That duty is a part of the judicial power vested in the courts by an express grant under Section 1, Article VIII of the 1987 Constitution of the Philippines which defines judicial power as both authority and duty of the courts "to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentalities of the Government.

The power and duty of the courts to nullify, in appropriate cases, the actions of the executive and legislative branches of the Government does not mean that the courts are superior to the President and the Legislature. It does mean though that the judiciary may not shirk "the irksome task" of inquiring into the constitutionality and legality of legislative or executive action when a justiciable controversy is brought before the courts by someone who has been aggrieved or prejudiced by such person, as in this case. It is - "a plain exercise of the judicial power, that power vested in courts to enable them to administer justice according to the law x x x It is simply a necessary concomitant of the power to hear and dispose of a case or controversy properly before the court, to the determination of which must be brought the test and measure of the law.[25]

Thus, in the words of author Bernas, the words "exclusive" or "sole" in the Constitution should not be interpreted as "driving away the Supreme Court," that is, prohibiting it from exercising its power of judicial review when necessary.

The House of Representatives may thus have the "exclusive" power to initiate impeachment cases but it has no exclusive power to expand the scope and meaning of the law in contravention of the Constitution.

While this Court cannot substitute its judgment for that of the House of Representatives, it may look into the question of whether such exercise has been made with grave abuse of discretion. A showing that plenary power is granted either department of government may not be an obstacle to judicial inquiry for the improvident exercise or abuse thereof may give rise to a justiciable controversy.[26]

The judiciary is deemed by most legal scholars as the weakest of the three departments of government. It is its power of judicial review that restores the equilibrium. In other words, while the executive and the legislative departments may have been wittingly or unwittingly made more powerful than the judiciary, the latter has, however, been given the power to check or rein in the unauthorized exercise of power by the other two.

CONGRESS' IMPEACHMENT POWER AND POWER OF THE PURSE VIS-À-VIS THE POWERS OF THE COMMISSION ON AUDIT (COA) AND THE JUDICIARY'S FISCAL AUTONOMY

One of the issues against the Chief Justice in the second impeachment complaint is the wisdom and legality of the allocation and utilization of the Judiciary Development Fund (JDF). We take judicial notice of the deluge of public discussions on this matter.

The second impeachment complaint charges the Chief Justice with alleged unlawful underpayment of the cost of living allowances of members and personnel of the judiciary and the unlawful disbursement of the JDF for certain infrastructure projects and acquisition of motor vehicles.

The JDF was established by PD 1949 in 1984. As stated in its preliminary clause, it was enacted to maintain the independence of the judiciary, review and upgrade the economic conditions of the members and personnel thereof, preserve and enhance its independence at all times and safeguard the integrity of its members, and authorize it, in the discharge of its functions and duties, to generate its own funds and resources to help augment its budgetary requirements and ensure the uplift of its members and personnel.

It is of public record that, while the judiciary is one of the three co-equal branches of government, it has consistently received less than 1% of the total annual appropriation of the entire bureaucracy.

As authorized by PD 1949, the judiciary augments its budgetary requirements through the JDF, which is in turn derived from, among others, the marginal increases in legal fees since 1984.

Section 1 of PD 1949 imposes the following percentage limits on the use of the JDF:

"That at least eighty percent (80%) of the Fund shall be used for cost of living allowances, and not more than twenty percent (20%) of the said Fund shall be used for office equipment and facilities of the Courts located where the legal fees are collected; Provided, further, That said allowances of the members and personnel of the Judiciary shall be distributed in proportion of their basic salaries; and, Provided, finally, That bigger allowances may be granted to those receiving a basic salary of less than P1,000.00 a month.

Section 2 thereof grants to the Chief Justice the sole and exclusive power to authorize disbursements and expenditures of the JDF:

SECTION 2. The Chief Justice of the Supreme Court shall administer and allocate the Fund and shall have the sole exclusive power and duty to approve and authorize disbursements and expenditures of the Fund in accordance with the guidelines set in this Decree and its implementing rules and regulations. (Underscoring supplied).

Section 3 of the same law empowers the Commission on Audit (COA) to make a quarterly audit of the JDF:

SECTION 3. The amounts accruing to the Fund shall be deposited by the Chief Justice or his duly authorized representative in an authorized government depository bank or private bank owned or controlled by the Government, and the income or interest earned shall likewise form part of the Fund. The Commission on Audit through the Auditor of the Supreme Court or his duly authorized representative shall quarterly audit the receipts, revenues, uses, disbursements and expenditures of the Fund, and shall submit the appropriate report in writing to the Chairman of the Commission on Audit and to the Chief Justice of the Supreme Court, copy furnished the Presiding Appellate Justice of the Intermediate Appellate Court and all Executive Judges. (Underscoring supplied).

It is clear from PD 1949 that it is the COA, not Congress, that has the power to audit the disbursements of the JDF and determine if the same comply with the 80-20 ratio set by the law.

In the course of the House Committee on Justice's investigation on the first impeachment complaint, the COA submitted to the said body a copy of its audit report, together with pertinent supporting documents, that the JDF was used and allocated strictly in accordance with PD 1949.

Because some congressmen disagreed with the COA report clearing the Chief Justice of any illegality or irregularity in the use and disbursement of the JDF, a second impeachment complaint was filed charging him with alleged "misuse of the JDF." At this point, the question foremost in my mind is: what would be the basis of such charges if the COA itself already cleared the Chief Justice?

Aside from its statutory power under PD 1949 to audit the JDF, the COA alone has the constitutional power to audit and investigate all financial accounts of the government, including the JDF.

Article IX (D), Section 2 (1) and (2) of the Constitution empowers and obligates the COA as follows:

Sec. 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned and controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. Preserve the vouchers and other supporting papers pertaining thereto.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article to define the scope of its audit examination, establish the techniques and methods required therefore, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

Under the foregoing provisions, the COA alone has broad powers to examine and audit all forms of government revenues, examine and audit all forms of government expenditures, settle government accounts, define the scope

and techniques for its own auditing procedures, promulgate accounting and auditing rules "including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures," decide administrative cases involving expenditure of public funds, and to conduct post-audit authority over "constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution." The provision on post-audit recognizes that there are certain government institutions whose operations might be hampered by pre-audit requirements.

Admittedly, Congress is vested with the tremendous power of the purse, traditionally recognized in the constitutional provision that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law." [27] It comprehends both the power to generate money by taxation (the power to tax) and the power to spend it (the power to appropriate). The power to appropriate carries with it the power to specify the amount that may be spent and the purpose for which it may be spent. [28]

Congress' power of the purse, however, can neither traverse on nor diminish the constitutional power of the COA to audit government revenues and expenditures.

Notably, even the expenditures of Congress itself are subject to review by the COA under Article VI, Section 20 of the Constitution

Sec. 20. The records and books of accounts of the Congress shall be preserved and be open to the public in accordance with law, and such books shall be audited by the Commission on Audit which shall publish annually an itemized list of amounts paid to and expense incurred for each member. (Underscoring supplied).

The COA's exclusive and comprehensive audit power cannot be impaired even by legislation because of the constitutional provision that no law shall be passed exempting any entity of the government or its subsidiary or any investment of public funds from COA jurisdiction. [29]

Neither can Congress dictate on the audit procedures to be followed by the COA under Article IX (D), Section 2 (2).

In sum, after Congress exercises its power to raise revenues and appropriate funds, the power to determine whether the money has been spent for the purpose for which it is allocated now belongs to the COA. Stated otherwise, it is only through the COA that the people can verify whether their money has been properly spent or not. [30]

As it is a basic postulate that no one is above the law, Congress, despite its tremendous power of the purse, should respect and uphold the judiciary's fiscal autonomy and the COA's exclusive power to audit it under the Constitution.

Not only is Congress precluded from usurping the COA's power to audit the JDF, Congress is also bound to respect the wisdom of the judiciary in disbursing it. It is for this precise reason that, to strengthen the doctrine of separation of powers and judicial independence, Article VIII, Section 3 of the Constitution accords fiscal autonomy to the judiciary:

Sec. 3. The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

In *Bengzon vs. Drilon*, [31] we explained the constitutional concept of fiscal autonomy:

As envisioned in the Constitution, the fiscal autonomy enjoyed by the Judiciary,. . . contemplates a guarantee of full flexibility to allocate and utilize [its] resources with the wisdom and dispatch that [its] needs require. It

recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their function.

Fiscal autonomy means freedom from outside control. If the Supreme Court says it needs 100 typewriters but DBM rules we need only 10 typewriters and sends its recommendation to Congress without even informing us, the autonomy given by the Constitution becomes an empty and illusory platitude.

The Judiciary. . . must have the independence and flexibility needed in the discharge of [its] constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based. In the interest of comity and cooperation, the Supreme Court, Constitutional Commissions and the Ombudsman have so far limited their objections to constant reminders. We now agree with the petitioners that this grant of autonomy should cease to be a meaningless provision.

In the case at bar, the veto of these specific provisions in the General Appropriations Act is tantamount to dictating to the Judiciary how its funds should be utilized, which is clearly repugnant to fiscal autonomy. The freedom of the Chief Justice to make adjustments in the utilization of the funds appropriated for the expenditures of the judiciary, including the use of any savings from any particular item to cover deficits or shortages in other items of the judiciary is withheld. Pursuant to the Constitutional mandate, the judiciary must enjoy freedom in the disposition of the funds allocated to it in the appropriation law.

In essence, fiscal autonomy entails freedom from outside control and limitations, other than those provided by law. It is the freedom to allocate and utilize funds granted by law, in accordance with law and pursuant to the wisdom and dispatch its needs may require from time to time.

Wherefore, I vote to grant the petitions (1) for this Court to exercise its jurisdiction and power of judicial review immediately; (2) to declare Rule V, Sections 16 and 17 of the Rules on Impeachment Proceedings of the House of Representatives unconstitutional and (3) to declare the second impeachment complaint filed pursuant to such rules to be likewise unconstitutional.

[1] According to Section 2, Article XI of the 1987 Constitution, the impeachable officers are the President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions and the Ombudsman.

[2] Antonio Tupas and Edcel Tupas, *FUNDAMENTALS on Impeachment*, 2001 ed., Quezon City, p. 6 [2001].

[3] Joaquin Bernas, *Commentaries on the 1987 Constitution of the Philippines*, Quezon City, p. pp. 1109-1110 [2003].

[4] *Supra*, Note 2, p. 7.

[5] *Ibid.*, p. 12.

[6] *Supra*, Note 3, p. 1113.

[7] Cruz, *PHILIPPINE POLITICAL LAW*, 1996 ed., p. 12.

[8] *Angara vs. Electoral Commission*, 63 Phil. 139 [1936].

[9] *Evardone vs. Comelec*, 204 SCRA, 464 [1991].

[10] 201 SCRA 792 [1991].

[11] Coseteng vs. Mitra, 187 SCRA 377, 378 [1990].

[12] Valmonte vs. Belmonte, Jr., 170 SCRA 256 [1989].

[13] 1 Cranch 137 [1803].

[14] WILLIAM H. REHNQUIST, The Supreme Court, New York, p. 34 [2001], quoting Marbury vs. Madison.

[15] 208 SCRA 254 [1992], citing Endencia and Jugo vs. David, 93 Phil. 699.

[16] 227 SCRA 703 [1993].

[17] Perfecto vs. Meer, 85 Phil. 552 {1950}.

[18] Bengzon vs. Drilon, 208 SCRA 133 [1992].

[19] Article XI, Section 3, 1987 Philippine Constitution.

[20] Dated June 2, 2003 and October 23, 2003.

[21] 66 Phil. 259 [1938].

[22] 50 Am Jur. 200.

[23] Luz vs. Secretary of the Department of Agrarian Reform, 192 SCRA 51 [1990].

[24] now Justice of the Court of Appeals.

[25] Bondoc vs. Pineda, 201 SCRA 792 [1991].

[26] supra.

[27] Article VI, Section 29 (1), 1987 Constitution.

[28] Bernas, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, 722 [1996].

[29] Article IX, Section 3, 1987 Constitution.

[30] Bernas, THE 1987 PHILIPPINE CONSTITUTION A REVIEWER-PRIMER [2003], 455.

[31] 208 SCRA 133 [1992].

SEPARATE OPINION

CALLEJO, SR., J.:

I concur with modifications with the encompassing ponencia of Justice Conchita Carpio-Morales. However, I find it imperative to submit this separate opinion to set forth some postulates on some of the cogent issues.

Briefly, the factual antecedents are as follows:

On June 2, 2003, a verified impeachment complaint was filed with the Office of the Secretary General of the House of Representatives by former President Joseph E. Estrada against Chief Justice Hilario G. Davide, Jr. and seven (7) other associate justices of the Court for violation of the Constitution, betrayal of public trust and

committing high crimes. The complaint was referred to the Speaker of the House, who had the same included in the Order of Business. Thereafter, the complaint was referred to the Committee on Justice and Human Rights.

On October 13, 2003, the House Committee on Justice included the first impeachment complaint in its order of business. The Committee voted that the complaint was sufficient in form. However, on October 22, 2003, the said House Committee dismissed the first impeachment complaint for insufficiency of substance. The same Committee has not yet transmitted its report to the plenary.

The following day, or on October 23, 2003, a verified impeachment complaint was filed with the Office of the Secretary General of the House by the complainants, Representatives Gilberto C. Teodoro, First District, Tarlac, and Felix William D. Fuentebella, Third District, Camarines Sur, against Chief Justice Hilario G. Davide, Jr., for graft and corruption, betrayal of public trust, culpable violation of the Constitution and failure to maintain good behavior while in office. Attached to the second impeachment complaint was a Resolution of Endorsement/Impeachment signed by at least one-third (1/3) of all the members of the House of Representatives.

On October 24, 2003, the Majority and Minority Leaders of the House of Representatives transmitted to the Executive Director, Plenary Affairs Division of the House of Representatives, the aforesaid Verified Impeachment Complaint and Resolution of Endorsement for its inclusion in the Order of Business, and for the endorsement of the House to the Senate within three days from its inclusion pursuant to Section 15, Rule IV of the 2001 Rules of Procedure on Impeachment Proceedings. The Impeachment Complaint and Resolution of Endorsement were included in the business of the House of Representatives at 2:00 p.m. of October 28, 2003. However, the matter of the transmittal of the Complaint of Impeachment was not resolved because the session was adjourned, to resume at 4:00 p.m. on November 10, 2003.

On October 27, 2003, Ernesto B. Francisco, Jr. filed his petition for certiorari and prohibition for the nullification of the October 23, 2003 Impeachment Complaint with a plea for injunctive relief. The Integrated Bar of the Philippines filed a similar petition for the nullification of Sections 16 and 17 of Rule V of the 2001 House Rules of Procedure in Impeachment Proceedings. The petitioners Congressmen in G.R. No. 160295 also manifested to the Court and prayed during the hearing on November 6, 2003 that Rule V of the 2001 Rules of Procedure on Impeachment Proceedings be declared unconstitutional. Similar petitions were also filed with the Court by other parties against the same Respondents with the Court.

In their Manifestation, Respondents Speaker of the House, et al., urged the Court to dismiss the petitions on the ground that the Court has no jurisdiction over the subject matter of the petition and the issues raised therein. They assert that the Court cannot prohibit or enjoin the House of Representatives, an independent and co-equal branch of the government, from performing its constitutionally mandated duty to initiate impeachment cases. They submit that the impeachment proceedings in the House is "nonjusticiable," falling within the category of "political questions," and, therefore, beyond the reach of this Court to rule upon. They counter that the October 23, 2003 Complaint was the first complaint for Impeachment filed against Chief Justice Hilario G. Davide, Jr., the complaint for Impeachment filed by former President Joseph Ejercito Estrada having been deemed uninitiated. In its Manifestation to the Court, the respondent Senate of the Philippines asserts that: (a) the petitions are premature because the Articles of Impeachment have yet to be transmitted to the Senate by the House of Representatives; and (b) the issues raised in the petition pertain exclusively to the proceedings in the House of Representatives.

In his Comment on the petitions, Respondent-Intervenor Senator Aquilino Q. Pimentel, Jr. contends that the Court has no jurisdiction to resolve the legality of the October 23, 2003 Complaint/Articles of Impeachment, as the said issue involves a political question, the resolution of which is beyond the jurisdiction of the Court. It is the Senate, sitting as an Impeachment Court, that is competent to resolve the issue of whether the Complaint of Impeachment

filed on October 23, 2003 was filed within the one year time- bar. The Senate, sitting as an impeachment tribunal as sole power to try and decide an impeachment case, is according to the Senator, beyond the reach of the Court to decide.

The threshold issues raised by the parties may be synthesized, thus: (a) whether the Petitioners have locus standi; (b) whether the Court has jurisdiction over the subject matter of the petitions and of the issues; (c) if in the affirmative, whether the petitions are premature; (d) whether judicial restraint should be exercised by the Court; (e) whether Sections 16 and 17 of Rule V of the House Rules of Procedure in Impeachment Cases are unconstitutional; and (f) whether the October 23, 2003 Complaint of Impeachment against the Chief Justice is time-barred.

On the Issue of Locus Standi of the Petitioners

I am in full accord with the ratiocinations of the ponente.

The Court Has Jurisdiction over The Respondents and the Subject Matter of the Petitions

In their Special Appearance and/or Manifestation, Respondents Speaker Jose de Venecia, et al. assert that the Court has no jurisdiction over the subject matter of the petitions and that it has no jurisdiction to bar, enjoin and prohibit the Respondent House of Representatives at any time from performing its constitutional mandate to initiate impeachment cases and to enjoin the Senate from trying the same. The Respondents contend that under Section 3(1), Article VI of the Constitution, the House of Representatives shall have the exclusive power to initiate all cases of impeachment. For his part, the Respondent Intervenor Senator Aquilino Q. Pimentel, Jr. avers that under Section 6, Article XI of the Constitution, the Senate shall have the sole power to try and decide all cases of impeachment and the Court is bereft of jurisdiction to interfere in the trial and decision of the complaint against the Chief Justice. The Respondents cite the ruling of the United States Supreme Court in *Walter Nixon v. United States*. [2] The Respondent Speaker Jose de Venecia, et al., also cited the Commentary of Michael Gerhart on the said ruling of the United States Supreme Court that even in a case involving a violation of explicit constitutional restraint, judicia intervention would undermine impeachment effectiveness as a check on the executive, and would constitute judicial abuse of power; and that the judicial involvement in impeachment proceedings even if only for purposes of judicial review is counterintuitive because it would eviscerate the important constitutional check placed on the judiciary by the Framers. It is also contended that opening the door of judicial review to the procedures used by the Senate in trying impeachments would expose the political life of the country to months, or perhaps years of chaos. Furthermore, it is averred that judicial review of the Senate's trial would introduce the same risks of bias as would participation in the trial itself.

I find the contentions of the Respondents to be without merit.

By the jurisdiction of the Court over the subject matter is meant the nature of the cause of action and of the relief sought. This is conferred by the sovereign authority which organizes the court, and is to be sought for in the general nature of its powers, or in authority specially conferred.[3] It is axiomatic that jurisdiction is conferred by the Constitution and by the laws in force at the time of the commencement of the action.[4]

In the petitions at bar, as can be gleaned from the averments therein, the petitioners sought the issuance of the writs of certiorari, prohibition and injunction against the Respondents, on their claim that the Respondent House of Representatives violated Section 3(5), Article XI of the Constitution when it approved and promulgated on

November 28, 2001 Sections 16 and 17, Rule V of the 2001 House Rules of Procedure in Impeachment Proceedings.

The Petitioners also averred in their petitions that the initiation by the Respondents Congressmen Gilbert C. Teodoro and Felix William D. Fuentebella of the impeachment case against Chief Justice Hilario G. Davide, Jr. on October 23, 2003 via a complaint for impeachment filed is barred by the one-year time line under Section 3(5), Article XI of the Constitution.

They further assert that the Respondent House of Representatives committed a grave abuse of its discretion amounting to lack or excess of jurisdiction in giving due course to the October 23, 2003 Complaint of Impeachment and in insisting on transmitting the same to the Respondent Senate.

Under Section 1, Article VIII of the Constitution, "judicial power is vested in the Supreme Court and in such lower courts as may be established by law. The judicial power of the Court includes the power to settle controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." In *Estrada v. Desierto*,^[5] this Court held that with the new provision in the Constitution, courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. The Constitution is the supreme law on all governmental agencies, including the House of Representatives and the Senate.

Under Section 4(2), Article VIII of the Constitution, the Supreme Court is vested with jurisdiction over cases involving the constitutionality, application and operation of government rules and regulations, including the constitutionality, application and operation of rules of the House of Representatives, as well as the Senate.^[6] It is competent and proper for the Court to consider whether the proceedings in Congress are in conformity with the Constitution and the law because living under the Constitution, no branch or department of the government is supreme; and it is the duty of the judiciary to determine cases regularly brought before them, whether the powers of any branch of the government and even those of the legislative enactment of laws and rules have been exercised in conformity with the Constitution; and if they have not, to treat their acts as null and void.^[7] Under Section 5, Article VIII of the Constitution, the Court has exclusive jurisdiction over petitions for certiorari and prohibition. The House of Representatives may have the sole power to initiate impeachment cases, and the Senate the sole power to try and decide the said cases, but the exercise of such powers must be in conformity with and not in derogation of the Constitution.

The Respondents cannot find refuge in the ruling of the United States Supreme Court in *Walter Nixon v. United States*^[8] because the United States Constitution does not contain any provision akin to that in Paragraph 1, Article VIII of the Constitution. The Nixon case involved the issue of whether Senate Rule XI violated Impeachment Trial Clause Articles 1, 3, cl. 6, which provides that the Senate shall have the power to try all impeachment cases. The subject matter in the instant petitions involve the constitutionality of Sections 16 and 17, Rule V of the 2001 House Rules of Procedures in Impeachment Proceedings and the issue of whether the October 23, 2003 Complaint of Impeachment is time-barred under Section 3(5), Article XI of the Constitution. Besides, unlike in the instant petitions, the U.S. Supreme Court ruled in Nixon that "there is no separate provision of the Constitution that could be defeated by allowing the Senate final authority to determine the meaning of the word 'try' in the Impeachment Trial Clause." The Court went on to emphasize that:

We agree with Nixon that [506 U.S. 224, 238] courts possess power to review either legislative or executive action that transgresses identifiable textual limits. As we have made clear, "whether the action of [either the Legislative or Executive Branch] exceeds whatever authority has been committed is itself a delicate exercise in

constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution.

The Court has jurisdiction
over the issues

The issue of whether or not this Court has jurisdiction over the issues has reference to the question of whether the issues are justiciable, more specifically whether the issues involve political questions. The resolution of the issues involves the construction of the word "initiate." This, in turn, involves an interpretation of Section 3(5), Article XI of the Constitution, in relation to Sections 3(1) and 3(2) thereof, which read:

Sec. 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

The construction of the word "initiate" is determinative of the resolution of the issues of whether Sections 16 and 17, Rule V of the 2001 House Rules of Procedure in Impeachment Proceedings violated Section 3(5), Article XI of the Constitution or not; and whether the October 23, 2003 Complaint of Impeachment is a violation of the proscription in Section 3(5), Article XI of the Constitution against impeachment proceedings being initiated against the same Respondent more than once within a period of one year. The issue as to the construction of Rule V of the 2001 House Rules of Procedure affects a person other than the Members of the House of Representatives, namely, Chief Justice Hilario G. Davide, Jr. These questions are of necessity within the jurisdiction of the Court to resolve. As Justice Brandeis said in *United States v. George Otis Smith*,^[9] as to the construction to be given to the rules affecting persons other than members of the Senate, the question presented is of necessity a judicial one. In *Santiago v. Sandiganbayan*,^[10] this Court held that it is an impairment or a clear disregard of a specific constitutional precept or provision that can unbolt the steel door for judicial intervention. In *Integrated Bar of the Philippines v. Zamora*,^[11] this Court held that when the grant of power is qualified, conditional or are subject to limitations, the issue of whether the proscribed limitations have been met or the limitations respected, is justiciable - the problem being one of legality or validity, not its wisdom. Moreover, the jurisdiction to determine constitutional boundaries has been given to this Court. Even in *Nixon v. United States*,^[12] the Supreme Court of the United States held that whether the action of the Legislative exceeds whatever authority has been committed is itself a delicate exercise in constitutional interpretation, and is the responsibility of the Supreme Court as the ultimate interpreter of the Constitution.

On the prematurity of the petition and
the need for Judicial Restraint.

There is no doubt that the petitions at bar were seasonably filed against the respondents Speaker Jose de Venecia and his co-respondents. In *Aquilino Pimentel Jr. v. Aguirre*,^[13] this Court ruled that upon the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty. In this case, the respondents had approved and implemented Sections 16 and 17, Rule V of the 2001 of the Rules of Procedure, etc. and had taken cognizance of and acted on the October 23, 2003 complaint of impeachment; the respondents are bent on transmitting the same to the respondent Senate. Inscrutably, therefore, the petitions at bar were seasonably filed against said respondents. However, I agree with the respondent Senate that the petitions were premature, the issues before the Court being those that relate solely to the proceedings in the House of Representatives before the complaint of impeachment is transmitted by the House of Representatives to the Senate.

On the issue of judicial self-restraint, *Amici Curiae* Dean Raul Pangalangan and Dean Pacifico Agabin presented two variant aspects: Dean Raul Pangalangan suggests that the Court orders a suspension of the proceedings in this Court and allow the complainants to withdraw their complaints and the House of Representatives to rectify Rule V of the 2001 House Rules of Procedure. Dean Pacifico Agabin suggests that the Court deny due course and dismiss the petitions to enable the Senate to resolve the issues in the instant cases. Their proposals prescind from the duty of the Court under Section 1, Article VIII of the Constitution to resolve the issues in these cases. The suggestions of the *amici curiae* relate to the principles of exhaustion of administrative remedies and the doctrine of primary jurisdiction.

I find the suggestions of the *amici curiae* unacceptable.

First. The complainants and the endorers of their complaint and even the House of Representatives through the Respondent Speaker Jose de Venecia are bent on transmitting the impeachment complaint to the Senate without delay.

Second. The courts should take cognizance of and resolve an action involving issues within the competence of a tribunal of special competence without the need of the latter having to resolve such issue where, as in this case, Respondent Speaker Jose de Venecia and his co-respondents acted with grave abuse of discretion, arbitrariness and capriciousness is manifest.^[14]

Third. The issue of whether or not the October 23, 2003 complaint of impeachment is time-barred is not the only issue raised in the petitions at bar. As important, if not more important than the said issue, is the constitutionality of Sections 16 and 17, Rule V of the 2001 House Rules of Procedure. In fact, the resolution of the question of whether or not the October 23, 2003 complaint for impeachment is time-barred is anchored on and is inextricably interrelated to the resolution of this issue. Furthermore, the construction by the Court of the word "initiate" in Sections 3(1) and (5) in relation to Section 3(3), Article XI of the Constitution is decisive of both issues.

Fourth. The Senate has no jurisdiction to resolve the issue of the constitutionality of Sections 16 and 17, Rule V of the 2001 House Rules of Procedure, in the same manner that the House of Representatives has no jurisdiction to rule on the constitutionality of the Impeachment Rules of the Senate. The Senate and the House of Representatives are co-equal. I share the view of Justice Isagani Cruz in his concurring opinion in *Fernandez v. Torres*^[15] that an unconstitutional measure should be slain on sight. An illegal act should not be reprieved by procedural impediments to delay its inevitable annulment. If the Court resolves the constitutionality of Rule V of the 2001 Rules of Procedure, and leaves the issue of whether the October 23, 2003 Complaint of Impeachment to be resolved by the Senate, this will promote multiplicity of suits and may give rise to the possibility that the Court and the Senate would reach conflicting decisions. Besides, in *Daza v. Singson*^[16] this Court held that the

transcendental importance to the public, strong reasons of public policy, as well as the character of the situation that confronts the nation and polarizes the people are exceptional circumstances demanding the prompt and definite resolution of the issues raised before the Court.

Fifth. The doctrine of primary jurisdiction comes into play in the Senate only upon the transmittal of the impeachment complaint to it.

Sixth. The resolution of whether the October 23, 2003 Complaint of Impeachment is time-barred does not require the application of a special skill or technical expertise on the part of the Senate.

Sections 16 and 17, Rule V of the
2001 Rules of Procedure, etc.
is unconstitutional

The October 23, 2003 Complaint
of impeachment is time-barred

The petitioners contend that Sections 16 and 17, Rule V of the 2001 House Rules of Procedure construing Section 3(5), Article XI is unconstitutional. Respondent Speaker Jose G. de Venecia and his co-respondents contend that the June 2, 2003 Complaint for Impeachment filed by former President Joseph E. Estrada against Chief Justice Hilario Davide, Jr., and seven other Justices of the Supreme Court "did not reach first base and was never initiated by the House of Representatives, and, in fact, the committee report has yet to be filed and acted upon by the House of Representatives." The respondents further assert that the only complaint for impeachment officially initiated by the House of Representatives is the October 23, 2003 Complaint filed by Congressmen Gilberto Teodoro and Felix William Fuentebella. The respondents finally contend that their interpretation of Rule V of the 2001 Rules of Procedure in relation to Sections 3(4) and 3(5), Article XI of the Constitution is the only rational and reasonable interpretation that can be given, otherwise, the extraordinary remedy of impeachment will never be effectively carried out because impeachable officials can conveniently allow or manipulate the filing of bogus complaints against them every year to foreclose this remedy. The respondents cite the commentary of Fr. Joaquin Bernas, one of the amici curiae of the Court in his book, "The 1987 Constitution of the Republic of the Philippines, A Commentary, 1996 ed., p. 1989."

The submissions of the respondents do not hold water.

Section 3, Article XI of the Constitution reads:

SECTION 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith

proceed.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

(7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment according to law.

(8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.

There are two separate and distinct proceedings undertaken in impeachment cases. The first is that undertaken in the House of Representatives, which by express provision of the Constitution, is given the authority to determine the sufficiency in form and substance of the complaint for impeachment, the existence of probable cause, and to initiate the articles of impeachment in the Senate. The second is the trial undertaken in the Senate. The authority to initiate an impeachment case is lodged solely in the House of Representatives, while the authority to try and decide an impeachment case is lodged solely in the Senate. The two proceedings are independent of and separate from the other. This split authority avoids the inconvenience of making the same persons both accusers and judges; and guards against the danger of persecution from the prevelancy of a factious spirit in either of those branches.[17]

It must be noted that the word "initiate" is twice used in Section 3; first in paragraph 1, and again in paragraph 5. The verb "initiate" in paragraph 1 is followed by the phrase "all cases of impeachment," while the word "initiated" in paragraph 5 of the Section is preceded by the words "no impeachment proceedings shall be." On the other hand, the word "file" or "filed" is used in paragraphs 2 and 4 of Section 3.

There is a clear distinction between the words "file" and the word "initiate." Under the Rules of Civil Procedure, complaints are filed when the same are delivered into the custody of the clerk of court or the judge either by personal delivery or registered mail and the payment of the docket and other fees therefor. In criminal cases, the information or criminal complaint is considered filed when it is delivered with the court whether for purposes of preliminary investigation or for trial as the case may be.

Distinction must be made between the phrase "the case" in Section 3(1) from the word "proceedings" in Section 3(5). "The case" refers to an action commenced or initiated in the Senate by the transmittal of the articles of impeachment or the complaint of impeachment by the House of Representatives for trial. The word "proceeding" means "the regular and orderly progression of a lawsuit including all acts and events between the time of commencement and the entry of judgment; an act or step that is part of a larger action; an act done by the authority or direction of the court, express or implied; it is more comprehensive than the word "action" but it may include in its general sense all the steps taken or measures adopted in the prosecution or defense of an action including the pleadings and judgment. [18] The word "initiate" means "to begin with or get going; make a beginning; perform or facilitate the first action." [19]

Based on the foregoing definitions, the phrase "initiate all cases of impeachment" in Section 3(1) refers to the commencement of impeachment cases by the House of Representatives through the transmittal of the complaint for impeachment or articles of impeachment to the Senate for trial and decision. The word "initiated" in Section 3(5), on the other hand, refers to the filing of the complaint for impeachment with the office of the Secretary

General of the House of Representatives, either by a verified complaint by any member of the House of Representatives or by any citizen upon a resolution of endorsement by any member thereof, and referred to the committee of justice and human rights for action, or by the filing of a verified complaint or resolution of impeachment by at least one-third of all members of the House, which complaint shall constitute the Article of Impeachment. This is the equivalent of a complaint in civil procedure or criminal complaint or information in criminal procedure.

According to amicus curiae Fr. Joaquin Bernas, the referral by the House of Representatives is the initiating step which triggers the series of steps that follow in the House of Representatives. The submission of Fr. Joaquin Bernas is shared by amicus curiae Justice Florenz D. Regalado, who, aside from being an eminent authority on Remedial Law, was also a member of the Constitutional Commission. During the hearing of this petition on November 5, 2003, he stated:

RET. JUSTICE REGALADO:

The point of filing does not mean that physical act of filing. If the petition/complaint is filed and no further action was taken on it then it dies a natural death. When we say initiation of impeachment proceedings where in the Court or the House of Representatives has taken judicial cognizance by the referral to the corresponding committees should be understood as part of the filing and that is why it was then. The problem here arose in that based on the wordings of Article 11, this House of Representatives is, promulgated pursuant to the power granted to them, the rules, Rule 2, Sections 2 and 3, on December 15, 1998 following the wording of the Constitution. But then, on November 28, 2001 they promulgated Rule 5, Section 16 and 17, this time requiring the vote of 1/3 for the purpose of initiating the proceeding obviously possibly of the fact that the Constitution as worded and amended by the Maambong suggestion or advice was that it was it is initiated from the moment of filing. The reason given and the justification given for that change was that it would enable the, somebody in collusion with the one who is going to be impeached to file what they call, what one petitioner calls here a "bogus" complaint for impeachment and thereby give the party there in effect immunity for one year from the filing of an impeachment case, which is meritorious. Now, number 1, I do not agree with that explanation because that is against the Constitution. Strictly against the Constitution, that was a grave abuse of discretion to change it. And further more, Second, that so- called problem about somebody coming in to file a "bogus" impeachment complaint just to save the respondent for one year from another complaint is not beyond solution. The mere fact that a "bogus" or insufficient or meritorious complaint was deliberately resorted to in order to illegally avail of the one year period is the filing of a sham pleading which has not produce any effect even in the Rules of Court we have proceedings, we have provisions about sham pleadings, and for that matter the Court can even *motu proprio* dismiss that initiatory pleading and here the House of Representatives I am sure could also dismiss a sham bogus or sham complaint for impeachment. Now, on the matter of a problem therein because the rules must always comply with the Constitution and it must be subject to Constitutional sufficiency. The political, the question of the sole power of the Senate to try and decide, will lie as obvious the matter of prematurity. Well, as I said this is not premature, although I understand that Senate President Drilon pointed out that it was premature to sent him a copy or resolution inviting them to observe to avoid any act which would render academic wherein in the first place we are only on the first stage here. This Court has not yet acquired jurisdiction to try the case on the merits, precisely the Court stated that the petition are not yet being given due course, so they might, but at any rate, it is not premature. ... the inevitable result is not if the complaint with the votes are submitted to the Senate, the Senate has no other recourse but to actually try the case.[20]

The Rules of Procedure adverted to by the Justice Florenz D. Regalado is Sections 16 and 17, Rule V which reads:

Sec. 16. Impeachment Proceedings Deemed Initiated.-- In cases where a Member of the House files a verified complaint of impeachment or a citizen files a verified complaint that is endorsed by a Member of the House

through a resolution or endorsement against an impeachable officer, impeachment proceedings against such official are deemed initiated on the day the Committee on Justice finds that the verified complaint and/or resolution against such official, as the case may be, is sufficient in substance or on the date the house votes to overturn or affirm the finding of the said committee that the verified complaint and/or resolution, as the case may be, is not sufficient in substance.

In cases where a verified complaint or a resolution of impeachment is filed or endorsed, as the case may be, by at least one-third (1/3) of the Members of the House, impeachment proceedings are deemed initiated at the time of the filing of such verified complaint or resolution of impeachment with the Secretary General.

Sec. 17. Bar Against Initiation of Impeachment Proceedings.-- Within a period of one (1) year from the date of impeachment proceedings are deemed initiated as provided in Section 16 hereof, no impeachment proceedings, as such, can be initiated against the same official.

The House of Representatives distorted and ignored the plain words of Section 3(1), Article XI of the Constitution when it provided in Section 16, Rule V that a complaint of impeachment is "deemed initiated" in the House of Representatives "on the day the committee of justice finds that the said verified complaint and/or resolution against such official, as the case may be, is sufficient in substance or on the date the House votes to overturn or affirm the finding of the said committee that the verified complaint and/or resolution, as the case may be, is not sufficient in substance." Consequently, it also distorted the computation of the one year period time bar under Section 3(5), Article XI of the Constitution to begin only "on the day this committee on justice finds that the verified complaint and/or resolution against such official is sufficient in substance or on the date the house votes to overturn or affirm the finding of the said committee that the verified complaint and/or resolution, as the case may be, is not sufficient in substance." Since Rule V of the 2001 Rules of Procedure is contrary to the Constitution, the said rule is void. Resultantly, the complaint for impeachment against seven Justices of this Court filed by former President Joseph Ejercito Estrada with the office of the Secretary General of the House of Representatives was initiated within the context of Section 3(5), Article XI of the Constitution. The complaint was filed on June 2, 2003 and referred to the House Committee on Justice and Human Rights shortly thereafter. However, Congressmen Gilberto Teodoro and Felix William Fuentebella initiated impeachment proceedings against Chief Justice Hilario G. Davide, Jr., with the Resolution of Endorsement of the Complaint for Impeachment by more than one-third of the members of the House of Representatives on October 23, 2003 well within one year from the initiation of the June 2, 2003 of former President Joseph E. Estrada. Irrefragably then, the October 23, 2003 complaint for impeachment filed by Congressmen Gilberto C. Teodoro, Jr. and Felix William D. Fuentebella is a second complaint for impeachment, which, under Section 3(5), Article XI of the Constitution, is proscribed.

IN THE LIGHT OF ALL THE FOREGOING, I vote to DENY DUE COURSE and to DISMISS all the petitions against the respondent Senate of the Philippines; and to DENY DUE COURSE and DISMISS the petition in G.R. No. 160397; and to give due course and grant the rest of the petitions against the respondent Speaker Jose G. de Venecia and his co-respondents.

Accordingly, Rule V of the 2001 House Rules of Procedure in Impeachment Proceedings which was approved by the respondent House of Representatives on November 28, 2001 is UNCONSTITUTIONAL. The complaint of impeachment filed by the respondents Representatives Gilberto C. Teodoro, Jr. and Felix William G. Fuentebella on October 22, 2003 is barred under Article XI, Section 3(5) of the Constitution.

[1] Aside from this petition, several other petitions were filed against the same respondents docketed as G.R. No. 160262, G.R. No. 160263, G.R. No. 160277, G.R. No. 160292, G.R. No. 160295, G.R. No. 160310, G.R. No.

160318, G.R. No. 160342, G.R. No. 160343, G.R. No. 160360, G.R. No. 160365, G.R. No. 160370, G.R. No. 160376, G.R. No. 160392, G.R. No. 160397, G.R. No. 160403 and G.R. No. 160405.

[2] 506 U.S. 224 (1993).

[3] *Idonah Slade Perkins v. Mamerto Roxas, et al.*, 72 Phil. 514 (1941).

[4] *Vesagas v. Court of Appeals, et al.*, 371 SCRA 508 (2001).

[5] 353 SCRA 452 (2001).

[6] *Santiago v. Guingona, Jr.*, 298 SCRA 756 (1998); *Pacete v. The Secretary of Commission on Appointments*, 40 SCRA 67 (1971).

[7] *Prowell v. McCormuck*, 23 L.ed.2d. 491.

[8] *Supra*.

[9] 286 U.S. 6 (1932).

[10] 356 SCRA 636 (2001).

[11] 338 SCRA 81.

[12] *Supra*.

[13] 281 SCRA 330, (1997), citing *Tanada v. Angara*, 272 SCRA 18 (1997).

[14] *Mapa v. Arroyo*, 175 SCRA 76 (1989).

[15] 215 SCRA 489 (1992).

[16] 180 SCRA 496 (1989).

[17] *Walter Nixon v. United States*, 506 U.S. 224 (1993).

[18] *Black's Law Dictionary*, 7th ed., p. 1221.

[19] *Webster's Third New International Dictionary*.

[20] T.S.N., pp. 24-28 (Regalado). Underscoring supplied.

SEPARATE OPINION

AZCUNA, J.:

On June 2, 2003 a complaint for impeachment was filed in the House of Representatives against Chief Justice Hilario G. Davide, Jr. and seven Associate Justices of the Supreme Court. Filed by former President Joseph E. Estrada, the complaint accused the respondents of conspiring to remove him from power in violation of the Constitution.

After referral to the Committee on Justice, and after several hearings thereon, the Committee voted that the complaint was sufficient in form. Subsequently, however, on October 22, 2003, said Committee voted to dismiss

the complaint for being insufficient in substance.

The next day, on October 23, 2003, another complaint for impeachment was filed in the House of Representatives, this time only against Chief Justice Hilario G. Davide, Jr.. It was filed by two Members of the House, namely, Representative Felix William D. Fuentebella and Representative Gilberto C. Teodoro, Jr., and charged the respondent with violating the law on the use of the Judiciary Development Fund (JDF).

Subsequently, and before the complaint could be referred to the Committee on Justice, more than seventy three other Representatives signed "resolutions of endorsement/impeachment," in relation to said complaint.

As the total number of those who filed and those who signed the "resolutions of endorsement/impeachment" reached at least one-third of the members of the House, the complainants and their supporters were poised to move for the transmittal of the complaint, as constituting the Articles of Impeachment, to the Senate.

At this point, six of the petitions, which now total seventeen, seeking to declare the second complaint unconstitutional were filed with this Court. The petitioners include two Members of the House of Representatives (Representative Salacnib F. Bateria and Deputy Speaker Raul M. Gonzales), later joined by six other Members thereof. The Integrated Bar of the Philippines also filed a petition, while the others were Former Solicitor General Francisco I. Chavez, other prominent lawyers, civic, labor and public- interest organizations, private individuals and plain taxpayers.

On October 28, 2003, the House of Representatives adjourned its session until November 10, 2003, for lack of quorum, which left the proponents of the impeachment unable to move to transmit their complaint to the Senate. Also, on that date, this Court, acting on the petitions, without granting the same due course, issued a status quo resolution.

The Senate President, the Honorable Franklin M. Drilon, on behalf of the Senate, filed a Manifestation stating that the matter of the impeachment is not yet with the Senate as it has not received the complaint or Articles of Impeachment from the House.

The House of Representatives, through the Speaker, the Honorable Jose de Venecia, Jr., as well as the other Members of the House who support the complaint of impeachment, for their part, through the legal counsel of the House, filed a Manifestation essentially questioning the jurisdiction of the Court on the ground that the matter involves a political question that is, under the Constitution, the sole prerogative of the House.

Senator Aquilino Q. Pimentel, Jr. was allowed to intervene and filed a Manifestation stating that the Court has no jurisdiction over the matter, as it is a political question that is addressed solely and exclusively to the Senate and the House of Representatives, and thus not justiciable.

The Solicitor General filed a Manifestation taking the position that the Court has jurisdiction, that the matter is justiciable, and that the filing of the second impeachment complaint subject of the petition is in violation of the Constitution.

On November 5 and 6, 2003, the Court en banc heard the eight amici curiae, as well as the representatives and counsel of the parties. The Speaker and the House of Representatives and proponent- Members thereof, made no appearance at said hearing.

First, the preliminary or threshold issues, locus standi, justiciability, jurisdiction, ripeness and propriety.

There can be no serious challenge as to petitioners' locus standi. Eight are Members of the House of Representatives, with direct interest in the integrity of its proceedings. Furthermore, petitioners as taxpayers have sufficient standing, in view of the transcendental importance of the issue at hand. It goes beyond the fate of Chief

Justice Davide, as it shakes the very foundations of our system of government and poses a question as to our survival as a democratic polity.

There is, moreover, an actual controversy involving rights that are legally demandable, thereby leaving no doubt as to the justiciability of the petitions.

As to the jurisdiction of this Court, and whether the issue presents a political question that may not be delved into by the Court, it is necessary to look into the structure and essence of our system of government under the Constitution.

The starting principle is that the Philippines is a democratic and republican State and that sovereignty resides in the people and all governed authority emanates from them (Art. II, Sec. 1).

As a republican State, the sovereign powers of the people are for the most part exercised through representatives and not directly, except in the cases of suffrage, referenda and initiatives.

Furthermore, the form of government we chose is that of a tripartite Presidential system, whereby the great powers of government are divided among three separate, co-equal and co-ordinate Departments. Accordingly, Articles VI, VII and VIII of the Constitution provide for the Legislative Department, the Executive Department and the Judicial Department, with the corresponding powers to make, to enforce and to interpret the laws.

The idea is to prevent absolutism that arises from a monopoly of power. Abuse is to be prevented by dividing power, and providing for a system of checks and balances.

Historically, one such method of checks and balances is the institution of impeachment, or the procedure of removing high officials on grounds spelled out in the Constitution. It was designed as a check by the Legislative Department on the Executive and Judicial Departments.

It is worth noting, however, that the Constitution places the provision on impeachment, not in Articles VI, VII and VIII on governmental powers, but in Article XI on Accountability of Public Officers.

This placement is clearly intentional and meant to signal the importance of the accountability of public officers, and that impeachment is an instrument of enforcing or securing that accountability, and not simply a method of checks and balances by one power over another.

Now, how does Article XI provide for this power of impeachment?

Again, it divides the power - the first part, or the power to "initiate," is given exclusively to the House of Representatives. The second part, the power to try and decide, is given solely to the Senate.

The provisions in full are, as follows:

Article XI

Accountability of Public Officers

x x x x x x x x

Section 3 (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together within the corresponding resolution. The resolution shall

be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

(7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial and punishment according to law.

(8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.

It is clear, therefore, that unlike the Constitutions of other countries, that of the Philippines, our Constitution, has opted textually to commit the sole power and the exclusive power to this and to that Department or branch of government, but in doing so it has further provided specific procedures and equally textually identifiable limits to the exercise of those powers. Thus, the filing of the complaint for impeachment is provided for in detail as to who may file and as to what shall be done to the complaint after it is filed, the referral to the proper Committee, its hearing, its voting, its report to the House, and the action of the House thereon, and the timeframes for every step (Subsection 2).

Similarly, the required number of votes to affirm or override a favorable or contrary resolution is stated (Subsection 3).

So, also, what is needed for a complaint or resolution of impeachment to constitute the Articles of Impeachment, so that trial by the Senate shall forthwith proceed, is specifically laid down, i.e., a verified complaint or resolution of impeachment filed by at least one-third of all the Members of the House (Subsection 4).

It is my view that when the Constitution not only gives or allocates the power to one Department or branch of government, be it solely or exclusively, but also, at the same time, or together with the grant or allocation, specifically provides certain limits to its exercise, then this Court, belonging to the Department called upon under the Constitution to interpret its provisions, has the jurisdiction to do so.

And, in fact, this jurisdiction of the Court is not so much a power as a duty, as clearly set forth in Article VIII, Section 1 of the Constitution:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes THE DUTY of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the

Government. (Stress ours)

This function of the Court is a necessary element not only of the system of checks and balances, but also of a workable and living Constitution. For absent an agency or organ that can rule, with finality, as to what the terms of the Constitution mean, there will be uncertainty if not chaos in governance, i.e., no governance at all. This is what the noted writer on legal systems, Prof. H.L.A. Hart, calls the need for a Rule of Recognition in any legal system, without which that system cannot survive and dies (HART, *The Concept of Law*, 92, 118).

From as far back as *Angara v. Electoral Commission*, 63 Phil. 139 (1936), it has been recognized that this is not the supremacy of the Court. It is the supremacy of the Constitution and of the sovereign Filipino people who ordained and promulgated it.

Proceeding, then, to do our duty of construing the Constitution in a matter of profound necessity, we are called upon to rule whether the second complaint of impeachment is in accord with Article XI, Sec. 3 (5) of the Constitution, which states:

No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

I say it is not.

The purpose of this provision is two-fold: to prevent undue or too frequent harassment; and (2) to allow the legislature to do its principal task, legislation.

As aptly put by the Association of Retired Justices of the Supreme Court:

"The debate as to the sense of the provision starts with the 1986 Constitutional Commission. Commissioner Villacorta, Commissioner of the 1986 Constitutional Commission, posited this query:

MR. VILLACORTA. Madam President, I would just like to ask the Committee three questions:

On Section 3, page 2, lines 12 to 14, the last paragraph reads as follows: 'No impeachment proceedings shall be initiated against the same official more than once within a period of one year.' Does this mean that even if an evidence is discovered to support another charge or ground for impeachment, a second or subsequent proceeding cannot be initiated against the same official within a period of one year? In other words, one year has to elapse before a second or subsequent charge or proceeding can be initiated. The intention may be to protect the public official from undue harassment. On the other hand, is this not undue limitation on the accountability of public officers? Anyway, when a person accepts a public trust, does he not consider taking the risk of accounting for his acts or misfeasance in office?

The query produced this answer:

MR. ROMULO. Yes, the intention here really is to limit. This is not only to protect public officials who, in this case, are of the highest category from harassment but also to allow the legislative body to do its work which is lawmaking. Impeachment proceedings take a lot of time. And if we allow multiple impeachment charges on the same individual to take place, the legislature will do nothing else but that. (Stress ours.)

"Madame Justice Cecilia Muñoz-Palma [President of the Constitutional Commission], in her article "We should remain steadfast with rule of law," *Manila Bulletin*, October 28, 2003, wrote:

The Foundation makes of record its considered view, based on the RECORD OF THE CONSTITUTIONAL COMMISSION OF 1986, at pages 373 to 376, and at 382 that:"

- 'Initiation' refers to the filing of any verified complaint by a Member of the House or by a citizen, with the endorsement of a Member of the House, as provided in Section 3 (2) of Article XI of the Constitution, and

initiation could not therefore refer to the filing of the Articles of Impeachment in the Senate.

- The one-year prohibition was intended by the framers of the Constitution to allow Congress to continue with its main task (emphasis in the original)

"It is noted that in the Commissioner Villacorta query and the Commissioner Romulo reply, the following values were considered: 'to protect the public official from undue harassment,' '(not to impose an) undue limitation on the accountability of public officers,' 'acceptance of public trust' and 'to allow the legislative body to do its work which is lawmaking.' In the end, Commissioner Romulo struck this balance: '[T]his is not only to protect public officials who, in this case, are of the highest category from harassment but also to allow the legislative body to do its work which is lawmaking.'" (Stress ours.)

The contention is advanced that the second complaint is not covered by the provision because under the Rules of Procedure in Impeachment Proceedings, adopted by the House on November 28, 2001, the first complaint filed in June, four months earlier, is not yet "deemed initiated," since it has not been reported to the floor of the House of Representatives. To my mind, this position is not tenable.

This would stretch the meaning of "initiate" and defeat the purpose of the provision of the Constitution. It would allow considerable harassment from multiple complaints filed within one year against the same official. And, what is even more telling, it would tie up the Legislature, particularly the House of Representatives, in too frequent and too many complaints of impeachment filed before it, leaving it little time to attend to its principal task of legislation, as is in fact happening now.

Therefore, the Rules referred to cannot be so interpreted as to defeat the objectives of Art. XI, Section 3 (5). For the very grant of the power to adopt Rules on Impeachment, Article XI, Section 3 (8), provides, too, a limit or qualification, thus:

(8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.
(Stress ours)

And, besides, as pointed out by amicus curiae former Constitutional Commissioner, Joaquin G. Bernas, S.J., said Rules refer to what are instances when a complaint for impeachment is "deemed initiated," a matter of legal fiction, presumably for internal purposes of the House, as to the timing of some of its internal action on certain relevant matters. The Constitutional provision, on the other hand, states that "No impeachment proceedings shall be initiated," not "deemed initiated," and, therefore, refers to actual initiation, not constructive initiation by legal fiction.

It is also contended that the provision of Article XI, Sec. 3 (5) refers to impeachment proceedings in the Senate, not in the House of Representatives.

This is premised on the wording of Article XI, Sec. 3 (1) which states that "The House of Representatives shall have the exclusive power to initiate all cases of impeachment." Thus, it is argued, cases of impeachment are initiated only by the filing thereof by the House of Representatives with the Senate, so that impeachment proceedings are those that follow said filing.

This interpretation does violence to the carefully allocated division of power found in Article XI, Sec. 3. Precisely, the first part of the power is lodged with the House, that of initiating impeachment, so that a respondent hailed by the House before the Senate is a fact and in law already impeached. What the House initiates in the Senate is an impeachment CASE, not PROCEEDINGS. The proceedings for impeachment preceded that and took place exclusively in the House (in fact, non-members of the House cannot initiate it and there is a need for a House member to endorse the complaint). And what takes place in the Senate is the trial and the decision.

For this reason, Subsections (1) to (5) of Article XI, Section 3 apply to the House whereas Subsections (6) and (7) apply to the Senate, and Subsection (8) applies to both, or to "Congress." There is therefore a sequence or order in these subsections, and the contrary view disregards the same.

Also, as aforesaid, the very rules of the House are entitled "Rules of Procedure in Impeachment Proceedings," and relate to every step of the impeachment proceedings, from the filing of the complaint with the House up to the formation of a Prosecution panel.

I earlier adverted to the placement of the power of impeachment, not in the Articles on governmental powers, but in the Article on accountability. This indicates that such power is not essentially legislative in character, and is not primarily intended as a check by the Legislative Department on the other branches. Its main purpose, at least under our Constitution, is to achieve accountability, but this is to be done without detriment to the governmental power of legislation under Article VI.

A second complaint is not forever barred, but only temporarily so, or until June of 2004, to forestall disruption of the principal task of legislative work. As it is, without casting aspersions on co-equal Departments but stressing only the fact that all the Departments have so much to do and so little time to do it, the national budget is yet to be approved. The rationale of the Constitutional provision is, thus, evident.

Finally, prudential considerations are urged to allow the political Departments to correct any mistake themselves, rather than for the Court to intervene.

It is not certain, however, whether the Senate is called upon to review what the House has done in the exercise of its exclusive power to initiate all cases of impeachment, any more that the House is wont to interfere with the sole power of the Senate to try and decide all such cases. Besides, the Senate action would itself be part of what is sought to be avoided by Subsection 5, namely, disruption of legislative work.

For all these reasons, I vote to grant the petitions by declaring the second complaint of impeachment as one that, for now, runs counter to Article XI, Section 3 (5) of the Constitution.

SEPARATE OPINION

Tinga, J.:

"May you live in interesting times," say the Chinese. Whether as a curse or a blessing, the Filipinos' lot, it seems, is to live in "interesting" times. In our recent past, we saw the imposition of martial law, [1] the ratification of a new Constitution,[2] the installation of a revolutionary government,[3] the promulgation of a provisional Constitution[4] the ratification of the present one,[5] as well as attempted power-grabs by military elements resulting in the arrest of the then Defense Minister.[6] We saw the fall from grace of a once popular president, and the ascension to office of a new president.[7]

To all these profound events, the Court bore witness - not silent but, possibly, muted. In all these profound events, the Court took part - mostly passive and, sometimes, so it is said, active - by upholding or revoking State action.

Today, the Court is again asked to bear witness and take part in another unparalleled event in Philippine history: the impeachment of the Chief Justice. Perhaps not since Javellana and the martial law cases has the Supreme Court, even the entire judiciary, come under greater scrutiny.

The consequences of this latest episode in our colorful saga are palpable. The economy has plunged to unprecedented depths. The nation, divided and still reeling from the last impeachment trial, has again been

exposed to a similar spectacle. Threats of "military adventurists" seizing power have surfaced.

Punctuating the great impact of the controversy on the polity is the astounding fast clip by which the factual milieu has evolved into the current conundrum of far-reaching proportions. Departing from the tradition of restraint of the House of Representatives, if not acute hesitancy in the exercise of its impeachment powers, we saw more than one-third of the House membership flexed their muscles in the past fortnight with no less than the Chief Justice as the target.

On June 2, 2003, former President Estrada filed a complaint for impeachment before the House of Representatives against six incumbent members of the Supreme Court who participated in authorizing the administration of the oath to President Macapagal-Arroyo and declaring the former president resigned in *Estrada v. Desierto*.^[8] Chief among the respondents is Chief Justice Hilario G. Davide, Jr.^[9] himself, the same person who co-presided the impeachment trial of Estrada and personally swore in Macapagal-Arroyo as President. Also impleaded in the complaint are two other justices^[10] for their alleged role, prior to their appointment to this Court, in the events that led to the oath-taking. Nothing substantial happened until the House Committee on Justice included the complaint in its Order of Business on October 13, 2003, and ruled that the same was "sufficient in form." However, the Committee dismissed the complaint on October 22, 2003 for being insufficient in substance. But the Committee deferred the preparation of the formal Committee Report that had to be filed with the Rules Committee. As it turned out, there was a purpose behind the delay. The next day, on October 23, 2003, another complaint was filed by respondent Representatives Gilberto Teodoro, Jr. and Felix William Fuentebella against the Chief Justice alone, alleging irregularities in the administration of the Judiciary Development Fund.

Several petitions, eighteen in all, were filed before this Court, most of them assailing specific provisions of the House of Representatives' Rules on Impeachment, as well as the second impeachment complaint against the Chief Justice, for being contrary to Section 3 (5), Article XI of the Constitution on Accountability of Public Officers. Sections 2 and 3 of said Article read in full:

SEC. 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

SEC. 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) A verified complaint for impeachment may be filed by any member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of

one year.

(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

(7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial and punishment according to law.

(8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section. [Emphasis supplied.]

The impugned House of Representatives Rules on Impeachment, specifically, Sections 16 and 17, Rule V (Bar against Initiation of Impeachment Proceedings against the same Official), provide:

Sec. 16. Impeachment Proceedings Deemed Initiated. - In cases where a Member of the House files a verified complaint of impeachment or a citizen files a verified complaint that is endorsed by a Member of the House through a resolution of endorsement against an impeachable officer, impeachment proceedings against such official are deemed initiated on the day the Committee on Justice finds that the verified complaint and/or resolution against such official, as the case may be is sufficient in substance or on the date the House votes to overturn or affirm the finding of said Committee that the verified complaint and/or resolution, as the case may be, is not sufficient in substance.

In cases where a verified complaint or resolution of impeachment is filed or endorsed, as the case may be, by at least one-third (1/3) of the Members of the House, impeachment proceedings are deemed initiated at the time of the filing of such verified complaint or resolution of impeachment with the Secretary General.

Sec. 17. Bar Against Initiation of Impeachment Proceedings. - Within a period of one (1) year from the date impeachment proceedings are initiated as provided in Section 16 hereof, no impeachment proceedings, as such, can be initiated against the same official.

In light of these contentions, petitioners - indeed, the whole Filipino nation - ask: What is the Court going to do? To this, the Court answers: We do our duty.

The Constitution lodges on the House of Representatives "the exclusive power to initiate all cases of impeachment,"[11] and on the Senate, "the sole power to try and decide all cases of impeachment." [12] But the power of impeachment is not inherently legislative; it is executive in character. Neither is the power to try and decide impeachment cases; it is judicial by nature. Thus, having emanated from the Constitution, the power of impeachment is circumscribed by constitutional limitations. Even if impeachment as a legal concept is *sui generis*, it is not *supra legem*.

An examination of the various constitutions which held sway in this jurisdiction reveals structural changes in the legislature's role in the impeachment process. The 1935 Constitution, as amended, was stark in its assignation of the impeachment authority. Therein, the House of Representatives was vested "the sole power of impeachment,"[13] while the Senate had "the sole power to try all impeachments,"[14] No other qualifications were imposed upon either chamber in the exercise of their respective functions other than prescribing the votes required for either chambers exercise of their powers, listing the public officials who

are impeachable, and enumerating the grounds for impeachment. The

1935 Constitution was silent on the procedure. It was similar in this regard to the United States Constitution.[15]

The 1973 Constitution provided a different system. As it ordained a unicameral legislature, the power to impeach, try and decide impeachment cases was lodged on a single body, the Batasang Pambansa.[16] The new structure would necessitate a change in constitutional terminology regarding impeachment, the significance of which I shall discuss later. But despite the change, the Constitution did not impose any new limitation that would hamstring the Batasang Pambansa in the discharge of its impeachment powers other than the required majorities.

Now comes the 1987 Constitution. It introduces conditionalities and limitations theretofore unheard of. An impeachment complaint must now be verified.[17] If filed by any member of the House of Representatives or any citizen with the endorsement of a House Member, it shall be included in the order of business within ten session days, and referred to the proper committee within three session days thereafter.[18] Within sixty days after the referral, and after hearing and upon majority vote of all its members, the proper committee shall submit its report to the House, together with the corresponding resolution, and the House shall calendar the same for consideration within ten days from receipt.[19] No impeachment proceedings shall be initiated against the same official more than once within a period of one year.[20]

While these limitations are intrusive on rules of parliamentary practice, they cannot take on a merely procedural character because they are mandatory impositions made by the highest law of the land, and therefore cannot be dispensed with upon whim of the legislative body.[21] Today, it must be settled once and for all which entity shall determine whether impeachment powers have been exercised in accordance with law. This question is answered definitively by our Constitution.

Section 1, Article VIII of the Constitution provides:

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Article VIII, Section 1 is a rule of jurisdiction,[22] one that expands the Supreme Court's authority to take cognizance of and decide cases. No longer was the exercise of judicial review a matter of discretion on the part of the courts bound by perceived notions of wisdom. No longer could this Court shirk from the "irksome task of inquiring into the constitutionality and legality of legislative or executive action when a justiciable controversy is brought before the courts by someone who has been aggrieved or prejudiced by such action." [23] An eminent member of the present Court, Justice Puno, described the scope of judicial power in this wise:

In the Philippine setting, there is a more compelling reason for courts to categorically reject the political question defense when its interposition will cover up abuse of power. For section 1, Article VIII of our Constitution was intentionally cobbled to empower courts "x x x to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government." This power is new and was not granted to our courts in the 1935 and 1972 Constitutions. It was not also Xeroxed from the US Constitution or any foreign state constitution. The CONCOM granted this enormous power to our courts in view of our experience under martial law where abusive exercises of state power were shielded from judicial scrutiny by the misuse of the political question doctrine. Led by the eminent former Chief Justice Roberto Concepcion, the CONCOM expanded and sharpened the checking powers of the judiciary vis-a-vis the Executive and the Legislative departments of government. In cases involving the proclamation of martial law and suspension of the privilege of habeas corpus, it is now beyond dubiety that the government can no longer invoke the political question defense.

In Tolentino v. Secretary of Finance, I posited the following postulates:

x x x

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Former Chief Justice Roberto R. Concepcion, the sponsor of this provision in the Constitutional Commission explained the sense and the reach of judicial power as follows:

x x x

x x x In other words, the judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute political question.

The Constitution cannot be any clearer. What it granted to this Court is not a mere power which it can decline to exercise. Precisely to deter this disinclination, the Constitution imposed it as a duty of this Court to strike down any act of a branch or instrumentality of government or any of its officials done with grave abuse of discretion amounting to lack or excess of jurisdiction. Rightly or wrongly, the Constitution has elongated the checking powers of this Court against the other branches of government despite their more democratic character, the President and the legislators being elected by the people.[24]

Thus, in the case of the House and Senate Electoral Tribunals, this Court has assumed jurisdiction to review the acts of these tribunals, notwithstanding the Constitutional mandate that they shall act as "sole judges" of all contests relating to the election, returns, and qualifications of the members of Congress. The Court asserted this authority as far back as 1936, in the landmark case of Angara v. Electoral Commission.[25] More recently, this Court, speaking through Justice Puno, expounded on the history of the Court's jurisdiction over these tribunals:

In sum, our constitutional history clearly demonstrates that it has been our consistent ruling that this Court has certiorari jurisdiction to review decisions and orders of Electoral Tribunals on a showing of grave abuse of discretion. We made this ruling although the Jones Law described the Senate and the House of Representatives as the 'sole judges' of the election, returns, and qualifications of their elective members. It cannot be overstressed that the 1935 Constitution also provided that the Electoral Tribunals of the Senate and the House shall be the 'sole judge' of all contests relating to the election, returns, and qualifications of their respective Members. Similarly, the 1973 Constitution transferred to the COMELEC the power be the 'sole judge' of all contests relating to the election, returns, and qualifications of all members of the Batasang Pambansa. We can not lose sight of the significance of the fact that the certiorari jurisdiction of this Court has not been altered in our 1935, 1973 and 1987 Constitutions.

xxx In the first place, our 1987 Constitution reiterated the certiorari jurisdiction of this Court on the basis of which it has consistently assumed jurisdiction over decisions of our Electoral Tribunals. In the second place, it even expanded the certiorari jurisdiction of this Court on the basis of which it has consistently assumed jurisdiction over decision of our Electoral Tribunals. In the second place, it even expanded the certiorari jurisdiction of this Court by defining judicial power as "x x x the duty of the courts of justice to settle actual

controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. In the third place, it similarly reiterated the power of the Electoral Tribunals of the Senate and of the House to act as the 'sole judge' of all contests relating to the election, returns, and qualifications of their respective members.[26] (citations omitted, emphasis supplied)

What circumscribes the Court's review of an act of Congress or a Presidential issuance are the limits imposed by the Constitution itself or

the notion of justiciability.[27] An issue is justiciable rather than political

where it involves the legality and not the wisdom of the act complained of, [28] or if it pertains to issues which are inherently susceptible of being decided on grounds recognized by law.[29] As this Court held in *Tatad v. Secretary of Finance*: [30]

In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the 'judiciary to settle the dispute. The question thus posed is 'judicial rather than political. The duty to adjudicate remains to assure that the supremacy of the Constitution is upheld. Once a controversy as to the application or interpretation of a constitutional provision is raised before this Court, it becomes a legal issue which the Court is bound by constitutional mandate to decide.[31]

The petitions before us raise the question of whether the House of Representatives, in promulgating and implementing the present House Rules on Impeachment, had acted in accordance with the Constitution. [32] Some insist that the issues before us are not justiciable

because they raise a "political question." [33] This view runs contrary to established authority.

While the Court dismissed per its Resolution of September 3, 1985, the petition in G.R. No. 71688 (*Arturo M. de Castro, et al. v. Committee on Justice, et al.*) seeking to annul the resolution of the Committee on Justice of the then Batasang Pambansa a verified complaint for the impeachment of then President Marcos signed by more than one-fifth (1/5) of all the members of the Batasang Pambansa, which was the requisite number under the 1973 Constitution, and to give due course to the impeachment complaint, the Court clearly conceded that had the procedure for impeachment been provided in the 1973 Constitution itself, the outcome of the petition would have been different. Wrote the Court:

. . . Beyond saying that the Batasan may initiate impeachment by a vote of at least one-fifth of all its members and that no official shall be convicted without the concurrence of at least two-thirds of all the members thereof, the Constitution says no more. It does not lay down the procedure in said impeachment proceedings, which it had already done. The interpretation and application of said rules are beyond the powers of the Court to review [34]

Forty-six years ago, this Court in *Tañada v. Cuenco* [35] was confronted with the question of whether the procedure laid down in the 1935 Constitution for the selection of members of the Electoral Tribunals was mandatory. After ruling that it was not a political question, the Court proceeded to affirm the mandatory character of the procedure in these words:

The procedure prescribed in Section 11 of Article VI of the Constitution for the selection of members of the Electoral Tribunals is vital to the role they are called upon to play. It constitutes the essence of said Tribunals. Hence, compliance with said procedure is mandatory and acts performed in violation thereof are null and void.[36]

The footnote of authorities corresponding to the above-quoted pronouncement reads:

The need of adopting this view is demanded, not only by the factors already adverted to, but, also, by the fact that constitutional provisions, unlike statutory enactments, are presumed to be mandatory, 'unless the contrary is unmistakably manifest.' The pertinent rule of statutory construction is set forth in the American Jurisprudence as follows:

In the interpretation of Constitutions, questions frequently arise as to whether particular sections are mandatory or directory. The courts usually hesitate to declare that a constitutional provision is directory merely in view of the tendency of the legislature to disregard provisions which are not said to be mandatory. Accordingly, it is the general rule to regard constitutional provisions as mandatory, and not to leave any discretion to the will of a legislature to obey or to disregard them. This presumption as to mandatory quality is usually followed unless it is unmistakably manifest that the provisions are intended to be merely directory. The analogous rules distinguishing mandatory and directory statutes are of little value in this connection and are rarely applied in passing upon the provisions of a Constitution.

So strong is the inclination in favor of giving obligatory force to the terms of the organic law that it has even been said that neither by the courts nor by any other department of the government may any provision of the Constitution be regarded as merely directory, but that each and every one of its provisions should be treated as imperative and mandatory, without reference to the rules and distinguishing between the directory and the mandatory statutes. (II Am. Jur 686-687; italics supplied)

Ten years later, the Court in *Gonzales v. Commission on Elections* [37] resolved the issue of whether a resolution of Congress proposing amendments to the Constitution is a political question. It held that it is not and is therefore subject to judicial review.

Indeed, the power to amend the Constitution or to propose amendments thereto is not included in the general grant of legislative powers to Congress. It is part of the inherent powers of the people -- as the repository of sovereignty in a republican state, such as ours -- to make, and, hence, to amend their own Fundamental Law. Congress may propose amendments to the Constitution merely because the same explicitly grants such power. Hence, when exercising the same, it is said that Senators and Members of the House of Representatives act, not as members of Congress, but as component elements of a constituent assembly. When acting as such, the members of Congress derive their authority from the Constitution, unlike the people, when performing the same function for their authority does not emanate from the Constitution -- they are the very source of all powers of government, including the Constitution itself.

Since, when proposing, as a constituent assembly, amendments to the Constitution, the members of Congress derive their authority from the Fundamental Law, it follows, necessarily, that they do not have the final say on whether or not their acts are within or beyond constitutional limits. Otherwise, they could brush aside and set the same at naught, contrary to the basic tenet that ours is a government of laws, not of men, and to the rigid nature of our Constitution. Such rigidity is stressed by the fact that, the Constitution expressly confers upon the Supreme Court, the power to declare a treaty unconstitutional, despite the eminently political character of treaty-making power.

In short, the issue whether or not a Resolution of Congress -- acting as a constituent assembly -- violates the Constitution essentially justiciable, not political, and, hence, subject to judicial review, and, to the extent that this view may be inconsistent with the stand taken in *Mabanag v. Lopez Vito*, the latter should be deemed modified accordingly. The Members of the Court are unanimous on this point.[38]

In *Sanidad v. Commission on Elections*[39] questioned was the power of the President to propose amendments to the Constitution on the ground that it was exercised beyond the limits prescribed by the Constitution. Holding that it was a justiciable controversy, this Court made the following disquisition:

The amending process both as to proposal and ratification, raises a judicial question. This is especially true in cases where the power of the Presidency to initiate the amending process by proposals of amendments, a function normally exercised by the legislature, is seriously doubted. Under the terms of the 1973 Constitution, the power to propose amendments to the Constitution resides in the interim National Assembly during the period of transition (Sec. 15, Transitory Provisions). After that period, and the regular National Assembly in its active session, the power to propose amendments becomes ipso facto the prerogative of the regular National Assembly (Sec. 1, pars. 1 and 2 of Art. XVI, 1973 Constitution). The normal course has not been followed. Rather than calling the interim National Assembly to constitute itself into a constituent assembly, the incumbent President undertook the proposal of amendments and submitted the proposed amendments thru Presidential Decree 1033 to the people in a Referendum-Plebiscite on October 16. Unavoidably, the regularity of the procedure for amendments, written in lambent words in the very Constitution sought to be amended, raises a contestable issue. The implementing Presidential Decree Nos. 991, 1031, and 1033, which commonly purport to have the force and effect of legislation are assailed as invalid, thus the issue of the validity of said Decrees is plainly a justiciable one, within the competence of this Court to pass upon. Section 2(2), Article X of the new Constitution provides: All cases involving the constitutionality of a treaty, executive agreement, or law shall be heard and decided by the Supreme Court en banc, and no treaty, executive agreement, or law may be declared unconstitutional without the concurrence of at least ten Members . . . The Supreme Court has the last word in the construction not only of treaties and statutes, but also of the Constitution itself. The amending, like all other powers organized in the Constitution, is in form a delegated and hence a limited power, so that the Supreme Court is vested with that authority to determine whether that power has been discharged within its limits.

Political questions are neatly associated with the wisdom, not the legality of a particular act. Where the vortex of the controversy refers to the legality or validity of the contested act, that matter is definitely justiciable or non-political. What is in the heels of the Court is not the wisdom of the act of the incumbent President in proposing amendments to the Constitution, but his constitutional authority to perform such act or to assume the power of a constituent assembly. Whether the amending process confers on the President that power to propose amendments is therefore a downright justiciable question. Should the contrary be found, the actuation of the President would merely be a brutum fulmen. If the Constitution provides how it may be amended, the judiciary as the interpreter of that Constitution, can declare whether the procedure followed or the authority assumed was valid or not.

We cannot accept the view of the Solicitor General, in pursuing his theory of non-justiciability, that the question of the President's authority to propose amendments and the regularity of the procedure adopted for submission of the proposals to the people ultimately lie in the judgment of the latter. A clear Descartes fallacy of vicious circle. Is it not that the people themselves, by their sovereign act, provided for the authority and procedure for the amending act, provided for the authority and procedure for the amending process when they ratified the present Constitution in 1973? Whether, therefore, that constitutional provision has been followed or not is indisputably a proper subject of inquiry, not by the people themselves -- of course -- who exercise no power of judicial review, but by the Supreme Court in whom the people themselves vested that power, a power which includes the competence to determine whether the constitutional norms for amendments have been observed or not. And, this inquiry must be done a priori not a posteriori, i.e., before the submission to and ratification by the people.[40]

The doctrine that may be drawn from the cited decisions is clear. The determination of compliance with a rule, requirement or limitation prescribed by the Constitution on the exercise of a power delegated by the Constitution itself on a body or official is invariably a justiciable controversy.

Contrary to what respondent Speaker Jose G. De Venecia and intervenor Senator Aquilino Pimentel have posited, the ruling in *Nixon v. United States*[41] is not applicable to the present petitions. There, the U.S. Supreme Court held that the constitutional challenge to the hearing of the impeachment case by a committee created by the Senate

is nonjusticiable. As pointed out earlier, the provisions of the 1987

Constitution on impeachment at the House level explicitly lay out the procedure, requirements and limitations. In contrast, the provision for the Senate level, like in the U.S. Constitution, is quite sparse. So, if at all, Nixon would be persuasive only with respect to the Senate proceedings. Besides, Nixon leaves open the question of whether all challenges to impeachment are nonjusticiable.[42]

The term "judicial supremacy" was previously used in relation to the Supreme Court's power of judicial review,[43] yet the phrase wrongly connotes the bugaboo of a judiciary supreme to all other branches of the government. When the Supreme Court mediates to allocate constitutional boundaries or invalidates the acts of a coordinate body, what it is upholding is not its own supremacy, but the supremacy of the Constitution.[44] When this supremacy is invoked, it compels the errant branches of government to obey not the Supreme Court, but the Constitution.

There are other requisites for justiciability of a constitutional question which we have traditionally recognized - namely: the presence of an actual case or controversy; the matter of standing, or when the question is raised by a proper party; the constitutional question must be raised at the earliest possible opportunity; and that the decision on the constitutional question must be necessary to the determination of the

case itself.[45] Justice Carpio-Morales, in her scholarly opinion, has addressed these issues as applied to this case definitively. I just would like to add a few thoughts on the questions of standing and ripeness.

It is argued that this Court cannot take cognizance of the petitions because petitioners do not have the standing to bring the cases before us. Indeed, the numerous petitioners have brought their cases under multifarious capacities, but not one of them is the subject of the impeachment complaint. However, there is a wealth of jurisprudence that would allow us to grant the petitioners the requisite standing in this case, and any lengthy disquisition on this matter would no longer be remarkable. But worthy of note is that the petitioners in G.R. No. 160295[46] are suing in their capacities as members of the House of Representatives. Considering that they are seeking to invalidate acts made by the House of Representatives, their standing to sue deserves a brief remark.

The injury that petitioners-congressmen can assert in this case is arguably more demonstrable than that of the other petitioners. Relevant in this regard is our ruling in *Philippine Constitution Association v. Enriquez*,[47] wherein taxpayers and Senators sought to declare unconstitutional portions of the General Appropriations Act of 1994. We upheld the standing of the legislators to bring suit to question the validity of any official action which they claim infringes their prerogatives as legislators, more particularly, the validity of a condition imposed on an item in an appropriation bill. Citing American jurisprudence, we held:

[T]o the extent to the powers of Congress are impaired, so is the power of each member thereof, since his office confers arrive to participate in the exercise of the powers of that institution (*Coleman v. Miller*, 307 U.S. 433 [1939]; *Holtzman v. Schlesinger*, 484 F. 2d 1307 [1973]).

An act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress (*Kennedy v. Jones*, 412

F. Supp. 353 [1976]). In such a case, any member of Congress can have a resort to the courts.[48]

There is another unique, albeit uneasy, issue on standing that should be discussed. The party who can most palpably demonstrate injury and whose rights have been most affected by the actions of the respondents is the Chief Justice of this Court. Precisely because of that consideration, we can assume that he is unable to file the petition for himself and therefore standing should be accorded the petitioners who manifest that they have filed their petitions on his behalf. In a situation wherein it would be difficult for the person whose rights are asserted to

present his grievance before any court, the U.S. Supreme Court held in *Barrows v. Jackson*[49] that the rules on standing are outweighed by the need

to protect these fundamental rights and standing may be granted.[50] There is no reason why this doctrine may not be invoked in this jurisdiction.

Another point. Despite suggestions to the contrary, I maintain that the Senate does not have the jurisdiction to determine whether or not the House Rules of Impeachment violate the Constitution. As I earlier stated, impeachment is not an inherent legislative function, although it is traditionally conferred on the legislature. It requires the mandate of a constitutional provision before the legislature can assume impeachment functions. The grant of power should be explicit in the Constitution. It

cannot be readily carved out of the shade of a presumed penumbra.[51] In this case, there is a looming prospect that an invalid impeachment complaint emanating from an unconstitutional set of House rules would be presented to the Senate for action. The proper recourse would be to dismiss the complaint on constitutional grounds. Yet, from the Constitutional and practical perspectives, only this Court may grant that relief.

The Senate cannot be expected to declare void the Articles of Impeachment, as well as the offending Rules of the House based on which the House completed the impeachment process. The Senate cannot look beyond the Articles of Impeachment. Under the Constitution, the Senate's mandate is solely to try and decide the impeachment complaint.[52] While the Senate acts as an impeachment court for the purpose of trying and deciding impeachment cases, such "transformation" does not vest unto the Senate any of the powers inherent in the Judiciary, because impeachment powers are not residual with the Senate. Whatever powers the Senate may acquire as an impeachment court are limited to what the Constitution provides, if any, and they cannot extend to judicial-like review of the acts of co-equal components of government, including those of the House.

Pursuing the concept of the Senate as an impeachment court, its jurisdiction, like that of the regular courts', has to be conferred by law and it cannot be presumed.[53] This is the principle that binds and guides all courts of the land, and it should likewise govern the impeachment court, limited as its functions may be. There must be an express grant of authority in the Constitution empowering the Senate to pass upon the House Rules on Impeachment.

Ought to be recognized too is the tradition of comity observed by members of Congress commonly referred to as "inter-chamber courtesy." It is simply the mutual deference accorded by the chambers of Congress to each other. Thus, "the opinion of each House should be independent and not influenced by the proceedings of the other." [54]

While inter-chamber courtesy is not a principle which has attained the level of a statutory command, it enjoys a high degree of obeisance among the members of the legislature, ensuring as it does the smooth flow of the legislative process. Thus, inter-chamber courtesy was invoked by the House in urging the Senate to terminate all proceedings in relation to the Jueteng controversy at the onset on the call for the impeachment of President Estrada, given the reality that the power of impeachment solely lodged in the House could be infringed by hearings then ongoing in the upper chamber.[55] On another occasion, Senator Joker Arroyo invoked inter-chamber courtesy in refusing to compel the attendance of two congressmen as witnesses at an investigation before the Senate Blue Ribbon Committee.[56]

More telling would be the Senate's disposition as a Court of Impeachment of the Motion to Quash filed by the lawyers of President Estrada during the latter's impeachment trial. The Motion to Quash was premised on purported defects in the impeachment complaint which originated from the House of Representatives. Had the Senate granted the Motion to Quash, it would have, by implication, ruled on whether the House of

Representatives had properly exercised its prerogative in impeaching the President. The Senate refused to grant the Motion to Quash, affirming the validity of the procedure adopted by the House of Representatives and expressing its conformity to the House Rules of Procedure on Impeachment Proceedings.[57]

It is my belief that any attempt on the part of the Senate to invalidate the House Rules of Impeachment is obnoxious to inter-chamber courtesy. If the Senate were to render these House Rules unconstitutional, it would set an unfortunate precedent that might engender a wrong-headed assertion that one chamber of Congress may invalidate the rules and regulations promulgated by the other chamber. Verily, the duty to pass upon the validity of the House Rules of Impeachment is imposed by the Constitution not upon the Senate but upon this Court.

On the question of whether it is proper for this Court to decide the petitions, it would be useless for us to pretend that the official being impeached is not a member of this Court, much less the *primus inter pares*. Simplistic notions of rectitude will cause a furor over the decision of this Court, even if it is the right decision. Yet we must decide this case because the Constitution dictates that we do so. The most fatal charge that can be levied against this Court is that it did not obey the Constitution. The Supreme Court cannot afford, as it did in the *Javellana* case, to abdicate its duty and refuse to address a constitutional violation of a co-equal branch of government just because it feared the political repercussions.

And it is comforting that this Court need not rest merely on rhetoric in deciding that it is proper for it to decide the petitions, despite the fact that the fate of the Chief Justice rests in the balance. Jurisprudence is replete with instances when this Court was called upon to exercise judicial duty, notwithstanding the fact that the application of the same could benefit one or all members of the Court.

In *Perfecto vs. Meer*,[58] the Court passed upon the claim for a tax refund posed by Justice Gregorio Perfecto. It was noted therein that:

. . . [a]s the outcome indirectly affects all the members of the Court, consideration of the matter is not without its vexing feature. Yet adjudication may not be declined, because (a) we are not legally disqualified; (b) jurisdiction may not be renounced, as it is the defendant who appeals to this Court, and there is no other tribunal to which the controversy may be referred; (c) supreme courts in the United States have decided similar disputes relating to themselves; (d) the question touches all the members of the judiciary from top to bottom; and (e) the issue involves the right of other constitutional officers whose compensation is equally protected by the Constitution, for instance, the President, the Auditor-General and the members of the Commission on Elections. Anyway the subject has been thoroughly discussed in many American lawsuits and opinions, and we shall hardly do nothing more than to borrow therefrom and to compare their conclusions to local conditions. There shall be little occasion to formulate new propositions, for the situation is not unprecedented.[59]

Again, in *Endencia v. David*,[60] the Court was called upon to resolve a claim for an income tax refund made by a justice of this Court. This time, the Court had the duty to rule upon the constitutionality of a law that subjected the income of Supreme Court Justices to taxation. The Court did not hesitate to tackle the matter. It held:

Under our system of constitutional government, the Legislative department is assigned the power to make and enact laws. The Executive department is charged with the execution or carrying out of the provisions of said laws. But the interpretation and application of said laws belong exclusively to the Judicial department. And this authority to interpret and apply the laws extends to the Constitution. Before the courts can determine whether a law is constitutional or not, it will have to interpret and ascertain the meaning not only of said law, but also of the pertinent portion of the Constitution in order to decide whether there is a conflict between the two, because if there is, then the law will have to give way and has to be declared invalid and unconstitutional.[61]

In *Radiowealth Inc. v. Agregado*,[62] this Court was constrained to rule on the authority of the Property Requisition Committee appointed by the President to pass upon the Court's requisitions for supplies. There, this

Court was compelled to assert its own financial independence

. . . the prerogatives of this Court which the Constitution secures against interference includes not only the powers to adjudicate causes but all things that are reasonably necessary for administration of justice. It is within its power, free from encroachment by the executive, to acquire books and other office equipment reasonably needed to the convenient transaction of its business. These implied, inherent, or incidental powers are as essential to the existence of the court as the powers specifically granted. Without the power to provide itself with appropriate instruments for the performance of its duties, the express powers with which the Constitution endows it would become useless. The court could not maintain its independence and dignity as the Constitution intends if the executive personally or through subordinate officials could determine for the court what it should have or use in the discharge of its functions, and when and how it should obtain them.[63]

Thus, in the cited cases the Court deviated from its self-imposed policy of prudence and restraint, expressed in pronouncements of its distaste of cases which apparently cater to the ostensibly self-serving concerns of the Court or its individual members, and proceeded to resolve issues involving the interpretation of the Constitution and the independence of the judiciary. We can do no less in the present petitions. As was declared in *Sanidad*,[64] this Court in view of the paramount interests at stake and the need for immediate resolution of the controversy has to act *a priori*, not *a posteriori*, as it does now.

Having established the jurisdiction of this Court to decide the petitions, the justiciability of the issues raised, and the propriety of Court action on the petition, I proceed now to discuss the constitutionality of the House Rules on Impeachment.

It is suggested that the term "initiate" in Sections 3 (1) and 3 (5), Article XI is used in the same sense, that is, the filing of the Articles of Impeachment by the House of Representatives to the Senate:

SEC. 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

. . . .

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year. [Emphasis supplied.]

A review of the history of Section 3 (1) shows that this is not so.

The Constitution of the United States, after which the 1935 and subsequent Constitutions, as well as our system of government, were patterned, simply states:

5. The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment. [Sec. 3, Art. I.]

Note that the phrase "power to initiate all cases of impeachment" does not appear in the above provision. Rather, it uses the shorter clause "power of impeachment." Webster's Third New International Dictionary defines "impeach" as, "to bring an accusation (as of wrongdoing or impropriety) against" or to "charge with a crime or misdemeanor." Specifically, it means, to "charge (a public official) before a competent tribunal with misbehavior in office" or to "arraign or cite for official misconduct." "Initiate," on the other hand, is defined primarily as, "to begin or set going," or to "make a beginning of," or to "perform or facilitate the first actions, steps, or stages of."

Contrast this with the merely slight difference between Section 3 (6), Article XI of the 1987 Philippine Constitution ("The Senate shall have the sole power to try and decide all cases of impeachment.") and Section 3.6, Article I of the U.S. Constitution ("The Senate shall have the sole power to try all impeachments."), the former adding only the word "decide."

The original 1935 Constitution contemplated a unicameral legislature called National Assembly but, nevertheless, employed a two-tiered impeachment process. The "sole power of impeachment" was

reposed on the Commission on Impeachment of the National Assembly, composed of twenty-one members of the Assembly,[65] and the "sole power to try all impeachments," on the National Assembly as a body, less those who belong to the Commission on Impeachment. The pertinent provisions of Article IX (Impeachment) of the original 1935 Constitution read:

SEC. 2. The Commission on Impeachment of the National Assembly, by a vote of two-thirds of its Members, shall have the sole power of impeachment.

SEC. 3. The National Assembly shall have the sole power to try all impeachments. When sitting for that purpose the Members shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of three-fourths of all the Members who do not belong to the Commission on Impeachment.

The 1935 Constitution was amended in 1940. The 1940 amendment transformed the legislature from a unicameral to a bicameral body composed of a Senate and a House of Representatives. Like the U.S. Constitution, the 1935 Constitution, as amended, lodged the "power of impeachment" in the House of Representatives. This was a simple but complete grant of power. Just as simple and complete was the power to "try and decide" which rested in the Senate.

If the impeachment process is juxtaposed against a criminal case setting, the structural change made the House the investigator and the proceeding before it akin to a preliminary investigation, while the Senate was transformed into a court and the proceedings before it a trial. This is the same structure under the 1987 Constitution.

Under the 1973 Constitution, the country reverted to a unicameral legislature; hence, the need to spell out the specific phases of impeachment, i.e., "to initiate, try and decide," all of which were vested in the Batasang Pambansa. This was the first time that the term "initiate" appeared in constitutional provisions governing impeachment. Section 3, Article XIII thereof states:

The Batasang Pambansa shall have the exclusive power to initiate, try, and decide all cases of impeachment. Upon the filing of a verified complaint, the Batasang Pambansa may initiate impeachment by a vote of at least one-fifth of all its Members. No official shall be convicted without the concurrence of at least two-thirds of all the Members thereof. When the Batasang Pambansa sits in impeachment cases, its Members shall be on oath or affirmation.

Unfortunately, it seems that the 1987 Constitution has retained the same term, "initiate," used in the 1973 Constitution. The use of the term is improper and unnecessary. It is the source of the present confusion. Nevertheless, the intent is clear to vest the power to "impeach" in the House of Representatives. This is a much broader power that necessarily and inherently includes not only the power to "initiate" impeachment cases before the Senate, but to investigate complaints filed by any Member or any citizen, endorsed by any Member, against an impeachable official. The term "initiate" in Section 3 (1), Article XI should, therefore, be read as "impeach" and the manner in which it is used therein should be distinguished from its usage in Section 3 (5) of the same Article.

This conclusion is supported by the object to which the term relates in the different paragraphs of the same Section 3. Thus, Section 3 (1) speaks of initiating "cases of impeachment" while Section 3 (5) pertains to the initiation of "impeachment proceedings." "Cases," no doubt, refers to those filed before the Senate. Its use and its sense are consistent throughout Section 3. Thus, Section 3(6) states, "The Senate shall have the sole power to decide all cases [not "proceedings"] of impeachment." Section 3(7) provides, "Judgment in cases [not "proceedings"] of impeachment shall not extend further than removal from office and disqualification to hold any

office...."

It may be argued, albeit unsuccessfully, that Sections 16 and 17, Rule V of the House of Representatives Rules on Impeachment constitute its interpretation of the Constitution and is, therefore, entitled to great weight. A comparison of these Rules, which, incidentally were promulgated only recently by the Twelfth Congress, with the previous Rules adopted by the Eighth, Ninth, Tenth and Eleventh Congress demonstrates how little regard should be given to this most recent "interpretation." The old Rules simply reproduced Section 3 (5), Article XI of the Constitution, which is to say, that they employed a literal interpretation of the same provision, thus:

RULE V

SEC. 14. Scope of Bar. -- No impeachment proceedings shall be initiated against the same official more than once within the period of one year.

The interpretation of the Twelfth Congress, however, is such a radical departure from previous interpretations that it cannot be accorded the same great weight normally due it. Depending on the mode of the filing of the complaint, the impeachment proceedings are "deemed" initiated only:

- (1) on the day the Committee on Justice finds that the verified complaint and/or resolution against such official, as the case may be is sufficient in substance; or
- (2) on the date the House votes to overturn or affirm the finding of said Committee that the verified complaint and/or resolution, as the case may be, is not sufficient in substance; or
- (3) at the time of the filing of such verified complaint or resolution of impeachment with the Secretary General.

It is true that each Congress is not bound by the interpretation of the previous Congress, that it has the power to disregard the Rules of its predecessor and to adopt its own Rules to conform to what it may deem

as the proper interpretation of the Constitution. Thus, in *Osmeña v. Pendatun*,^[66] the Court held that "the rules adopted by deliberative bodies are subject to revocation[,] modification or waiver at the pleasure of the body adopting them." The Court concedes the congressional power to interpret the Constitution in the promulgation of its Rules, but certainly not, as stated earlier, the congressional interpretation, which, in this case, is so dreadfully contrary, not only to the language of the provision, but also to the intent of the framers of the Constitution and to the provision's very philosophy.

Many of the petitions refer to the Records of the Constitutional Commission, stressing statements of Commissioner Regalado Maambong that "the initiation starts from the filing of the complaint," and that it "is not the [House] body which initiates [the complaint]." The Court, having heard from Commissioner Maambong himself, acting as *amicus curiae*, is persuaded by the argument and the point need not be belabored. Plainly, the mere filing of the complaint (or a resolution of impeachment) under Section 3(2) (or Section 3[4]) precludes the initiation of another impeachment proceeding against the same official within one year.

The rationale behind the so-called time-bar rule cannot be overemphasized, however. The obvious philosophy of the bar is two-fold. The first is to prevent the harassment of the impeachable official, who shall be constrained to defend himself in such proceedings and, as a consequence, is detracted from his official functions. The second is to prevent Congress from being overwhelmed by its non-legislative chores to the detriment of its legislative duties.^[67]

The impugned House Rules on Impeachment defeats the very purpose of the time-bar rule because they allow the filing of an infinite number of complaints against a single impeachable official within a given year. Not until:

- (1) . . . the day the Committee on Justice finds that the verified complaint and/or resolution against such official, as the case may be, is sufficient in substance; or
- (2) . . . the date the House votes to overturn or affirm the finding of said Committee that the verified complaint and/or resolution, as the case may be, is not sufficient in substance; or
- (3) . . . the time of the filing of such verified complaint or resolution of impeachment with the Secretary General.

are the impeachment proceedings deemed initiated. Until then, the right of the impeachable official against harassment does not attach and is exposed to harassment by subsequent complaints. Until then, the House would be swamped with the task of resolving these complaints. Clearly, the Rules do not "effectively carry out the purpose of" Section 3, Article XI and, in fact, quite creatively killed not only the language but the spirit behind the constitutional proscription. Clearly, Sections 16 and 17, Rule V of the House Rules on Impeachment contravene Section 3(5), Article XI of the Constitution. They must be struck down. Consequently, the second impeachment complaint is barred pursuant to Section 3(4), Article XI of the Constitution.

It is noteworthy that the above conclusion has been reached simply by taking into account the ordinary meaning of the words used in the constitutional provisions in point, as well as their rationale. Resort to the rule that the impeachment provisions should be given a narrow interpretation in relation to the goal of an independent judiciary need not be made even. [68]

Nevertheless, this does not mean that the second impeachment complaint is forever barred; only that it should be dismissed without prejudice to its re-filing after one year from the filing of the first impeachment complaint. Indeed, this Court cannot deprive the House of the exclusive power of impeachment lodged in the House by the Constitution.

In taking cognizance of this case, the Court does not do so out of empathy or loyalty for one of our Brethren. Nor does it do so out of enmity or loathing toward the Members of a co-equal branch, whom I still call and regard as my Brethren. The Court, in assuming jurisdiction over this case, to repeat, does so only out of duty, a duty reposed no less by the fundamental law.

Fears that the Court's conclusion today would yield a constitutional crisis, that the present controversy would shake the judicial institution to its very foundations, I am confident, would not come to pass. Through one seemingly endless martial rule, two bloodless uprisings, three Constitutions and countless mini-revolts, no constitutional crisis erupted; the foundations of the Court did not shake. This is not because, in the clashes between the great, perhaps greater, Branches of Government, the Court is "Supreme" for it holds neither sword nor purse, and wields only a pen. Had the other Branches failed to do the Court's bidding, the Court would have been powerless to enforce it. The Court stands firm only because its foundations are grounded on law and logic and its moorings on justice and equity. It is a testament to the Filipino's respect for the rule of law that in the face of these "clashes," this Court's pronouncements have been heeded, however grudgingly at times. Should there be more "interesting" times ahead for the Filipino, I pray that they prove to be more of a blessing than a curse.

ACCORDINGLY, concurring in the comprehensive and well-reasoned opinion of Justice Carpio-Morales, I vote to GRANT the petitions insofar as they seek the declaration of the unconstitutionality of the challenged provisions of the House Rules on Impeachment and the pronouncement that the second impeachment complaint is time-barred on the basis of Section 3(5), Article XI of the Constitution.

[1]See *Aquino, Jr. v. Enrile*, G.R. No. L-35546, September 17, 1974, 59 SCRA 183; *Aquino, Jr. v. Comelec*, G.R.

No. L-4004, 31 January 1975, 62 SCRA 275; Aquino, Jr. v. Military Commission No. 2, G.R. No. 37364, May 9, 1975, 63 SCRA, 546 (1975).

[2]See Javellana v. Executive Secretary, 151-A Phil. 35 (1973); Occeña v. Comelec, 191 Phil. 371 (1981); Mitra, Jr. v. Comelec, 191 Phil. 412 (1981).

[3]See Marcos v. Manglapus, G.R. No. 88211, September 15, 1989, 177 SCRA 668.

[4]See Palma, Sr. v. Fortich, G.R. No. L-59679, January 29, 1987, 147 SCRA 397.

[5]See De Leon v. Esguerra, G.R. No. L-78059, August 31, 1987, 153 SCRA 602.

[6]See Enrile v. Salazar, G.R. No. 92163, June 5, 1990, 186 SCRA 217.

[7]See Estrada v. Desierto, G.R. Nos. 146710-15, March 2, 2001, 353 SCRA 452.

[8]See Note 7.

[9]The other four are Justices Bellosillo, Puno, Vitug, Panganiban and Quisumbing. Also included in the complaint are Justices Carpio and Corona.

[10]Justices Carpio and Corona.

[11]Article XI, Section 3 (1), 1987 Constitution.

[12]Article XI, Section 3 (6), 1987 Constitution.

[13]Article IX, Section 2, 1935 Constitution, as amended.

[14]Article IX, Section 3, 1935 Constitution, as amended.

[15]The United States Constitution contains just two provisions pertaining to the power of the Congress to impeach and to try impeachment. "The House of Representatives . . . shall have the sole Power of Impeachment." (Article I, Section 2, par. 5, US Constitution); "The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside; And no Person shall be convicted without the Concurrence of two thirds of the Members present." (Article I, Section 3, par. 6). The class of officers subject to impeachment and the grounds for removal from office by impeachment are prescribed in Article II, Section 4 of the United States Constitution. "The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

[16]Sec. 3, Art. XII, 1973 Constitution. "The Batasang Pambansa shall have the exclusive power to initiate, try, and decide all cases of impeachment. Upon the filing of a verified complaint, the Batasang Pambansa may initiate impeachment by a vote of at least one-fifth of all its Members. No official shall be convicted without the concurrence of at least two-thirds of all the Members thereof. When the Batasang Pambansa sits in impeachment cases, its Members shall be on oath or affirmation."

[17]See Sec. 3 (1), Article XI, 1987 Constitution.

[18]See Sec. 3 (2), Article XI, 1987 Constitution.

[19]See Sec. 3 (2), Article XI, 1987 Constitution.

[20]See Sec. 3 (5), Article XI, 1987 Constitution.

[21]See Romulo v. Yñiguez, 225 Phil. 221 (1986).

[22]Daza v. Singson, G.R. No. 86344, December 21, 1989, 180 SCRA 496.

[23]Bondoc v. Pineda, G.R. No. 97710, September 26, 1991, 201 SCRA 792, 795-796.

[24]Arroyo v. De Venecia, August 14, 1997, 277 SCRA 311.

[25]63 Phil. 139 (1936).

[26]Arroyo v. House of Representatives Electoral Tribunal, 316 Phil. 464 at 508-510 (1995), J. Puno, concurring.

[27]"A controversy in which a present and fixed claim of right is asserted against one who has an interest in contesting it; rights must be declared upon existing state of facts and not upon state of facts that may or may not arise in future." See Black's Law Dictionary, 865.

[28]Daza v. Singson, supra note 33. See also Tañada v. Cuenco, 100 Phil. 101 (1975). "A question is political, and not judicial, is that it is a matter which is to be exercised by the people in their primary political capacity, or that it has been specifically delegated to some other department or particular officer of the government, with discretionary power to act."

[29]IBP v. Zamora, G.R. No. 141284, August 15, 2003, 338 SCRA 81.

[30]346 Phil. 321 (1997).

[31]Ibid at 358.

[32]While Congress is granted the authority to promulgate its rules on impeachment, such rules must effectively carry out the purpose of Section 3 of Article XI. See Section 3 (8), Article XI, 1987 Constitution.

[33]A political question refers to a question of policy or to issues which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. Generally, political questions are concerned with issues dependent upon the wisdom, not the legality, of a particular measure. Tañada v. Cuenco, 100 Phil. 101 [1957], as cited in Tatad v. Secretary of Finance, 346 Phil. 321.

[34]Resolution dated September 3, 1985, p. 2, G.R. No. 71688 (De Castro, et al v. Committee on Justice, et al.)

[35]103 Phil. 1051 (1957).

[36]Id. at 1088.

[37]129 Phil. 7 (1967).

[38]Id at 22-23.

[39]G.R. No. L-44640, October 12, 1976, 73 SCRA 333.

[40]Id. at 359-361.

[41]506 U.S. 224 (1993).

[42]Chemirinsky, Constitutional Law Principles and Policies, 2[nd] Ed. (2002); Aspen Law and Business, New York, U.S.A.

[43]Supra, note 33.

[44]Garcia v. Corona, 378 Phil. 848, 885. J. Quisumbing, concurring (1999).

[45]See, e.g., *Mirasol v. Court of Appeals*, G.R. No. 128448, February 1, 2001, 351 SCRA 44, 53-54; *Integrated Bar of the Philippines v. Zamora*, G.R. No. 141284, August 15, 2000, 338 SCRA 81, 99; *Sec. Guingona, Jr. v. Court of Appeals*, 354 Phil. 415, 425 (1998); *Board of Optometry v. Hon. Colet*, 328 Phil. 1187, 1205 (1996); *Joya v. PCGG*, G.R. No. 96541, August 24, 1993, 255 SCRA 568, 575; *Santos III v. Northwest Orient Airlines*, G.R. No. 101538, June 23, 1992, 210 SCRA 256; *Garcia v. Executive Secretary*, G.R. No. 100883, December 2, 1991, 204 SCRA 516, 522; *Luz Farms v. Secretary of DAR*, G.R. No. 86889, December 4, 1990, 192 SCRA 51, 58; *National Economic Protectionism Association v. Ongpin*, G.R. No. 67752, April 10, 1989, 171 SCRA 657, 663-664.

[46]Deputy Speaker Raul Gonzales and Congressman Salacnib Baterina.

[47]G.R. No. 113105, August 19, 1994, 235 SCRA 506.

[48]Id. at 520.

[49]346 U.S. 249 (1953).

[50]This case and rationale was cited by amicus curiae Dean Raul C. Pangalangan during the hearing on these petitions to support his belief that the petitioners had standing to bring suit in this case.

[51]In reference to the famed pronouncement of Justice Holmes that the great ordinances of the Constitution do not establish and divide fields of black and white" but also because "even the more specific of them are found to terminate in a penumbra shading gradually from one extreme to the other." *Springer v. Government*, 277 U. S., 189 (1928). Since the power of the legislature to impeach and try impeachment cases is not inherent, the Holmesian dictum will find no application in this case, because such authority is of limited constitutional grant, and cannot be presumed to expand beyond what is laid down in the Constitution.

[52]Section 3 (6), Article XI.

[53]Abbot v. Mapayo, G.R. No. 134102, 6 July 2000, 335 SCRA 265, 270.

[54]*Mason's Manual of Legislative Procedure* by Paul Mason, 1953 Edition p. 113 citing Jefferson, Sec. XXXV; Reed, Sec. 224; Cushing's *Legislative Assemblies*, Sec. 739. Op. Cit. 536-537 citing Jefferson, Sec. XVII, Hughes, Sec. 694.

[55]"Impeachment Trial or Resignation? Where do we stand? What must we do?" (An updated Position Paper of Kilosbayan, Bantay Katarungan and Bantayog ng mga Bayani Foundations). <http://www.mydestiny.net/~livewire/kilosbayan/paper6.htm>.

[56]"GMA Won't Lift A Finger To Bail Out Nani." See <http://www.newsflash.org/2002/11/pe/pe002423.htm>.

[57]Resolution of the Senate dated November 29, 2000.

[58]85 Phil. 552 (1950).

[59]Id. at 553.

[60]93 Phil 696 (1953).

[61]Id. at 700.

[62]86 Phil. 429 (1950).

[63]Id. at 437-438.

[64]Supra note 38.

[65]See Sec. 7, Art. VI thereof.

[66]109 Phil. 863 (1960).

[67]II Record of the Constitutional Commission 272.

[68]Abraham, The Pillars and Politics of Judicial Independence in the United States, Judicial Independence in the Age of Democracy, edited by Peter H. Russell and David M. O'Brien, p. 28; Published, 2000, The University Press of Virginia.

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