

FRANCISCO I. CHAVEZ, PETITIONER, VS. JUDICIAL AND BAR COUNCIL, SEN. FRANCIS JOSEPH G. ESCUDERO AND REP. NIEL C. TUPAS, JR., RESPONDENTS.

G.R. No. 202242. April 16, 2013

Ponente: MENDOZA, J.

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MENDOZA, J.:

This resolves the Motion for Reconsideration[1] filed by the Office of the Solicitor General (OSG) on behalf of the respondents, Senator Francis Joseph G. Escudero and Congressman Niel C. Tupas, Jr. (respondents), duly opposed[2] by the petitioner, former Solicitor General Francisco I. Chavez (petitioner).

By way of recapitulation, the present action stemmed from the unexpected departure of former Chief Justice Renato C. Corona on May 29, 2012, and the nomination of petitioner, as his potential successor. In his initiatory pleading, petitioner asked the Court to determine 1] whether the first paragraph of Section 8, Article VIII of the 1987 Constitution allows more than one (1) member of Congress to sit in the JBC; and 2] if the practice of having two (2) representatives from each House of Congress with one (1) vote each is sanctioned by the Constitution.

On July 17, 2012, the Court handed down the assailed subject decision, disposing the same in the following manner:

WHEREFORE, the petition is GRANTED. The current numerical composition of the Judicial and Bar Council is declared UNCONSTITUTIONAL. The Judicial and Bar Council is hereby enjoined to reconstitute itself so that only one (1) member of Congress will sit as a representative in its proceedings, in accordance with Section 8(1), Article VIII of the 1987 Constitution.

This disposition is immediately executory.

SO ORDERED.

On July 31, 2012, following respondents' motion for reconsideration and with due regard to Senate Resolution Nos. 111,[3] 112,[4] 113,[5] and 114,[6] the Court set the subject motion for oral arguments on August 2, 2012.[7] On August 3, 2012, the Court discussed the merits of the arguments and agreed, in the meantime, to suspend the effects of the second paragraph of the dispositive portion of the July 17, 2012 Decision which decreed that it was immediately executory. The decretal portion of the August 3, 2012 Resolution[8] reads:

WHEREFORE, the parties are hereby directed to submit their respective MEMORANDA within ten (10) days from notice. Until further orders, the Court hereby SUSPENDS the effect of the second paragraph of the dispositive portion of the Court's July 17, 2012 Decision, which reads: "This disposition is immediately executory." [9]

Pursuant to the same resolution, petitioner and respondents filed their respective memoranda.[10]

Brief Statement of the Antecedents

In this disposition, it bears reiterating that from the birth of the Philippine Republic, the exercise of appointing members of the Judiciary has always been the exclusive prerogative of the executive and legislative branches of the government. Like their progenitor of American origins, both the Malolos Constitution[11] and the 1935 Constitution[12] vested the power to appoint the members of the Judiciary in the President, subject to confirmation by the Commission on Appointments. It was during these times that the country became witness to the deplorable practice of aspirants seeking confirmation of their appointment in the Judiciary to ingratiate themselves with the members of the legislative body.[13]

Then, under the 1973 Constitution,[14] with the fusion of the executive and legislative powers in one body, the appointment of judges and justices ceased to be subject of scrutiny by another body. The power became exclusive and absolute to the Executive, subject only to the condition that the appointees must have all the qualifications and none of the disqualifications.

Prompted by the clamor to rid the process of appointments to the Judiciary of the evils of political pressure and partisan activities,[15] the members of the Constitutional Commission saw it wise to create a separate, competent and independent body to recommend nominees to the President. Thus, it conceived of a body, representative of all the stakeholders in the judicial appointment process, and called it the Judicial and Bar Council (JBC). The Framers carefully worded Section 8, Article VIII of the 1987 Constitution in this wise:

Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

From the moment of the creation of the JBC, Congress designated one (1) representative to sit in the JBC to act as one of the ex-officio members.[16] Pursuant to the constitutional provision that Congress is entitled to one (1) representative, each House sent a representative to the JBC, not together, but alternately or by rotation.

In 1994, the seven-member composition of the JBC was substantially altered. An eighth member was added to the JBC as the two (2) representatives from Congress began sitting simultaneously in the JBC, with each having one-half (1/2) of a vote.[17]

In 2001, the JBC En Banc decided to allow the representatives from the Senate and the House of Representatives one full vote each.[18] It has been the situation since then.

Grounds relied upon by Respondents

Through the subject motion, respondents pray that the Court reconsider its decision and dismiss the petition on the following grounds: 1] that allowing only one representative from Congress in the JBC would lead to absurdity considering its bicameral nature; 2] that the failure of the Framers to make the proper adjustment when there was a shift from unilateralism to bicameralism was a plain oversight; 3] that two representatives from Congress would not subvert the intention of the Framers to insulate the JBC from political partisanship; and 4] that the rationale of the Court in declaring a seven-member composition would provide a solution should there be a stalemate is not exactly correct.

While the Court may find some sense in the reasoning in amplification of the third and fourth grounds listed by respondents, still, it finds itself unable to reverse the assailed decision on the principal issues covered by the first and second grounds for lack of merit. Significantly, the conclusion arrived at, with respect to the first and second grounds, carries greater bearing in the final resolution of this case.

As these two issues are interrelated, the Court shall discuss them jointly.

Ruling of the Court

The Constitution evinces the direct action of the Filipino people by which the fundamental powers of government are established, limited and defined and by which those powers are distributed among the several departments for their safe and useful exercise for the benefit of the body politic.[19] The Framers reposed their wisdom and vision on one *suprema lex* to be the ultimate expression of the principles and the framework upon which government and society were to operate. Thus, in the interpretation of the constitutional provisions, the Court firmly relies on the basic postulate that the Framers mean what they say. The language used in the Constitution must be taken to have been deliberately chosen for a definite purpose. Every word employed in the Constitution must be interpreted to exude its deliberate intent which must be maintained inviolate against disobedience and defiance. What the Constitution clearly says, according to its text, compels acceptance and bars modification even by the branch tasked to interpret it.

For this reason, the Court cannot accede to the argument of plain oversight in order to justify constitutional construction. As stated in the July 17, 2012 Decision, in opting to use the singular letter “a” to describe “representative of Congress,” the Filipino people through the Framers intended that Congress be entitled to only one (1) seat in the JBC. Had the intention been otherwise, the Constitution could have, in no uncertain terms, so provided, as can be read in its other provisions.

A reading of the 1987 Constitution would reveal that several provisions were indeed adjusted as to be in tune with the shift to bicameralism. One example is Section 4, Article VII, which provides that a tie in the presidential election shall be broken “by a majority of all the Members of both Houses of the Congress, voting separately.”[20] Another is Section 8 thereof which requires the nominee to replace the Vice-President to be confirmed “by a majority of all the Members of both Houses of the Congress, voting separately.”[21] Similarly, under Section 18, the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus may be revoked or continued by the Congress, voting separately, by a vote of at least a majority of all its Members.”[22] In all these provisions, the bicameral nature of Congress was recognized and, clearly, the corresponding adjustments were made as to how a matter would be handled and voted upon by its two Houses.

Thus, to say that the Framers simply failed to adjust Section 8, Article VIII, by sheer inadvertence, to their decision to shift to a bicameral form of the legislature, is not persuasive enough. Respondents cannot just lean on plain oversight to justify a conclusion favorable to them. It is very clear that the Framers were not keen on adjusting the provision on congressional representation in the JBC because it was not in the exercise of its primary function – to legislate. JBC was created to support the executive power to appoint, and Congress, as one whole body, was merely assigned a contributory non-legislative function.

The underlying reason for such a limited participation can easily be discerned. Congress has two (2) Houses. The need to recognize the existence and the role of each House is essential considering that the Constitution employs precise language in laying down the functions which particular House plays, regardless of whether the two Houses consummate an official act by voting jointly or separately. Whether in the exercise of its legislative[23] or its non-legislative functions such as *inter alia*, the power of appropriation,[24] the declaration of an existence of a state of war,[25] canvassing of electoral returns for the President and Vice-President,[26] and impeachment,[27] the dichotomy of each House must be acknowledged and recognized considering the interplay between these two Houses. In all these instances, each House is constitutionally granted with powers and functions peculiar to its nature and with keen consideration to 1) its relationship with the other chamber; and 2) in consonance with the principle of checks and balances, as to the other branches of government.

In checkered contrast, there is essentially no interaction between the two Houses in their participation in the JBC. No mechanism is required between the Senate and the House of Representatives in the screening and nomination

of judicial officers. Rather, in the creation of the JBC, the Framers arrived at a unique system by adding to the four (4) regular members, three (3) representatives from the major branches of government - the Chief Justice as ex-officio Chairman (representing the Judicial Department), the Secretary of Justice (representing the Executive Department), and a representative of the Congress (representing the Legislative Department). The total is seven (7), not eight. In so providing, the Framers simply gave recognition to the Legislature, not because it was in the interest of a certain constituency, but in reverence to it as a major branch of government.

On this score, a Member of Congress, Hon. Simeon A. Datumanong, from the Second District of Maguindanao, submitted his well-considered position[28] to then Chief Justice Reynato S. Puno:

I humbly reiterate my position that there should be only one representative of Congress in the JBC in accordance with Article VIII, Section 8 (1) of the 1987 Constitution x x x.

The aforesaid provision is clear and unambiguous and does not need any further interpretation. Perhaps, it is apt to mention that the oft-repeated doctrine that “construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them.”

Further, to allow Congress to have two representatives in the Council, with one vote each, is to negate the principle of equality among the three branches of government which is enshrined in the Constitution.

In view of the foregoing, I vote for the proposition that the Council should adopt the rule of single representation of Congress in the JBC in order to respect and give the right meaning to the above-quoted provision of the Constitution. (Emphases and underscoring supplied)

On March 14, 2007, then Associate Justice Leonardo A. Quisumbing, also a JBC Consultant, submitted to the Chief Justice and ex-officio JBC Chairman his opinion,[29] which reads:

- Two things can be gleaned from the excerpts and citations above: the creation of the JBC is intended to curtail the influence of politics in Congress in the appointment of judges, and the understanding is that seven (7) persons will compose the JBC. As such, the interpretation of two votes for Congress runs counter to the intentment of the framers. Such interpretation actually gives Congress more influence in the appointment of judges. Also, two votes for Congress would increase the number of JBC members to eight, which could lead to voting deadlock by reason of even-numbered membership, and a clear violation of 7 enumerated members in the Constitution. (Emphases and underscoring supplied)

In an undated position paper,[30] then Secretary of Justice Agnes VST Devanadera opined:

As can be gleaned from the above constitutional provision, the JBC is composed of seven (7) representatives coming from different sectors. From the enumeration it is patent that each category of members pertained to a single individual only. Thus, while we do not lose sight of the bicameral nature of our legislative department, it is beyond dispute that Art. VIII, Section 8 (1) of the 1987 Constitution is explicit and specific that “Congress” shall have only “xxx a representative.” Thus, two (2) representatives from Congress would increase the number of JBC members to eight (8), a number beyond what the Constitution has contemplated. (Emphases and underscoring supplied)

In this regard, the scholarly dissection on the matter by retired Justice Consuelo Ynares-Santiago, a former JBC consultant, is worth reiterating.[31] Thus:

A perusal of the records of the Constitutional Commission reveals that the composition of the JBC reflects the Commission’s desire “to have in the Council a representation for the major elements of the community.” xxx The ex-officio members of the Council consist of representatives from the three main branches of government while the regular members are composed of various stakeholders in the judiciary. The unmistakable tenor of Article VIII, Section 8(1) was to treat each ex-officio member as representing one co-equal branch of

government. xxx Thus, the JBC was designed to have seven voting members with the three ex-officio members having equal say in the choice of judicial nominees.

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No parallelism can be drawn between the representative of Congress in the JBC and the exercise by Congress of its legislative powers under Article VI and constituent powers under Article XVII of the Constitution. Congress, in relation to the executive and judicial branches of government, is constitutionally treated as another co-equal branch in the matter of its representative in the JBC. On the other hand, the exercise of legislative and constituent powers requires the Senate and the House of Representatives to coordinate and act as distinct bodies in furtherance of Congress' role under our constitutional scheme. While the latter justifies and, in fact, necessitates the separateness of the two Houses of Congress as they relate inter se, no such dichotomy need be made when Congress interacts with the other two co-equal branches of government.

It is more in keeping with the co-equal nature of the three governmental branches to assign the same weight to considerations that any of its representatives may have regarding aspiring nominees to the judiciary. The representatives of the Senate and the House of Representatives act as such for one branch and should not have any more quantitative influence as the other branches in the exercise of prerogatives evenly bestowed upon the three. Sound reason and principle of equality among the three branches support this conclusion. [Emphases and underscoring supplied]

The argument that a senator cannot represent a member of the House of Representatives in the JBC and vice-versa is, thus, misplaced. In the JBC, any member of Congress, whether from the Senate or the House of Representatives, is constitutionally empowered to represent the entire Congress. It may be a constricted constitutional authority, but it is not an absurdity.

From this score stems the conclusion that the lone representative of Congress is entitled to one full vote. This pronouncement effectively disallows the scheme of splitting the said vote into half (1/2), between two representatives of Congress. Not only can this unsanctioned practice cause disorder in the voting process, it is clearly against the essence of what the Constitution authorized. After all, basic and reasonable is the rule that what cannot be legally done directly cannot be done indirectly. To permit or tolerate the splitting of one vote into two or more is clearly a constitutional circumvention that cannot be countenanced by the Court. Succinctly put, when the Constitution envisioned one member of Congress sitting in the JBC, it is sensible to presume that this representation carries with him one full vote.

It is also an error for respondents to argue that the President, in effect, has more influence over the JBC simply because all of the regular members of the JBC are his appointees. The principle of checks and balances is still safeguarded because the appointment of all the regular members of the JBC is subject to a stringent process of confirmation by the Commission on Appointments, which is composed of members of Congress.

Respondents' contention that the current irregular composition of the JBC should be accepted, simply because it was only questioned for the first time through the present action, deserves scant consideration. Well-settled is the rule that acts done in violation of the Constitution no matter how frequent, usual or notorious cannot develop or gain acceptance under the doctrine of estoppel or laches, because once an act is considered as an infringement of the Constitution it is void from the very beginning and cannot be the source of any power or authority.

It would not be amiss to point out, however, that as a general rule, an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all. This rule, however, is not absolute. Under the doctrine of operative facts, actions previous to the declaration of unconstitutionality are legally recognized. They are not nullified. This is essential in the interest of fair play. To reiterate the doctrine enunciated in *Planters Products, Inc. v. Fertiphil Corporation*: [32]

The doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play. It nullifies the effects of an unconstitutional law by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences which cannot always be ignored. The past cannot always be erased by a new judicial declaration. The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law. Thus, it was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy or would put in limbo the acts done by a municipality in reliance upon a law creating it.[33]

Under the circumstances, the Court finds the exception applicable in this case and holds that notwithstanding its finding of unconstitutionality in the current composition of the JBC, all its prior official actions are nonetheless valid.

Considering that the Court is duty bound to protect the Constitution which was ratified by the direct action of the Filipino people, it cannot correct what respondents perceive as a mistake in its mandate. Neither can the Court, in the exercise of its power to interpret the spirit of the Constitution, read into the law something that is contrary to its express provisions and justify the same as correcting a perceived inadvertence. To do so would otherwise sanction the Court action of making amendment to the Constitution through a judicial pronouncement.

In other words, the Court cannot supply the legislative omission. According to the rule of casus omissus “a case omitted is to be held as intentionally omitted.”[34] “The principle proceeds from a reasonable certainty that a particular person, object or thing has been omitted from a legislative enumeration.”[35] Pursuant to this, “the Court cannot under its power of interpretation supply the omission even though the omission may have resulted from inadvertence or because the case in question was not foreseen or contemplated.”[36] “The Court cannot supply what it thinks the legislature would have supplied had its attention been called to the omission, as that would be judicial legislation.”[37]

Stated differently, the Court has no power to add another member by judicial construction.

The call for judicial activism fails to stir the sensibilities of the Court tasked to guard the Constitution against usurpation. The Court remains steadfast in confining its powers in the sphere granted by the Constitution itself. Judicial activism should never be allowed to become judicial exuberance.[38] In cases like this, no amount of practical logic or convenience can convince the Court to perform either an excision or an insertion that will change the manifest intent of the Framers. To broaden the scope of congressional representation in the JBC is tantamount to the inclusion of a subject matter which was not included in the provision as enacted. True to its constitutional mandate, the Court cannot craft and tailor constitutional provisions in order to accommodate all of situations no matter how ideal or reasonable the proposed solution may sound. To the exercise of this intrusion, the Court declines.

WHEREFORE, the Motion for Reconsideration filed by respondents is hereby DENIED.

The suspension of the effects of the second paragraph of the dispositive portion of the July 17, 2012 Decision of the Court, which reads, “This disposition is immediately executory,” is hereby LIFTED.

SO ORDERED.

Sereno, C.J., no part as I am chairperson of JBC.

Carpio, Leonardo-De Castro, Peralta, Bersamin, Villarama, Jr., Perez, Mendoza, Reyes, and Perlas-Bernabe, JJ., concur.

Velasco, Jr., J., no part due to participation in JC.

Brion, J., no part.

Del Castillo, J., join the dissent of J. Abad.
Abad, J., see my dissenting opinion.
Leonen, J., see separate dissenting opinion.

[1] Rollo, pp. 257-286.

[2] Id. at 287-298.

[3] Entitled “Resolution expressing the sense of the Senate that the Judicial and Bar Council (JBC) defer the consideration of all nominees and the preparation of the short list to be submitted to the President for the position of Chief Justice of the Supreme Court;” id. at 303-304.

[4] Entitled “Resolution expressing anew the sense of the Senate that the Senate and House of Representatives should have one (1) representative each in the Judicial and Bar Council (JBC) and that each representative is entitled to a full vote;” id. at 305-307.

[5] Entitled “Resolution to file an urgent motion with the Supreme Court to set for oral argument the motion for reconsideration filed by the representatives of Congress to the Judicial and Bar Council (JBC) in the case of Francisco Chavez v. Judicial and Bar Council, Sen. Francis Joseph G. Escudero and Rep. Niel Tupas [Jr.] [,] G.R. [No.] 2022242 considering the primordial importance of the constitutional issues involved;” id. at 308-310.

[6] Entitled “Resolution authorizing Senator Joker P. Arroyo to argue, together with the Counsel-of-record, the motion for reconsideration filed by the representative of the Senate to the Judicial and Bar Council in the case of Francisco Chavez v. Judicial and Bar Council, Sen. Francis Joseph G. Escudero and Rep. Niel Tupas, Jr.,” id. at 311-312.

[7] Id. at 313-314.

[8] Id. at (318-I)-(318-K).

[9] Id. at 318-J.

[10] Petitioner’s Memorandum, id. at 326-380; Respondents’ Memorandum, id. at 381-424.

[11] Malolos Constitution Article 80 Title X. – The Chief Justice of the Supreme Court and the Solicitor-General shall be chosen by the National Assembly in concurrence with the President of the Republic and the Secretaries of the Government, and shall be absolutely independent of the Legislative and Executive Powers.”

[12] 1935 Constitution Article VIII, Section 5. – The Members of the Supreme Court and all judges of inferior courts shall be appointed by the President with the consent of the Commission on Appointments.”

[13] 1 Records of the Constitutional Commission Proceedings and Debates, 437.

[14] Section 4 Article X of the 1973 Constitution provides: “The Members of the Supreme Court and judges of inferior courts shall be appointed by the President.”

[15] 1 Records, Constitutional Commission, Proceedings and Debates, p. 487.

[16] List of JBC Chairpersons, Ex-Officio and Regular Members, Ex Officio Secretaries and Consultants, issued by the Office of the Executive Officer, Judicial and Bar Council, rollo, pp. 62-63.

[17] Id.

[18] Id. at 80, citing Minutes of the 1st En Banc Executive Meeting, January 12, 2000 and Minutes of the 12th En

Banc Meeting, May 30, 2001.

[19] Malcolm, *The Constitutional Law of the Philippine Islands* (2[nd] ed. 1926), p. 26.

[20] 1987 Constitution, Article VII, Section 4. – The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date, six years thereafter. The President shall not be eligible for any re-election. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

x x x

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately. (Emphasis supplied)

x x x.

[21] 1987 Constitution, Article VII, Section 9. – Whenever there is a vacancy in the Office of the Vice-President during the term for which he was elected, the President shall nominate a Vice-President from among the Members of the Senate and the House of Representatives who shall assume office upon confirmation by a majority vote of all the Members of both Houses of the Congress, voting separately. (Emphasis supplied)

[22] 1987 Constitution, Article VII, Section 18. – 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. (Emphasis supplied)

[23] 1987 Constitution, Article VI Section 27(1). – Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it.

[24] 1987 Constitution, Article VI Section 24. – All appropriation, revenue or tariff bills, bills authorizing increase of public debt, bills of local application, and private bills shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.

[25] 1987 Constitution, Article VI Section 23 (1). – The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war.

[26] 1987 Constitution, Article VII Section 4. – The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes. The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.

[27] 1987 Constitution, Article XI Section 3 (1). – The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

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(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.

[28] Dated March 27, 2007; Annex “D,” rollo, p. 104.

[29] Annex C, id. at 95. Quoting the interpretation of Article VIII, Section (1) of the Constitution by Fr. Joaquin Bernas in page 984 of his book, *The 1987 Constitution of the Republic of the Philippines, A Commentary*. He quoted another author, Hector de Leon, and portions of the decisions of this Court in *Flores v. Drilon*, and *Escalante v. Santos*, before extensively quoting the Record of the Constitutional Commission of 1986 (pages 444 to 491).

[30] Annex “E,” id. at 1205.

[31] Rollo, pp. 91-93.

[32] G.R. No. 166006, March 14, 2008, 548 SCRA 485.

[33] Id. at 516-517. (Citations omitted.)

[34] *Black’s Law Dictionary*, Fifth ed., p. 198.

[35] Agpalo, *Statutory Construction*, 2009 ed., p. 231.

[36] Id., citing *Cartwrite v. Cartwrite*, 40 A2d 30, 155 ALR 1088 (1944).

[37] Id., Agpalo, p. 232

[38] Dissenting Opinion, Chief Justice Panganiban, *Central Bank (Now Bangko Sentral Ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004, 446 SCRA 299, citing *Peralta v. COMELEC*, No. L-47771, March 11, 1978, 82 SCRA 30, 77, citing concurring and dissenting opinion of former Chief Justice Fernando, citing *Malcolm*.

DISSENTING OPINION

ABAD, J.:

On July 17, 2012, the Court rendered a Decision^[1] granting the petition for declaration of unconstitutionality, prohibition, and injunction filed by petitioner Francisco I. Chavez, and declaring that the current numerical composition of the Judicial and Bar Council (JBC) is unconstitutional. The Court also enjoined the JBC to reconstitute itself so that only one member of Congress will sit as a representative in its proceedings, in accordance with Section 8(1), Article VIII of the 1987 Constitution.

On July 24, 2012, respondents Senator Francis Joseph G. Escudero and Congressman Niel C. Tupas, Jr. moved for reconsideration.^[2] The Court then conducted and heard the parties in oral arguments on the following issues:

1. Whether or not the current practice of the JBC to perform its functions with eight members, two of whom are members of Congress, runs counter to the letter and spirit of Section 8(1), Article VIII of the 1987 Constitution.

A. Whether or not the JBC should be composed of seven members only.

B. Whether or not Congress is entitled to more than one seat in the JBC.

C. Assuming Congress is entitled to more than one seat, whether or not each representative of Congress should be entitled to exercise one whole vote.

I maintain my dissent to the majority opinion now being reconsidered.

To reiterate, the vital question that needs to be resolved is: whether or not the Senate and the House of Representatives are entitled to one representative each in the JBC, both with the right to cast one full vote in its deliberations.

At the core of the present controversy is Section 8(1), Article VIII of the 1987 Constitution, which provides that:

Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector. (Emphasis supplied)

In interpreting Section 8(1) above, the majority opinion reiterated that in opting to use the singular letter “a” to describe “representative of the Congress,” the Filipino people through the framers of the 1987 Constitution intended Congress to just have one representative in the JBC. The majority opinion added that there could not have been any plain oversight in the wordings of the provision since the other provisions of the 1987 Constitution were amended accordingly with the shift to a bicameral legislative body.

The mere fact, however, that adjustments were made in some provisions should not mislead the Court into concluding that all provisions have been amended to recognize the bicameral nature of Congress. As I have previously noted in my dissenting opinion, Fr. Joaquin G. Bernas, a member of the Constitutional Commission himself, admitted that the committee charged with making adjustments in the previously passed provisions covering the JBC, failed to consider the impact of the changed character of the Legislature on the inclusion of “a representative of the Congress” in the membership of the JBC.^[3]

Indeed, to insist that only one member of Congress from either the Senate or the House of Representatives should sit at any time in the JBC, is to ignore the fact that they are still separate and distinct from each other although they are both involved in law-making. Both legislators are elected differently, maintain separate administrative organizations, and deliberate on laws independently. In fact, neither the Senate nor the House of Representatives

can by itself claim to represent the Congress.

Again, that the framers of the 1987 Constitution did not intend to limit the term “Congress” to just either of the two Houses can be seen from the words that they used in crafting Section 8(1). While the provision provides for just “a representative of the Congress,” it also provides that such representation is “ex officio” or “by virtue of one’s office, or position.”[4]

Under the Senate rules, the Chairperson of its Justice Committee is automatically the Senate representative to the JBC. In the same way, under the House of Representatives rules, the Chairperson of its Justice Committee is the House representative to the JBC. Consequently, there are actually two persons in Congress who hold separate offices or positions with the attached function of sitting in the JBC. If the Court adheres to a literal translation of Section 8(1), no representative from Congress will qualify as “ex officio” member of the JBC. This would deny Congress the representation that the framers of the 1987 Constitution intended it to have.

Having said that the Senate and the House of Representatives should have one representative each in the JBC, it is logical to conclude that each should also have the right to cast one full vote in its deliberations. To split the vote between the two legislators would be an absurdity since it would diminish their standing and make them second class members of the JBC, something that the Constitution clearly does not contemplate. Indeed, the JBC abandoned the half-a-vote practice on January 12, 2000 and recognized the right of both legislators to cast one full vote each. Only by recognizing this right can the true spirit and reason of Section 8(1) be attained.

For the above reasons, I vote to GRANT the motion for reconsideration.

[1] Rollo, pp. 226-250.

[2] Id. at 257-284.

[3] <http://opinion.inquirer.net/31813/jbc-odds-and-ends> (last accessed February 15, 2013).

[4] Webster’s New World College Dictionary, 3rd Edition, p. 477.

DISSENTING OPINION

LEONEN, J.:

I dissent.

Both the Senate and the House of Representatives must be represented in the Judicial and Bar Council. This is the Constitution’s mandate read as a whole and in the light of the ordinary and contemporary understanding of our people of the structure of our government. Any other interpretation diminishes Congress and negates the effectivity of its representation in the Judicial and Bar Council.

It is a Constitution we are interpreting. More than privileging a textual preposition, our duty is to ensure that the constitutional project ratified by our people is given full effect.

At issue in this case is the interpretation of Article VIII, Section 8 of the Constitution which provides the following:

Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of

the Supreme Court, and a representative of the private sector. (Emphasis provided)

Mainly deploying verba legis as its interpretative modality, the main opinion chooses to focus on the article “a.” As correctly pointed out in the original dissent of Justice Robert Abad, the entire phrase includes the words “representative of Congress” and “ex officio Members.” In the context of the constitutional plan involving a bicameral Congress, these words create ambiguity.

A Bicameral Congress

Our Constitution creates a Congress consisting of two chambers. Thus, in Article VI, Section 1, the Constitution provides the following:

The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives x x x. (Emphasis provided)

Senators are “elected at large by the qualified voters of the Philippines”.[1] Members of the House of Representatives, on the other hand, are elected by legislative districts[2] or through the party list system.[3] The term of a Senator[4] is different from that of a Member of the House of Representatives.[5] Therefore, the Senate and the House of Representatives while component parts of the Congress are not the same in terms of their representation. The very rationale of a bicameral system is to have the Senators represent a national constituency. Representatives of the House of Representatives, on the other hand, are dominantly from legislative districts except for one fifth which are from the party list system.

Each chamber is organized separately.[6] The Senate and the House each promulgates their own rules of procedure.[7] Each chamber maintains separate Journals.[8] They each have separate Records of their proceedings.[9] The Senate and the House of Representatives discipline their own respective members.[10]

To belabor the point: There is no presiding officer for the Congress of the Philippines, but there is a Senate President and a Speaker of the House of Representatives. There is no single journal for the Congress of the Philippines, but there is a journal for the Senate and a journal for the House of Representatives. There is no record of proceedings for the entire Congress of the Philippines, but there is a Record of proceedings for the Senate and a Record of proceedings for the House of Representatives. The Congress of the Philippines does not discipline its members. It is the Senate that promulgates its own rules and disciplines its members. Likewise, it is the House that promulgates its own rules and disciplines its members.

No Senator reports to the Congress of the Philippines. Rather, he or she reports to the Senate. No Member of the House of Representatives reports to the Congress of the Philippines. Rather, he or she reports to the House of Representatives.

Congress, therefore, is the Senate and the House of Representatives. Congress does not exist separate from the Senate and the House of Representatives.

Any Senator acting ex officio or as a representative of the Senate must get directions from the Senate. By constitutional design, he or she cannot get instructions from the House of Representatives. If a Senator represents the Congress rather than simply the Senate, then he or she must be open to amend or modify the instructions given to him or her by the Senate if the House of Representatives’ instructions are different. Yet, the Constitution vests disciplinary power only on the Senate for any Senator.

The same argument applies to a Member of the House of Representatives.

No Senator may carry instructions from the House of Representatives. No Member of the House of Representatives may carry instructions from the Senate. Neither Senator nor Member of the House of

Representatives may therefore represent Congress as a whole.

The difference between the Senate and the House of Representative was a subject of discussion in the Constitutional Commission. In the July 21, 1986 Records of the Constitutional Commission, Commissioner Jose F. S. Bengzon presented the following argument during the discussion on bicameralism, on the distinction between Congressmen and Senators, and the role of the Filipino people in making these officials accountable:

I grant the proposition that the Members of the House of Representatives are closer to the people that they represent. I grant the proposition that the Members of the House of Representatives campaign on a one-to-one basis with the people in the barrios and their constituencies. I also grant the proposition that the candidates for Senator do not have as much time to mingle around with their constituencies in their respective home bases as the candidates for the House. I also grant the proposition that the candidates for the Senate go around the country in their efforts to win the votes of all the members of the electorate at a lesser time than that given to the candidates for the House of Representatives. But then the lesson of the last 14 years has made us mature in our political thinking and has given us political will and self-determination. We really cannot disassociate the fact that the Congressman, the Member of the House of Representatives, no matter how national he would like to think, is very much strongly drawn into the problems of his local constituents in his own district.

Due to the maturity of the Filipinos for the last 14 years and because of the emergence of people power, I believe that this so-called people power can be used to monitor not only the Members of the House of Representatives but also the Members of the Senate. As I said we may have probably adopted the American formula in the beginning but over these years, I think we have developed that kind of a system and adopted it to our own needs. So at this point in time, with people power working, it is not only the Members of the House who can be subjected to people power but also the Members of the Senate because they can also be picketed and criticized through written articles and talk shows. And even the people not only from their constituencies in their respective regions and districts but from the whole country can exercise people power against the Members of the Senate because they are supposed to represent the entire country. So while the Members of Congress become unconsciously parochial in their desire to help their constituencies, the Members of the Senate are there to take a look at all of these parochial proposals and coordinate them with the national problems. They may be detached in that sense but they are not detached from the people because they themselves know and realize that they owe their position not only to the people from their respective provinces but also to the people from the whole country. So, I say that people power now will be able to monitor the activities of the Members of the House of Representatives and that very same people power can be also used to monitor the activities of the Members of the Senate.[11]

Commissioner Bengzon provided an illustration of the fundamental distinction between the House of Representatives and the Senate, particularly regarding their respective constituencies and electorate. These differences, however, only illustrate that the work of the Senate and the House of Representatives taken together results in a Congress functioning as one branch of government. Article VI, Section 1, as approved by the Commission, spoke of one Congress whose powers are vested in both the House of Representatives and the Senate.

Thus, when the Constitution provides that a “representative of Congress” should participate in the Judicial and Bar Council, it cannot mean a Senator carrying out the instructions of the House or a Member of the House of Representative carrying out instructions from the Senate. It is not the kind of a single Congress contemplated by our Constitution. The opinion therefore that a Senator or a Member of the House of Representative may represent the Congress as a whole is contrary to the intent of the Constitution. It is unworkable.

One mechanism used in the past to work out the consequence of the majority’s opinion is to allow a Senator and a Member of the House of Representative to sit in the Judicial and Bar Council but to each allow them only half a vote.

Within the Judicial and Bar Council, the Chief Justice is entitled to one vote. The Secretary of Justice is also entitled to one whole vote and so are the Integrated Bar of the Philippines, the private sector, legal academia, and retired justices. Each of these sectors are given equal importance and rewarded with one whole vote. However, in this view, the Senate is only worth fifty percent of the wisdom of these sectors. Likewise, the wisdom of the House of Representatives is only worth fifty percent of these institutions.

This is constitutionally abominable. It is inconceivable that our people, in ratifying the Constitution granting awesome powers to Congress, intended to diminish its component parts. After all, they are institutions composed of people who have submitted themselves to the electorate. In creating shortlists of possible candidates to the judiciary, we can safely suppose that their input is not less than the input of the professor of law or the member of the Integrated Bar of the Philippines or the member from the private sector.

The other solution done in the past was to alternate the seat between a Senator and a Member of the House of Representatives.

To alternate the seat given to Congress between the Senate and the House of Representatives would mean not giving a seat to the Congress at all. Again, when a Senator is seated, he or she represents the Senate and not Congress as a whole. When a Member of the House of Representative is seated, he or she can only represent Congress as a whole. Thus, alternating the seat not only diminishes congressional representation; it negates it.

Constitutional Interpretation

The argument that swayed the majority in this case's original decision was that if those who crafted our Constitution intended that there be two representatives from Congress, it would not have used the preposition "a" in Article VIII, Section 8 (1). However, beyond the number of representatives, the Constitution intends that in the Judicial and Bar Council, there will be representation from Congress and that it will be "ex officio", i.e., by virtue of their positions or offices. We note that the provision did not provide for a number of members to the Judicial and Bar Council. This is unlike the provisions creating many other bodies in the Constitution.[12]

In other words, we could privilege or start our interpretation only from the preposition "a" and from there provide a meaning that ensures a difficult and unworkable result -- one which undermines the concept of a bicameral congress implied in all the other 114 other places in the Constitution that uses the word "Congress".

Or, we could give the provision a reasonable interpretation that is within the expectations of the people who ratified the Constitution by also seeing and reading the words "representative of Congress" and "ex officio."

This proposed interpretation does not violate the basic tenet regarding the authoritative text of the Constitution. It does not detract from the text. It follows the canonical requirement of *verba legis*. But in doing so, we encounter an ambiguity.

In *Macalintal v. Presidential Electoral Tribunal*,[13] we said:

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 cases where the need for construction is reduced to a minimum.

However, where there is ambiguity or doubt, the words of the Constitution should be interpreted in accordance with the intent of its framers or *ratio legis et anima*. A doubtful provision must be examined in light of the history of the times, and the condition and circumstances surrounding the framing of the Constitution. In following this guideline, courts should bear in mind the object sought to be accomplished in adopting a

doubtful constitutional provision, and the evils sought to be prevented or remedied. Consequently, the intent of the framers and the people ratifying the constitution, and not the panderings of self-indulgent men, should be given effect.

Last, *ut magis valeat quam pereat* – the Constitution is to be interpreted as a whole. We intoned thus in the landmark case of *Civil Liberties Union v. Executive Secretary*:

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. (Emphasis provided)

And in *Civil Liberties Union v. Executive Secretary*,^[13] we said:

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.

The authoritativeness of text is no excuse to provide an unworkable result or one which undermines the intended structure of government provided in the Constitution. Text is authoritative, but it is not exhaustive of the entire universe of meaning.

There is no compelling reason why we should blind ourselves as to the meaning of “representative of Congress” and “ex officio.” There is no compelling reason why there should only be one representative of a bicameral Congress.

Proposed Reasons for Only One Representative of Congress

The first reason to support the need for only one representative of Congress is the belief that there needs to be an odd number in the Judicial and Bar Council.

This is true only if the decision of the constitutional organ in question is a dichotomous one, i.e., a yes or a no. It is in this sense that a tie-breaker will be necessary.

However, the Judicial and Bar Council is not that sort of a constitutional organ. Its duty is to provide the President with a shortlist of candidates to every judicial position. We take judicial notice that for vacancies, each member of the Judicial and Bar Council is asked to list at least three (3) names. All these votes are tallied and those who garner a specific plurality are thus put on the list and transmitted to the President. There had been no occasion when the Judicial and Bar Council ever needed to break a tie. The Judicial and Bar Council’s functions proceed regardless of whether they have seven or eight members.

The second reason that the main opinion accepted as persuasive was the opinion that Congress does not discharge its function to check and balance the power of both the Judiciary and the Executive in the Judicial and Bar

Council. From this premise, it then proceeds to argue that the Representative of Congress, who is *ex officio*, does not need to consult with Congress as a whole.

This is very perplexing and difficult to accept.

By virtue of the fundamental premise of separation of powers, the appointing power in the judiciary should be done by the Supreme Court. However, for judicial positions, this is vested in the Executive. Furthermore, because of the importance of these appointments, the President's discretion is limited to a shortlist submitted to him by the Judicial and Bar Council which is under the supervision of the Supreme Court but composed of several components.

The Judicial and Bar Council represents the constituents affected by judicial appointments and by extension, judicial decisions. It provides for those who have some function vis a vis the law that should be applied and interpreted by our courts. Hence, represented are practicing lawyers (Integrated Bar of the Philippines), prosecutors (Secretary of the Department of Justice), legal academia (professor of law), and judges or justices (retired justice and the Chief Justice). Also represented in some way are those that will be affected by the interpretation directly (private sector representative).

Congress is represented for many reasons.

One, it crafts statutes and to that extent may want to ensure that those who are appointed to the judiciary are familiar with these statutes and will have the competence, integrity, and independence to read its meaning.

Two, the power of judicial review vests our courts with the ability to nullify their acts. Congress, therefore, has an interest in the judicial philosophy of those considered for appointment into our judiciary.

Three, Congress is a political organ. As such, it is familiar with the biases of our political leaders including that of the President. Thus, it will have greater sensitivity to the necessity for political accommodations if there be any. Keeping in mind the independence required of our judges and justices, the Members of Congress may be able to appreciate the kind of balance that will be necessary -- the same balance that the President might be able to likewise appreciate -- when putting a person in the shortlist of judicial candidates. Not only do they appreciate this balance, they embody it. Senators and Members of the House of Representatives (unlike any of the other members of the Judicial and Bar Council), periodically submit themselves to the electorate.

It is for these reasons that the Congressional representatives in the Judicial and Bar Council may be instructed by their respective chambers to consider some principles and directions. Through resolutions or actions by the Congressional Committees they represent, the JBC Congressional representatives' choices may be constrained. Therefore, they do not sit there just to represent themselves. Again, they are "representatives of Congress" "*ex officio*".

The third reason to support only one representative of Congress is the belief that there is the "unmistakable tenor" in the provision in question that one co-equal branch should be represented only by one Representative.^[14] It may be true that the Secretary of Justice is the political alter ego of the President or the Executive. However, Congress as a whole does not have a political alter ego. In other words, while the Executive may be represented by a single individual, Congress cannot be represented by an individual. Congress, as stated earlier, operates through the Senate and the House of Representatives. Unlike the Executive, the Legislative branch cannot be represented by only one individual.

A Note on the Work of the Constitutional Commission

Time and again, we have clarified the interpretative value to Us of the deliberations of the Constitutional

Commission. Thus in *Civil Liberties Union v. Executive Secretary*, we emphasized:

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 reason 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 or 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' understanding thereof.[15] (Emphasis provided)

Also worth Our recall is the celebrated comment of Charles P. Curtis, Jr. on the role of history in constitutional exegesis:[16]

The intention of the framers of the Constitution, even assuming we could discover what it was, when it is not adequately expressed in the Constitution, that is to say, what they meant when they did not say it, surely that has no binding force upon us. If we look behind or beyond what they set down in the document, prying into what else they wrote and what they said, anything we may find is only advisory. They may sit in at our councils. There is no reason why we should eavesdrop on theirs.[17] (Emphasis provided)

In addition to the interpretative value of the discussion in the Constitutional Commission, we should always be careful when we quote from their records without understanding their context.

The Committees of the Constitutional Commission were all tasked to finish their reports not later than July 7, 1986.[18] The Second and Third Readings were scheduled to finish not later than August 15, 1986.[19] The members of the Sponsorship and Style Committee were tasked to finish their work of formulating and polishing the style of the final draft of the new Constitution scheduled for submission to the entire membership of the Commission not later than August 25, 1986.[20]

The Rules of the Constitutional Commission also provided for a process of approving resolutions and amendments.

Constitutional proposals were embodied in resolutions signed by the author.[21] If they emanated from a committee, the resolution was signed by its chairman.[22] Resolutions were filed with the Secretary-General.[23] The First Reading took place when the titles of the resolutions were read and referred to the appropriate committee.[24]

The Committees then submitted a Report on each resolution.[25] The Steering Committee took charge of including the committee report in the Calendar for Second Reading.[26] The Second Reading took place on the day set for the consideration of a resolution.[27] The provisions were read in full with the amendments proposed by the committee, if there were any.[28]

A motion to close debate took place after three speeches for and two against, or if only one speech has been raised and none against it.[29] The President of the Constitutional Commission had the prerogative to allow debates among those who had indicated that they intended to be heard on certain matters.[30] After the close of the debate, the Constitutional Commission proceeded to consider the Committee amendments.[31]

After a resolution was approved on Second Reading, it was included in the Calendar for Third Reading.[32] Neither further debate nor amendment shall be made on the resolution on its Third Reading.[33] All constitutional proposals approved by the Commission after Third Reading were referred to the Committees on Sponsorship and Style for collation, organization, and consolidation into a complete and final draft of the Constitution.[34] The

final draft was submitted to the Commission for the sole purpose of determining whether it reflects faithfully and accurately the proposals as approved on Second Reading.[35]

With respect to the provision which is now Article VIII, Section 8 (1), the timetable was as follows:

On July 10, 1986, the Committee on the Judiciary presented its Report to the Commission.[36] Deliberations then took place on the same day; on July 11, 1986; and on July 14, 1986. It was on July 10 that Commissioner Rodrigo raised points regarding the Judicial and Bar Council.[37] The discussion spoke of the Judicial and Bar Council having seven members.

Numerous mentions of the Judicial and Bar Council being comprised of seven members were also made by Commissioners on July 14, 1986. On the same day, the amended article was approved by unanimous voting.[38]

On July 19, 1986, the vote on Third Reading on the Article on the Judiciary took place.[39] The vote was 43 and none against.[40]

Committee Report No. 22 proposing an article on a National Assembly was reported out by July 21, 1986.[41] It provided for a unicameral assembly. Commissioner Hilario Davide, Jr., made the presentation and stated that they had a very difficult decision to make regarding bicameralism and unicameralism.[42] The debate occupied the Commission for the whole day.

Then, a vote on the structure of Congress took place.[43] Forty four (44) commissioners cast their votes during the roll call.[44] The vote was 23 to 22.[45]

On October 8, 1986, the Article on the Judiciary was reopened for purposes of introducing amendments to the proposed Sections 3, 7, 10, 11, 13, and 14.[46]

On October 9, 1986, the entire Article on the Legislature was approved on Third Reading.[47]

By October 10, 1986, changes in style on the Article on the Legislature were introduced.[48]

On October 15, 1986, Commissioner Guingona presented the 1986 Constitution to the President of the Constitutional Commission, Cecilia Munoz-Palma.[49]

It is apparent that the Constitutional Commission either through the Style and Sponsorship Committee or the Committees on the Legislature and the Judiciary was not able to amend the provision concerning the Judicial and Bar Council after the Commission had decided to propose a bicameral Congress. We can take judicial notice of the chronology of events during the deliberations of the Constitutional Commission. The chronology should be taken as much as the substance of discussions exchanged between the Commissioners.

The quotations from the Commissioners mentioned in the main opinion and in the proposed resolution of the present Motion for Reconsideration should thus be appreciated in its proper context.

The interpellation involving Commissioners Rodrigo and Concepcion took place on July 10, 1986 and on July 14, 1986.[50] These discussions were about Committee Report No. 18 on the Judiciary. Thus:

MR. RODRIGO: Let me go to another point then.

On page 2, Section 5, there is a novel provision about appointments of members of the Supreme Court and of judges of lower courts. At present it is the President who appoints them. If there is a Commission on Appointments, then it is the President with the confirmation of the Commission on Appointments. In this proposal, we would like to establish a new office, a sort of a board composed of seven members, called the Judicial and Bar Council. And while the President will still appoint the members of the judiciary, he will be limited to the recommendees of this Council.

x x x x

MR. RODRIGO: Of the seven members of the Judicial and Bar Council, the President appoints four of them who are the regular members.

x x x x

MR. CONCEPCION: The only purpose of the Committee is to eliminate partisan politics.[51]

x x x x

It must also be noted that during the same day and in the same discussion, both Commissioners Rodrigo and Concepcion later on referred to a 'National Assembly' and not a 'Congress,' as can be seen here:

MR. RODRIGO: Another point. Under our present Constitution, the National Assembly may enact rules of court, is that right? On page 4, the proviso on lines 17 to 19 of the Article on the Judiciary provides:

The National Assembly may repeal, alter, or supplement the said rules with the advice and concurrence of the Supreme Court.

MR. CONCEPCION: Yes.

MR. RODRIGO: So, two things are required of the National Assembly before it can repeal, alter or supplement the rules concerning the protection and enforcement of constitutional rights, pleading, etc. — it must have the advice and concurrence of the Supreme Court.

MR. CONCEPCION: That is correct.[52]

On July 14, 1986, the Commission proceeded with the Period of Amendments. This was when the exchange noted in the main opinion took place. Thus:

MR. RODRIGO: If my amendment is approved, then the provision will be exactly the same as the provision in the 1935 Constitution, Article VIII, Section 5.

x x x x

If we do not remove the proposed amendment on the creation of the Judicial and Bar Council, this will be a diminution of the appointing power of the highest magistrate of the land, of the President of the Philippines elected by all the Filipino people. The appointing power will be limited by a group of seven people who are not elected by the people but only appointed.

Mr. Presiding Officer, if this Council is created, there will be no uniformity in our constitutional provisions on appointments. The members of the Judiciary will be segregated from the rest of the government. Even a municipal judge cannot be appointed by the President except upon recommendation or nomination of three names by this committee of seven people, commissioners of the Commission on Elections, the COA and Commission on Civil Service x x x even ambassadors, generals of the Army will not come under this restriction. Why are we going to segregate the Judiciary from the rest of our government in the appointment of the high-ranking officials?

Another reason is that this Council will be ineffective. It will just besmirch the honor of our President without being effective at all because this Council will be under the influence of the President. Four out of seven are appointees of the President, and they can be reappointed when their term ends. Therefore, they would kowtow to the President. A fifth member is the Minister of Justice, an alter ego of the President. Another member represents the legislature. In all probability, the controlling party in the legislature belongs to the President and, therefore, this representative from the National Assembly is also under the influence of the President. And may I say, Mr. Presiding Officer, that even the Chief Justice of the Supreme Court is an appointee of the President.

So, it is futile; he will be influenced anyway by the President.[53]

It must again be noted that during this day and period of amendments after the quoted passage in the Decision, the Commission later on made use of the term 'National Assembly' and not 'Congress' again:

MR. MAAMBONG: Presiding Officer and members of the Committee, I propose to delete the last sentence on Section 16, lines 28 to 30 which reads: "The Chief Justice shall address the National Assembly at the opening of each regular session."

May I explain that I have gone over the operations of other deliberative assemblies in some parts of the world, and I noticed that it is only the Chief Executive or head of state who addresses the National Assembly at its opening. When we say "opening," we are referring to the first convening of any national assembly. Hence, when the Chief Executive or head of state addresses the National Assembly on that occasion, no other speaker is allowed to address the body.

So I move for the deletion of this last sentence.[54]

Based on the chronology of events, the discussions cited by the main ponencia took place when the commissioners were still contemplating a unicameral legislature in the course of this discussion. Necessarily, only one Representative would be needed to fully effect the participation of a unicameral legislature. Therefore, any mention of the composition of the JBC having seven members in the records of the Constitutional Commission, particularly during the dates cited, was obviously within the context that the Commission had not yet voted and agreed upon a bicameral legislature.

The composition of the Congress as a bilateral legislature became final only after the JBC discussions as a seven-member Council indicated in the Records of the Constitutional Commission took place. This puts into the proper context the recognition by Commissioner Christian Monsod on July 30, 1986, which runs as follows:

Last week, we voted for a bicameral legislature. Perhaps it is symptomatic of what the thinking of this group is, that all the provisions that were being drafted up to that time assumed a unicameral government.[55]

The repeated mentions of the JBC having seven members as indicated in the Records of the Constitutional Commission do not justify the points raised by petitioner. This is a situation where the records of the Constitutional Commission do not serve even as persuasive means to ascertain intent at least in so far as the intended numbers for the Judicial and Bar Council. Certainly they are not relevant even to advise us on how Congress is to be represented in that constitutional organ.

We should never forget that when we interpret the Constitution, we do so with full appreciation of every part of the text within an entire document understood by the people as they ratified it and with all its contemporary consequences. As an eminent author in constitutional theory has observed while going through the various interpretative modes presented in jurisprudence: "x x x all of the methodologies that will be discussed, properly understood, figure in constitutional analysis as opportunities: as starting points, constituent parts of complex arguments, or concluding evocations." [56]

Discerning that there should be a Senator and a Member of the House of Representatives that sit in the Judicial and Bar Council so that Congress can be fully represented ex officio is not judicial activism. It is in keeping with the constitutional project of a bicameral Congress that is effective whenever and wherever it is represented. It is in tune with how our people understand Congress as described in the fundamental law. It is consistent with our duty to read the authoritative text of the Constitution so that ordinary people who seek to understand this most basic law through Our decisions would understand that beyond a single isolated text -- even beyond a preposition in Article VIII, Section 8 (1), our primordial values and principles are framed, congealed and will be given full

effect.

In a sense, we do not just read words in a legal document; we give meaning to a Constitution.

For these reasons, I vote to grant the Motion for Reconsideration and deny the Petition for lack of merit.

[1] CONSTITUTION, Art. VI, Sec. 2.

[2] CONSTITUTION, Art. VI, Sec. 5 (1).

[3] CONSTITUTION, Art. VI, Sec. 5 (2). See also the recent case of *Atong Paglaum v. COMELEC et al.*, G.R. No. 203766, for the most recent discussion on the nature of the party list system.

[4] The term of a senator is six years, extendible for another term. Constitution, Art. VI, Sec. 4.

[5] The term of a member of the House of Representatives is three years, and may be extendible for three consecutive terms. Constitution, Art. VI, Sec. 7.

[6] CONSTITUTION, Art. VI, Sec. 16.

[7] CONSTITUTION, Art. VI, Sec. 16 (1).

[8] CONSTITUTION, Art. VI, Sec. 16 (4), par. (1).

[9] CONSTITUTION, Art. VI, Sec. 16 (4), par. (2).

[10] Constitution, Art. VI, Sec. 16 (3).

[11] II RECORD, CONSTITUTIONAL COMMISSION 63 (July 21, 1986).

[12] CONSTITUTION, Art. VI, Sec. 2: The Senate shall be composed of twenty-four Senators who shall be elected at large by the qualified voters of the Philippines, as may be provided by law.;

Art. VI, Sec. 5: The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law...;

Art. VI, Sec. 17: The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be...;

Art. VI, Sec. 18: There shall be a Commission on Appointments consisting of the President of the Senate, as ex officio Chairman, twelve Senators, and twelve Members of the House of Representatives, elected by each House on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented therein.;

Art. VIII, Sec. 4.1: The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit en banc or in its discretion, in division of three, five, or seven Members...;

Art. IX (B), Sec. 1: The civil service shall be administered by the Civil Service Commission composed of a Chairman and two Commissioners...;

Art. IX (C), Sec. 1: There shall be a Commission on Elections composed of a Chairman and six Commissioners...;

Art. IX (D), Sec. 1: There shall be a Commission on Audit composed of a Chairman and two Commissioners...;

Art. XI, Sec. 11: There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.;

Art. XII, Sec. 17 (2): The Commission [on Human Rights] shall be composed of a Chairman and four Members who must be natural-born citizens of the Philippines and a majority of whom shall be members of the Bar.

[13] Atty. Romulo A. Macalintal v. Presidential Electoral Tribunal, G.R. No. 191618, November 23, 2010, 635 SCRA 783, 797-799.

[13] Civil Liberties Union v. Executive Secretary, G.R. No. 83896, February 22, 1981, 194 SCRA 317, 325.

[14] Francisco I. Chavez v. Judicial and Bar Council, Sen. Francis Joseph G. Escudero and Rep. Neil C. Tupas, Jr., G.R. No. 202242, July 17, 2012, p. 18.

[15] Civil Liberties Union v. Executive Secretary, *supra* at 337.

[16] Charles P. Curtis. LIONS UNDER THE THRONE 2, Houghton Mifflin, 1947.

[17] Ang Bagong Bayani-OFW Labor Party v. Commission on Elections, 412 Phil. 308, 363 (2001).

[18] I RECORD, CONSTITUTIONAL COMMISSION Appendix 2, p. 1900, (July 10, 1986), PROPOSED RESOLUTION NO. 50, RESOLUTION PROVIDING FOR THE RULES OF THE CONSTITUTIONAL COMMISSION (PROPOSED RESOLUTION NO. 50), Rule II, Sec. 9.

[19] Proposed Resolution No. 50, Rule II, Sec. 9.

[20] Proposed Resolution No. 50, Rule II, Sec. 9.

[21] Proposed Resolution No. 50, Rule IV, Sec. 20.

[22] Proposed Resolution No. 50, Rule IV, Sec. 20.

[23] Proposed Resolution No. 50, Rule IV, Sec. 20.

[24] Proposed Resolution No. 50, Rule IV, Sec. 21.

[25] Proposed Resolution No. 50, Rule IV, Sec. 22.

[26] Proposed Resolution No. 50, Rule IV, Sec. 22.

[27] Proposed Resolution No. 50, Rule IV, Sec. 23.

[28] Proposed Resolution No. 50, Rule IV, Sec. 23.

[29] Proposed Resolution No. 50, Rule IV, Sec. 24.

[30] Proposed Resolution No. 50, Rule IV, Sec. 25.

[31] Proposed Resolution No. 50, Rule IV, Sec. 26.

[32] Proposed Resolution No. 50, Rule IV, Sec. 27.

[33] Proposed Resolution No. 50, Rule IV, Sec. 27.

[34] Proposed Resolution No. 50, Rule IV, Sec. 29.

[35] Proposed Resolution No. 50, Rule IV, Sec. 29.

[36] I RECORD, CONSTITUTIONAL COMMISSION, JOURNAL No. 27 (Thursday, July 10, 1986).

[37] I RECORD, CONSTITUTIONAL COMMISSION, RECORD No. 27 (Thursday, July 10, 1986).

[38] I RECORD, CONSTITUTIONAL COMMISSION, JOURNAL No. 27 (Thursday, July 10, 1986).

[39] I RECORD, CONSTITUTIONAL COMMISSION, JOURNAL No. 34 (Saturday, July 19, 1986).

[40] I RECORD, CONSTITUTIONAL COMMISSION, JOURNAL No. 34 (Saturday, July 19, 1986).

[41] I RECORD, CONSTITUTIONAL COMMISSION, JOURNAL No. 34 (Saturday, July 19, 1986), which reads:

RECONSIDERATION AND APPROVAL, ON THIRD READING, OF THE ARTICLE ON THE JUDICIARY. On motion of Mr. Bengzon, there being no objection, the Body reconsidered the approval, on Third Reading, of the Article on the Judiciary, to afford the other Members opportunity to cast their votes. Thereupon, upon direction of the Chair, the Secretary-General called the Roll for nominal voting and the following Members cast an affirmative vote:

Abubakar
Alonto
Azcuna
Natividad
Tadeo

With 5 additional affirmative votes, making a total of 43 Members voting in favor and none against, the Chair declared the Article on the Judiciary approved on Third Reading.

[42] I RECORD, CONSTITUTIONAL COMMISSION, No. 35 (Monday, July 21, 1986), which reads in part:

MR. DAVIDE:

x x x

A Unicameral Structure of the National Assembly. — In the records of the 1935 and 1971 Constitutional Conventions, and now the 1986 Constitutional Commission, advocates of unicameralism and bicameralism have eloquently discoursed on the matter. The draft proposal of the 1986 UP Law Constitution Project analyzes exhaustively the best features and the disadvantages of each. Our people, having experienced both systems, are faced with a difficult decision to make.

Madam President and my dear colleagues, even in our own Committee, I had to break the tie in favor of unicameralism. Commissioner Sarmiento, in his Resolution No. 396, aptly stated that the Philippines needs a unicameral legislative assembly which is truly representative of the people, responsive to their needs and welfare, economical to maintain and efficient and effective in the exercise of its powers, functions and duties in the discharge of its responsibilities. Commissioner Tingson, however, said that despite its simplicity of organization, resulting in economy and efficiency, and achieving a closer relationship between the legislative and executive, it also resulted in the authoritarian manipulation by the Chief Executive, depriving in the process the people from expressing their true sentiments through their chosen representatives. Thus, under Resolution No. 321, Commissioner Tingson calls for the restoration of the bicameral form of legislature to maximize the participation of people in decision-making.

[43] I, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL No. 35, (Monday July 21, 1986).

[44] I, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL No. 35, (Monday July 21, 1986), which reads in part:

x x x

With 22 Members voting for a unicameral system and 23 Members voting for bicameralism, the Body approved the proposal for a bicameral legislature.

[45] Bernas, Joaquin, THE INTENT OF THE 1986 CONSTITUTION WRITERS, 1995, pp. 310-311.

[46] III, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL No. 102 (Tuesday and Wednesday, October 7 and 8, 1987).

[47] III, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL No. 103 (Thursday, October 9, 1986), which reads in part:

x x x

With 29 Members voting in favor, none against and 7 abstentions, the Body approved, on Third Reading, the Article on the Legislative.

[48] III, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL No. 104 (Friday, October 10, 1986).

[49] V, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 109 (Wednesday, October 15, 1986), which reads in part:

x x x

MR. GUINGONA: Madam President, I have the honor on behalf of the Sponsorship Committee to officially announce that on October 12, the 1986 Constitutional Commission had completed under the able, firm and dedicated leadership of our President, the Honorable Cecilia Muñoz Palma, the task of drafting a Constitution for our people, a Constitution reflective of the spirit of the time — a spirit of nationalism, a spirit of dedication to the democratic way of life, a spirit of liberation and rising expectations, a spirit of confidence in the Filipino. On that day, Madam President, the Members of this Constitutional Commission had approved on Third Reading the draft Constitution of the Republic of the Philippines — a practical instrument suited to the circumstances of our time but which is broad enough to allow future generations to respond to challenges which we of this generation could not foretell, a Charter which would seek to establish in this fair land a community characterized by social progress, political stability, economic prosperity, peace, justice and freedom for all...

[50] I Record, Constitutional Commission 445 (July 10, 1986) and I Record, Constitutional Commission 486-487 (July 14, 1986).

[51] I RECORD, CONSTITUTIONAL COMMISSION 445 (July 10, 1986).

[52] I RECORD, CONSTITUTIONAL COMMISSION 445 (July 10, 1986).

[53] I RECORD, CONSTITUTIONAL COMMISSION 486-487 (July 14, 1986).

[54] I RECORD, CONSTITUTIONAL COMMISSION 510 (July 14, 1986).

[55] II RECORD, CONSTITUTIONAL COMMISSION 434 (July 30, 1986).

[56] Lawrence Tribe, as cited in It is a Constitution We Are Expounding, p. 21 (2009), previously published in

American Constitutional Law, Chapter 1: Approaches to Constitutional Analysis (3rd ed.2000).

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