

RAMON A. GONZALES, PETITIONER, VS. COMMISSION ON ELECTIONS, DIRECTOR OF PRINTING, AND AUDITOR GENERAL, RESPONDENTS.

G.R. No. 28196 & 28224. November 09, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

G.R. No. L-28196 is an original action for prohibition, with preliminary injunction.

Petitioner therein prays for judgment:

1) Restraining: (a) the Commission on Elections from enforcing Republic Act No. 4913, or from performing any act that will result in the holding of the plebiscite for the ratification of the constitutional amendments proposed in Joint Resolutions Nos. 1 and 3 of the two Houses of Congress of the Philippines, approved on March 16, 1967; (b) the Director of Printing from printing ballots, pursuant to said Act and Resolutions; and (c) the Auditor General from passing in audit any disbursement from the appropriation of funds made in said Republic Act No. 4913; and

2) declaring said Act unconstitutional and void.

The main facts are not disputed. On March 16, 1967, the Senate and the House of Representatives passed the following resolutions:

1. R.B.H. (Resolution of Both Houses) No. 1, proposing that Section 5, Article VI, of the Constitution of the Philippines, be amended so as to increase the membership of the House of Representatives from a maximum of 120, as provided in the present Constitution, to a maximum of 180, to be apportioned among the several provinces as nearly as may be according to the number of their respective inhabitants, although each province shall have, at least, one (1) member;

2. R.B.H. No. 2, calling a convention to propose amendments to said Constitution, the convention to be composed of two (2) elective delegates from each representative district, to be "elected in the general elections to be held on the second Tuesday of November, 1971;" and

3. R.B.H. No. 3, proposing that Section 16, Article VI, of the same Constitution, be amended so as to authorize senators and members of the House of Representatives to become delegates to the aforementioned constitutional convention, without forfeiting their respective seats in Congress.

Subsequently, Congress passed a bill, which, upon approval by the President, on June 17, 1967, became Republic Act No. 4913, providing that the amendments to the Constitution proposed in the aforementioned Resolutions Nos. 1 and 3 be submitted, for approval by the people, at the general elections which shall be held on November 14, 1967.

The petition in L-28196 was filed on October 21, 1967. At the hearing thereof, on October 28, 1967, the Solicitor

General appeared on behalf of respondents. Moreover, Atty. Juan T. David and counsel for the Philippine Constitution Association --- hereinafter referred to as the PHILCONSA --- were allowed to argue as amici curiae. Said counsel for the PHILCONSA, Dr. Salvador Araneta, likewise, prayed that the decision in this case be deferred until after a substantially identical case --- brought by said organization before the Commission on Elections,[1] which was expected to decide it any time, and whose decision would, in all probability, be appealed to this Court --- had been submitted thereto for final determination, for a joint decision on the identical issues raised in both cases. In fact, on October 31, 1967, the PHILCONSA filed with this Court the petition in G.R. No. L-28224 for review by certiorari of the resolution of the Commission on Elections[2] dismissing the petition therein. The two (2) cases were deemed submitted for decision on November 8, 1967, upon the filing of the answer of respondent, the memorandum of the petitioner and the reply memorandum of respondent in L-28224.

Ramon A. Gonzales, the petitioner in L-28196, is admittedly a Filipino citizen, a taxpayer, and a voter. He claims to have instituted case L-28196 as a class suit, for and in behalf of all citizens, taxpayers, and voters similarly situated. Although respondents and the Solicitor General have filed an answer denying the truth of this allegation, upon the ground that they have no knowledge or information to form a belief as to the truth thereof, such denial would appear to be a perfunctory one. In fact, at the hearing of case L-28196, the Solicitor General expressed himself in favor of a judicial determination of the merits of the issues raised in said case.

The PHILCONSA, petitioner in L-28224, is admittedly a corporation duly organized and existing under the laws of the Philippines, and a civic, non-profit and non-partisan organization the objective of which is to uphold the rule of law in the Philippines and to defend its Constitution against erosions or onslaughts from whatever source. Despite his aforementioned statement in L-28196, in his answer in L-28224 the Solicitor General maintains that this Court has no jurisdiction over the subject-matter of L-28224, upon the ground that the same is "merely political" as held in *Mabanag vs. Lopez Vito*.^[3] Senator Arturo M. Tolentino, who appeared before the Commission on Elections and filed an opposition to the PHILCONSA petition therein, was allowed to appear before this Court and objected to said petition upon the ground: a) that the Court has no jurisdiction either to grant the relief sought in the petition, or to pass upon the legality of the composition of the House of Representatives; b) that the petition, if granted, would, in effect, render inoperational the legislative department; and c) that "the failure of Congress to enact a valid reapportionment law x x x does not have the legal effect of rendering illegal the House of Representatives elected thereafter, nor of rendering its acts null and void."

Jurisdiction

As early as *Angara vs. Electoral Commission*,^[4] this Court – speaking through one of the leading members of the Constitutional Convention and a respected professor of Constitutional Law, Dr. Jose P. Laurel – declared that "the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of power between the several departments and among the integral or constitutional constituent units thereof."

It is true that in *Mabanag vs. Lopez Vito*,^[5] this Court, characterizing the issue submitted thereto as a political one, declined to pass upon the question whether or not a given number of votes cast in Congress in favor of a proposed amendment to the Constitution – which was being submitted to the people for ratification – satisfied the three-fourths vote requirement of the fundamental law. The force of this precedent has been weakened, however, by *Suanes vs. Chief Accountant of the Senate*,^[6] *Avelino vs. Cuenco*,^[7] *Tañada vs. Cuenco*,^[8] and *Macias vs. Commission on Elections*.^[9] In the first, we held that the officers and employees of the Senate Electoral Tribunal are under its supervision and control, not of that of the Senate President, as claimed by the latter; in the second, this Court proceeded to determine the number of Senators necessary for a quorum in the Senate; in the third, we nullified the election, by Senators belonging to the party having the largest number of votes in said

chamber, purporting to act on behalf of the party having the second largest number of votes therein, of two (2) Senators belonging to the first party, as members, for the second party, of the Senate Electoral Tribunal; and in the fourth, we declared unconstitutional an act of Congress purporting to apportion the representative districts for the House of Representatives, upon the ground that the apportionment had not been made as nearly as may be possible according to the number of inhabitants of each province. Thus we rejected the theory, advanced in these four (4) cases, that the issues therein raised were political questions the determination of which is beyond 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.^[10] It is part of the inherent powers of the people – as the repository of sovereignty in a republican state, such as ours^[11] – 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.^[12] 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,^[13] 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,^[14] the power to declare a treaty unconstitutional,^[15] despite the eminently political character of the treaty-making power.

In short, the issue whether or not a Resolution of Congress – acting as a constituent assembly – violates the Constitution, is 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 vs. Lopez Vito*,^[16] the latter should be deemed modified accordingly. The Members of the Court are unanimous on this point.

The Merits

Section 1 of Article XV of the Constitution, as amended, reads:

"The Congress in joint session assembled by a vote of three-fourths of all the Members of the Senate and of the House of Representatives voting separately, may propose amendments to this Constitution or call a convention for that purpose. Such amendments shall be valid as part of this Constitution when approved by a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification."

Pursuant to this provision, amendments to the Constitution may be proposed, either by Congress, or by a convention called by Congress for that purpose. In either case, the vote of "three-fourths of all the members of the Senate and of the House of Representatives voting separately" is necessary. And, "such amendments shall be valid as part of" the Constitution when approved by a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification."

In the cases at bar, it is conceded that the R.B.H. Nos. 1 and 3 have been approved by a vote of three-fourths of all the members of the Senate and of the House of Representatives voting separately. This, notwithstanding, it is urged that said resolutions are null and void because:

1. The Members of Congress, which approved the proposed amendments, as well as the resolution calling a convention to propose amendments, are, at best, de facto Congress-men;
2. Congress may adopt either one of two alternatives - propose amendments or call a convention therefore - but may not avail of both - that is to say, propose amendment and call a convention - at the same time;
3. The election, in which proposals for amendments to the Constitution shall be submitted for ratification, must be a special election, not a general election, in which officers of the national and local governments - such as the elections scheduled to be held on November 14, 1967 - will be chosen; and
4. The spirit of the Constitution demands that the election, in which proposals for amendment shall be submitted to the people for ratification, must be held under such conditions - which, allegedly, do not exist - as to give the people a reasonable opportunity to have a fair grasp of the nature and implications of said amendments.

Legality of Congress and

Legal Status of the Congressmen

The first objection is based upon Section 5, Article VI, of the Constitution, which provides:

"The House of Representatives shall be composed of not more than one hundred and twenty Members who shall be apportioned among the several provinces as nearly as may be according to the number of their respective inhabitants, but each province shall have at least one Member. The Congress shall by law make an apportionment within three years after the re-turn of every enumeration, and not otherwise. Until such apportionment shall have been made, the House of Representatives shall have the same number of Members as that fixed by law for the National Assembly, who shall be elected by the qualified electors from the present Assembly districts. Each representative district shall comprise, as far as practicable, contiguous and compact territory."

It is urged that the last enumeration or census took place in 1960; that, no apportionment having been made within three (3) years thereafter, the Congress of the Philippines and/or the election of its Members became illegal; that Congress and its Members, likewise, became a de facto Congress and/or de facto congressmen, respectively; and that, consequently, the disputed Resolutions, proposing amendments to the Constitution, as well as Republic Act No. 4913, are null and void.

It is not true, however, that Congress has not made an apportionment within three years after the enumeration or census made in 1960. It did actually pass a bill, which became Republic Act No. 3040,[17] purporting to make said apportionment. This Act was, however, declared unconstitutional, upon the ground that the apportionment therein undertaken had not been made according to the number of inhabitants of the different provinces of the Philippines.[18]

Moreover, we are unable to agree with the theory that, in view of the failure of Congress to make a valid apportionment within the period stated in the Constitution, Congress became an "unconstitutional Congress" and that, in consequence thereof, the Members of its House of Representatives are de facto officers. The major premise of this process of reasoning is that the constitutional provision on "apportionment within three years after the return of every enumeration, and not otherwise," is mandatory. The fact that Congress is under legal obligation to make said apportionment does not justify, however, the conclusion that failure to comply with such obligation rendered Congress illegal or unconstitutional, or that its Members have become de facto officers.

It is conceded that, since the adoption of the Constitution in 1935, Congress has not made a valid apportionment as required in said fundamental law. The effect of this omission has been envisioned in the Constitution, pursuant to which:

"x x x Until such apportionment shall have been made, the House of Representatives shall have the same number of Members as that fixed by law for the National Assembly, who shall be elected by the qualified electors from the present Assembly districts. x x x."

The provision does not support the view that, upon the expiration of the period to make the apportionment, a Congress which fails to make it is dissolved or becomes illegal. On the contrary, it implies necessarily that Congress shall continue to function with the representative districts existing at the time of the expiration of said period.

It is argued that the above-quoted provision refers only to the elections held in 1935. This theory assumes that an apportionment had to be made necessarily before the first elections to be held after the inauguration of the Commonwealth of the Philippines, or in 1938.[19] The assumption is, however, unwarranted, for there had been no enumeration in 1935, and nobody could foretell when it would be made. Those who drafted and adopted the Constitution in 1935 could be certain, therefore, that the three-year period, after the earliest possible enumeration, would expire after the elections in 1938.

What is more, considering that several provisions of the Constitution, particularly those on the legislative department, were amended in 1940, by establishing a bicameral Congress, those who drafted and adopted said amendment, incorporating therein the provision of the original Constitution regarding the apportionment of the districts for representatives, must have known that the three-year period therefor would expire after the elections scheduled to be held and actually held in 1941.

Thus, the events contemporaneous with the framing and ratification of the original Constitution in 1935 and of the amendment thereof in 1940 strongly indicate that the provision concerning said apportionment and the effect of the failure to make it were expected to be applied to conditions obtaining after the elections in 1935 and 1938, and even after subsequent elections.

Then again, since the report of the Director of the Census on the last enumeration was submitted to the President on November 30, 1960, it follows that the three-year period to make the apportionment did not expire until 1963, or after the Presidential elections in 1961. There can be no question, therefore, that the Senate and the House of Representatives organized or constituted on December 30, 1961, were de jure bodies, and that the Members thereof were de jure officers. Pursuant to the theory of petitioners herein, upon expiration of said period of three years, or late in 1963, Congress became illegal and its Members, or at least, those of the House of Representatives, became illegal holders of their respective offices, and were de facto officers.

Petitioners do not allege that the expiration of said three-year period, without a reapportionment, had the effect of abrogating or repealing the legal provision creating Congress, or, at least, the House of Representatives, and we are not aware of any rule or principle of law that would warrant such conclusion. Neither do they allege that the term of office of the members of said House automatically expired or that they ipso facto forfeited their seats in Congress, upon the lapse of said period for reapportionment. In fact, neither our political law, in general, nor our law on public officers, in particular, supports the view that failure to discharge a mandatory duty, whatever it maybe, would automatically result in the forfeiture of an office, in the absence of a statute to this effect.

Similarly, it would seem obvious that the provisions of our Election Law relative to the election of Members of Congress in 1965 were not repealed in consequence of the failure of said body to make an apportionment within three (3) years after the census of 1960. Inasmuch as the general elections in 1965 were presumably held in conformity with said Election Law, and the legal provisions creating Congress - with a House of Representatives composed of members elected by qualified voters of representative districts as they existed at the time of said elections - remained in force, we can not see how said Members of the House of Representatives can be regarded

as de facto officers owing to the failure of their predecessors in office to make a reapportionment within the period aforementioned.

Upon the other hand, the Constitution authorizes the impeachment of the President, the Vice-President, the Justices of the Supreme Court and the Auditor General for, inter alia, culpable violation of the Constitution,[20] the enforcement of which is, not only their mandatory duty, but, also their main function. This provision indicates that, despite the violation of such mandatory duty, the title to their respective offices remains unimpaired, until dismissal or ouster pursuant to a judgment of conviction rendered in accordance with Article IX of the Constitution. In short, the loss of office or the extinction of title thereto is not automatic.

Even if we assumed, however, that the present Members of Congress are merely de facto officers, it would not follow that the contested resolutions and Republic Act No. 4913 are null and void. In fact, the main reason for the existence of the de facto doctrine is that public interest demands that acts of persons holding, under color of title, an office created by a valid statute be, likewise, deemed valid insofar as the public - as distinguished from the officer in question - is concerned.[21] Indeed, otherwise, those dealing with officers and employees of the Government would be entitled to demand from them satisfactory proof of their title to the position they hold, before dealing with them, or before recognizing their authority or obeying their commands, even if they should act within the limits of the authority vested in their respective offices, positions or employments.[22] One can imagine the great inconvenience, hardships and evils that would result in the absence of the de facto doctrine.

As a consequence, the title of a de facto officer cannot be assailed collaterally.[23] It may not be contested except directly, by quo warranto proceedings. Neither may the validity of his acts be questioned upon the ground that he is merely a de facto officer.[24] And the reasons are obvious: (1) it would be an indirect inquiry into the title to the office; and (2) the acts of a de facto officer, if within the competence of his office, are valid, insofar as the public is concerned.

It is argued that the foregoing rules do not apply to the cases at bar because the acts therein involved have not been completed and petitioners herein are not third parties. This pretense is untenable. It is inconsistent with *Tayko vs. Capistrano*.^[25] In that case, one of the parties to a suit being heard before Judge Capistrano objected to his continuing to hear the case, for the reason that, meanwhile, he had reached the age of retirement. This Court held that the objection could not be entertained, because the Judge was at least, a de facto Judge, whose title can not be assailed collaterally. It should be noted that *Tayko* was not a third party insofar as the Judge was concerned. *Tayko* was one of the parties in the aforementioned suit. Moreover, Judge Capistrano had not, as yet, finished hearing the case, much less rendered a decision therein. No rights had vested in favor of any of the parties, in consequence of the acts of said Judge. Yet, *Tayko's* objection was overruled. Needless to say, insofar as Congress is concerned, its acts, as regards the Resolutions herein contested and Republic Act No. 4913, are complete. Congress has nothing else to do in connection therewith.

The Court is, also, unanimous in holding that the objection under consideration is untenable.

Alternatives Available

to Congress

Atty. Juan T. David, as amicus curiae, maintains that Congress may either propose amendments to the Constitution or call a convention for that purposed, but it cannot do both, at the same time. This theory is based upon the fact that the two (2) alternatives are connected in the Constitution by the disjunctive "or." Such basis is, however, weak one, in the absence of other circumstances - and none has been brought to our attention - supporting the conclusion drawn by the amicus curiae. In fact, the term "or" has, oftentimes, been held to mean

"and," or vice-versa, when the spirit or context of the law warrants it.[26]

It is, also, noteworthy that R.B.H. Nos. 1 and 3 propose amendments to the constitutional provisions on Congress, to be submitted to the people for ratification on November 14, 1967, whereas R.B.H. No. 2 calls for a convention in 1971, to consider proposals for amendment to the Constitution, in general. In other words, the subject-matter of R.B.H. No. 2 is different from that of R.B.H. Nos. 1 and 3. Moreover, the amendments proposed under R.B.H. Nos. 1 and 3, will be submitted for ratification several years before those that may be proposed by the constitutional con-vention called in R.B.H. No. 2. Again, although the three (3) resolutions were passed on the same date, they were taken up and put to a vote separately, or one after the other. In other words, they were not passed at the same time.

In any event, we do not find, either in the Constitution, or in the history thereof, anything that would negate the authority of different Congresses to approve the contested Resolutions, or of the same Congress to pass the same in different sessions or different days of the same congressional session. And, neither has any plausible reason been advanced to justify the denial of authority to adopt said resolutions on the same day.

Counsel ask: Since Congress has decided to call a constitutional convention to propose amendments, why not let the whole thing be submitted to said convention, instead of, likewise, proposing some specific amendments, to be submitted for ratification before said convention is held? The force of this argument must be conceded, but the same impugns the wisdom of the action taken by Congress, not its authority to take it. One seeming purpose thereof is to permit Members of Congress to run for election as delegates to the constitutional convention and participate in the proceedings therein, without forfeiting their seats in Congress. Whether or not this should be done is a political question, not subject to review by the courts of justice.

On this question there is no disagreement among the members of the Court.

May Constitutional Amendments

Be Submitted for Ratification

in a General Election?

Article XV of the Constitution provides:

"x x x The Congress in joint session assembled, by a vote of three-fourths of all the Members of the Senate and of the House of Representatives voting separately, may propose amendments to this Constitution or call a convention for that purpose. Such amendments shall be valid as part of this Constitution when approved by a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification."

There is in this provision nothing to indicate that the "election" therein referred to is a "special," not a general election. The circumstance that three previous amendments to the Constitution had been submitted to the people for ratification in special elections merely shows that Congress deem-ed it best to do so under the circumstances then obtaining. It does not negate its authority to submit proposed amendments for ratification in general elections.

It would be better, from the viewpoint of a thorough discussion of the proposed amendments, that the same be submitted to the people's approval independently of the election of public officials. And there is no denying the fact that an adequate appraisal of the merits and demerits of proposed amendments is likely to be overshadowed by the great attention usually commanded by the choice of personalities in-volved in general elections, particularly when provincial and municipal officials are to be chosen. But, then, these con-siderations are

addressed to the wisdom of holding a plebi-scite simultaneously with the election of public officers. They do not deny the authority of Congress to choose either alternative, as implied in the term "election" used, without qualification, in the above-quoted provision of the Constitu-tion. Such authority becomes even more patent when we con-sider: (1) that the term "election," normally refers to the choice or selection of candidates to public office by popular vote; and (2) that the word used in Article V of the Constitu-tion, concerning the grant of suffrage to women is, not "elec-tion," but "plebiscite."

Petitioners maintain that the term "election," as used in Section 1 of Art. XV of the Constitution, should be construed as meaning a special election. Some members of the Court even feel that said term ("election") refers to a "plebiscite," without any "election," general or special, of public officers. They opine that constitutional amendments are, in general, if not always, of such important, if not transcendental and vital nature as to demand that the attention of the people be focused exclusively on the subject-matter thereof, so that their votes thereon may reflect no more than their intelligent, impartial and considered view on the merits of the proposed amendments, unimpaired, or, at least, undiluted by extraneous, if not insidious factors, let alone the partisan political considerations that are likely to affect the selection of elective officials.

This, certainly, is a situation to be hoped for. It is a goal the attainment of which should be promoted. The ideal conditions are, however, one thing. The question whether the Constitution forbids the submission of proposals for amend-ment to the people except under such conditions, is another thing. Much as the writer and those who concur in this opin-ion admire the contrary view, they find themselves unable to subscribe thereto without, in effect, reading into the Con-stitution what they believe is not written thereon and can not fairly be deduced from the letter thereof, since the spirit of the law should not be a matter of sheer speculation.

The majority view - although the votes in favor thereof are insufficient to declare Republic Act No. 4913 unconstitu-tional - as ably set forth in the opinion penned by Mr. Justice Sanchez, is, however, otherwise.

Would the submission now of the
contested amendments to the
people violate the spirit of
the Constitution?

It should be noted that the contested Resolutions were approved on March 16, 1967, so that, by November 14, 1967, our citizenry shall have had practically eight (8) months to be informed on the amendments in question. Then again, Section 2 of Republic Act No. 4913 provides:

- (1) that "the amendments shall be published in three consecutive issues of the Official Gazette, at least twenty days prior to the election;"
- (2) that "a printed copy of the proposed amendments shall be posted in a conspicuous place in every municipality, city and provincial office building and in every polling place not later than October 14, 1967," and that said copy "shall remain posted therein until after the election;"
- (3) that "at least five copies of said amendment shall be kept in each polling place, to be made available for exami-nation by the qualified electors during election day;"
- (4) that "when practicable, copies in the principal native languages, as may be determined by the Commission on Elections, shall be kept in each polling place;"
- (5) that "the Commission on Elections shall make available copies of said amendments in English, Spanish and,

whenever practicable, in the principal native languages, for free distribution;" and

(6) that the contested Resolutions "shall be printed in full" on the back of the ballots which shall be used on November 14, 1967.

We are not prepared to say that the foregoing measures are palpably inadequate to comply with the constitutional requirement that proposals for amendment be "submitted to the people for their ratification," and that said measures are manifestly insufficient, from a constitutional viewpoint, to inform the people of the amendments sought to be made.

These were substantially the same means availed of to inform the people of the subject submitted to them for ratification, from the original Constitution down to the Parity Amendment. Thus, referring to the original Constitution, Section 1 of Act No. 4200, provides:

"Said Constitution, with the Ordinance appended thereto, shall be published in the Official Gazette, in English and in Spanish, for three consecutive issues at least fifteen days prior to said election, and a printed copy of said Constitution, with the Ordinance appended thereto, shall be posted in a conspicuous place in each municipal and provincial government office building and in each polling place not later than the twenty-second day of April, nineteen hundred and thirty-five, and shall remain posted therein continually until after the termination of the election. At least ten copies of the Constitution with the Ordinance appended thereto, in English and in Spanish, shall be kept at each polling place available for examination by the qualified electors during election day. Whenever practicable, copies in the principal local dialects as may be determined by the Secretary of the Interior shall also be kept in each polling place."

The provision concerning woman's suffrage in Section 1 of Commonwealth Act No. 34, reading:

"Said Article V of the Constitution shall be published in the Official Gazette, in English and in Spanish, for three consecutive issues at least fifteen days prior to said election, and the said Article V shall be posted in a conspicuous place in each municipal and provincial office building and in each polling place not later than the twenty-second day of April, nineteen hundred and thirty-seven, and shall remain posted therein continually until after the termination of the plebiscite. At least ten copies of the said Article V of the Constitution, in English and in Spanish, shall be kept at each polling place available for examination by the qualified electors during the plebiscite. Whenever practicable, copies in the principal native languages, as may be determined by the Secretary of the Interior, shall also be kept in each polling place."

Similarly, Section 2, Commonwealth Act No. 517, referring to the 1940 amendments, is of the following tenor:

"The said amendments shall be published in English and Spanish in three consecutive issues of the Official Gazette at least twenty days prior to the election. A printed copy thereof shall be posted in a conspicuous place in every municipal, city, and provincial government office building and in every polling place not later than May eighteen, nineteen hundred and forty, and shall remain posted therein until after the election. At least ten copies of said amendments shall be kept in each polling place to be made available for examination by the qualified electors during election day. When practicable, copies in the principal native languages, as may be determined by the Secretary of the Interior, shall also be kept therein."

As regards the Parity Amendment, Section 2 of Republic Act No. 73 is to the effect that:

"The said amendment shall be published in English and Spanish in three consecutive issues of the Official Gazette at least twenty days prior to the election. A printed copy thereof shall be posted in a conspicuous place in every municipal, city and provincial government office building and in every polling place not later than February eleven, nineteen hundred and forty-seven, and shall remain posted therein until after the election. At least ten copies of the said amendment shall be kept in each polling place to be made available for examination by the qualified electors during election day. When practicable, copies in the principal native

languages, as may be determined by the Commission on Elections, shall also be kept in each polling place."

The main difference between the present situation and that obtaining in connection with the former proposals does not arise from the law enacted therefor. The difference springs from the circumstance that the major political parties had taken sides on previous amendments to the Constitution – except, perhaps, the woman's suffrage – and, consequently, debated thereon at some length before the plebiscite took place. Upon the other hand, said political parties have not seemingly made an issue on the amendments now being contested and have, accordingly, refrained from discussing the same in the current political campaign. Such debates or polemics as may have taken place – on a rather limited scale – on the latest proposals for amendment, have been due principally to the initiative of a few civic organizations and some militant members of our citizenry who have voiced their opinion thereon. A legislation cannot, however, be nullified by reason of the failure of certain sectors of the community to discuss it sufficiently. Its constitutionality or unconstitutionality depends upon no other factors than those existing at the time of the enactment thereof, unaffected by the acts or omissions of law enforcing agencies, particularly those that take place subsequently to the passage or approval of the law.

Referring particularly to the contested proposals for amendment, the sufficiency or insufficiency, from a constitutional angle, of the submission thereof for ratification to the people on November 14, 1967, depends – in the view of those who concur in this opinion, and who, insofar as this phase of the case, constitute the minority – upon whether the provisions of Republic Act No. 4913 are such as to fairly apprise the people of the gist, the main idea or the substance of said proposals, which is – under R.B.H. No. 1 – the increase of the maximum number of seats in the House of Representatives, from 120 to 180, and – under R.B.H. No. 3 – the authority given to the members of Congress to run for delegates to the Constitutional Convention and, if elected thereto, to discharge the duties of such delegates, without forfeiting their seats in Congress. We – who constitute the minority – believe that Republic Act No. 4913 satisfies such requirement and that said Act is, accordingly, constitutional.

A considerable portion of the people may not know how over 160 of the proposed maximum of representative districts are actually apportioned by R.B.H. No. 1 among the provinces in the Philippines. It is not improbable, however, that they are not interested in the details of the apportionment, or that a careful reading thereof may tend, in their simple minds, to impair a clear vision thereof. Upon the other hand, those who are more sophisticated, may enlighten themselves sufficiently by reading the copies of the proposed amendments posted in public places, the copies kept in the polling places and the text of the contested resolutions, as printed in full on the back of the ballots they will use.

It is, likewise, conceivable that as many people, if not more, may fail to realize or envisage the effect of R.B.H. No. 3 upon the work of the Constitutional Convention or upon the future of our Republic. But, then, nobody can foretell such effect with certainty. From our viewpoint, the provisions of Article XV of the Constitution are satisfied so long as the electorate knows that R.B.H. No. 3 permits Congressmen to retain their seats as legislators, even if they should run for and assume the functions of delegates to the Convention.

We are impressed by the factors considered by our distinguished and esteemed brethren, who opine otherwise, but, we feel that such factors affect the wisdom of Republic Act No. 4913 and that of R.B.H. Nos. 1 and 3, not the authority of Congress to approve the same.

The system of checks and balances underlying the judicial power to strike down acts of the Executive or of Congress transcending the confines set forth in the fundamental law is not in derogation of the principle of separation of powers, pursuant to which each department is supreme within its own sphere. The determination of the conditions under which the proposed amendments shall be submitted to the people is concededly a matter

which falls within the legislative sphere. We do not believe it has been satisfactorily shown that Congress has exceeded the limits thereof in enacting Republic Act No. 4913. Presumably, it could have done something better to enlighten the people on the subject-matter thereof. But, then, no law is perfect. No product of human endeavor is beyond improvement. Otherwise, no legislation would be constitutional and valid. Six (6) Members of this Court believe, however, said Act and R.B.H. Nos. 1 and 3 violate the spirit of the Constitution.

Inasmuch as there are less than eight (8) votes in favor of declaring Republic Act 4913 and R.B.H. Nos. 1 and 3 unconstitutional and invalid, the petitions in these two (2) cases must be, as they are hereby, dismissed, and the writs therein prayed for denied, without special pronouncement as to costs.

IT IS SO ORDERED.

Makalintal and Bengzon, J.P., JJ., concur.

Fernando, J., concurs fully with the above opinion, adding a few words on the question of Jurisdiction.

Sanchez, J., renders a separate opinion.

Reyes, Dizon, and Angeles, JJ., concur in the result reached in the separate opinion of Justice Sanchez.

Zaldivar and Castro, JJ., concur in the separate opinion of Justice Sanchez.

[1] Urging the latter to refrain from implementing Republic Act No. 4913 and from submitting to a plebiscite in the general elections to be held on November 14, 1967, the Constitutional amendments proposed in the aforementioned R.B.H. Nos. 1 and 3.

[2] Dated October 30, 1967.

[3] 78 Phil., 1.

[4] 63 Phil., 139, 157.

[5] Supra.

[6] 81 Phil., 818.

[7] L-2851, March 4 and 14, 1949.

[8] L-10520, February 28, 1957.

[9] L-18684, September 14, 1961.

[10] Section 1, Art. VI, Constitution of the Philippines.

[11] Section 1, Art. II, Constitution of the Philippines.

[12] Section 1, Art. XV, Constitution of the Philippines.

[13] Of amending the Constitution.

[14] And, inferentially, to lower courts.

[15] Sec. 2(1), Art. VIII, of the Constitution.

[16] Supra.

[17] Approved, June 17, 1961.

[18] Macias vs. Commission on Elections, supra.

[19] Under the original Constitution providing for a unicameral legislative body, whose members were chosen for a term of three (3) years (Section 1, Art. VI, of the Original Constitution).

[20] Section 1, Article IX, of the Constitution.

[21] Lino Luna vs. Rodriguez and De los Angeles, 37 Phil., p. 192; Nacionalista Party vs. De Vera, 85 Phil., 126; Codilla vs. Martinez, L-14569, November 23, 1960. See, also, State vs. Carrol, 38 Conn., 449; Wilcox vs. Smith 5 Wendell [N.Y.], 231; 21 Am. Dec., 213; Sheehan's Case, 122 Mass., 445; 23 Am. Rep., 323.

[22] Torres vs. Ribo, 81 Phil., 50.

[23] Nacionalista Party vs. De Vera, supra.

[24] People vs. Rogelio Gabitanan, 43 O.G., 3211.

[25] 53 Phil., 866.

[26] 50 Am. Jur., Sec. 282, pp. 267-268, citing Heckathorn v. Heckathorn, 284 Mich 677, 280 NW 79, citing RCL; Robson v. Cantwell, 143 SC 104, 141 SE 180, citing RCL; Geiger v. Kobilka, 26 Wash 171, 66 P 423, 90 Am St. Rep. 733 and many others.

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CONCURRING OPINION

BENGZON, J.P., J.:

It is the glory of our institutions that they are founded upon law, that no one can exercise any authority over the rights and interests of others except pursuant to and in the manner authorized by law.[1] Based upon this principle, petitioners Ramon A. Gonzales and Philippine Constitution Association (PHILCONSA) come to this Court in separate petitions.

Petitioner Gonzales, as taxpayer, voter and citizen, and allegedly in representation thru class suit of all citizens of this country, filed this suit for prohibition with preliminary injunction to restrain the Commission on Elections, Director of Printing and Auditor General from implementing and/or complying with Republic Act 4913, assailing said law as unconstitutional.

Petitioner PHILCONSA, as a civic, non-profit and non partisan corporation, assails the constitutionality not only of Republic Act 4913 but also of Resolutions of Both Houses Nos. 1 and 3 of March 16, 1967.

Republic Act 4913, effective June 17, 1967, is an Act submitting to the Filipino people for approval the amendments to the Constitution of the Philippines proposed by the Congress of the Philippines in Resolutions of Both Houses Numbered 1 and 3, adopted on March 16, 1967. Said Republic Act fixes the date and manner of the election at which the aforesaid proposed amendments shall be voted upon by the people, and appropriates funds for said election. Resolutions of Both Houses Nos. 1 and 3 propose two amend-ments to the Constitution: the first, to amend Sec. 5, Art. VI, by increasing the maximum membership of the House of Representatives from 120 to 180, apportioning 160 of said 180 seats and eliminating the provision that Congress shall by law make an

apportionment within three years after the return of every enumeration; the second, to amend Sec. 16, Art. VI, by allowing Senators and Representatives to be delegates to a constitutional convention without forfeiting their seats.

Since both petitions relate to the proposed amendments, they are considered together herein.

Specifically and briefly, petitioner Gonzales' objections are as follows: (1) Republic Act 4913 violates Sec. 1, Art. XV of the Constitution, in submitting the proposed amendments to the Constitution, to the people for approval, at the general election of 1967 instead of at a special election solely for that purpose; (2) Republic Act 4913 violates Sec. 1, Art. XV of the Constitution, since it was not passed with the 3/4 vote in joint session required when Congress proposes amendments to the Constitution, said Republic Act being a step in or part of the process of proposing amendments to the Constitution; and (3) Republic Act 4913 violates the due process clause of the Constitution (Sec. 1, Subsec. 1, Art. III), in not requiring that the substance of the proposed amendments be stated on the face of the ballot or otherwise rendering clear the import of the proposed amendments, such as by stating the provisions before and after said amendments, instead of printing at the back of the ballot only the proposed amendments.

Since observance of Constitutional provisions on the procedure for amending the Constitution is concerned, the issue is cognizable by this court under its powers to review an Act of Congress to determine its conformity to the fundamental law. For though the Constitution leaves Congress free to propose whatever Constitutional amendment it deems fit, so that the substance or content of said proposed amendment is a matter of policy and wisdom and thus a political question, the Constitution nevertheless imposes requisites as to the manner or procedure of proposing such amendments, e.g., the three fourths vote requirement. Said procedure or manner, therefore, far from being left to the discretion of Congress, as a matter of policy and wisdom, is fixed by the Constitution. And to that extent, all questions bearing on whether Congress in proposing amendments followed the procedure required by the Constitution, is perforce justiciable, it not being a matter of policy or wisdom.

Turning then to petitioner Gonzales' first objection, Sec. 1, Art. XV clearly does not bear him on the point. It nowhere required that the ratification be thru an election solely for that purpose. It only requires that it be at "an election at which the amendments are submitted to the people for their ratification". To join it with an election for candidates to public office, that is, to make it concurrent with such election, does not render it any less an election at which the proposed amendments are submitted to the people for their ratification. No prohibition being found in the plain terms of the Constitution, none should be inferred. Had the framers of the Constitution thought of requiring a special election for the purpose only of the proposed amendments, they could have said so, by qualifying the phrase with some word such as "special" or "solely" or "exclusively". They did not.

It is not herein decided that such concurrence of election is wise, or that it would not have been better to provide for a separate election exclusively for the ratification of the proposed amendments. The point however is that such separate and exclusive election, even if it may be better or wiser, which again, is not for this Court to decide, is not included in the procedure required by the Constitution to amend the same. The function of the Judiciary is "not to pass upon questions of wisdom, justice or expediency of legislation.[2] It is limited to determining whether the action taken by the Legislative Department has violated the Constitution or not. On this score, I am off the opinion that it has not.

Petitioner Gonzales' second point is that Republic Act 4913 is deficient for not having been passed by Congress in joint session by 3/4 vote.

Sec. 1, Art. XV of the Constitution provides:

"Sec. 1. The Congress in joint session assembled, by a vote of three-fourths of all the members of the Senate

and of the House of Representatives voting separately, may pro-*pose* amendments to this Constitution or call a convention for that purpose. Such amendments shall be valid as part of this Constitu-*tion* when approved by a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification."

Does Republic Act 4913 propose amendments to the Constitution? If by the term "propose amendment" is meant to determine WHAT said amendment shall be, then Republic Act 4913 does not; Resolutions of Both Houses 1 and 3 already did that. If, on the other hand, it means, or also means, to provide for how, when, and by what means the amendments shall be submitted to the people for approv-*al*, then it does.

A careful reading of Sec. 1, Art. XV shows that the first sense is the one intended. Said Section has two sentences; in the first, it requires the 3/4 voting in Join session, for Congress to "propose amendments". And there in the second sentence, it provides that "such amendments ...shall be submitted to the people for their ratification". This clearly indicates that by the term "propose amendments" in the first sentence is meant to frame the substance or the content or the WHAT-element of the amendments; for it is this and this alone that is submitted to the people for their ratification. The details of when the election shall be held for approval or rejection of the proposed amendments, or the manner of holding it, are not submitted for ratification to form part of the Consti-*tution*. Stated differently, the plain language of Section 1, Art. XV, shows that the act of proposing amendments is distinct from - albeit related to - that of submitting the amendments to the people for their ratification; and that the 3/4 voting requirement applies only to the first step, not to the second one.

It follows that the submission of proposed amendments can be done thru an ordinary statute passed by Congress. The Constitution does not expressly state by whom the sub-*mission* shall be undertaken; the rule is that a power not lodged elsewhere under the Constitution is deemed to reside with the legislative body, under the doctrine of residuary powers. Congress therefore validly enacted Republic Act 4913 to fix the details of the date and manner of submitting the proposed amendments to the people for their ratification. Since it does not "propose amendments" in the sense referred to by Sec. 1, Art. XV of the Constitution, but merely provides for how and when the amendments, already proposed, are going to be voted upon, the same does not need the 3/4 vote in joint session required in Sec. 1, Art. XV of the Constitution. Furthermore, Republic Act 4913 is an appropriation measure. Sec. 6 thereof appropriates P1,000,000 for carrying out its provisions. Sec. 18, Art. VI of the Constitution states that "All appropriation ... bills shall originate exclusively in the House of Representatives". Republic Act 4913, therefore, could not have been validly adopted in a joint session, reinforcing the view that Sec. 1, Art. XV does not apply to such a measure providing for the holding of the election to ratify the proposed amendments, which must perforce appropriate funds for its purpose.

Petitioner Gonzales contends, thirdly, that Republic Act 4913 does not offend against substantive due process. An examination of the provisions of the law shows no violation of the due process clause of the Constitution. The publi-*cation* in the Official Gazette at least 20 days before the election, the posting of notices in public buildings not later than October 14, 1967, to remain posted until after the elections, the placing of copies of the proposed amend-*ments* in the polling places, aside from printing the same at the back of the ballot, provide sufficient opportunity to the voters to cast an intelligent vote on the proposal. Due process refers only to providing fair opportunity; it does not guarantee that the opportunity given will in fact be availed of; that is the look-out of the voter and the responsibility of the citizen. As long as fair and reason-*able* opportunity to be informed is given, and it is, the due process clause is not infringed.

Non-printing of the provisions to be amended as they now stand, and the printing of the full proposed amend-*ments* at the back of the ballot instead of the substance thereof at the face of the ballot, do not deprive the voter of fair opportunity to be informed. The present wording of the Constitution is not being veiled or suppressed

from him; he is conclusively presumed to know them and they are available should he want to check on what he is conclusively presumed to know. Should the voters choose to remain ignorant of the present Constitution, the fault does not lie with Congress. For opportunity to familiarize oneself with the Constitution as it stands has been available thru all these years. Perhaps it would have been more convenient for the voters if the present wording of the provisions were also to be printed on the ballot. The same however is a matter of policy. As long as the method adopted provides sufficiently reasonable chance to intelligently vote on the amendments, and I think it does in this case, it is not constitutionally defective.

Petitioner Gonzales' other arguments touch on the merits or wisdom of the proposed amendments. These are for the people in their sovereign capacity to decide, not for this Court.

Two arguments were further advanced: first, that Congress cannot both call a convention and propose amendments; second, that the present Congress is a de facto one, since no apportionment law was adopted within three years from the last census of 1960, so that the Representatives elected in 1961 are de facto officers only. Not being de jure, they cannot propose amendments, it is argued.

As to the first point, Sec. 1 of Art. XV states that Congress "may propose amendments or call a convention for that purpose". The term "or", however, is frequently used as having the same meaning as "and" particularly in permissive, affirmative sentences so that the interpretation of the word "or" as "and" in the Constitution in such use will not change its meaning (*Vicksburg, S. & P. R. Co. v. Good enough*, 32 So. 404, 411, 108 La. 442). And it should be pointed out that the resolutions proposing amendments (R.B.H. Nos. 1 and 3) are different from that calling for a convention (R.B.H. No. 2). Surely, if Congress deems it better or wise to amend the Constitution before a convention called for is elected, it should not be fettered from doing so. For our purposes in this case, suffice it to note that the Constitution does not prohibit it from doing so.

As to the second argument, it is also true that Sec. 5 of Art. VI of the Constitution provides in part that "The Congress shall by law make an apportionment within three years after the return of every enumeration, and not otherwise". It however further states in the next sentence: "Until such apportionment shall have been made, the House of Representatives shall have the same number of Members as that fixed by law for the National Assembly, who shall be elected by the qualified electors from the present Assembly districts". The failure of Congress, therefore, to pass a valid redistricting law since the time the above provision was adopted, does not render the present districting illegal or unconstitutional. For the Constitution itself provides for its continuance in such case, rendering legal and de jure the status quo.

For the above reasons, I vote to uphold the constitutionality of Republic Act 4913, and fully concur with the opinion of the Chief Justice.

[1] *United States v. San Jacinto Tin Co.*, 125 U.S. 273.

[2] *Angara v. Electoral Commission*, 63 Phil. 139, 158, Justice Laurel, ponente.

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Concurring Opinion

FERNANDO, J.:

At the outset, we are faced with a question of jurisdiction. The opinion prepared by the Chief Justice discusses the matter with a fullness that erases doubts and misgivings and clarifies the applicable principles. A few words may however be added.

We start from the premise that only where it can be shown that the question is to be solved by public opinion or where the matter has been left by the Constitution to the sole discretion of any of the political branches, as was so clearly stated by the then Justice Concepcion in *Tañada v. Cuenco*,^[1] may this Court avoid passing on the issue before it. Whatever may be said about the present question, it is hard to speak with certitude, considering Article XV, that Congress may be entrusted with the full and un-controlled discretion on the procedure leading to proposals for an amendment of the Constitution.

It may be said however that in *Mabanag v. Lopez Vito*,^[2] this Court through Justice Tuason followed *Coleman v. Miller*,^[3] in its holding that certain aspects of the amending process may be considered political. His opinion quoted with approval the view of Justice Black, to which three other members of the United States Supreme Court agreed, that the process itself is political in its entirety, "from submission until an amendment becomes part of the Constitution, and is not subject to judicial guidance, control or interference at any point. In a sense that would solve the matter neatly. The judiciary would be spared the at times arduous and in every case soul-searching process of determining whether the procedure for amendments required by the Constitution has been followed.

At the same time, without impugning the motives of Congress, which cannot be judicially inquired into at any rate, it is not beyond the realm of possibility that a failure to observe the requirements of Article XV would occur. In the event that judicial intervention is sought, to rely automatically on the theory of political question to avoid passing on such a matter of delicacy might under certain circumstances be considered, and rightly so, as nothing less than judicial abdication or surrender.

What appears regrettable is that a major opinion of an esteemed jurist, the late Justice Tuason, would no longer be controlling. There is comfort in the thought that the view that then prevailed was itself a product of the times. It could very well be that considering the circumstances existing in 1947 as well as the particular amendment sought to be incorporated in the Constitution, the parity rights ordinance, the better part of wisdom in view of the grave economic situation then confronting the country would be to avoid the existence of any obstacle to its being submitted for ratification. Moreover, the Republic being less than a year old, American Supreme Court opinions on constitutional questions were invariably accorded uncritical acceptance. Thus the approach followed by Justice Tuason is not difficult to understand. It may be said that there is less propensity now, which is all to the good, for this Court to accord that much deference to constitutional views coming from that quarter.

Nor is this mode of viewing the opinion of Justice Tuason to do injustice to his memory. For as he stated in another major opinion in *Araneta v. Dinglasan*,^[4] in ascertaining the meaning to be given the Emergency Powers Act,^[5] one should not ignore what would ensue if a particular mode or construction were followed. As he so emphatically stated, "We test a rule by its results." ^[6]

The consequences of a judicial veto on the then proposed amendment on the economic survival of the country, an erroneous appraisal it turned out later, constituted an effective argument for its submission. Why not then consider the question political and let the people decide? That assumption could have been indulged in. It could very well be the inarticulate major premise. For many it did bear the stamp of judicial statesmanship.

The opinion of Chief Justice Concepcion renders crystal-clear why as of this date and in the foreseeable future

judicial inquiry to assure the utmost compliance with the constitutional requirement would be a more appropriate response.

[1] 103 Phil. 1051 (1957).

[2] 78 Phil. 1 (1947).

[3] 307 US 433 (1939).

[4] 84 Phil. 368 (1949).

[5] Commonwealth Act No. 671 (1941).

[6] Araneta v. Dinglasan, supra, at p. 376.

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Concurring Opinion

MAKALINTAL, J.:

I concur in the foregoing opinion of the Chief Justice. I would make some additional observations in connection with my concurrence. Sections 2 and 4 of Republic Act No. 4913 provide:

"SEC. 2. The amendments shall be published in three consecutive issues of the Official Gazette at least twenty days prior to the election. A printed copy thereof shall be posted in a conspicuous place in every municipality, city and provin-cial office building and in every polling place not later than October fourteen, nineteen hundred and sixty-seven, and shall remain posted therein until after the election. At least five copies of the said amend-ments shall be kept in each polling place to be made available for examination by the qualified electors during election day. When practicable, copies in the principal native languages, as may be determined by the Commission on Elections, shall be kept in each polling place. The Commission on Elections shall make available copies of each amendments in English, Spanish and, whenever practicable, in the principal native languages, for free distribution.

x x x x

"SEC. 4. The ballots which shall be used in the election for the approval of said amendments shall be printed in English and Pilipino and shall be in the size and form prescribed by the Commission on Elections: Provided, however, That at the back of said ballot there shall be printed in full Resolu-tions of both Houses of Congress Numbered One and Three, both adopted on March sixteen, nineteen hundred and sixty-seven, proposing the amendments: Provided, further, That the questionnaire appearing on the face of the ballot shall be as follows:

Are you in favor of the proposed amendment to section sixteen of Article VI of our Constitution printed at the back of this ballot?

To vote for the approval of the proposed amendments, the voter shall write the word "yes" or its equivalent in Filipino or in the local dialect in the blank space after each question; to vote for the rejection thereof, he shall write the word "No" or its equivalent in Filipino or in the local dialect."

I believe that intrinsically, that is, considered in itself and without reference to extraneous factors and circumstances, the manner prescribed in the aforesaid provisions is sufficient for the purpose of having the proposed amendments submitted to the people for their ratification, as enjoined in Section 1, Article XV of the Constitution. I am at a loss to say what else should have been required by the Act to make it adhere more closely to the constitutional requirement. Certainly it would have been out of place to provide, for instance, that government officials and employees should go out and explain the amendments to the people, or that they should be the subject of any particular means or form of public discussion.

The objection of some members of the Court to Republic Act No. 4913 seems to me predicated on the fact that there are so many other issues at stake in the coming general election that the attention of the electorate cannot be entirely focused on the proposed amendments, such that there is a failure to properly submit them for ratification within the intentment of the Constitution. If that is so, then the defect is not intrinsic in the law but in its implementation. The same manner of submitting the proposed amendments to the people for ratification may, in a different setting, be sufficient for the purpose. Yet I cannot conceive that the constitutionality or unconstitutionality of a law may be made to depend willy-nilly on factors not inherent in its provisions. For a law to be struck down as unconstitutional it must be so by reason of some irreconcilable conflict between it and the Constitution. Otherwise a law may be either valid or invalid, according to circumstances not found in its provisions, such as the zeal with which they are carried out. To such a thesis, I cannot agree. The criterion would be too broad and relative, and dependent upon individual opinions that at best are subjective. What one may regard as sufficient compliance with the requirement of submission to the people, within the context of the same law, may not be so to another. The question is susceptible of as many views as there are viewers; and I do not think this Court would be justified in saying that its own view on the matter is the correct one, to the exclusion of the opinions of others.

On the other hand, I reject the argument that the ratification must necessarily be in a special election or plebiscite called for that purpose alone. While such procedure is highly to be preferred, the Constitution speaks simply of "an election at which the amendments are submitted to the people for their ratification," and I do not subscribe to the restrictive interpretation that the petitioners would place on this provision, namely, that it means only a special election.

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CONCURRING OPINION

REYES, J.B.L., J.:

I concur in the result with the opinion penned by Mr. Justice Sanchez. To approve a mere proposal to amend the Constitution requires (Art. XV) a three-fourths (3/4) vote of all the members of each legislative chamber, the highest majority ever demanded by the fundamental charter, one higher even than that required in order to declare war (sec. 24, Article VI), with all its dire consequences. If such an overwhelming majority, that was evidently exacted in order to impress upon all and sundry the seriousness of every constitutional amendment, is asked for a proposal to amend the Constitution, I find it impossible to believe that it was ever intended by its framers that such amendment should be submitted and ratified by just "a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification", if the concentration of the people's attention

thereon is to be diverted by other extraneous issues, such as the choice of local and national officials. The framers of the Constitution, aware of the fundamental character thereof, and of the need of giving it as much stability as is practicable, could have only meant that any amendments thereto should be debated, considered and voted upon at an election wherein the people could devote undivided attention to the subject. That this was the intention and the spirit of the provision is corroborated in the case of all other constitutional amendments in the past, that were submitted to and approved in special elections exclusively devoted to the issue whether the legislature's amendatory proposals should be ratified or not.

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SEPARATE OPINION

SANCHEZ, J.:

Right at the outset, the writer expresses his deep appreciation to Mr. Justice Calixto O. Zaldivar and Mr. Justice Fred Ruiz Castro for their invaluable contribution to the substance and form of the opinion which follows.

Directly under attack in this, a petition for prohibition, is the constitutionality of Republic Act 4913, approved on June 17, 1967. This Act seeks to implement Resolutions 1 and 3 adopted by the Senate and the House of Representatives on March 16, 1967 with the end in view of amending vital portions of the Constitution.

Since the problem here presented has its roots in the resolutions aforesaid of both houses of Congress, it may just as well be that we recite in brief the salient features thereof. Resolution No. 1 increases the membership of the House of Representatives from 120 to 180 members and immediately apportions 160 seats. A companion resolution is Resolution No. 3 which permits Senators and Congressmen - without forfeiting their seats in Congress - to be members of the Constitutional Convention^[1] to be convened, as provided in another resolution - Resolution No. 2. Parenthetically, two of these proposed amendments to the Constitution (Resolutions 1 and 3) are to be submitted to the people for their ratification next November 14, 1967. Resolution No. 2 just adverted to calls for a constitutional convention also to propose amendments to the Constitution. The delegates thereto are to be elected on the second Tuesday of November, 1970; the convention to sit on June 1, 1971; and the amendments proposed by the convention to be submitted to the people thereafter for their ratification.

Of importance now are the proposed amendment increasing the number of members of the House of Representatives under Resolution No. 1, and that in Resolution No. 3 which gives Senators and Congressmen the right to sit as members of the constitutional convention to be convened on June 1, 1971. Because, these are the two amendments to be submitted to the people in the general elections soon to be held on November 14, 1967, upon the provisions of Section 1, Republic Act 4913, which reads:

"The amendments to the Constitution of the Philippines proposed by the Congress of the Philippines in Resolutions of both Houses Numbered One and Three, both adopted on March sixteen, nineteen hundred and sixty-seven, shall be submitted to the people for approval at the general election which shall be held on November fourteen, nineteen hundred and sixty-seven, in accordance with the provisions of this Act."

Republic Act 4913 projects the basic angle of the problem thrust upon us - the manner in which the amendments proposed by Congress just adverted to are to be brought to the people's attention.

First, to the controlling constitutional precept. In order that proposed amendments to the Constitution may become effective, Section 1, Article XV thereof commands that such amendments must be "approved by a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification." [2] The accent is on two words complementing each other, namely, "submitted" and "ratification."

1. We are forced to take a long hard look at the core of the problem facing us. And this, because the amendments submitted are transcendental and encompassing. The ceiling of the number of Congressmen is sought to be elevated from 120 to 180 members; and Senators and Congressmen may run in constitutional conventions without forfeiting their seats. These certainly affect the people as a whole. The increase in the number of Congressmen has its pro-portion increase in the people's tax burdens. They may not look at this with favor, what with the constitutional provision (Section 5, Article VI) that Congress "shall by law make an apportionment", without the necessity of disturbing the present constitutionally pro-vided number of Congressmen. People in Quezon City, for instance, may balk at the specific apportionment of the 160 seats set forth in Resolution No. 1, and ask for a Congressman of their own, on the theory of equal representation. And then, people may question the propriety of permitting the increased 180 Congressmen from taking part in the forthcoming constitutional convention and future conventions for fear that they may dominate its proceedings. They may entertain the belief that, if at all, increase in the number of Congressmen should be a proper topic for deliberation in a constitutional convention which, anyway, will soon take place. They probably would ask: Why the hurry? These ponderables require the people's close scrutiny.

2. With these as backdrop, we perforce go into the philosophy behind the constitutional directive that constitutional amendments be submitted to the people for their ratification.

A constitutional amendment is not a temporary expedient. Unlike a statute which may suffer amendments three or more times in the same year, it is intended to stand the test of time. It is an expression of the people's sovereign will.

And so, our approach to the problem of the mechanics of submission for ratification of amendments is that reasoning on the basis of the spirit of the Constitution is just as important as reasoning by a strict adherence to the phraseology thereof. We underscore this, because it is within the realm of possibility that a Constitution may be overhauled. Supposing three-fourths of the Constitution is to be amended. Or, the proposal is to eliminate the all-important Bill of Rights in its entirety. We believe it to be beyond debate that in some such situations the amendments ought to call for a constitutional convention rather than a legislative proposal. "And yet, nothing there is in the books or in the Constitution itself which would require such amendments to be adopted by a constitutional convention. And then, too, the spirit of the supreme enactment, we are sure, forbids that proposals therefor be initiated by Congress and thereafter presented to the people for their ratification.

In the context just adverted to, we take the view that the words "submitted to the people for their ratification" if construed in the light of the nature of the Constitution - a fundamental charter that is legislation direct from the people, an expression of their sovereign will - mean that it can only be amended by the people expressing them-selves according to the procedures ordained by the Constitution. Therefore, amendments must be fairly laid before the people for their blessing or spurning. The people are not to be mere rubber stamps. They are not to vote blindly. They must be afforded ample opportunity to mull over the original provisions, compare them with the proposed amendments, and try to reach a conclusion as the dictates of their conscience suggest, free from the incubus of extraneous or possibly insidious influences. We believe the word "submitted" can only mean that the government, within its maximum capabilities should strain every effort to inform every citizen of the provisions to be amended, and the proposed amendments and the meaning, nature and effects thereof. By this, we are not to be understood as saying that, if one citizen or 100 citizens or 1,000 citizens cannot be reached, then there is no

submission within the meaning of the word as intended by the framers of the Constitution. What the Constitution in effect directs is that the government, in submitting an amendment for ratification, should put every instrumentality or agency within its structural framework to enlighten the people, educate them with respect to their act of ratification or rejection. For, as we have earlier stated, one thing is submission and another is ratification. There must be fair submission, intelligent consent or rejection. If with all these safe-guards the people still approve the amendment no matter how pre-judicial it is to them, then so be it. For, the people decree their own fate.

Aptly had it been said:

“x x x The great men who builded the structure of our state in this respect had the mental vision of a good Constitution voiced by Judge Cooley, who has said: 'A good Constitution should be beyond the reach of temporary excitement and popular caprice or passion. It is needed for stability and steadiness; it must yield to the thought of the people; not to the whim of the people, or the thought evolved in excitement or hot blood, but the sober second thought, which alone, if the government is to be safe, can be allowed efficiency. * * * Changes in government are to be feared unless the benefit is certain. As Montaign says: 'All great mutations shake and disorder a state. Good does not necessarily succeed, evil; another evil may succeed and a worse.' Am. Law Rev. 1889, p. 311.' "[3]

3. Tersely put, the issue before Us funnels down to this proposition: If the people are not sufficiently informed of the amendments to be voted upon, to conscientiously deliberate thereon, to express their will in a genuine manner, can it be said that in accordance with the constitutional mandate, "the amendments are submitted to the people for their ratification?" Our answer is "No".

We examine Republic Act 4913, approved on June 17, 1967 - the statute that submits to the people the constitutional amendments proposed by Congress in Resolutions 1 and 3. Section 2 of the Act provides the manner of propagation of the nature of the amendments throughout the country. There are five parts in said Section 2, viz:

- (1) The amendments shall be published in three consecutive issues of the Official Gazette at least twenty days prior to the election.
- (2) A printed copy thereof shall be posted in a conspicuous place in every municipality, city and provincial office building and in every polling place not later than October fourteen, nineteen hundred and sixty-seven, and shall remain posted therein until after the election.
- (3) At least five copies of the said amendments shall be kept in each polling place to be made available for examination by the qualified electors during election day.
- (4) When practicable, copies in the principal native languages, as may be determined by the Commission on Elections, shall be kept in each polling place.
- (5) The Commission on Elections shall make available copies of said amendments in English, Spanish and, whenever practicable, in the principal native languages, for free distribution.

A question that comes to mind is whether the procedure for dissemination of information regarding the amendments effectively brings the matter to the people. A dissection of the mechanics yields disturbing thoughts. First, the Official Gazette is not widely read. It does not reach the barrios. And even if it reaches the barrios, is it available to all? And if it is, would all understand English? Second, it should be conceded that many citizens, especially those in the outlying barrios, do not go to municipal, city and/or provincial office buildings, except on special occasions like paying taxes or responding to court summonses. And if they do, will they notice the printed

amendments posted on the bulletin board? And if they do notice, such copy again is in English (sample submitted to this Court by the Solicitor General) for, anyway, the statute does not require that it be in any other language or dialect. Third, it would not help any if at least five copies are kept in the polling place for examination by qualified electors during election day, As petitioner puts it, voting time is not study time. And then, who can enter the polling place except those who are about to vote? Fourth, copies in the principal native languages shall be kept in each polling place. But this is not, as Section 2 itself implies, in the nature of a command because such copies shall be kept therein only "when practicable" and "as may be determined by the Commission on Elections." Even if it be said that these are available before election, a citizen may not intrude into the school building where the polling places are usually located without disturbing the school classes being held there. Fifth, it is true that the Comelec is directed to make available copies of such amendments in English, Spanish or whenever practicable, in the principal native languages, for free distribution. However, Comelec is not required to actively distribute them to the people. This is significant as to people in the provinces, especially those in the far-flung barrios who are completely unmindful of the discussions that go on now and then in the cities and centers of population on the merits and demerits of the amendments. Rather, Comelec, in this case, is but a passive agency which may hold copies available, but which copies may not be distributed at all. Finally, it is of common knowledge that Comelec has more than its hands full in these pre-election days. They cannot possibly make extensive distribution.

Voters will soon go to the polls to say "yes" or "no". But even the official sample ballot submitted to this Court would show that only the amendments are printed at the back. And this, in pursuance to Republic Act 4913 itself.

Surely enough, when the voters do not have the benefit of proper notice of the proposed amendments through dissemination by publication in extenso and people do not have at hand the necessary data on which to base their stand on the merits and demerits of said amendments.

We, therefore, hold that there is no proper submission of the proposed constitutional amendments within the meaning and intent of Section 1, article XV of the Constitution.

4. Contemporary history is witness to the fact that during the present election campaign the focus is on the election of candidates. The constitutional amendments are crowded out. Candidates on the homestretch, and their leaders as well as the voters, gear their undivided efforts to the election of officials; the constitutional amendments cut no ice with them. The truth is that even in the ballot itself, the space accorded to the casting of "yes" or "no" vote would give one the impression that the constitutional amendments are but a bootstrap to the electoral ballot. Worse still, the fortunes of many elective officials, on the national and local levels, are inextricably intertwined with the results of the vote on the plebiscite. In a clash between votes for a candidate and conscience on the merits and demerits of the constitutional amendments, we are quite certain that it is the latter that will be denied.

5. That proper submission of amendments to the people to enable them to equally ratify them properly is the meat of the constitutional requirement, is reflected in the sequence of uniform past practices. The Constitution had been amended thrice – in 1939, 1940 and 1947. In each case, the amendments were embodied in resolutions adopted by the Legislature, which thereafter fixed the dates at which the proposed amendments were to be ratified or rejected. These plebiscites have been referred to either as an "election" or "general election". At no time, however, was the vote for the amendments of the Constitution held simultaneously with the election of officials, national or local. Even with regard to the 1947 parity amendment, the record shows that the sole issue was the 1947 parity amendment; and the special elections simultaneously held in only three provinces, Iloilo, Pangasinan and Bukidnon, were merely incidental thereto.

In the end, we say that the people are the last ramparts that guard against indiscriminate changes in the

Constitution that is theirs. Is it too much to ask that reasonable guarantee be made that in the matter of the alterations of the law of the land, their true voice be heard? The answer perhaps is best expressed in the following thoughts: "It must be remembered that the Constitution is the people's enactment. No proposed change can become effective unless they will it so through the compelling force of need of it and desire for it." [4]

For the reasons given, our vote is that a republic Act 4913 must be stricken down as in violation of the Constitution.

[1] The text of the law reads: "he (Senator or Member of the House of Representatives) may, however, be a Member of a Constitutional Convention."

[2] Emphasis supplied.

[3] *Effingham vs. Dye*, 99 N.E. pp. 4, 15; underscoring supplied. .

[4] *Effingham vs. Dye*, *supra*, at p. 17; underscoring supplied.

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