REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

RAUL L. LAMBINO and
ERICO B. AUMENTADO,
TOGETHER WITH 6,327,952
REGISTERED VOTERS,
Petitioners,

- versus -

G.R. No. 174153
For: Certiorari and Mandamus

COMMISSION ON ELECTIONS,
Respondent.
x----------x

MOTION FOR RECONSIDERATION

1. Petitioner RAUL L. LAMBINO, in his own behalf, together with and on behalf of the 6,327,952 registered voters whose names and signatures appear in Annexes "01100000" to "17752041" of the Amended Petition dated 29 August 2006 filed with public respondent Commission on Elections (COMELEC), through the undersigned counsel, respectfully move for the reconsideration of the Decision dated 25 October 2006 dismissing the petition, copy of which was received by petitioner on the same date, on the following grounds:

I. The factual finding that the petition for initiative is a "grand deception" and a "gigantic fraud" because the full text of the petition was not shown to be circulated together with the signature sheets, is utterly without any evidentiary basis, because: (a) the basic rules on presumptions in favor of the proponent, and burden of proof against the opposer, regarding compliance with the law,[1] and ordinary care of concerns,[2] regular performance of official duty,[3] raising of all relevant issues,[4] were totally disregarded; (b) not a single witness was presented to testify on the matter of "deception" or "fraud;" (c) not a single signer has filed any opposition to the petition on ground of "deception" or "fraud;" (d) reliance on the purported admissions of petitioner Lambino is baseless because the transcript of the stenographic notes and the text of the memorandum plainly and clearly shows that no such prejudicial admissions were made; (e) the elementary rule of procedure that "fraud ... must be stated with particularity" was completely disregarded.

IIA. The proposition for a change in form of government, involving a shift from the bicameral-presidential to the unicameral-parliamentary system of government, cannot be considered as a prohibited "revision," because "the words "simple" and "substantial" are not subject to any accurate quantitative or qualitative test," and therefore "it behooves us to follow the cardinal rule in interpreting Constitutions, i.e. construe them to give effect to the intention of the people who adopted it."[5]

[1] Rules of Court, Rule 131, Section 2(ff).
[2] Rules of Court, Rule 131, Section 3(d).
[3] Rules of Court, Rule 131, Section 3(m).
[4] Rules of Court, Rule 131, Section 3(o).
[5] Decision of 25 October 2006, Dissenting Opinion, Justice Puno, pages 36, 44.

IIB. In any case, the proposition for a change in form of government, involving a shift from the bicameral-presidential to the unicameral-parliamentary system of government, cannot be considered as a prohibited "revision," because under the prevailing Supreme Court doctrine in the Philippine jurisdiction, "amendment" includes "revision," and any technical distinction between an "amendment" or "revision" is immaterial the moment the proposed "change" is approved by the sovereign people.[6]

III. The ruling in the case of Santiago v. COMELEC regarding the inadequacy, incompleteness and insufficiency for subordinate legislation of Republic Act No. 6735 must be re-examined because that is the crux or lis mota of the present petition and the matter is of "transcendental importance" to the people at large..

IVA. The COMELEC En Banc committed grave abuse of discretion in denying due course to the petition for initiative based on the ruling in the case of Santiago v. COMELEC, because the cited ruling declaring Republic Act No. 6735 as inadequate, incomplete and insufficient in standard for subordinate legislation, cannot be considered as a binding doctrine of the Supreme Court En Banc, inasmuch as upon the reconsideration and final resolution of these matters, no majority vote was secured to opine and declare the implementing statute as inadequate, incomplete and insufficient in standard.[7]

IVB. The COMELEC En Banc committed grave abuse of discretion in denying due course to the petition for initiative based on the ruling in the case of Santiago v. COMELEC, because the "permanent injunction" in the cited case properly applied only to the Delfin petition therein considering that: firstly, under the constitutional principle of "due process,"[8] *the personal nature of an action for injunction,*[9] *as well as the adjudicatory nature of the power of judicial review,*[10] *a court order must be deemed to apply only to the parties of the case, and under the "actual controversies"*[11] *brought before the court; secondly, the "permanent injunction" was discussed only in the body of the Santiago decision, and was not so ordered in the disposition; thirdly, the principle of stare decisis cannot be applied because the Delfin petition in the Santiago is materially different from the present petition; the Delfin petition called for the COMELEC to assist in the gathering of signatures, while the present petition calls for the conduct of a plebiscite; the PIRMA petition in the PIRMA case is also materially different from the present petition; the PIRMA petition contained unverified signatures, while the present petition contains verified signatures.*

ARGUMENTS

ARGUMENTS ON COMPLIANCE WITH THE REQUIREMENTS OF SECTION 2, ARTICLE XVII OF THE CONSTITUTION

I. The factual finding that the petition for initiative is a "grand deception" and a "gigantic fraud" because the full text of the petition was not shown to be circulated together with the signature sheets, is utterly without any evidentiary basis,

---

[6] Simeon G. Del Rosario v. Ubaldo Carbonell, et al, G.R. No. L-32476, 20 October 1970. Samuel C. Occena v. Commision on Elections, et al, G.R. No. 56350, 02 April 1981.
[7] Supra PIRMA, 23 September 1997, Separate Opinion, Francisco, J., p. 9.
[8] 1987 Constitution, Article III, Section 1.
[9] Kean v. Harley, 179 F.2d 888 (8th Cir. 1950).
[10] 1987 Constitution, Article VIII, Section 1, Paragraph 2.
[11] Id.

because: (a) the basic rules on presumptions in favor of the proponent, and burden of proof against the opposer, regarding compliance with the law,[12] and ordinary care of concerns,[13] regular performance of official duty,[14] raising of all relevant issues,[15] were totally disregarded; (b) not a single witness was presented to testify on the matter of "deception" or "fraud;" (c) not a single signer has filed any opposition to the petition on ground of "deception" or "fraud;" (d) reliance on the purported admissions of petitioner Lambino is baseless because the transcript of the stenographic notes and the text of the memorandum plainly and clearly shows that no such prejudicial admissions were made; (e) the elementary rule of procedure that "fraud ... must be stated with particularity" was completely disregarded

2. The Decision of 25 October 2006 finds as a fact that the petition for initiative is a "grand deception"[16] and a "gigantic fraud"[17] because the full text of the petition was not circulated together with the signature sheets, and therefore the signers were kept in the dark of what the proposed amendments were all about. With due respect, petitioners submit that while the Decision ostensibly tries to protect the interests of the people and uphold the Constitution, in reality it constitutes a wholescale violation of the right to due process of the petitioners and the 6,327,952 signers, and ultimately of their sovereign political rights as Filipino citizens and registered voters.

3. Before we forget what this case is all about, let us go back to the basics. What was brought up for review under the present petition for *certiorari* is the validity and correctness of the COMELEC dismissal based on the ruling in the case of *Santiago v. COMELEC*, and not the sufficiency of the petition for initiative.

4. Now, this Honorable Court, in its Decision of 25 October 2006 under reconsideration, side-stepped this question of the applicability of the *Santiago* ruling and the COMELEC's power, authority and competence to consider the initiative petition.

[12] Rules of Court, Rule 131, Section 2(ff).
[13] Rules of Court, Rule 131, Section 3(d).
[14] Rules of Court, Rule 131, Section 3(m).
[15] Rules of Court, Rule 131, Section 3(o).
[16] Decision of 25 October 2006, page 27.
[17] Id, page 30.

Instead it addressed a non-issue, whether the petition for initiative was sufficient in form and substance. Uncannily, this Honorable Court opined that since the petition for initiative did not comply with Section 2, Article XVII of the Constitution and Section 5 (c) of RA 6735 , there was no need to address the issue of the applicability of *Santiago* ruling.

5. Such re-focusing of the issue is unfair. It caught petitioner off guard and by surprise. The matter resolved was outside the pleadings on this petition for *certiorari* filed by the original parties to the case. **It violated the petitioners' collective right to procedural due process[18] because it condemned them as perpetrators of a "grand deception" and "gigantic fraud," without even informing them that they were being charged as such, much less allowing them to be heard on these charges. It also violated the petitioners' collective right to substantive due process,[19] because of its inherent arbitrariness**.

6. It is the essence of fair and sensible litigation and adjudication that the issues on which the parties are divided be sharply defined and focused so that the court can meaningfully, narrowly and precisely resolve them. Issues outside those so defined can only be resolved if they constitute plain errors, jurisdictional errors or are otherwise related to the issues raised.[20] Otherwise, the court will be deciding in a vacuum, without regard to the issues which the parties have isolated and identified and submitted for decision.

7. Our system of adjudication of cases is adversarial. The underlying notion is that the interests of the litigants will be more narrowly and correctly addressed and resolved if the clashing parties are given free rein to state their antagonistic positions. The theory is that a more enlightened judgment will result from the parties' statement of their respective stands as animated and propelled by their competing self-interests. This is the whole idea of adversarial litigation, that there must be real adversity between the

[18] Lopez v. Director of Lands, 47 Phil. 23, 32 (1924). The essence of procedural due process is that of a "law which hears before it condemns."
[19] Morfe v. Mutuc, G.R. No. L-20387, 31 January 1968. Substantive due process "is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided."
[20] See Rules of Court, Rule 51, Section 8.

parties. There can be no such real adversity if the issues are not joined or if the case is resolved on a non-issue. Here, the parties had not taken any position on the manner of solicitation of the signatures. The COMELEC did not assert a position on this matter contrary to any position of the petitioners. It was a non-issue.

8. Are these 6,327,952 signatures genuine? Were they knowingly and intelligently affixed? Were the signatories unduly influenced by government functionaries to such a degree as to vitiate their free will? These questions, which go to the sufficiency in form and substance of the petition for initiative, are factual questions. Resolution of these questions requires presentation and appreciation of evidence to be adduced according to the prescribed rules.

9. Firstly, **based on the fact that the petition for initiative filed with the COMELEC, contained not only the signatures of the petitioners together with the 6,327,952, but also the 1528 certificates of verification issued by all the Election Officers nationwide, the basic rules on burden of proof and presumptions, regarding compliance with the law,[21] ordinary care of concerns,[22] regular performance of official duty,[23] raising of all relevant issues,[24] now operate in favor of the proponents and against the opposers**. However, in total disregard of these basic rules of evidence, the Decision of 25 October 2006 simply stated that "there is no presumption that the proponents observed the constitutional requirements in gathering the signatures."[25] Whatever happened to the Rules of Court and settled jurisprudence on evidence, the Decision does not say. In this regard, petitioners replead its arguments regarding burden of proofs and presumptions contained in Annex "B" of their Memorandum dated 11 October 2006, specifically paragraphs (d), (f), (g), (h), (i), (j), (o) and (s).

10. Secondly, no such evidence of "deception" or "fraud" had been adduced even before the COMELEC. Much less had such evidence been adduced before this

[21] Rules of Court, Rule 131, Section 2(ff).
[22] Rules of Court, Rule 131, Section 3(d).
[23] Rules of Court, Rule 131, Section 3(m).
[24] Rules of Court, Rule 131, Section 3(o).
[25] Decision of 25 October 2006, page 16.

Honorable Court. The hearing of 26 September 2006 was for the oral arguments of the parties, and not for the presentation of evidence. **Not a single witness was presented to testify on the matter of "deception" or "fraud." Not a single signer has filed any opposition to the petition on the ground of "deception" or "fraud."**

11. The purported admissions made by petitioner Lambino who also acted as his own counsel during the oral arguments cannot qualify as such evidence. Petitioner Lambino, for one, was not personally privy to the circumstances of the affixation of each and every one of the 6,327, 952 signatures. More importantly, **the text of the transcript of stenographic notes of the oral arguments, as well as that of the memorandum filed, clearly and plainly belies the existence of any such prejudicial admissions**.[26]

12. Based on the supposed prejudicial admissions made by petitioner Lambino, the Decision of 25 October 2005 made the factual finding that "(with) only 100,000 printed copies of the petition … (the) inescapable conclusion is that the Lambino group failed to show to the 6.3 million signatories the full text of the proposed changes,"[27] This factual finding is utterly baseless and *non-sequitor.*

13. Firstly, a reading of the full text of the transcript of stenographic notes, clearly and plainly shows that the 100,000 copies was only the initial batch of printed copies made by petitioner Lambino, with other succeding batches printed by other supporters of the people's initiative, *to wit*: [28]

> "ASSOCIATE JUSTICE CARPIO: **How many copies of the petition, that you mention(ed), did you print?**
>
> ATTY. LAMBINO:**We printed 100 thousand of this petition last February and we distributed to the different organizations that were volunteering to support us**.
>
> ASSOCIATE JUSTICE CARPIO:So, you are sure that you personally can say to us that 100 thousand of these were printed?
>
> ATTY. LAMBINO: It could be more than that, Your Honor. x x x x x x x x x x

[26] Excerpt of TSN of oral arguments conducted on 26 September 2006 is quoted in the Dissenting Opinion of Justice Puno, pages 59-61. Lambino Memorandum of 11 October 2006, page 5, paragraph 5.
[27] Decision of 25 October 2006, page 24, paragraph 2.
[28] Excerpt of TSN of oral arguments conducted on 26 September 2006 is quoted in the Dissenting Opinion of Justice Puno, pages 59-61.

ASSOCIATE JUSTICE CARPIO: **But you asked your friends or your associates to re-print, if they can(?)**

ATTY. LAMBINO: **Yes, Your Honor**.

ASSOCIATE JUSTICE CARPIO: Okay, so you got 6.3 Million signatures, but you only printed 100 thousand. So you're saying, how many did your friends print of the petition?

ATTY. LAMBINO: I can no longer give a specific answer to that, Your Honor. I relied only to the assurances of the people who are volunteering that they are going
to reproduce the signature sheets as well as the draft petition that we have given them, Your Honor. x x x x x x x x x x x x

ASSOCIATE JUSTICE CARPIO: Did you also show this amended petition to the people?

ATTY. LAMBINO: Your Honor, the amended petition reflects the copy of the original petition that we circulated, because in the original petition that we filed
before the COMELEC, we omitted a certain paragraph that is, Section 4 paragraph 3 which were part of the original petition that we circulated and so we have to correct that oversight because that is what we have circulated to the people and we have to correct that…

ASSOCIATE JUSTICE CARPIO: But you just stated now that what you circulated was the petition of August 25, now you are changing your mind, you're saying what you circulated was the petition of August 30, is that correct?

ATTY. LAMBINO: In effect, yes, Your Honor.

ASSOCIATE JUSTICE CARPIO: So, you circulated the petition of August 30, but what you filed in the COMELEC on August 25 was a different petition, that's why you have to amend it?

ATTY. LAMBINO: We have to amend it, because there was an oversight, Your Honor, that we have omitted one very important paragraph in Section 4 of our proposition.
x x x x x x x x x x x

ASSOCIATE JUSTICE CARPIO: Okay, let's be clear. What did you circulate when you gathered the signatures, the August 25 which you said you circulated or the August 30?

ATTY. LAMBINO: Both the August 25 petition that included all the provisions, Your Honor, and as amended on August 30. Because we have to include the one that
we have inadvertently omitted in the August 25 petition, Your Honor. x x x x x x x x x x x x

ASSOCIATE JUSTICE CARPIO: **And (you cannot tell that) you can only say for certain that you printed 100 thousand copies?**

ATTY. LAMBINO: **That was the original printed matter that we have circulated by the month of February, Your Honor, until some parts of March, Your Honor**.

ASSOCIATE JUSTICE CARPIO: **That is all you can assure us?**

ATTY. LAMBINO: **That is all I can assure you, Your Honor, except that I have asked some friends, like for example (like) Mr. Liberato Laos to help me print out some more of this petition**…" [29]

14. Secondly, a comparison of the excerpt containing the supposed admission made by petitioner Lambino in his Memorandum, *vis-à-vis* the full text of the statement actually made, likewise clearly and plainly shows that the 100,000 copies was only the initial batch of printed copies made by petitioner Lambino, and not only batch of copies of printed copies for the entire campaign,[30] *to wit:*

Excerpt quoted in the Decision of 25 October 2006	Full text of statement in the Memorandum of 11 October 2006
"petitioner Lambino initiated the printing and publication and reproduction of 100,000 copies of the petition for initiative x x x"	*"Shortly thereafter, petitioner Lambino initiated the printing and reproduction of 100,000 copies of the petition for initiative and 500,000 copies of signature sheets. He also initiated the reproduction of several hundred compact disks containing soft copies of the petition for initiative and signature sheets."*

15. Moreover, while the Decision of 25 October 2006 speaks of the submission by petitioners of a "copy of the **signature sheet**" as Exhibit "B" of their Memorandum,[31] it conveniently forgot to mention the other submission by petitioners of a copy of the **draft petition** as Exhibit "A" of said Memorandum.

16. Thirdly, **the elementary rule of procedure that "fraud … must be stated with particularity"[32] was completely disregarded.** Neither the Decision of 25 October 2006, nor any of the oppositions filed by the intervenors, cite with particularity any single incident of fraud, identifying the alleged victim and the perpetrator, stating the place, date, time and manner of commission.

17. Nonetheless, if only to refute the unfair findings of fraud and deception purportedly perpetrated by petitioners, we respectfully submit the following certifications issued by responsible officers of the Union of Local Authorities of the Philippines:

[29] (TSN, September 26, 2006, pp. 7-17). Excerpt quoted in the Separate Opinion of Justice Reynato S. Puno.
[30] Lambino Memorandum of 11 October 2006, page 5, paragraph 5.
[31] Decision of 25 October 2006, page 16, paragraph 2.
[32] Rules of Court, Rule 8, Section 5.

(a) Affidavit of Erico B. Aumentado dated 08 November 2006, attached hereto as Annex "A;"

(b) Affidavit of Jerry P. Treñas dated 08 November 2006, attached hereto as Annex "B;"

(c) Affidavit of Ramon N. Guico, Jr. dated 08 November 2006, attached hereto as Annex "C."

18. It may also be noted that in support of the information dissemination and signature gathering campaign, the "full text" of the Draft Petition for initiative and accompanying signature sheet was posted in the website of Sigaw ng Bayan at www.sigawngbayan.com, www.sigawngbayan.net and www.sigawngbayan.org, immediately upon its launching on 08 April 2006 for access to and downloading by the general public.[33] In fact, opposer-intervenor ONEVOICE, INC. secured its copy of the Draft Petition from the Sigaw ng Bayan website.[34] The same Draft Petition was published by the Philippine Daily Inquirer, a national newspaper of general circulation, sometime during the Lenten season of 2006. Finally, the pros and cons of the proposition for a change in form of government, from a bicameral-presidential system to a unicameral-parliamentary system, were discussed extensively before the tri-media as a matter of public knowledge.

19. It is therefore this Honorable Court which, in passing upon factual issues and at the first instance at that, strayed into uncharted waters as it went far afield to find a "gigantic fraud" and "grand deception" practised on the signatories and the nation. This is too much.

20. The issue on the petition for initiative is not the merits of the proposed amendments. Rather, the only issue thereon is whether amendments of the nature described in the petition should be put to a plebiscite. The proposed amendments may be unacceptable to those who believe in the political *status quo* but that does not mean they should not be submitted to a plebiscite.

[33] Lambino Memorandum dated 11 October 2006, Page 6, Paragraph 7.
[34] OneVoice Opposition-in-Intervention dated 05 September 2006, page 28, page 68.

21. The Decision of 25 October 2006 strikes at the heart of proper adversarial adjudication, at the principle that the Supreme Court does not try facts especially at the first instance, and ultimately stifles the expression of the popular will.

22. As opined by Justice Dante O. Tinga in his Separate Opinion:[35]

> "(The) more fundamental question that we should ask, I submit, is whether it serves well on the Court to usurp trier of facts even before the latter exercises its functions? **If the Court, at this stage, were to declare the petitions as insufficient, it would be akin to the Court pronouncing an accused as guilty even before the lower court trial had began**. (emphasis supplied)
>
> *"Matugas v. COMELEC*[36] inveighs against the propriety of the Court uncharacteristically assuming the role of trier of facts, and resolving factual questions not previously adjudicated by the lower courts or tribunals:
>
> > "[P]etitioner in this case cannot "enervate" the COMELEC's findings by introducing new evidence before **this Court, which in any case is not a trier of facts, and then ask it to substitute its own judgment and discretion for that of the COMELEC**.
> >
> > "The rule in appellate procedure is that a factual question may not be raised for the first time on appeal, and documents forming no part of the proofs before the appellate court will not be considered in disposing of the issues of an action. This is true whether the decision elevated for review originated from a regular court or an administrative agency or quasi-judicial body, and whether it was rendered in a civil case, a special proceeding, or a criminal case. Piecemeal presentation of evidence is simply not in accord with orderly justice.[37]
>
> "**Any present determination by the Court on the sufficiency of the petitions constitutes in effect a trial *de novo*, the Justices of the Supreme Court virtually descending to the level of trial court judges. This is an unbecoming recourse, and it simply is not done**." (emphasis supplied)

23. In connection with the determination of the sufficiency of a petition for initiative, we note a fairly recent persuasive authority in the case of *Committee v. Carnahan*[38] rendered by Supreme Court of Missouri, U.S.A. on 11 October 2006, which ruling is consistent with the Philippine concept of a people's initiative,[39] and reads as follows:

> **"II. Standard of Review**
>
> "Before reaching the issues presented in this appeal, it is important to make some general observations regarding the **initiative** process provided by the

[35] Decision of 25 October 2006, Separate Opinion, Justice Danto O. Tinga, pages 14-15.
[36] G.R. No. 151944, January 20, 2004, 420 SCRA 365.
[37] Id., at 377. Emphasis supplied.
[38] Committee for a Healthy Future v. Carnahan, No. SC 88018, 11 October 2006, S.W.3d.
[39] See Subic Bay Metropolitan Authority v. Commission on Elections, G.R. No. 125416, September 26, 1996, 262 SCRA 492, 516-517, *citing* 42 Am. Jur. 2d, p. 653.

> constitution. Nothing in our constitution so closely models participatory democracy in its pure form. Through the **initiative** process, those who have no access to or influence with elected representatives may take their cause directly to the people. The people, from whom all constitutional authority is derived, have reserved the "power to propose and enact or reject laws and amendments to the Constitution." … When courts are called upon to intervene in the **initiative** process, they must act with restraint, trepidation and a healthy suspicion of the partisan who would use the judiciary to prevent the **initiative** process from taking its course. Constitutional and statutory provisions relative to **initiative** are liberally construed to make effective the people's reservation of that power. ....
>
> **"III. Analysis …D.**
>
> "Intervenors next contend that signatures should not be considered valid if they appear on a page where the circulator's affidavit required by section 116.040, RSMo 2000, is incomplete or notarization is missing.
>
> "As stated in *United Labor*, "[i]f the validity of the voters' signatures can be otherwise verified, their signatures should not be invalidated by the notary's negligence or deliberate misconduct." 572 S.W.2d at 454. *United Labor* has not been invalidated by changes in the election laws and continues to establish the proper focus-Do the requisite numbers of signatures appear on the petition? The General Assembly has not declared the failure to comply with section 116.040 to be fatal; to the contrary, it continues to state that only substantial compliance with the statute is required.
>
> "Here, signatures were indeed verified by the LEAs (Local Election Authorities). The circuit court properly focused on the signatures' validity and properly rejected Intervenors' attempt to invalidate signatures because of errors committed by persons other than the signers…
>
> **"IV. Conclusion**
>
> "Statutes implementing the constitutionally created **initiative** process should not restrict or limit the electorate's power. Although the implementing statutes are required to be followed, failure to adhere to mere technical formalities should not deny the people the power to propose changes to our laws or amendments to our constitution. Substantial compliance with the implementing statutes is all that is required.
>
> "Intervenors' various complaints of irregularities or discrepancies in petition signatures and circulators' affidavits are all without merit. The **initiative** petition submitted by the Committee contains the required number of valid signatures to be placed on the ballot for the November 2006 general election…" (underscoring supplied)

24. In any case, it is useful to note that the factual finding of a "grand deception" and "gigantic fraud," was not supported by a majority of the Justices. Only seven (7) Justices opined that there was sufficient basis to support such a finding.[40] Seven (7) other Justices found no sufficient basis and voted to remand to the COMELEC the resolution of this contentious factual matter.[41] One (1) Justice abstained on the issue.[42]

---

[40] Chief Justice Artemio V. Panganiban and Justices Consuelo Ynares-Santiago, Angelina Sandoval-Gutierrez, Antonio T. Carpio, Ma. Alicia Austria-Martinez, Conchita Carpio-Morales, Romeo J. Callejo, Sr..

[41] Justices Reynato S. Puno, Leonardo A. Quisumbing, Renato C. Corona, Dante O. Tinga, Minita V. Chico-Nazario, Cancio C. Garcia, Presbitero J. Velasco, Jr..

[42] Justice Adolfo S. Azcuna.

ARGUMENTS REGARDING
THE NATURE OF THE PROPOSITION
AS AN AMENDMENT AND REVISION

IIA. The proposition for a change in form of government, involving a shift from the bicameral-presidential to the unicameral-parliamentary system of government, cannot be considered as a prohibited "revision," because "the words "simple" and "substantial" are not subject to any accurate quantitative or qualitative test," and therefore "it behooves us to follow the cardinal rule in interpreting Constitutions, i.e. construe them to give effect to the intention of the people who adopted it."[43]

25. The Separate Opinion of Justice Reynato S. Puno, regarding the nature of the proposition as amendment or revision, is instructive, *to wit:*

> "The oppositors-intervenors then point out that by their proposals, petitioners will "change the very system of government from presidential to parliamentary, and the form of the legislature from bicameral to unicameral," among others. They allegedly seek other major revisions like the inclusion of a minimum number of inhabitants per district, a change in the period for a term of a Member of Parliament, the removal of the limits on the number of terms, the election of a Prime Minister who shall exercise the executive power, and so on and so forth.[44] In sum, oppositors-intervenors submit that "the proposed changes to the Constitution effect major changes in the political structure and system, the fundamental powers and duties of the branches of the government, the political rights of the people, and the modes by which political rights may be exercised."[45] They conclude that they are substantial amendments which cannot be done through people's initiative. In other words, **they posit the thesis that only simple but not substantial amendments can be done through people's initiative.**
>
> **"With due respect, I disagree.** To start with, the words "**simple**" and "**substantial**" are not subject to any accurate quantitative or qualitative test. Obviously, relying on the **quantitative test**, oppositors-intervenors assert that the amendments will result in some one hundred (100) changes in the Constitution. **Using the same test**, however, **it is also arguable** that petitioners seek to change basically only two (2) out of the eighteen (18) articles of the 1987 Constitution, *i.e.* Article VI (Legislative Department) and Article VII (Executive Department), together with the complementary provisions for a smooth transition from a presidential bicameral system to a parliamentary unicameral structure. **The big bulk of the 1987 Constitution will not be affected** including Articles I (National Territory), II (Declaration of Principles and State Policies), III (Bill of Rights), IV (Citizenship), V (Suffrage), VIII (Judicial Department), IX (Constitutional Commissions), X (Local Government), XI (Accountability of Public Officers), XII (National Economy and Patrimony), XIII (Social Justice and Human Rights), XIV (Education, Science and Technology, Arts, Culture, and Sports), XV (The Family), XVI (General Provisions), and even XVII (Amendments or Revisions).

---

[43] Decision of 25 October 2006, Dissenting Opinion, Justice Puno, pages 36, 44.
[44] Opposition-in-Intervention filed by ONEVOICE, p. 39.
[45] Opposition-in-Intervention filed by Alternative Law Groups, Inc., p. 30.

In fine, **we stand on unsafe ground if we use simple arithmetic to determine whether the proposed changes are "simple" or "substantial."**

"Nor can this Court be surefooted if it applies the qualitative test to determine whether the said changes are **"simple"** or **"substantial"** as to amount to a revision of the Constitution. The well-regarded political scientist, **Garner,** says that a good constitution should contain at least three (3) sets of provisions: the **constitution of liberty** which sets forth the fundamental rights of the people and imposes certain limitations on the powers of the government as a means of securing the enjoyment of these rights; the **constitution of government** which deals with the framework of government and its powers, laying down certain rules for its administration and defining the electorate; and, the **constitution of sovereignty** which prescribes the mode or procedure for amending or revising the constitution.[46] **It is plain that the proposed changes will basically affect only the constitution of government.** The constitutions of liberty and sovereignty remain unaffected. **Indeed, the proposed changes will not change the fundamental nature of our state as "x x x a democratic and republican state."**[47] It is self-evident that a unicameral-parliamentary form of government will not make our State any less democratic or any less republican in character. Hence, **neither will the use of the qualitative test resolve the issue of whether the proposed changes are "simple" or "substantial."**

"For this reason and more, **our Constitutions did not adopt any quantitative or qualitative test to determine whether an "amendment" is "simple"** or **"substantial." Nor did they provide that "substantial" amendments are beyond the power of the people to propose to change the Constitution**…

"As we cannot be guided with certainty by the inconclusive opinions of the Commissioners on the difference between "simple" and "substantial" amendments or whether "substantial" amendments amounting to revision are covered by people's initiative, it behooves us to follow the **cardinal rule in interpreting Constitutions**, *i.e.*, construe them to give effect to the **intention of the people who adopted it**. The illustrious Cooley explains its rationale well, *viz*:[48]

> "x x x the constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be arrived at is that of the people, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed. These proceedings therefore are less conclusive of the proper construction of the instrument than are legislative proceedings of the proper construction of a statute; since in the latter case it is the intent of the legislature we seek, while in the former we are endeavoring to arrive at the intent of the people through the discussion and deliberations of their representatives. The history of the calling of the convention, the causes which led to it, and the discussions and issues before the people at the time of the election of the delegates, will sometimes be quite as

---

46 Introduction to Political Science, pp. 397-398.

47 Section 1, Art. II of the 1987 Constitution.

48 T. M. Cooley, I A TREATISE ON CONSTITUTIONAL LIMITATIONS 143-144 (8th ed. 1927).

instructive and satisfactory as anything to be gathered form the proceedings of the convention.

"Corollarily, a constitution is not to be interpreted on narrow or technical principles, but **liberally and on broad general lines, to accomplish the object of its establishment and carry out the great principles of government – not to defeat them.**[49] One of these great principles is the sovereignty of the people…

"It is significant to note that the people modified the ideology of the 1987 Constitution as it stressed the power of the people to act directly in their capacity as sovereign people. Correspondingly, the power of the legislators to act as representatives of the people in the matter of amending or revising the Constitution was diminished for the spring cannot rise above its source. To reflect this significant shift, Section 1, Article II of the 1987 Constitution was **reworded**. It **now** reads: "the Philippines is a **democratic** and republican state. Sovereignty resides in the people and all government authority emanates from them." …

"Consistent with the stress on **direct democracy**, the **systems of initiative**, referendum, and recall were enthroned as polestars in the 1987 Constitution…

"Commissioner Jose E. Suarez also explained the people's initiative as a safety valve, as a peaceful way for the people to change their Constitution, by citing our experiences under the Marcos government…[50]

"Commissioner Regalado E. Maambong opined that the **people's initiative could avert a revolution…**[51]

"The **end result** is Section 2, Article XVII of the 1987 Constitution which expressed the right of the sovereign people to propose amendments to the Constitution by direct action or through initiative. To that extent, **the delegated power of Congress to amend or revise the Constitution has to be adjusted downward**. Thus, Section 1, Article VI of the 1987 Constitution has to be **reminted and now provides**: "The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, **except to the extent reserved to the people by the provision on initiative and referendum**."

"Prescinding from these baseline premises, **the argument that the people through initiative cannot propose substantial amendments to change the Constitution turns sovereignty on its head**. At the very least, the **submission constricts the democratic space** for the exercise of the direct sovereignty of the people. It also denigrates the sovereign people who they claim can only be trusted with the power to propose **"simple" but not "substantial"** amendments to the Constitution. According to **Sinco**, the concept of sovereignty should be strictly understood in its legal meaning as it was originally developed in law.[52] Legal sovereignty, he explained, is "the possession of **unlimited power to make laws**. Its possessor is the legal sovereign. It implies the absence of any other party endowed with legally superior powers and privileges. **It is not subject to**

---

49 H.C. Black, HANDBOOK OF AMERICAN CONSTITUTIONAL LAW S. 47, p. 67 (2nd ed. 1897).

50 *Id.* at 377.

51 *Id.* at 395.

52 Sinco, supra note 58, at 22.

law 'for it is the author and source of law.' Legal sovereignty is thus the equivalent of **legal omnipotence**."[53]

"To be sure, sovereignty or popular sovereignty, emphasizes the supremacy of the people's will over the state which they themselves have created. The state is created by and subject to the will of the people, who are the source of all political power. Rightly, we have ruled that "the sovereignty of our people is not a kabalistic principle whose dimensions are buried in mysticism. Its metes and bounds are familiar to the framers of our Constitutions. They knew that in its broadest sense, sovereignty is meant to be supreme, the *jus summi imperu*, the absolute right to govern."[54] …

"I wish to reiterate that in a democratic and republican state, only the people is sovereign - - - not the elected President, not the elected Congress, not this unelected Court. Indeed, the sovereignty of the people which is **indivisible** cannot be reposed in any organ of government. **Only its exercise may be delegated to any of them**. **In our case, the people delegated to Congress the exercise of the sovereign power to amend or revise the Constitution**. If Congress, as delegate, can exercise this power to amend or revise the Constitution, can it be argued that the sovereign people who delegated the power has no power to substantially amend the Constitution by direct action? If the sovereign people do not have this power to make substantial amendments to the Constitution, what did it delegate to Congress? How can the people lack this **fraction of a power** to substantially amend the Constitution when by their sovereignty, **all power** emanates from them? It will take some *mumbo jumbo* to argue that the whole is lesser than its part…

"At the very least, the power to propose substantial amendments to the Constitution is shared with the people. We should accord the most benign treatment to the sovereign power of the people to propose substantial amendments to the Constitution especially when the proposed amendments will adversely affect the interest of some members of Congress. A contrary approach will suborn the public weal to private interest and worse, will enable Congress (the delegate) to frustrate the power of the people to determine their destiny (the principal).

"All told, the **teaching of the ages** is that constitutional clauses acknowledging the right of the people to exercise initiative and referendum are **liberally and generously construed in favor of the people**.[55] Initiative and referendum powers must be broadly construed to maintain **maximum power in the people**.[56] We followed this orientation in **Subic Bay Metropolitan Authority v. Commission on Elections**.[57] There is not an iota of reason to depart from it."

26. Thus, even though Justice Adolfo S. Azcuna eventually voted to dismiss the present petition for *certiorari,* he nonetheless opined in his Separate Opinion, that a change in the form of government from a bicameral to a unicameral legislature, albeit substantial in nature, was lawfully covered by a people's initiative, *to wit:*

---

53 *Id.* at 20-21.

54 *Frivaldo v. Commission on Elections*, G.R. No. 120295, June 28, 1996, 257 SCRA 727.

55 *State v. Moore*, 103 Ark 48, 145 SW 199 (1912); *Whittemore v. Seydel*, 74 Cal App 2d 109 (1946).

56 *Town of Whitehall v. Preece*, 1998 MT 53 (1998).

57 G.R. No. 125416, September 26, 1996, 262 SCRA 492, 516-517, *citing* 42 Am. Jur. 2d, p. 653.

> "For the proposed changes can be separated and are, in my view, separable in nature-a unicameral legislature is one; a parliamentary form of government is another. The first is a mere amendment …
>
> "The proposal, therefore, contained in the petition for initiative, regarding a change in the legislature from a bicameral or two-chamber body to that of a unicameral or one-chamber body, is sustainable. The text of the changes needed to carry it out are perfunctory and ministerial in nature. Once it is limited to this proposal, the changes are simply one of deletion and insertions, the wordings of which are practically automatic and non-discretionary.
>
> "As an example, I attach to this opinion an Appendix "A" showing how the Constitution would read if we were to change Congress from one consisting of the Senate and the House of Representatives to one consisting only of the House of Representatives. It only affects Article VI on the Legislative Department, some provisions on Article VII on the Executive Department, as well as Article XI on the Accountability of Public Officers, and Article XVIII on Transitory Provisions. These are mere amendments, substantial ones indeed but still only amendments…"

IIB. In any case, the proposition for a change in form of government, involving a shift from the bicameral-presidential to the unicameral-parliamentary system of government, cannot be considered as a prohibited "revision," because under the prevailing Supreme Court doctrine in the Philippine jurisdiction, "amendment" includes "revision," and any technical distinction between an "amendment" or "revision" is immaterial the moment the proposed "change" is approved by the sovereign people.[58]

27. In the case of *Del Rosario v. Carbonell*,[59] the Supreme Court ruled that "amendment includes revision" as follows:

> "3. And **whether the Constitutional Convention will only propose amendments to the Constitution or entirely overhaul the present Constitution and propose an entirely new Constitution based on an ideology foreign to the democratic system, is of no moment; because the same will be submitted to the people for ratification. Once ratified by the sovereign people, there can be no debate about the validity of the new Constitution**.
>
> "4. **The fact that the present Constitution may be revised and replaced with a new one** by the Constitutional Convention called in Resolutions Nos. 2 and 4, respectively, of 1967 and 1969, because under Sec. 6(A), par. 5, of the law, a candidate may include a concise statement of his principal constitutional reforms, programs or policies, **is no argument against the validity of the law because "amendment" includes the "revision" or total overhaul of the entire Constitution. At any rate, whether the Constitution is merely amended in part or revised or totally changed would become immaterial the moment the same is ratified by the sovereign people**." (emphasis supplied)

[58] Simeon G. Del Rosario v. Ubaldo Carbonell, et al, G.R. No. L-32476, 20 October 1970. Samuel C. Occena v. Commision on Elections, et al, G.R. No. 56350, 02 April 1981.
[59] Supra Del Rosario.

28. The *Del Rosario* case involved the interpretation of the 1935 Constitution, which as distinguished from the 1973 and 1987 Constitutions, does not yet use the word "revision" in its text. The 1935 Constitution reads as follows:

> "Article XV, Amendments.
>
> "Section 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 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."

29. In the case of *Occena v. COMELEC,*[60] the Supreme Court also ruled that "amendment includes revision" as follows:

> "Petitioners would urge upon us the proposition that the amendments proposed (i.e. Resolution No. 1 proposing an amendment allowing a natural-born citizen of the Philippines naturalized in a foreign country to own a limited area of land for residential purposes; Resolution No. 2 dealing with the Presidency, the Prime Minister and the Cabinet, and the National Assembly; and Resolution No. 3 on the amendment to the Article on the Commission on Elections) are so extensive in character that they go far beyond the limits of the authority conferred on the Interim Batasang Pambansa as successor of the Interim National Assembly. For them, what was done was to revise and not to amend. It suffices to quote from the opinion of Justice Makasiar, speaking for the Court, in Del Rosario v. Commission on Elections to dispose of this contention. Thus: "3. And **whether the Constitutional Convention will only propose amendments to the Constitution or entirely overhaul the present Constitution and propose an entirely new Constitution based on an ideology foreign to the democratic system, is of no moment; because the same will be submitted to the people for ratification. Once ratified by the sovereign people, there can be no debate about the validity of the new Constitution. 4. The fact that the present Constitution may be revised and replaced with a new one … is no argument against the validity of the law because 'amendment' includes the 'revision' or total overhaul of the entire Constitution. At any rate, whether the Constitution is merely amended in part or revised or totally changed would become immaterial the moment the same is ratified by the sovereign people**." There is here the adoption of the principle so well-known in American decisions as well as legal texts that a constituent body can propose anything but conclude nothing. We are not disposed to deviate from such a principle not only sound in theory but also advantageous in practice." (emphasis supplied)

30. The *Occena* case involved the interpretation of the 1973 Constitution, which as distinguished from the 1935 Constitution, already uses the word "revision" in its text, just like the 1987 Constitution. The 1973 Constitution reads as follows:

> "Article XVI, Amendments.
>
> "Section 1. (1) Any amendment to, or revision of, this Constitution may be proposed by the National Assembly upon a vote of three-fourths of all its Members, or by a constitutional convention.

[60] Supra Occena.

> (2) The National Assembly may, by a vote of two-thirds of all its Members, call a constitutional convention, or by a majority vote of all its Members, submit the question of calling such a convention to the electorate in an election.
> Section 2. Any amendment to or revision of this Constitution shall be valid when ratified by a majority of the votes cast in the plebiscite which shall be held not later than three months after the approval of such amendment or revision."

31. Thus, the Supreme Court has resolved the issue involving the apparent technical distinction between "amendment" and "revision" by simply ruling that "amendment includes revision."[61] Moreover, it has ruled that any purported technical distinction between "amendment" and "revision" necessarily becomes irrelevant the moment the "change" is approved by the sovereign people.[62]

32. Hence, under the *Del Rosario* and *Occena* cases, the Supreme Court established the doctrine that "amendment" includes "revision." To the knowledge of the petitioners, this doctrine has not been modified or reversed by any other Philippine Supreme Court decision as of this date. It certainly cannot be deemed modified or reversed by any other decision of a foreign jurisdiction. More importantly, this prevailing doctrine was not even discussed in the Decision of 25 October 2006. Accordingly, this doctrine must be deemed binding upon the present petition, pursuant to the constitutional rule that "no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc."*[63]

33. It is proferred that a people's initiative applies only to "amendments" and not to "revision," and that this "distinction was intentional" as shown by the "deliberations of the Constitutional Commission."[64] With due respect, petitioners submit that the deliberations of the framers cannot be deemed conclusive on the meaning of the constitutional provisions because "**(d)ebates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law..." The proper interpretation thereto**

[61] Supra Del Rosario. Supra Occena.
[62] Id.
[63] 1987 Constitution, Article VIII, Judicial Department, Sec. 4(3).
[64] Decision of 25 October 2006, pages 32-33.

depends more on how it was understood by the people adopting it than in the framer's understanding thereof."[65] (emphasis supplied)

34. **Can this Honorable Court fairly, justly, equitably and reasonably presume that the common people at large who ratified the 1987 Constitution understood the words "amendment" and "revision" in their technical meanings, when even sophisticated lawyers cannot agree among themselves on what this technical meaning is about?**[66]

35. It is proferred that under the rulings of the state supreme courts of the United States of America, "amendment" is distinguished from "revision" in connection with a people's initiative, and accordingly this distinction must perforce be applied to the Philippine jurisdiction.[67] With due respect, petitioners submit that the said rulings are applicable only to a federal state like the United States of America, but not to a unitary state like the Philippines. As explained by Justice Makasiar, the ruling that the sovereign people cannot deviate from the procedure for amending or revising the constitution they themselves defined was made "in order to and preserve the existence of the Federal Republic of the United States against any radical innovation initiated by the citizens of the fifty (50) different states of the American Union, which states may be jealous of the powers of the Federal government presently granted by the American Constitution. This dangerous possibility does not obtain in the case of our Republic."[68] Moreover, these foreign rulings squarely contradict the prevailing doctrine in the Philippine jurisdiction that "amendment" includes "revision," and therefore such rulings cannot be properly cited even for persuasive effect.

36. It is also proferred that under the rulings of the state supreme courts of the United States of America, "amendments" must be limited to one (1) subject, otherwise it will constitute as prohibited "logrolling," which ruling must perforce be applied to the

[65] Civil Liberties Union v. Executive Secretary, G.R. No. 83896 22 February 1991.
[66] See J.M. Tuazon & Co., Inc. v. Land Tenure Administration, et al, G.R. No. L-21064, 18 February 1970.
[67] Decision of 25 October 2006, pages 34-46, citing McFadden v. Jordan, 196 P.2d 787, 790 (1948); Holmes v. Appling, 392 P.2d 636, 638 (1964); In re Initiative Petition No. 364, 930 P.2d 186, 196 (1996); Livermore v. Waite, 102 Cal. 113, 118-119 (1894); Amador Valley Joint Union High School District v. State Board of Equalization, 583 P.2d 1281, 1286 (1978); Legislature of the State of California v. EU, 54 Cal.3d 492, 509 (1991); California Association of Retail Tobacconists v. State, 109 Cal.App.4th 792, 836 (2003); Adams v. Gunter, 238 So.2d 824 1970); Lowe v. Keisling, 882 P.2d 91, 96-97 (1994).
[68] Javellana v. Executive Secretary, G.R. No. L-36142, 31 March 1973, Separate Opinion, J. Makasiar.

Philippine jurisdiction.[69] With due respect, petitioners submit that **the foreign rulings on "logrolling" are totally inapplicable to the Philippine jurisdiction for the simple reason that the 1987 Constitution does not in any way limit to one (1) subject the "amendments" to the constitution by way of an initiative**. Accordingly, to avoid a taint of unconstitutionality, Section 10(a) of Republic Act No. 6735 limiting a petition for initiative to one (1) subject, must be construed to apply only to propositions for statutes, and not to propositions to amend the constitution.

37. In connection with the citation of foreign rulings that are not applicable or otherwise contradict prevailing Philippine jurisprudence, the Supreme Court ruled in the case of *Sanders v. Veridiano II*[70] as follows:

> "The petitioners' counsel have submitted a memorandum replete with citations of American cases, as if they were arguing before a court of the United States. The Court is bemused by such attitude. **While these decisions do have persuasive effect upon us, they can at best be invoked only to support our own jurisprudence, which we have developed and enriched on the basis of our own persuasions as a people**, particularly since we became independent in 1946.
>
> "We appreciate the assistance foreign decisions offer us, and not only from the United States but also from Spain and other countries from which we have derived some if not most of our own laws. But we should not place undue and fawning reliance upon them and regard them as indispensable mental crutches without which we cannot come to our own decisions through the employment of our own endowments. We live in a different ambience and must decide our own problems in the light of our own interests and needs, and of our qualities and even idiosyncrasies as a people, and always with our own concept of law and justice." (emphasis upplied)

38. In the same manner, the Supreme Court ruled in the case of *People of the Philippines v. Molina*[71] as follows:

> "So his counsel did vigorously argue in a brief notable for its thoroughness. It could have been improved, had there been no undue reliance on American authorities and, what is worse, on such a secondary source as American Jurisprudence. It was not entirely out of levity that the late Professor Moore, speaking of such work as well as Corpus Juris, noted that the text thereof appeared to be the product of a far from accurate thinking of impecunious young lawyers not yet established practice. He did add, in a more serious vein, that to extent that it would yield the impression of a so-called American common law, it is likely to incur the vice of inaccuracy, especially so after the epochal decision in Erie R. R. Co. v. Tompkins. By this time, with one hundred ten volumes of Philippine Reports as well as fifty-on volumes of Supreme Court Reports Annotated, Philippine lawyers … are well advised to rely primarily on Philippine decisions."

[69] Decision of 25 October 2006, pages 27-29.
[70] G.R. No. L-46930, 10 June 1988.
[71] G.R.No L-30191, 27 October 1973.

ARGUMENTS REGARDING THE RE-EXAMINATION OF THE RULING IN THE CASE OF SANTIAGO V. COMELEC

III. The ruling in the case of Santiago v. COMELEC regarding the inadequacy, incompleteness and insufficiency for subordinate legislation of Republic Act No. 6735 must be re-examined because that is the crux or lis mota of the present petition for certiorari and the matter is of "transcendental importance" to the people at large.

39. The Supreme Court, as a court, may exercise judicial power only over "cases,"[72] in the present case, G.R. No. 174153.

40. What is G.R. No. 174153? As the Decision states:

> "These are consolidated petitions on the Resolution dated 31 August 2006 of the Commission on Elections ("COMELEC") denying due course to an initiative petition to amend the 1987 Constitution."

41. G.R. No. 174153 is before the Supreme Court, not as an original case brought before it, but for review.[73]

42. The "decision, order, or ruling" of the COMELEC before the Supreme Court for review is its resolution of 31 August 2006, which in its pertinent parts,[74] read as follows:

> "We agree with the Petitioners that this Commission has the solemn Constitutional duty to enforce and administer all laws and regulations relative to the conduct of, as in this case, initiative.
>
> "This mandate, however, should be read in relation to the other provisions of the Constitution particularly on initiative.
>
> "Section 2, Article XVII of the 1987 Constitution provides:
>
> > SEC. 2. Amendments to this Constitution may likewise be directly proposed by the people through initiative, upon a petition of at least twelve per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters therein. x x x.
>
> "The Congress shall provide for the implementation of the exercise of this right.

---

[72] 1987 Constitution, Article VIII, Section 5.

[73] 1987 Constitution, Article IX, Section 7.- "Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof." See Section 5(s), Article VIII, Constitution.

[74] As quoted in Footnote No. 9 of the Decision.

> "The afore-quoted provision of the Constitution being a non self-executory provision needed an enabling law for its implementation. Thus, in order to breathe life into the constitutional right of the people under a system of initiative to directly propose, enact, approve or reject, in whole or in part, the Constitution, laws, ordinances, or resolution, Congress enacted Republic Act No. 6735.
>
> "However, the Supreme Court, in the landmark case of *Santiago vs. Commission on Elections* struck down the said law for being incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned.
>
> "The Supreme Court likewise declared that this Commission should be permanently enjoined from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the system.
>
> "Thus, even if the signatures in the instant Petition appear to meet the required minimum *per centum* of the total number of registered voters, of which every legislative district is represented by at least three *per centum* of the registered voters therein, still the Petition cannot be given due course since the Supreme Court categorically declared R.A. No. 6735 as inadequate to cover the system of initiative on amendments to the Constitution.
>
> "This Commission is not unmindful of the transcendental important of the right of the people under a system of initiative. However, neither can we turn a blind eye to the pronouncement of the High Court in the absence of a valid enabling law, this right of the people remains nothing but an "empty right", and that this Commission is permanently enjoined from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution.
>
> "Considering the foregoing, We are therefore constrained not to entertain or give due course to the instant Petition.

43. What is the issue or the crux or *lis mota* in G.R. No. 174153, the "case" before the Supreme Court? The issue is whether the COMELEC acted without or in excess of jurisdiction, or with grave abuse of discretion, in resolving "not to entertain or give due course to the instant petition (for initiative)." In light of the COMELEC Resolution, a resolution of this issue will depend on the resolution of the following:

(a) Whether R.A. No. 6735 is unconstitutional; consequently, there is no implementing law with respect to Section 2, Article XVII of the 1987 Constitution.

(b) Whether by virtue of *Santiago vs. COMELEC,* the COMELEC is "permanently enjoined from entertaining or taking cognizance of any petition for

initiative on amendments to the Constitution until a sufficient law shall have been validly enacted to provide for the implementation of the system."

44. However, this Honorable Court, in its Decision, dismissed the petition, not on the basis of the *Santiago vs. COMELEC,* but on other grounds, particularly:

(a) the petition for initiative does not comply with Section 2, Article XVII of the Constitution because it has not been shown that those who purport to have signed the petition knew the text of the proposed amendments to the Constitution, and that they read and understood it before they signed the petition;

(b) that the proposed amendments are in the nature of "revisions" and not amendments of the Constitution; and

(c) that the proposed amendments cover more than one subject matter.

45. The Decision found no need to re-visit or rule on whether indeed the Commission on Elections is "permanently enjoined from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution," which is the only issue in the "case" before it for resolution.

46. It is important to note that had this Honorable Court resolved the issue in the "case" before it, that is, whether by virtue of *Santiago vs. COMELEC,* the Commission is "permanently enjoined from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution," it would have reached an entirely different result. All the seven (7) members of the Supreme Court who dissented[75] found that the COMELEC is not, by virtue of the *Santiago vs. COMELEC,* permanently enjoined from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution."

47. In addition, Justice Consuelo Ynares-Santiago, in her "Separate Opinion," stated:

> "I agree with the *ponencia* of our esteemed colleague, Justice Reynato Puno, that the Court's ruling in *Santiago v. COMELEC*[76] is not a binding precedent."

[75] Justices Reynato S. Puno, Leonardo A. Quisumbing, Renato C. Corona, Dante O. Tinga, Minita V. Chico-Nazario, Cancio C. Garcia, Presbitero J. Velasco, Jr..
[76] G.R. No. 127325, March 19, 1997, 270 SCRA 106.

while Justice Adolfo S. Azcuna stated:

> "Seen in this light, the provisions of Republic Act No. 6735 relating to the procedure for proposing amendments to the Constitution can and should be upheld, despite shortcomings perhaps in legislative headings and standards.
>
> "For this reason, I concur in the view that *Santiago v. Comelec*[77] should be re-examined and, after doing so, that the pronouncement therein regarding the insufficiency or inadequacy of the measure to sustain a people's initiative to amend the Constitution should be reconsidered in favor of allowing the exercise of this sovereign right."

48. It follows then that by a majority of nine (9) concurring votes,[78] the Resolution of the COMELEC dated 31 August 2006 should have been reversed. In other words, upon the resolution of the *lis mota* or crux of the present petition by a majority of the Justices, the Petition should have been granted.

49. In relation to the foregoing, it cannot be overstressed that the matter of the Congressional implementation of the constitutional provisions on people's initiative is of "transcendental importance" to the people at large. The democratic action taken directly by the petitioners together with 6,327,952 registered voters cannot be trivialized and belittled as if they mean absolutely nothing to this Honorable Court. Even the opposers who so fiercely defend the political *status quo* will have to concede the people's right to speak and advocate institutional change, for the simple reason that we are a democracy, unless of course we should now start to think of our society as a tyranny, that is owned and controlled by the so-called "masters of manipulation"[79] who so shamelessly and so arrogantly "misrepresent themselves as the spokesmen of the people."[80]

ARGUMENTS REGARDING GRAVE ABUSE OF DISCRETION OF THE COMELEC

IVA. The COMELEC En Banc committed grave abuse of discretion in denying due course to the petition for initiative based on the ruling in the case of Santiago v. COMELEC because the cited ruling declaring Republic Act No. 6735 as inadequate, incomplete and insufficient in standard for subordinate legislation, cannot be considered as a binding doctrine of the Supreme Court En Banc, inasmuch as upon the reconsideration and final

[77] G.R. No. 127325, March 19, 1997 and June 10, 1997.
[78] Justices Reynato S. Puno, Leonardo A. Quisumbing, Renato C. Corona, Dante O. Tinga, Minita V. Chico-Nazario, Cancio C. Garcia, Presbitero J. Velasco, Jr., Consuelo Ynares-Santiago and Adolfo S. Azcuna.

[79] Decision of 25 October 2006, Separate Opinion, Justice Puno, page 72, paragraph 2.
[80] Id.

resolution of these matters, no majority vote was secured to opine and declare the implementing statute as inadequate, incomplete and insufficient in standard.[81]

50. It is important to note that the case of *Santiago v. COMELEC*, G.R. No. 127325, dismissed the Delfin petition based on three (3) grounds: (1) that the Delfin petition was non-compliant because it lacked the requisite supporting signatures;[82] (2) that Republic Act No. 6735 was inadequate,[83] and (3) that Republic Act No. 6735 was incomplete and insufficient in standard for subordinate legislation.[84]

51. With respect to the collegial voting of the Justices of the Supreme Court *en banc*, they were unanimous on the first ground, but cast opposing votes on the second and third grounds.

52. On the final collegial voting by the Justices of the Supreme Court *en banc*, regarding the second and third grounds of inadequacy and unconstitutionality, no majority vote was obtained. Only six (6) Justices agreed to invoke these grounds, six (6) other justices disagreed with these grounds, one (1) Justice abstained from voting on these grounds, and the two (2) remaining Justices inhibited themselves from the proceedings.

53. In connection with the voting and collegial adjudication of the second (2nd) and third (3rd) grounds of inadequacy and unconstitutionality in the *Santiago* case, it is useful to note the Separate Opinion of J. Francisco[85] which reads as follows:

> "As it stands, of the thirteen justices who took part in the deliberations on the issue of whether the motion for reconsideration of the March 19,1997 decision should be granted or not, only the following justices sided with Mr. Justice Davide, namely: Chief Justice Narvasa, and Justices Regalado, Romero, Bellosillo and Kapunan, Justices Melo, Puno, Mendoza, Hermosisima, Panganiban and the undersigned voted to grant the motion; while Justice Vitug "maintained his opinion that the matter was not ripe for judicial adjudication". In other words, only five, out of the other twelve justices, joined Mr. Justice Davide's June 10, 1997 ponencia finding R.A. No. 6735 ***unconstitutional*** for its failure to pass the so called " completeness and sufficiency standards" tests. Obviously, seven votes are needed to reach a "***majority***", not six. The *"concurrence of a* ***majority*** *of the members who actually took part in the deliberations"* which Article VIII, Section 4 (2) of the Constitution requires to

[81] Supra PIRMA, 23 September 1997, Separate Opinion, Francisco, J., p. 9.
[82] Id., p. 22-23.
[83] Supra Santiago, 19 March 1997, p. 11-23.
[84] Id.
[85] Supra PIRMA, Separate Opinion, Francisco, J.

> declare a law unconstitutional was, beyond dispute, not complied with. And even assuming, for the sake of argument, that the constitutional requirement on the concurrence of the "***majority***" was initially reached in the March 19,1997 ponencia, the same is inconclusive as it was still open for review by way of a motion for reconsideration. It was only on June 10,1997 that the constitutionality of R.A. No. 6735 was settled with finally, *sans* the constitutionally required "***majority.***" The Court's declaration, therefore, is manifestly grafted with infirmity and wanting in force necessitating, in my view, the re- examination of the Court's decision in G.R. No.127325. It behooves the Court "not to tarry any longer " nor waste this opportunity accorded by this new petition (G.R. No. 129754) to relieve the Court's pronouncement from constitutional infirmity."

54. Under the premises, it reasonably follows that the opinion and declaration in the Decision dated 19 March 1997 in the case of *Santiago v. COMELEC*, G.R. No. 127325, declaring Republic Act No. 6735 as inadequate, incomplete and insufficient in standard for subordinate legislation, cannot be considered as a binding doctrine of the Supreme Court En Banc, because upon the reconsideration and final resolution of these matters on 10 June 1997, no majority vote was secured to opine and declare the implementing statute as inadequate, incomplete and insufficient in standard,[86] as only six (6) Justices[87] voted that the implementing statute was inadequate, incomplete and insufficient in standard, while six (6) other Justices[88] voted that the implementing statute was adequate, complete and sufficient in standard, one (1) Justice[89] abstained on these issues, and two (2) Justices[90] inhibited themselves from the proceedings.

IVB. The COMELEC En Banc committed grave abuse of discretion in denying due course to the petition for initiative based on the ruling in the case of Santiago v. COMELEC, because the "permanent injunction" in the cited case properly applied only to the Delfin petition therein considering that: firstly, under the constitutional principle of "due process,"[91] the personal nature of an action for injunction,[92] as well as the adjudicatory nature of the power of judicial review,[93] a court order must be deemed to apply only to the parties of the case, and under the "actual controversies"[94] brought before

[86] Id, p. 9. Lambino v. Comelec, G.R. No. 174153, 25 October 2006, J. Puno, Dissenting Opinion, pages 61-71.
[87] Narvasa, C.J., Bellosillo, Davide, Jr., Kapunan, Regalado, Romero, JJ..
[88] Franciso, Hermosisima, Melo, Mendoza, Panganiban, Puno, JJ..
[89] Vitug, J..
[90] Padilla, Torres, JJ..
[91] 1987 Constitution, Article III, Section 1.
[92] Kean v. Harley, 179 F.2d 888 (8th Cir. 1950).
[93] 1987 Constitution, Article VIII, Section 1, Paragraph 2.

the court; secondly, the "permanent injunction" was discussed only in the body of the Santiago decision, and was not so ordered in the disposition; thirdly, the principle of stare decisis cannot be applied because the Delfin petition in the Santiago is materially different from the present petition; the Delfin petition called for the COMELEC to assist in the gathering of signatures, while the present petition calls for the conduct of a plebiscite; the PIRMA petition in the PIRMA case is also materially different from the present petition; the PIRMA petition contained unverified signatures, while the present petition contains verified signatures.

55. It is proferred that the COMELEC *en banc* is barred from taking cognizance of the petition for initiative to amend the constitution because of the "permanent injunction" purportedly issued in the *Santiago* case.[95] With due respect, petitioners submit that there is no such thing as a "permanent injunction" that purports to operate as an injunction against the whole world, or that otherwise purports to apply automatically to all future cases or controversies not yet filed before the court. Consistent with the constitutional principle of "due process,"[96] the personal nature of an action for injunction,[97] as well as the adjudicatory nature of the power of judicial review,[98] the "permanent injunction" issued in the *Santiago* case, must be deemed to apply only to the parties of the case, and under the "actual controversies"[99] brought before the court.

56. Furthermore, it may be noted that the so-called "permanent injunction" in the *Santiago* case is found only in the opinion embodied in the Decision dated 19 March 1997. It did not form part of the *fallo* or disposition. Thus, in case of any inconsistency between the opinion and the disposition of a decision, it is settled that it is the disposition that prevails because that is the final order of the court while the opinion is merely a statement that orders nothing.[100]

---

[94] Id.
[95] Decision of 25 October 2006, page 48.
[96] 1987 Constitution, Article III, Section 1.
[97] Kean v. Harley, 179 F.2d 888 (8th Cir. 1950).
[98] 1987 Constitution, Article VIII, Section 1, Paragraph 2.
[99] Id.
[100] OLAC v. Court of Appeals, G.R. No. 84256, 02 September 1992.

57. In view of the foregoing, it is useful to review the rational behind the judicial doctrine of precedent or of *stare decisis.* "The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument."[101] "(T)he rule on *stare decisis* promotes stability in the law and should, therefore, be accorded respect. However, blind adherence to precedents, simply as precedent, no longer rules. More than important than anything else is that the court is right, thus its duty to abandon any doctrine found to be in violation of the law in force."[102]

58. In this regard, it may be noted that Delfin petition in the *Santiago* case is materially different from the present petition. The Delfin petition called for the COMELEC to assist in the gathering of signatures. The present petition does not call for assistance. The present petition already submits the signatures gathered and verified in compliance with the percentage requirements for registered voters. Thus, the present petition calls instead for the conduct of a plebiscite. Accordingly, the doctrine of *stare decisis* cannot be applied with respect to the *Santiago* case.

59. It may also be noted the PIRMA petition in the *PIRMA* case is materially different from the present petition. The PIRMA petition contained unverified signatures. The present petition already submits the verified signatures in compliance with the percentage requirements for registered voters. Accordingly, the doctrine of *stare decisis* cannot be applied with respect to the *PIRMA* case.

P R A Y E R

60. Wherefore, premises considered, petitioners respectfully pray:

(a) That the motion for reconsideration be set for oral arguments;

(b) That after consideration of motion and the oral arguments that may be set, that judgment be rendered:

(i) Reconsidering and setting aside the Decision of 25 October 2006, for lack of merit;

[101] Castillo v. Sandiganbayan, 377 SCRA 509, 515 (2002).
[102] Commissioner of Internal Revenue v. PLDT, 478 SCRA 61, 70 (2005).

(ii) Setting aside the public respondent COMELEC's Resolution dated 31 August 2006, which denied due course to the Petition for Initiative, for having been issued with grave abuse of discretion;

(iii) Ordering that a Writ of Mandamus be issued directing the public respondent COMELEC to comply with Section 4, Article XVII of the 1987 Constitution, and to set the date of the plebiscite, based upon a finding that the petition for initiative is sufficient in form and substance;

(iv) Bway of an alternative prayer, declaring Republic Act No. 6735 as the basic and appropriate implementing statute for the people's constitutional right of initiative; further declaring that the proposition for a change in form in government involving a shift from a bicamerial-presidential system to a unicameral-parliamentary system does not constitute a prohibited revision; and remanding the present Petition to the COMELEC En Banc for adjudication of the factual issues, specifically the compliance with the constitutional percentage requirements, and the determination of the genuineness and due execution of the supporting signatures;

(c) That petitioners be granted such other reliefs as may be just or equitable under the premises.

Quezon City for Manila. 09 November 2006.

Lambino De Guzman Tumanda & Rafanan
Counsel for Petitioner Raul L. Lambino
Autoland Sales Building
1616 Quezon Avenue, South Triangle
Diliman, Quezon City

By:

Raul L. Lambino
IBP No. 05601, Lifetime
PTR No. 1277541, 01-06-06 Pangasinan
Roll of Attorneys No. 35291

Demosthenes B. Donato
IBP No. 668717, 01-06-06, PPLM

PTR No. 4188514, 01-06-06, Makati
Roll of Attorneys No. 35872
Co-Counsel for Petitioner Raul L. Lambino
Autoland Sales Building
1616 Quezon Avenue, South Triangle
Diliman, Quezon City

Copy furnished:

Solicitor General Antonio Eduardo B. Nachura
134 Amorsolo Street
Legaspi Village, 1229 Makati City

Chairman Benjamin Abalos
Commission on Elections
Intramuros, 1002 Manila

(Retired) Justice Bernardo P. Pardo
Counsel for Petitioner Erico B. Aumentado
No. 40 Polk Street, North Greenhills
San Juan, Metro Manila

Atty. Alberto C. Agra
Counsel for Petitioner Erico B. Aumentado
No. 12, Fourth Street
St. Ignatius Village, Quezon City

Atty. Pete Quirino-Quadra
In His Own Behalf
Section D, 8th Floor, Ramon Magsaysay Center
1680 Roxas Boulevard, Malate
1004 Manila

Atty. Carlos P. Medina
Counsel for Opposer OneVoice, Inc. et al.
Ateneo Human Rights Center
Room 101, Ground Floor, APS Building
20 Rockwell Drive, Rockwell Center
Makati City

Atty. Marlon J. Manuel
Counsel for Opposer-Intervenor
Alternative Law Groups, Inc.
Room 215, Institute of Social Order
Social Development Complex
Ateneo de Manila University
Loyola Heights, Quezon City

Atty. Neri Javier Colmenares
Counsel for Intervenor Luwalhati Ricasa Antonino
No. 1 Matatag corner Maaralin Streets
Central District, Quezon City

Atty. Manuel M. Lazaro
M.M. Lazaro & Associates
Counsel for Intervenors Philconsa and Estrella
19/F Chatham House Building

Valero corner V.A. Rufino Streets
Salcedo Village, Makati City

Atty. Mario Ongkiko
Ongkiko Kalaw Manhit & Accorda
Counsel for Intervenors Philconsa, Toledo and Bacungan
4/F Cacho Gonzales Building
101 Aguirre Street, Legaspi Village
Makati City

Atty. Reynaldo Y. Maulit
Counsel for Intervenors Tajon, Venus, Aguas and Gat Inciong
4/F Du-Val Building
669 Aurora Building, Quezon City

Atty. Ibarra M. Gutierrez III
Counsel for Intervenors Rosales, Aguja and Baraquel
101 Matahimik Street
Teachers' Village, Quezon City

Atty. Jose Anselmo I. Cadiz
Counsel for Cadiz, Bocar, Lat, Salvador and Tabayoyong
Suite 3601, 36/F Antel Global Centre
3 Julia Vargas Avenue, Ortigas Center
Pasig City, Metro Manila

Atty. Rufus B. Rodriguez
Rufus B. Rodriguez & Associates
Counsel for Joseph Ejercito Estrada and PMP
Suite 308 Heritage Center
1851 A. Vasquez Street
Malate, Manila

Atty. Pablo P. Garcia
Counsel for Integrated Bar of the Philippines, Cebu City and Cebu Chapters
2091 Andres Abellana corner Singson Streets
Guadalupe, Cebu City

Atty. Aquilino L. Pimentel III
Counsel for Pimentel, Osmena III, Madrigal, Estrada, Lim and Lacson
Suite 2106, Atlanta Center
No. 31 Annapolis Street, Greenhills
San Juan, 1503 Metro Manila

Atty. Democrito T. Mendoza &
Atty. Cecilio T. Seno
Counsel for TUCP
PGEA Compound, Elliptical Road
Corner Maharlika Avenue
Diliman, Quezon City

Atty. Arturo M. Castro
7F LTA Building, 118 Perea Street
Legaspi Village, Makati City

Atty. Antonio L. Salvador
102 Scout de Guia Street

Quezon City

R.A.V Saguisag
Counsel for petitioners in G.R. No. 174299
4045 Bigasan Street
Palanan, 1235 Makati City

Senator Miriam Defensor Santiago
Philippine Senate
Pasay City

Atty. Janijay B. Alonzo
Counsel for R. Adamat, R.M. Rivera and R. Baya
Block 38, Lot 12 Marawi Street
South City Homes
Biñan, Laguna

Atty. Arnel Z. Dolendo
Philippine Transport & General Workers
Organization and Victorino Balais
Rooms 504-505, S&L Building
1500 Roxas Boulevard
Pasay City

Senator Joker Arroyo
Philippine Senate
Pasay City

Ocampo Arciaga-Santos Nuñez
Lomangaya and Ribao
2nd Floor, Ocampo Heritage Building
214 Wilson Street, Greenhills
San Juan, Metro Manila

Topacio Law Office
Carnation Street, Camella Classic
Better Living, Parañaque City

Integrated Bar of the Philippines
IBP Building
Doña Julia Vargas Avenue
1605 Pasig City

Dean Pacifico Agabin
26th Floor Pacific Star Building
Gil Puyat Avenue corner Makati Avenue
Makati City

Copies for Solicitor General Antonio Eduardo B. Nachura, COMELEC Chairman Benjamin Abalos, Atty. Alberto C. Agra, Atty. Pete Quirino-Quadra, Atty. Carlos P. Medina, Atty. Marlon J. Manuel, Atty. Neri Javier Colmenares, Atty. Manuel M. Lazaro, Atty. Mario Ongkiko, Atty. Ibarra M. Gutierrez III, Atty. Jose Anselmo I. Cadiz, Atty. Rufus B. Rodriguez, Atty. Pablo P. Garcia, Atty. Aquilino L. Pimentel III, Atty. Democrito T. Mendoza, Atty. Arturo M. Castro, Atty. Antonio L. Salvador, R.A.V. Saguisag, Senator Miriam Defensor Santiago, Senator Joker Arroyo, Ocampo Arciaga-Santos Nuñez Lomangaya and Ribao, Topacio Law Office, Integrated Bar of the

Philippines, Dean Pacifico Agabin, are served by registered mail due to distance and lack of available messenger.

Raul L. Lambino **Demosthenes B. Donato**

VERIFICATION

I, **Raul L. Lambino**, Filipino, of legal age, married, with office address at Autoland Building, 1616 Quezon Avenue, South Triangle, Diliman, Quezon City, Philippines, under oath, depose and say:

1. That I am one of the Petitioners in the above-captioned case;
2. That I have caused the preparation and authorized the filing of the foregoing Consolidated Reply;
3. That I have read the contents thereof and the allegations therein are of my own personal knowledge or based on authentic records.

Quezon City, Philippines, 11 October 2006.

Raul L. Lambino
Affiant

SUBSCRIBED AND SWORN to before me at Quezon City on 11 October 2006, affiant exhibiting his Comm. Tax Cert. No. 07758589 issued at Mangaldan, Pangasinan on 05 January 2006.

Doc. No. ____:
Page No. ____:
Book No. ____:
Series of 2006