Lambino v. Comelec: Revising the Constitution Through the People's Initiative

The Facts

Lambino v. Comelec, decided by an 8-7 hairline vote, was probably the most controversial case decided by the Panganiban Court. It attracted sustained national attention for over a year. Media – television, radio, and print – discussed its ramifications extensively for an even longer period.

On February 15, 2006, Petitioners Raul L. Lambino and Erico B. Aumentado (the "Lambino Group"), together with other groups and individuals, commenced gathering signatures for an initiative Petition to change the 1987 Constitution. On August 25, 2006, the Lambino Group filed a Petition with the Commission on Elections (Comelec) to hold a plebiscite, purportedly to ratify the initiative efforts under Section 5 (b and c) and Section 7 of Republic Act No. 6735, also known as the Initiative and Referendum Act.

The Lambino Group alleged that the initiative Petition had the support of 6,327,952 individuals, constituting at least twelve percent (12%) of all registered voters, with each legislative district represented by at least three percent (3%) of its registered voters in the

country. Petitioners also claimed that Comelec election registrars had verified the signatures of the 6.3 million individuals.

The initiative Petition was supposedly intended to change the Constitution by modifying Sections 1-7 of Article VI (on the Legislative Department) and Sections 1-4 of Article VII (on the Executive Department); and by adding Article XVIII entitled "Transitory Provisions." These proposed changes were for a shift from the present bicameral-presidential to a unicameral-parliamentary form of government.

The Lambino Group prayed that after due publication of the Petition, the Comelec would submit the following proposition in a plebiscite for the voters' ratification:

> DO YOU APPROVE THE AMENDMENT OF ARTICLES VI AND VII OF THE 1987 CONSTITUTION, CHANGING THE FORM OF GOVERNMENT FROM THE PRESENT BICAMERAL-PRESIDENTIAL TO A UNICAMERAL-PARLIAMENTARY SYSTEM, AND PROVIDING ARTICLE XVIII AS TRANSITORY PROVISIONS FOR THE ORDERLY SHIFT FROM ONE SYSTEM TO THE OTHER?

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On August 30, 2006, the Lambino Group filed an Amended Petition with the Comelec, indicating some modifications in the proposed Article XVIII ("Transitory Provisions") of the initiative.

The Comelec denied due course to the Petition for lack of an enabling law governing petitions to amend the Constitution. The Commission invoked the Court's ruling in *Santiago* v. *Commission on Elections,* declaring that Republic Act 6735 was inadequate to

implement the initiative clause on proposals to amend the Constitution.

Before the Supreme Court, petitioners prayed for the issuance of writs of certiorari and mandamus. They asked the Court to set aside the Comelec Resolution denying due course to the initiative Petition; and to compel the electoral body to give due course to the said Petition. The group contended that the Comelec had committed grave abuse of discretion in denying due course to their Petition, because *Santiago* was supposedly not a binding precedent. Alternatively, they claimed that *Santiago* was binding with respect only to the parties to that case, and that their Petition deserved cognizance as an expression of the "will of the sovereign people."

In his Comment on the Lambino Group's Petition, the Office of the Solicitor General (OSG) joined cause with petitioners, urging the Court to grant their Petition despite the *Santiago* ruling. The OSG proposed that the Court should treat Republic Act 6735 and the implementing rules of that law "as temporary devices to implement the system of initiative."

Various groups and individuals sought intervention, filing pleadings supporting or opposing the group's Petition. The supporting intervenors uniformly held the view that the Comelec had committed grave abuse of discretion in relying on *Santiago*. On the other hand, the opposing intervenors upheld the contrary view and maintained that *Santiago* was a binding precedent.

The opposing intervenors also challenged (1) the Lambino Group's standing to file the Petition; (2) the validity of the signature-gathering and the verification process; (3) petitioners' noncompliance with the minimum requirement -- under Section 2 of Article XVII of the Constitution -- for the percentage of voters that support an initiative petition; (4) the nature of the proposed changes, claiming that they were revisions and not mere amendments, as provided under Section 2, Article XVII of the Constitution; and (5) the Lambino Group's noncompliance with the requirement in Section 10(a) of Republic Act 6735 limiting initiative petitions to only one subject.

The Issues

The issues were as follows: 1) whether the Lambino Group's initiative Petition complied with Section 2 of Article XVII of the Constitution, on amendments to the Constitution through a people's initiative; 2) whether the Court should revisit its ruling in *Santiago,* which had declared Republic Act 6735 "incomplete, inadequate or wanting in essential terms and conditions" to implement the initiative clause on proposals to amend the Constitution; and 3) whether the Comelec had committed grave abuse of discretion in denying due course to the Lambino Group's Petition.

The Court's Ruling

The Court ruled that the Lambino Group had miserably failed to comply with the basic requirements of the Constitution for conducting a people's initiative. It said that

there was not even any need to revisit *Santiago*. The present Petition warranted dismissal, based alone on the Lambino Group's glaring failure to comply with the basic requirements of the Constitution. The Court further held that no grave abuse of discretion was attributable to the Commission on Elections for following the ruling in *Santiago*.

Noncompliance with the Constitution

Section 2 of Article XVII of the Constitution is the governing constitutional provision that allows a people's initiative to propose amendments to the Constitution. This section reads thus:

> 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 essence of amendments "directly proposed by the people through initiative upon a petition" is that the entire proposal on its face be a petition by the people. Hence, two essential elements must be present. *First,* the people must author and thus sign the entire proposal. No agent or representative may sign on their behalf. *Second,* as an initiative upon a petition, the proposal must be embodied in a petition.

These essential elements are present only if the *full* text of the proposed amendments is first shown to the people, who express their assent by signing that

complete proposal. Thus, an amendment is "directly proposed by the people through initiative upon a petition" only if the people sign a petition that contains the full text of the proposed amendments.

The deliberations of the Constitutional Commission explicitly reveal that the framers intended the full text of the proposed amendments to be seen first by the people before they sign it, and the latter to sign a petition containing that full text. Section 5(b) of Republic Act No. 6735, the Initiative and Referendum Act that the Lambino Group invoked as valid, indeed required the Petition to be acknowledged by the people "as signatories."

There was no presumption that the proponents observed the constitutional requirements in gathering the signatures. In fact, the proponents bore the burden of proving that they had complied with the constitutional requirements in gathering the signatures -- that the Petition contained or incorporated, by attachment, the full text of the proposed amendments.

As the signature sheet readily showed, there was not a single word, phrase, or sentence of the Lambino Group's proposed changes. Neither did the signature sheet state that the text of the proposed changes was attached to it. Petitioner Atty. Raul Lambino himself admitted this lapse during the Oral Argument before the Court on September 26, 2006.

The signature sheet merely asked whether the people approved a shift from the bicameral-presidential to the unicameral-parliamentary system of government. It did not show the prospective signatories a draft of the proposed changes before they were asked to affix their signatures. Clearly, the signature sheet was not the "petition" that the framers of the Constitution had envisioned when they formulated the initiative clause in Section 2 of Article XVII of the Constitution.

However, Petitioner Lambino explained that during the signature-gathering from February to August 2006, members of his group circulated, together with the signature sheets, printed copies of the group's draft Petition. Later, on August 25, 2006, they filed it with the Comelec. When asked if they had also circulated the draft of their amended Petition filed with the Commission on August 30, 2006, Atty. Lambino initially replied that they had circulated both. He changed his answer, though, and said that what his group had circulated was the draft of the August 30, 2006 Amended Petition, not that of the Petition dated August 25, 2006.

Factual Premises Conclusively
Proven by Admission

By his own express admission, it was also established that Petitioner Lambino could assure the Court of only 100,000 copies of the draft Petition that he made. It was therefore beyond doubt that his group had failed to show the full text of the proposed

changes to the great majority of the people who signed on the signature sheets.

Assuming 100 percent distribution without wastage, only 100,000 out of the total 6.3 million signatories could have received one copy each of the Petition. (If the Lambino Group had attached one copy of the Petition to each signature sheet, only 100,000 signature sheets could have been circulated with the Petition.) Assuming that ten voters signed on each of the 100,000 signature sheets attached to the Petition, the maximum number of people who could have seen it before signing would not have exceeded 1,000,000.

The inescapable conclusion was that the Lambino Group had failed to show the full text of the proposed changes to the 6.3 million signatories. If at all, not more than one million signatories could have seen the Petition before signing on the signature sheets.

In any event, the signature sheets did not contain the full text of the proposed changes, either on the face of or as an attachment indicated on each sheet. This admission, made by Petitioner Lambino during the Oral Argument, was binding on his group. The non-attachment of the text was also obvious from a mere inspection of the signature sheet.

The omission was fatal. The failure to include the text of the proposed changes to the signature sheets rendered the initiative void for noncompliance with the constitutional

requirement that the amendment must be "directly proposed by the people through initiative upon a petition." The signature sheet was not the "petition" envisioned in the initiative clause of the Constitution. Without the draft Petition attached, the signatories could not have known the nature and effect of the proposed changes.

Revisions, Not Amendments

These changes included the following proposals: 1) the term limits on members of the legislature would be lifted, so members of Parliament could be reelected indefinitely; 2) the members of the interim Parliament -- who would be almost all the present members of Congress -- would in effect determine the expiration of their own terms of office, as they could continue to function indefinitely until they would decide to call for new parliamentary elections; and 3) within 45 days from the ratification of the proposed changes, the interim Parliament would convene to propose further amendments or revisions to the Constitution.

The people could not have inferred or divined these proposed changes merely from a reading or a rereading of the contents of the signature sheets. The 6.3 million signatories had to rely on the verbal representations of Lambino and his group. The result was a grand deception of these millions of signatories, who had been led to believe that the proposed changes would require the holding of elections for the regular Parliament in 2007, simultaneously with the local elections.

Logrolling Provision

The Lambino Group's initiative sprang another surprise on the people who had signed on the signature sheets. The proposed changes **mandated** the interim Parliament to make further amendments or revisions to the Constitution. The proposed Section 4(4) of Article XVIII ("Transitory Provisions") provides as follows:

> "Section 4(4). Within forty-five days from ratification of these amendments, the interim Parliament **shall convene to propose amendments to, or revisions of, this Constitution** consistent with the principles of local autonomy, decentralization and a strong bureaucracy." (Emphasis supplied)

During the Oral Argument, Atty. Lambino contended that this provision was a "surplusage," and that the Court and the people should simply ignore it. Far from being a surplusage, this provision invalidated his group's initiative.

Section 4(4) of the proposed changes was a subject matter totally unrelated to the shift from the bicameral-presidential to the unicameral-parliamentary system. American jurisprudence on initiatives outlaws this proposal as "logrolling," a subterfuge consisting of incorporating an unrelated subject matter into the same document. This practice puts the people in a dilemma, since they can answer only either "yes" or "no" to the entire proposition. They are thus forced to sign a petition that effectively contains two propositions, one of which they may find unacceptable.

Under American jurisprudence, logrolling nullifies the entire proposition, not only

the unrelated part.

Thus, the present initiative seemed to be merely a preliminary step for further amendments or revisions, to be undertaken by the interim Parliament as a constituent assembly. The people who signed the signature sheets could not have known that their signatures would be used to propose an amendment mandating the interim Parliament to propose further amendments or revisions to the Constitution.

Clearly, the signature sheets did not explain what specific amendments or revisions that the initiative proponents wanted the interim Parliament to make, and why there was a need for further amendments or revisions. The people were left to fathom the nature and effect of the proposed changes. Certainly, the initiative was not "directly proposed by the people," because they did not even know the nature and effect of the proposed changes.

Moreover, the proposed changes end the terms of all the present Senators at noon on June 30, 2010. Afterwards, if the interim Parliament would not schedule elections for the regular Parliament by June 30, 2010, not one of them would remain as members of the legislature. There was, however, no counterpart provision for the present members of the House of Representatives, even if their terms of office would all end on June 30, 2007, three years earlier than those of half of the present Senators. Thus, all the present members of the House would remain members of the interim Parliament after June 30, 2010.

The term of the incumbent President would end on June 30, 2010. Thereafter, the Prime Minister would exercise all the powers of the President. If the interim Parliament would not schedule elections for the regular Parliament by June 30, 2010, the Prime Minister would come only from the present members of the House of Representatives, to the exclusion of the present Senators.

The signature sheets did not explain this discrimination against the Senators or these other consequences. Hence, the 6.3 million signatories could not have known that their signatures would have these consequences.

An initiative that gathers signatures from the people without first showing them the full text of the proposed amendments is most likely a gigantic fraud. That is why the Constitution requires that an initiative must be "directly proposed by the people x x x in a petition." This requirement means that the people must sign a petition that contains the full text of the proposed amendments. On an issue as vital as amending the nation's fundamental law, the text of the proposed amendments cannot be hidden from them under a general or special power of attorney conferred upon unnamed, unidentified, and unelected individuals.

Section 2, Article XVII of the Constitution Violated by the Initiative

Article XVII of the Constitution speaks of three modes of amending the Constitution. The *first* is through Congress, upon a three-fourths vote of all its members; the *second,* through a constitutional convention; and the third, through a people's initiative.

Under the Constitution, a people's initiative to change the Constitution applies only to its amendment, not to its revision. In contrast, Congress or a constitutional convention can propose both amendments and revisions.

The framers of the Constitution intended, and wrote, a clear distinction between *amendment* and *revision* of the Constitution. The framers intended, and wrote, that only Congress or a constitutional convention may propose constitutional revisions. The framers intended, and wrote, that a people's initiative may propose only amendments to the Constitution. The intent and the language of the Constitution clearly withhold from the people the power to propose revisions to the Constitution. Thus, the people cannot propose revisions, even if they are empowered to propose amendments.

There can be no deviation from the constitutionally prescribed modes of revising the Constitution. A popular clamor, even one backed by 6.3 million signatures, cannot justify a deviation from the specific modes prescribed in the Constitution itself.

The question in the present case was whether the initiative constituted an amendment to or a revision of the Constitution. If that initiative constituted a revision,

then the group's Petition should be dismissed for being outside the scope of Section 2 of Article XVII of the Constitution. The Court ruled that the Petition proposed revisions, not mere amendments.

Courts have long recognized the distinction between an amendment and a revision of the Constitution. Revision broadly implies a change that alters a basic principle in the Constitution, like altering the principle of separation of powers or the system of checks and balances. A revision occurs if a change alters the substantial entirety or substantial provisions of the fundamental law. On the other hand, amendment broadly refers to a change that adds, reduces, or deletes without altering the basic principle involved.

By any legal test and under any jurisdiction, a shift from a bicameral-presidential to a unicameral-parliamentary system, involving the abolition of the Office of the President and of one chamber of Congress, is undoubtedly a revision and not a mere amendment. Apparently, the Lambino Group's proposed changes would radically alter the framework of government as set forth in the Constitution.

Petitioners theorized that the difference between *amendment* and *revision* was only one of procedure, not of substance. The express intent of the framers and the plain language of the Constitution, however, contradicted this theory.

Courts should not deviate from such intent and language when plainly stated. Any

theory espousing a contrary construction deserves scant consideration, more so if it wreaks havoc by creating inconsistencies in the form of government established by the Constitution. Thus, this Court rejected the petitioners' theory, which negated the express intent of the framers and the plain language of the fundamental law.

Since a revision of a Constitution affects its basic principles or several of its provisions, a deliberative body with recorded proceedings is best suited to undertake a revision. A revision requires harmonizing not only several provisions, but also the altered principles, with those that remain unaltered. Thus, constitutions normally authorize deliberative bodies, like constituent assemblies or constitutional conventions, to undertake revisions. On the other hand, constitutions allow people's initiatives, which do not have fixed and identifiable deliberative bodies or recorded proceedings, to undertake only amendments and not revisions. A revision of the Constitution through a people's initiative will only result in gross absurdities.

In sum, there was no doubt whatsoever that the Lambino Group's initiative was a revision, not an amendment. Thus, the initiative was void and unconstitutional, because it violated Section 2 of Article XVII of the Constitution, limiting the scope of a people's initiative to "[A]mendments to this Constitution."

No Necessity for Revisiting
Santiago v. Comelec

There was no need to revisit this Court's ruling in *Santiago* declaring Republic Act 6735 "incomplete, inadequate or wanting in essential terms and conditions" to cover the system of initiative to amend the Constitution. An affirmation or reversal of that ruling would not change the outcome of the present Petition. Thus, the Court declined to revisit *Santiago* which had effectively ruled that the said law did not comply with the constitutional requirements for implementing the initiative clause on amendments to the fundamental law.

The Court held that it should avoid revisiting a ruling involving the constitutionality of a statute, if the case before it could be resolved on some other grounds. This move was a logical consequence of the well-settled doctrine that courts would not pass upon the constitutionality of a statute, if the case could be resolved on some other grounds.

Nevertheless, even assuming that Republic Act 6735 was valid and sufficient to implement the constitutional provision on initiatives to amend the Constitution, this fact would not change the result of the case, because the Petition would violate Section 2, Article XVII of the Constitution. To be valid, the present initiative must first comply with this constitutional provision, even before complying with the aforementioned law.

In any event, held the Court, the present initiative violated Section 5(b) of Republic Act 6735, which required that the "petition for an initiative on the 1987 Constitution must have at least twelve *per centum* (12%) of the total number of registered voters as

signatories." The provision required that the people must sign the "petition x x x as signatories."

The 6.3 million purported signatories had not signed the Petition dated August 25, 2006, or the amended Petition of August 30, 2006, which were filed with the Comelec. Only Attys. Lambino, Demosthenes B. Donato, and Alberto C. Agra signed both Petitions as counsels for "Raul L. Lambino and Erico B. Aumentado, Petitioners." In the Comelec, the Lambino Group, which claimed to be acting "together with" the 6.3 million signatories, merely attached the signature sheets to the two Petitions. Thus, these pleadings filed with the electoral body failed to comply with the basic requirement of Republic Act 6735, which petitioners claimed to be valid.

The Lambino Group's logrolling initiative also violated Section 10(a) of Republic Act 6735, stating that "[n]o petition embracing more than one (1) subject shall be submitted to the electorate; x x x." The proposed Section 4(4) of the Transitory Provisions, mandating the interim Parliament to propose further amendments or revisions of the Constitution, was a subject matter totally unrelated to the shift in the form of government. Since the present initiative embraced more than one subject matter, the said law prohibited the submission of the initiative Petition to the electorate. Thus, even if the law was valid, the initiative would still fail.

No Grave Abuse of Discretion

The Court ruled that the Comelec en banc had merely followed this Court's ruling in *Santiago,* as well as in *People's Initiative for Reform, Modernization and Action (PIRMA) v. Comelec.* In so doing, the Commission committed no grave abuse of discretion. On this ground alone, the present Petition warranted outright dismissal.

Conclusion

In sum, the Court said that the Constitution, being the fundamental law of the land, deserved the utmost respect and obedience of all the citizens of this nation. No one could trivialize the Constitution by cavalierly amending or revising it, in blatant violation of the clearly specified modes of amendment and revision it had laid down itself.

To allow the fundamental law to be changed thus was to set it adrift in unchartered waters, to be tossed and turned by every dominant political group of the day. If today the Court allowed a cavalier change in the Constitution outside the prescribed modes, tomorrow the new dominant political group that would come would demand its own set of changes in the same cavalier and unconstitutional fashion. A revolving-door constitution did not augur well for the rule of law in this country.

An overwhelming majority – 16,622,111 voters comprising 76.3 percent of the total votes cast – approved our Constitution in a national plebiscite held on February 11, 1987. That approval was the unmistakable voice of the people, the full expression of their

sovereign will. That approval included the prescribed modes for amending or revising the Constitution.

Incantations of "people's voice," "people's sovereign will," or "let the people decide" could not override the specific modes of changing the Constitution, as prescribed in the fundamental law itself. Otherwise, the people's fundamental covenant that provided enduring stability to our society would become easily susceptible to manipulative changes by political groups gathering signatures through false promises. The Constitution would then cease to be the bedrock of the nation's stability.

The ruling stressed that it could not betray its primordial duty to defend and protect our fundamental law. The Constitution, which embodied the people's sovereign will, was the bible of this Court, which existed to defend and protect it. To allow the constitutionally infirm initiative, propelled by signatures gathered through deception, in order to alter basic principles in the Charter, was to allow its desecration and to lose this Court's *raison d'etre*.

The Concurring Opinions

The Separate Opinion of the Chief Justice

I opened my Separate Concurring Opinion with a quote from the Chief Justice of Canada, Beverley McLachlin. In her speech before the "Global Forum on Liberty and

Prosperity" held on October 18-20, 2006, in Manila, she stressed that "without the rule of law, there can be no lasting prosperity and certainly no liberty."

Convinced that the Lambino Petition must be dismissed, I emphasized that my present disposition was completely consistent with my previous Opinions and votes in *Santiago v. Comelec* and *People's Initiative for Reform, Modernization and Action (PIRMA) v. Comelec,* both of which involved an initiative to change the Constitution. These Decisions were reproduced in full in my Concurring Opinion.

To recall, in *Santiago v. Comelec*, I opined "that taken together and interpreted properly and liberally, the Constitution (particularly Art. XVII, Sec. 2), Republic Act 6735 and Comelec Resolution 2300 provide more than sufficient authority to implement, effectuate and realize our people's power to amend the Constitution." On the other hand, in my Separate Opinion in *PIRMA v. Comelec*, I joined the rest of the members of the Court in ruling "by a unanimous vote, that no grave abuse of discretion could be attributed to the Comelec in dismissing the Petition filed by PIRMA therein," since the Commission had "only complied" with the *Santiago* Decision. In both Opinions, I concluded that we must implement "the *right thing* [initiative] in the *right way* at the *right time* and for the *right reason.*"

Tested against the *Santiago* and *PIRMA* Decisions, I maintained that the Lambino Petition must be dismissed, because "the *right thing* is being rushed in the *wrong* way and for the *wrong reasons*."

No grave abuse of discretion by Comelec. As in *PIRMA*, I found no grave abuse of discretion in Comelec's dismissal of the Lambino Petition. After all, the Commission merely followed the holding in *Santiago* permanently enjoining the poll body "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."

On this matter, I pointed out that the Lambino Petition was in exactly the same situation as that of PIRMA in 1997. Both Petitions contained unverified signatures. Therefore, they both deserved the same treatment: dismissal.

Only amendments, not revisions. I likewise reiterated that under the third mode of changing the Constitution -- people's initiative -- only amendments, not revisions, may be allowed. Changing the system of government from presidential to parliamentary and the form of the legislature from bicameral to unicameral contemplated an **overhaul of the structure of government**. The proposed changes had an implication on the entire Constitution, as they effectively rewrote its most important and basic provisions. Hence, the prolixity and complexity of the changes could not be categorized, even by semantic generosity, as "amendments."

Added to the constitutional mandate barring revisions was the provision of Republic

Act 6735 expressly prohibiting petitions for initiative from "embracing more than one subject matter." I submitted that the present initiative covered at least two subjects: (1) the shift from a presidential to a parliamentary form of government; and (2) the change from a bicameral to a unicameral legislature.

Twelve percent and 3 percent thresholds not proven by petitioners. As discussed extensively in the *ponencia* written by Justice Antonio T. Carpio, the present Petition dismally failed to comply with the constitutional requirement that an initiative must be directly proposed by the people. The Decision amply established the inability of petitioners to show that the Lambino Petition contained, or incorporated by attachment, the full text of the proposed changes.

Even the 12 percent and 3 percent constitutional requirements involved "contentious facts," which had not been proven by the Lambino Petition. It was for this reason that Justice Reynato S. Puno was urging a remand to the Comelec. But a remand, I opined, was both **imprudent** and **futile**. It was imprudent because the Constitution itself mandated the said requisites of an initiative petition. In other words, **a petition that did not show the required percentages was fatally defective and must be dismissed**, as the Delfin Petition was, in *Santiago*.

To sum up, I said that Republic Act 6735 was valid and sufficient to govern initiatives to amend the Constitution. This belief, however, would not result in an initiative

to change the Constitution, because the Lambino Petition violated the following:

- The **Constitution** (specifically Article XVII, which allows only amendments, not revisions, and requires definite percentages of verified signatures)
- The **law** (specifically Republic Act 6735, which prohibits petitions containing more than one subject)
- **Jurisprudence** (specifically *PIRMA v. Comelec,* which dismissed the Petition then under consideration on the ground that, by following the *Santiago* ruling, the Comelec had not gravely abused its discretion)

I stressed that, at bottom, the issue was simply the Rule of Law. I said in part:

"The Constitution is a **sacred social compact**, forged between the government and the people, between each individual and the rest of the citizenry. Through it, the people have solemnly expressed their will that all of them shall be governed by laws, and their rights limited by agreed-upon covenants to promote the common good. If we are to uphold the Rule of Law and reject the rule of the mob, **we must faithfully abide by the processes the Constitution has ordained** in order to bring about a **peaceful, just and humane society**. Assuming *arguendo* that six million people *allegedly* gave their assent to the proposed changes in the Constitution, they are nevertheless **still bound by the social covenant** -- the present Constitution -- which was ratified by a far greater majority almost twenty years ago. I do not denigrate the majesty of the sovereign will; rather, I elevate our society to the loftiest perch, because **our government must remain as one of laws and not of men**."

In closing, I wrote as follows:

"Verily, the Supreme Court is now on the crossroads of history. By its decision, the Court and each of its members shall be judged by posterity. Ten years, fifty years, a hundred years -- or even a thousand years -- from now, what the Court did here, and how each justice opined and voted, will still be talked about, either in shame or in pride. Indeed, the hand-washing of Pontius Pilate, the abomination of *Dred Scott,* and the loathing of *Javellana* still linger and haunt to this day."

Separate Opinion of Justice Santiago

Justice Consuelo Ynares-Santiago agreed that the Court's ruling in *Santiago v. Comelec* was not a binding precedent. It was her position, though, that the Petition for Initiative in the present case must nonetheless be dismissed. She would maintain this opinion, she said, even if *Santiago* were to be reversed, and Republic Act No. 6735 held as a sufficient law for the purpose of the people's initiative to amend the Constitution.

There was absolutely no showing here that petitioners had complied with Republic Act 6735, even if they blindly invoked it to justify the alleged people's initiative. Section 5(b) of this law required that "[a] **petition for an initiative** on the 1987 Constitution must have at least twelve *per centum* (12%) of the total number of registered voters **as signatories**, of which every legislative district must be represented by at least three *per centum* (3%) of the registered voters therein."

On the other hand, Section 5(c) of the same law required that the Petition should state, among other things, the proposition; or the "contents or text of the proposed law sought to be enacted, approved or rejected, amended or repealed." If Section 5(c) is applied to an initiative to amend the Constitution, a petition for initiative signed by the required number of voters should incorporate a text of the proposed changes. This requirement, however, was not followed in the case at bar.

The present Petition for Initiative was likewise irretrievably infirm, because it violated the one-subject rule under Section 10(a) of Republic Act 6735.

The proposed changes to the Constitution covered other subjects that were beyond the main proposal espoused by petitioners. Apart from a shift from the presidential to the parliamentary form of government, the proposed changes included the abolition of one House of Congress. The proposals also included the convening of a constituent assembly to propose additional amendments to the Constitution. Further included was an omnibus declaration regarding Articles VI and VII: constitutional provisions that were inconsistent with the unicameral-parliamentary form of government would be deemed amended, so as to conform to this system.

The foregoing proposals, said Justice Santiago, could not be the subject of a people's initiative under Section 2 of Article XVII of the Constitution. Taken together, they indicated the proponents' intendment, which was not simply to effect *substantial amendments* to the Constitution, but to revise it.

Quantitatively, the changes espoused would allegedly affect only two (2) out of the eighteen (18) articles of the 1987 Constitution; namely, Article VI ("Legislative Department") and Article VII ("Executive Department"), as well as provisions that would ensure a smooth transition from a presidential-bicameral to a parliamentary-unicameral

structure of government. The quantitative effect of the proposals was neither broad nor extensive and would not affect the substantial entirety of the 1987 Constitution.

Justice Santiago opined, though, that the proposed changes would have serious ***qualitative*** consequences on the Constitution. Undoubtedly, if successful, the initiative Petition would alter not only not our basic governmental plan, but also the definition of our rights as citizens in relation to government. The proposals were likely to set in motion a ripple effect that would strike at the very foundation of this basic plan. A constitutional revision that might not be effected through a people's initiative was therefore impermissible.

Petitioners' main proposal pertained to the shifting of our form of government from presidential to parliamentary. An examination of this proposal revealed that there would be a fusion of the executive and the legislative departments into one parliament, whose members would be elected on the basis of proportional representation. No term limits were set for the members, except for those elected under the party-list system, whose terms and number would be provided by law. There would be a President who would be the head of state, but the head of government would be the Prime Minister. The latter and the members of the cabinet would be elected from among the members of parliament, whose program of government they would be responsible for.

Under the proposed system, the executive and the legislature would be one and the

same, so the Parliament would be the paramount governing institution. Hence, there would be no separation between the state's law-making and enforcement powers, which were traditionally delineated between the executive and the legislature in a presidential form of government. Necessarily, the checks and balances inherent in the fundamental plan of our U.S.-style presidential system would be eliminated. The workings of government would, instead be controlled by the internal political dynamics prevailing in the Parliament.

Our present governmental system is built on the separation of powers among the three branches of government. The legislature is generally limited to the enactment of laws, the executive to the enforcement of laws, and the judiciary to the interpretation of laws. This separation is intended to prevent a concentration of authority in one person or group that may lead to an irreversible error or abuse in the exercise of that authority, to the detriment of our republican institutions. In the words of Justice Laurel, the doctrine of separation of powers is intended to secure action, forestall over action, prevent despotism, and obtain efficiency.

Justice Santiago noted that in the proposed parliamentary system, there was an obvious lack of formal institutional checks on the legislative and executive powers of the state, since both the Prime Minister and the members of the cabinet would be drawn from Parliament. Other than the will of the parliamentary majority, there were to be no effective limits to what the Prime Minister and the Parliament could do. This principle was

against the central concept of the present constitutional scheme.

That the central idea was the distribution of the powers of government and, thus, the provision for counterreaction among the three branches. Although both the presidential and the parliamentary systems were theoretically consistent with constitutional democracy, Justice Santiago noted, the underlying tenets and resulting governmental framework were nonetheless radically different.

Consequently, the shift from the presidential to the parliamentary form of government could not be regarded as anything but drastic. The change would require a total overhaul of our governmental structure and involve a re-orientation in the cardinal doctrines governing our constitutional setup. The proposal could not, by any standard, be deemed a mere constitutional amendment.

It was clear that the right of the people to propose changes to the Constitution directly did not include the revision, and was limited to the amendment, of the fundamental law. Otherwise, Section 2 would not have had to distinguish the scope of the people's right from that which was vested in Congress under Section 1.

Section 1 lucidly states that Congress may propose both amendments and revisions of the Constitution by either convening a constituent assembly or calling for a constitutional convention. Section 2, on the other hand, textually commits to the people

the right to propose *only amendments* by direct action. **To hold, therefore, that Section 2 allows substantial amendments amounting to revisions is to obliterate the clear distinction in scope between Sections 1 and 2.**

Our people had also spoken, opined Justice Santiago, when they overwhelmingly ratified the 1987 Constitution, with its provisions on amendments and revisions under Article XVII. Their voice and will could not have been any clearer when they limited the people's initiative to mere amendments of the fundamental law and excluded revisions from its scope. In that regard, the task of the Court was to give effect to their voice, as expressed unequivocally through the Constitution.

According to the Separate Opinion, Article XVII on amendments and revisions was called a "constitution of sovereignty," because it defined the constitutional meaning of "sovereignty of the people." It was through these provisions that the sovereign people had allowed the expression of their sovereign will and canalized their powers, which would otherwise be plenary. By approving those provisions, the sovereign people decided to limit themselves and future generations in the exercise of their sovereign power. They were thus bound by the Constitution and, whatever their numbers, were powerless to change or thwart its mandates, except through the means it had itself prescribed.

Section 1 of Article XVII might be considered as a provision *delegating* the sovereign powers of amendment and revision to Congress, observed Justice

Santiago. In contrast, Section 2 was a *self-limitation* on that sovereign power.

For the foregoing reasons, Justice Santiago voted to dismiss the Lambino Petition.

Separate Opinion of Justice Gutierrez

Voting to dismiss the Lambino Petition, Justice Angelina Sandoval-Gutierrez opined that the ultimate yardstick in deciding the matter should be the attendance of "grave abuse of discretion" on the part of the Comelec.

No grave abuse of discretion by the Comelec. There is grave abuse of discretion when the act is performed in a capricious or whimsical exercise of judgment, as when the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility; and the abuse is so patent and gross as to amount to an evasion of a positive duty, or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law.

By denying due course to the Petition for Initiative on the basis of the ruling of the Court in *Santiago,* Respondent Comelec could not, in any way, be characterized as

"capricious or whimsical," "patent and gross," or "arbitrary and despotic." On the contrary, it took the most prudent course, considering that it had permanently been enjoined by this Court in *Santiago* "from entertaining or taking cognizance of any petition for initiative on amendments to the Constitution until a sufficient law shall have been validly enacted." Since Congress had not enacted a sufficient law, Comelec had no alternative but to adhere to that ruling.

Reexamination of *Santiago* barred by *stare decisis*. The denial of a motion or reconsideration signifies that, upon due deliberation, the grounds relied upon has been found to be without merit or sufficient weight to warrant a modification of the judgment or final order. Hence, the denial of the Motion for Reconsideration in *Santiago* -- via an equally divided Court (a 6-6 vote) – meant that the original Decision stood.

As used in our jurisprudence, the doctrine of ***stare decisis*** means that "once this Court has laid down a principle of law as applicable to a certain state of facts, it would adhere to that principle and apply it to all future cases in which the facts are substantially the same as in the earlier controversy."

Justice Gutierrez conceded that the doctrine of *stare decisis* did not prevent re-examining and, if need be, overruling prior Decisions. She asserted that, fundamentally, applicable precedents were usually followed, even if the case might be decided differently when considered anew by the current justices.

Thus, a party who seeks the reversal of a precedent faces an onerous task. Some of the factors that must be considered include the **age of the precedent**; the **nature and extent of public and private reliance on it**; and its **consistency** or inconsistency with related rules of law. The present petitioners failed to discharge this task.

Considering that *Santiago v. Comelec* had been decided by this Court on March 19, 1997 (or more than nine years ago), this Court's Decision was recognized as a precedent by the Filipino people, especially by law practitioners, law professors, law students, the entire judiciary, as well as litigants.

The *Santiago* doctrine was in fact applied by this Court in the subsequent case *PIRMA*. Even the legislature relied on that Decision, as confirmed by the bills that were introduced in both Houses of Congress to cure the deficiency. This Court's conclusion in *Santiago* was that Republic Act No. 6735 was incomplete, inadequate or wanting in essential terms and conditions, insofar as an initiative on amendments to the Constitution was concerned. The *Santiago* ruling was a precedent that had to be upheld.

Revisions, not amendments. The systems of **initiative and referendum** as means by which the people could directly propose changes to the Constitution were not provided for in the 1935 and the 1973 Constitutions. Thus, there was no clamor to draw a distinction between an amendment and a revision under these two Constitutions.

Under our present Constitution, which provides for a people's initiative, the distinction between an amendment and a revision becomes crucial. Under this system, only **amendments** are allowed, a point fully elucidated upon during the deliberations of the 1986 Constitutional Commission. **Revisions** are within the exclusive domain of Congress, done through a vote of three fourths of all its members or through a constitutional convention.

Thus, the Court is required to examine whether the following partake of the nature of amendments, not revisions: proposals to change the form of government from bicameral-presidential to unicameral-parliamentary; to convert the present Congress of the Philippines to an interim national assembly; to change the terms of members of Parliament; and to elect a Prime Minister who shall be vested with executive power.

While both *revision* and *amendment* connote change, any distinction between the two must be based upon the degree of change contemplated. It would seem that any major change in governmental form and scheme would have to be interpreted as a *revision* that should be achieved through the more thorough process of deliberation.

The present petitioners' proposed changes appeared to cover isolated and specific provisions. Upon scrutiny, however, it was clear that they sought to alter the very structure

of government and to create multifarious ramifications that would have a "ripple effect" on other provisions of the Constitution.

The power reserved to the people as regards Charter change is limited to the power to amend any section; and, if approved, the amendment should be complete in itself and not affect any other section or article of the Constitution. Justice Gutierrez explained that this was clearly not the case in the Petition under consideration.

First, a shift from a presidential to a parliamentary form of government would affect the well-enshrined doctrine of separation of powers of government embodied in our Constitution. In a parliamentary form of government, the executive branch is dependent on the support of the Parliament, as expressed through a "vote of confidence."

Second, a change in the form of the legislative branch of government would not merely affect many other provisions, but tear apart the whole fabric of the Constitution and even affect the physical facilities necessary to carry on government.

Third, the so-called "Transitory Provisions" included in the proposed changes would necessarily result in a "ripple effect" on the other provisions of the Constitution. With one sweeping stroke, the proposed transitory provisions would result in an ***automatic***

revision of some other constitutional provisions to make the latter conform to the qualities of a unicameral-parliamentary form of government. Hence, the proposed changes, being connected or "interlocked" with the other provisions of the Constitution, could not be taken in isolation.

RA No. 6735 insufficient to implement the people's initiative. To implement Section 2 of Article XVII of the Constitution, an enabling law was imperative. In *Santiago,* the Court struck down Republic Act No. 6735 for being **incomplete**, **inadequate**, or **wanting in essential terms and conditions** insofar as an initiative on amendments to the Constitution was concerned. The passage of time had done nothing to change the applicability of that law. Congress neither amended the law nor passed a new one to make up for the earlier deficiencies.

Justice Gutierrez argued that this law was incomplete and inadequate for failing to specify the procedure for conducting an initiative on the Constitution.

Improper parties and noncompliance with constitutional requirements. Justice Gutierrez further opined that there was a requirement for determining whether petitioners were the proper parties to file the Petition for Initiative on behalf of the alleged 6.3 million voters. Compliance with the provisions of Section 2, Article XVII of the Constitution, had to be examined.

For a people's initiative to prosper, the following requisites must be present:

1. It is "the people" themselves who must "directly propose" "amendments" to the Constitution.

2. The proposed amendments must be contained in "a petition of at least twelve per centum of the total number of registered voters."

3. The required minimum of 12 percent of the total number of registered voters "must be represented by at least three per centum of the registered voters" of "every legislative district."

In this case, these requisites were not met. The Petition for Initiative was filed with the Comelec by merely two voters, Lambino and Aumentado. This fact clearly showed that the questioned Petition had not been initiated directly by the 6.3 million people who allegedly comprised at least 12 percent of the total number of registered voters, as required by Section 2. Moreover, the alleged signatures of these registered voters could not be found in the Petition itself. Affixed were the signatures of only Petitioners Lambino and Aumentado "as representatives" of those 6.3 million people.

This manner of representation was constitutionally proscribed. Petitioners had no authority to file the Petition "as representatives" of the purported 6.3 million registered voters. The phrase "directly proposed by the people" excluded any person acting as a representative or an agent of the 12 percent of the total number of registered voters. The right granted under Section 2 of Article XVII of the Constitution could not be usurped by

anyone under the guise of being the people's representative.

Not political questions. Tracing the history of the doctrine of political question, Justice Gutierrez cited *Vera v. Avelino.* In that case, the Court defined political questions as "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government."

Moreover, Justice Gutierrez said that, even assuming *arguendo* that the issues were political in nature, the Constitution limited resort to the political-question doctrine and broadened the scope of judicial power. Under previous Charters, the Court would have normally left the resolutions of these questions to the political departments.

She urged the Court not to repeat the mistake it had committed in *Javellana v. The Executive Secretary.* It ruled in that case that there was no obstacle to deeming the present Constitution to be in force and effect, despite a finding that the Charter had not been validly ratified by the people in accordance with the 1935 Constitution. That ruling was made during Martial Law, when perhaps a majority of the justices were scared of the dictator. Since the present magistrates were not under a martial law regime, argued Justice Gutierrez, then there was no reason why the Court should allow itself to be used as a legitimizing authority by those who wanted to perpetuate themselves in power.

Separate Opinion
of Justice Callejo

Justice Romeo J. Callejo Sr. agreed that the Comelec had not committed an abuse of discretion in dismissing the Amended Petition before it. He reasoned that (1) the proposals incorporated were for the revision of the Constitution, and that (2) the Amended Petition was insufficient in substance.

No grave abuse of discretion. According to the Separate Opinion, petitioners failed to allege and demonstrate all the essential facts needed to establish the right to a writ of certiorari. That writ is available only when the tribunal has acted with "grave abuse of discretion" amounting to lack or excess of jurisdiction. In this case, the Comelec denied the Petition for Initiative, solely in obedience to the mandate of this Court in *Santiago v. Commission on Elections.*

In *PIRMA*, the petitioners elevated the Comelec's dismissal of a Petition that had cited the permanent restraining order issued against it by the Court in *Santiago.* The Petition was dismissed outright by a *unanimous vote* of the Court, which declared that the Comelec had not committed grave abuse for merely complying with the dispositions in *Santiago.*

According to Justice Callejo, the Office of the Solicitor General (OSG) had

wrongfully taken the side of petitioners in arguing that the permanent injunction in *Santiago* referred only to the parties there. The OSG's attempt to isolate the dispositive portion from the body of the Court's Decision in that case was futile. The dispositive portion must not be read separately, but in conjunction with the other portions of the decision of which it is a part. The ruling in *Santiago* was of the nature of an *in rem* judgment barring any and all Filipinos from filing a Petition for Initiative on amendments to the Constitution until a sufficient law shall have been validly enacted.

The Separate Opinion also rebuffed the opinion of Justice Puno that there was no doctrine enunciated in *Santiago*. The Court's Decision in that case was concurred in, without any reservation, by eight justices. They comprised the majority of the members of the Court, who actually took part in the deliberations thereon. On the other hand, five Justices dissented from the majority opinion and maintained the view that RA 6735 was sufficient to implement the system of initiative. The motions for reconsideration of the *Santiago* decision were denied with finality in a subsequent Resolution as only six Justices, or less than the majority, voted to grant the same. The pronouncement in the Decision in *Santiago* remains the definitive ruling on the matter.

Justice Callejo stressed that in *PIRMA*, petitioners prayed that the Court reexamine its ruling as regards Republic Act 6735. The Court positively and unequivocally declared that, in dismissing the Petition before it, the Comelec had merely followed the ruling in *Santiago*. Justice Callejo noted that Justice Puno himself had concurred in that resolution,

when he could have dissented on the ground that there was no doctrine enunciated by the Court then.

The Separate Opinion noted that many lawmakers in the House of Representatives and the Senate had filed bills to implement the system of initiative under the Constitution. The explanatory notes on the proposed bills uniformly recognized that there was, to date, no law governing the process by which constitutional amendments may be directly introduced by the people through the system of initiative. As Congress and other government agencies had abided by *Santiago,* the Court could do no less with respect to its own ruling.

No constitutional revision through initiative. Justice Callejo argued that the Amended Petition for Initiative could not prosper, even if one were to assume that the Court would abandon *Santiago* and declare Republic Act 6735, together with other laws, sufficient to implement the system of initiative. Despite the denomination of their Petition, the proposals to change the form of government from the present bicameral-presidential to a unicameral-parliamentary system were actually for the *revision* of the Constitution.

Justice Callejo explained that the framers had intended to reserve the power to propose a revision of the Constitution to Congress or a constitutional convention, not to allow the process to be undertaken through the system of initiative. They believed that a

revision should be a product of extensive and intensive study and debates. He said that the system of initiative was placed under a separate provision, precisely to distinguish the "traditional modes" of Charter change and to limit the system of initiative to *amendments* to the Constitution.

Having provided for *amendment* and *revision* as different modes of changing the fundamental law, the framers were cognizant of the distinction between the two. Justice Callejo noted in particular that they had relied on the distinction made by Justice Felix Antonio in the latter's Concurring Opinion in *Javellana v. Executive Secretary.* That controversial Decision had given an imprimatur to the 1973 Constitution of former President Marcos.

To explain the distinction between *amendment* and *revision,* Justice Callejo also cited several authorities, such as Dean Vicente G. Sinco, Fr. Joaquin Bernas, SJ, and United States jurisprudence. *Revision* necessarily entailed more complex, substantial and far-reaching effects on the Constitution; thus, the framers wisely withheld that mode from the system of initiative. It was not only the term that was different, but also the procedures and fields of application.

The Separate Opinion further stated that, despite its denomination, the Petition for an initiative on amendments to the Constitution was one for revision. The Petition purported to seek the amendment only of Articles VI and VII of the Charter, as well as to

provide transitory provisions. However, the amendment of the two necessarily affected many other provisions, particularly those pertaining to the specific powers of Congress and the President. Those powers would have to be transferred to the Parliament and the Prime Minister and/or President, as the case might be. Citing the provisions, he showed that more than one hundred sections would be affected or altered.

More than the quantitative effects, though, the revisory character of petitioners' proposition was apparent from the qualitative effects it would have on the fundamental law. Justice Callejo pointed out that a change in the form of government from bicameral-presidential to unicameral-parliamentary entailed a revision of the Constitution, as the change would involve an alteration of different parts of the entire document. The result could be a rewriting of the whole Charter, the greater portion of it, or perhaps only some of the important provisions. The basic plan and substance of a tripartite system of government and the principle of separation of powers underlying that system would be altered, if not entirely destroyed.

Insufficiency of the Petition for Initiative. Justice Callejo likewise explained that the Petition for Initiative was, on its face, insufficient in form and substance. He reasoned that the law mandated the election registrar to verify the signatures personally. In patent violation of the law, several Certifications submitted by petitioners showed that the verification of the signatures was made, not by the election registrars, but by *barangay* officials. Because of the illegal verifications made by these officials, the Petition for

Initiative failed to comply with the requisite number of signatures: at least twelve percent of the total number of registered voters, of which every legislative district must be represented by at least three percent of its registered voters.

The Separate Opinion further said that a remand of the case was not warranted. The holding of any kind of hearing on a petition for initiative -- whether the hearing was full-blown or trial-type, summary or administrative – was not authorized by Republic Act 6735 or by Comelec Resolution No. 2300, granting that the latter was valid to implement the former statute. The rules required the electoral body to determine the sufficiency or the insufficiency of the Petition for Initiative **on its face**.

A justiciable controversy posed by the present Petition. Citing Justice Puno in his Concurring and Dissenting Opinion in *Arroyo v. De Venecia*, Justice Callejo noted the compelling reason for courts to reject categorically a political-question defense that would cover up an abuse of power.

He said that even if the present Petition involved the act, not of a governmental body, but of purportedly more than six million registered voters who had signified their assent to the proposal to amend the Constitution, the Petition still posed a justiciable controversy -- hence, a nonpolitical question. According to the Separate Opinion, Article XVII of the Constitution had explicitly provided for the manner or method of effecting amendments or revisions of the Charter. Thus, the question of whether the terms of the

Constitution had been complied with was for the Court to pass upon.

He strongly took exception to the view that the people, in their sovereign capacity, could disregard the Constitution altogether. That view, he said, directly contravened the fundamental constitutional theory that, while "the ultimate sovereignty is in the people, from whom springs all legitimate authority," nonetheless, "by the Constitution which they establish, they not only tie up the hands of their official agencies, but their own hands as well; and neither the officers of the state, nor the whole people as an aggregate body, are at liberty to take action in opposition to this fundamental law." Justice Callejo sought to maintain the supremacy of the Constitution at whatever risk.

In conclusion, he shared the concern of Chief Justice Day in *Koehler v. Hill*:

> **"It is for the protection of minorities that constitutions are framed. Sometimes constitutions must be interposed for the protection of majorities even against themselves. Constitutions are adopted in times of public repose, when sober reason holds her citadel, and are designed to check the surging passions in times of popular excitement. But if courts could be coerced by popular majorities into a disregard of their provisions, constitutions would become mere 'ropes of sand,' and there would be an end of social security and of constitutional freedom. The cause of temperance can sustain no injury from the loss of this amendment which would be at all comparable to the injury to republican institutions which a violation of the constitution would inflict. That large and respectable class of moral reformers which so justly demands the observance and enforcement of law, cannot afford to take its first reformatory step by a violation of the constitution. How can it consistently demand of others obedience to a constitution which it violates itself? The people can in a short time re-enact the amendment. In the manner of a great moral reform, the loss of a few years is nothing. The constitution is the palladium of republican freedom. The young men coming forward upon the stage of political action must be educated to venerate it; those already upon the stage must be taught to obey it. Whatever interest may be advanced or may suffer, whoever or whatever may be 'voted up or voted down,' no sacrilegious hand must be laid upon the constitution**."

Separate Opinion of Justice Azcuna

In his Separate Opinion, Justice Adolfo S. Azcuna discussed the nature of Article XVII of the Constitution. He explained that constitutions had three parts – the Constitution of Liberty, which stated the fundamental rights of the people; the Constitution of Government, which established the structure of government, its branches and their operation; and the Constitution of Sovereignty, which provided how the Constitution may be changed.

Article XVII is the Constitution of Sovereignty, and the powers it provides for are called constituent powers. Thus, when Congress acts under this provision, it acts not as a legislature exercising legislative powers, but as a constituent body exercising constituent powers.

The rules that govern the exercise of legislative powers do not apply strictly to actions taken under Article XVII. This provision mandates Congress to provide for the implementation of the exercise of the people's right to propose amendments to the Constitution directly through initiative. Hence, Article XVII partakes of a constituent act.

The enactment of Republic Act 6735 is a constituent rather than a mere legislative measure, insofar as it relates to proposing amendments to the Constitution. Hence,

requirements for statutory enactments – like the sufficiency of standards -- should not apply strictly. As long as there is a sufficient and clear intent to provide for the implementation of the exercise of that right, it should be sustained, simply in compliance with the mandate imposed by the Constitution on Congress.

Justice Azcuna thus opined that Republic Act 6735 should be upheld, despite alleged shortcomings in legislative headings and standards.

There being a sufficient law, the point to be addressed was whether the present Petition for Initiative had complied with the requirements of that law, as well as those stated in Article XVII of the Constitution.

While the Constitution recognizes and provides for instances in which the people may directly exercise their sovereign powers -- recall, initiative and referendum -- nevertheless, this democratic nature of our polity is that of a democracy under the rule of law.

The power of initiative is subject to limitations under the Constitution itself. This power cannot be exercised for the first five years after the Constitution had taken effect; can be exercised only once every five years; extends only to the proposal of amendments, but not revisions; and needs an act of Congress to provide for its implementation, an act that is directed or mandated.

Thus, the question that had to be addressed in the present controversy was whether the proposed Charter changes in the Petition for Initiative were revisions or mere amendments.

Revisions are changes that affect the entire Constitution, not mere parts of it. For practical reasons these changes are not allowed through a system of initiative. It would be inconceivable for 6.3 million people to come up with a single extensive document via a direct proposal from each of them. Someone would have to prepare the draft, but it cannot be authorized, as it would not be a direct proposal from the people.

Indirect proposals can only take the form of proposals from Congress as a constituent assembly under Article XVII, or from a constitutional convention created under the same provision. Further, revisions would require deliberative bodies whose proceedings and debates are duly and officially recorded, in order to aid future interpretations of Constitutional provisions.

Even a cursory reading of the proposed changes contained in the present Petition for Initiative revealed that the proposed changes constituted a revision of the Constitution.

Only Articles VI, VII, and XVIII were purportedly involved. The Petition and the

text of the proposed changes themselves stated, however, that every provision of the Constitution would have to be examined and changed to ensure conformity with the nature of a unicameral-parliamentary form of government.

The proposed initiative did provide for the mechanics for determining who or how these examinations or changes might be made. On this matter, not only did the proposed initiative constitute a prohibited revision. Being incomplete and insufficient on its face, it could not overcome the very limits imposed by the Constitution on the exercise of the power of initiative.

Neither did the proposals comply with Section 10 of Republic Act No. 6735. This law states that not more than one subject shall be proposed as an amendment to the Constitution. The Petition proposed, at the very least, two subjects: a unicameral legislature and a parliamentary form of government. Again, for this clear and patent violation of the very act that provided for the exercise of the power, the proposed initiative could not lie.

In Justice Azcuna's view, however, all was not lost for petitioners. He argued that the proposed changes, which could have been separated, as they were separable in nature, were as follows: (1) a change to a unicameral legislature; and (2) a change to a parliamentary form of government.

He believed that the change from a bicameral to a unicameral legislature would be a mere amendment containing only one subject matter. The changes that were needed to carry out the proposal would be perfunctory and ministerial in nature. Had they been limited to this proposal, they would have simply required deletions and insertions. The wordings would have been practically automatic and non-discretionary.

The change to a parliamentary form of government, however, would clearly be a revision affecting every article and every provision in the Constitution to an extent not even the proponents could fully articulate.

The Dissenting Opinions

Dissenting Opinion
of Justice Puno

Justice Reynato S. Puno voted to reverse and set aside the Comelec Resolution dated August 31, 2006, denying due course to the Petition for Initiative.

First, he pointed out that Petitioners Lambino and Aumentado were proper parties to file the present Petition. Together with it, they filed voluminous signature sheets showing prima facie the intent of the signatories to support the filing. Thus, there was no need for the more than six million signatories to execute separate documents to authorize petitioners to file the Petition on their behalf.

Neither was it necessary for the signatories to authorize Lambino and Aumentado to file the present Petition for certiorari and mandamus. Under Rule 65 of the Rules of Court, a petition for certiorari or mandamus may be filed before the appropriate court by any **person aggrieved** by the act or failure to act of the respondent tribunal, board or officer. Certainly, opined Justice Puno, petitioners had the standing to file the Petition at bar, because they were among the proponents of the Petition for Initiative dismissed by the Comelec.

Second, Justice Puno pointed out that the reexamination of *Santiago* was not barred by the doctrine of *stare decisis*. Because *stare decisis* was not among the precepts set in stone in our Charter, courts enjoyed more flexibility in refusing to apply it to litigations involving constitutional questions.

The Dissenting Opinion cited *Planned Parenthood v. Casey*[1] as the leading case in deciding whether a court should follow the *stare decisis* rule in constitutional litigations. That case established a four-pronged test, whereby the court should (1) determine whether the rule has proved to be **intolerable** simply by defying practical workability; (2) consider whether the rule should be subjected to a form of **reliance** that would lend a special hardship to the consequences of overruling and inequity to those of repudiation; (3) determine whether **related principles of law had so far developed,** such that the old rule had become no more than a remnant of an abandoned doctrine; and (4) find out

whether **facts had so changed** or come to be seen differently as to have robbed the old rule of significant application or justification.

Following these guidelines, he concluded that the *stare decisis* rule was not applicable to the case at bar. In ruling that Republic Act 6735 was insufficient, but without striking it down as unconstitutional, *Santiago* was an **intolerable aberration.** This ruling usurped the exclusive right of legislators to determine how far laws implementing constitutional mandates should be crafted. The doctrine of separation of powers forbade this Court from invading the exclusive lawmaking domain of Congress, for courts could construe laws but not construct them. The end result of the ruling of the six justices that Republic Act 6735 was insufficient was **intolerable,** for the sovereign right of the people to amend the Constitution via an initiative was thereby rendered lifeless.

On the factor of **reliance**, the *Santiago* ruling did not induce any expectation from the people. On the contrary, the ruling smothered their hope that they could amend the Constitution by direct action.

On the factor of **changes in law and in facts**, the urgent need to adjust certain provisions of the Constitution to enable the country to compete in the new millennium was a given. The only point of contention was the mode of effecting the change -- whether through a constituent assembly, a constitutional convention, or a people's initiative.

The will of 6.3 million signatories could not be waylaid by 6 justices who ruled that Republic Act 6735 was insufficient to implement the people's direct right to amend the Constitution through an initiative. As the people were the bearers of our sovereignty, said Justice Puno, it was from them that all government authority emanated.

Justice Puno noted that new developments in our social, economic, and political settings -- internal and external -- demanded a reexamination of *Santiago*. The *stare decisis* rule was no reason for the Court to allow the people to step into the future with a blindfold.

Third, Justice Puno maintained his view that Republic Act 6735 was sufficient to implement the people's initiative. He argued that when laws were challenged as unconstitutional, courts were counseled to give life to the intent of legislators.

In enacting Republic Act 6735, Congress intended that law to implement the right of the people to propose amendments to the Constitution by direct action through initiative. This all-important intent was palpable from the text and the legislative history of the said law, as well as from the sponsorship speeches of its authors, such as the late Senator Raul Roco (then a member of the House of Representatives) and former Representative Salvador Escudero III.

In the opinion of Justice Puno, the tragedy was that, while conceding this intent, the six justices nevertheless ruled that "x x x R.A. No. 6735 is incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned." In support of this ruling, the following reasons were given: (1) Section 2 of the law did not suggest an initiative on amendments to the Constitution; (2) the law did not provide for the contents of a petition for initiative on the Constitution; and (3) while the law carried the subtitles "National Initiative and Referendum" (Subtitle II) and "Local Initiative and Referendum" (Subtitle III), it had no subtitle for an *initiative* on the Constitution.

These alleged omissions were weak reasons to throttle the right of the sovereign people to amend the Constitution through an initiative. Republic Act 6735 clearly expressed a legislative policy for the people to propose amendments to the Constitution by direct action. The fact that the legislature might have omitted certain details in implementing the people's initiative in Republic Act 6735 did not justify the conclusion that, *ergo*, the law was insufficient. What were omitted were mere details, not fundamental policies that Congress alone could and had determined. The implementing details of a law could be delegated to the Comelec and be the subject of its rule-making power.

Fourth, Justice Puno held that the proposed constitutional changes, albeit substantial, were mere amendments that could be undertaken through a people's initiative.

To start with, he said that whether a quantitative or a qualitative test was used, one could not reliably determine whether the proposed changes were "simple" or "substantial." Obviously relying on a quantitative test, oppositors-intervenors asserted that the amendments would result in about a hundred changes in the Constitution.

However, using the same test, one could argue that petitioners were basically seeking to change only 2 out of the 18 articles of the Constitution: Article VI ("Legislative Department") and Article VII ("Executive Department"), together with complementary provisions for a smooth transition from a presidential-bicameral to a parliamentary-unicameral system.

The big bulk of the Constitution would 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").

To Justice Puno, it was self-evident that a unicameral-parliamentary form of government would not make our State any less democratic or any less republican in

character. Hence, neither would the use of the qualitative test resolve the issue of whether the proposed changes were "simple" or "substantial."

For this reason and more, said Justice Puno, none of our Constitutions had adopted any quantitative or qualitative test to determine whether an amendment was "simple" or "substantial." Nor did any of our Charters provide that "substantial" amendments were beyond the power of the people to propose to change. Instead, our fundamental laws carried the traditional distinction between *amendment* and *revision*: amendment meant "change," including complex change; revision meant "complete change," including the adoption of an entirely new covenant.

Explaining further, he pointed out that this traditional distinction guided the people when they effected changes in the 1935 and the 1973 Constitutions. In 1940, the changes in the 1935 Constitution included the conversion from a unicameral to a bicameral system; the shortening of the tenure of the President and the Vice President, from six-years without reelection to four years with one reelection; the establishment of the Comelec; and the complementary constitutional provisions to effect these changes. These were all considered amendments only, not revisions.

The replacement of the 1935 Constitution by the 1973 Constitution was, however, considered a revision. The latter was "a completely new fundamental charter embodying new political, social and economic concepts."

In turn, the 1973 Constitution underwent a series of significant changes in 1976, 1980, 1981, and 1984. These changes included the creation of an interim Batasang Pambansa, in place of the interim National Assembly; in certain cases, the conferment on the President of the power to issue decrees, orders, or letters of instruction, which would form part of the law of the land; the restoration of the retirement age of 70 for justices and judges; the installation of the presidential system with parliamentary features; provision for the transfer of private land for use as residence, to natural-born citizens who had lost their citizenship; the reapportionment of the Batasang Pambansa membership by province, city, or district in Metro Manila, instead of by region; the creation of the Office of the Vice-President; the abolition of the executive committee; and the strengthening of the urban land reform and social housing programs. These substantial changes were considered mere amendments.

The present Constitution superseded the Provisional or Freedom Constitution after being ratified by the people in a plebiscite in February 1987. While many provisions of the 1973 Constitution were retained, like those on the constitutional commissions and local governments, the new 1987 Constitution was still deemed as a revision of the 1973 Constitution.

It was arguable, said Justice Puno, that when the framers of the 1987 Constitution used the word *revision,* they had in mind the "rewriting of the whole Constitution" or the

"total overhaul of the Constitution." Anything less was an "amendment" or just "a change of specific provisions only." The intention was "not the change of the entire Constitution, but only the improvement of specific parts or the addition of provisions deemed essential as a consequence of new conditions or the elimination of parts already considered obsolete or unresponsive to the needs of the times." Under this view, "substantial" amendments were still "amendments" and could thus be proposed by the people via an initiative.

According to the Dissenting Opinion, the people could not be guided with certainty by the commissioners' inconclusive opinions on the difference between "simple" and "substantial" amendments, or whether "substantial" amendments amounting to revision were covered by a people's initiative. Justice Puno urged the use of the cardinal rule in interpreting a Constitution: to construe it so as to give effect to the intention of the people who adopted it.

Looking back, Justice Puno noted that both the 1935[2] and the 1973 Constitutions[3] had provided that "the Philippines is a **republican state**. Sovereignty resides in the people and all government authority emanates from them." In a republican state, the power of the sovereign people is exercised and delegated to their representatives.

In the aforementioned Constitutions, the sovereign people delegated to Congress or to a convention the power to amend or revise our fundamental law. When the representatives of the people failed to effectuate timely changes in the Constitution either

by acting as a constituent assembly or by calling a constitutional convention, the sovereign people revolted and replaced the 1973 Constitution with the 1987 Constitution.

It is significant to note that the people modified the ideology of the 1987 Constitution, which now stressed the power of the people to act directly in their capacity as sovereigns. 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 could not rise above its source.

To reflect this significant shift, Section 1 of 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.

In a democratic and republican state, only the people are sovereign -- not the elected President, not the elected Congress, not this unelected Court. Indeed, the people's sovereignty is **indivisible** and cannot be reposed in any organ of government; only the exercise of that sovereignty may be so delegated.

Our people, said Justice Puno, had delegated to Congress the exercise of the sovereign power to amend or revise the Constitution. As delegate, Congress could exercise

this power. If so, could it be that the sovereign people, who had delegated the power, did not have it themselves? Then what did they delegate to Congress? How could they lack this fraction of the power to substantially amend the Constitution when, by their sovereignty, all power emanated from them?

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

The "teaching of the ages," Justice Puno further opined, was that Constitutional clauses acknowledging the right of the people to exercise the powers of initiative and referendum were **liberally and generously construed in their favor**.[4] These powers must be broadly construed to maintain **maximum power in the people**.[5] There was no reason to depart from this orientation, which was followed in *Subic Bay Metropolitan Authority v. Commission on Elections*.[6]

Fifth, Justice Puno agreed with the majority that the issues at bar were not political questions, as held in *Sanidad v. Commission on Elections*:[7]

> Political questions are neatly associated with the wisdom, *not* the legality of a particular act. Where the *vortex* of the controversy refers to the legality or validity of the contested act, that matter is definitely justiciable or non-political. X x x If the Constitution provides how it may be amended, the judiciary as the interpreter of that Constitution, can declare whether the procedure followed or the authority assumed was valid or not.

In the instant case, the requirements for the exercise of the people's initiative had been set forth in black and white in the Constitution. The amendments must be proposed by the people "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. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter."[8] Compliance with these requirements was clearly a justiciable and not a political question.

Sixth, as to the issue of whether the Petition for Initiative filed before the Comelec complied with Section 2 of Article XVII of the Constitution and with Republic Act 6735, Justice Puno held that this issue involved contentious questions of fact that must first be resolved by the electoral body. He observed that the only basis it used to dismiss the Petition was the ruling in *Santiago v. Comelec*. The Court ruled then that Republic Act 6735 was insufficient, and that the Comelec had yet to rule on the Petition's sufficiency of form and substance.

Seventh, the Dissenting Opinion held that Comelec had gravely abused its discretion when

it denied due course to the present Petition on the basis of *Santiago*. He explained that this ruling did not establish a firm doctrine that Republic Act 6735 was not a sufficient law to implement the constitutional provision allowing the people's initiative.

In the original Decision, 8 justices voted that Republic Act 6735 was not a sufficient law; 5 justices, that the law was sufficient; and 1 justice abstained from voting on the issue, holding that it was not ripe for adjudication, unless and until a proper initiatory pleading was filed.

As regards respondents' Motion for Reconsideration, which the Court denied on June 10, 1997, only 13 justices participated, as Justice Torres had inhibited himself. Of the original majority of 8 justices, only 6 reiterated their ruling that Republic Act 6735 was an insufficient law. Justice Hermosisima, originally part of the majority of 8 justices, changed his vote and joined the minority of 5 justices. Justice Vitug remained steadfast in refusing to rule on the sufficiency of the law. In fine, the final vote on whether it was a sufficient law was 6-6, with one justice inhibiting himself and another refusing to rule, on the ground that the issue was not ripe for adjudication.

The six 6 justices who voted that Republic Act 6735 was an insufficient law failed to establish a doctrine that could serve as a precedent. Under any alchemy of law, Justice Puno contended, a deadlocked vote of 6 was not a majority, and a non-majority could not write a precedential rule.

The Dissenting Opinion noted the well-settled jurisprudence in U.S. and English Courts that an equally divided Court could never set a precedent. A tour of those cases showed the prevailing doctrine that affirmance by an equally divided court merely disposed of the current controversy between the parties and settled no issue of law*;* the principle of law presented by the case was left unsettled by that affirmance, which consequently had no precedential value. In other words, the decision had only the effect of *res judicata* and not of *stare decisis*. It was not conclusive and binding upon other parties as regards the issues in other actions.

There were patent differences between the Petition at bar and the Delfin Petition in *Santiago ,* which prevented the latter ruling from binding the present petitioners. To start with, the parties were different. More important, the earlier Petition did not contain the signatures of the required number of registered voters under the Constitution. It did not comply with the requirement that the signatories must be at least 12 percent of all the registered voters in the country, with each legislative district to be represented by at least 3 percent of all the registered voters therein.

In contrast, the present Petition was apparently accompanied by the signatures of the required number of registered voters. Thus, while the Delfin Petition had prayed that an Order be issued fixing the time and dates for signature-gathering all over the country, the Lambino and Aumentado Petition prayed for the calling of a plebiscite to allow the

Filipino people to express their sovereign will with respect to the proposition. Comelec could not close its eyes to these material differences.

Justice Puno added that the dismissal of the PIRMA Petition, which was based on *res judicata,* was binding only upon PIRMA, but not the petitioners.

In closing, he stressed that the first principle enthroned by blood in our Constitution was the sovereignty of the people. We ought to be concerned with this first principle, which involved the inherent right of the sovereign people to decide whether to amend the Constitution. Stripped of its abstractions, he said, democracy was all about who had the sovereign right to make decisions for the people.

Our Constitution was clear and categorical in stating that from none other than the people themselves emanated all government authority. In Justice Puno's view, their right to make decisions, which was the essence of sovereignty, could not be given any minimalist interpretation by the Court. If there was any principle in the Constitution that could not be diluted or negotiated, it was this sovereign right of the people to decide.

Separate Opinion
of Justice Quisumbing

Justice Leonardo A. Quisumbing was of the opinion that the present Petition was a matter mainly involving a complex political question. While the present Constitution

admittedly laid down requirements for the holding of a people's initiative, these were not the main points of controversy. What the Court had to decide was whether the Comelec had committed grave abuse of discretion in denying the Petition to submit the proposed changes.

First, Justice Quisumbing explained, no less than the Constitution empowered the people to propose amendments "directly" through their own "initiative." Of their fulsome powers in a democracy, the most basic concerned the idea that sovereignty resided in the people, and that all government authority emanated from them. It was the ultimate will of the people expressed in the ballot that mattered, whether the initial moves were done by a constitutional convention, a constituent assembly, or an initiative.

Second, in denying due course to the Petition, Comelec could not be held liable for grave abuse of discretion, for it had merely relied on this Court's prior unequivocal rulings. Justice Quisumbing conceded that the Decisions in *Santiago* and *PIRMA* could have been reviewed and reversed by the Court. Until we did so, however, the Comelec was duty-bound to respect and obey the Court's mandate that the rule of law should prevail.

Lastly, Justice Quisumbing saw fit to remand to the Comelec the Petition of Messrs. Lambino and Aumentado and 6.327 million voters. A remand would allow a further examination of the factual requisites before a plebiscite. In his view, the only option left

for the Comelec, once factual issues had been heard and resolved, was to give due course to the Petition for Initiative. By that move, the people would have the opportunity to vote on whether to replace the present presidential to a parliamentary system of government.

Separate Opinion
of Justice Corona

Justice Renato C. Corona shared the opinion that *Santiago* should not apply to this case, but only to the Delfin Petition in 1997. He said that the doctrine of *res judicata* should not bar the present Petition for Initiative for several reasons.

First, there was no identity of parties between *Santiago* and the present case. The petitioners in the two cases were different.

Second, there was no identity of causes of action. *Santiago* involved amendments to Sections 4 and 7 of Article VI, Section 4 of Article VII, and Section 8 of Article X of the Constitution; on the other hand, the Lambino Petition sought to amend Sections 1 to 7 of Article VI and Sections 1 to 4 of the Constitution.

Third, the present Petition and that in *Santiago* were materially different from each other. They were not based on the same facts.

Justice Corona further said that *Santiago's* pronouncement on the insufficiency of

Republic Act 6735 was out of place. He described the ruling in that case as "unprecedented and dangerously transgressed the domain reserved to the legislature."

To his mind, neither the legislature nor the courts could restrict the privilege of initiative by subjecting it to any condition. He said that the Supreme Court could not unnecessarily and unreasonably restrain the people's right to directly propose changes to the Constitution. That is, it could not do so by declaring Republic Act 6735 inadequate, simply for lack of a subheading or other grammatical but insignificant omissions.

Separate Opinion
of Justice Tinga

Justice Dante O. Tinga agreed with Justice Puno that *Santiago v. COMELEC*[9] and *PIRMA v. COMELEC*[10] had not acquired value as precedent and should be reversed in any case. He added that the Court had long been mindful of the rule that a majority, and not merely a plurality, was necessary for a decision to become a precedent.

***Santiago* not a precedent.** A curious twist to *Santiago* and *PIRMA* was that, despite all the denigration they had heaped upon Republic Act 6735, the Court did not invalidate any provision of the statute. All that it said then was that the law was "inadequate." Since that law had not been annulled by the Court or repealed by Congress, it remained a part of the statute books.[11]

Santiago established the tenet that the Supreme Court may affirm a law as constitutional, but declared its provisions as inadequate to accomplish the legislative purpose, then barred the enforcement of the law. Justice Tinga said that the ruling was erroneous and illogical, and that it should not be perpetuated.

Grave abuse of discretion. Justice Tinga followed the clear demonstration of Justice Puno why *Santiago* should not be respected as a precedent. The former agreed that the Comelec's failure to take cognizance of the Petitions, as mandated by Republic Act No. 6735, constituted grave abuse of discretion correctible through the present Petitions before the Court.

Under that law, its enforcement and administration was the primary task of the Comelec. These functions were essentially executive and administrative in nature; even the electoral body's subsequent duty of determining the sufficiency of the Petitions after they had been filed was administrative in character. By any measure, the commission's failure to perform its executive and administrative functions under Republic Act 6735 constituted grave abuse of discretion.

Section 10 of Republic Act No. 6735 was a reflection of the long-enshrined constitutional principle that the laws passed by Congress "shall embrace only one subject which shall be expressed in the title thereof." The one-subject requirement under the

Constitution was deemed satisfied if all parts of the statute were related and germane – or, at least, not inconsistent with or foreign to -- the subject matter expressed in the title. Provided this requirement was met, the act may contain any number of provisions, no matter how diverse they might be; and may be considered to be in furtherance of the subject by providing for the method and means of carrying out the general object.

To Justice Tinga, the Lambino Petition for Initiative expressly proposed a change of the form of government from bicameral-presidential to unicameral-parliamentary. Although this proposal appeared to be comprehensive -- one that would necessitate the reorganization of the executive and the legislative branches of government -- it nevertheless ineluctably encompassed only a single general subject.

The very purpose of the initiative Petitions, he said, was to fuse the powers of the executive and the legislative branches of government; hence, the amendments that were intended to effect this general intent necessarily affected the two branches.

The absence of a constitutional record. The Separate Opinion further pointed out that if there was fear of the absence of a constitutional record to guide the interpretation of any amendment adopted via initiative, that absence would not prevent the courts from interpreting the amendment in a manner consistent with how courts generally construed the Constitution. For example, other constitutional provisions would be relied

upon to arrive at a harmonious and holistic constitutional framework.

Justice Tinga agreed with Justice Puno that all issues relating to the sufficiency of the initiative Petitions should be remanded to the Comelec. Republic Act 6735 clearly reposed in the electoral body the task of determining the sufficiency of the Petitions, including the ascertainment of whether 12 percent of all registered voters -- including 3 percent of registered voters in every legislative district -- had indeed signed the Petitions.[12] It should be remembered that the Comelec had dismissed these Petitions outright, and that it had yet to undertake the determination of sufficiency as required by law.

The more fundamental question was whether the Court should be a trier of facts, even before it had exercised its functions.

Justice Tinga said that any determination by the Court of the sufficiency of the Petitions would in effect constitute a trial *de novo*. The justices of the Supreme Court would virtually be reduced to the level of trial court judges, an unbecoming recourse that was simply not resorted to.

The vote to grant the Petition. In the opinion of Justice Tinga, the worst position in which the Court could find itself was to acquiesce to a plea or it to make the choice whether to amend the Constitution or not. This was a matter that should not be left to 15 magistrates who had not been elected by the people.

A vote to grant the Petitions, Justice Tinga said, was not to amend the 1987 Constitution. It was merely a vote to allow the people to exercise that option directly. He said that the position of Justice Puno would, in fact, not even guarantee that the initiative Petitions would be submitted to the people in a referendum. The Comelec would still have to determine their sufficiency. In the process, among the questions that it still had to resolve was whether 12 percent of all registered voters nationwide, including 3 percent of registered voters in every legislative district, had indeed signed the initiative Petitions.

According to the Separate Opinion, our Constitution saw fit to grant the people a progressive system of initiative that was but a continuation of the evolution towards the democratic ideal.

By allowing the sovereign people to propose and enact constitutional amendments directly, the initiative process should be acknowledged as the purest implement of democratic rule under law. This right, granted to over 60 million Filipinos, could not be denied by the votes of less than 8 magistrates for reasons that bore no cogitation on the Constitution.

Dissenting Opinion
of Justice Nazario

Justice Minita Chico-Nazario opined that, while it was proper to accord great respect

to the Constitution for being the supreme law of the land, the Court should not lose sight of the truth that there was an ultimate authority to which the Constitution itself was subordinate: the will of the people.

The Comelec had indeed committed grave abuse of discretion when it summarily dismissed the Lambino Petition entirely on the basis of *Santiago*. That ruling had allegedly enjoined the electoral body permanently from entertaining or taking cognizance of any petition for initiative to amend the Constitution.

The permanent injunction issued by the Court in *Santiago ,* however, pertained only to the Petition for Initiative filed by Jesus S. Delfin, not to all subsequent petitions for initiative to amend the Constitution. It was clear from the *fallo* of that case that the first and the second paragraphs of the conclusion, preceding the dispositive portion, merely expressed the opinion of the *ponente*; while the definite Orders of the Court for implementation were found in the dispositive portion itself.

Moreover, while *Santiago* barred *PIRMA* because of *res judicata*, the same ruling would not apply to the Petition at bar. Undoubtedly, the Petitions in that case and in the present one involved different parties, subject matters, and causes of action. Thus, the former Petition should not bar the latter.

Justice Nazario likewise took the opportunity to revisit the pronouncements made

by the Court in *Santiago*, especially as regards the supposed insufficiency or inadequacy of Republic Act 6735. This was supposedly the enabling law for the implementation of the people's right to initiative on amendments to the Constitution.

The Dissenting Opinion noted that, while *Santiago* repeatedly held that Republic Act 6735 was insufficient and inadequate, the Decision did not categorically state that the statute was unconstitutional. That express finding was found, not in the Resolution on *PIRMA,* but only in former Chief Justice Davide's Separate Opinion, which was not concurred in by the other members of the Court.

As regards the distinction between *amendment* and *revision*, said, Justice Nazario, there was no quantitative or qualitative test that could definitely establish the distinction between them.

She opined that the proposed change to transform our form of government would not affect the fundamental nature of a democratic and republican state. Ours would still be a representative government, in which officials would continue to be accountable to the people. So, too, the people would maintain control over the government by electing the members of the parliament.

Furthermore, she asked, if the people themselves wanted to change a substantial portion or even the whole of the Constitution, what or who was to stop them? Since their

sovereign will was supreme, there was nothing and no one that could prevent them from initiating those changes if they chose to do so.

Lastly, she stressed that there was no injustice in allowing the Comelec to give due course to and take cognizance of the Lambino Petition for Initiative to amend the Constitution. She reiterated that it would be a greater evil if such a Petition, which was ostensibly supported by the required number of registered voters all over the country, would be summarily dismissed.

Dissenting Opinion
of Justice Velasco

Justice Presbitero J. Velasco Jr. began with a reevaluation of the pronouncements made in *Santiago v. Comelec.* He said that Congress had clearly intended to give effect to the people's initiative when it drafted what later became Republic Act 6735. This intent should not have been frustrated by *Santiago ,* simply because the law was later found to be inadequate or incomplete.

Justice Velasco said that the reading of Republic Act 6735 in *Santiago* should have been more flexible. The goal should have been to uphold and not to defeat the law.

Nevertheless, it was his view that *Santiago's fallo* or dispositive portion was evidently limited to the Delfin Petition only and was not applicable to the present one. He noted

that *Santiago* did not include any directive that permanently enjoined the Comelec "from entertaining or taking cognizance of any petition for initiative on amendments."

He said that the Court could not permanently prohibit the electoral body from assuming jurisdiction over petitions for initiative. Otherwise, Comelec's constitutional power to enforce and administer all laws and regulations relative to the conduct of an initiative would be trampled upon. He further said that Republic Act 6735, which had not been declared unconstitutional in *Santiago* , gave the Comelec the jurisdiction to determine the sufficiency of the Petition on Initiative.

Justice Velasco then addressed the issue of whether the Lambino Petition involved an amendment or a revision of the Constitution. He opined that the Petition, which involved only a few provisions of the Constitution, sought a mere amendment.

He ended by stressing that "when there are gray areas in legislation, especially in matters that pertain to the sovereign people's political rights, courts must lean more towards a more liberal interpretation favoring the people's right to exercise their sovereign power."

: GR No. 174153, October 23, 2006, per Carpio, *J.* Concurred in by Chief Justice Panganiban; and Justices Santiago, Gutierrez, Martinez, Morales, Callejo, and Azcuna. The dissenters were Justices Puno, Quisumbing, Corona, Tinga, Nazario, Garcia, and Velasco.

[1] 112 S.Ct. 2791 (1992).

[2] Section 1, Article II.

[3] Section 1, Article II.

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

[5] *Town of Whitehall v. Preece*, 1998 MT 53 (1998).

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

[7] L-44640, October 12, 1976, 73 SCRA 333, 360-361.

[8] Section 2, Article XVII, 1987 Constitution.

[9] GR No. 127325, 270 SCRA 106, 19 March 1997.

[10] GR No. 129754, 23 September 1997.

[11] Petitioner Aumentado aptly refers to the comment of the late Senator Raul Roco that the *Santiago* ruling "created a third specie of invalid laws, a mongrel type of constitutional but inadequate and, therefore, invalid law." Memorandum for Aumentado, p. 54.

[12] *See* Republic Act No. 6735, Sections 5(b) & 8. *See also* the CONSTITUTION, Art. XVI, Sec. 2.