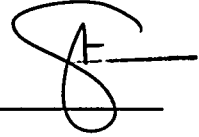


PS RESOLUTION NO. 623

21 JAN 25 P 2 :48

INTRODUCED BY SENATOR LACSON



RESOLUTION

CALLING FOR THE SENATE OF THE PHILIPPINES TO EXERCISE ITS CONSTITUENT POWERS UNDER THE 1987 CONSTITUTION, TO PROPOSE AMENDMENTS TO OR REVISION OF THE CONSTITUTION AND, UPON APPROVAL OF THREE FOURTHS (3/4) VOTE OF ITS MEMBERS, ADOPT THE SAME

Whereas, Article XVII of the 1987 Constitution provides for the manner by which the fundamental law can be amended or revised;

Whereas, under the said provision of the Constitution, any amendment to or revision of the Constitution may be proposed by: (1) the Congress, upon a vote of three-fourths (3/4) of all its members; or (2) a Constitutional Convention. Amendments to the 1987 Constitution may likewise be directly proposed by the people through what is known as People's Initiative;

Whereas, the framers of the fundamental law are silent on how the Congress should meet in effecting this change in the Constitution;

Whereas, the noted constitutionalist Father Joaquin Bernas stated that "now there is growing acceptance of the proposition that Congress, when acting as a constituent assembly, need not be in joint session but may act the way it does in ordinary legislation (because the Constitution does not require a joint session)."¹ In justifying his proposition, Father Bernas said that:

"But where in the Constitution does one find this mode? The elements of this mode are all in Article XVII. The fundamental principle is that what is not prohibited by the Constitution, either explicitly or implicitly, is left to the discretion of Congress provided it can be traced somehow to the powers of Congress. It is clear from Article XVII that the power to propose amendments can only be activated by Congress. The two houses of Congress are not required, as they were under the 1935 Constitution, to be in joint session. Hence, it is quite possible for the two houses to formulate amendments the way they formulate laws—as they are where they are. Once

¹ <http://opinion.inquirer.net/14997/back-to-charter-change>

*one house is through with a draft, it is passed on to the other house for action. If there is a prohibition, it can come either from the letter of the Constitution (and there is none) or from the fundamental structure of our constitutional government. Thus, for instance, the implicit prohibition of joint voting comes from the bicameral structure of Congress"*² (emphasis supplied)

Whereas, Retired Justice Adolfo Azcuna, who was also a member of the 1986 Constitutional Commission, likewise opined that:

*"As long as it is within the terms of Article XVII... Article XVII says Congress may propose amendments by 3/4 vote. I examined the proposed bill and it contains a very key provision. Pursuant to Article XVII, it's not an ordinary legislation being proposed. It's being taken up pursuant to Article XVII in the exercise of constituent power. It signals that Congress is exercising constituent powers. If you omit the phrase, it will have doubtful validity. You're exercising constituent powers. There is no general provision which says that Congress, when tackling not legislation, must meet in joint session. There is none. When it comes to amendment, it doesn't say you have to meet in joint session."*³

Whereas, said proposition would not in any way diminish the amending process to the nature of an ordinary legislation considering that in the exercise thereof, the members of Congress become a component element of a constituent assembly whose authority is derived from the Constitution as ruled by the Supreme Court in the case of *Tolentino vs COMELEC, G.R. No. L-34150, October 16, 1971*, thus:

"Indeed, the power to amend the Constitution or to propose amendments thereto is not included in the general grant of legislative powers to Congress (Section 1, Art. VI, Constitution of the Philippines). It is part of the inherent powers of the people — as the repository sovereignty in a republican state, such as ours (Section 1, Art. 11, Constitution of the Philippines) — to make, and, hence, to amend their own Fundamental Law. Congress may propose amendments to the Constitution merely because the same explicitly grants such power. (Section 1, Art. XV, Constitution of the Philippines) Hence, when exercising the same, it is said that Senators and members of the House of Representatives act, not as members of Congress, but as component elements of a constituent assembly. When acting as such, the members of Congress derive their authority from the Constitution, unlike the people, when performing the same function, (Of amending the Constitution) for their

² <http://opinion.inquirer.net/33185/doable-charter-change>

³ <http://news.abs-cbn.com/nation/02/25/14/constitutional-law-experts-divided-cha-cha>

authority does *not* emanate from the Constitution — they are *the very source* of all powers of government *including the Constitution itself.*" (emphasis supplied)

Whereas, the current maelstrom generated by the differing opinions on how this amendment to or revision of the Constitution should take place and the ambivalent political positioning of those favoring one or the other mode of effecting such change has caused bitter political bickering between and among our current political leaders in both Houses of Congress; **NOW THEREFORE, BE IT RESOLVED,**

AS IT IS HEREBY RESOLVED, to direct as it hereby directs the Senate of the Philippines to exercise its constituent powers under the 1987 Constitution, to propose amendments to or revision of the Constitution and, upon approval by three-fourths (3/4) vote of all its members, approve the said amendments to or revision of the Constitution.

Adopted.


Panfilo M. Lacson
Senator