

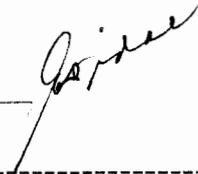
EN BANC

G.R. No. 202242

FRANCISCO I. CHAVEZ, *Petitioner,*
versus JUDICIAL and BAR COUNCIL,
SEN. FRANCIS JOSEPH G.
ESCUDERO, and REP. NIEL C. TUPAS,
JR., *Respondents.*

Promulgated:

APRIL 16, 2013



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DISSENTING OPINION

ABAD, J.:

On July 17, 2012, the Court rendered a Decision¹ granting the petition for declaration of unconstitutionality, prohibition, and injunction filed by petitioner Francisco I. Chavez, and declaring that the current numerical composition of the Judicial and Bar Council (JBC) is unconstitutional. The Court also enjoined the JBC to reconstitute itself so that only one member of Congress will sit as a representative in its proceedings, in accordance with Section 8(1), Article VIII of the 1987 Constitution.

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

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

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



¹ *Rollo*, pp. 226-250.

² *Id.* at 257-284.

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

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

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

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

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

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

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

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

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

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

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

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

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

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


ROBERTO A. ABAD
Associate Justice

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