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G.R. No. 202242 – FRANCISCO I. CHAVEZ, Petitioner, **v. JUDICIAL AND BAR COUNCIL, SENATOR FRANCIS ESCUDERO AND REP. NEIL TUPAS, JR.**, Respondents.

Promulgated:

APRIL 16, 2013

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DISSENTING OPINION

LEONEN, *J.*:

I dissent.

Both the Senate and the House of Representatives must be represented in the Judicial and Bar Council. This is the Constitution's mandate read as a whole and in the light of the ordinary and contemporary understanding of our people of the structure of our government. Any other interpretation diminishes Congress and negates the effectivity of its representation in the Judicial and Bar Council.

It is a Constitution we are interpreting. More than privileging a textual preposition, our duty is to ensure that the constitutional project ratified by our people is given full effect.

At issue in this case is the interpretation of Article VIII, Section 8 of the Constitution which provides the following:

> 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 provided)

Mainly deploying *verba legis* as its interpretative modality, the main opinion chooses to focus on the article "a." As correctly pointed out in the original dissent of Justice Robert Abad, the entire phrase includes the words "representative of Congress" and "*ex officio* Members." In the context of the

constitutional plan involving a bicameral Congress, these words create ambiguity.

A Bicameral Congress

Our Constitution creates a Congress consisting of two chambers. Thus, in Article VI, Section 1, the Constitution provides the following:

> The legislative power shall be vested in ***the Congress of the Philippines which shall consist of a Senate and a House of Representatives*** x x x. (Emphasis provided)

Senators are "elected at large by the qualified voters of the Philippines".[1] Members of the House of Representatives, on the other hand, are elected by legislative districts[2] or through the party list system.[3] The term of a Senator[4] is different from that of a Member of the House of Representatives.[5] Therefore, the Senate and the House of Representatives while component parts of the Congress are not the same in terms of their representation. The very rationale of a bicameral system is to have the Senators represent a national constituency. Representatives of the House of Representatives, on the other hand, are dominantly from legislative districts except for one fifth which are from the party list system.

Each chamber is organized separately.[6] The Senate and the House each promulgates their own rules of procedure.[7] Each chamber maintains separate Journals.[8] They each have separate Records of their proceedings.[9] The Senate and the House of Representatives discipline their own respective members.[10]

To belabor the point: There is no presiding officer for the Congress of the Philippines, but there is a Senate President and a Speaker of the House of Representatives. There is no single journal for the Congress of the Philippines, but there is a journal for the Senate and a journal for the House of Representatives. There is no record of proceedings for the entire Congress of the Philippines, but there is a Record of proceedings for the Senate and a Record of proceedings for the House of Representatives. The Congress of

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1 CONSTITUTION, Art. VI, Sec. 2.
2 CONSTITUTION, Art. VI, Sec. 5 (1).
3 CONSTITUTION, Art. VI, Sec. 5 (2). See also the recent case of *Atong Paglaum v. COMELEC et al.*, G.R. No. 203766, for the most recent discussion on the nature of the party list system.
4 The term of a senator is six years, extendible for another term. CONSTITUTION, Art. VI, Sec. 4.
5 The term of a member of the House of Representatives is three years, and may be extendible for three consecutive terms. CONSTITUTION, Art. VI, Sec. 7.
6 CONSTITUTION, Art. VI, Sec. 16.
7 CONSTITUTION, Art. VI, Sec. 16 (1).
8 CONSTITUTION, Art. VI, Sec. 16 (4), par. (1).
9 CONSTITUTION, Art. VI, Sec. 16 (4), par. (2).
10 CONSTITUTION, Art. VI, Sec. 16 (3).

the Philippines does not discipline its members. It is the Senate that promulgates its own rules and disciplines its members. Likewise, it is the House that promulgates its own rules and disciplines its members.

No Senator reports to the Congress of the Philippines. Rather, he or she reports to the Senate. No Member of the House of Representatives reports to the Congress of the Philippines. Rather, he or she reports to the House of Representatives.

Congress, therefore, is the Senate and the House of Representatives. Congress does not exist separate from the Senate and the House of Representatives.

Any Senator acting *ex officio* or as a representative of the Senate must get directions from the Senate. By constitutional design, he or she cannot get instructions from the House of Representatives. If a Senator represents the Congress rather than simply the Senate, then he or she must be open to amend or modify the instructions given to him or her by the Senate if the House of Representatives' instructions are different. Yet, the Constitution vests disciplinary power only on the Senate for any Senator.

The same argument applies to a Member of the House of Representatives.

No Senator may carry instructions from the House of Representatives. No Member of the House of Representatives may carry instructions from the Senate. Neither Senator nor Member of the House of Representatives may therefore represent Congress as a whole.

The difference between the Senate and the House of Representative was a subject of discussion in the Constitutional Commission. In the July 21, 1986 Records of the Constitutional Commission, Commissioner Jose F. S. Bengzon presented the following argument during the discussion on bicameralism, on the distinction between Congressmen and Senators, and the role of the Filipino people in making these officials accountable:

> I grant the proposition that the Members of the House of Representatives are closer to the people that they represent. I grant the proposition that the Members of the House of Representatives campaign on a one-to-one basis with the people in the barrios and their constituencies. I also grant the proposition that the candidates for Senator do not have as much time to mingle around with their constituencies in their respective home bases as the candidates for the House. I also grant the proposition that the candidates for the Senate go around the country in their efforts to win the

> votes of all the members of the electorate at a lesser time than that given to the candidates for the House of Representatives. But then the lesson of the last 14 years has made us mature in our political thinking and has given us political will and self-determination. We really cannot disassociate the fact that the Congressman, the Member of the House of Representatives, no matter how national he would like to think, is very much strongly drawn into the problems of his local constituents in his own district.
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> Due to the maturity of the Filipinos for the last 14 years and because of the emergence of people power, I believe that this so-called people power can be used to monitor not only the Members of the House of Representatives but also the Members of the Senate. As I said we may have probably adopted the American formula in the beginning but over these years, I think we have developed that kind of a system and adopted it to our own needs. So at this point in time, with people power working, it is not only the Members of the House who can be subjected to people power but also the Members of the Senate because they can also be picketed and criticized through written articles and talk shows. And even the people not only from their constituencies in their respective regions and districts but from the whole country can exercise people power against the Members of the Senate because they are supposed to represent the entire country. So while the Members of Congress become unconsciously parochial in their desire to help their constituencies, the Members of the Senate are there to take a look at all of these parochial proposals and coordinate them with the national problems. They may be detached in that sense but they are not detached from the people because they themselves know and realize that they owe their position not only to the people from their respective provinces but also to the people from the whole country. So, I say that people power now will be able to monitor the activities of the Members of the House of Representatives and that very same people power can be also used to monitor the activities of the Members of the Senate.[11]

Commissioner Bengzon provided an illustration of the fundamental distinction between the House of Representatives and the Senate, particularly regarding their respective constituencies and electorate. These differences, however, only illustrate that the work of the Senate and the House of Representatives taken together results in a Congress functioning as one branch of government. Article VI, Section 1, as approved by the Commission, spoke of one Congress whose powers are vested in both the House of Representatives and the Senate.

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[11] II RECORD, CONSTITUTIONAL COMMISSION 63 (July 21, 1986).

Thus, when the Constitution provides that a "representative of Congress" should participate in the Judicial and Bar Council, it cannot mean a Senator carrying out the instructions of the House or a Member of the House of Representative carrying out instructions from the Senate. It is not the kind of a single Congress contemplated by our Constitution. The opinion therefore that a Senator or a Member of the House of Representative may represent the Congress as a whole is contrary to the intent of the Constitution. It is unworkable.

One mechanism used in the past to work out the consequence of the majority's opinion is to allow a Senator and a Member of the House of Representative to sit in the Judicial and Bar Council but to each allow them only half a vote.

Within the Judicial and Bar Council, the Chief Justice is entitled to one vote. The Secretary of Justice is also entitled to one whole vote and so are the Integrated Bar of the Philippines, the private sector, legal academia, and retired justices. Each of these sectors are given equal importance and rewarded with one whole vote. However, in this view, the Senate is only worth fifty percent of the wisdom of these sectors. Likewise, the wisdom of the House of Representatives is only worth fifty percent of these institutions.

This is constitutionally abominable. It is inconceivable that our people, in ratifying the Constitution granting awesome powers to Congress, intended to diminish its component parts. After all, they are institutions composed of people who have submitted themselves to the electorate. In creating shortlists of possible candidates to the judiciary, we can safely suppose that their input is not less than the input of the professor of law or the member of the Integrated Bar of the Philippines or the member from the private sector.

The other solution done in the past was to alternate the seat between a Senator and a Member of the House of Representatives.

To alternate the seat given to Congress between the Senate and the House of Representatives would mean not giving a seat to the Congress at all. Again, when a Senator is seated, he or she represents the Senate and not Congress as a whole. When a Member of the House of Representative is seated, he or she can only represent Congress as a whole. Thus, alternating the seat not only diminishes congressional representation; it negates it.

Constitutional Interpretation

The argument that swayed the majority in this case's original decision was that if those who crafted our Constitution intended that there be two representatives from Congress, it would not have used the preposition "a" in Article VIII, Section 8 (1). However, beyond the number of representatives, the Constitution intends that in the Judicial and Bar Council, there will be representation from Congress and that it will be "*ex officio*", i.e., by virtue of their positions or offices. We note that the provision did not provide for a number of members to the Judicial and Bar Council. This is unlike the provisions creating many other bodies in the Constitution.[12]

In other words, we could privilege or start our interpretation only from the preposition "a" and from there provide a meaning that ensures a difficult and unworkable result -- one which undermines the concept of a bicameral congress implied in all the other 114 other places in the Constitution that uses the word "Congress".

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[12] CONSTITUTION, Art. VI, Sec. 2: The Senate shall be composed of twenty-four Senators who shall be elected at large by the qualified voters of the Philippines, as may be provided by law.;

Art. VI, Sec. 5: The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law...;

Art. VI, Sec. 17: The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be…;

Art. VI, Sec. 18: There shall be a Commission on Appointments consisting of the President of the Senate, as ex officio Chairman, twelve Senators, and twelve Members of the House of Representatives, elected by each House on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented therein.;

Art. VIII, Sec. 4.1: The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit en banc or in its discretion, in division of three, five, or seven Members...;

Art. IX (B), Sec. 1: The civil service shall be administered by the Civil Service Commission composed of a Chairman and two Commissioners...;

Art. IX (C), Sec. 1: There shall be a Commission on Elections composed of a Chairman and six Commissioners...;

Art. IX (D), Sec. 1: There shall be a Commission on Audit composed of a Chairman and two Commissioners...;

Art. XI, Sec. 11: There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.;

Art. XII, Sec. 17 (2): The Commission [on Human Rights] shall be composed of a Chairman and four Members who must be natural-born citizens of the Philippines and a majority of whom shall be members of the Bar.

Or, we could give the provision a reasonable interpretation that is within the expectations of the people who ratified the Constitution by also seeing and reading the words "representative of Congress" and "*ex officio*."

This proposed interpretation does not violate the basic tenet regarding the authoritativeness of the text of the Constitution. It does not detract from the text. It follows the canonical requirement of *verba legis*. But in doing so, we encounter an ambiguity.

In *Macalintal v. Presidential Electoral Tribunal*,[13] we said:

> As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus these are cases where the need for construction is reduced to a minimum.
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> However, where there is ambiguity or doubt, the words of the Constitution should be interpreted in accordance with the intent of its framers or ratio legis et anima. A doubtful provision must be examined in light of the history of the times, and the condition and circumstances surrounding the framing of the Constitution. In following this guideline, courts should bear in mind the object sought to be accomplished in adopting a doubtful constitutional provision, and the evils sought to be prevented or remedied. Consequently, the intent of the framers and the people ratifying the constitution, and not the panderings of self-indulgent men, should be given effect.
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> Last, *ut magis valeat quam pereat* – the Constitution is to be interpreted as a whole. We intoned thus in the landmark case of *Civil Liberties Union v. Executive Secretary*:
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> > It is a well-established rule in constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing

[13] *Atty. Romulo A. Macalintal v. Presidential Electoral Tribunal*, G.R. No. 191618, November 23, 2010, 635 SCRA 783, 797-799.

> on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.
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> *In other words, the court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory.* (Emphasis provided)

And in *Civil Liberties Union v. Executive Secretary*,[13] we said:

> A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration. Thus, it has been held that the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.

The authoritativeness of text is no excuse to provide an unworkable result or one which undermines the intended structure of government provided in the Constitution. Text is authoritative, but it is not exhaustive of the entire universe of meaning.

There is no compelling reason why we should blind ourselves as to the meaning of "representative of Congress" and "*ex officio*." There is no compelling reason why there should only be one representative of a bicameral Congress.

Proposed Reasons for Only One Representative of Congress

The first reason to support the need for only one representative of Congress is the belief that there needs to be an odd number in the Judicial and Bar Council.

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[13] *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, February 22, 1981, 194 SCRA 317, 325.

This is true only if the decision of the constitutional organ in question is a dichotomous one, i.e., a yes or a no. It is in this sense that a tie-breaker will be necessary.

However, the Judicial and Bar Council is not that sort of a constitutional organ. Its duty is to provide the President with a shortlist of candidates to every judicial position. We take judicial notice that for vacancies, each member of the Judicial and Bar Council is asked to list at least three (3) names. All these votes are tallied and those who garner a specific plurality are thus put on the list and transmitted to the President. There had been no occasion when the Judicial and Bar Council ever needed to break a tie. The Judicial and Bar Council's functions proceed regardless of whether they have seven or eight members.

The second reason that the main opinion accepted as persuasive was the opinion that Congress does not discharge its function to check and balance the power of both the Judiciary and the Executive in the Judicial and Bar Council. From this premise, it then proceeds to argue that the Representative of Congress, who is *ex officio*, does not need to consult with Congress as a whole.

This is very perplexing and difficult to accept.

By virtue of the fundamental premise of separation of powers, the appointing power in the judiciary should be done by the Supreme Court. However, for judicial positions, this is vested in the Executive. Furthermore, because of the importance of these appointments, the President's discretion is limited to a shortlist submitted to him by the Judicial and Bar Council which is under the supervision of the Supreme Court but composed of several components.

The Judicial and Bar Council represents the constituents affected by judicial appointments and by extension, judicial decisions. It provides for those who have some function vis a vis the law that should be applied and interpreted by our courts. Hence, represented are practicing lawyers (Integrated Bar of the Philippines), prosecutors (Secretary of the Department of Justice), legal academia (professor of law), and judges or justices (retired justice and the Chief Justice). Also represented in some way are those that will be affected by the interpretation directly (private sector representative).

Congress is represented for many reasons.

One, it crafts statutes and to that extent may want to ensure that those who are appointed to the judiciary are familiar with these statutes and will have the competence, integrity, and independence to read its meaning.

Two, the power of judicial review vests our courts with the ability to nullify their acts. Congress, therefore, has an interest in the judicial philosophy of those considered for appointment into our judiciary.

Three, Congress is a political organ. As such, it is familiar with the biases of our political leaders including that of the President. Thus, it will have greater sensitivity to the necessity for political accommodations if there be any. Keeping in mind the independence required of our judges and justices, the Members of Congress may be able to appreciate the kind of balance that will be necessary -- the same balance that the President might be able to likewise appreciate -- when putting a person in the shortlist of judicial candidates. Not only do they appreciate this balance, they embody it. Senators and Members of the House of Representatives (unlike any of the other members of the Judicial and Bar Council), periodically submit themselves to the electorate.

It is for these reasons that the Congressional representatives in the Judicial and Bar Council may be instructed by their respective chambers to consider some principles and directions. Through resolutions or actions by the Congressional Committees they represent, the JBC Congressional representatives' choices may be constrained. Therefore, they do not sit there just to represent themselves. Again, they are "representatives of Congress" "*ex officio*".

The third reason to support only one representative of Congress is the belief that there is the "unmistakable tenor" in the provision in question that one co-equal branch should be represented only by one Representative.[14] It may be true that the Secretary of Justice is the political alter ego of the President or the Executive. However, Congress as a whole does not have a political alter ego. In other words, while the Executive may be represented by a single individual, Congress cannot be represented by an individual. Congress, as stated earlier, operates through the Senate and the House of Representatives. Unlike the Executive, the Legislative branch cannot be represented by only one individual.

A Note on the Work of the Constitutional Commission

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[14] *Francisco I. Chavez v. Judicial and Bar Council, Sen. Francis Joseph G. Escudero and Rep. Neil C. Tupas, Jr.*, G.R. No. 202242, July 17, 2012, p. 18.

Time and again, we have clarified the interpretative value to Us of the deliberations of the Constitutional Commission. Thus *in Civil Liberties Union v. Executive Secretary*, we emphasized:

> While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention 'are of value as showing the views of the individual members, and as indicating the reason for their votes, but they give Us no light as to the views of the large majority who did not talk, much less of the mass or our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face.' ***The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framers' understanding thereof***.[15] (Emphasis provided)

Also worth Our recall is the celebrated comment of Charles P. Curtis, Jr. on the role of history in constitutional exegesis:[16]

> The intention of the framers of the Constitution, even assuming we could discover what it was, when it is not adequately expressed in the Constitution, that is to say, what they meant when they did not say it, surely that has no binding force upon us. ***If we look behind or beyond what they set down in the document, prying into what else they wrote and what they said, anything we may find is only advisory. They may sit in at our councils. There is no reason why we should eavesdrop on theirs.***[17] (Emphasis provided)

In addition to the interpretative value of the discussion in the Constitutional Commission, we should always be careful when we quote from their records without understanding their context.

The Committees of the Constitutional Commission were all tasked to finish their reports not later than July 7, 1986.[18] The Second and Third Readings were scheduled to finish not later than August 15, 1986.[19] The members of the Sponsorship and Style Committee were tasked to finish their work of formulating and polishing the style of the final draft of the new

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15 *Civil Liberties Union v. Executive Secretary*, supra at 337.

16 Charles P. Curtis. LIONS UNDER THE THRONE 2, Houghton Mifflin, 1947.

17 *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, 412 Phil. 308, 363 (2001).

18 I RECORD, CONSTITUTIONAL COMMISSION Appendix 2, p. 1900, (July 10, 1986), PROPOSED RESOLUTION NO. 50, RESOLUTION PROVIDING FOR THE RULES OF THE CONSTITUTIONAL COMMISSION (PROPOSED RESOLUTION NO. 50), Rule II, Sec. 9.

19 Proposed Resolution No. 50, Rule II, Sec. 9.

Constitution scheduled for submission to the entire membership of the Commission not later than August 25, 1986.[20]

The Rules of the Constitutional Commission also provided for a process of approving resolutions and amendments.

Constitutional proposals were embodied in resolutions signed by the author.[21] If they emanated from a committee, the resolution was signed by its chairman.[22] Resolutions were filed with the Secretary-General.[23] The First Reading took place when the titles of the resolutions were read and referred to the appropriate committee.[24]

The Committees then submitted a Report on each resolution.[25] The Steering Committee took charge of including the committee report in the Calendar for Second Reading.[26] The Second Reading took place on the day set for the consideration of a resolution.[27] The provisions were read in full with the amendments proposed by the committee, if there were any.[28]

A motion to close debate took place after three speeches for and two against, or if only one speech has been raised and none against it.[29] The President of the Constitutional Commission had the prerogative to allow debates among those who had indicated that they intended to be heard on certain matters.[30] After the close of the debate, the Constitutional Commission proceeded to consider the Committee amendments.[31]

After a resolution was approved on Second Reading, it was included in the Calendar for Third Reading.[32] Neither further debate nor amendment shall be made on the resolution on its Third Reading.[33] All constitutional proposals approved by the Commission after Third Reading were referred to the Committees on Sponsorship and Style for collation, organization, and consolidation into a complete and final draft of the Constitution.[34] The final draft was submitted to the Commission for the sole purpose of determining

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20 Proposed Resolution No. 50, Rule II, Sec. 9.
21 Proposed Resolution No. 50, Rule IV, Sec. 20.
22 Proposed Resolution No. 50, Rule IV, Sec. 20.
23 Proposed Resolution No. 50, Rule IV, Sec. 20.
24 Proposed Resolution No. 50, Rule IV, Sec. 21.
25 Proposed Resolution No. 50, Rule IV, Sec. 22.
26 Proposed Resolution No. 50, Rule IV, Sec. 22.
27 Proposed Resolution No. 50, Rule IV, Sec. 23.
28 Proposed Resolution No. 50, Rule IV, Sec. 23.
29 Proposed Resolution No. 50, Rule IV, Sec. 24.
30 Proposed Resolution No. 50, Rule IV, Sec. 25.
31 Proposed Resolution No. 50, Rule IV, Sec. 26.
32 Proposed Resolution No. 50, Rule IV, Sec. 27.
33 Proposed Resolution No. 50, Rule IV, Sec. 27.
34 Proposed Resolution No. 50, Rule IV, Sec. 29.

whether it reflects faithfully and accurately the proposals as approved on Second Reading.[35]

With respect to the provision which is now Article VIII, Section 8 (1), the timetable was as follows:

On July 10, 1986, the Committee on the Judiciary presented its Report to the Commission.[36] Deliberations then took place on the same day; on July 11, 1986; and on July 14, 1986. It was on July 10 that Commissioner Rodrigo raised points regarding the Judicial and Bar Council.[37] The discussion spoke of the Judicial and Bar Council having seven members.

Numerous mentions of the Judicial and Bar Council being comprised of seven members were also made by Commissioners on July 14, 1986. On the same day, the amended article was approved by unanimous voting.[38]

On July 19, 1986, the vote on Third Reading on the Article on the Judiciary took place.[39] The vote was 43 and none against.[40]

Committee Report No. 22 proposing an article on a National Assembly was reported out by July 21, 1986.[41] It provided for a unicameral assembly. Commissioner Hilario Davide, Jr., made the presentation and stated that they had a very difficult decision to make regarding bicameralism and unicameralism.[42] The debate occupied the Commission for the whole day.

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35 Proposed Resolution No. 50, Rule IV, Sec. 29.

36 I RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 27 (Thursday, July 10, 1986).

37 I RECORD, CONSTITUTIONAL COMMISSION, RECORD NO. 27 (Thursday, July 10, 1986).

38 I RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 27 (Thursday, July 10, 1986).

39 I RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 34 (Saturday, July 19, 1986).

40 I RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 34 (Saturday, July 19, 1986).

41 I RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 34 (Saturday, July 19, 1986), which reads:
RECONSIDERATION AND APPROVAL, ON THIRD READING, OF THE ARTICLE ON THE JUDICIARY. On motion of Mr. Bengzon, there being no objection, the Body reconsidered the approval, on Third Reading, of the Article on the Judiciary, to afford the other Members opportunity to cast their votes. Thereupon, upon direction of the Chair, the Secretary-General called the Roll for nominal voting and the following Members cast an affirmative vote:

Abubakar
Alonto
Azcuna
Natividad
Tadeo

With 5 additional affirmative votes, making a total of 43 Members voting in favor and none against, the Chair declared the Article on the Judiciary approved on Third Reading.

42 I RECORD, CONSTITUTIONAL COMMISSION, NO. 35 (Monday, July 21, 1986), which reads in part:

MR. DAVIDE:
x x x
A Unicameral Structure of the National Assembly. — In the records of the 1935 and 1971 Constitutional Conventions, and now the 1986 Constitutional Commission, advocates of

Then, a vote on the structure of Congress took place.[43] Forty four (44) commissioners cast their votes during the roll call.[44] The vote was 23 to 22.[45]

On October 8, 1986, the Article on the Judiciary was reopened for purposes of introducing amendments to the proposed Sections 3, 7, 10, 11, 13, and 14.[46]

On October 9, 1986, the entire Article on the Legislature was approved on Third Reading.[47]

By October 10, 1986, changes in style on the Article on the Legislature were introduced.[48]

On October 15, 1986, Commissioner Guingona presented the 1986 Constitution to the President of the Constitutional Commission, Cecilia Munoz-Palma.[49]

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unicameralism and bicameralism have eloquently discoursed on the matter. The draft proposal of the 1986 UP Law Constitution Project analyzes exhaustively the best features and the disadvantages of each. Our people, having experienced both systems, are faced with a difficult decision to make.

Madam President and my dear colleagues, even in our own Committee, I had to break the tie in favor of unicameralism. Commissioner Sarmiento, in his Resolution No. 396, aptly stated that the Philippines needs a unicameral legislative assembly which is truly representative of the people, responsive to their needs and welfare, economical to maintain and efficient and effective in the exercise of its powers, functions and duties in the discharge of its responsibilities. Commissioner Tingson, however, said that despite its simplicity of organization, resulting in economy and efficiency, and achieving a closer relationship between the legislative and executive, it also resulted in the authoritarian manipulation by the Chief Executive, depriving in the process the people from expressing their true sentiments through their chosen representatives. Thus, under Resolution No. 321, Commissioner Tingson calls for the restoration of the bicameral form of legislature to maximize the participation of people in decision-making.

43 I, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 35, (Monday July 21, 1986).

44 I, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 35, (Monday July 21, 1986), which reads in part:

x x x

With 22 Members voting for a unicameral system and 23 Members voting for bicameralism, the Body approved the proposal for a bicameral legislature.

45 Bernas, Joaquin, *THE INTENT OF THE 1986 CONSTITUTION WRITERS*, 1995, pp. 310-311.

46 III, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 102 (Tuesday and Wednesday, October 7 and 8, 1987).

47 III, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 103 (Thursday, October 9, 1986), which reads in part:

x x x

With 29 Members voting in favor, none against and 7 abstentions, the Body approved, on Third Reading, the Article on the Legislative.

48 III, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 104 (Friday, October 10, 1986).

49 V, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 109 (Wednesday, October 15, 1986), which reads in part:

x x x

MR. GUINGONA: Madam President, I have the honor on behalf of the Sponsorship Committee to officially announce that on October 12, the 1986 Constitutional Commission had completed under the

It is apparent that the Constitutional Commission either through the Style and Sponsorship Committee or the Committees on the Legislature and the Judiciary was not able to amend the provision concerning the Judicial and Bar Council after the Commission had decided to propose a bicameral Congress. We can take judicial notice of the chronology of events during the deliberations of the Constitutional Commission. The chronology should be taken as much as the substance of discussions exchanged between the Commissioners.

The quotations from the Commissioners mentioned in the main opinion and in the proposed resolution of the present Motion for Reconsideration should thus be appreciated in its proper context.

The interpellation involving Commissioners Rodrigo and Concepcion took place on July 10, 1986 and on July 14, 1986.[50] These discussions were about Committee Report No. 18 on the Judiciary. Thus:

> MR. RODRIGO: Let me go to another point then.
>
> On page 2, Section 5, there is a novel provision about appointments of members of the Supreme Court and of judges of lower courts. At present it is the President who appoints them. If there is a Commission on Appointments, then it is the President with the confirmation of the Commission on Appointments. In this proposal, we would like to establish a new office, a sort of a board composed of seven members, called the Judicial and Bar Council. And while the President will still appoint the members of the judiciary, he will be limited to the recommendees of this Council.
>
> x x x x
>
> MR. RODRIGO: Of the seven members of the Judicial and Bar Council, the President appoints four of them who are the regular members.
>
> x x x x

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able, firm and dedicated leadership of our President, the Honorable Cecilia Muñoz Palma, the task of drafting a Constitution for our people, a Constitution reflective of the spirit of the time — a spirit of nationalism, a spirit of dedication to the democratic way of life, a spirit of liberation and rising expectations, a spirit of confidence in the Filipino. On that day, Madam President, the Members of this Constitutional Commission had approved on Third Reading the draft Constitution of the Republic of the Philippines — a practical instrument suited to the circumstances of our time but which is broad enough to allow future generations to respond to challenges which we of this generation could not foretell, a Charter which would seek to establish in this fair land a community characterized by social progress, political stability, economic prosperity, peace, justice and freedom for all…

[50] I RECORD, CONSTITUTIONAL COMMISSION 445 (July 10, 1986) AND I RECORD, CONSTITUTIONAL COMMISSION 486-487 (July 14, 1986).

> MR. CONCEPCION: The only purpose of the Committee is to eliminate partisan politics.[51]
>
> x x x x
>
> It must also be noted that during the same day and in the same discussion, both Commissioners Rodrigo and Concepcion later on referred to a 'National Assembly' and not a 'Congress,' as can be seen here:
>
> MR. RODRIGO: Another point. Under our present Constitution, the National Assembly may enact rules of court, is that right? On page 4, the proviso on lines 17 to 19 of the Article on the Judiciary provides:
>
> The National Assembly may repeal, alter, or supplement the said rules with the advice and concurrence of the Supreme Court.
>
> MR. CONCEPCION: Yes.
>
> MR. RODRIGO: So, two things are required of the National Assembly before it can repeal, alter or supplement the rules concerning the protection and enforcement of constitutional rights, pleading, etc. — it must have the advice and concurrence of the Supreme Court.
>
> MR. CONCEPCION: That is correct.[52]

On July 14, 1986, the Commission proceeded with the Period of Amendments. This was when the exchange noted in the main opinion took place. Thus:

> MR. RODRIGO: If my amendment is approved, then the provision will be exactly the same as the provision in the 1935 Constitution, Article VIII, Section 5.
>
> x x x x
>
> If we do not remove the proposed amendment on the creation of the Judicial and Bar Council, this will be a diminution of the appointing power of the highest magistrate of the land, of the President of the Philippines elected by all the Filipino people. The appointing power will be limited by a group of seven people who are not elected by the people but only appointed.
>
> Mr. Presiding Officer, if this Council is created, there will be no uniformity in our constitutional provisions on appointments. The members of the Judiciary will be segregated from the rest of the government. Even a

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51 I RECORD, CONSTITUTIONAL COMMISSION 445 (July 10, 1986).
52 I RECORD, CONSTITUTIONAL COMMISSION 445 (July 10, 1986).

> municipal judge cannot be appointed by the President except upon recommendation or nomination of three names by this committee of seven people, commissioners of the Commission on Elections, the COA and Commission on Civil Service x x x even ambassadors, generals of the Army will not come under this restriction. Why are we going to segregate the Judiciary from the rest of our government in the appointment of the high-ranking officials?
>
> Another reason is that this Council will be ineffective. It will just besmirch the honor of our President without being effective at all because this Council will be under the influence of the President. Four out of seven are appointees of the President, and they can be reappointed when their term ends. Therefore, they would kowtow to the President. A fifth member is the Minister of Justice, an alter ego of the President. Another member represents the legislature. In all probability, the controlling party in the legislature belongs to the President and, therefore, this representative from the National Assembly is also under the influence of the President. And may I say, Mr. Presiding Officer, that even the Chief Justice of the Supreme Court is an appointee of the President. So, it is futile; he will be influenced anyway by the President.[53]
>
> It must again be noted that during this day and period of amendments after the quoted passage in the Decision, the Commission later on made use of the term 'National Assembly' and not 'Congress' again:
>
> MR. MAAMBONG: Presiding Officer and members of the Committee, I propose to delete the last sentence on Section 16, lines 28 to 30 which reads: "The Chief Justice shall address the National Assembly at the opening of each regular session."
>
> May I explain that I have gone over the operations of other deliberative assemblies in some parts of the world, and I noticed that it is only the Chief Executive or head of state who addresses the National Assembly at its opening. When we say "opening," we are referring to the first convening of any national assembly. Hence, when the Chief Executive or head of state addresses the National Assembly on that occasion, no other speaker is allowed to address the body.
>
> So I move for the deletion of this last sentence.[54]

Based on the chronology of events, the discussions cited by the main *ponencia* took place when the commissioners were still contemplating a unicameral legislature in the course of this discussion. Necessarily, only one Representative would be needed to fully effect the participation of a unicameral legislature. Therefore, any mention of the composition of the

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53 I RECORD, CONSTITUTIONAL COMMISSION 486-487 (July 14, 1986).

54 I RECORD, CONSTITUTIONAL COMMISSION 510 (July 14, 1986).

JBC having seven members in the records of the Constitutional Commission, particularly during the dates cited, was obviously within the context that the Commission had not yet voted and agreed upon a bicameral legislature.

The composition of the Congress as a bilateral legislature became final only after the JBC discussions as a seven-member Council indicated in the Records of the Constitutional Commission took place. This puts into the proper context the recognition by Commissioner Christian Monsod on July 30, 1986, which runs as follows:

> Last week, we voted for a bicameral legislature. Perhaps it is symptomatic of what the thinking of this group is, that all the provisions that were being drafted up to that time assumed a unicameral government.[55]

The repeated mentions of the JBC having seven members as indicated in the Records of the Constitutional Commission do not justify the points raised by petitioner. This is a situation where the records of the Constitutional Commission do not serve even as persuasive means to ascertain intent at least in so far as the intended numbers for the Judicial and Bar Council. Certainly they are not relevant even to advise us on how Congress is to be represented in that constitutional organ.

We should never forget that when we interpret the Constitution, we do so with full appreciation of every part of the text within an entire document understood by the people as they ratified it and with all its contemporary consequences. As an eminent author in constitutional theory has observed while going through the various interpretative modes presented in jurisprudence: "x x x all of the methodologies that will be discussed, properly understood, figure in constitutional analysis as opportunities: as starting points, constituent parts of complex arguments, or concluding evocations." [56]

Discerning that there should be a Senator and a Member of the House of Representatives that sit in the Judicial and Bar Council so that Congress can be fully represented *ex officio* is not judicial activism. It is in keeping with the constitutional project of a bicameral Congress that is effective whenever and wherever it is represented. It is in tune with how our people understand Congress as described in the fundamental law. It is consistent with our duty to read the authoritative text of the Constitution so that ordinary people who seek to understand this most basic law through Our decisions would understand that beyond a single isolated text -- even beyond

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55 II RECORD, CONSTITUTIONAL COMMISSION 434 (July 30, 1986).

56 Lawrence Tribe, as cited in *It is a Constitution We Are Expounding*, p. 21 (2009), previously published in AMERICAN CONSTITUTIONAL LAW, *Chapter 1: Approaches to Constitutional Analysis* (3rd ed.2000).

a preposition in Article VIII, Section 8 (1), our primordial values and principles are framed, congealed and will be given full effect.

In a sense, we do not just read words in a legal document; we give meaning to a Constitution.

For these reasons, I vote to grant the Motion for Reconsideration and deny the Petition for lack of merit.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice