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EDITOR'S NOTE

Welcome to this 2024 Online Issue of *The UST Law Journal*, where we continue our commitment to providing thoughtful and rigorous analysis of the most pressing legal questions of our time. In this edition, we explore a diverse range of topics that reflect the ever-evolving landscape of law, from emerging constitutional debates to the latest developments in judicial reform governance and international human rights.

As we publish this issue, our field is at a critical juncture. Legal practitioners, policymakers, and scholars are grappling with complex challenges—from the intersection of law and critical legal philosophies to the shifting dynamics of ethics, judicial reform, and economic implications in an increasingly globalized world. This journal aims to serve as a forum for cutting-edge research, fostering dialogue among those who seek to understand, shape, and respond to these challenges.

We are particularly excited to feature a series of articles that delve into topics of great contemporary relevance, such as strengthening Filipino's cultural heritage, the governance structure of the criminal justice system and judicial reforms, the evolving narrative on constitutional change, legal-philosophical norms of public morality, and the notion of justice. These contributions advance academic discourse and provide valuable insights for legal practitioners, academe, and jurists navigating the practical realities of law in today's fast-paced, interconnected society.

As always, we are grateful to our contributors for their expertise and dedication and to our Editorial Board for their tireless efforts in bringing this issue to fruition. Through their hard work and commitment, we can continue to produce a journal that meets the highest standards of scholarship and impact.

With its foundational commitment to encouraging broader discussions through diverse legal perspectives, this issue aims to foster deeper insights for the Philippine legal community. We hope this issue sparks thoughtful reflection and inspires new avenues for inquiry in the legal profession. Thank you for your continued readership and support.

Sincerely,

IRENE D. VALONES, DCL, DPA
Editor-in-Chief
December 5, 2024

ECONOMIC CHARTER CHANGE: WHY THERE IS MORE TO IT THAN MEETS THE EYE?

By:

ATTY. MARLO V. DESTURA, LLM, DCL[1]

ABSTRACT

Constitutions should be capable of being changed, but not easily nor abruptly. They should be changed only on the basis of careful deliberation, with public support and broad agreement. They are not meant to provide specific details for every aspect of a functioning society but as a general framework of the State's operation, as it is impossible to predict how society will look in the future. Only when it is absolutely necessary to address continuity, stability, economic prosperity, and legal certainty should a change be advocated. The 1987 Philippine Constitution has, since its ratification in February 1987, been the subject of several attempts to change its provisions. Maybe due to its rigid structure, it was freed from such a move, and to this day, the established legal landscape drawn by its framers has remained the same. Kudos or not to its framers, present political developments that unearthed several pitfalls in the amendatory provisions of the Constitution that could either swing in favor of or against it. This goes beyond what erstwhile structured amendatory process was enshrined in it, which, for a time, could be easily tapped when the need arises.

Keywords*: Constitution, Amendment and Revisions, Congress, People's Initiative.*

I. INTRODUCTION

The year 2024 ushered in new initiatives for the amendment of the 37-year-old decade of the Philippine Constitution. Three proposals were introduced, two from the Senate and the House of Representatives, respectively, and one through the People's Initiative, acting pursuant to Sections 1 and 2 of Article XVII of the 1987 Philippine Constitution on Amendments and Revisions.

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People's Initiative took the first step when it proposed changes to Section 1 (1) of Article XVII of the 1987 Philippine Constitution, particularly "The Congress upon a vote of three-fourths of all its members," which read as follows:

> Section 1. Any amendment to, or revision of, this Constitution maybe proposed by:
>
> (1) The Congress, upon a vote of three-fourths of all its Members VOTING JOINTLY, AT THE CALL OF THE SENATE PRESIDENT OR SPEAKER OF HOUSE OF REPRESENTATIVE; or

Under the present setup, Congress, as a bicameral body, can propose "any amendment to, or revision of, this Constitution." However, it is silent whether the Senate and the House of Representatives would convene and deliberate jointly or separately; or vote jointly or separately. Given the apparent silence of the provision, the proposed change by People's Initiative would require both chambers of Congress to convene jointly upon "the call of the Senate President or the Speaker of the House of Representatives" and, upon deliberation, vote "jointly."

On 15 January 2024, Resolution of Both Houses No. 6 (RBH6) was introduced in the Senate entitled "*A Resolution of both Houses of Congress Proposing Amendments to Certain Economic Provisions of the 1987 Constitution of the Republic of the Philippines, particularly on Articles XII, XIV, and XVI,* with the following important features:

1. Section 11 of Article XI1 (National Patrimony and Economy), is amended to read as follows:

   > Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens **UNLESS OTHERWISE PROVIDED BY LAW**; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. **UNLESS OTHERWISE PROVIDED BY LAW,** the participation of foreign investors in the governing body of any public

utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

2. Paragraph 2 Section 4 of Article XIV (Education, Science and Technology, Arts, Culture, and Sports), is amended to read as follows:

x x x

1. **BASIC** Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions. The control and administration of educational institutions shall be vested in citizens of the Philippines, **UNLESS OTHERWISE PROVIDED BY LAW.**

3. Paragraph 2 Section 11 of Article XVI (General Provisions), is amended to read as follows:

Section 11.

(2) x x x

Only Filipino citizens or corporations or associations at least seventy per centum of the capital of which is owned by such citizens shall be allowed to engage in the advertising industry, **UNLESS OTHERWISE PROVIDED BY LAW.** The participation of foreign investors in the governing body of entities in such industry shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such entities must be citizens of the Philippines.

The proposed Resolution does not mention how both Houses of Congress should convene or vote. The proposed changes through People's Initiative beg the same questions earlier raised before the Supreme Court in *Santiago vs. Comelec,*[2] and *Lambino vs. Comelec,*[3] on whether this manner of proposal may already be exercised by the people; and in the affirmative, whether it is only an amendment or

[2] G.R. 12725, 17 March 1997.
[3] G.R. 174153, 25 October 2006.

revision. Under the People's initiative, Senators and the House of Representatives will vote jointly on Charter Change proposals instead of "separately" as two Houses of Congress would apparently dilute the Senate's vote of 24 members when combined with the House of Representatives over 300 lawmakers.

House leaders also filed on 19 February 2024 Resolution of Both Houses No. 7 (RBH7) containing their own version of economic constitutional amendments, which are the same as the Senate's Charter change proposals, and restating the provision of the Constitution that Congress may propose amendments "upon a vote of three-fourths of all its members." It was, however, silent whether the voting shall be made jointly or separately.

These two resolutions envisioned the grant of legislative franchises to Public Utilities in Article Xll, Basic Education in Article XlV, and Advertising in XVl. The suggested principal amendments are the insertion of the phrase "unless otherwise provided by law," which would empower Congress to lift or relax present economic restrictions in the nation's basic law, and the addition of the qualifier "basic" in Article XlV. The change to the Constitution is by way of *amendments* to the Constitution.

However, it remains unclear how Senate RBH 6 and House RBH 7 could effectively be passed by either house. Will Congress convene jointly and separately? How will Congress secure the required three-fourths vote? Will it be done separately upon joint session assembled or upon the vote of each house separately like in ordinary legislation? Are the proposed changes only amendments or revisions? Finally, are the proposed changes necessary and relevant to address the perceived economic problems of the country? Or will they just endanger the very fabric of our national economy and security?

This *opus* attempts to discuss the method and manner of changing the Constitution; and that while the provisions of Article XVIII of the 1987 Constitution may appear simply worded, several questions have surfaced caused by the recent developments in our political scene, questions such as —how Congress should convene and vote; how could we determine whether the proposed changes take the nature of a revision and no longer an amendment; and finally, whether there is a necessity for the proposed constitutional changes.

II. THE NUTSHELL OF THE CONSTITUTIONAL PROCESS

In a nutshell, the procedure of amending or revising the Constitution starts with a proposal and ends with the ratification of the proposed changes by the people. There are also three modes by which a proposal is made: by Congress, which may propose amendments or revision upon a vote of three-fourths of all its Members, the Constitutional Convention, and through People's Initiative upon a petition of at least twelve per centum of the total number of registered voters, of which every legislative district is represented by at least three per centum of the registered voters therein. Whether initiated by Congress, the Constitutional Convention, or through the People's Initiative, the power to propose amendment or revision is an exercise of sovereignty power as a natural consequence of a republican and democratic State.

Congress possesses constituent power aside from its ordinary legislative power. When acting as such, it has the full and plenary authority to propose constitutional amendments or revisions."[4] In *Imbong vs. Comelec*, the Supreme Court illustrated how these powers exist in one persona, as follows:

> Without first considering the validity of its specific provisions, we sustain the constitutionality of the enactment of R.A. No. 6132 by Congress acting as a legislative body in the exercise of its broad law-making authority, and not as a Constituent Assembly, because —
>
> 1. Congress, when acting as a Constituent Assembly pursuant to Art. XV of the Constitution, has full and plenary authority to propose Constitutional amendments or to call a convention for the purpose, by a three-fourths vote of each House in joint session assembled but voting separately. Resolutions Nos. 2 and 4 calling for a Constitutional Convention were passed by the required three-fourths vote.
> 2. The grant to Congress as a Constituent Assembly of such plenary authority to call a Constitutional Convention includes, by virtue of the doctrine of necessary implication, all other powers essential to the effective exercise of the principal power granted, such as the power to fix the qualifications, number, apportionment, and compensation of the

[4] *Manuel B. Imbong vs. COMELEC*, G.R. L-32432, 11 September 1970. (The Supreme Court held that the vote is three-fourths vote "of each House in joint session assembled but voting separately.")

delegates as well as appropriation of funds to meet the expenses for the election of delegates and for the operation of the Constitutional Convention itself, as well as all other implementing details indispensable to a fruitful convention. Resolutions Nos. 2 and 4 already embody the above-mentioned details, except the appropriation of funds.

3. While the authority to call a Constitutional Convention is vested by the present Constitution solely and exclusively in Congress acting as a Constituent Assembly, the power to enact the implementing details, which are now contained in Resolutions Nos. 2 and 4 as well as in R.A. No. 6132, does not exclusively pertain to Congress acting as a Constituent Assembly. Such implementing details are matters within the competence of Congress in the exercise of its comprehensive legislative power, which power encompasses all matters not expressly or by necessary implication withdrawn or removed by the Constitution from the ambit of legislative action. And as long as such statutory details do not clash with any specific provision of the Constitution, they are valid.[5]

On the part of the people, such exercise of constituent power is reserved to them in Section 1 of Article II, Section 1 of Article VI, and in Section 2 of Article XVII of the Constitution, which respectively provides:

> The Philippines is a democratic and Republican State. **Sovereignty resides in the people and all government authority emanates from them.**
>
> x x
>
> The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, **except to the extent reserved to the people by the provision on initiative and referendum (Underscoring is supplied for Emphasis)**

[5]Ibid

In *Lambino*, the Supreme Court aptly described Article XVII on amendments and revisions as –

> x x x a "constitution of sovereignty" because it defines the constitutional meaning of "sovereignty of the people." It is through these provisions that the sovereign people have allowed the expression of their sovereign will and have canalized their powers which would otherwise be plenary. By approving these provisions, the sovereign people have decided to limit themselves and future generations in the exercise of their sovereign power.[23] They are thus bound by the Constitution and are powerless, whatever their numbers, to change or thwart its mandates, except through the means prescribed by the Constitution itself.

Thus, this sovereign power is vividly exercised in Article XVII on Amendments and Revisions, which states:

> Section 1 of Article XVII of the 1987 Constitution provides that "Any amendment to, or revision of, this Constitution may be proposed by:
>
> (1) the Congress, upon a vote of three-fourths of all its Members; or
>
> (2) a constitutional convention.
>
> SECTION 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. 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.
>
> The Congress shall provide for the implementation of the exercise of this right.

However, while Section 1 of Article XVII may be considered as a provision delegating the sovereign powers of amendment and revision to Congress, Section 2, in contrast, is a self-limitation of that sovereign power. In the words of Cooley:

> x x x Although by their constitutions the people have delegated the exercise of sovereign powers to the several departments, they have not thereby divested themselves of the sovereignty. They

> retain in their own hands, so far as they have thought it needful to do so, a power to control the governments they create, and the three departments are responsible to and subject to be ordered, directed, changed, or abolished by them. **But this control and direction must be exercised in the legitimate mode previously agreed upon. The voice of the people, acting in their sovereign capacity, can be of legal force only when expressed at the times and under the conditions which they themselves have prescribed and pointed out by the Constitution, or which, consistently with the Constitution, have been prescribed and pointed out for them by statute;** and if by any portion of the people, however large, an attempt should be made to interfere with the regular working of the agencies of government at any other time or in any other mode than as allowed by existing law, either constitutional or statutory, it would be revolutionary in character, and must be resisted and repressed by the officers who, for the time being, represent legitimate government. ***(Underscoring supplied)***[6]

Also, the Constitution made it a self-executing provision in Section 1(1) of Article XVII for Congress to propose any amendment to or revision thereof, but not its Section 2. A constitutional provision is self-executing –

> x x x if the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action.[7]

In the *Manila Prince Hotel vs. GSIS* case, the High Court explained why the provisions of the Constitutions are normally self-executing provisions. It says –

> If the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law. This can be cataclysmic. That is why the prevailing view is, as it has always been, that -
>
> > x x x x in case of doubt, the Constitution should be considered

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[6] Lambino vs. Comelec, *supra*

[7] Manila Prince Hotel vs. GSIS, G.R. No. 122156, February 03, 1997. 335 Phil. 82

> self-executing rather than non-self-executing x x x Unless the contrary is clearly intended, the provisions of the Constitution should be considered self-executing, as a contrary rule would give the legislature discretion to determine when, or whether, they shall be effective. These provisions would be subordinated to the will of the lawmaking body, which could make them entirely meaningless by simply refusing to pass the needed implementing statute.[8]

This is not true with the provision on People's Initiative, as the second paragraph of Article 2 provides that "Congress shall provide for the implementation of the exercise of this right", making it a non-self-executing provision.[9] Thus, in pursuance of this, Congress enacted Republic Act (RA) 6735, also known as the Initiative and Referendum Act, [10] which would have empowered the people of this exercise as early as 1989. However, in *Santiago*, the Supreme Court, voting 8-5, rejected the People's Initiative attempt at that time because such law was inadequate to cover the system of initiative on amendments to the Constitution and failed to provide sufficient standards for subordinate legislation. Nine years later, in *Lambino v. Comelec*, the Supreme Court voting 8-7, rejected another initiative attempt because the petition failed to comply with Section 2 of Article XVII of the Charter and Section 5 (b) of RA 6735. A month later, or on 21 November 2006, the Court, by the same vote of 8-7, denied the Motion for Reconsideration with finality. It clarified further that RA 6735, by a more decisive vote of 10-5, was "sufficient and adequate" to amend the Constitution through a People's Initiative.

Could the people now effectively exercise this right?

Justice Carpio identified three reasons why he opposes the current People's Initiative, citing both the *Santiago* and *Lambino* cases and the *doctrine of finality of judgment* or *immutability of judgment*, viz:

> "When the Supreme Court says, 'This law is unconstitutional,' it has become final. That's it. It cannot be revived by the Supreme Court anymore. Only Congress can revive it and Congress up to

[8] Ibid
[9] Sec. 2, Article XVII, second par.
[10] Approved on August 4, 1989

> now has not filed or approved any enabling law to implement the People's Initiative."[11]

While this author believes that the decisive vote of 10-5 in the resolution of *Lambino's* Motion for Reconsideration finding RA 6735 "sufficient and adequate" already put to rest the issue on the right of the people to amend the Constitution through a People's Initiative, the certainty of another case in the Supreme Court enjoining the exercise of the people for lack of legislative authority could discourage proponents of this mode to conduct a nationwide campaign for the amendment of the Constitution.

Despite the widespread signature campaign, the People's Initiative is stalled due to some revelations that, far from being a grassroots effort, it was actually a well-funded operation traceable to congressional leaders and built on tactics like vote-buying. Thus, this exercise has not gone full circle and is feared to have been struck out already, even at the first base

Congress to Convene Jointly or Separately?
Voting Jointly or Separately?

The three proposals have one common issue: How will Congress convene and vote in light of the silence of Section 1(1) of Article XVII of the Constitution? For Congress, a definitive answer is required for it to effectively proceed with the approval of RBH 6 and RBH 7 and for the People's Initiative to institutionalize what it perceives as the practical solution to an erstwhile vague provision of the Constitution.

> The provision – "Any amendment to, or revision of, this Constitution maybe proposed by: (1) the Congress, upon a vote of three-fourths of all its Members" is indeed silent whether Congress, acting as a constituent body, should convene jointly or separately, or vote jointly or separately.

The people's proposal attempts to add what it perceived to be lacking in details on how Congress should convene and vote in Section 1(1) of Article XVII of the Constitution by providing: VOTING JOINTLY, AT THE CALL OF THE SENATE PRESIDENT OR SPEAKER OF HOUSE OF REPRESENTATIVE in the proposal.

During the Senate deliberation, former justices of the Supreme Court and members of the Constitutional Convention that drafted the 1987 Constitution, Chief Justice Davide, Justice Mendoza, and Justice Azcuna, revealed that in a rush of things, they forgot to adjust their recommendation on how to amend the Constitution in the case where Congress is bicameral

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[11] Ateneo de Manila Universityhttps://www.ateneo.edu › 2024/03/15To Amend or Not To Amend: A Debate on Charter Change | Events

and meeting as a Constitutional Assembly, as they were operating on the assumption that there would be a unicameral Congress. Former Chief Justice Davide, who was Chair of the Committee on Amendments and Revisions, revealed that what his committee was proposing was to come up with a unicameral Congress, but when presented during the plenary session, the proposal was later changed into a bicameral Congress. Former Chief Justice Davide said:

> x x x
>
> MR. DAVIDE. Just to add a little on the controversy, it is just to correct the part of the statement of Justice Mendoza, on what happened to the Constitutional Commission.
>
> The fact of the matter is I happened to be the Chair of the Legislative Committee and my good friend, Adolf, here was the Vice Chairman of that committee. The committee recommended a unicameral body. And at the time that the transitory provision—rather, the article on amendments and revision to the Constitution and transitory provisions were taken up, it was based precisely on the assumption that what would be adopted eventually would be as recommended by our committee, which was unicameral.
>
> Unfortunately, during the plenary session on a voting as to the form of government, whether bicameral—or the form of legislature, whether bicam or uni, by one single vote, the committee lost. **And it was the motion of Delegate Villegas who voted that we adopt the bicameral assembly**.
>
> x x x.[12] (Emphasis supplied)

The intent of the framers is relied upon, in case of ambiguity, in the provisions of the Constitution. But, Chief Justice Davide's statement is clear only in so far as the bicameral nature of Congress, but is still silent on whether both houses should convene jointly or separately, or vote jointly or separately in proposing amendment or revision of the Constitution; hence, the difference in the views of many, including constitutional experts.

The provision of Article XVII refers to a singular "Congress," which may be viewed as three-fourths of the House and the Senate together, voting jointly, a view shared by several House proponents and the People's Initiatives. This view is opposed by the Senate, whose 24 votes would be diluted by the 316 votes of the House. This would allow the lower house to pass proposals on its own, including the abolition of the Senate and the fact

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[12] Minutes of Sub-Committee Hearing, *supra.*, p. 145

that changing the Constitution would be easier than passing ordinary legislation, which must pass both houses separately.

The Senate, and the prevailing opinion of scholars, maintains that with the bicameral nature of Congress, the Houses must vote separately, and each must get the three-fourths vote for the proposal to be considered valid. This is shared by former Chief Justice Puno, who pointed out that the two Houses of Congress can follow the "traditional way" of the meeting as stated in the 1935 Constitution[13], which means that while Senators and the House of Representatives can hold a session together, they would vote on matters separately. The former Chief Justice told lawmakers that if they are trying to interpret the Constitution, they must understand "the intent of the framers."[14]

Hence, the matter of whether Congress should convene jointly or separately is still an issue, and the ambiguity due to the silence of the Constitution, already makes it difficult for either House to initiate proposals, as it may be difficult for them to meet as one body and later vote separately.

III. THE BERNAS SOLUTION

Lawyer and priest Joaquin Bernas, one of the framers who also drafted the 1987 Philippine Constitution, once expressed his personal interpretation of the apparent silence of the affected provision of the Constitution. Father Bernas, in his column with the Inquirer, expressed that "another reason for the failure to achieve change was the fact that there was no agreement about the constitutional way of doing it."[15] Coming from a similar perspective that the present text in Section 1 of Article XVII was not adjusted to reflect the change to a bicameral Congress, he said:

> The current text says nothing about the necessity of a joint session of both chambers. Understandably so, because the current text was drafted at a time when the Constitutional Commission, working on the draft, was still thinking in terms of a unicameral National

[13] *Congress.gov.ph.* The Philippine Legislative System has undergone a series of evolutions that reflected the sociopolitical conditions of the times and the level of political maturity of society. It began with the unicameral Malolos Congress of the short-lived Philippine Republic of 1898-1899, followed by the Philippine Commission of 1901, a colonial legislative system composed of all-American appointees. This body then evolved into a bicameral, predominantly elective, Filipino-controlled legislature by virtue of the Jones Act of 1916, and lasted until November 1935 when the semi-independent Commonwealth Government was inaugurated. A unicameral National Assembly replaced the bicameral body after the 1935 Philippine Constitution was ratified. In 1941, the Constitution was amended, again restoring the bicameral legislature that came to be called the Congress of the Philippines.

[14] *Rappler*, www.rappler.com,Cha-cha debate: Can Congress amend Constitution by mere legislation?

[15] Fr. Joaquin G. Bernas, S.J., Back to Charter Change, Philippine Daily Inquirer, 10 October 2011.

> Assembly for the Philippines. Hence the current text is an almost verbatim copy of the amendatory provision in the 1973 Constitution which had a unicameral Batasang Pambansa. The understanding was that the text would be adjusted should the Commission opt for a bicameral Congress. The Commission opted for a bicameral Congress, which we now have, but failed to make the adjustment. Hence, we have a text that does not tell us explicitly whether Congress should be in a joint session or should vote separately if in a joint session.

Fr. Bernas also pointed out that the subject provision of the 1987 Constitution is differently worded compared to that of the 1935 Constitution (as amended), which expressly provides that "The Congress in joint session assembled, by a vote of three-fourths of all the Members of the Senate and of the House of Representatives voting separately, may propose amendments to this Constitution or call a convention for that purpose." Thus, he proposed a solution, *viz*:

> It is clear, however, that the function of initiating constitutional change has been given by the Constitution not to the President nor to the judiciary but to Congress. Thus, it stands to reason that whatever gap there is in the constitutional text on the amendatory process is for Congress to fill.
>
> 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); but if Congress decides to be in joint session (since the Constitution does not prohibit it), and if they do, they must vote separately (because it is the basic intent of having two houses that the wisdom of decisions be subjected to separate votes).[16]

Withal, the leaderships of the present Congress seem to have adopted this opinion of Fr. Bernas for each House to propose amendments to the economic provisions of the Constitution through ordinary legislation – for each House proceeding separately with their own versions and submit to the House, after a vote of three-fourths of all its members. In fact, while the Senate is still deliberating on RBH 6, this institutional route has been more successful with the House of Representatives, which overwhelmingly approved RBH 7 by a 288-8-2 vote of all its members.

Will this solution work? Is Congress on the right path?

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[16] *Ibid*

Unfortunately, even Fr. Bernas doubted whether this formula would work. In his opinion, he raised the following observations:

> The current leaders of Congress have come to an agreement that the procedure to be followed will be through separate sessions voting by three-fourth votes of all the members of each house as they are and where they are. The procedure will follow the ordinary legislative process of having a proposition approved in one house and passed on to the other for similar action. Will it work? Are we now on a sure path to Charter change in 2011 or even 2012? Not really.
>
> It is good to remember that the leadership of Congress is but a small percentage of the total membership of both houses, and that the House of Representatives can easily nullify the votes of the Senate. There are currently 285 representatives and only 23 senators. Even if the Senate should vote unanimously, a majority of the House can always go in the opposite direction.
>
> There is another factor to consider. The thinking seems to be that the non-joint session process, which I call the "fourth mode" of change, can give "surgical change" a better chance; that is, the change can be limited to the economic provisions. But the "fourth mode" does not prevent anybody in either house from proposing other amendments. The ARMM (Autonomous Region in Muslim Mindanao) situation, a high concern of Mindanao politicians, can be a very inviting subject for amendatory consideration, among other things.
>
> Finally, what about the supposed indifference of President Aquino to constitutional change? Legally the President has no role in the amendatory process, neither on the process being followed nor on the substance being proposed. But politically he can influence the vote of his supporters in Congress. [17]

Thus, even with the passage of RBH 7 in the House of Representatives, the same measure would still be subject to review by the Senate, and the latter may either propose amendments thereto or entirely substitute it with its version – a power exercisable within the parameters of legislative power. The same process would also be applied to the Senate version (RBH6), and the probability of having a Bicameral Committee to thresh out differences in the two resolutions would likely happen. Notwithstanding, the same

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[17] Ibid

process may be subject to a judicial review to determine whether Congress followed the correct procedure laid down in the Constitution. Hence, the anticipation of a swifter passage of the proposed changes to the Constitution through ordinary legislation may not happen, *albeit* may take further delays, and the rationale for the change may no longer be relevant with time.

It is the author's position that both Houses of Congress **must convene jointly but vote separately**. The members of the Senate and the House of Representatives must meet as just one body without any distinction whether they are senators or congressmen, except that when it comes to the time of voting, they vote separately for the obvious reason that the members of the Senate are smaller than those of the House.[18]

The Constitution states the "Congress of the Philippines xxx shall consist of a Senate and a House of Representatives xxx." Hence, the Senate or the House cannot act alone in amending or revising the Constitution. Both Houses must approve the same act separately before it becomes an act of Congress. Voting separately supports the current bicameral nature of the Philippine Congress and establishes checks and balances between two institutions representing two different constituencies: the national and congressional district constituencies, which the Senate and the House respectively represent.

The case of *Mabanag and Lopez Vito*[19], decided under the 1935 Constitution, as amended, when there was also a Senate and a House of Representatives, is illustrative. On 18 September 1946, a Congress' Resolution proposing an amendment to the Constitution of the Philippines was adopted, which reads as follows:

> Resolved by the Senate and House of Representatives, of the Philippines **in joint session assembled, by a vote of not less than three-fourths of all the Members of each House voting separately.** To propose, as they do hereby propose, the following amendment to the Constitution of the Philippines to be appended as an Ordinance thereto:
>
> ORDINANCE APPENDED TO THE CONSTITUTION
>
> "Notwithstanding the provisions of section one, Article Thirteen, and section eight, Article Fourteen, of the foregoing Constitution, during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen

[18] Minutes of the Senate Hearing dated 5 February 2024 (Opinion of Justice Mendoza).
[19] G.R. No. L-1123, March 5, 1947

> hundred and forty-six, pursuant to the provisions of Commonwealth Act Numbered seven hundred and thirty-three, but in no case to extend beyond the third of July, nineteen hundred and seventy-four, the disposition, exploitation, development, and utilization, of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines."
>
> This amendment shall be valid as a part of the Constitution when approved by a majority of the votes cast in an election at which it is submitted to the people for the ratification pursuant to Article XV of the Constitution.

Indicative that Congress convened jointly but voted separately; sixteen Senators voted in favor of the resolution, five were against it; while 68 House of Representatives voted in favor and 19 voted against it. Thereafter, in the exercise of its ordinary legislative power, both Houses of Congress passed Republic Act No. 73, calling for a plebiscite to ratify the proposed resolution.

Following the maxim *ratio legis est anima,* the intention of the Constitution's framers must be gathered from the letter and spirit of the document, for in case of ambiguity, the words of the Constitution should be interpreted in accordance with the intent of the framers. Thus, voting jointly renders bicameralism and the principle of checks and balances irrelevant and meaningless. In addition, allowing Congress to vote jointly would put the Senate in a disadvantaged position because they can easily be outnumbered and dwarfed by their counterparts in the House of Representatives who have the numbers in the context of constitutional change and amendments.

Noticeably, it is only when the President declares martial law or suspends the privilege of the writ of habeas corpus that Congress "**votes jointly**." In all its other functions, Congress acts as a bicameral body, and **votes separately**. As there is no expressed provision in the Constitution that Congress, when proposing amendments or revisions to the Constitution, shall vote jointly, applying rules of construction, "**voting separately**" should be viewed as the rule and "**voting jointly**" as the exception in interpreting Section 1(1) Article XVII of the Constitution.

From the foregoing, the manner of voting for the proposed changes in RBH 6 and RBH 7 must be done separately. Under the present provision, any proposed change must be approved by a three-fourths vote of all the members of the Senate and all the members of the House, and this means voting separately since the Constitution speaks of "[T]he Congress," which is a bicameral body. The proposed change in the presently worded People's Initiative for Congress to convene and **vote jointly** upon the "call" of either the Senate President or the House Speaker, once approved, would effectively ruin the bicameral nature of Congress.

IV. REVISIONS NOT AMENDMENTS

Article XVII of the Constitution provides the process by which the people themselves, or through their chosen representatives may alter, change or modify the charter that governs the State. Such modification may either be an amendment or a revision. Traditionally, an amendment is an isolated or piecemeal change merely by adding, deleting, or reducing without altering the basic principles, whereas a revision is a revamp or rewriting of the whole instrument, altering the substantial entirety of the Constitution.

As worded, Congress could either propose amendment or revision of the Constitution. However, the framers of the 1987 Constitution limited the People's Initiative to only proposing amendments and not revisions to the Constitution. The intention to limit the people to initiate amendment is clear in the deliberation of the framers of the 1987 Constitution, viz:

> MR. MAAMBONG: My first question: Commissioner Davide's proposed amendment on line 1 refers to "amendments." Does it not cover the word "revision" as defined by Commissioner Padilla when he made the distinction between the words "amendments" and "revision"?
>
> MR. DAVIDE: No, it does not, because "amendments" and "revision" should be covered by Section 1. So insofar as initiative is concerned, it can only relate to "amendments" not "revision."
>
> MR. MAAMBONG: Thank you.[20] (Emphasis supplied)

The framers of the Constitution made a clear distinction between "amendment" and "revision" of the Constitution; that only Congress or a constitutional convention may propose revisions to the Constitution, and that a People's Initiative may propose only amendments to the Constitution.

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[20] *Lambino vs. Comelec, supra.*, citing I RECORD 386, 392, 402-403.

Where the intent and language of the Constitution clearly withhold from the people the power to propose revisions to the Constitution, the people cannot propose revisions even as they are empowered to propose amendments.

This intention is clearly spelled out in Section 2 of Article XVIII when it says only: "**Amendments** to this Constitution may likewise be directly proposed by the people through initiative x x x."

At this juncture, is the present initiative proposing the amendment of section 1 (1) by adding the words "voting jointly, at the call of the Senate President or Speaker of the House of Representative," an amendment only? In *Lambino*, amendment is only a simple change in the Constitution that does not affect basic or fundamental principles of the Constitution like the checks-and-balances or the separation of powers. Also, if the scope of the changes in the Constitution is so broad that substantial changes are made in several provisions of the Constitution, then the change is a revision and not an amendment. It provided two tests to determine whether a proposed change is an amendment or revision: the *quantitative* and the *qualitative tests*.

> The quantitative test asks whether the proposed change is "so extensive in its provisions as to change directly the 'substantial entirety' of the Constitution by the deletion or alteration of numerous existing provisions." The court examines only the number of provisions affected and does not consider the degree of the change.
>
> The qualitative test inquires into the qualitative effects of the proposed change in the Constitution. The main inquiry is whether the change will "accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision." Whether there is an alteration in the structure of government is a proper subject of inquiry. Thus, "a change in the nature of [the] basic governmental plan" includes "change in its fundamental framework or the fundamental powers of its Branches. "A change in the nature of the basic governmental plan also includes changes that "jeopardize the traditional form of government and the system of check and balances."[21]

Qualitatively, the proposed People's Initiative is considered a revision. Once approved, it would destroy the very nature of Congress, as it would effectively remove the check-and-balance in our bicameral Congress, as the House will always outvote the Senate. Consequently, the House Speaker

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[21] *Lambino v. Comelec, supra.*, citing Legislature of the State of California v. EU, 54 Cal.3d 492, 509 (1991), *California Association of Retail Tobacconists v. State,* 109 Cal.App.4th 792, 836 (2003).

could convene Congress to propose amendments or revisions to the Constitution even if opposed by all the 24 Senators. Also, with the number of members in the House, the latter could easily muster the required three-fourths vote even if all the 24 Senators would oppose the proposed amendment or revision. Finally, the House, acting alone and against the vote of all the 24 Senators, can **even propose the abolition of the Senate**.

Thus, the proposed change in the present People's Initiative cannot be the proper subject of an initiative, for it would be easier for Congress to amend or revise the Constitution than pass ordinary legislation. The Constitution must be accorded more stability than ordinary laws, and if any change is to be introduced in it, it must be in answer to a pressing public need so powerful as to sway the will of three-fourths of all the members of the Senate and the House of Representatives.

Consequently, it is either the Congress or a Constitutional Convention that could propose such measures as they are both given the authority to either amend or revise the Constitution. However, the same will not favor the Senate and, therefore, would not likely act on it. Convening a Constitutional Convention would also be too expensive and massive of a body to act on a single change of the Constitution, albeit other provisions may be included in the process.

Similarly, the subject proposals from the Senate and the House of Congress on the insertion of the phrase "*unless otherwise provided by law,*" and the additional insertion of the word "*basic*" to Paragraph 2 Section 4 of Article XIV on educational institutions is not only amendments to the Constitution but, qualitatively, a revision. While the changes to the provisions of the Constitution looks like an addition only to specific provisions of the Constitution, when done, would alter the basic principles on what the 1987 Constitution stands for. Specifically, the insertion of the phrase "*unless otherwise provided by law,*" affects substantially, among others, the following provisions of Article II of the Constitution:

a. Section 7 - - The State shall pursue an "**independent foreign policy,**" and its relations with other States the paramount consideration shall be **national sovereignty**, x x x **national interest, and the right to self-determination.**

b. Section 17 - - The State shall give priority **to education**, science and technology, arts, culture, and sports to **foster patriotism and nationalism**, accelerate social progress, and promote total human liberation and development.

c. Section 19 - - The State shall develop a self-reliant and independent national economy **effectively controlled by Filipinos**.

Also, any law enacted by Congress lowering the nationality requirement pursuant to the amended economic provisions of the Constitution would suffer congenital infirmities of being easily struck down for its unconstitutionality, contradicting the following provision of the Constitution, *mandating* that:

a. All educational institutions to include the study of the Constitution as part of the curricula, to inculcate patriotism and nationalism, x x x.[22] Prohibiting the ownership of the citizens of the Philippines or corporations or associations at least sixty per centum of the capital of educational institutions, but recognizing the authority of Congress **to increase rather than decrease** the Filipino equity participation in all educational institutions,[23] and to ensure that the control and administration of educational institutions is always vested in the citizens of the Philippines.[24]

b. The "grant of rights, privileges, and concessions covering the national economy and patrimony," the State to "**give preference to qualified Filipinos**;"[25] hence, recognizing the indispensable role of the "private sector" and "private enterprise"[26] in nation building.

c. Only corporations or associations, at least seventy per cent of the capital of corporations or associations is owned by Filipino citizens could engage in the advertising industry, as it is **impressed with public interest**, and shall **be regulated by law for the protection of consumers** and the promotion of the general welfare.[27]

In fact, during the hearing on the Resolution of Both Houses No. 7 (RBH7), which seeks to relax restrictions on certain economic provisions of

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[22] Sec. 3 (2), *ibid.*
[23] Sec. 4 (2), *id.*
[24] Sec. 4 (2), par 2
[25] Section 10, *supra*
[26] Section 10, *id.*
[27] Sec. 11, (2) Article XVI

the charter, by adding the phrase "unless otherwise provided by law", retired Supreme Court Chief Justice Reynato Puno, said:

> The use of the phrase "unless otherwise provided by law" is vulnerable to another constitutional challenge. Number one Your Honors, allowing Congress to use its lawmaking powers to amend the Constitution may be questionable.[28]

Indeed, we cannot have a Constitution that is self-contradictory that carries with it the seeds of contradiction for the proposed amendment in the economic provisions and open these to foreigners removing the control in the hands of Filipinos, which would place us in a very contradictory position *vis-à-vis* our solemn declaration in Article II, Section 19 that we have a national economy controlled effectively by Filipinos. If Congress intends to proceed with this exercise, it should not only change the proposed economic provisions in Articles XII, XIV, and XVI but should also change the related provisions of the Constitution in Articles II, XII, and XIV of the Constitution. Hence, a revision is needed for the surgery of the 1987 Constitution.

V. ON THE NECESSITY OF THE EXERCISE

The reframing of the nation's economic policy is used as a tool towards economic prosperity. Proponents stressed the need to remove the economic restriction in the Constitution, institutionalize the reforms laid down in the amended Public Service Act, provide our children access to the best educational institutions in the world for them to be globally competitive, and finally, liberalize our advertising industry to attract more foreign investments. Under the demands of the increasingly globalized age, the Philippines, despite its Filipino-first policy, has lagged behind its neighboring countries.

Former Finance Secretary Margarito B. Teves, in his Commentary, said that the removal of foreign restrictions would "help curb inflation" and, in turn, "help lower prices" due to "increased competition."[29] In emphasizing the urgent need to remove these restrictions, he said:

> Now is the right time. Our FDI inflows are lagging behind compared to our Asean peers. From 2010 to 2022, Philippine FDI inflows amounted to just $9 billion compared to Indonesia's $22 billion, and Vietnam and Malaysia at $17 billion. We are allocating less of our gross domestic product to investing in our growth compared to our peers. In

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[28] Hana Bordey, GMA Integrated News, Ex-CJ Puno: 'Unless otherwise provided by law' prone to challenge, GMA Network.www.gmanetwork.com, February 26, 2024 09:05 PM

[29] Gary Teves, Why Remove Restrictive Economic Provision, Philippine Daily Inquires, April 03, 2024

> 2022, such investment was only at 23 percent for the Philippines, compared to Vietnam's 33 percent, Thailand's 28 percent, and Indonesia's 30 percent. Except for those in the National Capital Region and nearby areas—which have almost 60 percent of economic activity—there are fewer opportunities for Filipinos to improve their lives. Attracting more FDIs will help direct more capital, and thus more balanced growth in other regions.

However, there are also other sectors that oppose liberalizing our economy. During the Senate Hearing on RBH 6, former Chief Justice Davide of the Supreme Court eloquently said:

> What our country and our people need today are not amendments to or revision of the Constitution but the full implementation of its principles and State policies solemnly enshrined in its Article II, and mandatory and provisions in its body. In about 150 instances, our Constitution orders the State or Congress to implement them by these solemn commands: "Congress shall give highest priority to"; "the State shall"; "Congress shall"; "as provided by law"; "as established by law"; or "in accordance with law."

This is echoed in Section 10, Article XII of the Constitution, which mandates that in the "grant of rights, privileges, and concessions covering the national economy and patrimony, preference must be given to qualified Filipinos."[30] In fact, in certain areas of investment, the reservation is for Filipino citizens or corporations or associations, at least sixty percent of whose capital is owned by such citizens or **such higher percentage** as Congress may prescribe.[31] Hence, the intent of the framers is to encourage the formation and operation of Filipino enterprises, as evidenced by the prohibition of lowering Filipino ownership and, instead, encouraging the increase of the same.

Not oblivious to these, we have seen our government already liberalizing our economic policies.

VI. ON FOREIGN OWNERSHIP OVER THE OPERATION OF A PUBLIC UTILITY

Recently, Congress addressed the limitations of foreign ownership that constrained investment in many sectors. It paved the way for a 100% foreign investment with the amendments to the Public Services Act (PSA) in

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[30] Sec. 10, Article XVII
[31] *Ibid*

March 2022,[32] opening up the previously closed or restrictive sectors of the economy, specifically when it reclassified several businesses as "public services" open to 100% foreign ownership, and only limiting the numbers of 60-40 foreign ownership restrictions to essential/"public utilities" such as distribution of electricity, transmission of electricity, water and wastewater pipeline distribution systems, including sewerage, petroleum and petroleum products pipeline transmission systems, seaports, and public utility vehicles.

The amendments to PSA define and differentiate public utilities from public services while addressing the constitutional limitation on foreign equity," and limiting the 60-40 foreign equity to essential public utilities. The amendments to the law are vital to safeguarding of our national interests and ensuring equitable access to essential services for all Filipinos, striking a balance between promoting foreign investments and protecting our domestic industries. The law even empowers the President to reclassify a public service as a public utility.

Now, local banks are open to 100% foreign ownership under the amended RA 10641; retail trade is open to 100% foreign ownership under RA 8762 subject to reasonable minimum capital requirement;[33] and the generation of renewable energy – solar, wind and tidal - is open to 100% foreign ownership under the DOE Circular amending the IRR of RA 9513.[34]

The Foreign Investment Act (RA 11647), which was enacted in March 2022, effectively removed several industries from the "Foreign Investment Negative List," or those in which 100% foreign-owned companies cannot invest. More industries, such as startups, startup enablers, and enterprises with advanced technology, can have 100% foreign ownership. In February 2023, the Philippines joined the Regional Comprehensive Economic Partnership, the most significant trade pact in the world, and imposed minimal restrictions on trade.

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[32] Public Service Act (PSA) – Enacted in March 2022, Republic Act (RA) 11659 distinguished between a public service and a public utility such that a public utility no longer includes telecommunication, shipping, airline, railway, toll road, and transport network vehicle industries. Because of the PSA, these industries are no longer subjected to the 40% constitutional limit on foreign ownership. Simply put, foreigners can now fully own corporations in these industries.

[33] Retail Trade Liberalization Act – In January 2022, the 2000 Retail Trade Liberalization Act was amended so that foreign retailers are required a lower paid-up capital. Under the new RA 11595, a foreign retailer shall have a minimum P25 million paid-up capital. In the old law, the requirement used to be a minimum of the peso equivalent of US$2.5 million paid-up capital (in current exchange, that's around P139 million).

[34] Renewable energy development – The Constitution also restricts to 40% the foreign ownership of a project to develop natural resources. But in 2022, the Department of Justice (DOJ) issued a legal opinion to the Department of Energy (DOE) that "natural resources" exclude kinetic energy like solar, wind, and hydro energy sources. Therefore, according to the DOJ opinion, renewable energy projects are not subjected to a 40% restriction cap, and are thus open to full foreign ownership.

Secretary Gary Teves, in his Commentary, would nevertheless suggest the complete removal of foreign restrictions, as the foregoing measures by Congress may be stifled through a judicial challenge, and the investors' interest in investing in the country lost. He said:

> Why outright removal? Recent laws passed to improve the investment climate may face judicial challenges, as seen in the amendments to the Public Service Act because the provision on public utilities is still in the Constitution. The same is true in the amendments to the implementing rules and regulations of the Renewable Energy Act, if the restrictions on natural resources are not removed. With foreign investors considering a country's legal framework as an important factor in their investment decisions, removing these restrictions in our Constitution would send a clear and compelling message of welcome to foreign investors.[35]

This author views that to address the low foreign direct investment in the country, we should address the real causes of the problem, none of which require constitutional change, such as high power cost, bureaucratic regulations, absence of rule of law, and poor infrastructure. NEDA Secretary Arsenio M. Balisacan, on the 2023 Fourth Quarter Performance of the Philippine Economy, did not mention the lifting of the economic restrictions found in our Constitution as necessary to achieve massive, sustained investments, *viz:*

> The growth in total investments accelerated to 11.2 percent in Q4 2023, a turnaround from the 1.4 percent contraction in Q3. This resulted in a 5.4 percent growth for the full year. The robust investment expansion during the quarter was driven by significant growth in fixed capital (10.2 percent), particularly the expansion of durable equipment (14.6 percent). As I have mentioned in other fora, nothing less than massive, sustained investments are needed to achieve high-quality, job-creating growth and inclusion. Thus, a major effort will be made to address critical factors affecting investment decisions. **We shall improve the ease of doing business through digitalization and continuous streamlining of policies and regulations, accelerate the execution of game-changing public infrastructure projects, facilitate more private-sector investments in energy and**

[35] Gary Teves, *supra*

> **telecommunications, and upskill our workforce.**[36]
> (Underscoring supplied)

Even former NEDA Head, UP Professor Emerita Winnie Monsod, argued compellingly that Charter Change is not a necessary condition for a country to grow its economy, as other more urgent constraints to investing must be addressed before anything else. These include issues surrounding "infrastructure, governance, corruption, and ease of doing business."[37] She further said:

> Even if you have a Constitution that provides for 100% foreign ownership in all sectors, without a nice, stable business environment to thrive in, we can't expect investors to suddenly flock in droves.[38]

Hence, amending Section 11 of Article XII is already inconsequential. What our country and our people need today are not amendments to or revision of the Constitution but the full implementation of its principles and State policies solemnly enshrined in Article II. One has to give the foregoing measures a chance to be realized as they are intended to improve our utilities and to encourage new players in sectors such as airports, railways, expressways, and telecommunications.

VII. ON BASIC EDUCATION

Both RBH 7 in the House and RBH 6 in the Senate seek to amend the fundamental law to allow foreign nationals to fully control and own schools in the country without limits through the insertion of the phrase "unless otherwise provided by law."

During the deliberation of RBH 7 in Congress, DepEd said that adding the phrase "unless otherwise provided by law" "could potentially serve as a gateway to expand the scope of control and administration over educational institutions not solely by citizens of the Philippines but by other entities as well,"[39] citing Article 14 Section 3 of the Constitution which states that all education institutions shall "inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values, develop moral character and personal discipline, encourage critical and creative

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[36] Statement of NEDA Secretary Arsenio M. Balisacan on the 2023 Fourth Quarter Performance of the Philippine Economy, January 1, 2024.
[37] JC Punongbayan, Assistant Professor, UP School of Economics, ANALYIS: Why Charter Change is needless right now. Rappler, March 3, 2023
[38] Ibid.
[39] Wendell Vigilia, DepEd berated for opposing entry of foreign schools under economic Cha-cha, March 6, 202

thinking, broaden scientific and technological knowledge, and promote vocational efficiency."[40] The proposed constitutional amendment may result in the possible "dilution of the fundamental aspects of Filipino identity, cultures, and values to be taught and worse, endanger national security."[41]

Interpolating DepEd's representatives on the discussions on Resolution of Both Houses (RBH) No.7, particularly on the lifting of restrictions in education, House Deputy Majority Leader Iloilo 1st district Rep. Janette Garin has slammed the "hypocrisy" when it comes to patriotism and the desire for quality education that can only be achieved abroad. She said:

> We're talking about here pure Filipino, we're talking about here patriotism, but does it make you less of a Filipino kung hangarin mong magkaroon ng mas magandang edukasyon (if you yearn for better quality education)?[42]

Citing that foreign schools would also help boost the Philippine economy, she said that DepEd failed to establish a connection between liberalization and the claim of threat to national security and that the current administration aims only at providing foreign quality education to deserving and intelligent Filipinos.[43]

Analyzing these perspectives, the author agreed that DepEd's position on the proposed amendment would run counter to Section 17 of Article II of the Declaration of Principles and State Policies of our Constitution, which provides, "The State shall give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development." Opening schools to full foreign ownership could attract entities looking to "make a quick buck" and further the commercialization in education. Hence, than open up our schools to foreign ownership, the Philippine government should be reminded that improving the quality of Philippine education is a State obligation.[44]

It is essential that the Philippine curriculum is exclusively implemented by Filipino citizens. This ensures alignment with the specific needs and context of the country. The 1987 Constitution currently allows the establishment of international schools only if these are under religious

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[40] Ibid.
[41] Ibid
[42] *Ellson* Quismoro, Let's not be hypocrites: Garin says Pinoys should also enjoy foreign quality education in the Philippines, Manila Bulletin, Mar 5, 2024 09:56 AM
[43] Ibid
[44] Christina Chi, DepEd objects to foreign control of schools, cites national security risk. Philstar Global, March 5, 2024.

groups and mission boards or if they will intentionally cater to foreign diplomatic personnel and their dependents, as well as foreign temporary residents. Allowing foreign nationals to operate schools in the country may step on the government's mandate of honing students' "sense of nationality."

With foreign control or dominance in our basic education, we would put asunder the noble, patriotic, and nationalistic virtues which are constitutionally mandated to be a part of the curricula of all educational institutions provided for in paragraph 2 of Section 3 of Article XIV of the Constitution, which reads:

> SECTION 3. (1) All educational institutions shall include the study of the Constitution as part of the curricula.
>
> (2) They shall inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values, develop moral character and personal discipline, encourage critical and creative thinking, broaden scientific and technological knowledge, and promote vocational efficiency.

Indeed, we cannot expect foreigners, at the helm or in control of our educational system, to seriously consider the State policy on education, or take the cudgels from the State the responsibility of inculcating in the filipino youth "patriotism and nationalism," and "involvement in public and civic affairs" provided in Section 13 of Article 2 of the Constitution, viz:

> SECTION 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism and encourage their involvement in public and civic affairs.

Thus, the Philippine curriculum should be exclusively implemented by Filipino citizens to ensure alignment with the specific needs and context of the country. In fact, by express provision of the Constitution, what is authorized is for Congress **to increase rather than decrease** the Filipino equity participation in all educational institutions and to ensure that the control and administration of educational institutions is always vested in the citizens of the Philippines. Nevertheless, the 1987 Constitution already allows the establishment of international schools provided they are: (1) established by religious groups and mission boards, (2) established for

foreign diplomatic personnel and their dependents, and/or (3) established for foreign temporary residents.[45]

VIII. ON ADVERTISING INDUSTRY

Congress' proposal to amend Paragraph 2 Section 11 of Article XVI (General Provisions), when approved, grants the discretion to lower the ceiling of foreign ownership or entirely remove the restriction that only Filipino citizens or corporations or associations could engage in the advertising industry, making this industry available to all. Hence, the provision in this section on "the participation of foreign investors in the governing body of entities in such industry shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such entities must be citizens of the Philippines," is already inconsequential, once Congress, by legislative action, decides to remove the foreign restriction altogether.

Our Constitution mandates that only corporations or associations, with at least seventy percent of the capital of corporations or associations owned by Filipino citizens, could engage in the advertising industry.[46] The justification lies in it being impressed with the public interest; hence, it should be regulated by law for the protection of consumers and the promotion of the general welfare.[47]

Nevertheless, the advertising industry has long been a borderless industry, and the present move by both houses of Congress may be regarded as mooted, or at least, a mere formality. Content creation can be brought into the country without the need to bring people into the Philippines or lifting the restrictive provision of Section 11 Article XVI to attract more foreign investors. Almost 40% of advertising agencies in the Philippines have foreign partners. What is needed is "content regulation" of what is placed into the media to determine whether it contradicts Philippine culture, identity, and aspirations.[48]

The amendment of Section 11 of Article XVI would already be a futile exercise and would result in billions of expenses, as it has been rendered moot by the pace of how this industry moves. Instead, Congress should enact measures to regulate this industry so that it is not plagued with undesirable content that is capable of destroying the welfare of the nation.

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[45] Sec. 4 (2) par. 3, Article XIV
[46] Sec. 11, (2) par 2, Article XVI
[47] Sec. 11, (2) Article XVI
[48] Statement of Mr. Rudolph Jularbal, KBP Vice President for Legal and Regulatory Compliance Group, House Hearing on RBH 7, March 5, 2024.

IX. THREAT TO NATIONAL SECURITY

Opening up to foreigners some strategic sectors, including electricity and water, can also compromise our national security. Foreign State-owned companies already have a presence in Philippine telecoms, electricity distribution, and even water and natural gas supplies. The Chinese government continues to control some areas of our exclusive economic zone in the West Philippine Sea. A report regarding the effect of State-backed investors, or foreign wealth funds vis-à-vis issues on national security, shows domestic governments "reconsidering their national security interest to inward investment and to consider placing additional restrictions on foreign investments in areas considered to be an essential security interest."[49] Pertinently, the report says:

> Since the end of World War II, the United States has led efforts internationally to reduce official government restrictions on foreign investment. One prominent exclusion to these efforts and commitments incorporated in international treaties is the right of nations to protect their own "essential security interests." The terrorist attacks of September 11, 2001, combined with the growing role of State-backed investors, or sovereign wealth funds (SWFs), has spurred a number of nations to reconsider their national security interests relative to inward investment and to consider placing additional restrictions on foreign investments in areas considered to be an essential security interest. For the most part, such restrictions apply to mergers, acquisitions, and takeovers of existing firms and not generally to new establishments. These actions, in turn, have raised concerns among the members of such organizations as the OECD, which promotes the concept of liberalized government restrictions on the free flow of international investment.[50]

On basic education, allowing foreign nationals to operate schools in the country may step on the Department of Education's mandate of honing students' "sense of nationality." The proposed removal of limits on the number of foreign students studying in Philippine schools, as well as the lifting of the prohibition on the establishment of exclusive schools for foreigners, is also a "great risk" to national security. The Department of Education, citing its current *Matatag* Education agenda, stated:

> How can foreign entities who are not citizens of the Philippines and therefore may lack

[49] EveryCRSReport.com., Foreign Investment and National Security: Economic Considerations, April 2013
[50] Ibid

> first-hand experience with Filipino culture and values effectively impart a sense of patriotism and nationalism to learners?" The potential threat to national security on top of the "dilution" of Filipino identity and culture in allowing 100% foreign ownership of schools. [51]

This is possible due to the lack of provisions for proper supervision and control over aliens in Philippine territory, as the proposed Charter amendment would not just "significantly diminish" DepEd's oversight of school supervision and curriculum offerings, but it would also open up the education sector to security threats. The susceptibility to external and foreign influence raises concerns regarding national security as it may expose these educational institutions to infiltration and compromise.[52]

X. CONCLUSION

The Constitution intends to govern far into the indefinite future as social and economic conditions change. It is intended to be adaptive to changing conditions. It is a continuing instrument of government to strictly contain not rules for the present but principles for the expanding future, so it could withstand for ages and be adaptable to various crisis of human affairs. It is intended to have an indefinite life. It must be permanent and not transitory. However, when it is absolutely necessary to address the needs of the times, it must yield some changes through the means prescribed by the Constitution itself.

In reference to the 1987 Constitution, every attempt to change its provision has been a failure. At first, the difficulty in the process of either amending or revising the charter is hinged on the rigidity of acquiring the necessary three-fourths or two-thirds votes for Congress to act as Constituent Assembly or to call a Constitutional Convention, respectively. Similarly, the requirement for an enabling law before the People's Initiative is exercised seems to be the reason why this exercise has not been successful. However, there is more to it than what meets the eye. Questions that surfaced due to the silence of the provisions on how Congress should proceed with the proposal are within the framework of proposing, and then later, ratification by the people of the proposal. Thus, even with a valid proposal in mind – there is no clear-cut procedure on how Congress should start in the first place.

This author shares the opinion that Congress has the authority under Sec 1, Article XVII of the 1987 Constitution to propose revision or

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[51] Christina Chi, *supra*

[52] *Ibid,* citing the Statement of DepEd Usec Omar Romero during the House Congressional Hearing on RBH 7, March 18, 2024.

amendments by the Constitution, but it should be made by Congress assembled and by voting separately. The members of the Senate and the House of Representatives must meet as just one body without any distinction whether they are senators or congressmen, except that when it comes to the time of voting, they vote separately for the obvious reason that the members of the Senate are smaller than the members of the House. Hence, he does not share with the view of proposing changes through ordinary legislation, bypassing what would have been a more rigorous and deliberative exercise than the speedy three plenary sessions it would take them to propose amendments to the Constitution.

Also, the proposed amendments are actually a revision as the proposed insertion of "as may be provided for by law in the three economic provisions in RBH 6 and RBH 7 will effectively affect the declaration of fundamental principles and policies of the State. A revision requires harmonizing not only several provisions, but also the altered principles with those that remain unaltered. Similarly, a proposal to amend section 1 (1) of Article XVII by adding the words "voting jointly, at the call of the Senate President or Speaker of the House of Representative" is a revision as it undermines the bicameral nature of Congress.

Presently, the current exercise of the People's Initiative is now stalled with the COMELEC, and the latter has not made any positive action in rendering its mandate of certifying the correctness of the gathered signature to determine when the ratification of the proposal should be made. On the part of Congress, both houses adopted what Fr. Joaquin Bernas opined as a solution to the silence of Section 1 of Article XVII of the Constitution by availing the ordinary legislative process in the approval of proposed changes in the Constitution. Thus, the House of Representatives is the first to approve RBH 7 amending the foreign equity restrictions in public utilities, education, and advertising by adding the phrase "unless otherwise provided by law." While foreign restrictions will still remain in the Constitution, Congress can fully lift these restrictions by mere legislation or an enabling law.

However, even with the passage of RBH 7 in the House of Representatives, the same measure would still be subject to review by the Senate, and the latter may either propose amendments thereto or entirely substitute it with its version – a power exercisable within the parameters of legislative power. The process would also be applied to the version of the Senate (RBH6), and the probability of having a bicameral committee to thresh out differences in the two resolutions would likely happen. Notwithstanding, the same process may be subject to a judicial review to determine whether Congress followed the correct procedure in the Constitution. Hence, the anticipation of a swifter passage of the proposed changes to the Constitution through ordinary legislation may not actually

happen, *albeit* may take further delays, and the rationale for the change may no longer be relevant with time.

Hence, why the proposed constitutional changes in the charter when existing economic data show that restrictive provisions of the 1987 Constitution are inconsequential to economic progress? Neither do they hinder economic growth. In fact, study shows that age-old economic issues of corruption, heavy taxation and distresses in government transactions are the factors that discouraged foreign investors and not the conceived economic restrictions in the Constitution.

Also, Congress has highlighted the significant strides in recent years to liberalize the economy through legislation, among them is an amendment to the Public Services Act or PSA, and other laws aimed at attracting foreign investments. Hence, amending Section 11 of Article XI1 is already inconsequential. What our country and our people need today are not amendments to or revisions of the Constitution but the full implementation of its principles and State policies solemnly enshrined in Article II and mandatory provisions in its body. One has to give the foregoing measures a chance to be realized as they were intended to improve our economy.

Rather than open up our Philippine schools to foreign ownership, our government should be reminded that improving the quality of Philippine education is a State obligation. Philippine curriculum should be exclusively implemented by Filipino citizens to ensure alignment with the specific needs and context of the country, especially our basic education, so as not to put into oblivion the noble, patriotic, and nationalistic virtues that are constitutionally mandated to be a part of the curricula of all educational institutions.

It would be a work in futility, *nay* the expenses required if an amendment or revision should still be undertaken when the change is no anymore relevant in the Philippine advertisement industry. Congress should instead be vigilant and provide measures to protect our people, especially the young, against the evils that this technology brings.

Finally, rather than give up what indeed is for the Filipinos, we should instead be relentless in protecting our national interest and the right to self-determination by immersing our youth in the ideals of patriotism and nationalism and by fully implementing existing laws that are geared toward accelerating social progress and the promotion of total human liberation and development of the Filipino people.